



REVISED AGENDA | REGULAR TOWN COUNCIL MEETING

Tuesday, April 08, 2025 at 6:00 PM

Council Chambers - Apex Town Hall, 73 Hunter Street

The meeting will adjourn when all business is concluded or 10:00 PM, whichever comes first

Governing Body and Town Senior Executive Leadership

Mayor: Jacques K. Gilbert | Mayor Pro-Tempore: Edward Gray

Council Members: Audra Killingsworth; Brett D. Gantt; Terry Mahaffey; Arno Zegerman

Town Manager: Randal E. Vosburg

Deputy Town Manager: Shawn Purvis

Assistant Town Managers: Demetria John and Marty Stone

Town Clerk: Allen L. Coleman | Town Attorney: Laurie L. Hohe

COMMENCEMENT

Call to Order | Invocation | Pledge of Allegiance

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 Mayor will present the Consent Agenda to be set prior to taking action on the following items:

CN1 Advisory Board Attendance Report 2025 - Quarter 1

Allen Coleman, Town Clerk

CN2 Agreement - Utilities Infrastructure Reimbursement Agreement - Chatham County and Town of Apex - Apex Gateway Partnership Project

Shawn Purvis, Deputy Town Manager, Town Manager's Office

CN3 Annexation No. 789 - Chinese Christian School - Secluded Acres Road - 4.72 acres

Allen Coleman, Town Clerk

CN4 Annexation No. 801 - Apex Light Industrial - 0 Creekbird Road - 3.19 acres

Allen Coleman, Town Clerk

CN5 Council Meeting Minutes - Various

Allen Coleman, Town Clerk

CN6 Encroachment Agreement - 1461 Hasse Avenue

Chris, Johnson, P.E., MPA, Director, Transportation and Infra. Dev. Department

CN7 Encroachment Agreement - Huxley Open Space - 0 Hasse Avenue

Chris, Johnson, P.E., MPA, Director, Transportation and Infra. Dev. Department

CN8 Fiscal Policy Guideline Amendments - Budget Targets, Debt Targets, Fund Balance, Cash and Investments, and Utility Fund Targets

Antwan Morrison, Director, Finance Department

CN9 Human Resources (HR) Policy Updates - Town Personnel Policies - Define Immediate Family and Clarify Secondary Employment with the Town

Karen Spurlin, Interim Director, Human Resources Department

CN10 Property Acquisition - 0 Pristine Water Drive - 0.9468 acres

Steve Adams, Real Estate and Utilities Acquisition Specialist, Trans. and Infra. Dev. Dept.

CN11 Property Acquisition - 0 Tingen Road - 5.5926 acres

Steve Adams, Real Estate and Utilities Acquisition Specialist, Trans. and Infra. Dev. Dept.

UPDATES BY TOWN MANAGER

PRESENTATIONS

PR1 ADDED - Special Recognition - Cub Scout Pack 312

Mayor Jacques K. Gilbert

PR2 Proclamation - Child Abuse Prevention Month 2025 - April 2025

Mayor Jacques K. Gilbert

PR3 Proclamation - National Public Safety Telecommunications Week 2025 - April 13 through April 19, 2025

Mayor Jacques K. Gilbert

PR4 Proclamation - Nepal Day 2025 - Saturday, April 19, 2025

Mayor Jacques K. Gilbert

PR5 Think Apex Awards - 2025

Brianne Gill, Community Engagement Manager, Comm. Dev. And Nghbd. Conn. Dept.

REGULAR MEETING AGENDA

Mayor Gilbert will call for additional Agenda items from Council or Staff and set the Regular Meeting Agenda prior to Council actions.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Town Council. The speaker is requested not to address items that appear as Public Hearings scheduled on the Regular Agenda. The Mayor 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 the opportunity to speak.

PUBLIC HEARINGS

PH1 Annexation No. 792 - Jainix South - Jenks Road - 7.243 acres

Dianne Khin, Director, Planning Department

PH2 Unified Development Ordinance (UDO) Amendments - Signs - March/April 2025

Bruce Venable, Planner II, Planning Department

PH3 Unified Development Ordinance (UDO) Amendments - Various - March/April 2025

Amanda Bunce, Current Planning Manager, Planning Department

Bruce Venable, Planner II, Planning Department

NEW BUSINESS

**NB1 Abbey Spring Affordable Housing Funding Commitment - Budget Ordinance
Amendment No. 10**

B. Lamont Taylor, Housing Services Manager, Community Dev. and Nghbd. Conn. Dept.

CLOSED SESSION

Council will enter into closed session pursuant to:

CS1 Steve Adams, Real Estate and Utilities Acquisition Sp., Trans. and Infra. Dev. Dept.

NCGS §143-318.11(a)(5):

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

CS2 Laurie Hohe, Town Attorney

RE: Town of Apex v. Mills

NCGS §143-318.11(a)(3):

"To consult with an attorney employed or retained by the public body in order to preserve the attorney client privilege between the attorney and the public body."

ADJOURNMENT

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: April 08, 2025

Item Details

Presenter(s): Allen Coleman, Town Clerk

Department(s): Town Clerk's Office

Requested Motion

Motion to receive and accept the resident advisory board attendance reports for quarter one, which includes January, February, and March, of calendar year 2025.

Approval Recommended?

Yes

Item Details

The Town of Apex has six (6) active resident advisory boards that are established to provide expert advice, guidance, and recommendations to the elected body on specific focus areas or identified Town priorities.

Each of the resident advisory boards are listed below:

- Arts and Culture Advisory Board (formerly Public Art Committee)
- Board of Adjustment (BOA)
- Environmental Advisory Board (EAB)
- Multimodal Transportation Advisory Board (formerly Transit Advisory Committee)
- Parks and Recreation Advisory Board (PRAB)
- Planning Board

During the Town Council Work Session on December 17, 2024, the Town Clerk presented several administrative process recommendations, including a quarterly report to the elected body on resident advisory board members attendance. In addition, the elected body considered the following attendance policy recommendation:

- Missing three (3) consecutive meetings shall be cause for dismissal
- Missing twenty-five (25%) of meetings within a twelve (12) month period shall be cause for dismissal

Following the acceptance of this report, the Town Clerk shall send warning letters to the following individuals who have attended fifty percent (50%) or less of the meetings held in calendar year 2025.

Resident Advisory Board	Member	Meetings Attended % YTD 2025
Arts and Culture Advisory Board	Colwell, Tom	50%
Arts and Culture Advisory Board	Durham, Sean	50%
Arts and Culture Advisory Board	Erickson, Bradley	50%
Arts and Culture Advisory Board	Prichard, Ewan	0%
Arts and Culture Advisory Board	Trawick, Lafayette	50%
Board of Adjustment (BOA)*	NONE	N/A
Environmental Advisory Board (EAB)	Crowell, Sean	50%
Multimodal Transportation Advisory Board (MTAB)**	NONE	N/A
Parks and Recreation Advisory Board	Colwell, Tom	33%
Parks and Recreation Advisory Board	Kanters, Michael	33%
Planning Board	NONE	N/A

*The Board of Adjustment (BOA) has designated alternate members who are not required to attend every meeting.

**The Multimodal Transportation Advisory Board previously had three (3) Ex-officio member seats which were held by staff. The direction provided on December 17, 2024 eliminated the ex-officio members but replaced them with at-large voting members.

The Office of the Town Clerk is in active recruitment for all resident advisory boards and accepting applications through April 21, 2025. Residents are encouraged to apply online using the following link:

<https://www.cognitofrms.com/TownOfApex1/AdvisoryBoardApplicationForm>

Attachments

- CN1-A1: Arts and Culture Advisory Board Attendance Report 2025 - Quarter 1
- CN1-A2: Board of Adjustment Attendance Report 2025 - Quarter 1
- CN1-A3: Environmental Advisory Board Attendance Report 2025 - Quarter 1
- CN1-A4: Multimodal Transportation Advisory Board Attendance Report 2025 - Quarter 1
- CN1-A5: Parks and Recreation Advisory Board Attendance Report 2025 - Quarter 1
- CN1-A6: Planning Board Attendance Report 2025 - Quarter 1



Office of the Town Clerk

Advisory Board	Last Name	First Name	Position	January 2025 (Present/Absent)	February 2025 (Present/Absent)	March 2025 (Present/Absent)	Total Held	Total Attended	Total Missed	Attendance % YTD - 2025
Arts and Culture Advisory Board	Bryant	Bethany	Board Member	Present	Cancelled Meeting	Present	2	2	0	100%
Arts and Culture Advisory Board	Colwell	Tom	Chair	Absent	Cancelled Meeting	Present	2	1	1	50%
Arts and Culture Advisory Board	Durham	Sean	Vice-Chair	Present	Cancelled Meeting	Absent	2	1	1	50%
Arts and Culture Advisory Board	Erickson	Bradley	Board Member	Absent	Cancelled Meeting	Present	2	1	1	50%
Arts and Culture Advisory Board	Kirley	Susan	Board Member	Present	Cancelled Meeting	Present	2	2	0	100%
Arts and Culture Advisory Board	Pritchard	Ewan	Board Member	Absent	Cancelled Meeting	Absent	2	0	2	0%
Arts and Culture Advisory Board	Trawick	Lafayette	Board Member	Present	Cancelled Meeting	Absent	2	1	1	50%
Arts and Culture Advisory Board	VACANT	VACANT	Board Member	NA	Cancelled Meeting	NA	NA	NA	NA	
Arts and Culture Advisory Board	VACANT	VACANT	Youth(Voting)	NA	Cancelled Meeting	NA	NA	NA	NA	
Total Members Present				9	4	0	4			

Town Staff	Last Name	First Name	Position	January 2025 (Present or NA)	February 2025 (Present or NA)	March 2025 (Present or NA)	Total Held	Total Attended		Attendance % YTD - 2025
Town Clerk	Coleman	Allen	Staff	Present	Cancelled Meeting	NA	2	1		
Deputy Town Clerk	Gentry	Ashley	Staff	Present	Cancelled Meeting	NA	2	1		
Cultural Arts Center Manager	Wray	Taylor	Clerk Liaison	Present	Cancelled Meeting	Present	2	2		

Office of the Town Clerk

Advisory Board	Last Name	First Name	Position	January 2025 (Present/Absent)	February 2025 (Present/Absent)	March 2025 (Present/Absent)	Total Held	Total Attended	Total Missed	Attendance % YTD - 2025
Board of Adjustment	Carmac	Robert	Chair	Cancelled Meeting	Present	Present	2	2	0	100%
Board of Adjustment	Hart	William	Board Member	Cancelled Meeting	Present	Present	2	2	0	100%
Board of Adjustment	Hollenbeck	William	2nd Alternate	Cancelled Meeting	Present	Present	2	2	0	100%
Board of Adjustment	Pai	Umeshi	Board Member	Cancelled Meeting	Present	Present	2	2	0	100%
Board of Adjustment	Sayers	Michael	1st Alternate	Cancelled Meeting	Present	Present	2	2	0	100%
Board of Adjustment	Sisco	Heidi-Marie	3rd Alternate	Cancelled Meeting	Present	Absent	2	1	1	50%
Board of Adjustment	Stocks	Ross	Board Member	Cancelled Meeting	Present	Present	2	2	0	100%
Board of Adjustment	Taylor	Tracy	Vice-Chair	Cancelled Meeting	Present	Present	2	2	0	100%
<u>Total Members Present</u>	8				8	7				

Town Staff	Last Name	First Name	Position	January 2025 (Present or NA)	February 2025 (Present or NA)	March 2025 (Present or NA)	Total Held	Total Attended		Attendance % YTD - 2025
Current Planning Manager	Bunce	Amanda	Staff	Cancelled Meeting	Present	NA	2	1		
Town Clerk	Coleman	Allen	Staff	Cancelled Meeting	Present	NA	2	1		
Senior Planner	Cowles	June	Staff	Cancelled Meeting	Present	P	2	2		
Deputy Town Clerk	Gentry	Ashley	Staff	Cancelled Meeting	Present	NA	2	1		
Planner 1	Staudenmaier	Lauren	Clerk Liaison	Cancelled Meeting	Present	Present	2	2		
Assistant Town Attorney	Welch	Chris	Staff	Cancelled Meeting	Present	Present	2	2		
				Cancelled Meeting						

Office of the Town Clerk

Advisory Board	Last Name	First Name	Position	January 2025 (Present/Absent)	February 2025 (Present/Absent)	March 2025 (Present/Absent)	Total Held	Total Attended	Total Missed	Attendance % YTD - 2025
Environmental Advisory Board	Adams	Patrick	Board Member	Present	Cancelled Meeting	Present	2	2	0	100%
Environmental Advisory Board	Crowell	Sean	Board Member	Present	Cancelled Meeting	Absent	2	1	1	50%
Environmental Advisory Board	Garrison	John	Vice-Chair	Present	Cancelled Meeting	Present	2	2	0	100%
Environmental Advisory Board	Jenson	Bill	Board Member	Present	Cancelled Meeting	Present	2	2	0	100%
Environmental Advisory Board	Mason	Suzanne	Chair	Present	Cancelled Meeting	Present	2	2	0	100%
Environmental Advisory Board	Moller	Njeri	Board Member	Present	Cancelled Meeting	Present	2	2	0	100%
Environmental Advisory Board	Schaaf	Katie	Board Member	Present	Cancelled Meeting	Present	2	2	0	100%
Environmental Advisory Board	VACANT	VACANT	Board Member	NA	Cancelled Meeting	NA	NA	NA	NA	0%
Environmental Advisory Board	VACANT	VACANT	Board Member	NA	Cancelled Meeting	NA	NA	NA	NA	0%
Environmental Advisory Board	VACANT	VACANT	Youth (Voting)	NA	Cancelled Meeting	NA	NA	NA	NA	0%
Total Members Present	10			7		6				

Town Staff	Last Name	First Name	Position	January 2025 (Present or NA)	February 2025 (Present or NA)	March 2025 (Present or NA)	Total Held	Total Attended		Attendance % YTD - 2025
Town Clerk	Coleman	Allen	Staff	Present	Cancelled Meeting	NA	2	1		
Town Councilmember	Gantt	Brett	Council	Present	Cancelled Meeting	Present	2	2		
Deputy Town Clerk	Gentry	Ashley	Staff	Present	Cancelled Meeting	NA	2	1		
Environmental Programs Coordinator	Skinner	Nora	Clerk Liaison	Present	Cancelled Meeting	Present	2	2		

Office of the Town Clerk

Advisory Board	Last Name	First Name	Position	January 2025 (Present/Absent)	April 2025 (Present/Absent)	July 2025 (Present/Absent)	October 2025 (Present/Absent)	Total Held	Total Attended	Total Missed	Attendance % YTD - 2025
Multimodal Transportation Advisory Board	Barrett	Linda	Board Member	Present				1	1	0	100%
Multimodal Transportation Advisory Board	Bryant	Nick	Vice-Chair	Present				1	1	0	100%
Multimodal Transportation Advisory Board	Kirley	Patrick	Board Member	Present				1	1	0	100%
Multimodal Transportation Advisory Board	Perry	Wendy	Board Member	Present				1	1	0	100%
Multimodal Transportation Advisory Board	Werking	Andrew	Chair	Present				1	1	0	100%
Multimodal Transportation Advisory Board	Williams	Frances	Board Member	Present				1	1	0	100%
Multimodal Transportation Advisory Board	VACANT	VACANT	Board Member	NA							
Multimodal Transportation Advisory Board	VACANT	VACANT	Board Member	NA							
Multimodal Transportation Advisory Board	VACANT	VACANT	Youth (Vothing)	NA							
Total Members Present	9			6				1	6	0	

Town Staff	Last Name	First Name	Position	January 2025 (Present or NA)	April 2025 (Present or NA)	July 2025 (Present or NA)	October 2025 (Present or NA)	Total Held	Total Attended		Attendance % YTD - 2025
Town Clerk	Coleman	Allen	Staff	Present				1	1		
Long-Range Planning Manager	Cox	Shannon	Staff	Present				1	1		
Town Councilmember	Gantt	Brett	Council	Present				1	1		
Deputy Town Clerk	Gentry	Ashley	Staff	Present				1	1		
Director of Economic Development	Helms	Joanna	Staff	Present				1	1		
Parks Planning Manager	Reincke	Angela	Staff	Present				1	1		
Sr. Planner - Long-Range Transit	Schwing	Katie	Staff	Present				1	1		
Planner II	Staudenmaier	Lauren	Staff	Present				1	1		

Office of the Town Clerk

Advisory Board	Last Name	First Name	Position	January 2025 (Present/Absent)	February 2025 (Present/Absent)	March 2025 (Present/Absent)	Total Held	Total Attended	Total Missed	Attendance % YTD - 2025
Parks and Recreation Advisory Board	Lanier	Darryl	Chair	Absent	Present	Present	3	2	1	67%
Parks and Recreation Advisory Board	Blatchford	Mary	Board Member	Present	Present	Present	3	3	0	100%
Parks and Recreation Advisory Board	Carusona	Matt	Vice-Chair	Absent	Present	Present	3	2	1	67%
Parks and Recreation Advisory Board	Colwell	Tom	Board Member	Absent	Absent	Present	3	1	2	33%
Parks and Recreation Advisory Board	Croom	Jeremy	Board Member	Present	Present	Present	3	3	0	100%
Parks and Recreation Advisory Board	Esterrich	Lisa	Board Member	Present	Present	Present	3	3	0	100%
Parks and Recreation Advisory Board	Kanters	Michael	Board Member	Absent	Present	Absent	3	1	2	33%
Parks and Recreation Advisory Board	Montoya	Lisa	Board Member	Present	Present	Present	3	3	0	100%
Parks and Recreation Advisory Board	Roach	Jeff	Board Member	Present	Present	Present	3	3	0	100%
Parks and Recreation Advisory Board	VACANT	VACANT	Youth (Non-Voting)	NA	NA	NA	NA	NA	NA	
Total Members Present	10			5	8	8				
Town Staff	Last Name	First Name	Position	January 2025 (Present or NA)	February 2025 (Present or NA)	March 2025 (Present or NA)	Total Held	Total Attended		Attendance % YTD - 2025
Town Clerk	Coleman	Allen	Staff	NA	Present	NA	3	1		
Deputy Town Clerk	Gentry	Ashley	Staff	NA	Present	NA	3	1		
Executive Assistant	Pearson	Candice	Clerk Liaison	Present	Present	Present	3	3		
Planning Parks Manager	Reincke	Angela	Staff	Present	Present	Present	3	3		
Director of PRCR	Setzer	Craig	Staff	Present	Present	Present	3	3		

Office of the Town Clerk

Advisory Board	Last Name	First Name	Position	January 2025 (Present/Absent)	February 2025 (Present/Absent)	March 2025 (Present/Absent)	Total Held	Total Attended	Total Missed	Attendance % YTD - 2025	Notes
Planning Board	Byrd	Alyssa	Board Member	Present	Present	Present	3	3	0	100%	
Planning Board	Braswell	Keith	Board Member	Present	Present	Present	3	3	0	100%	
Planning Board	Hastings	Jeff	Board Member	Present	Present	Present	3	3	0	100%	
Planning Board	Khodaparast	Daniel	Board Member	Present	Present	Present	3	3	0	100%	
Planning Board	Mitchell	Preston	Board Member	Present	Present	Present	3	3	0	100%	
Planning Board	Rhodes	Steven	Board Member	Present	Present	Present	3	3	0	100%	
Planning Board	Royal	Tim	Vice-Chair	Present	Present	Present	3	3	0	100%	
Planning Board	Sherman	Tina	Chair	Present	Present	Absent	3	2	1	67.00%	
Planning Board	Soh	Sarah	Board Member	Present	Present	Present	3	3	0	100%	
Planning Board	VACANT	VACANT	Apex Historical Rep.	VACANT	VACANT	VACANT	NA	NA	NA		
Planning Board	VACANT	VACANT	Youth (Non-Voting)	VACANT	VACANT	VACANT	NA	NA	NA		
Total Members Present	11			9	8	8					

Town Staff	Last Name	First Name	Position	January 2025 (Present or NA)	February 2025 (Present or NA)	March 2025 (Present or NA)	Total Held	Total Attended		Attendance % YTD - 2025	Notes
Current Planning Manager	Bunce	Amanda	Staff	Present	NA	NA	3	1			
Planner 1	Killian	Joshua	Staff	Present	Present	Present	3	3			
Director of Planning	Khin	Dianne	Staff	Present	Present	Present	3	3			
Lead Planning Technician	Pederson	Jeri	Clerk Liaison	Present	Present	Present	3	3			
Parks Planning Manager	Reincke	Angela	Staff	Present	NA	NA	3	1			

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: April 08, 2025

Item Details

Presenter(s): Shawn Purvis, Deputy Town Manager

Department(s): Town Manager's Office

Requested Motion

Motion to approve a Utilities Infrastructure Reimbursement Agreement between Chatham County and the Town of Apex for a one-time reimbursement of \$300,000 of public infrastructure costs (paid to the Town of Apex), and authorize the Town Manager or their designee, to execute on behalf of the Town.

Approval Recommended

Yes

Item Details

As part of the partnership to develop the Apex Gateway project located in Chatham County and the Town of Apex, Chatham County agreed to contribute to the public infrastructure cost necessary for site development. The reimbursement agreement includes a one-time contribution from Chatham County of \$300,000 to the Town of Apex.

Attachments

- CN2-A1: Utilities Infrastructure Reimbursement Agreement - - Chatham County and Town of Apex - Apex Gateway Partnership Project
 - CONT-2022-113 - Mills Chatham Dev. Group LLC - Project Real Water - Sewer Incentive Agreement Executed



STATE OF NORTH CAROLINA)
)
CHATHAM COUNTY)

UTILITIES INFRASTRUCTURE
REIMBURSEMENT AGREEMENT

This UTILITIES INFRASTRUCTURE REIMBURSEMENT AGREEMENT (this “**Agreement**”) is entered into this the 17th day of March, 2025, by and between CHATHAM COUNTY, NORTH CAROLINA (the “**County**”), and the TOWN OF APEX, NORTH CAROLINA, a municipal corporation organized and existing under the laws of the State of North Carolina (“**Apex**”) (collectively, the “**Parties**”).

RECITALS

WHEREAS, Apex and County desire to provide water and sewer utility service to developments within the County which are incorporated into Apex;

WHEREAS, Apex is willing and able to extend water and sewer utility service to the development known as Apex Gateway which is located at the intersection of US Highway 64 and NC Highway 751;

WHEREAS, the project known as Apex Gateway Offsite Utilities (the “**Project**”) to extend water supply and distribution, and sanitary sewer collection utility services to Apex Gateway has been completed by the developer of Apex Gateway and accepted by Apex;

WHEREAS, Apex entered into the Economic Development Agreement with Mills Chatham Development Group, LLC on July 28, 2022, attached hereto as **Exhibit A**, wherein Apex agreed to reimburse Mills Chatham Development Group, LLC up to \$2,200,000.00 for completing the Project;

WHEREAS, Apex and County as neighbors in the region collaborate on providing utilities to their customers;

WHEREAS, County is agreeable to reimburse Apex for a portion of the Project to serve Apex Gateway; and

WHEREAS, this Agreement is authorized by N.C.G.S § 153A-449 and § 153A-275.

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. RECITALS; PURPOSE. The recitals are incorporated into this Agreement. This Agreement shall be effective upon execution by both parties (“**Effective Date**”). This Purpose of this Agreement is for County to reimburse Apex for a portion of the Project expenses.
2. COMPENSATION: County shall pay to Apex the total sum of three hundred thousand dollars (\$300,000.00) for completion of the Project. Payment shall be made within thirty (30) days of receipt of an invoice from Apex.

