TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, January 6, 2004

Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Web site: www.apexnc.org

Mayor Weatherly called the meeting of the Town of Apex Board of Commissioners to order on Tuesday, January 6, 2004 at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street. Mayor Weatherly delivered the Invocation, led the Pledge of Allegiance, and extended a welcome to those present.

PRESENTATION

Lois Nixon, Wake County Keep America Beautiful presented the "Capital Tree Program Award" for the "Blackjack Oak Tree at the United Church of Christ", Center Street. This Program recognizes the largest, rarest, oldest and prettiest trees of various species in Wake County. The program is an educational effort about economic and environmental benefits of trees for our urban environment. The Program is funded by Wake County and an Urban and Community Forestry grant from NC Division of Forest Resources and the US Department of Agriculture.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action. There were no amendments to the consent agenda.

Action: Motion by Commissioner Gossage and second by Commissioner Meckes to approve the following items on the consent agenda. Motion carried.

1. Minutes of December 16, 2003 Board of Commissioners meeting.
2. Annexation Petition # 354, Town of Apex, owner/petitioner, petitioning to annex 2.06 acres into the town's corporate limits, property being a portion of the Apex Peakway, an existing 90' public right-of-way, and located between Center Street (NCSR 1010) and Old Raleigh Road; and supporting documents 1) Resolution directing Clerk to Investigate Annexation Petition; 2) Certificate of Sufficiency of Petition by Clerk, and 3) Resolution setting date of public hearing for January 20, 2004.
3. Budget Ordinance Amendment No. 10 ($54,000 for a backhoe; $25,000 rate study – regional wastewater facility).

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as printed. With no amendments, the meeting agenda was set as printed.

PUBLIC HEARINGS

David Rowland, Director of Planning

Public Hearing # 01 – 2010 Land Use Plan Amendment and Rezoning Petition #03CU09

Rezoning Case # 03CU09, Jones & Cnossen Engineering, PLLC, petitioner, seeking to amend the 2010 Land Use Plan and rezone from High Density Multi-Family Residential to Planned Unit Development Conditional Use District, 50.02 acres located on the future Apex Peakway between Towhee and Bryan Drives; possible motion regarding this request.

All persons speaking gave sworn testimony to the following:

Director of Planning advised this hearing was a request to change the Land Use Plan and rezone from High Density Multi-Family Residential to Planned Unit Development Conditional Use District, 50.02 acres located on the future Apex Peakway between Towhee and Bryan Drives and noted the adjacent zoning and land uses (staff report incorporated as a part of the minutes.)

Highlights:

- The project proposes 87 single-family lots; property is split by Beaver Creek and joined by stub street from White Hall and joined by another stub street from Amherst
- Perennial stream carries a 100 foot buffer with side streams - intermittent - 50 foot buffer
- Average lot size 9,500 square feet (in keeping with surrounding subdivisions of Amherst and White Hall)
- Retention ponds catch the run-off so post-development run-off does not exceed pre-development run-off for the one and ten year storms
- This project if approved makes a major greenway connection from downtown – Beaver Creek to the American Tobacco Trail – the only segment left
- Density is 1.74 units per acre with all lots shown out of the 100 year floodplain
- Town working with developer to get a developers agreement for a connection of the Apex Peakway from Bryan Drive to Cardinal Boulevard over to S. Salem Street; could be done at a separate meeting.

Planning Board recommends unanimous approval with condition that construction traffic should enter from the south of the property up Cardinal Boulevard to the north and not go through the existing subdivision.

Questions/comments from the Board were answered by Director of Planning:

Commissioner Meckes noted the depiction of the general diagram showing the Peakway in a different location than the actual schematic. (This was a representation and should be going by what he was showing).

Commissioner Schulze asked the minimum lot size. (Average lot size is 9,500 square feet; Minimum lot size is 7,000 square foot).

Commissioner Jones noted a portion of the Peakway running through a corner of Jaycee Park. (Donation of 9/10 acre of the applicants property; town comes out better square foot wise – town proposes to clip off a part of Jaycee Park; we get Parcel C – not an active part of the park).

Commissioner Jensen asked about Parcel B. (Parcel B is for future use under PUD and allows daycare, office building; there's not a use for that yet; will come later with a site plan).

Commissioner Meckes asked would that access of the Peakway. (Yes).

Commissioner Jensen noted to him lot sizes looked smaller than those around it. (Engineer Cnossen will address this later; looking at overall density it's a fairly low - 1.74 units per acre with 35% open space – 18 acres of the 50 acres; preserves steep slopes, creek buffers on site).

Commissioner Meckes asked the character of the greenway corridor connection. (Idea is not to pin-down the greenway now, but walk it to determine the actual route of the greenway, keeping it out of areas subject to flooding; Recreation Department would be involved with the determination).

Commissioner Jensen noted $75,000 from the developer with Town supplementing the surfacing. (If that is not enough to build it.) Jensen offered there would be pavers put down. (This is the general look for future greenways – they would be a paved surface – asphalt). Commissioner Jensen noted there could be use of permeable concrete as well.

Director of Planning noted this a challenging piece of property, and what the applicant had come up with was a good solution for this piece of property.

Public hearing # 1 continued

Mayor Weatherly opened the public hearing at 7:25 p.m.

Speaking in favor:
Peter Cnossen, Jones & Cnossen, 106 W. Chatham Street, engineer for the developer who is looking to purchase this piece of property. He thanked staff for working on putting this together; noted it as a challenging piece of property; feels what is being presented is low impact and predominantly residential; has met with adjacent property owners and has had favorable responses - they like what is being offered as single family especially as an infill around single-family neighborhoods.

Highlights of the project:

- Average lot size is 9,500 square foot; matches up well to adjacent properties: The Green 7,000 square feet minimum, White Hall 8,000 square feet minimum, and Amherst 10,000 square foot minimum.
- Stormwater controls are designed for peak flow on the 2 and 10-year storms, limiting post-development flow not to exceed pre-development flow.
- This Planned Unit Development is consistent with the Unified Development Ordinance and meets the intent of the Planned Unit Development District.

Cnossen appreciates the support and feels this is a good project for the town.

- Project builds a substantial portion of the Apex Peakway which is a positive thing.
- Condition for construction traffic recommended by the Planning Board to enter from the south is acceptable and has agreed to access from the south.

Speaking in opposition:
Richard Tyson, 709 Bristol Blue Court, stated 87 homes means 174 cars; doing the Peakway to Bryan Drive dumping another 174 cars on Bryan Drive and Cameron Glenn; neither of them were made to carry the traffic; Post Office is busier now then when it was built with the church getting ready to open; he would like to see this approved, but the Peak Way and Torrance Avenue not be opened until the Peakway is done to Olive Chapel Road.

Mayor Weatherly closed the public hearing at 7:30 p.m.

Comments/questions from the Board answered by Director of Planning and Engineer Cnossen:
Commissioner Jensen asked about stormwater run-off from the Peakway, asking if it were included in the 10-year storm control. (Cnossen responded it was for the whole site (the 2 and 10-year storm) and the Peakway is being considered impervious area in that as part of the site).

Commissioner Jensen asked about Tyson's concern of the Peakway to Olive Chapel. (Rowland would like to see that connection made, but it's not eminent, there's a rezoning in that area that would make the connection, but it's not proposed to be done in the first phase of that project that would make that connection; he doesn't disagree, it would be great to have that connection made).

Commissioner Meckes clarified it was the length of the lot on Olive Chapel being considered later. (Rowland responding right – estimated distance about 500 feet. Manager Radford added the Peakway section through Amherst, even though the right-of-way is there, is not built; does not exist but can add that to it).

Commissioner Jensen asked if the project required a traffic report. (Rowland responded it does not).

Commissioner Meckes asked about the access points. (Rowland responded there will be two major access points: Bryan Drive and out to South Salem Street; it's not one way in and one way out; he doesn't disagree with the concern of Tyson, it would be nice to have the Peakway connection to Olive Chapel but it is not in the immediate plan now, but as this property is developed on Olive Chapel, it will be done).

Commissioner Jensen stated the main flow of traffic unfortunately will be to the north rather than the south, he would expect. (Rowland responded relief is offered on South Salem Street, but right, probably the majority of the traffic might be heading north, but there will be some folks that will head south to get on US 1 to go to Raleigh).

Commissioner Meckes verified the location of Bryan Drive and White Dogwood.

With no further questions, Mayor Weatherly called for a motion.

Action: Motion by Commissioner Meckes and second by Commissioner Jensen to approve Case #03CU09 from High Density Multi-family Residential to Planned Unit Development Conditional Use, thinking it's a great use of this plan and gives open space in the middle of all of this, conceivably for use by all surrounding areas, plus the greenway connection out to the American Tobacco Trail, our open dream that we could have that done and a wonderful amenity for all our citizens.

Mayor Weatherly asked for legal clarification from the Attorney Kaus if we needed to have a finding of the standards. He responded ideally we would, but he thinks we are fine here, making make sure the motion includes the condition recommended by the Planning Board. Commissioner Meckes stated his motion did include the condition from the Planning Board.

Mayor Weatherly asked for discussion on the motion:
Commissioner Jones understood Tyson's concern with the traffic, but doesn't know how we would time that such to make that happen; such that we would only have access from the south or via. Torrance Drive; the connection at White Dogwood would be Torrance Drive too; he hopes the connection to Olive Chapel happens soon enough that it would not be that big of a deal.

Commissioner Jensen thinks we are better off for multiple house dwellings, even along with the possibility of having problems; you could jam a lot more people into the multiple living situation, than we will be seeing here. He would rather have seen the lots a bit larger, but thinks we are better off with what we've got here than what we had.

Commissioner Meckes commented on being mindful of the sewer issues with 87 homes and an additional 270 folks. Commissioner Jensen stated when these come up, he would request there be a chart that says how much we've consumed as we go along so we can see where we are; it's an important planning aspect of where we're heading. Motion carried unanimously.

End of Public Hearing # 1

June Cowles, Planner
Public Hearing # 02 – Rezoning Petition #03CU18
Rezoning Case # 03CU18, Jones and Cnossen Engineering, PLLC, petitioner, seeking to rezone from High Density Multi-Family Conditional Use and High Density Multi-Family to Planned Unit Development Conditional Use District, 4 acres located south of Ten-Ten Road; possible motion regarding this request.

All persons speaking gave sworn testimony to the following:

Planner Cowles advised the following:
- Request is to rezone a master subdivision and site plan known as Cherry Grove Townhomes;
- Location off Ten-Ten Road
- Current zoning is High-density Multi-family Conditional Use and High-density Multi-Family
- Request is to rezone to Planned Unit Development Conditional Use District
- 2010 Land Use Classification is Medium High-Density Residential
- Stated the adjacent zoning and land uses (staff report incorporated as a part of the minutes).
- Proposed plan is for 45 town homes
- Resource and Conservation Area and Development Standards;
- Site is partially wooded with pine, cherry, walnut and gum trees
- Density is 11.25 units per acre consistent with the 2010 Land Use Plan
- Access is off Ten-Ten Road with a street stub for future development
- There is textured paving at the entrance of the private area which is private and maintained by the Homeowners' Association –
- Architecture includes hardiplank siding, bring and the raised foundations
- Stormwater management pond is designed for a 10 year storm and another potential storm drainage (Stuart Jones will address Commissioner Jensen's concern regarding this).

Mayor Weatherly opened the public hearing at 7:40 p.m.

Public hearing # 2 continued

Speaking in favor:
Stuart Jones, Jones and Cnossen Engineering, 106 W. Chatham Street, offered the following:

- This project clusters townhomes and creates individual pods keeping the units off a public street, but creates entry ways that are unique and more distinctive in this area, maybe a better gateway into Apex
- Staff worked in coming up with several different concepts with this being the greatest, with staff agreeing
- Idea of running units on Ten-Ten, backing on Ten-Ten, but built so the front faces on Ten-Ten, a nice effect coming into Apex
- Nice project: no decks, but every unit will have a patio; if enclosed or covered will have to meet NC Building Code
- Raised foundations, porches, hard-i-plank siding, shadow-line singles
- All units adjacent to Center Street shall have decorative features on portions of the building that are visible from Center Street
- Rear and side elevations of the Center Street units shall include features such as covered porches, shutters, bay windows or other features to enhance the appearance from Center Street.
- Planning Board discussion regarding parking: meets code by providing two spaces per unit; feels in this price range and this size unit, this will meet or exceed the needs in this development, not wanting anymore impervious surface on this site than they needed too.
- Trash/recycling collection idea on site: Residential trash carts/bins will be housed in 3 brick collection corrals with one cart for every two townhomes; town has agreed at additional cost to pick up trash twice a week minimizing trash/recycling area – there are no dumpsters which is always a big headache for a development, trying to keep this on a more residential scale or feel.
- RCA: extensive landscape plan to tie into existing Cherry Trees on site (the name of the project).
- Project will create a stub street connection into a five/ten acre site next to this, with everything else in the back; north side is already developed; staff idea is the street would loop back to Ten-Ten and be self contained, no plan to go any where.
- Sewer is on site and water will be extended down public facilities
- Stormwater management: a couple of ideas – there is a pond on site, probably large enough to do the one and 10-year storm, but.
- Trying to come up with a low impact storm water ideas – one take roof drains and put them out into an underground cistern and return back into the ground water system instead of canalizing everything to a pond and creating more run-off; unique new way, documents out of Maryland embraces this impact design concept; Raleigh is trying to push this and is great for small sites where you can control it – on a large site, it gets too intense; State of North Carolina has approved some of these low impact designs; will work with staff, this will be the first time they have included something like this in a stormwater management plan; will work with staff on volumes; theory, take roof top drainage back into the ground and an underground system returning it into a ground water system; take the street runoff and parking lots putting it into the pond and filtered; (underground: hole will be filled with stone and it settles here and migrates back through the ground based on calculations for the site); alternate: could use pumps for irrigation; low impact stormwater management design, a new wave and trying to get single-family homes to reuse their own stormwater on their own lot instead of run-off into the street and deal with it in bulk, it's a new concept, and if dealt with on lot basis, it's not as expensive – for this site, there would have to be a large ponds and each lot pays a lot for the pond; lots of urban sites are going to this system – they don't have any options.
- Concern from Commissioner Jensen, it's a better way to go, but long term clogging (Jones responded keeping it clean water from the roof top is easy maintenance, no pollutants coming off the street; no oil in the street running in; Home owners association will maintain the system.

No one spoke in opposition:

Mayor Weatherly closed the public hearing at 7:50 p.m.

Questions/comments from the Board:

Commissioner Meckes clarified the way residential trash pickup would work. (Jones stated there will be three corrals with enough carts for every two to take it and theory being everyone would fill up, and should balance out with twice a week collection).

Commissioner Meckes confirmed the plans for Center Street from downtown to US1. (Director of Planning advised there would be a five lane section to the Peakway, then its three lanes, and as development occurs the road would be widened, just as this one is doing).

Commissioner Jensen thought it good if it could be widened from Surry Meadows to the Peakway, asking if we could push this at least on the north side for Ten-Ten; this traffic is near Surry Meadows and loading these folks again possibly. (Director of Planning advised short of the Town doing it, would have to wait on development). Commissioner Jensen added most of the Ten-Ten on the north side has been developed, but must have gotten fee-in-lieu. (Director of Planning noted one fee-in-lieu there, lots of the development was there prior to, with Manager Radford recollecting fee-in-lieu about $14,000, not much to do with).

Commissioner Meckes clarified the name of the storm water management. (Low impact).

Mayor Weatherly called for a motion:

Action: Motion by Commissioner Jones and second by Commissioner Gossage to approve the rezoning case #03CU18 as presented. Motion carried unanimously.

End of Public Hearings # 2

June Cowles, Planner
Public Hearing # 03 – (Amendment) Rezoning Petition #03CU24
Rezoning Case # 03CU24, BBM Associates, Inc., petitioner, seeking to rezone that modifies two conditions from the Haddon Hall Rezone #03CU06 (paging system or outdoor entertainment). Current zoning of Haddon Hall project site is Planned Commercial Conditional Use, 12.36 acres located on NC55 between the Apex Peakway and Hunter Street; possible motion regarding this request.

All persons speaking gave sworn testimony to the following:

Planner Cowles gave background information:

- 1997 area was rezoned and approved with conditions Planned Commercial Conditional Use
- Last year rezone modified one condition of the rezoning
- This rezoning is proposal to revise two of the existing conditions from 1997: paging system or outdoor entertainment
- Planning Board at their December 8 meeting recommended approval with revised conditions – since Planning Board conditions have been revised from two to four – Revised conditions: (page 2 of the staff report and being incorporated as a part of the minutes).
- Change time from 9:30 p.m. or before 9:00 a.m. – Fridays, Saturdays and Holiday periods only; music for special events or outdoor festivals would be allowed only by permit from the Town of Apex; requesting outdoor music speaker systems only under the canopies of the storefronts (noted storefronts on site plan).
- Noted parking area with buffer six foot solid fence noting the residential area
- Nearest resident 270 feet
- Only background music would be allowed at a minimal decibel and no case be audible from neighboring properties
- Condition three: applicant/owner shall have the outdoor music system speaker sound check prior to certificate of occupancy and the outdoor music speaker system shall be owner controlled and not tenant controlled.

Questions from the Board:
Commissioner Schulze asked why the change; was it to have background music for shoppers or outdoor café. (Cowles responded the area in the storefronts will have a fountain and seating also for cafe; applicant will talk about this).

Mayor Weatherly stated it seems this was loosely worded, as far as tying something in, knowing what the conditions being granted are, and asking clarity from the Planning Department as to some of the issues regarding the permitting process. Cowles asked as far as special events or outdoor festivals, with Mayor Weatherly asking how are they different, what's a special event that is not an outdoor festival, asking her to define them. Commissioner Jones adding how they differ from live outdoor entertainment – does it have to be a festival or special event in order to have live outdoor entertainment. (Cowles responded anytime there is live outdoor entertainment or sale – ex: sidewalk, they would have to come to the Planning Department to request the permit. Staff would look at where they are having it – ex: parking area, asking how much will be used, what's going on and then, it talks about permits from the Town of Apex).

Commissioner Jones continued it would only be allowed on Friday, Saturday and Holiday periods only 9:00 a.m. to 9:30 p.m., with Mayor adding nothing Sunday through Thursday and Federal Holidays, asking Cowles to define holiday for him. (Cowles responded Planning Board discussed Friday, Saturday and applicant asked about holidays – with Maness adding the night before a holiday. There was much discussion.

Commissioner Jensen clarified they have to get a permit - the Town would have control over what a holiday is - he assumed the town would have that control. Maness responded the reason for the change was the neighbors requested restrictions to Friday and Saturday, and he suggested holidays being in keeping children up at night – the noise; emphasis would be if kids were out of school, maybe could define it by school holidays; of course, summers and calendars vary; Federal Holidays may be easiest definition – the night before the Fourth of July for a festival.

Mayor Weatherly stated the need to tighten the language up as it was easier to talk about this now than when we get into this and look back and look at this language, asking what it meant and what the board's intent was. Maness responded holidays would include the night before. Commissioner Jones read: "no live entertainment shall be allowed 9:30 p.m. or before 9:00 a.m. on Friday, Saturday, and holiday periods." It needs to be re-written – the time you can have it, rather than the time you can't, asking to leave the word "no" out. Mayor Weatherly continued the noise is not coming from neighborhood properties but the problem being noise going to neighboring properties. He asked if the petitioner drew the language or was it drawn by us; it's fairly loose. (Cowles responded it was discussed at Planning Board).

Attorney Kaus noted that with outdoor music, speaker systems, there is a noise limitation that can't be audible from the neighboring properties, but there is no noise limitation from the outdoor entertainment. You may want to clarify that outdoor entertainment needs to comply with the existing noise ordinance, so you couldn't add any volume of outdoor entertainment on site. Mayor Weatherly asked why the noise ordinance wouldn't be tied into it with Commissioner Meckes making a comparison with Regency Park with the heavy metal bands coming there. Mayor Weatherly continued there was an issue with festivals at the Depot, having complaints from several blocks away; we need to look at that, an issue for another time. He advised we do have a noise ordinance that should apply here and not sure whether it ties in or not from a legal aspect.

Attorney Kaus advised if the Board were inclined to move forward with these conditions, make clear the condition that all outdoor entertainment is subject to the noise ordinance, so someone down the road can't come back and say, we have a special condition to allow us to do outdoor entertainment without complying with the noise ordinance, with Mayor Weatherly interjecting that would supersede our noise ordinance because this was adopted after the noise ordinance. Attorney Kaus advised you would want to make sure that's not contrary to what the applicant is proposing and it doesn't come as a big surprise to them.

Maness response was they were not reporting that an outdoor festival would not be audible; the background music being played everyday under the canopies is not to be heard from their property at all; it should not be audible; it will be very low; latterly it will be music they play, but in the event they have a permit from the Planning Department that there would be no stipulation that it not be audible from the neighbors.

Commissioner Meckes didn't know that he agreed it, with Commissioner Jones adding that it doesn't allow on Friday or Saturday; "says doesn't allow after 9:30 p.m. or before 9:00 a.m. ", with Cowles responding she changed it to "live outdoor entertainment shall be allowed on Friday, Saturdays and holiday period only between the hours of 9:00 a.m. to 9:30 p.m.", with Commissioner Meckes responding perfect. Mayor Weatherly stated this would prohibit Sunday – Thursday, or non-holiday periods, and get a definition of holiday. Cowles asked if they wanted her to add this to Condition 1, with Mayor Weatherly asking the Attorney if that helps. Attorney Kaus advised it does, as had suggested earlier, take out the "no" and take out the "live", what they are trying to do here is just authorize outdoor entertainment and that's specific use or activity under the UDO; we don't necessarily need to qualify the live, take out the "no" and take out the "live" and it says that any type of outdoor entertainment would be allowed on Fridays, Saturdays and Federal Holidays between the hours of 9:00 a.m. and 9:30 p.m., have to get a permit, and if you like it, all outdoor entertainment shall be subject to compliance with the town's noise with the Mayor interjecting we haven't had the public hearing yet, just looking at the perimeters. Commissioner Jensen added you would have to change 9:30 p.m. and 9:00 a.m. otherwise you will have it allowed after 9:30 p.m. and before 9:00 a.m.

Commissioner Meckes asked if the Federal Holiday would be an issue; he could see holidays that might be suitable, like Halloween.....with Cowles stating at Planning Board discussion was not on a school night, with the Mayor Weatherly adding the whole three months in the summer would be wide open even for year round students. Commissioner Meckes asked if Federal holidays was alright with Mayor Weatherly stating there are only ten of them, with Commissioner Jones suggesting it be left to the Planning Department; they have to get a permit from the Planning Department to make it happen; he's ok with it, but not being limited to just Federal holidays, with Commissioner Schulze adding just on non-school nights.

Mayor Weatherly asked under what conditions they could legally refuse to issue a permit. Attorney Kaus responded the condition says you have to get a permit and doesn't say what kind. Mayor Weatherly asked someone offer a definition of a holiday.

Public hearing # 3 continued

Mayor Weatherly opened the public hearing at 8:05 pm.

Speaking in favor:
Alan Maness, PE, BBM Associates, petitioner on behalf of Argus Properties, the owner, came back when reading these conditions and thought it worth another $800 to have this changed; intent to have music under the canopies during business hours only and would include the outdoor dining area and working on recruiting a nice restaurant for the area with outdoor seating and background music. In working with neighbors and Planning Board had had good discussion about these items; intent not to hear this music, low / safe and don't think they will and will insure they want. Outdoor entertainment issue: seek to expand the hours a little beyond 7:00 p.m. condition that was there before; Planning Board meeting neighbors suggested they don't want that music on a school night at 9:30 p.m. and they have no problem with that; they do need to narrow this down, thinking if a school holiday fell in the middle of the week, whatever, they may want the ability to have outdoor music the night before. Mayor Weatherly interjected if it's not going to be heard from their property, with Maness responding they will hear live music. How to define this: Federal holidays may be start, some outside of that, but once again if school next day they don't intend to have it.

Mayor Weatherly added most federal holidays are not festive, naming Columbus Day, President's Day, generally not festive. Maness stated generally school holidays follow federal holidays; maybe we word it federal holidays or school holidays. Commissioner Schulze felt they should link it to the schools; if there's school the next day, you can't have live music.

Maness continued in the summer time and it's open he was interrupted with the Mayor saying Friday, Saturday, then comes the exception the holiday deal is what we're talking about, all Fridays and Saturdays, we are trying to define when the exception for a holiday period would be. Maness continued his intent in the summer would not to have it on Tuesday, but on July 3 and 4, but tie it into holidays even with school being out in the summer. Commissioner Meckes asked if we listed three holidays, Labor Day, Memorial Day and Fourth of July and Federal holidays. Maness felt this would probably cover it; with Commissioner Meckes adding this gets spring, summer and fall. Mayor Weatherly stated we don't want to be too restrictive on this, but suggested the Planning Department come up with this prescribing holidays for which a permit may or may not be issued on that day, let them after the fact of this adoption come up with a list of prescribed holidays; it would meet the test of what obviously the objections might be, but not be too restrictive. Commissioner Schulze felt this would be good, not only for this case, but could be used across the board for any situation like this. Mayor Weatherly asked Rowland if they could come up with something like this, reasonable and working with what the potential conflict would be school children, work with that and come up with a list. Maness stated this would be acceptable. Commissioner Gossage added you're also talking the evening before with Maness adding the night before the holiday, with Mayor Weatherly stating as long as the kids don't have to go to school the next day is basically what we are talking about, with Maness agreeing, 5:00 p.m. to 9:30 p.m. the night preceding, with Mayor Weatherly saying ok.

Maness continued the third and fourth conditions were brought out at Planning Board with neighbors with both suggesting we would check the system, not sure of sound check would mean, we would start up the sound system before occupancy and let them tell them they do not hear it, before CO is given, with Mayor Weatherly asking to be verified on a fairly regular basis that the sound system hasn't changed, with Maness agreed and always the intent the owner of the shopping center will control this system the individual tenants will not have control of the volume.

Jeff Tyburski, 511 Gablefield Lane, stated this was alluding to an enforcement issue and came up in discussion, with thought there are two mechanisms for enforcement shall not be audible:

1) Linked to an zoning, an actual condition that allows neighbors to come back if they hear "Barry Mantelo" every morning
2) Police department - this gives him comfort its enforceable, to get back to the board and say not audible is easy for an inspector to hear, and
3) Expand on the School and in favor the night before a holiday and holidays is acceptable (Sparks had a live band 10-11 at night and could hear them from Olive Chapel Village and were outside on the patio).
4) He agreed to take out live: have a "DJ" it's live music and entertainment

Mayor Weatherly asked if these shopping centers zoning conditions didn't prohibit in anyway outdoor music and festivals; he knows they have had festivals, but they want to amend theirs to allow it when it was restrictive at first zoning, but Olive Chapel had no such restriction or specifically allowed. Rowland responded it just wasn't addressed.

Lib McGowan, 515 Gablefield Lane stated the following:

1) Enforcement was the big issue; concern decimal meter is not accurate enough - even though she can hear the traffic on NC 55, to name a song in five notes is more irritating than traffic – if we can get reassurance Town will enforce it as a code issue so they do not have to keep calling the police; have good feelings now about current owners, but if property changes hands five years from now, owners could say if they complain, sue us; assure they do have recourse.
2) Loud music: initially open any night until 9:00 p.m., lots of school children, and school night issue came up; first with just weekends and then they said how about holidays, so they were fine with that if they are so defined; she asked if there were a limit as to how many permits a year they could do this, she was fine with an occasional festival, one or two in summer, but not open so every Friday night all year long is party time over there; she doesn't see anything limiting the number of times they could get a permit; they want good things going on, but not certain the language does limit it, not 52 Fridays and Saturdays a year.

Maness responded the owners intent is not to have weekly events, as to frequency we don't know the tenants in the shopping center now, it may not be an issue, they may never want a festival, but could be one or two, he doesn't know how to define – he understands her concern, one per month? Mayor Weatherly added one Friday and one Saturday per month, that would allow two events per month. Commissioner Meckes added they wouldn't come to pass October, November, December, January, and February, there want be any. Jeff Tyburski added the permit system is that if we get fed up we come to board and have them put a hold on this. Maness added you have to give all those in the shopping center the same treatment. McGowan is open to having the shopping center with live entertainment, but not necessarily hear it every weekend; this is not what we signed up for when we moved here.

Commissioner Jones commented the tenants wouldn't be coming for the permit, but the owner of the shopping center with Maness responding he believes the tenant. Manager responded Sparks got their permit through ownership of shopping center; they got permits for various things outdoor events.

Mayor Weatherly asked if permitted use in the shopping center would allow bar pub, maybe overtime live music club and on nice weekends every Friday and Saturday night have live entertainment. Director of Planning stated the site plan has to show an area for constant outdoor entertainment, right now, they do not show it, Ex: Cary club had a designated are outside and this is not shown on site plan. Maness stated to have a band, probably would rope off a section of the parking lot and have a permit; they could just be talking a piano out by the fountain. Mayor Weatherly was trying to anticipate eventually they may be stuck with.

Commissioner Meckes asked if we should give them an arbitrary number per month. Maness responded if permits come from the owner and not the tenants, he doesn't think this would set up a discrimination issue; he thinks you could limit it to one a month. Attorney Kaus advised you do the same thing with control of the outdoor speaker system, you could also make the owner plus tenant apply for; someone made a good point about the monthly thing, several months are just off the books anyway, that might not do the developer much good, you may just have a lump sum per year, so if they want to jack it all up in July, then they go ahead and have all ten. Commissioner Jensen didn't think that's what these folks want to see.

Mayor Weatherly added we want them to spread it out with Commissioner Meckes adding a maximum of 8 per year, no more than 2 in any given month. Maness responded he felt that was plenty.

Mayor Weatherly closed the public hearing at 8:30 p.m.

He asked Cowles for a clarification of where they were.

1. Modified to outdoor entertainment shall be allowed on Fridays and Saturdays and Holidays to be determined by the applicant and Planning Department as far as the list and only between the hours of 9:00 a.m. and 9:30 p.m. (Mayor Weatherly added to be determined from a list prescribed by the Apex Planning Department). Outdoor entertainment shall be allowed only pursuant to a permit from the Apex Planning Department. (Mayor Weatherly added issued to the property owner).

2. Outdoor music speaker system will be allowed only under the canopies of the store fronts, only background music will be allowed at a minimal, decibel and at no case be audible from neighboring residential properties. (Mayor Weatherly added to neighboring residential properties).

3. The applicant/owner shall have the outdoor music speaker systems sound check that shall not be audible at the adjacent residential properties prior to certificate of occupancy.
4. The outdoor music speaker system shall be owner controlled and not tenant controlled.
5. Maximum of eight outdoor entertainment events per year and not more than two in any one month.

Commissioner Jensen still had concern for outdoor entertainment where you have an amplifier in terms of decimal levels at the property line he thinks ... with Mayor Weatherly stating our noise ordinance would cover that. McGowan added we want it to meet the regular, with Commissioner Meckes adding comply with... with Attorney Kaus adding have the permits the Planning Department issues, say that; that might be an easier way to do that.

Mayor Weatherly stated it wouldn't hurt to be redundant, let's put it in there:

6. All such events shall comply with the Town's Code for noise ordinance.

Commissioner Jensen asked what the noise ordinance says. Rowland stated 50 decimals; he felt that was pretty low. Cowles wanted to assure this was in the minutes.

Action: Motion by Commissioner Jensen and second by Commissioner Meckes to approve the rezoning case #03CU24, with revised conditions. Motion carried unanimously.

End of public hearings

OLD BUSINESS

There were no Old Business Items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments should be limited to 3 minutes to allow others opportunity to speak.

Mayor Weatherly recognized Bill Sutton, Former Manager, (Abbington resident) came to hear US64/49 NCDOT presentation.

NEW BUSINESS

Apex Chamber of Commerce Representative
New Business Item # 1 – Apex Chamber of Commerce Economic Development Report
Dan Davis, President of the Apex Chamber of Commerce presented the Economic Development Report for April – December 2003. The report is incorporated as a part of the minutes. Commissioner Schulze asked if the Board could help in any way. Davis responded he is pleased with the open communication between the Chamber and Town Board and desires to keep the lines open.

End of New Business Item # 1

NC DOT Representative
New Business Item #2 – NCDOT – US64 Project
John Adams, PBS&J, Consultant for NCDOT, gave a brief overview of the US64-NC49 Corridor Study from Raleigh to Charlotte and Raleigh to Statesville, developed to serve statewide travel needs to and through 200+ miles through Central North Carolina for the next 25 years (Strategic Corridors Concept). He was joined by David Wasserman, Project Manager for the study, and Jamal Alobi. Study initiated in fall of 2003 and utilizes a "tiered" process to define range of transportation alternatives with intent to develop a new approach which is visionary, proactive and systematic. Strategic Corridors is a set of existing highways that are vital to moving people and goods within the state and outside of North Carolina, focusing on high volume traffic with a goal to promote mobility and connectivity, foster economic prosperity, minimizes environmental impact and protects the transportation investment.

Selection criteria was established to determine which corridors will be part of the strategic plan; four major ones: mobility, activity connectivity, interstate connectivity and interstate relievers. Secondary factors: whether route was hurricane evacuation routes, sited as needs improvement, or part of an already established highway system. US64 and NC49 have been identified as a statewide strategic corridor. Regional forums are being sponsored around the state regarding the concept. Conflict exists between US64 being a mainline vs. a main street. NCDOT assembled a Corridor Development Team to oversee the study. David Rowland and Dianne Khin of the Planning Department are members of this team. He will return fall of 2004 with recommendations of the study.

Questions/comments from the Board:
Commissioner Meckes asked about Tier 1: it indicates as far as the Board is concerned this study has come to pass (right; will compare I40 and I85). Tier 1 will have the decision made to invest money within the US64 and NC49 corridor; Tier 2 look at the characteristics of that quarter: express way, controlled access freeway, what will it look like. NCDOT sponsors the project CDT represents Planning agencies, MPO's, RPO's, and municipalities.

Mayor Weatherly asked if the constituency of Apex is basically inconsequential to the outcome of this, if talking the whole corridor from here to Asheboro then NC49, there are many constituencies that would be, in other words you can't take one component out; his impression on Apex would be very negative at this point, they have not seen anything that would be positive to economic development; basically that outlook will not play anything in the final outcome because of the many constituencies. Response: The picture of what it ought to be in each specific segment of the corridor may vary; he doesn't think there will be one plan that will show a controlled access freeway from one point to the other point. You may have a variation of a certain section that is controlled access and maybe an accurate expressway would be a better alternative for another section. Mayor Weatherly stated Commissioner Meckes was alluding to the number of issues relating to the US64 corridor lately and every response from NCDOT has been controlled access. They have given the response based on this is already a done deal; it will be controlled access and we have nothing to say about it. These issues are important to our community – in the scheme of things they are not giving any credibility at all with NCDOT. Response: He would want to refer to NCDOT to address this, but by definition of a strategic corridor, it doesn't have to be controlled access freeway; an expressway is a characteristic within that definition. Response: NCDOT representative stated they were striving for the highest level of mobility they could get, but at same time allowing that access to exist, so they are trying to find a balance. Addressing and looking for and recommending controlled access is what they are striving for at the same time they want Apex to have that opportunity to develop and allow for the economic growth. He asked if this was answered correctly, with Mayor Weatherly responding the way they expected him to respond.

Commissioner Jones added NCDOT could push for it to be controlled access whether or not it's a strategic corridor designation or not. One is not a requisite for the other as stated; it's already been treated controlled access from US1 west. Manager Radford added in several conversations, he doesn't have to tell them what the Wake County demographics are in regard to growth years from now; he asked it be considered from NC751 westward, knowing Raleigh, Cary and Apex is one metropolitan area that will see more growth westward – as all towns south of Raleigh grow west. Please consider starting at NC751 and going west; he knows how difficult they believe this to be, but he wasn't asking for a response, that's where we would like to be. He asked the cost of the study: over $1,000,000,000.

NCDOT representative stated they want people to come in from Asheboro and Charlotte to get to downtown Raleigh to take the urban core, and at the same time we don't want this segment to become a Capital Boulevard and we're not talking driveways every 100 or 50 feet, but every time you add a new signal, it degrades the value of the roadway and similar in North Raleigh are looking at converting US1 north of I-540 to a freeway and a similar concept to what is being proposed here.

Mayor Weatherly responded it could be tied into the I-540 outer loop and not impact us in a major way, but still have fluent transportation to downtown Raleigh and everywhere else in the triangle without that huge negative impact that would have if you came down all the way to US1 – I-540 would seem a logical stopping place or starting place, whichever the case may be.

NCDOT representative responded each segment or section of the road may be different; we may not be proposing a full scale freeway, may go full freeway west of I-540; but some improvement to the current facility.

Consultant added the alternative the Mayor had mentioned is differently something that needs to be considered in Tier 2 and will be and evaluated; they are not there yet; he can't comment on it, he doesn't have enough information at hand, the study has kicked off, and once they get into more regional analysis and take more into corridor specific issues, he'll be able to come back with something more definitive to talk about. Mayor stated may need to be discussed in the retreat.

End of New Business Item #2

Manager Radford

New Business Item # 3 – Annual Retreat

Manager Radford recommended setting date of March 5, 2004, Friday, as the date for the Annual Retreat (transportation bond, financial planning and recreation planning). Budget calendar is attached. Timing regarding a May primary bond referendum; there want be a May primary, not wanting Apex to carry a full burden for a special election; at this point planning for a general election, guaranteeing to bring out a great number of folks.

Action: Motion by Commissioner Schulze and second by Commissioner Meckes to approve the date of the retreat as recommended. Motion carried.

End of New Business Item # 3

Mayor Weatherly

New Business Item # 4 – Appointments to Various Boards/Commissions

Mayor Weatherly recommended the attached reappointments of members to the Planning Board and Appearance Commissioner, with one new member recommended to the Appearance Commission Pete Sayre for an unexpired term. Chairs and Vice Chairs; all members are listed on the attached. Mayor Weatherly will recommend one for the Recreation Commissioner later and alternates in the Board of Adjustment later. All were willing to accept re-appointments as noted.

Action: Motion by Commissioner Meckes and second by Commissioner Jones for approval. Motion carried unanimously.

End of New Business

WORK SESSION

There were no Work Session Items to be discussed.

CLOSED SESSION

Mayor Weatherly asked for a motion to go into Closed Session at 9:05 p.m. to discuss pending Litigation: Doe v. Penny, et al., No. 03-CVS-17117. **Action:** Motion by Commissioner Jones and second by Commissioner Meckes to do so. Motion carried. Minutes of closed session are recorded separately. **Action:** Motion by Commissioner Gossage and second by Commissioner Schulze to move back into regular session.

ADJOURNMENT

With no further business to come before the Board, there was a motion by Commissioner Jensen and second by Commissioner Gossage to adjourn at 9:48 p.m. Motion carried.

The above minutes were approved on the 20 day of January 2004.

Georgia A. Evangelista
Town Clerk

Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of January 20, 2004 Meeting

Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order on Tuesday, January 20, 2004 at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present.

Invocation rendered by Commissioner Schulze.
Mayor Weatherly asked an Eagle Scout from Troop # 209 to lead the Pledge of Allegiance.
Mayor Weatherly extended a welcome to those present.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action. Commissioner Jensen asked to pull items # 5 and # 7 for separate consideration.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to do so.

Action: Motion by Commissioner Meckes and second by Commissioner Gossage to approve the consent agenda with the exception of items # 5 and # 7 which will be considered under new business. Motion carried.

1. Minutes of January 6, 2004 Board of Commissioners meeting.
2. Minutes of January 6, 2004 Board of Commissioners closed session (separate cover).
3. Annexation Petition #355, Stephen M. Lawrence, Ellen Childs, Et Al owner/petitioner; petitioning to annex 15.938 acres into the town's corporate limits; property located on the west side of East Williams Street (NC Hwy. 55) south of James Street and north of US1:
    - Resolution directing Clerk to Investigate Annexation Petition; and
    - Certificate of Sufficiency of Petition by Clerk, and
    - Resolution setting date of public hearing for February 3, 2004.
4. Annexation Petition #356, APX Haddon LLC owner/petitioner; petitioning to annex 16.301 acres including public right-of-way into the town's corporate limits; property located on the eastside of NC Hwy. 55 and north of Olive Chapel Road and Hunter Street Intersection and south of Apex Peakway.
    - Resolution directing Clerk to Investigate Annexation Petition; and
    - Certificate of Sufficiency of Petition by Clerk, and
    - Resolution setting date of public hearing for February 3, 2004.
5. Site plan: Motiva Enterprises, LLC, located at 2232 Ten-Ten Road.
6. Site plan: Apex Office Park, Piedmont Land Design, LLP, Perry Road and American Way.
7. Master Subdivision Plan: Sutton Place PUD, Holt Road.
8. Resolution accepting and authorizing purchase of street rights of way, easements and appurtenant property interests in regards to Lynch Street improvements.
9. Extend a contract with Wake County for CDBG funds for sidewalks along Lynch Street for additional time needed to purchase right-of-way and temporary construction easements.
10. Wake County Tax Report

End of Consent Agenda

MEETING AGENDA

Mayor Weatherly presented the meeting agenda to be set as printed, and with no amendments, the agenda was set.

PUBLIC HEARINGS

Public Hearing # 01 – Annual Budget Fiscal Year 2004-05
Pre-Budget Public Hearing to receive citizen input regarding the formulation of the Fiscal Year 2004-05 Budget.

Mayor Weatherly made opening comments to the time line for the budget submittal and adoption and opened the public hearing at 7:10 p.m.

Comments were received by the following:

Tim Carley, President of Downtown Merchants asked to remember the association as it reorganizes and works on a series of new plans for downtown.

Art Clem, asked allocation of funds for extending sidewalks along Olive Chapel Road and street lights along that walkway to the shopping areas; he understands the intersection at NC55 and Olive Chapel should have work begin on it in early spring, asking the board keep in mind traffic, other intersections and sidewalks.

Judy Friddle, 309 S. Hughes Street, asked for sidewalks along S. Hughes for safety – she walks there and noted cut throughs and speeders.

Mayor Weatherly closed the public hearing at 7:15 p.m. No action was taken. Manager will consider the comments during budget process.

End of public hearing # 1

Dianne Khin, Senior Planner
Public Hearing # 02 – Amendments to Unified Development Ordinance
Public hearing regarding amendment to Section 8.3.6(B)(1)of the Unified Development Ordinance; possible motion regarding same.

Senior Planner Khin presented proposed amendments to Article 8 of the UDO "Parking Lot Design Standards" "Site Layout" as outlined in the attached staff report and incorporated as a part of the minutes. Planning Board unanimously recommends approval. Staff recommends approval. Revision is … off street parking areas with 35 spaces or less be exempt. Mayor Weatherly opened the public hearing at 7:18 p.m. With no comments being made, the public hearing was closed at 7:18 p.m. p.m.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to adopt the ordinance to amend the Unified Development Ordinance as recommended. Motion carried.

End of public hearing # 2

Dianne Khin, Senior Planner
Public Hearing # 03– Annexation Petition # 354
Public hearing regarding Annexation Petition #354, Town of Apex, owner/petitioner, petitioning to annex 2.06 acres into the Town's corporate limits; property being a portion of the Apex Peakway, an existing 90' public right-of-way, and located between Center Street (NCSR 1010) and Old Raleigh Road; possible motion to adopt an ordinance to extend the corporate limits.

Khin noted the portion of the Peakway was being annexed to be included in map for Powell Bill monies.

Mayor Weatherly opened the public hearing at 7:20 p.m. With no comments, the public hearing was closed at 7:20 p.m.

Action: Motion by Commissioner Schulze and second by Commissioner Meckes to approve Annexation #354 by adoption of an ordinance to extend the corporate limits by the 2.06 acres. Motion carried.

End of public hearing # 3

Mike Wilson, Assistant Manager

Public Hearing # 04– Time Warner Cable Television

Public hearing and possible motion to approve Report and adopt Order regarding Time Warner's maximum permitted cable television Basic Service Tier rate and the equipment and installation rates for 2004.

Assistant Manager Mike Wilson presented the report and order regarding Time Warner's permitted cable television basic service tier rate and equipment installation rates for 2004. The Town as a franchising authority has the responsibility to review and approve the proposed annual adjustment in Basic Service Tier (first 13 basic channels) and the equipment and installation rates.

Cable consultant has reviewed the BST rate calculations provided and finds the proposed adjustment to be within the FCC guidelines. The adjustment would set the selected monthly BST rate at $11.61 instead of last year's $11.21. In addition, the "add-on" Network Upgrade Charge would remain at $1.89. These two components together would make the 2004 Combined BST rate a total of $13.50 instead of 2003 rate of $13.10.

Recommend adoption of the Report and approve the Order approving the new BST rate and adjustments in equipment and installation rates.

Mayor Weatherly opened the public hearing at 7:24 p.m. With no comments being made, the public hearing was closed at 7:24 p.m.

Wilson advised that Time Warner has filed a petition with FCC to revoke us from participation; noting there is a number of flaws.

Action: Motion by Commissioner Meckes and second by Commissioner Schulze to approve the report and adopt the order as recommended. Motion carried.

End of public hearing # 4

End of Public Hearings

OLD BUSINESS

There were no Old Business Items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments should be limited to 3 minutes to allow others opportunity to speak.

No one spoke during public comment.

NEW BUSINESS

New Business Item # 1A – Motiva Enterprises, LLC.

Commissioner Jensen asked about the Class E Buffer along SR1010, noting it an entry way into town, asking if they could take the edge off the tank farm and soften it a bit. Khin explained the 34" Oak was save in lieu of additional plantings, and the RCA was on the back of the site, with the applicant not wanting to plant in the buffer for security reasons. The UDO requires major thoroughfares a Type "E" buffer (10 - 3" caliber trees). Parking lot will be screened and shrubs will be planted around the masonry wall of the tanks – 48 foot in height. Commissioner Jensen would like to look at some modification for these specific site requirements. Mayor Weatherly commented the UDO would be revisited; the petitioner fully complied with the UDO and there was no concern from the Planning Board. Khin stated the petitioner was asked to soften it a bit, but didn't want to close up the site due to security reasons. Commissioner Meckes commented on another site and its security.

Action: Motion by Commissioner Jensen and second by Commissioner Meckes to approve the site plan for Motiva Enterprises, LLC, located at 2232 Ten-Ten Road as recommended. Motion carried

End of New Business item #1A

June Cowles, Planner
New Business Item # 1B – Sutton Place
Commissioner Jensen commented on the mass grade in the center of the subdivision plan, thinking maybe it was due to smaller lots, asking if the applicant was required to plant additional trees. Cowles responded there are existing homes and it's not covered with trees, there are some valley areas. Withers and Ravenal Engineer for the project noted they are trying to get as close to existing grade as possible by filling the valleys and cutting hills in the center of the site. There are premium lots with high-end homes and landscape (2 l/2" caliper trees). Commissioner Jensen asked about the stormwater management; it's designed for a 25 year storm event. Commissioner Jensen was pleased.

Action: Motion by Commissioner Jensen and second by Commissioner Schulze to approve the master subdivision plan for Sutton Place PUD, Holt Road, as recommended. Motion carried.

End of New Business item # 1B

June Cowles, Planner
New Business Item # 1 – Hazard Mitigation Plan
Planner Cowles gave highlights of the Apex Hazard Mitigation Plan process, noting the January deadline for submittal to North Carolina Emergency Management and then to FEMA for review and back to the Town for approval mid July 2004. The Action Plan tells what the Town is doing and will be reviewed yearly, and every five years will be reviewed by Emergency Management and FEMA. No action was taken (informational item only).

End of New Business item # 1

Lee Smiley, Director of Finance
New Business Item # 2 – Finance Summary
Lee Smiley, Director of Finance gave a Review of 2nd Quarter FY03-04 Financial Summary, noting everything was on target where the Board would want it to be. The report is attached. No action was taken.

End of New Business Item # 2

WORK SESSION

There were no Work Session Items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a recess, and then asked for a motion to move into closed session to discuss a Personnel matter. With a motion by Commissioner Meckes and a second by Commissioner Gossage, the Board moved into closed session at 8:05 p.m. Minutes are under separate cover and recorded by Mayor Pro tempore Jones. With a motion by Commissioner Schulze and a second by Commissioner Gossage the Board moved back into regular session at 9:15 p.m.

ADJOURNMENT

With no further business to come before the Board, there was a motion and a second to adjourn at 9:17 p.m.

The above minutes were approved on the 3 day of February 2004.

Georgia A. Evangelisse
Town Clerk

Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of February 3, 2004

Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Web site: www.apexnc.org

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order on Tuesday, February 3, 2004 at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street.

Invocation was given by Commissioner Gossage.
Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

CONSENT AGENDA

Mayor Weatherly presented the *consent agenda* to be set and asked for a call for action.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to approve the following items contained in the consent agenda. Motion carried

1. Minutes of January 20, 2004 Board of Commissioners meeting.
2. Minutes of January 20, 2004 Board of Commissioners closed session (separate cover).
3. Findings of Fact, Conclusions of Law and Ordinance: Rezoning #03CU09, Jones & Cnossen, Engineering, petitioner, amending the UDO and Official Zoning District Map by changing zoning classification of lands from High Density Multi-Family District to Planned Unit Development Conditional Use District, 50.02 acres located on the future Apex Peakway between Towhee and Bryan Drives.
4. Findings of Fact, Conclusions of Law and Ordinance: Rezoning Case # 03CU18, Jones and Cnossen Engineering, PLLC, petitioner; The Unified Development Ordinance, including the Town of Apex Official Zone District Map, changing the zoning classification of lands from High Density Multi-Family District to Planned Unit Development Conditional Use District, 4.012 acres located off Ten-Ten Road between Investment Boulevard and Forrest Grove Drive.
5. Ordinance: Rezoning #03RZ20, James and Caroline Sylivant, petitioner; Unified Development Ordinance, including the Town of Apex Zone District Map, 6.173 acres located on Olive Chapel Road between Cameron Glen Drive and White Dogwood Road from Residential Agricultural District to Rural Residential District.
6. Budget Ordinance amendment and project ordinance amendment (FEMA – Hurricane Isabel) / (Zeno Road paving).
7. Mills, Rouse & Company Audit Contract to perform June 30, 2004 audit.
8. Ordinance: Amending Division 4: Use of Sewers. Section 12-78(b)(6) Limitations on discharge, and amending Division 4.5: Pretreatment Program. Section 12-93(b)(4). Prohibited discharge standards.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as printed.

PUBLIC HEARINGS

Dianne Khin, Senior Planner

Public Hearing # 01 – Rezoning #03CU17

Public hearing regarding possible amendment to the 2010 Land Use Plan and Conditional Use Rezoning #03CU17, Jerry Turner & Associates, Inc., petitioner, seeking to amend the 2010 Land Use Plan from Low Density Residential to Planned Unit Development and to rezone 15.24 acres located at the southwest quadrant of Olive Chapel Road and the Apex Peakway from Office and Institutional Conditional Use to Planned Unit Development Conditional Use; possible motion regarding same.

Senior Planner Khin and those desiring to speak on this item were administered an oath by the Town Clerk.

Khin oriented to the location of the 15.24 acres, Apex Peakway and Olive Chapel Road and Olive Chapel Village; current zoned Office & Institutional Conditional Use and requested to be zoned Planned Unit Development Conditional Use. The 2010 Land Use Plan map designates the area as low density residential. Applicant requests land use plan amendment to Planned Unit Development. Peakway Village PUD proposes to integrate single-family detached and townhouse units at a maximum of eight dwelling units per acre with commercial/office/institutional at the intersection of Olive Chapel Road and Apex Peakway. 2010 Land Use Plan encourages commercial uses "at designated minor/major thoroughfare intersections serving a population of up to 1,000 persons". Olive Chapel Road and Apex Peakway are designed as major thoroughfares in the Apex Transportation Plan. Slides showed (staff report is attached and incorporated as a part of the minutes) adjacent zoning and land uses to the north, south, east, and west as noted on the staff report. The concept plan for planned unit development includes residential uses and must comply with the Parks and Open Space Dedication Requirement. The Parks & Recreation Advisory Commission recommends approval of the proposed project with a payment of a fee in lieu of $45,041.36 based on 56 units proposed.

Petitioner offered conditions on this rezoning to help mitigate the potential difficulties with site of a PUD in close proximity to existing single family residential; conditions proposed are included the staff report; includes but not limited to limiting residential units to 8 dwelling units per acre, limiting commercial uses to 15,000 square feet with a no more than 40,000 feet in commercial and office combined, restrict commercial and office uses from 200 foot strip along Cameron Park and Amherst Subdivision and the commercial uses are limited to the corner of Apex Peakway and Olive Chapel Road, are combining a 50' buffer RCA strip along Cameron Park and Amherst, a 20' buffer is provided between the subject property on the east side of the Peakway in the adjacent single family residential that is currently zoned office and institutional; they provide a 20' streetscape buffer along Olive Chapel Road and a 15' streetscape along the west side of the Peakway, a 30' streetscape buffer is provided along the Peakway as well. All thoroughfare plan improvements will be met with the widening of Olive Chapel Road with curb, gutter and sidewalk and the construction of the Apex Peakway with curb, gutter, and sidewalk on the eastern side; multi-use path is required on the western side.

Side showed phasing of the project: Phase I fronts on Olive Chapel Road, Phase II fronts on Apex Peakway adjacent to Amherst, Phase III is at the corner of Olive Chapel Road and Apex Peakway. Property east of the Peakway is not included in these phases – this property would most likely develop with the adjacent property.

To approve the conditional use permit, the Board must find the ten standards listed in the staff report and incorporated as a part of the minutes are met; note standard # 3 complies with Section 4.4 of the UDO is not applicable at this time – this section provides for supplemental standards for various uses, but any projects proposed for this property would be required to meet the supplemental standards at site plan approval once its determine the exact uses being planned for the site.

Planning Board recommended approval at their January 5 meeting.

Khin responded to questions from the Board:

Commissioner Jensen: asked the percentages of single-family or townhomes lots or was it open to go either way.
Commissioner Meckes asked how much area of the 15 acres this would be

Khin responded all the area listed for single family or townhomes along the west and south property lines and not specific to which one, areas located interior to the site also have the possibility of office use. Commissioner Meckes added 60 or 70% or more could be single homes or townhomes, with Khin responding it looks right and showed an overview of a map with red area proposed for possible retail; has potential to be office. Commissioner Jensen felt it was disturbing to not call out percentages; it could all be townhomes, with Khin agreeing.

Commissioner Schulze asked about the right hand corner is office space; Khin responded mixed use buildings and the only buildings that would allow retail and would also allow office and institutional uses as well as potential for condominiums or apartment units only allowed if they are on a second or third floor; they would not be allowed to be stand alone in that area; may have retail on the first floor and office on the second or office on the first floor and condominiums on the second floor, or apartments.

Mayor Weatherly noted in this context, townhomes means for purchase or private owned residences, not for rental as opposed to definition of apartment, with Khin responding its not apartments, it's townhomes, with Mayor Weatherly stated apartments are rental unit – generally townhomes are ... with Khin interjecting look on page 4 of the PD plan – design controls: commercial, office and institutional mixed use says: maximum of 18 residential units and has to be a part of a mixed use building. Mayor Weatherly stated a residential unit is an apartment as well, with Khin responding only apartments - page 3 under residential: apartments/condominiums in mixed use area only; portions shown in brown (on map) are single-family and townhouse only; red area could be owner/occupied which is condominium or renter occupied or apartment and the only place that apartments could be and only be in the mixed use building, and limited to a 18 units.

Mayor Weatherly asked the Town Attorney if this is a legal definition. Attorney Kaus responded he believes it's not. His understanding of the UDO is that a townhouse is a structural distinction from an apartment or condo; you have a owner/occupied distinction between apartment and condos; generally our UDO defines a condo as an owner/occupied structure whereas an apartment is a rental similar construction; a townhouse, if he's right, is a different construction usually up or down or something different from an apartment, but it could be rental, it could be owner/occupied, designation town house doesn't convey any sort of ownership. Khin responded it's like single-family homes could be rental; it's similar, there's not a distinction townhouse doesn't necessarily mean rental; it doesn't necessarily mean owner/occupied. Mayor Weatherly continued apartments are mass rent, with Khin responding this is correct; with the Mayor adding and not usually rented by with Commissioner Jensen interjecting not individual ownership, with Mayor Weatherly adding that's the distinction.

Mayor Weatherly asked if there were further questions.

Commissioner Jensen asked if we are going to request individual ownership, Mayor Weatherly was going to address this with the petitioner and could ask him if he wished to make a conditional statement on this.

Commissioner Jensen noted this property had required 100 foot or 50 foot buffer across Olive Chapel under the old zoning, if they took the lake out. Khin responded under the rezoning - conditional use permit July 15, 1998 was approved – there was a statement that if the pond were to be removed, an additional screening would be done – it's a 30' type A buffer with an additional 10' building setback and that trees planted in the buffer shall obtain a height of 50 feet in maturity and that trees planted in the buffer shall obtain a height of 50 feet at maturity and have no unobstructed opening wider than ten feet between tree canopies at maturity; that is what was a condition on the previous rezoning; in the proposal they do not carry through that language – it would essentially be going away if it were to be rezoned.

Commissioner Jensen was more concerned about the buffers that they are looking for between this property to the south and the property to the west Khin responded there's a 10 foot Type A buffer and additional 40 feet of RCA. Commissioner Jensen continued a few times in the past when there was something butting against a residential like this, we have requested the developer irrigate those buffers because, what we see on the plan is at maturity and what we see when it gets planted is substantially different and takes awhile for it to grow to that; he was hoping that at the very least those buffers would be irrigated being we are pushing this against medium/lower density housing; has any of this taken place. Khin stated this was not included as one of the conditions; it wasn't discussed with the applicant. Commissioner Jensen wanted to discuss it along with the townhomes with the developer.

Commissioner Jensen asked if this were a retention or detention pond, with Khin responding retention and there's a possibility they may want to do bio-retention which isn't a pond, but that's more likely in the area up toward Olive Chapel Road where there's wetlands already; stormwater pond is further south; Khin responded both are retention.

Commissioner Jensen asked the trade off with mosquitoes in respect to those devices; once again we are backing it up against residential area; how do they or we manage it to assure there's not a mosquito problem in that situation. He personally thinks a detention pond is probably better in some respect because you can put mosquito fish or coy in there. Commissioner Meckes responded the pond surface is significantly less it appears than the pond that was there before, with Commissioner Jensen and

Khin agreeing. Commissioner Jensen added it's not a pond, it's a retention, so it's going to pass through, asking if that was correct; it's not detention, being that there's going to be a standing amount of water there, it's retention, with responding she thinks there is a standing amount of water, not knowing how many feet with the applicant addressing this. Khin continued they are required to landscape the retention pond area fully and required to submit an operation/maintenance manual to Dan LaMontagne in public works that will be put on file and in terms of basically falling back on zoning compliance with the UDO if there is any discrepancy between what is approved and what they have done on site.

Commissioner Jensen noted the retention pond across from Food Lion is not pretty by any means, with the retention ponds by Lake Pine apartments, some of those look quite nice and asked how we drive towards that. Khin responded one improvement is that the UDO requires them to be fully landscaped where the old ordinance does not; also now requires operation/maintenance manual which was not required in the past under the old ordinance; hopefully the newer retention ponds that is being seen are better landscaped and better maintained. Commissioner Jensen asked how we decide it's ok, asking if it were under Rocky Ross's jurisdiction with Khin responding it's Dan LaMontagne in terms of operation and maintenance in making sure their manuals they submit are adequate with Commissioner Jensen adding and they follow through, with Khin responding the follow through is through zoning compliance which is planning department and landscape is also through planning.

Commissioner Schulze asked that on page 6 of the document it says will be consistent with the 2010 Land Use Plan; that's really not the case or else they wouldn't be applying for an amendment. Khin responded she thinks most of the property is showing residential and thinks where this came up; yes they were told toward the end of the process they would need land use plan amendment to planned unit development so they would be fully consistent because their corner piece does not have necessarily residential and likely have office and retail and thought it cleaner to go ahead and request that so might be something they should amend.

Commissioner Jensen noticed on the Peakway development they are talking about bringing it in on Phase III, with Khin responding Phase 2 and 3 that is correct. Commissioners Jensen added normally we would require probably Phase I, the way he reads it. Khin stated for PD Plans and Planned Unit Development, the way it's stated in the UDO is that improvements are done as part of the first phase; for subdivisions and other phased site plan projects they usually don't do all the public improvements up front, but as the phase occurs. Applicant does propose to make the improvements as each Phase is built; but could be up for discussion.

Commissioner Jensen suggested that at a previous meeting they passed the PUD by Beaver Creek and that road comes up here; we do have fee in lieu to connect from that road up to this unit here and he can't see pushing anybody to put a road in any earlier than necessary, however, he would think that that road should be put in on or before the other section is put in below, so they can connect the two up. It may be the other section doesn't get built anywhere near the timeframe of this one and what the developer suggesting is just fine, but if we have that road coming up there, and ready to go, then we should request this road is put in on or before that other road gets in; it's the connection of the Peakway from south; that's the connectivity all the neighbors were concerned about before; if the other road is not in, then this fellows timeline is fine, but if the other road gets in then we should request this part of the road be in at the same time, because we could connect up with the money from fee in lieu. He does not want to make anyone do anything if it's not necessary, but he thinks it's necessary if that road is ready to be connected. Mayor Weatherly stated we would get the developers comments on that.

Mayor Weatherly asked the proponents of this rezoning to come forward.

Willie Hood, Jerry Turner & Associates, 905 Jones Franklin Road, Raleigh feels this is a good proposal that allows this piece of property to be developed in a manner that is within keeping with the neighborhood around it and also in keeping with the spirit of the land use plan. They are requesting an amendment to the land use plan, because it calls for residential in this area, however the existing zoning on this property is O&I and could be built out under today's zoning as O&I without a land use plan amendment; they are in an odd situation. They view this as a down zoning and they believe what is being proposed does make sense. They took a lot of care in looking at the previous conditions that were on the property for the O&I tract and have tried to meet or exceed those conditions as far as landscape buffers and tree plantings, things of that nature. Under the current zoning, there is a 40 foot buffer between office development and the residential units to the west and south where they are proposing 50' of separation; they have actually increased that even though they are only building residential; they think the things they are offering makes a lot of sense; one other thing about the previous condition that if the pond was drained, there would be an additional streetscape buffer planted along Olive Chapel Road; instead of widening the buffer, they have a 20 foot streetscape buffer all along Olive Chapel Road, but also have .65 acres of RCA and wetland protection in that area. There will be a significant open space area there that they think satisfies the intent of the previous condition.

As far as stormwater management goes, they are still in preliminary design as to what type of devices they will use; they believe the one closest to Olive Chapel Road will be a wetlands restoration project or a bio-retention area and believe the one to the south will probably be a pond; they have reviewed the town's ordinances and feel comfortable that the procedures they have to

go through and present to the town are adequate, not only are there manuals and maintenance schedules that have to be submitted, there are yearly inspections and feel the developer will meet and exceed those requirements. They did add additional language into the PDD to landscape these areas. They are going to be selling houses adjacent to them, so they are very concerned about how attractive they are; something that is foremost in their minds as to what they look like.

As far as phasing goes, some discussion at planning board, and this project is a small project as far as acreage goes and what they propose in Phase I, they would install all improvements along Olive Chapel which are significant; they widen and put in sidewalk; in Phase II and III would build Peakway according to Town Standards. They are not trying to do or delay anything but trying to do it in a sequential manner because this project is burdened with some substantial infrastructure improvements.

They would be willing to discuss or could come up with some wording tonight that says if the Town builds the Peakway, they would initiate construction within a certain period of time so they can be joined; they would agree to that. That was mentioned earlier. He firmly believes but has not put it in writing; the Peakway will be built between 2005 and 2006 or 2007, somewhere in that phase in that area.

He does believe they have a proposal that meets the needs of the area, and they have tried to address buffers, surrounding land uses, scale of the project as far as limiting height and other factors and asked for their approval.

Mayor Weatherly asked that he define townhomes. Hood responded they were under the impression and they have had numerous meetings with the neighbors, and have presented to them the fact that there will be no rental units in the areas shown, except in red. They thought by saying single family or townhouse that they were clarifying that since the townhouse is a lot; if they misunderstood, they need to clarify that. Mayor Weatherly stated that's what he defines a Townhome to be.

Mayor Weatherly asked the attorney if that were ok as far as clarification; Attorney Kaus responded he thinks there's some confusion about the term Townhome; generally understand a Townhome can be rental, can be owner/occupied, just like any residential can. Mayor Weatherly stated it can be rental, but if he bought it and lived in it for a while and then move out and want to maintain his equity and rent to someone else, I'm not concerned about that, as opposed to blocks of apartments are. Hood responded it will not be managed and rented like that, it would be sold to individuals, with the Mayor interjecting for the purpose he's saying will be individually owned townhomes, is that ok, do we need to put that into the motion that there will be a formal condition. Someone asked if he meant owner/occupied, with the Mayor responding, no, just owned.

Mayor Weatherly continued as far the phasing of the construction of the Peakway, does that need to be put in the motion or clarified that is a condition for this rezoning. Attorney Kaus advised the second one is the easier one, definitely if there is going to be some sort of new agreement or understanding about expediting potentially the Peakway improvements, he thinks it better to have that as a condition; the sections being talked about that they would want to be connected are in play in a potential developer agreement under another project that may be coming before them in the near future. He thinks there's some high confidence that those other sections they are talking about, called the Whitehall section, you have heard Commissioner Jensen refer to Whitehall development; Whitehall developer is talking about not only doing the onsite section of the Peakway, but also the one between Whitehall and this section. There's some high confidence that that section, that additional phase of the Peakway may be coming pretty quickly. The short answer to the question, yes, he thinks we ought to have a condition if that's something the Board is concerned about.

On the first thing, he thinks there is some ambiguity, again, he hasn't looked at it in a while, but there may be some ambiguity in the UDO about what townhouse means because it can mean potentially like he said, a block for them out for rental by a unified owner or it could also mean owner/occupied or it could mean own and fee simple and rented out. On all these projects when we impose a condition of owner/occupied only, keeping in mind it cuts out both, the single unified owner renting them out as rental units and also eliminates, he thinks, the fee simple owner renting it out, because, it has to be owner/occupied. That may not be the intent here, with Mayor Weatherly interjecting that property right of that person to rent his own property as long as he's abiding by any other covenants ... with Attorney Kaus continuing that he was saying with other projects when those conditions and covenants have been imposed, that's how it's going to be interpreted by the courts. That's not a town condition, it's imposed by the developer; the developer usually comes in and says ... we're willing to impose a CC&R that says owner/occupied only ... that would mean then that the owner in fee simple would not be able to rent; if that is the concern here, he thinks they will come up with a different wording so that you would still allow the fee simple owner, like he says if they move away or rent it out. Mayor Weatherly stated that is not his concern, but concern they have a whole block of rental units that would be a transit population opposed to ... with Attorney Kaus advising they way we usually handle this is to invite the developer or petitioner to offer a condition being that they will impose CCR's on their property as opposed to the town imposing a condition. If the developer understands what the concerns are, if the petitioner understands what the concerns are, and they are willing to posit or offer a condition that they will impose CCR's on their own property to accommodate those concerns, he thinks that will be the best way to handle it. If we all understand what we are talking about, that's the ideal situation.

Wood didn't think they would be interested, he thinks it's too cumbersome to try to limit single family homes and townhomes to not be rented by a parent to a child, there are so many different situations that can come up that he thinks they do not want to go there, he thinks it's clear that they are building a for sale product and if there is another way other than that, that it can be clarified, they did say apartments were allowed only in that mixed use area, he thinks that's clear by way of default. Commissioner Meckes added even those apartments, it's a unique environment to have an apartment over a retail or office space that is not going to be your typical what one might think of as a typical apartment renter utilizes. That's his impression of what those spaces will be like.

Commissioner Jensen thinks it's great to have an apartment over an office; that's what we are striving for; the shortest distance to work is downstairs if you happen to have something like that.

Wood offered on the Peakway would it be a possibility to have a condition they in a development agreement that they would work out the language that of coinciding the construction by the Town of their portion and their portion or is do they need another type condition; he's not sure how to do the wording on that.

Mayor Weatherly responding they are looking for that portion no later than the completion of the connecting end; you would simultaneously not later than. ... with Hood interjecting if for some reason that you got started, is there someway for them to have like a six month delay – they may need more time to mobilize than the town did. Commissioner Meckes added within six months of the completion of the adjoining section. Commissioner Jensen stated at the same time we are going through the design phase of our section and would be the time that he thinks we would let them know and probably coordinate the design in some manner so it would be less expensive for them. Wood continued vertical alignment would have to be coordinated; their engineer is looking at that now to see what it looks like, with Commissioner Jensen adding storm drains, and so forth. Mayor Weatherly added something of that nature would be voluntary condition, with Wood responding yes.

Commissioner Jensen added irrigating those buffers, we have asked other folks to do that in these situations and it's not a big thing but he thinks it helps to speed those along. As an example at Home Depot, they didn't irrigate them, but the neighbors came back in and requested they put irrigation in and it made night and day difference; anything that is open if there is he would like to see something along that line if possible.

Mayor Weatherly added the issue is you have to maintain living vegetation, if you in violation, so if you find it's in the best interest to irrigate to keep them alive and vibrant, than that's good he doesn't know that we need to dictate how they keep their vegetation alive. Hood would rather do that at the subdivision level in a way; they believe this will go single family and they believe those single family people will keep their plants alive, if they go Townhome, they would probably irrigate – they can do a condition like that if it goes townhomes, they will irrigate. Commissioner Jones agreed with what he was trying to accomplish to get plant material up to a level of maturity that it's actually providing benefit in a hurry; we've heard "aqua man", Tim Donnelly come before us so many times in the past ten years discouraging irrigation because of water, environmental uses, and encouraging us to plant materials that are drought tolerant and other things and he's hesitant to put that condition on a developer saying you have to put in irrigation system while at the same time we have been discouraging it. Commissioner Jensen understood what he was saying, but at the other time what if we said a temporary irrigation for one year – looking at those plants at home depot, he could see a good difference after they started irrigating them and filled in the holes; you don't want to have it forever, but get things going. Mayor Weatherly didn't want to micro manage the project to the point of telling them how much water he needed to put on his ... with Commissioner Jensen interjecting but Beaver Creek, those folks went ahead and irrigated that. Mayor Weatherly responded they want the property to look nice, it's obviously good business and the kind of vegetation they need would require some more intense watering than he's sure they will do that; it's in their own best interest to keep the vegetation looking nice, certainly while you are in the first year of promoting to sale the property; all developers generally, that's the best time to look good. Commissioner Jensen's concern was the neighbors and the viewscape form the neighbors side; we are tying to jam something in – it's fairly compatible, but at the same time a littler higher than low-density single family homes. Commissioner Meckes added they are still better off than they would have been with O&I there. The buffer is increased more than with O&I and they want have big parking areas, they want have parking lot lights, and so. Commissioner Jensen agreed.

Commissioner Meckes asked about the two individuals of the planning board and their vote against it for the two reasons listed. He asked the Attorney to comment, asking if we approve this are we negating what the UDO says. Attorney Kaus responded yes sir, if you look at, unfortunately, if you look at page 4 of the staff memo and point out the language they are talking about here; Khin referred to it earlier – page 4 subsection (i) called phasing: these are the two requirements. First sentence says when you have a phased PD Plan for PUD, it's got to include specific build out dates and the UDO does not offer any flexibility there. He was involved in discussion and not sure why this PD Plan doesn't have specific build out dates, you may ask the petitioner that. There is no flexibility there.

On the second one there is flexibility as to whether the improvements must be completed in the first phase; you notice it says if it's not possible then it has to be done as quickly as possible; the board may determine in it's judgment that's exactly what the petitioner is proposing to do here, especially now with the offered condition about potentially expediting the Peakway improvements.

On the first one, there's no wiggle room, he doesn't know what to say about that to them. Mayor Weatherly responded that's not in compliance with the UDO; that's his understanding that we had a recommendation of approval from the planning staff, did he misunderstand. Khin stated staff doesn't make recommendations on conditional use permits; there is no recommendation from planning staff. The Planning Board recommended approval with a vote of 6 to 2. Mayor Weatherly asked what the staff presented to the Planning Board; is it in compliance with the ordinances or not.

Khin responded with conditional use permits, we just tell them the facts; we don't make recommendations. Mayor Weatherly stated, no he was saying as the plan is presented does it comply with our own ordinance. Khin asked if he were asking her to make a recommendation. Mayor Weatherly stated, no – no, he was asking her a straight factual question, with Khin responding, no it does not meet that part of the phasing plan; that was what was planted out by the planning board and is correct and true, and it does not have a specific phasing plan.

Commissioner Jones added their proposal to present one at the time of the first development plan submittal - does that meet the UDO requirement. Attorney Kaus responded it's unfortunately fairly air tight – it's one of those ones that ... with Commissioner Jones adding the original submission of the ... with Attorney Kaus responding yes sir. Mayor Weatherly stated that is what had confused him with the 6 to 2 vote, did they know that they were voting for a plan that was not in compliance with our own ordinances when they took the vote. Commissioner Meckes responded two of them had pointed these things out. Mayor Weatherly asked was that universally understood or was that just an assertion by those two members that ... with Commissioner Meckes interjecting they made their assertion in public. Khin stated they did, but the other six she guessed did not feel that was what the UDO was saying, otherwise they would not have voted that way, they felt like that was not what it meant or what it's intent was. Mayor Weatherly asked did they ask interpretation from staff, a technical interpretation from staff; with Khin responding no, and Mayor Weatherly clarifying they did not. Khin stated the two members made their case and the others apparently did not agree with them because they voted for the project to go forward.

Hood stated there was some confusion, part of it probably their fault, they had discussed this with staff and Planning Board and felt, and what was offered, and when they submitted their first subdivision they would give more specific dates and would give them a little more time to plan when that would happen. They didn't realize it was not in keeping with what the law says, and one of their options, they would build the Peakway between 2004 and 2008. When you start saying dates, you can give any kind of gap that you want, and what they were trying to do was give some better dates later than some broad dates now, but will be glad to offer and amend this to put dates in this proposal now. He didn't want this to hold it up.

He thinks the condition they offered about the timing of the Peakway is pretty clear about now when it's going to happen. Mayor Weatherly asked how long he thought he would need to provide some more specific dates if they....he'll ask, can we put a condition in the rezoning that the petitioner shall submit dates by time certain, as a condition for the approval tonight, and would meet... with Attorney Kaus advising absolutely, all the UDO wants is if Phase I is going to be built out by X date, Phase II, Phase III with the Mayor adding not necessarily tell us tonight, but we can demand he tell us the time certain, with Attorney Kaus advising exactly. Hood stated he would be glad to comply with this. Mayor Weatherly asked how much time he would need to supply some dates for them. Commissioner Jones liked the idea of submitting it with the first development plan submitted; when you come in with the very first plan, to be reviewed for Phase I, that's when there's a time table for Phase I and Phase II and III. Attorney Kaus advised, that technically the PD Plan, the way the UDO is drafted, whoever drafted it, so the PD Plan is not even supposed to be approved and that's what we are doing tonight until those dates are in there, so you want to be careful about how much rope or delay you give. He thinks what we are talking about is giving a date certain within the next 60 days for example, and that would effectively relate back; he thinks that's acceptable. Commissioner Meckes added within 60 days prior to the submission of ... with Mayor Weatherly interjecting within 60 days of the approval, but certainly prior to the ... with Commissioner Meckes adding that way we stay within the letter of the law. Attorney Kaus advised that was exactly right, and pointed out they may want to consider revising this part of the UDO; maybe that's what we'll find out here too. Hood responded that makes sense.

Commissioner Jensen asked when talking specific dates, he thinks we just said by 2008 or 2010 which obviously can be done anytime before that, so you are just putting a bounding date, is that what we're talking about. Attorney Kaus read the UDO with the language to say specific build out date. He thinks it needs to be something more than between 2004 and 2008, you probably want to pick at a minimum a month and year; January 2006, as opposed to just anytime in 2006, with Commissioner Jensen asking build by 2006, it's bounding with Attorney Kaus responding yes.

Khin added that staff suggests we go ahead and amend that section of the ordinance, because it's obviously difficult for anyone to meet, it has to be a specific month. Commissioner Jensen added as long as it's by... with Attorney Kaus adding right, and of course UDO amendments have to be run through the Planning Board, so we have to run the process. Khin advised for future rezonings, with Commissioner Meckes interjecting, we'll have it within 60 days prior to submission of the first phase, with Mayor Weatherly adding ok.

Mayor Weatherly asked anyone wishing to speak in favor.

Helen Robinson, 301 Cameron Glenn Drive, abuts the property and wanted to address retention ponds. On Sunday, November 16, 2003 there was a News & Observer Article about what Raleigh wanted to do about their retention ponds. She asked the Board to follow their example and have some regulations that are required for the Town for developers to follow; it sited Wake Med North Campus as a good example of how a retention pond can be pleasing to the eye and do what it's intended to do, which is to clean the stormwater before it reaches the creeks. It won a city award for this project. Since here property is directly behind where one of the retention ponds is planned to be, it's important to her that her quality of life not be changed; she suggests and thinks its been suggested, but doesn't think they go along with it, suggesting again, they install irrigation systems to help quick growth of plantings in the buffer area, also install filtration systems to keep the water moving and help curtail all kinds of mosquitoes from breeding in the area. He'd like for them to take a good look at the photos given to Commissioner Jensen. She's compiled a few photos of area ponds here in Apex: Exhibit A. She wanted them to look and see if they are pleasing to the eyes, asking if they wanted to live behind them. She believes it's time to make them the developers accountable for their appearance and require them to take precaution to avoid health and safety problems that might arise from these retention ponds, and expressed her thanks to the Board.

Mayor Weatherly asked if they wanted to clarify what the current ordinance says about vegetating these as opposed to some – he hasn't seen the pictures yet, asking are these pictures pre-UDO, with Khin responding when she took a look at those photos, it was probably a month ago, and guess these are the same photos shown to her in the office. Robinson responded yes. Khin stated the ones she had seen were all pre UDO, with Mayor Weatherly interjecting we do a better job now then those, the ordinance requires more screening vegetation than these, with Khin responding correct. Mayor Weatherly added old ordinance opposed to the new one.

Commissioner Jensen was looking at those also, and added the one out by Food Lion is not the prettiest one by any means, but the ones over by the apartments, he thinks are quite pleasing and what Mrs. Robinson is driving towards and he thinks that's what we are going to end up with, is the ones that look like the apartments; that's where we are heading, with Robinson responding super, thank you.

Mayor Weatherly added the one he has to look at every day is Bright Horizons Greater, whatever that is over there, abomination by the daycare, everyday, he sees it multiple times.

No one else spoke in favor or in opposition.

Manager Radford stated he thought Mrs. Robinson may have misheard what Commissioner Jensen said about those; he thinks she understands we intend to fix it like ... with Mayor Weatherly asking him to speak into the microphone, with Manager Radford asking Mrs. Robinson if she just understand that Commissioner Jensen had said that we would make these retention ponds like those at the apartments, with Robinson responding yes. Commissioner Jensen said no, that's what the UDO will tend to create, we don't create it, the developer will have too, but that's what our UDO is actually, the new UDO will basically require. Commissioner Jones added it will improve the situation, not necessarily the very same look as some of the pictures she had taken, but the same spirit. Robinson added, so we don't have the problems with everything around.

Mayor Weatherly closed the public hearing at 8:00 p.m. and referred the matter to the board.

Commissioner Gossage asked the maximum height as three stories, which is under what we are going to, or may be going to is three stories, asking is that thirty feet. Khin responding 30 feet to 36 feet, with Commissioner Jones adding you're going to have some roof. Commissioner Gossage asked what it was under the current zoning. Khin responded 36 feet.

Commissioner Jensen asked when talking three stories, does that include the perimeter buildings also or is it limited to two stories on that, because if they go to three stories, then there's a view line from the third story that is going to look right down into peoples back yards possibly. Do you see what I mean; under the current zoning, he's asking is there a limit on the town in this item. Khin responded they have not limited it to any particular area – it would be anywhere the residential townhouses or single family are allowed; they are saying three stories, with Commissioner Jensen confirming three stories. He noted the homes on the lower density side in Cameron Park are really two story towns, with Khin advising correct. Commissioner Jensen wanted to know if it were possible to limit those on the perimeter to two stories instead of three. Wood responded you might have a basement or a story and one-half depending on how that gets interpreted, with Commissioner Meckes adding, or an

attic. Khin added that they measure the height at the front; with Wood adding if measured at the front they would be ok with making that two story around the perimeter, where any lot that abuts existing subdivisions, two story max, with Khin interjecting it says it's measured at the front elevations, so if you wanted to have a walk out basement, that would be allowed, with Commissioner Jensen saying that would be fine he thinks. Hood responded they would make that condition.

Mayor Weatherly asked if there were further clarifications of staff, with none, he stated the floor was open for a motion if they choose to make one, and they need some help in drafting one.

Commissioner Meckes was glad to make the motion but would never add all the conditions, asking if anyone knew what all the conditions are.

Action: Commissioner Meckes made a motion for approval, conditional use rezoning #03CU17 with the following conditions and they are, with Attorney Kaus suggesting the motion say with the conditions offered by the petitioner and if that is acceptable by the petitioner then we will sort them out both with wording and according to the minutes from what's been agreed to and then you don't have to worry about specific language.

Mayor Weatherly added we can clarify in our minds in discussion, but as far as the motion that suffices, with Attorney Kaus advising that was correct. Commissioner Gossage seconded the motion.

Mayor Weatherly asked to lets clarify what, so they can at least have a common understanding here.

1) Commissioner Meckes stated, first the Peakway and the completion of the Phase within 6 months of the adjoining sections, with Mayor Weatherly agreeing.
2) Mayor Weatherly added one is the completion dates of the phases shall be specified by the petitioner within 60 days but prior to the submission of the development plan, with Commissioner Meckes agreeing.
3) Commissioner Jensen added the two stories on the perimeter buildings, with Mayor Weatherly restating the perimeter buildings shall not exceed two stories in height, measured from the front.
4) Commissioner Jensen added residential ownership, asking if we were going to ask that of the developer to take that, with Mayor Weatherly asking if fee simple covered it, with Attorney Kaus advising individually owned is the phrase he was kicking around in his head, with Commissioner Jensen adding individually owned is more specific, with the Mayor restating that the units specified townhomes shall be individually owned, with Commissioner Meckes asking if that would preclude an individual from buying two or three of these units, with the Mayor saying they are still individually owned. Attorney Kaus added for clarification, what the specific condition will say is the petitioner will impose CCR's limiting the townhouses – the town doesn't impose that condition, the petitioner does, asking is that acceptable; it's a restriction that the property owner places as opposed to the town.

Mayor Weatherly asked if this encompasses everything that they've extracted.

Commissioner Jensen added one last thing is the mosquito problem if there is one, he assumes we have ways of handling that, so we are ok there asking Khin if that were correct, with Commissioner Gossage adding that wouldn't be a rezoning issue.

Mayor Weatherly stated that's clear and what the second was intended to do, with Commissioner Gossage responding that is correct. Mayor Weatherly asked if there were further discussion, with none further, he asked for a vote on the motion. The motion carried unanimously.

End of Public hearing # 1

David Rowland, Director of Planning
Public Hearing # 02 – Annexation Petition # 355
Public hearing concerning Annexation Petition #355, Stephen M. Lawrence, Ellen Childs, Et Al owner/petitioner; petitioning to annex 15.938 acres into the town's corporate limits; property is located on the west side of East Williams Street (NC Hwy. 55) south of James Street and north of US1; possible motion to adopt an ordinance to extend the corporate limits of the town.

Director of Planning oriented the Board to the petition for property, with landmark of Dallas Restaurant being across the street; the Perry Road extension is almost complete to NC55 and a cleared site now; a site plan for a portion of the property is forthcoming. In order to receive town water and sewer they must be annexed.

Mayor Weatherly asked if they are in compliance with our erosion control; have we had a question about their compliance; he can't see how they can do that on that lot. Manager Radford stated they are in compliance. Commissioner Meckes asked the current status of that land. Rowland responded it's in our ETJ and now needs to be annexed. Commissioner Meckes asked if there were a classification for that land currently, with Rowland responding Planned Unit Development, our zoning classification.

Mayor Weatherly opened the public hearing at 8:08 p.m. and with no one speaking in favor or in opposition he closed the hearing and referred the matter to the board for a motion.

Action: Motion by Commissioner Schulze and second by Commissioner Jones to adopt an ordinance to extend the corporate limits by the 15.938 acres. Motion carried unanimously.

End of public hearing # 2

David Rowland, Director of Planning
Public Hearing # 03 – Annexation Petition # 356
Public hearing concerning Annexation Petition # 356, APX Haddon, LLC owner/petitioner; petitioning to annex 16.301 acres including public right-of-way into the town's corporate limits; property is located on the east side of NC Hwy 55 and north of Olive Chapel Road and Hunter Street Intersection and south of the Apex Peakway; possible motion to adopt an ordinance to extend the corporate limits of the town.

Director of Planning oriented the Board to the location of the property at NC55 and Olive Chapel Village and the Peakway and known as the Peakway Market Square which is under construction. He noted it a very attractive building and nice addition to the town. The Harris Teeter is located here and has done clearing there and needs to be annexed to get town water and sewer.

Mayor Weatherly asked if there were any question, with there being none, he opened the public hearing at 8:10 p.m. With no one speaking in favor or in opposition, the hearing was closed.

Mayor Weatherly asked if there were questions of staff. Commissioner Schulze asked how we could approve their site plan if it were not already annexed. Rowland responded it's in our ETJ; they do make that leap, but felt.... With Commissioner Schulze interjected it was a good assumption assuming they would be annexed, but in the event they were not annexed tonight, they would be in trouble wouldn't they, with Rowland responding we all would be. Commissioner Schulze asked how they would handle sewer, with Commissioner Jensen adding that's their risk they take. Commissioner Schulze felt it was an awfully big risk, with Commissioner Jensen adding not at that site, but sometimes yes.

With no further questions, Mayor Weatherly called for a motion.

Action: Motion by Commissioner Gossage and second by Commissioner Meckes. Motion carried to adopt an ordinance to extend the corporate limits by the 16.301 acres. Motion carried unanimously.

End of public hearing # 3

OLD BUSINESS

There were no Old Business Items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments should be limited to 3 minutes to allow others opportunity to speak.

***Herman Jaffee* attended** the ABC meeting and noted the school board needs help. He had spoke with Jobe in looking for ground for schools and noting Old Jenks suggested across from Charleston Village, where children could walk from there and was told they needed 18 acres and where they build, development would follow. He noted where he comes from they use ten acres and most not used; he almost hung up the phone. Jobe reported $260,000 an acre – his point discussion with Margiotta, School Commissioner, sites school have use only part of the site should be reviewed to put more schools on the same site and request from the state permission to build bigger than 600 or 800 student size while we ask permission to use the site. Result

more students near their homes and improve education by having parents be involved with child's school, also saving cost expansion for the proposed seven or eight buildings they are thinking about. Most were at the meeting; letter from Apex Commissioners to the school commissioners asking what he had outlined may be considered by them. He spoke to ABC people and wrote out his suggestion to them, but a letter from Apex and possibly Cary may get the school board to thinking along those lines. It's fact of life 16 acres for an elementary school and may only use 6 or 40+ acres for a middle school and 65+ acres for high school, you're talking a lot of extra land there that could be utilized for other things and especially since Jobe said wherever he picked a site in the past ten years, development came, no problem there will be plenty of children around the school eventually. Let's use the sites we have, they are there and do not cost anymore; question of getting state permission to do this.

Mayor Weatherly responded one of the major proposals in the Mayor's Task Force Report is concept of land banking, where you have planning, which the school board does not have any or put any credibility into, and then obviously ten years out or so decide where you want your schools, acquire that property while it's still available but they don't' do that. There are several things we need to help the school board think through. He noted some solutions are being offered, but the problem is falling on deaf ears. Jaffee committed on collusion, Pepsi saying they can't afford it and Coke saying they can't either; the board could make $10 million a year on the drink rights in vending machines; Jersey and Newark make about $6 million with half the population. Chapel Hill over a $1 million on their population. Mayor Weatherly stated naming rights may come up before their board agenda. Commissioner Meckes thought they should take the soda machines out.

End of public comment.

NEW BUSINESS

Information – Parking on Investment Blvd.

Manager Radford advised for several months we have been experiencing problems with parking on Investment Drive between Dream Sports and the dance studio on the opposite side of the street. The situation is inadequate parking along the business on Investment Drive therefore the patrons of the dance studio are parking on both sides of the road; often times they park on the far side when an event at the dance studio lets out there has been some danger of the children running between cars onto Investment Drive. In two week we will ask to prohibit parking on the Dream Sports side of Investment Blvd. This will make Dream Sports folks happier and may be awarding off some accident involving a child. Police Chief has endorsed this concept in placing no parking on that side.

Mayor Weatherly clarified this is in the interest of environmental concern, the reason why the gymnastics or dance studio would not be in compliance with our current ordinance requiring certain parking because we granted a variance to that because there is a stream running there and their lot was not ... they would have had to pipe the stream and we decided in our wisdom not to do that and allow them to have lesser parking spaces, which would otherwise have been required. Plan off the issue and developer concerns and now it comes back to a safety issue that was unanticipated obviously.

End of Information Item

There were no further New Business Items to be considered.

WORK SESSION

There were no Work Session Items to be discussed.

CLOSED SESSION

There were no Closed Session Items to be discussed.

ADJOURNMENT

With no further business to come before the Board, there was a motion by Commissioner Schulze and second by Commissioner Meckes to adjourn at 8:20 p.m. Motion carried.

The above minutes were approved on the 17th day of February 2004.

Georgia A Evangelisti
Town Clerk

Keith A. Weatherly
Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of February 17, 2004
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Web site: www.apexnc.org

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order, Tuesday, February 17, 2004 at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Gossage and Schulze were present. Commissioner Jones was not present due to sickness and Commissioner Meckes was not present due to out of town business.

Mayor Weatherly rendered the Invocation, led the Pledge of Allegiance and extended a welcome to those in attendance.

INTRODUCTION OF TOWN EMPLOYEES

Due to the weather, newly hired town employees were not introduced.

SPECIAL INTRODUCTIONS

Mr. Randy Musser, Senior Resident Inspector of the US Nuclear Regulatory Commission, Shearon Harris Nuclear Power Facility introduced himself to the Board and offered his assistance with any concerns. He extended an invitation to an annual assessment meeting to be held at the Holiday Inn Express on March 24 at 2:00 p.m. Plant website is www.nrc.gov Mayor Weatherly noted the unique relationship being the closest town to the facility and appreciated his availability to address inquiries from the citizens as they arise.

CONSENT AGENDA

Mayor Weatherly presented the *consent agenda* to be set and asked for a call for action.
Action: Motion by Commissioner Jensen and second by Commissioner Schulze to approve the consent agenda items. Motion carried.

1. Minutes of February 3, 2004 Board of Commissioners meeting.
2. Annexation #357, G. Bryant & Sandra K. Garner, owner/petitioner, petitioning to annex into the town's corporate limits, 48.431 acres located on the south side of US64 and west of Abbington Subdivision; 1) Resolution directing Clerk to Investigate Petition; 2) Certificate of Sufficiency of Petition by Clerk; 3) Resolution setting date of public hearing for March 2, 2004.
3. Proposed Resolution accepting and authorizing the purchase of street rights of way, easements and appurtenant property interests for the Lynch Street widening and improvement project.
4. Adopt an Ordinance Amending Article VIII. Parking, Section 20-150(21) of the Apex Code of Ordinances to designate a "No Parking" Area on the south side of Investment Boulevard for its entire length.
5. Site plan for OFM Flex, Lot 16 Pinnacle Park, Phase II, for Office/warehouse (flex space).
6. Site plan for Goddard School, 903 Olive Chapel Road, for proposed Daycare Center.
7. Site plan for Coastal Federal Credit Union, Olive Chapel Village Shopping Center out parcel at Olive Chapel Road and Apex Peakway.
8. Wake County Tax Report for Town of Apex, approved and accepted at the Wake County Board of Commissioners February 2, 2004 meeting.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as printed. Manager Radford noted Representative of Haden-Stanziale was not able to attend due to the weather and New Business Item # 1 would be heard later. With this notification, the agenda was set as presented.

PUBLIC HEARINGS

Public Hearing # 01 – Amendment to Sections of the Unified Development Ordinance / stormwater controls
Public hearing regarding adoption of an Ordinance to Amend Certain Sections of the Unified Development Ordinance with regard to stormwater controls for 1 and 10 year storm events; possible motion regarding same.

Director of Planning David Rowland noted Article 6 and Article 2 are proposed to be amended to add language to clarify what is required for engineered stormwater control structures with regard to post-development peak run-off and its limitation to pre-development peak runoff for the 1 and 10 year storm events. Mayor Weatherly asked if this would conform to state law and regulation authorities, with Public Works Director Tim Donnelly responding this is correct.

Mayor Weatherly opened the public hearing at 7:10 p.m.

Art Clem, Apex Home Owners Association Coalition noted stormwater drainage a quality of life issue with members having expressed concerns with stormwater flooding and named the various subdivisions throughout town that have had impact from flooding issues; the questions is this UDO amendment going to help the problems of flooding within the subdivisions. He addressed the last sentence in Section 2 of the ordinance...."Based on findings presented in the impact statement, the Town shall reserve the right to increase, decrease, or waive the typical stormwater quantity control requirement and have the right o require that the downstream infrastructure to the 10% point be improved if impacted by development". He stated this was an out clause to get out of an increase requirement. He had sent an earlier email to the Board and noted two points: 1) with the UDO pre/post would be ok, and 2) as projects continue to develop in the Beaver Creek area, streams will be overwhelmed asking to go beyond numbers and look at overall pictures in the basins we are in – example: Becketts Crossing has wetlands to take care of the flow, but flooding doesn't go anywhere; another example indicating water accumulates and may have major flooding issues, asking the Board to pay attention before it gets out of control. He continued other smaller projects are not put into this measure; development along the basin will get filled – ex. flea market, etc. He asked a broad comprehensive view including tax dollars of the five or six basins in Apex, noting new development has a major impact on the Beaver Creek Basin. Another concern was to letting the developers dictate and hire people to talk about the stormwater; they "tweak" it to develop a way out of spending tons of money. He made a recommendation that the town take over and have the town evaluate the project; the I-540 and new development is coming and he thinks there should be a broader perspective of stormwater management. He agrees with this amendment if the ordinance will help, but if it's a "band aid" then take a look at a broader picture of stormwater management.

Daniel O'Rawe had purchased property in town and neglected to see he had a creek along the greenway in Shepherd's Vineyard and mosquito bits on his grandson caused him to investigate; he is located third house down from the pool on Chimney Hill Drive with the stream coming close to his home; he noted the configuration of the stream and doesn't allow the creek water a way out. He had contacted Adam Stephenson and Rocky Rose regarding the problem from the creek and they noted it a natural area, with the problem from another creek developed from the water coming through there and he felt it should be filled with stone and soil put back; the creek has been built-up with rocks now so it never goes over there. He noted two previous experiences where the Corp of Engineers ran pipe so water would not impact their home, with the private property paying for it because they had put black top, cement and homes in an area of natural grain; and another example cleaned a creek to keep homes from flooding due to cement, black top and homes. He noted the creek had been developed by nature not to handle the water coming down and he walked the creek and he can see in some areas silt is so high there is no creek on the sides and agrees to get someone to do it right and developers are out fro them selves and not the welfare of everyone else in Apex; they moved here because of this community and it brings a lot to it; he asked the problems be resolved. Mayor Weatherly closed the hearing at 7:25 p.m.

Action: Commissioner Gossage stated staff had done a great deal of work in this area and with neighboring town comparisons; he felt the public had made interesting points and felt the issue would benefit with the full Board present. He moved to delay making a decision on the UDO until a full board is present. Commissioner Schulze made a second to his motion, noting he would ask when questions when the full board is here. The motion carried. Mayor Weatherly stated they would deliberate at the next meeting (March 2), and asked staff of the Planning Board's action, with Rowland responding they had considered this a couple of times and were unanimous in their recommendation for approval. Mayor noted they had discussed this before and all members should be up to speed on this issue.

End of Public Hearings

OLD BUSINESS

There were no Old Business items to be considered.

PUBLIC FORUM

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Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments should be limited to 3 minutes to allow others opportunity to speak.

No one spoke during public comment.

NEW BUSINESS

John Brown, Director of Parks, Recreation & Cultural Resources
New Business Item # 01 – Various Park Projects
Representatives from Haden-Stanziale will provide update on various parks projects.

Representative from Haden-Stanziale was not able to attend due to the weather and will be heard at later date.

David Rowland, Director of Planning
New Business Item # 02 – Allow Churches in Industrial District
Possible motion to direct staff to pursue possible language to allow churches in the light industrial district with a special use permit.

Director of Planning advised the Planning Board had considered this matter to amend the UDO by allowing churches by special use permit in light industrial districts. Discussion included parking, tax base, truck traffic and desirability (Chair commented a concrete plant could go beside a church). Planning Board recommendation was that staff pursues possible language to allow churches in Light Industrial zoning districts. He noted Planning Board's interest in investigation of this request but wanted some reading from the Board regarding their thoughts to pursue; looking for some indication the Board also would like to pursue this, with staff coming back with more specific language.

Mayor Weatherly recalled past talks regarding this issue, with strong recommendation from planning staff these conflicts should be avoided, noting this is not an issue for or against a church to locate in Apex and whether they are welcome or not, but a public policy issue of permitted use within a zoning district. He asked if anything had changed with planning staff since the last visit. Rowland responded they are not sure they considered churches with a special use permit, but considered it as a use by right; a special use permit helps mitigate some problems you may have with two different land uses beside each other. He noted this gives a new look by special use permit. Another issue with staff is a church moving permanently into an industrial district. King is talking only lease space with the idea that a church would find a permanent location and more into a more traditional district, O&I, Residential – he said maybe middle ground would be to look if there is a way to do this, draft it in such a way churches would be in lease space, not sure this could be done, but his concern is you would find a church in a permanent location in an industrial park.

Mayor Weatherly noted in his findings and standards to be met, is the appropriateness and compatibility of this issue, that in this case, a special use permit for a church shall be appropriate for it's proposed location and its compatibility with the character of the surrounding land uses, asking how this standard could ever be met by having a church in industrial. Rowland responded on a case by case basis, industrial districts permit offices and perhaps if the subject location were in a primary office area, it may not be as incompatible as if it were located next to a trucking type operation; special use lets you consider it case by case on a site specific location. He said it seems to set up subjectivity rather than objectivity they like to see in our ordinances where you don't like to have wide flexibility which obviously gives dispersant treatment, but is almost subjective to the extreme when you get into those kinds of examples. He asked if this were a potential problem, even talking case by case. Commissioner Gossage noted Rowland had said....allow you on a case by case basis, asking who, with Rowland saying Board of Commissioners, with Gossage continuing the board would consider each church on a case by case basis with Rowland continuing if the recommendation is to go forward, that they are allowed by special use permit, they would have to consider them on a case by case basis, a public hearing for surrounding property owners to suggest conditions and the board could impose conditions on it.

Mayor Weatherly recognized Jimmy King, who spoke to the changes since the last visit to this item; he asked consideration of UDO changes for special situations for a land owner, church, or group of citizens that wanted to form a church, if they feel significant enough reason they could come and request a Special Use Permit, not saying they have a right to do it, but would like to be considered allowing them as a citizen, a religious organization or property owner to hear them; as it stands now, churches are not prohibited by right, there is no way for them to come with a specific situation. He argued allowing churches by special use permit would not take away from the town's authority or its ability to control growth and development but would allow opportunities to be brought for discussion and consideration. Comments from the planning board is that this may take away available industrial property, but he noted Norris Park was approved with 7 buildings, 196,000 square foot of space, they have built two over 50,000 square foot and to allow a church to occupy part of one building under the conditions it would be worked out would not diminish available industrial property that out there now or maybe coming on stream.

They have the opportunity to locate a Christian organization on the fringe of Norris Park right on Perry Road and thinks it's a great fit to the current businesses now and with what will come; they don't have chemical mixing or concrete or asphalt plant, have dance studio, landscape businesses, furniture show room and, office for construction company.

They didn't have churches in mind when they built Norris Park, but the opportunity has come and fills it fits nicely with businesses there; he mentioned the builders of the Food Lion building on Williams Street or the builders of the sewing plant on NC55 had churches in mind when they were built, and churches occupy those. Planning Board vote was unanimous in favor of the recommendation.

Two points in relation to the UDO: Distinguish between church as an organization and church as building – distinction is not provided in UDO – UDO addresses stand alone church building and surrounding property and it does not separate religious organizations apart from their building. Putting a stand alone church in the middle of a heavy industrial area is not what they are asking for, but if they are allowed to come back and offer their special use permit request to let a start-up religious organization use existing space, in an existing building for offices, Sunday school rooms and large space/meeting/worship area; during the week offices would function like any other businesses and would fit nicely with the businesses there; on weekends when business are not working, large meeting space is ideal, with plenty of available parking with little or no truck or other traffic through the park. You hear from planning mixed use and compatibility and in parking, the fact that you have a number of spaces sitting idol on the weekend it begins to fit.

He's not sure the UDO considered and the Board before separated religious organization going into lease space opposed to a church building being building that would take away from tax base, that would be separate island in itself within a larger area; he understands the difference in use and zoning.

Mayor Weatherly asked if they change the ordinance to allow special use permit to be allowed, there would be no distinction between leasing a pre-built facility or having a church purchase the lot beside Norris, or any kind of light industrial manufacturing and building a brick and mortar structure; we can't this would only be allowed for a lease of ... with Rowland responding he would like to think there might be something, but not sure it would, with Attorney Kaus advising no.

Mayor Weatherly said to King he didn't know what the position would be, if he didn't have a facility there vacant, but that a church wanted to purchase, which is exactly the situation he remembered on Lufkin Road wanting to purchase property and plant a church there; he didn't know the position. King responded he had some office and institutional that would be perfect for them.

King continued the second point is that Norris Park is classified industrial; there's no other classification that fits their flex project; provides space for low intensity, clean mixed business uses; offer high ceilings, large space and role up back doors where they are needed and designed to be flexible for a wide variety of uses. They had started Norris Park when Apex adopted the UDO; it's understanding prior to the adoption of the UDO, he was told church buildings were permitted anywhere in town. They were Apex's first office space/flex/large-space project and the UDO didn't contemplate their type flex development. If they could do it over they would ask for another classification that allows for mixed business uses of the type that has developed in their area; now they have to live with the word industrial and have to bring situations to the Board for consideration – did it with the dance facility and now the church facility.

Commissioner Gossage asked when he moved into town he had asked if churches could go anywhere and were told this when. King responded in preparing for this... it's not a problem, but they don't clearly fit in industrial. Commissioner Gossage asked when he was told churches could go anywhere... with Mayor Weatherly interjecting he means prior to the adoption of the UDO, not thinking that was correct, with King responding if it's not correct... with the Mayor saying it's immaterial at this point. King continued the issue is churches don't belong in industrial, churches belong in mixed use business environments, flex parks; that's what they have, but they have a zoning classification says you're industrial. The only way to bring other type uses is to ask for consideration or amend the UDO; one of the things when the UDO was passed was we couldn't anticipate every single situation that may arise and it was flexible and would be looked at and considered as they move forward and he would set this out for consideration.

As owner of the property, he wouldn't put anything that would detract or take away from what they envision Apex premiere business space; they have invested a lot and are dead on the Peakway and the first business type park there and don't want to detract or take away. They are believer and advocate of this type office warehouse multiple use building from the beginning and not going to do anything to undermine this issue. They think it would be a good fit for the town and citizens and members of that church and like that opportunity to discuss this.

Mayor Weatherly stated they could continue the dialogue with the Board. John Powell Real Estate agent desired to speak. Mayor Weatherly stated they are not debating the merits of him leasing a facility to a church, but debating whether an ordinance should be changed that would apply to every light industrial zoning district in our town to all other petitioners who may come forward under this circumstance and continued they need to separate specifics of his business (King) transaction and public policy debate whether its good or where ever this situation may occur. Obviously you're a good business man and think it would work in his place, but asked if it's good for the community at large to have a change in the ordinance; separate your individual lease opportunity to discuss a change in policy.

King asked consideration if they believe there's validity to the point a church building situation is different than a religious organization leasing space in a building. Mayor Weatherly stated we're talking about potential to build... with King saying that's not allowed, there's not that flexibility in the UDO either. Commissioner Jensen asked King to repeat what he had said. King responded, understands the public policy aspect of what you are having to deal with, but hopes they would give consideration to the fact that a church building sitting on property is different than a religious organization leasing space. Mayor Weatherly stated that's not what we are talking about, we're talking about allow a church to purchase property in your industrial park, King interjected lease property, with the Mayor responding, no.

Attorney Kaus clarified, we're talking about is in for dime, in for dollars, the town does not have the authority to open the door to a lease circumstance, but not to an ownership circumstance. We don't have authority to regulate the mode of ownership or lease, so if we are opening the door to churches in the light industrial district, we're opening the door to lease circumstance, to ownership circumstance, to any other... with Commissioner Gossage interjecting building free standing church in light industrial, this is the same as having, with Mayor Weatherly interjecting they can buy one-half acre from whoever the owner would be in a zone district industrial and build a permanent facility right there beside your plant, with King adding by special use permit as approved by conditions ... with the Mayor interjecting yes, but we're not talking about organization being brick and mortar or the people who constitute the congregation, so there's no distinction as far as this amendment is concerned.

Commissioner Jensen asked that if we can't distinguish between the two, can we limit this special use permit to two or three years and then they would have to come before the Board again and to him that would be one method of saying no one is going to build a house if they are going to live in it for two years and then loose the right to live in it. Attorney Kaus advised you could regulate on a temporary basis, you can't have an expiration or renewal because this is one of those special quasi-judicial things that we talk about based on the circumstances in existence at the time and the only way you can change or revoke it is if there were a change in circumstance, so in short you can't build into the ordinance a fuse or an expiration saying you have to come back to us and show us that you still need after two or three years. You could put a temporary basis on it if you wanted to and then maybe that indirectly gets to the lease-ownership distinction but you can't distinguish between leasing and owning. He's agreeing with Commissioner Jensen if they want to do the temporary, if the board feels that is important, it indirectly gets what you're trying to get at; we do have the authority to say a temporary use is accepted. Mayor Weatherly asked and if we define temporary there would be no extension, with Attorney Kaus advising that is correct.

