

# TOWN OF APEX, NORTH CAROLINA

Meeting Minutes for April 19, 2011

The Regular Meeting of the Apex Town Council scheduled for Tuesday, April 19, 2011, 7:00 p.m. was held in the Council Chambers of the Apex Town Hall and Town Campus, 73 Hunter Street, Apex, North Carolina.



<http://www.apexnc.org/>

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Bryan Gossage, Bill Jensen, Mike Jones, Lance Olive, Gene Schulze

## COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the invocation, led the Pledge of Allegiance and extended a welcome to those in attendance. Council Member Schulze was not present.

## PRESENTATIONS

**Presentations 01:** Planner Lauren Simmons presented the 2011 Spring Appearance Awards for Residential and Commercial Properties: Creekside Commons Subdivision located on Kelly Road, Apex and MCI Business Park, 2121 E. Williams Street, Apex.

## CONSENT AGENDA

*All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the consent agenda and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Consent Agenda will be set prior to taking action on the following items.*

**Mayor Weatherly presented the Consent Agenda to be set prior to taking action.**

**Action:** Council Member Gossage made the motion to approve the Consent Agenda with the exclusion of item 6 and referred same to the Personnel Committee for review and with Committee action being the definitive decision. Council Member Jensen made the second to the motion. Vote on the motion was 4 – 0. Motion carried unanimously.

1. Minutes for April 5, 2011 Council meeting and the continuation minutes of April 13, 2011, as well as the April 5, 2011 Closed Session minutes, will be placed on the May 3, 2011 Agenda for Council's approval.
2. Annexation Petition #460: Ruth C. Maynard, 0.279 acres (non-contiguous to the Town's corporate limits), and located at 3525 Old US1 Hwy (request for public water connection); 1) Resolution directing Clerk to investigate petition; 2) Certificate of Sufficiency by Clerk; and 3) Resolution setting date of public hearing for May 3, 2011.
3. Regional Water Reclamation Facility buffer restrictions and recording with Wake County Register of Deeds, and authorization for Town Manager to execute same.
4. Amend existing policy regarding advance rental/reservation of shelters at various parks up to 12 months in advance.
5. Ordinance No. 2011-0419-03 to Amend Apex Town Code Chapter 20, Article VIII, Town Parking.
6. Police Chief requests authorization from Council to submit a Governor's Highway Safety Program Traffic Safety Project Grant application (Pulled for Personnel Committee April 25, 2011 decision; approved).
7. Wake County Board of Commissioners Tax Report for Apex, approved/accepted by WCBOC April 4, 2011.
8. Ratify Right of Entry to facilitate construction on Wake County Public School System (WCPSS) property for the Safe Routes to School Project and authorize and ratify Town Manager's to sign same

End of Consent Agenda

## REGULAR MEETING AGENDA

Mayor Weatherly presented the Regular Meeting Agenda to be set prior to taking action. There were no amendments to the agenda and it was set as presented.

## PUBLIC HEARINGS

### Public Hearing 01

Planner Lauren Simmons

**Rezone #11CZ03 and Master Subdivision Plan:** Jones & Cnossen Engineering, PLLC, applicant, seeks to rezone 25 acres: Traditions at Bella Casa Phase 3C-3E from Rural Residential district to Medium Density Conditional Zoning district and Master Subdivision Plan for property located at 2724, 2728, 2800 & 2820 Evans Road and Lazio Lane; possible motion regarding same. Staff presented the planning report and is incorporated as a part of the minutes and contains the request as stated. Staff recommends approval of the rezone and subdivision plan Phase 3C-3E with conditions:

1. The applicant will be allowed to get up to 50 Certificates of Occupancy on Lazio Lane in prior to connecting Lazio Lane to Grouse Road. This number includes the approved lots in the Bella Casa PUD Master Subdivision Plan.
2. All residential buildings shall have exterior materials of brick, stone, wood and/or hardiplank siding. All roofs of residential buildings shall be pitched at 5:12 or greater and shall be covered with wood or asphalt shingles. Covered porches are required on the front façade of each single family residential structure facing the public right-of-way. All residential units shall require a crawl space or a minimum of two steps to the front door and 14 inches to the front door.
3. A tree protection fence shall be required to be installed 10 feet from the rear property line at a minimum on each lot prior to the grading or building of individual lots that are adjacent to RCA and around the RCA and limits of disturbance.