3. DELAY BEYOND THE CONTROL OF THE PARTIES. Neither County nor Apex, having taken commercially reasonable precautions, shall be in default of the provisions of this Agreement for delays in performance due to forces beyond the control of the Parties. "Forces beyond the control of the parties" shall mean, but is not limited to, delay caused by natural disaster, fire, flood, earthquakes, storms, lightning, epidemic, pandemic, war, riot, civil disobedience, or other event reasonably outside of the parties' control.
4. NO JOINT AGENCY AND NO PERSONNEL. No joint agency is established by this Agreement, and this Agreement does not create a partnership, joint venture, other joint endeavor, joint ownership, joint operations, or personnel sharing of any kind. No joint personnel are needed by the Parties to carry out this Agreement; this Agreement does not provide for the appointment of any personnel joint or otherwise.
5. AMENDMENT. This Agreement may be amended at any time by the mutual written consent of both Parties.
6. NOTICE. All notices and other communications required or permitted by this Agreement shall be in writing and shall be given either by personal delivery, or deposited in the United States mail, postage prepaid, addressed as follows:

The notice address for County shall be:

Attn: Bryan Thompson, County Manager
Chatham County
PO Box 1809
Pittsboro, NC 27312

The notice address for Apex shall be:

Attn: Randal E. Vosburg, Town Manager
Town of Apex
PO Box 250
Apex, NC 27502

7. DISPUTE RESOLUTION; GOVERNING LAW; VENUE. In the event a dispute arises between the Parties regarding performance under this Agreement, the Parties agree to bargain in good faith towards a mutual resolution. If the Parties, after honest good faith negotiations, cannot reach a mutually agreeable resolution of the dispute, then a Party may adjudicate its dispute as allowed by North Carolina State Laws. This Agreement shall be governed by the laws of the State of North Carolina. Any and all suits or actions related to this Agreement shall be brought in Chatham County, North Carolina.
8. NON-EXCLUSIVE REMEDIES/NO WAIVER. The selection of one or more remedies for breach shall not limit a Party's right to invoke any other remedy available under Agreement or by law. No delay, omission or forbearance to exercise any right, power or remedy accruing to a Party shall impair any such right, power or remedy or shall be construed to be a waiver of any

breach hereof or default. Every right, power or remedy may be exercised from time to time and as often as deemed expedient.

9. NO THIRD-PARTY BENEFICIARIES. There are no third-party beneficiaries to Agreement.
10. ELECTRONIC SIGNATURES. Pursuant to Article 40 of Chapter 66 of the North Carolina General Statutes (the Uniform Electronic Transactions Act) this Agreement and all documents related hereto containing an electronic or digitized signature are legally binding in the same manner as are hard copy documents executed by hand signature. The Parties hereby consent to use electronic or digitized signatures in accordance with Apex's Electronic Signature Policy and intend to be bound by the Agreement and any related documents. If electronic signatures are used the Agreement shall be delivered in an electronic record capable of retention by the recipient at the time of receipt.

Remainder of page left blank intentionally.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officials.

APEX, Town of Apex

Randal E. Vosburg, Town Manager

Date

Attest:

Allen Coleman, Town Clerk

Date

COUNTY, Chatham County



Bryan Thompson, County Manager

3/17/2025

Date

This instrument has been preaudited in the manner required by Local Government Budget and Fiscal Control Act.



03-21-2025

Date

STATE OF NORTH CAROLINA

ECONOMIC DEVELOPMENT
AGREEMENT

(APEX DEVELOPMENT SITE – PROJECT REAL)

COUNTY OF CHATHAM

This **ECONOMIC DEVELOPMENT AGREEMENT** (“**Agreement**”) is entered into and effective as of this 28th day of July, 2022 (“**Effective Date**”) by and among **MILLS CHATHAM DEVELOPMENT GROUP, LLC**, a North Carolina limited liability company (the “**MCDG**”), and the **TOWN OF APEX**, North Carolina, a municipal corporation of the State of North Carolina (the “**Town**”), and describes the agreement between the parties relating to an economic development project (as described herein, and commonly known as “**Project Real**”) located in the Town of Apex, North Carolina.

RECITALS

WHEREAS, pursuant to North Carolina General Statute 158-7.1, the Town of Apex is authorized to make appropriation for economic development purposes when the Council determines the appropriations will increase the population, taxable property, employment, industrial output, or business prospects of the town; and

WHEREAS, the Town is vitally interested in the economic welfare of its citizens and the creation and maintenance of sustainable jobs for its citizens in strategically important industries and therefore wishes to provide the necessary conditions to stimulate investment in the local economy and promote business, resulting in the creation of a substantial investment in the Town and to encourage economic growth and development opportunities which the Town has determined will be made possible pursuant to the Project (as defined below); and

WHEREAS, MCDG has contracted with an affiliate of BIN – AG LLC, a North Carolina limited liability company (“**BIN – AG**”) to develop the portion of the Site (as defined herein) owned by MCDG, including the design and construction of certain infrastructure improvements and an industrial or commercial building which will be leased to an affiliate of MCDG. MCDG intends to make a capital investment for the real property, infrastructure improvements and facility, of at least \$25,000,000.00 (the “**Capital Investment**”); and

WHEREAS, the portion of the Site to be owned by BIN – AG or an affiliate of BIN – AG will be developed for the benefit of future tenants that would bring additional jobs and investment to the Town. In connection therewith, BIN – AG intends to make a capital investment of at least \$68,750,000.00 for the infrastructure improvements and industrial or commercial buildings at the Site (as defined below); and

WHEREAS, such infrastructure and the building to be owned by MCDG and located on the Site are referred to as the “**MCDG Facility**,” the infrastructure and building to be owned by BIN – AG or an affiliate of BIN – AG and located on the Site are referred to as the “**BIN – AG Facility**,” and all of the facilities located on the Site are collectively referred to as the “**Facilities**,” and

WHEREAS, in order to locate the Project on the Site, a sewer and water line extension would be required to provide sewer and water services to the Site. The extension would benefit Project Real and future companies locating on the Site; and

WHEREAS, the Town recognizes that the Project will bring direct and indirect benefits to the Town, including needed infrastructure, job creation, economic diversification and stimulus in technology and manufacturing skills, and has offered economic development incentives (the “**Town Incentives**” as defined below) to induce MCDG to locate the Project at the Site; and

WHEREAS, MCDG fully intends to establish through the Project an important presence in the Town by making a substantial investment in the Project and hereby affirms that the terms of this Agreement, including specifically the Town Incentives and other assistance described in this Agreement, constitute a dispositive inducement for MCDG and its tenant to locate and develop the Facility at the Site.

Based on the above Recitals and the Terms contained below, which the parties acknowledge constitute sufficient consideration to make this Agreement legally binding and enforceable, the parties agree as set forth below.

TERMS

I. TOWN INCENTIVES GENERALLY

The Town will provide incentives, as specified below, so long as the provisions of this Agreement are specifically met.

II. TOWN ECONOMIC DEVELOPMENT INCENTIVES RELATED LAND DEVELOPMENT AND INFRASTRUCTURE

A. Town’s Incentives

Upon the completion of construction of the Improvements, as described below and in Section III, the Town will reimburse costs associated with the extension and installation of public utilities, specifically water and sewer, (the “**Improvement(s)**”) to the Site in an amount not to exceed two-million two hundred thousand dollars (\$2,200,000.00) (“**Maximum Town Incentive**”). The Improvements are described more specifically in the construction plans which have been or will be submitted to and approved by the Town. MCDG will provide evidence of the amount and completion of the construction of the Facilities and Improvements to the Town. Such evidence will include an AIA certificate of substantial completion signed by MCDG’s architect, civil engineer and general contractor, as applicable for Facilities and EJCDC C-625 Certificate of Substantial Completion signed by MCDG’s engineer and general contractor, as applicable. The County Assessor may request additional evidence reasonably necessary to properly assess each phase of the Facility.

B. Town Incentive payments.

Upon certification, inspection, and acceptance of the Improvements, the Town shall make ten (10) annual Town Incentive payments to MCDG. Each payment shall be \$220,000 and in no event shall the total Town Incentive paid to MCDG under this agreement exceed \$2,200,000.00. The initial payment shall be made within six (6) months following the acceptance of the Improvements by the Town, and the remaining payments shall be made annually thereafter as provided herein so long as this Agreement remains in effect.

III. MCDG OBLIGATIONS.

A. Improvements to the property.

MCDG and BIN - AG, at their sole cost and expense, shall construct the Improvements described above; construct Facilities and develop the Project known as Project Real on a tract or tracts of land owned by MCDG consisting of approximately 54.51 acres; and a tract or tracts of land to be owned by BIN - AG consisting of approximately 77.6 acres, all such tracts located at the intersection of US-64 and NC-751 in the County of Chatham, North Carolina (collectively, the "Site"). The Site is denoted on the map attached as Exhibit A.¹ The tax parcels included in the Site are provided in the table attached as Exhibit B.

Certification, Inspection, and Acceptance of Improvements.

Upon completion of construction of the Improvements, MCDG shall provide the Town with written certification and as-built drawings from MCDG's designated consulting engineering firm that the Improvements are complete and have been constructed and installed in compliance with this Agreement and within appropriate Town easements or fee simple parcels. The Improvements shall be offered for public dedication to the Town upon completion of construction and shall be subject to inspection and acceptance by the Town. Thereafter, the Town shall own the Improvements, have exclusive possession and control of the Improvements and responsibility for maintenance thereof. In the event that any defect or breach of warranty claim becomes known to the Town after acceptance and dedication of the Improvements to the Town, MCDG agrees either to assign such rights and claims to the Town as directed by the Town and reasonably cooperate with the Town in the Town's pursuit of its rights and claims against the contractor or other party responsible for the defect or breach of warranty. In the event any recovery is actually received by MCDG, MCDG shall promptly pay over such recovery to the Town.

B. Job creation.

MCDG, whether directly or indirectly through its affiliates, lessees, licensees, vendors, or tenants, is expected to create a minimum of one hundred eighty (180)

¹ Confirming if this is available. If not, we would propose substituting the tax parcel maps.

new full time jobs (herein “**Qualified Jobs**”) within the Town of Apex (Chatham County) by the date that is thirty-six (36) months following the Effective Date. The expected median average hourly wage for the Qualified Jobs at the Project is expected to be above the then-current median average hourly wage paid in Chatham County. The term “median average hourly wage” is defined as the median average hourly wage for all insured industries in the County as determined by the Employment Security Commission for the most recent period for which data is available. The Parties acknowledge that the median average hourly wage in Chatham County, according to data provided by the NC Department of Commerce, is currently \$20.98 per hour with an annual average wage of \$42,789.00.

C. Tax Generation.

The Project is expected to generate Property Tax Revenue, whether directly or indirectly through MCDG, BIN – AG, and their affiliates, lessees, licensees, vendors, or tenants, from the Site over its first ten years of operations, following the Effective Date, on the following schedule:

Apex-Chatham 751/US64 Site - Economic Development Estimates

Year	Estimated Tax Value*	Tax Rate**	Estimated Tax Revenue	Company Incentive†	Net Tax Revenue	Cumulative Tax Revenue
2025	\$ 93,750,000	0.390	\$ 365,625	\$ 329,063	\$ 36,563	\$ 36,563
2026	\$ 93,750,000	0.405	\$ 379,688	\$ 341,719	\$ 37,969	\$ 74,531
2027	\$ 93,750,000	0.405	\$ 379,688	\$ 341,719	\$ 37,969	\$ 112,500
2028	\$ 93,750,000	0.405	\$ 379,688	\$ -	\$ 379,688	\$ 492,188
2029	\$ 93,750,000	0.380	\$ 356,250	\$ -	\$ 356,250	\$ 848,438
2030	\$ 93,750,000	0.380	\$ 356,250	\$ -	\$ 356,250	\$ 1,204,688
2031	\$ 93,750,000	0.380	\$ 356,250	\$ -	\$ 356,250	\$ 1,560,938
2032	\$ 93,750,000	0.380	\$ 356,250	\$ -	\$ 356,250	\$ 1,917,188
2033	\$ 93,750,000	0.360	\$ 337,500	\$ -	\$ 337,500	\$ 2,254,688
2034	\$ 93,750,000	0.360	\$ 337,500	\$ -	\$ 337,500	\$ 2,592,188
2035	\$ 93,750,000	0.360	\$ 337,500	\$ -	\$ 337,500	\$ 2,929,688

Assumptions

Highlighted years indicate revaluation years

* Estimates are derived from expected investment for Project Real (\$25M) and subsequent projects (\$68.75M) on The Site and are subject to change based on actual costs of construction and equipment.

**Tax rate is for estimate purposes only and based on the current rate with future adjustments made to reflect an estimated revenue-neutral tax rate occurring with Wake County revaluations. The setting of the tax rate is at the sole discretion of the Apex Town Council on an annual basis.

†Years 2025 through 2027 reflect potential economic development tax incentives typically provided by Apex to new industries that provide significant investment and job creation. The current incentive policy is a 90% grant back for three years.

It is recognized that these are revenue projections, based on current tax rates and tax structure.

D. Commencement of Operations. MCDG, whether directly or indirectly through its affiliates, lessees, licensees, vendors, or tenants, is expected to commence operations within two and one-half (2.5) years of the Effective Date.

E. Other.

- (1) Permits. MCDG shall obtain and maintain all permits and approvals required by federal, state and local law for the construction and operation of the proposed Improvements and the Project.
- (2) Quarterly Reports. MCDG shall provide the Town's Economic Development Director with copies of all monthly and/or quarterly tax and wage statements, at the time of filing, for MCDG and for each tenant or vendor of MCDG conducting business on the Site or operating as part of the Project for purposes of demonstrating compliance with the requirements of Sections IV.B. and C. below. Said statements and other documents may be necessary to allow the Town to determine compliance with the Jobs Creation and Tax Revenue benchmarks.
- (3) Extensions. For good cause, including Force Majeure, the time for performance of any obligation set forth herein may be extended by the party to whom the performance is due; provided that the aggregate of extensions may not cause the time for completion of the Improvements to extend beyond five years from the Effective Date.

IV. REDUCTION AND RECAPTURE OF INCENTIVES

The Parties acknowledge that the creation of Qualified Jobs and additional Capital Investment, with corresponding projected increases in tax revenue to the Town, are the essence of this Agreement and form the legal basis for the Town's participation. Pursuant to NCGS § 158-7.1(h), the Town's remedies for failure by MCDG to meet its obligations as set out herein are:

- A. If MCDG, along with that of its tenants, lessees, affiliates or Agents, fails to construct the contemplated Improvements within the times set out in this Agreement, then the Town may elect to terminate this Agreement under the provisions of paragraph F below.
- B. If MCDG, along with that of its tenants, lessees, affiliates or Agents, does not reach the number of Qualified Jobs as outlined in paragraph III.B as shown on its Quarterly Report within the times set out in this Agreement, then the Town may elect to terminate this Agreement under the provisions of paragraph F below.
- C. Failure to maintain jobs. For any year in which MCDG, along with that of its tenants, lessees, affiliates or Agents, fails to retain the number of Qualified Jobs actually created in the prior years under this Agreement, the Town may elect to terminate this Agreement under the provisions of paragraph F below.
- D. Failure to Maintain Property Tax Revenue. Notwithstanding the initial capital investment, if MCDG, BIN – AG, and their successors or assigns, with their tenants, lessees, affiliates or Agents, fail to maintain a total level property tax revenue within Chatham County at the levels and for the periods of time set forth

in paragraph III.C then the Town may elect to terminate this Agreement under the provisions of paragraph F below, subject to the revenue catch up provisions of paragraph I below.

- E. If MCDG, along with that of its tenants, lessees, affiliates or Agents, is not current on all other taxes, fees, assessments or other amounts owed to the Town related to the Project at the time a Town Incentive is to be paid, in addition to any other remedies provided by law, this Agreement may be terminated.
- F. Termination. Upon failure of MCDG to meet its Obligations as set forth herein, the Town may elect to terminate this Agreement in whole or in part. If the Town elects to terminate, notice of termination shall be given in the manner set forth in Section IX.C. Failure of the Town to elect termination in whole or in part shall not constitute a waiver of the right of the Town to make such election at a later time. Nothing herein shall prohibit the parties from negotiating an alternative remedy for the failure of MCDG to meet one or more of its obligations, consistent with North Carolina law.
- G. The provisions of this Section IV survive the termination of this Agreement.
- H. Alternative Remedies for Partial Performance. To the extent permitted by North Carolina law, MCDG and Town agree that the following remedies or “claw backs” may be applied in the case of partial performance by Company.
- I. In the event of a failure by MCDG, along with that of its tenants, lessees, affiliates or Agents, to create or maintain the minimum number of Qualified Jobs, MCDG shall pay to Town an amount equal to the economic impact credit that MCDG received for each Qualified Job not created as required per this Agreement. The “economic impact credit” per job is defined as the Maximum Town Incentive less the 10-year average cumulative tax revenue estimate divided by the total number of Qualified Jobs.² For purposes of this section, the parties acknowledge the “economic impact credit” per job equals five thousand, one-hundred forty dollars (\$5,140.00). For example, if MCDG’s job creation is 20 less Qualified Jobs than that required by this agreement, MCDG would be required to reimburse the Town \$102,800³. In the event that MCDG fails to make the Capital Investment or that the Project for any reason fails to generate the projected property tax revenue as shown on the table in Sec. III.C, then MCDG shall pay to the Town the difference between the projected tax revenue and the actual tax revenue, subject to adjustment pursuant to the “Revenue Catch Up” provision below.
- J. Revenue Catch Up. For any year in which the actual property tax revenues are less than the projected property tax revenues, MCDG shall be required to pay Town the difference, provided that Town may defer said payment for up to two years in order

² Maximum Incentive – 10 yr avg tax / number of jobs required (\$2,200,000 - \$1,274,872 = \$925,128) / 180 = \$5,139.60 Rounded to \$5,140

³ \$5,140 multiplied by 20 = \$102,800/

to allow for the recognition of any surplus revenue in subsequent years, unless the deficit occurs in year 10, in which case MCDG shall pay the Town any difference between the total projected tax revenue and the actual tax revenue.

Nothing herein shall prevent the parties from negotiating other remedies for partial performance, as allowed by North Carolina law and in no event shall MCDG be required to pay to Town an amount greater than the amount of Town Incentives actually paid by Town to MCDG pursuant to the terms of this Agreement.

V. RIGHT TO CURE

In the event the Town determines that MCDG is deficient in its obligations under this Agreement, the Town shall provide written notice of deficiency to MCDG describing the nature of the deficiency and the steps required to cure the deficiency. For each year in which a deficiency occurs, MCDG shall have a twelve (12) month cure period from the time it receives notice of the deficiency to provide written evidence to the Town that the deficiency has been cured, did not occur, or was cured prior to receipt of notice of deficiency. In the event MCDG does not cure or provide evidence of compliance within the twelve (12) month cure period, MCDG shall forfeit any Incentive Payment to which the deficiency applies. No default or deficiency by MCDG shall result in a termination or limitation of any rights of MCDG unless and until the Town shall have notified MCDG in writing of said default or deficiency. Upon the cure of any deficiency, the Town Incentive payment shall be restored and shall be payable within thirty (30) days following the cure date.

VI. INDEMNIFICATION AND LIMITATIONS

MCDG will indemnify and hold harmless the Town and its Town Council, and employees and agents (the "Indemnified Parties") for damages imposed upon them by a court of final determination based on any claims of third parties arising out of any act or omission of MCDG in the performance required of it by this Agreement, provided, however, that such indemnification (i) is not contrary to law and (ii) shall not apply to third party claims arising out of or relating to a negligent act or omission of the Town. The Town agrees that none of the foregoing shall be construed to release Town from the obligations it has undertaken elsewhere in this Agreement, in connection with the Town Incentives or otherwise. Except as otherwise set forth, each Indemnified Party and MCDG agree to pay their own costs incurred in such connection, including all costs incurred in connection with the preparation of this Agreement.

MCDG SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY CLAIMS ARISING OUT OF ANY ACT OR OMISSION OF MCDG IN THE PERFORMANCE REQUIRED OF IT BY THIS AGREEMENT FOR SPECIAL INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST REVENUES AND PROFITS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. This provision also applies to the indemnity set forth in the above paragraph.

VII. DISCLAIMER OF WARRANTIES

MCDG acknowledges that the Town has not designed the Facility or the Improvement(s), that the Town has not supplied any plans or specifications with respect thereto and that the Town: (a) is not a manufacturer of, or dealer in, any of the component parts of the Facility or Improvement(s), (b) has not made any recommendation, given any advice nor taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to the Facility or Improvement(s) or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Facility or Improvement(s) or any component part thereof or any property or rights relating thereto at any stage of the construction, (c) has not at any time had physical possession of the Facility or Improvement(s) or any component part, and (d) has not made any warranty or other representation, express or implied, that the Facility or Improvement(s) or any component part or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the results which MCDG intended, or (iii) is safe in any manner or respect.

The Town makes no express or implied warranty or representation of any kind whatsoever with respect to the Facility or Improvement(s) or any component part, including but not limited to any warranty or representation with respect to the merchantability or the fitness or suitability for any particular purpose, and further including the design or condition, the safety, workmanship, quality, or capacity; compliance with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the ability of the Facility or Improvement(s) to perform any function; or any other characteristic of the Facility or Improvement(s); it being agreed that as between the Town and MCDG, MCDG is to bear all risks relating to the Facility or Improvement(s), its completion or the transactions contemplated hereby and MCDG waives the benefits of any and all implied warranties and representation of the Town.

The provisions of this Section VII shall survive the termination of this Agreement.

VIII. TERMINATION OF AGREEMENT

Unless terminated earlier as provided in section IV.F, this Agreement shall terminate at the end of the tenth year after the Town has made the last of the Town Incentive payments to MCDG, or upon payment of the Maximum Town Incentive payments if sooner, as required by this Agreement. After such termination, this Agreement will be null and void, and the parties to this Agreement will have no further obligations from one to the other thereafter, except as specifically noted in this Agreement. Provided, however, in no event will any payment be made by the Town to MCDG after December 31, 2038.

IX. ASSIGNMENTS

MCDG shall not assign this Agreement or any portion thereof without the written consent

of the Town, which consent shall not be unreasonably withheld, conditioned, or delayed, nor shall MCDG assign any Town Incentive payments due or to become due to it under this Agreement without the written consent of the Town, which consent shall not be unreasonably withheld, conditioned, or delayed; provided, however, MCDG shall be permitted to (i) assign this Agreement or any portion thereof, or any funds due or to become due to it hereunder, to any direct or indirect wholly-owned subsidiary or other related party of MCDG, and (ii) any Tax Incentive payments actually received by MCDG to any other party..

X. REPRESENTATIONS

MCDG represents as of the date of this Agreement as follows:

- A. MCDG (i) is a limited liability company duly organized and validly existing under the laws of its state of incorporation; (ii) is duly qualified to transact business and is in good standing in North Carolina; (iii) is not in violation of any provision of its organizational documents; (iv) has full corporate power to own its properties and conduct its business; (v) has full power and authority to enter into this Agreement and to enter into and carry out the transactions contemplated by this Agreement; (vi) by proper action has duly authorized the execution and delivery of this Agreement; and (vii) is not in default under any provision of this Agreement.
- B. The execution and delivery of this Agreement neither conflicts with, nor will result in, a breach or default under its organizational documents; nor, to the best of its knowledge, will its execution and delivery conflict with, or result in, a breach or default under the terms, conditions, or provisions of any statute, order, rule, regulation, agreement, or instrument to which each such company is a party or by which it is bound; nor will its execution and delivery result in the imposition of any lien on its property.
- C. MCDG has duly authorized, executed, and delivered this Agreement, and to MCDG's knowledge, this Agreement constitutes its legal, valid, and binding obligations, enforceable in accordance with its terms.

The Town represents as of the date of this Agreement as follows:

- A. At the time of execution of this Agreement, the Town (i) has full power and authority to enter into this Agreement and to enter into and carry out the transactions contemplated by this Agreement; (ii) by proper action has duly authorized the execution and delivery of this Agreement; and (iii) is not in default under any provisions of this Agreement.
- B. The Town has duly authorized, executed, and delivered this Agreement, and this Agreement constitutes the Town's legal, valid, and binding obligation, enforceable in accordance with its terms.

