

TOWN OF APEX, NORTH CAROLINA

Council Meeting Minutes for April 03, 2012

The Regular Meeting of the Apex Town Council scheduled for Tuesday, April 03, 2012, 7:00 p.m. was held in the Council Chambers of the [Apex Town Hall](#) and Town Campus, 73 Hunter Street.



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

Mayor Keith Weatherly presided over the meeting.

Council: Mayor pro tempore Gene Schulze, Bill Jensen, Lance Olive, Terry Rowe, Scott Lassiter

COMMENCEMENT

Mayor Weatherly called the meeting to order, gave the Invocation and led the Pledge of Allegiance.

PRESENTATIONS

Mayor Weatherly recognized retiring Town Clerk Georgia Evangelist, effective May 1, 2012 having served the Town 32 years, and noted this would be her last official meeting with the Council.

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. There were no amendments and the Consent Agenda was set. **Action:** Council Member Schulze made the motion to approve the Consent Agenda. Council Member Rowe made the second to the motion. Motion carried unanimously 5-0.

1. Minutes for March 20, 2012 Council Meeting; and March 20, 2012 Council Closed Session (separate).
2. Council Statement and Ordinance for Rezone #11CZ17, NHPO, LLC. petitioner, for property located at 3525 Old US 1 Hwy.
3. Findings of Fact, Conclusions of Law for Thales Academy Major Site Plan, 1300 N. Salem Street.
4. Set Public Hearing April 17, 2012 for Rezone #12CZ02 from Planned Unit Development-Conditional Zoning to PUD-CZ district, changing conditions for the property located at Olive Chapel Road and known as Olive Chapel Park, containing 23.11 acres.
5. Set Public Hearing April 17, 2012 for Rezone #12CZ03 Kelly Grove Phase II from Rural Residential to Medium Density Residential-Conditional Zoning, located at 2293 Toad Hollow Trail, containing 7.134 acres.
6. Set Public Hearing April 17, 2012 for various amendments to the Unified Development Ordinance.
7. Wake County Tax Report approved and accepted during the Commissioners March 19, 2012 Regular Session for Town of Apex.
8. Approve appointment of a committee to consider renewal of the office space lease for Apex Chamber of Commerce.

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. The Regular Meeting Agenda was set.

PUBLIC HEARINGS

There were no scheduled Public Hearings.

OLD BUSINESS

Old Business 01

Council Member Jensen

Council Member Jensen asked Council to consider the purchase of the Edwards property on Old Raleigh Road to erect a retention pond and small passive park space.

Council Member Olive asked he be recused from participating and voting on this item as his father owns property near the property being considered. **Action:** Council Member Schulze made the motion to allow Council Member Olive to be recused. Council Member Rowe made the second to the motion. Motion carried unanimously 4-0.

Council Member Jensen viewed this as an opportunity for the Town to consider purchase of the property; noted the Parks, Recreation and Cultural Resources Advisory Commission did not recommend the property for a park site for the following reasons: property was not on the park plan, were concerned with connectivity, unknown costs for managing the park and its usage, and felt the program was mainly for storm water management and should go through Public Works and DENR first; due to the lack of information he accepted this. He reported on information from the Manager, in that placing wet ponds in the headwaters of the perennial part of William's Creek was not desirable; he commented on reduction of the flow capacity and discharge during 10 and 25 year storm events and the impact of waters as it moves downstream. Estimated costs could push towards \$600,000 and would include construction, land and miscellaneous other costs. He was willing to pursue grant funding in an effort to reduce costs if Council were interested, and had hoped the Commission would have been on board and could pursue combination grants; noted the greenway connection could come through Surry Meadows, Ole Mill Village, could tie into Shepherd's Vineyard Greenway and then into Town. He expressed if there were no interest, there was no reason to proceed, and if there was interest, he would contact DENR seeking approval for a retention pond; noted they would not have to buy the property immediately, nor do the project all at one time, but saw it as a good opportunity. Mayor Weatherly was willing to keep the item open if there was additional information that would have positive bearing, such as grant funding to reduce costs and proved diligence on the Williams Creek issues, not knowing if this would make a significant impact downstream; noted other larger parks projects and need for funding to complete those. Mayor Weatherly continued if there were no motion, then they would move on, and with more information, would revisit this. Council Member Schulze asked if the pond could not be dammed up, would it still work. Council Member Jensen responded the pond could be dammed up to limit flow, but not a retention pond, but could be a wet pond and would have to be left in natural state. No action was taken.

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

Lee Smiley Director of Finance

Possible motion to approve change in Town's financial policies to increase minimum level of fund balance from 10% to 25%. Smiley noted the approved financial policies and guidelines for the Town requires the Town maintain a minimum amount of 10% fund balance for annual operating budget; rating agencies are not comfortable with the policy which allowed the Town to reduce its fund balance to this level and financial advisors recommend increasing the minimum to 25%; Town currently maintains 45%. In addition the Governmental Accounting Standards Board felt the terminology for fund balance was confusing to the average citizen and required changes in its Statement 54: term "Unassigned" instead of previous term "Unrestricted" and/or "Undesignated." Policy is being corrected to reflect new standard. Mayor Weatherly noted money will be available for use if need be and this change assures bond markets the Town is financially secure. **Action:** Council Member Schulze made the motion to approve the changes as recommended. Council Member Jensen made the second to the motion. Motion carried unanimously 5-0.