Private recreation facility will be available in Bella Casa for this phase; Parks and Recreation Advisory Commission recommends payment of fee-in-lieu \$172,842.31 for all phases of the project. Request is consistent with 2025 Land Use Plan, Unified Development Ordinance Apex Transportation Plan, and includes a street stub east of the property and connects site with Evans Road and Lazio Lane. Planning Board met April 11, 2011 and unanimously recommended approval of rezone and master subdivision plan with conditions stated.

Mayor Weatherly opened the public hearing at 7:15 p.m. Stuart Jones, Jones and Cnossen Engineering spoke in support of the request, a continuation of Bella Casa, and will save as many trees as possible, and will provide additional landscape. The recreation facility is located north of this phase near Evans Road and Milano Drive and the residents would be added to the Home Owner's Association and have access (2 acres with pool/tennis courts/play ground). With no one speaking in opposition, Mayor Weatherly closed the public hearing at 7:20 p.m. and referred the matter to Council. **Action:** Council Member Gossage made the motion to approve the rezone and master subdivision plan with conditions stated. Council Member Jensen made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously.

End of Public Hearing 01

### Public Hearing 02

Senior Planner June Cowles

**Rezone #11CZ04 and Land Use Plan Amendment:** Jack Skaggs, Jr., applicant, seeking to amend 2025 Land Use Plan from Low Density Residential to Commercial and Low Density Residential and rezone 1.01 acres from Wake County district to Neighborhood Business Conditional Zoning and Low Density Conditional Zoning district, located at 3521 Old US 1 Hwy; possible motion regarding same. Staff presented the planning report, and is incorporated as a part of the minutes, and notes existing conditions and request as stated. A neighborhood meeting report is included; permitted uses are listed in the report. Planning Board met April 11, 2011 and unanimously recommends approval to amend 2025 Land Use Plan and rezone with conditions.

Mayor Weatherly opened the public hearing at 7:20 p.m. and with no one addressing the request, closed the public hearing and referred the matter to Council. **Action:** Council Member Jensen made the motion to approve the amendment to the 2025 Land Use Plan and rezone with conditions stated. Vote on the motion was 4-0. Motion carried unanimously.

End of Public Hearing 02

### **Public Hearing 03**

Senior Planner June Cowles

**Rezone #11CZ05 and Land Use Plan Amendment:** Jones & Cnossen Engineering, PLLC, applicant, seeks to amend the 2025 Land Use Plan from Office and Institutional to Mixed Use, Office, Commercial, High Density and Medium Density Residential and to rezone .28 acres from Office & Institutional Conditional Zoning district to Mixed Office Residential Retail Conditional Zoning, located at 924 Center Street; possible motion regarding same. Staff presented the planning report and is incorporated as a part of the minutes and contains the request as stated and states existing conditions.