- C. To the Town's knowledge, there is no litigation or proceeding pending or threatened against the Town or affecting it which would adversely affect the validity of this Agreement.
- D. To the best of the Town's knowledge at the time of execution of this Agreement, the Town is not in default under any provision of State law which would affect its existence or its powers.
- E. To the best of the Town's knowledge at the time of execution of this Agreement, no official of the Town has any interest (financial, employment, or other) in MCDG or the transactions contemplated by this Agreement.
- F. With respect to this Agreement, Town has complied fully with all requirements of N.C. Gen. Stat. §158-7.1, to the Town's ability and knowledge.

NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE TOWN WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS DELEGATING GOVERNMENTAL POWERS NOR AS A DONATION OR A LENDING OF THE CREDIT OF THE TOWN WITHIN THE MEANING OF THE STATE CONSTITUTION. THIS AGREEMENT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE TOWN TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE TOWN FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT SHALL BE IN EFFECT. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF THE TOWN'S MONEYS, NOR SHALL ANY PROVISION OF THIS AGREEMENT RESTRICT TO ANY EXTENT PROHIBITED BY LAW, ANY ACTION OR RIGHT OF ACTION ON THE PART OF ANY FUTURE TOWN GOVERNING BODY. TO THE EXTENT OF ANY CONFLICT BETWEEN THIS ARTICLE AND ANY OTHER PROVISION OF THIS AGREEMENT, THIS ARTICLE TAKES PRIORITY.

XI. MISCELLANEOUS

- A. Definitions. All terms with initial capitals used in this Agreement and not otherwise defined will have the meanings ascribed to those terms in Webster's Third New International Dictionary.
- B. Governing Law. The parties intend that the law of the State of North Carolina will govern this Agreement.
- C. Notices.
 - (1) Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement.

- (2) Any communication under this Agreement shall be sufficiently given and deemed given when delivered by hand or after being deposited in the mail by first-class certified mail, postage prepaid, and addressed as follows:

(i) If to MCDG: Mills Chatham Development Group, LLC
Attn: Mr. Hager Rand, Manager
3214 Hillsborough Road
Durham, NC 27705
Telephone: 919-383-2058
Email: Hagerr@durhamcoke.com

With a copy to: Manning, Fulton & Skinner, P.A.
Attn: Eugene F. Dauchert, Jr.
280 S. Mangum Street, Suite 130
Durham, NC 27701
Telephone: 919-510-9286
Email: dauchert@manningfulton.com

(ii) If to the TOWN: Town of Apex
Attn: Town Manager
PO Box 250
Apex, NC 27502

With copy to: Town of Apex
Attn: Town Attorney
PO Box 250
Apex, NC 27513

Any addressee may designate additional or different addresses for communications by notice given under this Section to each other.

- D. Non-Business Days. If the date for making any payment or performing any act or exercising any right is not a business day, such payment must be made or act performed or right exercised on or before the next business day.
- E. Entire Agreement: Amendments. This Agreement, including Exhibits, which are incorporated by reference, constitutes the entire contract between the parties. This Agreement may not be changed except in writing signed by both parties.
- F. Binding Effect. This Agreement is binding upon, inures to the benefit of and is enforceable by the parties and their respective successors and assigns. There are no other agreements or other conditions precedent to the binding nature of the

respective obligations of the Town, other than the performance by MCDG of its obligations under this Agreement.

- G. Time. TIME IS OF THE ESSENCE of this Agreement and each and of each and every provision hereof.
- H. Liability of Officers and Agents. No officer, agent, or employee of the Town or MCDG shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent, or employee from the performance of any official duty provided by law.
- I. Counterparts. This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.
- J. Provide W-9. MCDG shall provide a completed W-9 form to the Town upon execution of this Agreement.
- K. Dissolution of MCDG. If the legal entity of either MCDG is dissolved or suspended and MCDG does not notify the Town of such dissolution within thirty (30) business days and/or the entity status is not reinstated within sixty (60) business days, this Agreement, at the sole option of the Town, shall be declared null and void or MCDG may be allowed to execute a new Agreement showing the correct legal entity of MCDG.
- L. Notice of Potential Disclosure of Confidential Information. MCDG acknowledges that it has been informed by the Town that the Town is required by North Carolina law to disclose "Public Records" as the term is defined by N.C. Gen. Stat. §132-1, upon request. All information disclosed to the Town by MCDG which is subject to that definition and whose disclosure is not otherwise protected by law will be released by the Town upon request as provided by N.C. Gen. Stat. §132-6. The Town may withhold from disclosure confidential records as defined by N.C. Gen. Stat. §132-1.2. MCDG acknowledges that it has read and is familiar with the Town's obligations of public disclosure of documents and the definitions of confidential documents as contained in Chapter 132 of the North Carolina General Statutes. In order to prevent the disclosure of the confidentiality of information identified by MCDG as a trade secret or as "confidential" pursuant to N.C. Gen. Stat. §132.1.2 the Town shall, if it receives a request for disclosure of such information, notify MCDG of such request so that MCDG may defend any claims or disputes arising from efforts of others to cause such trade secrets to be disclosed as a public record. The parties agree that this Section will survive the termination of the Agreement.

- M. Force Majeure. Any delay in the performance of any of the duties or obligations of either party (the "Delayed Party") shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay arises out of or is caused by, directly or indirectly, (i) forces beyond the Delayed Party's control, including, without limitation, strikes, work stoppages, lockouts, job actions, boycotts, accidents, acts of war or terrorism, insurrections, civil or military disturbances, riots, nuclear or natural catastrophes, earthquakes, fire, flood, pandemics, epidemics, public health emergency, state of declared emergency, loss or malfunctions of utilities, communications or computer (software and hardware) services (ii) with regard to MCDG, the inability to obtain the governmental permits or approvals (including zoning) necessary for the acquisition of the land or undertaking and operating the facility after a good faith effort to obtain same has been made; (iii) with regard to MCDG, shortages of materials or energy; (iv) changes in laws; or (v) other causes beyond the control of and arising without the fault or negligence of the Delayed Party (each of them a "Force Majeure Event"). The Delayed Party shall give prompt notice to the other party of such cause, and shall take whatever reasonable steps are necessary to relieve the effect of such cause as promptly as possible. No such event shall excuse the payment of any sums due and payable hereunder on the due date except any payment due upon the occurrence of any act or event for which delayed performance is excused as provided above.
- N. Severability. If any court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, then (a) such holding shall not invalidate or render unenforceable any other provision of this Agreement, unless such provision is contingent on the invalidated provision; and (b) the remaining terms hereof shall, in such event, constitute the parties' entire agreement.
- O. Audit Right. The Town reserves the right to require a certified audit or may perform the audit through the use of its staff pertaining to MCDG's compliance with any provision in this Agreement during normal business hours and upon reasonable prior notice.

[Signature Pages to Follow]

IN WITNESS, the parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

[SEAL]



ATTEST:

By:

Allen Coleman
Allen Coleman, CMC, NCCCC
Town Clerk

TOWN OF APEX
NORTH CAROLINA

By:

Catherine H. Crosby
Catherine H. Crosby
Town Manager
Town of Apex

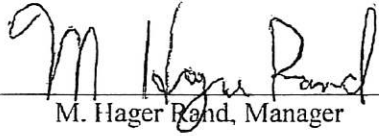
TOWN OF APEX

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Thomas V. Holloman
Thomas V. Holloman, Finance Director
Town of Apex, North Carolina
Date: 7/28/2022

[Signature Pages Continue]

MILLS CHATHAM DEVELOPMENT
GROUP, LLC, a North Carolina limited
liability company

By: 
M. Hager Rand, Manager

[End Signature Pages]

Exhibit A

Property Description or Map

[SITE PLAN]

Exhibit B

Tax Parcels

2021 Baseline Tax Parcel No.(s): 0060523, 0071694,0073702, 0017900*

2021 Baseline Tax Information

*Parcel numbers prior to change of ownership and recordation of recombination / subdivision plat;
Parcel 0017900 has been subdivided into two separate tax parcels and assigned Tax Parcel No.(s)
0017900 and 95398.

Parcel No.:	0060523	0071694	0073702	0017900 and 95398	Total
Real Property Assessed Value:	\$8,869	\$288,863	\$332,840	\$159,507	\$790,079
Chatham County Taxes Paid	\$69.56	\$2,357.91	\$2,620.56	\$1,232.99	\$6,281.01
Town of Apex Taxes Paid	\$0	\$0	\$0	\$0	\$0
Total Taxes Paid	\$69.56	\$2,357.91	\$2,620.56	\$1,232.99	\$6,281.01

1. ALL DISTANCES SHOWN HEREON ARE HORIZONTAL DISTANCES EXPRESSED IN FEET AND HUNDRETHS OF FEET.
2. AREA CALCULATED BY COORDINATE GEOMETRY.
3. ZONING: R-1
ZONING SOURCE: <https://data.bnmrgis.maps.arcgis.com/>

4. THIS SURVEY DOES NOT REFLECT OR DETERMINE OWNERSHIP.
5. ADJONIAN'S INFORMATION OBTAINED FROM WAKE COUNTY AND CHATHAM COUNTY GIS WEBSITE.
6. EXCEPT AS SHOWN, THERE IS NO OTHER VISIBLE OR RECORDED EASEMENTS OR RIGHTS OF WAY ACROSS THE SURVEYED PROPERTY THAT HAVE BEEN PROVIDED TO THE SURVEYOR.
7. ALL PROPOSED PARCEL AREAS MATHEMATICALLY CLOSE GREATER THAN 1:10,000.
8. ROADS, STREETS AND HIGHWAYS SHOWN HEREIN SHOW EVIDENCE OF BEING CONVEYED, DEDICATED AND ACCEPTED FOR PUBLIC MAINTENANCE.

3 - UTILITY POLE	IRON PIPE FOUND (IPT)	D.B.	DEED BOOK
4 - UTILITY ANCHOR	5/8" REBAR WITH CAP SET (REWC)	B.M.	BOOK MAP
5 - SIGN	IRON ROD FOUND (RT)	P.C.	PAGE
6 - FIBER OPTIC PEDESTAL	DISK MONUMENT FOUND (AS NOTED)	PC.	ACRES
7 - GAS MARKER	MONUMENT NAIL FOUND (MNF)	CONCRETE	CONCRETE
	RAILROAD SPIKE FOUND (RSF)	P.O.C.	POINT OF BEGINNING
		P.O.B.	POINT OF BEGINNING
			SQUARE FEET

DEED FOR J. B. MILLS AND WIFE, DATED JANUARY 9TH, 1954, AND RECORDED IN DB 135 IN THE CHATHAM COUNTY REGISTER OF DEEDS. DEED FOR L O LO 235 IN THE CHATHAM COUNTY REGISTER OF DEEDS. DEED FOR J. C. GAY, C. GAY, TRUSTEES, DATED APRIL 11TH, 1917, AND RECORDED IN DB 150 IN THE CHATHAM COUNTY REGISTER OF DEEDS. DEED FOR STEPHEN MILLS, DATED NOVEMBER 6TH, 1986, AND RECORDED IN DB 606 IN THE CHATHAM COUNTY REGISTER OF DEEDS. DEED FOR EDWARD HORTON, MILLS JR. AND ALEXA H. MILLS, DATED OCTOBER 19TH, 1986, AND RECORDED IN DB 371 IN THE CHATHAM COUNTY REGISTER OF DEEDS. DEED FOR EDWARD HORTON, MILLS JR. AND MARION C. HORTON, DATED OCTOBER 18TH, 1986, AND RECORDED IN DB 372 IN THE CHATHAM COUNTY REGISTER OF DEEDS. DEED FOR RECOMMENDATION SURVEY FOR ALLEN B. BARBOUR AND WIFE, DATED JANUARY 14TH, 1982, AND RECORDED IN BM 92 93 IN THE CHATHAM COUNTY REGISTER OF DEEDS. DEED FOR RECOMMENDATION PLAT FOR WILLIAM J. GRECZYNI, DATED DECEMBER 1ST, 2014, AND RECORDED IN BM 2014 16 320 IN THE CHATHAM COUNTY REGISTER OF DEEDS. DEED FOR JAMES MARCUS MALCHO, WIFE, DATED SEPTEMBER 29TH, 2017, AND RECORDED IN DB 1949 90 0812 IN THE CHATHAM COUNTY REGISTER OF DEEDS. DEED FOR PHILIP MICHAEL MCAN AND WIFE, DATED APRIL 4TH, 2008 AND RECORDED IN DB 1395 50 247 IN THE CHATHAM COUNTY REGISTER OF DEEDS. SUBDIVISION AND RECOMBINATION PLAT FOR JOHN B. MILLS, JR., DATED DECEMBER 31ST, 2008 AND RECORDED IN BM 2008 216 IN THE WAKE COUNTY REGISTER OF DEEDS. RECOMBINATION PLAT FOR JANCE M. MILLS, DATED MAY 11TH, 1993 AND RECORDED IN BM 1993 60 603 IN THE WAKE COUNTY REGISTER OF DEEDS. 2. MAP OF BOUNDARY LINE BETWEEN WAKE COUNTY AND CHATHAM COUNTY NORTH CAROLINA, DATED JUNE-DEC. 1980 AND RECORDED IN BM 1981 16 08 IN THE WAKE COUNTY REGISTER OF DEEDS. NC 54 HIGHWAY PROJECT SHEETS 42 AND 43. NC 54 HIGHWAY PROJECT SHEETS 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709,

LOT 1: MILLS WILLIAM STEPHEN
ADDRESS: 106 751 HWY, APEX 27523

LOT 2: MILLS REGINALD HORTON JR
ADDRESS: 104 751 HWY, APEX 27523

TRACT 1 AND PORTION OF TRACT 2: REGINALD MILLS JR
& WILLIAM S MILLS

ADDRESS: NOT ASSIGNED

TRACT 3: GRAY PEGGY G TRUSTEE
ADDRESS: NOT ASSIGNED

TRACT 1 AND PORTION OF TRACT 2 - 91.82 ACRES
TRACT 3 - 35.23 ACRES
LOT 1 - 2.50 ACRES
LOT 2 - 2.56 ACRES

TOTAL AREA TO BE ANNEXED: 132.11 ACRES

THIS PLAY WAS PREPARED FOR RECORDING IN ACCORDANCE WITH GS 47-30,
AS AMENDED

CGS 47-30 F(11)(1). THAT THE SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND OR ONE OR MORE EXISTING EASEMENTS AND DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET.

JOHN E. KAUKOLA, JR. DO HEREBY CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION USING REFERENCES AND SHOWING HEREON; THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS BROKEN LINES PLOTTED FROM INFORMATION SHOWN HEREON; THAT THE RATIO OF PRECISION AS CALCULATED FOR LATITUDES AND DEPARTURES IS 1:10,000 OR GREATER; THAT THIS SURVEY WAS PERFORMED USING GNSS AND CONVENTIONAL SURVEY, THAT THE FOLLOWING INFORMATION WAS USED TO PERFORM THE GNSS SURVEY:

CLASS OF SURVEY: A
POSITIONAL ACCURACY: 3CM + 50PPM
TYPE OF GPS FIELD PROCEDURE: VRS RTK
DATES OF SURVEY: NOVEMBER 24TH TO DEC 15TH OF 2021
DATUM/EPOCH: NAD 83 (2011)
PUBLISHED/FIXED-CONTROL USE: DURH, NCRO AND SNFD CORP ARP
SPECID MODEL: 12B
UNITS: US SURVEY FEET
COMBINED GRID FACTOR: 0.999898256

John E. Kunkel, Jr.
NORTH CAROLINA PROFESSIONAL LAND SURVEYOR
LICENSE NUMBER 1-3988
john.kunkel@ncsurn.com
(919) 752-8765

DATE: 02/03/2022

SEAL
1-3988
NORTH CAROLINA
PROFESSIONAL LAND SURVEYOR

ENGINEERING AND MAPPING, LLC
1442

**SATELLITE ANNEXATION MAP
FOR THE TOWN OF APEX
NEW HOPE TOWNSHIP, CHATHAM COUNTY
STATE OF NORTH CAROLINA**

PROJECT:	US64-NC751 SURVEY
BEACON PARTNERS	
JOB NUMBER:	1021066922
DATE:	2022/02/03
SCALE:	1"=400'
SURVEYOR:	JOHN KAUKOLA
TECHNICIAN:	JOEL ALVARADO
DRAWING:	US 64-751 -ANN
TRACT ID:	AS SHOWN ON PL
PARTYBOOK:	MITCHELL WELLS
FIELDBOOKS:	

2641-116 Sumner Blvd.
Raleigh, NC 27616
Ofc: 919.878.7466
Email: Info@sam.biz

SHEET 1
OF 1

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: April 08, 2025

Item Details

Presenter(s): Allen Coleman, Town Clerk

Department(s): Town Clerk's Office

Requested Motion

Motion to adopt a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting the Date of a Public Hearing for April 22, 2025, on the Question of Annexation - Apex Town Council's intent to annex 4.72 acres project entitled Chinese Christian Mission Church, and located on Secluded Acres Road, Annexation No. 789, into the Town Corporate limits.

Approval Recommended?

Yes

Item Details

The Town Clerk certifies to the investigation of said annexation.

Adoption of the Resolution authorizes the Town Clerk to advertise said public hearing by electronic means and on the Town of Apex's website.

Attachments

- CN3-A1: Resolution Directing the Town Clerk to Investigate Petition
 - Certificate of Sufficiency by the Town Clerk
 - Resolution Setting Date of Public Hearing
- CN3-A2: Legal Description - Annexation No. 789 - Chinese Christian Mission Church - 4.72 acres
- CN3-A3: Aerial Map - Annexation No. 789 - Chinese Christian Mission Church - 4.72 acres
- CN3-A4: Plat Map - Annexation No. 789 - Chinese Christian Mission Church - 4.72 acres
- CN3-A5: Annexation Petition - Annexation No. 789 - Chinese Christian Mission Church - 4.72 acres





RESOLUTION DIRECTING THE TOWN CLERK
TO INVESTIGATE PETITION RECEIVED UNDER G.S. § 160A-31

Annexation Petition No. 789
Chinese Christian Mission Church – Secluded Acres Road – 4.72 acres

WHEREAS, G.S. § 160A- 31 provides that the sufficiency of the petition shall be investigated by the Town Clerk before further annexation proceedings may take place; and

WHEREAS, the Town Council of the Town of Apex deems it advisable to proceed in response to this request for annexation;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Apex, that the Town Clerk is hereby directed to investigate the sufficiency of the above-described petition and to certify to the Town Council the result of his investigation.

This the 08th day of April, 2025.

Jacques K. Gilbert
Mayor

ATTEST:

Allen L. Coleman, CMC, NCCCC
Town Clerk



CERTIFICATE OF SUFFICIENCY BY THE TOWN CLERK

Annexation Petition No. 789
Chinese Christian Mission Church – Secluded Acres Road – 4.72 acres

To: The Town Council of the Town of Apex, North Carolina

I, Allen L. Coleman, Town Clerk, do hereby certify that I have investigated the annexation petition attached hereto, and have found, as a fact, that said petition is signed by all owners of real property lying in the area described therein, in accordance with G.S. § 160A-31, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Apex, North Carolina this 08th day of April, 2025.

Allen L. Coleman, CMC, NCCCC
Town Clerk

(Seal)



RESOLUTION SETTING DATE OF PUBLIC HEARING
ON THE QUESTION OF ANNEXATION PURSUANT TO G.S. § 160A-31 AS AMENDED

Annexation Petition No. 789
Chinese Christian Mission Church – Secluded Acres Road – 4.72 acres

WHEREAS, a petition requesting annexation of the area described herein has been received; and

WHEREAS, the Town Council of Apex, North Carolina has by Resolution directed the Town Clerk to investigate the sufficiency thereof; and

WHEREAS, Certification by the Town Clerk as to the sufficiency of said petition has been made;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Apex, North Carolina that:

Section 1. A public hearing on the question of annexation of the area described herein will be held at the Apex Town Hall at 6 o'clock p.m. on the 22nd day of April, 2025.

Section 2. The area proposed for annexation is described as attached.

Section 3. Notice of said public hearing shall be published on the Town of Apex Website, www.apexnc.org, Public Notice, at least ten (10) days prior to the date of said public hearing.

This the 08th day of April, 2025

Jacques K. Gilbert, Mayor

ATTEST:

Allen L. Coleman, Town Clerk

Attachment: Legal Description

All that certain lot or parcel of land situated in white Oak Township, Wake County, North Carolina and more particularly described as follows:

BEGINNING at a stake in the northern right of way of State Road 1783, said stake being S87°07'57"W 30.10 feet from Mathew Prafull & Annie Verma southwest corner; run thence with the northern right of way of said State Road 1783, S87°06'30"W 519.40 feet to an iron pipe, a corner for Toll Southeast LP Company Inc.; thence N00°22'41"E 396.00 feet to an iron stake; thence with a common line of Jeff & Lindy Morris & Raleigh Land Fund N86°57'17"E 118.11 feet to an iron pipe; thence N87°02'09"E 400.90 feet to an iron pipe; thence S00°18'55"W 396.80 feet to the point and place of BEGINNING, containing an Area of 205,508 sq.ft.; 4.72 acres; according to a map and survey entitled "Annexation for the Town of Apex" by Turning Point Surveying, PLLC map# C-1040.

All that certain part of State Road 1783 right of way situated in white Oak Township, Wake County, North Carolina and more particularly described as follows:

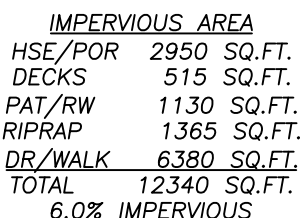
BEGINNING at a point in the northern right of way of State Road 1783, said point being N87°06'30"E 83.44 feet from the south western most corner of said parcel described above; run thence with the northern right of way of said State Road 1783, N87°06'30"E 30.00 feet to a point, thence into the right of way S02°53'30"E 30.00 feet to a point, thence along the centerline of said road S87°06'30"W 30.00 feet to a point, thence N02°53'30"W 30.00 feet to the point and place of BEGINNING, containing an Area of 900 sq.ft. 0.02 acres; shown on a map and survey entitled "Annexation for the Town of Apex" by Turning Point Surveying, PLLC map# C-1040.





March 2025.
Signed JFHID, PLS
Seal

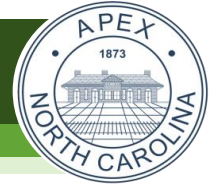
Allen Coleman, MMC, NCCMC, Town Clerk



(IN FEET)
1 inch = 50 ft.

SHEET 1 OF 1

PETITION FOR VOLUNTARY ANNEXATION Town of Apex, North Carolina



ANNEXATION PETITION SUBMISSION: Applications are due by 12:00 pm on the first business day of each month. See the "[Annexation Petition Schedule](#)" on the website for details.

ANNEXATION FEE: \$200.00

VOLUNTARY ANNEXATION: Upon receipt of a valid petition signed by all of the owners of real property in the area described therein, the Town may annex an area either contiguous or not contiguous to its primary corporate limits when the area meets the standards set out under North Carolina General Statutes 160A-31 and 160A-58.1. The petition need not be signed by the owners of real property that is wholly exempt from property taxation under the Constitution and laws of North Carolina, nor by railroad companies, public utilities as defined in G.S. 62-3(23), or electric or telephone membership corporations.