King asked if there is a difference between a church and a non-profit organization. He's not sure why the church would be any different than another non-profit group. Commissioner Gossage asked the difference between a place of worship and a church office, with King responding the UDO says churches, with the Mayor saying a use under a zoning category, with King adding as opposed to Red Cross or Salvation Army that had meetings and space and offices. Mayor Weatherly stated if they wanted a use of an office... with Rowland responding we do allow offices in there. Mayor Weatherly added O&I is office and institutional and institutional being churches and schools and that's standard definition.

John Powell, President Powell Properties, Real Estate Commercial Firm. He's been involved in numerous projects office, flex, industrial, residential, commercial, retail, and have attracted a number of quality local national and international firms to the town. He noted this was a road block. He handles the marketing for Norris Park, a high-end flex park, located off Perry Road and the Apex Peakway; one of the highest regarded parks in this area, even though small in size. When fully built out there will be seven buildings and almost 200,000 square feet of high-end office flex space; in addition an office element with soccer field across from REX facility which will be more office and medical type applications.

He doesn't want to loose site their responsibility to their client and shepherd them through the process of their transactions, not wanting to do anything or encourage them to do anything that would inhibit their ability to have a successful project or their ability to spawn new growth, bring new buildings which bring fees to the town, brings jobs to the market and fill up space. They are taking this seriously coming before the Board.

They are working with a local church that is rapidly growing and currently not in Apex, in a neighboring municipality wanting to come to Apex. A number of their members work and live, play, shop and spend their money in Apex. They have been on a site selection with the committee and have targeted Norris Park, one specific building and one specific space in Apex. Their number one goal is not to lease space, but incur ownership; now is a great time to buy with interest rates, but they are not ready, and need a stepping stone and Norris Park would allow them to do this. They are not going to buy land within the Park; they are looking at buying land within this town; intermediate step to be within the Park now.

Owners of Norris Park are confident this use will not adversely affect their project; it's clean and appropriate, bringing people to the park on weekends and utilizes parking during off hours; this use is no different than other projects he classifies as assembly use – gymnastics organization currently located in the industrial park here in Apex; he can't see anything different other than the worship aspect.

His responsibility is to his client and would rather do no deal than the wrong deal. He addressed the attorney had advised they could regulate time in terms of coming back for a renewal – initially they were thinking that was a bad idea, but listening to this, this verbiage may be exactly what they spawns this particularly group and others like that may come before the Board to pursue the ownership opportunity and to focus on a timeline or deadline. This may be a good way to work with them.

A proposed office development is before the Board now within a stone's throw of Norris Park; they have a neighboring community next to them; they have the REX facility across the street – those are neighboring uses, if this use is not compatible, then they need to look at these neighboring uses and ask are they compatible to them. Their request is not to change the zoning or introduce new zoning – it's to allow the use under the current UDO via. Special Use Permit.

He noted almost every municipality around Apex has sought the opportunity as they have endured growth, challenges, and hardships to create a new zone and a new level between O&I use and Industrial Use – they created a middle ground and thinks this is a bigger picture and not what they want; not rezone the property, but if they were in Cary, Holly Springs, Garner, Raleigh, and Morrisville, this use could go into an Industrial project and that's the validity of the churches moving to McGregor Park now. Staff mentioned taking up existing space: some of the churches in McGregor Park meet in existing facilities with companies that are there five days a week; the church comes in the exact same facilities on the weekend. He doesn't view this as being a loss of opportunity, but an opportunity to create an environment where people go to worship or Sunday school or office during the week can go to Apex and spend their dollars for lunch after worship.

He thinks it's extremely important in a lease situation, back to verbiage that should be created, a lease scenario, non-profit organization there is no reduction of tax benefit for the town; the partnership the landlord owns the property and has to bear the tax burden. Having this use in this project whether 100 square feet or 100,000 square feet, town will still benefit from the tax.

Planning Board questions were answered and their vote unanimous. Long range planning talked mixed use; one thing you see come before the board are mixed use projects; they are involved in a number of them – Scotts Mill, still a pile of dirt, just not the right time for something that big; they are working on something downtown Apex which will make the next 20 years to develop and is the type project this use when they own something would be ideal. Some positives: clean use, almost same as gymnastics use; weekend use; bringing jobs to Apex not only pastors, but administrative staff during the day; creates an opportunity for him to encourage ownership to bring new development into Norris Park. They are blessed with activity and if they do their jobs properly will become before the Board with new buildings which will create new opportunities. He also noted the Board controls their own destiny and with each special use applicant they can review, approve and/or deny it – every applicant will come before them with verbiage they think should go in there. He appreciates their attention and consideration.

Mayor Weatherly appreciated his comments, but the issue is not whether this would be a good use for this particular spot but whether this applicability should be provided to all industrial zones whether they be built or lease arrangement and the question is not whether we welcome this congregation to plan a church in Apex – this is not the issue – we certainly welcome and sure he would be glad to help them find a suitable location with the appropriate zone location, and would like to see him to do that. This issue is on the policy side of it, is this a good thing for our code.

Mayor Weatherly stated the issue is always when there is a conflict of interest he guarantees, in the case of industrial vs. anything else, industrial tenants are going to be the losers; there's no body that will say that if there were any kind of mishap or loud noise or intrusion of whatever fumes may come from an industrial site, it will be on the industrial guy to say why he's doing this to this church even though they try to have zoning to avoid those kinds of conflicts, but usually they are on the other side protecting King's right to have his industrial site without encroachment from potential conflict and he would certainly want to protect that right of the landowner and users in industrial districts not to be encroached upon, and now it's turned where we have the petitioner welcoming potential encroachment that the town would have to mediate or dispute, he feels sure, in the future – the potential is there.

Powell responded the point is well taken; one of the things in handling the market of a specific project in Norris Park in particular is that as they bring potential tenants to the table they want to work with the landlord to make sure they have the right tenant mix. They have had truck organizations that may 30/40 tractor loads daily going up and down Hughes Street and Perry Road, and to him while that use is allowed, it's probably not in landlord's best interest to have that user in there, as it's not a high-end use they had envisioned nor they had envisioned either. This particular use their peak time will be during their off time but can utilize their facilities and parking and they are not looking this as the final step. His goal is not to sell any land; he doesn't think this is something King is worried about.

Mayor Weatherly responded he didn't mean to argumentative about this, but he's not aware of any active viable church that only uses it's facilities on Sundays – obviously active congregation has bible study in the mornings, has women potential groups that meet and studies and youth activities at night , certainly on Saturdays and you would expect if it is a viable church if an active church congregation, it would be used virtually every day to the week; to say this will only be used on Sunday assuming it's a church that worships on Sunday, whatever day of the week, it's going to be a seven day operation. King responded it's a Christian church that worships on Sunday – group of the first Baptist in Cary and starting his church. He agrees the more viable the group the more active but you look at the group called not traditional – the one on NC55 at the old Food Lion and the one on NC55 at the sewing plant, yes there's a few cars at various times around there during the week but go there on Sunday and the parking lot is full – that's not the way it is during the rest of the week. Sure there are meetings going on, but it's also the time when there are not nearly that many people there. Mayor Weatherly stated 100% Sunday morning.

Commissioner Schulze commented on the reduction of tax base; that would only the case if the church leases the space but if they chose to purchase there would be a reduction, with Powell responding this is correct and why in the verbiage of the town attorney advised – the verbiage that should be drafted might encourage a short term. The majority of the applicants across the area are small business; big business will own and the small business typically lease or are in office condo's like up and down the street; he would think the long term goal ... like when they go to Salem Baptist and worship, they don't pay taxes there.

Commissioner Schulze continued he was opposed to churches in industrial parks for the same reason he's not to keen on churches locating in shopping plazas; reason, in those kind of environments, each business or use plays off each other – shopping center – when a church locates in an abandoned grocery store, where as before hand there was a video store, a cleaners – people use to do all that kind of business in one stop, the church is not being used during the day, doesn't have a lot of activity, so now the video stores are not going to locate there, the cleaners aren't going to locate there, he thinks the same thing would hold true for an industrial park, you're not going to have your quick copy printers, cleaners or banks, because the church is not really going to support that kind of use and it's kind of a viscous cycle the whole thing starts to fail. He knows you can argue that within Norris Park you can control what you decide to locate and what you don't but you're talking industrial zone of an area that includes more than one property owner or developer, so he thinks it's important they as commissioners make sure that whole area is developed that is the way it's suppose to be in the sense that it would support the typical businesses that would be in there. If you have a bunch of offices you could expect to see cleaners, banks, etc to support the type businesses that would be there, and if you put churches there, you don't make full use of that opportunity and things don't work out. King responded they are not allowed retail, with Commissioner Schulze adding there would be some retail areas surrounding the property that would support the people inside the property and responded on the environment there. Powell agreed but noted their park master planned with approval for seven buildings and it's all designed basically with no retail element – case in point: Liberty Station downtown – offices, retail, professional retail, Laundromat, that's not what Norris Park is designed and they also handle the Pinnacle Park development – that whole analogy is not applicable – there's a lot of owner/occupied space and some investment grade properties – it's a different analogy and appreciates what's being said and could agree with that in a mixed use development like the long range plan is talking about, but in a true industrial environment, you will not have those uses; they want survive.

Commissioner Gossage stated Commissioner Schulze's point is valid – he thinks we're almost arguing around something that has been brought up a couple of times and sounds to him a church temporarily could do quite well in Norris Park , but he's not convinced as a rule churches throughout Apex and in Light Industrial areas they should mix – when saying mixed development he's not sure that means church and light industrial – he understands the point they are making but they have not convinced him that they should consider any light industrial throughout Apex now and in the future that they zone any use the next door neighbor and the church is going to be compatible. King stated with special use they could be considered.

Mayor Weatherly asked what would be the definition of temporary. Powell responded with investment grade property you would have a twenty year mortgage, but most people leasing in today's market are looking at five to seven year commitments as long term; most leases three to five short term deal. Most deals are three to five year term. With a church, in this instance are using this as a stepping stone and they are on a tenant side of the fence; they went into a space with a three and a five year deal and do not have the option to renew. The key point, with a special use permits and with the verbiage being talked about, he thinks the planning board was suggesting that you control every applicant where one may be approved, doesn't mean the next user will be approved.

Commissioner Gossage asked are we are in a position of denying churches on a case by case basis, denying or approving on a case by case basis. Powell stated they could deny any use on case by case basis.

Mayor Weatherly stated you have to meet, some more subjective than objective, but the situation, we could define temporary that would suit what they think a reasonable compromise, but what would happen in the political environment, at the expiration of the two to three which to him would be long time as far as he's concerned, you have the pastor coming and probably King saying what a wonderful relationship this has been and it's working out for every body and no body has been harmed, we ask that you give us an amendment to the ordinance that allows for the extension or does away with the temporary nature of the proposal altogether, the fact that we could say temporary, but it certainly doesn't bind future boards to be under this problem. We could either say it's a good use of industrial to put a church there or not because it does not lay to rest – temporary means it's a temporary part of the ordinance and only to the part the next board or this board changes it; he thinks we need to decide it strictly on a policy decision whether this is a good use in an industrial zone or it's not. Whether a built up brick and mortar church or a lease facility, it has no distinction involving welcoming those petitions to come to us.

Commissioner Jensen understands what's said, and what Commissioner Schulze said about commercial; light industrial, he thinks the burden of incompatibility is more on the church itself than it is on the folks around them and could it be done on a case by case basis, it wouldn't bother him – he doesn't believe at all. He says a church sub-leased the chamber depot on Sundays and it's basically in a commercial zone with no real effect; it's a temporary situation and needed an inexpensive place to get going and now have moved on and now own their church. Mayor Weatherly noted the permanent church across the street; then it was condemned. Commissioner Jensen stated this was a situation like is being talked about – temporary, got on their feet and now own a church – at the time of the lease of the building they were a small congregation and soon grew out of it; that would be another situation – maybe you can't get to this detail, but size he could feel comfortable about a three year permit and that would be it. If every body went in with their eyes open, then some body comes back and says its working good he would say you had your shot and should have taken time to find yourself a new building with Powell agreeing.

Mayor Weatherly noted a range of options, with first one to direct staff to draw up language that would go through ordinary process to amend the UDO, requiring public hearing and going back to planning board. He asked when they would start joint public hearings, with Rowland responding they have it under consideration – they are not pushing it. Mayor Weatherly asked if there were further questions. He stated they didn't have to make a motion at all; the issue would die due to lack of a motion or make a motion to do various things. He asked if there were a motion to debate.

Action: Motion by Commissioner Jensen to direct staff to look at language and the legal aspect of allowing church type organizations in light industrial with a limitation on duration.

Mayor Weatherly asked if there was a second to the motion; there being none the motion died for lack of a second.

Mayor Weatherly asked if there were another motion; there being none no further action was taken and no direction was given to staff to move ahead. This issue died for lack of a motion and a second.

End of New Business

WORK SESSION

There were no Work Session Items to be discussed.

CLOSED SESSION

There were no Closed Session Items to be discussed.

ADJOURNMENT

With no further business to come before the Board a motion was made by Commissioner Schulze and second by Commissioner Gossage to adjourn at 8:20 p.m. Motion carried.

The above minutes were approved on the 2nd day of March, 2004.

Georgia A Evangelista
Town Clerk

Keith D. Weatherly
Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, March 2, 2004
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioner's meeting to order on Tuesday, March 2, 2004 at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street. Commissioners Gossage, Meckes, Jensen and Schulze were present. Commissioner Jones was absent due to out of town business.

Invocation was rendered by Commissioner Meckes.
Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action to approve the items listed below. There were no amendments to the consent agenda.

Action: Motion by Commissioner Jensen and second by Commissioner Gossage to approve the consent agenda as printed. Motion carried.

1. Minutes of February 17, 2004 Board of Commissioners meeting.
2. Annexation Petition # 358 JVI Construction, Inc. owner/petitioner petitioning to annex 3.914 acres of land into the Town's corporate limits; 1) Resolution directing Clerk to Investigate Annexation Petition; and 2) Certificate of Sufficiency of Petition by Clerk, and 3) Resolution setting date of public hearing for March 16, 2004.
3. Ordinance to amend Article VIII. Parking, Section 20-150(21) of the Apex Code of Ordinances to designate a "No Parking" Area on Investment Boulevard (second reading).

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as printed.
With no amendments to be made, the agenda was set as printed.

PUBLIC HEARINGS

Public Hearing # 01 – Annexation # 357 ***David Rowland, Director of Planning***
Public hearing concerning Annexation #357, G. Bryant & Sandra K. Garner, owner/petitioner, petitioning to annex into the town's corporate limits, 48.431 acres located on the south side of US64 and west of Abbington Subdivision; possible motion to adopt an ordinance to extend the corporate limits.

Director of Planning oriented the Board to the location of the property and noted it outside the town's limits and outside the town's ETJ. In order to develop the property it must be annexed into the town's corporate limits; petitioner is asking for annexation to also receive town water and sewer.

Director of Planning answered questions in regard to the annexation:

- Proposed development of this property is not a part of the original Abbington, but was stubbed from Abbington to this site.
- Houses will be similar to the Abbington Subdivision homes and having the same developer; same size lots, and would be a Phase of the Abbington Subdivision, and would be sharing recreation facilities of Abbington and is a private arrangement between the developer and the homeowners association.
- He was not sure of the number of homes but noted the property to be outside of the proposed I-540, but within the urban growth boundary which is just west of I-540 (estimate 90+ homes).
- Adjoining parcels without development have not been annexed.
- Noted access points and noted the extension of Barbecue Road that would intersect with US64; staff is talking with the developer, with another access.
- It's not known if NCDOT would allow another access on US64; this doesn't necessarily have to have access on US64, could bridge US64 and tie in on a thoroughfare plan with some roads that Cary has planned to give some relief; may not be at grade intersection, could be bridge and the expense of this, and with NCDOT cutting off access, he felt the burden would be on them to provide access.
- Noted if Barbecue Road came up next to the development - south side it would give another access in/out (site plan issues).

Manager Radford noted there was talk about the easement for connection to Apex Barbecue Road and a proposed thoroughfare collector street. Cardinal Gas Pipeline has a pipeline through there and there is a small amount of right-of-way through there and feels there would be difficulty getting enough right-of-way through there for a collector but a small street would work there now.

Mayor Weatherly opened the public hearing at 7:12 p.m. and with no one addressing this annexation, the floor was open for a motion.

Action: Motion by Commissioner Meckes and second by Commissioner Gossage to approve Annexation petition #357. He suspects 90 homes, 270 folks; water/sewer would not be an issue for this level of development.

Commissioner Jensen asked to see a graph of what is left of consumption of wastewater capacity; he wants to see as we go along where we are. Commissioner Gossage noted there is an arrangement with staff already from a couple of meetings ago and had received that. Tim Donnelly Director of Public Works reported every quarter their department reports to the state and would share with the board the amount of gallons; the one million gallons that is available should last thought 2011; should be in good shape.

Motion carried.

End of Public Hearings

OLD BUSINESS

Mayor Weatherly noted the public hearing on this item was held on February 17, 2004, and with the public hearing having been closed, the Board voted to defer action on this item to allow the full board to be present before taking action).

Old Business Item # 01 – Amendment to Sections of the Unified Development Ordinance / stormwater controls
Possible motion regarding adoption of an Ordinance to Amend Certain Sections of the Unified Development Ordinance with regard to stormwater controls for 1 and 10 year storm events; possible motion regarding same.

Mayor Weatherly had a request from Art Clem to speak again and reopened the public hearing for his comments; time 7:16 p.m.

Art Clem, AHOC, has looked at this amendment and thinks it will help and brings us up with state regulations; recommends moving forward with change to the UDO, but notes and asks the following:

1) This wouldn't solve stormwater problems, asking to keep the book open and look at recommendations made by AHOC – a basin wide study of the stormwater issues; even with the UDO, each added development compounds the situation and it continues to worsen; he did not want to erode property values and quality of life for people who get caught in flood things; would like the board to think about looking at a basin and the overall collection of stormwater and how that flows together with the UDO;

2) Asked to change the way the consultants work in developing plans coming in; let the town and consultant work up the impact of a development rather than letting the developer head this; if town does it, margin of error and fault would fall in favor of town where with the developer the margin of fault and error falls with the developer; this would give us a better break and we would have more recourse if we had someone consistently working on the impact of stormwater.

Mayor Weatherly closed the hearing at 7:20 p.m.

Commissioner Schulze asked clarification regarding 10% - ...area where post development is less than 10% of the total drainage area. Dan La Montagne responded consultants are hired by the developer – an engineer doing the impact statement; wanting them to look at the overall drainage basin where their property is 10% of the overall watershed, looking at impacts down stream. The impacts at this point are not a big a factor as others downstream. Small sites may not have to look that far down steam where a large site would.

Mayor Weatherly asked about the last statement in both sections of the ordinance: findings in the impact statement, town shall reserve right to increase, decrease, or waive stormwater quantity control requirements and have right to required downstream infrastructure to the 10% point be improved if impacted by development asking its intent. Dan La Montagne responded they wanted to do a comprehensive look at the entire watershed and the impact development and retention facilities have on down stream facilities. If when looking at this, they see the retention is not enough, or that retaining it in addition with other stormwater ponds that may be in this basin exacerbates the problems downstream, then they want to have the flexibility to change those requirements.

To the Mayor, it seemed it makes the rest of the ordinance almost superfluous, asking why we don't just have language saying the town can ask for whatever it deems appropriate for each development on a case by case basis. He asked the attorney to weigh in on this, but seems why have the rest if you have total discretion as staff to make a subjective decision of what's required on that particular development. It would be based on an impact statement which looks at the one and ten year storms downstream and their effects. He gave an example if the infrastructure downstream is undersized, that would give them the option to retain more stormwater on site as opposed to replacing infrastructure down below.

Director of Public Works Tim Donnelly added if you look at the way public works and utilities manual are written, it gives a minimum criteria for road design, then it says at the discretion of the town engineer or the public works director, more may be required. Most of the time the minimum is where we need to go, but occasionally, you may need a site specific soil study to design the structure of the road and in this case in looking at 10% of the area if everything looks fine, they do the minimum; if the culvert is not going to work, staff would make a decision that this culvert may be in trouble, what reasonable solution is needed to fix it.

Mayor Weatherly asked why we wouldn't put the obligation on the part of the developer to certify or insure that it wouldn't harm upstream or downstream properties and then it would be up to staff to recommend to the board whether they believe that certification or assurance it's sufficient or the obvious leverage is to deny the site plan rather than make it at staff level where government has the authority – at that level you have a onerous power over a development if you have threatened it, you hold the whole project up. Donnelly responded his experience with developers is they want credibility and when they can see a minimum and look at their experience and think that minimum will work, most of the time it is, but occasionally there will be.

Developer when laying out his plans looks at expense of ex> $150.00 a linear foot for this road and that generally works then if there's tough soil conditions and they have to do a specific site design, their costs go up and they have to make a decision to either do this further, town said base design isn't going to work so do I want to go further or this is out of my price range, I'll stop. He continued the only way to know is to have the data of the report; the problem relying on certification is you don't know about the problem until a long way down the road; its better they judge their analysis and look at it.

Mayor Weatherly responded they as staff would certainly give them guidance as to whether that is credible or not; he's saying he's a little leery and asking what recourse a business person would have if he believed that you are extracting something that is not reasonable or necessary for the development – what recourse at staff level before it even moves through the planning board and you have him held at that level, what recourse would he have.

Donnelly responded generally you would have a meeting with the engineers, town staff and consulting engineers, and would look at the issue and would say they think the culvert at whatever street would be washed out because of the collection is at a minimum, they would need to upgrade the culvert; they then would say ok, but the Mayor disagreed that they would not believe so. Donnelly continued how much does it cost; they would do an analysis of the cost and say it's a $50,000 problem, then they have a decision to make – we disagree and don't want to do that, and then they call the Manager; the Manager would review the result and may decide staff was a bit conservative go with something less or he would say he's fully convinced this is what we should do and the only recourse is go the board. Mayor Weatherly didn't agree that it would get to them; staff would not move it along to planning board or town board. Donnelly responded they would only bring a specific complaint – they think that staff is misinterpreting data and there's no reason to protect this culvert to the level they are at – he thinks this the worse case scenario that they are worrying about. When looking at roads, sewer lines, and pump station size, few of them have gotten to the boards level for direction; like any tax payer, if they believe staff is treating them unfairly, they have the right to come to the board. Mayor Weatherly responded they believe there will be penalties to pay if the buck staff; they know how it works and they would probably accede to $50,000, if they have to grit and get on with it, to see the light of day, otherwise it won't and they incur increasing costs and interest payments mount up.

Commissioner Meckes noted the Mayor had said it would be all subjective data, but he would suggest that it all be objective data; there's a simple set of facts here and they say this, it's not being pulled out of the air – thinking this is not going to work – this culvert is just not big enough. There's some basis in fact for staff to say this is culvert is not going to work and we have to upgrade it; by the same token it may be that the developer has a set of facts that says something different, but he doesn't think it's as capricious as – that's what you are trying to avoid, you don't want it to be that way and he doesn't think it would be, he thinks it would be more objective with facts to back their position and it may come down based on what Donnelly had said, would come up periodically where there are give and takes between staff and development and ultimately that's why we get phone calls. Donnelly adding all of the sizing, etc. is based on an engineers study and their review of it and then agrees or disagrees, and occasionally they disagree. Mayor Weatherly asked why there would be a disagreement if it's an exact size. Commissioner Meckes was saying more objective than subjective. Donnelly added it's never an exact science and there is no scenario that you can set up that is exact; if you rely on a certification .... With Mayor Weatherly interjecting, no, staff would not rely on it and the board would not rely on it if it's not credible, it would be staffs job to tell the board – he bent the numbers and we believe for the best interest of Apex that they need to do thus! He guarantees 99% of the time the Board would refer to our excellent staff but he's trying to move the burden from whether – to let this body make the decision and judgment based on your advice; he's worried about the ambiguity or the lack of flexibility – the total flexibility in this provision and wonders – the first thing that hit him is if you make it fine for one development and an adjacent development do more, are we not liable in a legal sense of being capricious; having to much subjectivity rather than an objective standard here. He turned to the Attorney for advice.

Attorney Kaus responded that when he first read it, he had concerns about lack of guiding or governing standards of when we increase/decrease when we waive. Dan La Montagne gave him some input and explained and said, essentially one size doesn't fit all in this context; if we require everybody to do the same thing, there are some circumstances when it may cause more harm than good, either up stream or down stream, so they are looking for some sort of flexibility.

He's come to the conclusion there is a way to get that flexibility, maybe without such broad language, maybe we need a little tighter language, more governing standards about who makes this decision and when/when not so that we don't open Pandora's box in that situation of treating similar situated people differently; he thinks that is one of the problems we have to avoid as well as unfettered discretion, frankly whether its for the board or for staff. What he would suggest is if the board is amenable to it, defer final action tonight and he can work with Dan La Montagne and try to come up with some language, hopefully based on what some other folks are doing that Dan has already looked into that will give us the flexibility; we can always make the same issue, we want flexibility but we also want to give predictability to developers that we're talking about, it's sort of hard to walk that razors edge; let us do a little more work and see if we can resolve these concerns if the board is willing to do this.

Commissioner Gossage added issue aside, this seems to be the kind of ambiguity in the UDO that he hopes they would be working to take out, not put in. It seems to him, these are the kind of language that leads to frustrated calls, to him, saying we are having so much trouble working through the process, we don't understand, it's not clear; a hurdle came up that we didn't expect; the property next door didn't have it and now we do.

Mayor Weatherly believes staff would have an inordinate amount of influence over the final decision of the business person anyway if you suggested he was going to oppose his compliance with our requirements when it came to this level, but it would pass on, he would bet, and in virtually all cases, he would defer to avoid that controversy at this level or the planning board level. But only in those cases that he would really believed he was right and there was a difference of opinion and he was willing – no, I'll debate the issue in front of the board, it does allow us to get there without undue heavy hand of bureaucracy on these issues.

Commissioner Meckes understood, but when talking about the two hands, one set of facts is in favor of the developer and the second set of facts is in favor of the town and he guesses, and frankly, he's more inclined to protect the town. Maybe we've gone a bit overboard to try to do this because it is so wide open, but we've had issues to come back and bite us in the bottom and none of us like getting calls that backyards are under water and none of us like getting calls about other things and whatever we can do to avoid that in the future. He thinks the town is better off, folks are better off, and he thinks they are well served by it. He recalled Art Clem had suggested the town have a staff member that comes up with conclusions that is in fact what comes to pass; literally, you guys take the facts that you are presented and come to your own set of conclusions based on those facts. We are doing that already.

Commissioner Jensen addressed Donnelly, asking when they do come to these conclusions, the developer has his engineer do his hydrology analysis and that is a little subjective; you can pick your numbers, shade them five points either way and it can change the outcome of the analysis. He asked if we have an in-house program to be able to do this; to accurately assess or do we look at the numbers and say you're shading your analysis?

Donnelly responded we do not do full hydraulic models of basins; we don't have that capability and to get that capability would require more resources and staff. We're heading toward the situation of stormwater utility; Raleigh is already in this situation – looking at their staff – may have 20 people working on those issues; Cary has 10 or 15 working on those kinds of issues – that's the direction we're headed if you want that level of information. Currently, what we do and will do more of, if you pass this ordinance amendment which is not in force, will look at the base assumptions they have made and through experience can tell if they are cooking the books heavily – they can shade them 4%or 5% in their direction; it's pretty hard to win that argument. The arguments would be people who shade 30% in their direction which is obvious; unreasonable land use assumptions, unreasonable sloops or other performance factors, but to exactly be able to duplicate the model, you would have to be able to run the model and we don't have staff or resources to do that.

Dan LaMontagne added he reviews all the curve numbers and land uses and does review the model output and what input they put into their model and knows which models he's looking at; knows how to interpret the data that comes out of them, checks them and calls them on it all the time whenever he sees anything that is out of line – someone uses different rainfall data etc, he questions them; he is looking for every site on sizing of pond – this is an engineer who says how big a pond needs to be – he has to review that and make sure he's comfortable with it; he feels the same way with the stormwater impact statement – they prepare it, plead their case that this is the way they think it is and he has to agree with that – review that and talk with them about it and make sure he's comfortable with that.

Commissioner Jensen asked if he finds they shade it very much very often. La Montagne responded that he questions them frequently especially if he has someone new; he wants to make sure he understands how they are doing it; everyone that submits calculations on stormwater, submits in a different format which he would like to change when he gets time to do that – some standardized format that he would like to see all the calculations in, but when he goes through them, especially when he has a new engineering firm, he has to decipher how they prepare their calculations and how they submit them and the details they have left out that he would like to see.

Mayor Weatherly addressed him, noting he would have to do that either way, even if we wrote the ordinance to say we reserve the right to basically make an arbitrary determination on it, or if you were making a recommendation for approval of the project based on our stormwater compliance; you would have to review it, the impact statement anyway.

Commissioner Jensen added that it comes down fairly exact as long as you understand the numbers you have to select and understand the program – like a finite element program; it should give you fairly good results.

Commissioner Meckes noted another safeguard - typically don't you have a situation where there is an independent engineering group making these assessments? La Montagne stated for the developer, it is a professional engineering firm. Commissioner Meckes agreed and they are bound by their oath of office, professional standards like anyone else, so it's in their best interest to present the facts to the best ability as they see them and he thinks there is some built in safeguards and again, he guesses some of the mistakes we have made in the past, we are not making now and helps the long-term solution.

Mayor Weatherly commented there may be other provisions in here that need discussion, asking Commissioner Meckes if he had a problem with allowing the Attorney to tinker the language and if he comes up with something no better than what we have here, then we obviously – there might be other provisions, that's not all that is in these amendments. Commissioner Meckes had no problem with this; he wants the odds in favor of the house. Mayor Weatherly responded they usually are.

Commissioner Schulze asked if they could make it across the board that all development would have peak flow pre-development and have these same and vice versa, where now it is only certain situations. Rowland responded the plan district, yes.

Commissioner Jensen commented that we are talking about peak flow in this situation and are moving a step in the right direction; the arrowhead is in the right direction, but not the arrow. One concern he has is that he would like to see the money value taken out of this; if the town itself, if we decide to waive, if it shows from the developers engineers analysis – he looks back at forensic science – you see these trials where there is two forensic scientist – one paid by the prosecutor and the other being paid by the defendant and guess how their decisions come out... it's most interesting. He would like to take the cost value out of it from that side; if you are going to say no you do not have to have a retention pond, then we should have a fee-in-lieu of some sort; we do that with greenways, highways, we should consider this to try and take the....then we would have to have a mechanism to utilize that money and it would have to be... with the Mayor adding we would have to have the authority... and Commissioner Jensen continuing the problem he has is that you don't have to do it, certainly the developers engineer will try to define his job to try to find how he can slide under the bar, just make it – that's what he will try to do and if it comes out maybe the retention pond isn't the best thing, that's what he would drive for.

He continued this is flow control and flow control will never solve a flooding problem. We are not going to make it any better, not solve it and the reason is because we have to do volume control if we are going to do this. The Wooten Company's analysis says under flow control for a typical storm the increase in volume for the storm is 365% - we will not solve flooding problems by allowing 365% increase in flow come off a site, we are not going to do it. We can discuss this later, but he wanted to bring this out. We are doing better by trimming off the peak flow, but it's not a solution to the problem. He knows we are competing with other towns and we don't want to be nasty to developers and he agrees with that; we can be a lot worse, meaner but on the other hand, we are trying to protect our town.

The whole idea, "Do unto others as you would have them do unto you." That's what we have to get the developers to look at – the folks downstream – the greenways we have trouble with now – the only way we get it done is with flow control, so long term that's the way we have to head. You look at the requirements from the state, he agrees, this ordinance will solve the state and we are doing a bit better, a lot better than Holly Springs – they don't have anything, but maybe we're not doing quite as good as Chapel Hill. We are in the middle of the pack, but in long term, we have to do volume control and that's where he would like to at one point have staff tell us ... he's look at some of it and says yes, it takes a lot more volume – our area, to take care of the volume control. Smart development can cut it down to 12% - now we require 25% RCA - these things can go into the RCA that's allowable under our ordinance.

Commissioner Meckes asked if you have volume control if it goes under RCA, he mean flow control. Commissioner Jensen gave an example if you have to set up a retention pond that area can come out of RCA, that's allowable by our ordinance. With smart development and smart design, it can get down to 12%; another thing, we need to look at semi-regional at some point as Art Clem was saying, maybe we can – there the advantage of size does lend itself to us and if we look at it more as a system, we can not impact the developers, we can not impact the people down stream and if we did it smart could end up with something of value to the town; another small Lake Pine here and there. He doesn't want to stop developers by any means, but at the same time, somehow we have to have a fair thing for folks downstream. We'll talk about this more later.

Commissioner Meckes commented that every basin is unique and there is no one panacea for the entire community; there would have to be a specific solution for each specific site, asking if this is correct. Donnelly responded yes every basin is different and particularly the larger the scale you look at, there are different issues with each one, but they also have similarities and what Commissioner Jensen is suggesting is sort of could you do a facility plan in Apex and look at what you think will happen; look at your land use plan, do this, and is sort of what Art Clem asked for too. The answer is you could, it's just very expensive. One thing this is tying to do in a more piece-meal way as development occurs is shift that burden to the developer. Each one is different, but there are similarities. The only way to find this out is to do the study; you may look at two of them that you think may be the same and they end up being different; you may look at two you thought were different and they end up being similar and only that hydraulic model tells you and the land use.

Commissioner Meckes added that what we are doing with developers here is, Commissioner Jensen is right, it's all about flow control and nothing to do with volume control, asking if this is pretty much the case, because he always envisions in his mind these basins, these volume control basins are being as Lake Pine, they have to be huge, asking Donnelly if this is right, with Donnelly responding yes; that your current strategy right now is to use these basins to control the peak and then you change your ordinances so that there will be no new residential development in the flood plain. That was the response of all the people who had the big back yards and didn't understand they would get wet. Your response was you are not going to own that back yard anymore, you want be able to come back and say I didn't know my land was going to get wet – it would be a homeowners association owning that and having a greenway there we hope. He continued these are the changes that has been made; volume control is very expensive – if you are comparing a site and turn it into something we've asked for say, a shopping center, it's hard to duplicate where the water goes; it can be done and has some value, there's no doubt it has value, that's not the current strategy, the current strategy is to manage the peak and tolerate more flow going into that stream for a little longer period of time and then keeping people out of the stream and letting nature deal with it. You can argue that may not be the right approach, you want to do more – volume control and can do that and it can be done, but there's a cost to it. That water has to go somewhere; when it hits the roof tops and parking lots, it can't go into the ground anymore, you have to manage it. We have a program proposed here that the town has adopted that is more progressive than probably 80% of the state of North Carolina, but there are even more restrictive programs; give us direction and you wish to do them, we can do it. It may need more staff, but can be done if that's what you like.

Commissioner Meckes asked if there were others that have more restrictive programs in place. Donnelly responded you can argue that Chapel Hill does; it may not do volume control that you might wish, but certainly a more restrictive program, with Commissioner Jensen advising they do not do volume control. Donnelly continued that volume control is very difficult; you can do some things on some sites and some water gardens, etc, but talking a big shopping center it's very difficult.

Old Business Item #01 continued

Commissioner Jensen asked if we did do it and not suggesting we should analyze all basins, it is expensive, but to analyze a part of it and say, I'm not going to force you guys to have 20 little retention ponds, he thinks that's stupid, but maybe it's too late for the town, we've grown quite a bit, we would select an area and say this is where a semi-regional retention pond is going to go and you do get advantage of scale when you do this at this magnitude when you can float the level ten feet of the pond itself; he's seen it before – California. He understands the economics of it and he knows we don't want to burden these guys too much, but somehow we need to solve the problem; this isn't going to solve the problem for us.

Commissioner Meckes, responded, Commissioner Jensen had already said it, we are moving in the right direction and are ahead of 80% of the people in the state of North Carolina. Commissioner Jensen responded the other 80% he thinks, "fastest pig in the pig race, they are lagging away"; he knows we are doing good… with Commissioner Meckes interjecting slow and steady wins the race.

Mayor Weatherly asked Attorney Kaus if we were ready to adopt this ordinance, but still had desire to allow tinkering, could they defer the matter, asking if he could be ready at the next regular meeting, or March 16, 2004. Attorney Kaus responded he would be.

Mayor Weatherly asked if there were further questions.

Action: Motion by Commissioner Meckes and second by Commissioner Gossage to defer action on this item to the next regular meeting. Motion carried.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments should be limited to 3 minutes to allow others opportunity to speak.

Kathy Ferguson, Brookfield Subdivision, informed the board she had been one of the flood victims and has continual flood problems; developer placed storm drain and it runs through her property and was not on the plans; and no one takes responsibility for the flooding, noting staff had a lot of experience in these flood issues and ask them to listen; development was all about money, don't forget the older properties. She also asked for sidewalks along Laura Duncan Road from the high school to the town hall. She views this as a safety issue and wants to avoid kids being hit. She suggested to fill in the storm ditch be covered; noted fourteen homes along there and had had over 32 responses to place sidewalks and could get more. She has support from the school principal and noted staff agrees it's doable. She further asked to place a park across from town hall with the pond, park benches, etc.

Mayor Weatherly responded to her plea that this had been a continual issue and seriously considered. Laura Duncan is an NCDOT maintained road and plans to widen it and much of the yards would be taken and may cause condemnation expenses to occur since we don't own their property; he feels this project would be pushed back and doesn't know how many years it may take to get it done. Temporary fix was discussed, but it would not be a simple issue to lay a strip of concrete down, when it came to taking property and trees; he responded if she canvassed those homes and ask them if they would be willing to do that. Ferguson, response was the town should contact the school and ask the kids not be allowed to run along that road, it was a matter of time.

Lisa Glover, Tunstall Street, asked the board to consider amending the UDO, Residential Infill Section 6.3, which circles the downtown area, minimum lot size is not included; developers don't have to comply with the buffer and RCA requirements, or community amenities. She thinks it works fine for single home development and small lots which we try to encourage denser development close to downtown; you may have a smaller lot where it's too small to develop so we waive lot size, you don't do a buffer and can fit a house.

Public Forum continued

She thinks problems may arise as there are larger parcels of land within this circular boundary that could support development that would qualify as a major subdivision greater than four parcels in an established older neighborhood that is likely to be higher density than what is currently in the neighborhood and not do RCA, buffer, community amenities, tiny lot sizes and various setbacks. She proposes them to study limiting residential infill section overlay district to minor subdivision or single lot development and that it not apply to anything greater in size or impact than a minor subdivision.

Art Clem has talked sidewalks for the last five years and thinks NCDOT will not do anything to Laura Duncan Road for years; they don't have money or inclination to do much of anything for the town of Apex, based on his dealings with them. He thinks in the right of way, through a strip of crush/run or something that is a through away sidewalk and deal with the safety issue; he doesn't know how to deal with the state on this, but maybe like NC55/Olive Chapel Road intersection, maybe we can take the responsibility of putting down the through away sidewalk and do it on right-of-way rather than impact peoples yards and when 20 years from now, maybe when the state figures out how to run their department of transportation, they will improve the road. They usually turn feeder roads over to the town from places he has been, this department doesn't do this. Until there is a massive change there, he doesn't think that road will be re-done.

End of Public Forum

NEW BUSINESS

There were no New Business items to be considered.

WORK SESSION

There were no Work Session Items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to enter into closed session to discuss acquisition of real property owned by the heirs of Mabel Powell that the Town would use for a public parking lot.

Action: Motion by Commissioner Jensen and second by Commissioner Gossage to enter into closed session to discuss acquisition of real property owned by the heirs of Mabel Powell that the Town would use for a public parking lot. Motion carried. Closed session minutes are recorded separately. Motion by Commissioner Meckes and second by Commissioner Gossage to move back into open session at 9:00 p.m. Motion carried.

ADJOURNMENT

With no further business to come before the Board, a motion was made by Commissioner Meckes and second by Commissioner Gossage to adjourn at 9:01 p.m. Motion carried.

The above minutes are approved on the 16th day of March 2004.

Georgia A Evangelisti
Town Clerk

Keith D. Weatherly
Mayor

Town of Apex
Board of Commissioners
Minutes of 03/05/04

2004 Annual Retreat

The Town of Apex Board of Commissioners held their annual retreat on Friday, March 5, 2004 at the Apex Community Center. Mayor Weatherly and Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present, along with the Manager, Assistant Manager, Attorney, Clerk, and Department Heads.

Mayor Weatherly began the annual retreat by expressing appreciation to staff and calling on Manager Radford for opening comments. Manager Radford stated this a time to discuss and make decisions regarding community needs. He extended a welcome to Bob High and Ted Cole, Davenport & Company as well as to Tommy Esqueda Camp, Dresser, & McKee.

The 2004 Annual Retreat Agenda is attached with staff's comments being incorporated in the Retreat notebook. Brief highlights of the meeting follow:

David Rowland, Director of Planning reported on population and growth forecast. 1.0 MGD Wastewater Capacity will be completely used by 2013, with build-out of previously approved residential units being complete by 2008 and reaching close to 33,000; continued growth dependent on completion of the regional wastewater treatment facility and a 4% growth rate. A comprehensive plan for Apex is being prepared and will be presented to the Planning Board in April for review. Rowland addressed the Board's questions regarding certificates of occupancy, build out, potential for re-allocation and ways to regulate it; larger homes, historic data, security of capacity and the comprehensive plan for the town. Population Projections are graphed on page 4.

Kent Jackson, Director of Construction Management reported on the Construction Forecast (page 5 – 8) office/Industrial, retail, residential multi-family and single-family. He noted a slow down over the past years, with this region in 2003 having a banner year and thinks we lag due to lack of inventory on ground and that it is "world of choice in buyers range". Building Construction Forecast by Sector 2004 is graphed on page 6. He noted the active school construction cycle would be ending this year. Retail: Target at Beaver Commons; projects slight increase in vacancy for retail; feels impacts larger chains (branches); noted new development occurring at the Peakway and NC55. Building permits are graphed on page 7 with totals for the past five years and 2004 projections on page 8. There is slightly more activity in residential multi-family and there are still un-built units; multi-family is defined rental and owner-occupied. Units on the ground are steadily absorbed; some new units are Scotts Mill and Cherry Grove, with Re-Union Park having been completed. Expects similar number of permits for single family; projects mortgage interest rates will stay low through this calendar year and still be competitive for financing; there's a greater demand for land, noting Trackside, Beaver Commons and the Morris tract; increase number of developers/engineers are asking about water/sewer access that shows interest in residential development; seeing out land unburden by real estate developers (unincorporated lands less expensive). Jackson addressed the Board's questions regarding regulations, inventory of lots and their availability, growth rate, reduction of house values (no impact), un-regulated land (location and convenience); surplus inventory of office space. Commissioner Jensen would like to see more business with a committee working with Chamber of Commerce (7 members currently serve in this capacity; Commissioner Jensen volunteered to serve as well, noting this most critical to the town).

Jackson noted the South Salem Street condo's that the owner plans to convert to residential; noted lots of vacant office space. Commissioner Schulze would be reluctant to approve this because he doesn't' want short term vision; prefers to see more permanent type office space. Jackson responded Apex has more flex office type space, vs. business occupied office space. Cole noted negative reviews of mixed use office space being not economically viable; there was talk regarding the market driven need and the land use plan as it's noted; that the I-540 will present an opportunity for business to be attracted to that; wanting to be proactive and not leaving Apex.

Lee Smiley, Director of Finance reported on the financial conditions of the town 2004-05 (projected fund balances available and projected reserve funds and capital project funds as well as outstanding bonded indebtedness, pages 10, 11, 12. Electric Fund includes contingency and is in good shape and has very low debt. Mike Wilson Assistant Manager reported on potential rate increases due to charge for lease facilities that in the past had been spread across the board, but now potentially shared with actual cost member by member with Apex cost being "substantial" due to bigger costs; 4% rate; new facility for Apex would take load off the existing facilities reducing the charges. Smiley continued funds include additional surplus; reserve funds are development driven on water/sewer; municipal campus is left over funds; fire reserves are new (page 10). Capital projects (page 11) reflect small projects with money being set aside for the electric substation. General fund is what is available after $10,000,000. Review of Debt summary (page 12) reflects public works building is pad off (past payments $450,000 year); figures are conservative regarding calculations for bonds issuances; consultants Davenport & Company will address refunding in spring.

Bob High and Ted Cole Davenport and Company are a financial services company and who addressed Preliminary General Fund Capital Funding and Deb Capacity Analysis for the Town (pages 13 – 34). Cole reviewed goals and objectives, existing annual debt service obligations , debt capacity - decline in debt service , historic and projected growth trends, borrowing assumptions (looking at three cases for paying back debt), revenues (figures are conservative and showing significant growth page 21); borrowing capacity Case 1, 2, and 3 and Tax Impact Case 1, 2, and 3. (Pages 22-26). Debt capacity that North Carolina Benchmarks are in good shape compared to similar towns. Debt assessed value North Carolina Benchmarks are on the lower side, but shows active growth, vibrant community making the ratio's high (page 28). Debt services to expenditures are affordable, and show the investment grade range low, more like 10-15%. Debt to income (page 30) is well below the national range and reflects personal income. Next steps to be done are listed on page 31. Comparative Analysis are listed on page 32,33, 34 for Wake County Municipalities and other Selected Municipalities; noted data a bit old, but ever changing and shows all on an equal footing at a certain time. Apex shows a solid AA rating with Standard and Poor's, noting "AA" a lot for this community and noting only 40 "AAA" ratings in the United States. He continued "AA" on a borrow basis will have lower interest rates (saves money with industrial recruitment being a strong selling point" and noting the rate deferential can move; debt rations change. He noted Apex well positioned and expects to continue to do so. He answered questions regarding borrowing and responding rates would be high but would look overall, but if you don't care for needs, it hurts the rates, town should be in control and know where you are going and make plans to get there.

Manager Radford recommended following Case 3 and having used cases 1 and 2 as examples to see what was best for the town financially. Case 3 is the closer amount of money we are actually talking about financing.

John Brown, Director of Parks, Recreation and Cultural Resources, introduced Sara Burroughs, with Hazen-Stanziale for an update of the Master Plans Adopted Priorities (pages 37-40). Completed and on-going projects are listed on page 36. Projects for the proposed bond issues based on priorities are $7.5 million. Projects proposed for 2005 Bond issue totals $4,500,000 and is outlined on page 41 and includes renovation of 1912 Town Hall for Cultural Arts and Performance Center ($400,000); Apex Community Center Extension: Gym and Administrative Offices, and Storage ($3,500,000); Beaver Creek Greenway Phase I, ($600,000). Projects for the proposed 2008 bond issue totals 5,042,000 which includes Land Acquisition & Construction of an Athletic Complex $2,000,000; Beckett Crossing Greenway Connection $450,000; Haddon Hall Greenway Completion $592,000; and the Construction of Nature Park – Phase I $2,000,000 is outlined on Page 42. Projects for the proposed 2010 Issue totals $3,327,000 and includes Construction of Nature Park, Phase II, $2,000,000 and Beaver Creek Greenway Phase II $1,327,000 is outlined on page 43.

Project 2: During the presentation of projects Mayor Weatherly asked if thought had been given to include recreation offices on the third floor of Town Hall. Manager Radford responded the thought of Parks & Recreation had not been considered, but consideration is being given to finishing l/3 of the space. Brown noted the square footage of the building is 23,000 sq. feet and are looking at the same footage; there is benefit to all of parks and recreation operating out of one building space including their program space, and having him physically located in the same building vs. town hall. The following facts were noted: Administrative space: 2500 sq. feet; gym 9500 sq. feet; restrooms 1200 sq. feet each and four or five offices; break room and conference room and meeting room; 10% of 23,000 sq. feet would be dedicated to administration. Mayor Weatherly noted the 10% not being much space. Design contract time frame is April 7, 2004; Referendum November 4, 2004; Begin Construction Jan/Feb 2005 and targeted completion date April 30, 2006.

Project 3: Beaver Creek greenway will eventually connect to the American Tobacco Trail. Burroughs gave an update of the construction document for Phase I; are working with NCDOT; hope to apply for NCDOT Grant Funding; noted project sits in a good position as far as how we rate in relation to other communities; great opportunity for funding; commitment with design helps with rating; homeowners are excited about this project; connects communities to downtown. She noted: Greenway surfaces, wet areas, board walks, asphalt, concrete, and bridges would be part of the construction materials; could get the minimum 50% grant funding - $600,000 from NCDOT and hopes for more.

Project 5 and 6 Beckett Crossing and Haddon Hall Greenways would be major connections. Haddon Hall Dedication Greenway: crushed stone (trying to retrofit all more function able and usable) – stabilizing these surfaces; maintenance by Home Owners Associations and they are not maintaining them and we can't make them; major storms along Beaver Creek took out greenways and after fixing them once or twice, the third time didn't fix them; permanent easements are through them; we're not having to buy easements; working with the owners; working with easements and purchases of three areas but foresees no major problems. Town has dealt with greenway issues for years and has learned form past mistakes; town now uses surface material that is appropriate; are looking at permeable asphalt and will see how long it holds for the Nature Park; hard to use this material on greenways.

Page 42 notes Project 7 Nature Park: survey is complete, working on roadway access; talking with water quality groups about maintenance; establishing a park mission statement for the park as well as protection for the environment, clean water activities and passive recreation opportunities; proposing an amphitheater, restrooms and maintenance facility. Burroughs gave a review of the design and uses and layout and the opportunities that would develop including outdoor storm water education opportunities and how they would all work together; talking with groups about site uses.

Nature Park Phase II is noted on page 43. Burroughs noted the park elements and the connection of the two ends of the Nature Park and Kelly Road Park; have met with Wake County about the connection and identified corridors " with Beaver Creek" having high priority; acquiring corridor easements along the streams – Wake County may use money to acquire these easements – 300' easement from the property owners; are having ongoing discussions with property owners to buy these easements and working with town to build connection – easements will be designated public greenway easement; connection depends on build out time. Brown explained what is happening currently with the property; large part is wetlands and reason for receipt of clean water money; hold up with the appraisals from the property owners; whole piece (56 acres) is bigger than the Community Park with a majority in the flood plain which limits uses and do not want to disturb a lot there. Brown answered questions regarding grants and matching funds; assuming the $600,000 grant for Phase 1 of Beaver Creek Greenway – Burroughs is assuming – they have asked her not to call"; it's reasonable to assume other opportunities – will apply to build actual facilities maximum $250,000 per cycle; can reapply every year for additional money – for each grant phase over each year with an estimated cost of $2 million. Brown reported land acquisition for a future athletic complex is included in the master plan as a priority; he addressed program expansion and the difficult situations he has with the schools and the controlled use of the facilities. He continued the town had made some improvements for leverage to use the school campuses, but would not do so anymore as the situations were getting to be more difficult; he's looking at sites to acquire significant tracts of land up to 30/40 acres – this would put money in to long term thinking. Commissioner Jensen commented that he would hate to see us loose use of the schools facilities. Page 44 shows total bond projects totaling $12,869,000. Mayor Weatherly commented this was a number one complaint of all municipalities, with Bill McNeal promising the Wake County Mayors a mutual use agreement would be wrapped up to our satisfaction, but doesn't think he intends too. Brown informed his last update was Wake County was trying to find a way to make this work. Commissioner Jensen commented that we should buy land close to the schools and we'd be in the driver's seat as they would come to use to use our facilities rather than us using their facilities. Brown responded the town could buy land and we would be the owners and let the schools be built on the site, but not control the land. Mayor Weatherly commented on dedication to the Wake County Board of Commissioners where they get the land in lieu of cash and there be an agreement for the parcel to be built on – he could see financial advantages of the school site and the board maintaining land adjacent to the site; sees the county commissioners accepting land dedication for schools would be a win/win situation.

Kent Jackson, Director of Construction Management addressed Transportation Improvement Projects – Page 46 – Review 2003:

Signalization: completion of traffic signal at Olive Chapel and Kelly Roads and completion of traffic signal at Ten-Ten Road and Reliance Avenue.

Road Construction: North Mason Street widening and signal upgrade and Perry Road Extension NC55 to S. Hughes Street (used fee in lieu money from Rex Center – project mostly complete).

Transportation Issues: NCDOT approved signal at Peakway and SR1010 – 2005. Commissioner Jensen asked the possibility of loaning money to NCDOT with Jackson responding we're not close to do this – Cary was a model but NCDOT is not familiar with this and will look into it but not involved; possible – municipal agreement at the front end would let them reimburse us.

2004 Transportation Bond overview: Page 47 – focuses on completing significant portion of the Apex Peakway to two lanes as a primary alternate route around town for local trips; upgrade service level of several key intersections – street widening, traffic signals and signal upgrades; filling in critical gaps in sidewalk network to provide safer and more continuous pedestrian ways. Projects for proposed 2005 Issue includes: Haddon Hall Connector - $1,357,000; Bradley Park Connector, $120,000; Realign Lufkin Road at Ten-Ten Road $500,000; Salem Street and NC55 intersection $150,000 and beginning on Page 48 Lake Pine Drive and Us64 intersection $170,000; Tingen Road at S. Salem Street realignment $150,000; Laura Duncan Road to Apex High School sidewalk gaps $165,000; and Olive Chapel Road sidewalk 2900 feet - $200,000. Total Cost of 2005 issues: $2,812,000.

This would complete 75% of the Peakway which would be a significant and welcome improvement to help move traffic around Apex. 2008 proposed projects total $2,378,000 pages 48 and 49 includes: Trackside Connector $1,940,000; Signalization along Apex Peakway and NC55 $188,000; Center Street to Downtown sidewalk $125,000; Old Raleigh Road to Perry Library sidewalks $125,000.

Discussion: Peakway lane completion 2 lanes vs. 4 lanes (appears odd, but gets median and gives flexibility and control of driveways and median cuts. Commissioner Schulze commented the infrastructure gets in place and to expand would have to redo the entire permanent infrastructure and asked if there were a plan in place for this. Commissioner Jensen commented on the bike paths and sidewalks and doesn't see expansion to four lanes for a long time. Jackson responded there are options to have bike travel lane with Commissioner Jensen adding he had pushed the two lanes. Commissioner Meckes noted it reasonable choice that it may not become four lanes – sidewalks based on observation of use. Dianne Khin, Senior Planner that looks are included in the pedestrian and bike plan of the Apex Transportation Plan; the list follows priorities with one being connection of the school to the library with definite areas listed as high priorities. Jackson noted all the projects are numbered by priority. Jackson advised cost of one foot of sidewalk with no curb is $15 and with curb would double the cost.

Mayor Weatherly commented on the NC55 widening and the bottleneck that would occur at the NC55 railroad trestle; CSX and NCDOT were the two entities involved with Apex not being in the loop; Khin noted CAMPO request 2001 with no priorities being funded, but NC55 widening is still on there; if not five lanes would look at main street after I-540, but not take it off; push NCDOT interval part of NC55 project as a top priority; makes no sense to squeeze to the trestle. Commissioner Gossage asked who has authority to tell... with Rowland interjecting DOT and CSX must keep tracks operating without services being impaired and continues to put it off; NC55 widening is on top of the priority list and on the May 21 update. Mayor Weatherly added Apex needs to push this, with Khin responding the top five would come back to the Board. Commissioner Meckes commented on the historical value of the trestle.

2010 Issues page 49 include: Vineyard Station Connector $525,000; Amherst Connector $815,000; Whitehall Connector $1,106,000; Schieffelin Road Connector $790,000; Cardinal Boulevard Upgrade $4000; and Signalization along Apex Peakway and NC55 $188,000 – Total cost for 2010 projects $3,824,000.

Page 51: Total costs of all proposed projects: $9,284,000; noted all transportation projects would be welcomed news throughout town. Commissioner Jensen commented on striking a partnership with NCDOT to lend money to them for improvements on NCDOT roads. Commissioner Jones and Jackson commented on the Trackside open negotiations with NCDOT and the rail division for at grade crossings; have to close some public crossing and supply design drawings for bridge in the future; negotiations are not broken down. Commissioner Jensen noted SR1010 sidewalks improvements were needed as well

and that the northern lane should be widened and then sidewalks to relieve residents of Surry Meadows. Jackson responded the widening for vehicle traffic is on the TIP schedule with plans showing widening of shoulders and not thoroughfare widening. Commissioner Jensen asked he push for this, with Jackson noting the plans go through CAMPO and TIP process.

Legal Status of Business Incentives: Town Attorney Kaus reported as far as legal status to offer business incentives they could do what they want; focus on procedural requirements; state focus on disadvantages; the 93 statute is well established; could use tax money or public funds to recruit new jobs, expand existing business; not use tax rebates or private loan or debts – give land or build buildings to suit. Example offered: Company gave on job training, site prep work, road construction, built offices and parking decks. He commented one had included spouse relocation. Greensboro had used incentives to retain current jobs and recruit. He continued if the town goes this route, it includes procedural public hearings Town would benefit from it. Mayor Weatherly commented this idea or concept of business incentives was being pushed by the Economic Development Commission. He was introducing this at the Retreat to see the receptivity of providing economic incentives. He has seen no level of support to say that we would venture into economic incentives. He had been contacted by a person that offered such software and passed it on to the Manger, but the Mayor himself had not encouraged this person. Mayor Weatherly asked if the board wanted to go forward with this, with the Attorney adding provided what we may do; set up standards or criteria. He referred to a legislative referendum to allow for economic development funding called "Local Option Project Development Financing". Ex Raleigh: its benefit and the use of revenues to pay back debt (handout). Mayor Weatherly commented on the projects that could be used; noted you would define an area and growth in tax rate and additions would be segregated. Attorney Kaus noted it a public/private type partnership. Commissioner Meckes noted it a bit of a stretch with Mayor Weatherly noting it very controversial thinking obligation; wouldn't want to say never, but a unique opportunity, not to set precedent in the future. Commissioner Meckes commented on waiver of fees, bring jobs in and site locations – Ex. Morrisville. Commissioner Schulze commented on building roads; not turning them over; do more on a regional basis say with Wake County; go beyond number of jobs. Sheryl Bynum, Director of Apex Chamber recommended being open minded viewing case by case not seeing this happening a lot, but could look at it; this would be new territory for Apex. Commissioner Jensen suggested deferring over five year period, with Commissioner Meckes noting this had been done, with Commissioner Gossage commenting on equality and due process. Attorney Kaus continued the need to set criteria to establish and guide the process and not on case by case basis. Bynum commented on the Governor's one fund and a match from the Town. It was a consensus of the Board to not direct the Attorney to develop criteria for business incentives.

> Tim Donnelly, Director of Public Works reported on Water/Sewer Capital Projects page 53 – 54. Water System Improvements: Meter Vault and Pressure Reducing Valves - $500,000 with Cary paying 77% of the cost; noted land prices are expensive, have to acquire easements and pipe prices are up; 30 Inch Water Transmission Main - $1,000,000; and James Street/NC55 Waterline $175,000; will optimize filling of new Tingen Road Tank.

Wastewater System Improvements: Kelly Road Pump Station Upgrade - $1,000,000 – explained course of action to add ground pumps and eliminate recurring pump failure and increase capacity to 2.4 MGD. Page 54: Hwy 55 Bore and Jack and Beaver Creek Gravity sewer - $600,000 – explained operation, eliminates pump stations; Raleigh Force Main and Pumping Station - $415,000 – restart of lines from Apex Waste Water Plant to Crossroads and under I-40. Some development occurred over top of this line and there is some danger of damage.

A long range CIP was developed for fiscal years 2004-05 through 2015-16 to ensure that no revenue shortfalls would occur due to unanticipated capital costs. This plan was the basis for the rate study prepared for the water and wastewater systems. Page 55.

The long range plan addresses future regulations compliance and service level to customers and is based on capacity, fees and money rates Project Designations for Water and Sewer System projects total $104,503,000. Can't predict when Water Treatment Facility Expansion from 40 mgd to 56 mgd will occur.

Page 57: Future Water/Sewer Capital Projects: General Water System Improvements – cost averages increase from $200,000 per year starting FY2012 to $300,000 a year; Western Pressure Zone with pressure reducing valves and new elevated storage – Avoids pressure in far reaches of the distribution system that would exceed safe design levels - $2,500,000. Pressure rises and falls with demand; wants all tanks to drop at same rate; Public Works Expansion – would solve overcrowding – estimated land cost $150,000 (will come from water/sewer fund);

Page 58: Cary/Apex Water Treatment Plant Sludge Management Facilities – Due to increase in flow demand; requires new centrifuge - $2,505,000; Cary/Apex Water Treatment Plant Finish Water Pumping – ensures reliable finished water deliver - $391,000; Cary/Apex Water Treatment Plant Chemical Feed Facilities – will optimize performance at design flows - $181,000; Cary/Apex Water Treatment Plant Expansion to 56 MGD – customer demand - $9,401,000 (23% share); Tommy Esqueda noted the lake designed for 100 mgd – could permit more ore reclassify 40 mgd; users of the lake are Cary, Apex, Durham, Chatham County and WASA; the 40 mgd is on a peak day; runs 18 or 80 mgd a day based on average vs. peak. Total cost $150,000,000 – will look at allocations to determine actual cost before build out.

Page 58: Projected Wastewater System Improvements: Infiltration and Inflow Reduction – rainwater leaks into the sanitary sewer collection system and is expensive to treat and if left unchecked can cause spills. Town should continue to budget $125,000 yr. for I&I removal; General Sewer System Improvements - $100,000 year for general improvements; Public Works Building Expansion – expansion would also support sewer maintenance personnel and operations; Western Regional wastewater Project – Interbasin Transfer Certificate mandates returning water to Cape Fear Basin by 2011. Regional facility should be in place – if not there will be regulation problems; estimated cost figures are conservative numbers; there are not good discharge points – most of the money is moving it to the Cape Fear Basin. Views of potential locations were shown on a slide presentation. There is some opposition to putting wastewater back into the lake – build up of nutrients and algae. Re-use water someday will be the norm. Commissioner Jensen agreed with this technology and noted it wise to do so.

Commissioner Meckes asked what would happen to the existing waste water plant if new one went on line. Donnelly explained the load would be reduced form 3.6 to 1.8 sending this portion to the new plant and then to the Cape Fear; could abandon the old station 20 years or so; same money in redirecting the collection system. He noted the Wake County Interbasin Transfer cancels out the Durham one (grandfathered); Fayetteville views what Durham does as good increasing their flow; this is more political then scientific. Mayor Weatherly commented Fayetteville should be our advocate for flow into the lake as well, with Donnelly responding this was true. As far as adding wastewater to the lake, unless science shows water quality issues or doesn't hurt use resources, there's no problem. Plant minimizes the process but there could be a small amount of nutrients added to the lake which becomes a political issue and hopes Fayetteville would be an ally; try to discharge in part of the lake; put a fuser near the dam and it goes through and doesn't hang around and hurt the lake.

Tommy Esqueda, Camp, Dresser & McKee gave an overview of the Water and Sewer Rate Study Results (Page 61) that covered purpose (continue to operate, change rates and fees to fund, as allowed under the General Statute), Revenue Requirement Forecasts (page 62) – divided into three categories (1) administration expense, (2) operating expense, and (3) capital improvement expense (will have the greatest impact on the town's future water and sewer rates, fees and charges; staff is working to get expenses down; Western Wake County Regional Wastewater Treatment Facilities, Interbasin Transfer, IBT Certificate Conditions, Estimated Capital Costs and Alternative Water and Sewer Rate Revisions – as current infrastructure ages it needs replacing – estimates are based on a 4% growth.

Water & Wastewater Combined Monthly Increase for Apex currently is $49.70 (page 65). Four Options for revisions were presented; Base charge, Volume charge and Capacity replacement fees were noted while looking at accelerations of consumption, revenue, expenditures, classifications and inflations.

One option is to do nothing; Option I: no change to base charge, adjust as necessary volume charge, and no change on capacity replacement fees (page 65). Option II: base charge increase, volume charge increase, and capacity replacement fees increase (page 66). Option III: base charge increase, volume charge increase, and capacity replacement fee increase (page 67). Option IV: base charge increase of $5.00, volume charge increase in year 2005-06, and no change in capacity replacement fees (page 68). Comparisons with other municipalities range in rates depending on nature, scale and debt level.

Mayor Weatherly asked if tier pricing had been looked at. Esqueda noted revenues would have to be adjusted; he noted the message from the board is they want commercial/business/industrial growth and with tier structure, these will pay more; users of irrigation water would pay more – those that pay sewer charge. Mayor Weatherly asked if it could structure pain differently, with Donnelly responding its policy choice.

Option 4 (page 68) was recommended to be built into the budget figures – more refined figures and data will be prepared; Esqueda noted the longer you wait the more painful it will become; we get hit with more debt. He could justify the $5.00 increase now and still be competitive and adds value to the future. There was discussion regarding weather determining volume; that this option gets you where you need to go without plans to increase capacity replacement fees – thinks Apex is competitive as far as capacity fees. Mayor Weatherly suggested looking at the tiered structure as another option before settling. After a brief discussion of Option 4, Mayor Weatherly was comfortable with the $5.000 base increase for July 1; but uncomfortable with future volume. Commissioner Meckes could justify base cost to users, asking could we initiate something now for the future. Commissioner Jensen agreed with keeping base the same, but giving volume to users and only residential not commercial users. Commissioner Schulze felt tier structure could be considered for the future. Mayor Weatherly was ok with $5.00 base charge now and come back with volume charge options and look at capacity fees. Dianne Mills, Rate Specialists was present. Donnelly will follow through and will revisit this at the future meeting and show justification of $5.00 increase.

Commissioner Jensen wanted straight volume, and show pros/cons ob the base adjustment vs. volume adjustment (volume – flat tax on use). Commissioner Schulze saw need for fee increase – base charge for first gallon and afterward pay for material. Commissioner Jensen could see arguments both ways. Commissioner Meckes noted consumption and could perhaps have a blend of both.

Ed Thomas, Tony Pearce, Electric Consultants, along with Electric Superintendent Mike Couch gave a review of proposed capital projects and a proposed new electric substation, explored other alternatives, and where lines should be placed.

Pearce addressed the need, criteria used to establish this need, locations, advantages and disadvantages. Projected electric growth is higher than population projected growth; estimates 2005 use of 60/70 mega watts; noted liability issues with the existing system and addressed capacity and voltage. He informed the board the fire at the CP&L substation was caused by a busing failure (insulator cracked expansion); load was not that large, but heat load was. He continued two transformers operate as one and represents 90 total mega watts of capacity, and if you loose one, you loose both. New station would reduce customers affected by 2/3; by cutting feeders in half, the voltage problem goes away; could switch load from one to the other; new substation for next few years serves entire load from existing and new location.

Criteria for sub station site selection: CP&L charges rent for their facilities and will be going up $300,000 to $900,000 a year; new station cuts this charge in half ($450,000 year). May want to talk about looking at buying out other CP&L stations (live by JC Park) and (current tap on line on US1); need to get substation where distribution feeders can go in all directions; land availability – town owns lift station site. Option sites: page 71, 72, 73, and 74. 230 KV sites – east Bespak, Fowler and Freeman; Lift Station site via Jenks/Green Level Church; Jenks Road site; and Lift Station site via US64. Focus was on 115 delivery by water plant; easy to construct, cheaper, and permitting would be easier; noting it's tough to find land. He continued the need to look at future growth, liability, can't guarantee 115 delivery in writing; some point you have to upgrade lines; we have to build at 230 don't want to upgrade. To reduce 230 KV to 115 requires large station (step-down station) would be a huge expense and you can't limit capacity at 230; you don't need tap station; town doesn't build transmission line; no need for easements.

Options: Fowler tract progress energy is responsible to fund and build this tap. Freeman: not interested. Bespak and Fowler – along transmission lines – impact would be on the park. The station on NC55 is about three substation sizes; this new one is about the size of one. They had looked at the corner of the park; there are small creeks and not enough room. Restrictions are based on funding – John Brown stated lines would have to be placed underground and would have to have federal government approval to do this. 230 KV tap would up Progress Energy, would try to help them as mush as possible. There is nothing but walking trails now, would work through conversion process. Commissioner Schulze questioned price for lines underground vs. overhead. Underground causes outages where overhead would not interrupt service – expense $10 foot to $100 foot.

Donnelly discussed price and best sites and reviewed pros and cons of all sites. He noted with Apex growing, there is need for the substation; and need to continue design and contact with Progress Energy and move forward. Recommend Fowler property: except easement; sooner built better reliability and save facilities charges. Recommend 230 KV route pros/cons: land values and easements.

Summary: Page 76 – Total Bond Issue and Bond Projects.

Manager Radford understood board would want to consider: 1) variable rates for water charges; and 2) hold workshop for priority Parks & Recreation, and Transportation projects; and 3) move forward with bond referendum in November to afford improvements for Parks and Recreation and Transportation Bonds. Workshop will be held at 5:30 p.m. prior to Board of Commissioners April 6, 2004 meeting at 7:00 p.m.

Brief comments were made on a fire station # 3; NC55 area; $1.4 million land lease; huge operating expense as well. The retreat adjourned at 3:20 p.m.

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, March 16, 2004

Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order at 7:00 p.m. on Tuesday, March 16, 2004 in the Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present.

Invocation given by Commissioner Jones.
Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

INTRODUCTION OF TOWN EMPLOYEES

Manager Radford called on Department Directors to introduce newly hired Town of Apex employees.

Chief of Police Bob Boone introduced Tele-communicator Robin Whitley.
Tim Donnelly, Director of Public Works introduced John Cratch Wastewater Treatment Superintendent.

CONSENT AGENDA

Mayor Weatherly presented the *consent agenda* to be set and asked for a call for action.

Commissioner Jensen asked to consider Item #8 separately to ask about road improvements, and pedestrian connectivity.
Action: Motion by Commissioner Jensen and second by Commissioner Jones to consider Item # 8 under New Business. Motion carried.

Action: Motion by Commissioner Meckes and second by Commissioner Schulze to approve the consent agenda with the exception of Item #8. Motion carried.

1. Minutes of March 2, 2004 Board of Commissioners meeting.
2. Minutes of March 2, 2004 Board of Commissioners Closed Session Minutes.
3. Annexation Petition #359, VRM Development LLC, owner/petitioner; petitioning to annex 0.571 acres of land into the town's corporate limits; property located on the northwest side of the Apex Peakway and north of where it intersects with Center Street; 1) Resolution directing Clerk to Investigate Annexation Petition; 2) Certificate of Sufficiency of Petition by Clerk; 3) Resolution setting date of public hearing for April 6, 2004.
4. Annexation Petition #360, Jerry B. & Shelby Lewter, David F. & Sharon Raymer, JDN Real Estate Apex LP, Richard D. Wilson, Karen J. Giroux, Silas A. & Carolyn King, Ethel E. Boxwell, Carmen R. Parkhurst, owners/petitioners; petitioning to annex 82.241 acres of land including public right of way into the town's corporate limits; the property is located west of NC55 and south of US64 off Zeno Road; 1) Resolution directing Clerk to Investigate Annexation Petition; and 2) Certificate of Sufficiency of Petition by Clerk, and 3) Resolution setting date of public hearing for April 6, 2004.

Consent Agenda continued

5. Site plan – Lawrence Crossing - Lot 6 (internal to Lawrence Crossing PUD at Hwy. 55 and future Perry Road).
6. Site plan – AAMCO Transmissions, 1791 W. Williams Street, Peak Plaza.
7. Site plan – Wendy's Commercial Site Design, Apex Peakway and Hwy. 55.
8. Master Subdivision Plan – Waterford East PUD, Withers and Ravenal Inc., 15.1 acres located north of Ten-Ten Road and Waterford Green Subdivision (**considered under New Business**).
9. Street closings 2004 Peak Week, 4 th of July, and Today & Yester Year Festivals – sponsored by Apex Festival Commission and Town of Apex.
10. Revised landscape maintenance contract with Jones Landscaping and Maintenance for 2004-2005.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as printed. Manager Radford asked Item # 3 under New Business be deferred to the April 6, 2004 meeting. With this modification, the meeting agenda was set as printed.

PUBLIC HEARINGS

Dianne Khin, Senior Planner

Public Hearing # 01 – Amendment to Apex Transportation Plan

Public hearing regarding amendments to the Apex Transportation Plan; possible motion to approve amendments to the Apex Transportation Map.

Khin reported the Plan was adopted by the Board, October 15, 2002; showed proposed changes on an aerial map of the US64-I-540 vicinity; amendments proposed would provide better access to the area;

1) Square loop interchange at Kelly Road and US64 which includes a grade separation over US64 and right-in/right-out access on each side on US64; correspondence with NCDOT is enclosed; confirmation concept is acceptable from an operational standpoint and are waiting on the environmental impacts; NCDOT will build this modified interchange.

2) Extension of Zeno Road/(future) Beaver Creek Commons Drive to Kelly Road with a bridge across I-540. Beaver Creek Commons Drive would be constructed as a three-lane roadway on a 100' right-of-way. Would allow a future widening to a four lane divided if necessary. The right-of-way could be reduced if a traffic impact analysis shows that proposed development along the roadway will not require the full 100' right-of-way to accommodate necessary improvements.

3) Collector street with bridge over US64 linking Green level Church Road with (future) Beaver Creek Commons Drive with grade separation over US64 (development would be required to provide).

4) Temporary traffic signal at Green Level Church Road and US64. Intersection to be converted into a right-in/right-out intersection when I-540 is complete (NCDOT said when awarded to contractor). Green Level Church Road would connect to Jenks Road be constructed as a three-lane roadway on a 100' right-of-way. The right-of-way could be reduced if a traffic impact analysis shows that proposed development along the roadway will not require the full 100' right-of-way to accommodate necessary improvements. Planning Board recommends approval as well as Staff as shown.

A second issue regarding the Apex Transportation Plan is the widening of NC55 from Olive Chapel Road south to the Apex Peakway (near US1) and the question of whether the road section should be widened to 3 lanes or to 5 lanes. The 2002 plan shows a three lane road section. 55 south/north of the area is shown as five lane road sections. Staff analysis for the US64/NC55 areas are provided in the staff report and incorporated as a part of the minutes. Mike Rutkowski of Kimley-Horn participated in the workshops; Khin noted if NC55 were widened to five lanes, and the Apex Peakway is constructed to a four lane divided, and the I-540 is constructed (2010) as a six lane freeway, there would be an "overkill" of capacity with 14 lanes serving the north/south corridor; three lanes gets a turn lane, keeping the small town feel and makes bike and pedestrian crossings easier (some public input opposed the widening creating a barrier for bike and pedestrian traffic). Planning Board unanimously recommends the three lane section not be amended to five lanes in the Apex Transportation Plan; they further recommend looking at completing the western leg of the Peakway in order to relieve congestion in the short term. They believe in long term congestion relief will occur when I-540 is complete. Staff also recommends the NC55 section not be amended in the Apex Transportation Plan.

Commissioner Meckes clarified with Khin the bridge over to Beaver Commons Drive over US64; Khin met with NCDOT last week and they say as long as the roadway is there they will be required to put the bridge in and pay for it; it has to be there before the project is awarded which is early 2007.

Commissioner Jensen noted the half clover leaf between I-540 and US64; Khin had just received an update from NCDOT and they now plan to do a full clover leaf (the four approaches). The map will be amended to show this, but it's not a part of the transportation plan.

Commissioner Jensen asked about past conversations for a right off US64 going east into Beaver Creek Commons and it's not shown; Khin pointed to the area in question. Manager Radford responded the request had been made to NCDOT; he had received two phone calls from NCDOT representatives and both wondering what the logic was behind the request. The logic was basically they had requested every other alternative except that one and they asked for this one; both representatives were not enthusiastic about the idea and said they would respond in writing and as yet, he has not gotten a response, but can tell by their lack of enthusiasm, that was not something we could hope for. Commissioner Jensen asked if he had told them we were trying to keep traffic off NC55 from US64 east (the objective to minimize congestion). Manager Radford said they did do this; this was the motivation behind the request, but no logic was given.

Mayor Weatherly opened the public hearing at 7:15 p.m. There were no comments. Mayor Weatherly closed the hearing and made comments on the NC55 issue; the fact we have four lanes south and north and noted the bottleneck, asking if a traffic engineer had looked at this and the potential impact of having this much traffic forced into two lanes in Apex, asking if there were a model that shows what we would confront. Mike Rutkowski of Kimley-Horn responded we don't need a model to reflect this, it is a bottleneck with the key being in trying to assess short term and long term vision, especially with the Peakway in place – it's all about timing and there's two options – five lane today and get rid of traffic commuting problems (about a two mile section with the bridge – an added cost, but it's only money and the two mile stretch is unfunded; it has to be funded and designed, then right-of-way acquisition; then bid phase and then construction; talking years). If the outer loop is in place, that's the regional traffic carrier – six lane divided interstate; time frame to widen NC55 2009 if it's committed to this year; remember TIP is a two year program; you miss this, you miss it for another three years.

Mayor Weatherly clarified this section was within the top five of the TIP. Khin responded it was included but not funded the last several times; Rutkowski noted this had been an issue for twenty years. Mayor Weatherly seemed the pressure complete would be shortened with both ends complete; if desire of the community is to put a turn lane in where applicable and basically what we've done with four, then that's fine, but thinks opportunity is here now and decide not to change it would be fine, but proposing the issue that we've lost the opportunity and he can't imagine over capacity building a road like NC55, once built and there can't imagine short order glad we did it.

Commissioner Meckes asked the issues of the western leg of the Peakway associated with NC55; Rutkowski responded the eastern or western leg adds another north/south leg of relieving traffic; depends on the timing of the Peakway coming into place; that will add to the north south capacity; picture a six lane divided interstate 2010, NC55 even if it's two lane and then the Peakway at two lanes each, and that's 12 to 14 lanes of north/south capacity which is more than enough that the models are telling that Apex needs. Commissioner Meckes commented money would be better spent doing the Peakway asking if that were his opinion. Rutkowski responded there are two different avenues; two different moneys. The planning process brought out more access, better cross access to I-540 – 350' barrier will separate west apex from downtown apex and he thinks is the bigger issue; the square loop and the access point to I-540 is tremendous for the community; the entire north side of Apex doesn't have to go back down to Old US 1 to go to RTP; now they can access it. He gave "hats off" to our lobbyist with NCDOT; you have an abundance of capacity even with our without widening of NC55. Commissioner Meckes asked if looking at the five lanes headed north on NC55 from wherever, they get to US1 what numbers go east on US1 as opposed to continuing to go north – there has to be some decrease; hopefully not all five lanes will shoot through, some go east/west. Rutkowski responded he thinks the bottleneck would go away when you have the Peakway in its entirety in place in one side or the other; it will parallel NC55 even though it's a half circle. Commissioner Meckes continued we want have the railroad issue, the CSX trestle. Mayor Weatherly noted some business issues in takings of the right-of-way; there would be substantial impact if they expand to five lanes.

Commissioner Jones asked what opportunity would there be to substitute a portion of the Peakway, maybe get some NCDOT funding for that, vs. widening NC55, asking if that were out of the question. Khin responded in the past the Peakway has not made it on the list as it was seen as an intra-city vs. regional. Commissioner Jones continued if we could show it for a substitute for something that is problematic for reasons – trestle being one and the others talked about, with Khin responding the other reason the Peakway may have had trouble making it on a list is because they actually look at local funding, a portion of it favorably, so if there were some local funding, it may get boosted upward on the list; they might actually pay a portion of it.

Mayor Weatherly continued if we leave our recommendation in place, that would make it more likely funding would be available – much less is going to be necessary to put the turn lane in where applicable. There are stretches that would need a turn lane and seems to him now should go ahead and complete whatever we are going to do for NC55, then it's all the way from Fuquay to Durham County line; we need to press on for whatever, unless... with Commissioner Jones wondering if we are pressing on because the trestle issue is not going to happen. As we get closer to 2010, the less and less significant that becomes; he's thinking how NCDOT thinks – have this big outer loop going around, maybe our money would be better spent somewhere else. He's in favor of proposing it, but he's also thinking we may be barking up the wrong tree.

Mayor Weatherly responded we're not going to abandon that doing whatever we are going to do on NC55; that's not the point, that's it on the top five on CAMPO but unfunded, so, there's lots on our list that's unfunded regionally, asking if we want to leave it where it is and hope we are going to get at least a turn lane out of it when they do something rather than get nothing at all. We need to at least do three lanes, we can't leave it as is and obviously it would be an improvement to do the turn lane, with Commissioner Meckes agreeing.

Commissioner Jensen asked if it were the trestle or the stop lights that is hanging up the traffic. Rutkowski responded in his opinion, both; obviously if you are going to improve that it would have to be replaced totally. Commissioner Jensen continued at a stoplight, if you could get four lanes of traffic through half the time, it's almost as well for two lanes of traffic all the time under the trestle. Rutkowski continued the last traffic count on there was 20,000 vehicles on a two lane, with a typical two lane carrying 12,000 vehicles at level service E and well beyond level service F. Third lane allows left turn vehicles to get out of there; how many times have we all been stuck on NC55 with a tractor trailer there trying to make a turn. It gives a little relief but he's not going to pass any false allusions, it's not going to solve commuting problems at all, until something else is in place. Mayor Weatherly added five lanes would not solve the commuter problem, only the I-540 is the solution.

Commissioner Meckes asked what the best way was to approach this. Mayor Weatherly responded that borrowing any uprising among the board, will leave it as is, the recommendation that we still want the NC55, and would ask staff, but Planning Board recommendation was to request improvement for that stretch of NC55 and that improvement being two lanes with a turn making it three lanes.

Commissioner Jensen added it seems the intersection especially at Salem Street and NC55 are... with Mayor Weatherly saying that's a separate deal altogether... with Commissioner Jensen continuing improvements. Mayor Weatherly continued Olive Chapel intersection, with Commissioner Jensen saying Salem Street, both of those - that's critical.

Manager Radford responded this is within the plan discussed at the Retreat. He offered one other thing to think about, to ask NCDOT based on the fact that we are not asking now for a five lane undivided road, that we are willing to live with the three lanes or two with the turn lane, that we be given permission because we are going to use the Peakway as a connector road, a major thoroughfare, to get permission from NCDOT and DOT rail to go across S. Salem Street railroad where it connects with Shangri-La and ask their permission to do so, they are reticent at best to give additional rail crosses; if we use that as a way to alleviate commuter traffic, that should be part of our request to be able to go across there. Based on the fact, that we are making a true submission of a request.

Commissioner Meckes clarified we are acting on the five lanes, requesting only three and in return for that, we want a rail crossing for the Peakway, with Commissioner Schulze adding he was for that, and also Commissioner Jones agreed. Mayor Weatherly stated this was interesting leverage since the other is not funded anyway.

Commissioner Jensen questioned the crossing at Green Level Church Road, asking how much affect, if NCDOT shuts off the temporary light at US64 and Green Level Church, guessing the flow of traffic will go past Home Depot, with his concern being Walden Creek, looks like it's probably not a problem. Khin responded the idea is Green Level Church Road, to Zeno to Kelly down to the square loops act as frontage road and Beaver Creek Commons Drive as well would act as a frontage road for that; there would be some traffic that would want to come back to NC55 either through Beaver Creek Commons or down Vision Drive because you can go from NC55 over to Kelly Road without getting onto US64 which is what NCDOT wants. The purpose of the bridge is to get from one development to another you don't have to go up to NC55 around and back. The bridge will be funded totally by the developer of the property. Commissioner Meckes added the $3 million bridge. Commissioner Jensen noted the circulation pattern down Vision Drive would keep people out of Walden Creek, with Khin agreeing, that it's a public street and a straight shot and there's the traffic signal at NC55. Cutting through the neighborhood gives turns to make and end up an un-signalized intersection. Commissioner Jensen agreed that this was probably good.

Public hearing # 1 continued

Commissioner Meckes asked about the clover leaf on I-540, that only leads to access on or off US64, looking at what happens at Jenks and Green Level north. Khin responded Green Level would be re-routed to Jenks Road and there will be one bridge vs. two noting the location of the bridge, with Commissioner Meckes noting the part that goes through the I-540 right-of-way is gone, with Khin saying yes; she understands they will cul-de-sac an area pointing to it on the west side. Commissioner Meckes noting those folks go to Kelly Road access, with Commissioner Jensen thinking that we are going to load Kelly Road with the clover leaf and then that's the way to Apex. Khin had talked with NCDOT about the plan showing four lane divided on Kelly Road, and the bridge and they said they would only make the bridge five lane basically if Kelly Road was already widened for that; that may be a transportation improvement TIP request that we may want to make as to widen Kelly Road, with Commissioner Jensen clarifying Kelly Road was an NCDOT road which is, a major thoroughfare on the Apex plan.

Commissioner Meckes clarified if Kelly Road were widened to five lanes, with Khin showing four lanes divided on our section but on the bridge you don't have the median, so it's five lanes; it would have to be widened, with Commissioner Meckes confirming all this would have to be in place before they do the bridge, with Khin responding yes. Commissioner Meckes noted this major dollars there, with Commissioner Schulze adding you could do just 100 feet on both sides. Khin didn't know if there were an exact number of feet you would have to do; maybe to the nearest crossroad or something with Rutkowski adding Olive Chapel and Jenks, with Khin adding even maybe Beaver Creek Commons Drive and up to Jenks. Kelly Road goes down to S. Salem Street where we have a full access interchange, it's something to consider, Kelly Road needs to be looked at to be widened, with Commissioner Meckes adding all the way to S. Salem, with Khin agreeing, and Commissioner Meckes adding that's a big project with Khin agreeing. Rutkowski added $20 million, and widening more than that, but probably that for NC55 to be widened, with the right-of-way and utilities. Commissioner Jensen added he didn't talk about Kelly Road extra lanes, with Rutkowski adding it's in there, in the transportation plan.

Mayor Weatherly opened the floor for a motion.

Action: Motion by Commissioner Jensen to approve as presented, with Commissioner Jones making the second. Manager Radford asked they add the request for the rail crossing at Salem Street to be included in this, with Commissioner Jones saying to allow staff to begin negotiations. Mayor Weatherly clarified it would be added on and not either/or. Manager Radford language placed in this letter framing this saying additionally we would like to request ... with Mayor Weatherly asking if this is formally on TIP to do three lanes for this stretch, with Khin responding the TIP currently has unfunded an interim plan for three lanes widening future five lane full section; that's how it's worded and for CAMPO we just said five lanes, and didn't get into the three lane interim; NCDOT did this on their own. She continued they have been told that the Apex Transportation Plan and our TIP requests have to meet exactly, if we ask for five lanes, you have to ask for five on the other, or three ask for three, they want it to be the same, with Mayor Weatherly adding this will be consistent, asking for three lanes, with Khin interjecting the next TIP request is due May 21, so at one of the April meetings they will have a list of potential projects for you to choose from .. listing up to five road projects; at that time will have that list and will include three lanes NC55. Mayor Weatherly asked David Rowland, Director of Planning if he were still staffing the TCC, or if it were Dianne? Mayor Weatherly asked they let him know anytime there were... there were a couple of agenda's in the TAC meeting that were buried in there with Apex, there was a situation Apex had something there and this being one of them when, it was on our agenda a couple of months ago.

Commissioner Jensen noted how Beaver Creek Commons swings up to the freeway now, asking if this were the best place, with Khin responding for future development, she thinks so, basically since that is a major thoroughfare, it has to have a 30 foot buffer on both sides and since one side is up against US64, they don't have to do the extra buffer, if you put it in the middle of the property it's 60 feet of buffer, if where it is , it blends in to US64 and they have 30 feet. From a developers point of view they would like to see it remain where it is, with Commissioner Meckes interjecting and any development would come off in a grid fashion. Commissioner Jensen continued where the interchange is, it buts up against that, and once again, is that usable land, with Khin responding it's a big creek or ravine – they had looked at the alignment coming closer to I-540 so there would be more usable land, but this is the last part that is still up on this level and it drops off. When looking at the environmental layers, they sat with NCDOT and it was on their environmental assessment they had done for I-540 and they agreed it couldn't be any closer to I-540 that would have to come down due to wetlands and creek. Commissioner Meckes added it would remain undisturbed with Khin agreeing.

The vote on the motion was unanimous. Motion carried.

End of public hearing # 1

Public hearings continued

David Rowland, Director of Planning

Public Hearing # 02 – Annexation # 358

Public hearing concerning Annexation #358, JVI Construction Inc., owner/petitioner, petitioning to annex 3.914 acres into the town's corporate limits, and located on the south side of Center Street (SR1010) and east of Schieffelin Road and the Apex Peakway (Cherry Grove Townhomes); possible motion to adopt an ordinance to extend the corporate limits.

Director of Planning oriented to the location of the property noting the board approved several months ago a townhouse development here and need water and sewer; policy to get these requires annexation.

Commissioner Jensen noted we're taking this area in blocks rather than getting a more area plan, with Rowland responding they had worked with them to eventually, with everything here associated with market and how much they can sell, but have looked ahead and believe we have stubbed a street that will come around and line up with the next property to be developed. They have put thought into trying to piece it together, but they only want to annex the property they are working on. Commissioner Jones added there were multiple owners of the property and some not motivated to sell at the moment.

Mayor Weatherly opened the public hearing and with no comments closed the public hearing at 7:45 p.m. and opened the floor for a motion.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to approve annexation # 358 by adopting an ordinance to extend the corporate limits by the 3.914 acres. Motion carried.

End of Public Hearings

OLD BUSINESS

(Recall public hearing regarding this item was held on February 17, 2004, and with the public hearing having been closed, the Board voted to defer action on this item to allow the full board to be present before taking action; the Board further deferred action at their March 2, 2004 meeting to their March 16, 2004 meeting.

Attorney Jason Kaus

Old Business Item # 01 – Proposed Amendment to Stormwater Control Requirements

Possible motion regarding proposed amendments to the stormwater control requirements in Sections. 6.1.3 and 2.3.4 of the Unified Development Ordinance.

Attorney Kaus updated that on the February 17, 2004 the board initially considered this and the Planning Staff and Public Works Staff has proposed some amendments to the stormwater control provisions in the UDO Sections 6.1.7(a) 2 and 6.1.7(b) 2 and some clean up in the PD provisions which is contained in the staff report and incorporated as a part of the minutes. Due to a bare quorum, the board deferred this item until there was a fuller board; it was placed on the agenda for the March 2, 2004 meeting with concerns being raised about the wording that may give unlimited discretion to staff to require or not require things as case may be of certain developers but not others. The Board had instructed him to look into tightening the language a little bit, to see what could be done to flesh out that discretion or eliminate it. The second document following the staff report is a black line version showing his proposed edits to the original proposed amendments. The third document is a clean version of what the ordinance with his edits. He focused on the edit document, in which he tried to incorporate the boards expressed concerns and positives; one example the board found comfort in was that the storm water impact analysis was – he started over with the background – noting part of the changes was to codify the one year and ten year storm which he understands has been the informal or practice of the town, and will codify this in the UDO; one of the new things, staff has requested, is the storm water impact analysis (Dan and Tim can explain this), a lot like a traffic impact analysis, obviously focusing on stormwater control requirements for any particular piece of property or assemblage. Effectively, those were the changes that would have been worked by the original amendment. The Board also expressed concerns about the last sentence, looking at his edited version of the document, the strike out version at the end of the main paragraph .... based on findings presented in the impact statement, he's taken out that sentence, the one that gave rise and concerns about unlimited discretion by staff – instead of just letting staff analyze storm water impact analysis and short of negotiate or grapple with developers back and forth, instead he suggested to track the traffic impact analysis model; this is already in place and well familiar with it, which is the developer comes in with an analysis, here traffic impact analysis under these ordinances would be storm water impact analysis – then the board considers that as part of an earlier development approval process. Originally, staff had proposed the storm water impact analysis would only be relevant at the construction drawing stage, so well after the board is out of the game, then its pure staff review.

Old Business Item continued

The traffic impact analysis is earlier in the process; it's more at the site plan stage; the language in the UDO says the traffic impact analysis is supposed to be " with the initial application for any development or activity ". Staff apparently interprets that to mean site plan; again he's trying to track these two parallels so when the traffic impact analysis comes in, now we would also require the stormwater impact analysis, not going to always be required, so the TIA is only required for developments that generate more than 1,000 trips a day; stormwater impact analysis as he understands from Public Works staff, would only be required of a certain developments – there are certain categories, multiple categories that are exempt and wouldn't even have to do these things. In any event, if the board accepts his edits, they would come in at the same time, and the board would have the benefit of having both analyses at the same time; you would be considering transportation impact as well as the stormwater impact. Instead of us after the fact, and late in the development process telling the developer potentially, "By the way, we've kind of decided we want you to spend significant additional dollars, maybe even off site to do these stormwater things that you didn't know about, this would bring it much earlier in the process , would take out of staff's realm and put it in the board's hands, just with the site plan, so effectively you would have the same conditioning power you would have with other site plans, meaning that if you saw a site plan from a stormwater perspective that just plain didn't meet the requirements, or met the requirements or met the requirements that could have some downside, upstream or downstream, and you could apply appropriate conditions to make sure they didn't cause those problems downstream or upstream. If the developer isn't wiling to do what is necessary to avoid those problems, then the site plan doesn't get approved.

Commissioner Meckes confirmed you get the word early on. Attorney Kaus confirmed you get the word early on and there are no surprises on the pro-formo at the end; we also take out this treating similar situated developers potential differently; there would consistency and plus it was important to the board at the last meeting to have control over this process as opposed to once you have already signed off on it then allowing unfettered discretion.

Mayor Weatherly commented this helps on resolve of disagreements at this level rather than being held up at another level. He asked if staff could give a rough estimate of what an impact study would cost. Dan LaMontagne reported if would depend on sites, some have major development down stream – example: Shepherds Vineyard; they have to do routing through that channel to get the 10% point spoken about earlier. Other areas where we have put in buffers and keep people out of the flood plain, not as much analysis being required in those areas, but it's hard to say; he's not seen any estimates as to what the cost would be for either one, with the Mayor asking would it be ten's of thousands, with LaMontagne saying he would not imagine that, it should be similar to upscale of routing a large sit e through a pond. Normal analysis that engineers do to route stormwater through a larger site, through their stormwater pond, may analyze their channel flows to determine what their outflows are; would be similar to what those are on downstream basis.

Commissioner Meckes noted it to be pretty much a function of the process already; that's information they have to have a feel for, with LaMontagne advising on-site they do at this point, we don't require them to look downstream at all. They look at the watershed all together and keep track of the stormwater as its going downstream.

Mayor Weatherly asked if we have a body of information either now or anticipate having it on certain basins in Apex in our Planning jurisdiction that once we basically have comparable data that we would know what the development plan is submitted whether we need an impact study. LaMontagne advised they would definitely have that information available to the engineering firm to tap into. Mayor Weatherly asked over time would we have enough information to know what the impact would be. LaMontagne responded it would continually change as more retention goes into that basin, then impacts will change.

Commissioner Jensen noted the model made of the Williams Creek through Shepherds Vineyard; once that model is developed, as long as it's been developed with a standard program, if we had control of that model, once one developer did it, it could be made available; it's an add on at that point. He knows there's a half dozen standard modeling techniques or programs available; if we had something – once on the books should be easy to plug into and modify for the next user.

Mayor Weatherly continued that once we have a body of information, asked if it's possible to say we really don't need the impact study because we have enough information to indicate what an impact study would roughly tell us anyway. Why incur the cost of doing study after study of the same basin or same drainage. LaMontagne responded it could be possible; if an area comes in downstream and we know there have been other impacts in that area, we may be able to step it that way. They would work with the developer on the best way to handle this. Mayor Weatherly noted this a starting point, but in the future as development occurs, staff comes to them – what he's getting at is there reason now or in the future to have a waiver situation where there is really not one necessary up front; to submit upfront before impede the process of the development plan, where we basically have the information that would tell us anyway and let them proceed and then the certification that they are not complying with this later. Commissioner Meckes didn't want them to have to do the study to give us the information we already have, with Mayor Weatherly agreeing. LaMontagne added we work with them on this.

Mayor Weatherly asked if the way the ordinance is drawn give him the leave-way to say; Attorney Kaus responded he thinks in this situation for example, you have two almost identical adjacent properties that develop reasonably in proximity to each other time wise, and if one came in and said the guy across the stream just did this study, asking can't we use his, he would think common sense and certainly this ordinance would allow you to say we are not going to require you just for the sake of doing it.

Mayor Weatherly asked if we had the discretion to do this, with Attorney Kaus advising absolutely, then that person could turn around and give a photo copy saying that's my plan. Commissioner Jensen added he could change the model slightly.

Commissioner Jensen asked to have this information available on a number of basins, asking how many we deal with this community, are there 10 or so, with LaMontagne responding we will be dealing with smaller watersheds not necessarily basin wide. Commissioner Meckes confirmed it want be necessary to do, what he's coming to, is the expense involved with the Williams Creek Study was significant and we don't want to have to go through every area in our community and do this, and it involved a great deal of time as well. LaMontagne noted situations may exist where they have to do a lot more extensive routing if there are areas that indicate there could be flooding problems down stream. The engineering firm would bring the report to us and as far as the models being available, some of the software models the firms do – they will not make them available to us; they own that software and wouldn't hand it off to a competitor. We do have tables, output and data they could use this information and put it into their models. Commissioner Jensen asked the cost of a modeling program; LaMontagne was unsure.

Commissioner Jensen noted the draining of detention volume would drain within 72 hours to allow for subsequent storms, noting it doesn't define a storm size, asking if this were for the ten year storm where it's full or the one year storm; if we're talking about both, then we're draining the ten year storm in 72 hours and the one year storm in six hours, asking if this is what we want to do, with LaMontagne responding at the pre development rate; a ten year storm in 72 hours. Commissioner Jensen asked at the pre-development peak rate? He continued we're talking peak flows; noting one of the models by Wooten Company shows most of the volume of water that enters into any retention pond is drained off actually during the storm; referring to 365% more volume is going off the site during the storm. He asked what's left to drain, understanding it's routed through the pond. LaMontagne advised him that they are trying to match the post development peak flows to the pre development peak flows. We will be discharging an increased volume down stream at a lower peak because of the impervious surface for a longer period of time; they hope to get the additional volume drained down within 72 hours to the normal pool to be prepared for additional storms that may come in. Commissioner Jensen noted it confusing to him, because a lot of it goes out during the storm according to the graphs. Commissioner Meckes and Jones continued that it can't all go out during the storms, with Commissioner Jones adding it would in a pre development situation, it would move on down stream during the storm. That's where he's having trouble grasping this. Commissioner Jensen added it would move down stream, but he's saying post development moves a net increase in volume of 365% more downstream during the storm. Commissioner Meckes added you still never see the pre development flow rate.

Donnelly added you have more volume of run-off to deal with and that's the concern; more water will run down stream if you develop under this program; you are trying to keep the peak rate of it the same as pre and post. Commissioner Meckes added that's the 365%, with Commissioner Jensen adding more volume during the storm and is where you get into the timing issues because you're not containing it during the storm, you're pushing it down. He has trouble with the 72 hours to allow for subsequent storms because when looking at the graphs, you are basically draining the pond during the storm, already draining it down quite a bit. Donnelly referred to the study by Wooten and Company; it's a trade off of what the Board wants to do. The wisdom of this and if you believe it, you want to clear the storms in a reasonable amount of time – the longer the stream sees the flow, the more erosive it is and the more danger you have of storms backing on. He continued if the board wishes to be in the volume control business, you have to build a lot bigger retention facility and hold it a lot longer and then it releases it over more time. This system was chosen because it's what lots of other communities are doing and is what the consultant thought was best for Apex; certainly more volume control is possible if the board believes it to be the best for Apex.

Commissioner Jensen noted his review of some of the graphs and in actuality, if we were to do volume control, the increased volume requirement to be stored on site would be 40% greater than what we do for flow control; what was given was generalized material and he use it. With 40% larger volume, if volume grows area wise and depth wise, then the area of the pond grows as the ratio of volume which means if it's 40% greater in volume, then it's only 25% greater in area. We are not talking about huge changes to do volume control. Longer time of release, depending on what the stream can accept, is probably 12 to 20 days for a ten year storm, but the smaller storms doesn't drain much quicker; if you're controlling a ten year storm, and even if you get stacking of one year storms, you get control volume within the retention pond to control it. You're ready for the ten year storm, so you can take a stacking of three one year storms. He's happy to vote on this and say yes, but thinks we're not going to ever correct the problems that we have because we are dumping volumes of water during the storm into the system; this is what some of the other towns are doing, but are they smart leaders.

Old Business Item continued

Mayor Weatherly responded you are doing an infinite amount of detention as far as volume and you'd never capture, but could capture perceivably all of it and release it, but is it good public policy to require this and he thinks 99.9% of all local government in North Carolina, this is the standard, with Commissioner Meckes interjecting Donnelly had reported to them there is no one doing volume control to any great extent. Mayor Weatherly continued this is basically the standard being used, with Donnelly adding this puts Apex in the 90% of what others are doing to protect the environment.

Mayor Weatherly commented you could always do more, but is it reasonable to require more being the issue. Commissioner Jensen asked is 25% more reasonable; he knows this will be discussed again, but we are fastest in the race and ahead of the game, but he's not sure we are running the race very well; the past standard practice was to bleed um down a little; we need to look logically asking if this is good for all of Apex downstream; can we do it better.

Commissioner Meckes commented on the other side of the coin, when we did the Williams Creek Basin, we see there is no difference with what happens at the bottom of that stream, then what happened 75 years ago. Commissioner Jensen responded that's what was presented, with Commissioner Meckes adding the problem is where we let people put their houses, with Commissioner Jensen agreeing and adding as well as quality and erosion of streams and the undercuts of the banks and passing this on to Cary and then onto the next county – asking what we are doing to folks downstream. He referred to the Williams Creek Study, noting the pre development curves used for the CN numbers was for a farm which is higher than a natural state and was not CN numbers for the natural state.

Mayor Weatherly noted the number one issue of the Shepherds Vineyard homeowners association dealt with prior to the Food Lion Shopping Center being built and before we anticipated doing anything was drainage through Williams Creek, flooding in backyards, washing out rip-rap and homeowners incurred large expenses; washing out massive foot bridges – he doesn't go back 75 years with Williams Creek, but back 15 years, there's been significant problems before there was any significant development.

Commissioner Jensen gets discussion with neighbors noting it has gotten worse over the last years, maybe due to impact. He agreed Shepherd's Vineyard was their own worst enemy because there was never much thought put into the flow there; this campus has only a 1% impact, maybe 2% for Foodlion but a lot of it is the streets in Shepherd's Vineyard, best we can do is not make it worse than it is; this will help a bit but it will get worse.

Commissioner Meckes felt all of this will be a strong consideration if we develop Trackside and he's certainly amenable to consider volume control along the line; he's not convinced about the 25% greater area, but is something we have to deal with on a continuing basis, and always will be and thinks we are conscious of it; it will be associated with every issue that comes before us. For now, he wanted to move into the 90% of what everyone is doing and that it's a great step forward.

Action: Mayor Weatherly asked if this was a motion, with Commissioner Meckes responding yes, and calls for the question, with a second from Commissioner Gossage.

Commissioner Jensen hopes we can look at this fairly soon, not waiting until the whole thing is done, saying it's like Shepherds Vineyard, asking how do you fix it. That's the big problem and what concerns him.

Commissioner Jones didn't doubt his calculations or estimates; he simply didn't understand them, but this is a big step in the right direction, with Commissioner Jensen agreeing.

Motion carried unanimously.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments should be limited to 3 minutes to allow others opportunity to speak.

Public Forum continued

Haddon Hall Homeowner Association President, Charles Portnoy, questioned the Peakway and asking NCDOT for a railroad crossing wanting to know if this were the section that would cross North Salem Street and connect to the piece that reaches NC55, with the Manager responding no; the section from N. Salem to Haddon Hall has been agreed to by NCDOT and the NCDOT railway, with the timeframe being when the trackside development takes place. There are two pieces missing, the one from Duncan property over to Salem and the portion north of Salem Street and over to Hillcrest to the existing new section beside the Harris Teeter. Retreat discussions were for a bond referendum for transportation improvements; don't anticipate building the section across from us, but do for the section north of Haddon Hall.

He shared concerns of his neighborhood with pass through traffic in his neighborhood; vehicles running stop signs, children almost getting hurt (traffic nightmare); ask to find money and complete it. He noted a developer wanted to plan a shopping center in front of Haddon Hall Drive, and this would further make traffic issues worse. He complained about Beaver Creek Commons and the un-activated light with 20,000 cars during peak hours.

NCDOT didn't turn it on; read email Adam Stephenson, Engineering, truck/trailer, almost took it out; has potential of loosing light until it's taken care of, and some of those trucks come through his neighborhood also.

He plans to continue to attend every meeting until he gets something done; appreciates what Commissioner Jensen has done, but it's not enough. Police Department comes; he can get to his neighbors but not everyone else that passes through.

Manager Radford appreciated his willingness, asking him want the Town could do that they haven't done to getting NCDOT to approve turning on the light. Portnoy stated he'd go to an NCDOT meeting and get back with us. Manager Radford stated he could continue to come, but town had done everything they could, and at this point, he's looking for suggestions. NCDOT says it will be turned on when the shops are opened that drives the warrant study to turn them own; delay study was done, and still does not warrant to be turned on by NCDOT.

Mayor Weatherly added he thinks that education would be a good one, please do. Commissioner Meckes informed him we are aware of all these issues and deal with it in every neighborhood. He said more should be there and he was going to be less apathetic and they should realize this problem is still here, and if he didn't show up they would think everything is ok and it's not right. He will encourage each of the presidents to show up for the meetings; he's starting to realize he's being addressed. He said NCDOT wasn't going to want to see him after a while either.

Commissioner Jensen asked if the Peakway to Salem in his opinion would help and he responded yes; trying to keep people out of Walden Creek expanding Green Level, you keep them out of others and you would aleve traffic; due to growth and until I-540 arrives, 55 is a major thoroughfare and without access to other roads you are setting up heartache leaving it as a three lane road, without other avenues to get to RTP in the morning. He noted NC55 and Kelly Road would be thoroughfares. You factor people into town to leave dollars and revenues and to pass through – this is what it's about, but interim you have to look after people in this town. He is to make sure we do.

Commissioner Meckes assured him that's the town's job as well and always work towards this, with Portnoy saying he'd make sure; that's his job.

End of public forum

NEW BUSINESS

Kent Jackson, Director of Construction Management
New Business Item # 01 – JDN Real Estate, Apex, L.P. Proposed Agreements

1) Proposed "Municipal Agreement" with NCDOT re: improvements to N.C. Hwy. 55 and U.S. Hwy. 64 required to be performed by JDN Real Estate – Apex, L.P., pursuant to the approved Beaver Creek Commons S/C site plan; and
2) Proposed "Assignment and Assumption Agreement" with JDN Real Estate – Apex, L.P.

Kent Jackson, Director of Construction Management due to time conflict and an overlap with development improvements and NCDOT improvements on NC55, being the site plan for Beaver Creek Commons had to complete all NC55 improvements prior to the center being opened. There was an overlap between the north side of the bridge on US64 and Vision Drive between the developer's improvements and NCDOT's improvements.

To make both these happen, they established a municipal agreement with NCDOT and the town allowing NCDOT to back the work out of their contractor's contract and remand the responsibility of that to the town; we do not want to do the project, so we worked towards assigning those responsibilities of that contract to the developer.