Staff recommends approval of the 2025 Land Use Plan amendment as Mixed Use Office and High and Medium Density Residential, and rezone to MORR-CZ with permitted uses as follows and limits commercial: Accessory Apartment; Single Family; Barber and Beauty Shop % (30% of gross floor area of building); Office, Business or Professional; Floral Shop; Medical Office; Newsstand or Gift Shop %; Personal Service %; Utility, Minor; Real Estate Sales; and Studio for Art. A neighborhood meeting report is in the report; permitted uses are listed in the report. Planning Board met April 11, 2011 and voted 6 -1 recommending approval to amend 2025 Land Use Plan and rezone with conditions. Mayor Weatherly opened the public hearing at 7:20 p.m. Stuart Jones, Jones and Cnossen, spoke in support of the request, noting the small one-quarter acre site, with no public sewer, and how the site transitioned from residential to industrial, then rented and now request to rezone to MORR-CZ and to allow for retail; noted should the property adjacent be develop, most likely would absorb this site. With no one speaking in opposition, Mayor Weatherly closed the public hearing at 7:24 p.m. and referred the matter to Council. Clarity was given in regard to the retail uses percentages and with a change in conditions; noted conditions can't be forced, but must be agreed to by the applicant; noted staff's position to allow for retail in the district classification had been the same with the Seymour property in the downtown and differs from applicant's request. **Action:** Council Member Gossage made the motion to approve the request with conditions stated by Stuart Jones, Jones and Cnossen vs. staff recommendation and position. Council Member Olive made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously.

End of Public Hearing 03

### **Public Hearing 04**

Senior Planner June Cowles

**Rezone #11CZ06:** Colvin Park, LLC, applicant, seeks to rezone 69.83 acres from Rural Residential district to Medium Density Conditional Zoning district, located south of Smith Road, west of Stephenson Road and north of Satori Way; possible motion regarding same. Staff presented the planning report and is incorporated as a part of the minutes, and contains the request as stated. Colvin Estates was approved in 2008 however the construction plans were not submitted. Proposed uses were noted, and proposed restrictions and conditions by applicant were added to the application after the initial filing for rezone and are:

1. All buildings shall have exterior materials of brick, stone, wood and/or hardiplank siding;
2. All residential units shall require a crawl space/turned down slab, a minimum of two (2) steps or 14 inches to the front door.
3. All residential roofs shall be covered with wood or asphalt shingles.
4. Along the border between the subject property and the property at 2900 Timpani Trail, a minimum 10 foot common area buffer will be maintained. In this area all existing trees will be removed in order to prevent potential tree falls from greater exposure to wind. A new Type C Spatial definition vegetated buffer will be created to separate the properties from each other in this 10 foot buffer area.
5. Along the border between the subject property and the property located at 2901 Timpani Trail, a minimum 10 foot common area buffer will be maintained. In this area all existing trees will be preserved in order to maintain the natural buffer that already exists between the two properties.

A neighborhood meeting was held with concerns being related to traffic, buffer, lot sizes and homes; report is in planning report. Request is consistent with 2025 Land Use Plan, Transportation Plan and compatible with surrounding properties; staff recommends approval of the rezone with restrictions/conditions stated by applicant in the report. Planning Board met April 11, 2011 and unanimously recommends approval of the rezone with conditions proposed by applicant. Mayor Weatherly opened the public hearing at 7:35 p.m. Matt Kirkpatrick, Colvin Park LLC, spoke in support of the request; noted TIA was conducted for site plan approval. With no one speaking in opposition, Mayor Weatherly closed the public hearing and referred the matter to Council. **Action:** Council Member Jones made the motion to approve the request with conditions stated. Council Member Gossage made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously.

End of Public Hearing #04

**Public Hearing 05 (Quasi-Judicial)**

Planner Lauren Simmons

**Rezone #11CZ07 and Special Use Permit #11SUP02 and Minor Site Plan:** Leslie Cordileone, Skyway Towers, applicant, seeks to rezone 2.8 acres from Rural Residential district to Office & Institutional Conditional Zoning district, the property located at 3101 Tingen Road, and seeks a Special Use Permit to construct a proposed 180' telecommunications tower; possible motion regarding same. All persons speaking during the hearing gave sworn testimony limited to the issues related to the rezone and site for the proposed tower and were administered an Oath by the Town Clerk prior to presenting evidence. Attorney Hank Fordham described the Quasi-judicial process prior to the presentations and noted two motions would be necessary: one for the rezone request and one for the minor site plan/special use permit.