HARD COPY SUBMITTAL REQUIREMENTS:

- Town of Apex Petition for Annexation
- Petition Fee

ELECTRONIC SUBMITTAL REQUIREMENTS:

- Legal Description (metes and bounds): Must be submitted as an original PDF. Scanned documents will not be accepted.
- Electronic plat submittal (18" x 24") through [IDT Plans](#)

REVIEW AND APPROVAL PROCESS:

- **SUBMITTAL:** Submit hard copy application to the Planning Department and upload an electronic copy of the Annexation Plat via [IDT Plans](#).
- **REVIEW BY STAFF:** The Planning and Community Development Department and Public Works and Transportation Department review the annexation submission. Comments will be sent to the applicant via email.
- **DESIGNATION OF ANNEXATION NUMBER:** The application is assigned an annexation number once the annexation petition is received.
- **ANNEXATION PLAT SUBMISSION:** After the map and legal description are deemed sufficient by the Town of Apex, the applicant is required to submit three (3) Mylar annexation plats to the Planning Department by the due date on the attached Annexation Schedule.
- **1ST TOWN COUNCIL MEETING:** This Town Council Meeting is typically held the second Tuesday of each month. The Town Council will pass a resolution directing the Town Clerk to investigate the annexation petition. The Town Clerk will present to the Town Council a Certificate of Sufficiency indicating that the annexation petition is complete. A resolution setting the date of the public hearing is then approved.
- **LEGAL ADVERTISEMENT:** A legal advertisement will be published on the Town of Apex's website no more than 25 days and no less than 10 days prior to the date of the public hearing.
- **2ND TOWN COUNCIL MEETING/PUBLIC HEARING:** This Town Council Meeting is typically held the fourth Tuesday of each month. The Town Council will either adopt or deny an ordinance to extend the corporate limits of the Town of Apex.
- **RECORDATION:** If the annexation is approved by the Town Council, the Town Clerk will have the Annexation Plats recorded at the Wake County Register of Deeds. Wake County will keep one of the recorded plats, one copy will be returned to the Planning Department, and the surveying company is given the remaining recorded Annexation Plat.

FOR WELL AND/OR SEPTIC FAILURES:

If the purpose of the petition is to connect to public water and/or sewer, contact Water Resources Director Michael Deaton at 919-249-3413 or michael.deaton@apexnc.org to confirm that public water and/or sewer is available to the property. In order to receive public water and/or sewer services from the Town of Apex, refer to the checklist of items below to assist with obtaining one or both of these services:

- Apply for a plumbing permit with the Building Inspections Department, located on the 1st Floor of Town Hall.
- The plumbing permit and associated costs for water and/or sewer will be included with the permit.

Please refer to the [Town of Apex Fee Schedule](#) for the list of current fees. For a fee estimate, please contact Bonnie Brock at bonnie.brock@apexnc.org.

PETITION FOR VOLUNTARY ANNEXATION

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Application #: _____
Fee Paid \$ _____

Submittal Date: _____
Check # _____

TO THE TOWN COUNCIL APEX, NORTH CAROLINA

1. We, the undersigned owners of real property, respectfully request that the area described in Part 4 below be annexed to the Town of Apex, Wake County, North Carolina.
2. The area to be annexed is ☒ contiguous, ☐ non-contiguous (satellite) to the Town of Apex, North Carolina and the boundaries are as contained in the metes and bounds description attached hereto.
3. If contiguous, this annexation will include all intervening rights-of-way for streets, railroads, and other areas as stated in G.S. 160A-31(f), unless otherwise stated in the annexation amendment.

OWNER INFORMATION

CHINESE CHRISTIAN MISSION CHURCH

0723-71-6900

Owner Name (Please Print)

Property PIN or Deed Book & Page #

973-573-2401

xwang707@gmail.com

Phone

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

SURVEYOR INFORMATION

Surveyor: Jeff H. Davis

Phone: 919-781-0234

Fax: 1-800-948-0213

E-mail Address: tpsurvey@ncrrbiz.com

ANNEXATION SUMMARY CHART

Property Information		Reason(s) for annexation (select all that apply)	
Total Acreage to be annexed:	4.72	Need water service due to well failure	<input type="checkbox"/>
Population of acreage to be annexed:		Need sewer service due to septic system failure	<input type="checkbox"/>
Existing # of housing units:	1	Water service (new construction)	<input checked="" type="checkbox"/>
Proposed # of housing units:	1	Sewer service (new construction)	<input checked="" type="checkbox"/>
Zoning District*:		Receive Town Services	<input checked="" type="checkbox"/>

*If the property to be annexed is not within the Town of Apex's Extraterritorial Jurisdiction, the applicant must also submit a rezoning application with the petition for voluntary annexation to establish an Apex zoning designation. Please contact the Planning Department for questions.

PETITION FOR VOLUNTARY ANNEXATION

Application #: _____

Submittal Date: _____

COMPLETE IF SIGNED BY INDIVIDUALS:

All individual owners must sign. (If additional signatures are necessary, please attach an additional sheet.)

Please Print

Signature

Please Print

Signature

Please Print

Signature

Please Print

Signature

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County,
this the _____ day of _____, 20____.

Notary Public

SEAL

My Commission Expires: _____

COMPLETE IF A CORPORATION:

In witness whereof, said corporation has caused this instrument to be executed by its President and attested by its
Secretary by order of its Board of Directors, this the 14 day of May, 2021.

Corporate Name _____

SEAL

By: _____
President (Signature)

Attest:

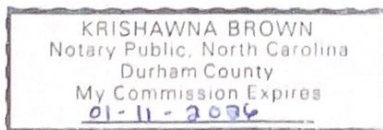
Secretary (Signature)

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, Krishawna Brown, a Notary Public for the above State and County,
this the 14 day of May, 2021.

Krishawna Brown
Notary Public

SEAL



My Commission Expires: 01/11/2026

PETITION FOR VOLUNTARY ANNEXATION

Application #: _____

Submittal Date: _____

COMPLETE IF IN A LIMITED LIABILITY COMPANY

In witness whereof, _____ a limited liability company, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the ____ day of _____, 20____.

Name of Limited Liability Company _____

By: _____

Signature of Member/Manager

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County,
this the ____ day of _____, 20____.

Notary Public

SEAL

My Commission Expires: _____

COMPLETE IF IN A PARTNERSHIP

In witness whereof, _____, a partnership, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the ____ day of _____, 20____.

Name of Partnership _____

By: _____

Signature of General Partner

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County,
this the ____ day of _____, 20____.

Notary Public

SEAL

My Commission Expires: _____

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: April 08, 2025

Item Details

Presenter(s): Allen Coleman, Town Clerk

Department(s): Town Clerk's Office

Requested Motion

Motion to adopt a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting the Date of a Public Hearing for April 22, 2025, on the Question of Annexation - Apex Town Council's intent to annex 3.19 acres project entitled Apex Light Industrial, and located on Creekbird Road, Annexation No. 801, into the Town Corporate limits.

Approval Recommended?

Yes

Item Details

The Town Clerk certifies to the investigation of said annexation.

Adoption of the Resolution authorizes the Town Clerk to advertise said public hearing by electronic means and on the Town of Apex's website.

Attachments

- CN4-A1: Resolution Directing the Town Clerk to Investigate Petition
 - Certificate of Sufficiency by the Town Clerk
 - Resolution Setting Date of Public Hearing
- CN4-A2: Legal Description - Satellite Annexation No. 801 - Apex Light Industrial - 3.19 acres
- CN4-A3: Aerial Map - Satellite Annexation No. 801 - Apex Light Industrial - 3.19 acres
- CN4-A4: Plat Map - Satellite Annexation No. 801 - Apex Light Industrial - 3.19 acres
- CN4-A5: Annexation Petition - Satellite Annexation No. 801 - Apex Light Industrial - 3.19 acres





RESOLUTION DIRECTING THE TOWN CLERK
TO INVESTIGATE PETITION RECEIVED UNDER G.S. § 160A-58.1

Satellite Annexation Petition No. 801
Apex Light Industrial – 0 Creekbird Road – 3.19 acres

WHEREAS, G.S. § 160A- 58.2 provides that the sufficiency of the petition shall be investigated by the Town Clerk before further annexation proceedings may take place; and

WHEREAS, the Town Council of the Town of Apex deems it advisable to proceed in response to this request for annexation;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Apex, that the Town Clerk is hereby directed to investigate the sufficiency of the above-described petition and to certify to the Town Council the result of his investigation.

This the 08th day of April, 2025.

Jacques K. Gilbert
Mayor

ATTEST:

Allen L. Coleman, CMC, NCCCC
Town Clerk



CERTIFICATE OF SUFFICIENCY BY THE TOWN CLERK

Satellite Annexation Petition No. 801
Apex Light Industrial – 0 Creekbird Road – 3.19 acres

To: The Town Council of the Town of Apex, North Carolina

I, Allen L. Coleman, Town Clerk, do hereby certify that I have investigated the annexation petition attached hereto, and have found, as a fact, that said petition is signed by all owners of real property lying in the noncontiguous area described therein, in accordance with G.S. § 160A-58.1 (b), as amended.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Apex, North Carolina this 08th day of April, 2025.

Allen L. Coleman, CMC, NCCCC
Town Clerk

(Seal)



RESOLUTION SETTING DATE OF PUBLIC HEARING
ON THE QUESTION OF ANNEXATION PURSUANT TO G.S. § 160A-58.2 AS AMENDED

Satellite Annexation Petition No. 801
Apex Light Industrial – 0 Creekbird Road – 3.19 acres

WHEREAS, a petition requesting annexation of the non-contiguous area described herein has been received; and

WHEREAS, the Town Council of Apex, North Carolina has by Resolution directed the Town Clerk to investigate the sufficiency thereof; and

WHEREAS, Certification by the Town Clerk as to the sufficiency of said petition has been made;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Apex, North Carolina that:

Section 1. A public hearing on the question of annexation of the area described herein will be held at the Apex Town Hall at 6 o'clock p.m. on the 22nd day of April, 2025.

Section 2. The area proposed for annexation is described as attached.

Section 3. Notice of said public hearing shall be published on the Town of Apex Website, www.apexnc.org, Public Notice, at least ten (10) days prior to the date of said public hearing.

This the 08th day of April, 2025.

Jacques K. Gilbert, Mayor

ATTEST:

Allen L. Coleman, Town Clerk

Attachment: Legal Description

ANNEXATION LEGAL DESCRIPTION FOR PIN: 0722471690

BEING ALL THAT CERTAIN PARCEL OF LAND, NOW OR FORMERLY OF GGP APEX64 LLC AS DESCRIBED IN DEED BOOK 19810 AT PAGE 2600 AND DEPICTED AS LOT 3 IN BOOK OF MAPS 1995 AT PAGE 133 OF THE WAKE COUNTY REGISTER OF DEEDS (PIN: 0722471690, REID: 0211592) LYING IN THE TOWN OF APEX, WHITE OAK TOWNSHIP, APEX, WAKE COUNTY, NORTH CAROLINA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A $\frac{3}{4}$ " IRON PIPE FOUND ON THE SOUTHEASTERN CORNER OF THE HERIN DESCRIBED PARCEL, SAID IRON BEING THE TRUE POINT OF BEGINNING AND HAVING NORTH CAROLINA STATE PLAIN COORDINATES OF N: 727,242.94' AND E: 2,024,361.61'; THENCE, FROM THE POINT OF BEGINNING, S86°34'15"W A DISTANCE OF 279.52 FEET TO A $\frac{3}{4}$ " IRON PIPE FOUND; THENCE, N01°22'07"E A DISTANCE OF 378.11 FEET TO A CAPPED 1" IRON PIPE FOUND; THENCE, N01°22'07"E A DISTANCE OF 130.81 TO AN OAK TREE FOUND ON THE PROPERTY CORNER; THENCE, S89°04'50"E A DISTANCE OF 280.00 FEET TO A COMPUTED POINT 1.49 FEET SOUTHEAST OF A $\frac{1}{2}$ " IRON PIPE FOUND; THENCE, S01°32'19"W A DISTANCE OF 487.74 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 139,157 SQUARE FEET OR 3.19 ACRES, MORE OR LESS.

Annexation #801

**Arden at
Summit Pines**

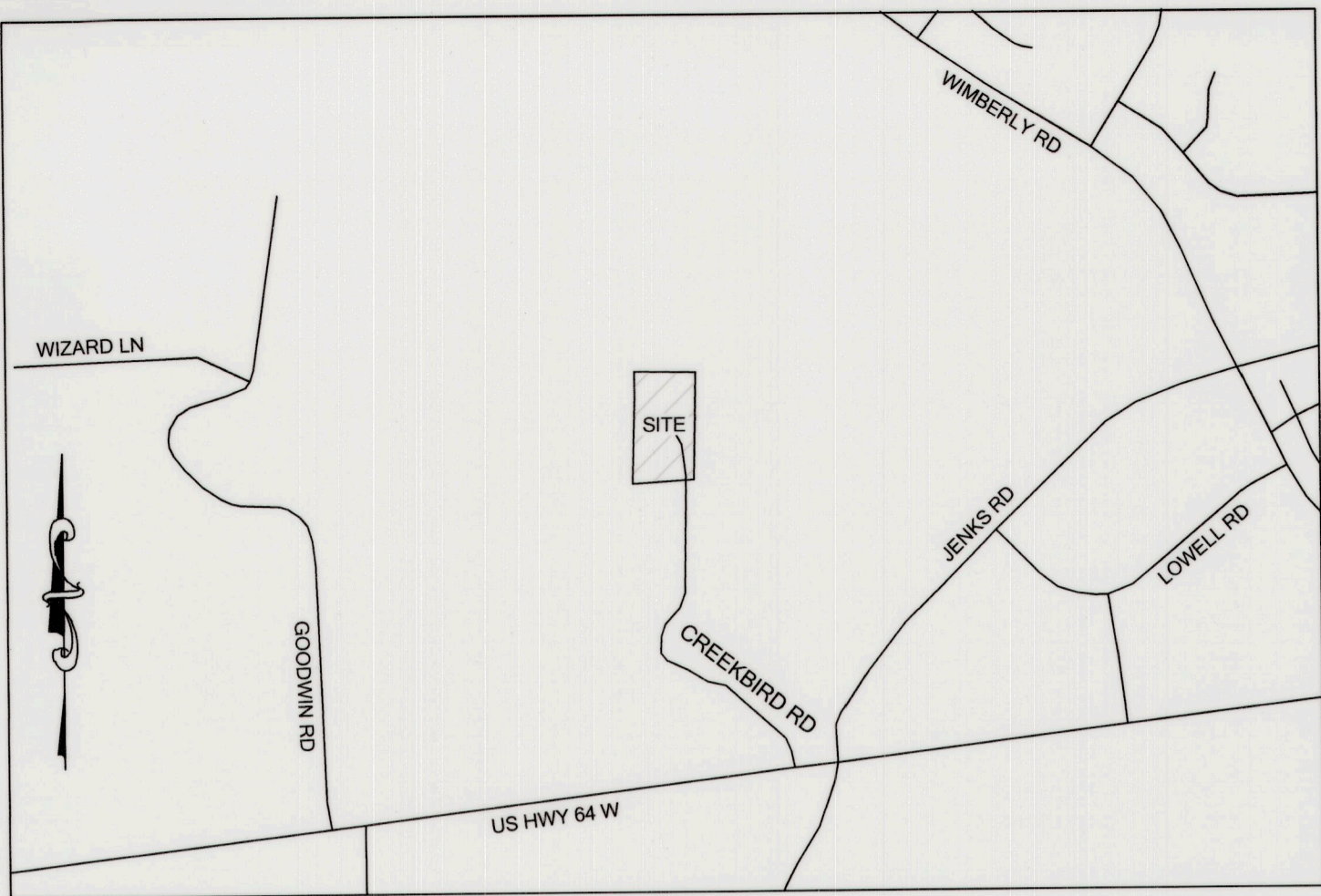
**Apex Light
Industrial**

Creekbird Rd

Jenks Rd

Lowell Rd

0 200 400 Feet



VICINITY MAP
NOT TO SCALE

NOTES

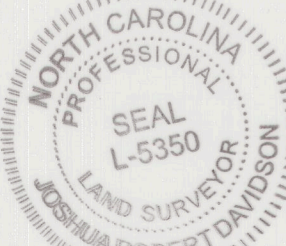
1. THE PROPERTY LIES IN ZONE "X" PER NATIONAL FLOOD INSURANCE PROGRAM FLOOD INSURANCE RATE MAP COMMUNITY NUMBER 3720072200K DATED 07/19/2022.
2. ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES AND ALL BEARINGS ARE BASED ON GPS OBSERVATION, NAD 83 / NSRS 2011, SPC UNLESS OTHERWISE SHOWN.
3. PARCELS ZONED "TF-CZ" FOR THE TOWN OF APEX PER WAKE COUNTY GIS.
4. AREAS COMPUTED BY COORDINATE METHOD.
5. THIS SURVEY WAS PREPARED BY BATEMAN CIVIL SURVEY COMPANY, UNDER THE SUPERVISION OF JOSHUA R. DAVIDSON, PLS.
6. THIS MAP HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.
7. NO INVESTIGATION INTO THE EXISTENCE OF JURISDICTIONAL WETLANDS OR RIPARIAN BUFFERS PERFORMED BY THIS FIRM.
8. NO GRID MONUMENTS FOUND WITHIN 2,000 FEET.
9. PROPERTY OWNERS AT TIME OF PLAT:
GGP APEX64 LLC
3904 BOSTON ST, STE 402
BALTIMORE, MD 21224

CLASS OF SURVEY: A
POSITIONAL ACCURACY: 0.07'
TYPE OF GPS FIELD PROCEDURE: NC REAL TIME NETWORK
DATES OF SURVEY: JULY 2022 & OCTOBER 2024
DATUM/EPOCH: NAD83/NSRS2011
GEOID MODEL: 18
COMBINED GRID FACTOR (CONTROL CORNER 1): 0.999900921
UNITS: US SURVEY FEET

THIS MAP IS CONSIDERED PRELIMINARY, NOT FOR RECORDATION, CONVEYANCE OR SALES UNLESS SIGNED AND SEALED BY THE LICENSED SURVEYOR.

I, JOSHUA R. DAVIDSON, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTIONS RECORDED IN DB 17201 PG 407); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND AS SHOWN HERE ON; THAT THE RATIO OF PRECISION AS CALCULATED IS 1: 10,000 + ; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 27th DAY OF March, A.D., 2025.

I, FURTHER THAT IN ACCORDANCE WITH G.S. 47-30-F-11-D; CERTIFY THAT THE SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-ORDERED SURVEY, OR OTHER EXEMPTION OR EXCEPTION TO THE DEFINITION OF SUBDIVISION.



JOSHUA R. DAVIDSON, PLS
NC LICENSE NO. 5350

REFERENCES:
DB 12479 PG 2004
DB 15784 PG 1929
BM 2014 PG 1252
DB 16455 PG 2065
BM 1981 PG 752
DB 19446 PG 498
BM 1985 PG 862
BM 1985 PG 752
BM 1995 PG 1026
DB 18789 PG 1467
DB 17201 PG 407
BM 1995 PG 133
BM 1995 PG 1038
DB 16508 PG 1036
BM 2025 PG 104

NOTE: PROPERTY LINES ARE SHOWN PER BM 2025 PG 103-104. WAKE COUNTY GIS DOES NOT SHOW THE CORRECT PROPERTY CONFIGURATION.

TOTAL ANNEXATION AREA: 139,157 SF / 3.19 AC

LEGEND

- RETRACED BOUNDARY LINE
- BOUNDARY LINE BY DEED
- RIGHT OF WAY LINE (NOT SURVEYED)
- EASEMENT LINE
- EXISTING BOUNDARY CORNER FOUND
- BOUNDARY CORNER SET (3/4" IPS UNLESS OTHERWISE NOTED)
- COMPUTED POINT
- CONCRETE MONUMENT FOUND
- EXISTING IRON PIPE
- EXISTING IRON REBAR
- IRON PIPE SET
- PK NAIL SET
- EXISTING PK NAIL
- TIE (INDICATES 2 PARTS OF THE SAME PARCEL)
- NORTH
- EAST
- SOUTH
- WEST
- NORTHEAST
- SOUTHEAST
- SOUTHWEST
- NORTHWEST
- DEED BOOK
- PAGE
- BOOK OF MAPS
- RIGHT OF WAY
- POINT OF BEGINNING
- TOTAL
- NOW OR FORMERLY
- AREA TO BE ANNEXED TO THE TOWN OF APEX

N/F
DUKE ENERGY
PROGRESS INC
PIN: 0722385057
REID: 0078613
DB 15289 PG 2437
ZONED R-80-W
USE: UTILITY

N/F
GGP APEX64 LLC
PIN: 0722374075
REID: 0076962
DB 19810 PG 2600
BM 2025 PG 104
USE: RESIDENTIAL
ZONING: TF-CZ

N/F
TOWN OF CARY
TOWN OF APEX
PIN: 0722488535
REID: 0162647
DB 4409 PG 746
BM 2022 PG 1606
ZONED R-80-W
USE: EXEMPT

GGP APEX64 LLC
PIN: 0722472428
REID: 0211592
DB 19810 PG 2600
BM 2025 PG 104
7529 CREEKBIRD RD
USE: RESIDENTIAL
ZONING: TF-CZ
AREA: 139,157 SF / 3.19 AC

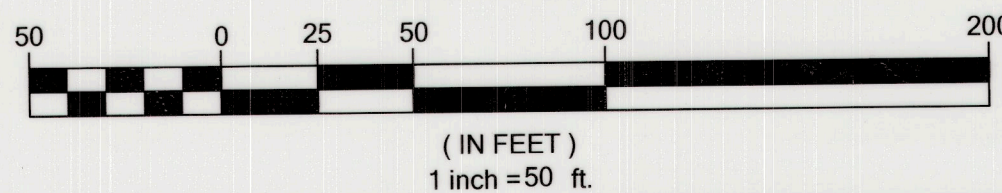
N/F
PHEOBIE J JENKS
RHONDA A S TYNDALL
PIN: 0722465567
REID: 0035457
DB 18098 PG 31
ZONED RR
USE: VACANT

N/F
COC REAL ESTATE CO LLC
PIN: 0722463330
REID: 0148942
DB 17705 PG 1600
BM 1995 PG 133
ZONED RR
USE: VACANT

CONTROL CORNER 2
(3/4" EIP)
NAD 83 / NSRS 2011 / SPC
N: 727,226.28'
E: 2,024,082.43'

CONTROL CORNER 1
POINT OF BEGINNING
(3/4" EIP)
NAD 83 / NSRS 2011 / SPC
N: 727,242.94'
E: 2,024,361.61'

GRAPHIC SCALE

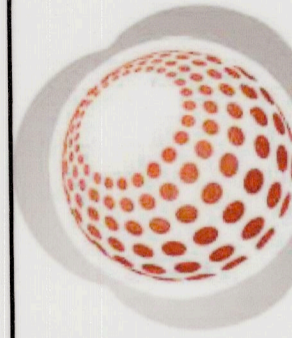


CREEKBIRD RD
60' PRIVATE R/W
(BM 1995 PG 1038)

ANNEXATION #
I, ALLEN COLEMAN, CMC, NCCCC, TOWN CLERK, APEX, NORTH CAROLINA
CERTIFY THIS IS A TRUE AND EXACT MAP OF ANNEXATION ADOPTED THE
DAY OF 20, 2025, BY THE TOWN COUNCIL. I SET MY HAND
AND SEAL OF THE TOWN OF APEX, DAY / MONTH / YEAR

ALLEN COLEMAN, CMC, NCCCC, TOWN CLERK

BATEMAN CIVIL SURVEY COMPANY
ENGINEERS • SURVEYORS • PLANNERS
2524 RELIANCE AVENUE, APEX, NC 27539
PHONE: (919) 577-1080 FAX: (919) 577-1081
INFO@BATEMANCIVILSURVEY.COM
NCBELS FIRM# C-2378



SATELLITE ANNEXATION MAP FOR THE TOWN OF APEX

7529 CREEKBIRD RD

PIN: 0722472428, REID: 0211592

AS RECORDED IN DEED BOOK 19810 AT PAGE 2600

AND BOOK OF MAPS 2025 AT PAGE 104

OWNER: GGP APEX64 LLC, 3904 BOSTON ST, STE 402, BALTIMORE, MD 21224
WHITE OAK TOWNSHIP - WAKE COUNTY - NORTH CAROLINA

REVISIONS

- 1.
- 2.
- 3.
- 4.
- 5.

DRAWN BY: ELS

CHECKED BY: JRD

SCALE: 1" = 50'

DATE: 12/10/2024

DRAWING #: 220473

SHEET 1 OF 1

PETITION FOR VOLUNTARY ANNEXATION

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Application #: Annexation # 801 Submittal Date: 3-18-2025
Fee Paid: \$300.00 Check #: 6787

TO THE TOWN COUNCIL APEX, NORTH CAROLINA

1. We, the undersigned owners of real property, respectfully request that the area described in Part 4 below be annexed to the Town of Apex, ☒ Wake County, ☐ Chatham County, North Carolina.
2. The area to be annexed is ☐ contiguous, ☒ non-contiguous (satellite) to the Town of Apex, North Carolina and the boundaries are as contained in the metes and bounds description attached hereto.
3. If contiguous, this annexation will include all intervening rights-of-way for streets, railroads, and other areas as stated in G.S. 160A-31(f), unless otherwise stated in the annexation amendment.