Also, they have looked at the cash flow and didn't want the town to be out of pocket funding this project on the front end; they told the developer if the town is middle man to help do this, you have to bank role it on the front end and then town will give you credits towards the transportation fees and we will receive the reimbursement from NCDOT after the project is done and before he gets his credits. Attorney Kaus helped work through the legal work for the agreement assigned.

Mayor Weatherly asked why the real owner and the local partnership pare up, asking why the real owner didn't take on the liability. Attorney Kaus responded this was his original thought as well; the fought to have the apparent company known as DDR (bought property from JDON) and the local company is JDN; local project limited partnership owns the property is doing the development and signing the contracts, so they said JDN will be the only party of the contract; he think they saw at the end a little light, so in the second agreement, DDR actually participates to the extent of an indemnity. It's not just an indemnity from JDN, but they twisted arms to get them; we have some additional security from some entity other than just the project specific limited partnership. It has been reviewed and understood and agreed upon by all parties. We have signed copies from DDR and JDN; no signed one of the municipal agreement from NCDOT yet, as they regularly do, they want you to jump first and they will get back with us in about four or six months after they are ready.

One thing we asked for from NCDOT earlier was because we are the middle man here, we wanted to be able to sign these responsibilities to JDN or DDR, whoever, but NCDOT refused that; he didn't want anyone to be confused by that; he called it an Assignment and Assumption Agreement but NCDOT has not permitted an Assignment, so we are passing them on, but still on the hook here; if anything goes wrong, and that's why the indemnity was so important, if anything goes wrong NCDOT will come looking for the town because we will be legally and contract orally obligated to do these improvements and everything else in the contract, acquire right-of-way, pay fines, etc. there's a leap of faith between the town and JDN and thankfully DDR also jumped in on the indemnity trying to give us some security.

Commissioner Meckes asked if we're covered to the extent we can be by the law, and then if there's an answer required it has to be litigated, with the Attorney advising this was correct.

Commissioner Jensen asked if we could hold up CO's if something went wrong. Attorney Kaus advised probably not, although the site plan and CO is tied to completion of these improvements, if the improvements were not completed by JDN, he could anticipate the town might not complete them as quickly as JDN would like. Commissioner Jones anticipates their improvements being made by expediting NCDOT's improvements; we're taking the burden of making that happen faster so the improvements the developer has to make will happen when they are suppose to happen, with Attorney Kaus advising this to be correct.

Mayor Weatherly noted the real exposure was if JDN goes "belly up" or has sever financial – the whole project basically is left dormant and not completed, then we are on the hook, they liquidate assets or whatever, they file bankruptcy and then we are... with Commissioner Jones adding then we re-negotiate with NCDOT. Attorney Kaus advised that is the worse case scenario, with the other bad case scenario being if something goes wrong with JDN and NCDOT, if for some unexpected reason NCDOT decides to be unreasonable, and demands additional things and JDN says forget it, I'm not going to be pushed around, now NCDOT can come calling on us to make us do them.

Mayor Weatherly continued they are not going to obviously make substantial investments here and a most catastrophic set of circumstances would prohibit the completion and the appropriate completion of all contractual agreements. Attorney Kaus added that he thinks the transportation bond from JDN also covers these improvements so that's security these improvements could be done on the basis of that bond and it would be an administrative nightmare for the town to jump in take over and call for the bond, but there's also some additional moderate exposures in addition to that bond. To answer the question, he's tried to secure us the best he can and why we held the line on DDR getting involved. Commissioner Meckes added to protect ourselves and we have history that this company has been successful in every endeavor, with Mayor Weatherly agreeing. Jackson advised that they initially tried to be toward NCDOT and developer two party agreement, but wasn't possible.

Mayor Weatherly called for a motion.

Action: Motion by Commissioner Jones for approval and second by Commissioner Meckes. Attorney Kaus advised the contract from NCDOT actually requires this be approved before February 29, 2004 so the Attorney asked the Board to make approval retroactive to February 29, 2004 and we are entitled to do this if the board is comfortable doing this. Motion by Commissioner Meckes and second by Commissioner Jensen to date retroactive to February 29, 2004 as recommended. Motion carried unanimously.

End of New Business Item # 1

David Rowland, Director of Planning
New Business Item # 02 – Annexation Agreement between the Town's of Cary and Apex for Mutual Boundary Line
Possible motion to set a public hearing relative to "An Ordinance Establishing an Annexation Agreement between the Town of Apex, North Carolina and the Town of Cary, North Carolina for the Mutual Boundary Line between These Two Municipalities.

Rowland advised in working with Cary have tried to establish a firm boundary line for Apex and Cary and have agreed to that in a number of years, with one case they went over the line and annexed American Airlines reservation center; now we have a chance to solidify this into one boundary line agreement. He pointed to the area from Sunset Lake Road to Davis Drive is called the non-boundary boundary line agreement and from Davis Drive out to Jordan Lake is the binding boundary line agreement that was developed when we went into partnership with Cary on the Water Treatment Plant. They would like to move the line along White Oak Creek and take in roughly 430 acres along the creek where they would like to build a greenway and put in a sewer line and perhaps a regional pump station in this area.

The disadvantage is we do give up some acreage that potentially would be in our area but on the other hand we get a solid line under one agreement that goes back down to Sunset Lake Road and gets us under one binding agreement.

He presented a proposed schedule for action. Mayor Weatherly asked what authority there is for a binding agreement. Rowland responded there are provisions under the North Carolina Statutes that allows municipalities to establish.... with Mayor Weatherly interjecting so any encroachment of that would be a violation of state law, asking if it would be civil or criminal matter, with Attorney Kaus advising civil. Mayor Weatherly stated with the clean water trust, this is what they needed to purchase to complete that transaction; they purchased a single ownership tract with some of those moneys, and whether they could have bought the bare minimum or not wasn't an issue. Commissioner Schulze asked if when they bought the tract it crossed this informal boundary and it did, so now they want to change the boundary, with Rowland agreeing they had a chance to buy some of this property. Manager Radford said this is the only way they can get the clean water management trust fund money, stay in the wetlands – 270+ acres are wet, and give them access to the American Tobacco Trail.

Commissioner Jensen asked if there would be parks there and should we give it up, should we get a reciprocal agreement saying our citizens can use that park, with Manager Radford confirming you can use that park. Commissioner Schulze issues was more than land, he would like to see we get other land on their side of the boundary, with Commissioner Gossage thinking we should lease it to them as long as they would agree to a 2% growth rate. Commissioner Schulze was upset over the American Airlines deal and now they are asking for more of our land and they are growing all around us, and taking all they can get, he was reluctant to turn it over; he can understand why they want it, and he'd be willing to give it to them, but thinks we should get some compensation for that in a land mass the same size or greater.

Commissioner Meckes called attention that this piece of property would never be developed, and we would not develop anything there, so what we would have is a park for our citizens that we don't have to spend any money and next to the American Tobacco Trail, with Commissioner Jones adding open space for a park. Manager Radford commented that if this had been over a year ago, staff would have felt differently, but we have a totally different relationship now and the relationship with the folks that did annex the American Airlines tract – that's not part of the game we are dealing with now, and this is a good deal for us and solidifies that boundary out to the Chatham County line which is something that has not existed before.

Commissioner Schulze agreed this is a good goal, and he also wants that goal, but he doesn't see and thinks it's a bad precedent to give up land without any kind of compensation. Mayor Weatherly agreed with his sentiment and his position was let us extend the olive branch with this and in return we get future concessions and not necessarily be tied to any concession there. We have several deals we may need to harkens back to how cooperative we were in this arrangement as the first sign of good will with the new administration there and that we can expect reciprocal ... with Commissioner Meckes adding they are getting solidification of the boundary line and that is pretty ... with the Mayor adding there is something involved but he also maintains that we could have probably gotten it without ... right down that line there.

Commissioner Jones had thought for sometime that this was a semi binding agreement that we had with them to the county line already, asking if that was not the case. He continued we signed something years ago. Assistant Manger Mike Wilson informed the board that the only thing binding was the utility service; we agreed they want serve, but doesn't prevent annexation, and never has prevented that.

Mayor Weatherly stated there's nothing to say in the future that we have some... asking if this will finish up our territorial on the western frontier. Wilson responded he didn't have to worry about a precedent; this is the end of it. You want have to revisit this. Mayor Weatherly continued and there want be other parcels that may come into question in the future.

Commissioner Schulze noted the boundary line coming down to Sunset Lake Road and asking what happens south of there. Response was Holly Springs which is another... with Rowland interjecting we have a boundary line agreement along Sunset Lake Road to that point with them. Commissioner Schulze clarified this non-binding boundary agreement goes down to Sunset Lake Road, with Rowland advising it stops at Sunset Lake Road. Commissioner Schulze asked what happens after that, south of there; with Commissioner Jones advising with have an agreement with Holly Springs running east and west. Commissioner Schulze asked if Holly Springs came up to Sunset Lake Road on the east side, with Commissioner Jones showing him this on the previous map in the Transportation Plan. Commissioner Jones added a lot of the land running north/south on the east side of town, we effectively have a boundary agreement because our city limit abuts their city limit already in a lot of that area. Commissioner Schulze said he would trust the Mayors judgment here.

Commissioner Gossage did not agree that as much as that turning what we have non binding into binding balances, giving them 430 acres, especially if what Wilson was saying as far as we have city limits along here. He doesn't understand where we have; referring to where it says current boundary agreement line and looks like it goes to the Chatham County line. Commissioner Jones noted limitations, with Rowland adding it doesn't prevent annexation, with Wilson advising the distinction was that it's binding for utility services and not annexation. The added what we did tonight would make it a binding as far as annexation. Commissioner Jensen added it's still under the old rules for utility service.

Commissioner Schulze was concerned about Cary encompassing us and asked what's to stop them from coming into Chatham County and driving down, with Manager Radford responding Chatham County. Commissioner Schulze wouldn't say Chatham County because they have just approved a big development there, with Manger Radford adding they didn't want Cary to have anything to do with it. Commissioner Schulze seems to think sooner or later the pressures would come to bare. He said he was trying to protect us from loosing our opportunity to grow in a nice way; he felt we are being forced to either grab the land now or if we don't Cary is going to get it. Commissioner Meckes added we don't want to go to Chatham County, but if Cary wants to go there more power to them, but doesn't think the Town of Apex has any desire to go there. Commissioner Schulze felt that's short sited in that 50 years from now.... with Commissioner Gossage added maybe a donut hole in the middle of Cary, with Commissioner Meckes noting we'd still be Apex. He added what we are giving is 280 acres of swamp land, with Rowland responding a total of 430. Commissioner Jones added there are lots of folks living in that 430 acres of land – noting the intersection of Green Level West and Green Level Church Road. He noted the homes along Green Level West with the Mayor adding Cary couldn't have purchased this with those home sites in there. Rowland added there are some fronting on Green Level West, with the Mayor asking if those are holdings that are not a part of the purchase, with Rowland responding as he understands it, they have purchased along the creek, south of Green Level West, the wetlands. Mayor Weatherly asked why they want to extend the agreement this far down then, with Manager Radford advising that Green Level West creates a natural geographic boundary. He reiterated that all we are asking is for a possible motion to call for this public hearing, not debating the issue.

Mayor Weatherly noted the time frame of April 20, with Commissioner Jones adding they should expect a long night, because Green Level and Cary have not been good partners and haven't seen things through the same perspective. Mayor Weatherly added they associate themselves with Apex and not Cary. Commissioner Jones noted this the intersection that is Green Level for all intent and purpose – where the nursery is.

Rowland advised we would advertise a joint notice with Cary advertising in their paper and Apex in ours, with signs posted – two separate hearings. Commissioner Schulze asked if it would be possible to get a blow up of the area; he wanted to know if there are houses, where is the developable part of the land, where the watershed area is and what is undeveloped and where the greenway is planned to go and where the American Tobacco Trail is. Commissioner Jensen even thought it would be nice to get a vote of the people in that section asking what they want to be, with Commissioner Schulze agreeing. Commissioner Schulze said he wasn't going to role over with this. Commissioner Gossage said it sounds like Cary at this point is just being nice by coming and asking if we would consider this. Is this incorrect, that they could just come and annex it at the next possible moment. Manager Radford responded that he thinks it shows that they are being cooperative and that we are cooperating together.

New Business Item 1 continued

Commissioner Schulze felt we were coming out on the short end. Commissioner Gossage added even if we say no we would rather you don't that wouldn't prevent them necessarily, with Manager Radford responding no. Commissioner Schulze added then it becomes a race of who can annex the land first. Commissioner Gossage did add that we are working with different people there now, with Commissioner Schulze agreeing.

Attorney Kaus addressed Commissioner Gossage advising him that it may be that this property doesn't / isn't right now subject to be annexed by Cary, because it's too far away from the corporate limits or they are over their satellite limits, he thinks they are talking about preserving this for future annexation for Cary. He doesn't know because he hasn't looked at it, whether they could tomorrow go and annex it. Commissioner Gossage advised it abuts their ETJ.

Mayor Weatherly stated we need the public hearing, asking for a motion.

Action: Motion by Commissioner Schulze and second by Commissioner Meckes to set the public hearing for April 20, 2004. Motion carried.

End of New Business Item # 2

David Rowland, Director of Planning *(This item was deferred to the April 6 meeting).*
New Business Item # 03 – Draft N. Salem Street Corridor Plan
Possible motion regarding draft of N. Salem Street Corridor Plan which would apply to properties having frontage on N. Salem Street between Hunter Street and U.S. Hwy. 64.

Mayor Weatherly
New Business Item # 04 – Work Session

Action: Motion by Commissioner Meckes and second by Commissioner Gossage to call for a Special Meeting – Work Session for 5:30 p.m. on April 6, 2004 to review and approve the priority transportation and parks projects for a bond package and to receive additional information concerning projected water/sewer rate revisions. . Motion carried.

End of New Business Item # 04

Mayor Weatherly
New Business Item # 05 – UDO Task Force
Mayor Weatherly asked the Board to look at a list of potential members of a task force to review the Town's UDO. He added we could do nothing or modify it, we've all had questions about certain revisions that are in there and how the impact of certain provisions in the UDO when projects are being considered; good quality development is looking at the UDO and after two years, thinks its time to review it. Potential members are persons who work with ordinances such as our UDO all the time and most of them in their daily businesses could give us good solid advice on certain provisions in our UDO. It would be up to the Board if there is anything they wish to change; but a good time to look at that. He asked that they be allowed to organize themselves at their first meeting, choosing a chair and their operating procedures. Their mission is outlined in their letter.

Daniel Davis, Chamber of Commerce
Mike Jones, Board's Liaison to that body
Tommy Morgan, Planning Board
Boots Elam, Elam, Todd D'Ambrosi
Chuck Smith, Withers & Ravenel
Mike Whitehead, McGregor Development
Stuart Jones, Jones & Cnossen
Jerry Turner, Jerry Turner & Associates

Commissioner Jensen had a problem that there were no association presidents, no balance between the development community and this list of people; just a couple. Mayor Weatherly responded the thought is less policy and more technical review, and it's our responsibility to weigh the public policy aspects. These folks are charged with each who has their own copy of the UDO; they don't need to get up to speed on the ordinances. Commissioner Jones added after a technical review as policy questions arise, it will impact the policy of the UDO and we will have to have some public input and would advocate that we bring in homeowners association presidents or who ever else has an interest at appropriate time.

Mayor Weatherly stated once they issue a report, and then we decide where we want to go with this. This is purely technical review and is the intent. Commissioner Gossage added as the UDO provisions changes come before the Board, we would have to approve the changes with public having opportunity at that point. Commissioner Jensen felt what they look at would be sloped or slanted in one direction he would expect from this. He's not saying they are bad, but the slant.

Commissioner Schulze asked in regards to public input could we have an open forum, with the Mayor adding it will open for suggestions as to how to process it. It's not intended to be a multi-year endeavor – six months maximum. They will get right down to business and a public service to us to do this. Mayor Weatherly thinks it's more the board's role to address issues and how the board addresses them is up to them.

Action: Motion by Commissioner Schulze and second by Commissioner Meckes to approve the eight nominees. Vote on the motion was 4 to 1 with Commissioner Jensen voting no. Motion carried.

End of New Business

Item moved for separate consideration from the consent agenda
Master Subdivision Plan – Waterford East PUD, Withers and Ravenal Inc., 15.1 acres located north of Ten-Ten Road and Waterford Green Subdivision.

Commissioner Jensen addressed road improvements and traffic for the Waterford Green East.

June Cowles, Planner, noted the rezone of this property didn't warrant a traffic impact study as it doesn't produce 1,000 trips daily. Commissioner Jensen stated in the project impact, there would be road improvements, etc, with Cowles responding as far as roads, curb, gutter and sidewalks, and extending existing stub and sidewalks off the existing subdivision. Commissioner Jensen asked how it mitigated existing traffic, with Cowles responding the rezone for the PUD was approved without a road extension. Commissioner Jensen addressed parks and recreation greenways, within the power easement that would connect to McGregor Park, asking how it does that. Cowles responded in meeting with applicant and senior planner of Cary have planned a building (Lord Corporation) and wooded land and Cary doesn't have greenway easement but requested to be on the transportation plan with the greenway running through power line easement with sidewalks into the Lloyd property. Commissioner Jones added even though we are accepting this designation of greenway, it's not meeting the requirement, they are paying the fee in lieu for the recreation requirement, with Cowles adding they are giving easement, working with the power company and giving us the fee.

Commissioner Jensen asked where it goes, with Cowles showing it butts up to Lord Corporation, an opportunity for Cary to connect through, even through Waterford East she received calls from folks that affords walkers an opportunity to walk to work from Waterford East, and maybe another contact with Cary to let them know there's opportunity for walking to work into McGregor. Commissioner Jensen noted you could go down the Lord Boundary, but where the pathway comes in, you would have to down the fence line north and he's talked with Cary and seems where the stub comes out and goes no where into the Lord Property would be a take off point, that's the American Air Line Lord Boundary and goes up into Gregson; that's where he couldn't see the pathway going into McGregor because it doesn't lead any place, unless we go north on the boundary of the Lord Property, if Cary is going to do anything, they will have to eminent domain that property to get anything and would be the place to do it.

Cowles responded she didn't know if a road would ever continue through there, with Commissioner Jensen adding it would not, he's sure of that, with Cowles adding there's opportunity for trail there. Commissioner Jensen continued the way it stubs out, it would be nice to have it come out at the corner, they would loose a lot, but would make a greenway to Gregson up north and south boundary and greenways if you get money for them is suppose to be ten feet wide, almost wide enough for an emergency exit and all you have to do is pull posts and if a disaster in Waterford Green; he thinks the plan doesn't allow for it.

Cowles added when this came as a preliminary it did stub to the north, with Commissioner Jensen adding it didn't go through the corner, with Cowles adding it stopped 20' from there, but Adam Ashcroft, Withers & Ravenel, had conversation with the property owner north of that. Commissioner Jensen added who ever bought it from American Airlines; you don't want to stub into there, but stub out at the edge and there's no way to make a curb as he sees it to go north and would have to go north from there.

Consent Item under New Business continued

Ashcroft reported the original PUD had road connection moving straight up into the parking lot and no opportunity ever to connect a road here; felt if stubbed another route to connect, if the land ever were developed there might be another route to connect through; that's the reason for the change, since not one would allow you to connect into their parking lot; you're talking a walkway up the property line and thinks where the road extension would allow a 20' easement open space buffer along that edge; if at some point in the future there was a connection allowed in this parking area to allow pedestrians to get back up to Gregson or those areas, that would be the place where it would happen; there are sidewalks along one side of all these roads and sidewalks connected to Water Glen Drive, and the agreed upon greenway location was to come down the easement and tie into the sidewalk system that is in the internal roadway; Cowles had mentioned to allow, if again, if there were ever an opportunity for a greenway connection, that it could be either through the asphalt paved drive to lift station or with the road stub; that was the thought process behind what was done

Commissioner Jensen noted the way the stub comes out, he doesn't think that road would ever connect into the Lord property especially with their attitude about connection to their private roads; the only opportunity that would impact Lord Corporation or American Airlines or whoever bought that property would be to try to go vertical north at the property line; the only place that could go and concern is the way the stub comes out once again, it's not in the parking lot, shouldn't have been in the parking lot the first place, but it's on the other side and doesn't think it will buy us anything there either. He thinks it has to go north along the property line. Commissioner Meckes added it could from there it would be left hand turn and up the property line to Gregson with Commissioner Jensen agreeing. Commissioner Jensen noted they were looking at old and new alignment; the way to connect with the bike path would be vertical; he can't see anyone giving anything, it would have to go along the property line; it can be done; if there's a bike path wide enough we talk extra access out of Waterford Green if there is a problem. He noted two ways to do this, if we don't do the road we talk about; 1) down power line easement into old Buckingham and could be done as an emergency route or out through here. He thought we needed to push connectivity between Waterford Green and Gregson and into the industrial park, we talk mixed use, and this is an opportunity to take two old zoning type ideas and make them into what we like and will give people quality life. Commissioner Meckes asked how we go about using eminent domain in Cary, with Commissioner Jensen responding we can't; it will have to be a Cary item and we set up for it. Commissioner Meckes added that maybe we should tie this into another piece of property. Commissioner Jensen added it was unfortunate we didn't tie this in with the passing of this that we didn't push for this having that on there at that time. Lord wanted to sell the property and we might have had an opportunity that might well be missed; now we have to rely on Cary and eminent domain and he's talked with Marla Durel about this. Commissioner Meckes asked if he envisions a greenway now that someone could ride their bike or walk and go up to Gregson and go to work. Commissioner Jensen felt this was an ideal situation. Commissioner Meckes didn't think anyone would oppose this at all. Commissioner Jensen asked if this would get that, he doesn't like the way the stub comes out. This has to be done with Cary and hopes they will look at this; it's a win-win situation for both towns, certainly Waterford Green and for the McGregor Industrial Park; it's a great selling point to tell someone you want to hire if you live in Waterford Green you can walk to work. He would like to see us work it to have traffic through there to fix the other problem.

Secondly, he talked about circulation, and had talked with Mike Whitehead about this, Golden Glover Drive, where the cul-de-sac comes at the end, he was of the impression Whitehead was going to put a walkway connectivity from there into the power line easement walkway. We talk circulation in walking and not on the roads and the people in that cul-de-sac have to go around and come back down; good exercise, but not connectivity. He's surprised this was not put in. Commissioner Meckes noted you could enter from Red Sage Court, with Ashcroft noting it was a storm drain easement, one sewer and one storm drainage. Commissioner Meckes asked if he could put a walkway there, and he responded he could, but all he is doing is dedicating the easement, asking if this could be a stormwater and access easement; if he lived in one of those homes he wouldn't want people walking between his lot; truth of the matter not that much of a longer walk to go down the sidewalk and follow the public streets. He looks at it from the standpoint that if he owned one of those two cul-de-sac lots, he wouldn't want a greenway between his yard. Commissioner Jensen agreed, depending on the width and plantings that take place. Commissioner Jensen said he would not vote against this, although he doesn't like it very well, but hopes staff, and would like to see them direct staff to say lets work with Cary and get this connectivity to McGregor Park, Lord Corporation or American Airlines may have to give 10 or 15 feet along their boundary. Ashcroft appreciated his concerns, and noted they were bound by a lot of constraints. They have Cary surrounding them and an existing Buckingham Subdivision surrounding them as well; they are locked into a lot of boundary conditions that they can't deal with, not a lot they can do on this site. They've tried to address as much as they could.

Mayor Weatherly called for a motion.

Action: Motion by Commissioner Schulze and second by Commissioner Meckes to approve the master subdivision plan. Motion carried unanimously.

End of Consent Agenda Item added to New Business

WORK SESSION

There were no Work Session Items to be discussed.

CLOSED SESSION

There were no Closed Session Items to be discussed.

ADJOURNMENT

With no further business to come before the Board, the Mayor asked for a motion to adjourn.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to adjourn. Motion carried.

The above minutes were approved on the 6th day of April 2004.

Georgia A Evangelista
Town Clerk

Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, April 6, 2004 Meeting
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Town of Apex Board of Commissioners at their March 16, 2004 meeting voted to call for a special meeting to conduct a work session for 5:30 p.m. prior to the April 6, 2004 Board of Commissioners meeting to review and approve the priority transportation and parks projects for a bond package and to receive additional information concerning projected water/sewer rate revisions.

Mayor Weatherly called the work session of the Town of Apex Board of Commissioners to order at 5:30 p.m. in the Board Room of the Apex Town Hall. Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present.

Manager Radford made opening comments and noted three key issues to be discussed and desiring the Board's prioritization of these issues. Mayor Weatherly asked how they would be placed on the ballot for a bond referendum as far as time. Manager Radford responded there would be flexibility to prioritize. Attorney Kaus advised that bond counsel could advise and guide us and could look at this further and get back with them.

Mayor Weatherly noted the priorities for water/sewer could change and asked if we were tied into this specific project. Finance Director Lee Smiley advised bond counsel words the bond referendum according to state statute and no specific projects; the town can spell out the specific projects and put the amounts on them; nothing binds how we use the money; priorities can be changed and also leaves latitude to bond counsel. Mayor Weatherly continued transportation issues could change and this doesn't tie our hands to prioritization which was correct.

Commissioner Jones commented on conditions and if they warrant, could change amounts over time, asking if we were locked into increments. Director of Finance responded no, we are not locked in, once the referendum is approved there's a ten year limit (7 years with a 3 year extension).

Commissioner Gossage asked the maximum amount of bonds that could be issued, with Manager Radford responding we were looking at $10 million on each (parks and recreation / transportation). Finance Director Smiley commented on other bond types and the four to one rule; debt payment where principals are pushed forward and more interest is paid; he responded to Commissioner Gossage question regarding future debt in general fund with majority of the debt in streets and recreation.

Commissioner Jensen commented on the potential of a future fire station and how over time direction could change with this as well. Director of Finance Smiley responded there was no obligation to issue the total amount of debt; new referendum could be issued and ignore the existing bonds and not issue them. Commissioner Jensen commented on the upgrade with the first issue and next purchase property, with Director of Finance Smiley responding both could be done, limiting flexibility; he further commented on the IRS arbitrage rules – can't issue bonds and hold them waiting fro something to come up; bond notes can be issued on short notice and there are several ways to go if you want to buy land.

Mayor Weatherly moved forward with the work session agenda.

WORK SESSION AGENDA

John Brown, Director, Parks & Recreation
Work Session Item # 1 - Parks and Recreation
Discussion and possible motion regarding proposed elements and priorities for possible November 2004 Bond Referendum for Parks and Recreation.

John Brown, Director, Parks & Recreation, noted the proposed projects and time frame for the park bond totaling an approximate $12.869 million. Commissioner Jensen asked about land purchase, with Director of Finance Smiley noting different burrowing approaches, one being with LGC, another note from a bank with installment purchase pay-off to property owners with land being the security. Attorney Kaus further commented on the LGC and the steps to take regarding selling and financing. John Brown, Director, Parks & Recreation, responded to Commissioner Schulze's comments that 20% inflation had been added to the project amounts and discussed possible grant options. Mayor Weatherly further shared his enthusiasm about these projects proposed for 2005 issue and called for a motion to proceed regarding parks bonds.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to approve and proceed to initiate the bond referendum for all the components in the parks and recreation bond package.

Commissioner Jensen commented on the issues and desired to include property, with Mayor Weatherly responding the motion was for all projects. Commissioner Jones added the intent was for all $12 million a one time bond referendum with first draw 2005, with Mayor Weatherly adding we can change priorities. Director of Finance Smiley added we have the ability to pay without a tax increase, and can set priorities and build around each issue with streets. Vote on the motion was unanimous. Motion carried (priorities attached).

End of Work Session Item # 1

Kent Jackson, Director of Construction Management
Work Session Item # 2 – Transportation Improvement
Review of proposed transportation improvement projects and priorities for a possible bond referendum; possible motion regarding same.

Kent Jackson, Director of Construction Management, noted the proposed transportation improvement projects and ability to get the design and permitting and construction of these projects. The proposed projects include construction of a significant part of the Apex Peakway, improvements to several congested intersections and completion of a number of partially built sidewalk links. Total estimated cost is $9,300,000.

Commissioner Schulze asked about the Laura Duncan sidewalk project. Commissioner Meckes and Commissioner Jones commented on the location being closer to the homes, trees being cut down and negotiations with NCDOT; how wide Laura Duncan Road would be and the pressure to put the sidewalks closer to the existing pavement. Director of Construction Management Jackson noted benefit of having sidewalks available for several years; adding curbs pulls the sidewalks closer to the street and coordinating this project with NCDOT. Commissioner Gossage asked about sidewalks along Old Raleigh Road to US64. Director of Construction Management Jackson responded there were three categories that can be submitted along with enhancements; there was duplication here and the bond package would have the CAMPO projects listed. During further discussion regarding sidewalks along Laura Duncan, Commissioner Jensen desired to move ahead with them with the town paying, and placing it in the right-of-way. Mayor Weatherly called attention to the unfunded projects. Director of Construction Management Jackson noted the first time widening projects part of the priority requests and the sidewalks were being considered as a traffic calming measure along Laura Duncan Road in relation to the high school. Commissioner Schulze noted backup traffic on US64 not being able to turn left and the need for turn lanes. Mayor Weatherly noted this was a NCDOT funded road. Director of Construction Management Jackson advised on NCDOT roads, municipal agreements are entered into where they pay part of the cost with potential to do this. Traffic, safety and enhancement funds were discussed, with Commissioner Jensen desiring to update these projects as we see fit. Mayor Weatherly commented on roundabouts where signals are not proposed and asked Joe (in the audience for comments) about the expense. Joe noted at new intersections they are not expensive, but at existing ones they are; they keep traffic moving at least at a slow pace as opposed to light cycles. Mayor Weatherly called for a motion.

Action: Motion by Commissioner Meckes and second by Commissioner Schulze to approve the bond referendum for the transportation improvements package. Motion carried unanimously (priorities attached).

End of Worksession Item # 2

Tim Donnelly, Director of Public Works
Work Session Item # 3 – Water/Sewer
Review of Option 4 Rate Recommendation and Review of the Pros and Cons of Inclining Block Rate Structure.

Tim Donnelly, Director of Public Works, commented on the first rate study for the town's water/sewer since the 90's, and having been driven by the regional wastewater treatment facility and capital improvement needs. Board considered recommendations and requested more detail of the recommended Option 4 funding. Tommy Esqueda of Camp Dresser and McKee presented the study at the board's retreat and recommends Option 4 as the best option, reviewing pros/cons of inclining block or "tiered" rate structures for future consideration. Mayor Weatherly desired the intent to be inclusive of both, rather than competition of the two; feels conservation is wise use of resources, and notes the option as high priority, and desiring to phase in the conservation block tier. A summary analysis of rate increase Option 4 is attached and recommended by staff. Base charge reflects a $5 increase, with volume charge increases in FY2005-06 and increases thereafter as necessary to accommodate revenue requirements, with no change in capacity replacement fees during the planning period (reference Table 2 of the handout). Operation budget and program costs were discussed (5 l/2% Revenue Bond and 2 l/2% SRF). Donnelly added the goal is to leave 2016 Board of Commissioners in good shape financially; rates have become more stable over the last 10/15 years. Commissioner Meckes noted a $25 increase over the past ten years, and asking for a $5.00 increase. Esqueda called attention to the handout: Analysis of Water Conservation rates – Inclining Block Rates. He noted the path to move forward with data showing this. Manager Radford asked to proceed with Option 4 in the budget, with consensus of the Board to do so. Mayor Weatherly called for a motion to end the work session.

Action: Motion by Commissioner Schulze and second by Commissioner Jones to end the work session and recess this portion of the meeting at 6:45 p.m. Regular meeting of the board will begin at 7:00 p.m. Motion carried.

End of Work Session # 03

BOARD OF COMMISSIONERS MEETING

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order at 7:00 p.m. on Tuesday, April 6, 2004, in the Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present.

Invocation was given by Commissioner Schulze. Mayor Weatherly asked Scout Eric Chiavacci from Troop #236 to lead the Pledge of Allegiance. Mayor Weatherly extended a welcome to those in attendance.

CONSENT AGENDA

Mayor Weatherly presented the *consent agenda* to be set and asked for a call for action. There were no amendments to the consent agenda.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to approve the consent agenda as printed. Motion carried.

1. Minutes of March 16, 2004 Board of Commissioners meeting.
2. Minutes of March 5, 2004 Board of Commissioners Annual Retreat.
3. Memorandum of Agreement between Wake County and Town of Apex for purposes of designating uses for money appropriated by Wake County Board of Commissioners from the Occupancy and Prepared Food and Beverage Tax fund, and to authorize Town Manager to execute the document on behalf of the Town.
4. Resolution accepting and authorizing purchase of easements and appurtenant property interests for the Kelly Road water line project.
5. Resolution accepting and authorizing purchase of street rights of way, easements and appurtenant property interests for Lynch Street improvement project.
6. Wake County tax report for Town of Apex.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set and asked to allow Cary Mayor Ernest McAlister to make introductory remarks.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to do so. Motion carried. The regular meeting agenda was set as amended.

Cary Mayor Ernest McAlister commented on his vision for continued joint working issues between Cary and Apex and their intent to build a productive cooperative working relationship with their neighbors. The upcoming item is to update utilities service agreement between the two towns; it follows some parts of the original 1988 agreement but are additions to it as well, where they follow Cary's ETJ to the south and an area northwest due to geographic conditions that an adjustment to it is in order. Public hearings are scheduled. Ben Shiver, Assistant Manager and Ricky Barker, Planning Director was present. Schedule for voting: Cary votes on May 13 and Apex on May 4.

Commissioner Schulze was reluctant to give up such a significant piece of property, understanding they want to move the line southward to connect to the American Tobacco trail via greenway and for a potential future pump station above White Oak Creek. He wanted to look after the best interests of Apex and its future possible expansion of Apex into this area, and reluctant to give up potential expansion. He thinks there are ways to achieve Cary's goals and his in a cooperative relationship. The American Tobacco Trail crosses Wimberly Road and west of the trail - he asked if this was an area they would need. He understood both staffs had worked together on this, but he would like to give what is needed but not give up as much as we want. That's one area he can see - that maybe they do not need and maybe could change this to run along the American Tobacco Trail. Mayor McAlister responded he's absolutely right and the reasons for change to follow White Oak Creek - feels reason to benefit both Cary and Apex and the larger area. Cary has gone to considerable expense and effort to purchase rights-of-way and conservation easements along White Oak Creek and would like to continue that further down to the American Tobacco Trail. The reason the line on the western side follows Wimberly Road as opposed to coming up the American Tobacco Trail - he deferred to staff, but that if it were a concern shared by the Board, then they could address that through the process of this plan.

Commissioner Schulze also noticed the line ends at Wake County, and he knows Cary is expanding into Chatham County asking if it were possible, knowing Green Level West Road, would they be coming into Chatham County south of Green Level Road. Mayor McAlister responded because they are following the ETJ line granted to them by Wake County, they have only extended that to the Wake County line and where it would go after the Wake County line would be determined by future development and future requests. He doesn't know that either one of their groups have gotten that far. Commissioner Schulze stated he would like to see that included to continue that line as a part of this agreement. Mayor McAlister responded as a point of clarification, he asked what the relationship was between Apex and Chatham County, asking if there were any plans to cross that line at this point. Mayor Weatherly responded we have not discussed that nor do we anticipate doing that at any time in the near future. Mayor McAlister continued that he recognized the concern considering the process they have gone through with Chatham County and would take that into consideration as they go through the plan as well.

Commissioner Jensen continued that in that area of distribution and looking at the housing distribution, the area to the west of the Tobacco Trial is the higher density, with his question, have they talked with the folks about what they would like to do in that area, with Mayor McAlister asking the residents, with Commissioner Jensen saying the people themselves that own the property, have they asked any of those folks. Mayor McAlister responded that's the process of the public hearing and certainly hopes they would hear from them during the process of public hearing and have sent notification letters to those affected so they will be aware of that public hearing and have a chance to give them feedback on this. Commissioner Jensen restated his question, letting them be aware and saying come on down is one thing but to have a ballot asking if they want to be in Apex or in Cary, and thinks we should do that a lot of times when we try to annex areas, saying do you really want to be in our Town and he thinks that should apply to this, certainly being that we are looking between the two towns; we're looking at giving up quite a few acres to Cary for that. His second question: is there going to be a thought – he had heard there is going to be a natural park in this area and asked if that is what they are going to do. Mayor McAlister deferred to his staff with Barker responding they plan to continue the White Oak Greenway all the way to the American Tobacco Trail, and also plan like they did west of Green Level Church Road – purchased hundreds of acres also put land in a conservation easement through using a clean-water trust fund and town funds so they expect to move forward and do similar things there. From a conservation standpoint their plans are to develop more open space and not sure if it will be a park, more passive right now. Commissioner Jensen continued that if they did this and Apex relinquishes this land, asked what relationship would our citizens have to that if there is a fee situation like that, would Apex citizens should have same rights as the Cary folks. Barker responded the way it is today, all facilities that are town property they don't check to see what jurisdiction they are in, just like there are lot of people in Cary that use your park on Lake Pine.

Barker continued their Town goal is to link up with a multi-purpose path ten foot wide asphalt path all their major town parks and getting on this trail the American Tobacco Trail to Durham all the way through the Town, Bond Park and all the other parks they have; its a great asset that they feel as a public purpose thing for people to use.

Commissioner Gossage questioned their plans to go west of the Chatham County line and south of Green Level West Road, and at the current time, we do not, asking does the Town of Cary. Mayor McAlister responded, no not currently, the plans or the conversation that has evolved about Cary going into Chatham County is primarily involved in areas further north where they have developed to the County line and across the County line in the cases of Amberly and Cary Park. Barker clarified that during joint discussions with Apex staff, that is correct, there were some talks about extending it on out into Chatham County, but Cary as a Town and Apex staff didn't feel they are going to put utilities in there anytime in the near future and maybe down the road, but right now there is no plans for that so they feel since this is a utilities service area and they have no plans for utilities in there, there's no use to extend it on out to there, but if that changes in the future, they can come back and talk about that and try to iron it out. Commissioner Gossage continued not just for utilities but for development in general, annexation, he wanted to clarify that the Town of Cary has no plans to annex any land south of Green Level West and west of the Chatham County line. Barker responded this is not related to annexing property, it's related to establishing utility boundaries for future services, with Commissioner Gossage responding he understood that. Commissioner Schulze interjected that Commissioner Gossage didn't get his question answered, with Commissioner Gossage responding that was correct.

Commissioner Meckes remembered six or seven years ago, Apex had established our growth boundary to I-540. Commissioner Jones responded we had established that for our planning, with Commissioner Meckes adding it was pretty much a consensus then too that we would not go beyond there, obviously we can't say what future boards will do, with Commissioner Jones adding that was strictly planning and how we would deal with water and sewer and other infrastructure issues. Commissioner Meckes continued that we established a 4% future growth rate, a population cap of 40,000 and a growth boundary of I-540.

Commissioner Jensen thought this also, but this was established over the next ten years as he found out later, so it's up to any board to do what they want. Commissioner Meckes added he wasn't having as much heart burn about this issue, especially since much of it is not even developable, 170 acres of this property isn't even developable. He continued if we can have arrangements for any park utilities there for Apex citizens, he has no problem with it.

Mayor McAlister referred back to Commissioner Gossage question to assure they get an answer to that, that's it's a clear answer, that it's not their intent to annex beyond the line as it exists now and if they adopt this, they certainly will not annex beyond that line in the future. Commissioner Gossage continued that the area he was talking about isn't defined by this line and it touches the question that Commissioner Schulze asked further.

Mayor Weatherly asked if he were talking about voluntary annexation, or involuntary or either. Commissioner Gossage response was either one. Mayor Weatherly continued with voluntary annexation if you get a land owner that wants to petition for services that should be viewed in a whole different situation than involuntary annexation, so to bind Apex or Cary to say we wouldn't entertain a request by a land owner to say would we take them into our municipality would be totally.... with Commissioner Gossage saying lets look into involuntary, with Mayor Weatherly saying that's what I was hoping you were talking about, involuntary annexation.

Commissioner Jensen commented on the American Airlines property having been annexed by Cary, and actually considered being Apex ETJ, which to him was unfortunate, and lead him to fact that he believes in working together and noting Waterford Green Subdivision that abuts to McGregor Park; when talking 10' wide greenways and walkways he felt it would be terrific for Cary to find their way to connect to the Lord Corporation property – a sliver along the boundary to connect this subdivision to McGregor Park, most or less a mixed use situation where it would be good for McGregor Park, he thinks, and for our subdivision an opportunity to get folks off the highways and allow them to walk to work. He asked him to take this aside, with Mayor McAlister saying they want all their parks together, and this makes great sense to him as well. Commissioner Jensen had talked with Marla about this too.

Commissioner Gossage again went back to the area he was talking about, identifying it as immediately west of the Chatham County Line and immediately south of Green Level West Road and his question being, specifically, does Cary have any plans, current plans or thoughts to involuntary annex any of that in the future, with Mayor McAlister responding no, and will check that with staff to assure he was correct, but there are no plans there currently, no plans, no intention.

Mayor Weatherly thanked Mayor McAlister and expressed that he looked forward to resolving this issue as well as others in the future, as our future is tied together. Mayor McAlister offered any Cary staff to be available for the public hearing. Mayor Weatherly desired that and also, if our staff had specific questions, their folks would be open to that prior to the public hearing.

PUBLIC HEARINGS

David Rowland, Director of Planning
Public Hearing # 1 – Annexation Petition # 359
Public hearing regarding Annexation Petition #359, VRM Development LLC, owner/petitioner; petitioning to annex 0.571 acres of land into the town's corporate limits; property located on the northwest side of the Apex Peakway and north of where it intersects with Center Street; possible motion to adopt an ordinance to extend the corporate limits.

David Rowland, Director of Planning, oriented the Board to the location of the property, and advised this was a clean-up of the area. Mayor Weatherly opened the public hearing, and with no one speaking, closed the hearing at 7:26 p.m.

Action: Motion by Commissioner Meckes and second by Commissioner Jensen to adopt an ordinance to extend the corporate limits by the 0.571 acres. Motion carried.

End of public hearing # 1

David Rowland, Director of Planning
Public Hearing # 2 – Annexation Petition # 360
Annexation Petition #360, Jerry B. & Shelby Lewter, David F. & Sharon Raymer, JDN Real Estate Apex LP, Richard D. Wilson, Karen J. Giroux, Silas A. & Carolyn King, Ethel E. Boxwell, Carmen R. Parkhurst, owners/petitioners; petitioning to annex 82.241 acres of land including public right of way into the town's corporate limits; property located west of NC55 and south of US64 off Zeno Road; possible motion to adopt an ordinance to extend the corporate limits.

David Rowland, Director of Planning, oriented the Board to the location of the property desiring town water/sewer. The future 2025 plan shows the area as mixed use. Mayor Weatherly opened the public hearing and with no one speaking, closed the hearing at 7:27 p.m.

Commissioner Jensen stated development with the extension of Beaver Creek Commons Road; if goes to mixed use has to get connected. He continued a traffic impact analysis of Zeno Road, and Beaver Creek Drive – to get this work rezone plan – we annexed Green Level Church property then the plan.

Action: Motion by Commissioner Gossage and second by Commissioner Jones to adopt an ordinance to extend the corporate limits by the 82.241 acres. Motion carried.

End of Public Hearings

OLD BUSINESS

There were no Old Business Items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments should be limited to 3 minutes to allow others opportunity to speak.
No one spoke during public comment.

NEW BUSINESS

Rosetta Radtke, Planner
New Business Item # 1 – Draft North Salem Street Corridor Plan
Possible motion regarding Draft N. Salem Street Corridor Plan which would apply to properties having frontage on N. Salem Street between Hunter Street and Highway 64.

Rosetta Radtke, Planner noted this plan was to guide and influence development along Old US 1 while preserving character. Melanie Brethauer and Jacque Burgess homeowners were present and were members to the steering committee. The 1996 Board of Commissioners Resolution requested this section of North Salem Street be downgraded from a major thoroughfare in order to maintain the elements of the landscape that contribute to the attractiveness and historic character of the town. Staff presented the plan to the Planning Board and asked staff to take the draft to the Board of Commissioners to confirm whether or not the draft plan stated the goal, "to ensure the cultural and environmental resources that comprise the character of this primary entrance corridor into Apex are maintained as the corridor develops and is still the goal the board wants to achieve for this corridor". Some changes would be change of "shall to should" change in buffers from 30' to 50', change of disturbed to undisturbed; create additional options, while preserving the corridor. Mayor Weatherly wanted to reaffirm: traffic flow (more than two lanes); development would be pulled closer to the street along the corridor closer to town (Liberty Station and Salem Oaks); preservation buffer 50'. Commissioner Meckes felt over two lanes causes damage to the streetscape trees, and thinks the original intent still stands with Commissioner Jones agreeing, questioning where it starts - at what point does this N. Salem Street corridor start, inside the Peakway may be more urban, with Commissioner Gossage adding maybe starting at Hunter Street and include the areas not yet developed, with Commissioner Jensen agreeing and with Commissioner Jones showing the west side is developed, and the east is a railroad facility. Rosetta noted enhancements money (NCDOT) has been received to implement a portion of the plan $150,000, survey is being completed to get sidewalks, curb and gutter and will how much further we can go – until we're out of money – can run both ways, but may make more sense to run to the north. Commissioner Meckes felt it should start at Hunter Street as well, with Commissioner Gossage felt it was the consensus as he recalled it. Rosetta recalled that she had heard take into consideration south Salem, extend it further, but no one questioned Hunter, and that was before Liberty Station, but felt that was correct.

Action: Motion by Commissioner Meckes and second by Commissioner Jones that the Board ensures the cultural and environmental resources that compromises the character of this primary interest corridor in Apex be maintained (that was the Goal of the Board of Commissioners and is the goal of this board, with Commissioner Gossage agreeing that was the goal of the Board 1996, that of 2001 and 2004 and continues to make sense). Motion carried.

End of New Business #01

Dianne Khin, Senior Planner

New Business Item # 2 – Draft Transportation Plan

Consideration of Draft Transportation Improvement Program Priorities Request for FY 2006-2012; and to direct staff on projects to include in final Transportation Improvement Program Priorities Request for FY 2006-2012; possible motion to set public hearing date for May 18, 2004 Board of Commissioner's Meeting.

Dianne Khin, Senior Planner stated CAMPO has requested the list of priorities for FY2006-2012 transportation improvements no later than May 21. Staff recommends the attached proposed list. Five requests are allowed in roadway projects, pedestrian and bike projects and enhancement projects. CAMPO allows joint roadway requests with other municipalities. Three joint proposed projects:

1) Holly Springs I-540 extension from NC55 north to US1 (six lane divided section with landscape median – last extension of the western wake freeway that has not been funded and not included in the original highway trust fund money – local legislation has been passed to get this funding); good chance of high priority for funding on the list with NCDOT funding it.

2) Cary - Kelly Road north to Green Level Church Road west widening (4 lanes) – Cary not in position to make a joint request (they currently show six lane and is where historic green level is – given some public input they are sure it's not going to be six lane divided, but unsure and can't make the request until a plan is done), but willing to joint request the widening of Green Level Church Road bridge or agree to request to widen Wimberly from US64 to Green Level Church Road in Cary. Staff here felt best to add to the Kelly Road widening from Old US1 north to Green Level West (4 lanes divided). New Project #3.

3) Cary -Ten-Ten Road interchange improvements (4 lanes divided). Cary wants to include road widening improvements (4 lane divided from Apex Peakway to Kildaire Farm Road) requiring interchange improvements at US1 at the bridge. Apex felt it's reasonable.

Note: transportation plan states an additional loop will be added to the NC55/US64 interchange, suggested by Kimley-Horn and could be added to the NC55 widening project (limits left turn movements and not requiring a signal); all proposed NC55 signals are going to be a part of two different signalization sections (one at Haddon Hall Drive north and going to be maintained by Cary with NCDOT agreement) - (second section from where the Peakway is at Harris Teeter south). A bond item is Apex Peakway and signalization – amount is reasonable and could fit) they propose to replace this signalization with possibly a road widening with Old Raleigh Road to Lake Pine drive from Apex Peakway to Cary's jurisdiction near the community park (two to four lane divided, with curb, gutter and wide outside bike lanes, and sidewalks); the fifth request. Commissioner Jensen asked if this could be a joint venture with Cary, Khin will ask Cary, if not it could be our own request. Mayor Weatherly noted the developer may be required to put in an extra lane (match up with Cary was discussed). New Projects 3 and 4 were noted; NC55 Bypass Extension to US1 has been on the past two requests; New Project 5 new request Davis Drive US64 North to the Cary jurisdiction or Farm Pond Road (4 lane divided with landscape median, curb, etc. Mayor Weatherly asked about the curve there having been talked about before – Salem Church the severe left, with Khin stating this could be included, but in the past the request was for Salem Church Road, this would be the other side on Davis. Commissioner Jensen noted this was talked about, with Khin stating something would have to be done to do four lanes, with Cary already working on it, going northward.

She asked if the Board were in agreement with this priority order. All were in agreement.

Staff tries to keep the list of priorities starting with the ones on previous lists; NC55 widening is already a TIP project but never funded (three lane interim widening but not funded for five lanes due to the railroad bridge). Signal coordination went with this; Kelly Road widening due to I-540 (staff doesn't anticipate funding) - CAMPO first list was unfunded by NCDOT last time. She does think the I-540 – US1 to NC55 will be funded, NCDOT wants this. She's not sure anything outside of the I-540 will be funded. Raleigh Road widening – will become obvious I-540 will have a lot of traffic (a wall with Kelly Road having a ton of traffic). Interchange NC55 bypass extension, get from Holly Springs bypass up through the area zoned as a planned unit development – gives access to over 300 acres of land that would not have access – request in the past few requests. Davis Drive widening – given the amount of traffic and that Cary is widening their section, would be a good time to request. Old Raleigh Road, given the connection of the park, and connecting to downtown thought good request with bike lanes, sidewalks.

Mayor Weatherly noted the time to set public hearing was May 18. Khin has lots of work and needs direction to not waste time.

Commissioner Gossage noted Old Raleigh Road from Laura Duncan to US64 seem this is in the bond referendum and previously discussed this in terms of another project. Khin noted pedestrian New Project 4 would not be needed – could be crossed off the list, as it would be included in the roadway request for Old Raleigh Road; it would go away; this could include bike lanes, curb, gutter all in one request, no separate pedestrian and bike request needed. Commissioner Jones noted the bond one was Laura Duncan Road and not project 4. He clarified this was listed in the bond package sidewalks on Laura Duncan Road to the high school, also a component of new project one. Khin continued one way CAMPO ranks projects are the amount of local support and if we are willing to pay a portion, they would pay the rest and the reason it was included in project one. If they did fund the entire thing, you could use the bond money for something else. Old Raleigh Road is taken care of in the road widening, and creates an extra slot for another request; Pedestrian and bike project 4: we don't need this if we add in Old Raleigh Road widening. Commissioner Meckes noted that Laura Duncan Road is being done with bond money and if we get money from NCDOT we can shift; we don't need that if we add Old Raleigh Road widening, it will be included. This new project 4 would be open to something else. Staff suggests Old Raleigh Road widening be # 5; Kelly Road # 2; US1 & NC55 #3; Davis Drive # 4.

Commissioner Schulze questioned potential additional projects Lake Pine US 64 Pedestrian underpass – park connection to Apex. Khin noted the enhancement projects came from a past CAMPO list – Laura Duncan Road Pedestrian underpass would connect to the park and is the Number 1 project. Other projects were suggested by Director of Planning thinking Beaver Creek Greenway project – process for NCDOT has changed and now requests if on CAMPO's list, greenways, they hand it over. She suggests not changing the enhancements. Commissioner Jensen asked that on new project 1, NCDOT talks underpasses at Laura Duncan, asking how this does over US64. Pedestrian Bike could include one more, with Commissioner Meckes thinking maybe throwing this in as a part of the land swap, with Commissioner Jensen commenting he had; making it pedestrian walkway # 5 identifying greenways. Manager Radford responded neither one of them were NCDOT roads and doesn't have to be done that way – not an NCDOT issue. Khin noted the only thing to do was set the public hearing for May 18, and also there are some transportation amendments that would need to be done to be consistent with this list as required by CAMPO. No Wake County projects were funded last time round. She's hopeful I-540 will happen because NCDOT has expressed they think it's important for that section to be completed. Enhancement projects require a 20% local match if funded.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to set the public hearing for May 18. Motion carried.

End of New Business Item # 2

Jason Kaus, Town Attorney

New Business Item # 3 – Town's proposed legislative agenda

The Town Attorney will present and explain the Town's proposed legislative agenda for 2004 session of the General Assembly.

Jason Kaus, Town Attorney, noted past cooperation from our legislative delegation (Senator Stevens and Representative Stam) and again this year has offered help again. Two past local bills were in regards to condemnation and historical preservation. Two ideas for an upcoming agenda is to engage in conditional zoning to help relieve us of the quasi judicial zoning, and joint ventures with NCDOT on their roads outside the town's corporate limits which would allow us to do almost anything the Board would be comfortable doing (widening, building, planning, designing, improving, repairing, replacing, sidewalks, bikeways).

He noted the proposed language in Section 1. of this bill is subject to change; Representative Stam has lots of ideas, thoughts and questions and may want to tinker with the language. Attorney Kaus had taken language from previous bills successful when Charlotte, Greensboro, and Wilmington received permission to do this. The final product may come back significantly different, but the idea is to get conditional zoning.

Mayor Weatherly asked if he had seen any generosity extended towards impact fees. Attorney Kaus responded this was not a part of our legislative agenda.

Commissioner Gossage asked how Section 2. would affect traffic control device at NC55 and Beaver Creek. Attorney Kaus advised this was within our corporate limits so we already have statutory pretty clear on that; couple of things that we've run into is Zeno Road outside our corporate limits – with one of the ideas to pave Zeno Road or participate in paving Zeno Road; town to do that even though it's an NCDOT road outside our municipal corporate limits - this would legitimize that. Referenced earlier is the sidewalk project on NC55 through town and found that section of right-of-way had never been annexed, so it's outside the town's limits (a donut hole and no authority to do it so we had to petition NCDOT for annexation of street right-of-way). This would help with those donut holes – to the extent they still remain and authorize projects outside our corporate limits. He would check but was sure the section on NC55 in front of Beaver Creek is already in our limits and we have statutory authority to do that. This is aimed outside the town's limits.

Commissioner Jones commented on Olive Chapel Road, Ten-Ten, and Old Raleigh Road on the CAMPO Plan asking if they are donut holes and they are, asking if Section 2. breaks new ground with the legislature. Attorney Kaus responded that it is somewhat creative and referred back to cooperation of our legislative delegation, noted Greensboro was unsuccessful in getting this authority in the last legislation; he's looking forward to cooperation from our folks. He advised in short session there is different rules for local bills – have to be non-controversial, unanimous support from the entire countywide delegation. A meeting is coming up with the entire delegation where all municipalities are suppose to present these sorts of things; Senator Stevens and Representative Stam are already working on these and may be no need for us to go to that meeting. In any event, he couldn't say confident that we will get this, and he wanted to give the disclaimer, whatever ends up coming out the other side, may look different that what goes in. He's hopeful we can get this authority, one we are already doing this and two, and we plan to do it some more.

Attorney Kaus referred to the language in Section 2. Any previous expenditures validated or ratified .... Commissioner Meckes asked if they go together, one could be ok and the other not, with Attorney Kaus advising the legislative process has all sorts of rules etc. where they can strike out one and they don't rise or fall together. For convenience in drafting they are put into one bill.

Mayor Weatherly asked if they would be introduced simultaneously. Attorney Kaus had talked with Representative Stam about his and he felt more comfortable with Senator Stevens introducing this on the Senate side. Attorney Kaus had thought there was benefit to doing them as parallel bills – whichever one got crossover first, you run with that one. Representative Stam feels it would be great to introduce it in Senate. Attorney Kaus noted the proposed Resolution to show the Board was serious about this.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to adopt Resolution of Support and Approval of the Town of Apex's 2004 Legislative Agenda #04-0406-02. Motion carried.

End of New Business # 3

Mayor Weatherly

New Business Item # 4 – Appointment to Parks and Recreation Advisory Commission

Mayor Weatherly is requesting consideration of an appointment to the Apex Parks and Recreation Advisory Commission.

Mayor Weatherly recommends the appointment of Dave Duncan to the Apex Parks and Recreation Advisory Commission to fill the unexpired term of Rick Wilkie with term expiring in May 2005. Rick Wilkie resigned due to work considerations. Dave has recently coached soccer and now involved in school issues, and dedicated and Mayor Weatherly feels good about him serving in this capacity.

Action: Motion by Commissioner Jensen and second by Commissioner Schulze to appoint Dave Duncan to the Parks and Recreation Advisory Commission. Motion carried.

End of New Business

CLOSED SESSION

Possible motion to move into closed session to consult with Town Attorney regarding potential litigation.

Action: Motion by Commissioner Gossage and second by Commissioner Jones to move into closed session at 8:22 p.m. Motion carried. Minutes are recorded separately. Motion by Commissioner Jones and second by Commissioner Meckes to move into open session at 8:44 p.m. Motion carried.

With the Board of Commissioners being in open session, Mayor Weatherly led a brief discussion regarding taking proposals for Bond Counsel Attorney. Consensus of the Board was to issue RFP's.

ADJOURNMENT

Motion was made by Commissioner Gossage and second by Commissioner Jones to adjourn at 8:48 p.m. Motion carried.

The above minutes were approved on the 20th day of April 2004.

Georgia A Evangelista
Town Clerk

Keith D. Weatherly
Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, April 20, 2004
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the meeting of the Town of Apex Board of Commissioners to order at 7:00 p.m. on Tuesday, April 20, 2004, Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present.

Invocation was given by Commissioner Gossage.
Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

ACCEPTANCE OF DONATED ITEM

Mayor Weatherly accepted on behalf of the Town the donation and offer of training to Town staff for operation of an Automatic External Defibrillator, offered by the Apex Emergency Medical Service for use at the Apex Community Center. Captain John Wallace, Apex EMS and Elise Marquis (high school student) made the presentation. Elise was instrumental in collection of funds to purchase this piece of equipment and a training unit for staff at the community center.

RECOGNITIONS

Commissioner Jones, Liaison to Parks and Recreation Advisory Commission, recognized Rick Wilkie with a plaque for his contributions to Apex Parks Recreation & Cultural Resources Advisory Commission over the past four years. He further recognized Apex Parks, Recreation and Cultural Resources Department Volunteers of the Year with a plaque: (April 18-24 National Volunteer Week). Dwayne Beal was recognized for Athletic Programs and Joe Dragon was recognized for Non-Athletic Programs.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action. Commissioner Schulze asked to consider Item # 10 separately: Design contract for the Apex Community Center.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to consider this item separately and prior to the public hearings. Motion carried.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to approve the consent agenda as amended with the exception of Item # 10. Motion carried.

1. Minutes of April 6, 2004 Board of Commissioners meeting.
2. Minutes of April 6, 2004 Board of Commissioners Work Session.
3. Minutes of April 6, 2004 Board of Commissioners Closed Session (minutes recorded separately).
4. Minutes of April 14, 2004 Personnel Committee meeting.
5. Findings of Fact, Conclusions of Law and Ordinance for Rezoning Case #03CU17, Jerry Turner & Associates, petitioner, located at Olive Chapel Road, changing zoning classification of 15.23 acres of lands from Office & Institutional Conditional Use District to Planned Unit Development Conditional Use District.
6. Resolution Accepting and Authorizing Purchase of Street Rights of Way, Easements and Appurtenant Property Interests regarding Lynch Street project # 04-0420-05.
7. Annexation Petition # 361, James W. Sylivant, and Caroline H. Sylivant, owners/petitioners, petitioning to annex 1.041 acres of land including public right-of-way and an existing 10' utility easement into the town's corporate limits; property located on the north side of NCSR 1160, known as Olive Chapel Road and west of the NC55/Olive Chapel Road intersection; 1) Resolution directing Town Clerk to Investigate Petition; 2) Certificate of Sufficiency by Town Clerk, and 3) Resolution setting date of public hearing for May 4, 2004.
8. Budget Ordinance Amendment to transfer money from the Transportation Capital Reserve to the Street Improvements Project Fund for the Town's portion of the work on the Thompson Street rail crossing and also appropriate NCDOT reimbursements for this project and the Olive Chapel Road/Hwy 55 intersection improvements and Project Ordinance Amendment.
9. Expenditure of fine money by the Appearance Commission to build a gazebo to be placed at Town Campus pond; total cost $30,863.52.
10. Award design contract to Smith-Sinnett Architects for proposed extension/expansion of Apex Community Center not to exceed $181,000; and to authorize staff to oversee / negotiate for associated expenses / contingencies, the not-to-exceed amounts as listed on the cover sheet of this item (considered separately).
11. Amend site plan to delete a fence between the Church of Christ of Latter Day Saints and the Amherst Subdivision on Bryan Drive.
12. Resolution to N.C. Department of Transportation supporting a temporary signal at US64 and SR1600 Green Level Church Road.
13. Approval to participate in cooperative bidding and joint purchasing with ElectriCities for the procurement of Utility Materials, Supplies, and Equipment.
14. Personnel Committee recommendation to revise Town of Apex Personnel Policies:
    Article III, Sec. 10 and Sec. 11, and Article IX, and approval of Position Classification Plan FY04-05.
15. Wake County Board of Commissioners tax report for Town of Apex.

Consent Agenda Item # 10: Award design contract to Smith-Sinnett Architects. Commissioner Schulze asked the reason this contract did not need to be bid out and second steps taken to assure its good pricing.

John Brown, Director of Parks Recreation & Cultural Resources reviewed the process for Requests for proposals solicited from nine firms; John Brown, Kent Jackson of Construction Management, and Mike Wilson Assistant Manager reviewed them. Consideration was given to design and experience with Community Centers. Firms best considered: Smith-Sinnett and BBH. Consideration was given in regards to architectural compatibility (Smith-Sinnett designed Community Center in Jacksonville and received good reports. BBH designed Apex Town Hall and Community Center; Smith-Sinnett designed Apex Public Works facility - excellent job, within budget and completed ahead of time). Money, contract and fees, and time schedule anticipating bond schedule was considered and they were comfortable with Smith-Sinnett and noted their fees were less than BBH Design, and having received a proposed contract and having been reviewed by Jackson recommends the proposal by Smith-Sinnett. Commissioner Schulze asked if they came in less than BBH Design and asked if this was from a percentage standpoint. He asked that in response to the legal question, why we don't have to bid this out. Attorney Kaus advised service contracts are not required to be bid, much like the bond counsel issue they had discussed, you generally do this through an RFQ process, and because this is professional services as opposed to construction type contract would not be required to competitively bid. Commissioner Schulze was comfortable due-diligence was done.

Jackson advised according to General Statute Chapter 87 prohibits selection of design firms based on price, and specifically requires you to do this based on qualifications; they can submit hourly rates, but beyond this prohibits getting prices and you have to base selection on qualifications and then you can negotiate price from most qualified firm and reason they didn't get bids from all the firms. Motion carried.

Action: Motion by Commissioner Schulze and second by Commissioner Gossage to Award design contract to Smith-Sinnett Architects for proposed extension/expansion of Apex Community Center not to exceed $181,000; and further as stated to authorize staff to oversee / negotiate for associated expenses / contingencies, the not-to-exceed amounts as listed on the cover sheet of this item.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as printed.
With no amendments to the agenda, it was set as printed.

PUBLIC HEARINGS

David Rowland, Director of Planning

Public Hearing # 1 – Utility Service Boundary/Annexation Agreement between the Towns of Apex and Cary

Public hearing and possible motion regarding an Ordinance Establishing a Utility Service Boundary/Annexation Agreement between the Town of Apex, North Carolina and the Town of Cary, North Carolina for the Mutual Boundary Line between these two municipalities.

Director of Planning advised that both Town staffs of Cary and Apex have been working together to form one comprehensive utility service/annexation agreement. Line follows the old boundary from Smithfield Road almost entirely except for an area near the Wake/Chatham County line. Change to the boundary would shift to the Cary jurisdiction property to complete their White Oak Creek Greenway and connect their greenway system to the American Tobacco Trail. If adopted Apex would be able to consider utility service and/or annexation south and west of this boundary and likewise Cary would be able to consider utility service and/or annexation north and east of this boundary. Staff recommends adoption of the proposed agreement which lets property owners know what town would be providing utilities in the future, and at the same time lets municipalities plan for development and the provisions for future urban services. Mayor Weatherly asked that this proposed agreement has been negotiated between the two staffs and not entertaining a request from Cary to bargain in such a way, Apex staff believes it's a reasonable agreement and we get a good return in the boundary with Cary, with Rowland agreeing that planners like to have boundaries and know where we can plan and let the property owners know what to expect in the future and the kind of agreement that will do this.

Commissioner Jensen asked how long Cary had been buying up the land there and was this before we talked to them regarding this change in boundary. Ricky Barker, Cary Planning, advised the Town of Cary in their master plan for parks and recreation has purchased land and securing conservation easements along the White Oak Creek corridor. They have purchased and secured easements for quite a few properties from Davis Drive to this area and their plans is to secure more funds from the Clean Water Trust Fund and their funds to continue purchasing property and their long range plan to connect a greenway trail to the American Tobacco Trail. Commissioner Jensen asked if he were saying they have not purchased any here yet, with Barker saying they have not, but is something that right now currently their existing agreement is Green Level Road line and until this is bought upon from both jurisdictions, they wouldn't pursue purchasing, but is their long term plan to do this. Commissioner Jensen asked if we were aware their intent to put the greenway thorough this area, with Barker responding that was when they met with both staffs and has been working on this since last year that this is what they are considering doing. They have already purchased property and their vision is to continue this to the American Tobacco Trail and informed them at that time. Commissioner Jensen asked how long had they planned before this. Barker would research this with their parks and recreation department and get back, not knowing exact dates.

Commissioners Schulze questioned the area west of the American Tobacco Trail and east of Wimberly Road, asking why this is a part of the agreement, and seemed to him everything they would need is east of the American Tobacco Trail, asking why we wouldn't just make the border the American Tobacco Trail. Barker responded working together as staff it was a line recommended by both as it does fall as a ridge line as far as a service delivery point this made sense from a utilities standpoint to fall on a ridge line.

Commissioner Meckes saw a division of parcels if they stopped at the American Trail so that some folks would be in Apex and some of their property would be in Cary as well, and if they went out to Wimberly Road, it's pretty clean, with Barker responding he had not looked at the parcels but maybe true. Commissioner Gossage asked where this is the case, and looked at the maps showing property south of Green Level Church Road where the trail goes through the eastern side of it if we use the American Tobacco Trial more than half would be in the Apex side and about a third or more in the Cary side. Commissioner Jensen added unless the boundary line is down the middle of the trial, which it could be.

Commissioner Jensen noted when Mayor McAlister was here, he had mentioned to him he felt it would be a good idea for people to have a vote and will have opportunity to voice their opinion which usually eliminates 70% or 80% of the people with about 20% of the people turning out, asking if there was anything thought about asking the people which town they really want to be in, here's your opportunity. Barker's response to "a vote" from long term planning and growth, lots of times staff looks at what's in the best interest of the town's from a utility service area standpoint and staff coming up with a boundary feels this is a better approach and as a town have worked with Apex staff and notified people along this corridor so they can listen and entertain like Holly Springs boundary, entertained comments from the public and made some adjustments to that based on their feedback; they are open to hear them and if they make sense they as a staff can come back with recommendations or changes if that's so desired. Mayor Weatherly responded that if with the situation if Cary extends water and sewer to that area, there may be plenty of people on our side of this boundary agreement for economic reasons would like to have access to that water, you may have a flood of folks that want to be there in Cary just for availability of water and sewer, because Apex has no plans to extend water and sewer. Commissioner Jensen added that could explained to them on a piece of paper and give them the option to say....he hates to force people back and forth across a boundary when it's their property, and their houses and their destiny without giving them some sort of opportunity to easily voice their opinion; that's what democracy is all about.

Commissioner Jones asked about their need for a sewer line along the creek, asking what this is about, with Barker responding Cary needs to locate a regional pump station in west Cary, and would most likely need to be on the north side of White Oak Creek to serve that watershed there, and that the town sewer line must be constructed to the Cary/Apex Water Treatment Plant to take the existing septic system and pump stations off-line within the next five years; this would be consistent within the greenway corridor and would parallel the proposed White Oak Greenway Corridor. Commissioner Jensen asked if they didn't have this property, where would they put this, or would they negotiate with Apex to put it there as a necessity, with Commissioner Jones adding the property owners, not with us, with Barker responding they would have to work with Apex saying this makes sense from an environmental and from an engineering standpoint to put it in this area. Commissioner Jones added easements would need to be acquired from the property owners not from us regardless of whether they are in Cary or Apex.

Mayor Weatherly advised the Board would consider adoption of the agreement at their May 4 meeting and opened the public hearing for comment.

Bill and Doris Upchurch, 2132 Carpenter Upchurch Road, Cary, NC 27519: Mayor Weatherly read into the record a letter from Mr. Upchurch due to his absence because of a death in his family. He owns a 55 acres south of White Oak Creek adjoining the Beckwith Farm which is now in the conservation reserve program with all the land sloping towards White Oak Creek and will not perk. He had hoped to develop this land and had always thought the dividing line was Green Level Road West and assumed someday Apex would put a sewer line down White Oak Creek to serve the area that slopes to Green Level Road West and hears Apex may let Cary service that area. He asked they not be kept in no mans land, they don't care which town they are in and only wants sewer line access that will be on White Oak Creek. He looks forward to working with the Town of Apex.

Barbara Beckwith, 8109 Green Level Church Road, Apex, NC 27523 advised she has 139 acres that would be split by Cary and Apex; no one had contacted her to even ask if they could walk along the creek to see if they wanted a greenway there; she doesn't like this because she's being kept in the dark and the only time she gets an answer is when she calls one of them to talk. She would like to be in one or the other asking what would be the harm in coming to Green Level Church Road with the boundary, asking if that would be giving Cary too much land – it would be a more solid boundary than the creek. Cary already has one side of it at the cross road and if they come up Green Level Church Road to Jenks Road then you would cut back to Wimberly. The Board looked at the map showing this area, with her adding that's too much with the Board agreeing it was too much. Her property adjoins the Upchurch land on the Apex side. Her property runs from Green Level West to Green Level Church Road and is on both sides of White Oak Creek and she will be divided and wants to be in one or the other. She asked consideration of her request as it would be easier on her. Commissioner Meckes asked if her land south of White Oak Creek does it slop back towards the creek, with Beckwith responding yes, with Commissioner Meckes continuing that if a sewer line came down there, both sides of her property could be served. She responded yes, her land on the Green Level Church side is higher and goes down to the creek and then starts up hill going towards Green Level West. Commissioner Jensen added the question is if you can place a sewer line across the creek, with Commissioner Meckes understanding the sewer line would parallel the creek, with Commissioner Jensen adding it runs parallel to the creek, but the spurs that run into it run perpendicular to the creek and you would have to cross the creek, with Commissioner Meckes adding with a manhole you could go from either side, with Commissioner Jensen adding the feeder to the sewer line would have to go under the creek. Beckwith thought it would be easier if one town owned her.

Henry McNair, 8737 Castleberry Road, Apex, 27523, advised he was not notified about the public hearing, but everyone along Wimberly was notified, although it doesn't change their jurisdiction, he wants to be in Apex for life. His concern, he's not sure there's enough land there for him to justify a regional pump station for future development; it's all about bank accounts anyway, and he couldn't justify a pump station to service his farm on the end of Castleberry Road. He believes Mrs. Beckwith is correct; she would have to have an individual pump station to pump back to Cary and if you have an Apex line as it always has been along Green Level Church Road, everything falls off the road to White Oak Creek there and she would have to pump back over the ridge to Cary and he's a developer and I would subtract that from her price, if he were to buy the land and he can't see how that would be good and his piece of property he doesn't see how he could be served with that big bite taken out, how he would be served either. He asked why this has to be moved; for years it has been the assumed Green Level Church Road as Apex/Cary boundary and because of the purchase of easements or conservation easements he doesn't understand why it's being moved, but also to run a force main or even a pump station across White Oak Creek basin would be prohibitively if you could get Corp permits to do that would be totally prohibited cost wise in his opinion to service anything from the Green Level Church Road south or down the way he is looking at it. It seems like a good way in the future for someone to obtain her land because it is now "quote not serviced by our utilities". This would still affect Castleberry Road because of future utility service plans and would have liked to have been notified about this.

Larry Will, Jenks Road and Trelawney at NC55: he owns two acres with the utilities boundary borders the center line of Jenks Road and the town limits of Apex and the other side is Cary's future utilities; would like to consider the parcels at Scotts Farm Subdivision, his land, Charles Williams (2 l/2 acres) land and Elsie Scotts land (l/2 acre) about 7 acres. He has a shallow well that runs out of water consistently, a 59 house with septic system and field replaced twice. The other two parcels are the same; all conversations with Cary for water/sewer are long term plans for five plus years; Williams had an estimate for Cary's sewer line to property to extend the line only and no sewage - $350,000). He asked them to consider changing the boundaries to where it crosses Old Jenks Road to Jenks Road along NC55 (2 l/2 acres) and cuts down to Trelawney Road and back to Jenks Road – only adding 5 or 6 aces of land to Apex where these utilities already cross the street and would be cost efficient for them to hook up and get Apex services and we are already doing the line to the apartment complexes and the subdivision behind the Foodlion which is all a part of Apex now – it would be a small change but a big advantage to them.

Ethel Harris, Smith Road resident, asked where the proposed sewer and water line will go out SR1010 to Smith Road, concerned that one side is Cary and one side Apex. Mayor Weatherly advised Apex has no plans for this area until sometime annexation would occur in the future and if she were talking about Cary's extension. She said it runs down Smith Road and curves to Stephenson. Manager Radford reaffirmed there is no plan in place for this area for water/sewer but a lot would have to do with the new regional wastewater treatment plant and where future wastewater pump stations are placed and the fact that land would be annexed into the town at some future time, with Mayor Weatherly adding it would have to be annexed before we run water/sewer there. Harris referred to the map and letter from the Town. Mayor Weatherly stated with the boundary agreement and all the property owners along the boundary got this letter, asking the proximity that got this letter. Manager Radford stated those within 300 feet, with Rowland responding just those adjacent to the proposed boundary. Mayor Weatherly continued outside our incorporated area we would have no plans for water/sewer outside our incorporated area at such time we annex that area, then of course service would have to be available within a period of time. Harris repeated the location, asking that it should be no concern to her and the residents there they should not be concerned about water/sewer in the possible future. Mayor Weatherly responded he would think they would be concerned if they have need of those services, asking if she wished to be annexed by the Town of Apex. Harris responded not at this time. She was here because of this and was asking where they proposed to put ... saying there are no plans to put water/sewer in that area, asking if this were correct. Mayor Weatherly responded not now, it's not in our incorporated area. Commissioner Jones advised the purpose of this agreement for planning purposes, staff can direct developers as they come into the Town's offices and ask for information and with this in place can give them hard/fast information about which area is served by Cary and which area is served by Apex for future consideration. Harris responded this is a ways down the road, with Mayor Weatherly responding for planning services in the future, some would be near term like Cary has talked about for some of this acreage adjacent to the this, some may be off in the distance before we would run water/sewer and would be dictated by request for annexation and mainly that. Harris repeated again, for now they should have no concern and would remain County. Mayor Weatherly responded, yes absolutely - there are no plans to do anything with that; this is a planning tool for us to use, with Harris responding she understood this and was the reason for her concern – this was a planning stage and how it would affect the residents on Smith Road. Mayor Weatherly responded no immediate change whatsoever, with Commissioner Jones adding but in the future she would be a part of Apex if they adopt this agreement. Harris questioned and they have no idea when or if they plan to adopt this. Mayor Weatherly responded when she gets municipal services including water/sewer it would be from the Town of Apex whenever it does happen, with Harris responding it would be years down the road. Commissioner Meckes responded they are planning on adopting the boundary line agreement next month, once they come to terms, but nothing would change at their place most likely for years, he would think that would be the case. Harris continued that's what she wants to know and make sure they are clear about the notice sent out to them, so they have nothing to worry about until another several years, but would be notified in plenty of time to voice their opinions, with the Board responding yes. Manager Radford advised her one day some member of her family of she herself would come and ask to be annexed, and the developer that develops her property would be responsible for running the water/sewer lines, with Harris noting there were individual lots now.

Moreene Heck, 532 Wimberly Road, Apex, 27523 is on the side of the road where the water plant is now and confused as far as the boundary as it goes straight down Wimberly Road asking which Town does her property fall into with Rowland responding Apex. She prefers to be in Apex and happy about that, but her neighbor on the other side may want to hear that.

Craig Falhamer, 729 Wimberly Road, Apex, is in one of the proposed areas being sold by Apex to Cary, saying we scare him. You say we are going to adopt this next month and this tells him they have already made up their mind, and dealing with the American Tobacco Trail over the last twelve years, he knows minds get made up very early and it's paramount for him to come up and speak. He moved here in 1989 in old Apex bout two and one-half acres of land and moved into the country knowing this will be Apex eventually and doesn't want anything to do with Cary, and never has. There are a lot of people in the Apex area that want nothing to do with Cary and they consider Cary snobs, land grabbing, pro-expansion big time. He showed where his property was located on the map.

He use to live a couple of doors down from Mr. Holt, former one of the Board and was kind of pro-growth too, but at least he got to understand about what was going on and that Apex is not as near pro growth and he wanted to be out in the country. He continued what was proposed here and he's afraid of is Cary in a year would say we are going to annex you or put you in our ETJ, and they are not going to have a vote in politics and it puts them in limbo. He noted his neighbors felt the same way, asking the board not to sell them out to Cary and prays they work something else out. Commissioner Meckes responded that a decision regarding the agreement would be made but remains to be seen.

Hattie Miller, Stephenson Road, lives in the south east part in Wake County of this utilities service boundary line; she's near the Sunset Lake Road area and Holly Springs has already annexed this section; she's in Wake County and not a part of Apex or Cary and has an Apex address. She has been to several of the meetings to realize she's not a part of Apex and doesn't know where she falls. Her concerns were that she went to the Wake County land office and looked at the proposes ETJ five years ago, and she doesn't see – looking at the proposed service area, but the map sent to her didn't give the current boundary line for her section, and being she's a part of Wake County she also knows that in order to find out when planning our ETJ it's quicker for her to go the land office rather than Apex or Cary to find out what's going on and usually it's five or ten years down the road. She's been in her location for ten years and since she's getting this notice about service utility plan and has also gotten notices from Holly Springs – they are in as close as Sunset Lake which is 1,000 or 2,000 feet beyond where she lives, she's wondering what Apex is planning for that particular section, or would we being doing anything concerning the ETJ which is going to determine what happens with the service utility for this area, hers included. She continued they have a lot of buildings that have been going up around that area and it's like overnight and you can't tell from one town to the next what area; she was not aware that Sunset Lake Road was the actual boundary and the way her letter reads proposed boundary but doesn't show the actual boundary, for clarification she wanted to know what the actual boundary is on the south east side. Manager Radford responded there are no plans for water/sewer in this area and when you go to Wake County and look at ETJ lines and in this particular case, ETJ lines, Apex Boundary Line with Cary would be one in the same because there is not enough room in there for there to be two separate lines. She asked what the actual boundary line was, with Manager Radford saying it's the same and showed her on the map. Rowland responded we have a boundary line agreement along Sunset Lake Road and this would start upward going north on Stephenson Road. Barker clarified if she's asking is the ETJ line falling in that particular area, that area south to SR1010 is within the Wake County land use plan as an urban service area; the ETJ line between Cary and Apex starts at SR1010 and is where that picks up. He stated this area is where Cary has a request for an ETJ extension for this area east of that line with a boundary agreement with Holly Springs is still Sunset Lake.

Randy Heffner, 1008 White Oak Creek Drive (showing the residence on the map) is in Apex, and wants to stay in Apex; he lived in Cary 11 years and Apex the last seven years and would like to see the line say at Green Level West Road; the property beside him is where the line is coming up against it and coming close to his property and obviously the closer it gets the closer Cary can make changes in the future; he would like to leave the boundary line at Green Level West Road and not bring it south. Mayor Weatherly responded that's the reason we are doing this to establish a definite permanent and by statute can not be an encroachment by either party over the boundary so if his fear is the closeness of the line, there would be tendency for them to want to covet some property over the line that would not be possible should this be adopted. Heffner continued things do change in the future; he knows Raleigh and Cary have often used roadways as a line and thinks a roadway is better than a creek, or whatever.

Sylvia Monaca, 805 Wimberly Road next to Craig and moved there because it was rural and a part of Apex and would really like to stay in Apex, and if taking votes, thinks the majority of the people who live in that area, wants it to stay rural and there may be some that doesn't, but for the most part would like to stay rural and a part of Apex. She wanted to come up and at least vote.

Mayor Weatherly closed the public hearing at 8:10 p.m. and advised the Board this would be back on their May 4 meeting to discuss whether to adopt this agreement or not. Cary will have a public hearing at their April 29 meeting and on will discuss this at their May 13 meeting.

Commissioner Jensen asked where the force main would be located for a Cary pump station. Barker would defer this to his engineering staff and get back with him. He didn't want to speak out of turn. Commissioner Jensen felt this would have to do with the regional wastewater facility if it's down line. He asked if this comes to be and Cary puts in a sewer line and there's the creek crossing situation, everything to the east of White Oak Creek drains down into the creek, does this mean, if we do this deal, that Cary will have a main down one side of the creek and Apex is going to have a main on the other side of the creek. Manager Radford responded yes. Commissioner Jensen continued that's what it's going to be and if we don't do this thing, we would have just one main down that creek. Commissioner Meckes asked why this would be, and the reason behind this, if we are going to have a common wastewater treatment plan, why a main down each side. Manager Radford responded it would be part of a regional system and wastewater that is in that gravity line runs along the creek but eventually goes to a regional pump station where it would be joined. Commissioner Meckes continued a gravity line could serve both sides of the creek, with Manager Radford adding we are not talking about great distances, but would be a place in which we would intersect their line. Commissioner Meckes felt that's too much redundancy. Commissioner Jensen agreed, with Commissioner Schulze asking if there is a joint cooperation with water/sewer, asked why it had to be a Cary pump station – be a regional pump station, with Manager Radford advising when we get to that point it would be regional with Commissioner Schulze continuing to him you could check that off the list as far as why they would need it. Mayor Weatherly responded you have to have a means to measure capacity because we are paying for capacity out of the regional plant and not just a socialistic operation, this would be charged to Cary's capacity, this line and should we build one would be our capacity treated by that regional plant; we would keep it separate to certain point.

Commissioner Jensen asked how we would measure flow when we are talking about this type of fluid we are pumping around, with Commissioner Meckes responding per household basis, with Commissioner Jensen adding he thinks so and you wouldn't have to worry about where you mix it because you are talking about household in the first place. Manager Radford added he wished it were that easy to be done on household, but that there are weird measuring devices and measures the flow and charges the flow but no one is good enough friends yet to accept a certain level of wastewater flow and probably want be, but there are mechanisms to be able to work some of that out. Commissioner Jensen added because we can't we'll end up with possible two sewer lines is what he's saying. Commissioner Meckes added if we can go on a joint project for $140 million waste water treatment plant, surely we can work out something along White Oak Creek if whatever happens.

Mayor Weatherly clarified the agenda was for a public hearing and discussion to the actual boundary line agreement and ramifications there of will be back on the May 4 agenda.

End of public hearing # 1

Dianne Khin, Senior Planner

Public Hearing # 2 – Site Plan – Promenade at Beaver Creek

Public hearing and possible motion regarding a major site plan for Promenade at Beaver Creek located on NC55 and Haddon Hall Drive at Zeno Road.

Dianne Khin, Senior Planner oriented the Board regarding the site plan for Promenade at Beaver Creek for a proposed mixed use center with retail, office, restaurant, and cinema uses approximately ten acres in size and consistent with the 2010 Land Use Plan and with the Neighborhood Business zoning district (staff report is attached and incorporated as a part of the minutes). She showed the building elevations proposed to be 65,672 square foot pedestrian shopping center building and one 4600 square foot restaurant out parcel; old world style with variety of materials and colors; out parcel required to use same palette of materials and colors as main building. Restaurant is Carnaubas, with typical roof garden (have not received the landscape plan, but recommends condition for approval is roof garden must utilize native plants). Building is 46' tall extending to 49 feet with dome to 67' in height. Cupolas and domes are not considered in determining the height per UDO. Mansard roof is used for ornamental and mechanical screening purposes and exempt from height calculation. 46' height meets UDO restriction based on Sec. 5.2.3(B)(3) Contextual height limit of 48' allowed on HDMF-CU property located adjacent to the subject property across NC55.

Plan meets landscape plan for buffers general landscape and vehicular use area landscape. This plan meets the buffer requirements if given approval by the Planning Department and Board of Commissioners to disturb the buffers UDO Section 8.2.6(C)(4) which states "No grading, development or land-disturbing activities shall occur within the buffer unless approved by the BOCV or Planning Department at the time of site plan or subdivision plan review."

The areas where this approval would be necessary are as follows:

1. The 30-foot buffer shown along Zeno Road will be partially undisturbed buffer and re-planted with trees re-located from within the site. This site was owned by a nurseryman and has many quality large trees that cannot be saved in the interior of the site. By moving the trees from the interior of the site to the buffer, the buffer will be higher quality than strictly undisturbed buffer. By utilizing mature plants from the site, staff feels that the intent of the undisturbed buffer is met. Trees will be moved with tree spades; trees can be very large.

2. The construction of the retaining wall proposed immediately adjacent to the buffer on Zeno Road must not utilize tie-backs into the areas of undisturbed buffer. Furthermore, the design of the Zeno Road improvements which are noted on the plan "Zeno Roadway Design to be in coordination with the Town of Apex Engineering Department" has not been determined. Care must be taken to ensure that the trees within the Zeno Road buffer are protected. If the trees cannot be adequately protected during construction of Zeno Road, then the undisturbed buffer may end up being disturbed.

3. There is no buffer required between the Promenade and Apex Medical (class 4 to class 5 uses). However, as Apex Medical was approved under the old Town ordinance, they do have an undisturbed buffer on their property. Six larger (8" caliper or larger) trees and several smaller trees will need to be removed from that buffer to install the pedestrian connection between Apex Medical and the Promenade. The two developments have an agreement to utilize one another's parking as they are markedly different periods of high usage (office during the week in the daytime and retail/restaurant/cinema during the evenings and on weekends). The pedestrian connection is necessary to encourage people to utilize this shared parking. It also gives office workers an incentive to walk to lunch rather than drive.

4. Finally, Planning staff recommends that a condition of approval be that the developers continue working with staff during construction plan review to ensure landscaping meets the UDO requirements for buffers, slope stabilization and RCA plantings.

Resource Conservation Area: The proposed plan meets the Unified Development Ordinance requirement for RCA with 25.05% (2,460 acres) of the net property in Resource Conservation Area.

Watershed: The property is located within the Secondary Watershed Protection Area. Stormwater requirements are met through the use of a retention pond located within the RCA and underground storage under the parking lot (Designed for a one and ten year storm event). Impervious surface on the site is equal to 5.75 acres or 58.6%, which meets the 65% impervious surface limitation in the BI district. The property is not located within a FEMA designated floodplain.

Parking Spaces: The proposed plan meets the parking space requirements of the UDO. The proposed parking is as follows:

Regular: 424 provided
Handicapped: 10 provided
Location: 59% of the spaces are located to the side or rear of the building.

Street Access: One major entrance onto Haddon Hall Drive and one secondary entrance onto Zeno Road are proposed. A Traffic Impact Analysis (TIA) was prepared by Kimley-Horn and Associates. The recommended lane configuration is shown in Figure 8 (attached). The plan reflects the TIA recommendations (basically lane striping for turning movements).

Pedestrian Access: The proposed plan emphasizes pedestrian connectivity, with sidewalks along Haddon Hall Drive and Zeno Road, as well as a pedestrian connection from the adjacent Apex Medical development.

Lighting: The plan proposes 42 cut-off, shoebox style fixtures on 20-foot tall poles with a maximum wattage of 175 watts mounted in the vehicular use area. It also proposes 15 decorative acorn lamps mounted on 12-foot poles with a maximum wattage of 100 watts located around the building. The parking areas have an average of 2.0 foot candles which meets the Unified Development Ordinance's requirement of 1.9 to 2.9 for general commercial uses. The maximum spillover level of 1.0 foot candles onto adjoining non-residential properties and rights-of-way is also met.

STAFF RECOMMENDATION: Staff recommends approval of the major site plan with the following conditions:

1. The out parcel building is required to utilize the same palette of materials and colors as the main building. The roof garden must utilize native plants.

2. The Board of Commissioners approve the proposed buffers per UDO Section 8.2.6(C)(4) which states: "No grading, development or land-disturbing activities shall occur within the buffer unless approved by the Board of Commissioners or Planning Department at the time of site plan or subdivision plan review."

3. The developer continues working with staff during construction plan review to ensure landscaping meets the UDO requirements for buffers, slope stabilization and RCA plantings.

4. The developer is required to complete the Zeno Road improvements adjacent to the subject property if the Town does not complete the improvements prior to the Promenade's completion.

PLANNING BOARD RECOMMENDATION: The Planning Board unanimously recommended approval with the same four conditions as stated by staff.

Commissioner Meckes was curious about the roof garden: Khin responded there is soil on the building, with Commissioner Meckes adding it insulates as well, with Khin stating yes and it's good for the environment and has worked with Dan LaMontagne and the developer to get them to do cisterns to collect rainwater from the other portion of the roof and pump it up to the plantings on the roof. Commissioner Meckes thought this is a wonderful concept and wanted to do it on this roof to hide the big box, but feel on deaf ear.

Commissioner Schulze asked if this required the traffic impact analysis, with Khin responding it did and one was provided – there's figure 8 in the staff report and is basically all turning movements and because NC55 improvements are being done by Beaver Creek Commons, they extended it quite a ways down – improvements to Haddon Hall Drive were done by Beaver Creek Commons and then the improvements on Zeno Road would be jointly done with the Town and undertaking the ribbon pavement of Zeno Road to make sure it's not gravel when the Beaver Creek Commons development opens and will be coordinating to get in the curb/gutter sections and the sidewalks. The only thing that hasn't been done is some lane striping for turning movements, left turn lanes into the property and that's what is recommended on the TIA shows that on their plan per the recommendations.

Commissioner Schulze asked if the traffic lights on NC55 will perform a level of service that is acceptable. Khin responded according to the TIA, it will. The TIA was done by Kimley Horne and Associates with this particular project and took into account, all the approved development including Beaver Creek Commons and are the traffic experts and found it would be acceptable levels of service. Diagrams were included in the packet.

He was most concerned with the traffic backing up on NC55 and make sure the traffic flow is sufficient. Khin referred to the TIA and read the recommendation section (included in Planning Board agenda). She said what was being said was the acceptable levels of service are met with improvements. Commissioner Schulze asked during peak times what would be the level of service, most concerned with the Haddon Hall light on NC55 – congestion, wanting to bypass this entire area, he wants easy flow through this entire section. Khin didn't have any of these questions at Planning Board. She looked this up in the TIP and read levels of service. She said what this says is it falls above the acceptable levels of service.

Commissioner Schulze asked if this accounts for phases three and four of Beaver Creek, with Khin responding it does not as they have not been approved yet and are only required to study what has been approved. They can't assume something that has been submitted has been approved so they are not required to review that, however, Beaver Creek Phases III and IV are proposed is required to include the Promenade because they had the information at hand and they did include it even though it hasn't been approved yet, they did include Beaver Creek Commons I and II that was approved.

Commissioner Meckes commented on the tie backs, asking if this was because of the buffers. Khin responded the retaining wall is holding the soil and to do tie backs they grade out and put up the wall and fill it back in and all the trees would be wiped out. The engineer reported the wall material is block.

Commissioner Jensen commented when we did the zoning change to this property, we had discussed the traffic flow from the movie theater and when it got onto Haddon Hall Drive after 9:00 p.m. there would be some mechanism that would push that traffic over to NC55 rather than flow back onto Zeno Road due to the folks concerns with headlights. He asked if we have a secondary exit onto Zeno he doesn't know what happens at this point because you would want them to flow back onto NC55 also. That was agreed too, with Khin saying that they would look at it. Commissioner Jensen recalled it a stronger agreement than that. Khin noted the theater was on the second floor, with parking at the rear. She had spoken with Kimley Horne with their main concern that people will do what they want to do, and if parked in the rear are not likely to get behind these people to come out this drive, and the problem with restriction such as a gate, for emergency access, it's not a good idea to have one way in and out, and have said this for other projects. Commissioner Jensen asked what was to stop the requirement after 9:00 p.m. on Haddon Hall Drive with Khin responding it was not one of their conditions, and she recalls it was a strong recommendation. Commissioner Meckes noted the other side of Haddon Hall is commercial. Commissioner Jensen was talking about turning left going up Zeno and the agreement was they would look at a right hand turn item – it may not have been written down, but he remembers it well defined that we would have something after 9:00 p.m. with the right hand turn. Khin continued we talked about it in the motion for approval it was not one of the included items. Commissioner Jensen stated he would remember that. Khin responded if the applicant wants to speak to that he can.

Blain East, Development Partner for the Promenade at Beaver Creek stated he was correct in that there were discussions about that entrance onto Zeno Road and having met with Mike Horne, Kimley-Horne, when he developed the TI study, his concern was restricting that access onto Zeno with a right-in and right-out because of the amount of traffic flow through there, he felt with the traffic signal at Haddon Hall, that a majority of the people would use that signal to get out but would not go back down over to the Peak Way because there is no signal at this time, and felt they would utilize the Haddon Hall entrance and exit, even though they would be turning out of Zeno back onto Haddon Hall, on the rear parking, the front parking of course using Haddon Hall entrance itself. Commissioner Jensen continued specifically the exit onto Haddon Hall Drive, we discussed after 9:00 p.m. there would be either a lit arrow or some mechanism to try and direct traffic onto NC55 and not back onto Zeno Road and remembers it clearly. East stated they would be more than happy to put some type sign up – left turn, or however they would do this, but doesn't know how they would control that mechanism. Commissioner Gossage recalls that was discussed with signage, with Commissioner Jensen adding it was lit signage, because it's 9:00 p.m. at night and difficult to see. East responded they could get some type lit signage on there and will have lights throughout the entire project for security and for the project itself and will be more than happy to provide the lighted signage at the exit.

Mayor Weatherly opened the public hearing.

Blain East reviewed a few factors and has no issues and agrees with the conditions that the planning board has recommended.

1. Pedestrian Friendly shopping center with design and passed out a booklet with the design.
2. Architectural treatments will conceal any kind of rooftop units, mechanisms, and drains, whatever for architectural visibility for all four sides.
3. Have met the UDO requirements on the parking (front, rear, and sides).
4. Zeno Road buffer will utilize lots of the trees from the Champion property (huge mature trees will be made with spade onto site – 15/30 foot in height – 6 to 8 inch diameter) 30 foot Type A buffer .
5. Will install fence along that area as well.
6. Parking lot light will be shielded as to not wash over into the residential on the other side of Zeno Road.

Commissioner Jensen assured the following:

1. 30' Type A Buffer (Khin responded this Type A Buffer)
2. Buffers will be irrigated (full irrigation throughout the entire project designed by landscape architect and contractor) Commissioner Jensen wanted the farm type irrigation that will run for three or four years and doesn't want them to spend anymore money than they need too, but to him he wants this done. Commissioner Meckes reminded Commissioner Jensen we are getting trees on this buffer from the interior that will be fifteen years ahead of what we typically see, but Commissioner Jensen wanted to assure they survive and recalled the tree at Wendy's that didn't make it. Mayor Weatherly added there's incentive to make that buffer look nice and attractive to the site and will do whatever is necessary to do so. East responded in the plaza area, there will be a big amount of landscape annuals that will have to be irrigated especially due to hot summers.
3. Commissioner Jensen feels better about the traffic flow with East responding they have handled it to the best of their ability using Kimley-Horne and looking at the big picture, they not only studied this one intersection, but the request by the town was to study a number of intersections on both ends of the large projects. Commissioner Jensen recalls the right-turn only for evenings with East saying it might say from 5:00 p.m. to 12:00 p.m.

Bob Bolsch, 1422 Zeno Road, spoke conditionally in favor of the site plan, expressing some concerns:

1. Traffic running stop signs 23 recorded.
2. Right-in/right-out say this, but people turn out the wrong way and has spoke with police (under advisement) and noticed there is a no left turn that marks it better – encouraged board if conditions are placed on it, people don't do it.
3. He likes human scale, transitioning from big box for the neighborhood environment
4. Public face is essentially out of Zeno Road and likes this.

His concerns are with zoning conditions almost identical to Beaver Creek Commons; they are currently in violation of one-third of their conditions; he's met with the Manager, but he wants the Board to use strict enforcement of those conditions, they are allowed in his neighborhood by agreements made with the town and if they don't follow through on their agreements, then he would say, if he would on the board, to stop the project until the conditions are met. He stated there was suppose to be a fence on Zeno Road for this development and before construction began and can see these buildings are being built now and there's no fence. He stated he's having problems with the conditions and the Board is suppose to be enforcing these conditions and stops with them; he can work with town staff, but the board let them into the neighborhood and expects them to enforce these conditions, by whatever means necessary. He noted where his driveway is and is closer than the Beaver Commons development and he plans to be more particular and to get a condition enforced, he's having to call and nag someone and sick of it. He stated it's the board's job to do this for him because the board is making the agreements.

He would like to see the fence built first to keep trash blowing onto his property and throughout the neighborhood, and there's a contact to notify someone to pick up the litter and should be picked up within three days of the occurrence and has not gotten any contact from the developer of Beaver Creek Commons and it looks like a dump in his neighborhood.

Commissioner Gossage stated it would be helpful to him if he would bring this up later in the meeting during public forum. Bolsch stated he had to leave, and added construction parking was suppose to be prohibited, there's workers there everyday and when he calls construction management, he asked why not just put up a sign that says no construction parking he was told they can't do that, and he asked why not. He asked what to do, and told to call Kent Jackson, Construction Management, he gets phone mail, and they continue to park in his way getting in and out of his property. He told the board they knew what their responsibilities are and ask they go to it.

With no one else speaking, Mayor Weatherly closed the public hearing and called for a motion.

Action: Motion by Commissioner Schulze and second by Commissioner Gossage to approve the site plan as submitted with strict enforcement of all zoning enforcement regulations, with the four conditions as proposed. Commissioner Jensen wanted to add as a fifth condition the right-turn out onto Haddon Hall Drive is noted after 9:00 p.m. lighted. Commissioner Schulze and Commissioner Gossage added that to their motion. Commissioner Jones added an illuminated sign right-turn only as long as it meets our sign ordinance. Motion carried unanimously.

End of Public Hearing # 2

Mayor Weatherly called for a five minute break at 8:50 p.m. with the meeting reconvening at 9:00 p.m.

David Rowland, Director of Planning

Public Hearing # 3 – Rezoning #04RZ02 – Harvey Montague

Public hearing and possible motion regarding rezone #04RZ02 Harvey Montague, petitioner seeking to rezone from a Wake County zoning designation to LI (Light Industrial) District classification containing 3.04 acres located at 5504 Caterpillar Drive.

Director of Planning oriented the Board regarding an existing development with warehouse space that has a failed septic system with the owner wanting to tie this into the town's sewer with the property having already been annexed into the corporate limits of the town and now needs to rezone the property and would be zoned for light industrial zoning.

Mayor Weatherly opened the public hearing at 9:02 p.m. and with no one speaking to the proposed rezoning the hearing was closed.

Commissioner Jensen asked if this were the tank farm, with Director of Planning responding this is a different project. Commissioner Gossage asked if this were zoned at our last meeting and it was. Commissioner Jensen asked buffers along SR1010 asking if this were Cary across the street. Director of Planning noted it an existing project.

Action: Motion by Commissioner Jensen and second by Commissioner Gossage to approve the rezoning as stated. Motion carried unanimously.

End of public hearing # 3

Dianne Khin, Senior Planner

Public Hearing # 4 – Apex Comprehensive Plan and 2025 Land Use Plan

Public hearing and possible motion regarding the Apex Comprehensive Plan and the 2025 Land Use Plan.

Dianne Khin reported the process by the Comprehensive Advisory Commission over the past year, and gave the recommendations of the Parks, Recreation Advisory Commission, Planning Board, and Comprehensive Advisory Commission.

Parks, Recreation Advisory Commission unanimously voted to accept and recommend the proposed modifications as noted in the draft Comprehensive Master Plan as they pertain to parks, recreation, greenways and open space master plan. The Comprehensive Advisory Commission also recommends approval of the Comprehensive Plan and the Planning Board recommends approval of the Comprehensive Plan. There are three recommended changes that came from staff in regard to executive summary brochure; the three bullets in the existing condition sections:

• The Apex Parks System includes small neighborhood parks as well as larger parks such as the 160-acre Apex Community Park in northeast Apex. In addition, the Town is currently engaged in planning efforts for a 110-acre nature park in western Apex, expansion of the Apex Community Center, and renovation of the Town's original town hall into a Cultural Arts and Performance Center.

• Public greenways intertwine among several residential communities, connecting schools, parks, and neighborhoods; planning and design efforts are now underway for the construction of over 4 miles of public greenway, which will eventually connect the heart of downtown Apex to the American Tobacco Trail.

• Regional Parks include Jordan Lake and Umstead State Parks as well as Harris Lake Park, which is part of the Wake County Parks System.

Khin introduced consultant Meg Connelly and Dave Stewart from Land Design. Connelly presented the Apex Comprehensive Plan summary. There were three public workshops and conducted interviews and incorporated this information. Seven elements were addressed including existing conditions and how they got to the recommendations.

Goals for the Plan were many with the top being preservation of small town character and mindful of this though-out the process.

Historic Cultural Resources – protection of the historic area and study area; recommend local program for historic preservation, and public/private partnerships aimed at historic preservation in terms of economic development for the town.

Open space – looked at work to date and build on what they see: recommend ways to enhance and suggest interconnectivity to surrounding communities from one open space to another and connects to schools, historic sites, that are local destinations within town.

RCA – requirement of the UDO and ways to revise this – pieces environmentally sensitive for protection – development of land in lieu of setting land aside, fees are paid into a fund that could set sensitive land aside and be more meaningful to the overall system.

Small town character – area defined by the Peak Way – pay special attention to assure any development that happens within this area needs to define what is happening in the downtown area already and continue the character to this area. Reinforce it to standards that would apply to new development.

Growth - plan adopted for urban growth boundary line established and potential to adjust it with new population; important to protect rural areas outside of Apex that contribute to the small town character. Line beyond the ETJ should be the one to follow.

Protection of Rural areas: develop and adopt annexation strategy consistent with NC laws regarding annexation and figure how you may use this to further protect those areas currently not in Apex jurisdiction. Work with Wake County to expand our ETJ – have more control of areas outside the municipal limits or work with Wake County to figure out ways to give us input on development that is happening in the county to see if what is happening in those areas is consistent with your vision for the future of that area.

Activity Centers: Community wants to contain growth within a certain area – defined where community would accept higher density to accommodate extra growth and recognize the limitations of the urban growth boundary. Five were identified and described as mixed use areas each with their own character – circled on the map and indicating one-quarter or one-half mile radius from the center point; also described as walkable areas in addition to a mixture of uses.

Activity Center 5: focus on South Salem Street I-540 – proposed interchange is interesting – in a location where people will be looking for future development opportunities so there will be lots of pressure in that area if not already; an opportunity to recognize the growth coming and guide it to allow for a mixture of uses – densities appropriate for walkable environment – also located in a spot where overtime could supportive of transit – next to I-540 bus services are reasonable addition – point to use as a park and ride area to have express bus service to other parts of the region. If TTA is able to expand regional rail service into Apex this might be a better terminus of the line reaching south opposed to the downtown location and would allow you to get to densities consistent with TTA recommendations for minimum density and allow stops in town but not have to meet those densities in town which could overwhelm the densities that are in the current downtown – best of both worlds as development occurs over time.

Land use: areas on the map are intended to be (orange in color) residential areas higher density more attached units and taken from the preference survey of the first public meeting – indicating the type houses the community is comfortable with seeing in the future. Blue areas indicate employment areas to accommodate additional industrial development and the lighter blue indicates office space and non-industrial type employment centers. Red areas are existing and future commercial development to support existing and future population. Stripped areas are intended to be mixed use areas, sometimes it goes outside the activity center and seeing clusters of vacant properties in town and an opportunity to create these mixed use areas where walking and biking is more feasible; uses would enhance quality of development already occurring. Brown areas indicate all uses where you would like to develop.

Zeno Road area could take advantage of this due to the vacant parcels there and incorporate non-residential uses between NC55 and Zeno Road and then transition them into residential development. Orientation of Zeno Road would shift traffic off NC55.

Lighter green are areas outside the future growth boundary and low density to maintain rural character, example horse area – closer to Jordan Lake and owned by the Corp of Engineers is even lower (darker green) density.

Development Design: Apex is clearly concerned about development coming to Apex. How do we communicate to others Apex expectation – development of community design guidelines would show ideas and also conducting small area plans of the expectations.

Transportation: Building on the transportation plan adopted over one year ago – focus how to move vehicular traffic around Apex and opportunities for pedestrians and bikes - US64/I-540 and US1 create a boundary for Apex and making sure mobility is maintained in town is the key; also on interior is important and why Peak Way study should be nailed down to know how it functions and designed so it's uniformed and what type development should be there. Connection of I-540 stops at US1 and the leg to NC55 is the key for Apex in the future and key recommendation is work with NCDOT to get that included in the first project.

Develop local policies and ordinances for all types of transportation including bike and pedestrian facilities. Also, cross access for mobility in Apex – three roads and getting those cross accesses in place now will allow for bike, pedestrians and cars to cross what could be barriers in the future. Important: NCDOT is studying US64 now and is essentially a front door into Apex providing many access points into town; along current alignment to where I-540 is proposed thinks maintaining access along that point is important, but control of those access points will also be important. West of I-540 endorsing that freeway concept is probably going to be beneficial for all involved, but part that access will important for as well.

Participating in regional transit study planning appropriately for access those areas to the south would be able to access it. Reserving land and supporting transit for development in key areas would also be helpful.

Housing: mix of housing by type and tenure over the next twenty years; demand for all types; within the downtown area infill housing will be important – could be single-family development or attached suitable for integrating into the downtown area for single-family; again part of the small town character study.

Employment: create more opportunities for employment – find areas suitable for more business or industrial parks and finding parcels 50 acres or larger for major employers before land is developed for other purposes.