Lauren Simmons, Planner Town of Apex, stated her credentials and gave the purpose of the rezone and request for Special Use Permit and Minor Site Plan approval for Skyway Towers, with the property being located at 3101 Tingen Road, near the future intersection of old US1 and NC540 interchange and outside the Town limits, to construct a 180' Telecommunications Tower. Current Zoning is Rural Residential and request to rezone to Office and Institutional Conditional Zoning; Current Land Use classification is Office and Institutional and Current Use is Residential; adjacent zoning and 2025 Land Use Plan classifications were stated and full planning report is incorporated as a part of the minutes. The 2.8 acres is a portion of 30 acres and currently a single family lot; portion of parcel for rezone is wooded and unutilized by the owners. Applicant will be required to plat 20% of the rezoned acreage as RCA; applicant will only grade access road and lease area; drop zone will remain undisturbed; project does not require water or sewer; project is exempt from stormwater requirement. Neighborhood meeting was held January 26, 2011, and report is included in the planning report, noting concerns and responses: could tower be moved further east; if signal would interfere with other signals, other carriers besides AT&T, affected property values, and if indoor cellular coverage would be provided, would tower be lit, why other portions of property were not being rezoned if 2025 Land Use Plan called for Office and Employment. Tower is being moved further east and tower is not lit. Proposed is consistent with the 2025 Land Use Plan, which calls for Office Employment in this area, and the rezone, Special Use Permit and Minor Site Plan meets the requirements of the Unified Development Ordinance. Planning Board met April 11, 2011 and unanimously recommends approval of the rezone, minor site plan and Special Use Permit. Staff recommends approval of the rezone, Special Use Permit and Minor Site Plan. Mayor and Council stated they had no prior contacts prior to the quasi-judicial hearing.

Proponent: Attorney Tom Johnson, Nexsen Pruet, Raleigh, N.C., stated his credentials and presented evidence: Linwood and Dianne Council, property owners are were present. Proposed tower construction is near the NC540 intersection and necessary due to increased demand on services; noted families have dropped their land lines and are using mobile communications and wireless devices, with 60% of all 911 calls made from wireless devices; noted Onslow County at 70%. ATT Mobility, Leslie Cordileone, Radio Frequency, and Micah Retzlaff, Project Manager, Excell Communications, Inc. 223 US Highway 70 East, Suite 120-A, Garner, NC stated their credentials and certified the documents being submitted as evidence, complies with the rules and regulations, process and procedures and contains accurate and true information to the best of their knowledge.

Council Questions: Council Member Jones asked about the accommodations for more than one carrier and number. Attorney Johnson responded a total of four could be accommodated, not to say more could not be accommodated in the future and as design is strengthened and given the situations.

Opponent: none

Mayor and Council stated they had not visited the proposed site prior to the quasi-judicial hearing. Mayor Weatherly closed the hearing at 7:55 p.m. and referred the matter to Council. **Action:** Council Member Gossage made the motion to rezone the property as requested. Council Member Jones made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously. **Action:** Council Member Jones made the motion to approve the minor site plan and Special Use Permit as requested. Council Member Gossage made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously. Mayor Weatherly advised the quasi-judicial hearing is ended.

**End of Public Hearing 05**

**Public Hearing 06**

Senior Planner June Cowles

**Rezone #11CZ08:** Town of Apex and Apex First Development, applicants: Town of Apex seeks to rezone .64 acres from Planned Unit Development Conditional Zoning to Office and Institutional district, located off Old Raleigh Road west of Apex Peakway. Apex First Development seeks to rezone .68 acres from Office & Institutional, Neighborhood Business Conditional Use and Planned Unit Development Conditional Use to Planned Unit Development Conditional Zoning district, located off Old Raleigh Road and northwest corner of Apex Peakway and Mill Hopper Lane; possible motion regarding same. Staff presented the staff report and is incorporated as a part of the minutes, and contains the request as stated. Applicant's proposal reflects a property exchange as stated in the report. Neighborhood meeting was held and included in the report. Staff recommends approval of the requests for rezones with conditions as stated in the Old Mill Village PUD CZ rezone case #10CZ14 for the northwest corner of Apex Peakway and Mill Hopper Lane. Planning Board met April 11, 2011 and unanimously recommends approval of the rezone with conditions consistent with Old Mill Village.