OWNER INFORMATION

GGP Apex64 LLC	0722472428
Owner Name (Please Print)	Property PIN or Deed Book & Page #
<u>843.469.2517</u>	<u>ATHIBREX @ G6COMMERCIAL.COM</u>
Phone	E-mail Address
Owner Name (Please Print)	Property PIN or Deed Book & Page #
Phone	E-mail Address
Owner Name (Please Print)	Property PIN or Deed Book & Page #
Phone	E-mail Address

SURVEYOR INFORMATION

Surveyor: Joshua Davidson, Bateman Civil Survey
Phone: 919-577-1080 Fax: 919-577-1081
E-mail Address: josh@batemancivilsurvey.com

ANNEXATION SUMMARY CHART

Property Information	Reason(s) for annexation (select all that apply)
Total Acreage to be annexed: <u>3.19</u>	Need water service due to well failure <input type="checkbox"/>
Population of acreage to be annexed: <u>0</u>	Need sewer service due to septic system failure <input type="checkbox"/>
Existing # of housing units: <u>2</u>	Water service (new construction) <input checked="" type="checkbox"/>
Proposed # of housing units: <u>0</u>	Sewer service (new construction) <input checked="" type="checkbox"/>
Zoning District*: <u>TF-CZ</u>	Receive Town Services <input checked="" type="checkbox"/>

*If the property to be annexed is not within the Town of Apex's Extraterritorial Jurisdiction, the applicant must also submit a rezoning application with the petition for voluntary annexation to establish an Apex zoning designation. Please contact the Planning Department with questions.

PETITION FOR VOLUNTARY ANNEXATION

Application #: Annexation #801 Submittal Date: 3-18-2025

COMPLETE IF IN A LIMITED LIABILITY COMPANY

In witness whereof, LGP APEX64 LLC a limited liability company, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the 12 day of MARCH, 2025.

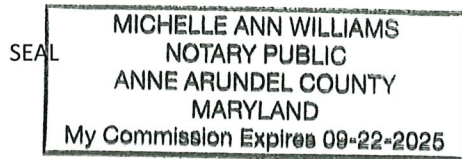
Name of Limited Liability Company DREW THIGPEN

By: [Signature]
Signature of Member/Manager

STATE OF ~~NORTH CAROLINA~~ Maryland
COUNTY OF ~~WAKE~~ Anne Arundel

Sworn and subscribed before me, Michelle Ann Williams a Notary Public for the above State and County, this the 12 day of March, 2025.

Michelle Ann Williams
Notary Public



My Commission Expires: 9-22-2025

COMPLETE IF IN A PARTNERSHIP

In witness whereof, _____, a partnership, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the ____ day of _____, 20____.

Name of Partnership _____

By: _____
Signature of General Partner

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County, this the ____ day of _____, 20____.

Notary Public

SEAL

My Commission Expires: _____

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: April 08, 2025

Item Details

Presenter(s): Allen Coleman, Town Clerk

Department(s): Town Clerk's Office

Requested Motion

Motion to approve, as submitted or amended, Meeting Minutes from the following meetings:

- February 12, 2025 - Town Council Retreat Day One
- February 13, 2025 - Town Council Retreat Day Two
- March 11, 2025 - Regular Town Council Meeting Minutes

Approval Recommended?

The Town Clerk recommends the Town Council approve the meeting minutes as presented or amended.

Item Details

In accordance with 160A-72 of North Carolina General Statutes (NCGS), the Governing Board has the legal duty to approve all minutes that are entered into the official journal of the Board's proceedings.

Attachments

- CN5-A1: **DRAFT** Minutes - February 13, 2025 - Town Council Retreat Day One
- CN5-A2: **DRAFT** Minutes - February 13, 2025 - Town Council Retreat Day Two
- CN5-A3: **DRAFT** Minutes - March 11, 2025 - Regular Town Council Meeting Minutes



DRAFT MEETING MINUTES

**TOWN OF APEX
REGULAR TOWN COUNCIL MEETING
TUESDAY, MARCH 11, 2025
6:00 PM**

The Apex Town Council met for a Regular Town Council Meeting on Tuesday, March 11, 2025 at 6:00 p.m. in the Council Chambers on the 2nd Floor at Apex Town Hall, located at 73 Hunter Street in Apex, North Carolina.

This meeting was open to the public. Members of the public were able to attend this meeting in-person or watch online via the livestream on the Town's YouTube Channel. The recording of this meeting can be viewed here:

<https://www.youtube.com/watch?v=xdRIDzSOMKk&t=1s>

[ATTENDANCE]

Elected Body

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

Town Staff

Town Manager Randy Vosburg
Deputy Town Manager Shawn Purvis
Assistant Town Manager Marty Stone
Assistant Town Manager Demetria John
Town Attorney Laurie Hohe
Town Clerk Allen Coleman
All other staff members will be identified appropriately below

[COMMENCEMENT]

Mayor Gilbert called the meeting to order at **6:00 p.m.** and welcomed all who were in attendance and watching. He thanked Apex Youth Council for attending the meeting.

Mayor Gilbert then took a moment of silence for the invocation and for a moment of peace. He led those in attendance in the Pledge of Allegiance.

[CONSENT AGENDA]

A **motion** was made by **Councilmember Gantt**, seconded by **Councilmember Killingsworth**, to approve Consent Agenda as presented.

VOTE: UNANIMOUS (5-0)

CN1 Budget Ordinance Amendment No. 9 - Lund Property Acquisition (REF: ORD-2025-015)

Council voted to approve a Budget Ordinance Amendment No. 9 appropriating funds for the Lund property acquisition.

CN2 Construction Contract Award - Superior Paving Corporation (NC) - 2025 Microsurfacing Project (REF: CONT-2025-076)

Council voted to award a construction contract between Superior Paving Corporation (NC) and the Town of Apex, for the 2025 Microsurfacing Project, and to authorize the Town Manager or their designee, to execute the contract on behalf of the Town.

CN3 Council Meeting Minutes - February 18, 2025

Council voted to approve Meeting Minutes from the following meeting:
February 18, 2025 - Town Council Work Session Meeting Minutes

CN4 Encroachment Agreement - 2524 Silas Peak Lane (REF: CONT-2025-077)

Council voted to approve an Encroachment Agreement between the Town of Apex and property owner, Amward Homes of NC, Inc., located at 2524 Silas Peak Lane Apex, NC 27523, Lot 12, to install a fence and gates that will encroach 67 linear feet (LF) and air conditioning units that will encroach 20.4 square feet (SQ) onto the Public Drainage Easement, and to authorize the Town Manager, or their designee, to execute on behalf of the Town.

CN5 Fee Schedule Amendment - Fiscal Year 2024-25 - New Street Hockey Court Rental Fee

Council voted to approve an amendment to the Town's Fiscal Year 2024-2025 Fee Schedule to include a new street hockey court rental fee in the amount of forty dollars per hour (\$40/hour), effective March 11, 2025.

CN6 Rezoning Case No. 24CZ17 - Kelly Road Townhomes - Statement and Ordinance (REF: ORD-2025-016)

Council voted to approve the Statement of the Town Council and Ordinance for Rezoning Application No. 24CZ17, Vasu Kollipara, applicant, for the properties located at 2305 and 2509 Kelly Road (PINs 0731352462 and 0731355481).

CN7 Rezoning Case No. 24CZ21 - 3028 Evans Road - Statement and Ordinance (REF: ORD-2025-017)

Council voted to approve the Statement of the Town Council and Ordinance for Rezoning

Application No. 24CZ21, Alonzo Wilson, ATM Development, LLC, applicant, for the property located at 3028 Evans Road (PIN 0721707475).

CN8 Speed Limit Concurrence - North Carolina Department of Transportation (NCDOT) - Portion of Castleberry Road, 35 MPH (REF: OTHER-2025-022)

Council voted to approve North Carolina Department of Transportation (NCDOT) Certification of Municipal Declaration to Enact Speed Limits and Request for Concurrence for a 35 MPH speed limit on SR 1604 (Castleberry Rd), from the intersection of SR 1603 (Wimberly Rd) to 0.805 mile east of SR 1603 (Wimberly Rd).

[UPDATES BY TOWN MANAGER]

Town Manager Vosburg gave updates on the Read Across America Program that was held on March 3rd at Salem Elementary School, which was put on by the Community Engagement team. He gave an update that the Mason Street Building has reopened and is fully safe and secure and meeting residential standards and that there will be updated on after-action reviews. He also gave an update on the Utility Billing and Meter Upgrades. He said that this is unrelated to the Cyber-attack and this is an update that has been planned for years. He said that utility billing cycles have returned to a normal pattern, and meter upgrades continue but will be slowed down on the meter reading side due to the integration of the meter readings with some of the software upgrade issues. He said that about 150 customers, mainly commercial, across two utility billing cycles were impacted and will have experience extended billing cycles. He said they will be slowing down the integration to ensure those issues don't persist with further installations.

Mayor Pro Tempore Gray asked how the customers would communicate with the customers.

Town Manager Vosburg said that the customers are being directly notified by letters or emails, and they are focusing on not having disruptions while moving forward with improvements.

Mayor Gilbert asked if the third-party review was still scheduled.

Town Manager Vosburg said that the third-party review is still scheduled to be completed by the end of March and then there will be meetings to disseminate the findings.

Mayor Gilbert thanked Town Manager Vosburg for the updates.

Town Attorney Hohe introduced the newest Assistant Town Attorney, Seth Kandl. **Mr. Kandl** thanked the Council and gave some information about his career journey and said he was excited to be part of Team Apex.

[REGULAR MEETING AGENDA]

Mayor Gilbert called for the setting of the Council's Regular Agenda for March 11, 2025, and asked if there were any recommended changes.

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

VOTE: UNANIMOUS (5-0)

[PRESENTATION]

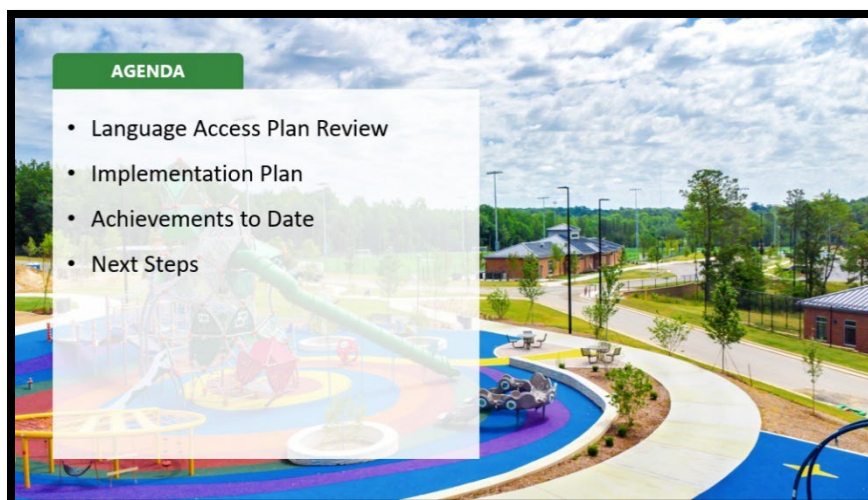
PR1 Language Access Plan Update

Linda Jones, Director, Diversity, Equity, and Inclusion Director and **Kristy Nguyen**, Language Access and Community Coordinator presented the following PowerPoint:

[SLIDE 1]



[SLIDE 2]



1 [SLIDE 3]



2
3 [SLIDE 4]

Language Access Plan Review

- **22%** of Apex residents speak a language other than English
- **5%** are Limited English Proficient (LEP)
- Our strategic languages are **Spanish** (21%) and **Chinese** (21%)

LEP Primary Language	Percent of LEP Population
Spanish	21%
Chinese	21%
French, Haitian, Cajun	4%
Vietnamese	4%
Russian, Polish, or other Slavic	3%

*Source: American Community Survey 5-Year Estimates 2019-2023

4
5 [SLIDE 5]

Language Access Implementation Plan

Phase 1: Establishing Core Language Services (In Progress)

- Identify language needs, translate vital documents, and manage interpretation and translation requests

Phase 2: Strengthening Foundations (Target Date: June 2025)

- Integrate language access into Town operations by raising awareness of services, providing staff training, establishing a repository of resources, and setting proficiency standards for bilingual/multilingual staff

Phase 3: Expansion and Refinement (Target Date: January 2026)

- Refine outreach and communication to expand language services

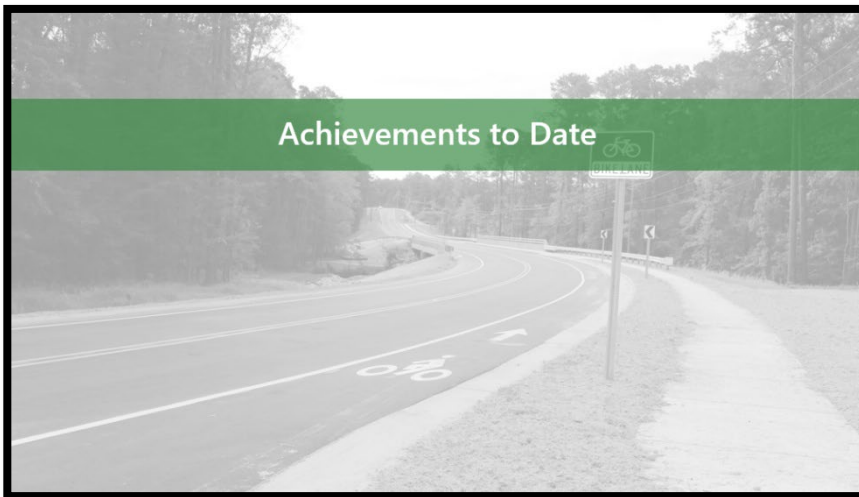
Phase 4: Ongoing Monitoring and Evaluation (Ongoing)

- Evaluate and review the plan to monitor progress and adjust plan as needed

*Will adapt plan based on Town policies and current federal and state direction

6


1 [SLIDE 6]



2
3 [SLIDE 7]

ReciteMe Accessibility & Translation

- **ReciteMe** (web accessibility software) was launched to the Town website in **June 2024**
- Assistive toolbar that enables **web accessibility** (text resizing, text-to-speech, font options, etc.)
- On-page translation available in **100+** languages with select languages supporting screen reader compatibility



New Language & Accessibility toolbar now available on the Town of Apex website

Nueva barra de herramientas de idioma y accesibilidad ahora disponible en el sitio web de la ciudad de Apex

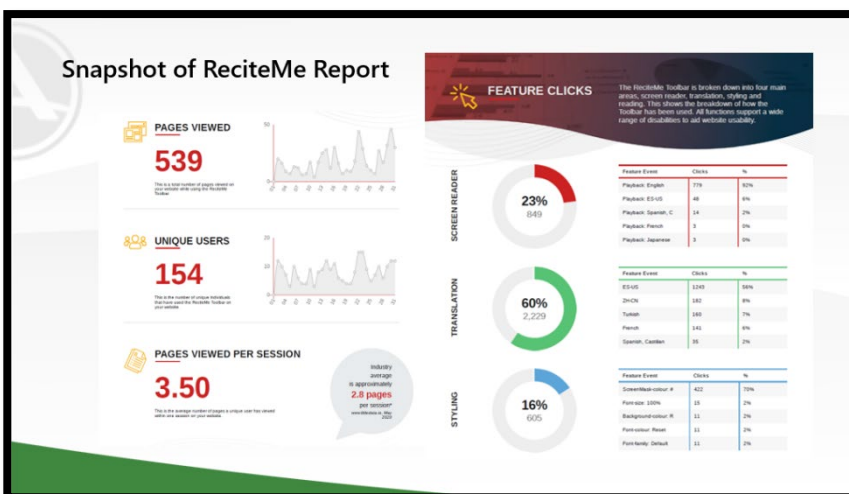
新的语言和无障碍辅助工具栏现已在 Apex 镇官网上推出

BRIDGING THE GAP BETWEEN ACCESSIBILITY AND USABILITY

The Town of Apex recently partnered with ReciteMe, an accessibility software company, to provide an inclusive online experience at www.apexnc.org.

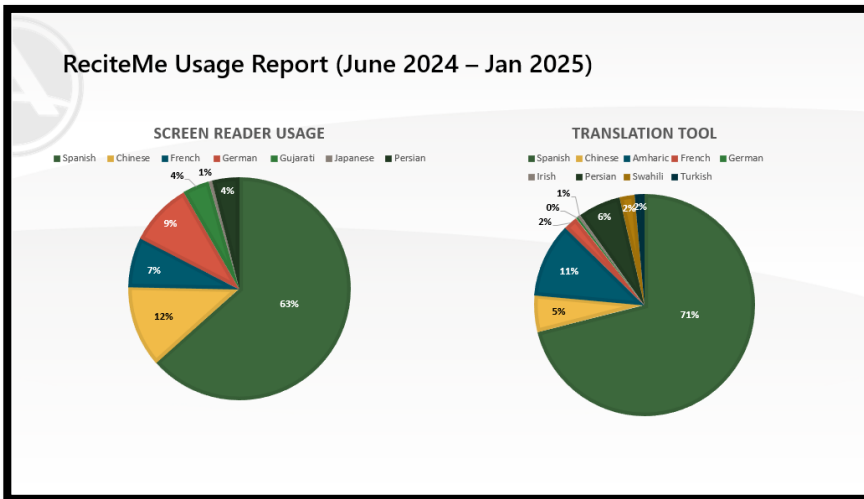
The ReciteMe accessibility toolbar, pictured above, will help make www.apexnc.org more accessible and inclusive for a diverse range of people online by providing translation services, multiple reading aids, customizable font options for easier reading, and more!

4
5 [SLIDE 8]

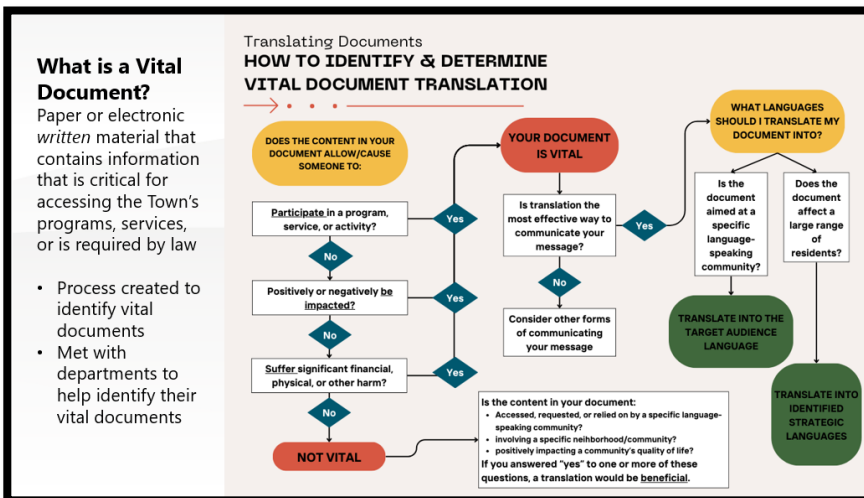


6

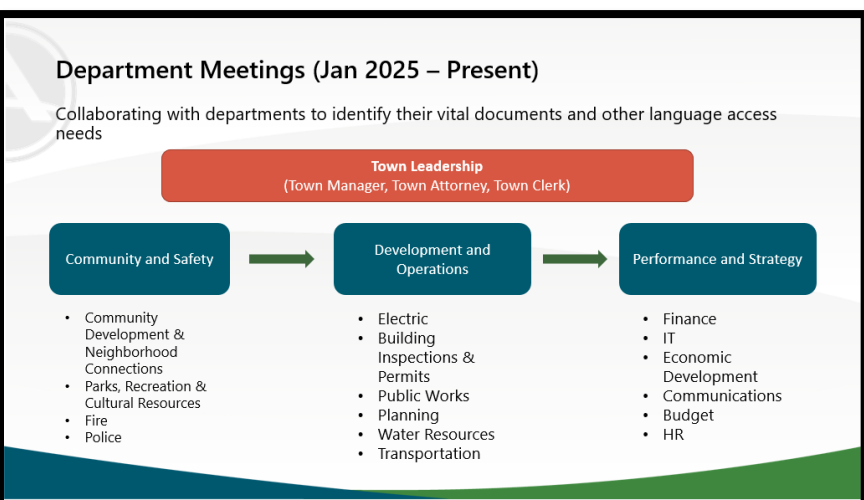
1 **[SLIDE 9]**



2
3 **[SLIDE 10]**



4
5 **[SLIDE 11]**



1 **[SLIDE 12]**

Interpretation Services

Key Achievements:

- Language service provider selection:
 - Research multiple language service providers
 - Identified and partnered with Language Service Solutions for ongoing interpretation needs
- First Interpretation at Town Council Meeting (September 24, 2024)
 - Successful simultaneous and consecutive Spanish interpretation ensuring accessibility for Spanish-speaking residents to engage with the Town
- Community Engagement Events:
 - Assisted the Community Engagement Team in providing interpretation at CommUniversity Events (January and February 2025 completed)
 - Commitment to ongoing interpretation at future CommUniversity events
- Working with Ask Apex (Call Center) to ensure they have language assistance as needed


*Note: American Sign Language interpreter providers identified



2
3 **[SLIDE 13]**

What's Next?

Phase 2: Strengthening Foundations (Target Date: June 2025)




- Integrate language access into Town operations by raising awareness of services, providing staff training, establishing a repository of resources, and setting proficiency standards for bilingual/multilingual staff
- Finalize translation of vital documents
- Secure interpretation equipment for Town use
- Continue to meet with departments to assess their language access needs

Phase 3: Expansion and Refinement (Target Date: January 2026)

Phase 4: Ongoing Monitoring and Evaluation (Ongoing)

4
5 **[SLIDE 14]**

Questions?



6
7 **Ms. Nguyen** asked if there were any questions.

1 **Councilmember Zegerman** asked if the people who responded that they had limited
2 English proficiency was the same kind of breakdown in language percentage wise as the rest
3 of the model.

4 **Ms. Nguyen** said to be considered limited English proficient they follow the model is
5 that if they speak less than very well English.

6 **Councilmember Zegerman** asked if the 5% of the limited English is spread across
7 multiple languages.

8 **Ms. Nguyen** said yes, these are spread out in different languages.

9 **Mayor Pro Tempore Gray** said that some of the younger residents do not use the
10 webpage. He asked if there was a plan for integration of social media into our language
11 accessibility plan.

12 **Director Jones** said that there is a plan, and Stacie Galloway, Communications
13 Director, is a part of the team, and she will be rolling out communication on social media. She
14 said that there were flyers that were translated into our top strategic languages that went out
15 to the town when Recite Me was launched.

16 **Councilmember Mahaffey** asked if there was a translation service on request for the
17 Town Council meetings and what the process would be like.

18 **Director Jones** said that they were committed to providing those Town services. She
19 said that they are partnered with Language Solutions as needed.

20 **Councilmember Mahaffey** asked about the time period that they can get the
21 services.

22 **Director Jones** said that it is a 48-hour request, but sometimes when the request
23 comes in with less time before a meeting they have a vendor in place to provide quick on-call
24 services.

25 **Mayor Gilbert** thanked Director Jones.

26 **Director Jones** thanked Ms. Nguyen for all that she has done.