Capital improvements: activities and programs in each years budget; create capital needs assessment, set up capital improvements programs and capital improvements budget. Create staff position so someone can focus on capital improvements planning; establish reliable income stream by reviewing and adjusting utility rates and make use of bond capacity – grants, low interest rate loans and carefully utilizing fees. Identify strategy for developing short term lack of wastewater treatment capacity; regional waste water study dealing with potential service uses.

When you see all the elements in one picture you get an idea of the relationships between all these elements. They think key things as first steps towards implementation of this plan; reflects lots of what was heard from the public meetings.

1. Have a land use plan consistent with this plan as development proposals come in they can be reviewed with the plan.
2. Small town character: overlay district as modification of UDO to focus on standards and describe what the area needs to be to guide development occurring in this area.
3. I-540 extension to NC55 (small area plan for South Salem Street area to describe more detail what that area could be)
4. Conduct the Peakway Study
5. Complete the regional wastewater study.

Plan delivery: their hope one of these items will appeal to all audiences in Apex.

Commissioner Meckes asked in moving Apex Urban Growth Boundary beyond I-540, asked where this would take Apex population wise (it accommodates us through 2015 with this plan through 2025 – activity centers provide additional locations for housing as well as commercial services). Khin: The total number given the plan proposed: almost 100,000.

Commissioner Jensen added on getting large companies in, seems it's a regional planning situation that we are always up against. He said this was an outstanding comprehensive plan but hard for us to reach outside of Apex and change things and would make it better for everybody to try and down zone RTP and up-zone here; with urban sprawl, you get business sprawl and asked how we attack that – it's a state level to try to make the area better by – not wanting to use smart growth, but by diversifying.

Commissioner Meckes felt you would have to have a broad spectrum of altruistic board members throughout; everyone would have to set aside their own self interest for something like this to come to pass and would tough to do. Commissioner Jensen thinks this is at state level and is ludicrous to see people head down NC55 and I-540 – that's a 1960's model and we are 40 years beyond that and asks how we can do that. Connelly responded they have witnessed that employees are looking for places where their employees are happy living and so much of their decision to relocate a headquarters or businesses are based on what the community has to offer, whether the schools are good, whether or not that quality of life feeling is there – many are looking at what you call your small town character but to work within their community – kids can go to school there, play in the playground – all sorts of things and a huge factor that many employees are taking into consideration and taking it seriously; probably a lot of effort into maintaining this place everybody loves and folks wanting to stay in Apex and be a part of Apex future and desire employees are hoping when they bring their employees to a new place they will have that same feeling about where they live. Commissioner Jensen added secondly would be a turn-key opportunity to get the infrastructure squared away, but nice to have big employers on the other side of US1 in an activity center; thinks this is the thrust we need to drive for.

Commissioner Meckes felt it comforting that many of the recommendations that were presented, are already being addressed, touching base on them during the retreat and in-sink with what the proposals are. Commissioner Gossage added and those proposals are abased a lot on the comprehensive planning meetings with what the public wants, with Connelly agreeing.

Mayor Weatherly opened the public hearing and with no one speaking, closed the hearing at 9:35 p.m.

Mayor Weatherly stated this speaks volume, because the potential volatility of such document, with Commissioner Jones added the volatility was taken care of before it got here, with the Mayor agreeing. Commissioner Meckes assumed this was a clamor of support, with the Mayor agreeing and our citizens are not timid in anyway to speak up when they receive something in the negative.

Commissioner Jensen added we've kind of lost the horse farm and still a target on this plan, adding we get a little section of it, with Khin responding it's not shown on the plan but the Parks and Recreation have it currently on their plan and ask it not be taken off the plan because a development proposal has been submitted for that property, and thought that is still an area they may want land dedication rather than fee in lieu. It may not be large park, but would have some sort of park in that area. Commissioner Jensen added he would expect when we can't get things like this we could re-designate zone spots nearby as it's kind of a dead zone for parks up by Waterford Green and important to get something for those folks that's reasonable. Khin says comprehensive plan doesn't designate exact spots but looks at the overall picture in this general area there should be park, but consistent with the parks plan.

Commissioner Jones commented the urban growth boundary was talked about a lot, as it's already been established and talked 40,000 and reasons that was a key number for Apex, mainly wastewater and if made I-540 how many people would that be, with the answer being 40,000 with an urban growth boundary and recognizing that however our city limits are already outside that growth boundary, and that we need to do some planning because of the transportation plan, greenway plans, all those other things need to be in concert with these kinds of things, I-540 on the map now, but nothing built and if we don't get connectivity issues planned appropriately before I-540 is built, may indeed be a wall – with Commissioner Gossage adding a geographic boundary with Commissioner Jones continuing it will be our boundary, but to say our urban growth boundary does need to move out beyond what we've talked about previously is based on those two things – it's already outside anyway and we need those connectivity issues to be taken care of and also if we don't plan for that area southwest of I-540, somebody else will and he's not talking our friends to the north and east. If you look on the maps we are being approached from the south with annexations that have taken place and if we don't plan for that area, somebody else will; that was the other reason for shifting that growth boundary from its current location. Commissioner Jensen added that you want to be on both sides of a major highway – the artery is there to carry people and the feeder lines they shorter they are, the better off you are which means being on each side.

Commissioner Meckes added the decision made at the time was made appropriately based on the best information we had. He referred to the boundary with Cary, and referred to the map in hand – Chatham County line is about as far as Apex could go with development because we get into the flood plain with the Corp of Engineers land on the lake as soon as we get across, even though we want be able to go there, no one else will either – it's not going to be area that will be developed.

Commissioner Jensen agrees with Commissioner Jones that we need almost to lay roads across I-540 in its path, almost like land mines, so we get connectivity.

Commissioner Jones made another point, while not so many people here to ask questions there are 120 with a mailing list of 360 and he expressed appreciation to her for all she had done to inform them for all the meetings over the past months keeping everyone informed. She has emailed all those on an email list. Commissioner Gossage added all three of the meetings were well done and well attended and well structured.

Mayor Weatherly stated it was very impressive to get people acquainted with the process, and no one with objection here tonight. He expressed appreciation.

Action: Motion by Commissioner Jones and second by Commissioner Gossage for approval of the Apex Comprehensive Plan with the corrections as recommended from the Parks and Recreation Commission. Motion carried unanimously.

Khin continued the other part of the agenda item for the 2025 Land Use Plan – the Planning Board reviewed it and has continued it to their May 10 meeting. This may come to the Board of Commissioners May 18, but nothing tonight.

End of public hearing # 4

Mayor Weatherly noted public hearings five and six are not necessary, with the petitions having been withdrawn. Mayor Weatherly asked if anyone had shown up for these hearings and with none moved into public forum.

David Rowland, Director of Planning

Information to Board of Commissioners: (Petitioner has withdrawn this request – Public hearing was advertised prior to the withdrawal, no further action is necessary by the Board of Commissioners)

Public Hearing # 5 – Rezoning #04CU03, Town of Apex

Town of Apex petitioning to rezone from Office & Institutional to Mixed Office Residential Retail Conditional Use district 8 acres located on S. Salem Street between E. Chatham Street and W. Williams Street.

David Rowland, Director of Planning

Information to Board of Commissioners: (Petitioner has withdrawn this request – Public hearing was advertised prior to the withdrawal, no further action is necessary by the Board of Commissioners)

Public Hearing # 6 – Special Use Permit # 04SUPO1 Carole Kish

Special Use Permit #04SUP01 Carole Kish, petitioner seeking special use permit for a retail business for the property located at 203 S. Salem Street.

End of Public hearings

OLD BUSINESS

There are no Old Business Items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments should be limited to 3 minutes to allow others opportunity to speak.

Herman Jaffee, read an article about big box stores, and history that opened many of them outside small towns driving business out of downtowns, and then closed their stores to increase sales at selected sites. North Carolina has bigger box empty stores than any state by 1990. Apex didn't have any, now with larger population developers are coming in – NC55 – tremendous crossroads type mall and others at US64/NC55 with some there and more trying to get there; he wants us to be careful and not allow developers to flood us and act as neighboring towns – Winston Salem proposed a moratorium on big box stores for five or six months – thinks Apex should consider a moratorium for a couple years to see where we are going. If in place, they want pester you so much and leave you empty stores ten years down the road – you can't do anything with them when they are empty – will sit there like eye sores. He said you may want to put this in the UDO or consider it some place else.

End of public forum

NEW BUSINESS

Lee Smiley, Director of Finance

New Business Item # 1 – Review of 3rd Quarter FY03-04 Financial Summary

Lee Smiley, Director of Finance reviewed the third quarter financial summary and noted we are solid. The third quarter is 75% for revenues and expenditures – significant variances are noted on the attached summary.

End of New Business Item # 1

Dianne Khin, Senior Planner

New Business Item # 2 – Addition to Draft Transportation Plan

Consideration of Addition to Draft Transportation Improvement Program Priorities Request for FY 2006-2012 as requested by Holly Springs; and Direct Staff on whether to include project in final Transportation Improvement Program Priorities Request for FY 2006-2012.

Khin reported the staff of Holly Springs has requested a joint project to the TIP requests for Sunset Lake Road widening from NC55 to Lockley Road. This would be a 4-lane divided road section with landscaped median, curb and gutter and sidewalks on both sides of the road. This does not count against the towns requests; would amend the transportation plan from five lanes to four lane divided in order to partner on the project, and would make for a more attractive streetscape; turn lanes would be there and provides some access management; will not affect any subdivisions we have. Transportation Plan amendments will be brought to the May 18 meeting.

Staff did have the joint request to them the I-540 extension down to NC55 which directly benefits us and almost directly benefits them – they want to see that as well. They will present that to their town board and will say we are in favor of this project as well.

Consensus of the Board was to include this project to the TIP Priorities Request.

End of New Business Item # 2

David Rowland, Director of Planning

New Business Item # 3 – Potential Amendment to the Unified Development Ordinance

Possible motion to direct staff to amend the UDO to create a new zoning district entitled "Tech/Flex".

Director of Planning oriented Jimmy King has requested the UDO be amended to create a new zoning district that would allow churches in a Norris Park type setting. This zoning district would be a blend between O&I and Industrial thus "Tech/Flex". Planning Board wants the Board's feelings and if they think this is a good idea have staff draft an ordinance for their consideration and then the Board.

Mayor Weatherly felt this was good for more consideration; asking if he thought Norris Park doesn't have the heavy industrial zone, trucks are the most intense traffic, with Rowland responding architecturally it's pleasing with the planning board want to make sure we have fairly high standards for this district and what we have in mind with the existing Norris Park would fit that. Mayor Weatherly's concern was... with Commissioner Meckes noting a church had been turned down before, with the Mayor continuing that it would set a precedent for all other industrial whether they be light, but as long as there's an industrial category in Apex if we allowed churches or other much less intense use to intrude upon the more intense uses then we would have that situation potentially all over town and you couldn't say that's not a good policy decision if we make it for Norris Park that it wouldn't be good for other places. This has potential for a good middle ground or compromise for the future that could meet this test and could have more varied or diverse usage that wouldn't be considered intrusive.

Commissioner Meckes recalled at Pinnacle Park someone wanted to have a church and what was that reasoning with Director of Planning stating what the Mayor had talked about and that we want to not take away from business in industrial parks. Commissioner Meckes continued any given area could potentially be designated "Tech/Flex" with Director of Planning responding what's in the land use plan now is conversion of medium density to what it converts to zoning; if "Tech/Flex" is approved on the land use plan, we put this and the districts that would be go into. King noted the uses currently there with Commissioner Meckes feeling if these are compatible, asked what would be wrong with a church. Commissioner Gossage noted a few uses were not decided on yet with Rowland responding specific uses were listed for the planning board to look at and consider, but they didn't want them brought forward to the Board until the Board indicated this something they wanted to see and they would flush out some uses at their meeting.

Mayor Weatherly asked if there were any objection for staff to draw up something more specific to put through the process. Commissioner Schulze was still opposed to churches in industrial districts, but not opposed to flex type space concept, probably a good idea, but if it's a backdoor way to get churches in an industrial district, he's opposed to it. Mayor Weatherly stated they would have to meet, with Commissioner Meckes interjecting, we don't even have a criteria yet, with Mayor Weatherly continuing you'd work with criteria you would be comfortable with that would allow the diversity of uses such as churches in flex space and potentially trucking firms. Commissioner Meckes added it probably would not look a lot like light industrial that we've seen before. Commissioner Meckes asked if a place like Pinnacle Park (light industrial) could they see "Tech/Flex" with Rowland responding they could but he doesn't see Pinnacle Park doing this because he thinks it would restrict a lot of their uses down and not sure it's an advantage to them to do this, and thinks it's more that someone would come in that wants to do another Norris Park type setting where architecture is the same and doesn't think it would apply so much to individual subdivision type industrial parks. He sees this as being a bit more restrictive than light industrial; that in accepting this it may well preclude some of their uses they could have in light industrial – give and take.

Mayor Weatherly added to have less impact uses; you give up more intense uses, with Commissioner Gossage agreeing this is the kind of compromise we are looking for. Mayor Weatherly said all we are doing is conceptually agreeing that staff should go forward and we'll get detail as we proceed through this.

Jimmy King stated it came up several times in Planning Board that staff had been asked or approached with questions for other developments that may fit this category; it is broader and should have application in places other than Norris Park and important for the town. He has seen draft zoning uses and there were 34 different uses between "Tech/Flex" and Light Industrial and there were 46 differences between O&I – it's a middle ground between the two. They had hoped to have the detail but Planning Board didn't want to get into that but get a sense of direction from the board and would appreciate them giving them that. He thinks this would work where they are as they are in the boundary of the small town character area and this would be an up-zoning and would eliminate some of the more intense industrial things; there are four parcels there zoned light industrial but are benign kinds of things and nothing that is of the nature we are talking about before. As far as residences there is a transition into more intense and a number of places where this kind of zoning would work.

Mayor Weatherly noted the consensus of staff to proceed and follow the normal process.

End of New Business

WORK SESSION AGENDA

There are no Work Session items to be discussed.

CLOSED SESSION

There are no closed Session Items to be discussed.

ADJOURNMENT

With no further business to come before the Board, a motion was made by Commissioner Gossage and second by Commissioner Schulze to adjourn at 10:05 p.m. Motion carried.

The above minutes were approved on the 4th day of May, 2004.

Georgia A Francisco
Town Clerk

Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, May 4, 2004
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the meeting of the Town of Apex Board of Commissioners to order at 7:00 p.m. on Tuesday, May 4, 2004, Apex Town Hall, 73 Hunter Street. Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present. Invocation was given by Commissioner Jones. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action.
Action: Motion by Commissioner Gossage and second by Commissioner Jensen to approve the consent agenda. Motion carried.

1. Minutes of April 20, 2004 Board of Commissioners meeting.
2. Budget Ordinance Amendment Number 14 and Capital Project Ordinance Amendment to Recreation Project Fund.
3. Expand watercraft allowed on Apex Community Park Lake.
4. Resolution to submit DOT Grant Application for T-21 Enhancement Funding in association with Phase I of Beaver Creek Greenway and declaration that Town will provide minimum of 20% funding if approved.
5. Amend Town of Apex fee schedule to include Express Review for Building Permits.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set. With no amendments the agenda was set.

PUBLIC HEARINGS

June Cowles, Planner (Review)
Public Hearing # 1 – Land Use Amendment and Rezoning #03CU25
Public hearing and possible motion regarding Land Use Amendment and Rezoning Case #03CU25, Crown Builders & Developers, Inc., petitioner, seeking to amend the Land Use Plan from Medium-High Density Residential to Planned Unit Development and a rezone from Office and Institutional District to Planned Unit Development District classification 8.33 acres located north of Salem Street between Sugarland Drive and Lynch Street.

Review: *Planning Board met April 12, 2004 and was recommended for approval with conditions that applicant submit phase build-out dates and turn lane be included in Phase I. Applicant has agreed to both conditions.*

The Town Clerk administered oaths to those speaking during this hearing.
June Cowles, Planner, oriented to the location of the property and reviewed the staff report for the proposed project for 65 townhomes and daycare, noting current zoning, requested zoning, 2010 Land Use Plan, requested land use, acreage, proposed uses, RCA, stormwater retention, public utilities, access and circulation and traffic study which was prepared for a similar project in 2000 – staff determined this study could be utilized for this PUD Plan (staff report is attached and incorporated as a part of the minutes). Planning Board recommended approval with amendments and conditions that the applicant submit phase build-out dates and turn lane be included in phase one. Applicant agreed to both conditions.

Commissioner Schulze and Jensen questioned the warranting of a left turn lane from the traffic study. The traffic study prepared in 2000 for Salem Knoll Professional Center did not warrant a left turn lane as noted in staff report. David Brown, OBS Landscape Architect, responded when they go to NCDOT for permitting, he felt they would have them put in the center turn lane and they would do what NCDOT says do and he would be glad to put this in writing. Commissioner Jensen reasoned there would be additional homes and traffic and roadways were not up to scale and a left turn lane would be needed to get across because there would be no lights for a long time. Commissioner Meckes added this was not an issue to turn left into, but turning out headed west.

Cowles advised traffic service level would be Service C and noted AM and PM trips generated; right turn lane will be provided; recommends adjustment of signal timing for increased traffic and upgrade signal to add protected permitted phase for northbound left turn. Noted: when proposed Peakway located south of project is complete, traffic volume will reduce at NC55/Salem Street intersection and will improve movement of traffic along NC55 and Salem Street.

Commissioner Jensen expressed concern with maintenance of an underground stormwater storage system (to be viewed more at site plan) and the size of the stormwater retention. David Brown responded stormwater retention meets the Town's requirements and specifications regarding inspections. He advised they will put in turn lanes acceptable to NCDOT standards.

Mayor Weatherly closed the public hearing at 7:17 p.m.

Commissioner Jensen wanted to know how we compare with other towns regarding ratio of townhomes in that we are limited in wastewater capacity, wanting a certain mix and didn't want to overload with this type housing, recalling two previously approved for this type housing, and not start an avalanche of this type housing. Commissioner Jones noted this single-family vs. multi-family. Commissioner Meckes noted this close to downtown and a good situation.

Action: Motion by Commissioner Jensen and second by Commissioner Schulze to approve the rezoning case and land use amendment with a left turn lane into the north bound lane of Salem Street and with other conditions as recommended by the Planning Board. Motion carried.

End of public hearing # 1

Dianne Khin, Senior Planner
Public Hearing # 2 - Amendment to 2010 Land Use Plan and Conditional Use Rezoning Case #04CU01
Public Hearing regarding amendment to the 2010 Land Use Plan and Conditional Use Rezoning Case #O4CUOl (Beaver Creek Crossing Phase 3 & 4 PUD). Developers Diversified Realty / Ist Carolina Apex Ill petitioners.

Review: *Planning Board held a public hearing on the conditional use rezoning at their April 19, 2004 meeting but did not vote on the rezoning. The Planning Board will further review the amendment to the 2010 Land Use Plan and conditional use rezoning request at their May 10, 2004 meeting.)*

Public hearing # 2 continued

Staff Request: *Staff requests that the public hearing advertised for the Board of Commissioners' May 4, 2004 meeting be continued to the May 18, 2004 meeting.*

Action to be taken by the Board of Commissioners: *Motion to continue the Public Hearing to the May 18, 2004 meeting.*

Action: Motion by Commissioner Jones and second by Commissioner Gossage to continue this hearing to May 18, 2004 meeting. Commissioner Jensen advised he would not be present and asked consideration to move this forward one month or June 1 meeting, with Commissioner Meckes advising he would not be present at that meeting. Motion carried to continue this hearing to May 18, 2004 meeting.

End of public hearing # 2

Dianne Khin, Senior Planner (Review)
Public Hearing # 3 - Amendment to Unified Development Ordinance
Public Hearing and possible motion regarding amendment to Section 2.3.4(F)(1)(c) of the Unified Development Ordinance with regard to Resource Conservation Area requirements for Planned Unit Developments.

Review: *Planning Board reviewed the proposed amendment at their April 12, 2004 meeting and unanimously recommended approval.*

Dianne Khin, Senior Planner noted the PD Plan for PUD shall demonstrate compliance with Sec. 8.1.2, Resource Conservation Area, except the percentage of RCA required under Sec. 8.1.2 ....shall be allowed to be reduced by no more than 5%. Staff originally proposed 10% reduction be allowed for projects with 100 acres or more. The concern is that very large PUDs are being required to set aside 20+ acres of land which begins to make development of a large PUD unfeasible. Staff believes although there are few opportunities out there for such large PUDs, getting land assembled into a large project is a benefit to the Town for several reasons:

1. Land use and transportation compatibility can be reviewed on a semi-regional scale. When small project after small project is approved, the cumulative impacts are difficult to discern until traffic becomes unacceptable. The impact of a large project can more clearly be assessed prior to approval.
2. Major road improvements are done at one time rather than in a piecemeal fashion. This allows major connections of thoroughfares and collector streets to occur.
3. Architectural compatibility across a large land area. The character of the area can be uniformly upscale, as in the case of Brier Creek in Raleigh.

Planning Board felt additional relief was needed for PUDs of all sizes. Staff agreed to change the language so it applies to all PUDs. Planning Board unanimously recommends amending UDO to increase reduction allowed from 5% to 10% as stated in the proposed amendment.

Commissioner Jensen questioned exchange for RCA and reduction of buffers up to 50% and commented on RCA remaining in the interior part of site and counting as RCA; Khin responded this was correct for PUD – with Commissioner Jensen noting this as a double deal to reduce as well as count as RCA. Ex. RTP. He felt the RCA and the quality of development we have now, seems to him we are going in the wrong direction giving up what we've got.

Public hearing # 3 continued

Mayor Weatherly opened the public hearing at 7:30 p.m. and with no one speaking, closed the hearing.

Commissioner Gossage asked about fee in lieu moneys for RCA, and if we give up buffers and RCA we don't get anything in return, with Khin responding there is no fee in lieu moneys for RCA, and would have to set up a system which was a recommendation in the comprehensive plan. Mayor Weatherly felt it reasonable to give and take and adjust the UDO.

Commissioner Jones asked for examples where this might apply. Khin responded: an area that would allow for completion of a major thoroughfare that doesn't exist; if a road were in place or bridge built by NCDOT in that location; architectural standards apply over large acreage 100 acres and staff didn't recommend this for all PUDs. Planning Board felt all PUDs should be given the same consideration; large PUDs road networks completed trade off – developer can't make his numbers work – a balance best befits town.

Commissioner Meckes felt 100 acres was to large used RTP as an example of promoting sprawl: 40% RCA assured sprawl that had spread over three county areas; he encouraged looking at more dense development everywhere for RCA and to increase density would be better served.

Commissioner Jensen added 60% of land was not being used; RTP design created sprawl in 1960 and would like to see RTP down-zoned and give us RTP here. Commissioner Meckes and Commissioner Jensen think the 40% RCA is too much and the 10% applied to that. Percentages were discussed with concern for the smaller guys having to set aside RCA and the impact this has on them; commercial 25% is less.

Commissioner Jones was thinking compromise – 10% Residential – 5% Commercial – already allow 20% reduction and maybe apply 10% to residential. Commissioner Jensen commented on the percentage being applied to the entire land and percentages being proportionate. Commissioner Jones added this gives opportunity to adjust or negotiate .... shall... in (c). Attorney Kaus responded language could say "may be reduced by no more than 10%" or cap, and have flexibility in unique situations and would prevent 10% from all. Commissioner Meckes added they could go down to 40% if compelled to do so, with Attorney Kaus advising you would want to treat them similar.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to modify the ordinance language in (c) ... may be reduced by the Board of Commissioners by no more than 10%. Commissioner Jensen commented it was up to the Board and a lot of money was on the table and then they were almost compelled to say yes, and felt they should be in on the earlier part. Attorney Kaus advised zone standards of the PUD criteria allows early on involvement. Vote on the motion was 4 to 1, with Commissioner Jensen voting no. Motion carried.

End of Public hearing # 3

June Cowles, Planner (Review)

Public Hearing # 4 – Amendment to the Unified Development Ordinance

Public hearing and possible motion regarding an Ordinance to Amend Unified Development Ordinance Section 8.7 Signs, Section 10.6.10 Amortization of Nonconforming Signs, and Section 11.4.6 Sign Removal.

Review: *Planning Board reviewed the proposed amendment at their April 12, 2004 meeting and unanimously recommended approval.*

June Cowles, Planner advised this amendment replaces the current Section 8.7 Signs (quick reference chart, and easy to use, separates permanent and temporary signs, and alphabetical organized content), Section 10.6.10 Amortization of Nonconforming Signs (pole signs that are over six feet in height to conform within a 3 year time limit effective the date of adoption of amortization provisions) and Section 11.4.6 Sign Removal (allow code enforcement officers to remove prohibited signs within the public right-of-way, easements and public land).

Planning Board and staff recommends approval. Attorney Kaus responded to questions regarding authority to remove signs. Staff advised after removal of a sign located in public right of way, code enforcement holds the signs for 30 days on the first violation and on second violation throws them away or fines them; they also pick up signage placed in NCDOT right-of-ways. Charge for sign permits is $10.00.

Mayor Weatherly opened the public hearing at 7:55 p.m. and with no one speaking, closed the public hearing.

Commissioner Jensen questioned the number of signs that would fall under the three year compliance under amortization of Nonconforming signs. Director of Planning responded two or three, with staff feeling a three year compliance time was reasonable. Commissioner Jones noted the former sign ordinance amendment allowed five years for compliance, with Director of Planning advising ten years were given to comply. Discussion followed regarding costs, with Director of Planning advising costs would vary and the board's decision regarding amortization. Commissioner Gossage added the burden is being placed on businesses with Director of Planning noting there were only a couple of signs and no huge pole signs. Commissioner Meckes wanted to be consistent with past regulations to change except those of historical value. Mayor Weatherly agreed to be consistent and three years was a reasonable time to comply as there was minimum signage and only a few being impacted; he recalled the few that were not in compliance with the past amendment and had argued visibility of their establishments from the streets, and with adoption of the ordinance they are now in compliance and still in business. Director of Planning advised if passed, business owners will be contacted. Attorney Kaus advised on the bill before legislature regarding prohibiting amortization billboards and pole signs, and the town's paying just compensation for amortization and saw three years as reasonable for compliance. Commissioner Schulze was more comfortable with five years.

Action: Motion by Commissioner Jensen and second by Commissioner Gossage to adopt the ordinance with a five years compliance provision under the amortization of nonconforming signs. Motion carried.

End of Public hearing # 4

David Rowland, Director of Planning
Public Hearing # 5 – Annexation Petition # 361
Public hearing regarding Annexation Petition # 361, James W. Sylivant, and Caroline H. Sylivant, owners/petitioners, petitioning to annex 1.041 acres of land including public right-of-way and an existing 10' utility easement into the town's corporate limits; property located on the north side of NCSR 1160, known as Olive Chapel Road and east of the NC55/Olive Chapel Road intersection; possible motion to adopt an ordinance to extend the corporate limits of the town. Director of Planning oriented to the location of the property where the owners want to build a new house and need water. A house currently sits there and there is enough land to build another one.

Mayor Weatherly opened the public hearing at 8:02 p.m. and with no one speaking, closed the hearing.

Action: Motion by Commissioner Meckes and second by Commissioner Schulze to approve annexation # 361 and adopt an ordinance to extend the corporate limits. Motion carried.

End of Public hearings

OLD BUSINESS

There were no Old Business Items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments should be limited to 3 minutes to allow others opportunity to speak.

Carol Sylivant, 1108 Olive Chapel Road, advised a reflector had been taken from her drive and asked if it were considered a sign. Response: it's not and the town had not removed it.

Herman Jaffee referred to an N&O article "Wal-Mart becoming more aggressive politically", and asked the board to protect main streets as towns suffer due to Wal-Marts, and suggesting no big box stores be allowed within five miles of one another.

End of Public Forum

NEW BUSINESS

David Rowland, Director of Planning
New Business Item # 1 – Ordinance to Establish Utility/Annexation Agreement
Possible motion to adopt An Ordinance Establishing a Utility and Annexation Agreement between the Town of Apex, North Carolina and the Town of Cary, North Carolina for the Mutual Boundary Line between these two municipalities.

David Rowland Director of Planning briefed on the utility/annexation agreement and made up of three segments: Sunset Lake Road to SR1010, SR1010 to Davis Drive/Farm Pond Road intersection, and Davis Drive to Chatham County line since 1988. A public hearing was held on April 20, 2004. Citizens along Wimberly Road voiced that they preferred to be in Apex annexation area.

Ricky Barker, Town of Cary, agrees: 1) To make the boundary line to follow the American Tobacco Trail leaving those folks desiring to be in Apex. 2) Those folks who had concerns about their property being split by the boundary would make request to the town whose utility serviced their area for future extension of water/sewer. After a concrete development proposal is drawn, then they would negotiate and be agreed upon by both towns. 3) Neither town will extend utilities into Chatham County upon request form property owners south or west of the following boundary unless this agreement is amended and notice sent to Chatham County. If approved, this would replace the previous 1988 agreement. A past issue with a Cary resident wanting water: he went to Cary and received their approval to be released from their service area and then came to us for annexation.

Commissioner Jensen asked where the proposed sewer line along the creek would be pumped to assuming a force main would run across Apex. Barker responded Cary had considered a regional wastewater pumping station for several years to be located on White Oak Creek. He couldn't give a definite location or how it would apply to Apex and service this area but may lend to regional share of facilities in joint planning for Western Wake County and would benefit the area, but not duplicate services.

He advised 1) the need for the current water treatment plant to go off line over the next five years for property owners to have access to sewer 2) the greenway had been on their plan since 1998 to connect to the American Tobacco Trail and shown as an easement 3) Town aggressive funds would be used to purchase open space 4) looking at White Oak Corridor to protect - $1 million to fund open space, if it goes through, to extend conservation easements along creek more open space (goal for Wake County as well as Apex to access the greenway system). Commissioner Meckes added we would be in on the big picture with the regional waste water treatment plant and was not concerned about the cooperative agreement. Barker responded as part of the Wake County study, ultimately, we would all be sewered together one way or another.

Commissioner Jensen asked again about the force line crossing Apex, with Barker responding it would be pumped toward the treatment plant either to south Cary or the new plant and were looking for a western facility as well, but couldn't say where. Manager Radford responded it would be located in the western quadrant north of US64 – it all flows this way southwest toward US64, with a larger part gravity flow; he could see a regional pump station jointly owned.

Commissioner Jones commented on the Wimberly Road residents concerns wanting to remain in Apex and that staff does support that, and understands Cary has to review this, and will make finishing touches. He addressed the property that splits and the process to modify as time comes (Beckwith property sewer line pump station and there would be a meter system to serve her property).

Barker responded Counsel Member Dorrell was supportive of the sidewalk issue to connect Lloyd Corporation and had talked as well an opportunity for Cary on Lake Pine "path" to the park site and could continue to make something work for both. Manager Radford added with the Lake Pine issue that DOT small urban moneys could be used to complete the sidewalk Lake Pine to the park. Commissioner Jensen commented with the connection of the sidewalks that both towns are looking the same way on these, not understanding why we can't say we'll help regarding the necessary line and greenway and grants, and pump station working with Cary instead of moving the boundary. Commissioner Schulze suggests the same thing, not giving up part of Apex but find a way to provide Cary easement agreements without changing the line.

Mayor Weatherly noted the reduction of the usable property with the wetlands and the tobacco trail and supports a cooperative way to make this work to have an alternative site in Cary jurisdiction. Commissioner Schulze asked if intent was to build and come for easements. Barker responded regarding the sewer line to serve water treatment plant and to ready the utilities for properties to access and should this remain in Apex there's potential for paralleled line to serve; purchase design Cary has for this area has focused to secure more grants for more open space which is more land taken out and not for development.

Commissioner Jensen in having looked at his emails noted those received all wanted to stay in Apex; he would like to find out from the property owners what they want and he knows they can speak at public hearing, noting that's only about 20% and this troubles him.

Commissioner Schulze could not support this because Apex would be giving up too much land. Commissioner Jones agrees there should be some way to accomplish this without giving up 400 acres. Opinions he received were that property owners want to stay in Apex noting sentimental paranoia that whatever the course of action taken maybe immediate annexation and would also pay taxes. He was thinking on the same lines as Commissioner Schulze does and leaving the boundary line where it is. As far as sentimental thinking Green Level is considered in Apex, with three fourths of community already in Cary and one-fourth in Apex and this would be giving up more and would like to find a way to satisfy this and leave the line where it is along Green Level West Road and he doesn't know way they can't.

Commissioner Meckes on the ultimate goal of the boundary line agreement and expressed sensitivity, caring about a reasonable swap with the land and with the folks coming causing him concern, not wanting Apex to let Cary take them noting the board's sensitivity to those requests. Mayor Weatherly suggested delay in action to allow staff time to work on this. Commissioner Meckes expressed the board was meanable to long term needs. Commissioner Gossage commented on fairness and understanding the Wimberly Road connection and the American Tobacco Trail, but doesn't know where this needs to be, but believes in working with this now rather than property owners having to go to Cary or Apex and agrees with Commissioner Meckes to help get this done even if it means taking more time and thinking this through. Barker will provide more information regarding the pump station, location and service area and understands wanting to know what's in it for Apex. Barker will be place on the board's agenda when both have a mutually ready agreement. There was a consensus to defer action to future meeting date unsure.

End of New Business # 1

David Rowland, Director of Planning
New Business Item # 2 – Special Legislation Satellite Annexations
Discussion regarding special legislation to exempt Apex from the 10% limitation on satellite annexations.

Director of Planning shared that the NC General Statute limits municipalities to 10% of the corporate limits in satellite annexations. Representative Stam has made the Town aware of a local bill that would exempt Wendell, Zebulon, Rolesville, Holly-Springs, Fuquay-Varina and Garner from this requirement. Representative Stam wants to know if Apex would like to be included in this legislation. Staff recommends Apex be included in this local bill to have flexibility should need arise in the future. Wake Forest and Knightdale are exempt. A sunset time limitation has not been proposed. Attorney Kaus advised the last sunset provision, no bill was drafted and no session started. Commissioner Schulze agrees this allows more flexibility with Commissioner Jensen seeing we have no choice. Mayor Weatherly saw no reason we should not be included. It was the consensus of the Board that Apex be included. Director of Planning will notify Attorney Stam.

End of New Business # 2

Jason Kaus, Town Attorney
New Business Item # 3 – Bond Counsel
Town Attorney advised there were 7 responses to the Town's Request for Statements of Qualifications for bond counsel. Three firms noted for the highest level of quality were Helm's Mullis & Wicker, Parker Poe Adams & Bernstein, and Womble Carlyle. Representatives of each firm were present for a brief introduction and reason for wanting to serve as bond counsel for Apex and underwriter counsel if need be. Attorney Kaus recommendation was the firm of Parker Poe Adams & Bernstein for bond counsel and Helms Mullis & Wicker for underwriter counsel if need be. After discussion Mayor Weatherly noted respect for Attorney Kaus opinion, but with his association with Womble Carlyle stands good with him and their local record speaks for them as far as bond counsel. He has heard good of all and further recommends Helms Mullis as underwriter counsel since they are counsel for Wake County. Financing was discussed and will seek direction from the bond counsel.

Action: Motion by Commissioner Gossage and second by Commissioner Schulze to select Womble Carlyle as bond counsel and Helms Mullis as underwriter counsel should the need be. Motion carried.

End of New Business # 3

Note for the record: Attorney Kaus resigned his position as Town Attorney with this being his last official meeting with the Board of Commissioners. Attorney Hank Fordham, Stam Fordham & Danchi will serve as interim attorney for the Town.

WORK SESSION AGENDA

There were no Work Session items to be discussed.

CLOSED SESSION

There were no closed Session Items to be discussed.

ADJOURNMENT

There being no further business to come before the Board, there was a motion and a second to adjourn at 9:10 p.m. Motion carried.

The above minutes were approved on the 18th day of May 2004.

Georgia A Evangelista
Town Clerk

Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, May 18, 2004

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order at 7:00 p.m. at the Apex Town Hall, 73 Hunter Street, Apex Town Campus. Commissioners: Mike Jones, Bryan Gossage, Doug Meckes and Gene Schulze were present. Commissioner Bill Jensen was absent.

Invocation was led by Commissioner Meckes. Mayor Weatherly led the Pledge of Allegiance and extended the welcome to those in attendance.

Mayor Weatherly welcomed Hank Fordham, former Town attorney to the meeting. He asked for a motion to approve the appointment of Henry C. Fordham Jr., as interim Town Attorney.

Action: Motion by Commissioner Gossage and second by Commissioner Jones to approve the appointment of Town Attorney Fordham as the Town's interim attorney. Motion carried.

PRESENTATION

Dr. Stephen Scott, Wake Technical Community College gave a presentation: Economic Impact of Wake Technical Community College on Economy of Wake County (Summary attached). A satellite campus is being considered in Western Wake County.

CONSENT AGENDA

Mayor Weatherly presented the *consent agenda* to be set and ask for a call for action on the following items.

1. Minutes of May 4, 2004 Board of Commissioners meeting.
2. Budget Ordinance Amendment No. 15 and Capital Project Ordinance Amendment to the Recreation Project Fund.
3. Site Plan – Chick-Fil-A located on Beaver Creek Commons Drive.
4. Town of Apex Fire Department requests adoption of the N.C. Department of Labor's recommendation for a monthly volunteer stipend of $100 per month, provided established criteria is met; effective 07/01/04 and amended Membership Requirements and Benefits Handbook.
5. Approve North Carolina Canine Emergency Response Team Memorandum of Agreement with Town of Apex Fire Department for Provision of Technical Rescue Services.
6. Approve North Carolina Task Force Memorandum of Agreement with Town of Apex Fire Department.

7. Adopt Resolution giving authorization to send notice of intent letters to enter properties for investigations necessary to complete appraisals associated with electric distribution line easements.
8. Resolution in support of Veterans Freedom Park.
9. Wake County Tax Report for Town of Apex.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to approve the consent agenda as printed. Motion carried.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly present the regular meeting agenda to be set as printed. With there being no amendments to the agenda, it was set as printed.

PUBLIC HEARINGS

Dianne Khin, Senior Planner
Public Hearing # 1 – 2025 Land Use Plan
Public hearing regarding the 2025 Land Use Plan; possible motion to adopt the plan.

Khin Review: On April 20, 2004, the Board of Commissioners adopted the Apex Comprehensive Plan.
One of the recommendations and implementation measures listed in the Apex Comprehensive Plan under "Land Use and Urban Design" is to amend the Town of Apex Land Use Plan to reflect the proposed land use patterns depicted in the Comprehensive Plan Map.

The Planning Board reviewed the proposed 2025 Land Use Plan at their April 12, April 19, and May 10, 2004 meetings and unanimously recommended approval of the Land Use Plan presented by staff with the following amendment:

• Eliminate retail stripe from south end of S. Salem Street (e.g. Chatham Street to just before NC 55). Recommend that Mayor Weatherly appoint and the Board of Commissioners confirm a study committee to do a S. Salem Street study on the possibility of including retail within the historic homes along S. Salem St.

Planning Staff recommends approval of the 2025 Land Use Plan as presented.

Khin presented the staff report which is attached and incorporated as a part of the minutes. One of the recommendations and implementation measures listed in the Apex Comprehensive Plan under "Land Use and Urban Design" is to amend the Town of Apex Land Use Plan to reflect the proposed land use patterns depicted in the Comprehensive Plan Map. Some of the features of the 2025 Land Use Plan map (attached) include:

1. It encourages a mixture of complementary uses in areas where contiguous, undeveloped and underdeveloped parcels of land present opportunities for mixed-use development, which is consistent with recommendation "a" under "Land Use and Urban Design" in the Apex Comprehensive Plan.
2. It allows for alternative uses (could be mixed use, but mixed use is not required) on certain tracts to allow flexibility for the property owner and the Boards in making decisions on rezonings.

3. The Plan attempts to provide accurate land use classifications for existing development that is unlikely to redevelop as a different use (such as small-to-medium lot subdivisions, townhomes, new retail shopping centers, etc.).
4. It covers a wider area than the 2010 Land Use Plan, especially to the south and west.
5. The Plan provides a chart that shows the relationship between the land use classifications of the 2025 Land Use Plan and the zoning districts established by the Unified Development Ordinance. The chart provides guidance to the Planning Board and Board of Commissioners in their review of rezoning petitions. However, this chart in no way guarantees that any particular zoning district associated with a land use classification will be approved by the Board of Commissioners at rezoning.

Effect of Adoption of 2025 Land Use Plan:

The effect of the adoption of the 2025 Land Use Plan would be the repeal of both the 2010 Land Use Plan and the Preferred Areas for Mixed Use Development policy map previously adopted by the Board of Commissioners.

Staff recommends approval of the 2025 Land Use Plan as presented. The Planning Board reviewed the proposed 2025 Land Use Plan at their April 12, April 19, and May 10, 2004 meetings and unanimously recommended approval of the Land Use Plan presented by staff with the following amendment:

• Eliminate retail stripe from south end of S. Salem Street (e.g. Chatham Street to just before NC 55). Recommend that Mayor Weatherly appoint and the Board of Commissioners confirm a study committee to do a S. Salem Street study on the possibility of including retail within the historic homes along S. Salem St.

Mayor Weatherly opened the hearing at 7:24 p.m.

Don Grimes, S. Salem Street, approved the Planning Board's sentiments to reject retail use in the Historic Homes area; study is up to the Board; recalled the North Salem Street Study had rejected this and believes same argument should apply to S. Salem Street Historic Homes, with retail not the best use and not a good mix. He is a 15 year resident and noted the Mills and Cash homes with all planning to remain residents in them. He offered cooperation and participation if a study was conducted.

Lisa Glover, 115 N. Tunstall Street, asked the board to change designations on five specific parcels from 2010 plan to 2025; located in vicinity of Center Street where it intersects to Tunstall and south at Culvert Streets; 2010 notes them low density and currently zoned medium density; 2025 would change plans to medium density high density stripped designation and would change two to O&I; parcels are in a small town character area and part of the comprehensive plan (concept that it would be medium density residential); small character area has not been defined and concerns changes are being made to the land use plan within this area before the study to determine what is wanted there; concern land use plan stripes areas high density when the comprehensive plan visions it medium density; single family homes (stripped medium/high density) Christian Home Church and adjoining parcel with single family home (designated O&I as opposed to residential). 600 Center Street is vacant lot which development is proposed and will come to them June 1; the 2025 plan would change the northern half to the stripped designation. 503 Center Street 1900 house and 505 Center Street. Surrounding neighborhood is single family homes and some currently zoned high density – one the single family home and a lot zoned high density with home being built. South are homes on Culvert Street (low density). Behind Church Lake Meadow Drive (medium density). Asked to change staff recommendation and designate all five parcels as medium density with no stripping and no O&I. Current zoning is medium density and would be consistent.

Density in medium density are 6 units per acre current density based on lot size is closer to 4 units per acre; stripping for high density and rezoning would increase to 8 units and would double the density adjacent to the existing neighborhood; would increase development pressures and increase traffic; high density designations would continue to creep and adjoining parcels might try to get high density designations; for every additional unit allowed increased vehicle trips per day; streets are narrow and do not want increased traffic; Center Street is natural dividing line with high density north; not a good reason to extend that sough of Center Street, keep high density to the north. Center Street separates some high density and closer to US1more appropriate at major intersections. She wants to preserve the small town character area; is high density and O&I wanted in this area. She doesn't think O&I is appropriate close to the residential neighborhood; church is an allowed use in medium density and consistent with current zoning; O&I doesn't reflect existing conditions (single family house there). O&I uses allowed by right in the UDO are medical laboratories and recycle and collection stations and not what we want to see next to the residential neighborhood. Ask to preserve small town character, and consider changing parcels and leaving them at medium density.

Carole Kisch, 204 S. Salem Street, read a letter from Charlie Holland, property owner on S. Salem Street, would like to see a better mix of more-cu from Chatham Street to Williams Street. There are five legal residents and 2 retail stores and several offices and banks. It would make a wonderful addition to mix in some boutiques, antiques and other specialty type stores. Kisch agreed there's already a mix with a few homes and a consensus they are in agreement; it would fit within the Historic Area.

Marshall Barnes, 103 S. Salem Street, thinks this is an appropriate use for the area; current O&I; concern residential uses are not permitted use by right; current uses are grandfathered; his property is limited as to what he can do with it; if house vacated for six months or if changed to office use he could not move back and use it as residence; read UDO definition for O&I (intent to use office and uses with integration of complementary retail uses to service those O&I uses primarily located at major thoroughfares – no residential is permitted) and mixed office residential retail district (intent to build on traditional neighborhood and small town character by allowing mix of residential, professional office and limited retail uses – single family lots duplexes and bed and breakfast, small professional offices and limited retail uses) consistent with Apex small town character a better fit for this area other than current O&I; asks support of 2025 Plan for mixed use area – thinks retail in this area should be limited under special use permit.

Mayor Weatherly closed the public hearing.

Khin commented on the areas on Tunstall, SR1010 and Culvert Streets were originally shown as high density and what was across the street SR1010; it was stripped for both medium and high density to allow flexibility; remainder of downtown neighborhood has been classified as medium density residential, particularly closer to CSX and listed previously as medium and high density. The area shown as high density is due to SR1010 and Center Street where high density homes are located (duplexes) and high density further down the road nearer US1 and an acceptable area for high density.

Looked at areas where Institutional uses were and are shown as O&I; 99% of the rezonings coming to us are conditional use; some uses mention were by right uses specifically ask the applicant not to include if they wanted to rezone that property; staff was trying to be consistent having changed lots of the other churches land use classifications to office and institutional uses but if to the board and could be left medium density meaning if they wanted to do any rezone, they would take it into consideration; currently Church is O&I use in a medium density area; single family homes on the corner made sense to put this piece O&I as well for any future development for maybe church expansion. Stripping is along both the north and south sides of Center Street; basically where the duplexes are and the brick home just built and across the street.

Commissioner Meckes and Commissioner Jones agreed with Center Street being used as a division (only place stripes come across Center Street inside the Peakway and reason was there's PUD on north side with south side O&I – step down to high density); Commissioner Meckes and Jones see it more consistent with surrounding properties and especially on the south side of Center Street if we leave it as is on the south side.

Commissioner Jones asked staffs reaction to this. Khin responded this was up to them; staff recommended high density. Commissioner Meckes stated we have an O&I use in medium density zoning with Khin noting this not unusual. He was not uncomfortable with leaving the church as is – churches don't go away, once established historically remain – lots of history and tradition come with them. Commissioner Gossage felt consistency was nice, but doesn't make sense; then we want to be consistent.

Commissioner Schulze was not ready to make a decision regarding the downtown district area either way they went; needing more information; recommendation of the planning board for a study or something else; he would be in favor of some sort of study. Mayor Weatherly responded they didn't have to make a decision tonight; an important decision; planning board met three times – can do this. Commissioner Gossage was comfortable to send one of the issues to study committee, other seems a solution they would be happy with and didn't see reason to delay. Commissioner Jones was happy to take the recommendation from the Planning Board.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to adopt the 2025 Land Use Plan as presented with recommendation from the Planning Board to delete stripe from S. Salem Street and either appoint study committee or re-look at this in whatever manner (leave area as is for now) and to modify the stripping on Center Street to remove the high density residential stripe from the south side of Center Street. There was no discussion. Khin didn't hear any thing regarding the O&I (didn't want it changed to O&I – get rid of the high density stripe, but would like the O&I to be medium density) with Commissioner Jones adding to the motion to remove O&I designation for the church and the adjoining lot. Motion carried.

Mayor Weatherly asked if there were a motion to follow up on the recommendation by the Planning Board that we have a study committee ratified by the Board of Commissioners to go into some detail to study this issue, not taking long – short duration. Manager Radford asked if this were a study committee or report generated to give them something to discuss in terms – staff driven, undertaken by land use consultants with help of private group of citizens. Commissioner Jones responded he was not involved in the North Salem Street study (character property owners along that area). Mayor Weatherly asked why we didn't formulate a proposal and come back with this issue and work with staff to bring something back and look over it and if we don't like that then we will do something different. Commissioner Jones stated on the surface seems we should do something similar with north Salem. Commissioner Schulze was looking at – if we make it retail, what are the pros and cons of doing that and if not what are the pros and cons of being residential – some options. Commissioner Gossage added something beyond local resident input. Mayor Weatherly summarized staff and any interested parties can weigh in over this over the next meeting or two and come to a proposal and put it back on the agenda, if not a consensus give more than one option as to whether the board wants to study the issue to come to some conclusion. It was consensus of the board to do this.

End of public hearing # 1

Dianne Khin, Senior Planner

Public Hearing # 2 - Amendment to 2010 Land Use Plan and Conditional Use Rezoning Case #04CU01

Public hearing regarding amendment to the 2010 Land Use Plan and Conditional Use Rezoning Case #O4CUOI (Beaver Creek Crossing Phase 3 & 4 PUD); Developers Diversified Realty / Ist Carolina Apex III petitioners; possible motion regarding same.

Town Clerk administered oaths to all those wishing to speak during the public hearing.

Khin oriented the board regarding request for amendment to the 2010 Land Use Plan and Rezoning Case #O4CUOI (Beaver Creek Crossing Phase 3 & 4 PUD)—DDR/Ist Carolina Apex III

BACKGROUND INFORMATION is contained the staff report and incorporated as a part of the minutes. Location: North of US 64 between Green Level Church Road and 1-540 and 1-540 and south of US 64 between Beaver Creek Commons Shopping Center and 1-540.

Khin oriented according to the 2025 Plan as adopted.

Current Land Use: North of US64: Mixed Use and Retail Office & High Density Residential
South of US64: Retail in northern portion and high density residential in the southern portion

TRANSPORTATION IMPACT ANALYSIS: has been performed by Ramey Kemp and Associates and has been reviewed for the Town by Kimley-Horne and Associates. Both are present to answer questions.

PARKS RECREATION AND CULTURAL RESOURCES: Advisory Commission voted unanimously to accept the staff recommendation that this development pay a fee in lieu for the project based on an anticipated minimum of 6 units per acre and a maximum of 10 units per acre for the residential portions of the project. This recommendation is contingent upon:

1. The exact number of units and amount of fee to be determined at site plan submittal.

2. The greenway and/or multi-use path connection and related construction issues associated with the Town's transportation and greenway master plans to be resolved by the Planning and Parks and Recreation staffs at site plan stage.

PLANNING BOARD RECOMMENDATION: considered this land use plan change and rezoning at their April 19 and May 10, 2004 meetings and unanimously recommended approval with the following conditions added by the petitioner at the Planning Board meeting:

1. The language in the opening paragraph of the letter from the petitioner amending the PD Plan (dated May 4, 2004) shall be revised to state that the petitioner will request transportation fee credits (the previously submitted wording seemed to imply that the credits had already been approved).

2. The language regarding RCA in the letter from the petitioner amending the PD Plan (dated May 4, 2004) shall be revised to state that the petitioner is requesting from the Board of Commissioners a 10% reduction in the amount of RCA required under the current UDO. Additionally, the petitioner will no longer include the 1-540 right-of-ways within the RCA calculations. The right-of-way area will also no longer count toward the net acreage from which the RCA percentage is calculated.

The revised letter from the petitioner incorporating the above conditions is attached.

Standards: To approve a PUD district designation the Board shall find the PUD district and PD Plan for PUD to demonstrate compliance with certain standards which are included in the staff report.

Mayor Weatherly opened the public hearing at 7:55 p.m.

Connell Radcliff, President of First Carolina Properties, also co-owns a home in Apex. Beaver Creek Commons is a continuation of Beaver Creek Commons - joint venture with Diversified Realty and First Carolina Properties.

Phase 3 is south of US64 is 80 acres WC (R40-HD/PC) – Phase 4 is north of US64 is 54 acres WC (HC/Rural Residential on the eastern portion). Property location was shown on the vicinity map. PD Plan is attached and incorporated as a part of the minutes. Land Use and Rezoning only –

Objectives of the plan: request amendment to the 2010 LUP to PUD consistent with adopted 2025 LUP, request amendment to zoning PUD-CU consistent with Comprehensive Plan and 2025 LUP, comply with UDO standards for PUD District , meet goals and objectives of 2010 and 2025 LUP

UDO: integrating all three uses on the north side as required by the UDO; zoning request calls for this, interconnectivity requirement on the perimeters, greenway systems for bike and pedestrian paths connecting the north and south side to the existing greenway system in Apex, Compatibility with surrounding properties is shown throughout the presentation.

RCA BUFFERS AND LANDSCAPE: meets the guidelines for landscape in the RCA taking a lot of work, enhanced buffers on the residential (met with residents to assure this)

STORMWATER/UTILITIES: Post development run-off will be equal to or less than the pre-development levels which exist currently, meets the one and ten year storm event , upgrade existing sewer system on the north side (currently at 83% or 86% capacity) and south side (no capacity issue with sewer – commercial are not big users), extend waterlines to adjacent properties.

PHASING: overpass built prior to the opening of phase 4 (north side property) build out for Phase 3 – June 07 and Phase 4 – March 08.

LUP: request was to amend the 2010 LUP but with the adoption of the 2025 LUP, it is consistent and the comprehensive plan.

TIA: required for rezoning – set maximum limits (attached and incorporated as a part of the minutes) prepared by Ramey Kemp & Associates, and Kimley Horne to satisfy staff for roadway improvements. Worked with NCDOT (town and developers behalf) out lying roads (Kelly and Jenks Intersection and Jenks and Green Level Church Road Intersection). Have satisfied staff concerns: most recent I-540 issue which they elected to take out of their development plan so not to overstep any issues in terms of the RCA requirements. Over $4 million dollars in road improvements have been agreed too, with some public bond assistance provided with the bond referendum if it is passed in the fall; may have more discussions in terms of this. Worked on solutions for neighborhoods. Received unanimous planning board decision based on this May 10.

TIA was required for rezoning and scope of the study was determined by the Town (staff requirement) assuming worse case scenario maximum build out which was given and if it exceeds this, they are aware this has to be redone, or if any particular user would cause this TIA to exceed current projections they have to do another one – do not anticipate doing so, but would if need be.

Pre and post I-540 scenarios: updates have been made Kelly Road and beneficial to the town. Calculations include Phases I & II of Beaver Creek Commons (Super Target, Lowes and retail). Studied multiple off-site locations – Kelly Road at Jenks and Green Level Church Road at Jenks and NC55.

Roadway summaries at south side of Vision Drive current two lanes – have been asked to make it three lane intersections where it intersects with Green Level Church Road and have agreed to do this. Green Level Church Road and US64 would facilitate the temporary light with NCDOT (April 8 letter from Secretary Tippett indicated they would like to install the light and they would help facilitate that during Phase 3 south side (predicated on a resolution from town) not the north side of the road where the concern is but the opposite side and agreed to help accelerate that. Beaver Creek Commons Drive agree to widen to three lanes from existing Phase 1 all the way to Kelly Road with both bike and pedestrian paths. Kelly Road and Beaver Creek Commons Drive agree to add turn lanes on Beaver Creek Commons Drive and agree to install traffic light there in before certificate of occupancy can be issued for Phase 3. Coordinate with NCDOT on the square loops Green Level Church at Jenks, Kelly at Jenks – Phase 3 the south side. North side: Green Level Church Road widened to three lanes with bike and pedestrian paths; overpass bridge connects Phase 3 and Phase 4 over US64 – a three lane bridge with bike and pedestrian paths. Interior roads have agreed to round-a-bouts or signals within the development most particular on the Phase 3 side where the overpass comes over to Beaver Creek Commons Drive – if light is warranted they will put one there, if not they will do a round-a-bout.

Additional neighborhood meetings have been held and added Beckett's Crossing at the request of the Planning Board, didn't know the effect on them – the existing buffer between the end of the back yards of those properties that might have an effect on the adjoining residential portion of Phase 3 which is the back portion behind the commercial is at minimum 350 on an average of 400 feet in distance – that's RCA area non disturbed and does not include a 10' buffer behind the residential yard and rear yard itself – a significant area.

Chapel Ridge: Agreed there was an issue with an access point dedication from Chapel Ridge Drive over into the residential area in Phase 3. They do not need this – there's adequate access to residential – back of commercial property on Phase 3. Town's recommendation they dedicate this right-of-way connection to the town – reason if future development of Chapel Ridge it would be the town's discretion to utilize the right-of-way any way they see fit. Also enhanced a buffer butting residential parcels (residential back yard to back yard) 10' Type B buffer with berm; back yards to right-of-way behind the commercial property Phase 3 have a 40' Type A opaque buffer plus the 60 to 75 foot right-of-way determined at site plan plus a 30' Type E before you get into any parking areas that are commercial (130 feet behind there and thinks they have addressed the buffer issues particularly as it pertains to commercial side).

Walden Creek: enhanced buffer directly across from the entrance affecting 8 homes backing to Green Level Church Road with a 40' Type A opaque buffer; back yards of homes and right-of-way area – at site plan – 60 to 75' right-of-way there's a three lane road, a bike and pedestrian way and there's green space with plantings – cross road and you are at the rear side of the residential portion of their development – you have a 40' Type A opaque buffer (prior application Type E) then there's 30 or 40 foot of rear yard before you see the back of townhomes (140 feet before you come close to the townhomes which is the same height as their homes across the street). They have agreed to realign the driveways on GL Church Road so they don't align with that area and are more accessible; working to assure driveways do not become a visibility issue. Light at US64 will be facilitated with NCDOT – Phase 3. Vision Drive will be stripped to three lanes at GL Church Rd.

Benefits to Apex: meets goals and objectives of LUP and adopted 2025 LUP; provides needed road improvements and connections (he didn't include NCDOT improvements – staff can address this as this is not their obligation, but will facilitate a lot of that with them); enhance the surrounding property values – have completed lots of studies – several mixed use properties have shown properties are enhanced by these type developments; expands good and services to town of apex; encourage economic growth; provides a variety of jobs and tax revenue; create lease office space for Apex (on the property on the north side they are required to put three uses and do have an interested user for 10,000 square feet and thinks it's one of the most viable uses in Apex in proximity to I-540 and US64 visibility – getting nice class A/B office buildings); meets the vision of the town's Comprehensive Plan and LUP.

John Linderman, 219 Queens Ferry Road, presented a petition of 450 signatures in support of this proposal.

Vivian Huddle, Apex Chamber of Commerce, Economic Development supports this proposal as it provides a positive economic development impact for Apex (jobs and increased revenue).

Maryanne Laurence, 2408 Rabbit Walk Lane, stated it's the board's duty to the citizens to insure a good quality of life and not deter their quality of life; development for the north and south of US64 should be planned and managed well to preserve the small town character and there being more to the town than the Historic District. Concerns were with the image of town; property values; Green Level Church Road property having been discussed four times, use of the property on such a small piece. She did say she felt it was a well thought out plan with many contacts. She asked foot prints be restricted with request attached. Other concerns were: Vision Drive being 3 lanes and not much space; upscale architecture; not allowing commercial development to take over and limit large scale commercial development – residents live with the impact of the development. She didn't want to stop development but keep the future in mind. She did not want the petition submitted in support to be counted since theirs for opposing was not presented. Mayor Weatherly advised her, that the petition in opposition had been forwarded to the board and was determined invalid.

Mike Bishop, Chapel Ridge, west side had met and agree on some concessions; some concerns were west side, berm height, and monitoring of well water and the impact development would have on their drinking supply. He's not opposed to development but developed in a smart manner and reflect the values of the town and not be a Crossroads – which is a traffic nightmare and use good judgment in PUD. He noted Olive Chapel Road and NC55; and having to use Vision Drive on NC55 due to a signal and not being able to get on US64. He noted the south side Phase 3 property as high density residential and need for more medium to low density residential and reduce the impact to neighboring communities – he's not opposed by develop in a conscientious way.

Bob Bolsch, 1420 Zeno Road, spoke to the conditions of Rezoning 02CU05 DDR for Beaver Creek Commons asking the board have them fulfill the conditions they were obligated to do. He asked not to approve this rezoning until the existing conditions on the previous rezoning had been met.

Judy Ward, 2412 W. Creek Drive, had met with Radcliff; her concern was commercial adjacent to residential; traffic and transition; to make a better transportation improvement plan; have Kelly Road accelerated by the time of occupancy and put pressure on NCDOT to do so. Next transition: maintain and enhance residents; concerns were stores, lights, and noise; if development is mixed use she hopes for an upscale retail and unique design for Phase 4 following specific guidelines for storage, buffers, lights, and upgrade of Green Level Church Road, asking to pay attention to detail to protect the residents. She gave Home Depot as an example wanting to address this project before site plan so it can be made appropriate to protect the residents.

Andrea Clain, Speckled Alder Court, felt Radcliff had done an excellent job; she addressed the 2025 LUP and low, medium and high density. She addressed the process Radcliff had gone though over one and one-half years ago and the issues to get there. She asked the Board to keep the concept of neighborhood mixed use for the north phase off US64 for townhomes and O&I and more north for high end commercial and limiting commercial development; placing restrictions on the northern section and limiting square footage on the retail.

Shawn Groom, 2411 Bristol Speckled Way, addressed new urbanism and smart growth not wanting big box retail; hold to high development standards when commercial is near residential.

Art Clem, Beckett Crossing, noted this development had taken the blunt of Beaver Creek development; structures are huge on the back side of their properties; not as much attention had been paid to them as should be; there were changes made to the elevations; these were concerns and not opposition; glad he doesn't have to drive to Cary; pay attention to large facilities and what's being built; lights, etc at site plan approval. Concerns: flooding and maintaining stormwater runoff and not exasperate problems to Beaver Creek watershed; traffic, buffers at Chapel Ridge – preference single-family homes vs. high density townhomes; DDR has not lived up to their standards; issue Phase I required fencing - Beckett Crossing got taken care of on the fence; architecture: looking at it at site plan NC55 is proponent of that; standards dictate that; work with concerns that are right for the property; there will be lots of issues at site plan; run-off causes residential issues up basin; lights/noise – technology is greater and doesn't have on-going glare; size limitation: TIP – addressed limitations on both sides of US64; smaller uses doesn't generate as much traffic as larger box stores – he addressed the misconception of mixed use: address different sizes at site plan; not issues CO's in Phase 3 until road improvements at Kelly and light (NCDOT warranted) and done so at Green Level Phase 3 vs. Phase 4; move the progress of Kelly ahead of I-540.

Mike Horn had talked with NCDOT regarding Kelly Road overpass and the square loops with Phase 3; can't control NCDOT, but felt he was successful. Green Level Church Road widened to three lanes with overpass drive and Vision Drive with Phase 3; Phase 4 not until the bridge.

Commissioner Meckes and Schulze both addressed the water retention ponds controlling the water and the attractiveness (2 acres) with the north side having three ponds. Commissioner Meckes noted the PD Plan had addressed all these issues and is a part of the record. Commissioner Meckes addressed the existing well condition with current flow problems; erosion control is addressed with run-off obligations, sediment; some well not being deep enough. Commissioner Jones noted the berm to be 8 feet in height. Commissioner Meckes commented on the dedicated right-of-way; not accepting high volumes of traffic; and with initial annexation not being aware of the connection and intent not to utilize it. Commissioner Gossage noted what was built, they would have to live with concern to the conditions DDR and felt this was a valid issue. Radcliff responded DDR was one of the larger developers and had made large investments and he couldn't ask for a better partner; have centers in Holly Springs, and Fuquay as well as Apex; he plans to have his local office here.

Mike Horne addressed directions of approach, access to sites, transportation improvements and noted significant egress and ingress. He oriented to the roadway system including bridges two lane with bike and pedestrian pathways and square loops at Kelly Road. Phase 3 & 4 have extensive access and assuring NCDOT would move forward with square loops on Kelly which are critical to this project. Traffic can get to the site being dispersed over many access points without Kelly all would enter on NC55 and this wouldn't work. Commissioner Meckes felt it fair to say this project has enhanced flow of transportation, with Horne responding this development took care of its traffic and future traffic to come. He continued significant improvements had been made with Phase I and II of Beaver Creek Commons, widening NC55, and relief of the I-540, with NCDOT controlling I-540 (2008). NCDOT has committed to Kelly Road to shift traffic and needed to get on US64. Discussion with John Nance, Division Engineer with NCDOT was square loops has to come in prior to I-540. Manager Radford advised Olive Chapel Road and NC55 would be fully signalized this summer with road improvements from east bound US64 to NC55. Horne noted full signalization left and right turns simultaneously to "CO" for Beaver Creek Phase I & II. He advised the developer has fully dealt with his traffic and off site road improvements and you would have to be fair and equitable in dealing with his traffic improvements.

Tim Donnelly, Director of Public Works was administered an oath and addressed the ground water impact by construction, addressing Triassic soils in Chapel Ridge and there being high and low yields, due to nature and genealogy have marginal wells. He didn't expect this development to change this situation; soils do not let lots of water in but are good natural filters; option for water would be town facilities; not predicting a problem; properly

developed wells naturally filtrate; houses have septic systems and wells are well constructed; he doesn't predict any changes. Commissioner Meckes added the town supports those in need of water. Donnelly continued costs are based on economics and the value to the home and health; if the wells fail, the owner has options.

Manager Radford advised that with his contact with DDR regarding their conditions, they have acted quickly, noting trash had been cleaned up and parking on Zeno Road had subsided and feels good about their response; fence design posts are placed and will start immediately. He did not have the level of concern as Bolsch had expressed. Mayor Weatherly commented that some see roof tops, and fencing and plantings were site plan issues. Radcliff advised Commissioner Meckes in regard to roadway improvements and bond issues, if not provided by the legislature approval, if not passed, all would be out of pocket. Mayor Weatherly added if passed, we adopt options to do so, but nothing is implied.

Action: Commissioner Gossage added the developer has worked hard to satisfy site plan issues, with even the people who were opposed had still complimented the developers work with them and the project and more issues would be discussed at site plan; he felt they should allow him to move forward; making a motion to amend the 2010 LUP and for #04CU01 to be approve for DDR and 1st Carolina with the two conditions added by the petitioner at the Planning Board meeting. Second by Commissioner Meckes. Attorney Fordham advised the need would be to amend the 2025 LUP rather than the 2010 LUP. Commissioner Gossage revised the motion to say 2025 LUP with Commissioner Meckes making the second to the revision.

Commissioner Schulze agreed this was a good quality project, lots of folks want it, but their concern was not wanting a Crossroads since day 1 to happen, and was comfortable with the TIA. Commissioner Jones was comfortable they could satisfy the concerns with the investments. Mayor Weatherly added the process may seemed frustrating, but thinks the end result justifies the process, further 1st Carolina had come up with an end quality project with minimum impact and was comfortable with it, and having been accomplished, and knowledge not perfect, but good as can get. Commissioner Meckes noted this not an easy process taking two years to get through it, not pleasing all, but happy with accomplishments and mixed use asset to the community. Motion carried unanimously.

End of Public hearing #02

David Rowland, Director of Planning

Public Hearing # 3 – Amendment to the UDO "Tech/Flex District"

Public hearing regarding an Ordinance to amend certain sections of the Unified Development Ordinance to create Tech/Flex District; possible motion regarding same.

Rowland recalled Jimmy King had requested the UDO be amended for Tech/Flex so churches could be allowed at Norris Park. Planning Board discussed this matter at their May 10, meeting and unanimously recommends approval. This would blend uses of O&I and Light Industrial. He agrees this would allow others unique and special to Apex; architect and development standards apply for the good of the development and feels it's an appropriate zoning category.

Mayor Weatherly opened the public hearing with John Powell, 102 Dunedin Court, Cary addressing the marketing and change of landscape for over ten years and the need for this UDO amendment. Others have created this middle ground up zone and flexibility for areas such as Norris Park and this type use. He noted site selection for Wake Tech was a great opportunity and exact class for this type use and encouraged looking at creation of opportunities for town. Mayor Weatherly closed the hearing and agreed its better flexibility. Commissioner Schulze was in favor, but not for churches.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to approve the amendment to the UDO for Tech/Flex District. Motion carried.

Dianne Khin, Senior Planner

Public Hearing # 4 – Apex Transportation Plan

Public hearing regarding amendments to Apex Transportation Plan; possible motion to adopt resolution regarding same.

Khin reported the Capital Area Metropolitan Planning Organization (CAMPO) has requested that each municipality provide a list of priorities for the FY 2006-2012 Transportation Improvement Program (TIP) no later than May 21, 2004. CAMPO will then prioritize all submitted projects and submitted to NCDOT for possible inclusion in the 2006-2012 TIP. All requested TIP projects must either be in the current 2025 CAMPO Long Range Transportation Plan or proposed for inclusion into the 2030 Long Range Transportation Plan to be adopted later this year. Staff has already given the originally-approved Apex Transportation Plan to CAMPO for inclusion in the 2030 plan. Additional amendments to the Apex Transportation Plan are necessary prior to the submittal of the TIP project priority list to CAMPO as listed in the staff report. The Planning Board considered the amendments at their May 10, 2004 meeting and unanimously recommended approval. Staff recommends the amendments as presented. Note that bicycle and pedestrian amendments 10-13 were requested by the Parks, Recreation, and Cultural Resources Department as part of the TIP request for NCDOT Enhancement funds.

Staff report: Roads:

1. Kelly Road/Green Level Church Road from US 64 to Green Level West Road: In light of the square loop at Kelly Road and US 64, the current 3-lane section shown on the Transportation Plan needs to be amended to a 4-lane divided section with landscaped median. This would also make the section of Kelly Road north of US 64 consistent with the section south of US 64.
2. Ten-Ten Road from US Ito Cary jurisdiction: Ten-Ten Road heading east from US I (toward Cary) is shown on the Transportation Plan as 5 lanes while Gary shows it as 4-lane divided. In order to be consistent with Gary's section and with Ten-Ten Road heading west from US I (toward Apex), which is shown as 4-lane divided, staff recommends that this section be shown as 4-lane divided as well.
3. Davis Drive from US 64 to Cary jurisdiction: Currently Davis Drive is shown on the Transportation Plan as 5 lanes. Gary is currently widening their section of Davis Drive to 4-lane divided. Staff recommends amending the Transportation Plan to show 4- lane divided on Davis Drive.
4. Sunset Lake Road from NC 55 to Holly Springs jurisdiction: Currently Sunset Lake Road is shown on the Transportation Plan as 5 lanes. Holly Springs shows their section as 4-lane divided. Staff recommends amending the Plan to show 4-lane divided on Sunset Lake Road.
5. Collector Streets: There are several collector streets that have been re-evaluated since the adoption of the Transportation Plan:

- Connection from Chapel Ridge Road to Beaver Creek Commons Drive needs to be relocated. There is an existing stub that could connect Chapel Ridge Road to a residential street within a future development. This would be preferable to cutting through an existing residential property.
- Collector street connection across the cul-de-sac of White Oak Creek Drive and White Oak Creek Drive need to be removed as this road is unpaved and serves an existing subdivision. Wake County removed these collectors during their recent adoption of their collector street plan. Staff recommends removal from the Apex Transportation Plan for consistency.
- Collector street connection from Old Ivey Road, Old Ivey Road, and Secluded Acres Road need to be removed as these roads are unpaved. Wake County removed these collectors during their recent adoption of their collector street plan. Staff recommends removal from the Apex Transportation Plan for consistency.
- In consultation with CAMPO, the collector between Apex Barbecue and Richardson just south of US 64 needs to be relocated further north to provide a frontage street to US 64. Otherwise there are many parcels that will have limited or no access to public streets.

• In consultation with CAMPO, the collector street from Holland Road to Evans Road needs to be moved south to avoid cutting through the approved Crocketts Ridge Phase 4 subdivision and to provide a continuous route from Kelly Road to NC 751.

Grade Separation/Interchange:
6. Apex Barbecue Road and US 64 Interchange: Now that Kelly Road will have square loops, the proposed interchange at Apex Barbecue Road is too close to Kelly Road to be feasible. Staff recommends that it be shown as a grade separation (bridge) instead.
7. Richardson Road connector to Wimberley Road:
Richardson Road at US 64 will now be the next interchange west of Kelly Road. Currently no road alignment is proposed on the north side of US 64. In consultation with CAMPO, staff recommends connecting Richardson with Wimberley Road.

Bicycle and Pedestrian:
8. Apex Barbecue Road Wide outside Lane: The Transportation Plan does not show a wide outside lane for bicycles on Apex Barbecue Road. Given the location of the Town's future Nature Park and the state bike route along Olive Chapel Road, it makes sense to provide bicycle access to the park and Olive Chapel Road (via Kelly Road) along Apex Barbecue Road.
9. US 64/Laura Duncan Road Pedestrian Underpass: The Transportation Plan shows a potential square loop at US 64 and Laura Duncan Road which would provide pedestrian and vehicular access across the bridge. However, since the square loop is a long term project, it makes sense to include the pedestrian underpass on the plan as the short term solution.
10. NC 55/South Salem Street Intersection Improvements: The intersection improvements are necessary to connect downtown to the Beaver Creek Greenway. A pedestrian signal needs to be added to the Transportation Plan as it is currently not shown.
11. Harwood Street Sidewalk Connection: The sidewalk is necessary to connect downtown to the Beaver Creek Greenway. The sidewalk needs to be added to the Transportation Plan as it is currently not shown.
12. NC 55 Pedestrian Underpass: The pedestrian underpass is necessary to connect downtown to the Beaver Creek Greenway. The pedestrian underpass needs to be added to the Transportation Plan as it is currently not shown.
13. Kelly Road Pedestrian Overpass: The pedestrian overpass is necessary to connect the Beaver Creek Greenway on the east and west sides of Kelly Road. Without the overpass, greenway users will have to utilize sidewalks up the east side of Kelly Road to Olive Chapel Road, cross at the signal, and backtrack down the west side of Kelly Road to get back on the greenway. The pedestrian overpass needs to be added to the Transportation Plan as it is currently not shown.

Khin advised the I-540 to US1 dates 2007 to 2009, with the south side not being funded but in the joint request with Holly Springs on the CAMPO List (an important link to see completely designed and be funded).

Mayor Weatherly opened the public hearing at 9:50 p.m. and with no one addressing this item, closed the hearing.

Action: Motion by Commissioner Gossage and second by Commissioner Schulze to adopt the resolution to amend the Apex Transportation Plan. Motion carried.

Dianne Khin, Senior Planner
Public Hearing # 5 – Apex Transportation Improvement Program
Public hearing regarding Town of Apex Transportation Improvement Program Priorities Request FY2006-2012 for submission to Capital Area Metropolitan Planning Organization; possible motion to adopt resolution in support of the request.

Khin Review:
The Capital Area Metropolitan Planning Organization (CAMPO) has requested that each municipality provide a list of priorities for the FY 2006-2012 Transportation Improvement Program (TIP) no later than May 21, 2004. CAMPO will then prioritize all submitted projects and submit it to NCDOT for possible inclusion in the 2006-2012 TIP.
The priorities were discussed at the Board of Commissioners' April 6 and April 20, 2004 meetings. The Board directed staff at that time to complete the request forms for the attached projects. Staff recommends approval of the Resolution to submit to Capital Area Metropolitan Planning Organization Town of Apex Transportation Improvement Program Priorities Request for FY 2006-2012 which are attached and incorporated as a part of the minutes.

Mayor Weatherly opened the public hearing and 9:58 p.m. and with no one speaking, closed the hearing.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to adopt the resolution regarding the TIP requests. Motion carried.

End of Public Hearings

OLD BUSINESS

There were no Old Business Items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments should be limited to 3 minutes to allow others opportunity to speak.

Square loops at Kelly Road were defined as a glorified right-in and right-out for a gentleman in the audience.

NEW BUSINESS

Bruce Radford, Town Manager
New Business # 1 - Annual Budget FY 2004/05
Town Manager Radford presented highlights of the Town's proposed Annual Budget FY2004/05 which is attached. There is no tax increase (40 ¢ per $100 valuation). Tax rate would be applied to an estimated tax base of $2,462,622,823, and indicates a 4.4% one year growth rate with $104,000,000 increase in tax base from the current fiscal year. Nine full-time employee positions and one part-time position have been recommended by the Personnel Committee. A 2% cost-of-living increase is being recommended for all employees. Health insurance rates are up 9%. The budget message is available with the proposed budget and can be viewed in the Clerk's office. Public hearing will be held June 1, 2004 and adoption of the Budget Ordinance.

End of New Business

WORK SESSION AGENDA

There were no work session items to be discussed.

CLOSED SESSION

Mayor Weatherly asked for a motion to move into Closed Session to discuss the following: 1) Property Acquisition for future electric substation and 2) Authorize Condemnation Proceedings associated with Kelly Road Water Line Project.

Action: Motion by Commissioner Gossage and second by Commissioner Jones to move into closed session to discuss the items as noted. Motion carried. The minutes of closed session are recorded separately. Motion by Commissioner Meckes and second by Commissioner Gossage to move back into open session. Motion carried.

Being back in open session the following action was taken:

Action: Motion by Commissioner Jones and second by Commissioner Gossage to adopt a Resolution Authorizing Entry, Notice of Entry and Condemnation of a Water Line Easement along Kelly Road. Motion carried.

End of Open Session

ADJOURNMENT

There was no further business to come before the Board.

Action: Motion by Commissioner Schulze and second by Commissioner Meckes to adjourn at 11:06 p.m. Motion carried.

The above minutes were approved on the 1st day of June, 2004.

Georgia A Evangelista
Town Clerk

Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, June 1, 2004
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the meeting to order, rendered the invocation, led the Pledge of Allegiance and extended a welcome to those in attendance. Meeting was held at 7:00 p.m., Apex Town Hall, 73 Hunter Street. Commissioners Gossage, Jones and Schulze were present. Commissioner Meckes was absent. Commissioner Jensen arrived at 7:35 p.m. Attorney Hank Fordham was present.

RECOGNITIONS

Mayor Weatherly recognized Planning employee Lissa A. Parrish, recipient of Zoning Official Certification, NC Association of Zoning Officials.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set with an amendment to add # 8 N.C. Statewide Emergency Management Mutual Aid and Assistance Agreement and asked for a call for action.

Action: Motion by Commissioner Schulze and second by Commissioner Gossage to approve the consent agenda with amendment. Motion carried.

1. Minutes of May 18, 2004 Board of Commissioners meeting.
2. Minutes of May 18, 2004 Board of Commissioners closed session (separate cover).
3. Lynch Street rehab project – contract award.
4. Award contract for construction of Kelly Road water transmission main/meter vault and associated Budget Ordinance Amendment # 16 with Capital Project Ordinance Amendment.
5. Close Apex Chamber of Commerce Parking lot in conjunction with Downtown Merchants sidewalk sale set for June 19, 2004.
6. Close Salem Street downtown for radio car race to benefit Apex Fire Department and Apex Police Department.
7. Resolution accepting and authorizing purchase of easements and appurtenant property interests (Kelly Road Waterline).
8. N. C. Statewide Emergency Management Mutual Aid and Assistance Agreement and authorization for Town Manager to execute document and asked for a call for action.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set with an amendment to add closed session to receive legal advice from the Attorney and to discuss real property acquisitions.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to set the regular meeting agenda with an amendment to add closed session. Motion carried.

PUBLIC HEARINGS

Public hearing # 1 – N. Salem Street Corridor Plan
Public hearing and possible motion regarding the N. Salem Street Corridor Plan.

Rosetta Radtke, Planner, stated the Planning Board had asked staff to present the N. Salem Street Corridor Plan to the Board of Commissioners to assure the stated goal was still what was desired and if there were revisions to return them as soon as possible. The Board of Commissioners voted unanimously to keep the goal as stated on April 6, 2004. With staff revisions, the Plan was returned to the Planning Board on May 10. Planning Board voted to recommend adoption as revised by a three to two vote. The chart outlines four areas of possible revision to the Plan which, in summary, changes the authority of the Plan from mandatory standards to recommended guidelines.

N. Salem Street Corridor Plan: Issues and possible revisions

1. Plan's authority and mandatory nature:
   Change all "shall" and "must" phrases to "should";
   Change all "required" to "recommended"; and
   Change all Development "Standards" and "Regulations" to "Guidelines" so that Plan will not provide mandatory standards but recommended guidelines.
   Add under "Sensitive Development Areas" the qualification that actions associated with photos are recommendations.
2. Street width and alignment (#1):
   Recommend maintaining two lane section except as required by NCDOT.
3. Thoroughfare buffers:
   Change 50' to 30'.
4. References to "Planning Director":
   Delete all such references, which occur in #2 "Side and Rear Buffers," #5 "Sidewalks," and #7 "Building Orientation."

Mayor Weatherly opened the public hearing at 7:15 p.m. No one spoke; the hearing was closed.

Mayor Weatherly commented the plan now having more recommended guidelines. Radtke commented the Planning Board had desired more flexibility and not so much restriction – while preserving the character and having development occurring beyond it. Radtke stated opposition votes of the Planning Board related to transportation with one member seeing it more appropriate for three lanes due to increased development and traffic, and two having issues with the RCA upfront as it takes too much of the prime development land, and being too restrictive for development.

Action: Motion by Commissioner Jones and second by Commissioner Schulze to adopt the North Salem Street Corridor Plan. Motion carried

Public Hearing # 2 – Rezoning Case #03CU26

Public hearing and possible motion regarding Rezoning Case #03CU26 Windsor at Abbington, Community Properties, petitioner, seeking to rezone from Wake County R-30 (Residential) to Planned Unit Development District, 47.81 acres located west of Abbington Subdivision and Kelly Road and north of Olive Chapel Road.

Town Clerk administered oaths to those speaking during the hearing.

Staff Planner June Cowles, Planner, oriented the Board to the location of property lying west of Abbington Subdivision with one single family home which will remain on the property, a pond, creek, open fields, gas line easement along the east and a portion of the south property line, and clusters of trees.

Proposed Windsor is Planned Unit Development Plan, and a continuation of the Abbington Subdivision extended through Chanticlair Drive, for single-family residential, public greenway easement, and resource conservation area with minimum lot size of 10,000 square feet and consistent with the 2025 Land Use Plan. RCA is 16.75 acres that includes the existing 1.36 acre pond and public greenway easement within the stream buffer or 35.2% of the project site and consistent with the UDO and maintained by the Homeowners Association. No additional recreation requirements are required as developer assisted purchase for Kelly Road Park property. Average vehicle trips for 84 single family homes are 843 which did not require a traffic impact report because the proposed use does not generate over 1,000 trips per day. Street located in an east and west direction will be a collector street. Portion of Apex Barbeque Road extension will be a minor thoroughfare as identified in the Apex Transportation Plan with a 65 foot right of way, 30 foot roadway (2 lanes), 45 speed limit, sidewalks on both sides and 30 foot wide buffer. Applicant is requesting a 5 foot reduction for a total of 25 foot wide buffer along the minor thoroughfare in accordance with UDO Section 2.3.4(1)(d) as stated in the staff report, with the report being incorporated as a part of the minutes. Plan includes the 25 foot wide Type E thoroughfare buffer adjacent to Apex Barbeque Road extension with a wooden fence similar to existing wooden fence in Abbington adjacent to Kelly Road, 2 lanes, 60 foot right of way, and sidewalk on both sides. Town has 50 foot right of way north of Olive Chapel Road between Homestead Park and Woodridge due to lack of land between these tow and an existing gas line easement this portion of Apex Barbeque Road extension will not include a 30 foot wide buffer on each side. Plan includes five street stubs; Apex Transportation Plan includes Apex Barbeque Road extension from Olive Chapel Road north to Jenks Road with grade separation at US64; future three entry/exit points for posed Plan, once completed Apex Barbeque Road extension serves the area from Jenks Road and Olive Chapel Road, and the collector street with the east and west direction connects with Richardson Road extension. Future road extensions are constructed once the adjoining properties are developed. Planning Board at their May 10, 2004 meeting recommended approval of Windsor at Abbington Planned Unit Development rezone.

Concern by Commissioner Schulze: piecemeal of TIA with the area growing and not requiring a report due to not generating 1000 trips. Director of Planning David Rowland responded this could be looked at in the UDO regarding accumulative connections generating over 1000 when development ties into another subdivision. It was the consensus of the Board to review the UDO in regard to traffic impact and accumulative traffic impact as development occurs to existing subdivisions.

Mayor Weatherly opened the public hearing at 7:25 p.m.

Speaking in favor:
Chuck Smith, representing the property owners/developers had addressed staff concerns with the PUD meeting the ordinance and consistent with the Land Use Plan. Jim Camphill Engineer was available for questions.

Speaking in opposition:
Rene Hacker, resident on a already busy corner addressed additional traffic and the time frame before Apex Barbecue with be extended even if the trips generated were not enough for a study.

Mayor Weatherly closed the public hearing and turned to the board for questions.

Commissioner Gossage asked the time frame for Apex Barbeque Road extension, with the Manager responding to the connection of it to US64, Richardson/Jenks Road and Olive Chapel to US64, with future development building it out. Smith responded in about two years. Rowland explained the modified connection to US64 with interchange. Future roadway could be funded by the town, but needs development to piece it together. Commissioner Schulze addressed NCDOT access with Rowland advising not at-grade, but bridge or interchanges – not a light situation.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to approve rezoning case #03CU26 Windsor at Abbington as recommended. Motion carried unanimously.

End of Public hearing # 2

Public Hearing # 2 – Rezoning Case #03CU13
Possible motion to accept petitioners request for withdrawal of application regarding Rezoning Case #03CU13, S&W Investments, petitioner, seeking to amend the 2010 Land Use Plan and rezone from Medium Density Residential to Planned Unit Development Conditional Use District classification as well as a proposal for a master subdivision and site plan for Tunstall Commons containing 1.59 acres located at the block of Tunstall, Culvert and Center Streets.

David Rowland, Director of Planning advised the Board that the petitioner has requested withdrawal of petition for Case #03CU13. Board of Commissioners should vote to accept petitioners request for withdrawal of application in accordance with Sec. 2.2.12(c) of the UDO with no public hearing being required.

Action: Motion by Commissioner Gossage and second by Commissioner Jensen to accept the withdrawal of the petition as requested. Motion carried unanimously.

Bruce Radford, Town Manager
Public Hearing # 2 - FY2004-05 Annual Budget
Public hearing and possible motion to approve the FY2004-05 Annual Budget and adopt the Budget Ordinance.

Mayor Weatherly opened the public hearing at 7:35 p.m. No one spoke at the hearing. The hearing was closed. Mayor Weatherly commented on the town's tax rate being maintained with other towns having significant increases and being at higher rates than Apex; that it speaks well that we meet budget guidelines and hold increases in spending and still have increases in town services. Commissioner Jones commented that staff should be commended for the low tax rate, as they continue to work with limited resources. Mayor Weatherly noted Apex employee per capital was the lowest at 7.1 per 1000 citizens; better than other towns and rated # 1. Budget Ordinance will be adopted at the June 15, 2004 meeting of the Board of Commissioners.

End of Public Hearings

OLD BUSINESS

There were no Old Business Items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments should be limited to 3 minutes to allow others opportunity to speak.

Dee Connors Baucom PTA President asked the board to consider modifying the town's sign ordinance to allow changeable signage to be placed on school grounds for education and information purposes to enhance the community's awareness of events and activities taking place at the schools throughout the year and ensure efficient communication. Principal of Olive Chapel School also supports this request. Mayor Weatherly spoke to the degrees of signage and their prohibition and if the town could allow some and disallow others. Attorney Fordham advised he would need to give it some thought and with staff looking further at the ordinance and could return to the board. Connors will check back with staff later.

End of public forum

NEW BUSINESS

New Business # 1 – Zeno Road Paving

Kent Jackson, Construction Management Director led discussion and gave review and updated information related to Zeno Road paving project. Board had approved a budget ordinance to pave Zeno Road between the Peakway and Beaver Creek Commons. Estimated cost $210,000, NCDOT will reimburse Town $56,000. Manager Radford advised Aspen Development Company had introduced a conceptual plan that involves the redevelopment of the majority of the properties along the planned paving route and relocates a majority of the remaining Zeno Road. Staff sought direction on how to proceed with the planned paving project; wanting to keep traffic concerns to a minimum and proposing not to pave to save money; better for town not to spend the money at this time. Phillip Myers resident on Zeno Road was present to hear the discussion. The property in question extends outward from Beaver Creek Commons back to Olive Chapel Road. Estimated time frame for construction is within two years being one major PUD – one phase and to expedite the road as soon as possible. Plans were to have road paved at the time Beaver Creek opens in the fall; potential residents will still be there. Time for paving would be about three weeks with no curb and gutter; money has not been committed. Money is included in the budget and town has given word to residents that it would be inclusive in this year's budget to pave the road. Commissioner Schulze would like to hear from the residents on Zeno Road. Mayor Weatherly added if discussion were whether in paving it was done by the town paying or the developer paying. Commissioner Jensen added if the road was to take a different route, cost would be on the town to dispose of it, asking to put off decision to hear from the residents. Mayor Weatherly suggested July 20 meeting to allow residents to be notified. Jackson suggested Brandon Jones with NCDOT be invited to attend to discuss a Plan B if Apex doesn't move forward with the paving – maintenance, etc.

End of New Business

WORK SESSION AGENDA

There were no work session items to be discussed.

CLOSED SESSION

Mayor Weatherly asked for a motion to move into closed session to receive legal advice from the Town Attorney and to discuss real property acquisitions.

Action: Motion by Commissioner Schulze and second by Commissioner Jones to move into closed session at 8:05 p.m. Motion carried. Minutes of closed session are recorded separately. Motion by Commissioner Jensen and second by Commissioner Gossage to go out of closed session and back into regular session at 8:28 p.m. Motion carried.

ADJOURNMENT

With no further business to come before the board there was a motion by Commissioner Gossage and second by Commissioner Jones to adjourn at 8:29 p.m. Motion carried.

The above minutes were approved on the 15th day of June 2004.

Georgia A Evangelista
Town Clerk

Kirk A. Weatherly
Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, June 15, 2004
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order on Tuesday, June 15, 2004 at 7:00 p.m. in the Apex Town Hall. Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present.

Invocation rendered by Commissioner Gossage. Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

RESOLUTION

Mayor Weatherly offered the attached Resolution for adoption and "Honoring the Life, Memory and Service of President Ronald Wilson Reagan".

Action: Motion by Commissioner Jones and second by Commissioner Gossage to adopt the resolution. Motion carried. (Copies sent to the Reagan Library in California).

RECOGNITION

Mayor Weatherly recognized Julia Rudy recipient of Certification, GIS Professional with the Town of Apex Planning Department.

CONSENT AGENDA

Mayor Weatherly presented the *consent agenda* to be set and asked for a call for action. Mayor Weatherly asked consent item # 14 be considered under new business, asking Manager Radford to give additional information. Commissioner Jensen asked staff to give the results of the Planning Board concerning consent items # 8, #9, and #10. Dianne Khin, Senior Planner stated the Planning Board had given unanimous approval of those items.

Action: Motion by Commissioner Gossage and second by Commissioner Meckes to move item # 14 to new business item # 6. Motion carried. Motion by Commissioner Meckes and second by Commissioner Jensen to approve the consent agenda as modified. Motion carried.

Consent Agenda continued

1. Minutes of June 1, 2004 Board of Commissioners meeting.
2. Minutes of June 1, 2004 Board of Commissioners closed session (separate cover).
3. Resolution #04-0615-11 Authorizing Wake County Revenue Director to collect taxes for Town of Apex.
4. Rezoning #03CU22 - Findings of Fact, Conclusions of Law and Ordinance – NC55 and Haddon Hall Drive intersection.
5. Rezoning #03CU23 – Findings of Fact, Conclusions of Law and Ordinance – northeast corner Davis Drive and Old Jenks Road.
6. Rezoning and Conditional Use Permit #04CU01 – Findings of Fact, Conclusions of Law and Ordinance – Developers Diversified Realty & 1 st Carolina Apex III, petitioners, - north of US64 between Green Level Church Road and I-540 and south of US64 between Beaver Creek Commons Shopping Center and I-540.
7. Rezoning #04RZ02 – Ordinance – Harvey Montague, petitioner – 5504 Caterpillar Lane.
8. Site plan – Miramonte Recreation Center, MDC Homes, petitioner.
9. Site plan – Chili's Restaurant at Beaver Creek Commons.
10. Master subdivision plan - Peakway Village, Jerry Turner & Associates, petitioner.
11. Contract Award - Olive Chapel Road/NC55 Intersection Rehabilitation Project.
12. Resolution accepting the conveyance to it of fee simple and easement and appurtenant property interests (Lynch Street project).
13. Resolution accepting and authorizing the purchase of easements and appurtenant property interests (Kelly Road water line project).

14. Cooperation Agreement between Town of Apex and Town of Cary regarding project known as Cooperation for Rapid Recovery "CARR" (new business).
15. Wake County Tax Report.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as printed. Manager Radford asked to add a new business item # 7 Discussion of newly announced ISO rating by the North Carolina Department of Insurance and in regard to new business item # 8 the wiring project for downtown. Mayor Weatherly stated this is a part of efforts by Commissioner Gossage. Commissioner Gossage will give a report.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to add items # 7 and #8 to new business. Motion carried.

Manager Radford asked the addition of a declaration of surplus property, new business item #9.
Action: Motion by Commissioner Jones and second by Commissioner by Commissioner Meckes to add item # 9. Motion carried.

The regular meeting agenda was set as amended.

PUBLIC HEARINGS

Dianne Khin, Senior Planner

Public Hearing #1 – Rezoning # 03CU21

Public hearing and possible motion regarding Rezoning Case #03CU21 DKI Construction, Inc, petitioner, seeking to rezone 5.90 acres located on Salem Church Road and North Salem Street between Salem Church Road and Greenlea from Medium Density Residential and Residential Agricultural to Medium Density Residential Conditional Use and Office and Institutional Conditional Use.

Attorney Fordham advised the Board a protest petition was submitted but GS 160-385 states the petition was insufficient because it wasn't signed by enough people to constitute 20% of the land area necessary, therefore the petition was not valid. The Board would proceed under normal procedure. The petition is attached.

Those speaking during the hearing were administered an oath by NC Notary Bonnie Bailey Planning Department.

Senior Planner Dianne Khin reported to the location of the property and to the adjacent zoning and land uses as outlined in the staff report which is attached and incorporated as a part of the minutes. Current zoning: medium density residential and residential agricultural. Requested zoning: medium density residential conditional use and office and institutional conditional use and on the 2025 Land Use Plan map. Conditions proposed by the applicant are listed on page 2 of the staff report. Standards for approval are listed on pages 2 and 3 of the staff report. Planning Board gives unanimous approval to this rezoning. Staff recommends approval as well.

Mayor Weatherly opened the public hearing:

David Smith, petitioner, had no further comments but was open for comments.

Commissioner Jensen questioned the proposed project under medium density – Smith anticipates duplex or single-family residential. Commissioner Schulze asked what an accessory apartment was; Smith responded he has no intention of having one, with Khin adding it's like a "granny flat" where people have an apartment over the garage which is allowed in medium density. Commissioner Jensen questioned modular home, with Smith responding most likely it would be stick built. Commissioner Jensen questioned duplex or condominiums, with Smith responding it would be rental.

No one else spoke in favor.

Speaking in opposition and being sworn in by the notary:

Ed Hester has adjoining property from Salem Church Road behind the Williams property to the Abbots property on the front. He doesn't object, having moved here 23 years ago, finding his home, and has horses and feels he understands Apex small town atmosphere, loving his oaks and ponds and pasture – noting Apex changing, and not being the same packing homes and business, but is the way the world is going. He wants to protect his own quality of life and to allow him to continue to live in the style he loves; he wants to keep his horses on the fenced property, and has discovered in raising horses and working with them, there is likely-hood of an accident with horses it will happen and has concerns with the new facility there is possibility of children at the new school, young girls being attracted to horses, may try to reach over the fence and get bitten or climb over and get hurt and doesn't want this and anyone feeding horses over the fence that will create colic or veterinarian expenses for him or cause death of his animals – his objection simply to provide protection for children and families on the land and his horses in pasture, requesting a fence be built where children could not climb over and fingers couldn't reach through.

He thought he had enough land to represent 20%. To him it's a valid issue for mutual protection. He envisions a wooden fence six foot tall along the length of the pasture – with the same issue on the upper side of his property but a barrier of closely planted pines and shrubs provide a barrier there and he has had no one coming to trick or treat in the 23 years since the property was developed above him – a barrier works, so no one will come through or climb over he'd be in good shape.

Mayor Weatherly closed the public hearing and referred the matter to the Board.

Commissioner Jensen asked the Planning Board recommendation, which was unanimous approval. He has concern with duplex on two major streets on property 1.5 acres and one less than an acre would lend to "sloppy stuff"; he doesn't know we can control this – how it will be buffered along the road to be more gentle. Khin responded duplexes are allowed by right the same as single-family homes and would not come through a site plan – they would only need a building permit through building inspections and would not come back for review and doesn't have a required buffer, but may provide one, but not reviewed by us. Commissioner Jensen asked at site plan would we be able to require a fence along the boarder for protection – Khin responded for O&I conditional use property yes that could be condition approval during site plan. This would take into account the buffer – 20 foot type A buffer required between O&I conditional use and the RA land. Commissioner Jensen added and could be a part of the buffer for type A buffer, with Khin responding correct.

Commissioner Meckes asked if determination had been made a school is going there, with Hester mentioning this, but realizes this is an option. Khin responded it is an option but doesn't know if the applicant wants to speak to his intent. Smith responded his intent for the project is to build a ballet school for his wife on the O&I property and the primary concern as it has turned out, there is additional land that was necessary to make it happen.

Commissioner Meckes agreed horses are big stupid animals and at site plan they need to address this. He asked on the residential property is his pasture back from it and it's only the O&I (pond in front) asking if the border of the residential property is also against the pasture; Khin responded by noting his ownership of the properties with Smith stating the location with the home in the far back with the front being pasture. The Sutton property was noted. Commissioner Jensen felt they were in good shape. Commissioner Schulze asked if any portion of this property was in the Salem Street corridor plan, with Khin responding that it was not a part of either plan; the North Salem Street plan ends at US64 and the South Salem Street plan is basically downtown to NC55.

Mayor Weatherly stated the floor was open for a motion.

Action: Motion by Commissioner Jensen to approve the rezoning as presented, with a second by Commissioner Meckes. Motion carried unanimously.

End of public hearing # 1

Dianne Khin, Senior Planner

Public Hearing # 2 – Amendment to Town of Apex Code of Ordinances

Public hearing and possible motion to amend Section 22-77 (5) (f) (4) of the Town of Apex Code of Ordinances "Side porches on detached townhomes".

Dianne Khin, Senior Planner reports the proposed amendment is for the R4 Residential zone subsection Sec. 22-7 (5) (f) (4) proposed to amend to allow side porches on detached townhomes. The impetus for this amendment is proposed conversion of much of the previously approved Chapel Glen Apartments to detached townhomes. New project Creekside Valley, will utilize both front and side porches for added variety in the housing mix. (f) (4) adds the phrase ... or along the front section of the side elevation. Staff recommends approval of the amendment. Planning Board recommends unanimously for approval of the amendment.

Mayor Weatherly opened the public hearing, and hearing none, Mayor Weatherly closed the public hearing and called for a motion.

Action: Motion by Commissioner Meckes and second by Commissioner Schulze to approve the amendment to Section 22-77 (5) (f) (4). Attorney Fordham stated there is no effective date stated in the ordinance. Commissioner Meckes responded immediately, with the Mayor asking the motion reflect the effective date is upon enactment and the second was consistent with this. Motion carried unanimously.

End of public hearing # 2

June Cowles, Planner

Public Hearing # 3– Conditional Use Rezoning and Land Use Amendment # 04CU04

Public hearing and possible motion regarding Conditional Use Rezoning # 04CU04 and 2025 Land Use Amendment, Jones & Cnossen Engineering, petitioner, for property located on Investment Boulevard, seeking a conditional use rezoning from Residential Agricultural to Light Industrial Conditional Use and in the northern portion of the site Office and Institutional Conditional Use; and proposed 2025 Land Use Amendment in the northern portion of the site from Medium and High Density Residential to Office and Institutional.

Those speaking during the hearing were administered an oath by Notary Bonnie Bailey Planning Department.

June Cowles, Planner oriented to the site with request to rezone from Light Industrial Conditional Use and the northern portion Office and Institutional Conditional Use. Staff report is attached and incorporated as a part of the minutes. Requested land uses include all uses in light industrial and office and institutional except for the list which is attachment 2 in the staff report. The adjacent zoning and land uses are listed on page 1 of the staff report. 2025 Land Use Plan: Industrial and Office and Institutional and the northern portion - medium and high density residential. Requested 2025 Land Use Plan: the northern portion Office and Institutional. Applicant states proposed O&I in the northern portion provides transition from the medium to high density at the west. Two additional lots were noted as zoned O&I. Planning Board recommends approval.

Mayor Weatherly opened the public hearing.

Public hearing # 3 continued

Sean Dolle, Jones & Cnossen Engineering, is the petitioner's representative for the project and rezoning. He was happy to address any concerns or answer questions; there being none, the Mayor called others speaking in favor.

Tommy Hinton was administered an oath by Notary Bonnie Bailey, Planning. He is an owner of property, speaking in favor of the rezoning, and would be back asking rezoning of his property.

No one else spoke in favor or in opposition to the proposed rezoning, with Mayor Weatherly closing the public hearing referring the matter to the Board.

Commissioner Jensen clarified the Planning Board approved this unanimously which was correct.
Mayor Weatherly opened the floor for a motion.

Action: Motion by Commissioner Schulze and second by Commissioner Jensen to approve the rezoning. Motion carried unanimously.

End of public hearing # 3

David Rowland, Director of Planning
Public Hearing #4 – Rezoning # 04RZ08
Public hearing and possible motion regarding Rezoning # 04RZ08 Peakway Development, petitioner, seeking to rezone from Light Industrial to Tech/Flex district, 32.5 acres located at 3452 and 3453 Apex Peakway.

Director of Planning oriented to the site stating this is the existing Norris Park with some phases having been built and plans are to expand. Staff report is attached and incorporated as a part of the minutes. Adjacent Zoning and Land uses are listed on page 1 of the staff report. Current zoning is Light Industrial with requested zoning Tech/Flex. The ordinance has been amended to allow this, with the first applicant being Mr. Jim King. Planning Board recommended approval unanimously, with staff approving as well.

Mayor Weatherly opened the public hearing asking those wishing to speak in favor to come forward:

Jimmy King spoke in favor, having been through the process of the UDO and meets all to proceed. Staff and Planning Board were unanimous and asks for the Board's approval.

John Powell, 102 Dunedin Court, Cary, spoke in favor of the petition commending staff for working with the applicant and having looked at the big picture that this zone would create potential for jobs, new corporations in town that this would allow. Their firm and other commercial realtors have office, industrial, educational, professional and medical types of applicants that would fit in this type zone and other properties coming in the future; looking beyond this is an excellent opportunity for Apex to encourage quality development within a wonderful corporate limits.

With no one else speaking in favor or in opposition, the hearing was closed. Mayor Weatherly referred the matter to the board for a motion.

Action: Motion by Commissioner Jensen and second by Commissioner Gossage to approve the rezoning from light industrial to Tech/Flex. Motion carried unanimously.

End of Public Hearings

OLD BUSINESS

There were no Old Business Items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments should be limited to 3 minutes to allow others opportunity to speak.

No one spoke during public forum.

NEW BUSINESS

June Cowles, Planner

New Business # 1 – Bradley's Carpet and Flooring Site Plan

Possible motion regarding site plan for Bradley's Carpet and Flooring, Brad and Christina Zadell, petitioner, seeking site plan approval for two buildings for a total of 19,700 square feet, located at North Salem Street, US 64.

June Cowles, Planner oriented to the site adjacent to the storage facility which is 3.24 acres. This item is considered under new business because of the zoning and the 2025 Land Use Plan are inconsistent. Staff report is attached and incorporated as a part of the minutes. Current zoning is light industrial with the 2025 LUP classification is mixed use for traditional neighborhood district, planned unit development and mixed office and major employment center. Light Industrial zone was in place prior to the 2025 Land Use Plan mixed use classification and prior to the 2010 Land Use Plan.

The proposed project was granted a variance that includes reduction of RCA with the condition: site has no water or sewer lines there and will have well and septic tank. Review of site fields, woods, and condition: once connected to sewer would have to comply with RCA requirement at that time. Drain field will remain the same and wasn't considered under RCA as it was considered as a utility and being used as a drain field for septic tank. Second variance: 12 foot wide encroachment with drive way in the 100' wide highway buffer. Existing right-in and right-out drive on US64 does include drive isle to the self storage facility. Plan includes coordination with planned Transportation Plan collector street to align with right-in and right-out on US64.

Proposed site includes two buildings 9,850 square feet each, one story with small second story area for office, brick veneer facade on north, east and south elevations. West elevation facing self storage facility will have brick veneer facade on one third of northern portion and a tan metal siding with roll up doors on the remaining portion. Condition added to include the arched area on the northern facade and southern facade area on the second building be extended three and half feet in order to not appear as a false facade.

Staff recommends approval with conditions based on transportation plan and as stated earlier the zoning was in place prior to the 2025 Land Use Plan classification. Planning Board recommends approval unanimously.

Cowles expanded on the facade windows with awnings and location of doors for delivery and front side of elevation. Traffic: Applicant Brad Zadell stated big truck may come in once a week and they would occupy about one half of the building with the other four spaces being rental units and could have traffic - one way around back with paved street in front until town's collector street is complete; front prettier, hoping development occurs in the back and they have a nice corner lot – have minimal use and traffic; smaller uses no restaurants minimal – have good frontage pulling in with turn lane and pulling out good visibility.

Commissioner Jensen looked at buffer on west side – and considers storage facility as one of the ugliest places in Apex. He asked the color schemes expecting to see this very well. Back side colors were explained, signs and windows and buffer.

Mayor Weatherly opened to floor for a motion.

Action: Motion by Commissioner Jones and second by Commissioner Gossage for approval. Motion carried unanimously.

End of new business # 1

Bruce Radford, Town Manager

New Business # 2 - Town of Apex FY2004-05 Annual Budget

Manager Radford presented the FY 2004-05 Annual Budget Ordinance for adoption, with necessary public hearing and workshops held. Process has been through the personnel committee for positions proposed, no tax increase, minor user fee increases primarily the adjusted $5 month water charge with the only other significant increase is an automatic meter read program (radio read meter – time saver way to read meters, electric and water; cost recovery $3/$4 margin above cost of meter for installation). Comments on the budget were favorable. Commissioner Jensen asked if reduction is reflected in bills or over all of Apex. Manager Radford responded efficiencies that are increased: 1) if we continue to grow with electric/water meters we have would require additional meter readers and by doing this with 100% of our meters, existing readers can accomplish this reading and not hire additional readers. Cost would be factored in future budgets hoping every meter in town will be a radio read meter – town bears cost of retrofit.