Council Member Gossage asked Council to recuse him from participating and voting during this discussion and hearing as he has been contracted to do consulting work for the associated company. **Action:** Council Member Jensen made the motion to honor the request to recuse Council Member Gossage. Council Member Olive made the second to the motion. Vote on the motion was 3-0 to recuse Council Member Gossage. Motion carried unanimously.

Mayor Weatherly opened the public hearing at 8:p.m. and with no one addressing this request, closed the public hearing and referred the matter to Council. **Action:** Council Member Jones made the motion to approve the request as presented. Council Member Jensen made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously.

**End of Public Hearing 06**  
**End of Public Hearings**

**OLD BUSINESS****Old Business 01**

Town Manager Bruce Radford

**Council during their annual retreat gave support to staff recommendation to forego purchase of E-32 site and move forward with use of the funds for other park facilities: Seagroves Park and Hunter Street Park.**

Council will give consideration to options for funds previously committed for land purchases at the E-32 school site. Council will be presented options to move forward with construction plans for Seagrove's Park and Hunter Street Park, and an option to reduce the extent of the construction effort at these two Parks and add a construction project at the Nature Park. Manager Radford presented the report and is incorporated as a part of the minutes that offers options that would expedite park projects noting Council had discussed this during the annual retreat. Council Member Jensen suggested monies be distributed to all three park projects, moving forward for bid, award contracts and moving on for the citizens use. John Brown Director of Parks, Recreation and Cultural Resources and Kent Jackson Director of Construction Management presented options that would reallocate bond funds earmarked for a land purchase and costs estimates to upgrade and how best to distribute funds to provide the most for each park. Valve System repair for the Apex Community Park had been considered, and noted discussion to expand the Nature Park Plan would be tied to the sale of \$6 million in bonds and contingent on the ability for repay of the debt service associated with the bond sale. Options were discussed in detail. Brown stated the PR&CR Advisory Committee recommendations did not include valve repair, considered it maintenance and felt it was not the intent of purpose for the bonds approved by the voters, and recommended allocation of funds for Hunter Street and Seagroves Farm Parks.

	<b>Former E-32 Existing Bond Funds On Hand = \$1,325,000</b>				
	<b>Hunter St</b>	<b>Seagroves Farm</b>	<b>Nature</b>	<b>Dam Repair</b>	<b>Totals</b>
<b>Option 1</b>	\$945,566	\$346,620	0	0	\$1,292,186
<b>Option 2</b>	\$786,068	\$301,981	\$229,269	0	\$1,317,318
<b>Option 3</b>	\$786,068	\$301,981	0	\$227,325	\$1,315,374

Cost differences between Options 1 and 2 for Seagroves Farm Park noted less than \$45,000 and conclusion to upgrade would be less expensive now than later, with Manager Radford advising if directed the difference to upgrade could be taken from General Fund Balance. Pros and Cons to expand the Nature Park were discussed in detail and suggestion by Council Member Jensen to sell lesser bonds: ½ million; staff noted associated costs would be the same for the bond process and would have the Finance Director look into the possibility of the sale of bonds for a lesser amount with debt service being less. Council did agree Hunter Street Park was a highly visible park and should also be given a better upgrade and to bid sooner would be less costly than later. Mayor Weatherly referred the matter to Council. **Action:** Council Member Jensen made the motion to choose Option 1 with the understanding staff would look heavily into the sale of bonds to expand the Nature Park plan to get it going. Staff noted construction plans are close on both Hunter and Seagroves parks and would start the bid process as soon as possible. Council Member Olive made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously.