27
28 **[PUBLIC FORUM]**
29

30 **Mayor Gilbert** opened up the Public Forum and invited the first speaker up.
31

32 First to speak was **Andrew Gluck** of Walden Creek Subdivision:
33

34 "I've spoke, this has been going on for about since the hurricane that came through
35 devastated the Western part of North Carolina. There's a creek running behind my house, and
36 it doesn't affect me, but it affects the people downstream from me. It's been ever since then
37 there's been a lot of fallen debris in it, which the neighborhood normally cleans up, but this
38 time it's gotten too large. I've been trying since then to get that cleaned up by the Town. I've
39 been told many times I'm going to get call backs, someone's been out now for over a month,
40 nobody showed up, nobody's been out. The problem with this also is it's gotten worse from
41 the rain we've had. Now there's an island in there, trees are about to come down, which

1 wouldn't have happened if they would have just cleaned it up and the reason, I didn't do it
2 was that it was just too much for us. We always, the neighbor keeps this clean even though it
3 belongs to the Town of Apex. Now, if we get another big rain, and also by the way, two
4 blockages now are formed because of this, not just one. The island is formed with trees on it,
5 which will soon come down, big trees. If this happens, it's not going to affect my house, not
6 going to affect the house next to me, but the people downstream will get flooded. They've
7 got flooded before, but this will be a massive flood. It'll hit the house, it'll wreck a few houses
8 downtown, and I cannot see why the Town will not take responsibility for their own creek and
9 send people out to clean it. I've been asking for at least since that hurricane been here for
10 months ago, we have never had anybody come speak to me about it or return a phone call
11 except one of our Councilmen had called me back about it and he's also tried to get people
12 to call me back who would do this, and no one has luck. We need to get this taken care of. I
13 don't want to go to a Core of Engineers to do it, I just want the Town to take care of what's
14 there's, and it is a creek that's now blocked off in two spots, and as I said, it just keeps getting
15 worse now, there is one area that is almost 20 feet wide, which used to be 6 feet wide, and it's
16 undercutting it now and as I said, my house sits up, it could flood all day long over there, and
17 I'll never get affected, but the people downstream from me will be devastated from this so I'd
18 love somebody to give me a call on this. I need them to come out, send the crew out there to
19 clean it up. They could do this in a day. It's going to take longer now, and now it appears
20 they're going to have to take down some trees too to keep them from falling, and they're
21 pretty big. This would have been a lot easier if they would have just done it when first asked. It
22 would have probably been about a three-hour, two-hour job, but now it's going to take a lot
23 longer. So, someone, I don't think you have my phone number, but if someone could get in
24 contact with me on this, I'll give them my phone number or my phone number to them, and
25 please, please, I've got some pictures that are hard to read, call a printer, but it shows where
26 the creek should be is now covered. It shows where the creek should be also, and this is the
27 island."

28
29 **Mayor Gilbert** asked Mr. Gluck to give his phone number. He called the next speaker.

30
31
32 Next to speak was **Elizabeth Stitt** of 3113 Friendship Road:

33
34 "Mayor and Town Council, good evening. So, in the January 14th meeting and the
35 February 25th meeting, you decided to vote for a resolution on Eminent Domain on 44
36 properties. I understand, so two of those are my properties. These are properties that are our
37 primary residences, and, you know, people don't expect the town to come in heavy-handed
38 and say, "Hey, we're going to use our power and we're going to take your property." So,
39 I've had a few discussions, and I think the problem is there's no policy. How many times is a
40 Town required to reach out to me before you vote in a closed session? Well, you debated in a
41 closed session and voted on the resolution afterward to take my property. The letters that I
42 have from the Town do not say, "Elizabeth, you need to respond by X date, or we as a Town

1 are going to take action." I deserve more consideration than this behind-the-scenes closed-
2 door conversation. I'm here every meeting, and nobody had the conversation that said,
3 Elizabeth, we need you to make a decision by X date. Then the law requires you to offer fair
4 market value. Fair market value, what does that mean? The two appraisals on my two
5 properties I received in August and in January used sales from properties in 2020. The fair
6 market value of my property today is not what it was in 2020, but for some reason, your staff is
7 allowed to take an appraisal using 2020 data. So, why would I work with the town? Why would
8 I agree to work on an easement when you're not offering me fair market value? I put this out
9 there to you when you look at your consent item number one from tonight, when you took
10 the Lund property, you offered them \$669,000, but the lawsuit just wrapped up and you guys
11 ended up having to pay an additional \$610,000. You offered them 52% of what the legal
12 outcome came out at \$1.28 million. You have a problem somewhere in your process to take
13 action against 44 properties in two months. Something is broken. So, I ask that you take the
14 time to try to figure out why you have to take action on so many properties. If you're working
15 with the community, you shouldn't have to take action on 44 properties. Thank you."

16
17
18 **Mayor Gilbert** thanked Ms. Stitt and called the next speaker.

19
20 Next speaker was **Beth Bushman Bland** of 3724 Friendship Road:

21
22 "I'm going to piggyback onto Elizabeth. I didn't know what she was going to talk
23 about tonight, but basically, I'm in the same boat. I'm one of the 44 properties, we are, Tom
24 and I are also, and I happen to agree with her. I don't see any reason to trust working with the
25 Town. We were told they weren't going to take our buffer; they're taking our buffer. There
26 were other options that weren't looked at. So, I now have representation, and we submitted it
27 through our attorneys on the 28th of January, a public records request concerning Veridia
28 and the big Branch Force main. Our records request was a very reasonable request, didn't
29 require a whole lot of different documents, and the ask was to have the documents in hand
30 by the 18th of February, which was three weeks after the request was made. I think that was
31 pretty reasonable. The response from the Town was sent to the attorneys on the 7th of
32 February, a little over a week later, stating that due to the large volume of records requested,
33 the Town's response would be delayed, but no timeline was given as to how long that's going
34 to take. Nothing. There was also a push in there, what I would consider a push, that said, Oh,
35 we're going to get charged for paper copies, which were not requested, and if needed, a
36 special service charge could be imposed. It's now 6 weeks later, no records. Our attorney did
37 respond back two weeks ago, asking again and going over what was sent to us on the 7th of
38 February. You know, I've seen Allen at Panera at 9:00 at night. I know how hard he works, and I
39 know how much he has to do, but I don't think this was out of the ordinary. I think you guys
40 are snowballing it, you're pushing it, and you have no intention of getting these requests in
41 any kind of timely manner. That's it."

1
2 **Mayor Gilbert** thanked Ms. Bland and called the next speaker.

3
4 Next speaker was **Dawn Cozzolino** of 3632 Bosco Road:
5

6 "Good evening, Town Council and Mayor. I don't know if you picked up all the
7 patterns tonight, it's care and competence, but my discussion tonight was on growth. I'll just
8 chime in with that real quick. So, this is a blackberry plant. I'm going to put it in the garden,
9 I'm going to nurture it, I'm going to give it water, I'm going to give it sunlight, and it's going to
10 thrive. That's organic growth, natural. Government management of Apex leverages external
11 forces to get their growth at a furious pace. Can't have it both ways. You can't have a small-
12 town charm and be the city of the future. That's why the people here feel so disorganized with
13 this lack of vision. Housing growth is going to overwhelm the schools and the roadways. Talk
14 a lot about roads, but there's no other options but to shuttle kids far away to schools. No
15 other means of travel, and, you know, they have to leave their friends and the stability there,
16 and we're going to plague our roadways with more accidents and serious safety concerns.
17 This is what's advertised to the outside world, outside of here, and I just think it's an
18 ambiguous narrative that brands everything in a wholesome manner and packages it up,
19 when you're not really telling the entire truth or you're hiding it. Just heard about Eminent
20 Domain, why is that in secret? Why is there even Eminent Domain on private development? I
21 mean, this is not for the public good. These are questions said, okay, why is it so difficult to
22 get a simple request for a traffic impact study? Okay, just three developments on Old US
23 Road are going to add 17,000 new vehicle trips a day to that road, the three that are getting
24 built now. Why is that too much to ask? And then a community waits over 417 days for a
25 public records request. Why is that so hard? Care and competence and the truth will be the
26 sunlight. Thank you."

27
28 **[NEW BUSINESS]**

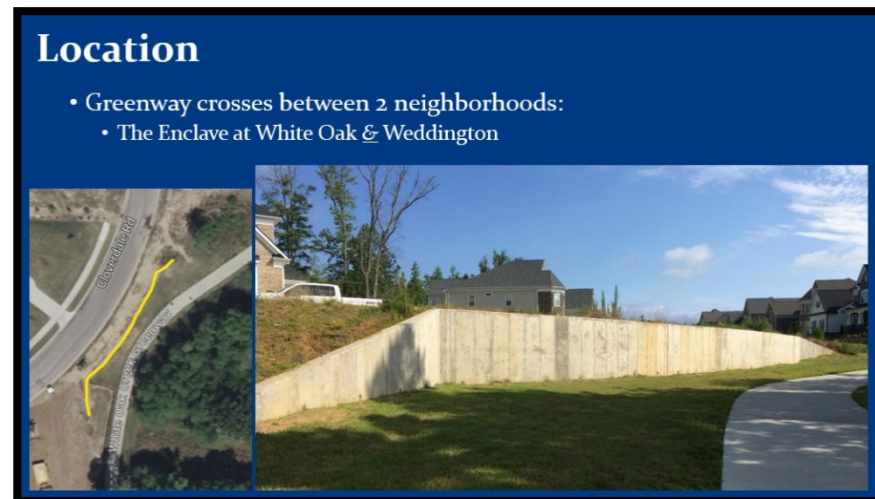
29 **NB1 White Oak Creek Greenway Mural Design Endorsement**

30 **Taylor Wray**, Cultural Arts Center Manager, Parks, Recreation, and Cultural Resources
31 Dept. gave the following presentation:
32

1 [SLIDE 1]



2
3 [SLIDE 2]



4
5 [SLIDE 3]



6

[SLIDE 4]



[SLIDE 5]



Ms. Wray thanked everyone for their time.

Mayor Gilbert asked if there was anyone at the meeting from the Public Art Committee.

Ms. Wray said that Chair Tom Cowell was in attendance.

Mayor Gilbert asked if there were any questions.

Mayor Pro Tempore Gray said that someone had asked him why the Town was spending money on murals. He said that one way to combat graffiti and vandalism is with art because artists respect other artists' work. He said this was a reflective piece of art that is a small investment to ensure beauty stays in Apex.

A **motion** was made by **Councilmember Killingsworth**, seconded by **Councilmember Zegerman** to approve the White Oak Creek Greenway Mural Design Endorsement.

VOTE: UNANIMOUS (5-0)

[CLOSED SESSION]

A **motion** was made by **Councilmember Gantt**, seconded by **Mayor Pro Tempore Gray** to enter into closed session pursuant to NCGS §143-318.11(a)(3).

VOTE: UNANIMOUS (5-0)

Council entered closed session at **6:55 p.m.**

CS1 Laurie Hohe, Town Attorney

NCGS §143-318.11(a)(3):

"To consult with an attorney employed or retained by the public body in order to preserve the attorney client privilege between the attorney and the public body."

Council returned to open session at **7:09 p.m.**

[ADJOURNMENT]

Mayor Gilbert adjourned the meeting at **7:10 p.m.**

Jacques K. Gilbert
Mayor

Allen Coleman, CMC, NCCCC
Town Clerk to the Apex Town Council

Submitted for approval by Town Clerk Allen Coleman and approved on_____.

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: April 08, 2025

Item Details

Presenter(s): Chris Johnson, Director, P.E.

Department(s): Transportation & Infrastructure Development

Requested Motion

Motion to approve an Encroachment Agreement between the Town of Apex and property owner, Pulte Home Company, LLC, to install a driveway that will encroach 84 square feet (SF) onto the Public Drainage Easement, and authorize the Town Manager, or their designee, to execute on behalf of the Town.

Approval Recommended?

Yes

Item Details

Approve Encroachment Agreement between the Town and property owner Pulte Home Company, LLC for the property described as a Residential Lot, Wake County PIN# 0722-40-8157, Book of Maps 2024, Page 1791, Lot 1, 1461 Hasse Ave., Apex, NC 27502, Wake County Register of Deeds. Grantee wishes to install a driveway that will encroach 84 square feet (SF) onto the Public Drainage Easement.

Attachments

- CN6-A1: Encroachment Agreement -1461 Hasse Avenue
- CN6-A2: Exhibit A -1461 Hasse Avenue



After Recording Mail To: Development Services
 Town of Apex
 PO Box 250
 Apex, NC 27502

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT, being made this _____ day of _____, 2025, by and between Pulte Home Company, LLC hereinafter referred to as "Grantee," and the Town of Apex, hereinafter referred to as the "Town."

WHEREAS, the Grantee is the owner of a certain residential lot of land in the County of Wake, State of North Carolina, which is designated as **PIN #0722-40-8157** by the Wake County Revenue Department and more particularly described as **Lot 1** of the subdivision known as **Huxley Phase 1** as shown on that certain plat recorded in **Book of Maps 2024, Page 01791**, Wake County Registry (hereinafter the "**Subdivision Plat**"). The residential lot is also known as **1461 Hasse Ave, Apex, NC 27502**. The residential lot described in this paragraph is hereinafter referred to as the "**Residential Lot**."

WHEREAS, the Town is the owner of a **Town of Apex Public Drainage Easement** as shown on the **Subdivision Plat** hereinafter referred to as the "**Public Drainage Easement**".

WHEREAS, Grantee wishes to install certain improvements more particularly described as a **driveway that will encroach 84 square feet (SF) onto the Public Drainage Easement**, which serves the Residential Lot, hereinafter referred to as the "**Encroachment**", all as shown on the attached **Exhibit A**. Grantee desires to make certain agreements and covenants regarding the Encroachment.

WHEREAS, the Town, under the terms and conditions herein set forth, is willing to allow the above-described Encroachment upon the **Public Drainage Easement**.

NOW, THEREFORE, in consideration of these promises and other consideration, the receipt and sufficiency of which is hereby acknowledged, Grantee and the Town hereby covenant and agree:

1. Subject to the terms herein, the Town agrees to allow Grantee, and Grantees' successors and assigns at Grantee sole risk and expense, to encroach into the **Public Drainage Easement** of the Town as shown in the attached **Exhibit A**, and incorporated by reference as though fully set forth herein.
2. The Encroachment shall not be enlarged or increased beyond the Encroachment shown in **Exhibit A** and described in this Encroachment Agreement. Grantee is responsible for any and all expenditures of labor or materials required for the installation, erection, repair, removal, or maintenance of the above-referenced Encroachment and shall be allowed to maintain the Encroachment and to perform all necessary repairs, maintenance, and replacement of the Encroachment as may be necessary from time to time.
3. The Town shall not be held responsible for any and all property damage or injury or death of any person which results from any and all negligence, omission, defect in design, maintenance, or workmanship created by the Encroachment described herein, or any cause of action arising out of the installation, maintenance, removal, destruction, or location of said Encroachment.
4. Grantee agrees to and does hereby hold the Town, its officers, council members and employees harmless from any and all liability arising out of such negligence, omission, defect or other cause of action; that it will defend the Town, its officers, council members and employees, and pay all attorney fees in any and all actions brought as a result of such; and that it will indemnify the Town, its officers, council members, and employees against any and all loss sustained by reason of such negligence, omission, defect, or other cause of action, claim, cost, or expense arising out of the installation, maintenance, removal, or location of said Encroachment; provided that, Grantee shall not be obligated hereunder to indemnify the Town for any negligent acts or omissions of the Town, its contractor(s) (including sub-contractors) and their respective officers, agents and employees.
5. Sections 3 and 4 shall survive the termination of this Encroachment Agreement for any reason.

6. All notices required herein shall be deemed given by depositing such in the United States mail, first class, and addressed to:

To Town: Town Manager
Town of Apex
PO Box 250
Apex, NC 27502

To Grantee: Pulte Home Company, LLC
1225 Crescent Green, Suite 250
Cary, NC 27518

7. In the event there is a dispute between the parties concerning the interpretation of the terms of this Encroachment Agreement or their respective rights and obligations hereunder, such dispute or controversy shall be adjudged pursuant to the laws of the State of North Carolina.

8. Grantee agrees to abide by all applicable laws, regulations, statutes and ordinances.

9. This Encroachment Agreement shall not divest the Town of any rights or interest in said **Public Drainage Easement**.

10. If the Town deems, within its sole discretion, that removal of all or apportion of the Encroachment is necessary in order to operate, protect, maintain, modify, replace, add-to or improve its facilities located within the **Public Drainage Easement**, then Grantee shall cause such removal to be made at Grantee's sole expense within 30 days after receipt of notice from the Town and shall be completed in a manner that will allow the Town complete and safe access to the **Public Drainage Easement**. In the event that the Grantee fails to timely remove the Encroachment or in the event of an emergency associated with the condition of the **Public Drainage Easement**, the Town is authorized to remove all or such portion of the Encroachment as the Town determines in its sole discretion to be reasonably necessary, convenient or advisable to operate, protect, maintain, modify, replace, add-to or improve its facilities located within the **Public Drainage Easement**. The Town shall have the sole discretion to determine the existence of an emergency associated with the condition of the **Public Drainage Easement**.

11. Grantee agrees to pay and reimburse the Town the entire expense and cost of removal of the Encroachment in the event that the Town removes the Encroachment as provided in the Paragraph 10 or if Grantee fails to remove the Encroachment within the time limit after receiving notice under Paragraph 9.

12. Grantee, during the life of this Encroachment Agreement, agrees to procure or cause to be procured from a responsible insurance carrier or carriers authorized under the laws of the State of North Carolina, insurance in the minimum amounts of \$300,000/\$500,000/\$300,000 covering full liability for any and all personal injury, property damage or wrongful death caused by the construction, maintenance, location, repair or visual obstruction of said Encroachment. Grantee shall furnish the Town, without demand, each July a certification from the insurance carrier or carriers with whom the insurance herein mentioned is carried, stating that such compensation is covered by such carrier or carriers and showing such insurance to be in full force and effect. Both Grantee and the Town shall be named as insured parties by endorsement of the policy. In the event of any change in the insurance policy, Grantee shall give the Town thirty (30) days' notice of such change. Should Grantee fail to pay premiums upon said insurance or to perform any of the agreement, terms or conditions herein contained, the Town, at its option, by written notice may declare this Encroachment Agreement canceled and terminated and all rights acquired hereunder by Grantee shall thereupon terminate.

13. Notwithstanding Section 14 below, Grantee shall be released from its obligation under this Encroachment Agreement only upon the assumption of said obligations either by a successor in title to the **Residential Lot**, or by assumption of said obligations by an incorporated party approved by the Town. The Town's consent to such assumption and release shall be required but shall not be withheld, conditioned or delayed if, as reasonably determined by the Town, the party assuming Grantee's obligations possesses adequate financial resources and ownership interest, and Grantee's delegate and proposed assignee assume and agree to fulfill, in writing, all of Grantee's duties set forth in this Encroachment Agreement.

14. The right to encroach is appurtenant to and runs with the land hereinabove referred to and shall forever by subject to the conditions above agreed on between the parties. This Encroachment Agreement is binding upon the heirs, assigns, transferees, and successors in interest of the Grantee and shall, upon execution, be recorded in the Office of the Register of Deeds of Wake County, North Carolina.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

In testimony whereof, said Grantee and said Town have here unto set their hands and seals, the day and year first above written.

GRANTEE

Pulte Home Company, LLC

By: Chris Raughley (SEAL)
Chris Raughley
Division Vice President
Land Planning & Development

NORTH CAROLINA

COUNTY OF Durham [county in which acknowledgement taken]

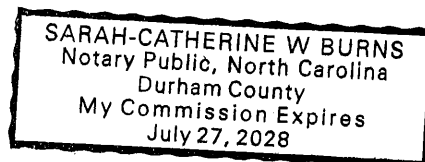
I, Sarah-Catherine W. Burns, a Notary Public of Durham County, North Carolina, certify that Chris Raughley, personally appeared before me this day and acknowledged that he is the **Division Vice President of Land Planning & Development** for **Pulte Home Company, LLC**. Grantee herein, and that by authority duly given as **the Division Vice President of Land Planning & Development** for the company, the foregoing instrument was signed and sealed by him on behalf of the company and acknowledged said writing to be the act and deed of said company.

Witness my hand and official stamp or seal, this 21 day of March, 2025.

[Signature]
[Signature of Notary Public]

(Affix Notarial Stamp-Seal)

My Commission Expires: July 27, 2028



TOWN OF APEX

Randal E. Vosburg, AICP, CPM
Town Manager

(Corporate Seal)

ATTEST:

Allen Coleman, CMC, NCCCC
Town Clerk

STATE OF NORTH CAROLINA

COUNTY OF _____ [county in which acknowledgement taken]

I, _____, a Notary Public of _____
County, North Carolina, certify that **Allen Coleman** personally came before me this day and acknowledged
that he is the **Town Clerk** for the **Town of Apex, a North Carolina Municipal Corporation**, and that by
authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its
Town Manager, sealed with its corporate seal and attested by him as its **Town Clerk**.

Witness my hand and official stamp or seal, this _____ day of _____, 2025.

[Signature of Notary Public]

(Seal)

My Commission Expires: _____

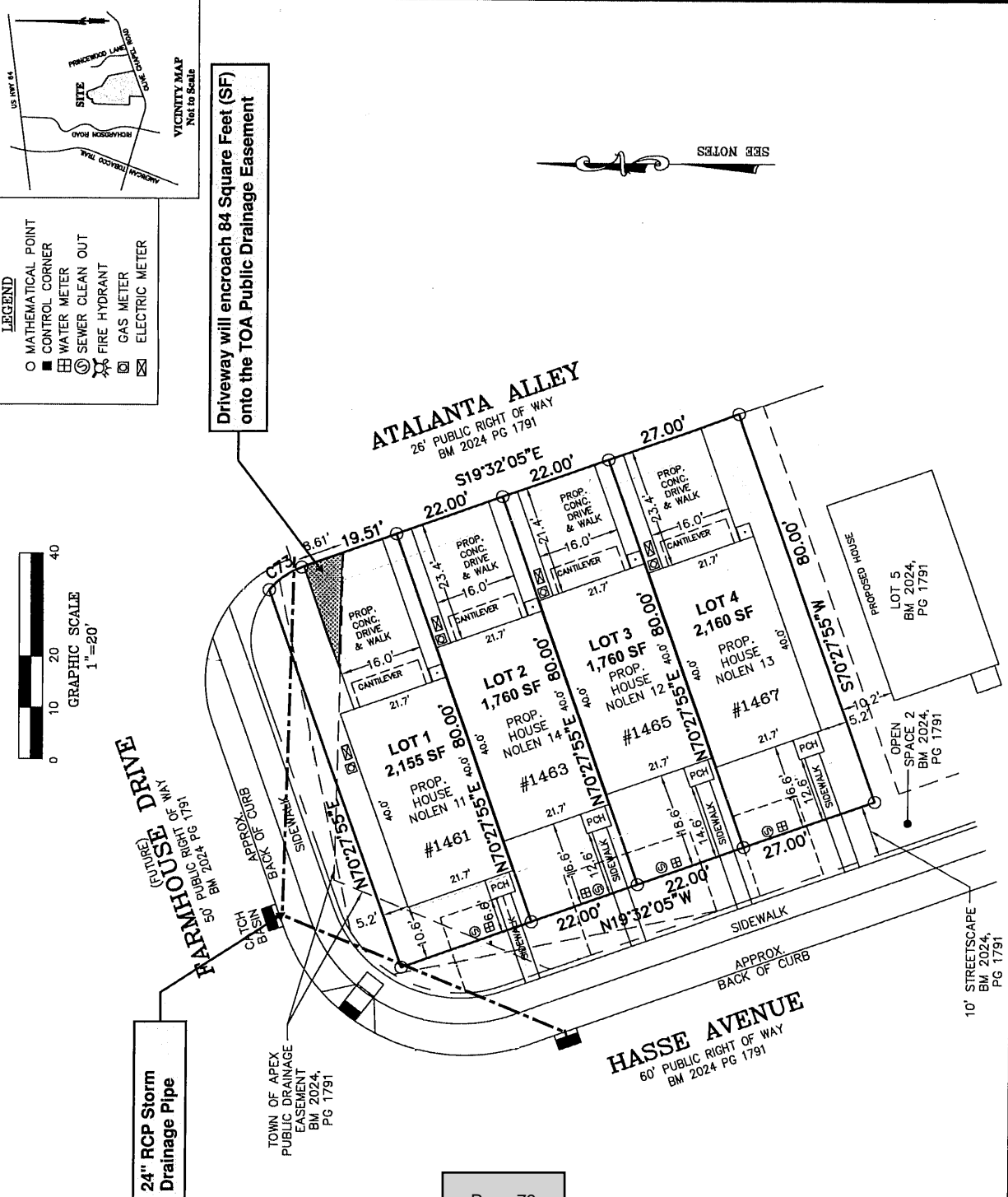
NOTE:
THIS MAP MAY NOT BE A CERTIFIED
SURVEY AND HAS NOT BEEN REVIEWED
BY A LOCAL GOVERNMENT AGENCY FOR
COMPLIANCE WITH ANY APPLICABLE
LAND DEVELOPMENT REGULATIONS AND
HAS NOT BEEN REVIEWED FOR
COMPLIANCE WITH RECORDING
REQUIREMENTS FOR PLATS.