Action: Motion by Commissioner Schulze and second by Commissioner Gossage to approve the FY 2004-05 Budget by adoption of the budget ordinance. Commissioner Meckes review of development submittal fees etc. asked staff provide a report on where we stand with surrounding communities. Mayor Weatherly noted a vote of confidence was displayed in that no one appeared at the public hearing on the budget to weigh in on anything the town was doing showing we are on the right tract in every way. Motion carried unanimously.

End of new business # 2

Bruce Radford, Town Manager

New Business # 3 – Resolution for Proposed Bond Referendum

Manager Radford presented that the board had at the town's annual retreat authorized staff to pursue a bond referendum for the fall. Bond counsel has proposed a resolution for approval – certain findings concerning the need for bond financing, appoint bond counsel and authorizes filing of an application to Local Government Commission for approval of the referendum.

Mayor Weatherly opened the floor for a motion.
Action: Motion by Commissioner Jones and second by Commissioner Gossage to adopt the Resolution for proposed bond referendum. Motion carried unanimously.

End of new business item # 3

Bruce Radford, Town Manager
New Business # 4 - Cancellation of Board of Commissioners Meeting
Manager Radford advised it is traditional that after the completion of the budget various staff members take vacation time as well as members of the Board and he asked the Board of Commissioners July 6, 2004 meeting be cancelled.

Action: Motion by Commissioner Jensen and second by Commissioner Meckes to cancel the July 6, 2004 meeting of the Board of Commissioners. Motion carried unanimously.

End of new business # 4

Mayor Weatherly
New Business # 5– Town of Apex Parks & Recreation Commission
Mayor Weatherly recommended appointments to the Town of Apex Parks and Recreation Commission.
With the approval of Commissioner Jones, Liaison to the Parks and Recreation he presents for appointment Bill Chamberlain to fill an expired term on the board (former star UNC under Dean Smith and in the mayor's class 1972 and lived in Apex for three years) June 1, 2004 expires May 30, 2007. Commissioner Jones finds him to be a quality nominee and a good addition to the commission.

Action: Motion by Commissioner Jones to appoint Bill Chamberlain for a three year term as noted, and to also recommend the appointment of chair Jimmy Perry one year term June 1, 2004 – May 30, 2005 and vice chair Angela Reincke one year term June 1, 2004 – May 30, 2005, and further to reappoint Angela Reincke for a three year term beginning June 1, 2004 and expires May 30, 2007. Motion carried unanimously.

End of new business # 5

Additional items added under new business:

 # 14 from consent agenda
Cooperation Agreement between Town of Apex and Town of Cary regarding project known as Cooperation for Rapid Recovery "CARR".

Mayor Weatherly asked notification be given to the news media. Manager Radford reports this is in anticipation of a grant application that is being made to the Home Land Security Department in conjunction with the Town of Cary and are asking a redundant radio communication system be implemented. This means they will make available to us a seat at their console in their dispatch office and we will do the same for them in ours. The switch that is pushed in their dispatch office will communicate directly with all of our line police officers and with our fire rescue crews; for whatever reason a sever emergency in Apex then we can pick up our dispatch office with one human and go to Cary station and have full communication with officers, firemen and rescue left in Apex – same in the event they have something of the same magnitude. We are asking for $197,000 to purchase all radio equipment for the console in the event if funded this is what we will do with it; required to submit the Interlocal Agreement within 30 days of submitting our application.

Mayor Weatherly sees both communities appreciative of this planning ahead. Likelihood of receipt: application has been made year after year since September 11 and thus far have not received anything – thinks we are will receive some radio monies funneled through the county which was Homeland Security Money, but a stand alone application has not been successful for us. With emergencies services would overlap – we will be on 800 radios.

Attorney Fordham advised as far as a technical matter if this is dependent on the finding we should add a provision that says if the funding that if the grant isn't awarded then the contract is null and void. Mayor Weatherly stated in the motion to include this provision. Commissioner Jones asked that if we do not get the grant, asked if there were a chance he would come to the board and ask this be funded. Manager Radford responded if we do not get this grant, this would not be a priority – something we could be able to afford to do - $197,000 not in the current fiscal year.

Action: Motion by Commissioner Schulze and a second by Commissioner Gossage that we approve this agreement for Cooperation for Rapid Recovery with the Town of Cary and if the funding does not come through from Homeland Security that the contract is null and void. Motion carried unanimously.

End of consent agenda item # 14 under new business.

Manager Report on ISO Rating

Manager Radford advised Chief Haraway Fire Chief was first instructed to find a way to improve the ISO fire rating. He worked well within the confines of the first years budget to set us up to improve the rating; second year funded additional things to continue to prepare – built out of South Salem Street water tower (additional water pressure on that end of town); result of the efforts of firemen and others – NC Department of Insurance announced as result of our former Class 6 we are promoted to Class 5 – a significant accomplishment considering the amount of money and resources put into this process. The most advantageous part is the department of insurance gave us a list of the deficiencies so in the event the ultimate criteria was a 7 and we got 5 they told us exactly why we got a Class 5. We have started developing a three year capital budget determining exactly how much money it will take the next three years prior to our next inspection to make at least one notch better than we are today. It's a great benefit to the citizens in that people in the commercial districts can see as much as 2 to 3% decrease in their commercial insurance base which translates to a cost in tax savings. We are proud of this; press release will be issued in regard to this excellent rating.

End of ISO Rating report

Report from Commissioner Gossage on the wireless technology to the downtown business district

Commissioner Gossage reports a month and one half ago he approached the manager with the idea of putting wireless internet system into the historic downtown business district. He and Peter LaPiana found that working with the company that had installed a similar system in Mount Airy it could be done relatively inexpensive $3,000 and use economic development funds for that. Met with Chamber and Downtown Merchants, Bell South, and EMC Square and proceeded with positive reaction. Two weeks ago, company 802 Link came and mounted unit on fire station and broadcasts a strong signal from the testing and mostly on exterior of buildings with a little penetration to interior of buildings and further towards Apex Baptist Church the weaker the signal; if business like Carley's wanted this service and found it not strong enough could buy a repeater for $500 or $600 to boost the signal to the rear of their business. Anyone with a PDA or Blackberry - wireless or lap top with internet card – like in town hall could sit at a bench downtown or inside a restaurant or table like Carley's out front and get some work done. July 2, 2004 is the day Bell South will plug in the monthly reoccurring cost $200 fee is being provided by Bell South – there will be no ongoing costs to the downtown merchants that they had agreed to pick up.

Commissioner Schulze asked if the Merchants Association would be promoting this, with Commissioner Gossage responding we are trying to be their repository for the outgoing press releases etc. Chamber has also volunteered to help. President of the Downtown Merchants Association has sent out material – trying to create a buzz for July 2. The wider the exposure the better use it will get and increase foot traffic downtown as we continue to build commercial development outside of downtown – something small like this.

End of report by Commissioner Gossage

Declaration of Surplus Property

Manager Radford reported the Town of Apex owns a residential property in Selma, 904 N. Sharpe Street, and has received an offer to purchase in writing at $120,000 with further negotiations to bump to $125,000 and one item to discuss, asking for $1500 in closing costs and if in the event the bump up to $125,000 to discuss them leaving $1500 in closing costs in if not we do not. He asked to declare it surplus property according to state statute and to authorize town attorney to continue to frame a schedule by which we would make transfer of this property – a negotiated sale to an individual. Commissioner Schulze asked legal reasons declaring surplus property – in order for town to sale the board has to agree it's something they can live without, not essential to the operations of the town. Firm price will come back at a later date. Initial purchase price $147,677.76.

Action: Motion by Commissioner Meckes and second by Commissioner Jensen to declare the property in Selma as surplus. Motion carried unanimously.

End of Surplus Property

End of New Business

WORK SESSION AGENDA

There were no work session items to be discussed.

CLOSED SESSION

Mayor Weatherly asked for a motion move into closed session to discuss personnel.

Action: Motion by Commissioner Jones to move into closed session. There was no recorded second. Motion carried. The minutes of closed session was recorded separately. Motion was made by Commissioner Meckes and second by Commissioner Jones to move back in open session at 8:42 p.m. Motion carried.

ADJOURNMENT

With no further business to come before the Board there was a motion by Commissioner Jones and second by Commissioner Gossage to adjourn at 8:43 p.m. Motion carried.

Georgia A. Evangelist
Town Clerk

Keith H. Weatherly
Mayor

Note for the record: Town Clerk Georgia Evangelist was absent due to health issues. Bonnie Bailey Planning Department recorded the meeting in her absence; Town Clerk Evangelist completed the minutes as submitted for approval.

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, July 20, 2004
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Gene Schulze

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen

Mayor Weatherly called the meeting of the Town of Apex Board of Commissioners to order, with the meeting being held at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus Board of Commissioners Meeting Room (2nd. Floor). Commissioners Jensen, Gossage, Jones, Meckes and Schulze attending.

Invocation was given by Commissioner Meckes.
Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those attending the meeting.

RECOGNITION OF SERVICE

Mayor Weatherly recognized Cornelius Tillery for fifteen years of service to the Apex Parks, Recreation Commission. Mr. Tillery accepted a Resolution and made parting remarks.

APPEARANCE AWARDS

Mayor Weatherly recognized recipients of the Residential and Commercial Appearance Awards. The Cash Family, 738 Cash Street and Design Group South, 118 N. Salem Street.

RECOGNITION OF EDUCATION

Mayor Weatherly recognized Georgia Evangelist, Apex Town Clerk for qualifying for her Second Level Membership in the *International Institute of Municipal Clerks Master Municipal Clerk Academy.*

CONSENT AGENDA

All items regarding financial spending is included in the FY2004-2005 budgeted funds. Consent agenda approval will finalize these items.

All site plans have received unanimous approval from the Planning Board and Planning Staff.
Mayor Weatherly presented the *consent agenda* to be set and asked for a call for action.
Action: Motion by Commissioner Gossage and second by Commissioner Jensen to approve the consent agenda as printed. Motion carried.

1. Minutes of June 15, 2004 Board of Commissioners meeting.
2. Minutes of June 15, 2004 Board of Commissioners closed session (separate cover).
3. Rezoning and Conditional Use Permit #03CU21 – DKI properties – Findings of Fact, Conclusions of Law and Ordinance – property location between N. Salem Street and Salem Church Road east of Salem Woods Subdivision.
4. Rezoning and Conditional Use Permit #-03CU24– BBM Associates - Findings of Fact, Conclusions of Law and Ordinance – property location NC55 between the Apex Peakway and Hunter Street.
5. Rezoning and Conditional Use Permit #03CU25 – Crown Builders & Developers - Findings of Fact, Conclusions of Law
and Ordinance – S. Salem Street between Sugarland Drive and Lynch Street.
6. Rezoning and Conditional Use Permit #03CU26- Findings of Fact, Conclusions of Law and Ordinance – Community Properties – property location west of Abbington Subdivision.
7. Rezoning and Conditional Use Permit #04CU04 – Jones & Cnossen Engineering, PLLC – Findings of Fact, Conclusions of Law and Ordinance – property location 1332 Center Street.
8. Rezoning# 04RZ08 – Peakway Development, LLC. – Ordinance – property location 3452 & 3453 Apex Peakway.
9. Site Plan Apex Flex Storage, Jones & Cnossen Engineering, petitioner; location Lot 4 & 5 Investment Boulevard.
10. Site Plan Ferguson Enterprises; location 2000 N. Salem Street.
11. Site Plan Wachovia Bank; location Out Parcel 2 at Beaver Creek Commons.
12. Resolution: Request 50% assistance from NCDEHNR for treatment of Alligator Grass Apex Community Park Lake.
13. Re-appropriate $135,000 to current fiscal year for the Raleigh Force Main and Pumping Station Project.
14. Budget Ordinance Amendment and Project Ordinance Amendments.
15. Authorization for Finance Director to close capital projects completed as of June 30, 2004.
16. Addendum "Alternate 1" to previously approved Olive Chapel Road and NC55 Intersection Project – (Additional amount requested to complete entire project $272,004.50.) – Mangum Asphalt Services.
17. Award Traffic Signal Improvements Contract for NC55 at Olive Chapel Road / Hunter Street to lowest responsible bidder, Watson Electrical Construction Co. in the amount of $49,829.00.
18. Ordinance regulating commercial trucks along Mason Street.
19. Resolution requesting North Carolina Department of Transportation to relocate the existing "No Thru Trucks" sign on Center Street (SR1010) to a point just east of the Apex Peakway.
20. Resolution designating Chief of Police as Town of Apex official to make recommendations to NC Alcoholic Beverage Control Commission on ABC Permit Applications.
21. Approve Purchase of power transformers for new substation; contract award to ABB with a purchase price of $828,360.00.
22. Resolution Authorizing Purchasing Manager to Sign Powers of Attorney to State to Dispose of Surplus Motor Vehicles.
23. Resolution authorizing sale of house at 904 N. Stage Street, Selma, NC for $125,000.00 subject to the Upset Bid Procedure.
24. Acceptance of Petition and Resolution of Intent to consider closing of an unopened alley between Hughes and Mason Streets and setting date of Public hearing for September 7, 2004.
25. Authorization for Town of Apex to use the services of a collection agency to collect outstanding civil penalties related to ordinance violations.
26. Authorization for Finance Director to sign Certificate of Satisfaction and Affidavit of Lost Note to release Deed of Trust for 625 Tingen Road.
27. Wake County Tax Report.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as printed. There were no modifications to the agenda. The meeting agenda was set as printed.

PUBLIC HEARINGS

David Rowland, Director of Planning
Public Hearing # 1 – Rezoning #04CU07
Public hearing and possible motion regarding Rezoning Case #04CU07 Robert L. Toler, petitioner, seeking to rezone 4.47 acres located on E. Williams Street between James Street and the Apex Peakway (amending previous rezoning 01RZ11) from Planned Unit Development Conditional Use to Planned Unit Development Conditional Use.

The Town Clerk administered an oath to those speaking during the hearing.
Director of Planning oriented the Board to the location of the property noting adjacent zoning and land uses. Staff report is attached and incorporated as a part of the minutes. Restrictions/conditions: subject property was previously rezoned to a 7-lot PUD. Lot # 5 only permitted O&I type uses. Owner would like to amend PUD for Lot # 5 to allow for all permitted uses under PUD. Uses are referenced in Table 4.2.2 for permitted uses. Planning Board reviewed this item at their June 14, 2001 meeting and unanimously recommends approval. Staff also recommends approval. Development of this lot within this PUD would go through site plan process. The PUD plan has designated RCA (Resource Conservation Area).

Mayor Weatherly opened the public hearing at 7:20 p.m.

Robert L. Toler spoke in favor of the rezoning that would not limit this lot to O & I, but would be mostly office. RCA is 75 feet and would be expanded for huge retention pond and based on lots 4 and 5 – over 100 feet wide in some areas. Buildings would conform in architecture. There would be a Type A Buffer.

With no one speaking in opposition, the public hearing was closed at 7:22 p.m.
Action: Motion by Commissioner Jensen and second by Commissioner Jones to approve the rezoning. Motion carried unanimously.
End of Public Hearing # 1

Dianne Khin, Senior Planner
Public Hearing # 2 – Amendments to the Unified Development Ordinance
Public hearing and possible motion to adopt an ordinance regarding amendments to the Unified Development Ordinance, Article 5: Section 5.1.2 and Article 8: Section 8.2.6(B) (4) (d) with regard to dimensional standards for "Government service" and land use class for the use "Retail sales, general."

Senior Planner Khin addressed certain sections of the UDO to be amended as noted in the attached staff report which is incorporated as a part of the minutes. Planning Board reviewed the proposed amendments at their July 12, 2004 meeting and unanimously recommended approval with the condition that the maximum height for "Government Service" in the B2 zoning district be set at 48' This change has been made to the amendment documents.

Mayor Weatherly opened the hearing at 7:25 p.m. and with no one speaking the hearing was closed.
Action: Motion by Commissioner Jones and second by Commissioner Jensen to adopt an ordinance approving the amendments to the UDO as presented. Motion carried unanimously.

End of Public Hearing # 2

Public Hearings continued

June Cowles, Planner

Public Hearing # 3 – Amendments to the Unified Development Ordinance

Public hearing and possible motion to adopt an ordinance regarding proposed amendment to the Unified Development Ordinance, Article 4: Section 4.2.2 Use Table "Automotive parts".

Planner Cowles addressed the above referenced section of the UDO, asking the use table be amended as noted in the attached staff report and incorporated as a part of the minutes. Planning Board received this item at their June 14, 2004 meeting and recommends approval. Proposed AutoZone would fit this section; further considered neighborhood retail business store with no outdoor repair operations; Advance Auto, Peak Plaza fits this section as well. No repair operation was discussed; it was noted battery and wiper blade repair would be permitted in the lot and has been customary for this type operation. Commissioner Gossage wanted to assure those prohibited were advised of this language.

Mayor Weatherly opened the public hearing at 7:28 p.m. and with no one speaking, the hearing was closed.
Action: Motion by Commissioner Meckes and second by Commissioner Gossage to adopt the ordinance approving the amendment to the UDO Use Table - Automotive Parts as presented. Motion carried unanimously.
End of Public Hearing # 3

Dianne Khin, Senior Planner

Public Hearing # 4 – Amendments to the 2025 Land Use Plan

Public hearing and possible motion regarding amendment to the 2025 Land Use Plan chart to add Tech/Flex zoning district to Office Employment and Industrial Employment.

Senior Planner Khin stated on May 18, 2004 the Board of Commissioners adopted an amendment to the UDO to add the zoning district Tech/Flex (TF) and needs to be included within the chart on the 2025 Land Use Plan that gives guidance regarding possible zoning districts associated with a particular land use classification. Planning Board reviewed this amendment at their July 12, 2004 meeting and unanimously recommended approval. Staff recommends approval.

Mayor Weatherly opened the public hearing at 7:29 p.m. and with no one speaking the hearing was closed.
Action: Motion by Commissioner Schulze and second by Commissioner Meckes to approve the amendment to the 2025 Land Use Plan chart to add Tech/Flex zoning district to Office Employment and Industrial Employment. Motion carried unanimously.

End of Public Hearing # 4

Dianne Khin, Senior Planner

Public Hearing # 5 – Amendments to the Apex Transportation Plan

Public hearing and possible motion regarding possible amendments to the Apex Transportation Plan.

Senior Planner Khin presented Maps 1 and 2 and 3 showing proposed amendments to the Apex Transportation Plan as outlined in the attached staff report and incorporated as a part of the minutes. Planning Board reviewed amendments to Maps 1 and 2 at their July 12, 2004 meeting and recommends approval of the specific changes identified as items # 1 - # 7 . CAMPO concurs with the reconfiguration of the thoroughfares and collector streets within this area and will be added to the NCDOT transportation improvement lists.

Public Hearing # 5 continued

Khin responded to questions regarding the property rezoned at Abbington and the impact of the specific changes; a downgrade from thoroughfare to collector-street is no more restrictive.

Khin continued with Map 3 showing proposed amendments regarding realignment of the Apex Peakway to the north of its existing alignment from east of Laura Duncan Road to west of North Salem Street and realign collector streets connecting with the Apex Peakway; noted on the staff report and incorporated as a part of the minutes. The proposed change would move the Peakway north to avoid separating Guy C. Lee's storage yard from the main building and disrupting their operation. Planning Board reviewed the proposed amendment at their July 12, 2004 meeting and recommended denial with a 3 to 2 vote; vote was based on the fact the Transportation Plan is schematic and not exact - showing linkages not exact routes, so the amendment is unnecessary; Planning Board did not want their recommendation for denial to be construed that they don't agree with the proposed location change; however, believe the location change could occur during site/subdivision/PUD plan without any change to the Transportation Plan. Khin agrees this to be true and giving the Stephens project as an example. She continued the plan is lines on a map with no engineering behind it; doesn't have to change, however staff wanted to show ahead for future planning. Director of Planning noted the existing line has been shown on the map since 92 or 93.

Commissioner Jensen wanted to confirm the buffer would remain in place at Salem Oaks between the subdivision and the Peakway, with Rowland responding that to be true. Commissioner Jensen was concerned developers may want to place stores on both sides of the land if moved farther away. Khin noted the alignment across the Smith property – the northern property line vs. south with Commissioner Jensen agreeing this maybe better for Salem Oaks and even with the impact to Guy C. Lee - it's not through their storage. Brookfield would be buffered with a 25' area. Alignment would cross Laura Duncan Road; Artist Village would be to the southern portion now the northern portion – or 2/3 of their vacant lot. Commissioner Meckes agrees the buffer for Salem Oaks of the Peakway would be effective for commercial. Khin noted a Type A 40' protected buffer between commercial and single-family that can be reduced to 20' for PUD or saved areas – Board could say 25'; there are four lots in Salem Oaks that has no buffer but a gap there acting like a buffer; most commercial would want to push business forward and place buffers to the back. Commissioner Schulze added he could see the concerns of Guy C. Lee, Smiths and Artists Village.

Mayor Weatherly opened the public hearing at 7:40 p.m.

Wayne Herndon, speaking for his dad - resident at 1010 N. Salem Street, was opposed to the alignment. Impact would be a lost of land and his thought for no reason; slides were shown of this property and area properties; slides were shown of the view down N. Salem and the traffic moving on US 1 and to RTP; slides were shown of the Floyd home and drive and the right-of-way that would be along the driveway. The Herndon well sits center in the realignment; pecan trees would be lost as well as other trees and azaleas, as well as land near barns (view from railroad tracks). Slides were shown of a home on the left with a portion of this property being taken that would then have no access. Concern for traffic: his father now has to turn right towards US64 going over to Laura Duncan Road to get back into downtown. View of Guy C. Lee shows a portion of their land at the end of the property not being used – further noted old location of the Apex Baptist Church trash site, with a further disruption of a cemetery. He continued the proposed alignment would create a non-usable triangle piece of property as well as other unusable land for Guy C. Lee with impact on the parking lot and the neighbors on the south side; he showed the alignment shot of where the Peakway would go on N. Salem Street, asking the Board look at a different alignment without splitting the neighborhood or creating a triangle piece with the view showing historic Artist Village " building, the former Freckled Frog" would be taken, wanting to keep the alignment towards town and keep the residential land and old community in tack; Herndon home was built in 1915 and he would like the Peakway to be where it was originally scheduled to go and was not in favor of the proposed alignment.

Public Hearing # 5 continued

David Floyd, 1009 N. Salem Street, spoke to the impact of the Peakway to his property and his neighbor's home, noting the property line and the location of his home not being in the center of the property. He noted with change in the alignment this could make the property change to O&I on two major thoroughfares; he's not totally opposed – loves his home but not tied to it as much as the Herndon home – staying there would be great, but if not and the town chose to proceed, he would not stand in the way. His septic tank is located under the hedge right of way and drain field; he would need to connect to sewer; alignment would eliminate portion of his drive and out building, noting concessions to be made and if there were other options that would be great too.

Alan Manase, developer noted his company has ownership of some of the properties with Apex 1st Developers owning properties as well to the north of the alignment from there to US64 and are ready to bring their plans forward for development and hasn't done so because of this issue and are needing direction from the town; he supports the proposal as it would benefit Trackside Development; he noted expense and challenges with Guy C. Lee.

No one else spoke and the hearing was closed at 8:00 p.m.

Manager Radford reported, in speaking with Construction Management Director, the proper alignment meets the railroad and NCDOT's standard of perpendicular; he noted the railroad crossing at Guy C. Lee and the movement would cost $300,000, with a loss of business if following current proposed alignment and it being imperative to settle. Peakway is proposed on the Duncan property and close to a deal to secure the east and west properties. Collector road is not cast in stone – access from Hunter with road through Trackside north is important to develop the property. Commissioner Schulze asked if Guy C. Lee would be bought out, with Manager stating their intent is to remain in their location for next 15/20 years.

Commissioner Meckes noted the hedge along right of way at the Floyd residence and just a couple of feet to the left would be the sidewalk and road – maybe 7 feet. Commissioner Jensen noted in reality with the Peakway those properties may change zoning and not remain residential and would not be the same. Commissioner Meckes continued even giving up historic property there's a long term benefit and even with the Peakway, Herndon would still take a right to get out of his drive; wanting to maintain the integrity of N. Salem Street, but there would be more traffic. Herndon was concerned that his father wouldn't be able to go to the right either. Commissioner Meckes confirmed the Floyd drive to the south would be gone and the Herndon drive is farther to the north about 20 feet – there will be a traffic signal.

Mayor Weatherly asked if the board wanted to defer action on the amendment to Map 3. Manager Radford preferred they follow staff recommendation to realign as proposed and the alignment from Hunter Street to the Peakway not be cast in stone, but when site plan of Trackside came into play. Commissioner Gossage noted a lot of effort having taken place – people are riled up and if this is not set in stone, then they would revisit it again in a few months. Commissioner Meckes noted the northern portion would be set - developers would have set points at site plan. Commissioner Jensen confirmed the points of the Peakway touching the properties and asked about the access to Guy C. Lee; moving the Peakway northward would help them but mess up the residents and was upsetting to him, but he had to consider the expense as it carries a lot of weight.

Commissioner Jones noted in 1989 when he came on the board, there was talk of the Peakway and the same discussion had occurred several times – impact on homes and business is tough, but he had to weigh the pros and the cons to make the best decision. He noted the proximity of the Peakway to the Herndon and Floyd properties, but based on the hearing, it comes down to dollars and cents and the best alignment is the most cost effective situation. He wished the S-curve alignment met the engineering criteria with Herndon wanting to see the criteria in writing.

Public Hearing # 5 continued

Mayor Weatherly opened the floor for a motion.
Action: Motion by Commissioner Meckes and second by Commissioner Schulze to approve both amendments - Maps 1, 2 and 3 (all eight listed in the staff report). He noted the board's dedication to maintain the historical integrity and doesn't acknowledge giving up the Herndon and Floyd homes, but with the commercial, it's not cost effective and if it goes there some new development may go there as well and he sees this and Trackside as a greater good for Apex. He continued O&I, residential, and commercial will enhance the tax base and infrastructure and will further insure the survival of downtown and sees this as greater good by moving the alignment north. Commissioner Jensen added the value of these properties with the Peakway would increase; doesn't want to see them loose at the expense of someone else's gain – their quality of life doesn't go down. Motion carried unanimously.

End of Public Hearing # 5

Mayor Weatherly called for a recess at 8:20 p.m. to 8:25 p.m.
With the meeting back in session, Mayor Weatherly noted the next two public hearings # 6 & # 7 were continued by the Planning Board at their July 12 meeting to their August 9 meeting, therefore, a motion would be in order by the Board to continue the hearings as well and would be the August 17, 2004 Board of Commissioners meeting.

Action: Motion by Commissioner Jones and second by Commissioner Jensen to continue hearings # 6 Rezoning Case # 04CU11 and # 7 Special Use Permit #04SUP02 to the August 17, 2004 Board of Commissioners meeting. Motion carried.

Public Hearing # 6 – Rezoning Case #04CU11 (Continued to August 17, 2004 Board of Commissioners meeting).

Possible motion to continue this public hearing until August 17, 2004 Board of Commissioners Meeting. Planning Board reviewed this item at their July 12, 2004 meeting and unanimously recommended to continue the public hearing to their August 9, 2004 regular meeting. The hearing was advertised to be heard by the Board of Commissioners at the July 20, 2004 meeting; however, this is a conditional use hearing and should be continued awaiting further action by the Planning Board.

Public hearing regarding rezoning Case #04CU11, Marshall Barnes, et al, petitioners, seeking to amend the 2025 Land Use Plan and rezone from Office & Institutional to Mixed Office, Residential, Retail, Conditional Use District, 5.81 acres located on S. Salem Street between E. Chatham Street and W. Williams Street.

Public Hearing # 7 – Special Use Permit #04SUP02 (Continued to the August 17, 2004 Board of Commissioners meeting).

Possible motion to continue this public hearing until August 17, 2004 Board of Commissioners Meeting. Planning Board reviewed this item at their July 12, 2004 meeting and unanimously recommended to continue the public hearing to their August 9, 2004 regular meeting. The hearing was advertised to be heard by the Board of Commissioners at the July 20, 2004 meeting, however, this is a special use hearing and should be continued awaiting further action by the Planning Board.

Public hearing regarding Special Use Permit #04SUP02, Carole Kish, petitioner, seeking a special use permit for a retail business for property located at 206 S. Salem Street.

End of Public Hearings

OLD BUSINESS

Bruce Radford, Town Manager

Old Business Item # 1 – Zeno Road

Zeno Road paving project and input from Zeno Road residents: A real estate development company has presented a plan to the Town which involves the development of many of the properties along the remaining unpaved portion of Zeno Road. This proposal has caused town staff to take a closer look at the proposed paving project. The Board will be looking at whether the town would spend public funds for a paving project that may have a short life of a couple of years, as the project would reconfigure the road and would be torn up; developer paying the expense for paving or public paying the expense.

Manager Radford shared Mr. Blain East has plans to develop the property along Zeno Road and is 24 months or better away from beginning construction, with some properties currently under contract, with development contingent on contract of other properties. Residents would give input on paving now or later and if they plan to stay there when paved. NCDOT will still share $56,000 for the paving project (no NCDOT person was present – but response from Brandon Jones, NCDOT is they still plan to share costs in the project). Mayor Weatherly noted if the developer continued in a reasonable amount of time and Zeno Road is paved, public road monies would have been for naught.

Mayor Weatherly asked Zeno Road residents to come forward and address this issue.
Bob Bolch, Zeno Road, didn't agree with what the developer might do – but what the town had said they would do and that was to pave Zeno Road. He agrees the road should be paved. Mayor Weatherly stated the board is acting responsibly taking into consideration the town would expense $150,000 and if the developer continues on course, in a few months the road would be ripped up and re-done. Bolch stated it's not how much the Town gets, but how much the Zeno Road residents have to suffer. Manager Radford informed the board plans have been received, rezoning has occurred, preparing for construction to being in the fall with those plans being in review. Bolch advised that he owns property to the center line of the roadway and asked what they would do in this case, annexation was not the case. Mayor Weatherly felt two to five years was reasonable time if development occurs, with Bolch stating five years was not reasonable to the residents there. Mayor Weatherly had understood less than two years, with the Manager stating it's still true.

Philip Myers, Zeno Road, attended the June 1 meeting of the Board, and advised them, no dealings had been negotiated with the residents on the west side of Zeno Road and his intent was to not go anywhere; assumption was the developer was to own both parts of the road and this would not happening with his property. He noted minimum of three years for the road to be paved and felt the residents of Apex would not be happy if they had to come down a dirt road into the shopping area that was opening in October. They would not come down Olive Chapel to NC55 and then into the shopping center, but would cut through Carriage Downs and Haddon Hall; law says there's no speed limit on dirt roads – giving example of the school bus coming down the dirt road, and mailboxes being taken down by vehicles and the "S curve" being dangerous and needing realignment, but from what he's seeing it will not be done soon. He has heard the developer does a good project, but has no sense of timing – not two to three years – it would be way too long for a dirt road to stay as an entrance into a major shopping center. He stated this may not happen – this man is a middle guy and he has his doubts. He asked the board to move on and pave Zeno Road and not delay and feels the money is worth it and to wait is too long of a time. He said the road had been # 1 on the State's priority list to get it paved prior to the opening of the shopping center, and the town got involved and now Town doesn't want to pave it. He was told the state was in the speed up traffic business and not the calming of traffic; offered the town annex the road, the two build it and the town get the traffic calmed. He didn't see any money coming from the developer now; town has allocated the money to pave Zeno Road and he wants the town to let it happen as traffic will only worsen.

Old Business Item # 1 continued

Don Gersch, 1419 Zeno Road, asked the road be paved by the time the shopping center opens in October or November. Zeno Road has traffic coming through from all over at all times of day and night and traveling through very fast; construction traffic was not suppose to use Zeno, but does all day long; he commented on the dangerous curve. He noted the shopping center was to open on time, and he wanted Zeno Road paved on time. He indicated he probably would not be there the duration – traffic would increase on Zeno Road as they would find it an easy access and continue to move down it fast. The state had it down for paving, now the town says not; most residents would still be living there two to three years from now. He asked to keep the construction traffic off Zeno Road and even if it were paved, construction traffic would tear it up and it would have to be repaved, but would tear up the road even if it remains dirt. He sees traffic will increase and asked the board to help the residents and not wait three, four, or five years, but pave it now.

Mayor Weatherly asked if the rest of the Zeno Road residents in attendance were in agreement with what had been said, and desires the road to be paved. All of those in attendance were in agreement to pave the road.

Art Clem, Fairfax Woods Drive, reminded the board, the Beaver Creek Project had been gone over and thought all had come to agree with the traffic pattern, speed humps on Zeno Road, asking why they wanted to back off, and if they did, it would be undoing a lot of good work, and the traffic would be finding a short cut through Becketts Crossing and Carriage Downs. He asked the Board to live up to their obligations and get the road paved with speed bumps before the shopping center opens in October, as well as the intersection at NC55 and Olive Chapel Road; live up to their commitment to the residents even if they do through away the $150,000 – they had made an obligation to the people there and the town should complete these hodge-podge roads and not wait for the developers to do it – he didn't want the residents to see two or three years more of dust and didn't want the traffic through Becketts Crossing. He indicated the town would have to sell folks on the Peakway as a major asset to Apex and it was the biggest part of the bond referendum on streets and sidewalks. Mayor Weatherly encouraged him to help with this issue.

Tom Seymour came forward and advised the board he had started this project and believes it to be farther out than two years; he doesn't like to spend and agrees with the time frame, but thinks the town should live up to what they had told the people they would do.

Carol Harzack, Carriage Downs, addressed through traffic, noting a playground and the town homes and sees increased problems if Zeno Road is not paved.

Mayor Weatherly commented the board could prepare to proceed, or if no decision is made, this means they plan to do as they have already prepared to do, which is to pave the road. Commissioner Jones commented the development is eminent in 24 months and no action taken means the paving of the road. Commissioner Gossage commented on the obligation to pave the road and it being the tax payer's money should take this time to actually look at the way it's being spent. Commissioner Jensen thinks paving should be done due to the traffic pattern and there should be no change in the decision. It was a consensus Zeno Road be paved with staff proceeding in the process. No vote was taken. Zeno Road residents were very appreciative of the board.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments should be limited to 3 minutes to allow others opportunity to speak.

Public Forum continued

Henry Brown, 305 Center Street, commented on the "No Thru Truck" signs that it was a good idea, but not if it's not enforced, noting the one at Hughes and Center, suggesting the Police check this and enforce this.

End of Public Form

NEW BUSINESS

Mike Whitehead, UDO Task Force Chairman

New Business Item #1 – Unified Development Ordinance Task Force Presentation

Mike Whitehead, UDO Task Force Committee Chairman, addressed possible amendments to Unified Development Ordinance. Sections of the UDO were addressed that most needed scrutiny and revision form the development community's point of view for maintaining quality development and for a high quality of life. He reviewed the process and thanked the committee for their short turn around time and noted the years of experience that surrounded this committee, and how some of these revisions had worked in other towns. For the process to continued, the Board of Commissioners should refer the amendments to the Planning Board for review and recommendation. A public hearing of the Board of Commissioners will be held on August 17 and possible adoption of an ordinance would be in order.

Mayor Weatherly commented the document was not set in concrete and could be adjusted by ordinance and was appreciative for the task force efforts and these proposed amendments would be reviewed in detail with the Planning Board and would move through the process and called for a motion.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to refer the proposed amendments to the Planning Board as recommended. Motion carried.

End of New Business # 1

Town Manager Bruce Radford

New Business Item # 2 – Bonds: Parks & Recreation Facilities and Street/Sidewalk Improvement

Manager Radford introduced the bond orders authorizing Parks and Recreational Facilities and Street and Sidewalk Improvement Bonds as the next step to hold a referendum in November. A public hearing is set for August 17, 2004 and authorizes the advertising of the hearing, and references the sworn statement of debt on file with the Town Clerk. A separate order is required for each purpose for which the Town wishes to issue bonds.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to approve the order authorizing $13,000,000 Parks and Recreational Facilities Bonds. Motion carried unanimously.

Action: Motion by Commissioner Meckes and second by Commissioner Jensen to approve the order authorizing $9,500,000 Street and Sidewalk Improvement Bonds. Motion carried unanimously.

End of New Business # 2

June Cowles, Planner
New Business Item # 3 – Site Plan AutoZone
Possible motion to approve site plan for AutoZone, Freeland and Kaufman, Inc. petitioner to include 6,500 square foot automotive parts store located at the southwest corner of Perry Road and Highway 55 Lot 4 and 5 Investment Boulevard.

Planner Cowles oriented the Board to the site plan for AutoZone according to the staff report which is attached and incorporated as a part of the minutes and located in the Lawrence Crossing PUD, meeting the development standards and conditions. Planning Board recommends approval contingent on the UDO amendment for automotive parts as a permitted use in the Planned Unit Development zoning – technicality and noting in regards to the site plan.

Action: Motion by Commissioner Schulze and second by Commissioner Meckes to approve the site plan for Auto Zone. Motion carried unanimously.

End of New Business # 3

June Cowles, Planner
New Business Item # 4 – Political signs
Senior Planner Cowles asked direction by the Board of Commissioners to Staff regarding political signs being placed within the public rights-of-way. Currently, the Town does not allow placement of political signs within the public rights-of-way, however, staff has had requests from candidates to allow signs within those public rights-of-way. Conditions for political signs within the town are noted in the staff report. Surrounding jurisdictions were surveyed; the chart of the information collected is also inclusive in the staff report. There are several NCDOT roads within the corporate limits and the town doesn't maintain or enforce ordinances within their rights-of-way.

Mayor Weatherly wanted to modify to be consistent with the enforcement. Commissioner Meckes commented it's the same with real estate signs. Commissioner Gossage added the issue is with current placement of signs. Mayor Weatherly gets questions from candidates and thinks it's reasonable for allowance in the Apex public rights-of-way and only for a certain number of days prior to elections. He's lost for honest answers. The consensus was yes it's reasonable to allow them in the Apex public rights-of-way. Commissioner Jones commented on the enforcement issue and figure out whose rights-of-way especially at sign removal time. Some discussion was heard regarding placement on private property vs. rights-of-way, with Attorney Fordham advising this is a different issue. After review of the survey information collected the board came to a consensus regarding placement of the signage.

Action: Motion by Commissioner Meckes to allow for political signs to be placed within the Town of Apex public rights-of-way following the example of Chapel Hill: political signs be allowed in Town public rights-of-way; sign placement days prior to election be 45 days; signs removed days after election 10 days vs. Chapel Hills 12 days; and eliminate the number of signs per lot. Motion carried unanimously. Staff and the Town Attorney will prepare an amended ordinance for adoption.

End of New Business # 4

Town Manager and Director of Public Works
New Business Item # 5 – Interlocal Agreement / Western Wake Regional Water Reclamation Facility
Possible motion to enter into an Interlocal Agreement with Towns of Cary, Morrisville and Wake County for Permitting, Preliminary Engineering and Land Acquisition for the Western Wake Regional Water Reclamation Facility and to authorize Town Manager to make technical corrections to the Agreement document.

New Business Item # 5 continued

Director of Public Works Donnelly introduced the proposed Interlocal Agreement regarding the regional water reclamation facility, noting key points of the Agreement. To this point, Holly Springs is not included, but are considering being included. Town of Cary would be the lead agency of this phase. Wake County would make the land purchase, loaning Apex money for their share with Apex paying back to Wake County. Cary would apply for the loan for construction – Apex would pay Cary. Town of Apex pays 33.66% of the land, planning, engineering and other costs; estimated expenditure for Town including 20 year loan payments and interest. Engineering Report for Phase 1 is to be operating by 2011; must return water to the Cape Fear by 2011.

Mayor Weatherly commented on Apex capacity shares and discharge with percentages based on build-out – what we could afford. With Cary affording a bigger portion Apex became the lower percentage customer. Holly Spring's numbers have changed those percentages but with final design will ask to push Apex percentages up but will not pass Cary (8.9% to 10%). Project will be built in phases, what we can afford and what will serve us best; gives Apex future a cushion. Older parts of the town will still divert flows to the Neuse; newer flows will divert to Cape Fear – will keep the Neuse plant running as we can't afford to eliminate it. GPD were discussed – 9 mgd on the smaller side with 3 mgd Interbasin transfer. Donnelly reported Holly Spring's boundary must be considered.

Mayor Weatherly asked if the board should consult with the town attorney in closed session prior to further discussion. He continued 23% water capacity and partnership with Cary had been an issue of being too much capacity, but now it has expanded, and needed.

Action: Motion by Commissioner Gossage and second by Commissioner Schulze to defer to closed session. Motion carried unanimously.

Deferred to Closed Session

Director of Construction Management/Town Manager

New Business Item # 6 – Speed Humps

Possible motion to approve construction and possible motion to award bid for construction of two (2) speed humps on Cameron Glen Drive, Cameron Park Subdivision to Bookers Patching & Paving $1,650.00.

Manager Radford advised Cameron Park Subdivision had requested 4 speed humps to get a handle on speeding issues. Chief of Police and Manger believe 2 speed humps would deter the problem and consideration be given to more should the problem persist. Bid was for 4 speed humps at $3,300 and 2 speed humps would be $1,650, with the home owners association contributing 10% of the costs.

Action: Motion by Commissioner Schulze and second by Commissioner Jones to award bid for construction of 2 speed humps on Cameron Glen Drive to Bookers Patching and Paving for $1,650.00 as recommended by the Manager. Motion carried unanimously.

End of New Business # 6

Town Manager Radford

New Business Item # 7 – Governor's Highway Safety Program

Possible motion to adopt North Carolina Governor's Highway Safety Program Local Governmental Resolutions: Form GHSP-04-A and Form GHSP-06-A and giving Officer Dondi M. Day authorization to file on behalf of the Town of Apex application contracts for Federal Funding.

New Business Item # 7 continued

Manager Radford introduced Resolutions for adoption; NC Governor's Highway Safety Program for federal funding in the amounts of $12,725 and $9,765 totaling $22,500 for purchasing equipment; resolutions also ask for authorization for Officer Dondi M. Day to file application on behalf of the Town.

Action: Motion by Commissioner Meckes and second by Commissioner Schulze to adopt both resolutions and give authorization for Officer Day to file application on behalf of the Town of Apex. Motion carried unanimously.

End of New Business Item # 7

Mayor Weatherly

New Business Item # 8- Fire Advisory Board

Mayor Weatherly recommended the appointment of Brian Yates to the Apex Fire Advisory Board. Both Commissioners Jones and Schulze agreed, with Commissioner Jones pointing out that Mr. Yates grandfather was one of the founding firemen.

Action: Motion by Commissioner Jones and second by Commissioner Schulze to approve the appointment. Motion carried unanimously.

End of New Business

WORK SESSION AGENDA

There were no work session items to be discussed.

CLOSED SESSION

Mayor Weatherly asked for a motion to move into closed session at 9:55 p.m. to discuss the following:

1) Land acquisition
2) Condemnation with respect to properties for improvements to the electric system owned by: Daylene PageHeirs, David F. Raymer, Robert J. Barker, Clyde E. Sorrell Heirs, Dixie Pipeline Company, Amerigas Propane LP, Southern Equipment Company, Puryear Properties, LLC, Waffle House, and
3) Personnel, and
4) The addendum to consult with Town Attorney regarding New Business Item # 5.

Action: Motion by Commissioner Gossage and second by Commissioner Jensen to move into closed session. Motion carried. Minutes of closed session are recorded separately. Motion by Commissioner Gossage and second by Commissioner Jones to move back into regular session at 10:53 p.m. Motion carried unanimously.

In regular session the following action was taken:

Action: Motion by Commissioner Jones and second by Commissioner Gossage to adopt a resolution authorizing contract to purchase real estate adjacent to Laura Duncan Road for an electric substation or to condemn the same if necessary a 5.32 acre tract at $92,500. Motion carried unanimously.

Action: Motion by Commissioner Gossage and second by Commissioner Jones to adopt a resolution authorizing condemnation proceedings related to the improvement of the Apex electric system along NC Hwy 55. Motion carried unanimously.

Action in regular session continued

Action: Motion by Commissioner Jones and second by Commissioner Gossage to appoint Henry C. Fordham, Jr. as the Town's Attorney, and to authorize his hiring of a part-time staff attorney @ $30.00/hour on behalf of the Town to work up to 1,000 hours per year. The part-time staff attorney is to report to work under the supervision of the Town Attorney. Henry C. Fordham's hourly rate agreed to be $155.00/hour and authorized that Board meeting hours be compensated by a salary and benefits the cost to the Town of which shall be based on the hours related to Town Board meetings. Motion carried unanimously.

Action: Motion by Commissioner Gossage and second by Commissioner Jones to approve an Interlocal Agreement with Towns of Cary, Morrisville and Wake County for permitting, preliminary engineering and land acquisition for the Western Wake Regional Water Reclamation Facility and to authorize Town Manager Radford to make technical corrections to the agreement document if necessary. Motion carried unanimously.

End of Regular Session

ADJOURNMENT

With no further business to come before the Board, there was a motion by Commissioner Jones and second by Commissioner Gossage to adjourn at 10:56 p.m. Motion carried.

The above minutes were approved on the 3rd day of August 2004.

Georgia A Evangelista
Town Clerk

Mayor

TOWN OF APEX
BOARD OF COMMISSIONER'S

Minutes of Tuesday, August 3, 2004
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order. The meeting was held at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus. Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present.

Mayor Weatherly offered the invocation, led the Pledge of Allegiance and extended a welcome to those present.

Mayor Weatherly recognized Raymond McNemar, Information Services Technician, expressing appreciation for his assistance during Board meetings, assuring all equipment was up and running. Raymond is leaving the employment of the Town and going to work with State government.

CONSENT AGENDA

Mayor Weatherly presented the *consent agenda* to be set and asked for a call for action.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to approve the consent agenda as printed. Motion carried.

1. Minutes of July 20, 2004 Board of Commissioners meeting.
2. Minutes of July 20, 2004 Board of Commissioners closed session (separate cover).
3. Municipal Agreement and Resolution with NC Department of Transportation for paving Zeno Road.
4. Enhancement Agreement, Resolution and project map with NC Department of Transportation for construction of a pedestrian transportation facility along Lake Pine Drive.
5. Interlocal Agreement with Wake County for a Stormwater Management Program Feasibility Study.
6. Declaration of Surplus property: Badge and service weapon to Retiring Sgt. Ross Denson.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as printed. There were no amendments to the agenda, and it was set as printed.

PUBLIC HEARINGS

June Cowles, Planner (Planning Board recommends approval by unanimous vote at their July 12, 2004 meeting)
Public Hearing # 1– Conditional Use Rezoning and Land Use Amendment # 04CU10
Public hearing and possible motion regarding Conditional Use Rezoning # 04CU10 and 2025 Land Use Amendment, for Center Street and Investment Boulevard; Jones & Cnossen Engineering, petitioner, rezone from Residential Agricultural to Light Industrial Conditional Use and in the northern portion of the site Office and Institutional Conditional Use; and proposed 2025 Land Use Amendment in the northern portion of the site from Medium and High Density Residential to Office and Institutional.

Those speaking during the hearing were administered an oath by the Town Clerk.

June Cowles, Planner, oriented the board to the location of the property and noted the request to rezone and to amend current 2025 Land Use Plan, and gave the adjacent zoning and land uses as outlined in the staff report which is attached and incorporated as a part of the minutes. Planning Board reviewed this request at their July 12, 2004 meeting and recommends approval unanimously.

Mayor Weatherly opened the public hearing at 7:09 p.m.

Sean Dolle, Jones & Cnossen Engineering, 106 W. Chatham Street, representative and owner gave support to rezone and amend the 2025 Land Use Plan.

No one else spoke to this request, and the public hearing was closed at 7:10 p.m.

Action: Motion by Commissioner Schulze and second by Commissioner Meckes to approve the conditional use rezoning and land use amendment as requested. Motion carried unanimously.

End of Public Hearings

OLD BUSINESS

John Brown, Director of Parks, Recreation & Cultural Resources

Old Business Item # 1 – Proposed Community Center Expansion Project

John Brown, Director of Parks, Recreation & Cultural Resources, addressed the Community Center Expansion Project for the Town in anticipation of the November Bond Referendum. Town Staff has been working with the architects Smith-Sinnett and Associates and introduced them for the presentation regarding the concept site plan, concept elevations and concept floor plan for proposed Community Center Expansion Project. Parks, Recreation and Cultural Resources Advisory Commission reviewed the concept at their August 28, 2004 meeting and unanimously supports it with a few recommendations which are incorporated. John Hitch, AIA, Smith Sinnett had worked with staff to develop a design to meet the Town's needs. Architecturally, the building, responds to the established architecture of the Community Center and Town Hall. The plan will continue through normal review and site plan process. Slides were shown and explanations given regarding the floor plan, site plan, building model, and building views. Hitch answered questions from Commissioner Schulze assuring there will be minimal disruption to daily operations and mechanical space should remain on the first floor, vs. second floor. Commissioner Schulze further would like to see more flex space vs. game room space to allow change with time; Brown added the arts/crafts room may provide this space. Brown doesn't see the game rooms very active with Commissioner Gossage having been there when it was full.

Commissioner Schulze preferred parking not be in the circular traffic area of town hall not using the quadrant as it was proposed for future building expansion. Hitch responded different parking areas were discussed, but this would be within keeping of the circular traffic flow pattern and geometry of the campus. Commissioner Jensen added when a building was built there, there would be the need for more parking and may have to pick up more property. Commissioner Meckes added across Hunter Street, residents could walk to the town campus. Commissioner Gossage noted a temporary solution; to utilize existing parking but would be a longer walk; Hitch response was that additional parking could wait and do maybe a 9 month study to determine additional need. Director of Planning Rowland advised the existing lot at the Community Center and town campus parking would be enough parking, only a longer walk, however, with this additional parking it would make it more inviting. Planning Department will work with the architects on the parking issue.

Brown asked if there were changes the board would like to see, and if so should be incorporated. Commissioner Jones reiterated the P&R Advisory Commission recommendations were incorporated. Commissioner Schulze would prefer more open flex-space over the game room. Staff will proceed with the project keeping suggestions in mind.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments should be limited to 3 minutes to allow others opportunity to speak.

No one spoke during public forum.

NEW BUSINESS

David Rowland, Director of Planning

New Business # 1 – Change in Street Name

Director of Planning asked the board to consider a change in the name of Kelly West Drive to Brickstone Drive between Bonhill Court and a portion of south of Brieridge Drive.

A master plan was divided into two subdivisions: Kelly West and Greenbrier. Kelly West Drive was to be looped, homes were built, and there should have been a connection but due to the presence of wetlands the State of North Carolina would not allow the road to be installed as planned. Chapel Valley Lane has been realigned to meet a segment of Kelly West Drive. Due to public safety issues, and complaints from the residents, staff recommends the change in the name as requested. Residents will keep the same address numbers, only change is street name. Resolution will be on the next agenda for ratification, with effective date of adoption being August 3, 2004.

Tom McKay, Developer, regrets this change, but respects protection of the wetlands over traffic changes.

July Rudy, GIS Planner, explained there would be one month to six weeks time regarding mail delivery and had given residents two months notice also provided a check list so when final notification of the street name change was approved, they would be ready to make their address changes. Commissioner Gossage asked what the public complaints detailed: Rudy responded the residents didn't agree with the first street name suggestion of Chapel Valley Lane, so staff involved the home owners association and came up with Brickstone Drive; other concerns were with connection and not being able to get through; however, the road name being the most significant complaint about 90% with 10% asking why the wetlands were not seen before now and what their plans are in the future to detect such.

Resident Sheryl Hannah, 701 Kelly West Drive, expressed frustration and over the past four or five years; there are monetary changes to be made, and hopes Planning Department would look at the impact of these type decisions instead of making random changes in the future.

Action: Motion by Commissioner Schulze and second by Commissioner Jones to approve the street name change as requested, with Resolution to be ratified at the August 17, 2004 meeting.

End of New Business # 1

Commissioner Jensen

New Business # 2 – Consideration of Speed Reduction

Commissioner Jensen commented on a possible reduction of speed limit on Old Raleigh Road from 45 mph to 35 mph. He had received numerous emails regarding the portion that parallels with US64 by St. Andrews Church. Police Department had said no to this in past, and noted this a less than satisfactory situation. He noted from Gregson Street east it was 35 mph and then 45 mph into town. Accidents have occurred due to bad view lines, and should ask NCDOT what to do about this. He noted subdivisions with children off Kingsway coming onto Old Raleigh Road; a neighbor having an accident there. Chief of Police doesn't have an opinion at this time, however, Manager Radford will check with the Chief of Police regarding this issue, and noting probably a month or so to get NCDOT input. Commissioner Jensen noted the two lane portion was the most important at this intersection, and was not looking at the portion coming into town (narrow portion is 45 mph and wider portion is 35 mph).

End of New Business

WORK SESSION AGENDA

There were no work session items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into closed session to discuss personnel.

Action: Motion by Commissioner Schulze and second by Commissioner Jensen to move into closed session. Motion carried. Minutes of closed session are recorded separately. Motion by Commissioner Gossage and second by Commissioner Jones to move out of closed session and move back into regular session. Motion carried.

End of Closed Session

With the meeting being back in regular session the following **action** was taken:

Motion by Commissioner Meckes and second by Commissioner Schulze to give the Town Manager a 3% merit increase and maintain the 3 week vacation benefit. Motion carried.

End of regular session

ADJOURNMENT

With no further business to come before the Board there was a motion by Commissioner Meckes and second by Commissioner Jensen to adjourn at 9:11p.m. Motion carried.

The above minutes were approved on the 17th day of August 2004.

Georgia A. Evangelista
Town Clerk

Mayor

BOARD OF COMMISSIONER'S

Minutes of Tuesday, August 17, 2004
Mayor Keith H. Weatherly presiding

Meeting to be held at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus
Board of Commissioners Meeting Room (2nd. Floor)

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the Town of Apex Board of Commissioners August 17, 2004 meeting to order at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus. Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present.

Invocation by Commissioner Gossage.
Mayor Weatherly led the Pledge of Allegiance and extended a Welcome to those in attendance.

CONSENT AGENDA

Mayor Weatherly presented the *consent agenda* to be set and asked for a call for action. Commissioner Gossage asked to consider Item # 11 800 MHz Radio Agreement be moved for consideration as new business item (# 6).

Action: Motion by Commissioner Schulze and second by Commissioner Jones to consider item # 11 under new business. Motion carried.

Action: Motion by Commissioner Gossage and second by Commissioner Meckes to approve the consent agenda as amended. Motion carried.

1. August 3, 2004 Board of Commissioners meeting minutes.
2. August 3, 2004 Board of Commissioners closed session minutes (under separate cover).
3. Annexation Petition # 362, Haddon Hall Ltd. Partnership, owner/petitioner, petitioning to annex 10.905 acres located north of the portion of the Apex Peakway where it intersects with NC55 north of the NC55/Olive Chapel Road/Hunter Street Intersection and being a portion of Haddon Hall Subdivision;
    1) Resolution directing Clerk to Investigate Annexation Petition,
    2) Certificate of Sufficiency of Petition by Clerk, and
    3) Resolution setting date of public hearing for September 7, 2004.
4. Rezoning #04CU07, Robert L. Toler, Findings of Fact, Conclusions of Law & Ordinance, property located at NC55 (E. Williams Street) and Perry Road.
5. Rezoning # 04CU10, Jones & Cnossen Engineering, PLLC, Findings of Fact, Conclusions of Law & Ordinance, property located at 1400 Center Street.
6. Resolution to change the name of a portion of Kelly West Drive to Brickstone Drive (effective 08/03/04).
7. Resolution declaring Delores D. Ward's bid of $125,000.00 to be the highest bid for the purchase of the house: 904 N. Sharpe Street, Selma, pursuant to the Upset Bid procedure, and authorizing completion of sale.

8. Supplemental Agreement No. SCL004058 between CSX Transportation, Inc. and Town of Apex covering usage of land (Apex Depot Site).
9. Consent to Supplemental Agreement between Town of Apex and Tennant for building located at 220 North Salem Street and Center Street, known as the Apex Union Depot.
10. Wake County tax report.
11. **Signing of Wake County 800 mhz. radio agreement between Wake County and Town of Apex (considered as new business item # 6).**

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as printed. Manager Radford asked to add an additional appointee for recommendation to the Apex Appearance Commission.
Action: Motion by Commissioner Jones and second by Commissioner Gossage to add this additional recommended appointee. Motion carried. The meeting agenda was set as amended.

PUBLIC HEARINGS

Lee Smiley, Director of Finance
Public Hearing # 1 – Bond Orders
Lee Smiley, Director of Finance, announced the public hearing to receive public input regarding the bond orders and resolution calling for the referendum on November 2, 2004. *(Order Authorizing $13,000,000 Parks & Recreational Facilities Bonds, and Order Authorizing $ 9,500,000 Street and Sidewalk Improvement Bonds).*

Mayor Weatherly opened the public hearing at 7:05 p.m.

Art Clem, Fairfax Woods Drive, spoke in favor of the referendum, parks & recreation and particular wanting to see more than $9 million on street and sidewalk improvements, calling attention to priorities for sidewalks on Olive Chapel Road, Laura Duncan Road, and Old Raleigh Road and possibly involving the state (lending money) in street bonds particularly the NC55/widening. Apex Homeowners Association group will offer a letter to the homeowners to show support for continuation of the parks program and traffic/sidewalks improvements.

Margaret Allen, 202 S. Hughes, has a petition of downtown persons wanting to see more business streets with sidewalks – more walkable and preserving the downtown.

The hearing closed at 7:10 p.m. Director of Finance added this motion would not set priorities. Mayor Weatherly asked the attorney if this could be done in a single motion; Attorney Fordham advised it could be addressed in one.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to approve the Order Authorizing $13 million Parks and Recreational Facilities Bonds and the Order Authorizing $9,500,000 Street and Sidewalk Improvement Bonds as presented. Mayor Weatherly commented on education guidelines to inform citizens what the money would be used for. As far as priorities they can be changed up to the time of the specific projects, where the money will go up to entering into a contract for construction. There could be some fluidity involved in our priorities but does amply state the concept both transportation and recreation as we go forth into the fall and attempt to provide that information necessary for voters to make a decision - the town using public money cannot advocate for either referendum, but will educate and inform our citizens what we intend to use this money for and what the potential ramifications of our borrowing this money over the next few years would be to the budget and finances of the town; information we all need and with intent to do that vigorously and hope to have public input in this process. Motion carried unanimously.
End of public hearing # 1

David Rowland, Director of Planning

Public Hearing # 2 – Rezoning Case #04CU11

Public hearing regarding rezoning case #04CU11, Marshall Barnes, et al, petitioners, seeking to amend the 2025 Land Use Plan and rezone from Office & Institutional to Mixed Office, Residential, Retail, Conditional Use District, containing +/- 4.18 acres located on South Salem Street between E. Chatham Street and W. Williams Street; possible motion regarding same.

All persons anticipating speaking during this hearing were administered an oath by the Town Clerk.

Director of Planning Rowland oriented the board to the request to change the land use plan to allow retail in a defined area as noted on the map and to rezone an area and to request a conditional use permit along with the rezoning. Staff report is attached and incorporated as a part of the minutes. Requested zoning: Mixed Office Residential Retail Conditional Use District. Highlights of the rezoning are listed on the last page of the petition and incorporated as a part of the minutes. Idea of the arts district was recommended from the downtown steering committee: create an area of Salem Street between Chatham Street and NC55 for boutique type shops, art galleries, studies, etc. Staff worked on a proposed district to allow limited retail and at the same time, preserving the architectural integrity and fabric of the area, keeping office in the mix and bringing non-conforming residential uses into conformity. MORR - the closest rezoning classification: purpose and intent to build on the traditional neighborhood and small town character of Apex by providing land to allow a mixed of residential, professional office and limited retail use that are designed and developed consistent with neo-traditional principles. District allows single-family residences on small lots, duplexes, bed and breakfasts and small scale professional office and retail uses built to scale consistent with Apex small town character.

Carol Kish, resident of the proposed district, desires to locate a shop at 206 S. Salem Street. He informed her subject property needed to be rezoned and staff was looking into a larger more comprehensive conditional use mixed office residential retail district as suggested by the downtown steering committee. Property owners would need to sign a rezoning petition and conditional use permit; further as proposed the MORR district would require shops to have a special use permit.

Section 2.3.2(c)(2) of the UDO provides the Planning Director may propose an amendment to the official zone district map. Based on this authority the downtown steering committee recommendation and a request to locate a shop in the proposed MORR area, the rezoning was initiated. Kish offered she would obtain the necessary signatures from the property owners, once completed, staff advertised the public hearing. After this time, he was advised by the Town's Attorney the town could not act as the petitioner for a conditional use rezoning and a property owner or owners would need to be the petitioner. Thus, staff pulled the rezoning item from the April 19, 2004 Planning Board agenda and the April 20, 2004 Board of Commissioners agenda. Kish asked Marshall Barnes, property owner 103 S. Salem Street to be the petitioner; he agreed; process started over with new signatures obtained from the property owners. A new public hearing was set for July 12, 2004 Planning Board and July 20, 2004 Board of Commissioners. From the July 12, 2004 Planning Board meeting, their vote was to continue the hearing to August 9, 2004 because petitioner Barnes could not be at the July 12, 2004 meeting – there were problems with the map and application. Public hearing was also continued at the July 20, 2004 Board of Commissioners meeting until this meeting August 17, 2004.

Final: Recall Planning Board had recommended to the commissioners this area be studied for possible inclusion of retail in the historic homes along S. Salem Street. Minutes of the May 18, 2004 Board of Commissioners meeting indicate staff and any interested parties can weigh in over this at the next meeting or two and come to a proposal and put it back on the agenda. Staff received and processed the petition which is now before the board for consideration.

Planning Board reviewed this item at their August 9 meeting and unanimously recommended to deny the change in the Land Use Plan, the rezoning request and the conditional use permit based on the following:

1. Proposed request is not consistent with Land Use Plan which shows area as residential and office.
2. Proposed request is not appropriate in subject location as retail uses would change character of area.

In addition, Planning Board recommended study of this area be conducted similar to that of North Salem Street. Other concerns included conflicts that may come up with shared driveways and the buffering proposed may not be adequate with shops adjacent to residential.

A valid protest petition is on file for the area north of Moore Street; there is not a valid petition for the single parcel.

Planning staff supports the recommendation of the downtown steering committee and the rezoning of the area to MORR.

Mayor Weatherly asked the Town Attorney to clarify the protest petition. Attorney Fordham advised one protest petition was filed and valid to the area it is adjacent to, but not valid to the area it is not adjacent to. Salem Street between the area north of Moore Street and west of Salem Street is not separated in terms of whether it is contiguous but the area north of Moore Street and east of Salem Street – the whole area north of Moore Street is considered contiguous. The area on the other side of Moore Street is not contiguous because it is separated by more than a street – it also intervenes between that and the rest of the area.

Mayor Weatherly continued any motion to approve the rezoning would require a super majority – four votes in the affirmative, with Attorney Fordham advising if it passes three/two the portion south of Moore Street would be rezoned and the portion north would not, so there has to be a super majority vote.

Mayor Weatherly opened the public hearing at 7:30 p.m.

Proponents of the Petition and having been sworn came forwarded.

Marshall Barns, 103 S. Salem Street, speaks for himself and nine other property owners seeking to rezone their properties on S. Salem Street, currently zoned Office and Institutional.

Problems with the current zoning classification:

- Residential is not a permitted use but are grandfathered, asking what it means – Hurricane Charley had it destroyed his home, could not rebuild it as a residential use. Also, if the home was vacated for six months or to be used for some other O&I use it could not longer be used as a residence.

- Allows number of uses permitted by right that are not suitable for the area (permitted uses: communication towers, recycling collection stations, parking lots, medical or dental labs).

- Does not preserve the architectural integrity and character of the area, nor does it provide any protection of the historical structures located there.

Goal of the property owners: Restore residential as a permitted use, preserve the character of the area, and include some protection of the historic structures without negatively affecting the values of the properties. Believe the proposal accomplishes these goals, proposing area be rezoned to MORR-CU district where single family residential and professional and business offices would be the only uses permitted by right. Proposal includes a special use component that would permit certain limited uses associated with local arts, crafts, culture and bed and breakfast (examples: cultural centers, museums, art galleries, studios, antique and gift shops).

Special Use Process: prior to one opening any of the businesses, one would have to petition the town for a special use permit which would go through the same process of this rezoning petition – filing a special use petition, placement of the sign on the affected property advertising the special use, notification by mail to all property owners within 300 feet of the affected property and publication by the town of a notice describing a nature and scope of the petition along with the dates of review and public hearings to be held by the Planning Board and the Board of Commissioners. There are eleven effected properties, 7 residential, 2 professional or business offices, 1 vacant, and 1 subject to the special use petition following this petition. 5 of the properties are currently rented. There are also other uses not included in this petition that are inter-disbursed with the effected properties between Chatham Street and Williams Street. There has been opposition to the retail portion of this proposal; he doesn't think anyone has expressed opposition to restoring the residential as a use. Very few have expressed opposition to professional and business offices as a permitted use. In expressing their opposition, he believes some have miss-represented the specific concerns and limitations contained in the proposal and have described the intent of the proposal as an effort to convert all the effected properties to retail uses – simply untrue. He has no plans or intent to use his property on S. Salem Street for anything other than residential purposes. In an effort to assure factual information about this proposal was disseminated to those concerned, he held a neighborhood meeting on July 7, 2004 - card advertisement was mailed to property owners within 300 feet of the effected properties. The Board was also notified by email – one attended with twenty other residents. Others may express concern the properties be zoned residential only; first and foremost this is not a request of the property owners; second such zoning designation would adversely affect the values of these properties. He had two appraisals of his property – one six months prior to his purchase of his property assessing the value as a commercial use and the other done about the time of purchase assessing the value as residential – there is a significant use in these two valuations with commercial use being substantially higher. He is willing to forego any increased value that may be associated with the current O&I zoning designation as he believes the current use types are in appropriate that the current zoning provides no protection for the character of the area, nor does it provide any protection of the historical structures and because he desires the protections created by restoring residential as a permitted use type. He is not willing nor in a position to sustain the financial loses that would occur with a residential only zoning designation.

In summary, he said the owners of these properties have voluntarily requested this rezoning, that this proposal corrects and restores residential as a permitted use type; eliminates inappropriate uses permitted with the current zoning by limiting future uses of these properties; attempts to provide some protection to the character of the area and the historical structures there in by imposing secretary of interior standards and rehabilitation and guidelines for rehabilitating historic buildings and should not negatively affect property values. In addition, this proposal is consistent with the current zoning district outlined in the UDO. Proposed zoning classification is a district that by definition is intended to build on the traditional neighborhood and small town character of Apex and consistent with the number one goal of Apex's comprehensive plan which is the preservation of Apex's character. He's hopeful those who previously expressed opposition to this proposal will reconsider their positions – he believes this the best possible alternative that takes into consideration the extent possible the concerns of all. He shared copies of letters from affected property owners that were not able to be here for the hearing that are in support of the petition (attachment # 1 – Barnes). He knew each of the board would evaluate this proposal objectively and set aside any personal friendships in doing so – he thanked them for their consideration and trust they will take the proper action.

Dan Davis, President of the Apex Chamber of Commerce, stated from an economic point of view this makes sense and realizes change is not easy and changes made never please everybody and understands this. Proposed change for zoning on Salem Street is no different – there will be for and against on both sides. Chamber agrees that with development of the Peak Way Market Square, Beaver Creek Commons, Haddon Hall Commons, and other developments already on the books, they don't want to have the all time downtown lost in the new shuffle of supermarkets and strip malls. This expansion is good for Apex, but is it good for downtown. They don't want the loss for the Merchants downtown; they don't want the loss of the charm of main street of downtown Apex; they don't want the loss of culture of the original downtown Apex neighborhood. They feel by expanding the retail area, but being very particular in the way the permits are issued to the businesses there, we can allow the right type of businesses to expand the downtown area to help the downtown area prosper and remain historic and also keep that small town charm.

Robin Oke, 607 Samara Street, couldn't live in an older home, not living in the affected area, but lives in Apex, and chose it to be as close as they could to downtown without having to rebuild and upkeep an older home. One great thing the town has undertaken is its preservation and promotion of the downtown area; he agrees with it, it's the heart of the downtown – people come from all over during the holiday season to shop downtown, come to the fourth of July celebration, come from out of town to enjoy our Christmas celebration. He thinks that should be one of the goals in mind when considering the zoning. She's for MORR as its best suited to protect the liability of the downtown and one of the things that needs to be considered when talking about preservation of downtown's viability. Without business there and promotion of people coming there, you loose downtown. Business owners do not want to be there for the upkeep, you loose the residents who want to be there, if downtown falls apart, it streams over to the adjoining areas. Apex is fortunate we have a poor area that is established – being promoted but other surrounding areas we live in – Raleigh, Cary, - they are working diligently and under tough circumstances to bring to their town what we have here. She thinks MORR best protects because of its flexibility. She lives across from an area zoned O&I and for six years has watched it sit sometimes half full and the entire time half filled – the Crown Pointe business center on Ten-Ten Road. She would be distressed to see O&I kept as the standard for those homes in question on Salem Street. She thinks a mix of office and residential is a wonderful factor to this area – one of the big discussions that came up on the UDO – she was a resident on the UDO Committee. Clarion said, "key to this town – promoting and protecting the downtown". There was a new zoning category that would protect the viability of the area – meaning if the economy promotes businesses and we can have them downtown, great, let there be a zoning that allows you to do that, but if business leaves, let it go back to something the market will support. He asked the board to consider it and vote in favor of it.

Carol Kish, 209 S. Salem Street, she thinks most everything has been said. She read from a 1994 Study US Department of Interior ... "compact diversity of the Apex historic district restores depot, town hall and houses in close proximity to the railroad tracks is unique in Wake County. Late 19th century railroads of Garner and Varina have small depot districts listed on the national register – depots are small framed buildings and brick stores along the railroad tracks are fewer and less stylish than those in Apex. Neither town achieved the prosperity of Apex during the early 20th century. Other county railroad towns – Cary, Wendell, Zebulon – have lost their depots and undergone post-world war II development creating a non-historic layer of commercial buildings that interrupt the continuity of the early 20th century stores and houses that is one of the most significant survival of the Apex Historic district. No other town in the county has a comparable grouping of buildings that were essential components of a railroad town, the passenger depot, the freight depot, the town hall, tobacco warehouse and a large collection of stores and houses all dating from the early 20th century. "

She used this to show what a unique area we have, but doesn't need to be complacent upon this – but build on this, revitalize and enhance – being unique, utilize some of these places to bring in more retail, protecting the homes we have here. She's live in the area for 28 years and part of the growth and revitalization for the last 15 years and proud of it. She's proud of the commissioners and what the town has done - the neatest being keeping the old with the new, but revitalizing the old by bringing in old. You have to have growth, without growth we stagnate, if we don't enhance and build on what we have, as stated before, we could loose some of the viable businesses we have. She remembers 15 years ago, she'd stay open until 11 p.m. to make a sale – it was tough but they stuck it out; more people came in and got involved with what they were doing; we need to have foresight – not hindsight – we can't stay the same, but we can build on the historic and keep it growing – she would be heart sick if downtown started slipping – its the heart of this place. Many people said to her when she had her store downtown, we moved here and one big reason was for the downtown historic area. Those big malls coming are scary, and these people downtown want ever be rich, but they are wonderful to visit. People come in to chat, sit down and have a cup of coffee, lots of times free cups of coffee – you could sit out and play checkers – but if this passes she will put it back so people can sit, relax on the front porch and do that. She thinks Barnes had touched on everything in the rezoning – it's already a complete mix – we have retail on S. Salem Street, jewelry store, banks, churches, offices – this rezoning will be good for that and would protect the homes that are there. There is no way that a business can go in any of those homes without the consent of the neighborhood, advertising, writing out 127 envelopes which they did, and going before the board of commissioners. There are lots of people who have misconception – one homeowner told her they thought the commissioners could sneak anything in and included the word tattoo parlor – she knew they didn't mean it that way, but was off base – she thinks she has more faith that our commissioners and doesn't think they would get away with it – there are too many protections along the way in here. She thinks we need to have some foresight in this and hopes to get the board's favorable vote on this and thanked them for their work and consideration. She passed out photos showing the property in question – with the comment being retail does not take care of property.

Nancy Stolfo Corti, 1011 N. Salem Street, had moved here from Florence Italy to live in Apex; she thinks that says it all. Everyone has pretty much said everything about the rezoning. She totally supports it and thinks it's a win-win situation. She thinks a little bit of small town politics has moved into play and that's unfortunate because this is a wonderful town and she loves the fact she can walk downtown. She loved to walk downtown late at night and find someone coming out of the gym that would play checkers with her in front of Carol's store and would like to see her back downtown because she is visionary to this town – she has done so much for this town and she's the heart and soul of the commercial vision that we have here. She thinks Carol sees where we are going and they are all at the bottom, saying hey you guys, I'm up here and a lot of them doesn't really understand but will get there. Everything that she has seen for this town has been phenomenal and she has done a lot of hard work to get us there, and thinks a lot of people have forgotten that, but she hasn't and is the only reason she stays here because she knows the downtown is going to prosper and mingle out into N. Salem where she is and we will all benefit from her hard work.

Robert Birch, 3200 Hillview Court, Raleigh, owner of 206 S. Salem Street adjacent to CCB – purchased end of 2003 bought out of foreclosure with intention of opening a real estate appraisal office there. Between the time of contract June 2004 and closed in December things changed and they decided not to open an office there. At that time they decided they liked the property enough and wanted to have a hand in renovating it and try to find a tenant. They put a lease sign out front, and received a number of calls – 40% residential, 40% retail, and 20% office – no scientific survey, just an account of the calls he was getting. At that point a few people were serious – one a gift shop, the other Carol with an antique store – we found that would require a zoning change. One of the concerns of the neighbors was that their real estate taxes would go up. He called the Wake County Tax Assessor's office, speaking with Grady Wright – a commercial assessor (phone # 857-7119). He asked him what they do in cases of small downtown where zoning changes – do you automatically up the tax value or charge more taxes and he said no. If the use remains the same, the taxes would remain the same; it's only when you convert it to a different use that triggers the change in taxes.

Throughout his travels through small towns that have had successful revitalization of downtown, he has noticed there's a three or four block area from the center of town where retail, office, and residential work in harmony. The property they own is on the national registry – they spent a good amount of money on it, stabilizing it and structural work – replaced rotten wood, and painted inside and out – did some roof work and 500 other things that comes with ownership of old property. It still has a residential floor plan, but it's ideal for retail use also.

Commissioner Jensen asked in terms of property taxes, what happens when it's reassessed? Birch didn't get into this but he explained example: house on Salem Street has a tax value of $100,000 that may be broken down $20,000 land and $80,000 improvements. Change in zoning would increase the land but at the same time decrease the structure in terms of tax value - it maybe $80,000 land and $20,000 improvements. Total would be the same as long as the use stayed the same. If a structure is changed from residential to commercial use, they are comparables they look at to gage it by, would be commercial, not residential. Commissioner Jensen had trouble understanding the decrease as a result of the land becoming commercial and going up in price. Birch explained if it's still used as residential, they try not to penalize the people that stay there and use it as residential. That's the explanation he gave me. Commissioner Meckes asked does change of use initiate this, Birch responded yes. Commissioner Meckes asked if you went from residential to O&I - Barnes suggested his tax was significantly more valuable than residential – the tax valuation would change if it were commercial and if it went back to residential would it change. Birch didn't know if it would change back – he didn't get that far – reason for leaving name and phone number.

Charlie Holland, 6237 Old Jenks Road, has a business at 301 S. Salem Street for 35 years. He doesn't think it's ever caused any problems if it has he doesn't know anything about it. He's for the rezoning for the simple reason if you have the right kind of business, quiet, don't create any problems he thinks she should be able to make a living there and he supports that.

Elaine Mills, Basket Tree at the corner of Chatham Street and Salem Street having been there for almost 20 years. When she came to that corner, and believes Carol came shortly thereafter, it was in no way what it looks like today. When she looks around and sees people that have been here longer than she has, she's sure they remember the metal awnings, lots of vacancies – an ugly place to have a business. Then, Carol came to the street – there were a number of other people who came to the street and there were about five or six of them who got together and decided that if we didn't help ourselves, no body else was. They had all chosen to be there; they didn't inherit anything downtown – they chose to come to Apex and stake out our livelihood. She wasn't going to stand there and tell them Carol and she had not had their differences, they have, believe her they have, but the one thing they always had that bound them together was the interest in downtown Apex becoming not a ghost town as she saw downtown Fuquay – she had another store in downtown Fuquay – nobody did anything in Fuquay, but Carol was our "ball buster" – she was like the little red hen, when the rest of them would grow weary of beating their heads up against the wall, Carol – it was always, who would help me do this, not I and Carol said I'll do it myself then. No matter what it was Carol was always at the forefront and she had nearly for twenty years had the interest of downtown Apex was her prime motivating factor and she believes this. She thinks Carol is the kind of person that leaves it better and as far as the downtown charm that she's heard everybody talk about and people come to her store everyday – without Carol Kish there wouldn't be any downtown charm, she's convinced of it. As far as the festivals that bring people downtown, is anybody interested in knowing who was the primary instigator of these festivals, and who has worked tirelessly to make sure they were successful and worked with the town when it came time to turn them over. She doesn't live in Apex she's sorry to say, but she has been coming to Salem Street every day for six and seven days a week for almost 20 years and it never occurred to her that the block(s) that is being discussed tonight were not part of downtown Apex. There were a few businesses and to her was always downtown Apex from Hunter Street to NC55 – that was our downtown.

She would like to ask the board to consider approving these changes because she thinks it's good for the downtown and it will help us to remain quaint and as far as Carol Kish's business, she doesn't think the antique businesses draws crowds of people at one time – she thinks it would be a quiet little business that would go about keeping Carol as part of our downtown which we need. She thanked the board for listening to what she had to say – a lot of them she knows, a lot she doesn't know, a lot of them are her customers and a lot of them are not, and in 20 years, she has never taken a stand because they are going to alienate one customer or another customer, but eventually you come to the point you have to stand and speak to something and this is the cross roads she found herself. This is not just been starting in the last month or two – this has been going back and forth and she has listened and looked and thought the time is now – I support these changes.

Tim Carley, 301 Satinwood Drive, has owned a business for five years at 121 N. Salem Street in downtown Apex a member of the Downtown Steering Committee – the wasp nest that started this whole thing. There are issues that need to be resolved - O&I does not work for this block. He asked what would have happened if hurricane Charley had come through and leveled those buildings; we could have six more CCBs, a bunch more lawyers offices, but we couldn't have houses and that's bad – that's the key to our downtown. Where did we get to this point. It was suggested in a meeting of the downtown steering committee to change to MORR-CU – that's more important. It was suggested by a member of that committee who is here this evening and may speak later and he quoted." I would love to be able to walk from my house and see residences as well as perhaps shop in some unique boutiques – it's a natural extension of our beautiful historic downtown." Makes sense, perfect idea – save the historic houses, help downtown makes perfect sense. So we move forward, bad idea --- it wasn't handled probably correctly, but here we are today with a nightmare of emotions, good, bad and otherwise. This rezoning was never about retail, never about tat-too parlors, never about massage parlors, it was never about Carol Kish, but guess what, it is and that's wrong. It's about preserving and enhancing the downtown; you ask anyone living in town, in this room or on the street, they will tell you downtown is the key to the town, good bad or otherwise. This was not about the other side of Salem Street, towards Hunter Street, this was not about tax increases, tire stores, auto stores, parking on the front street, and it was about preserving downtown, cut and dry. Nine out of ten of the people who live in this property are in favor of that; he doesn't get it. It's allowing the economies of scale to – if it wants to be commercial, and doesn't want to say commercial in the tire auto store, but it needs to be an office – it's there, if the economies are there. If people want to live there, absolutely, let them live there – he wishes he could live there. More importantly he goes back to the CU – if we are going to do the R of the RR, it's about limiting the scope of any and all retail as permitted. If he wants to open a store, he has to come before the Board and plead his case – he can't open anything. If his store closes and another store opens, they have to come to the Board again and plead and beg and produce to the Board that it will fit the scope of the downtown. It's not about personal animosities between certain parties; it's about preserving Apex, for the good. More importantly, as he understands this, if you are to take over one of the properties, you have follow the guidelines of Historic Preservation, if you do not follow those guidelines in downtown, he would be the first in line in front of the bulldozer – he's put too much blood to much sweat and too many tears into making sure the historic preservation maintains the character of our downtown. Once again, it's about Apex, nothing else, nothing more – it's an easy decision.

Greg Stephenson, 103 S. Salem Street, lives in one of the homes affected by this proposal and he is for the proposal and strongly supports it.

Heather Ro-Sullivan Canney, 311 Olive Street, didn't want to be on one side or the other; she personally doesn't find it that simple. She's discovered, after much soul searching, that if she was basing this on personal feelings or self interest, it would be easy, but trying to take into account what's best for the Town of Apex and a lot of the factors that play into it, it's really not. Since she couldn't come up with a definitive answer, she's told them what she did know and what she didn't know. She does know the primary goal should be what's best for downtown Apex which absolutely includes the protection of historic properties – not satisfying personal agendas or alternative motives.

What she does know: There's a lot of miss-information going around and a lot of promises being made by different people with different agendas. We've all heard about tat-too parlors – parking would be a nightmare – downtown would become overrun by shops that would shut down at 6:00 p.m. and downtown Apex would become a ghost-town in the evening. What she doesn't know: Why those who originally proposed this rezoning are now opposed to it; she doesn't know why those at one time were opposed to residential zoning are now supporting it; if there will ever be a petition for it – most importantly – a lot of them would like for it to be residential and told that could happen, but we don't know, only those sitting here, whether or not you would ever vote for that. To stand there and give them her opinion would have to look into a crystal ball and know whether or not that could happen. She does know ultimately they would like to see our historic homes remain homes and under the current zoning they cannot be. She knows under O&I, MORR, office uses would be permitted and loves the idea of office uses either, but under all those permitted. Under MORR there's the opportunity for residential use and some other types of businesses. She wants the homes protected, but no way of knowing one zoning or the other would necessarily insure that. As far as the parking issues, she sees no difference between office and retail in that respect – this evening she counted eleven trucks parked in front of a surveyors office at 5:30 p.m. She doesn't see where parking would be a big difference – in her opinion. She knows if we have to have business use, if it can't be straight residential, she'd rather see an antique shop than some of the other possible uses that would currently be permitted such as a recycling center. She knows we have a lot of people want to preserve downtown; a lot of people are concerned about maintaining small town character in the downtown core, especially with the arrival of Target and so many others – she feels it's important to have something downtown worth protecting or we will have a ghost town and it want just be after 6:00 p.m. She wanted to say in a perfect world we would be able to pick and choose our neighbors, our zoning – she personally live in a residential zone in downtown Apex and her house backs up to a welding shop – that's not her first choice either. She knows we often have to make compromises and her first choice would absolutely be residential but if that is not a possibility then she would be in favor of limited retail use on Salem Street. It seems to her, it would be silly to reject this proposal tonight then later find out nobody is going to support residential, which was strongly opposed before and then has to come back and try to figure out what they want it to be then. She knows she doesn't want O&I. Whatever, you guys know the answer better than she does, what you think would be best otherwise.

Those speaking in opposition and having been sworn came forward:

Margaret Allen, 202 S. Hughes Street, the old Cunningham house, thinks Heather had said exactly what a lot of them are thinking – that's why there's a bunch of people that want to talk. They don't understand as homeowners and it does cost a lot of money, and takes a lot of work to take care of these homes. You can fix all the rules and make them look pretty, but structurally, that's where the work comes in and lots of times it doesn't look any different than it did when you started, but its sound – you can jump up and down and six kids can run up and down the stairs and they don't fall in. She's not here for political reason, Heather makes a good point, she asks the town board at the last meeting who lets them whether these can be residential, that's what they want. She asked if there's really anyway that the homes can stay homes because that's a lot of the reason that Apex is the great hometown – that's why she lives here – she has six kids and they run around and she feels she can run in the evening, jog in the morning early and she knows it's a safe place to be and she loves that. There's lots of construction and money making opportunities outside of town and she does want the economic area in downtown to stay vibrant. Her question to the board is there anyway that the residents can keep those homes residences, not offices, not closing down at 6:00 p.m. – but real homes – when you have a home, it's old, it takes everything you got – but it's a choice and for some crazy reason, they love it and love being in a place where other people respect their homes just as much and spend just as much time on them – it pours out into their personalities and who they are. She thinks watching that house as she runs at 206, she's not against – she thinks Carol Kish is fine, she doesn't know her, she fines; she knows you can fix up a house, paint it and make it look good, but it takes a lot more to make it sound and really thinks Apex is this great town we are so proud of and pull everyone into downtown to see it, is because there are people who live here and when people live in a house, they make it their own – those houses want sell for cheap if they went on the market for residences – people who buy them put their hearts into them and want to walk in downtown and see the other houses – they enjoy seeing the accomplishments of other people in their homes, so that's what she wants to know – can we make it a residence – can we make it just residential as it was at one time.

Can you answer the question – are you allowed to talk. (the board will talk later) She asked them to consider what has been said – she's not really against – she knows – the thing that's confusing about this is when you sandwich all the mix use residential retail and tell the people who own those houses, you know this is better than O&I – because you are not going to have insurance as an O&I and if Hurricane Charlie came through and blew the house away, tough luck, but reality is you don't have to have all of these together to make that happen. She has a residence and insurance and it's not easy to pay it, but it's doable but it's a residence and a home and those homes need to be preserved – just as you say, to keep the downtown the great downtown that it is. That's why she lives here, asking them to please consider residential only. If you have to table this, she doesn't know what's done in the political arena, but whatever they do, please consider making these homes stay homes.

Joe Zublena, 317 N. Salem Street, the old Hunter/Shaub House, bought four years ago and has been restoring it, similar to the Allen home, adding this is not political and not about Carol. He thinks when the issue was brought up – MORR is much better than the O&I, no doubt O&I is not what preserves old homes and allow people to move back into their homes – the issue he brings is when you look at what you describe as downtown. As a homeowner in downtown, he sees downtown as between SR1010 and pretty much Chatham Street – that's the business core of downtown. There are problems in the business core of downtown – we have empty buildings, we have inadequate parking, that's what needs work. What this is when you look at Salem Street residential, we have two blocks in N. Salem and two blocks in S. Salem that have homes – there's 15 homes on S. Salem and 8 homes on N. Salem. He sees the deterioration of that aspect of a neo-traditional neighborhood when we are a true traditional neighborhood. That's the uniqueness of Apex. Those homes, the porches, people interacting with people going downtown; if you look at the definition of what neo-traditional does - it builds a core then neighborhoods surround the core. This is proposing a eroding that neighborhood core on Salem Street. As a resident and homeowner on Salem Street – he finds this a concern, particularly when on the end of the petition N. Salem is the potential next target.

Don Grimes, 210 S. Salem Street, has lived there since 1989. This matter is one that he believes boil down to what do we see as the future of S. Salem Street and in Salem Street as a whole? Is the future what we see in many small towns that have a little central business district and some turn of the century or earlier late 18th and 19th century homes that have sort of turned over to business and the people that left instead of those homes being occupied by residents, we now have businesses of various sorts, asking is this the future that we want for Salem Street. Salem Street was described by Ruth Little when she did her very first survey of our downtown historic district – she characterized Salem Street as the backbone of our historic district and is exactly what it is. There is no N. Salem Street, there is no S. Salem Street – there is only Salem Street – the backbone of our historic district. Salem Street represents not in the pristine condition it was at one time but very nearly so, what we now all recognize as being the model of the neo-traditional development where you have a central core of business surrounded by homes where people can live close to those businesses and walk to those businesses and turn around and walk back home; that he believes is the central attractive core of what makes Apex special. He believes he's probably preaching to the choir in saying that, but what we are trying to decide or have to decide here tonight is what the future of Salem Street is. Is it going to turn into business, is it going to turn into retail, or will it retain the unique character that it has right now and that it has had since the late 1800's. His position is that it should remain the same and that we should do everything that we can do that is reasonable and prudent to encourage that to stay the way it is. He believes in order to do that, this particular petition has some merit – the meritorious part about this petition is actually having a zoning classification for S. Salem Street that will allow residential to be a conforming and permitted use and we need that, we absolutely need that and absolutely essential if it's going to retain it's residential quality and character. Where we differ is when we talk about introducing retail to that area. His belief is that once you cross that line, once you break that barrier, once you introduce retail into this very unique area and into these historic homes, what you are doing is simply making up your mind that you are ready for that area to turn to retail exclusively retail, or perhaps retail and office together. Our recently adopted comprehensive plan, of course as everyone here agrees, espouses and supports identifies the maintaining of the unique character and the small town character of Apex as the number

one goal for the vision and the future of this town. He quoted: the historic properties at the heart of Apex help define the small town identity that residents value so much - - the appeal of historic Apex and its small town character is easy to see and is further evidenced by the top stated goal of this comprehensive plan to preserve the small town character of Apex. Apex has that small town character now in its nearly pristine condition, but it warns us further down. It says the unified development ordinance does not however provide any protection from incompatible alterations and additions even with adoption of this ordinance, most historic properties in Apex are vulnerable to alterations that can destroy individual historic integrity and overtime such changes could affect the integrity of the entire historic district downtown. That's what we are talking about tonight. This is the decision we have to make tonight. Are we going to turn this area into something totally different that what it is right now and what we value so much. You have he submits very wisely recently taken the recommendation of the Planning Board recommendation which was unanimous to change this zoning in this area for the 2025 Land Use Plan to permit residential but not to allow retail and he submits the reason they did this is for the very reasons he has just subscribed to them. It's too precious to experiment with and too precious to take a chance with and too precious to simply succumb to the interests of people who want to make the downtown bigger – the downtown business district bigger – to expand the downtown business district just so that we can have a larger commercial district. This particular petition as he says is sort of a mixed bag and he has mixed emotions about it and since there aren't any ladies on this particular board, he compared it to the old story about the mixed feelings is when your mother-in-law drives off a cliff in your new Cadillac but in this particular case, he would really characterized it as bate and switch is what we've got here. The bate for the homeowners and something they badly need is to have residential as a conforming use in our district. The switch unfortunately is that in order to have that desirable goal that everyone recognizes as being desirable and essential to maintain that area, we have to have retail in these historic homes. He wanted to tell them a little bit about the weakness of this proposal which he is sure they are already aware of – he wanted to remind them – the only thing – the only criteria for what can go into these stores, shops, boutiques is that they have be quote " associated with local arts, craft and culture." Such examples of culture and arts and craft are gift shops, specialty toys where do we draw the line – well there is no line there – it's totally open ended, literally anything other than a department store is a specialty store and that's what we are talking about here – specialty stores. Literally that's the situation and not the absurd instance to talk about tat-too parlors in these homes – it is not. Tat-too parlors are art, and they are culture – no one could reasonably argue tat-toos are not something that is very much prevalent in our culture today. It is simply not laughable as others would like to think. Nor would barber shops, nail salons, tanning salons, whatever, literally, as long as it is a specialty shop, there is no criteria here for you to say that cannot go in there.

Parking is another thing talked about here. There is no provision, no suggestion, no idea on anyone's part being offered here as to where the additional parking is going to come from. We already know and recognize that we have a critical shortage of parking in downtown right now. Where are all these people going to park? No provision whatsoever.

Probably the worse part of this is the part referring to buffering and fencing. The purpose of a special use permit is to take what would potentially be an incompatible use and to require or impose additional requirements that make it less onerous of the surrounding properties. In this particular case look at what we are starting out as a baseline at the request of an adjoining residential property owner but only at the request of a residential property owner – a decorative fence or vegetative buffer of 4 to 5 feet in height shall be installed between a retail or a commercial use and a residential use. He believes Rowland had stated, testified at the planning board that normally the buffer between residential and retail is 40 feet – that's half the size of the lots that they are talking about on S. Salem Street – there's literally no way you even start with the normal base line to impose additional requirements – we are talking about – it goes on such buffer however, shall not be required if it would render a shared driveway unusable or in the event it would render a separate existing driveway too narrow to allow reasonable and necessary access. What the person, the resident, who has a shared driveway with a retail business. That's a pretty awful situation to start with,

what do you do about that? Literally there is nothing here, nothing to protect an adjoining residential owner from the negative affects of a retail establishment.

Storage: There can be no outside display of merchandise in the front of the building. If you look at the pictures he passed out, at the top you can see in fact, the side yard can be just as distracting, annoying, intrusive and ugly as the front and yet specifically leaving out the side yard or the back yard. What about the neighbor who has a back yard, enjoys being in his back yard and there's a complete assortment of all kinds of merchandise stored out in the back yard next to it.

The last thing is the signs, perhaps the least noxious of the whole thing, but we are talking about putting signs up on these houses after they turn into retail establishments. The ones in particular are two, a wall mounted sign and a ground mounted sign in front of this historic home. He showed another photo from the most recent cover of the Cary Magazine, who came to Apex to find this property on N. Salem Street to be the center piece, the front cover of their magazine to illustrate the graciousness of the historic homes in this area, they came to Apex to get this picture to show this porch. The owner of the property is seated and will speak in a moment. He asked, suppose this house had had a sign up on the front that said Tonya's tanning and nails and a ground mounted sign out front that said the same, would that house be on the front cover of the Cary Magazine - he doesn't think so. This is what we have that Cary doesn't have and we need to protect it. These homes need to be encouraged to be homes so that we can maintain what we've got. We've got it, Cary doesn't let's keep it.

Joe Williamson, 401 N. Salem Street, owns the house on the Cary Magazine, a homeowner with a lot of pride and puts a lot of effort into it, not something you get from a business. His house looks better than the business. It's ironic an Apex house is on the cover of Cary Magazine, actually not ironic but said for the people in Cary. Luckily it's not too late for us in Apex. The magazine shows photos of his two year old daughter sitting on the front porch with her doll and rocking chair, right size for her. He can't imagine her not having neighbors, or people to waive to or the people to talk to or kids to play with. He knows it's not his end of Salem Street being talked about, but he thinks the people on the other end want to have neighbors also.

Nancy Maynard Brown, 305 Center Street, in the late 1930's her parents moved into 206 S. Salem Street and where she grew up. It was a nice house and neighborhood and she doesn't like seeing it as commercial, retail. After graduation from college and getting married, she and her husband went to northern Virginia to live and just retired and came back in the last few months. At the time, we could not even consider an historic home, the home she grew up in, because it's already turned commercial. She thinks they need to allow those historic homes to go back to being residential after even if they have been commercial or for office space, because that's a nice home she grew up in. A lot of the homes around there are nice. She remembers her father sitting on the front porch and rocking and waving and saying hello to the people that passed by. We were close to our neighbors and spoke to them.

Molly Weston, 500 W. Chatham Street, stated she is also Vice President of the Historical Society and wanted to acquaint them with a motion they made at a Board meeting voting unanimously to oppose retail in the downtown. She grew up with the notion in her mind, because it was pounded in her mind that you buy in Apex, you keep your money in Apex and nobody has been more delighted to see downtown Apex, the area that has always been our downtown business district. She has been so delighted, she brought people in to shop here, and have bought everything she could possibly buy from the Merchants downtown. She doesn't want anybody to suggest that somebody go down and live on the main street of the business district but on the same token, she doesn't want anymore business or office or torn down homes in Apex. When she was a little girl, her parents thought about building a new home. Her daddy came home and announced he had the high bid on the old Teacherage – there were two, one on the corner of Moore and Hughes Street and the other on Moore Street. She was so delighted because she thought they were going to move into the castle. They went to look at it; during their visit she found out

her dads plans were to tear down the old house, to remodel and rent the old Teacherage and to build a new house on the corner – she cried. The only thing that saved the Teacherage from being demolished by her daddy, who she idolized, was that his current renter when down and raised the bid on the house because he wanted to live in the old Teacherage. Fortunately, for Apex that buyer didn't tear down the old Teacherage, he let it sit in absolute deteriation for years. Everybody in town thought it was an eyesore and then somebody came in and bought it and poured money into it and started to live in it. Other houses have had people come in. It has done more for Apex than any festival that has ever been here. We even had festivals back in the early 50's and knows some of the people sitting there may have tried to catch the greased pig or climb the grease pole. She urged them to do anything they can do to save the historic buildings in Apex to put them back to their original shape and to their original use and don't loose anymore of our history.

Lisa Zablena, 317 N. Salem Street, Hunter Shaub House, and is a rabid historical homeowner. She got the house on the market when it had been vacant for seven years; she fought for it and paid thousands and thousands of dollars more than it was worth because they wanted an old home in downtown Apex. She is very sad for people at S. Salem Street because here end is protected; they are residential. She knows that for forty years the zoning has been O&I and sad if their houses were burned, they couldn't rebuild them. She doesn't know she's against change in zoning; she thinks it's a step in the right direction. She's been to several planning board meetings and a little tired of hearing retail, retail, retail – we have retail going up everywhere. She doesn't understand why we feel the need to extend it any further. She'd like to see downtown revitalized even more. She's talked to the successful business owners down there and they are very successful because they offer something unique no one else has. She doesn't think we need to worry about Target – they are not going to take business away from the pottery shops or unique restaurants – that's not going to happen. All she wants to see is the people that go down and use the downtown remain in those homes. She doesn't see, and maybe she's wrong, those nine homeowners that live at S. Salem Street here. She begins to wonder if how interested they are in this petition. She thinks probably they know going to residential to MORR would be good but wondering if they are aware, they could maybe exclude retail – that would be her hope. She wants to see people stay in Apex, see the homes stay homes. She loves sitting on the porch watching the parade, loves seeing people walk by while doing yard work in her overalls. She plans to be here forever and really sad that there are people in their historic homes that doesn't fee the same way she does because if we let that end erode any further, it will probably become business district and doesn't think expanding business district would be very important.

Phillip Slupe, 204 N. Mason Street, a block and one-half from downtown. The area in question is unique, all agree, many splendid homes and thinks we are missing the main point – this area hasn't been rezoned since 1963 and everyone agrees a change has to occur and would like to think there's a way to build a bridge to connect the two parties here and that bridge would be possibly an amendment might be in order. He has no problem with business in the downtown area but would like to see a residential component down there. His amendment would be that we remove the retail component of MORR and allow the proposal to pass because he doesn't think anyone would want to go through this entire process again, especially different camps who have splinted off and have their own ideas about what this district should be. If there is a way, being weak on his parliamentary procedures, he's not sure how to propose this amendment, but propose that the retail component of this proposal be removed or stricken with the consent of the folks who originally signed the petition and live in these homes – if they would be willing would be awfully nice – if they could be approached – he thinks residential and business can coexist in this unique area in downtown which seems to have many people up in arms over and he thinks there could be a resolution to remedy this and please as many people as possible.

Bill Carey, 107 S. Hughes Street, hoping to keep this area and return it to residential state this could be done. Talking about preserving the integrity and the beauty of the area and doesn't think additional business with six square foot signs in front is the way to go – he hopes they will consider that.

Laura Grimes, 210 S. Salem Street, she thanked the board for listening and expects they think as she does that this is a watershed decision and a very hard one that they are asking them to make. She doesn't have much more to add; she has bits and pieces to say. She thinks there's a silver lining here in the downtown for retail business. She's also a member of the downtown steering committee and very much in favor of keeping homes as homes. She thinks we have a wonderful opportunity within the next year to see an expanded business district in what has come to be referred to as Track Side. It would be two blocks away from the current downtown business district – across from town hall and could be developed much in the way liberty station was developed in keeping with the character of the downtown but would have the opportunity for shops, and office, and some residential maybe condominiums – exactly what's being proposed – she does know there is a retail component to it. She thinks that's wonderful because she feels retail needs to take place in buildings that are sturdy that have concrete floors, steel beams, heavy doors so they can support inventory and heavy traffic. She thinks it's a wonderful place for Carol to have her business for there to be boutiques. It would so close to the downtown you could skip/hop one to the other. She doesn't feel homes are appropriate because they are fragile, small, lots are small and they are old. Some built 1875 – her house one hundred years old this year - many are older. The floors in her house have had to be scabbed – in the hallway, when they bought it was dangerous – you could step through the floor. Mr. Truelove, same who helped Ms. Zublena, told her the joints in her house were 24" on center instead of 16. There is no sub flooring and thinks this pretty much the standard. He also went under 206 next to her considering the special use rezoning and said it was a disaster underneath the house in terms of foundation and sub flooring. She cares about historic properties and knows they know and are aware of the activities she and Don have had in maintaining historic property in town, the Maynard Pearson house and so on. These things are too fragile and too vulnerable for heavy traffic. There's no way to put a "Polly Anna face" on that without really going in and doing major structural changes to these buildings – they can't take it. Another point: lots of information in the photos – taken from her house and 206. He pointed out you can see the side yard from the front yard – so because you don't put it in the front yard doesn't mean you can't see it. If you are a neighboring property owner – you are talking about their saying – we will have a vegetative buffer or a decorative fence four or five feet high. On the bottom picture she measured the shrubs at four feet high and can easily see over – if you had ten cars here and a dumpster and a loading dock and inventory, is that something you want to live next too. It's not attractive and there is no buffer – zero protection from this. This is not a serious attempt to protect the property owners here; there's no seriousness at all. If you look down at the bottom right photo – her drive adjoins the other driveway. Carol said there would be 20 cars a day coming in her driveway; maybe 20 doesn't seem that bad, you have your own car coming back and forth in your driveway. Think about multiplying that by 20 daily – you're talking six thousand cars a year coming into the property next to you; coming up what seems to be your very own driveway its so close – 20/30/40 times the amount of dirt, traffic, debris, gum wrappers, plastic bags, receipts, cigarette buts, 20/30/40 times what it is if it's a residence and she has to take care of it – she has to pick it up. There's her cat, she told Doug, she's going to get run over – she's not going to make it under that kind of traffic. Pets will not do well in this kind of situation – that's a minor thing. She would like to suggest we have a possibility for a win-win if we develop Trackside and have retail there, we have a place for that, appropriate and things appropriate for it. She'd like to ask them to please consider giving them protection they have never had as said many times tonight, this has been zoned O&I since 1963. The remarkable thing is that since 1963 only four properties have gone to office, the rest stayed homes – she's talking historic homes. We've got Lisa Garrity, Timberline Builders, and house next to her use to be and now it's vacant. We have Zadenic; there was two in the 15 years she lived there and now two more have gone. If there was a huge demand for business, more would have gone. The really huge demand is still to be homes – people love these homes. The pull is still there; way over the majority 70% are still residences. But for 40 years have worked under the situation if it went office, it couldn't become a home again. It's been a heavy burden for homeowners but yet it's still primarily residential and that is where the true pull is for these homes and still their appropriate use. You can change it or accelerate the change and it would be like Mr. Holland – jewelry store – said in the planning board meeting he purchased a house on Salem Street, immediately tore it down and built his business and he's had a good business. It's the only retail business on S. Salem Street and he has enjoyed it and has been a good neighbor. She suggests to them that if it is zoned retail, that is exactly the state of

the homes; they will be torn down, not immediately necessarily, because you would prevent it; you have the ordinance now that gives a four year cooling off period. Without it, toast, here we go and she likens it to a smile where the teeth are missing. If you look at Fuquay and Holly Springs and Cary, what you have is your downtown business district and then big gaps where the houses have been torn down and likes looking at a smile, with the teeth missing; it's so ugly and so obvious. Please don't do that to Apex – it's just a few little blocks – you've got the whole rest of the town for retail, let them have their few precious little blocks to remember and treasure.

Carole Kish wanted to speak, knowing she may be out of line. She said it was not mostly residential only 37% residential there; and added she had a cat killed there.

Mayor Weatherly closed the public hearing at 9: 00 p.m. and turned the matter over to the board for deliberation. Mayor Weatherly called for a stretch break and the meeting reconvened at 9:10 p.m.

Commissioner Meckes asked if there was anything of redeeming value. Rowland responded a nursing or convalescent home, private school. Commissioner Schulze asked if they approve this would a tat-too parlor be allowed. Rowland responded in his opinion = no, but would be handled with a special use permit when it got to the board as a special use. Commissioner Gossage asked if a protest petition could be filed on a special use permit request. Rowland responded no, he didn't think so, with the Town Attorney confirming that – only on conditional use zoning. Attorney Fordham advised a special use permit application is a quasi-judicial proceeding and not an opportunity to exercise broad policy judgment – you have to follow the criteria if the application met the criteria, you would have to grant it and if it didn't meet the criteria, you would have to deny it.

Commissioner Jensen asked if these were commercial, could the people at the same time live in the house and use part for both commercial and residence; could that be a requirement. Rowland responded in his opinion, yes; that would have to come from the petitioner (and property owners) agreeing to amend the requirements of the conditional use that be a requirement. Commissioner Gossage asked what signs are currently allowed under O&I if I put a business into one of these – accounting office or something like that. Rowland responded the wall signs would be 10% of the facade of the structure – could be allocated to a wall sign and then if you put a ground sign out, it's based on the footage of the lot that fronts the street; he doesn't think there is anything out there greater than two hundred feet; anything two hundred feet or less could get a 20 square foot sign. Commissioner Jensen asked if it were too late for the petitioner to adjust this if he so wished, with Rowland responding it would be up to the petitioner.

Commissioner Jensen stated buffering was scary to him, asking Rowland's opinion; his response was that would be case by case basis and can be conditions put on a special use permit. If there was a particular situation where more buffer is needed, then he thinks that could be made as a part of the special use permit.

Commissioner Gossage wanted to assure he understood that currently if the house burned down or a hurricane knocked it down, it could not be replaced. Rowland stated it's a complicated formula in the ordinance, but he gave a fairly way to look at it. Basically reads, if it's damaged more than 60% or greater of the value of the house, or structure, then you have to comply with the underlying zoning district which would be office and institutional, but anything less than that, but then there's a formula, but he thinks for discussion purposes, it gives you a formula or 60% whichever is greater but somewhere in the neighborhood of 60% of the value of the property if destroyed you have to revert to the underlying zoning; anything less than that you can rebuild it. Commissioner Jones confirmed that was any property under any zoning district, it's not just this particular one – non-conforming, with Rowland responding correct.

Commissioner Schulze stated in the parking it seems to him this is ordinary retail and would not be enough parking downtown as is; would there be satisfactory parking. Rowland responded, as noted by Ms. Grimes, much of the buildings or structures are not very big and hope most of the parking could be on street parking; that's the intent. Commissioner Jones stated you count on street parking toward their parking requirement – you would count those parking spaces, with Rowland continuing directly in front of it. Commissioner Gossage asked the number of parking spaces, with Rowland responding he didn't have a count on that, but usually are 18 feet by 9 feet – you could look at the frontage of the property and see how many spots. Commissioner Schulze asked if the number required is based on square footage of the retail, with Rowland responding it's roughly 300 square feet – one space for every 300 square feet of floor area. Commissioner Schulze asked if he house would only require a couple/three spots, with Rowland responding, he didn't know the size of the houses there, but would think 1200 somewhere in that neighborhood, more. Commissioner Schulze was thinking the retail portion would be downstairs, with Rowland responding it's based on square footage of the house so it's probably more than 1200.