End of Old Business

## PUBLIC FORUM

**Public Forum allows the public an opportunity to address the Town Council.  
Mayor Weatherly will recognize those who would like to speak at the appropriate time.**

**Large groups are asked to select a representative to speak for the entire group.**

*Comments must be limited to 3 minutes to allow others opportunity to speak.*

*No one spoke during Public Forum.*

## NEW BUSINESS

### **New Business 01**

Principal Planner Brendie Vega

**Revised Master Subdivision Plan Parkside on the Creek:** Parkside Development Group, LLC, owner, seeking to amend previous subdivision plan approval for 104 residential lots, proposing 103 residential lots on 60.07 acres, located at the 2147 Mt. Zion Church Road at the end of Blazing Trail. Staff presented the Planning report and is incorporated as a part of the minutes, and explains the existing conditions and background of the previously approved Parkside on the Creek Major Subdivision Plan. Proposed changes include roadway layout to decrease amount of stream crossings, reducing the number of lots, noted Milano Drive was under construction, and requests to amend the conditions as follows:

1. Tree protection fencing shall be installed at least 10 feet from the rear lot line on each lot prior to the grading of individual lots.
2. "No construction traffic" signage shall be posted at the entrance to Whistling Quail Run.
3. Snipe Court road improvements shall extend and connect to Whistling Quail Run prior to the 51<sup>st</sup> Certificate of Occupancy.
4. Milano Avenue shall be dedicated from the planned subdivision to Evans Road prior to the first plat of any phase.

RCA is not required, Parkside will pay a fee-in-lieu, noted access and circulation plan, landscape, and grading plan, with recommendation for tree protection fencing for each lot as they develop. Plan is consistent with 2025 LUP, UDO and Transportation Plan identifying Street G as a future major collector and Humie Olive Road as a 2-lane thoroughfare with left-turn bays/lanes; will connect Whistling Quail Run to Humie Olive. Planning Board met April 11, 2011 and unanimously recommends approval with conditions; staff recommends approval with conditions as stated. Discussion followed that fee-in-lieu for Parkside was based on the rate granted with its original approval in 2007 and satisfies the Parks and Recreation requirement, and is adjacent property to the Nature Park. Attorney Fordham advised the original decision to grandfather does not apply to the revision of the plan and could consider whether to grandfather the revision to the plan or not; Planning Department decision was to proceed as is. Stuart Jones, Jones and Cnossen, addressed the revised configuration dropping one lot, and noting the recreation area in Bella on the other side of the creek near Milano was optional and folks could join; noted lots of stream buffers, open space, and areas for kids to play, a different kind of recreation area cleared, with the change in the creek crossing, bringing this revision. Mayor Weatherly referred the matter to Council. **Action:** Council Member Gossage made the motion to approve the revision with conditions stated. Council Member Jensen made the second to the motion. Vote was 4-0. Motion carried unanimously.

End of New Business

**Information:** Tom Hendrickson, Veridea, stated he would provide addendum and updates of the SD Plan, Tables and UDO as agreed to during the April 5, 2011 Council meeting. Staff advised there should be at least two weeks for a full review of the documents for accuracy prior to discussion with Council, with some issues still to be addressed, one being reallocation, with Attorney Fordham advising they were close on all and should not be substantial. **Action:** Council Member Gossage made the motion to set May 10, 2011 as a Special meeting to continue Veridea discussion and for a possible motion regarding same. Council Member Olive made the second to the motion. Vote on the motion was 4-0. Motion carried unanimously.

### CLOSED SESSION

There were no Closed Session items to be discussed.

### WORK SESSION

No Work Session was scheduled.

### ADJOURNMENT

With no further business to come before the Council, Mayor Weatherly called for a motion to adjourn at 9:00 p.m. **Action:** Council Member Gossage made the motion to adjourn. Council Member Jensen made the second to the motion. Vote on the motion was 4 and 0. Motion carried.

The minutes for April 19, 2011 Town Council meeting were submitted by Town Clerk to the Council for their approval during their May 3, 2011 meeting.

/s/Georgia A. Evangelist, MMC  
Town Clerk

/s/Keith H. Weatherly  
Mayor