EXHIBIT A

1461 Hasse Avenue
Apex, NC 27502

Lot 1 Huxley Phase 1

DATE: 09/07/2024 SCALE: 1"=20' CHECK: DRAWN: CJC FILE: PH-22-08



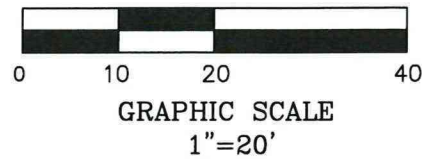
Driveway will encroach 84 Square Feet (SF)
onto the TOA Public Drainage Easement

24" RCP Storm
Drainage Pipe

TOWN OF APEX
PUBLIC DRAINAGE
EASEMENT
BM 2024,
PG 1791

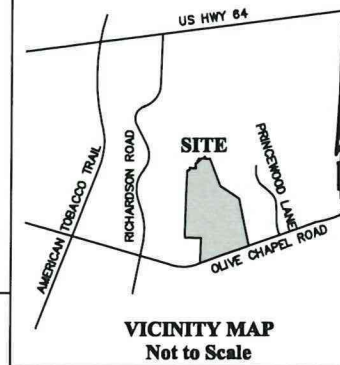
HASSE AVENUE
60' PUBLIC RIGHT OF WAY
BM 2024 PG 1791

10' STREETSCAPE
BM 2024,
PG 1791



LEGEND

- MATHEMATICAL POINT
- CONTROL CORNER
- ⊞ WATER METER
- ⊙ SEWER CLEAN OUT
- ⊕ FIRE HYDRANT
- ⊞ GAS METER
- ⊞ ELECTRIC METER



NOTE:
THIS MAP MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLATS.

24" RCP Storm Drainage Pipe

Driveway will encroach 84 Square Feet (SF) onto the TOA Public Drainage Easement

TOWN OF APEX PUBLIC DRAINAGE EASEMENT
BM 2024,
PG 1791

HASSE AVENUE
60' PUBLIC RIGHT OF WAY
BM 2024 PG 1791

10' STREETSCAPE
BM 2024,
PG 1791

ATLANTA ALLEY
26' PUBLIC RIGHT OF WAY
BM 2024 PG 1791



EXHIBIT A

1461 Hasse Avenue
Apex, NC 27502

Lot 1 Huxley Phase 1

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: April 08, 2025

Item Details

Presenter(s): Chris Johnson, Director, P.E.

Department(s): Transportation & Infrastructure Development

Requested Motion

Motion to approve an Encroachment Agreement between the Town of Apex and property owner, Pulte Home Company, LLC, to install a sidewalk that will encroach 9 square feet (SF) onto the Public Drainage Easement and to authorize the Town Manager, or their designee, to execute on behalf of the Town.

Approval Recommended?

Yes

Item Details

Approve Encroachment Agreement between the Town and property owner Pulte Home Company, LLC for the property described as Wake County PIN# 0722-40-8044, Book of Maps 2024, Page 1791, OS2 (Open Space 2), 0 Hasse Ave., Apex, NC 27502, Wake County Register of Deeds. Grantee wishes to install a sidewalk that will encroach 9 square feet (SF) onto the Public Drainage Easement.

Attachments

- CN7-A1: Encroachment Agreement - Huxley Open Space
- CN7-A2: Exhibit A - Encroachment Agreement - Huxley Open Space



After Recording Mail To: Development Services
 Town of Apex
 PO Box 250
 Apex, NC 27502

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT, being made this _____ day of _____, 2025, by and between Pulte Home Company, LLC hereinafter referred to as "Grantee," and the Town of Apex, hereinafter referred to as the "Town."

WHEREAS, the Grantee is the owner of a certain Open Space land in the County of Wake, State of North Carolina, which is designated as **PIN #0722-40-8044** by the Wake County Revenue Department and more particularly described as **OS2 (Open Space 2)** of the subdivision known as **Huxley Phase 1** as shown on that certain plat recorded in **Book of Maps 2024, Page 01791**, Wake County Registry (hereinafter the "**Subdivision Plat**"). The Open Space is also known as **0 Hasse Ave, Apex, NC 27502**. The Open Space described in this paragraph is hereinafter referred to as the "**Open Space**."

WHEREAS, the Town is the owner of a **Town of Apex Public Drainage Easement** as shown on the **Subdivision Plat** hereinafter referred to as the "**Public Drainage Easement**".

WHEREAS, Grantee wishes to install certain improvements more particularly described as a **sidewalk that will encroach 9 square feet (SF) onto the Public Drainage Easement**, which serves the Open Space, hereinafter referred to as the "**Encroachment**", all as shown on the attached **Exhibit A**. Grantee desires to make certain agreements and covenants regarding the Encroachment.

WHEREAS, the Town, under the terms and conditions herein set forth, is willing to allow the above-described Encroachment upon the **Public Drainage Easement**.

NOW, THEREFORE, in consideration of these promises and other consideration, the receipt and sufficiency of which is hereby acknowledged, Grantee and the Town hereby covenant and agree:

1. Subject to the terms herein, the Town agrees to allow Grantee, and Grantees' successors and assigns at Grantee sole risk and expense, to encroach into the **Public Drainage Easement** of the Town as shown in the attached **Exhibit A**, and incorporated by reference as though fully set forth herein.
2. The Encroachment shall not be enlarged or increased beyond the Encroachment shown in **Exhibit A** and described in this Encroachment Agreement. Grantee is responsible for any and all expenditures of labor or materials required for the installation, erection, repair, removal, or maintenance of the above-referenced Encroachment and shall be allowed to maintain the Encroachment and to perform all necessary repairs, maintenance, and replacement of the Encroachment as may be necessary from time to time.
3. The Town shall not be held responsible for any and all property damage or injury or death of any person which results from any and all negligence, omission, defect in design, maintenance, or workmanship created by the Encroachment described herein, or any cause of action arising out of the installation, maintenance, removal, destruction, or location of said Encroachment.
4. Grantee agrees to and does hereby hold the Town, its officers, council members and employees harmless from any and all liability arising out of such negligence, omission, defect or other cause of action; that it will defend the Town, its officers, council members and employees, and pay all attorney fees in any and all actions brought as a result of such; and that it will indemnify the Town, its officers, council members, and employees against any and all loss sustained by reason of such negligence, omission, defect, or other cause of action, claim, cost, or expense arising out of the installation, maintenance, removal, or location of said Encroachment; provided that, Grantee shall not be obligated hereunder to indemnify the Town for any negligent acts or omissions of the Town, its contractor(s) (including sub-contractors) and their respective officers, agents and employees.
5. Sections 3 and 4 shall survive the termination of this Encroachment Agreement for any reason.

6. All notices required herein shall be deemed given by depositing such in the United States mail, first class, and addressed to:

To Town: Town Manager
Town of Apex
PO Box 250
Apex, NC 27502

To Grantee: Pulte Home Company, LLC
1225 Crescent Green, Suite 250
Cary, NC 27518

7. In the event there is a dispute between the parties concerning the interpretation of the terms of this Encroachment Agreement or their respective rights and obligations hereunder, such dispute or controversy shall be adjudged pursuant to the laws of the State of North Carolina.

8. Grantee agrees to abide by all applicable laws, regulations, statutes and ordinances.

9. This Encroachment Agreement shall not divest the Town of any rights or interest in said **Public Drainage Easement**.

10. If the Town deems, within its sole discretion, that removal of all or apportion of the Encroachment is necessary in order to operate, protect, maintain, modify, replace, add-to or improve its facilities located within the **Public Drainage Easement**, then Grantee shall cause such removal to be made at Grantee's sole expense within 30 days after receipt of notice from the Town and shall be completed in a manner that will allow the Town complete and safe access to the **Public Drainage Easement**. In the event that the Grantee fails to timely remove the Encroachment or in the event of an emergency associated with the condition of the **Public Drainage Easement**, the Town is authorized to remove all or such portion of the Encroachment as the Town determines in its sole discretion to be reasonably necessary, convenient or advisable to operate, protect, maintain, modify, replace, add-to or improve its facilities located within the **Public Drainage Easement**. The Town shall have the sole discretion to determine the existence of an emergency associated with the condition of the **Public Drainage Easement**.

11. Grantee agrees to pay and reimburse the Town the entire expense and cost of removal of the Encroachment in the event that the Town removes the Encroachment as provided in the Paragraph 10 or if Grantee fails to remove the Encroachment within the time limit after receiving notice under Paragraph 9.

12. Grantee, during the life of this Encroachment Agreement, agrees to procure or cause to be procured from a responsible insurance carrier or carriers authorized under the laws of the State of North Carolina, insurance in the minimum amounts of \$300,000/\$500,000/\$300,000 covering full liability for any and all personal injury, property damage or wrongful death caused by the construction, maintenance, location, repair or visual obstruction of said Encroachment. Grantee shall furnish the Town, without demand, each July a certification from the insurance carrier or carriers with whom the insurance herein mentioned is carried, stating that such compensation is covered by such carrier or carriers and showing such insurance to be in full force and effect. Both Grantee and the Town shall be named as insured parties by endorsement of the policy. In the event of any change in the insurance policy, Grantee shall give the Town thirty (30) days' notice of such change. Should Grantee fail to pay premiums upon said insurance or to perform any of the agreement, terms or conditions herein contained, the Town, at its option, by written notice may declare this Encroachment Agreement canceled and terminated and all rights acquired hereunder by Grantee shall thereupon terminate.

13. Notwithstanding Section 14 below, Grantee shall be released from its obligation under this Encroachment Agreement only upon the assumption of said obligations either by a successor in title to the **Open Space**, or by assumption of said obligations by an incorporated party approved by the Town. The Town's consent to such assumption and release shall be required but shall not be withheld, conditioned or delayed if, as reasonably determined by the Town, the party assuming Grantee's obligations possesses adequate financial resources and ownership interest, and Grantee's delegate and proposed assignee assume and agree to fulfill, in writing, all of Grantee's duties set forth in this Encroachment Agreement.

14. The right to encroach is appurtenant to and runs with the land hereinabove referred to and shall forever by subject to the conditions above agreed on between the parties. This Encroachment Agreement is binding upon the heirs, assigns, transferees, and successors in interest of the Grantee and shall, upon execution, be recorded in the Office of the Register of Deeds of Wake County, North Carolina.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

In testimony whereof, said Grantee and said Town have here unto set their hands and seals, the day and year first above written.

GRANTEE

Pulte Home Company, LLC

By: Chris Raughley (SEAL)
Chris Raughley
Division Vice President
Land Planning & Development

NORTH CAROLINA

COUNTY OF Durham [county in which acknowledgement taken]

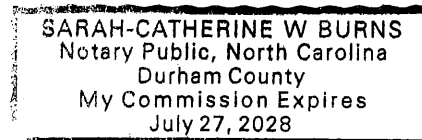
I, Sarah Catherine W. Burns, a Notary Public of Durham County, North Carolina, certify that Chris Raughley, personally appeared before me this day and acknowledged that he is the **Division Vice President of Land Planning & Development for Pulte Home Company, LLC**. Grantee herein, and that by authority duly given as **the Division Vice President of Land Planning & Development** for the company, the foregoing instrument was signed and sealed by him on behalf of the company and acknowledged said writing to be the act and deed of said company.

Witness my hand and official stamp or seal, this 21 day of March, 2025.

[Signature]
[Signature of Notary Public]

(Affix Notarial Stamp-Seal)

My Commission Expires: July 27, 2028



TOWN OF APEX

Randal E. Vosburg, AICP, CPM
Town Manager

(Corporate Seal)

ATTEST:

Allen Coleman, CMC, NCCCC
Town Clerk

STATE OF NORTH CAROLINA

COUNTY OF _____ [county in which acknowledgement taken]

I, _____, a Notary Public of _____
County, North Carolina, certify that **Allen Coleman** personally came before me this day and acknowledged
that he is the **Town Clerk** for the **Town of Apex, a North Carolina Municipal Corporation**, and that by
authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its
Town Manager, sealed with its corporate seal and attested by him as its **Town Clerk**.

Witness my hand and official stamp or seal, this _____ day of _____, 2025.

[Signature of Notary Public]

(Seal)

My Commission Expires: _____

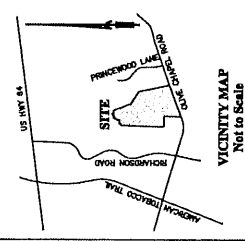
NOTE:

THIS MAP MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLATS.

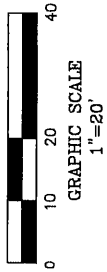
EXHIBIT A

0 Hasse Avenue
Apex, NC 27502
Huxley Phase 1
Open Space 2

DATE: 09/07/2024 SCALE: 1"=20' DRAWN: CJC CHECK: FILE: PH-22-08



- LEGEND**
- O MATHEMATICAL POINT
 - CONTROL CORNER
 - ▣ WATER METER
 - ⊙ SEWER CLEAN OUT
 - ⊗ FIRE HYDRANT
 - ⊠ GAS METER
 - ⊡ ELECTRIC METER

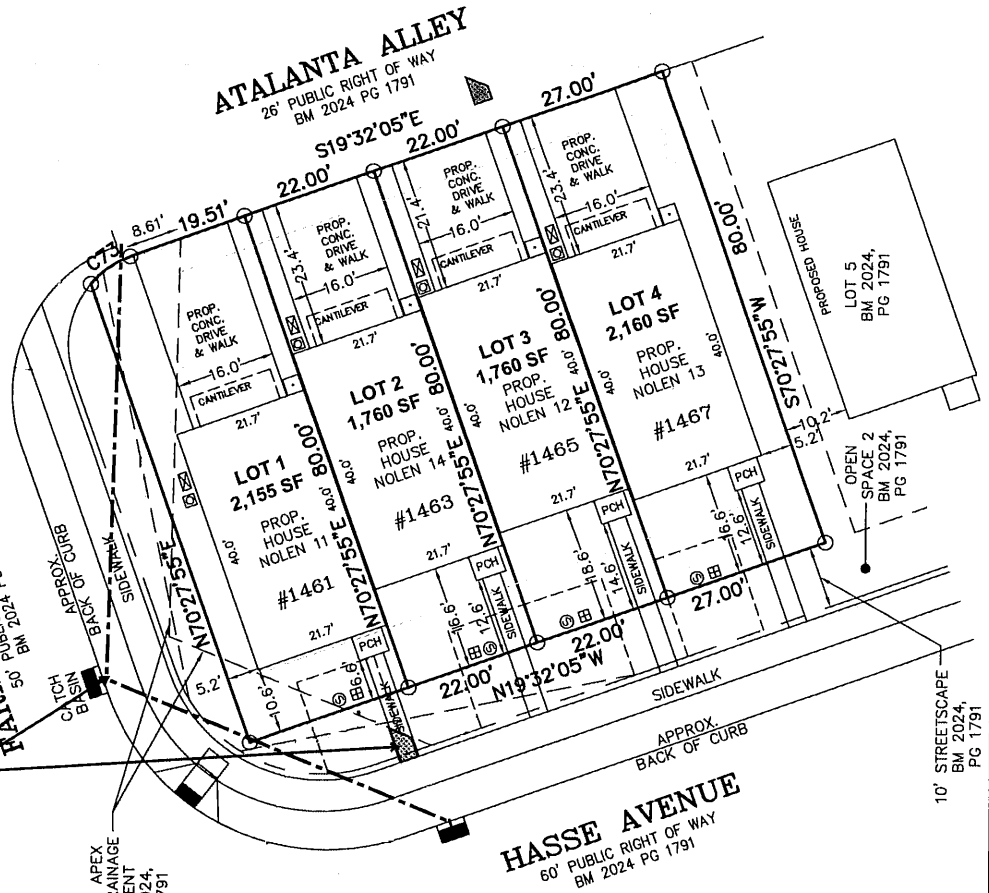


Sidewalk will encroach 9 Square Feet (SF) onto the TOA Public Drainage Easement

24" RCP Storm Drainage Pipe

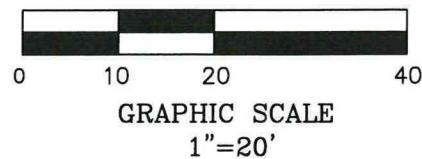
FAIRHOUSE DRIVE (FUTURE)
50' PUBLIC RIGHT OF WAY
BM 2024 PG 1791

TOWN OF APEX
PUBLIC DRAINAGE
EASEMENT
BM 2024,
PG 1791



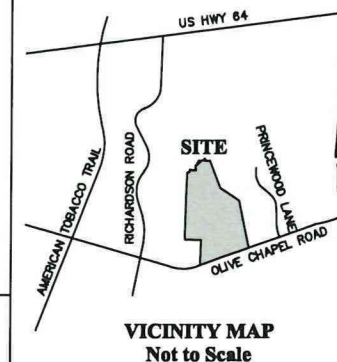
Sidewalk will encroach 9 Square Feet (SF)
onto the TOA Public Drainage Easement

24" RCP Storm
Drainage Pipe



LEGEND

- MATHEMATICAL POINT
- CONTROL CORNER
- ⊕ WATER METER
- ⊙ SEWER CLEAN OUT
- ⚡ FIRE HYDRANT
- ⊠ GAS METER
- ⊞ ELECTRIC METER



NOTE:
THIS MAP MAY NOT BE A CERTIFIED
SURVEY AND HAS NOT BEEN REVIEWED
BY A LOCAL GOVERNMENT AGENCY FOR
COMPLIANCE WITH ANY APPLICABLE
LAND DEVELOPMENT REGULATIONS AND
HAS NOT BEEN REVIEWED FOR
COMPLIANCE WITH RECORDING
REQUIREMENTS FOR PLATS.

TOWN OF APEX
PUBLIC DRAINAGE
EASEMENT
BM 2024,
PG 1791

HASSE AVENUE
60' PUBLIC RIGHT OF WAY
BM 2024 PG 1791

10' STREETSCAPE
BM 2024,
PG 1791

(FUTURE)
FARMHOUSE DRIVE
50' PUBLIC RIGHT OF WAY
BM 2024 PG 1791

CATCH
BASIN
APPROX.
BACK OF CURB
SIDEWALK

ATLANTA ALLEY
26' PUBLIC RIGHT OF WAY
BM 2024 PG 1791

SEE NOTES

EXHIBIT A

0 Hasse Avenue
Apex, NC 27502

Huxley Phase 1
Open Space 2

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: April 08, 2025

Item Details

Presenter(s): Antwan Morrison, Director

Department(s): Finance

Requested Motion

Motion to approve the amendments to the Fiscal Policy Guidelines for the Town of Apex.

Approval Recommended?

Yes

Item Details

The Town's fiscal policy guidelines were adopted in March 2009 and were last updated in April 2012.

A fiscal policy guideline influences and guides the financial management practices for the Town. These guidelines:

- 1) Contribute to the ability to insulate Town from fiscal crisis.
- 2) Enhance short-term and long-term financial credit ability by helping to achieve the highest credit and bond ratings.
- 3) Promote long-term stability by establishing clear and consistent guidelines.
- 4) Directs attention to the total financial picture rather than single issue areas.
- 5) Promotes the view of linking long-run financial planning with day-to-day operations; and
- 6) Provides the Town Council, citizens and the Town's management with a framework for measuring the fiscal impact of government services against established fiscal parameters and guidelines.

The financial leadership of the Town will continue to review and update this policy as needed to ensure that it aligns with the changing economic conditions, community needs and financial goals of the organization. In addition, these guidelines will be published in the annual budget document and thereby will be annually reaffirmed by the council upon approval of the budget.

Attachments:

- CN8-A1: Fiscal Policy Guidelines Update
- CN8-A2: Financial Policy Update 2025

Fiscal Policy Guidelines



Town of Apex, North Carolina

Adopted March 17, 2009

Amended April 8, 2025

FISCAL POLICY GUIDELINES

Town of Apex, North Carolina

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▪ Cash Management and Investment	6
▪ Public Utilities	7
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FISCAL POLICY GUIDELINES

Town of Apex, NC

Section Contents

Objectives

Capital Improvement Budget Debt

Policies

Reserve Policies

Budget Development Policies

Cash Management and Investment Policies

Public Utilities

Glossary

FISCAL POLICY GUIDELINES - OBJECTIVES

This fiscal policy is a statement of the guidelines and goals that will influence and guide the financial management practice of the Town of Apex, North Carolina. A fiscal policy that is adopted, adhered to, and regularly reviewed is recognized as the cornerstone of sound financial management. An effective fiscal policy:

- Contributes significantly to the Town's ability to insulate itself from fiscal crisis,
- Enhance short-term and long-term financial credit ability by helping to achieve the highest credit and bond ratings possible,
- Promotes long-term financial stability by establishing clear and consistent guidelines,
- Directs attention to the total financial picture of the Town rather than single issue areas,
- Promotes the view of linking long-run financial planning with day-to-day operations, and
- Provides the Town Council, citizens and the Town's professional management with a framework for measuring the fiscal impact of government services against established fiscal parameters and guidelines.

To these ends, the following fiscal policy statements are presented.

CAPITAL IMPROVEMENT BUDGET POLICIES

1. The Town will prioritize all capital improvements in accordance with an adopted capital improvement program.
2. The Town will develop a five-year, with horizons, plan for capital improvements and review and update the plan annually.
3. The Town will coordinate development of the capital improvement program with development of the annual operating budget.
4. The Town will use intergovernmental assistance to finance only those capital improvements that are consistent with the capital improvement plan and Town priorities.
5. The Town will maintain all its assets at a level adequate to protect the Town's capital investment and to minimize future maintenance and replacement costs.
6. The Town will identify the estimated costs and potential funding sources for each capital project proposal before it is submitted for approval.
7. The Town will attempt to determine the most prudent, fiscally responsible and flexible financing method for all new projects.

DEBT POLICIES

General

1. The Town will confine long-term borrowing to capital improvement or projects that cannot be financed from current revenues except where approved justification is provided.
2. The Town will utilize a balanced approach to capital funding utilizing debt financing, draws on capital reserves and/or fund balances in excess of policy targets, and current-year (pay-as-you-go) appropriations.
3. When the Town finances capital improvements or other projects by issuing bonds or other debt arrangements, it will repay the debt within a period not to exceed the expected useful life of the project. Target debt ratios will be annually calculated and included in the review of financial trends.
4. Where feasible, the Town will explore the usage of special assessment, revenue, or other self-supporting bonds instead of general obligation bonds.
5. The Town will retire tax anticipation debt, if any, annually and will retire bond anticipation debt within six months after completion of the project.

Tax-Supported Debt

6. The town's available debt capacity will be determined by the General Government Debt Affordability Model, which is to be updated on an annual basis. Council has established a community investment fund balance coverage ratio policy of 50% or better.
7. Net debt as a percentage of total assessed value of taxable property should not exceed 2.5%. Net debt is defined as any and all debt that is tax-supported.
8. The ratio of debt service expenditures as a percentage of total consolidated General Fund adopted budget expenditures (excluding other financing sources or any special items) should not exceed 15% with an aggregate ten-year principal payout ratio target of 55% or better.