Commissioner Jensen noted the property on Hudson Street, asking if that runs a flag with respect as to what would happen to that street – everything else is on Salem. Rowland responded that house probably wouldn't be conducive for retail – if rezoned it would be probably utilized as a residence. It was included, and thinks it's a residence now, believes it's none conforming. He believes its office and institutional. Commissioner Jensen asked how far office and institutional goes, with Rowland showing it on the map – showing S. Salem Street, Chatham Street, Holleman Street, Moore Street and showed the areas already zoned business – the church and the area showing office; the area he asked about is zoned office now. Mr. Grimes, noted the property next to him is O&I (the clinic), with Rowland responding he would correct the map.

Commissioner Schulze asked the requirements as far as refuge, think retail would generate more garbage; are there dumpster requirements or up to each homeowner to have enough trash bins to handle the quantity. Rowland responded that would be a case by case basis in terms of looking at the business and part of their special use permit to screen dumpsters, if they had to have them and address that at special use permit time.

Commissioner Gossage stated the number he had heard trips per day – 20 for a business – we can't know that for sure, does the town have any statistics on any sort of business where we can attempt to quantify. Rowland responded he thinks he's looking ahead at the special use permit that was filed for 206 S. Salem. Commissioner Gossage said it was brought up today during the hearing – 20 customers per day was mentioned during the hearing. Rowland didn't have a handle if that is accurate or not; he does know in the special use permit, not meaning to jump ahead, that Ms. Kish estimated 20 customers a day. Commissioner Gossage added no files, with Rowland responding he doesn't.

Commissioner Jensen asked if staff had looked at other towns that have done this within or next to their business district, with Rowland responding none other than just everyday riding around – going to Raleigh and see Oak Wood, gone through Cary and seen some house that have been turned, but no study. Commissioner Jensen asked his impression of those trips; Rowland responded they are positive, looked like it was working.

Commissioner Jensen asked how many stores are empty in the business district, with Rowland responding he didn't know but thinks they are pretty well full, with several under renovation that are intending to be occupied. He didn't have an inventory of this but thinks most of them are pretty well spoken for.

Commissioner Jensen asked during this change, you are bringing in minor type business, it adds, in his opinion, he was looking at areas having a critical mass, seems Apex has a critical mass with what it has, but asked if he thinks it adds to the critical mass to bring people in. Rowland responded that he thinks so; they met with a targeting group this morning about economic development and one of the categories they asked about was tourism, or bring tourists

to the town. It occurred to him this would be a compliment to downtown by having places for people to walk down to and would help attract tourists to Apex.

Commissioner Jensen asked about the concern of folks, if this took place that houses would eventually get torn down. It's in the historic district, asking don't we have control of that. Rowland responded we have special legislation that if a historic home is torn down, and required site plan approval; they would have to wait four years before they could apply for a site plan.

Mayor Weatherly asked if there were further questions, with there being none, he opened the floor for a motion and could continue debate on the motion.

Action: Commissioner Meckes made a motion to deny MORR-CU mixed use for this section of our community. Second was made by Commissioner Schulze

Commissioner Meckes explained that one of the ladies of Olive Street (Heather) had said it's not that simple, and he knows everybody on this board had thought about this issue coming before us for the last five months and tried to make a decision as to what would be the best for our community and he started by saying philosophically, he's in favor of the mixed use residential retail, because he's in the process of redoing a building in downtown that would be exactly that. There will be retail space, office space, and residential space all within the same building. Again, philosophically, he's not opposed to this, but he can't look at this issue without giving consideration to what will come about because of it, so the first thing we have to realize is that something needs to change in this district . The current zoning is not acceptable; the lose of any home in that area without the possibility of it being rebuilt as a home would be a tragedy for our community as far as he's concerned. So, that issue has to be resolved, and any of these other items that are currently allowed within this district are unacceptable to him. But to begin this process, and he has not come to this decision lightly, as he said, it's been weighing on him for months – and in thinking about this and talking about this, but to begin this process, I'm afraid could potentially lead us down a path that we don't want to go. He thinks we have to preserve this area for homes and believes the proximity of these homes to one another precludes there being a good relationship between retail and residential space. He thinks the less traveled office and institutional obviously has worked and has been that way for years. Charlie Holland's retail space does not encumber anyone's close residential space, so the current status as is has to be maintained. Other part of the argument is that it is conditional use, it is special use, but there are certainly considerations that would preclude this close intimate relationship between these two as far as he's concerned. It's hard to look at this alone without seeing this special use permit that will be presented next and feels at this time, it's not the appropriate thing to do, and may never be the appropriate thing to do, but that's the decision he has come to.

Commissioner Schulze agreed with everything Commissioner Meckes had said, and further, Mr. Grimes said we have to think about what the future of S. Salem Street will be. He thinks if you go down retail road, there will be no turning back and unfortunately he doesn't think it's an appropriate place to mix retail and residential. He thinks the way MORR is written now it's not strong enough for him to be comfortable with what can occur in these residential houses if we turn them retail. He's not satisfied that parking is addressed satisfactorily. He's worried about unsightly storage in the rear and side yards, how that would appear. His goal of this would make the whole street appear residential the way it was developed originally, so you don't want anything to indicate that it is retail there and beats the purpose of retail. He certainly agrees with what the intentions of the people are that want MORR and thinks they are honest intentions and think they do have some merit, but on the balance, he thinks it doesn't really work for this part of Apex and is why he's opposed to it.

Commissioner Jones, stated he would be a bit redundant and say he agrees with all of what Commissioners Meckes and Schulze have said, it has been an issue that has weighed on them for a long time and tough because it does get emotional when you look at both sides of the isle and know everybody involved and good points from each argument if you will. We do have a problem. O&I is not the appropriate zoning and we do need to fix that so residences can be rebuilt, or can be built – we have some vacant lots that you can't put a residence on - on South Salem Street. Maybe not included in this particular request, but further down S. Salem Street. There are ten standards we would have to look at – to find if they are met or not met when making a decision for conditional use permit and he frankly is not comfortable at this point saying that retail can meet all ten of those standards. He's not opposed to specific retail, and not opposed to us considering retail, but looking at it as a district, we need to fix the problem with the lack with residential uses not being compliant, but doesn't think we can look at retail uses on anything other than case by case basis.

Commissioner Jensen has mixed emotions also; certainly he doesn't think there is enough protection and thinks this has been echoed by the last three folks with respect to taking care of the neighbors and if you don't take care of the neighbors if you have commercial situation then everything will go commercial. He thinks obviously this has to be changed to allow for the houses. He could probably live with commercial, as he mentioned before, if it was an at home business; if the person who had the commercial lived there, had their bed and breakfast, or whatever, then you get a bit of both sides of the coin because you have the person who lives there who's going to be there all the time and the late night person walking down the street whether their business is busy or not and also still have the opportunity for the person to carry through. It concerns him is that this one house made it all the way to the auction block and we certainly need something to prevent this in the future. He thinks that's unfortunate. He's pretty well made up his mind that it took the last three commissioners to voice their opinion to push him the one way. He thinks its something we need to look at and really need to look at it real soon and at least get the first part taken care of.

Commissioner Gossage expressed his thoughts that he found it interesting that the people who came to speak in favor of this – Mr. Barnes said we need to restore residential as a use type; Tim Carley – it was never about retail – seems there's a great concern about the residential in this from the people who are down there. He understands Mr. Holland's point that he's had a business there for a long time and that he doesn't really bother anyone, but lets assume that 20 visitors, customers or cars a day and the attorney noted if a conditional use comes before us we can say yes or no and if it fits the criteria we say yes; so, that would be eleven new businesses here, or 220 trips, cars, customers – that is not bode well for our second standard which is appropriate for its location is compatible with character of surrounding land uses – that concerns him. The board had considered a study committee to look at this in more detail and thinks the bed and breakfast issue is a good one to include in that and thinks that is where we were headed and probably where we need to head again. Mayor Weatherly added we do need to look at this and find a way, with Commissioner Gossage, he agrees with haste.

Commissioner Jensen wanted to add with the haste situation, it was mentioned nine out of the ten property owners want the change, so we do owe it to them to deal with it; they are the ones most involved. The people against this tend to be not the folks that are economically involved and we certainly owe them something to get this done.

Mayor Weatherly asked all in favor of the pending motion to... with Manager Radford acknowledging Mr. Barnes had his hand up – he may need to withdraw his petition. Mayor Weatherly recognized him and advised that we were not getting into discussion; the board was ready for a vote.

Marshall Barnes noted it was suggested earlier that maybe we should consider amending this petition; he would be willing to drop this conditional use component, but feels he would need to discuss that with the other property owners that has signed this petition. Mayor Weatherly advised if they continue with the vote, they could come back with a rezoning petition that is different than the one – there's no time constrain in which to do that. Attorney Fordham

advised if it's different. Mayor Weatherly continued if he dropped a component of it, it would be different. He would go through planning. Commissioner Jensen added he had paid a fee for this, and wanted to continue this so he would not have to pay another fee. Commissioner Meckes asked if he could table this and come back in two weeks with an amendment without going back to planning board again. Attorney Fordham advised generally a petitioner can consent to changes in the conditions that can be considered by the board, so yes they could do that. Mayor Weatherly continued if you want to allow some time to let this percolate, he would say withdraw this and have no action at all and not table it. Commissioner Jones asked if they could ask Mr. Barnes to expand a bit on this, obviously having other petitioners he needs to talk too, asking what would be the intent. Barnes stated he would ask them if they would consider dropping or be comfortable with dropping the retail component and leaving the residential and professional office use. Commissioner Meckes added that would allow us to get out of the situation so we could go from residential to O&I back to residential by right. Commissioner Jones added it would no longer be a non-conforming use. Mayor Weatherly added we didn't want to put him on the spot. Attorney Fordham advised that if MORR allows residential then yes, if a house were destroyed, then it could be rebuilt. He asked if there is an MORR or saying MORR-CU then one of the conditions is it's restricted to uses other than retail. He understood the proposition they were asking whether the petitioner is considering eliminating a use that would otherwise be permitted under MORR by having a condition under the CU rezoning that says retail is not permitted. Commissioner Gossage indicated that was right. Commissioner Meckes asked if there were an MORR category.

Mayor Weatherly suggests we could move to defer decision on this for two weeks to see if it clarifies itself or we can proceed with the motion. Commissioner Meckes added there is no resolution under the current proposal. Mayor Weatherly added it allows the petitioner to respond to the petition tonight with we continue with the motion. Commissioner Gossage added it seems to him its not unlike our process where we created Tech/Flex, and maybe we need to do something similar, asking if he was correct. Commissioner Jensen responded we don't have the zoning as it is now. Commissioner Gossage continued the process we went through to do that ... with Commissioner Meckes interjecting staff, planning board, and then back to us. Mayor Weatherly stated the petitioner is ready to change the petition, wants to modify the petition and obviously the hand writing is on the wall there, so he wants to modify the petition and that's fine; usually it isn't after we have taken the motion and second, so we have to back up a step to allow the petitioner the usual courteous of modifying his petition at any point during our deliberation if that's what he wants to do – not prepared to do that tonight because he can't speak to all the other et. al part of the petition, so if he wants to withdraw the petition then they can withdraw the motion and then set up a time certain to come back or take no action tonight which case can comprise it at a future date, with the public hearing already have taken place – just a deliberation state. Attorney Fordham advised if the conditions are going to be substantially changed; you re-open the public hearing and continue that too, so you wouldn't have to republish notice of it. He's not suggesting one way or the other, but if you go that route, you need to re-open the public hearing, continue everything.

Commissioner Gossage felt there were people here tonight that wanted a sense of resolution but they can know their comments tonight would be included in the record in the future, so they don't feel they have to come back.

Mayor Weatherly asked for a withdrawal of the motion.

Action: Commissioner Meckes withdrew his motion; Commissioner Schulze withdrew his second. With no motion on the floor, Mayor Weatherly asked if we wanted to remand this issue and continue the public hearing for two weeks. Attorney Fordham advised to reopen the public hearing and then vote to continue the public hearing. Commissioner Jones interjected delay or defer or continue the public hearing for the specific purpose – with Attorney Fordham asking to have someone move to reopen the public hearing first.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to reopen the public hearing. Motion carried unanimously. Mayor Weatherly noted they were back in public hearing now.

Action: Motion by Commissioner Jones to continue the public hearing for the specific purpose of hearing the petitioner's revised petition and the public's reaction to it. Attorney Fordham advised yes, it would remain open for all purposes, but the reason it needs to remain open is anticipation that there might be a substantial change in the petition; it needs to be to a date certain that you would continue it too. Manager Radford advised the first meeting in September or September 7, 2004. Second on the motion by Commissioner Gossage. Mayor Weatherly asked if there were discussion on the motion, there being none, the motion carried unanimously.

Mayor Weatherly stated we would reopen the public hearing and entertain any modification of the petition and the floor would be open for a motion they choose to make. (hearing lasted two hours and forty minutes).

End of public hearing # 2

David Rowland, Director of Planning

Public Hearing # 3 – Special Use Permit #04SUP02

Public hearing regarding Special Use Permit #04SUP02, Carole Kish, petitioner seeking a special use permit for a retail business for the property located at 206 S. Salem Street; possible motion regarding same.

Mayor Weatherly asked advice from the Town Attorney if this item should be considered under the current zoning. Town Attorney advised under the current zoning it would not be permitted; the petitioner may want to continue it to see what happens with the previous one.

Mayor Weatherly asked the petitioner, Carole Kish if she wished to continue this item as they did the first item.

Carole came forward and having been previously sworn stated that it was no sense in continuing it. She thinks it's a shame because the things that were brought up were really all protected – dumpsters, there isn't a business downtown that has a dumpster except for a restaurant; parking – there are six parking places in back of the house now being considered for a store; 20 cars – that's during an eight hour period and if you have two or three or four at a time. Anything she's saying is hard to come after these, because all the things they had asked were things she could have answered. Things that were said could come in there couldn't because the neighbors would not have allowed it. The word retail, retail, retail – there are only about 35% residences there now and the majority is business, office, churches, banks. She wished spot zoning was allowed – it would make a lovely store and would be in fitting with the area down there. It's not fitting for a home now unless someone has an awful lot of money to put in it as far as the structure, its fine. As far as dumpster, she doesn't have a lot of trash – it's an antique store. As far as pictures – if it were a residence you could have a lawn chair in the back and it certainly isn't offensive. She could say a lot of other things, but then she'd bad and she got bad over there and she apologized for that. She thinks it's a crying shame because there is probably only maybe tops that she can think of, two or three other places that could possibly go retail down there, that the neighbors wouldn't even allow and they would have to petition address 127 envelopes, advertise, come before the board, and when talking about specialty stores – it's a little ludicrous to think that we would ever.... I live down there across the street so she certainly would want to protect that. She certainly would want to protect anything else that comes in – she doesn't know of any other way that they could help her open that store, but it certainly would have been a benefit to the whole area and it certainly looks better than it ever has if you look at the before and after pictures. It certainly wouldn't have been trashed because that's not the way she lives. She doesn't think anybody would have been allowed in there that did live like that.

Mayor Weatherly asked if she were withdrawing her petition or do you want them to act on it. Kish asked what good it would do to keep it – there's no way she could put retail in it now. Mayor Weatherly continued he needed a response if she wanted them to act on the petition she had given them – based on advice from the Town Attorney there is no way but one way to do it – or do you want to withdraw it. Kish responded, no, she would rather them go ahead and vote it down, and then it would be done with. **Note:** Ms. Kish left the meeting prior to the hearing being opened.

Mayor Weatherly asked the Town Attorney if there was need for a public hearing on an issue that is not one that we under the ordinance have... with Commissioner Meckes interjecting it can't be considered under our current zoning, with Mayor Weatherly agreeing, it would be a farce to have a public hearing on this. Attorney Fordham advised they should go through the normal procedure but there is no such thing as a special use permit use in the present zoning O&I for retail, so you need to go through the procedure even if it's short.

Mayor Weatherly opened the public hearing, asking if those speaking needed to be sworn in. Town Attorney Fordham advised they should do so.

Director of Planning stated a special use permit had been requested for 206 S. Salem Street to put in a retail type establishment. The potential merchant of the property estimates to have about 20 customers a day; description of business is sale and retail; proposed number of employees – two; hours of operation: Monday – Friday would be 10:00 a.m. to 6:00 p.m., Saturday 10:00 a.m. to 6:00 p.m., and not open on Sunday.

Mayor Weatherly opened the public hearing at 9:45 p.m.
The Town Clerk administered an oath to those wishing to speak during this hearing.

Ms. Mills, stated she was new to the process, and as she said before, she walks away from this disappointed because she thinks somehow we have failed downtown Salem Street and doesn't understand why when we have co-existed for all these years that suddenly this has to turn ugly. She heard Doctor Meckes say he has struggled with this for five months and others; she has to say if you have been struggling with this for five months – then its' nothing new and she feels like somehow this was not a decision made here tonight, but a decision that has been in the process of being made for five months, and maybe she's late coming to the party. She wants to be on record saying she thinks all of us on both sides of this isle and at the table here have failed downtown Apex and she honestly wanted them to know how she felt and thanked them for listening.

Mayor Weatherly closed the public hearing at 9:47 p.m. and asked if all were clear with the Town Attorney's advise that there was no provision for special use under O&I. He asked for a motion.

Action: Motion by Commissioner Gossage to deny the special use permit for retail business on the property because the proposed special use is not consistent with the land use plan which shows the area as residential and office; proposed special use is not appropriate in the subject location as a retail use and changes the character of the area. Second by Commissioner Meckes.

Commissioner Jensen noted that Ms. Kish had walked out a few minutes go emotional. He would personally feel a lot better if they defer this like the last hearing until the next meeting and let it follow – lets see what happens with that and see how this fits in or doesn't fit in and give her the opportunity after her emotions go away to come before this board and make a decision then, rather than throw this out right now. It would bother him if we didn't; if we could do it with the last one, he suspects we could do it with this one. He thinks we owe her that.

Commissioner Schulze didn't see how there was any way her proposal would pass; asking just out of courtesy? Commissioner Jensen wanted to see what would come out of the next one – if it completely goes away with the commercial, then yes; he doesn't know what will come out of it and maybe we will change, but could defer this for two weeks to give her the opportunity to come back up here if she so wishes; that's his suggestion out of respect and compassion for a lady that has worked hard in this town.

Commissioner Jones agreed with that, not knowing we will come to any different conclusion based on what he expects will come back in the way of a revised petition from the previous issue, with Commissioner Jensen adding he agreed, but thinks we owe her the opportunity.

Mayor Weatherly stated that's fine and he understands, but if the petition comes back the way it's drawn tonight, we are going to have a five and nothing vote next time too. Commissioner Jensen added that would be fine too, and in that situation he would be willing to put forth his vote in the way – but wouldn't want to do it tonight; doing it tonight is a death penalty at least life in prison, maybe there's innocence. Commissioner Gossage was comfortable withdrawing the motion in order to allow a citizen an opportunity to get in front of them again and talk a little bit more. Commissioner Meckes withdrew his second.

Mayor Weatherly stated with the motion and second being withdrawn, no action is taken tonight.

Attorney Fordham advised if they anticipate any changes to the petition, then you would need to reopen the hearing and go through the same process that you did a few minutes ago.

Mayor Weatherly asked for a motion to reopen the public hearing.

Action: Motion by Commissioner Jensen and second by Commissioner Gossage to reopen the public hearing. Mayor Weatherly stated this hearing would be continued to the September 7, 2004 meeting. Motion carried unanimously.

End of Public hearing # 3

Dianne Khin, Senior Planner

Public Hearing # 4 – Amendments to UDO (UDO Task Force Committee)

Public hearing regarding amendments to certain sections of the Unified Development Ordinance as recommended by the UDO Task Force Committee; possible motion regarding same.

Dianne Khin, Senior Planner came forward and presented that on March 16, 2004 the Board had confirmed appointees to the UDO Task Force Committee with purpose being to identify the sections of the UDO that most need scrutiny and revision from the development community's point of view. The committee met since April 21, 2004 nearly weekly and prepared recommended amendments included in the agenda packet and incorporated as a part of the minutes. Planning Board reviewed these amendments at their August 9, 2004 meeting and unanimously recommended approval with the following changes which the committee and staff have agreed too. 1ST - Section 2.3.4(f)(1)(e)(1) to clarify that the percentage increase in signage allowed in the PUD district would be based on the calculated allowable square footage. # 2 – Section 5(1)(1) to amend maximum density for all other uses in the high density single family zone district would take the place of the five thousand square foot requirement. Section 8(1)(2)(b)(2)(e) to change the word buffers to RCA at the end of that section. Section 8(1)(2)(c) to clarify that the RCA in planned unit development follows the standards for the geographic areas described in 8 (1) (2) (c) (4, 5, or 6) but does still give the board of commissioners the option of reducing those percentages by a maximum of two percent.

She didn't review all the amendments, asking if there were questions. Commissioner Jones recommended the questions route.

Commissioner Jensen asked for clarification on # 4 on what she had said. Khin responded Section 8 (1) (2) (c) on the third page shows what it use to say and what it is now. 4 is development located within the area bounded by US64, US1 and the I-540 corridor. Development within that area would be required to have undisturbed buffers in RCA equal too or greater than 20% of the gross site acreage. She stated the amendment talked about reducing that by 2% - the way it was worded, it didn't refer what the 2% was to be subtracted from so the planning board made an observation that it needed to refer back to that section so you could reduce the 2% from the 20% . #5 – it's located outside of US64, US1 and the I-540 corridor, but located within our urban growth boundary – this area would be required to do undisturbed buffers in RCA equal to 25% of the gross site acreage. Outside the urban growth boundary it's 30% for undisturbed buffers in RCA. Basically the amendment was to have a number to subtract the 2% from. Commissioner Jensen asked what originally was there for buffer requirement. Khin responded it's buffers plus RCA is at least 40% of site acreage for residential; buffers plus RCA is 40% for non-residential however, the RCA was capped at 25%. Basically this section: when RCA was originally conceived, they didn't have stream buffers, so 40% RCA was trying to get at those type sensitive areas, now in Article 6 there are stream buffers – 50 foot on each side of an intermittent stream and a 100 foot on each side of a perennial stream. They still have to meet those stream buffers; they have to meet those perimeter buffers first. If they look at that percentage and are already over the 20% they don't have to do anymore RCA – if they are under it, then they have to do tree save areas, that type of thing up to the 20, 25, or 30%. The main reason, we have land where there are a couple of properties, example the Episcopal Church, N. Salem Street; they didn't need to have any RCA at all – they had a flat piece of land that had been cleared years ago – a field – they had to replant areas to create RCA because there was nothing there to save to protect, whereas there are other developments that have plenty of stream buffers they need to protect – up in the 30/40% just based on the way the land is. They were trying to look for a way to be more fair so land that is developable could be developed and the area that really does have environmentally sensitive areas that they would like to see protected is protected. They didn't want to go down to zero cause they wanted some kind of green space on every project. Commissioner Jensen added we've reduced the needed buffer on properties that doesn't have streams – with Khin stating reducing RCA. Commissioner Jensen stating you were attacking gross in case there were streams on them, with Khin responding when RCA was originally included in the UDO that was one of the things it was trying to get at and one of the most important things – they had the criteria ranked in the beginning with highest being stream buffers, riparian buffers – that was what the RCA was trying to get at, and with addition to stream buffers to the ordinance in Article 6 – that is taken care of and the other things they would like to see – wetlands on property, large hardwood trees they would like to save – other resources – cemeteries, other things that can be included in RCA – old homesteads on big large estates – keep the house for RCA – they did want to still include it as a requirement above and beyond stream buffers. If a site has a lot of stream buffers, you may not have to do anything outside the stream buffers.

Commissioner Jensen noted there was some thought about changing RCA for recreation areas; not talking about this at all. Khin responded no, those are recommendations they are still working on and should bring those forward in October. This was the first set and main things that were critical to get before the board and do have a second tier of items that are important, still working on them; there is an item about the exchange of RCA – to get partial credit for private recreation area – ending up with more open space.

Mayor Weatherly opened the public hearing at 10:05 p.m.

Jim Meade, 203 Thorn Hollow Drive, spoke to the purpose of RCA or protection of natural and cultural resources including forest, significant habitat, ponds and historic structures; features that are becoming more scare with development as land is being developed around Apex. Reducing RCA standards will only increase the amount and rate at which these characteristics are lost. RCA retains land for wildlife habitat, storm water absorption, green space, esthetics and other natural values. RCA enhances property values not only for the develop parcel but also the adjoining neighborhoods. Ex: home next to him is for sale and large undeveloped tract that comes along his boundary – perspective buyer asked what is in store for the tract behind them – standards you hold the undeveloped parcels to effects everybody who lives here today. Apex comprehensive plan planning process was admirable involving large numbers of people with diversity view points. Something heard was that we want new development to meet high standards and not wanting Apex to end up like Cary. He's concerned Apex is contemplating lowering its standards in addition to reductions and RCA requirements – proposed revisions to the UDO more than double the size a tree needs to be before it would be protected during construction. Special standards for building on steep slopes and watershed protection areas have been proposed to be eliminated. Landscape replaces re-vegetation which opens door for replacing a true natural area with a scattering of gumball shrubs. We should proud of the high standards we have in Apex – in the long run, will keep Apex an attractive place to live compared to other areas. These standards protect property values and assure new development is of the highest quality. Ultimately these standards contribute to what makes Apex a place where people stay and invest in their community and improving their property. Rather than a place you stay until you save up enough to move some place better. If Apex wants its motto, the Peak of Good Living to mean something then these proposed reductions in our development standards should be rejected. Without our current high standards, in five or ten years you will be able to drive through Apex and not tell where it begins or ends and where the next town begins. People and business will have no reason to come here compared to anywhere else in the Triangle. Have current standards chocked off growth in Apex – when you look at our population increase, our need to expand water/sewer capacity or drive around town, it seems Apex is just as desirable as ever under its current standards. He urged the Board to reject the proposed reductions in RCA requirements and reductions in tree protection, the elimination of special standards for steep slopes and watershed protection areas and other reductions in our development standards. Don't trade off long term quality for short term extra profits when land is developed.

Mayor Weatherly closed the public hearing at 10:09 p.m.

Commissioner Jensen noted the change in slopes, adding 1000 square feet to a lot per percent increase above 20%; why did we change that. Khin responded by noting the section: not withstanding the maximum density is permitted by the underlying zoning district – minimum lot area for new development on sites containing slopes of 20% or greater outside the RCA – there are two reasons: 1) Proposal is to remove minimum lot size and go to straight density – reason: UDO is set up that every single residential project you see will be a planned unit development – no one will ever do a regular subdivision anymore because they can't get the density and meet the lot size requirements. This refers to lot size; main reason its being removed. Commissioner Jensen asked if we compensated that for density requirement with Khin responding the density requirements remain the same. 2) This has never been checked or made sure on any subdivision – they have come through as PUD setting their own lot sizes – not sure on a regular subdivision if it did come – how easy it would be to figure this out – slopes on site currently could be steep, and by time they are done, there are no more steep slopes – not enough reason to make the lot any larger than another lot. Commissioner Jensen asked if the tractor down the slope, with Khin responding that's pretty much what happens. She's not sure where it came from, but was in the UDO, not remembering staff ever discussing it with Clarion Consultants – she's not sure why it's there other than trying to keep people from grading.

Commissioner Meckes felt with the UDO, it was a giant, broad, sweeping program – a template from somewhere else, and working with it more and more have seen issues that don't apply to what we do; he's assuming this is where the slope issue came from. Khin continued the watershed protection overlay district didn't have stream buffers when this section was conceived. We now have extensive buffers on our streams, 50 foot on intermittent and 100 foot on each side from the top of the bank back on perennial. It's the game has changed solely on that, and once that occurred, we are 75% of the way there in terms of what we are trying to accomplish just by having that stream buffer. Commissioner Jones added that took slopes out of play. Commissioner Jensen didn't see between the two; you do not have a stream and also a steep slope; Khin stated this only applies to the watershed district. Staff never talked to Clarion about this, but felt this was to protect run-off from getting into the streams – steep slopes, more likely. Now we have added stream buffers she doesn't think we necessarily have to have this requirement anymore. Commissioner Jensen added stream buffers can get pierced quite easily the way they are set up; you put a nice buffer there but if you run water channelize opportunity and still sees a problem there.

Commissioner Jones went back to the reduction of RCA with Khin pointing out most projects are getting both non-residential and residential of PUD. Non-residential PUD – RCA is capped at 25% - alot request 10% reduction down to 15%. With this change its normalized at 20% and they only down to 18% and getting a 3% increase on non-residential. As you move out from the innermost ring you get outside the roadways you are at 25% down to 23% so you are at an 18% increase in RCA's; they are trying not to encourage PUD to get around the rules it should be because they are doing a special development – the thought of the group. In terms of residential it's going down in terms of percentage 40% going down 30% 25% and 20%. 40% is there because they were not reviewing subdivisions from the year 2000 to 2003 – the first time anything was approved because of the allocation plan; now its been road tested – with non-residential, it was tested and was moved from 40% to 25%. Residential is having a hard time making lots affordable – houses go up in price because the lots are more expensive – you have to have a balance – price goes up because they can't get the extra lots they needed. Home prices are five times the lot cost. She feels this is road test for residential and would like to see residential move away from being planned unit development for everything so they can try to get around the rules to do the development. They would like for them to come in with straight subdivisions and have their buffers, RCA, and stream buffers the way they are suppose to have them, but not trying to find loop holes to do the development.

Mayor Weatherly stated Planning Board voted unanimously to amend the amendments with the changes and staff recommends these amendments. Khin stated there were other things that she didn't support and didn't bring forward. Mayor Weatherly called for a motion.

Action: Motion by Commissioner Jones and second by Commissioner Schulze to accept the recommendations of the Task Force with the changes as recommended by the Planning Board. Commissioner Jones was a member of the task force, but poor attendance – he did do the required reading, and didn't think there was anything here that destroys the integrity of what they are trying to do with the UDO. The RCA issue is practical application issues they are trying to deal with of various aspects of the UDO and did want to make a point this is a short piece of the list of things that came up during discussion. He doesn't think anything here in looking at subdivisions or PUDs whatever comes next, as these changes are applied, yes, there may be something they want to readdress. He thinks we are not moving in the wrong direction by taking these recommendations.

Commissioner Meckes asked if it were fair to say the best we can hope for is what we have arrived at, without crushing development and making everything so burdensome that it's not economically feasible. Commissioner Jones says its a balance of the two and was comfortable with this. Commissioner Meckes clarified we ended up with the balance, with Commissioner Jones noting with these; some coming he has questions about.

Mayor Weatherly thinks the Town as represented by the board over a number of years has been the forefront of environmental activism and responsible in bring stream buffers and other things and doesn't think there is another community our size that has the standards we have. You say we want to the highest standards, he certainly has always and believes everyone on the board believes we should have the highest standards for development we have. Those standards should also be reasonable and rational and when we get to the level of 40% taking by the government, it's a confiscation and gets into private property rights and he doesn't think you can justify that amount but we do have a reasonable requirement with these amendments and thinks we will continue to provide a very high standard for development in Apex, and allow those good developers we want to come in here; if you get those who come in to carve things down to get the buck out of the project rather than have the high standards then that is what you will be left with if you have standards that just don't work for normal development. He commends staff and task force for bringing these to us.

Commissioner Meckes asked if a developer circumvented this by using the PUD he asked if they would end up with 18% RCA or even 15% with Khin responding 15%. Commissioner Jensen stated we reduced it by 10%.

Mayor Weatherly added when the UDO was put together we knew a consultant had something in his word processor that he was selling us, but we said consistently, it's a work in progress – we're going to see, we're going to set that bar and see how we can work with it and how it works and becomes after it's road tested. We never said any parts of that were set in concrete. Commissioner Meckes said it's like law; it's never determined how it functions until it's litigated. He believes this the case of the UDO as well, this is a cookbook printed off and brought to us and we've continued to come to issues that are not workable and this is what this process is about.

Commissioner Jensen thought 8" trees are too small but are going to 18" which he thinks in his opinion is too large with Khin responding 18% is what the old code had and not necessarily protected, but what they do the tree survey for. Any area that has RCA or buffers would still have to be protected at a minimum along the line of the buffer RCA, but anything 18" caliper or larger within that then they are made to bump it out to protect the root zone for those trees. If there's a tree on the edge 8, 10, 12" caliper, if not tree surveyed, it may be lost based on the tree protection fencing being next to it. Anything under the umbrella of the 18" tree will be saved. If you are 8 feet back from the tree protection fencing and you are an 8" tree you are saved; just the ones on the edge in all honestly lots on the edge end up being removed, development may have to take out the tree because it will fall in the parking lot. Commissioner Jensen noted the ones on the edge would be removed anyway. Commissioner Jensen clarified 3 to 1 slope being 33% instead of 30%. Khin explained it's a third of a 90 degree angle and why it's 30%; staff does 3 to 1 with engineers programs doing percentages. Daniel Davis had looked at the 30% looking a 90 degree angle, with Commissioner Jensen saying they are off if you go back to the raw definition, but doesn't matter.

Mayor Weatherly stated the action on the motion was to approve the amendments with a four to one vote, with Commissioner Jensen voting no.

End of public hearing # 4

Dianne Khin, Senior Planner
Public Hearing # 5 – Amendments to UDO
Public hearing regarding amendments to Section 4.2.2 of the Unified Development Ordinance; possible motion regarding same.

Dianne Khin, Senior Planner, presented UDO amendment 4.2.2 Flea Market. There was a whole set of amendments, but Planning Board reviewed and recommends unanimously this amendment at their August 9, 2004 meeting. She will bring the rest back in September. Use regulations and table was to allow with a special use permit in the PUD zoning district and to add car wash and auto detail to be allowed by right in the table for PUD district. Staff recommends approval of the amendment.

Mayor Weatherly opened the public hearing at 10:25 p.m. and with no one speaking, closed the public hearing.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to approve the amendments as recommended. Motion carried unanimously.

End of public hearing # 5

Dianne Khin, Senior Planner
Public Hearing # 6 - Amendment to 2025 Land Use Plan
Public hearing regarding possible amendment to the 2025 Land Use Plan; possible motion regarding same.

Dianne Khin, Senior Planner, stated the 2025 Land Use Plan when adopted was based on the Apex Comprehensive Plan and were areas shown in this vicinity as residential; they made corrections for things currently zoned other things than residential and missed a couple and pointed out by some of the citizens living in the area. One is a property at Apex Barbecue Road and S. Salem Street zoned O&I and would like to show that on the LUP as well and the second area is the mixed use area of Green at Scotts Mill – shown as mixed use high density commercial and office and institutional and can be seen on the node. Planning Board recommends approval and planning staff does as well.

Mayor Weatherly opened the public hearing at 10:27 p.m. and with no one speaking closed the public hearing.

Action: Motion by Commissioner Jones and second by Commissioner Jensen to approve the amendments to the 2025 Land Use Plan as presented. Motion carried unanimously.

End of Public hearing # 6

June Cowles, Planner
Public Hearing # 7– Hazard Mitigation Plan
Public hearing relative to the Town of Apex Hazard Mitigation Plan.

June Cowles, Planner, noted it happening over the past couple of years and due to State and FEMA delays has had it all reviewed. State recommends approval, and we move through the public hearing process. After adoption of the plan, it goes to FEMA for final review and approval. Staff worked with Wooten Co. to complete the plan, and departments within the Town of Apex. The core of the Plan is one-third of the plan and the other is the appendix with definitions of various hazards and data. The plan is in table form in Section 2 and outlines actions, objectives and responsibilities of departments and timelines. Main goal is protect public health and safety and reduce damage and recovery costs insuring long term economic vitality and environmental health of the community. Plan includes review and progress report that will be completed yearly to see if we are in line with the action plan. FEMA doesn't want it to sit on a shelf and be forgotten. Plan will need to be updated every five years for any state or federal changes that occur. Planning Board recommends unanimous approval.

Public hearing # 7 continued

Mayor Weatherly opened the public hearing at 10:30 p.m. and with no one speaking the hearing was closed.

Action: Motion by Commissioner Schulze and second by Commissioner Jensen to approve the plan as presented with the plan to be adopted at the next meeting. Motion carried.

End of Public Hearings

OLD BUSINESS

Kent Jackson, Director of Construction Management

Old Business Item # 1 – Transportation Project Priorities

Kent Jackson presented transportation project priorities for the planned bond referendum scheduled for November 2, 2004. Items were discussed during the annual retreat and the April 6, 2004 work session. First issues of bond projects are attached.

Mayor Weatherly stated none of the projects were set in stone and could be modified at any time, asking if there were a time to set them. We do need to communicate to the voters where the monies would be spent, asking if we were obligated to set them in stone anytime prior to contract for their construction. Town Manager Radford responded no. Mayor Weatherly continued there was nothing to be done tonight, but continue to consider priorities up to time we spend the money with Town Manager Radford agreeing.

Commissioner Jones added the only urgency might be when we give information and what we are trying to accomplish between now and November; there have been questions and suggestions about the prioritization. Town Manager Radford advised for road and parks and recreation projects – we are talking $7.5 million dollars per issue – just over three times – this was brought as conversation with Commissioner Jensen – his motivation was how we would accelerate sidewalks projects. Mayor Weatherly commented on the feedback from the Appearance Commission regarding Old Raleigh Road and would continue. Commissioner Jensen added part of the reason to prioritize as they had done with sidewalks – staff didn't have manpower to take on all these at one time. He's had lots of folks hitting him for sidewalks (1/15 of the money going to sidewalks); intersections are important. When the money comes in, rather than waiting until 2008 for sidewalks, he suggested get a retired NCDOT engineer, or a contractor to come in and help get this out – if that's the staff problem. We want to get them done earlier on and want to be a walking town; we've always said this, and let's be as early as possible – not thinking it would cost that much more. Can we give staff direction to look into a way to increase our capabilities without putting anyone else on; he's sure we could find them. He also noticed there was no sidewalk for Haddon Place on North Salem, asking if this were missed. Jackson responded this had not been part of the program up to this point. Under separate projects Planning Department has a sidewalk plan for N. Salem Street that will extend from Hunter Street out – an enhancement grant. Commissioner Jensen asked how this was planned. Jackson responded it was a joint project between Planning and engineering; staff doing this. Commissioner Jensen asked if he had thought about bringing in additional staff to get these done ahead of time. Jackson responded he had tried to schedule these out with no additional staff. Commissioner Jensen asked if we hired a retired NCDOT person, a contractor – another tentacle into NCDOT. Mayor Weatherly stated we have to sell the bonds to get the money, and we are not talking about acceleration of the bond sell; the same amount of money, and looks like to him there's an ambitious ... once we get to 2005 issue sold, we can move ... once we get money in hand for 2005 issue that we wouldn't be able to proceed with contracting for those projects. Commissioner Jensen responded the way it has been scheduled – we have 2005 and go out to 2008 with Center to downtown – he referred to an email he received, with the folks in Surry Meadows wanting sidewalks and from there to the Peakway was an easy place for one – having to put in curbs, but it's flat and could do that. Mayor Weatherly stated we sell those 2005 bonds and not obligating debt until we need too – with the other issue in 2008 that we incur that debt but don't get cash in hand to do those projects until that time.

Commissioner Jensen understood they could sell the bonds as we see fit – we don't have to wait until 2008. Mayor Weatherly added we pay interest, with Commissioner Jensen stating we do, but we have the sidewalks; it's $250,000 more to bring the Center Street and the Old Raleigh Road – at least $125,000 for Center Street into 2005 sidewalks; it's not a lot of money and if we hire a contract person to take care of it for us – then the folks in Old Apex and Olive Chapel are happy. Mayor Weatherly stated this is not the end of what will be done for transportation; this is why we are borrowing money to expedite what we find are priorities and will continue our regular capitol programs to spend for sidewalks and roads from General Fund. Commissioner Meckes confirmed he wanted to prioritize sidewalks # 3 and # 4 and move them - with Commissioner Jensen interjecting and find a way that it doesn't impact our other priorities. Commissioner Jensen asked how it impacts $250,000 and its effect, with the Manager agreeing.

Commissioner Jensen added the total on the entire bond issue is 1/15th for sidewalks – we're talking one-half of that being brought forward – or 1/30th of the total bond issue to get this done. Commissioner Jones added we are splitting it into thirds – with Jackson interjecting there's another piece to this – when doing collective scheduling in the spring there's a parks and recreation piece – while not a part of what he's scheduling, it's part of the financial part. When changing the amount for transportation in any issue, you look at the affect on the priorities for parks and recreation projects. Commissioner Gossage added he was fine with tossing around ideas and would feel more comfortable after November has come and gone and we have the money, with Mayor Weatherly interjecting, having the authority to borrow the money. Commissioner Gossage thinks then the commission should absolutely sit down and we haven't done this, but talked with the commissioners about looking at sidewalks and being more involved ourselves in prioritizing and at that time include General Fund money as well as bond money. Commissioner Meckes felt they were all open to it. Commissioner Jensen knew this was ahead of time, but there was a big sidewalk flap – wanted to start thinking about how we can contract, or whatever to bring the manpower. Jackson was receptive to hiring consultants. Mayor Weatherly added we are not talking about acceleration of debt. Commissioner Meckes added there may still be some general fund monies available. Commissioner Jensen added he knew there was a pad there, could use and sell the bonds later if we needed too; he knows we don't want to go through our tax rate in terms of selling the bonds at that rate. He felt if people are hammering this hard for sidewalks, if it's only 1/30th of the entire bond issue to move it forward four years. Mayor Weatherly added we still have Powell bill money to come in that could be used for street improvements and sidewalks in addition to this. We've always prioritized Powell bill money for priorities and doesn't know if we could get a projection of Powell bill not to tamper with financial consultants and staff has laid out here; as far as borrowing money projects, fine, they are always up in the air, but if staff comes back and say over the next and up to 2008 what Powell bill money we have, we might be able to make a commitment that we would certainly be able to do Old Raleigh Road without talking about the borrowing.

Manager Radford added he want be able to break the four/one rule by which you set aside l/4th of the increase in revenue in order to sustain annual capitol spending from then on – there is a maturity in the rate that will only allow him to spend the one-quarter increase in the total gain – that's the only way to spend $2.8 million in each issuance and the money is still the same. In terms of Powell bill money or other general fund money, special appropriations, there are places to move some of that around, but not much. Mayor Weatherly thinks we could still make a commitment for sidewalks to be built, if the majority of this board felt like it should be priority – whether we took it out of here or general fund or Powell bill, even without this bond referendum, we could find a way to do it. Jackson advised when looking at the schedule the approach was all these projects are doable by staff given enough time; the more they do the more money goes to actual sidewalk and less to hiring additional help.

Commissioner Meckes asked how the Laura Duncan Road to the High School issue had been resolved – sidewalk, was it going to be in the right-of-way. Jackson's plan was for it to be in the right-of-way by encroachment contract in DOT right-of-way, which means installation of curb which will make it more expensive. Commissioner Meckes added we would not end up in people's front yards.

Jackson advised that was not his plan; they haven't drawn plans but his approach is to keep it in the right of way – especially budget purposes. He has a good relationship with NCDOT that review these issues, and thinks will have good luck at getting this approved.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments should be limited to 3 minutes to allow others opportunity to speak.

Jim Meade, member of Board of Adjustment, noted there are five members and most of them in attendance. On occasions only four can attend – they can hold the meeting with four, but a property owner requesting variance has to hope all four will vote in favor – with four one can turn down a variance. He asked the board to consider appointment of a couple of alternates to the board of adjustment to have a regular quorum of five even if there were family emergencies or illnesses. There have been occasions for delay of plans and requests because they don't want to get a four to nothing vote and it's not fair to them because time is money. There has been more than one case for delay hearing because all five could not be there.

Mayor Weatherly clarified he had been told about this before, but ETJ (Meade is the only ETJ member) with the Mayor confirming two inside town both alternates. Meade added one member is nearing the end of his term and understands the UDO does not allow him reappointment due to limit of consecutive terms. Commissioner Meckes added maybe he could become an alternate. Meade responded he may be willing to continue to serve, but under the UDO he can't.

End of public forum

NEW BUSINESS

President Daniel Davis, Apex Chamber of Commerce
New Business Item # 1 - Apex Chamber of Commerce
Daniel Davis, President of the Apex Chamber of Commerce presented the Economic Development Report of the Apex Chamber of Commerce. Report is attached.

End of New Business Item # 1

Dianne Khin, Senior Planner
New Business Item # 2 – I-540/S. Salem Street Small Area Plan Advisory Committee
Possible motion to approve I-540/South Salem Street Plan Advisory Committee (ISPAC) roster.

Khin reported funds to generate the I-540/South Salem Street Small Area Plan are included in this year's budget and was conceived in the comprehensive plan which shows a future transit area (HOV lanes and TTA for rail). I-540 has a major interchange at S. Salem Street and where the CSX line comes through – with completion of I-540 done in 2009. This project will figure out what we would like to go there.

Part of the plan is to form an Advisory Committee to receive input from a board range of citizens and business people to be finalized by Christmas time with public work shops and open house scheduled for September 28, 29 and 30. Mayor Weatherly offered the following person on the attached chart for consideration by the Board.

Mayor Weatherly called for a motion to approve the Committee members.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to approve the members. Motion carried unanimously.

End of New Business # 2

Dianne Khin, Senior Planner
New Business Item # 3
Consideration of Capital Area Metropolitan Planning Organization's 2030 Long Range Transportation Plan; possible motion to give official comments on the plan.

Dianne Khin, Senior Planner reported the plan was released for public comment by on June 30, 2004 with some change. CAMPO is in their public review process and will Technical Advisory Commission will hold the public hearing. She suggests making comment in regard to "Upgrade to Freeway" on US54 from I-540 east to US1/US64 for the following reasons:

1) NCDOT "US 64 – NC49 Corridor Study" has not been completed so there is no evidence that the conversion of US64 to freeway is feasible at this time. It is premature to include the designation of freeway on the 2030 LRTP.
2) Town of Apex maintains the freeway to freeway movement that NCDOT and CAMPO desires from Apex to Raleigh can be maintained form US64 (west of I-540) to I-540 south to US1 north. There is no need to cut off essential access to business and residents located on US64 east of I-540.

Apex Transportation plan shows freeway from I-540 west to NC751, NCDOT shows super-street/expressway from I-540 east to US1/US64 in Cary; super-street/expressway limits left turns but allows access with square loops, right-in and right-outs, left-overs, and median breaks . Town has maintained freeway on US64 should end at I-540 where motorists seeking freeway mobility can get on I-540 to US1 rather than continuing through Apex and Cary on US64.

Staff has suggested this is inappropriate but they have not changed the map. Commissioner Schulze agreed this premature asking when the study would be complete with Khin responding not sure, but would attend the meeting in Harrisburg, NC for a briefing. Commissioner Schulze felt this tells him they have their mind made up already.

Mayor Weatherly felt this would be a unified position from the Board to CAMPO and asked for a motion.

Action: Motion by Commissioner Schulze and second by Commissioner Gossage to give comments on the plan to CAMPO.

Mayor Weatherly continued the Town has not asked CAMPO to weigh in on an issue that specifically relates to Apex that is not obvious need as far as transportation issues and thinks this is a strong case and should try it. Motion carried unanimously.

End of New Business Item # 3

Commissioner Gene Schulze

New Business Item # 4 – Survey to establish priorities

Commissioner Schulze addressed a community/town wide survey to help establish priorities, while listening to the citizens, thinking they've already done a good job, what we are doing right and/or wrong. He supplied a 2000 survey suggestion staff update for a new survey – same being sent in utility bills or parks/recreation newsletter – results would let them know what people are thinking. He would like to advertise it in the paper and other methods for a good response.

Mayor Weatherly stated the obvious drawback to this is that it would not be a scientific presentation, a guide, more than a rule. Commissioner Schulze agreed – it's a reality check – opportunity to voice their thoughts here in an anonymous form.

Commissioner Jones agrees with the public opinion as often as we can; a follow up on the comprehensive plan process they went through last year where there was 300 people involved giving opinions that were important and how to plan for the future of Apex – transportation, parks and recreation, types of housing, industrial/economic development and maybe take those point issues and follow up on those in the survey; keeping that process moving – having gone through a major effort to plan and use it for future surveys. Commissioner Schulze agreed this was good, but thinks people don't have time to commit to that, but this could be done in a few minutes giving their opinion.

Mayor Weatherly thinks it's a good idea, asking if we could address E-Government and see how much interest there is in interactive government through the computer. He thinks Apex would be up on the percentage as being internet savvy, particularly recreation – not having to stand in line to sign up kids for programs – there's got to be a better way – online registration. Questions E-Gov – how many would use it, could pay bills on line – give guidance to staff on how the money would be sent. Mayor Weatherly suggested the Manager come back with the most efficient way to survey. Manager Radford had shared a Concord Survey with Commissioner Schulze and may use that one and incorporate some of this one and come back with it.

End of New Business # 4

Mayor Keith Weatherly

New Business Item # 5 – Apex Appearance Commission

Mayor Weatherly recommended appointments to Apex Appearance Commission - Dona Taylor, Kim D'Amico, Betty Gilbert to fill unexpired terms.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to approve the appointments as recommended. Motion carried.

End of New Business # 4

Wake County 800 MHz Agreement -

Commissioner Gossage asked this item be removed from the consent agenda thinking it deserved staff time to present further information. Manager Radford noted in the past year had been working with Wake County to improve the CAD and Radio systems; receiving free 800 mhz radios; putting the systems together. We have split out the 800 MHz from CAD thinking there maybe opportunities for CAD that we have in our own dispatch facilities rather than being a part of Wake County/Raleigh CAD system. This is for the operations radio – 800 MHz system is here to stay.

Fire Chief Mark Haraway stated there would be a gain – 11 talk groups, 170 channels, full county operability between 23 fire departments, 9 EMS agencies, 11 Police departments plus all non-emergency service groups within all municipalities. This has been on the Federal Government agenda since 911 due to those events, and since then many natural events such as Florida – recommends interoperability. Apex has three channels – one for Police, EMS, and Fire – none being totally independent, but more on outside agencies, this system would have this ability, talking to everyone. We will reduce to one radio, currently everyone has this system with Apex being one of the last to sign this agreement – will activate with the signed agreements at the end of the month.

Action: Motion by Commissioner Gossage and second by Commissioner Jones to approve the agreement as recommended. Motion carried.

End of New Business

WORK SESSION AGENDA

There were no work session items to be discussed.

CLOSED SESSION

Mayor Weatherly asked for a motion to move into closed session concerning acquisition of property and adding to receive legal advice from the Town Attorney.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to move into closed session. Motion carried. Minutes of closed session are recorded separately. Motion by Commissioner Gossage and second by Commissioner Jones to move back into regular session. Motion carried.

With the board being back in regular session:

Action: Motion by Commissioner Jones and second by Commissioner Meckes to adopt a budget amendment and a capital project ordinance amendment regarding water and sewer. Vote on the motion was four and one with Commissioner Jensen voting no. Motion carried.

End of Regular session

ADJOURNMENT

With no further business to come before the Board:

Action: Motion by Commissioner Meckes and second by Commissioner Jones to adjourn at 11:53 p.m. Motion carried.

The above minutes were approved on the 7th day of September 2004.

Georgia A. Evangelist
Town Clerk

Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, September 7, 2004
Mayor Keith H. Weatherly presiding

Meeting to be held at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus
Board of Commissioners Meeting Room (2nd. Floor)

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the Town of Apex Board of Commissioners September 7, 2004 meeting to order at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus. Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present.

Invocation by Commissioner Jones.
Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

PRESENTATIONS

Mayor Weatherly presented Quarterly Residential and Commercial Appearance Awards; both for overall appearance.

Hannah and Matthew Moore, 801 Haddon Hall Drive and Apex Medical Park, 410 E. Williams St.

CONSENT AGENDA

Mayor Weatherly present the *consent agenda* to be set and asked for a call for action.

Action: Motion by Commissioner Gossage and second by Commissioner Jensen to approve the consent agenda as presented. Motion carried.

1. August 17, 2004 Board of Commissioners meeting minutes.
2. August 17, 2004 Board of Commissioners closed session (minutes recorded separately).
3. Adoption of the Town of Apex Hazard Mitigation Plan approved 08/17/04 by the Board of Commissioners.
4. Adoption of Resolution Accepting Conveyance of Easement and Appurtenant Property Interests in regards to the Lynch Street Project.
5. Approval of Utilities Infrastructure Reimbursement Agreement.
6. Firemen's Relief Fund Trustees appointed by Town Board of Commissioners and recommended by the Fire Department for NC Municipal Report of Fire Conditions to be certified by Town Clerk.
7. Request authorization for Town Manager to enter into an intergovernmental agreement with Wake County to facilitate participation with the WC-7 Body Removal Program.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as printed. The following amendment was made to the agenda: Manager Radford asked New Business Item # 1 not be considered regarding BBH Design Contract. **Action:** Motion by Commissioner Meckes and second by Commissioner Jones to amend the regular meeting agenda as requested. Motion carried. The meeting agenda was set as amended.

PUBLIC HEARINGS

Staff Report prepared by David Rowland, Director of Planning

Continuation: Public Hearing # 1 – Rezoning Case #04CU11

Recall:

i) Public hearing was continued from 08/17/04 meeting to allow petitioner time to consider changes to petition based on public hearing and to consult with other petitioners. Staff will report on current status and recommending UDO amendment regarding buffer requirement. Petitioner requests hearing be continued to October 5, 2004 meeting. Staff also recommends continuation.

ii) Rezoning petition includes two non-contiguous areas – received protest petition which is valid as to the area north of Moore Street, and petition is invalid as to the area south of Moore Street

Continuation of public hearing regarding rezoning case #04CU11, Marshall Barnes, et al, petitioners, seeking to amend the 2025 Land Use Plan and rezone from Office & Institutional (O&I) District to Mixed Office, Residential, Retail, Conditional Use (MORR – CU) District, containing approximately 4.18 acres located on South Salem Street between E. Chatham Street and W. Williams Street; possible motion regarding same.

The Town Clerk administered oaths to those desiring to speak during the public hearing.

Attorney Fordham advised the Director of Planning did not need to be sworn as he was presenting background information. David Rowland, Director of Planning, recalled the matter was continued form 8/17/04 meeting to give petitioner time to consider changes to petition based on the public hearing and to consult with the other petitioners. In discussion, petitioner discovered the UDO requires buffers to be installed in event of a zone change; if approved buffers would need to be installed between existing office and residential uses. Planning staff had concerns with not only this rezone but rezones in general and recommends UDO be amended to delete this provision. Petitioner Marshall Barnes requests hearing be continued to the October 5, 2004 meeting. Staff also recommends the continuation. Staff report is attached and incorporated as a part of the minutes.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to continue this hearing to October 5, 2004 meeting. Motion carried.

Don Grimes, 210 S. Salem Street, wanted to be heard, even though he had spoken in the hearing previously.

Attorney Fordham advised the hearing date may want to be discussed further due to consideration in an ordinance change; specify date or readvertise the hearing. Mayor Weatherly reopened the public hearing to allow Grimes to speak.

Mr. Grimes was administered an oath prior to addressing the board. He noted the provision of the UDO regarding buffer screening; with the rezone change a person must comply with the UDO requirements and he's not sure he wants to do away with that provision. He noted unique properties in the downtown that there was concern about. He used an example of properties rezoned to industrial, asking why not impose a buffer between it and residential – asking why do away with this provision. He hopes to achieve buffer to lessen impact of rezonings to property zoned residential.

He noted problem with downtown is with old existing property that has been residential for years with a few changing to office – he asked why take this isolated situation and generalize it to all of Apex, asking if this were an appropriate approach, advising they should treat this in a unique manner.

Carol Kish and Laura Grimes wanted to address this issue as well. Ms. Kish and Ms. Grimes was administered an oath prior to addressing the board.

Carol Kish, 209 S. Salem Street, asked why industrial came into the picture since it would never be. She advised if there were a 20 foot buffer if it were an office, there would be no drive there. She noted this was a specific need and asks to fix the situation.

Laura Grimes, 210 S. Salem Street, asked the board to consider letting this petition die and have the town bring a new petition. She agreed Kish had a good point. 1) Salem Street and other historic properties zoned O&I need to be considered in this change; other homes in O&I besides Salem Street all need to be considered at one time. 2) Asked to have staff survey properties to see what currently exists as far as buffers and vegetation and shared drives to present entire area and see where the problems areas are and what to do. In reduction of buffers she presented maybe a percentage of the road frontage with 20/10% on each side – most are 80 foot wide with two lots – 20 foot wide using up to 50% of the property with buffers is too intrusive. She's not an engineer or planner and feels they should decide the better information. She discovers more about the neighborhood daily as she walks and looks. She's not sure about a reasonable decision to reduce buffers would make her happy, but reduction of buffers off set by density of buffers may be best – not wanting to see next door, mention plan density wisely and sprawling. She continued with the two uses office and residential and no retail now but maybe in the future it could change office, retail, residential conditional use; with residential you don't want that. She desires to create a situation where residential can co-exist with office, noting the property in questions has been on/off office but never offensive to her. She noted Mr. Birch had in preparation for the rezoning put boards along her property line and graveled the area and covered the back. If not zoned retail, no buffer is required at all. The vegetative 4 foot buffer along the property would only be placed if they asked for it; Birch didn't plant bushes, etc. she did the planting along the property line. If it is office, she would like some buffer, since there would be trucks, etc. but doesn't know who will rent. She would like the parking lot not so close to her house and driveway; asking to arrive at a decision to make all of them happy conform to the UDO standards and negotiate buffers but would not be happy without a buffer. She feels the current UDO has not been enforced – turned to office, there is no site plan and no buffer is required recalling 1994, 1996 and 2004 and allowed to do whatever. She desires assurance the properties downtown are protected; it took the property owners to protest. She knows the board does care and has gone beyond to protect them, but asked again they consider staff survey and see what's there and decide what needs to be done. She noted the properties unique and need careful attention of staff to look at them one by one.

Kish added that Mr. Birch had placed the gravel as required by the town.

Attorney Fordham advised the hearing should be continued to a specific date asking Director of Planning if the date of October 5, 2004 was good, with Rowland responding it was.

Commissioner Meckes asked the type buffer required for office next to residential. Rowland responded it's a 20 foot Type A buffer – and the provision to apply buffer is reasonable and practical in an existing situation. Commissioner Meckes asked if MORR zone would trigger this requirement. Rowland responded the time would be at site plan and not the rezoning; he continued apply to specific situations – change of use would require a special permit.

Public hearing # 1 continued

Commissioner Jones clarified office next to residential didn't trigger a site plan – but office next to residential would require a 20 foot Type A buffer. Rowland responded if zone went through the provision was to get a special use permit, contact property owners, and deal with buffers; not proposing to do away but when to do buffers. Commissioner Meckes added to go O&I still triggers tie plan and special use deal with buffers. Commissioner Jensen added we haven't in the past. Rowland responded there were several offices there before the site requirement. Commissioner Meckes asked if under the current status they were addressed, with Rowland responding yes. Commissioner Meckes questioned the buffers with two drives; Rowland responding there could be alternatives – fence and narrow landscape naming certain plantings.

Attorney Fordham advised the hearing should be closed and continued to specific date of October 5, 2004.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to close the hearing at 7:35 p.m. and it be continued to October 5, 2004. Motion carried.

End of public hearing # 1

Staff Report prepared by David Rowland, Director of Planning

Continuation: Public Hearing # 2 – Special Use Permit #04SUP02

Recall: *Public hearing was continued from 08/17/04 meeting and dependent on rezoning of S. Salem Street (MORR-CU). Staff recommends hearing be continued to October 5, 2004 meeting in light of pending rezoning.*

Continuation of public hearing regarding Special Use Permit #04SUP02, Carole Kish, petitioner, seeking a special use permit for a retail business for the property located at 206 S. Salem Street; possible motion regarding same.

Director of Planning David Rowland recommended this hearing be continued as it was dependent on the rezoning of the Salem Street rezoning.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to continue this hearing to October 5, 2004. Motion carried.

End of public hearing # 2

Staff Report prepared by June Cowles, Planner

Public Hearing # 3 – Rezoning Case #04CU06

Note: *Planning Board unanimously recommended approval at their 08/09/04 meeting.*

Public hearing and possible motion regarding Rezoning Case #04CU06 Old Mill Village, Apex 1 st Development, LLC, petitioner, seeking to rezone from Office and Institutional (O&I) District and Planned Unit Development (PUD) District to Planned Unit Development District classification containing 32.12 acres located south of Old Raleigh Road, west of Apex Peakway, and north of Center Street.

June Cowles and Alan Maness were administered an oath prior to addressing this rezoning case.
Planner June Cowles presented the staff report (attached and incorporated as a part of the minutes) for a rezoning for Old Mill Village, Apex 1st Development, LLC, petitioner and located south of Old Raleigh Road, west of Apex Peakway and north of Center Street. Current zoning is O&I and PUD District, and requested zoning is PUD-CU district. Adjacent zoning and land uses are outlined on page 1 of the staff report. The PD Plan for Old Mill Village is attachment 2 of the staff report. Plan includes a mix of commercial, office, and residential with density of 8 to 12 units per acre. RCA is outlined on page 3 of the staff report and consistent with the UDO. Access and Circulation was addressed by Ramey Kemp & Associates with traffic study proposing project is estimated to generate 299 a.m. peak hour trips and 506 p.m. peak hour trips, however, not all these trips will impact the adjacent roadway network.

Public hearing # 3 continued

Planning Board reviewed this at their August 9, 2004 meeting and recommended approval unanimously.

Mayor Weatherly opened the public hearing at 7:38 p.m.

Alan Maness, BBM Associates is the applicant and engineer representing Apex 1st Development. He was excited about the project, a quality project, and was there to answer questions.

Commissioner Jensen noted two site plans, asking if there were apartments; Maness responded there are no apartments; building does lend for office condominiums for sale as designed; lot width is 20 foot minimum; two and three story townhomes. Commissioner Meckes looked at size.

Commissioner Jensen asked about the stormwater requirement: Maness responded they will comply with the Town's watershed protection and peak attenuation requirements for a ten year storm and leaving 50' buffers counting as RCA – with Rowland responding that's required; three proposed detention ponds. Commissioner Jensen had concerns with flooding problems added to Shepherd's Vineyard Subdivision; town had changed their pond and flow control so as not to add to down stream problems. It was noted the flows down Old Raleigh Road under the Peakway and crosses Old Raleigh Road; a semi wetlands area. Maness noted the proposed design concept includes a roundabout at its central intersection; with a pedestrian connection to all portions of the project as well as the adjacent Flea Market and Town Hall campus; dedicated right of ways; they do not control the land to Old Raleigh Road, but planned roadways are consistent with the Towns thoroughfare plan – and noted the minimum size discussed earlier was 600 square feet. Commissioner Meckes confirmed there would be a culvert, with Maness responding there would be. Manager Radford asked Rowland to verify stormwater does flow through Shepherds Vineyard and he responded the stream runs under the Peakway to Shepherds Vineyard.

Commissioner Schulze addressed the drain line and greenways, with Maness responding ponds are proposed as a trade off and discussed the 1" rain and the flow and a 10 year storm event. Commissioner Meckes, Jensen and Maness discussed the proposed detention ponds (3) and the provision of volume control and the storage and the release of the water, with Commissioner Jensen commenting on a study he had given out awhile back (noting ponds and need for volume control and stated percentages in regards to the same).

Commissioner Gossage verified Lots, 1, 4 and 5 were proposed restaurants with no drive-thru and Lots 3 and 6 were restaurants with a drive-thru. Maness stated Lot 6 already has a drive through, and Lot 3 with a drive-thru would increase flexibility; Planning Board and staff emphasized the restaurant with a drive-thru use was not appropriate for the PUD Plan due to the emphasis for a pedestrian friendly design community within the Peakway; town owns corner lot. Commissioner Jensen commented on the types of restaurants with drive throughs (Scholotzy's, Taco Bell – not always negative); Planning Board and staff want to keep certain type restaurants out. Maness responded drive cuts are site plan issues.

No one spoke in opposition; the hearing was closed at 7:50 p.m.

Commissioner Meckes was excited to see use of space and more parking spaces. Commissioner Schulze addressed the change in rezoning and the impact of stormwater run-off or the lessening of stormwater.

Director of Planning David Rowland was administered an oath and gave sworn testimony that the PUD rezone doesn't increase before or after run-off; should be the same two and ten year storm. Development under the O&I would still be the same standards.

Action: Motion by Commissioner Meckes to approve the Old Mill Village PUD #04CU06.

Cowles commented on traffic mitigation measures to be implemented as they are outlined in the staff report page three and four and recommended three conditions for site driveways # 1, 2, 3, and 4 (attached); color pavement shall be located at driveways along Street A & B as shown on the PUD plan site layout plan, and the restaurant with drive-thru use shall be omitted form Lot 3 Old Mill Village PUD plan. Maness commented on drive-thru use for pharmacies and dry cleaners with Rowland commenting on creation of a more urban fill with generally having no drive-thru in residential with drive-thru being more suburban – this gets into the core of downtown.

Commissioner Meckes rethought his motion: drive-thru being omitted from Lot 3. Commissioner Jensen commented on the lot at the Peakway and Old Raleigh Road, with Maness adding could include drive-thru for a pharmacy or a bank when completed. Mayor Weatherly could see some residential drive-thru, with Commissioner Jones adding he could see times when drive-thru would be offensive, but was hesitant to do away with them all together. Commissioner Gossage noted this was a restaurant drive-thru, with Commissioner Meckes seeing Rowland's point.

Action: Commissioner Meckes restated his motion to approve, precluding drive-thru and including the conditions 1, 2, and 3 on the Old Raleigh Road side, Lot 3 Old Mill Village Plan as recommended. Commissioner Jones commented on Lot 6; flee-market, convenient store, gas/car wash, drive-thru restaurant already approved as a part of this PUD; Cowles noted Lot 6 proposed restaurant with drive-thru.

Action: Commissioner Gossage made a second to the restated motion of Commissioner Meckes.

Action: Commissioner Gossage amended the motion to exclude restaurants in Lot 3, with Commissioner Jones making the second to this motion. Commissioner Jones could see some drive-thru usage.

Commissioner Jensen stated he would have trouble voting due to the stormwater not set up correctly as discussed in the past. He offered that photo's in two of the Planning meetings where folks begged it wouldn't get worse, but offered it will; noted this a decent plan, but correct rules are not in place and more water would be placed on Shepherd's Vineyard due to development and was the reason for change in the Town's pond.

Mayor Weatherly called for a vote on the amended motion; the vote was 4 – 1 with Commissioner Meckes voting no.

Discussion on the motion as modified noted the prohibition for drive-thru was on restaurants, with Mayor Weatherly clarifying approval would be with the three conditions and with the condition Lot 3 to eliminate drive-thru restaurants.

Commissioner Meckes commented on the basin study indicating development never altered what happens at the bottom of the stream with Commissioner Jensen commenting on the play of CN numbers and how fast water runs off with those numbers being played with could come out anyway they want them to and the problems with the study as he viewed it.

Commissioner Schulze commented there had been no serious flooding since the town campus pond was raised (1% change), with Commissioner Meckes commenting it was a 2001 storm. Commissioner Jensen noted the storm size with development causing more flooding on the other-side with a 20% increase in flow rate. Commissioner Meckes commented on the ponds depicted outside stream buffers, with Commissioner Jensen noting them state required because they were dry part of the year; more discussion followed regarding ponds and buffers.

Mayor Weatherly added if Commissioner Jensen chose to vote against the site plan, the water issue had been debated with qualified consultants and the ordinances having satisfied the issues with every site plan, a super majority vote, was sound and reasonable. Commissioner Jensen response was under the ordinance will have more flooding; more volume will be dumped in stream under flow control.

Public hearing # 3 continued

Commissioner Meckes and Commissioner Schulze discussed the water flow into Shepherd's Vineyard, with Commissioner Schulze commenting rezone doesn't do anything; there would be the same problem if turned down, it doesn't accomplish anything.

Commissioner Meckes indicated he appreciated Commissioner Jensen's efforts, but would take the information from the consultants at face value and they say it's reasonable and there's no significant impact, then he accepts that. Commissioner Meckes called for the question.

Vote on the motion was 3 – 2 with Commissioner Meckes and Jensen voting no. Motion carried.

End of public hearing # 3

Staff Report prepared by Dianne Khin, Senior Planner

Public Hearing # 4 – Rezoning Case #04CU09 and Minor Site Plan

***Note**: Planning Board unanimously recommended approval at their 08/09/04 meeting with condition to site plan approval.*
Public hearing and possible motion regarding Rezoning Case #04CU09 and Minor Site Plan – Pointe at Davis Drive, LLC, petitioner, seeking to rezone from 2.59 acres located at the northeast corner of Davis Drive and Old Jenks Road from Neighborhood Business-Conditional Use zoning (B1-CU) to Planned Unit Development Conditional Use (PUD-CU) and seeking to have minor site plan approved.

Those speaking during this hearing were administered oath by the Town Clerk.

Dianne Khin, Senior Planner offered the project was approved and rezoned to Neighborhood Business Conditional Use District in December 2003; however, the project as originally conceived could not meet the requirements of the B1-CU zoning district. Developer reduced the project by two buildings and reconfigured the site based on the requirements of the PUD –CU district. Several reductions allowed by the PUD-CU are necessary for this project to work: 1) reduce buffers by half their width (min. 15' wide); 2) reduce RCA by 10%; 3) reduce parking spaces by 4% (includes parking at gas island) or 16% (not including gas islands). In exchange for the reductions, Town will get additional landscaping within the reduced width buffers, coordination with wake County for a pedestrian connection between the two uses, a pedestrian friendly shopping center with buildings pulled closer to the road, and 100% of the parking to the side and rear of the buildings. Conditions on the project are the same as the B1-CU rezone, with exception of uses proposed "Radio and television recording studio" has been deleted as it is not allowed in PUD-CU and Restaurant drive-thru has been added to allow a drive-thru coffee shop (drive-thru use is limited to one).

Staff report is attached and incorporated as a part of the minutes.
Landscape/buffer meets the UDO requirements provided 1) the board grants a reduction of the buffer width per Section 2.3.4(F)(1)(d) Landscaping and 2) the developer works with Wake County to coordinate on the location of construction easements and a pedestrian connection, and the landscaping of the rear of the retention pond area so that it looks more natural than the currently proposed lien of shrubs.

RCA: plan proposes 15% in addition to the required buffers. Applicant requests 10% reduction allowable under the UD) Section 2.3.4(F)(1)(c) be granted by the board for the following reason: Proposed development will be pedestrian oriented with outdoor seating areas and close proximity to the street, with parking behind the buildings. Building architectural style has been enhanced to provide additional curb appeal using various visual elements and building materials, as reflected by the building elevations. Additional plantings have also been proposed to accentuate the overall site.

Public hearing # 4 continued

Floodplain/Watershed: Property is located within the watershed protection overlay district, but not located with a FEMA designated floodplain. Site has 67.7% built upon area (70% is allowed in the PUD zoning district) and meets requirement for stormwater retention with stormwater pond. No intermittent or perennial streams are located on the subject property.

Parking spaces require 100 regular spaces, 4 handicapped spaces with 100% of the parking to the side or rear of building. Applicant request 4% (includes spaces located at gas pumps) /16% parking space reduction per Section 2.3.4(F)(1)(b).

Street Access: one full service drive onto Old Jenks Road and one right-in/right-out drive onto Davis Drive is proposed. Traffic Impact Analysis was prepared by Kimley-Horn and Associates.

Lighting: Plan proposes 16 acorn style fixtures on 18 foot poles mounted in vehicular use area.

Staff recommends approval with the condition " the developer work with Wake County to coordinate on the location of construction easements and a pedestrian connection, and the landscaping of the rear of the retention pond area so that it looks more natural than the currently proposed line of shrubs".

Planning Board reviewed the rezoning at their August 9, 2004 meeting and unanimously recommended approval with the same condition.

Wake County representative commented on the construction of the slopes, and drainage easements; there will be additional landscape, greenway paths with verbal agreement, but confident this will happen. Easement will go before county commissioners for approval at their October 20 meeting; will improve the park and compliment Town and Salem Elementary; an added benefit having met with the principal and the tenant. Educational amenity: irrigate athletic fields; old farm pond cultural history.

Mayor Weatherly opened the hearing at 8:20 p.m.

Blain East, project design, having been sworn, spoke in favor of the rezoning and site plan. Building square footage will be reduced by 3000 square foot; has worked with Parks and Recreation – paved walkways around the lake; neighborhood center will be tied to parks and lakes; requested one full service drive thru for small coffee shop noting Davis Drive to the Park. Park reductions: increase size of pond buffers; will loose land on Davis Drive/Jenks Road widen both with NCDOT – right-in/right-out driveway onto Davis Drive and full access onto Old Jenks Road. Stormwater retention ponds will drain into two lakes.

Commissioner Gossage clarified traffic direction and the drive connections: East responded coming in to the lot, traffic would not stake onto the roads, but in the lots and continued after Commissioner Meckes clarified left onto Jenks after getting coffee with East responding NCDOT requirement of right-in/right-out and moved to the edge of the property line.

Jim Bell, Kimley Horne, having been sworn, stated they were ok with the storm water retention and no problem with drainage to the lake; it was a nice design; the stormwater facility would be a nice feature for children to look at the pond; and parking was less minimal.

No one spoke in opposition and the hearing was closed at 8:25 p.m.

Action: Motion by Commissioner Schulze and second by Commissioner Gossage to approve the rezoning and minor site plan with the condition proposed by the Planning Board " the developer work with Wake County to coordinate on the location of construction easements and a pedestrian connection, and the landscaping of the rear of the retention pond area so that it looks more natural than the currently proposed line of shrubs". Motion carried unanimously.

End of public hearing # 4

Presenter: David Rowland, Director of Planning

Public Hearing # 5 – Annexation Petition # 362

Public hearing regarding Annexation Petition # 362, Haddon Hall Ltd. Partnership, owner/petitioner, petitioning to annex 10.905 acres located north of the portion of the Apex Peakway where it intersects with NC55 north of the NC55/Olive Chapel Road/Hunter Street Intersection and being a portion of Haddon Hall Subdivision; possible motion to adopt an ordinance to extend the corporate limits of the town.

Director of Planning David Rowland oriented the board to the 10.905 acres known as the Haddon Hall swim club and would clean up the annexation of this area.

Mayor Weatherly opened the public hearing at 8:26 p.m. and with no one speaking, closed the public hearing.

Action: Motion by Commissioner Meckes and second by Commissioner Jensen to adopt an ordinance to extend the corporate limits by the 10.905 acres. Motion carried.

End of Public Hearings

OLD BUSINESS

Introduction of Presenter by Kent Jackson, Director of Construction Management

Old Business Item # 1 – Transportation Project Priorities

Presentation by Paul Worley, Assistant Director for Engineering & Safety, NCDOT Rail Division; discussion of proposed rail crossing locations for the Peakway section through the Trackside area.

Paul Worley and Arthur Petteway of the Rail Division NCDOT were present to answer questions.

Kent Jackson, Director of Construction Management, presented a map of the downtown railroad crossings. Noted: Peakway extension from Laura Duncan Road to North Salem Street is a critical component of the Trackside land use plan (major transportation facility that goes through there – Peakway). Staff met Worley to brainstorm how we may be able to have the Peakway and the two existing rail-lines to co-exist in a successful manner. Staff followed up by contacting NCDOT Rail Division outlining their understanding from the meeting and what may be required in order to build the Peakway segment. Requirements from NCDOT Rail Division include a closure of existing crossings (map attached) from Tingen Road to proposed new rail crossings for the Peakway. Requirements as they currently stand to install the Peakway: A letter dated May 22, 2003 is a response from NCDOT Rail Division to the Town's crossing proposal. NCDOT requires the closure of the at-grade crossings of Moore Street and Center Street in addition to the three private vehicular crossings that are in the Trackside footprint. He noted the Peakway crossing at the D&S liens (CSX terms) and the corridor proposed for a future high-speed rail corridor. In addition this crossing could exist as an at-grade crossing initially – we would need to secure right-of-way for future grade separation of that crossing which would mean installing a bridge once it becomes high-speed. Date this would occur is unknown – projections for future condition we would need to comply with.

Old Business continued

Town would secure this from a potential developer with the least evasive way to do this would be to construct some type retaining structure so we do not have field slopes expanding into the site on both sides. This would be done with other crossings closures he mentioned and in return would get two at-grade crossings for the D&S Line and the S Line that we need in order to make Trackside successful and workable.

The Closing of Center Street presents significant concern and challenge for Apex; it's a central point in the downtown and important arterial to the downtown area and feels it's important to the economic health and development of downtown Apex. Staff was concerned enough about that part of the proposal and felt it deserved for the Board to hear the concern and to hear the response from NC Rail Division to that question and invited Paul Worley.

Commissioner Jensen asked the cost for bridge construction today; estimate $1-2 million. Commissioner Schulze addressed contact points – number of trains and number of cars that cross that point, asking if this were a case of horse-trading, reducing the number of contact points, this one for that one; why close Center Street. Jackson responded it was a statewide initiative on a part of the rail division to reduce potential points of conflict. Commissioner Meckes commented on the swap of two and two. Jackson responded staff had stopped short of suggesting a commitment of closing Center Street crossing. Commissioner Jones added taking the private ones out of the equations, not talking two for two, but about a new grade crossing, one on the east, one on the west – he's including that as one, we are loosing one; at Center Street and Moore Street we are crossing both rail lines; doing the same thing just one time at the north. Commissioner Gossage noted the private crossing closings with the proposed new crossings - Peakway changes it from private to public.

Paul Worley, Assistant Director for Engineering & Safety, NCDOT Rail Division, passed a brochure to the board "NCDOT Crossing Safety on Track In NC". Since 1992 have been involved in crossing safety and closings around the state, steaming from a safety concern. Less at-grade crossings the more they can close and consolidate, the better off they are as far as safety and grade separations.

As a resource: rail crossings belong to CSX, Jacksonville, Florida and the ones to satisfy with what is proposed. Town proposes to grade separate the S-line crossing on the right side and designated the high-speed rail corridor in 1998 to connect Raleigh to Columbia and Columbia to Savannah and to Jacksonville, Florida. That is the later part of the high-speed rail planning; concentrating on Washington DC to Richmond, Richmond to Raleigh, Raleigh to Greensboro, and Greensboro to Charlotte, and Charlotte on to Atlanta when they can get S.C. and Georgia interested in the project. The high-speed corridor project is moving forward with the Department of Transportation. They are in the process of conducting an environmental impact statement Tier 2 in the process of assessing the impacts on the first phase of the line between Raleigh north to Petersburg.

Another important fact: Board of Transportation adopted at its meeting last week a comprehensive Transportation Plan for the department which will shift more priorities to transit and rail and other modes of transportation as well as the maintenance back log at the department. They are taking a multi-mode approach at NCDOT rather than highways as the answer. This is in spirit of that approach.

Attachment A: The discussions with town staff included representatives of CSX in 2003; they talked about coming up with a plan for Apex to allow for near-term development that is needed and Apex desires while doing some trading and allowing for the future high-speed rail corridor. Apex not having to pay for something now that may not come for 15/20 years or more. Felt from an engineering and planning point of view they could stand behind this counter proposal and take it to the leadership at CSX Railroad in Jacksonville and try to sell them on it and hope for success. (Copy of the response regarding the proposed Apex Peakway Crossing over the CSX Railroad in Apex, dated May 22, 2003 is attached and incorporated as a part of the minutes.

Old Business # 1 continued

Attachment B: Resolution past by the Board of Transportation dated 1999 (policy) as staff person he follows policy set by his board; eight railroad corridors have been designated nationwide by US DOT as future high-speed rail corridors and Board of Transportation decided it was in the public interest of the Department to reduce the number of grade crossings and encourage grade separated intersections. Item # 1 on B: the Board of Transportation directs that any new highway railroad intersections at the southeast corner be grade separated with an over pass or an under pass and # 3 operating railroads, transit/transportation authorities and local governments along these corridors strongly discourage new crossings and adopted plans zoning changes, site plan approvals and building construction approvals. When passed by the Board it was distributed to all MPO's in the state and it may be in the town's files and is on the internet as well.

Department through the Traffic separation study process they can recommend the relocation and the reconstruction of at-grade crossings on the southeast corridor when they meet the near term safety needs, mitigate the closure of multiple crossings as part of the comprehensive safety improvement project. What they develop among staff as a recommendation in 2003 was the comprehensive safety project that would close some crossings near term as well as private crossings – not something they would like to see closed, but not a big deal, you don't have traffic using them; where you have traffic is on public at-grade crossings - Moore Street and Center Street. Center Street was mentioned because you don't have that many options as far as S-line goes and also if looking at the map and thoroughfare plan, as far as traffic going from east to west, it can use the Peakway and Hunter Street. That is what they were doing in the spirit of the policy saying the Peakway was a relocation of the Center Street crossing rather than a new crossing. That's their approach staff took following policy.

Attachment C: Rail Grade Separation Guidelines statewide; separation should be constructed in urban areas. High speed rail or not, on any railroad if we conflicts above 30,000 in urban areas and above 15,000 in rural areas they build grade separation if anyway feasible – that's per year (ADT times the number of trains is how you get the conflicts). If you are looking for a return in investment on this road, you are looking for multiple thousands of cars to use this per day as an important connector. You are going to meet those conflicts with some eight to ten trains a day on the S-line. Arthur Petteway could back him on some of the facts.

Attachment D: FRA's Interim Final Rule on Locomotive Horns & Quiet Zones (Federal Railroad Administration Office of Safety). There have been questions about quiet zones and have met with Commissioner Gossage at their office; this is going through Federal Railroad Administration and answer more about this as he moves on.

Attachment E: Railroad-Highway At-grade Crossing Consolidation Initiative (Policy from the board to close crossings adopted in October 1995).

Attachment F: Resolution Support Federally-Designated Southeast High-Speed Rail Corridor (dated March 1999).

Attachment G: Public At Grade Crossing Investigative Index (spread sheet of Apex). Oldest ADT's go back to 1993 and the newest 2004. Most notable is the change at the last two crossings at Hunter Street - one 9,000 and one 1,900 cars per day – the only thing he can gather is we opened this facility (town campus) sometime between the first count being taken 2002 opened 2001 and may not have put in the count until 2002. You would have the same amount of traffic unless it's all coming in one way; you wouldn't have that kind of disparity between ADT's. You've got Center Street with an ADT of 244 and doesn't know if that's correct now – all would need to be updated prior to taking action. You are looking at eliminating two crossings – one with a 1,000 cars a day at Moore Street and Center Street – 244 is low, lets say it's 3,000 cars a day – you are still building a new at grade crossing that's probably going to be carrying at least 10,000 cars a day, on the Peakway. You are putting a considerable amount of traffic at grade on the railroad in exchange for lighter traveled crossings.

Old Business # 1 continued

Attachment H: Apex Crossings Map outlines the proposal. Commissioner Jones questioned the 244 at Center Street, seems low. Commissioner Meckes asked the time table for the high speed rail – 15/20 years out for this particular section. Commissioner Meckes noted the potential for grade separation could be 20 years from now with Worley responding that was right, but the main thing is to preserve the right-of-way and dedicate that right-of-way so it's not developed upon and the grade separation can exist harmoniously with development.

Manager Radford stated we could sit until 3:00 a.m. to discuss concerns about the crossing as they have talked numerous times; having closed rail crossings in Selma; helped him in Selma, but can do much now. He asked Worley what credit he gave the town in closing Thompson Street. Worley responded none; it was already done under a previous project. Radford asked what he was willing to do if anything for a southern crossing of the Peakway near Apex Elementary School. Worley advised Thompson Street was a property agreement the town signed with CSX to acquire some right-of-way – a trade off on the Thompson Street closure, with Radford adding that wasn't right-of-way granted by NCDOT but by CSX with Worley responding that's right, but still CSX and that is who you are dealing with. Commissioner Gossage added unfortunately it was not part of a larger view, basically the dozen or so crossings from the Mobile Home Park – Shangri-La all the way out to highest crossing – he doesn't think the town had at anytime worked within itself for external entities on every single one of these properties. Attorney Fordham commented in regard to the agreement between CSX and the town, it doesn't prohibit at crossing to be maintained for pedestrian traffic, with Commissioner Meckes saying that's the stroll-way part of the deal.

Manager Radford asked his plans for the southern crossing. Worley responded they have talked in not much detail, their feeling is that the first most eminent need was the north Peakway and trying to work out a way for Apex to get that in and work with developers, but on the south crossing you need to plan to grade-separate that because he sees us being able to go to this well one time with CSX on this. He saw an email the other day – a developer in Charlotte wanted a new crossing, CSX said close three public at grade crossings – the fact they came and met with them – they may change the May 2003 proposal; they may say that's not enough now; they've had a turnover in Jacksonville. As far as the southern one, need to plan and work for that one to be grade separated. That's one thing they did in Cary on the Parkway on Maynard Road – first portion built is at grade (Lowes) second crossing was grade separated over the high-speed corridor and same with Cary Parkway along the high speed rail corridor to as it was built. As policy has caught up with road projects it's changed. Commissioner Gossage stated something to keep in mind is that we have made decisions about zoning and developments assuming that we are going to have an intersection with the Peakway at grade; since he's been on the board – the last eight months between December and April. He had met with Worley about four months ago. He felt that decision was made based on an at-grade crossing because we talked about cars being able to go back over and get on the Peakway there.

Manager Radford asked how Worley would respond to other municipalities who have grown 400/500% in the last 15 years in regard to their need for multiple railroad crossings in their communities. Worley responded the same way or they had done traffic separation studies which they offered a few years ago to the town and at the time was decided the standard agreement and policy towards those studies has been – in the department that if they do a study and bring a consultant in, they work together on the study and make sure they come up with recommendations they all feel they can carry out and thus the study is binding – where you pay for the study and that was deemed unacceptable by the Town at that time, so the Town passed on the study and didn't do it. They have worked with Harrisburg, Concord, Kannapolis, closed crossings in Morrisville, worked with Wake Forest – those are towns that are in the same situation as Apex with the growth issue – you've seen metropolitan areas where you are far outgrowing you ability to build roads, your road needs are way beyond what you have your capacity, but the point is you can't build these at grade crossings and then expect to have transit and have the number of trains increase with TTA or high speed rail and maintain a safe crossing and maintain mobility of the citizens to be able to cross the railroad.

Old Business # 1 continued

You have to have a grade separation and why we have to work together for near term and long term planning to provide that grade separation in 20 years or plan for it on the southern Peakway crossing. That's CSX policy and Board policy.

Commissioner Gossage asked who currently owns Center Street and what will happen with it if its closed for the portion around the rail crossing, with Worley responding Center Street is an NCDOT street and would be landscaped, pulled up and be teed in and curbed off. Commissioner Gossage asked on the side between Salem Street and the rail, what would happen to the ownership of that, with Worley responding they may ask the town to take it on our system or they may maintain it if the town didn't. Commissioner Gossage continued to imagine if the town owned that chunk of Center Street – with Commissioner Meckes interjecting parking lot – that's the one pro with Commissioner Gossage adding you'd have an access road that goes down to Hunter (Elm Street). Commissioner Jensen asked if Center Street was closed, what about pedestrian traffic once again, asking if that would be allowed – that's an important corridor for a lot of subdivisions coming downtown. Worley responded that would probably be a CSX question or a question more on the lines of, is it more appropriate to have pedestrians crossing at Thompson or is there a way to move them up and have them cross at Center. Center you have three rail road tracks – he would like to have pedestrians crossing an area they can get across one or two tracks much quicker than three tracks where you have switching back and forth during certain times of the day. That would have to be evaluated by engineers and also approved by the railroad but we do recognize the need for pedestrian and non-motorized mobility as well and try to work with the communities as much as we can in that respect.

Manager Radford added he had mentioned Morrisville – in closing crossings there, how many were replaced with grade separation crossings? Worley responded none and closed two and built one – closing Ashe, Cedar Street and extended Airport Blvd. – two for one – two major crossings and built one there. Now, as they are planning TTA, they wish they didn't have that one – now they have four tracks and possibly up to 100 trains a day coming through there – queuing will be a nightmare. TTA is projecting 100 trains a day on their regional rail system; he's going by their numbers and their environmental document, with the bulk in the morning and afternoon.

Commissioner Meckes asked how Worley characterized his role – an advocate for the railroad or for the communities or does the board trying to implement railroad policy here with Worley responding they are advocates for a multi-transportation system and means trying to work towards planning and designing and building systems that has a level playing field and accommodates the movement of people and freight in several different mode ways. Commissioner Meckes added they can afford to see the big picture because they are out of the realm of politics and can look at things they way he does – saying this can be the absolute best situation given the set of circumstances that we can proceed, with high-speed rail coming through with TTA coming through – you can say what will be the best situation and he's assuming that's what the proposal is. Worley stated the absolute best situation would be to go ahead and grade separate from day one. Commissioner Meckes added given the current set of circumstances that's what they are trying to do, with Worley responding you have to take a clear minded approach and work with the communities to come up with solutions that are realistic and meet the needs today and that is what he feels like they have done here.

Commissioner Jensen asked if we do the grade separation right up, would there be any discussions about closing anything else; to be allowed to go over the top. Worley responded you want to build the Peakway, all you have to do is submit CSX design standards for your fly-over both of them, submit them to CSX they review your plans, comment and say thank you very much. Commissioner Meckes stated you wouldn't be able to come down on the ground between not being realistic – the east side and the west side proposed Peakway crossings; you'd fly over both without coming back down; you'd feel like a roll a coaster. Manager Radford added it was made clear to us that without grade separation Salem Street in exchange for the closings of the other crossings, but that we would only be able to go up and stay up if we are going to do that – couldn't go up come down and go back up – not feasible.

Old Business # 1 continued

Commissioner Meckes asked if TTA was going to use the S-line or DSN – line, with Worley responding he didn't know yet. Meckes continued bottom line, letter states what CSX will do without negotiation; we are not in a position to negotiate much with the railroad, with Worley responding none of us are. Commissioner Meckes added no one is in that position – they are autonomous it seems, whatever they want to do, they do. Worley responded not to that extent. Commissioner Gossage added railroads have always been powerful; we can't expect them to do everything for every little town because that would bankrupt the railroad, with Commissioner Meckes adding they already are, asking how much government subsidy is there every year – talking Amtrak – Commissioner Gossage talking freight.

Attorney Fordham asked a question that could jump start some legal research he may be asked to do at some point. He asked who has the legal responsibility to pay for the grade separation when the high-speed rail comes through as to existing crossings. Worley responded that is yet to be seen – that will have to be a project cost like when we upgrade 220 or Interstate 74 – it's got to be bared by the project; that's how he would see it – the way he would budget and plan it. Attorney Fordham asked if federal law requires the railroad to pay for it, with Worley responding, no it would be a public project; if running high speed rail for public transportation and rail passenger service, that's a public project. Now the railroad exists for freight and as far as they are concerned they are in good shape, that's they way they would look at it. Commissioner Meckes added to get a grade crossing at Chatham Street, he can't imagine any grade crossings on any of these – he meant grade separations. Commissioner Jensen added that would be disaster. Commissioner Jones was wondering about the old railroad trestle at NC55 – talking that we have no negotiations in discussions with them; we are sort of at their mercy with widening NC55 it's the States and CSX. Commissioner Gossage added you may not want a high-speed train going over a 100 year old bridge. Worley added it's on the MPO priority list as far as the NC55 widening and know that has to be replaced before NC55 is widen and when the bridge is built, it will be built to new standards, whenever its done as a part of that project just like at NC54 and other places. Commissioner Meckes asked what Hunter Street Extension was before it was built; did Hunter cross the tracks to Laura Duncan. Worley responded Hunter was new. Commissioner Meckes asked how we got two grade crossings on Hunter, with Worley responding that's what the folks at CSX asked when in 1989 or 1990 when the letter went to CSX saying these two crossings you agreed to, we are ready to pave up to them and install the gates, etc., they asked what crossings they had agreed to, we did what? The national policy started changing (can look it up on the internet) around the early 90's changed towards eliminating – Apex was the instigator, those folks got two off of us, we've got to change national policy. Commissioner Meckes asked for more positive aspects of closing Center Street; we know parking potential and if you open up the Chamber lot. Commissioner Gossage responded there are some other things that have been looked at for that whole area; again, maybe we could look at the big picture for that side of the street. Commissioner Meckes felt we are in the position we have to take what we can get. Commissioner Gossage added the Peakway – again we have to look all the way down to the Southern Peakway crossing, include that if we are going to do grade separation there – we have to look at how integral we expect the Peakway to be in moving traffic around Apex and if it's going to relieve the burden from what's currently on Center Street; it can be a bit of a nightmare sometimes making a left turn at 5 or 6 o'clock; there's a positive there – you know a merchant sitting there may want to have a restaurant there and is currently renovating – saying I want all this traffic – maybe parked across the street.

Worley continued one other benefit the quiet zone – you eliminate these two crossings – no horn. If these crossings are eliminated, the DOT would try to work with the town to upgrade Chatham Street with the proper devices so you could be quiet through there. You would already have closed Thompson Street all but pedestrian traffic; you can look at treatments on Hunter Street – you'll have four quadrant gates on the Peakway, and on the D&S crossing, so that's something to look at and get the quiet zone for this whole neighborhood. That's an advantage; you improve your numbers in getting that quiet zone and is a complex issue as Commissioner Gossage and he had discussed a couple of months ago.

Commissioner Meckes asked in regards to high speed rail, what would speed would the trains come through? Worley responded you are looking at 110 mph in open country side – when talking about eliminating crossings, we know you will not eliminate every crossing in every town where the corridors go through – working on the one now, and even on the one to New York to Boston, you still have five at grade crossings – you'll have to slow down to 90 mph to go through – really back off to 90 mph. Keep in mind, you have the four quadrant gates, the medians, the longer warning times, pre-empted signals, you should have the crossing clear.

Commissioner Gossage added with the quiet zone that would apply to the high-speed rail also. He finds the quiet zones particularly important because there are existing neighborhoods near these crossings; someone said to him why would you move into a neighborhood that was near a railroad crossing if that bothers you – if you are looking at the two new crossings created at the Peakway and Salem, and the other track the east and west lines, you create two new crossings – one near Haddon Hall and one on the northeast near Brookfield – these people will wake up and we will have finished the Peakway and they will wake up to 6:00 a.m. to a train horn that they've never heard before or at mid-night. Commissioner Jones sometimes there's a grade separation, with Commissioner Gossage, saying no, we want grade separate for 20 years. Commissioner Jones added high speed rail, with Commissioner Gossage agreeing, but you have trains running, with Commissioner Meckes interjecting you get you to it – he lived downtown for seven years and they listened for the train and could tell time by the train, whatever time for the train, they noticed when it was late. Commissioner Gossage added some do enjoy the sound of the train – this is a rail town, but he's heard people say when the train goes, my baby wakes up – it's a pain and for these people who didn't move into a subdivision expecting that – it's something we should consider.

Commissioner Meckes continued we still have to have crossings for the Peakway and all agrees, asking if we could negotiate anything better than we have. Commissioner Schulze added it may be beneficial to consider the fly-over of the rail crossings at this point in time; it's a lot of money, but would save a lot of problems - $1 to $2 million each. Manager Radford added to go up and stay up is a different number. Worley added you'll have to jug-handle back down to Old # 1 – Salem. Manager Radford added this includes full-blown interchanges. Commissioner Schulze was not saying for or against, just put it out for discussion. Jackson was not sure we could make it back down on the west side with Commissioner Gossage interjecting, we could grade separate the eastern most which is high-speed rail. Commissioner Meckes asked if they would go ahead and do it now. Worley stated you would have to negotiate the DNS; it would be a new at grade crossing – you deal with the railroad. Commissioner Meckes added we are talking flying over both of them, with Commissioner Gossage saying no, just one. Jackson continued if we go at grade on the minor leg, it still presents negotiations, with Commissioner Gossage thinking it was covered under this. Commissioner Jones added even if we fly over this and do this at grade, takes this other, with Worley interjecting you still go to CSX but takes out high-speed rail, their stance as far as high-speed rail, you would have to negotiate with CSX. Manager Radford said the thing to key that would be close Center Street from their perspective; he's saying the letter says would consider closing after talking with the Board. When we say consider, he had come back with a response saying must – if we did Moore and Center, the three private crossings, then we get an at grade crossing at N. Salem Street. Worley responded at the time they talked with CSX they were agreeable to that, but the folks have changed now and they would have to go to different people and he would say if this is something the counsel is interested in doing, we need to talk to the folks at CSX and ask if the deal is still on.

Mayor Weatherly advised this was a briefing and didn't have to make a decision, with Manager Radford noting this information.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

No one spoke during public forum

Mayor Weatherly took a moment to advise he had received an email complimenting two officers friendliness to a family where a small child wondered (Bloomgrin and Byrd). Also, a comment on curbside pick up of limbs, leaves and yard debris. Commissioner Schulze shepherd this project.

Mayor Weatherly called for a five minute break at 9:05 p.m. The meeting reconvened at 9:15 p.m.

NEW BUSINESS

Presentation by BBH Architects

New Business Item # 1 – Contract with BBH Architects

Presentation of recommendations and possible motion to approve contract with BBH Architects for design and construction administration regarding up-fitting of the Town Hall third floor and related Town Hall modifications.

This item was not considered at this meeting.

End of New Business Item # 1

Presenter Kent Jackson, Director of Construction Management

New Business Item # 2 – Apex Peakway between Olive Chapel Road and S. Salem Street

Discussion and possible motion to authorize staff to negotiate a cost sharing agreement for the design and construction of the Apex Peakway between Olive Chapel Road and S. Salem Street.

Jackson stated Stewart Jones was present, Agent and Civil Engineer for the two developers proposed to be a part of this developer agreement. Recall during discussion proposed bond referendum, this is section identified over one mile of the Peakway starting near Seymour Pond on Olive Chapel Road and extending over and connecting to Cardinal Boulevard also the Peakway and out to Old US1 by Whitehall Manor. In the bond referendum programming, these portions of the Peakway are scheduled to be done after year 2010 – when the bond sale is made. With Whitehall PUD project and the proposed Peakway Village project opportunity has presented itself for us to do this considerably sooner and at a significant lesser cost. Board can give serious consideration to this; number comparison $2.3 million with significant part being land acquisition and with the cost sharing arrangement cost would be just over $1 million. Staff from a spending– two primary sources of revenue for this are the Powell Bill and Transportation Impact Fee Fund and decision for manager and board to decide. He doesn't believe the TIFF has enough to cover the entire project, but close and would have to look at some Powell bill funds. Historically the Powell bill funds have been used for more maintenance type work and not so much new construction, but allowable expense for new construction. Cross section is same as considered in the bond package; two outside lanes and sidewalk. Decision was made to do a multi-use path on the inside of the Peakway and something for the future. Potential four lanes in future – no median in this part initially.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to authorize staff to negotiate a cost sharing agreement for the design and construction of the Apex Peakway from Olive Chapel Road to S. Salem Street. Motion carried unanimously.

End of New Business Item # 2

Presenter Kent Jackson, Director of Construction Management

New Business Item # 3 - Traffic Signal at Apex Peakway and Center Street

Discussion and possible motion directing staff to negotiate a municipal agreement with NCDOT for design and installation of a traffic signal at the intersection of Apex Peakway and Center Street.

Kent Jackson, Director of Construction Management stated this is a deal, late in developing, no fault of staff, however, NCDOT has changed their schedule and time multiple times for this signal, with original signal being a stand alone project then Governors office came out with Moving Ahead Program and part of that SR1010 was identified as a corridor and NCDOT locally chose to lump the two activities together to have only one contract and resulted in a project delay. Currently they project the project to be done in spring/summer 2005 and with this municipal agreement could at least match that schedule and eliminate that opportunity for their schedule to change again and could possibly better it. Majority of expense for installation is the physical equipment, cabinet that controls the brains of the signal and the heads and poles; reference: Pinnacle Park signal installed in the last two years cost $75,000.

Commissioner Jensen asked when doing this one critical point is people come down Center from the east and want to make a right turn, it would be good to get a long right-hand turn there because we want people to turn onto the Peakway at that point and need it. It would be great to go to Surry Meadows, but get a good long turn to allow this opportunity to get more functionality out of it. Jackson indicated this seems reasonable request. Commissioner Meckes noted the problem is once you turn right on the Peakway and get over to Old Raleigh Road and the Peakway you have the same situation. Commissioner Jensen noted it not as bad, not a death trap, with Manager Radford adding the bulk of that traffic will turn right, with Commissioner Meckes agreeing.

Commissioner Gossage asked if there would be a left arrow from the Peakway onto Center Street. Jackson stated this would be determined as the design is done and a matter of what the traffic engineering projections are for left turn movements and NCDOT has thresholds; he doesn't remember what those are and doesn't know what the count is. Commissioner Gossage added in conjunction with a long right hand turn lane would be to have the left turn arrow and that right green arrow that pops on also to encourage that, with Jackson responding he would work to have that happen. He continued they had tried to improve the Peakway marginally by putting the skip lines across to give people more depth perception but still not good.

Commissioner Jensen asked when Waterford Green is connected if we do that to Surry Meadows, he bets those folks would down here weekly unless we get some decent flow along SR1010; we want them to get out of Waterford Green and go down SR1010 rather than cut through – it will be a problem if connected; maybe we shouldn't do that. – through the horse farm. All the folks in Waterford Green may never get up to SR1010 but run down through Surry Meadows and over to Old Raleigh Road; you need big streets to carry lots of traffic and we don't have it on SR1010 and this would be the best thing to do to alleviate it a bit.

Action: Motion by Commissioner Schulze and second by Commissioner Jones to approve as recommended by staff. Motion carried unanimously.

End of New Business Item # 3

Presenter Police Chief Bob Boone and Police Officer Scott Allison

New Business Item # 4 – Police Canine (K – 9) Program

Presentation by Police Chief Bob Boone and Police Officer Scott Allison for consideration of a request to implement a Police Canine Program. Program is financially feasible, and asked endorsement by the Board, or they would return funds already collected. Allison is an experienced K-9 handler and he has handled K-9 in three previous departments. He would like to do without a dog if he could have other availability, but doesn't have that resource in Apex and is why he got together with Cary – between them they could put one dog on the street each and borrow dogs, could cover what is needed. Holly Springs and Morrisville are included and would have good K-9 coverage in western Wake County. Commissioner Jensen asked if this would be a safety for the officers. Boone responded rather a dog be at risk than an officer. Annual recurring cost years two – five is about $3,000 – useful life of the dog is seven to nine years and then would regenerate funds to purchase another dog. Dog cost $5,000 to $10,000 and training which is free of charge by an agency in Florida – a three month training program; looking for a green dog - untrained dog - considering the cost factor. Commissioner Jones asked about trade of dog and handler asking if there were liability issues any mutual aid to address. Chief Boone noted mutual aid contracts; with agency coming in with full authority and have their own insurance backing and doesn't increase our liability in anyway; may have some consideration from our insurance for having a dog on the street. There are some unique aspects: burglars look at communities without dogs and go into those communities. Some larger businesses could use the dog and have negotiated with schools – not their goal to do searches daily for drugs, but some occasions. Commissioner Schulze asked if there were any efforts with Wake County with Chief responding he was told the sheriff was pro K-9 but not seen that over a year but has been here and there's a need for it now. Commissioner Schulze asked if we could get corporate support for food and other expenses. Chief stated we are well funded now and has about 16,000 hours of expenses – including $5,000 donation and commitment from a business man for additional monies. He added once this is complete police will stop soliciting funds from the community, DARE, dogs or an other operations – he doesn't agree with asking the community for funds. Allison has done a good job.

Action: Motion by Commissioner Jensen and second by Commissioner Schulze to approve the K-9 program. Motion carried unanimously.

End of New Business Items

WORK SESSION AGENDA

There were no work session items to be discussed.

CLOSED SESSION

There were no closed session items to be considered.

ADJOURNMENT

With no further business to come before the board Mayor Weatherly called for a motion to adjourn at 9:45 p.m.

Action: Motion by Commissioner Gossage and second by Commissioner Jones to adjourn. Motion carried.

The above minutes were approved on the 21st day of September, 2004.

Georgia A. Evangelisi
Town Clerk

Keith A. Weatherly
Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, September 21, 2004
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Web site: www.apexnc.org

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order. The meeting was held at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus in the Board of Commissioners Meeting Room (2 nd. Floor). Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present.

Mayor Weatherly gave the Invocation, led the Pledge of Allegiance and extended a welcome to those in attendance.

RECOGNITIONS

Mayor Weatherly recognized and extended appreciation to the Apex Fire Department for their completion and recognition as an Accredited Rescue Provider, and for recent deployment of specific personnel and for their rescue efforts in western North Carolina as a part of the group that made up North Carolina Task Force 4. Chief Mark Haraway, Apex Fire Department introduced members of the task force and shared parts of their mission.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action. Attorney Fordham asked to amend the consent agenda to include a Deed of Temporary Construction Easements referencing MDC Homes.

Action: Motion by Commissioner Gossage and second by Commissioner Jensen to add this item to the consent agenda. Motion carried. Motion by Commissioner Schulze and second by Commissioner Gossage to approve the consent agenda as amended. Motion carried.

1. September 7, 2004 Board of Commissioners meeting minutes.
2. Findings of Fact, Conclusions of Law & Ordinance Rezoning # 04CU06, Apex 1st Development, LLC, petitioner, property located south of Old Raleigh Road, and west of the Apex Peakway and north of Center Street.
3. Findings of Fact, Conclusions of Law & Ordinance Rezoning # 04CU09, Pointe @ Davis Drive, LLC, petitioner, property located at the northeast quadrant of Davis Drive and Old Jenks Road.
4. Site Plan for Goodworth Commons, Brantley Powell, et. al., petitioner; office and storage warehouse buildings (3), property location at the northwest corner of Burma Drive and Goodworth Drive within Pinnacle Park (lots 55 and 56) as recommended by Planning Board.
5. Site Plan for OFM Flex, Abel Zalcberg, applicant; office/warehouse (flex space), property location Lot 16, Pinnacle Park, Phase II as recommended by Planning Board.

6. Budget Ordinance Amendment (installation of traffic signal at Apex Peakway and Center Street), and Capital Project Ordinance Amendment (construct portion of Peakway between Olive Chapel Road and South Salem Street).
7. Adopt Resolution of Support for the Town of Troy for changes to Federal and State housing programs for local governments.
8. Apex High School Homecoming Parade, October 8, 2004 – request to close portion of Laura Duncan Road from Foodlion Shopping Center to Apex High School from 3:15 p.m. to 4:00 p.m.
9. Water/Sewer acreage fee for new zoning district Tech/Flex ($3,975.00/gross acre) .
10. Deed of Temporary Construction Easement (MDC Homes & McCar Development Corporation.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set and asked it be amended to include a closed session to receive legal advice from the Town Attorney.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to amend the agenda to include the closed session and to set the agenda as amended. Motion carried.