New Business 02

Lee Smiley Director of Finance

Possible motion to approve a Service Agreement with Authorize.net and authorize Finance Department Staff to submit online application to Authorize.net and enter into the agreement for processing online payments for utility services and inclusive for building permits. Town will eliminate current fees charged to utility customers when paying online. Attorney Fordham identified three issues with the agreement: limitation of liability, indemnification and governing law and jurisdiction, however noted it appears to be standard throughout the industry and non-negotiable; noted laws applied to the agreement are in the favor of California. Staff believes risks to the Town are low and outweighed by the advantages of having a vendor who is familiar with New World Software; no problems have been reported by the Towns of Wake Forest, Holly Springs and Fuquay, users of the same with less than one year's experience. Town Attorney Fordham advised it may be worthwhile to join with the others that use this to see if there's an interest to negotiate the legal issues expressed by the attorney. Smiley explained how transaction fees are absorbed now for those paying by phone or counter, approximately \$7000 annually; noted no impact on the town long range, entering into the agreement could save in personnel costs and processing time and staffing needs and offset the number of phone calls. Mayor Weatherly questioned potential to consider parks and recreation, and was noted the department uses a different online provider and software package. **Action:** Council Member Schulze made the motion to approve the Authorize.net agreement as recommended. Council Member Jensen made the second to the motion. Council Member Olive agreed this was a good venture, and as the town gets bigger wouldn't have to add processors to handle paper work; he's confident the amount of time saved will be offset by the nominal fees charged for electronic transactions especially when people process their own payments; looking at the one sided pieces of the contract with other towns is worth it especially where it pertains to indemnification and venue and other items such as arbitration, trying to balance those out, and trying to get clout and leverage. Motion carried unanimously 5-0.

End of New Business 02

New Business 03

Chief of Police Jack Lewis

Possible motion to amend Section 14-14 and Section 18-11 of the Apex Town Code of Ordinances as shown in the attached ordinance to allow Downtown Sidewalk Food Service Tables on the public sidewalks in the Central Business District, to allow open containers of and the consumption of malt beverages and unfortified wine at these tables and to update the definitions of malt beverage and unfortified wine in the Town Code.

Chief explained businesses within the downtown operate food service tables on public sidewalks and serve alcohol at these tables and have been doing so for several months. He advised the Town Code does not allow food service tables on any public sidewalk nor does it allow open containers of the consumption of malt beverages or unfortified wine on any public sidewalk. State law does not prohibit open containers of same, and leaves that decision to municipalities whether to prohibit same or not; municipalities have no power to modify state law as they prohibit consumption of fortified wine, spirituous liquor or mixed drinks on any public sidewalk. Amending code Sec. 18-11 would allow food service tables on public sidewalks adjacent to food service provider's place of business on the conditions that a clear accessible travel path of at least 36" be maintained. Amending code Sec. 14-14(d) would allow open containers of and consumption of malt beverages and unfortified wine at downtown sidewalk food service tables on public sidewalks; mixed beverages would be prohibited by the general statute; Sec. 14-14 would define malt beverage and unfortified

wine to match state statute. Downtown Merchants supports the amendments. Jeff Hastings represents the Apex Chamber of Commerce and supports the amendments as proposed.

Council Member Schulze is in favor and asked what would stop one from strolling down the street with open containers. Would be unlawful and police would enforce law, however Chief Lewis felt the restaurant owners would be responsible, and patrons would cooperate. Council Member Rowe wanted the amendment clearly communicated to the merchants, keeping paths open would be tough and didn't want police to be responsible for the patrol, wanting to educate the merchants of the expectations. Chief Lewis was confident that the ordinances as proposed would work, advising the merchants want it to work especially for the revenue that it would generate, and realize if they are not in compliance, would be changed, and advised further would return to Council asking so. Discussion evolved around license, temporary permits for areas such as the Chamber lot; Attorney Fordham would have to revisit this to see. Hastings reported they rent the building only. Attorney Fordham confirmed with Chief Lewis if he were saying downtown tables should not be allowed during special events; Chief advised that was correct. Attorney Fordham offered that the ordinance could be amended. Council Member Olive viewed that 36" obstructs and not enough for wheelchairs where tables and chairs encroach the sidewalks, and where two people pass, thinking 48' was more in line with ADA compliance. Chief Lewis advised 36" was the standard and not inclusive of the brick area on the sidewalks, and was capturing the rule noting the extra foot makes the difference with the tables and were movable and could comply quickly. Council Member Olive commented on the sidewalks being tighter than need be and having to navigate through. Chief again noted 36" is the industry standard and recommended ADA compliance. Mayor Weatherly knew if this became a problem, could address it and the downtown merchants wanted this to work. Attorney Fordham offered the amending language for Sec. 18-11 "...except where the street is temporarily closed to regular traffic for special events." Council Member Rowe advised a previous UDO amendment had set 36" in place and the only way to enforce it based on ADA requirements. **Action:** Council Member Jensen made the motion to approve the amendments to the Town Code as recommended with the additional language stated by the Attorney. Council Member Schulze made the second to the motion, adding the downtown merchants were in favor.

End of New Business 03
End of New Business

CLOSED SESSION

There were no Closed Session items.

WORK SESSION

There were no Work Session items.

ADJOURNMENT

With no further business to come before Council Mayor Weatherly called for a motion to adjourn at 7:50 p.m. **Action:** Council Member Lassiter made the motion to adjourn. There was no second to the motion. Motion carried 5-0.

The minutes of the April 3, 2012 Council Meeting was submitted by the Town Clerk for the Council's approval during their May 1, 2012 meeting.

Georgia A. Evangelist, MMC
Town Clerk

Keith H. Weatherly
Mayor