PUBLIC HEARINGS

Staff Report prepared by Senior Planner Dianne Khin

Public Hearing # 1 – Rezoning Case #04CU13

Note: *Planning Board unanimously recommends approval at their September 13, 2004 meeting; staff recommends approval.*
Public hearing regarding Conditional Use Rezoning #04CU13, Pointe Development Group, LLC, petitioner, seeking to rezone 0.369 acres located at the intersection of NC55 and Haddon Hall Drive from Office and Institutional Conditional Use zoning to Neighborhood Business Conditional Use Zoning; possible motion.

Those wishing to speak during this hearing were administered an oath by the Town Clerk.

Dianne Khin Senior Planner explained the owner of the property and the petitioner were negotiating. Letters from the Apex Medical Park and Petitioner are attached with request from petitioner to continue the public hearing to October 19, 2004 meeting. Attorney Fordham advised the hearing could be continued.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to continue this hearing to October 19, 2004 meeting. Motion carried.

End of public hearing # 1

Staff Report prepared by Dianne Khin, Senior Planner

Public Hearing # 2 – Amendments to Sections of the Unified Development Ordinance

Note: *Planning Board unanimously recommends approval at their September 13, 2004 meeting amendment; staff recommends approval with amendment.*
Public hearing regarding amendments to Certain Sections of the Unified Development Ordinance; possible motion regarding same.

Dianne Khin, Senior Planner, presented amendments to sections of the Unified Development Ordinance that were considered by the Planning Board at their September 13, 2004 meeting and unanimously recommends approval with the deletion of the phrase " at the end of" in Section 2.3.7(D)(4)(a). The attached staff report and ordinance reflect this recommended change. Staff also recommends approval with the change.

Clarification was made in regards to engaging the ten percent of total costs and also regarding tree removal and noting permits are not required if property is not developed and referencing further Article 8.

Mayor Weatherly opened the public hearing at 7:27 p.m. With no one addressing the proposed amendments, the hearing was closed.

Action: Motion by Commissioner Meckes and second by Commissioner Jensen to approve the amendments to the UDO by adopting an ordinance as recommended by the Planning Board. Motion carried.

End of public hearing # 2

Staff Report prepared by June Cowles, Planner

Public Hearing # 3 – Amendments to Sections of the Unified Development Ordinance

Note: *Planning Board recommends the UDO Political Sign amendment be reviewed by the Apex Appearance Commission at their October 13, 2004 meeting and sent back to their November 8, 2004 meeting; and Planning Board recommends approval unanimously the amendment to the UDO Buffer section. Further, Appearance Commission has been invited to attend this hearing before the Board of Commissioners.*

Public hearing regarding a proposed ordinance to amend Sections of the Unified Development Ordinance Article 8.7.1(A)(24) *Political Signs*, and Article 8.2.6 *Buffering.*

June Cowles, Planner advised Article 8.7. 1(A)(24) of the UDO: Political Signs was reviewed by the Planning Board at their September 13, 2004 meeting and was recommended to be reviewed by the Appearance Commission (requests from candidates to allow signs within public rights-of-way). Amendment is noted on page 1 of the staff report and incorporated as a part of the minutes.

Members of the Appearance Commissioner were invited to attend the Board of Commissioners meeting affording them opportunity to make comments at the public hearing on the amendment regarding political signs, with Mayor Weatherly noting it a timing issue. Commissioner Gossage added the Commission was meeting to discuss buffers at their next meeting. Director of Planning David Rowland advised there is one project that may be affected by this amendment regarding buffers – Duncan Commons required 50' Type A buffer – amendment would affect lots that back to railroad yard and tracks.

Cowles continued there is a proposed amendment for Article 8.2.6 of the UDO: Buffering reviewed by the Planning Board at their September 13, 2004 meeting and was recommended for approval. Staff recommends approval. Staff report is attached and incorporated as a part of the minutes (exempt property along active railroad right-of-way from buffering requirement along that right-of-way).

Rowland noted it rare the Appearance Commission would review however, noted it a greater issue for buffers in general. Mayor Weatherly recommended the Board proceed, with Commissioner Gossage noting no Appearance Commission members were present. Commissioner Jensen suggested Planning Director have discretion to reduce buffer requirement, and not leave it up to the developer. Khin advised staff would have to come up with a list of criteria to do this. The size of the buffers were discussed and the amount of right-of-way - 100 feet to 200 feet.

Mayor Weatherly opened the public hearing at 7:40 p.m. No one addressed this item. Mayor Weatherly added speed was an issue in regards to political signs.

Action: Motion by Commissioner Meckes and second by Commissioner Gossage to approve the amendment to allow such signs to be placed within town's public street rights-of-way as noted on the staff report. Commissioner Jensen asked about the number of signs and discussed signage clutter and complaints that had been received – no action was taken regarding the number. Motion carried.

Mayor Weatherly asked Planning come up with criteria with the town attorney's assistance. Cowles recommended the public hearing regarding buffers be continued to the October 5, 2004 meeting of the Board.

Action: Motion by Commissioner Meckes and second by Commissioner Jensen to continue the public hearing regarding buffers to the October 5, 2004 meeting. Commissioner Jones noted the Appearance Commission has an opportunity to be here with Mayor Weatherly added only to this issue. Motion carried.

End of public hearing # 3

David Rowland, Director of Planning
Public Hearing # 4 – Amend Transportation Plan
***Note**: Staff recommends public hearing be continued to the October 19, 2004 Board of Commissioners meeting.*
Public hearing to amend the Apex Transportation Plan deleting Energy Drive Extension to Investment Boulevard.

Staff recommends this hearing be continued to the October 19, 2004 Board of Commissioners meeting to allow this item to go before the Planning Board.

Action: Motion by Commissioner Meckes and second by Commissioner Schulze to continue the hearing as recommended. Motion carried.

End of Public Hearings

OLD BUSINESS

Presenter by Kent Jackson, Director of Construction Management
Old Business Item # 1 – Zeno Road Status
Status of Zeno Road Paving Project.

Kent Jackson Director of Planning summarized the status of the Zeno Road paving project; property owners on Zeno Road had pursued the paving project. Staff reviewed this with the Town Attorney and had made request to property owners for signatures on the petition of annexation that have property frontage along the project extent in order for town to annex the road right-of-way corridor. Letters were sent on August 26, 2004 explaining the project scope, right-of-way issues and need for annexation of the rights-of-way. Deadline for response was Friday, September 10, 2004. There are eight property owners involved. To date 3 have not responded; 3 have signed the petition for annexation and 2 have refused to sign. Staff had prepared to solicit construction bids during the week of September 13, however, have suspended the bid solicitation process indefinitely pending acceptance of the annexation petition by all property owners. Zeno Road residents were made aware this item was calendared for discussion.

Mayor Weatherly asked the Town Attorney if staff could proceed under law with the paving without this property be annexed. Attorney Fordham responded no; town would need to annex the road right-of-way in order to spend money to construct the road. Commissioner Meckes asked if we could force annex, with the attorney responding he would have to look back at the criteria but probably meets the criteria for urban use; but he doesn't know all the details of the property. He continued that forced annexation requires the property reach a certain level of urban use. Commissioner Meckes noted November 1 once the shopping center is opened, there would be the level of urban use met. Attorney Fordham continued for the specific area to be annexed – it's a limited area, but probably would. Mayor Weatherly said not that part, but for us to consider involuntary annexation, with Commissioner Meckes recalling all the approaches on the board about this road. Mayor Weatherly continued if the property owners themselves don't see the value of what taxpayers are willing to spend on their behalf to pave this road, then they need to think about it, and when they come to an agreement that it's in their best interest to do so, then we can proceed, otherwise if they have an objection to our spending that amount of money for their own benefit, he wants to accommodate their property rights. Attorney Fordham added he would like to look at the details of force annexation road right-of-way before giving an opinion on it. Commissioner Meckes added it was a question and not a suggestion.

Mayor Weatherly could not see any reasonable explanation for refusal to allow annexation of this property with the value derived from that. Commissioner Jensen assumed there was no tax with Manager Radford noting two properties come to the centerline of the road – one owned by Blain East and the other - Bob Bolch. He doesn't think the county would catch the taxation of a piece of property that was within the DOT and/or town's right-of-way that is 150 lineal feet by 30 feet; in the even they did, the assessment on the Bolch property would be $3.41 per year vs. the earlier quote of $8.00 year.

Commissioner Jones asked of the two no response are we assured they have received this letter, with the Mayor asking if they were absentee land owners. Jackson responded one of the properties was for sale and the only evidence is the letters were not returned by the post office.

Philip Myers, resident, advised one for sale was a Raleigh police officer and he was not sure about Rahn. He came forward stating he doesn't think they own the property; this is the roadway and had talked with the county tax assessor asking if he owned the property and would get tax notice and was told no. He stated a couple of title searches on Bolch property say right-of-way was signed over by the person who sold – there's a right-of-way established on it. Tax assessor's office had to think about it, and he worked for Cary and asked when annexed the road do you get taxes, they said no; if it's not property he owns, and asked why they asking him, and what do they have to do with it that this is between the town and NCDOT. He noted this was problem – thinking they would be charged for bringing services down the road – they don't know what's going on, thinking they don't own it. Why petition property they don't control.

Attorney Fordham explained NCDOT only has an easement, so someone owns the underlying fee and the adjacent owners if they have exercised any control over the property up to the pavement are the presumptive owners of the property underneath NCDOT's right-of-way. Right-of-way can be fee simple or it can be an easement; right-of-way includes both terms and broader term than easement or fee-simple. Some of the properties were deeded to the center line and some were not; with regard to those not deeded to the center line – the owners either or old grantor who owned the land formally never deeded it to NCDOT or to the adjacent landowner, so they took the tact of simplification which was the presumptive owners could sign not doing a sixty year title search and try to find who owned it and their heirs, etc. With regard to owners that own to the center line there is no presumption, they clearly own it to the center line as to those that own to the right-of-way, if they have exercised control over it, up to the pavement, it's called adverse position so they in effect exercise control of it.

Old Business continued

Attorney Fordham continued someone has to sign it other than NCDOT, they only have an easement. For each property someone has to sign it other than NCDOT. There is some ambiguity who has to sign it for those properties where it was only deeded to the right-of-way line; there's no ambiguity for a person who owns it to the center line, so they took the simplest approach to it which was the adjacent land owners would be the ones that could complain if they didn't sign it. Myers stated we have a dispute – Bolch land or 50' of road. East owns the other piece and they have agreed. Myers stated if the 50' is the case, his logic is, then you can't pave but one side of the road on this development – there's be one lane paved in front of the Promenade, asking if it made sense, with Commissioner Meckes agreeing it did not. Myers had signed the petition - law had been rescinded he will not be taxed; he didn't get the whole contract and people backed away when they saw it; some got advice from others.

Attorney Fordham advised a simple cure for this when building a road, if it comes to this and in the public's interest, land can be condemned, so if for some reason, there's an issue about at some point needing to complete a development and there's a portion you can't get signatures for, that land can be condemned and completion of the project done. There's no contradiction between the situation here and some speculative situation in the future.

Myers asked if this is annexed and services are brought down this road, and they are not in the town limits, asked if they would get assessed for services in front of their road. Mayor Weatherly said right-of-way is all that's asked to be annexed. Myers said one didn't want to sign, asking what they are doing. Mayor Weatherly asked why that person wasn't here tonight, with Myers saying his wife had had a serious operation, with Bolch having minor operation and couldn't be here. Myers said when they moved there years ago, they didn't want to have anything to do with government and some of that is still prevalent – the middle of no where is now downtown.

Commissioner Jensen added condemnation eliminates tax, with Myers adding you pay for it. Mayor Weatherly added that's the issue, we'd be paying to do something for their own benefit. Attorney Fordham began he wasn't suggesting, with Mayor Weatherly interjecting he didn't think we could go any further.

Commissioner Jones asked who had talked to these folks who refused to sign; Jackson responded Engineer Stephenson continuing the two refusing to sign were 1) Mr. Gersch – feels it's unnecessary to sign a petition for annexation in order for town to pave the road; he was informed town must have signatures from all property owners in order to annex and that annexation is necessary for eventual road maintenance that the town will inherit from the DOT. 2) Mr. Bolch refuses to sign because one is the tax issue and that the town will not guarantee him free access to town water with no annexation of his property in the event that construction damages his well. Mayor Weatherly added to compensate him for paving the road, with Jackson adding he said if his well is damaged – his fragile well during the construction that he would like to tie onto the waterline stubbed out near his property that came as a part of Carriage Downs development and we explained Town policy it requires annexation to get water or sewer service. Commissioner Jones wanted to assure we had explained our perspective on these issues. Mayor Weatherly felt the board should let this simmer – issue is spending that amount of money for their benefit and they want to do this and then come up with some irrational with Commissioner Meckes interjecting to be mindful of what is going to come to pass – a lot of traffic soon with additional development in the area. All board members were in agreement to do nothing at this time. No action was taken. Mayor Weatherly charged Myers to be a liaison to the board and get his neighbors – with Myers asking if condemnation is needed, with Mayor Weatherly not recommending to the board, to have to go through a legal issue for that – it's irrational and didn't know, but the board could do what they wanted, with all board agreeing with the Mayor's view – that to expose additional money with what the paving was going to cost to extract that – to force the camel to drink, Commissioner Meckes added to wait long enough the pavement they would be putting in – only to be destroyed later on. Commissioner Gossage was asking what the construction schedule would be, with Commissioner Jensen adding NCDOT was will paving next year. Jackson added this would be a challenge to get it paved by the end of the calendar year if they started the next day and to tell DOT we want out of the deal – they will not put it back on their schedule and probably be paved in the spring of 2006. Commissioner

Meckes added effectively we are setting it aside now, with Commissioner Gossage adding it may be too late with Commissioner Meckes continuing even if we were enter into negotiations and have some resolution within a month or too – sixty days, we have no assurance of getting back on the schedule to get it done within a short amount of time, asking if this was correct. Jackson responded they will not put it back in their schedule until we tell them we want to nullify the municipal agreement; they consider it our project – we will do it and they give us money. If we tell them we want to nullify the agreement it will go back in their schedule, with Commissioner Meckes asking if that was what we were going to do. Commissioner Gossage asked if we need official action from the board to do this. Manager Radford asked if Jackson had the email from Stephenson that talked about the square footage on the Bolch property – he didn't. Myers added the square footage was Roadway area is about 30 foot by 50 foot – about 1500 square feet. Commissioner Meckes asked if current agreement is nullified, would it be simple to reestablish the agreement. Jackson added if we wanted t – about 1500 square feet. Commissioner Meckes asked if current agreement is nullified is it simple to reestablish the agreement. Jackson added if we wanted to accelerate it again, yes; they would get aggravated but that would be it.

No action was taken.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

No one spoke during public forum.

NEW BUSINESS

There were no New Business Items to be considered.

WORK SESSION AGENDA

There were no work session items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into closed session at 8:16 p.m. to receive legal advice from the Town Attorney.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to move into closed session to receive legal advice from the town attorney. Motion carried. Minutes of closed session are recorded separately. Motion by Commissioner Gossage and second by Commissioner Schulze to move back into open session. Motion carried.

Action: Motion by Commissioner Meckes and second by Commissioner Gossage to adopt a Resolution accepting and authorizing the purchase of easement and acceptance of deed of easement for installation of electric transmission lines along NC 55. Motion carried.

ADJOURNMENT

With no further business to come before the Board, there was a motion by Commissioner Schulze and a second by Commissioner Gossage to adjourn at 8:18 p.m. Motion carried.

The above minutes were approved on the 5th day of October, 2004.

Georgia A. Evangelista
Town Clerk

Keith A. Weatherly
Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, October 5, 2004 Meeting
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, on Tuesday, October 5, 2004. Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present.

Invocation by Commissioner Schulze
Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

CONSENT AGENDA

Mayor Weatherly presented the *consent agenda* to be set and asked for a call for action.

Action: Motion by Commissioner Jensen and second by Commissioner Gossage to approve the consent agenda. Motion carried.

1. September 21, 2004 Board of Commissioners meeting minutes.
2. September 21, 2004 Board of Commissioners closed session minutes (separate cover).
3. Annexation Petition # 363, David & Meghan Roeshot, DBA Westover Properties II, LLC, owner/petitioner; petitioning to annex approximately two (2) acres into the town's corporate limits; property located on the south side of Olive Chapel Road (SR 1160) and west of and contiguous to Glen Arbor – said parcel being Lot 1 the Goddard School); 1) Resolution directing Clerk to investigate Petition; 2) Certificate of Sufficiency of Petition by Clerk; 3) Resolution setting date of public hearing for November 16 2004.
4. Annexation Petition # 364, RASI, LLC – Gowrisnkar & Hemalatha Galla, owner/petitioner; petitioning to annex 1.626 acres into the town's corporate limits; property located on the north side of SR1010 across from Schieffelin Road intersection and includes public rights-of-way; 1) Resolution directing Clerk to investigate Petition; 2) Certificate of Sufficiency of Petition by Clerk; 3) Resolution setting date of public hearing for November 16 2004.
5. Resolution authorizing condemnation of a street and utility easement (0.006 acre) and a temporary construction easement (0.025 acre) across land owned by Margaret J. Stewart in conjunction with the Lynch Street Rehabilitation Project.
6. Ordinance repealing Sec. 14-15 and Sec. 14-16 of the Apex Code of Ordinances (day and time of day beer and wine can be sold within town limits – now regulated by State law).
7. Proclaim Home Builders of Wake County's Parade of Homes a "public event" for the month of October, 2004 for sign purposes.
8. Wake County Board of Commissioners submits Town of Apex tax report for approval.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as printed. There were no amendments and the meeting agenda was set.

PUBLIC HEARINGS

Staff Report prepared by David Rowland, Director of Planning

Continuation: Public Hearing # 1 – Rezoning Case #04CU11

Recall:

i) Public hearing was continued from 08/17/04 meeting to allow petitioner time to consider changes to petition based on public hearing and to consult with other petitioners. On 09/07/04 staff reported on current status recommending amendment to UDO (buffer installed at rezoning). Petitioner requested hearing be continued to October 5, 2004 meeting.

ii) Rezoning petition includes two non-contiguous areas – protest petition is valid as to the area north of Moore Street, and petition is invalid as to the area south of Moore Street

Continuation of public hearing regarding rezoning case #04CU11, Marshall Barnes, et al, petitioners, seeking to amend the 2025 Land Use Plan and rezone from Office & Institutional (O&I) District to Mixed Office, Residential, Retail, Conditional Use (MORR – CU) District, containing approximately 4.18 acres located on South Salem Street between E. Chatham Street and W. Williams Street; possible motion regarding same.

Minutes: All persons desiring to speak during this hearing were administered an oath by the Town Clerk.

Director of Planning David Rowland stated he had met with the petitioner and property owner Don Grimes about the proposed rezoning, that has been going on for sometime; based on comments at the public hearing and discussions it was proposed MORR District be modified; conditions are attached and incorporated as a part of the minutes. Proposed uses were associated with local arts, crafts, cultures and specialty toys, art galleries and studios – all were deleted. Special use left and requiring a special use permit: bed and breakfast. Left in uses by right: single family, professional and business offices. Significant change in parking: addition of restricting on-street parking of commercial vehicles hours of 6:00 a.m. to 6:00 p.m. only (surveyor's office may have trucks – idea is not to have vehicles parked all the time - weekends, etc.) Signs: increased size of ground signs from 6 to 12 square feet not to exceed 3 feet in height; adding bracket signs (could be installed if UDO is amended - staff is looking at an amendment to allow bracket – arm type signs in the historic district). Extensive wording of fencing and buffering in the old ordinance and not in the new ordinance or in proposed conditions: Staff will go by the UDO and what it states for buffers (office next to residential use – some cases difficult to meet – may require a board of adjustment hearing). Storage: Taken out: no outside display of merchandise or similar materials on front lawns except during Peak Week, Christmas on Salem Street, etc. Will now say: storage of heavy equipment shall not be permitted. Barnes will report on contacts with property owners.

Commissioner Schulze questioned the retail component. Rowland responded its conditional use and based on public hearings and conversations, retail will be taken out as a permitted use, even though it says MORR-CU .

Mayor Weatherly opened the public hearing for those wishing to speak in favor:

Marshall Barnes, 103 S. Salem Street, reiterated changes to original petition; presented signed requests from property owners asking their properties be included in the rezoning request - (103 - Barnes, 107 - Mills, 111 - Cash, 115 – Herndon, 201& 203 – Walker – Timberline Builders, Bryants have not gotten back with a signed statement, and 209 – Howell and 211 – Evans - all properties on S. Salem Street), having spoken with all property owners except Charlie Holland (he is out of the country and not expected back until the latter part of next week). Mr. Birch 206 S. Salem will address the board. Barnes was not sure of his options to move forward without having contact and an ok with Holland.

Attorney Fordham advised: if there are substantial changes to the original application all signatories should have opportunity to consent or express lack of consent to the changes; eliminating one of the uses is a substantial change; if there are people who have not expressed an opinion, or anyone has expressed a negative opinion, you (the board) can not go forward. Commissioner Meckes noted Holland had expressed opinion before in favor of retail.

Mayor Weatherly asked board to proceed with the public hearing, deliberate, and maybe expedite things when we get all the signatories to the original petition and then assess where we are. We would probably keep the hearing open; he confirmed Holland was the only exception - Barnes confirming this correct and also had no signed statement from the Bryants or Howell, and advised Howell is for this and he could get a signed statement. Mayor Weatherly continued, based on the attorney's advice, final action could not be taken based on a revised petition. He suggested proceeding with the hearing to dispense of their comments and testimony, while keeping the hearing open until we are able to finalize the position of the other petitioners, and asking the attorney if this was sufficient. Attorney Fordham responded yes.

Speaking in opposition:

Robert Birch, 3200 Fieldview Court, Raleigh, is co-owner of the property at 206 S. Salem Street. He knew how John Kerry felt, "he didn't know if he was for or against it." He doesn't want Grimes or Barnes homes not in conformance for being a non-conforming use. He purchased the property in past November and was not sure he's in favor of dropping retail allowed under the current zoning, and not see more buffers put in being as close as they are. He had rode through the area on the way over and ones used as offices looked as good as or better than houses folks live in. Commissioner Meckes interjected retail was not allowed now, with Rowland advising current zoning of his property is O&I and allows a percentage (35%) of the floor area for retail use.

Carol Kish, 206 S. Salem Street, is not for or against, and probably would like to see it pass. She spoke at this hearing because she felt the second part will get wiped. At the last hearing she had things she wanted to say to bring closure and asked herself if she wanted to say them; she may create hard fillings, but is going to say them. As far as the house, it's a closed thing for her; there's been lots of heart ache; the thing that bothers her is she's spent time talking to some of them and thinks some really don't get it; the whole thing with retail was not in just her best interest but for everybody there. She hears bed and breakfast, asking Grimes if he'd rather live next to a bed and breakfast than a unique store. She would never have started this had she not been told Grimes at a town meeting, with seven other folks present, had told her and he could deny it, but it was true, he thought it would be neat to have some unique places mixed in - unique boutiques, stores, and stuff. She continued there were a lot of untruths told and a lot of ridiculous things said and thinks it's sad. She had spent 15 years to get downtown where it is - she didn't do it alone – there were lots of people involved, but didn't need another 15 years to enhance what we have; maybe there's a lot she doesn't know, but feels a deep disappointment in what has been done. She didn't try to fight hard with the Planning Board and saying it doesn't make a difference what happens there, it's what happens with the Commissioners. Statement was made since they were unanimous - there was no way it would ever go through. She was told there could be 1000 or 100 people here and it wouldn't make a difference because the vote was pretty well set. She sometimes feels there were lots of shenanigans that went on and yet looking at all of you (the board) and she knew most of them pretty well, she can hardly believe that. She's over it, and sad for the town that we can't have something wonderful that we have. She stated the majority that move here move for the downtown – people walking there, don't shop there – people driving cars buy and support the stores there; she hopes someday in the near future you (the board) would have enough foresight to make the changes that need to be changed.

Margaret Allen, 202 S. Hughes Street (Cunningham House) , feels like Kish but doesn't understand politics trying to read up for the Presidential election and our state, but confused; trying to explain to her son, a boy scout wanting to come to the meetings for his badges - she can't understand why you can't talk to these people and they can't talk back to you unless you go through the lawyer. She asked if they could speak to her and when she did everyone looked – like can we. She's frustrated because she voted for them and feels she can't speak to them. She wasn't in on any shenanigans and didn't know what they were talking about but knows now she's involved. She got so angry she went downtown to the people who own the houses to ask them what they think about this – no one was home, and she talked with Holland's wife - she was frustrated in that she had seen some undercurrents, stuff she had not noticed. She, herself, is pretty naive - has a busy life with kids and teaches school – doesn't have time for it and doesn't believe it's the way "we" let our town be run. She doesn't want to live in a place where there's game and party stuff going on; see a lot of that going on in the elections. Her point, can we keep these homes residential and that went out the window – it must have been something you (the board) were laughing about and thinking that woman is crazy, that nobody is going to be thinking twice about making these houses just residential, because when she asked them (the board) they looked at her like - I don't know if we can make them residential. She didn't make the last meeting where there was a decision on buffers – no 20 foot buffer and they would have to rethink this issue; asked if that's the case, isn't it probable that those were residences to begin with and why they were built close together because that's what town's do and they should stay residences. She continued: Businesses there now, fine, they can grandfather out someday and if they want to make them back houses fine, but why shouldn't and you (the board) even admitted when that house came up for auction, that should never have happened; someone here said she would have bought that house but she couldn't because it was zoned O&I and couldn't go back once it was an office. She does understand that much but doesn't understand why didn't anybody say, obviously it's not going to improve the value of land now that its O&I or residence, why is it not possible or is it possible. She continued can I talk, can you answer me, asking is it not possible for these places to be homes. Mrs. Holland thinks it's insane, that it's too busy too crazy, but there are people who still want to live downtown, asking if that's even possible or is she talking out the side of her neck.

The Board responded in consensus, this was what they were trying to do. She continued, in other words this issue doesn't mean this couldn't be just a residential street, this part of the street. Commissioner Jones confirmed she was saying residence only and not having O&I - with Allen continuing except what is there. Commissioner Jones responded that would be down zoning it from O&I to residential. Commissioner Meckes added people could elect to move in every house and live there – it would be all residential, but they don't necessarily have to. Allen, continued no, no the places that are there stay offices; in other words you can't sell another house and make it an office, like Don Grimes, could say - I could get a lot of money selling this to a law firm asking if that's right – keep them houses, asking if that's not possible. Commissioner Jones asked if that was to restrict them to just houses, with Allen responding leave the offices there but keep residences in Apex, asking if it were possible. She's curious not trying to tell them what to do, but wants to know. Commissioner Jones stated it's possible but was not what was petitioned to be considered here. Allen noted the petition has changed so much in the realm that she doesn't see that's it's actually what the original one was to begin with.

Commissioner Gossage thinks part of the issue is that you do have a couple of banks there, a medical office, builders office - you do have O&I now; some are not houses but office buildings so they are there and not houses no one would move into and make it a house. Allen asked if they do not fear it will turn out to be all offices at some point, is that something she should even think about.

Commissioner Jensen added it could be that now and go all offices, and they (the board) are trying to allow the offices to go back to houses if they so wish. Allen asked, and you just can't say everybody that has a house has to stay a house because that's illegal. Commissioner Jones responded because it's already zoned O&I, with Allen interjecting, and you guys aren't allowed to change zones, with Commissioner Jones continuing, we can't, with Commissioner Meckes interjecting someone has come to us (the board), someone living in a house would have to say I don't want anything else on this street and they would listen to all the people that say, no I would like to have my house be available to be an office. Allen has been to three or four meetings and doesn't get it.

Mayor responded to her question about the process and her uncertainty; informing her they are all very accessible and was why he liked local government because they speak to people all the time, everyday, she could call them, and stated that's what they do every day about what's going on. He continued this public hearing is to get input from the public and if we (the board) carried on a dialogue like they are doing now, for every person that chooses, it would breakdown the process, it's not built for that, its a public hearing to take comments, then deliberate in public, and make decision, but as far as dialogue with the public, they do that everyday all day and certainly accessible. All their numbers are in the phone book. Allen didn't know if that was legal and she might be trying to sway them.

Don Grimes was not opposed but wanted to clear the record for the sake of this lady and anyone else that we now have O&I exclusively and he feels and all of the property owners with the possible exception of Birch, hopefully feels what they are about to do if they get consensus is greatly preferable to what they have now and is entirely in favor of it and thinks it will be real progress in trying to protect what they have and encourage residential but not necessarily discourage office as well. We can go back and forth enter-changeably and thinks it's the best thing and highly preferable to what they have.

Heather Sullivan Canney, 311 Olive Street, was not opposed to bed and breakfast, but didn't know what to say until she had heard it all. For the record she was uncertain since bed and breakfast is currently permitted by right in O&I wasn't sure why that would have to be conditional use, or permitted by right – she would be in favor of that. She doesn't want to use closure, but thinks some of the confusion has come in as she said before and Birch said – she has no problem with retail and said along houses should be able to be used as houses if someone wants to buy them for that purpose and still feels that way. She doesn't have choice over what someone chooses to use them for, but thinks that should be a right. Some confusion and reason there aren't as many here was they were told that if MORR was defeated that a petition would be placed to turn this area into straight residential; lots spoke against MORR because they thought that was an option and she thinks in all fairness – a lot of the people that were opposed to that were opposed because there was higher good and thinks lots of them feel the same way she does – she doesn't have a problem with there being an antique store; she thinks it's confusing to have retail and the definition and not allow retail; in either case she thinks if this is what everybody thinks it should be she's certainly in favor of it and sees no reason why B&B shouldn't be by right but thinks if there is a way to work it out with the buffers to do retail by conditional use as defined before; if you can have offices and surveyors offices and builders offices anyway then she doesn't think that's a bad thing.

Mayor Weatherly closed the public hearing and referred the matter to the board.

Commissioner Meckes gave a response that the question about bed and breakfast by right – a month or so ago we did this and ultimately all of them had thought about this for months and he mentioned at the time trying to figure out what's the best thing, it comes down to him was the close proximity of these lots and he took out all the personalities, that was the hardest part – we all on the board know everybody downtown, everybody on the street – he tried to put himself in the situation where he would be sitting in his back yard cooking hamburgers on a Friday afternoon and having a retail space next door with no buffering, there is no capacity buffer – he doesn't want an 8 foot fence between him and the neighbor, not a bunch of cars driving in and out because the parking has to be in the rear, he doesn't want doors slamming, not a bunch of conversation, not trucks coming in to haul – ultimately it comes down to - even if everyone on the street is in favor of whatever is proposed, if the guy next door is not in favor of it, he's never going to approve it. They are the ones going to be affected – its different at US65 and NC55 and put a Home Depot next to Walden Woods – but we've got trees, buffers, it was commercial all along; the people that are intimately affected by whatever happens next door to them ought to have a say so in what's going to come to pass and that's where he finally, after all the shenanigans that's where he ended up and he says that in light because it was a difficult decision for all of them. They do have to respect the people that live there and would all love to see it all residential, and remain that way, but he suspects that in 25 years it will be all retail - O&I and Retail. He thinks that will be the normal progression of events, but it's the wrong time, wrong zone, wrong place.

Mayor Weatherly added that's why we have zoning to mitigate negative impacts and the whole idea of land use plan is to insure you keep those negative impacts from one use intruding on another and is why we put O&I next to – a less negative. Those folks in the western part of the state continue to fight zoning and why we see a junk yard next to a trailer park next to a nice home because they don't have those protection; someone has to make a decision what is appropriate zoning and use for each piece property and we do the best we can; that's what we are trying to do here – that's why we don't have residential subdivision with home businesses in there to a degree because you would have that impact against residences.

Commissioner Jones addressed the standards; this has come up in discussions with property owners during the past week. Discussions if hurricanes came through and blew the house down, they wouldn't be able to rebuild and those shorts of things – what's proposed is all other structures or new construction shall comply with the applicable sections of the UDO. Say someone decided to sell their house, destroy it and rebuild something else that was allowed under this zone – asking if there was enough in the UDO that would keep that in the character of what's there. He knows Bryan says there's a CCB, an old post office that's now a physicians office – it's hard to define the character of this section, but there are some Historic homes there. If someone were to come in and build and says I want to build an office – he asked if there were enough in the UDO to make us comfortable that it's going to be with in keeping with the character of area.

Rowland responded he feels the UDO has good language that talks about being compatible – that you look at the surrounding properties and you try to pick up on some of the architectural elements, that you try to use similar materials, similar scale and type thing, but ultimately you (the board) will look at it in site plan process, and that will be the "final" judge or yes – in our judgment a bit out of character or worse. Commissioner Jones wanted to assure if something is built or rebuilt it would be in keeping with what's there.

Commissioner Gossage had a couple of thoughts, one because it had come up a couple of times; when he was elected Commissioner he had only been in town a couple of years and the truth of the matter was he didn't know a lot of the people there, so as far as personalities or shenanigans go – he actually went into this in a very neutral position and thinks what we have said all along, we've been very consistent throughout these public hearings is we favor very much a residential aspect there, and we moved to Apex because of downtown - Carol's right. He lives within walking distance and when he walks down there, to him that feels like a residential area and his senses is that it needs to feel like a residential – needs to have that aspect to it now. He agrees with Commissioner Meckes that 15 or 20 years from now, that may no longer be the case but right now, that's how he feels about it.

Commissioner Schulze added he's a lot like Commissioner Gossage and not a part of shenanigans either and kind of offended he wasn't asked to be a part (in a humorous setting) he concurs with Commissioner Meckes points wholeheartedly and as far as if he were a resident there, he thinks it would be disruptive to have delivery trucks or customers coming in next door to my back yard and for that reason alone, he would not be in favor of it; it was a hard decision, but thinks its the right decision.

Commissioner Jensen pretty well agreed with Commissioner Meckes except on the east side he could see a slight transition where if we allowed – he would go farther than what it's actually asked maybe – if we had concurrence with all the folks on the east side, and we could allow light commercial such as antique stores or something, so long as the person lived in the house; that would be a kind of magnet to have people living there where the concern he has now is with commercial, you don't necessarily have to live there – he restated it to say office – you don't have to live there, you can go there, go to work and go home – then you have the dead zone, but if we had a magnet of saying you can have your antique store providing you get agreement with your neighbors and you live either in the house or on the block – maybe have one store as commercial – that would be a way of focusing to keep residential there. He could see this gradually maybe becoming office as time goes on – they way it's set up. Maybe there's a way we can have that magnet to keep it also residential.

Mayor Weatherly opened the floor for a motion

Attorney Fordham interjected it's absolutely fine to have closed the public hearing, but before the board votes would probably need to hear from the last land owners. He continued you don't have to keep the public hearing open, there are two separate issues; anybody that wanted to come to a public hearing has had three opportunities. Commissioner Meckes interjected if Mr. Holland wanted to come back and say something - Attorney Fordham continued you have the discretion to continue, but you don't have to and you could find out whether or not he consents without it being a public hearing. Mayor Weatherly agreed, saying lets do that; we've already closed the public hearing. Mayor Weatherly called for a motion.

Action: Commissioner Jones moved to table the item, asking Barnes when Holland would return, with Barnes responding he thinks his son said next week, and with Mayor Weatherly adding to the next meeting, with Commissioner Jones finishing his motion to the next meeting which is October 19, 2004. Commissioner Gossage made the second to the motion. Motion carried.

End of public hearing # 1

Staff Report prepared by David Rowland, Director of Planning

Continuation: Public Hearing # 2 – Special Use Permit #04SUP02

Recall: *Public hearing was continued from 09/07/04 and 08/17/04 meeting and dependent on rezoning of S. Salem Street (MORR-CU). Staff recommended hearing be continued to October 5, 2004 meeting in light of pending rezoning.*

Continuation of public hearing regarding Special Use Permit #04SUP02, Carole Kish, petitioner, seeking a special use permit for a retail business for the property located at 206 S. Salem Street; possible motion regarding same.

Minutes:
Mayor Weatherly asked Attorney Fordham if he agreed to do the same with this hearing. Attorney Fordham responded it's not in a posture where it could be approved whether you continue it or not is in the board's discretion. Mayor Weatherly continued the issue currently doesn't allow them to approve this petition, with Attorney Fordham confirming that is correct. Mayor Weatherly continued as a courtesy to Kish, she left the meeting early, instead of denying the petition, without her withdrawing it – they had continued it, and stating the would continue and dissolve both at the same meeting.

Action: Motion by Commissioner Gossage and second by Commissioner Jensen that this item be tabled until the next meeting – October 19, 2004. Mayor Weatherly asked if this hearing should be kept alive since there hasn't been a public hearing on this item, asking the Attorney. Attorney Fordham advised the board has discretion to keep it open or close it either one – it's up to the board. Mayor Weatherly continued Kish had said tonight since she wouldn't speak at the next one she went ahead and said her piece tonight. He asked the pleasure of the board. Consensus was to keep it open as is. Mayor Weatherly stated the motion is to continue the public hearing to the next meeting (October 19, 2004) . Motion carried.

End of public hearing # 2

Presenter: Attorney David Godfrey

Public Hearing # 3 – Resolution Ordering the Closing of Portion of Unopened Alley

Public hearing to consider closing of unopened alley between Hughes and Mason Streets; possible motion to adopt a Resolution and Order Closing Alley.

Minutes: Attorney David Godfrey, Savage & Godfrey, stated the petition speaks for itself, adjoining land owners except the State of NC Department of Administration, called him and had no idea why they are shown as owning a piece of land here and doesn't care what the town does with it. He's aware of no objection. Mayor Weatherly stated the material is self explanatory and forthright. Mayor Weatherly asked if anyone had questions about this issue and opened.

Public hearing # 3 continued

Mayor Weatherly opened the public hearing at 7:50 p.m.

Henry Brown, 305 Center Street, is the primary petitioner having obtained Attorney Godfrey in this effort; alley between N. Hughes Street and N. Mason Street with original intent for the alley was to allow the town's trash truck to empty cans from behind the residences rather than in front. Chief of Police was Town Manager and drove the trash truck in the absence of the regular driver; those days are past. Town has not used or maintained the alley for the last 50 years. It is an encumbrance on the properties and would like it to be removed. Signers of the petition, Sessoms, Pearson, Hinton and himself have known each other since the 1950's and easier to petition now while all owners are living on the property and before the properties may be sold or inherited by non resident or out of state owners sometime in the future. He urged them to approve the resolution to close the alley.

The public hearing was closed at 7:52.

Action: Commissioner Meckes moved to approve resolution with a second from Commissioner Schulze. Commissioner Jensen pointed out we're closing an alley in a traditional neighborhood district and typically try to put them into traditional neighborhood districts, even though, he's in favor of closing it. Motion carried.

End of public hearing # 3

Staff report prepared by June Cowles, Planner

Continuation: Public Hearing # 4 – Proposed Ordinance to Amend UDO

Recall: *Pubic hearing was continued from the 09/21/04 meeting to allow staff to review land use classification buffers against rail road tracks. Planning Board recommended approval (09/13/04).*

Continuation of Public hearing regarding proposed ordinance to amend Sections of the Unified Development Ordinance Article 8.2.6 *Buffering.*

Minutes:

Cowles noted this item continued from the Board of Commissioner 09/21/04 meeting to allow staff to review land use classification and buffers against railroad tracks. Staff reviewed criteria, widths of right-of-way, and came back to residential being the focus for protection against railroad tracks. You see retail current today against railroad tracks, office and light industrial. Staff recommends the buffer for the railroad tracks is Class 6 for land use classes, 2 and 3 remain as stated in the buffer table – states: no buffer is required along the use railroad tracks which is classified as class 6 for land use classes 1, 4, 5, and 6; staff kept anything residential with a buffer.

Commissioner Jensen asked understood the visual standpoint of the business not wanting to worry about this; buffers tend to absorb noise especially if they have high-density lealon cypress, etc. and to him a buffer 5 or 10 feet wide with lealon cypress or high density item – had talked about noise from railroad tracts – shrubbery isn't a great absorber of noise but additional absorber that will try to tone down the trains as they come through. He recalls a few years ago a train engineer liked to blow the horn from one end of town to another and this is an opportunity to be lost if we don't give the planning department option of placing something there for at least noise control, something, asking if that was considered. Cowles responded there are setbacks for buildings, requirements you do for parking there with shade requirements for the asphalt – trees would go up; also looked for light industrial if there was storage against the railroad and need to screen also with fence or shrubs. It would be up to the property owner to put some type buffer – the one petition pending on this has parking against the railroad tracts and he would have some shade trees and shrubs. It has been looked at from that aspect.

Commissioner Meckes added one consideration: at the rate they are going there soon would be no crossings in Apex, no need to blow the horn at all – but blow right through here.

Public hearing # 4 continued

Mayor Weatherly opened the public hearing. With no one speaking, the hearing was closed. Mayor Weatherly called for a motion.

Action: Motion by Commissioner Gossage to approve the agenda item regarding a proposed ordinance to amend sections of the Unified Development Ordinance Art. 8.2.6 Buffering. Second by Commissioner Jones. Commissioner Jensen had voiced his opinion that we should retain this in the planning department for the option of placing this – it gives flexibility – they don't have to require it if they deem a building is up there or something like that; he thinks we are loosing opportunity of flexibility. Vote on the motion was 4 in favor and 1 against with Commissioner Jensen voting against. Motion carried.

End of public hearing # 4

End of Public Hearings

OLD BUSINESS

There were no Old Business Items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

Carolyn Hercheck, 208 Troyer Place, Carriage Downs asked why there is no significant buffer between Carriage Downs and Beaver Creek Commons. 20, 30, 40 foot buffers have been discussed; and only a stockade fence with a few vines on it. She knew there would be tall trees behind the fence but will not help them visual or sound control. She questioned the irrigated buffer with lots of trees. She noted the slope there and all they would see is tree tops. Manager Radford responded: plan is in place, she will not continue to look at the brown fence – Carolina Jasmine will reach above the fence will be placed on the outside of the fence, lealon cypress are 10 feet tall when they go in and will be on the back side of the fence and may be four feet higher than the fence the day they go in, wax myrtles and southern magnolias. He advised she would see tree tops, not roof tops or air conditioners and what the buffer is about; significantly more attractive then the plain brown fence. In the next couple of weeks thinks she will be more pleased than with what's there today.

Commissioner Jensen felt we need to watch more closely; ex: Home Depot, neighbors requested irrigation and more density with the buffers – we need to get the bigger buffer against residential.

End of public forum

NEW BUSINESS

Marty Mitchell, Facilities and Fleet Manager

New Business # 1 – Town Hall Modifications

Motion to approve a contract with BBH Architects for design and construction administration regarding the up-fitting of the Town Hall third floor and related Town Hall modifications and adopt a corresponding Budget Amendment.

Marty Mitchell, Fleet and Facilities Manager, introduced Doug Hall and Dawn Gum, BBH Design to present a short comprehensive plan for permission to proceed with third floor up-fit and subsequent renovations regarding it. Doug Hall, BBH Design, formally NBBJ – designed this facility and community center and presented there was a space assessment study completed and presented their recommendations for up-fitting portions of the third floor to facilitate relocation of the IT and Engineering Departments and a multi-purpose training room; and relocation and expansion of other departments. Recommends a non-permanent wall system to allow future reconfigurations of the space. Proposed contract would provide for services from design through construction and totals $75,000. Funding is available and already designated for this purpose in Municipal Campus Capital Reserve Fund.

Mayor Weatherly had toured the facility and was in agreement with the recommendation.

Action: Motion by Commissioner Jones and second by Commissioner Jensen to approve the contract pending the Attorney's review and approval as to content and to adopt a budget ordinance amendment.

End of New Business

WORK SESSION AGENDA

There were no work session items to be discussed.

CLOSED SESSION

Mayor Weatherly called for a motion to move into closed session to discuss personnel at 8:32 p.m.
Action: Motion by Commissioner Schulze and second by Commissioner Jensen to move into closed session to discuss personnel. Motion carried. Minutes of closed session are recorded separately. Motion by Commissioner Meckes and second by Commissioner Jones to move back into regular session. Motion carried.

ADJOURNMENT

With no further business to come before the Board, a motion was made by Commissioner Meckes and second by Commissioner Jones to adjourn at 8:48 p.m. Motion carried.

The above minutes were approved on the 19th day of October, 2004.

Georgia A. Evangelista
Town Clerk

Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, October 19, 2004
Mayor Keith H. Weatherly presiding

Meeting to be held at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus
Board of Commissioners Meeting Room (2nd. Floor)

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, on Tuesday, October 19, 2004. Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present.

Invocation by Commissioner Meckes.
Mayor Weatherly led the Pledge of Allegiance and extended a welcome to those in attendance.

CONSENT AGENDA

Mayor Weatherly presented the *consent agenda* to be set and asked for a call for action.

Action: Motion by Commissioner Gossage and second by Commissioner Jensen to approve the consent agenda as presented. Motion carried.

1. October 5, 2004 Board of Commissioners meeting minutes.
2. October 5, 2004 Board of Commissioners closed session minutes (separate cover).
3. Resolution in Support of 2004 Red Ribbon Week Activities in the Town of Apex.
4. Resolution of Appreciation to Home Depot of Apex, North Carolina.
5. Resolution of Support Endorsing Wake County's Open Space Bond Referendum.
6. Annexation Petition # 365, Robert Seymour III & Samuel L. & Linda H. Byrd, owner(s)/petitioner(s); petitioning to annex 15.426 acres into the town's corporate limits; property located on the south side of Olive Chapel Road (SR 1160) and west of NC55 intersection and includes public rights-of-way; known as Lots 1 and 2 Deerfield Farms (Peakway Village); 1) Resolution directing Clerk to investigate Petition; 2) Certificate of Sufficiency of Petition by Clerk; 3) Resolution setting date of public hearing for November 16, 2004.
7. Annexation Petition # 366, Ten-Ten Two, LLC, owner(s)/petitioner(s); petitioning to annex 11.353 acres into the town's corporate limits; property located west of US1 off SR1010 and known as Waterford Green East; 1) Resolution directing Clerk to investigate Petition; 2) Certificate of Sufficiency of Petition by Clerk; 3) Resolution setting date of public hearing for November 16, 2004.

Consent Agenda continued on page 2

8. Annexation Petition # 367, Pointe at Beaver Creek, owner(s)/petitioner(s); petitioning to annex 11.075 acres into the town's corporate limits; property located on the west side of NC55 and south of Haddon Hall Drive Extension and east of Zeno Road (SR1161), including public rights-of-way; and known as Promenade at Beaver Creek; 1) Resolution directing Clerk to investigate Petition; 2) Certificate of Sufficiency of Petition by Clerk; 3) Resolution setting date of public hearing for November 16, 2004.
9. Site plan: Pinnacle Park, Burma Drive - Office & Warehouse/Manufacturing.
10. Approve and authorize Town Manager to sign documents and agreements associated with public greenway – Lots 69 and 70 for construction of Beaver Creek Public Greenway project.
11. Approve and authorize Town Manager to sign all documents and agreements associated with required NCDOT encroachment agreement for the Beaver Creek Greenway Project.
12. Proposal for implementation of college intern program within fire department to supplement existing staff.
13. Wake County Board of Commissioners submits Town of Apex tax report for approval.

End of Consent Agenda

PRESENTATION OF RESOLUTIONS

Mayor Weatherly presented the following resolutions after adoption by the Board of Commissioners.

Action: Motion by Commissioner Meckes and second by Commissioner Gossage to adopt a Resolution in Support of 2004 Red Ribbon Week Activities in the Town of Apex (Drug Awareness). Motion carried.
Officer Jason Stone and Wake County PTA Chair Nancy Caggia were present to receive the resolution.

Action: Motion by Commissioner Jones and second by Commissioner Schulze to adopt a Resolution of Appreciation to Home Depot of Apex, North Carolina (donation of building materials and equipment valued in excess of $5,000 towards the reconstruction of the batting cages at Apex Community Park). Motion carried.
Store Manager Robert Thomason of the Apex Home Depot was present to receive the resolution.

Mayor Weatherly asked New Business Item # 1 be moved prior to presenting the next resolution: Presentation of Wake County's Proposed Open Space Bond Referendum.

New Business # 1 – Wake County Open Space Bond Referendum (November 2, 2004 ballot)
Sig Hutchinson, Chair of the Wake County Open Space Parks Advisory Commission and David Carter Director of Parks and Recreation Open Space for Wake County gave a presentation, and representing the Wake County Board of Commissioners. Wake County/Apex will be equal partners regarding money for open space preservation. 2000 Open Space Bond was approved and brought forth an open space plan with Apex participating and pleased with the efforts and fruits of the plan. Some municipalities are further along than others with Apex at the top of the list. 170 acre Nature Park will have connecting greenway to downtown and to the American Tobacco Trail. This connects 180 miles of greenways for the citizens throughout the entire region. Other partners have been brought by the Clean Water Management Trust Fund placing over $14 million in Wake County. A $15 million bond has purchased over $30 million in open space preservation, hopefully this $26 million bond if passed in November will generate $50 million in open space preservation. This does not mean a tax increase for Wake County citizens; money is already in the budget and by voting yes to this bond debt service is taken care of.

Wake County Commissioner Tony Gurley informed this bond passed the Wake County Board of Commissioners by unanimous vote and agrees this is a great thing for Wake County citizens and in full support. The previous bond was successful and involved all county citizens. He welcomes all support.

David Carter was here when the Town worked on the Holleman Tract; having worked with the Town of Apex more than any other municipality and noted exciting things are happening, asking to go to the polls on the second and do the right thing.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to adopt a Resolution of Support Endorsing Wake County's Open Space Bond Referendum. Motion carried.

Mayor Weatherly presented the Resolution of Support endorsing Wake County's open space bond referendum. Commissioner Gurley also called attention to the $40 million Wake Tech Bond for new campus in northern Wake County and has unanimous support from the Wake County Board of Commissioners - a much needed campus for the County to train for new job growth in the future; tech office is bursting at the seams in the Fuquay Varina site.

Mayor Weatherly expressed appreciation for the County's financial participation in the renovation of the first town hall and the next issue for local bond referendum for parks and recreation open space to present to Apex citizens to provide the other half of funding to renovate the building downtown for the first ever performing arts center and with the County Commissioners help this will be reality soon.

Jimmy Perry, Chair, Parks and Recreation Advisory Commission, represents the commission and the Citizens for Apex Parks (CAPS). No one can tell them how to vote, expressing appreciation for the bond and being behind in our facilities, this will go a long way to catch up. He noted the Board was unanimous to set the bond and he had total support; presented yard signs to the Board asking support of the bond.

End of presentations

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set.

Manager Radford asked to add two additional items to New Business: # 5 i) Annual Powell Bill Contract to award bids for road resurfacing during the year, and # 6 ii) possible motion for member participation in CAMPO – in the past city of Raleigh has led the effort financially for CAMPO and are asking for participation, and iii) a closed session to discuss a potential condemnation.

Action: Motion by Commissioner Schulze and second by Commissioner Meckes to amend the regular meeting agenda adding items # 5 and # 6 to New Business and closed session to discuss potential condemnation. Motion carried.

The meeting agenda was set as amended.

PUBLIC HEARINGS

Staff Report prepared by David Rowland, Director of Planning

(Continuation) Public Hearing # 1 – Conditional Use Rezoning #04CU11

Recall:

i) Public hearing was continued from 08/17/04 meeting to allow petitioner time to consider changes to petition based on public hearing and to consult with other petitioners. On 09/07/04 staff reported on current status recommending amendment to UDO (buffer installed at rezoning). Petitioner requested hearing be continued to October 5, 2004.

ii) The public hearing was held and then closed to the public 10/05/04; no action was taken by the Board to allow petitioner time to meet with a property owner concerning revised zoning condition; petitioner will report findings.

iii) Rezoning petition includes two non-contiguous areas – protest petition is valid as to the area north of Moore Street, and petition is invalid as to the area south of Moore Street.

Public hearing regarding rezoning case #04CU11, Marshall Barnes, et al, petitioners, seeking to amend the 2025 Land Use Plan and rezone from Office & Institutional (O&I) District to Mixed Office, Residential, Retail, Conditional Use (MORR – CU) District, containing approximately 4.18 acres located on South Salem Street between E. Chatham Street and W. Williams Street; possible motion regarding same.

Mayor Weatherly asked Madam Clerk if the hearing had been closed previously and with the hearing having been closed, Attorney Fordham advised no one need be sworn.

Director of Planning noted revised conditions excluding retail use from the original petition and still including residential and office use; increases ground signs from six to twelve square feet, and does not allow storage of heavy equipment, and restricts parking of commercial vehicles - hours 6:00 a.m. to 6:00 p.m. Mr. Barnes was to check with Charlie Holland on his participation in the petitioner (Holland had been out of the country and could not be reached) a letter has been received from Robert Birch, 206 S. Salem Street, withdrawing from this petition.

Commissioner Jones clarified the petition still calls for Mixed Office, Residential, Retail District, but does not include retail use, and asking if there was a way to change the definition at some point. Rowland responded this is the classification in the Unified Development Ordinance and is a conditional use; lots of time does there conditional uses that does exclude certain uses; it still carries the title.

Commissioner Meckes was not aware of the 15% issue. Rowland responded it's not in this, only in Office and Institutional. Commissioner Meckes clarified the classification of MORR did not allow for retail use; if town wanted to have residential and office and institutional interchangeable on an on-going basis this is the only means by which we can do this. Commissioner Jones stated his point was that it could be mixed office residential rather than mixed office residential retail. Rowland stated a new zoning district could be created but for now this is the one.

Mayor Weatherly asked Marshall Barnes to go down the list and to clarify for the record the confirmed petitioners that are a part of the revised petition.

Marshall Barnes felt he had enough information to bring this to conclusion; those wanting to continue to be included in this petition are as follows:

Marshall Barnes, 103 S. Salem Street
Billy & Susan Mills, 107 S. Salem Street
Jean Cash, 111 S. Salem Street
Joyce Herndon Goodwin, 115 S. Salem Street
R&D Leasing (Timberline Builders) 201 and 203 S. Salem Street
Ralph and Sandy Bryant, 207 S. Salem Street
Wilbur Lee Howell, 209 S. Salem Street
Charlie Holland, 301 S. Salem Street
William John Evans, 211 Hudson Avenue

Robert Birch, 206 S. Salem Street (faxed a letter to David Rowland indicating he wanted to withdraw from the petition).

Mr. Don Grimes, 210 S. Salem Street, addressed the board stating he is withdrawing his protest petition, speaking for both he and his wife.

Mayor Weatherly called for a motion regarding this rezoning # 04CU11.

Action: Motion by Commissioner Jensen to approve rezoning case # 04CU11 as requested. Attorney Fordham asked the motion include the exclusion of Mr. Robert Birch's property. Commissioner Jensen added to his motion – to exclude 206 S. Salem Street. Commissioner Jones felt this needed to be done, but not the initial intent of what came before them, but some good came from it with Commissioner Meckes adding at this point in time. Motion carried.

End of public hearing # 1

Staff Report prepared by David Rowland, Director of Planning

Continuation: Public Hearing # 2 – Special Use Permit #04SUP02

Recall:

i) Public hearing was continued from 09/07/04 and 08/17/04 meeting and dependent on rezoning of S. Salem Street (MORR-CU). Staff recommended hearing be continued to October 5, 2004 meeting in light of pending rezoning.

ii) Public hearing was continued from the 10/05/04 meeting in light of the pending zoning #04CU11.

Continuation of public hearing regarding Special Use Permit #04SUP02, Carole Kish, petitioner, seeking a special use permit for a retail business for the property located at 206 S. Salem Street; possible motion regarding same.

Mayor Weatherly noted this hearing had been continued asking if this hearing should be opened. Attorney Fordham advised the hearing should be opened to continue it. Mayor Weatherly opened the hearing at 7:35 p.m. and with no one addressing this request, he closed the hearing and referred the matter to the board. He stated on several occasions if the first previous hearing had been adopted this makes this mute; since there are no provisions under the current ordinance which they can approve this petition, with Commissioner Meckes interjecting and giving that fact; made a motion.

Action: Motion by Commissioner Meckes to deny special use permit #04SUP02, with Commissioner Jones making a second. Motion carried unanimously to deny.

End of public hearing # 2

Staff report prepared by Dianne Khin, Senior Planner

Public Hearing # 3 – Conditional Use Rezoning #04CU13

Note: *Planning Board considered this conditional use rezoning petition at their September 13, 2003 meeting and unanimously recommends approval.*

Public hearing regarding Conditional Use Rezoning #04CU13, Pointe Development Group, LLC, petitioner, seeking to rezone 0.369 acres located at the intersection of NC55 and Haddon Hall Drive from Office and Institutional Conditional Use zoning (O&I-CU) to Neighborhood Business Conditional Use zoning (B1-CU); possible motion regarding same.

Dianne Khin, Senior Planner was administered an oath by the Town Clerk. She recalled the public hearing was continued from 09/21/04 as requested by the property owner and developer. The .369 acres was previously approved as part of the Promenade at Beaver Creek project – current zoning O&I-CU does not allow the property to be used for restaurant use (Carrabbas); the property must be rezoned to Neighborhood Business Conditional Use – proposing the same zone and conditions as the large tract at the Promenade) in order to allow the restaurant to locate there. Planning Board considered this at their September 13, 2004 meeting and unanimously recommends approval. Staff also recommends approval.

Public hearing # 3 continued

Mayor Weatherly opened the public hearing at 7:38 p.m. and with no one addressing this rezoning request, the public hearing was closed.

Commissioner Jensen verified the portion being described which is across the street from the Haddon Hall entrance; Khin continuing it's part of Apex Medical Park; Promenade developers are in the process of purchasing the corner to utilize it for the Carrabbas restaurant and will have more frontage on NC55; this is an area that was a part of a buffer required when Apex Medical went in – the property was zoned residential at the time, now it's zoned for business and between a Class 4 - O&I use to a class 5 - B-1 use, there is no buffer required. Commissioner Jensen asked what type buffer goes across the street from the entrance to a subdivision, with Khin responding 30' Thoroughfare Buffer (NC55). It matches the thoroughfare buffer along Beaver Creek.

Commissioner Meckes stated it's the same trees that have been there all along, with Khin responding they would be removing many of the trees. He asked if the 30' buffer would remain undisturbed, with Khin responding she didn't believe it was undisturbed in the plan in order to put in the building – the grades are such they did grade out – the trees will not remain; will replant trees within the 30' thoroughfare buffer Class E. He asked one tree per the number of how many feet, with Khin responding per 1000 square foot of buffer – spaced 30 or 40 feet apart.

Mayor Weatherly called for a motion.

Action: Motion by Commissioner Jones to approve the rezoning as requested, with a second by Commissioner Meckes.

Commissioner Jensen added if he lived in Haddon Hall and came out of his subdivision daily and looked at commercial across the street - and here's a little opportunity for a little buffer across the street, and it's going to get blown away. His personal feeling is that we talk about esthetics in town – he thinks this is a slip backwards. Commissioner Meckes noted plantings would be on the roof, so esthetically, it may not be as bad as just a plain building. Vote on the motion was 4 in favor and 1 opposed, with Commissioner Jensen voting no. Motion carried.

End of public hearing # 3

Staff report prepared by Dianne Khin, Senior Planner

Public Hearing # 4 – Site Plan Amendment (Beaver Creek Commons)

Note: *Planning Board held a public hearing for this amendment to a major site plan at their October 11, 2004 meeting and unanimously recommends to deny with recommendations. Planning staff does not recommend approval as noted on the agenda action request.*

Public hearing for amendment to major site plan, Beaver Creek Commons, located at 1201 Beaver Creek Commons Drive; possible motion regarding same.

Khin noted applicant requests an amendment to an approved major site plan for the Beaver Creek Commons Development, to allow a different roof color on the Super Target Building than was originally approved, with development having been approved summer 2002; two anchor tenants: Lowes and Super Wal-Mart both had dark blue as their main corporate color. After approval, developer requested a minor deviation which was less than 10% increase in square footage for Super Wal-Mart in order to accommodate a change for Super Target. Staff granted the minor deviation and the developer submitted architectural renderings for the Super Target as well as revised architectural renderings for Lowes and the village shops. One request was to allow Super Target to have a lighter blue color then the approved blue. Staff approved the lighter blue color for Super Target and various tenants in the village shops in order to create a more balanced center. October 2003 elevations for Super Target were signed as part of the construction plan approval. Roof color denoted on the signed construction plans was for "Undercool SW6057". Actual color installed is Uniclad Sky Blue. Developers Diversified Realty and Target Corporation state their position as to why the Uniclad Sky Blue roof should be allowed to remain in the two letters attached to the staff report.

Staff does not recommend approval of the proposed amendment for the following reasons:

1. The original approved plans included one roof color (dark blue). During construction plan approval staff acquiesced to the developer's and/or Target's request to use a second roof color (staff preferred the use of one roof color since the color chosen was not a neutral color and understood that the dark blue was Wal-Mart color). Portions of the Village shops were required to utilize the second color in order to tie the entire shopping center together with the use of both blue colors. To incorporate a third blue color to one end of the shopping center causes the center to become less balanced visually.
2. Staff noticed the Target roof was not the same color as the Village shops before it was completed and notified the developer. Staff feels that the color difference is noticeable and recommends the roof color be replaced with new roof materials or overlaid with new roof materials. Staff does not recommend painting the roof material – there's some negative maintenance implications with that such as flaking, chipping, and some discoloration at a different rate than the other roofs on site.

Staff supports Target Corporation's request that replacement of the roofing materials be delayed until January 2005 for reasons stated in their letter as well as the practical difficulty in getting roofing material manufactured and delivered prior to that time period.

Planning Board held a public hearing at their October 11, 2004 meeting and unanimously recommended to deny the proposed amendment, and with the recommendation that the roof be replaced or overlaid with one of the two approved colors. Undercool or Lowe's Blue in January 2005. Planning Board noted they were not opposed to the color Uniclad Sky Blue, nor to a third roof color in general, but are concerned about the precedent it would set to approve the third color after the fact. Planning Board stated the negotiations of materials and colors needs to happen upfront so the Town gets what it is expecting.

Representatives both from Target and Developers Diversified were present.

Commissioner Jensen stated it sounds like a simple error and not that they would have a different color no matter what. Khin responded there was no indication it was done on purpose.

Mayor Weatherly clarified staff does not recommend repainting, asking if we have authority under the ordinance or other to require them to replace the roof rather than painting; if adopted by the board would be a recommendation to get into compliance. Khin responded there was no specific ordinance section that addresses this and based on information received from folks in the construction industry these type roofs are not intended to be painted; even the information Target Corporation has told her, it's not any easier or cheaper to paint it than it is to replace it or overlay it. This is staff recommendation and not something they could say is required under the ordinance, that they replace and not paint, but recommending that not be done.

Commissioner Meckes was trying to understand how this happened and reviewed it as he understood it to Khin, asking if the wrong color was ordered. Khin had signed the construction plan and signed only one set of plans and it was for Undercool SH color which was put on the Village Shops. She didn't sign a set of plans for Uniclad Sky Blue noting this was on a previous working set of plans Target was working from, and they could talk with the board about where the mix up happened. He asked when the developers requested a second roof color, we changed some colors on a portion of the Village shops, with Khin advising it was from site plan to construction plan; site plan was approved with one blue color with construction plans signed with two blue colors – one Lowes blue and other Undercool. He continued, then a third color entered into the picture, with Khin responding Uniclad Sky blue was a color the developer had submitted as a potential color for staff to approve, but they never did approve it. Commissioner Meckes continued UniClad Sky Blue was put in, with Khin responding correct; with the only UniClad Sky Blue roof being on Target, non in the shops (all village shops do not have roofs – main portion where Office Max and Pet Smart – there's different ones, showing photos.)

Office Max has Undercool; Pet Smart has Lowes Blue and was approved; Pay Less has Lowes Blue and another section with Undercool; then showing Target.

Commissioner Schulze asked the amount of roof that was being talked about, with Khin responding two main roofs and an awning section over the sidewalk (every thing on Super Target is Uniclad Sky Blue); (Commissioner Schulze did not get a chance to go out to see it, and wanted to know how much roof was being talked about asking the square footage).

Commissioner Meckes asked if the awnings were the most visible, with Khin responding she thinks the roof was – (showing the roof area over one of the entrances with a similar roof on the other side).

Douglas Bartolomeo, Design Architect, Target Corporation, stated they developed a continuous elevation with spaces in between to show architecture complete; photos show Target Roof under construction, Lowes Roof, and Village Shops which shows all three blues. Other photos showed the village shops with both light and dark blue. Metal samples were shown. Store designed 2003 with developer's architectural team. He explained why Target roof colors should be approved; example: to build house and with steps taken and when the house is finished and you move in and you get a notice that tan shingles are only allowed on the roof; you trusted the developer and asked how this happened. Mistake, miscommunication, a sad mistake is where they are. Gap in Developer/Target communication, Target was not directly informed of the final city approved roof colors. In good faith, Target followed and documented and constructed the metal roof agreed to by developer and Target September 2003. Unknown to Target, was revised October 2003 to incorporate the cities request and input. Acceptance of the slightly darker blue roof colors in the center will not be a diminishment but an acceptable positive variation contributing to the centers village like design. Acceptance of the roof color on impact of design: relates to roof location and proximity as the centers configuration is long and linear – the slightly darker blue target roofs are not located in any close proximity to the approved light blue roof colors – clustered at the far south end of the center. No direct adjacent comparisons between the two blue colors are realistically made. Another positive impact relates to the theme: the centers architectural style emulates the architecture of the village consisting of a variety of retail forms, materials, colors and expressions – in short diversity intolerance are the attributes of true village architecture. The suttle darkening in the blue roof color at the centers north end will only provide a bid of added variation. In these ways the centers design will be positively impacted. Acceptance of the existing Target Roof color into the centers pallet will not be a diminishment but will reinforce and strengthen the centers design.

Why the city should allow the third roof color in the centers pallet: A hardship: the Target roofs are premium construction assembly with a 30 year warranty; removal of these two metal roofs over the Target entries will be hardship to guests and the stores operations. Target entries will become construction zones and need to be tented or tunneled off with temporary construction means. Temporary egress will need to be coordinated which represents difficult and messy efforts at their two front doors. As a new corporate member of the Apex community, he asks for relief from what they feel is an unnecessary hardship. Another reason: practical sense – removal and reinstallation of an identical roof system for the sake of shade or color in a broad brush view, purely intuitive, seems a bit unnecessary. Another reason: mutual opportunity – were the board and staff to identify any remaining unfulfilled goals, wish list items for the Beaver Commons Center, Target would be willing to discuss and potentially support these as equivalency efforts for the roof color deviation.

They believe the Board of Commissioners should allow the Target roof color to remain in the centers pallet, based upon the merits, hardships, and opportunities previously noted. They asked for the Board's thoughtful and courageous deliberation on this issue. They believe the approval of the darker blue Target roof color allow it to remain in the center's pallet will accomplish the following: not diminish the center's esthetics but rather be an acceptable positive variation contributing to the centers village like design. It will see the board and city's thoughtful courageous deliberators on unnecessary hardship issues and may lead to support for other project goals or enhancements.

Mayor Weatherly asked if there were questions from the board.

Commissioner Schulze asked for clarification of colors, asking if the color used was originally approved and then changed without him knowing it. Bartolomeo responded it was approved within the developer /Target circle discussions, with Commissioner Schulze verifying it was not approve by the site plan with Bartolomeo responding no; that there was several preliminary meetings with the city that led to a combination of a material board that has the two colors on it; they went to legal closure on the property and in their relationship with the developer and based on this, in good faith, did their documents and built the store – feeling they were left out of the loop in terms of the last final approval with the city, requesting the lighter blue come on board.

Commissioner Meckes asked the third color be placed next to the pallet board; Bartolomeo showed pallets of paint and metal showing Lowes, Uniclad Sky Blue (Target), and noting their color was a middle color, with Commissioner Jensen liking the Uniclad Sky Blue best.

Mayor Weatherly asked if there were further questions. He didn't find the colors distracting in any way; colors are chosen to insure their consistency within the range that he finds acceptable. He noted the real problem was consistency in the application of the ordinance and setting precedent. He's struggled with the way, if we choose to allow status quo to remain, if they are convinced it's unintentional – no intent to circumvent the requirement, but would document in a very strong way in the record that this was an incident - we would allow some relief for these various reasons that maybe would not set a precedent except in a way of a case by case, very unique set of circumstances; there could be a petitioner in the future that could attempt to meet the same unique set of circumstances, but this would clearly not open the door for an all out circumvention of the requirements of the site plan; he doesn't want to be a party to that and if they find there is no way to realistically do that without setting a precedent then he will change his mind, but hopes they will find a way to look friendly at our newest corporate customer and citizen and work this out because it was unintentional.

Commissioner Meckes added from his perspective as the architect, if he were not the Target architect would he view this as favorably esthetically as he does. Bartolomeo responded that if it were a green roof, he would not be here. Commissioner Meckes agreeing and they wouldn't be discussing it either. Bartolomeo added it was a series of circumstances that all seem to tip towards the notion of accepting the color; they are far apart, there's a grade change, there's a bind in the form – all of the factors seem to indicate that it's not seen in one whole piece like the drawing.

Commissioner Gossage added in addition to that, he went there, and got as far away from it as he could in the front of the Target, and looked and not only does it bend so you can't see some of the stores, that the out parcels have canvass awnings on them and they are another color of blue, so you actually have three colors of blue and the Target blue would be a fourth color; reality, he thinks it looks fine and is not that big of a deal and thinks it goes back to the principle, and he would be more interested in hearing what the equivalency options were that he spoke of and doesn't think it lays too much on Target; he doesn't think they are going to build another Super Target in Apex, whereas, DDR will continue to develop and he would want to be careful of wording something so we can work with Target on this specific incident, and work with DDR to assure it doesn't happen again and broaden that to assure it's around Town but color aside.

Commissioner Meckes asked from the esthetic point if all roofs were done at the Village Shops, asking if it were possible to incorporate this color in those shops; was it even necessary, with Bartolomeo adding no, he thinks they are all done. Commissioner Gossage added color aside. Commissioner Meckes continued, our view by large is color is a non issue, with Commissioner Gossage adding, he would hope so. Commissioner Jones felt the only issue is to make sure we do send the right signal to the out parcels in front as they develop. Commissioner Gossage added staff deserves a nod because they noticed this, and it's their attention to detail that we have our town looking as good as it does in some of these group developments.

Commissioner Meckes added, you also have to appreciate the example of moving into a home and someone saying, sorry this is not acceptable. He stated if everyone was comfortable with the colors – he's been there, and oblivious to most things for the record. Commissioner Jones wanted the record to reflect (humorously), that he was as comfortable with this shade of Carolina blue as any other, which was not comfortable at all.

Commissioner Meckes addressed the Mayor that when the question of precedent comes, they will look to the counsel for advice. Mayor Weatherly asked the Attorney what kind of documentation could be placed in the minutes for the record, or even a resolution that would establish legislative history of this action.

Attorney Fordham advised they have the evidentiary record that has been put forth at the public hearing and provides a fairly unique set of facts and also thinks if viewing it as something they could have approved if it had come to them in the first place this way, then that's a reasonable standard upon which to look at it.

Mayor Weatherly added the issues here that would be unique are the color range; it's not that great - it doesn't clash – it's a consistency; an issue of a shiny dinner wouldn't be the same (Cary issue). It's not such a unique set of circumstances that certainly we could live with the color variation, which is not that great. Attorney Fordham interjected the inadvertent nature of it – with the Mayor continuing it was not intentional and the lack of intent to circumvent the requirement and the fact the colors are reasonably satisfactory.

Commissioner Schulze asked how we could demonstrate that it was true over-site and not intentional. Attorney Fordham responded either oral or documentary evidence and you've heard a description of how it happened. Mayor Weatherly added it would be no financial gain to do it that way; the color of one roof would be the same price of another, only a different color, with Bartolomeo responding, we would have had this discussion a year ago and come to a resolve and put the documents out there correctly and built what we would have agreed too. He thought it was policy of the town to only have one applicant, in this case the developer, and he realized they do not want all the out lot tenants coming to them and pitching their schemes, but for a larger anchor tenant like Target or Wal-mart, it might make some sense to invite them to the table for all of the approval processes, and it also promotes better communication and assures good communication.

Mayor Weatherly asked if there were further comments, that there was a recommendation from staff and Planning Board that we should take into consideration, but the issues here - straight application of compliance of the ordinance or do we wish to find a way to grant relief, asking if they are working towards a consensus.

Commissioner Schulze was comfortable that everything had been said already and was comfortable with the colors, and with the Attorney's advice regarding precedent; the one thing he was worried about and thinks if they vote to approve this, he thinks they are covering themselves as far as precedent, feeling better about this.

Commissioner Jensen thinks the color scheme is not a green and thinks this gentlemen's history shows how the error was made and personally thinks also it's their property – we want a good looking town and so do they; there's no doubt and if it were a big clash or a problem with it he thinks they would be the first to step forward. He noted Bartolomeo had mentioned Target is a corporate citizen and would try to help us later on and thinks that would be a wonderful thing and doesn't want to tell them to go change a roof for a color they all think is fine. He's very much in favor of leaving it as is – the error was made, an obvious error and certainly not esthetically as bad as loosing .369 acres of buffer. He's satisfied with this.

Commissioner Gossage, noted the mention of equivalency options, asking what was he thinking, with Bartolomeo responding he doesn't know, he had only opened it up – if there were other things around that center that are being supported and built by the city, they would certainly be wanting to talk about ways they could partner in or assess that and not about not wanting to spend money, it's wanting to keep our presentation of the store that's finished – finished and not dragging their guests back into construction.

Mayor Weatherly in response added, they could continue that but he didn't know that he would feel comfortable with extorting some additional things for an honest mistake. Commissioner Gossage asked how many employees Super Target has – with Commissioner Jensen interjecting he doesn't think it's extortion but agrees, by any means – but he had offered. Bartolomeo stated the suggestions had come about it, and if there is a way to make the center better, then it physically is now. In their view ripping off two to five roofs and re-doing it for a shade of color doesn't exactly to him solve the definition that this is a better center. Commissioner Meckes agreed, even the quality of construction could be impaired with removal of the roofs as well. Bartolomeo continued on the order with the Home Depot item and the resolution, they fully expect to step up and be active participants in this community and thinks they will be surprised and amazed with the good that comes out of their presence in our town.

Mayor Weatherly asked the Attorney if he felt the record is amply replete in covering the issue of precedence then they will proceed. Attorney Fordham advised the motion should comment on all the facts that have been brought to light during the meeting – not recite them all, but incorporate them.

Mayor Weatherly stated everyone had heard the discussion and opened the public hearing at 8:15 p.m. and with no one speaking closed the hearing and called for a motion.

Action: Motion by Commissioner Meckes to approve the amendment to the major site plan based upon two facts:

1) Center remains esthetically pleasing to even the untrained eye, and
2) The error in the roof color was brought about by a set of circumstances to which no one can be held responsible and thinks it was merely the transition from the town to the developer to the builder, and given that fact there's certainly no intent on anyone's part to circumvent what was originally intended; based upon those two issues should approve.

Commissioner Schulze asked if we should mention that we would have approved this if it had come before us, with Commissioner Meckes agreeing, going back to esthetics this plan is conceivably one that would have been considered with three group colors. Commissioner Gossage made a second to the motion.

Attorney Fordham advised he may want to incorporate the other details facts that were laid out in terms of the layout of the shops, etc. not reciting them all, but the other evidence that was presented.

Commissioner Meckes added, and 3) the significant separation between the two ends of the shopping center and the fact the blues are, one at one end and one at the other end.

Attorney Fordham advised procedurally, they would need to withdraw the second to the motion and have the motion restated or have a motion to amend the motion.

Commissioner Gossage responded his second could reflect those changes/addition. Commissioner Meckes asked that he make an amendment to the motion; if all falls, under the broad brush of esthetics of the center and the wide separation – the fact we could have well considered these three different shades of blue in the beginning.

Attorney Fordham suggested someone make a motion to amend the motion to include Commissioner Meckes further comments.

Action: Motion by Commissioner Jones to amend the motion on the floor to include the documents that were presented as evidence relative to the lack of major differences in the colors and the layout of the center that is evidentiary to the decision. Commissioner Schulze made the second to the amended motion.

Mayor Weatherly asked for a vote on the amended motion. Vote on the motion was 5 in favor and 0 opposed, with the motion being amended. Mayor Weatherly asked for a vote on the motion as amended. Vote on the motion was 5 in favor and 0 opposed. The motion was carried unanimously. Mayor Weatherly expressed that the town appreciates Target.

End of public hearing # 4

Staff report prepared by David Rowland, Director of Planning

Public Hearing # 5 – Thoroughfare Plan

Note: *Planning Board unanimously recommends the Thoroughfare Plan not be amended as noted on the agenda action request. Staff recommends approval as noted in the staff report.*

Public hearing and possible motion to amend the Thoroughfare Plan by deleting Energy Drive extension to Investment Boulevard.

Director of Planning David Rowland advised he had received a request from Joey Iannone, JVI Construction to delete the extension of Energy Drive to Investment Boulevard. He oriented the board to the area, and noting an approved Fowler Subdivision. Plan calls for the road to go all the way to Investment Boulevard and the request is to delete a portion and when the subdivision is developed, put in a cul-de-sac or turn-around and not have the road extend all the way through Investment Boulevard. Extension in Iannone's opinion would seriously compromise the development ability of lots on Investment Boulevard. Planning Board recommended against the amendment as it would be contrary to the UDO which requires cul-de-sacs not be any longer than 500 feet. Lot 3 of the Fowler Subdivision is greater than 800 feet from Schieffelin Road. While Staff recognizes this conflict they are agreeable with the request since industrial uses are generally not high traffic generators as opposed to residential development. Also, the amendment would not compromise the overall circulation of this area. He noted as of now this road is being punched through and would connect Investment Boulevard out to Center Street and would have that circulation occurring there that we haven't had; also this connects back to Schieffelin Road and pointing to the out direction.

Commissioner Meckes confirmed the extension of Energy Drive if it did not come to pass then Investment Boulevard will cut straight across and leave several lots south of Investment Boulevard to be developed as well as lots north could be developed with access from Investment Boulevard and appears even possible access from Center Street, with Rowland responding that was right and thinks the general plan is to have a line across the front pointing to the industrial portion and office and institutional portion – and pointing to the lots that would access Center Street. Commissioner Meckes noted two means east or west from Investment Boulevard to get in and out, one to Center Street and one to Schieffelin Road.

Commissioner Jensen asked what the folks at Lot 3 Fowler and Lot 2 Fowler have to say or PSNC. Rowland responded PSNC has their existing street in (pointing to the location) to access their property; also they had dedicated their portion of the road on the property (pointing to their property line and noting they only had to extend it to this portion of their property for access). Engineer Shawn Dolle was present to speak and having been with both Fowler and JVI (Joey Iannone) would address this situation.

Mayor Weatherly opened the public hearing at 8:25 p.m.

Sean Dolle, Engineer Jones & Cnossen Engineer, represents the Fowler Industrial Park previously approved as well as representative for Joey Iannone, JVI construction. In speaking with Steve Fowler, owner of Commercial Grading, and Fowler Industrial Park, he is not opposed to the removal of the connection of Energy Drive to Investment Boulevard; he only asks he not be required to install a cul-de-sac on the end of the street, but be allowed to investigate other alternatives such as a hammer-head or another device acceptable for an emergency vehicle to be able to turn-a-round, but is not in objection to the removal of the connection. Dolle had spoken with Kent Jackson, Director of Construction Management and his response was he could not guarantee that a cul-de-sac would not be required, but is agreeable to looking at other options.

Commissioner Meckes ask Dolle to clarify "hammer head", with Dolle responding it's basically a "T" at the end of the road.

Mayor Weatherly asked Director of Planning Rowland to elaborate on the Planning Board's recommendation. Rowland stated they looked at the ordinance that calls for permanent dead-ends or cul-de-sacs to be no longer than 500 feet.

Commissioner Jensen stated when this was looked at, it was mostly for subdivisions where you have lots of houses and high traffic; he thinks this is a separate issue.

Attorney Fordham asked the Board to move into closed session to receive legal advice. Mayor Weatherly asked for a motion to receive legal advice from the Attorney.

Action: Motion by Commissioner Jones and second by Commissioner Jensen to move into closed session at 8:30 p.m. Motion carried. Minutes of closed session are recorded separately. Mayor Weatherly asked for a motion to move back into regular session. Motion by Commissioner Schulze and second by Commissioner Jones to move back into regular session at 8:35 p.m. Motion carried.

With the Board being back in regular session, Mayor Weatherly asked if there were further questions; there being none, the public hearing was closed at 8:35 p.m. and floor was open for a motion.

Action: Motion by Commissioner Gossage and second by Commissioner Schulze to amend the Thoroughfare Plan by deleting the Energy Drive Extension to Investment Boulevard. Commissioner Gossage wanted to make sure it was understood that the motion does not in anyway stipulate how Energy Drive will develop.

Mayor Weatherly asked if they did not stipulate that there shall be a cul-de-sac or anything other than a stub, that it wouldn't do violence to the ordinance – would not be a compliance issue with the UDO. Attorney Fordham advised that to be true, it would not determine how Energy Drive would be finished out, with Mayor Weatherly continuing just stubbed as shown on the map. Commissioner Meckes added in actuality, Energy Drive does not go as far as indicated on the map; stubbed to its current position. Commissioner Jones asked if it were safe to say our consideration of this is only for the JVI property and not for the Fowler property, with Commissioner Meckes adding we don't even have to mention this in the motion. Mayor Weatherly stated the motion was for straight deletion, but now clarifying for the record exactly what the intent is, and the intent is to have a straight stub, as the motion says the deletion but does not specify how or what is to be done with the stub if anything, with Commissioner Gossage adding this is correct. Mayor Weatherly confirmed with the Town Attorney this takes care of this item. With no further discussion, Mayor Weatherly called for a vote on the motion. Vote on the motion was 5 in favor and 0 opposed. Motion carried unanimously.

End of public hearings

OLD BUSINESS

There were no Old Business Items to be considered.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

There were no comments during public forum.

NEW BUSINESS

This item was covered previously under presentation of Resolutions.

John Brown, Director of Parks, Recreation & Cultural Resources

New Business # 1 – Wake County's Proposed Open Space Bond Referendum

Presentation from representatives of Wake County regarding Wake County proposed Open Space Bond Referendum which is to be included on the November 2, 2004 Ballot.

End of New Business # 1

Lee Smiley, Director of Finance

New Business # 2 – FY 04-05 Financial Summary

Director of Finance Lee Smiley gave a review of the 1 st. Quarter FY04-05 Financial Summary; no unusual items to report on. Report is attached.

End of New Business # 2

David Rowland, Director of Planning

New Business # 3 – Wake County TRACS Program

Don Willis Transportation Planner with Wake County TRACS (transportation and rural access service) gave an overview of the program which provides affordable transportation for our citizens, especially those who have no cars or are physically impaired and can't operate a car – a service currently unmet. The service is a shared ride, seat available, door to door and general purpose no priority service; began February 2004 – with high demand. Funded by NCDOT grant requiring matching funds – last year $ 100,000; goal is to obtain additional grants and expand the programs. He understands service is needed in Apex and they are in need of partners to this service. Wake County is asking Apex to consider approval of $4,000 for current fiscal year and succeeding years to support TRACS. There was discussion regarding the service and fees. The South regional center located in Fuquay; service does not serve Raleigh or Cary; service is Fuquay, Holly Springs, Apex, Zebulon, Wendell, and Knightdale.

Mayor Weatherly asked for a motion to approve participation in TRACS with a financial obligation of $4,000.

Action: Motion by Commissioner Meckes and second by Commissioner Jensen to approve the request.

Commissioner Schulze after asking questions was not comfortable to make a decision regarding this program, a government program, feeling it's a good service and wants to know more about coordinating with TTA etc., and that its money well spent.

Action: Commissioner Meckes tabled his motion for another two weeks, with Commissioner Jensen adding there was a similar item that came before us in the past for this type service and must have faded away.

Willis advised the service provides connections to TTA and to CAT bus lines. Previous service was between a fixed route bus and the service he's talking about; service now is door to door and not off route service. Service is required for general public for any purpose; folks using the service are disabled, or seniors with driving issues. Mayor Weatherly reported the program is underway and this officially partners Apex with a nominal fee and allows our citizens to participate. As far as another government program the board's action will not have anything to do with it – will continue no matter what we do, this says we like what is being done and give $4000. Commissioner Schulze didn't want to voice support until he knew more about the program. Commissioner Meckes felt it was a successful program. Commissioner Jensen noted the trips that would help the elderly citizens. Mayor Weatherly noted this will come back in two weeks for consideration (November 16, 2004). Motion carried to table this item for two weeks.

End of New Business # 3

New Business # 4 – Small Town Character Area Advisory Committee

Mayor Weatherly recommended appointments to the creation of a Small Town Character Area Plan bounded by the Peakway, one of the implementation strategies recommended by the Comprehensive Plan; creation of an overlay district for this area that will guide and develop while retaining the small town character that has become Apex's trademark $30,000 is budgeted to prepare the plan.

Director of Planning informed the board they were in need of ideas on how to handle infill projects; seeing a bigger demand for development within the Peakway. Mayor Weatherly knew most of the members being recommended and advised they come highly recommended by staff and have offered their services for appointment. Work will begin in the next couple of months for about a ten month process. List attached.

Action: Motion by Commissioner Jensen and second by Commissioner Schulze to approve these appointments. Motion carried.

End of New Business # 4

New Business # 5 – Powell Bill

Town Manager Radford reported each year resurfacing projects are awarded using Powell Bill funds; recommending awards for REA Contracting, LLC, for total bid of $86,568.50. No sidewalk improvements are in this bid.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to award the bid as recommended. Motion carried.

End of New Business # 5

New Business # 6 – Interlocal Agreement – Participation CAMPO

Town Manager Radford reported CAMPO in the past the administrative portion has been supported by the City of Raleigh; they ask for relief from the Town of Apex for $5326.00. Pro-rata share noted on sheet attached. Opportunity to achieve a financial tie in to the operations of CAMPO; contribution will be standing obligation on a pro-rata basis each year.

Action: Motion by Commissioner Schulze to approve the agreement with Commissioner Jones. Motion carried.

End of New Business # 6

End of Regular Agenda

WORK SESSION AGENDA

There were no work session items to be discussed.

CLOSED SESSION

Possible motion to move into executive session to discuss condemnation in accordance as allowed under the closed meetings law of North Carolina.

Action: Motion by Commissioner Gossage and second by Commissioner Schulze to move into closed session to discuss condemnation. Motion carried. Minutes of closed session are recorded separately. Motion by Commissioner Gossage and second by Commissioner Schulze to move back into regular session at 9:28 p.m. Motion carried.

ADJOURNMENT

With the Board back in regular session, and no further items to come before the board for consideration, a motion was made by Commissioner Meckes and second by Commissioner Jones to adjourn at 9:29 p.m. Motion carried.

The above minutes were approved on the 3nd day of November 2004.

Georgia A Francisco
Town Clerk

Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, November 2, 2004
Mayor Pro tempore Mike Jones presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Pro tempore Jones called the meeting of the Town of Apex Board of Commissioners to order at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus Board of Commissioners Meeting Room. Commissioners Jensen, Gossage, Meckes and Schulze were present. Mayor Weatherly was absent.

Invocation was given by Commissioner Meckes. Mayor Pro tempore Jones led the Pledge of Allegiance and extended a welcome to those in attendance.

CONSENT AGENDA

Mayor Pro tempore Jones presented the consent agenda to be set and asked for a call for action. Commissioner Schulze asked Item # 6 be pulled for separate consideration.

Action: Motion by Commissioner Schulze and second by Commissioner Jensen to consider this item under Old Business. Motion carried.

Action: Motion by Commissioner Meckes and second by Commissioner Schulze to approve the consent agenda excluding item # 6. Motion carried.

1. October 19, 2004 Board of Commissioners meeting minutes.
2. October 19, 2004 Board of Commissioners closed session minutes to receive legal advice (separate cover).
3. October 19, 2004 Board of Commissioners closed session minutes for potential condemnation (separate cover).
4. October 12, 2004 Personnel Committee Meeting minutes.
5. Budget Ordinance Amendment No. 5 FY 2004-05.
6. Resolution declaring surplus: Town owned Lot at northeast corner of Highway 64 and Lake Pine Drive in light of an offer to purchase the lot for $85,000.00. (to be considered under Old Business)
7. Order to close portions of Salem Street, Hunter Street and Moore Street for Apex Jaycees to hold annual Apex Christmas Parade slated for Saturday, December 4, 2004 beginning at 5:00 p.m.
8. Order to close portions of Salem Street and Chamber of Commerce parking lot at 5:00 p.m. on Friday, December 3, 2004 in order for the Apex Downtown Business Association to hold annual Christmas on Salem Street.
9. Personnel Committee recommendation for approval of personnel policy revisions and position reclassification

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Pro tempore Jones presented the regular meeting agenda to be set and asking it be amended to include closed session to discuss litigation of street right-of-way for Chanticlair Drive and closed session be held prior to the public hearings.

Action: Motion by Commissioner Schulze and second by Commissioner Jensen to amend the agenda to include closed session. Motion carried. The meeting agenda was set as amended.

CLOSED SESSION

Action: Motion by Commissioner Schulze and second by Commissioner Meckes to move into closed session at 7:03 p.m. Motion carried. Minutes of closed session are recorded separately. Motion by Commissioner Gossage and second by Commissioner Jensen to move from closed session back into regular session at 7:27 p.m. Motion carried.

PUBLIC HEARINGS

(Planning Board voted unanimously for approval)

Public Hearing # 1 – Conditional Use Rezoning #04CU14

Public hearing and possible motion regarding rezoning case #04CU14, Town of Apex, petitioner, seeking to rezone Apex Town Campus property from B2-CU to B2-CU to accommodate an additional access drive off N. Hughes Street for the Community Center renovation.

Staff Report prepared by Rosetta Radtke Design Planner and incorporated as a part of the minutes.
Town Clerk administered an oath to Planner Radtke before speaking during the public hearing.

Planner Radtke stated the town was seeking a rezoning of the Town Campus property from B2-CU to B2-CU to accommodate an additional access drive off N. Hughes Street for the Community Center renovation. Drive will serve a proposed small new handicap accessible parking lot for senior citizens. Two access points had been a condition of the original rezoning, thus creation of a third assess. Site plan will come before the board for approval. Planning Board and staff recommends approval.

Mayor Pro tempore Jones opened the public hearing at 7:30 p.m. With no one addressing this rezoning, the hearing was closed.

Action: Motion by Commissioner Meckes and second by Commissioner Gossage to approve rezoning case #04CU14 as recommended. Motion carried.

End of public hearing # 1

(Planning Board recommends approval with condition)

Public Hearing # 2 – Conditional Use Rezoning # 04CU15 and Master Subdivision Plan

Public hearing and possible motion regarding Rezoning Case #04CU15 and Master Subdivision Plan for Windsor at Abbington, Community Properties, petitioner, seeking to rezone form Planned Unit Development District to Planned Unit Development District, 47.81 acres located west of the Abbington subdivision and Kelly Road and north of Olive Chapel Road.

Staff Report prepared by June Cowles, Planner and incorporated as a part of the minutes.
Town Clerk administered an oath to Planner Cowles and others desiring to speak at the public hearing.

Planner Cowles presented the staff report regarding the rezoning case and master subdivision plan for Windsor at Abbington; a Planned Unit Development Plan rezone and Master Subdivision Plan.

Public hearing # 2 continued

Planner Cowles reported the development was approved June 1, 2004. Since this date the UDO and Apex Transportation plan was amended. Three of the approved amendments affect this plan: RCA was amended from 35% to 25% of the project site gross acreage; Apex Barbeque Road was amended from a minor thoroughfare to a collector street (in addition the east and west street was amended from a collector street to a residential street); Proposed Windsor at Abbington Subdivision plan includes 75 lots – PUD Plan includes a maximum of 80 residential lots. There will be two retention ponds on site. Rezone and master subdivision plan was recommended for approval by the Planning Board at their October 11, 2004 meeting with the condition that staff review the Kelly Road Park agreement to determine if the Windsor at Abbington was a property participating in the acquisition of the park site.

Commissioner Jensen questioned the 75 lots and the approved 80 lot maximum before, with Planner Cowles responding there was no subdivision plan before. He asked about the reduction of the RCA from 35% to 25% and the amount of acreage this would be, with Planner Cowles responding 5 acres, pointing out the minor thoroughfare was amended to a collector street and that buffers went away in the Apex Transportation Plan.

Commissioner Meckes and Commissioner Gossage had questions about the pond located on site asking if it were a part of the RCA, with Planner Cowles responding staff had reviewed the parks agreement and that it was not included; she had talked to Dan LaMontagne of Public Works and he advised there is no impact on the lot and the applicant would be required to pay Park and Recreation fees prior to the plat being recorded.

Commissioner Jensen asked if there were public access easements coming off the stream buffers to the south (there are two access points around the retention pond with one off Apex Barbeque Road Extension). Commissioner Gossage asked if the pond is part of the RCA and could it overlap into the lot, with Planner Cowles responding it's not counted in the lot. Commissioner Gossage pointed out that it was shown on the maps, with Commissioner Jensen pointing out it was not counted as part of the lot; that the reduction of RCA was approximately five acres, and pointed out there was a house that will remain there, with Planner Cowles stating part of the reduction was a 30' buffer along Apex Barbeque Road Extension and some of the area north would be part of the RCA. She pointed to the current map showing the previous PUD Plan and the gas line easement along the east (not part of the RCA), also a portion of the south property line with a cluster of trees.

Mayor Pro tempore Jones opened the public hearing at 7:42 p.m.

Speaking in favor and having been administered an oath by the Town Clerk was: Jerry Jenson of Withers & Ravenal, Cary, stated he had nothing to add but would answer questions.

Commissioner Jensen asked if there was a planned access to the retention pond from the greenway, with Jenson responding there is no final design, but they could access the pond – the greenway is not built at this time. Commissioner Jensen suggested this could be a potential walking path for recreation, with Jenson adding ponds are required to be esthetically pleasing and look natural, and is still being fine tuned.

Commissioner Meckes asked questions about the pond, with Jenson responding there will be natural general slopes of the water pool, with vegetation, and not sure about fencing, but would work with staff to assure it's in compliance. Commissioner Meckes felt this would be a nice amenity to the subdivision, that the existing pond would be a nice view from the street. Commissioner Jensen wanted to see a walking path, with Jenson advising there was no path being planned now. Commissioner Meckes didn't think this could be done, there would have to be a bridge with Commissioner Gossage thinking it would work with the 1.36 acre pond and within the area around the pond. Jenson responded the dam must be retrofitted with a spillway however, none of the pond will encroach on the lot; no RCA is proposed on the lot. Commissioner Meckes pointed out that it was an old farm pond asking about the water flow, with Jenson adding they will retrofit the dam and the water flow would go to the lower pond. Commissioner Jensen discussed the spillway design with Jenson advising the existing pond will not be used for detention requirement and would be no drop in water service elevations. Commissioner Jensen added the pond functions like impermeable service, with Jenson responding it does and will manage its own self, and would struggle during dry times.

Commissioner Jensen asked about the easement requirements, with Jenson advising easements were needed for the sanitary sewer to get to the outfall and requires drainage easements with storm pipes being installed; but no pathways. Commissioner Jensen desired a pathway around the pond for recreational purposes. Commissioner Meckes wasn't sure how the homeowners would feel about traffic coming off the greenway around this pond and it being literally in their back yards. Commissioner Jensen noted it could be connected to the road, with Commissioner Meckes being reluctant to this idea.

With no one else addressing this item, the public hearing was closed at 7:47 p.m.

Action: Motion by Commissioner Meckes to approve rezoning # 04CU15 and the Master Subdivision Plan for Windsor at Abbington, with a second from Commissioner Gossage. Motion carried.

End of public hearing # 2

OLD BUSINESS

Old Business # 1 – Wake County TRACS Program

Possible motion to participate in the Wake County TRACS program.

David Rowland, Director of Planning recalled this item was tabled to allow additional time to consider the benefits of the program, and requested by Commissioner Schulze. Commissioner Schulze advised he had nothing further to add. Rowland introduced Don Willis, Transportation Planner and Ray Woodall Transportation Broker. Willis played a video regarding the TRACS service, and advised it was open to anyone during operation hours. Bids are awarded for contract with private local companies to provide this service; having one primary vendor and secondary vendor. Expansion of services has continued to cover their costs. Request for Apex to participate town's appropriation would be $4000 annually, if approved in the yearly budget. With concerns of rising costs, Commissioner Gossage felt it was important to review this appropriation yearly feeling as needs generates that costs will rise. Commissioner Schulze felt the transportation funds are not used sufficiently; he sees public buses with not many on them and it bothers him that this is taxpayer's dollars; he felt their approach should be their need is greater, and attempt to generate more funds by moving money from TTA. Willis responded this was not the same money as TTA. Commissioner Schulze felt they should demonstrate a greater need.

Action: Motion by Commissioner Meckes to participate in the Wake County TRACS program appropriating $4,000 now and consideration given for an appropriation for this service on an annual basis to be reviewed with the budget process, feeling this is an immediate direct and positive impact on peoples lives. A second to the motion was made by Commissioner Gossage. Commissioner Jensen sees this as a great value to the people and would like a report on this services progress prior to approving an appropriation in the budget for another year. Willis will be happy to comply with the request and invites the board to come and ride and get to know more about TRACS through the transportation advisory board meetings, also to know more about the planning process for residents of Apex. Vote on the motion was four in favor and one in opposition (Commissioner Schulze voting no). Motion carried.

End of Old Business # 1

Old Business Item # 2 - Item # 6 from Consent Agenda:

Resolution declaring surplus: Town owned Lot at northeast corner of Highway 64 and Lake Pine Drive in light of an offer to purchase the lot for $85,000.00.

Manager Radford advised the board that an offer had been received from Steven Sebastian to purchase 0.46 acres of land owned by the Town and located at the northeast corner of Highway 64 and Lake Pine Drive in the amount of $85,000.00. He plans to build an ice cream shop "Brusters". Property is located in the Cary ETJ, and if allowed to develop would be asked to be annexed into Cary. An appraisal of two years ago for the property was $135,000 thinking it a bit high and could pursue reappraisal. Having received a verbal offer staff now advises the board and is following through with a resolution to declare property surplus (site of old water pumping station an old pump house building there 12 x 14 with metal roof) as town has no future public plans for this property. Manager Radford advised there are several approved methods whereby the property could be sold, with staff choosing to utilize the upset bid alternative with the board's approval.

Commissioner Schulze expressed concern this was a strategic piece of property and didn't want to rush into selling it, thinking there could be a potential use for it in the future as it was a gateway into Apex; further asking to hold off as the future can take a fast turn; this could represent Apex even if it's in Cary. Manager Radford responded the property is in the Cary ETJ and if sold would work with the purchasers to annex the property into Cary. Commissioner Schulze noted the Welcome to Apex sign was about one-half mile into Apex and could put a Welcome to Apex there, with Commissioner Meckes thinking it would be an amenity to Apex to have it at Lake Pine (northeast quadrant). NCDOT had been approached about signage being placed there and they would not let it be placed in the right of way. Commissioner Schulze saw this as a big opportunity for land and possibly needing something else, and not giving it away. Commissioner Jensen noted in the upset bid process, the town could say no, with Commissioner Schulze not wanting to do it at all, with Commissioner Jones agreeing.

Old Business Item # 2 continued

Commissioner Meckes added that if staff saw no conceivable use of the property - with Commissioner Jensen interjecting could be one-half acre of buffer, or bird sanctuary, with Commissioner Meckes indicating he would go with that idea.

Mayor Pro tempore Jones advised people often drive off Lake Pine and turn in to this site and have to go back out, with Manager Radford advising the property now has a barricade across it. Manager Radford asked if the board had no interest to sell, or develop some public purpose, with Commissioner Meckes interjecting make it esthetically pleasant, plants, trees, low maintenance. Commissioner Jensen added if sold for $120,000 or so, a park would be an asset and valuable to the citizens and money could be applied to that. Commissioner Schulze was open to consider options.

Mayor Pro tempore Jones stated with no intent to sell this property, and lack of a motion – the board was choosing not to declare the property surplus. Consensus was the last appraisal would stand (cost for appraisal was $1500). Commissioner Jensen saw $85,000 as a value to the neighborhood as a buffer however, would like to see options. Manager Radford will bring options for potential uses of the property back to the board within thirty days, and noting there were easements across the property and render parts of it unusable.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

No one spoke during public forum.

NEW BUSINESS

There were no New Business Items for consideration.

WORK SESSION AGENDA

There were no work session items to be discussed.

ADJOURNMENT

With no further business to come before the Board, a motion was made by Commissioner Gossage and second by Commissioner Meckes to adjourn at 8:25 p.m. Motion carried.

The above minutes were approved on the 16th day of November 2004.

Georgia A. Evangelisti
Town Clerk

Keith D. Weatherly
Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, November 16, 2004
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Web site: www.apexnc.org

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order on Tuesday, November 16, 2004 at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus Board of Commissioners Meeting Room (2 nd. Floor). Commissioners Jensen, Gossage, Jones, and Meckes were present. Commissioner Schulze was absent.

Mayor Weatherly extended a welcome to those in attendance and gave the Invocation.
Mayor Weatherly recognized Apex Scout Troop #205 to lead the Pledge of Allegiance and present the colors.
Mayor Weatherly presented a Proclamation to the Troop #205 for the 2004 Scout Luminaria Project.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action. Commissioner Jensen asked separate consideration be given to Item 10, Site plan for Duncan Commons located on N. Salem Street to discuss landscape plan. **Action:** Motion by Commissioner Gossage and second by Commissioner Jones to consider this item under new business. Motion carried. **Action:** Motion by Commissioner Jones and second by Commissioner Gossage to approve the consent agenda as amended with Item 10 to be considered under new business. Motion carried.

1. November 2, 2004 Board of Commissioners meeting minutes.
2. November 2, 2004 Board of Commissioners closed session minutes (separate cover).
3. Water/Sewer acreage fee for new zoning district Tech/Flex.
4. Findings of Fact and Conclusions of Law and Ordinance regarding rezoning #04CCU11, Marshall Barnes, ET. al. petitioner, property located on S. Salem Street between E. Chatham Street and W. Williams Street from Office & Institutional District to Mixed Office, Retail, Residential Conditional Use District.
5. Findings of Fact and Conclusions of Law regarding special use permit #04SUP02, Carol Kish, petitioner, property located at 206 S. Salem Street.
6. Findings of Fact and Conclusions of Law and Ordinance regarding rezoning #04CU13, Pointe Development Group, LLC, petitioner, located on 1011 W. Williams Street between Haddon Hall Drive and Apex Medical Park from Office & Institutional Conditional Use District to Neighborhood Business Conditional Use District.
7. Findings of Fact and Conclusions of Law and Ordinance regarding rezoning #04CU14, Town of Apex, petitioner, properly located on Hunter and Mason Streets from Downtown Business Conditional Use District to Downtown Business Conditional Use.
8. Findings of Fact and Conclusions of Law and Ordinance regarding rezoning #04CU15, Community Properties, petitioner, property located west of Abbington Subdivision from Planned Unit Development Conditional Use District to Planned Unit Development Conditional Use District.
9. Wake County Tax Report.

10. Site plan for Duncan Commons located on N. Salem Street (moved to new business section).
11. Budget Ordinance Amendment No. 6. (Police Grants/Supplies, TRACS Appropriation, CAMPO Participation).
12. Parking additions to Apex Community Park located off Laura Duncan Road.
13. Adopt a resolution declaring Town claims no authority to approve or deny approval for termination of a private recreation easement created by covenants for Deer Field Farms subdivision.
14. Resolution accepting and authorizing purchase of easements and appurtenant property interests from the McCords and Parrishs for the Buckingham Subdivision waterline extension.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set. Manager Radford asked to add adoption a resolution to allow town to enter upon private properties to investigate future sewer routing related to the Williams Creek Drainage Basin.

Action: Motion by Commissioner Jensen and second by Commissioner Meckes to add this item to new business. Motion carried. The meeting agenda was set as amended.

Mayor Weatherly recognized Attorney Hank Fordham for introduction of Assistant Town Attorney Laurie L. Hohe; date of employment October 25, 2004.

PUBLIC HEARINGS

Staff Report prepared by David Rowland, Director of Planning

Public Hearing # 1 – Conditional Use Rezoning #04CU16

Public hearing and possible motion regarding rezoning case #04CU16, Jones & Cnossen, Engineering, PLLC, petitioner, seeking to rezone from Low Density Residential to Medium Density Residential Conditional Use District, 1.70 acres located on Fairview Drive.

David Rowland, Director of Planning, advised the petitioner had requested this hearing be continued to December 21, 2004 meeting to allow time for discussion with the neighbors. Note: A protest petition is on file and determined valid by the Town Attorney and invokes ¾ super majority rule for approval. **Action:** Motion by Commissioner Meckes and second by Commissioner Jones to approve the petitioners request to continue this hearing to December 21, 2004. Motion carried.

End of public hearing # 1

Staff Report prepared by Dianne Khin, Senior Planner

Public Hearing # 2 – Major Site Plan for Beaver Creek Crossings PH. 3 & 4

Public hearing for a major site plan for Beaver Creek Crossing Ph. 3 located at Beaver Creek Commons Drive and US64, and Phase 4 at Green Level Church Road, US64, and future I-540; possible motion regarding same.

Dianne Khin, Senior Planner presented the site plan for Beaver Creek Crossing Phases 3 & 4 and oriented the board to the location of the 130.943 acres and gave background information, project description, current zoning PUD-CU subject to conditional use permit #04CU01, adjacent zoning and land uses from the staff report that is incorporated into the minutes and contains all the information regarding the site plan. Current zoning is planned unit conditional use; Khin advised the board of the proposed Phase 3 and 4 plan is for shopping center with retail, village shops, restaurants, and cinema use; when rezoned area is reserved for residential for both sides and an area for office and institutional (for approval at a later date); building descriptions and elevations that meets the PD Plan, and colors, and views of the traffic pattern (staff recommends developer continue to refine materials and colors proposed on material board and to give more definition and character to the rear of the primary buildings in both phases due to visibility from I-540 and future residential phase, and to finalize front and side elevations (particularly cinema elevation).

Khin advised the board of the following:

- Landscape/buffer: meets the requirements of the UDO (staff recommends developer continue to work during construction plan stage on final plant selection and placement).
- Resource Conservation Area: 21.276 acres or 18.161% is provided on site (above PD Plan requirement)' much of it is proposed to be disturbed by grading for stormwater ponds, road improvements, and site improvements (staff recommends developer continue to work on final plant selection and placement during construction plan stage of the process).
- Grading: acceptable (staff is waiting on final signed plat from US Army Corps of Engineers allowing draining of pond in Phase 3 - copy is to be provided to staff prior to construction plan approval – future phase residential).
- Watershed: in primary watershed overlay district.
- Stormwater: requirements are met by use of retention ponds in a bio-retention area.
- 65 acres of impervious surface 48.5% and meets the limitation in the PUD district.
- Floodplain: FEMA designated flood plain adjacent to Beaver Creek; no fill in the flood plain – LOMAR F not required.
- Parking space: Phase 4 (1,541) – south side (2,138) (54% spaces are side or rear of buildings Phase 3 and 52% spaces located side and rear Phase 4)
- Utilities: applicant requested town water/sewer (staff recommends and developer agrees Note: CU3.0 and CU3.3 be revised: "Proposed pump station shown for information only. Layout and location of pump station is conceptual in nature. Coordination between developer, engineer, and Town on exact layout, capacity, and location to occur during construction plan stage. Town will share in proportionate costs in accordance with town's off-site and over-sizing policy. This will be confirmed in a development agreement that includes off-site and over-sizing costs for the interceptor under US64."
- Street access: Phase 3 from Beaver Creek Commons Drive connecting to Phases I&2 crossing over I-540 and connecting to Kelly Road - Note: connection will be made to Kelly Road and currently working with NCDOT for exact alignment crossing I-540; Phase 4: bridge across US64 connecting to Phase 3 as well as Green Level Church Road with several drives off GLC Rd.
- Traffic impact analysis: prepared by Ramey Kemp and Associates – proposed round-a-bout and 4-way stop Phase 3 (staff concern stacking distance) Memo: shows analysis with level of service B and acceptable – (UDO allows down to level service D).
- Pedestrian and bicycle access: pedestrian connectivity with sidewalks along Beaver Creek Commons Drive, Green Level Church Road, Road A public street crossing over US64 as well as pedestrian connections within the project on the north and south side (multi-use path similar to Green Way will be provided along Beaver Creek Commons Drive in front of subject property) – (multi-use path from Green Level Church Road across US64 and onto Beaver Creek Commons Drive will be provided) - bike racks will be provided at various points within the shopping center.
- Lighting plans: 140 shoe-box style fixtures for both Phases 3 and 4 – 30 foot tall poles maximum 250 watts and 133 decorative acorn lamps mounted on 12 foot poles in both north and south sides.
- Parking areas: meet UDO requirements for both.
- Community amenities: multi-use path from Green Level Church Road to Beaver Creek Commons Drive with bike racks located throughout the development.

Proposed site plan for Phases 3 and 4 is consistent with UDO and with conditions of conditional use permit # 04CU01, except for placement of bus stops (one per Phase) (no current confirmation from Triangle Transit Authority that they plan to include this development in their route(s) developer is working with TTA to determine location of the bus stops for both Phases 3 and 4 (staff recommends developer continue to work with TTA).

Land Use Plan: proposed retail, restaurant and cinema uses are consistent with the plan (future plan shows residential and office use); proposed plan meets requirements of the Apex Transportation Plan.

Staff recommends approval of the major site plan with conditions (# 2 – 6) Planning Board held a public hearing for this major site plan at their November 8, 2004 meeting and unanimously recommended approval with recommended staff conditions and one additional condition regarding pedestrian crossing (# 1).

1. Add separation between vehicular traffic and sidewalk on the bridge over US64 linking Phase 3 and Phase 4.
2. Developer continue to refine elevations to utilize all materials and colors proposed on material board to give more definition and character to rear of the primary buildings in both phases due to visibility from I-540 and future residential phase; and to finalize front and side elevations (particularly cinema elevation).
3. For all landscape, buffers, and RCA, developer continue to work with staff on final plant selection and placement during construction plan stage of process.
4. Developer will provide final signed plat from US Army Corp of Engineers (allow the draining of the pond in Phase 3) to staff prior to construction plan approval.
5. Note on sheets CU3.0 (note 26) and CU 3.3 (in 2 locations be revised to read: "Proposed pump station shown for information only. Layout and location of pump station is conceptual in nature. Coordination between developer, engineer, and Town on exact layout, capacity, and location to occur during construction plan stage. Town will share in proportionate costs in accordance with town's off-site and over-sizing policy. This will be confirmed in a development agreement that includes off-site and over-sizing costs for the interceptor under US64."
6. Developer work with TTA to determine location of bus stops (one per Phase) prior to construction plan approval.

Board questions and clarifications:

- Walden Creek north side has an intermittent stream with a 50 foot buffer.
- TTA has to provide stops and in rezoning did not promise to provide bus shelters which was done at Beaver Creek Commons but has the bump out where the bus can pull off as a stop and would find suitable locations for a bus pull-off (Phase 3 and 4)
- Nature of separation between pedestrian crossway and bridge: Planning board looked for a type railing (NC55 sidewalk across US64 not safe feeling for crossing) wanting something on this bridge for people to feel more comfortable to use the crossing if they elect to walk and a benefit to the residents to cross over to the greenway trail as well.

Mayor Weatherly opened the public hearing at 7:20 p.m. for those speaking in favor:

Connell Radcliff DDR/1st Carolina Apex Phase III, LLC noted this a long process, however, had worked with staff to resolve community issues regarding site plan, working on buffer and RCA issues, and had exceeded in buffers along Green Level Church Road opposite of Walden Creek (40' Type A opaque buffer); multi purpose path; met with Chapel Ridge and enhanced RCA with pond system increasing buffer from 10 to 30 foot. Have met needs of neighbors regarding elevations with Walden Creek and hopes satisfied their concerns; NCDOT issues are ongoing with Ramey Kemp having provided TIA and working on encroachments and drive permits. McKim & Creed prepared the plans; Chris Grimes Plan Design Architect was present. Radcliff asked for support of the site plan.

Commissioner Jensen clarified connection to Kelly Road from Beaver Creek Commons would be completed before the stores open in Phase 3. Radcliff answered this is correct and part of the Phase 3 development.

Commissioner Meckes asked if I-540 is the same grade as the north side, Kelly goes over I-540, asking if I-540 comes along the northern side of the developed area. Radcliff responded that's correct; as he understands it, I-540 will go under US64 and come back. Commissioner Meckes asked if there were elevations drawings from I-540 (they did not). Drawings were shown of general elevations; residential areas: maximum 10 units per acre – north side 6.5 acres anticipating cluster townhomes; mid-high range town homes (neighbors seem to like them).

Commissioner Gossage commented on the overage in parking spaces, with the Architect responding the spaces were over with town requirements and tenant requirements were where they needed to be.

Others speaking in opposition but expressing they were not 100% opposed:

Andrea Klein, 2303 Speckled Alder Court, was not 100% opposed and addressed concerns:

- Footprints over 300,000 square feet of retail space - she anticipates overage of parking spaces and being high density shopping behind Walden Creek thinking the square footage was down to 230,000 square foot asking why it's back up and was greater in terms of development across from Walden Creek, asking if the density and retail is appropriate for that space.

- Signage of Super Target is larger than needed and comparing it to Briar Creek with signage in one color and more consistent and classier then every sign a different color.

- Bus stop traffic pattern: have talked about alleviate traffic from going through Walden Creek – bus stop problems that could be created by juveniles at bus stops (ex: South Point with security there).

- Noise: placing perimeters on the property and when can be cleaned (ex: clean lots of Super Target at night) asking provisions to handle these issues.

Art Clem, 106 Fairfax Woods, stated he and his neighbors were delighted with Beaver Creek Commons Phases 1 and 2 and to see people walking to and from the shopping center and great to have this shopping convenience.

Concerns:

- Site plan does not include residential and concerned with drainage issues to keep buffers in place for those units
- Residential section is left out now sometime in future may be commercial and wants it to remain residential in the future and be more commercial.
- Traffic: agreements made to alleviate cut through traffic through Beckett Crossing and NC55 Olive Chapel Road intersection improvements and by alleviating this intersection and making it more usable would not have cut-throughs on Zeno Road and Beckett Crossing. Zeno Road improvements were discussed and speed bumps within Beckett Crossing to alleviate some of it. Some has happened, most of it has not happened – (NC55 OC Rd improvements may be delayed to next spring) noted a combination of things were brought together to address the traffic issues, but must pay attention that all these things talked about and have them come to pass when things open up; ex: when CO's were given, leverage was taken away to complete sidewalks and highways; developers trying to complete NC55 from US64 to Vision Drive leverage gone and had they not been given the occupancy could get more leverage to get highway department or whoever to finish the road.
- Assure in the new project: Beaver Creek Commons Drive connection to Kelly Road is completed before giving occupancy.
- Assure connecting sidewalk to Beaver Creek Commons and Beaver Creek Crossings (property not owned by developer); Town needs to address connecting sidewalks and take obligation.

He thinks it's a good project and will add to shopping convenience in Apex.

The public hearing was closed at 7:40 p.m.

Mayor Weatherly asked signage at Target meets the current ordinance with Khin responding it meets the current ordinance. Mayor Weatherly addressed the cleaning noise and that the cars have to be gone; project engineer responded the lots are still in a state of construction and have to keep the lots clean for customers and tenants and will see that gone overtime and after construction the cleaning will not be as frequent. Commissioner Jensen wanted them to work with the time for the neighbors, with project engineer agreeing to work on that.

Commissioner Jones addressed the question regarding leverage for unfinished improvements, with Manager Radford interjecting we have performance bonds on all those things left outstanding that is the responsibility of DDR; there are bonds for different phases but clearly are covered for the completion of outstanding work that is required originally. Mayor Weatherly confirmed they do it or we do it with the bond, with Manager Radford advising there had been lots of discussion regarding the plans to finish and sees no concerns about completion of the work. Commissioner Meckes added it was the Board's intent to finish Zeno Road paving and fully prepared to do what the town was obligated to do. Art Clem added it didn't come together and not to assign blame.

Commissioner Jensen wants to designate no-thru streets, that there would be cut-through traffic even with Kelly Road. He noted the sign at Surry Meadows for no-thru street but has no teeth to it. He wanted to look at designation of roads through Walden Creek, Beckett Crossing, and Haddon Hall as no-thru streets as well as Surry Meadows – that if traffic was under the threat of a ticket, it would keep quality neighborhoods and protect them. He noted the interconnectivity was nice to have within but not for cut-throughs and was the reason for major roads to take the traffic. Commissioner Meckes asked if he considered interconnectivity from one subdivision to another as cut-through, with Commissioner Jensen responding if there's a major road they can take, yes; he looked at cut-throughs from Surry Meadows from Water ford Green and with interconnectivity, they would not get on SR1010 and he considered it cut-through. This is why highways are built to use them for high traffic flow, and if it has to be done by ordinance, then so be it – we have to protect the people in the neighborhoods.

Commissioner Jones added he agreed on a case by case basis, also, he was not advocating that people cut through subdivisions to get from one place to another, but thinks the TIA looks at connector streets other than major highways and takes into consideration the traffic load on US64 and NC55 given they are other ways to get around within the subdivision; we need to take this in to account as well that these collector streets do play a role in moving traffic from one place to another. He's not saying they shouldn't look into specific situations and deal with it, but have to take them on a case by case basis, with Commissioner Jensen agreeing, however, connectivity is allowing people to go out in two or three different directions, however, cut-through is when people go through your neighborhood.

Commissioner Gossage asked about the sign colors here vs. Briar Creek, with Khin responding the signage colors are shown on the board, white, blue, red, black, and similar to what was allowed at Beaver Creek Commons Phase I and II – the four colors. Commissioner Meckes was fine with the colors, with Khin noting the colors are national chain colors for their logos.

Commissioner Jensen asked about the 48% (65 acres) impervious service area and addressed storm water run-off; more water run-off being 350% more during a storm event and noted the damage it would do down stream, and to do it differently would not have that run-off, recalling greenway trouble in the past down below, asking them to look at his paper and it wouldn't take that much more land to do it correctly, putting us out ahead of the rest of the towns. Mayor Weatherly confirmed they are in compliance with town ordinance which was correct.

With no further discussion, Mayor Weatherly opened the floor for a motion.

Action: Motion by Commissioner Gossage to approve the site plan for Phases 3 and 4 Beaver Creek Crossings, with the recommended conditions from staff and Planning Board. Second by Commissioner Jones. Mayor Weatherly commented it's a good project, with no one being 100% satisfied and comes close to a good quality project, consistent and will look good with what's already there and a good addition to the businesses community in Apex. He called for the vote on the motion. Vote on the motion was 4 and 0. The motion carried unanimously.

End of public hearing # 2

Staff Report prepared by June Cowles, Planner

Public Hearing # 3 – Major Site Plan for Madern, USA

Public hearing for a major site plan for Madern, Madern USA, petitioner, seeking a site plan approval for office and warehouse/manufacturing use; the property is located at 1010 Burma Drive, Pinnacle Park; possible motion regarding same.

June Cowles, Planner, presented the site plan for an office and warehouse/manufacturing located at 1010 Burma Drive, Pinnacle Park and part of the old zoning ordinance and not under the UDO. Cowles oriented to the location of the 5.74 acres for the proposed 43,800 square foot building with loading dock; brick with grey metal facades on sides and rear; and continued with the staff report that is incorporated into the minutes to include the landscape plan is consistent with the zoning ordinance; 75 parking spaces are consistent; access and circulation off Burma Drive; no traffic impact report was required as the proposed project does not create over 1,000 vehicle trips a day. RCA is not applicable. The proposed industrial use is consistent with the zoning ordinance and 2025 Comprehensive Plan and Land Use Plan. Staff recommends approval. Planning Board recommends approval having met to review this plan at their November 8, 2004 meeting.

Mayor Weatherly opened the public hearing at 7:51 p.m.

Jennifer Leonard, Architect was present to answer questions. There were no questions. With no further comments regarding this site plan, Mayor Weatherly closed the public hearing and asked for a motion.

Action: Motion by Commissioner Meckes and second by Commissioner Jensen to approve the site plan as recommended. Motion carried unanimously.

End of public hearing # 3

Staff Report prepared by Dianne Khin, Senior Planner

Public Hearing # 4– UDO Amendments

Public hearing regarding amendments to certain sections of the Unified Development Ordinance as recommended by the UDO Task Force Committee; possible motion regarding same.

Dianne Khin, Senior Planner, presented UDO amendments recommended by UDO Task Force Committee. Board adopted first set of amendments August 17, 2004. Planning Board recommends the amendments unanimously with some minor changes to sections 7.2.1 (additions of words existing and future) in regard to principle streets; and 7.2.1.H.1.c. and 7.2.1H.2.c. Change registered professional engineer to license professional engineer and 7.2.1.H.2 correct a formatting error and reflected in the attached ordinance. Staff recommends approval of the amendments with the recommended changes of the Planning Board. Khin reviewed the amendments noted in the attached staff report and incorporated into the minutes and noted there are no other amendments recommended by the UDO Task Force, staff has a few recommendations she's working on, with Commissioner Jensen asked if it includes the one where we give some RCA for getting a TOT lot or "kiddies playgrounds"; Khin responded it already had been included in the first set where they give a 25% credit for tot-lots. She added, Section 8.1.5.D.4 references Section 8.15.D.2 and needs to reference Section 8.1.5.D.3 as well.

Mayor Weatherly opened the public hearing at 8:12 p.m.

Kent Jackson, Director of Construction Management asked if the Task Force had addressed the enforcement requirements for plants on residential lots, not having a clear perspective. Khin responded given the amount of material in any subdivision and the timing, the task force felt the most expedient thing was to have the building inspector add one more block asking if they planted - expressed only the number of trees – no planting depth, type, or mulch. Planning is fine with this. Mayor Weatherly felt this would continue to be a work in progress and have some experience. He closed the public hearing. Commissioner Jones commended Task Force for their time and effort, and also Khin for all she had done. Commissioner Meckes added Task Force had been charged with the most troublesome areas and should be getting closer; Clarion had painted a broad brush and dropped it into our laps, and we had to make it fit where it's working and the process we are in now.

Mayor Weatherly called for a motion.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to adopt the ordinance for the amendments to certain sections of the UDO as recommended. Motion carried unanimously.

End of public hearing # 4

Presenter, David Rowland Director of Planning

Public Hearing # 5– Annexation Petition # 363

Public hearing concerning Annexation Petition # 363, David & Meghan Roeshot, DBA Westover Properties II, LLC, owner/petitioner; petitioning to annex approximately two (2) acres into the town's corporate limits; property located on the south side of Olive Chapel Road (SR 1160) and west of and contiguous to Glen Arbor – said parcel being Lot 1 the Goddard School); possible motion to adopt an ordinance to extend the corporate limits of the town.

David Rowland Director of Planning oriented the board regarding this petition for annexation of the Goddard School. Mayor Weatherly opened the public hearing at 8:17 p.m. and with no one addressing this petition, the hearing was closed.

Action: Motion by Commissioner Jensen and second by Commissioner Meckes to adopt the ordinance to extend the corporate limits of the town. Motion carried.

End of public hearing # 5

Presenter, David Rowland Director of Planning

Public Hearing # 6– Annexation Petition # 364

Public hearing concerning Annexation Petition # 364, Gowrisnkar & Hemalatha Galla, owner/petitioner; petitioning to annex 1.626 acres into the town's corporate limits; property located on the north side of SR1010 across from Schieffelin Road intersection and includes public rights-of-way; possible motion to adopt an ordinance to extend the corporate limits of the town.

David Rowland Director of Planning oriented the board regarding this petition for annexation for Center Village Pharmacy, site plan having been approved and under construction.

Mayor Weatherly opened the public hearing at 8:19 p.m. and with no one addressing this petition, the hearing was closed.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to adopt the ordinance to extend the corporate limits of the town. Motion carried.

End of public hearing # 6

Presenter, David Rowland Director of Planning

Public Hearing # 7– Annexation Petition # 365

Public hearing concerning Annexation Petition # 365, Robert Seymour III & Samuel L. & Linda H. Byrd, owner(s)/petitioner(s); petitioning to annex 15.426 acres into the towns corporate limits; property located on the south side of Olive Chapel Road or (SR 1160) and west of NC55 intersection and includes public rights-of-way; known as Lots 1 and 2 Deerfield Farms (Peakway Village); possible motion to adopt an ordinance to extend the corporate limits of the town.

David Rowland Director of Planning oriented the board regarding this petition for annexation; petitioner needs water and sewer to Peakway Village PUD. Piece between Goddard School and Peakway Village PUD is private residence, eventually thinks will be part of this development, already rezoned for Office and Institutional some time back.

Mayor Weatherly opened the public hearing at 8:20 p.m. and with no one addressing this petition, the hearing was closed.

Discussion followed regarding the draining of pond, with Commissioner Meckes asking if it precludes development for a year. Manager Radford informed the one year delay sets in with clearing of trees and not draining of pond. Staff attempted to uphold review for a 48 month period rather than one year, but the other side's attorney made it clear we were not able to uphold that.

Commissioner Jensen asked if in the original zoning of the property approximately 8 years or so ago, if they were going to drain the pond they had to have additional buffering along Olive Chapel Road; response was not this one. Manager Radford advised there may be another – believed in 92 they had gotten permission to release the recreation easement from the property and the town would allow that to happen; it didn't happen and was never brought before the Mayor and Board, we have not done this; to clear title and clear use of the property they may bring an issue back to us or may not, but is not the end of this particular issue. Commissioner Jensen confirmed it was this property with the recreation easement, with Manager Radford advising yes. Commissioner Jensen asked why we released it, with Manager Radford advising we did not. Town Clerk advised the Town Attorney had been working on this issue, with a resolution having been adopted under the Consent Agenda Item 13, and that he may wish to comment on this. Attorney Fordham addressed the resolution that it was his understanding in the restricted covenants, there was a statement that the recreation easement could not be released without the consent of the town. Town Clerk had researched to see if the subdivision had been approved by the town and apparently came before the planning board, with it not being in the town at that time; they developed it in a manner that did not require the town's approval for the town's annexation or utilities from the town – so, they town never gave formal approval because it was outside it's jurisdiction, in affect, that restrictive covenant revision was not based on any ordinance, not based on any authority granted by the Town of Apex to be put into the covenants and a private party can't make the Town a referee of a private issue whether or not a private recreation easement can be terminated or not and is why this particular resolution is drafted declaring the town is not claiming any authority or jurisdiction over it; title can be clear and private parties can do what they need to do in respect to their issues, but the town is not drawn into a private matter – the reason it's worded the way it is.

Action: Motion by Commissioner Gossage and second by Commissioner Jones to adopt the ordinance to extend the corporate limits of the town. Motion carried.

End of public hearing # 7

Presenter, David Rowland Director of Planning

Public Hearing # 8– Annexation Petition # 366

Public hearing concerning Annexation Petition # 366, Ten-Ten Two, LLC, owner(s)/petitioner(s); petitioning to annex 11.353 acres into the town's corporate limits; property located west of US1 off SR1010 and known as Waterford Green East; possible motion to adopt an ordinance to extend the corporate limits of the town.

David Rowland Director of Planning oriented the board regarding this petition for annexation, with the subdivision needing water and sewer to be served to this site.

Mayor Weatherly opened the public hearing at 8:27 p.m. and with no one addressing this petition, the hearing was closed.

Action: Motion by Commissioner Meckes and second by Commissioner Gossage to adopt the ordinance to extend the corporate limits of the town. Motion carried.

End of public hearing # 8

Presenter, David Rowland Director of Planning

Public Hearing # 9– Annexation Petition # 367

Public hearing concerning Annexation Petition # 367, Pointe at Beaver Creek, owner(s)/petitioner(s); petitioning to annex 11.075 acres into the town's corporate limits; property located on the west side of NC55 and south of Haddon Hall Drive Extension and east of Zeno Road (SR1161), including public rights-of-way; and known as Promenade at Beaver Creek; possible motion to adopt an ordinance to extend the corporate limits of the town.

David Rowland Director of Planning oriented the board regarding this petition for annexation of the Promenade at Beaver Creek.

Mayor Weatherly opened the public hearing at 8:28 p.m. and with no one addressing this petition, the hearing was closed.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to adopt the ordinance to extend the corporate limits of the town. Motion carried.

End of public hearing # 9

OLD BUSINESS

Presenter: Kent Jackson, Director of Construction Management

Old Business Item # 1– Olive Chapel Road and NC55 Intersection

Kent Jackson, Director of Construction Management, presented a project status report for the Olive Chapel Road and NC55 intersection improvements – left turn lane and signal, and reviewing key events taken place regarding this project. Report is attached and incorporated into the minutes.

Bid for these improvements were above funds available and staff went to the developers McIvers and Walgreens asking they pay the overage. Taking the bid at that time was in compliance with the length of time the agreement was executed. Staff met with Progress Energy and discussed the proposed utility relocation; they did not indicate the price of the relocation cost which $120,000 - was not included in the original project estimate to relocate about 13 poles with the lines having been located in NCDOT right-of-way with encroachment agreement; requires moving facilities at no cost to state. Progress Energy had bought easements before NCDOT had bought right-of-way; Progress Energy offered a shift in some of the pole lines and would reduce cost to $106,000 but not enough for significance difference. Town cannot move the poles belonging to Progress Energy. Poles on the north side were moved by the town – 3 poles less than $10,000.

Dr. Beavers had refused to approve easement for guide wire and thus eliminates this offer by Progress Energy. Walgreens offers to pay one half share of cost, Funeral home refuses to pay any of the cost; Walgreen's offer stands if town pays one half share of cost. He advised to do the project contemplated a year and a half – widen Olive Chapel Road and revise the signal and leave the NC55 improvements for the private development including utility relocations – puts us close to $250,000. Original budget project of town costs was about $230,000. NCDOT refuses to pay into the cost of the design cost, purchase of easements or relocation of utilities, as they have committed $230,000 to this project and best we could hope for. Jackson wanted to finalize this at this meeting so they could move forward.

Commissioner Jones asked why move so many poles – 13 being a high number, with Jackson noting it a congested utility corridor as well as traffic. Mayor Weatherly asked his contact with Progress Energy, which was Ken Schafer. Commissioner Jensen asked how many poles were on Olive Chapel and the number on NC55 – agrees it's a lot with the congestion being more Olive Chapel Road; Jackson didn't have the break out, but probably 2/3 more on Olive Chapel than NC55.

Commissioner Meckes asked if the end goal was Option No. 1; encompasses all the improvements that need to be made, with Jackson stating that is the ideal project with no budget constraints and is the best fix for the area considering the development that will take place.

Commissioner Meckes confirmed NCDOT provides $230,000 which is the original amount when the agreement started; with Commissioner Jones interjecting not the cost of the work, but the scope of the project, with Jackson stating no because when first stated the PUD plan was not in the picture – it was us dealing with NCDOT to get their partnership on widening both the streets at the intersection, to get turn lanes and signal upgrade.

Attorney Fordham advised the board they may need some legal advice on this, but he could not give legal advice because his firm is indirectly interested through the Beavers, and would need to refer it to an outside attorney. Mayor Weatherly asked if government relations might interceded on our behalf and get a different cost estimate. Manager Radford responded he would certainly try that and in regard to attorney, staff had talked with outside counsel as Attorney Fordham had told them his position. Mayor Weatherly added if they are absorbent in the cost, there's got to somebody that could bring some sense into that figure; he'd like to investigate other avenues before we put money into that and then last recourse would be legal.

Mayor Weatherly asked if the board wanted to hold back this for a future date to see if we have exhausted our efforts; time frame – order of affairs – thinks the Beavers have resolved their power pole issue and their project is the first in line to open – December; they are clear.

Commissioner Meckes asked if they have widening issues; they do not. Kent McIver advised one issue is the drive onto NC55 is their access also; Jackson responded they do have some obligation for widening based on their site plan; drive that aligns with the post office; they can't open until that is done – they can pave the drive, but can't tie into NC55. Manager Radford stated it may work out in that paving season will be over and won't be able to do it, then the question is would we hold up their CO as result of their access from Chatham and the answer to that question would be no, we would not hold up their CO. Commissioner Meckes added they would have means to gain access and he wanted to be fair about this – he doesn't think its right to come in a year or so later with surprises for folks – somehow we have to work through this so it's fair to all involved.

Mayor Weatherly confirmed the price to move the poles (alternate plan for new guide wire). Jackson stated along NC55 they had agreed to move their line onto poles the town owns on NC55 and provided some savings, but hit a snag on this with the Beavers project for a guide pole – the deal is nixed – and we are at $120,000. Mayor Weatherly will see what he can do and report back.

Commissioner Meckes wanted to know before the $120,000, had the deal been worked out, with Jackson responding yes; the options include the $120,000 – with everything else in option one having been agreed to and a plan to pay for; Jackson added the town and NCDOT was in for their part and the developers were splitting the other – the problem to solve is the $120,000 for Progress Energy.

Manager Radford stated this is the best way to bring it to their attention – numbers are clear and they board could help make a transportation decision. Commissioner Gossage added if the board could give the Mayor some time to work through channels and see what , with Mayor Weatherly interjecting he could probably tell quickly how responsive they will be.

Commissioner Meckes asked the time frame, with Jackson responding he had met with the contractor in the past week to feel out how receptive or not they would be if we had to amend the contract (we've already awarded) to take out part of the work; they don't have any expense except the cost of their bonds he thinks they would agree to which ever way we want to dice this up. Further, he talked about delay, as hard as it is to decide it would be difficult to start going with this in December. Manager Radford noted worse case would be do 35% of it and not be able to continue. Board didn't want that to happen. Jackson continued Progress Energy – once we reach some terms – they will have about six to eight weeks of work, they wouldn't start immediately.

Commissioner Meckes asked if oil prices come down, would asphalt be less expensive – with Jackson responding it would be to his benefit; they did say – with the assumption over winter all issues are worked out, then we begin in March, he said we ask for a modest increase because labor rates go up January 1, but would be magnitude of maybe 2%.

Old Business # 1 continued

Kent McIver stated they were slated to be finished with the Funeral Home first of March, asking if the road construction is delayed to after that, would they still be able to open, not wanting to tear down the old one until. Mayor Weatherly stated they had just had an informal discussion – he has an access point off of Chatham Street. Manager Radford stated primary access being talked about was the Beavers Dental office, with McIver stating on Chatham Street if you look at the plan, it's solely for the Beavers office. Attorney Fordham stated there is one for the Beavers, but didn't know if it were the sole one, he had not looked at the plans. McIver continued it didn't accommodate his building. Commissioner Meckes noted this as a significant time constraint. McIver thinks Chatham access is a private drive for the Beavers and the road driveway they agree to build will service everyone on both sides and another drive in the upper end of the parking lot of the funeral home. Mayor Weatherly asked if he would have access other than the one being talked about, with Commissioner Gossage saying he doesn't think so. Manager Radford stated they would try to work through that. McIver continued if they would give him access if he were to gravel with crush and run until they get started on the other that needs to be done. Mayor Weatherly stated they would certainly work with him on this, that there wouldn't be any real hang up to do whatever is necessary not to hold him up. Commissioner Meckes asked if we weren't Electricity would this have been an issue, with Jackson stating he wasn't sure; with Manager Radford responding it would be an easier go if we were not with Commissioner Jones adding if they were making more money off the land adjacent to these lines, clearly they are not.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.

No one spoke during public forum

NEW BUSINESS

Staff Report prepared by June Cowles, Planner

New Business Item # 1– Site plan – Carolina Express Car Wash

Possible motion regarding site plan for Carolina Express Car Wash, Arenal Group LLC., petitioner seeking site plan approval for a car wash; property located in Lawrence Crossing Planned Unit Development, lot 1 at 900 E. Williams Street.

June Cowles, Planner, presented the site plan for the 4,900 square foot carwash with future covered vehicle detail area and advised further from the staff report which is attached and incorporated into the minutes. Building is red brick veneer, consistent with the Lawrence Crossing PUD; landscape is consistent with the UDO and the PUD plan requirements. RCA is back – lot 5 and lighting and parking spaces are consistent with the UDO and Lawrence Crossing PUD plan. Planning Board reviewed this at their November 8 meeting; was on consent agenda however, one member had concerns with the 40" oak tree slated to be removed due to development and grading. Oak tree will be replaced with 18 – 2 and I/2 caliper red and white oak trees to be planted elsewhere on the lot and within the Lawrence Crossing RCA. Site plan was recommended for approval 5-1. Cowles noted this was a condition on the Lawrence Crossing rezoning PUD Plan: the existing oak tree may be removed if it is replaced caliper per caliper using 2.5 white and red oaks approximately 18 trees. In addition, Cowles added there are several oak trees to the west that were saved – a fifteen foot buffer – through the development they have pushed that planter back to 33 feet – there are several 20, 19 and 10 inch oaks that will be saved in the area and pointed to them on the map against where the cemetery lot is, and pointing to the oak tree in question. Manager Radford pointed adjacent to the Pop's ice cream – the big tree on the front at the shopping center. Manager Radford asked if it weren't worked out before that the tree would remain. Rowland responded it could be taken out if they replaced it with 18 two and one-half inch caliper oaks.

Commissioner Jensen hated to see a mature tree like this go; born before we were here for sure. Mayor Weatherly stated in the attempt to save them, they end up dying anyway. Commissioner Jensen noted it a healthy looking tree. Cowles stated the pavement starts approximately eight feet away from the trunk of the tree and believes the grade difference is about three or four feet difference. Commissioner Jensen asked if there were a way the carwash could be moved towards the property line – is that the set back required, with Cowles responding this was right. They had made an effort and different ways to do this and there are the requirements on the lot. Commissioner Jensen felt the issue was they had graded the lot down around the tree, with Commissioner Meckes agreeing. With no further questions, Mayor Weatherly opened the floor for a motion.

Action: Motion by Commissioner Gossage and second by Commissioner Meckes to approve the site plan. Vote on the motion was 3 – 1 with Commissioner Jensen voting no. Motion carried.

End of new business # 1

New Business Item # 2– Appointment to the Appearance Commission

Mayor Weatherly recommended the appointment of David Horne to a 3-year term on the Apex Appearance Commission and replacing Dr. Baillian Li whose term had expired. Town Clerk will write a letter expressing appreciation for Dr. Li's service on the Appearance Commission as he has been a very conscientious member, but recent business commitments have kept him away from some meetings.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to approve the appointment as recommended. Motion carried.

End of New Business # 2

New Business # 3 - Add On Item # 10 from the Consent Agenda

Commissioner Jensen asked item # 10 from the Consent Agenda Site plan for Duncan Commons located on N. Salem Street be considered separately to discuss landscape.

He had spoken with Anne Grebing, neighbor, who had expressed concern with the landscape and fence. The fence is out of wood, not long lasting and would look dilapidated in a short period of time; he didn't think anything could be done in this case, but asked look forward and get quality in things like that (stockade fencing such as is in his neighborhood).

Leland Cypress plantings are along each side; Grebing asked on her side of the fence if they could put in tall dark leaf camellias; or laurel pendulums – some that would get up in size; the Leland cypress would be the backdrop on the other side. Grebing said the developer didn't talk with her. Joey Iannone, developer, responded Staff Planner Rosetta Radtke had recommended the plantings on site, however, he would be more than glad to change anything, however, Radtke was trying to keep a street theme going and wants things that have longevity to them and not die in twenty years, or so, however, he would be glad to amend the landscape plan in any way; he initially didn't have a wood fence there but thinks staff recommended the fence be put up. He didn't want the fence at Liberty Station, neighbors wanted it and he agreed to put it up and within a few years, those bushes will overcome the fence, with Commissioner Jensen interjecting they would hold up the fence while it rots away, with Iannone continuing he was not opposed to taking the fence out and doing more landscape or if they wanted a powder coated aluminum fence that looks like route iron. He doesn't see the need for the fence there, except to keep critters out, but doesn't think anyone would be going on the Grebing property. Commissioner Jensen stated he was correct, the town was the folks involved, but Grebing wasn't happy with the wax myrtles and he agreed, asking if he would work with her and put in what she would prefer.

Grebing mentioned the trash bin, however he could understand regarding the placement. Iannone responded it would not be dumpster, it would be small containers.

Commissioner Jensen stated Grebing had tried to preserve her property for posterity and asked him to work with her. Iannone responded this is the first he had heard of her concerns; he noted he had talked many times with Radtke about the landscape, and would have been glad to have addressed this up front. He will arrange a meeting with Grebing and Radtke to discuss this. He asked if they were opposed to not having a fence, but heavier landscape, with Commissioner Jensen responding he would not be opposed, but he would have to work with staff, but if he were putting up a fence, it would be split brick or something, but he agrees if you put a fence, Leland cypress – fence is good for a beginning but once it fills in, it may be a good idea and he could understand it; so many buffers we say are opaque, but not opaque until he dies probably.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to approve the site plan. Motion carried.

End of New Business # 3

New Business # 4 – Resolution of Notice Regarding Sewer Route

Manager Radford introduced a Resolution authorizing notice be given to landowners within the Williams Creek Basin an area town anticipates running future major sewer routing and would like to give ample notification to the landowners such that when the town is out in their vicinity they will know that we are surveying, measuring, typos, etc. for several months developing this plan.

Action: Motion by Commissioner Jones and second by Commissioner Jensen to adopt the resolution. Motion carried.

End of New Business # 4

Mayor Weatherly extended an invitation to the Board, Town Attorney and Administrative Staff and their spouses, to attend the Wake County Mayors Dinner, on December 20 at Bogarts in Raleigh.

WORK SESSION AGENDA

There were no work session items to be discussed.

CLOSED SESSION

There were no closed session items to be discussed.

ADJOURNMENT

With no further business to come before the Board, there was a motion by Commissioner Jensen and second by Commissioner Jones to adjourn at 9:30 p.m. Motion carried.

The above minutes were approved on the 7th day of December 2004.

Georgia A Evangelista
Town Clerk

Keith A. Weatherly
Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, December 7, 2004
Mayor Keith H. Weatherly presiding

Meeting to be held at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus
Board of Commissioners Meeting Room (2nd. Floor)

Mayor:
Keith H. Weatherly

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Web site: www.apexnc.org

Mayor Weatherly call the regular meeting of the Town of Apex Board of Commissioners to order on Tuesday, December 7, 2004 at 7:00 p.m. in the Board Room of the Apex Town Hall, 73 Hunter Street, Apex Town Campus. Commissioners Jensen, Gossage, Jones, and Schulze were present. Commissioner Meckes was absent.

Invocation was given by Commissioner Gossage. Pledge of Allegiance was led by Scout Tommy Newman, Troop # 210. Mayor Weatherly extended a welcome to those in attendance.

RECOGNITIONS AND PRESENTATIONS

Mayor Weatherly recognized Jimmy Perry and Angela Reincke with a plaque for dedicated service to the Apex Community in leading the successful promotion of the 2004 Parks Bond November 2004; both are active on the Parks and Recreation Advisory Commission.

Mayor Weatherly recognized Kaylee Dudley, Salem Elementary School student, with a proclamation for being a winner of Red Ribbon Week poster contest; Nancy Caggia, Wake County PTA and Debbie DeRosa, Cary Town Center were present for the recognition (poster was on display at Cary Town Center during drug awareness month).

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and asked for a call for action. Commissioner Schulze asked for separate consideration of item #4. **Action:** Motion by Commissioner Gossage and second by Commissioner Jones to consider item # 4 separately. Motion carried. **Action:** Motion by Commissioner Gossage and second by Commissioner Jensen to approve the consent agenda as modified. Motion carried.

1. Minutes of the November 16, 2004 Board of Commissioners meeting.
2. Annexation Petition # 368, Susan King Byrd and Glenda King Gosztyla, owner(s)/petitioner(s); petitioning to annex 2.592 acres into the town's corporate limits; property located at the intersection of Davis Drive and Old Jenks Road (site for Davis Drive Village); 1) Resolution directing Clerk to investigate Petition; 2) Certificate of Sufficiency of Petition by Clerk; 3) Resolution setting date of public hearing for January 4, 2005.
3. Resolution Declaring Result of the Bond Referendum held in the Town of Apex, NC on November 2, 2004.
4. **Accept proposal to engage into an engineering services agreement with Kimley-Horn and Associates, Inc., and authorizing Town Manager to execute documents (old business # 3).**
5. Budget Ordinance Amendment and Capital Project ordinance Amendment.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set as printed. There were no amendments to the agenda. The agenda was set as printed.

PUBLIC HEARINGS

There were no scheduled Public hearings.

OLD BUSINESS

David Rowland, Director of Planning

Old Business Item # 1– Utility Service and Annexation Agreement

Possible motion concerning an Ordinance Revising a Utility Service and Annexation Agreement between the Town of Apex, and the Town of Cary for the Boundary Line between these two municipalities.

David Rowland, Director of Planning, stated staff has worked with Cary to establish a bounding boundary line agreement showing the map with the line being three segments:

1) Sunset Lake Road up to SR1010 (part of an existing paramunicipal line established as part of the Wake County general development plan)

2) SR1010 to Davis Drive (part of an informal ETJ Agreement that Apex had with Cary years ago having been approved by the Apex Board of Commissioners but not by the Cary Town Council – both have abided by it for many years)

3) Davis Drive to Chatham County Line (established in a 1988 Service Area Agreement with the Cary contract for the water treatment plan – anything north of the line would be in Cary's jurisdiction and anything south of the line would be in Apex jurisdiction).

The agreement recognizes on the Apex area and the Cary area on the plan and shaded to reflect both areas.

Ricky Barker, Town of Cary was here to answer questions.

Highlights of the ordinance to have a boundary line allows:

- Apex and Cary to plan for future and efficient infrastructure extensions
- Developers to know which municipality to talk with when proposing a project
- For modifications or amendments to the line

Commissioner Jensen asked on the southern most part where it stops, asking about the line at Stephenson Road and Sunset Lake Road asking what will occur there. Rowland responded the Town has a boundary line agreement with Holly Springs there that picks up where this proposed boundary with Cary leaves off.

Mayor Weatherly stated this proposed boundary with Cary will be binding, where the Holly Springs boundary is not necessarily ... with Rowland interjecting it has the same affect – the same kind of agreement provided by the General Statutes, but in some areas have not carried it out by the letter. Commissioner Jensen asked to discuss this at a later meeting.

Commissioner Schulze commended the staff for reaching this agreement. He confirmed the boundary agreement was exactly the same as it was as originally proposed which was correct – a 20 year agreement. He clarified:

Section 4 – Notice of Adjacent Annexations: each participating municipality waives the notice described in NCGS except such notice as is required in Section 4 (asked what this means). Attorney Fordham stated the statute requires any town municipal agreement to give notice of all annexations throughout the community with a part of the statute that can be interpreted to allow the parties to specifically waive the notice in their agreement. Absent the agreement, anytime a piece of property was annexed anywhere in Cary or in Apex whether near the line or not, both sides would have to give notice of it. This was an attempt to avoid the administrative burden to give notice of every single annexation in either town. Rowland continued this provides that if we have an annexation on the line, then we would let Cary know about it, but not notifying them of every annexation.

Section 6 – Provision of Service Lines and Other Easements through Annexation Areas: 1) Urban services do not include easements for needed public greenways connections (asked what this means). Rowland responded if there was need to run a waterline across or below the line, it could be done across Apex property and vice-versa and is the same for greenways. 3 – If there are buildings on both sides of the boundary line, by agreement of the town managers of Apex and Cary (he would feel more comfortable if the board was also notified; Mayor Weatherly responded our town manager does that by just telling him you'd like to be notified and not having to put this into the agreement). Commissioner Schulze wanted to assure this was in the minutes; he was thinking more in the future.

Mayor Weatherly gave appreciation to the Cary officials and staff for revisiting this and the good spirit of cooperation and hope to reciprocate when the need came to work on other issues.

Commissioner Jensen addressed the greenway Cary was concerned about, and that we would be working with them to get it in, asking if it had been started. Rowland clarified the one he was talking about; near Green Level West Road. Commissioner Jones responded the one from Green Level going southwest toward Wimberly Road – there was a sewer line and a greenway. Rowland stated this would not preclude us from working together to align greenways. Ricky Barker, Town of Cary, stated this is a future plan, but currently there is nothing in the capital budget or anything for this to occur, but as things progress and the water plant needs sewer then at that time they would consider a sewer and a greenway easement through there and all would have to go through a process. Commissioner Jensen assured him the board was willing to help with everything they can and had said that in discussion of the boundary line before, especially to help on this one.

With no further discussion, Mayor Weatherly opened the floor for a motion.

Action: Motion by Commissioner Schulze and second by Commissioner Jones to approve by adoption of the ordinance. Motion carried unanimously.

End of Old Business Item # 1

Bruce Radford, Town Manager

Old Business Item # 2– Abandoned Water Pump Station Property

Bruce Radford, Town Manager, advised this is the Town's abandoned water pump station property along US64 and Lake Pine Drive. The Town has not had a need for this station in the past nine years and has laid there fallow. Staff brought earlier a request to declare the property surplus since we do not need it for a public utilities purpose. At the time question was raised if it could be used for some purpose. Staff discussed that it could be used for green space; area that could be buffered. At that time an offer was made from Steve Sebastian for $85,000 for 0.46 acres of land. An appraisal in hand is for $135,000 and Mr. Sebastian has offered $135,000. Planning Department submits options for the green space – buffer between Apex and new Bennigans. With the offer of $135,000 on the table, it has sewer easements that run through it with access onto Lake Pine and not on US64; DOT says it can be right-in and right-out, nothing more – no left out as it would impact traffic at the intersection.

Commissioner Schulze presumed development would have to use the parking lot at Bennigans. Manager Radford advised this is in Cary's jurisdiction; they have spoken to Mr. Sebastian about buffer requirements and is up to Cary; based on the size of his building – 1200 square feet, he would have parking space requirements to meet. Right-of-way belongs to NCDOT.

Commissioner Jensen asked if the access to Lake Pine is an easement and how many acres. Manager Radford advised it was 24 feet wide and about 150 feet long.

Mayor Weatherly recalled entertaining an offer for $5,000 for this property; there was some discussion whether the facility should be torn down to sell it at that price; that was a fatuitous day when the deal fell through. He thinks this is a good deal for us and one that would maximize our value to citizens by taking this offer.

Commissioner Schulze felt the opposite in that a few years from now may be saying it was $135,000, could we get a million dollars. He sees no urgency to sell it and there will always be a market to sell it when the town wants too for a particular reason; but, to get rid of it, he's not inclined to do that.

Commissioner Jones understands and respects that and doesn't necessarily disagree except he thinks $135,000 is a fair price for it; a piece of property the town owns in Cary, based on the agreement we just voted on. Frankly, he thinks $135,000 could be put to use buying another piece of property to provide parking perhaps for downtown as an example, instead of holding onto the property, buy it, use it, and swap for another piece somewhere else that we might could put to good use.

Commissioner Schulze added if there were something earmarked, he would be more inclined.

Mayor Weatherly thinks the limited number of uses that this could be put for, puts the value questionable; it's obviously what is it worth to any particular buyer for that particular use, but this guy has something very unique in mind that he can have a going business on that parcel with it's curiarities and he's not sure that if we let this fall through, it might be awhile before there's someone else with those unique needs.

Commissioner Gossage added he could see a reason to keep this property for awhile and maybe maintain a more natural look on that corner, but thinks it's probably better, the scale tips a little bit in favor of going ahead and selling the property and taking the money and looking at something within the Town of Apex that we could spend it on. But he did also want to note that this was on the consent agenda at our last meeting, that Commissioner Schulze had been the one to pull it off and that act alone earned us $50,000.

Commissioner Jensen asked how long ago the appraisal was done for this property - almost two years - $135,000 at a cost of $1,500. He thought it might be wise to get another appraisal before charging ahead.

Commissioner Jones asked to describe the process that they would go through if they decide to sell this property; not just signing the paper and closing. Attorney Fordham advised the only thing before them was whether to declare the property surplus, and if its declared surplus, it opens the door to entertain a formal offer; request in the event it is declared surplus was a more specific contract proposal because the potential purchaser may want to have some conditions about getting the zoning they want; it's difficult to know how to respond until you see a specific contract and then the process after that would be, if the contract was attractive, to enter into the upset bid procedures. You are not closing any doors to have to sell or not sell by declaring surplus – you're just taking the first step that would be required to sell it. Action would be to declare it surplus property.

Mayor Weatherly opened the floor for a motion.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to declare the property surplus. Vote on the motion was 3 in favor and 1 in opposition, with Commissioner Schulze casting the opposition vote. Commissioner Jensen noted a couple of classic oaks asking to preserve them in some manner when the property is sold; preserve some of the natural look Commissioner Schulze was concerned with. Motion carried.

End of Old Business # 2

Old Business # 3
Item pulled from the Consent Agenda - Item # 4
Accept proposal to engage into an engineering services agreement with Kimley-Horn and Associates, Inc., and authorizing Town Manager to execute documents.

Commissioner Schulze questioned the study of the area that may have a lot of variables, whether or not we are going to close Center Street, where the track crossings will be – he questions the wisdom of spending money on a study that has factors we don't know about yet. He asked the others thoughts on this.

Commissioner Jensen had discussed this with Commissioner Schulze and he concurs; the concern being it is early – developers are coming in but on the other hand he understands in talking with the Manager that part of the reason is to put something in his back packet when he goes to talk with CSX. He asked for $20,000, how much do we need this and Commissioner Schulze had mentioned before, this isn't put out for bids it's just to one company to take a look at it.

Manager Radford added to air on the side of caution that spending this money at this time would not be absolutely necessary. Kent Jackson and Manager Radford plan to travel to Jacksonville, Florida to meet with CSX folks, to put forward their best thoughts as to how they can get an additional crossing, at least possibly as many as two; they want to talk further about a quiet zone; talk about four quad gates and four quad barricade – they can live without this for the time being, but did want to be able to tell them what the impacts would be and what they believe negative impacts would be if Center Street were closed. In the mean time if the Board would like to hold this in abeyance he would be glad too.

Commissioner Jones asked when they plan to visit CSX. Manager Radford is in hopes to go immediately after the first of the year, hoping before then, but didn't work out yet. Commissioner Jensen asked if this study would include Center Street and how this would interact. Manager Radford responded when talking with CSX, they would talk about every crossing currently in Apex and every potential crossing we could have. Commissioner Jones added, the ones proposed we close; the question is were you expecting Kimley Horne to give you a summary of what impact that is going to have to close the three proposed crossings they are proposing to close. Manager Radford responded NCDOT primary concern is Center Street; we may an attempt to try to pit the NCDOT traffic people against the NCDOT rail people and obviously they have different concerns – one group tries to keep cars from going across the railroad tracts – the other wants to insure the movement of traffic – he thought they may gain some headway there. They were not as successful as they thought they might be; based on this they want to look at what the impact of closing Center Street and the number of cars that use it daily, the average number of daily trips that are done, what impact it will have on Hunter Street and what impact it will have on the new Trackside collector street. He continued in the mean time, they would try to find a way to do without it.

Commissioner Jones asked how much if any of it would be done by traffic impact analysis as a part of the Trackside proposal. Manager Radford responded the major part of the TIA that the Trackside groups both north and south would have to do would be to talk about the amount of traffic carried that would be on Trackside drive – the Peakway – once the development was done based on the number of square footage of the commercial development they intend to have and the number of residential units they expect. Commissioner Jones added but not the off-site impacts elsewhere in town of closing the railroad crossing; Manager Radford responded that's right. Commissioner Jensen clarified it would not be a part of the study; Commissioner Jones responded it will not be part of the required TIA for Trackside, but part of what Bruce is proposing; with Commissioner Jensen interjecting this will be part of what Bruce is proposing; Commissioner Jones continued it wouldn't be done ... with Commissioner Jensen interjecting this will take care and fill that void, is what is being said. Manager Radford added that if Trackside north and Trackside south developers propose to build the Peakway as they expect them to do they will not take into account what the impact of closing Center Street will be. Commissioner Jones continued that in other words, we wouldn't have any ammunition to have in their pocket with CSX from those TIAs.

Mayor Weatherly asked the board's pleasure - offer to table this for future consideration. Commissioner Schulze asked if this study would be done by the time they plan to go to CSX. Manager Radford didn't think it would be completely finished. Manager Radford asked Kent Jackson if he had any indication that they would be finished by the middle of January. Jackson responded when they had first talked, it was having it done by the end of the year, this was about three weeks ago when first talked – probably the second week in January.

Commissioner Jones felt it seemed to be money well spent; closing three railroad crossings and the three they are proposing be closed will have a major impact on transportation flow from one side of town to the other and the more we can demonstrate what the impact will be, the better off and thinks its $15,000 well spent.

Mayor Weatherly opened the floor for a motion.

Action: Motion by Commissioner Jones to accept the proposal to engage in engineering services agreement with Kimley-Horne and Associates and authorize the Town Manager to execute the documents. Second by Commissioner Jensen. Commissioner agrees if we... the concern he had was it didn't seem to take into account anything else but Trackside road and if it's taking into account Center Street – he thinks it's very important that we have that information with us – he agrees with Commissioner Jones; he doesn't think this fully at least to his mind explains what we are going to be doing; he thinks we are going to be doing a lot more in this study.

Commissioner Schulze having said he tends to agree to; the important thing to him is that the study be completed by the time the Manager goes to talk with CSX and would say delay the trip until this is done.

Commissioner Jones asked if he correctly stated what they are going to try to accomplish, what we are asking them to do. Jackson responded we still hold some hope that – we have not spoken directly with CSX – the original proposal from Kimley-Horne included the analysis of the impacts of closing Moore Street and closing Center Street and redistribution or likely redistribution of traffic and drove the cost up to $35,000 for this proposal. They chose to wait on that with the hope that when talking with CSX, one on one, wanting to hear what they have to say about what we will be required to do and why we came back asking Kimley Horne to adjust this proposal to wait until later on the analysis of the closures until we have direct conversation with CSX. Commissioner Jensen clarified that he was saying this doesn't take into account the closures (it does not with Commissioner Jones stating he misunderstood this and was the basis he thought they should move forward is the impact off-site from Trackside). Commissioner Schulze was reading it the additional services offered the traffic count or intersection analysis – he took that to mean off-site type work – implying that was not included in the original agreement.

Commissioner Jensen asked if we could see a map of the area they are going to study or were they talking about this one road; a map would clarify it for him as to what he wanted to do. Commissioner Schulze felt there should be definite clarification as far as what's going on with this. Jackson clarified the current agreement in front of them was to study the collector street pattern within Trackside; one point brought up earlier was the timing of it – felt the timing was important – staff has a site plan that has not come to boards, but submitted for Trackside north that shows where the collector street for that northern development would connect to the Peakway – once done, this ties down what has to be done on the southern tract and why timing wise it important to look at this; also the reason they threw in the analysis of the structure is because the limits of that will also have an impact on where the collector street running from US64 down to Hunter Street where that point will occur. That's why the timing is important.

Commissioner Jones thinks that's valid; he felt he needed to get more detail on this. Action: Commissioner Jones withdrew his motion and Commissioner Jensen withdrew his second. Commissioner Jones asked they verify what they were trying to accomplish and what's going to be done essentially on the town's dime vs. what is going to be done by the Traffic Impact Analysis that would be done under ordinary circumstances by the petitioner for Trackside; are we duplicating any effort there; that's his concern.

Mayor Weatherly added this could be put on the next agenda if staff is ready; it was the consensus of the board to do so. Mayor Weatherly asked for a motion that the board delay action on this and it be put on the first agenda that staff can be ready to address those issues. Action: Motion by Commissioner Jones and second by Commissioner Jensen to do so. Commissioner Gossage added this brings them to the earlier issue of whether or not they should be looking at the affect of closing Center Street and Moore Street and how that would impact the Town, how that would impact any development in Trackside because they will assume then that traffic from Center Street is going to go over to the Peakway, so, that's the kind of thought that this was going to do, so if town staff thinks that is valuable, then having a proposal and an estimate of the cost to do that at our next meeting. He asked if this was clear. Motion carried.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.
No one spoke during public forum.

NEW BUSINESS

Lee Smiley, Finance Director

New Business Item # 1– Town of Apex Annual Financial Report

Presentation of Town of Apex Annual Financial Report for Fiscal Year End June 30, 2004 by Keith Joyce, Mills, Rouse & Company.

With the Comprehensive Annul Financial Report in hand, noted this is report prepared under GASB = 34, a change in government financial accounting standards that took place last year. Audit Highlights are included. Audit opinion – "Clean" – financial statements present fairly in all material respects the financial position and the results of the operations and the cash flows of its proprietary fund types of the Town for the year ended June 30, 2004.

Certificate of Excellence – Town received the "Certificate of Achievement of Excellence in Financial Reporting" from the Government Association for the June 30, 2003 CAFR (given to financial reports achieving highest standards in government accounting and financial reporting). Town has received this certificate for the past eleven years. The CAFR for June 30, 2004 will be submitted for review this year.

There is no management letter – there were no material findings of any type – the first year in their firm's history to his knowledge that any town audit did not have a management letter. He noted this quite an accomplishment to its self.

He answered questions from Commissioner Schulze and Gossage. The Board accepted the audit report as presented.

End of New Business # 1

Bruce Radford, Town Manager

New Business Item # 2– Proposed Development Project

Town Manager Radford recalled some time ago Perry Verille with Toll Brothers, Inc. had visited the Town with an interest to do a proposed development project in the Northwest territory of the area the board solidified the boundary with Cary earlier in the meeting. The proposed development is an upscale development and would accommodate homes unlike any that are currently in the Town of Apex – problem we have and staff could not help him further was the area in question is outside the town's current growth boundary. Verille would be required to expend large sums of money in order to be able to determine whether or not this project is feasible for him on a cost benefit analysis basis and before asking him to proceed wanted to assure he felt as though he was on comfortable grounds – couldn't get him there without a discussion with the board about the town's existing Urban Growth Boundary. The area is about three quarters of a mile outside the current area and he has designs on several tracts of land in the general area; in the past we have talked specifically about the Beckwith Farm and is one of the areas he's talking about. Verille came forward to talk about the proposed project. Manager Radford continued if the board had an inclining toward not adhering to our existing growth boundary, Director of Planning David Rowland has comments he would like to make about this.

Mayor Weatherly wanted to weigh in on what's being done asking the Town's Attorney to weigh in on any legal perimeters the town needs to be mindful of. He continued we are being asked would the town's urban growth boundary preclude the consideration of this project and certainly not to cast favorability or un-favorability on the project itself, but whether the boundary itself would be a wall which couldn't be breached and so the developer shouldn't expend any funds to try to breach it, with Town Manager Radford agreeing with the Mayors statement.

Mayor Weatherly asked the Town Attorney if the board was on the right track to consider this. Attorney Fordham advised as an initial matter, when an ordinance, resolution, or policy is enacted, a snapshot in effect is taken in that action has it's meaning at that time, so a board should not try to interpret the meaning of some action it took at a prior time – example: what does this ordinance mean; the board's role is to enact ordinances, make policy decisions that result in ordinances, resolutions, policies, so unless a quasi-judicial type matter that is provided for by statute or by ordinance comes before them, they shouldn't interpret their own ordinances, that's the role of town staff – it doesn't in any way preclude the board from listening to proposed development of a general area – you could consider whether the present ordinances, resolutions, and policies are appropriate or that you would want to consider changing them to accommodate conditions or a general type of development in an area. Also, if someone asked for a general opinion as to whether you are likely to approve something if a proposal were presented to them; you really shouldn't express an opinion on that.

That doesn't in anyway preclude them from listening to in a general way, a proposed development in an area, so you can have information and data to see whether the town's ordinances, regulations, resolutions and policies are what you do want in place in light of potential development in and around Apex. He added he could go over what the policy says in terms of procedure if it would help with the general statement.

Commissioner Gossage asked if this meant there is or is not room for the Board to be arbitrary with the growth boundary if they say, we like this development, but don't like that one. Attorney Fordham responded there should never be anything done that is arbitrary but the annexation power is a little different than other powers – the town never has an obligation to annex a particular property and the most general legislative determination is whether or not to annex something – if you think it's in the public interest, you don't have to give a reason why you do it; it just can't be for an illegal reason – you have broad discussion to annex areas. The slight modification to that is there is a policy in existence, and he has not gone back to look at the minutes and see the level at which the growth management plan has been adopted, the policy that provides for the extension of the growth management – the urban growth boundary or annexation beyond it, so he can't tell them now what's an ordinance, what's a resolution and what's just a policy by motion. He thinks what they are is policies by motion – and they don't bind a board, the board can always change those. An ordinance doesn't bind a board in the sense that an ordinance can always be changed – an ordinance is binding on the people that implement the ordinance until such time as it's amended or changed. In terms of extension of the growth boundary, there's a policy in place that provides for petition to extend it, a public hearing where you review five criteria that relate to whether or not to extend it. With regard to annexing beyond it, the basic policy there is to follow your normal annexation procedures and then you consider three criteria to determine whether or not it's appropriate to go beyond it. A policy is not legally binding on the board but the board just as general legal practice – best practice should follow its policies and if they find a reason they shouldn't follow the policies, should amend the policy before taking action contradictory to it. It's somewhat complicated in that some of these matters find their way into what's considered a comprehensive land use plan as it relates to zoning, so it's not that it doesn't have any legal affect; asking if this was confusing.

Mayor Weatherly stated for the purpose tonight, he thinks they are discussing whether the growth management plan is basically going to be held a strict adherence, compliance with or whether their temperature is such they entertain possible projects such as the one he's going to discuss, without discussion of the merits of the underlying project. Attorney Fordham stated this was right and the policy does have two mechanisms that built in whereby they could extend the boundary or annex outside the boundary.

Mayor Weatherly welcomed Verille. Verille stated Toll Brothers has an interest in this particular area of Apex for numerous reasons: widening of NC55, new Wake County Schools in the area, shopping at NC55 & US64 – the fell west of NC55 in Apex is prime for the type high-end residential development that his company does. They are unique among corporate builders in their market as their average sale price with Toll Brothers was under $600,000 nationwide across the twenty-one states they build in. He referenced their Briar Creek in Raleigh and would be proposing similar homes for this area, with the majority of the homes in the $400,000 to $600,000 range. This discussion started because they came to the town concerning how to get sewer to the area because of the sewer boundary issue. They were told before they could get that far into discussion they would have to discuss this boundary and if the boundary doesn't get moved .... then what happened was this area north of the current boundary up to Green Level West Road and west to the county line almost becomes never-never land for anybody, if the boundary can't be moved then they can't get sewer from Apex and if they can't get sewer from Apex their engineers are telling them based on soil analysis that nothing will get done with this land because it will not perk and will not be feasible to develop even as large lot subdivisions for them or anybody else; they would be looking at very low density in this area and doesn't think developers would come in to develop it. Before they spend the time and effort and funds to move this further, at their suggestion, are here to get some indication as to whether the line can be moved and if it can be, then they are ready and willing to proceed to move further with it. They have several of the parcels already under contract and several more that will be signed in the next few weeks if they get a favorable indication from the board. In the three parcels they are looking at probably over 400 homes.

Commissioner Jensen asked the average lot size. Bryan Purdy with McAdams responded conceptual plans illustrate on two parcels, the Beckwith and Robert's Rode piece – two separate lot sizes 80' wide lot with minimum square footage of 11,000 and 95' wide lot with minimum square footage of 13,000 minimum single family homes. Commissioner Schulze questioned the site data on the map there's Cary lots Apex lots. He explained the west portion led them to believe that may work better as Cary jurisdiction, since then it makes more sense to them this be Apex as its within the planning jurisdiction of Apex. Not only would this parcel be in Apex zoning wise, the piece next to it additionally. Between the two pieces they would perhaps pick up another 100 lots on this plan. Commissioner Schulze asked if this would have to go into Apex. Verille stated yes, the only piece that is Cary is the portion of the Roberts property on the north side of the boundary utility agreement, everything we are looking at is Apex. Purdy added approximately 320 acres. Commissioner Schulze asked the square footage of the homes (3200 to 4000 square feet - based on Briar Creek and their plans).

Mayor Weatherly thought as far as the urban growth boundary, it was right for the time when they were allocating sewer very miserly and with no immediate prospects for any relief from that allocation in the fact they had to be careful with that. Now he thinks we can see the light at the end of the tunnel with the regional plant and timetable coming plus we now have 1 million gallons we haven't used that Raleigh sold us that we can see the chance for additional opportunity in this and certainly not to send the signal that he may say or that the fact that what we may do with the growth boundary that we are signaling unfettered growth in population. He thinks our measured course is the right one for now having emphasized commercial but he thinks we need to look at opportunities like this not to say that anything about this particular one is right for us or that we would ultimately approve it but would think we ought to have flexibility and the growth management plan particularly in the area and that based on what the future holds that the restrictions of the I-540 corridor is probably too tight too much restrictive for us to be able to look at opportunities for quality unique residential growth that would accrue growth in our tax base. He would propose to the board for staff to look at how we need to formally modify a policy, or whatever we have done previously to signal that we would entertain proposals for growth outside the boundary. He asked the board for their comments.

Manager Radford added with this, he thinks the board may benefit from hearing what the Director of Planning David Rowland's comments and concerns are and see what sort of proposal he might frame as a result. Commissioner Gossage asked if he meant growth outside the boundary line or a redrawing of the boundary line. Mayor Weatherly responded that's a good topic and stated he didn't know that we needed an arbitrary line frankly, but would be open if the constrictions between us and the Chatham County line are finite, but as far as drawing another ... we thought the corridor with the I-540 was a demarcation line that was easy to see and define.

Commissioner Jones added as he recalled, they knew how much finite amount of sewer capacity and knew an approximate population that would support, so we asked, tell us what's the area – 40,000 was the number they were working with – if it built out to the land use plan specifications, where does it go and they came back and said it happens to be here at the I-540 which was a natural boundary line and was what we based our growth boundary on at the time. He thinks with all of our policies and plans we should review them on a regular basis and some flexibility sometimes is in order, whether or not – do you treat it as a real boundary line – you can't call it a boundary line and go over it, you call it something else. He's also concerned that as they plan for transportation and other things in cooperation with NCDOT and others, that if we put something there at I-540 and he's thought about this since we did this, that says this is our boundary line then it indeed is going to become a boundary line and as we need too and want to grow to the south and west, we may not have those connections over and through and under, whatever it might be I-540, so we need to consider that as well in addition to, yes, there's probably some great development opportunities outside this line, and thinks there needs to be some flexibility but not real sure how to do that and we are not going to decide that tonight.

Commissioner Gossage intends to agree because if its a boundary line and we are making an exception to the rule where we allow something to grow outside it, whereas, if we want to encourage infill and if we want to encourage things to grow close to town first; naturally they are going to a little bit because not every project is going to pay for water and sewer to be taken out, but if we want things to start close to town and work out then having some sort of a line makes sense.

Commissioner Schulze felt if we are going outside it really should change the line; he asked if we are proposing here to drop the line all together. Mayor Weatherly responded, currently, if we are sending the signals, which we are obviously by boundary, that we are not going to entertain anything beyond that, no matter how good or how quality or how unique it may be, but he thinks the extent of our development is obviously something that would be limited by the extension of water and sewer out there and even if we didn't have a line on a map, that it is certainly going to be limited by the willingness of the developer to run lines that far and for us to obviously offer infrastructure out that far.

So, that could continue to grow out over the years but he thinks what the Toll Brothers tonight – a prime example, are we, do we want to, as a policy decision to say no, we don't care what it is, how good it is, what the quality is, we don't want to consider it or hear about – we're going to maintain this urban growth boundary even knowing that we are going to have sewer capacity coming online and we have almost an infinite amount of water capacity, do we want to limit us from Toll Brothers or other developers bringing this kind of quality development to Holly Springs or Cary which aren't sending similar signals to developers, he thinks we ought to leave ourselves open by whatever mechanism we choose to take to at least see what development opportunities are out there, and obviously he thinks other things will come in as we see that we can provide water, sewer, police, fire all the other things we do and the rate of our growth, population, that would be something we look at too. To say no, not now, that's exactly, the story that's told time and time again about Apex is the one that the developers of McGregor came to our predecessors and asked would we annex McGregor so they could get water and sewer and this board, our predecessors said no we are not interested in doing that. So the rest is history. Would we now, do they think McGregor is a natural part of the Apex community more so than Cary in the days that it was done, of course, Cary Town Center was miles away and Apex was a natural part of that property but the decision made then said no and the rest is history. He would obviously like to see that golf course and the commercial property as part of our community and US1 would be our natural boundary if we had one, but he thinks we have a similar time now asking if we are going to be closed off to any potential development beyond this corridor now that we can see the initial reasons we put it in place, are no longer there, being infrastructure limitations – he thinks clearly we can see beyond that now and those limitations are no longer such that we need to be constrained.

Commissioner Jones felt we should also keep in mind we have corporate limits outside this boundary line already and in fact were there when we put the boundary line in place in the Olive Chapel Road area. We are already outside of it and was then; we knew that at the time.

Commissioner Schulze added he whole heartedly agreed with the Mayors comments; he thinks we want to remain a vibrant town and would be foolish on our part to deny or turn away development like this, especially from talking to people he knows that have the force to move out of Apex because they can't find next level of housing they are looking for and have to go elsewhere. It's been a big issue for him all along and to find an opportunity like this that comes to Town he doesn't want to shut the door. He continued another good point from the Mayor is that the reason we put the boundaries in effect were valid at the time, but no longer valid; he thinks it would be wise for us as a commission to re-evaluate the urban growth boundary and appears to him it warrants removing all together.

David Rowland, Director of Planning, stated another fact to consider are our friends to the south, and their actions; he thinks maybe that is an important factor when they think about change or modification to the urban growth boundary. Commissioner Jones asked if he were asking them to read outside the lines, with Mayor Weatherly adding unfettered may be a good word regarding their growth policies are to the south. He continued good opportunities will go one place or another – investment capital is not going to stay in a bank account somewhere, it's going to be used to enhance somebody's tax base, if it's good quality stuff, the pleasure of this board is to entertain such stuff, such development, he sees no reason why we shouldn't anyway. Commissioner Gossage added and particularly when we it's development in this area, he's more encouraged now that earlier tonight we approved the binding agreement with Cary, so he's more likely to be enthusiastic about development in this area. Commissioner Schulze asked for the record the previous boundary agreement with Cary – this would have been Cary if we agreed to the previous one. Mayor Weatherly stated it was first discussed as a split community where there would be a street with one side Cary and would be interesting municipal elections in that neighborhood.

Commissioner Jensen commented that the boundary was originally put in place for the sewer capacity and still there to a degree; but, certainly he looks at I-540 as being not a good boundary, from his own views, because here's a thoroughfare going through there and he could see moving the boundary on the other side of I-540 because you have access to this main artery. In terms of moving the boundary all the way out to grab this development, he personally has trouble with that, but he has no trouble with what they had talked about before and that's where they had said, if they see a special development such as a golf course community, then we have the right as a board, obviously, to make the artery and make the connections out there and thinks that's what we are really looking at. To move the boundary out there is probably not a good idea because we want infill, but certainly he can see annexing it and working with the developer and the people in the area to make sure that's what they want, because that's all a part of the equation. He has no problem with that. He thinks what had been talked about before with respect to the golf course community or the special community gives us an extra special little lever to get what Commissioner Schulze had mentioned as the upper tier type development in here.

He knows four families that moved from here, Apex, because there wasn't something to move into; he thinks this is a good idea, but not so sure about the size of the lots, he'd rather see a bit bigger lots, with Commissioner Schulze interjecting that he agrees with that, and Commissioner Jensen continuing at the same time cluster housing as long as they have large open space and one of these does but that's because of the flood zones probably. Average density he thinks is the key to these developments, more than anything else, it's average density and if they could look at that and keep that average density down, and offer the cluster housing, then we'll have something that's good for the environment to a degree if call growth good for the environment; but, at least it want impact the environment as bad. He agrees with Mayor Weatherly in terms of looking at it, but doesn't think we need to move the boundary all the way out there, he thinks we need to keep a handle on that lever that says this is the type development we want, if we are going to reach out with a long artery of any kind. Commissioner Jones said call it something other than a boundary, with Commissioner Jensen continuing he doesn't think we should move the boundary out there because we want infill, with Commissioner adding right.

Commissioner Schulze questioned, and agrees we want infill, but asked how much it really encourages infill; does someone look at property outside the boundary and then inside – he doesn't know if that works or not. He doesn't see... he thinks it's different type of people, some people like being in the out skirts, some like being in a more urban area; he doesn't know, he always questioned how much that does force infill.

Commissioner Jensen responded that he thinks we need a balance and thinks we have a handle on the lever if we keep it without saying the boundary is going out there; but we will allow that satellite, is really what we are looking at if we try to keep our arm in that. He hates to see the boundary move out and then we are back to the same situation.

Mayor Weatherly added we can always have a lever because we can say no, we are not going to annex that, we are not going to provide water and sewer to that, no matter where it is, we can disapprove anything that's adjacent to our current city limits if we wanted to. We have the ultimate and the folks sitting here in these seats the next go around may have a totally different take on it but we always have the ultimate leverage by saying no; just by saying we have a growth boundary, it doesn't mean we are going to pre-assume the approval or not of any project.

Commissioner Jensen added what the planning department would want us to do is get this infill and once you do expand your boundaries out there, it makes the decision to say no and we have not said no very often, as they are well aware; to anything – it would be nice to take a look at this a bit more, massage it and get upper class stuff.

Mayor Weatherly added what he was saying as far as having a line or not having a line, why would we not want ... why would we want a developer to say, boy, Apex, all the things that go into Apex, we'd love to be able to put some investment capital here, but we are not even going to talk with those folks because they have an arbitrary line and so it goes to Cary or Holly Springs as opposed to why not let them go down and talk to the Planning Department and say, is this something that would meet ... do you think it would be worthy of us to invest some money, some predevelopment costs – why preclude us from at least the first blush look at something that may be truly right down what we are looking for, not necessarily next year, but five or six years from now.

Commissioner Jensen stated that he thinks that is what we are looking at here; he thinks we are on the same.... with Mayor Weatherly interjected just to move the line out of scotch isn't exactly what he is saying. Commissioner Jensen was saying we have the right to move the line where we want to providing we think that is going to be the type of development that we would like to see; so much of the time we see the cookie cutter stuff come through and it's hard to say no. We did say no to one, one time on Hwy 55 and the beauty of that is we said no, and the next time it came through, if you recall, it came as a housing development, but much better.

Mayor Weatherly asked what if a developer came to us with maybe a golf course or without or something unique about it that you would think would be great all the way out at New Hill Road which is an extension of 751. Commissioner Jensen felt we would have to look at the folks in the area would want, and would have to look at cost. Mayor Weatherly asked would he say arbitrarily we went too far, should we look at it; with Commissioner Jensen saying consider that, absolutely. Mayor Weatherly continued that was all he was saying, he certainly wouldn't advocate over the line, because we are in Chatham County beyond that, he would say that is something that he would even draw the line in trying to move into Chatham, but as far as our potential being fairly unrestricted by an arbitrary line, is all he's saying, at least being able to look at something, not to signal to the development community that, heck no, this parcel, but not this one because there is a line on the map.

Commissioner Jensen responded that's really what we had talked about two years ago as he recalls with respect to the golf course community and things like that; that's exactly what they are talking about here, if it's really upscale, he could understand going out, but if we are getting cookie cutter again, absolutely not. Mayor Weatherly added no, no he agrees, cul-de-sac cookie cutter , with Commissioner Jensen saying cul-de-sacs are ok and he lives on an cul-de-sac and thinks they are wonderful for kids, even older kids like himself. Mayor Weatherly could see the old R-8 subdivisions.

Mayor Weatherly asked the Attorney and Director of Planning if he were getting the just of this as far as annunciating a revised policy that would send the correct signal to folks that may be curious about such things. Attorney Fordham responded that he thinks he can advise the Director of Planning as to what legal options they have and they can make a proposal.

Mayor Weatherly added he would like to ask the board to entertain a motion that in his thinking, just direct staff to make some recommendations as options, what to do with the growth management plan as it relates to a boundary; options obviously come to mind that have been talked about here; what we need to do to clarify our message, asking if we could do this and formally ask staff to put together something that we could have as a record that we've at least done this tonight.

Commissioner Jensen asked if he were saying write a policy paper, with Mayor Weatherly saying come back to us and say here is what our policy is; he had a brief conversation with Attorney Fordham tonight and part of this is elaborated in a policy statement, but it might refer back to the comprehensive plan and what has legal statutory ramifications and what doesn't, its not clear on the first quick look. Obviously, he caught the Town Attorney cold but he needs to look at the legal as far as statute and then policy wise, we need to definitely look at that.

Commissioner Jensen thinks connectivity in the roads definitely have to come into consideration more when going a mile away in the policy.

Mayor Weatherly asked if there was a motion to ask staff to do this.

Action: Motion by Commissioner Jensen and second by Commissioner Schulze to ask staff to follow up with their requests. Motion carried. Mayor Weatherly expressed appreciation to Verille for looking at Apex and agrees with what he had said about this community.

End of New Business

WORK SESSION AGENDA

There were no work session items to be discussed.

CLOSED SESSION

Mayor Weatherly asked for a motion to move into closed session to receive legal advice from the Town Attorney regarding:

1. Possible condemnation of easement for Chanticlair Drive Extension, and
2. Possible lease for a police substation at Beaver Creek Crossing.

Attorney Fordham asked if he could add discussion regarding the Creager condemnation. Mayor Weatherly added this item as requested.

Action: Motion by Commissioner Jones and second by Commissioner Gossage to move into closed session at 8:30 p.m. to discuss the items as requested. Motion carried. Minutes of closed session are recorded separately. Motion was made by Commissioner Schulze and second by Commissioner Jones to move out of closed session and back into regular session at 9:06 p.m. Motion carried.

No further action was taken in regular session.

ADJOURNMENT

With no further business to come before the Board, a motion was made by Commissioner Gossage and second by Commissioner Jones to adjourn at 9:09 p.m. Motion carried.

The above minutes were approved on the 7th day of December 2004.

Georgia A. Evangelista
Town Clerk

Mayor

TOWN OF APEX BOARD OF COMMISSIONER'S

Minutes of Tuesday, December 21, 2004
Mayor Keith H. Weatherly presiding

Mayor:
Keith H. Weatherly

Web site: www.apexnc.org

Commissioners:
Mike Jones
Bryan Gossage
Doug Meckes
Bill Jensen
Gene Schulze

Mayor Weatherly called the regular meeting of the Town of Apex Board of Commissioners to order at 7:00 p.m. in the Apex Town Hall, 73 Hunter Street, Apex Town Campus Board of Commissioners Meeting Room. Commissioners Jensen, Gossage, Jones, Meckes and Schulze were present.

Mayor Weatherly led the Invocation. The Pledge of Allegiance was led by Cub Scout Troop # 312.
Mayor Weatherly extended a welcome to all those in attendance.

Commissioner Meckes recognized William Henry Benfield Troop # 209 working towards achieving his Government Citizenship Merit Badge.

CONSENT AGENDA

Mayor Weatherly presented the consent agenda to be set and ask for a call for action.

Action: Motion by Commissioner Gossage and second by Commissioner Jones to approve the consent agenda. Motion carried.

1. Minutes of the December 7, 2004 Board of Commissioners meeting.
2. Minutes of the December 7, 2004 Board of Commissioners Closed Session (separate cover).
3. Wake County Tax Report.

End of Consent Agenda

REGULAR MEETING AGENDA

Mayor Weatherly presented the regular meeting agenda to be set; with no amendments the agenda was set.

PUBLIC HEARINGS

Dianne Khin, Senior Planner
Public Hearing # 1– I-540/South Salem Street
Public hearing regarding I-540/South Salem Street Small Area Plan; Khin noted this area a gateway into Apex and largely undeveloped.

Meg Connolly, Land Design, Inc. presented the I-540/South Salem Street Small Area Plan; identified as the location of a future activity center. Comprehensive Plan recommends this interchange be planned prior to the onslaught of development pressure so the Town could guide development rather than development occurring in a piecemeal fashion.

Khin reported the plan stated this area should feature compact development with a mix of retail, office, and residential uses, with multi-modal pedestrian, bike, auto, and transit access to a variety of land uses. This type of development is attractive to transit, and would be conducive to future regional bus and/or rail transit. The staff report regarding the plan is attached and incorporated as a part of the minutes and addresses public participation, goals, recommendations and implementation. Connolly recommends coordinating with NCDOT and TTA to make most of land holdings.

Planning Board considered the plan at their December 13, 2004 meeting and unanimously recommends approval of the plan; further offered an amendment to the recommendation "If a signalized intersection on Apex Barbecue Road between Kelly Road and South Salem Street is deemed necessary, locate it at the intersection with Town Side Drive, at the entrance to the planned Town Park". Planning Board felt this was too specific as the Town's Transportation Plan does not identify traffic signal locations, and premature given a traffic study will need to be done to determine traffic signal locations. Staff recommends this recommendation be removed from the document. Staff recommends approval of the plan.

Commissioner Meckes addressed rail transit, wanting to keep options open to travel with this center being a site that may well be for buses, park and ride for future transportation to the areas north, and felt this was the most important part of the concept. He further noted the transit status would not be just for this location.

Commissioner Jensen confirmed the average density (11/12 units per acre). Commissioner Gossage asked the estimated number of acres of open space of the 500 acres (32% includes stream buffers); excluding town park 114 acres (20%). Khin addressed the waiver of RCA within the small area plan. Commissioner Jensen desired to have RCA off-site with this greater amount of density, and further noted the amount of RCA for the overall site w/compact homes. Khin responded this area requires 20% RCA (50% to the south, 10% to the north). Commissioner Jensen further felt RTP was a 60's concept and this would be an opportunity for office / workplace. Connolly felt this would be highly likely to be a part of the overall envelope and not an RTP concept, and there would be restaurants and shops for those working there.

Mayor Weatherly opened the public hearing at 7:32 p.m. No one spoke. The hearing was closed.

Commissioner Jensen asked if underground parking had been considered (the parking will be incorporated in the center). Commissioner Jensen asked if the image on the other side of I-540 would create another study. Khin responded there is no vision for the other side; there would be need for another study. Khin advised the 2025 Land Use Plan shows O&I in the lower quadrant with some office maybe on the other side, and there would not be retail.

Action: Motion by Commissioner Meckes and second by Commissioner Jensen to approve the plan with the deletion of the signalization statement. Commissioner Meckes saw this as a bold step forward for our community; noted the construction to the north and wants to avoid those things here; the plan was well thought out and would be a landmark for Apex. Commissioner Jensen hopes to purchase off-site RCA, thinking it would be great if there's going to be higher density homes to have RCA purchased off-site. Motion carried unanimously.

End of Public Hearing # 1

Dianne Khin, Senior Planner

Public Hearing # 2- UDO Amendment

Public hearing regarding amendment to Section 8.3.6(D) of the Unified Development Ordinance; possible motion regarding same.

Khin noted the proposed amendment to Article 8 Section 8.3.6(D) Parking Lot Design Standards Surfacing and Maintenance should be amended to allow surfacing of parking lots in the Conservation Buffer zone district to be gravel or paved as determined by the Town (current zoning for town parks). Gravel parking would reduce the impermeability (environmental benefit) of the parking areas to reduce costs in areas where paving is deemed unnecessary (e.g. maintenance yard). Planning Board considered this amendment at their December 13, 2004 meeting and unanimously recommends approval of this amendment. Staff recommends approval.

Mayor Weatherly opened the public hearing at 7:40 p.m. No one spoke. The hearing was closed.

Commissioner Meckes confirmed permeable asphalt and gravel under the UDO is treated the same (is correct); nature park may want more natural esthetics. Asked if grills were considered (grass grows between them) with Khin responding staff could add additional options if the board chooses.

Action: Motion by Commissioner Jensen and second by Commissioner Jones to adopt an ordinance to amend the UDO regarding this section as recommended. Motion carried unanimously.

End of Public Hearings # 2

David Rowland, Director of Planning

Public Hearing # 3– Rezoning Case #04CU16 - *NOTE: Applicant has withdrawn his application*

Public hearing regarding rezoning case #04CU16, Jones & Cnossen Engineering, PLLC, petitioner, seeking to rezone from Low Density Residential to Medium Density Residential Conditional Use, 1.70 acres located at 405 Fairview Drive.

Rowland advised the board that the applicant had withdrawn his application per the attached letter dated November 19, 2004. Mayor Weatherly called for a motion to accept the withdrawal of the application.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to accept the withdrawal. Motion carried.

End of Public Hearing # 3

OLD BUSINESS

Kent Jackson, Director of Construction Management

Old Business Item # 1– Engineering Services Agreement

Possible motion to accept proposal to engage into an engineering services agreement with Kimley-Horn and Associates, Inc., and to authorize Town Manager to execute documents.

Kent Jackson presented, as a follow up, the amended engineering services agreement with Kimley-Horn & Associates, Inc. which expands the study of the transportation services which was in response to the Board of Commissioners December 7, 2004 discussion. The agreement outlines the tasks associated with evaluating the impacts of railroad crossing closures with the downtown district and verifies the proposed thoroughfare and collector street plan for Trackside development including a review of the functional design of the future bridge of the Peakway across the CSX rail line. Study map is included and cost of the study expands from $18,000 to $32,800.

Commissioner Jensen asked if such services would go out for bid. Jackson responded it seems reasonable for Kimley-Horn to handle the contract as they have the base map and they also maintain it, where another firm would add additional expense to create the base map. Manager Radford agreed with Jackson's statement and noted Kimley Horn has great credentials; with Jackson further noting their track record with NCDOT being they are as sound as any other firm.

Commissioner Jones questioned if this would be a duplication of Trackside development, with Jackson responding the nature of the two activities focus on mitigation and required improvements to off-site; and further the transportation planning.

Commissioner Gossage noted the original part of the contract and asked if it were still best to combine them, and to do them at the same time, with Jackson responding yes, with Trackside being on board, and the developers being around, now is the time to do it for that reason, and further, Trackside connection to the Peakway – it was best to tie it in with the best situation possible and this would look at it in more detail.

Commissioner Jensen questioned the cost involved and if it included the loop around, and if there were money up front to build the flyover with Jackson responding the cost of the bridge is not included but staff could provide this information.

Action: Motion by Commissioner Jones and second by Commissioner Meckes to accept the proposal to engage in an engineering services agreement with Kimley-Horn and Associates, Inc. and to authorize the Town Manager to execute the documents. Motion carried unanimously.

End of Old Business

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Board.
Mayor Weatherly will recognize those who would like to speak at the appropriate time.
Individuals having made requests to the Town Clerk to address the Board will be recognized first.
Your comments must be limited to 3 minutes to allow others opportunity to speak.
No one spoke during public forum.

NEW BUSINESS

June Cowles, Planner

New Business Item # 1– Unified Development Ordinance

Discussion and direction by the Board of Commissioners regarding Unified Development Ordinance "Vehicle repair and maintenance, general" use; possible motion regarding same.

Cowles advised a request from Dr. Lee Toler had been submitted to the Planning Department regarding creation of two uses titled "vehicle repair and maintenance, heavy" and vehicle maintenance and service, light", and an additional request to include "vehicle maintenance and service, light" as a permitted use under the Planned Unit Development zone which is the Lawrence Crossing project. Planning Board reviewed this request at their December 13, 2004 meeting and the vote was 4 to 1. The staff report is attached and incorporated as a part of the minutes. Staff reviewed vehicle repair and maintenance uses in adjacent jurisdictions of Cary, Town of Holly Springs and Town of Morrisville. Currently Apex has one vehicle repair and maintenance, general use which is permitted in the B1 (Neighborhood Business), PC (Planned Commercial) LI (Light Industrial) and TF (Tech Flex) zones.

Staff recommends the vehicle repair and service use not be permitted in the PUD zone because it is not consistent with the PUD standards of a higher quality zoning uses. PUD zone includes residential, office, retail uses and very limited vehicle and industrial uses. Staff is concerned if vehicle repair and servicing were permitted in the PUD zone there is a possibility a PUD zone could become an all automotive use site plan. Most automotive uses close in the evening and then become a "dead" area within the site. Staff believes this use is more appropriate in the PC, LI, and Tech Flex zone. Staff also believes this use should be taken out of the Neighborhood Business (B1) District. Staff recommends denial of the request to amend the UDO to include two separate use categories for vehicle repair and maintenance and to add the use to the Planned Unit Development zone.

Commissioner Meckes clarified a service station like Holt's sells gasoline where Jiffy Lube is light service, with Commissioner Jones noting the vehicle repair also at the service station, and that you do not see full service stations now.

Dr. Toler asked to speak to his request. He noted the project similar to Precision Tune, with a designated parcel. According to Planning staff it does not fit; Planning Board advised if he would put in gas pumps it would qualify; business would do all kinds of automotive repair which is allowed in the PUD, but its not a service station, and therefore proposes there be a new category to be allowed within the PUD. His concern is it does not meet the standards of a PUD – its a non-residential PUD and he doesn't want to have all automotive; he will have two office/retail buildings all of them being similar.

He noted Auto Zone would be one of the fanciest and most detailed in the state; noted the car wash had spent a lot of money and would be a high quality project, and abiding by the same strict guidelines. He didn't want to prohibit the business owner from moving forward. He added no one could come up with a reason why this shouldn't be allowed; it would not detract from the other uses.

Commissioner Meckes understood if he put in gas pumps it would be ok to do this, with Cowles responding if he could show the primary sale of gasoline. Commissioner Gossage asked if a special use permit were more appropriate than amending the UDO, with Cowles responded the property was zoned PUD and he had not applied for a special use permit, with Commissioner Gossage adding with a special use permit, they could deny at the time of application, but saw it as a flexible way to go. Cowles continued the applicant would have to provide evidence that the use was not a detriment to the area. Attorney Fordham advised with a special use permit, one would have to meet certain criteria of the ordinance and would follow quasi judicial setting to allow or deny and there would be no legislative discretion. Commissioner Meckes struggled with this as he saw this request more desirable than a service station, with Commissioner Jones agreeing.

Mayor Weatherly noted the request too much for a permitted use in PUD, noting the retail, but this being a step more towards an industrial noisy activity that is in proximity to residential use. Commissioner Gossage added a PUD development could put in a Jiffy Lube and still develop some of it with residential. Mayor Weatherly added the use could be an undeveloped parcel on site and after residential came in, it could come up with a service station. Commissioner Meckes confirmed the Jiffy Lube didn't qualify as wasn't a retail that sold gas that was important criteria in the PUD. Commissioner Jones noted there was a carwash and detail, with Cowles adding they were there because of two recent UDO amendments that covered them.

Mayor Weatherly called for a motion. No one made a motion regarding the request. Commissioner Jones felt this gave too much flexibility in other PUDs, with this being a non-residential PUD he struggled to make this change in this PUD and not in others. Mayor Weatherly added this was like the request for the church in an industrial zone, and not knowing what's coming next. Mayor Weatherly asked Rowland if there were other options to consider since this was zoned PUD. Rowland responded Toler could ask for a rezone to Planned Commercial which is open to other uses. Commissioner Gossage asked the length of time the process would take, with Rowland responding two to three months. Toler added he's already 3 months behind and understood special use is not an option. Attorney Fordham advised if he did include a special use, it would have to have a quasi-judicial hearing and test made regarding the criteria.

Commissioner Meckes noted this a good fit for this location, but there was no means to make it happen for all PUDs, and asked if Toler came back and applied for Planned Commercial zoning, that this would be a permitted use according to Planning Board and staff and would take about three months or so for the process, with Rowland responding yes.

Mayor Weatherly noted it a consensus of the board this request was a good fit for the site, but not for all PUDs, and would be constrained to allow it and with a housing component would not be a good fit, but a permitted use, noting even though this is a non-residential PUD. Commissioner Jones noted planned commercial zoning would be non-residential. There was no motion made regarding this request, so no action was taken by the Board.

End of New Business # 1

David Rowland, Director of Planning

New Business Item # 2– Urban Growth Boundary

Rowland led discussion regarding Urban Growth Boundary, recalling the December 7, 2004 meeting where the Mayor directed staff to suggest options for consideration regarding UGB in response to a presentation by Toll Brothers concerning potential subdivisions along Roberts, Green Level and Green Level West Roads. Three options were offered: 1) Retain existing UGB and invoke the "Policy" which allows "unique" properties to be annexed outside of the UGB, 2) Expand the UGB in the northwest area to include the Toll Brothers potential development, 3) Temporarily abolish the UGB until a Comprehensive Boundary Agreement can be reached with the Town of Holly Springs. Staff recommends either Option 1 or 2. Having UGB helps prevent pre-mature or costly over-extension of services such as water and sewer, discourages leap frog development, encourages preservation of open space and helps preserve a small town feel. As discussed during the Comprehensive Plan public hearings, once the final location of the regional wastewater treatment plant is determined, an expansion of the UGB should be considered to encompass areas to be served by this facility. Staff talked with the Town Attorney and advised option 2 and option 3 would require a public hearing process as it is part of the 2025 Land Use Plan.

Mayor Weatherly asked if there were other towns that have an open growth boundary, with Rowland responding not any in Wake County. Mayor Weatherly originally supported UGB as it signaled there was no development beyond it and it further encouraged infill development; further town having a finite sewer capacity which no longer exists, and not wanting to cut off good opportunity – not a good public policy for the board but where they took a careful approach to growth, and he was not suggesting UGB protected us from urban sprawl, that was not the case. Board should consider case by case on its own merit noting this as a good one to expect in the future. Board had been careful to scrutinize the population growth in Apex as people have demanded; UGB was right for the time to develop infill, now should not cut ourselves off, as our neighbors would compete for the investment monies and we don't want to loose that potential for cutting them off by our town having an arbitrary boundary.

Commissioner Meckes recalled this was held open as it was a unique development, given consideration they could still develop and noting the Corp of Engineers being the town's western most boundary, and feeling it's in the town's best interest to keep options open.

Commissioner Schulze agreed this gives more options to increase the quality of Apex. Commissioner Jones added now that we know the final location of the Waste Water Treatment Plant, and growth, we could entertain the deletion of the UGB as time grows closer. They had said in discussions if there were a unique development, they would consider it and encouraging a golf course development would be unique. Commissioner Meckes noted the I540-Salem Street as a unique concept and they had given it consideration. Commissioner Jones felt this should be put out to the public to receive their input. Commissioner Gossage added we had already crossed the boundary – Crocketts Ridge had been shifted to adjust the growth boundary with Rowland noting the shift was within the 2025 Land Use Plan.

Commissioner Jensen noted it would optimize town services and has lots of merit; options to go beyond a golf course. The concept was to keep development in the area but it is different outside and was in favor of larger lots, noting people had left the area because they couldn't get larger lots; he didn't want more cookie-cutter subdivisions with cul-de-sacs; he pushed for an area to have good high end stuff maybe like this one outside the UGB.

Commissioner Meckes added it didn't mean they would run sewer lines, with Mayor Weatherly adding or give fire and police protection, but would rather they take a look at them rather than send a negative message, that they can do without that.

Action: Commissioner Meckes made a motion for staff to advertise a public hearing to consider elimination of the Urban Growth Boundary for Apex. Manager Radford asked if they desired to make reservations for the Toll Brothers to invoke a policy to allow such special nature – something to make specific as they plan their project. Attorney Fordham advised they could look at it but not to do that. Commissioner Jones noted the tracks of land that would be involved, with Attorney Fordham advising they need to have a specific proposal for consideration.

Mayor Weatherly didn't want to let the UGB restrict them from review of their plans, and this was not to prejudge their plain or include any predevelopment costs. Manager Radford asked if the board agrees to annex it at that time, with Mayor Weatherly responding not, but talk about it – not get very specific with what to do about the annexation component of it.

Commissioner Jensen thinks Fuquay has growth zones, and he could see not having a growth boundary, but growth zones like A or B to keep leap frog development out; not calling it an urban growth boundary but a zone A or B that you some different consideration for; zone B to have high density housing condo's or something like that – he didn't think so talking about going towards Jordan Lake we want to have a lower density or cluster homes with a lot more space around it would be best, but seems we want to send the message so people understand that is what we want to see. Mayor Weatherly added he thinks that's the function of the Planning staff that would enunciate that and but not prohibit them from submitting it , because he thinks it should at least see "light of day" and he believes he has a vision we should see, but Planning staff should give direction to folks on that first initial exploratory look at a project; seems to him it would be better without ... with Commissioner Jensen interjecting not only if it's outside he would like to say come with a proposal and have it sketched out somewhat like was done and make a decision that this is what we would or would not like to see and that could be in zone level B. He felt by the time stuff gets to us we kind of committed to say yes, with Mayor Weatherly disagreeing not thinking we are and is the basis of his argument that our protection is against something that we don't see as the vision of the outer edges of our town or even infill for that matter that we are going to say no. Commissioner Jensen understood when we had the wastewater capacity situation, that was where we could say no because we are buffing up against this situation, but if we don't have capacity requirements and any other requirements that we have to meet, then we have more difficulty saying no.

Mayor Weatherly felt the key point is annexation; the findings are a lot more discretionary when we talk about annexing and thinks that's what we are talking about if we are talking in the urban growth area as opposed to a proposal that might be submitted inside the town limits that would meet our UDO. Commissioner Jones added annexations and rezonings and their compatibility to our Land Use Plan; we have discretion in the rezoning of this project. Commissioner Jensen added but if it meets all the requirements of our land use plan then we ... with Mayor Weatherly interjecting, then it ought to pass, with Commissioner Jones adding, and it should, with Mayor Weatherly adding absolutely with flying colors, otherwise we should change the ordinance if it's something faulty about it. Commissioner Jensen agreed with that, but maybe that's what he was trying to say in terms of the outer areas, maybe the Land Use Plan has to be.. , with Commissioner Jones interjecting we have to plan for the area... with Mayor Weatherly asking what direction staff needed to proceed with the process or someone elaborate, asking if it needs to go to Planning Board.

Attorney Fordham advised if the Board made a motion to direct staff to schedule a public hearing to consider the abolishment of... with Mayor Weatherly interjecting without a date because it needs to go through the Planning Board and staff first, with Attorney Fordham advising that is correct, their normal procedure, with Mayor Weatherly continuing the motion would be to direct a public hearing to be held in some future time, with Attorney Fordham advising they should specify the subject.

Commissioner Schulze had a question, that typically they annex something in then a site plan is proposed, asking if it were a way to tie an annexation to a site plan, for example, say we didn't have an urban growth boundary, and Toll Brothers came to us and said they would like to be annexed in and his position, was he didn't know if he wanted to annex them in because he didn't know what is going on the site yet, so if annexation request came in with some type of site plan, if it were high scale housing. Mayor Weatherly responded, remember they had one, the property beside Home Depot, remember it came in, they wanted to annex it and then for the board to immediately say what the zone code would be, and we said no, we annex it first then we can... because it wasn't in our ETJ so we had no jurisdiction, but before we could even put a zoning classification on it, we had to annex it and we were absolutely, for good reason, we refused to ... he didn't know if you could put the cart before the horse, but we didn't. Commissioner Meckes added that we agonized over that decision with Commissioner Schulze remembering that, but thinks we have the same dilemma, only the opposite way now. Mayor Weatherly added he stood corrected now, there was a motion by Commissioner Meckes to proceed with the public hearing asking if there was a second.

Action: Commissioner Schulze made a second to the motion.

Commissioner Jensen wanted to know what were they doing before the public hearing at this point.

Commissioner Meckes stated the motion was for the elimination of the Urban Growth Boundary although, with Commissioner Jensen adding and that's the only thing you want to put before the public or the option 1, 2 and 3, with Commissioner Meckes adding maybe let planning staff bring options, with Mayor Weatherly interjecting it's not always that the public hearing would be yes, or no, you would say, I agree with the abolishment, but can amend that and thinks any body that wants to speak or even this body when it's discussed could obviously,... is the question at hand. Attorney Fordham suggested a motion be made to amend the motion to consider modification or elimination of the Urban Growth Boundary and would cover all the options they want to consider.

Action: Motion by Commissioner Schulze and second by Commissioner Meckes to consider elimination or modification of the urban growth boundary in a public hearing. Commissioner Jensen asked if this were based on Option 1, 2, and 3, with Commissioner Meckes adding option 4 is elimination – not part of the motion would be option 4. Commissioner Jensen thought option 3 was the elimination, with Mayor Weatherly stating we were not tied to the options, with Commissioner Schulze adding its wide open. Commissioner Jensen restated 1, 2, and 3 and 3 would be forever, if we so wish. Mayor Weatherly stated there may be others out there, he was saying the motion seemed open-ended for any to modify or eliminate, which means we are not tied to these options. Mayor Weatherly continued that is the amendment to the motion, asking for a vote on the amendment to the motion which passed unanimously as modified.

Mayor Weatherly stated the motion on the floor is to hold a public hearing to consider modification or elimination of the Urban Growth Boundary. Commissioner Jensen asked how we were going to present the modified vs. the elimination; the elimination is very straight forward, but how do we present the modified part of it, asking if that's how are going to present it. Mayor Weatherly responded he felt anybody could speak to any variation they choose to at the public hearing; they say, don't eliminate, but I would suggest any of these or others; we might get some good ideas.

Commissioner Jensen asked if he thought the public would come up and say, without seeing some sort of a piece of paper that shows some concept; he doesn't see the public coming up and saying that. Mayor Weatherly asked why be tied to a specific proposals if there are other variations out there that we or staff or someone else may think of, the planning board. Commissioner Jensen certainly wanted to see some sort of an option tool so people would have something to work off of. Mayor Weatherly asked Rowland if he would be able to give them a narrative prior to a public hearing and also guide the planning board through a thought process that would elaborate on what Commissioner Jensen is asking, so that we fully consider all the ... with Commissioner Gossage interjecting make sure there are other materials available like the Land Use Plan, Comprehensive Plan, with Commissioner Jones adding so the general public understands what we are trying ..... with Commissioner Jensen interjection and items like these options 1, 2, and 3 would be included; it it's included he could agree to it, with Mayor Weatherly agreeing as a presentation format to show different concepts and people could expand on that if they so wish, but at least it gives them an anchor point to expand on. Mayor Weatherly agreed that's good.

Mayor Weatherly called for the vote on the pending motion as modified. The motion carried unanimously.

End of New Business Item # 2

Tim Donnelly, Director of Public Works

New Business Item # 3– Progress Energy Substation

Possible motion to authorize Town Manager to negotiate and execute contract to purchase Progress Energy Substation "Bank No. 3" and adopt budget amendment to appropriate fund balance.

Tim Donnelly gave an overview of the presentation by Tony Pearce, Utility Electric Consultants, PC, of the evaluation of Bank No. 3 Substation Purchase from Progress Energy Carolina. Progress Energy currently provides power to Apex through a single point of delivery located at their substation near US 1 and Hwy 55 intersection which is configured in groups of transformer banks. Bank 1 serves Progress Energy customers with Banks 2 and 3 serving Apex as a wholesale customer with Bank 3 being the newest.

Progress Energy recovers capital investment in the facilities dedicated to providing power to the town through leased facilities charges. The fees are charged to the North Carolina Eastern Municipal Power Agency (2% of CP&L's investment, per month) and then passed on to the larger towns. The Power Agency recently restructured the method of distributing facility charges to various member municipalities. This change caused the charges for the Town to increase from $18,200 to $78,178 per month.

Utility Electric Consultants have analyzed the potential cost savings generated by purchasing Bank 3 from Progress Energy and maintaining the Bank as Town-owned. It is not cost effective to purchase Bank 2 as it is an older design and because of the configuration of the site and lower associated charges; would like to get rid of it all together. Estimated cost to purchase Bank 3 is $2.8 million. The evaluation indicates a payback of 6.2 years if only direct costs are considered and 7.1 years considering depreciation. Bank 3 by itself is new and expandable and a plus for area developers.

Mayor Weatherly asked if there were an objective way to appraise the value of a substation (records of the cost, which is land purchase, transformer, and depreciation, with Utility Electric being comfortable with this). Commissioner Schulze asked if this were negotiable or hard and fast (cost is set). Commissioner Schulze asked if there were a downside to this (can't think of any downside – Town doesn't have a facility with a transformer etc. now but will build one in six months). Donnelly asked if we could build this substation with $2.6 million (land is the deal - $750,000 valuable property - substation cost is reasonable). Commissioner Meckes noted the land is the issue.

Public Works and Utilities recommends purchasing this facility in order to eliminate the $48,242 in monthly facility charges that will accrue for the approximately 28 year remaining expected life of the facility, seeing no downside to this investment. A budget amendment should be adopted to appropriate fund balance. Further, asked authorization for Town Manager to execute contracts.

Action: Motion by Commissioner Schulze and second by Commissioner Jensen to approve the purchase by authorizing the Town Manager to negotiate and execute a contract with Progress Energy and to adopt the budget amendment to appropriate fund balance - $2.8 million. Motion carried unanimously.

End of New Business

WORK SESSION AGENDA

Tim Donnelly, Director of Public Works

Work Session Item # 1 – Williams Creek Drainage Basin

Review of Sewage Collection Alternatives for the Williams Creek Drainage Basin and Trackside Development.

Town plans to build a new wastewater treatment plant with partners to the west of town; have run out of sewer capacity; outgrown our existing plant. Director of Public Works reported sewage collection in the William's Creek drainage basin is provided by gravity sewers that drain to pump stations located within the basin at Laura Village, Shepherd's Vineyard, Summit Lake, Whops Park, Parkway Pointe, and Buckingham. The Shepherds Vineyard pumps station is the largest and receives the flow from all the other stations before pumping to a large gravity interceptor along Schieffelin Road. The station is currently 88% capacity and can't support additional development in the basin such as Trackside and is a big problem.

Public Works and Utilities had retained Wooten Company (gave a presentation) to review the existing collection system and develop the most cost effective alternative for serving Trackside or other growth that might occur in the basin and help meet the goal of sending wastewater to the new regional plant. It would be appropriate for the Board to consider the options and endorse the best alternative. The report was presented and incorporated as part of the minutes. Long term plan is to transfer wastewater to the Cape Fear Basin by 2011; sewer is geared to the move to the Neuse Basin. Kelly Road station will be upgraded and eventually done away with. The study evaluates gravity flow from Trackside and the locating of a new pump station at the upper end of Lake Pine. Three discharge location alternatives were evaluated for the pump station. Based on the preliminary determination, Trackside can be served with one railroad bore in the northeast portion of the development (much more expensive than with two crossings); southern crossing could tie into existing sewer in Brookfield Subdivision; lower portion can't use existing line and need to parallel this line under US64 to Laura Village Pump Station. Remaining Trackside area can be served with gravity sewer. 3 alternatives are included in the report with their advantages and disadvantages. Alternative 2 would be the least costly which is to discharge into the Haddon Hall Interceptor east of Hwy 55 and eliminates the Green Level Pump Station. Disadvantage: the 18" Haddon Hall Interceptor will have to be paralleled and will require another bore under Hwy 55, and additional flow from Williams Creek Drainage Basin will speed up the time frames for paralleling Beaver Creek Interceptor.

Donnelly noted the task complex and expensive with the collections being in trouble, in compliance, but not set up to allow for more growth. If the board endorses the plan, it will be a way to stimulate growth in the basin at least cost to taxpayers; if not endorse a layout plan then quickly people will want to develop land and then we will have to say no, not because of growth boundary or sewer capacity, but we can't get it there at any reasonable cost. A number of developers have looked into the basin to develop (horse farm Laura Duncan, and others and run into sewer problems); even Trackside developers can't develop without a better sewage plan than we have; to endorse one of the plans staff will come back asking for the funding. He thinks its reasonable to expect developers to connect on to the big line going to the pump station; he doesn't think any one developer or two can spend $2 to $3 million to build a pump station and force main; when Apex is desirable enough (it is now) maybe they could come up with the money for off-site costs to build this pump station, but doesn't think so. To spend this much for high rise – it doesn't seem to be here for Apex yet. This would lay out a plan for developers who come to us build a piece of this, currently to get to sewer and water we pay oversize credits for oversize pump stations. Estimated project cost $2.2 million. Capital Reserved Funds can cover the expenses. This could work in other basins as well. Recommends endorsement of the plan (could be variation and design issues); will keep the board informed on the proposed line of design, and noted they would be doing what needed to be done for Trackside. This item will be further explored at the Board's annual retreat.

End of Work Session

CLOSED SESSION

Possible motion to move into closed session to discuss property acquisition regarding the Mabel Powell Estate property located at the corner of North Salem Street and Center Street.

Action: Motion by Commissioner Meckes and second by Commissioner Jones to move into closed session at 9:32 p.m. as requested. Motion carried. Minutes of closed session are recorded separately. Motion by Commissioner Schulze and second by Commissioner Gossage to move back into regular session at 9:54 p.m. Motion carried.

With the Board reconvening in regular session the following action was taken:
Action: Motion by Commissioner Jones and second by Commissioner Gossage to make an offer of $300,000 for the .689 acres, located at the corner of Center Street and North Salem Street, and known as the Mabel Powell Estate. Motion carried.

ADJOURNMENT

With no further business to come before the Board, there was a motion by Commissioner Gossage and a second by Commissioner Schulze to adjourn at 9:56 p.m. Motion carried.

The above minutes were approved on the 5th day of January, 2004.

Georgia A. Arrowood
Town Clerk

Keith A. Weatherly
Mayor