RESERVE POLICIES

Reserve fund will be established and maintained to ensure the continued delivery of Town services. The Town desires to maintain a prudent level of financial reserves to guard against service disruption in the event of temporary revenue shortfalls or unexpected one-time expenditures. The reserves have been accumulated to provide stability and flexibility, to respond to unexpected adversity and/or opportunities, and to stabilize fluctuations in operations' cash flows and rates. Capital reserve funds are accumulated over time and used to complete capital projects, acquire major capital assets and support economic development projects.

1. Unassigned Fund Balances will mean funds that remain available for appropriation by the Town Council after all commitments for future expenditures, required reserves defined by State statutes, and previous Council designations have been calculated. The Town will define these remaining amounts as "available fund balances."
2. Available fund balances at the close of each fiscal year should be between 20 and 25% of the most recent year's total annual General Fund adopted operating budget.
3. Available fund balance in excess of 30% of the total General Fund adopted budget calculated after the completion of the annual audit will be transferred to the community investment fund.
4. The Town Council may, from time to time, have appropriate fund balances that will reduce available fund balances below the 20% policy minimum for the purposes of a declared fiscal emergency or other such global purpose as to protect the long-term fiscal security of the Town of Apex. In such circumstances, the Council will adopt a plan to restore the available fund balances to the policy level within 36 months from the date of the appropriation. If restoration cannot be accomplished within such time period without severe hardship with the Town, then the Council will establish a different but appropriate time period.

BUDGET POLICIES

1. The Town will develop the Annual Budget in conjunction with a stated program of performance objectives, strategic goals as established by Council and measures with which to gauge progress toward meeting those objectives.
2. The Town will use the dedicated fund source allocation methodology for appropriating the property tax rate. The current allocations are for general government services, debt service and affordable housing.
3. Public utility rates will be established at the appropriate level to enable the related funds to be self-supporting. This includes water and wastewater, electric and stormwater service.
4. One-time or other special revenues will not be used to finance continuing Town operations but instead will be used for funding special projects.
5. The Town will pursue an aggressive policy seeking the collection of delinquent utility, license, permit and other fees due to the Town.
6. The Town Council will receive a financial report on a quarterly basis, showing year-to-date revenues and expenditures and comparing each amount to the budget as amended.

Balanced Budget:

Pursuant to the North Carolina General Statute, local governments are required to present and operate under an annual balanced budget ordinance. The North Carolina Local Government Budget and Fiscal Control Act defines a balanced budget as the sum of estimated net revenues and appropriated fund balances is equal to expenditure appropriations.

CASH MANAGEMENT AND INVESTMENT POLICIES

1. It is the intent of the Town that public funds will be invested to the extent it is possible to reduce the need for property tax revenues. Funds will be invested with the chief objectives of safety of principal, liquidity, and yield, in that order. All deposits and investments in Town funds will be in accordance with N.C.G.S. 159.
2. The Town will use a central depository to maximize the availability and mobility of cash for all funds that can be legally and practically combined.
3. Cash flows will be forecasted, and investments will be made to mature when funds are projected to be needed to meet cash flow requirements.

4. Liquidity: No less than 20% of funds available for investment will be maintained in liquid investments at any point in time.
5. Maturity: All investments will mature in no more than thirty-six (36) months from their purchase date.
6. Custody: All investments will be purchased "payment-versus-delivery" and if certificated will be held by the Finance Officer in the name of the Town. All non-certificated investment will be made in book-entry form in the name of the Town with the Town's third-party Custodian (safekeeping agent).
7. Authorized Investments: The Town may deposit Town Funds into: Any Board approved Official Depository, if such funds are secured in accordance with NCGS-159 (31). The Town may invest Town Funds in: the North Carolina Capital Management Trust or equivalent agency, US Treasury Securities, US Agency Securities specifically authorized in GS-159 and rated no lower than "AAA", and Commercial Paper meeting the requirements of NCGS-159 plus having a national bond rating.
8. Diversification: No more than 5% of the Town's investment funds may be invested in a specific company's commercial paper and no more than 20% of the Town's investment funds may be invested in commercial paper. No more than 25% of the Town's investments may be invested in any one US Agency's Securities.
9. Allocation: Investment income will be allocated to each participating fund or account based on a fair and equitable formula determined by the Finance Director.
10. Reporting: The Town Council will receive copies of the Town's "Report of Deposits and Investments" (LGC Form 203) filed semiannually with the Local Government Commission.

PUBLIC UTILITIES – FISCAL POLICIES:

RESERVED FOR FUTURE USE

GLOSSARY OF BUDGET TERMS

- **Ad Valorem Tax:** A property tax levied according to the tax valuation as assessed by the county
- **Annual Budget:** budget coverage for a single fiscal year (July 1st to June 30th)
- **Appropriation:** The amount budgeted on an annual basis to cover projected expenditure which has been legally authorized by Town Council
- **Assessed Valuation:** The value of real estate or personal property as determined by tax assessors and used as a basis for levying taxes
- **Assessment:** The process for determining values of real and personal property for taxation purposes
- **Budget:** A plan covering a fiscal year which projects expenditure for providing services and revenues to finance them. The Town's adopted budget is the official expenditure policy of the Town Council and effective tool for managing Town operations. The budget is a legal instrument by which Town funds are appropriated for specific purposes and by which Town government positions are authorized. N.C. General Statutes require the budget to be balanced.
- **Capital outlay:** Expenditure resulting in the acquisition of or addition to the Town's general fixed assets costing more than \$5,000 and having a useful life of greater than three years.
- **Capital improvement plan:** A long-range plan of proposed capital improvement projects, which includes estimated project costs and funding sources, that the Town expects to carry out over a five-year period. The program is updated annually to reassess capital needs and for the preparation of the capital budget.
- **Fiscal year:** A twelve-month period (July 1st through June 30th) to which the annual operating budget applies and at the end of which an assessment is made of the Town's financial condition and the performance of its operations.
- **General Fund:** A fund which provides for the accounting of all financial resources except those designated to other funds. Most of the basic government services, such as police, fire, sanitation, or street maintenance are accounted for in this fund. For the purposes of calculations, General Fund is interchangeable with consolidated General Fund as defined within GASB 54.
- **Tax rate:** The amount of tax stated in terms of a unit of the tax base (i.e. \$0.34 per \$100 valuation)

Target	Current Fiscal Policy (adopted 2012)	Recommended / Potential
Budget Targets:		
Capital Improvements	10 Year Plan	No Change
Dedicated Fund Sources – Tax Rate	N/A (Currently in practice, manual calculations and allocated in financials)	Add Dedicated Funding Sources of Tax Rates Example: General Fund - \$.27 Affordable Housing - \$.01 Debt Service Fund - <u>\$.06</u> Total Tax Rate - <u>\$.34</u>
Debt Targets:		
Net Debt as percentage of Assessed Taxable Valuation	2.5%	No Change Will be monitored but main target is debt model funding percentage
Debt Service Expenditures to Governmental Fund Expenditures	12%	15% Debt Service Expenditures to consolidated General Fund & Debt Service Fund Subsequent Year's Adopted Budget Total Expenditures,

		excluding any other financing uses or special items Will be monitored but main target is debt model funding percentage
Principal Payout Ratio	55% or better	No Change
Debt Service Fund Balance Coverage Ratio	N/A	50%
Fund Balance:		
Unassigned Fund Balances	25%	20 to 25% Unassigned General Fund & Debt Service Fund consolidated fund balances
Excess Funds Available above policy limit	N/A	Excess of calculated unassigned fund balance above 30% will be automatically transferred into the CIF Fund
Cash and Investments:		
Cash Liquidity	No less than 20% available funds for investment in liquid investments	No Change

Investments Purchases	All investments will mature no more than 36 months from purchase date	No Change
Investment Diversification	<p>No more than 5% in specific company commercial paper</p> <p>No more than 20% invested in commercial paper</p> <p>No more than 25% invested in agency's securities</p>	No Change
Utility Fund Targets:		
Electric Fund – Cash on hand	<p>90 days</p> <p>(not official in adopted policy, but in practice)</p>	90 days (TBD)
Water & Wastewater Fund – Cash on hand	<p>90 days</p> <p>(not official in adopted policy, but in practice)</p>	180 days (TBD)

Revenue Bond Coverage Ratio	N/A	Minimum of 120% Target of 175% (TBD)
Operating Ratio (including depreciation)	N/A	TBD

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: April 08, 2025

Item Details

Presenter(s): Karen Spurlin, Interim Director

Department(s): Human Resources

Requested Motion

Motion to amend the Personnel Policies for the Town of Apex effective April 08, 2025.

Approval Recommended?

Yes

Item Details

The Human Resources Department regularly reviews Town Personnel Policies to ensure accuracy and applicability to current practices and procedures. In reviewing our policies more closely the team discovered two items that needed additional clarification.

The following changes were recommended to the Apex Town Council's Personnel Committee on March 13, 2025, and unanimously recommended for approval:

Article V. Conditions of Employment

Section 6. Secondary Employment

No regular employees are permitted to work ~~a second job with~~ a second job with the Town.

Article VII. Holidays and Leaves of Absence

Section 18. Family and Medical Leave

- C) To care for a ~~parent, spouse, or child~~ with a serious health condition.
- D) The employee's own serious health condition makes the employee unable to perform the functions of his or her job
- E) For qualifying exigency arising out of the fact that the spouse, child, or parent of the employee is on active duty or called to active duty status in the National Guard or Reserves during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation, or Regular Armed Forces during deployment to a foreign country.

The FMLA also provides for up to 26 weeks of unpaid leave for eligible employees to care for a covered service member during a single 12-month period.

Employees who do not qualify for FMLA may still be eligible for the Town's Paid Parental Leave or Paid Caregiver Leave programs discussed in this Article.

Attachments

- CN9-A1: Town of Apex Personnel Policies Combined - Effective April 08, 2025
- CN9-A2: Article V. Conditions of Employment; Section 6 - Secondary Employment Amendment Only
- CN9-A3: Article VII. Holidays and Leaves; Section 18 - Family and Medical Leave Amendment Only



**TOWN OF APEX
PERSONNEL POLICY
January 14, 2025**

BE IT RESOLVED by the Town Council of the Town of Apex that the following policies apply to the appointment, classification, benefits, salary, promotion, demotion, dismissal, and conditions of employment of the employees of the Town of Apex.

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ARTICLE I. GENERAL PROVISIONS

Section 1. Purpose of the Policy

This policy manual is designed to acquaint all employees with the Town of Apex rules and regulations set forth to establish a fair and uniform system of personnel administration and to provide information concerning working conditions, employee benefits, and some of the policies affecting Town employment.

Employees shall understand and comply with all provisions of this manual. If an employee is unclear of the meaning or purpose of a policy, he or she should seek assistance from a supervisor, Director of Human Resources for clarification or interpretation. The policy manual describes many responsibilities of an employee and outlines the programs the Town has developed to benefit our employees. One of our Town objectives is to provide a work environment that is conducive to both personal and professional growth.

No policy manual can anticipate every circumstance or question about every one of our policies. Furthermore, there may be situations where the need arises to revise, add, or cancel policies. Therefore, the Town reserves the right to add new policies, and to change or cancel existing policies at any time.

Employment by the Town of Apex is “at-will” employment. Employment-at-will permits the employee or the Town to end the employment relationship at any time. Nothing in this policy creates an employment contract or term between the Town and its employees. This policy is established under authority of Chapter 160A, Article 7 of the General Statutes of North Carolina. The Town’s Human Resources Department will notify employees of any changes to the policies as they occur.

Section 2. Responsibilities of the Town Council

The Town Council shall be responsible for establishing and approving personnel policies, the position classification and pay plan, and may change the policies and benefits as necessary. They also shall make and confirm appointments when so specified by the general statutes.

Section 3. Responsibilities of the Town Manager

The Town Manager shall be responsible to the Town Council for the administration and technical direction of the personnel program. The Town Manager shall appoint, suspend, and remove all Town officers and employees except attorneys providing legal advice to the Town Council and those elected by the people or whose appointment is otherwise provided for by law. The Town Manager shall make appointments, dismissals and suspensions in accordance with the Town Charter and other policies and procedures spelled out in other Articles in this Policy.

The Town Manager shall:

- a) recommend rules and revisions to the personnel system to the Town Council for consideration;
- b) make changes as necessary to maintain an up to date and accurate position classification plan;
- c) recommend necessary revisions to the pay plan;
- d) determine which employees shall be subject to the overtime provisions of FLSA;
- e) develop and administer such recruiting programs as may be necessary to obtain an adequate supply of competent applicants to meet the needs of the Town;
- f) perform such other duties as may be assigned by the Town Council not inconsistent with this Policy.

Section 4. Responsibilities of the Human Resources Director

The responsibilities of the Human Resources Director are to make recommendations to the Town Manager on the following:

- a) recommend rules and revisions to the personnel system to the Town Manager for consideration;
- b) recommend changes as necessary to maintain an up to date and accurate position classification plan;
- c) recommend necessary revisions to the pay plan;
- d) recommend which employees shall be subject to the overtime provisions of FLSA;
- e) maintain a roster of all persons in the municipal service
- f) establish and maintain a list of authorized positions in the municipal service at the beginning of each budget year which identifies each authorized position, class title of position, salary range, any changes in class title and status, position number and other such data as may be desirable or useful;
- g) develop and administer such recruiting programs as may be necessary to obtain an adequate supply of competent applicants to meet the needs of the Town;
- h) develop and coordinate training and educational programs for Town employees;
- i) investigate periodically the operation and effect of the personnel provisions of this policy; and
- j) perform such other duties as may be assigned by the Town Manager not inconsistent with this Policy.

Section 5. Application of Policies, Plan, Rules, and Regulations

The personnel policy and all rules and regulations adopted pursuant thereto shall be applicable to all Town employees, unless otherwise noted. The Town Manager, Town Attorney, members of the Town Council and advisory boards and commissions will be exempted except in sections where specifically included. An employee violating any of the provisions of this policy shall be subject to appropriate disciplinary action, as well as prosecution under any civil or criminal laws which have been violated.

Section 6. Departmental Rules and Regulations

Due to the particular personnel and operational requirements of the various departments of the Town, each department is authorized to establish supplemental written rules and

regulations applicable only to the personnel of that department. All such rules and regulations shall be subject to the approval of the Town Manager or their designee, except the rules for the Legal Department which are approved by the Town Attorney, and shall not in any way conflict with the provisions of this Policy, but shall be considered as a supplement to this Policy. A copy of the approved supplemental departmental rules shall be provided to the Human Resources Department and all employees of said department.

Section 7. Definitions

For the purposes of this policy, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Full-time employee. An employee who is in a position for which an average work week equals at least 40 hours, and continuous employment of at least 12 months, are required by the Town.

Part-time, benefited employee. An employee who is in a position for which an average work week of at least 20 hours and less than 40 hours and continuous employment of at least 12 months are required by the Town.

Part-time, non-benefited employee. An employee who is in a position for which an average work week of less than 20 hours and continuous employment of at least 12 months are required by the Town.

Regular employee. An employee appointed to a full or part-time position who has successfully completed the designated probationary period.

Probationary employee. An employee appointed to a full or part-time position who has not yet successfully completed the designated probationary period.

Temporary/Seasonal employee. An employee who is hired to work up to 40 hours per week for a limited period of time. Generally, term of employment does not exceed one year.

Trainee. An employee status when an applicant is hired (or employee promoted) who does not meet all of the requirements for the position. During the duration of a trainee appointment, the employee is on probationary status.

Intern. A status that enables students (or persons new to a field of study) to gain practical knowledge of their particular occupational area of interest through service with the Town.

Regular position. A position authorized for the budget year for a full twelve months and budgeted for twenty or more hours per week. All town positions are subject to budget review and approval each year by the Town Council and all employees' work and conduct must meet town standards. Therefore, reference to "regular" positions or employment should not be construed as a contract or right to perpetual funding or employment.

ARTICLE II. POSITION CLASSIFICATION PLAN

Section 1. Purpose.

The position classification plan provides a complete inventory of all authorized and permanent positions in the Town service, and an accurate description and specification for each class of employment. The plan standardizes job titles, each of which is indicative of a definite range of duties and responsibilities qualifications needed, and other required factors.

Section 2. Composition of the Position Classification Plan

The classification plan shall consist of:

- a) a grouping of positions in classes which are approximately equal in difficulty and responsibility which call for the same general qualifications, and which can be equitably compensated within the same range of pay under similar working conditions;
- b) class titles descriptive of the work of the class;
- c) written specifications for each class of positions; and
- d) an allocation list showing the class title of each position in the classified service.

Section 3. Use of the Position Classification Plan

The classification plan is to be used:

- a) as a guide in recruiting and examining applicants for employment;
- b) in determining lines of promotion and in developing employee training programs;
- c) in determining salary to be paid for various types of work;
- d) in determining personnel service items in departmental budgets; and
- e) in providing uniform job terminology.

Section 4. Administration of the Position Classification Plan

The Human Resources Director shall allocate each position covered by the classification plan to its appropriate class, and shall be responsible for the administration of the position classification plan. The Human Resources Director shall periodically review portions of the classification plan and recommend appropriate changes to the Town Manager.

Section 5. Authorization of the Position Classification Plan

The position classification plan shall be approved by the Town Council and on file with the Human Resources Director. Copies will be available to all Town employees for review upon request. New positions shall be established upon recommendation of the Town Manager or designee and approval of the Town Council after which the Town Manager, assisted by the Human Resources Director, shall either allocate the new position into the appropriate existing class, or revise the position classification plan to establish a new class to which the new position may be allocated.

New classifications may be created mid-year without Town Council approval if the fiscal year's authorized FTEs and budget are not exceeded; however, the new classification must be presented to and approved with all other classifications by Town Council during the following budget process.

Section 6. Request for Reclassification

Any employee who considers the position in which classified to be improper shall submit a request in writing for reclassification to such employee's immediate supervisor, who shall immediately transmit the request to the Department Head. The Department Head shall share the request with Human Resources, to determine the merit of the request and whether the position shall be studied out-of-cycle and during the next scheduled position study.

ARTICLE III. THE PAY PLAN

Section 1. Definition

The pay plan includes the basic salary schedule and the "Position Classification Plan" adopted by the Town Council. The pay plan consists of ranges for minimum to maximum rates of pay for all classes of positions.

Section 2. Administration and Maintenance

The Town Manager, assisted by the Human Resources Director, shall be responsible for the administration and maintenance of the pay plan. All employees covered by the pay plan shall be paid at a rate listed within the salary range established for the respective position classification, except for employees in trainee status or employees whose existing salaries are above the established maximum rate following transition to a new pay plan. Employees whose salaries reach the maximum of that grade will be paid in lump sum bonuses for any pay increases awarded.

The pay plan is intended to provide equitable compensation for all positions, reflecting differences in the duties and responsibilities, the comparable rates of pay for positions in private and public employment in the area, changes in the cost of living, the financial conditions of the Town, and other factors. To this end, the Town Manager shall request the Human Resources Director to make comparative studies of all factors affecting the level of salary ranges and may make minor adjustments in the allocation of positions to salary grades as long as the fiscal year budget and authorized FTEs are not exceeded. When major adjustments encompassing numerous positions are needed, or when a general adjustment is needed to the pay plan, the Town Manager shall recommend such changes in salary grades as appear to be warranted to the Town Council. The Town Council shall adopt the Pay Plan and Position Classification Plan, including any minor adjustments made by the Town Manager during the previous budget year, annually as part of the budget process.

Section 3. Starting Salaries

All persons employed in positions approved in the position classification plan shall be employed no lower than the minimum salary for the classification in which they are employed. Candidates that exceed the education and experience identified on the class specification may be employed above the minimum and up to the market rate of the established salary range. Offers that exceed the market rate require approval of the Human Resources Director or their designee.

Section 4. Trainee Designation and Provisions

Applicants being considered for employment or Town employees who do not meet all of the requirements for the position for which they are being considered may be hired, promoted, demoted, or transferred to a "trainee" status. In such cases, a plan for training, including a time

schedule, must be prepared by the Department Head. "Trainee" salaries shall be one or (no more than) two grades below the minimum salary established for the position for which the person is being trained. A new employee designated as "trainee" shall concurrently serve a probationary period. However, probationary periods shall be no less than six months and trainee periods may extend from three to eighteen months. A trainee shall remain a probationary employee until the trainee period is satisfactorily completed.

If the training is not successfully completed to the satisfaction of the Town, the trainee shall be transferred, demoted, or dismissed. If the training is successfully completed, the employee shall be paid at least at the minimum rate established for the position for which the employee was trained.

Section 5. Merit Pay

Employees may be considered for advancement within the established salary range based on the quality of their overall performance. Guidelines for determining performance levels and performance pay increases shall be established in procedures recommended by the Human Resources Director and approved by the Town Manager.

Section 6. Merit Pay Bonus

Employees who are at the top of the salary range for their position classification are eligible to be considered for a merit bonus at the time of their regular performance review date. Merit bonuses are awarded based on the performance criteria set in the performance pay matrix established each year. Merit bonuses are awarded in lump sum payments and do not become a part of base salary.

Section 7. Merit Pay Eligibility

Employees in regular positions are eligible to receive merit pay if they have been employed in the same position for the entire year. Merit pay is pro-rated for any employee who is out of work on any combination of paid and unpaid leave for greater than 12 weeks. New Employees are eligible to receive merit pay if they are hired before March 1 in the performance year. Merit pay is prorated for new employees based on the number of months as an active employee during the annual review period.

Temporary/seasonal Employees who are promoted to a regular position are also eligible for merit pay, pro-rated based on the number of months in the regular position during the annual review period. Employees who vacate a full-time position for a Temporary/seasonal position are considered to have been "separated" for purposes of merit, and are therefore not eligible for merit pay.

Employees promoted, transferred or demoted into different positions by March 1 are eligible

for merit pay, awarded at the same time as the rest of the Town. Position changes that occur on or after March 1 will be eligible for merit pay after 6 months in the position. In either of these circumstances, employees will be eligible for full merit pay (not pro-rated), as long as the employee has served in a regular position for the entire annual review period.

Section 8. Career Progression Pay Increases

The Town Manager may approve the use of an established career development ladder and associated schedule of salary increases, either provided as in-range salary adjustments or as a promotion to a different position classification. Career progression increases recognize and reward employees for attaining and maintaining a higher level of skill, knowledge, training and certification which provide added value to the Town.

The Human Resources Department will maintain a copy of the approved career development ladders and associated pay progressions established for Town positions.

Section 9. Special Salary Adjustments

Once a year, the Town Manager may adjust an employee's salary if the employee has taken on added responsibilities that may not warrant a positions reclassification, but which increase the responsibility and complexity of the employee's work, or to establish equitable salary relationships. A justification for each adjustment will be documented in the employee's personnel file and may not exceed 10% of the employee's current salary.

Salary adjustments are not intended to be used as counter-offers to allow employees who get job offers to be rewarded for seeking new jobs while other employees have remained committed to Town employment. Special salary adjustments will become effective the first full pay period after approval, unless otherwise specified.

Section 10. Salary Effect of Promotions, Demotions, Laterals, Transfers, and Reclassifications

Interim Promotions. Interim promotional increases may be approved by the Town Manager or their designee when an employee is anticipated to be in an "acting" capacity assuming the majority of the position's responsibilities for greater than two consecutive pay periods. Upon completion of the interim assignment, the employee's salary will revert to the salary that it would have been had the acting increase not occurred.

Promotions. When an employee is promoted, the employee's salary shall normally be advanced to the minimum level of the new position, or to a salary which provides an increase of at least approximately 5% over the employee's salary before the promotion, provided, however, that the new salary may not exceed the maximum rate of the new salary range.

The purpose of the promotion pay increase is to recognize and compensate the employee for taking on increased responsibility; however, if such action would create internal inequity within that classification, the salary shall be set appropriate to the employee's qualifications for the job in relationship to other employees in the same classification.

Demotions. When an employee is demoted to a position for which qualified, the salary may be set at the rate in the lower pay range which provides the smallest decrease in pay if action is not for cause or voluntary. If the current salary is within the new range, the employee's salary may be retained at the previous rate. If such action would create internal inequity within that classification, the salary shall be set appropriate to the employee's qualifications for the job in relationship to other employees in the same classification.

If the demotion is for cause (disciplinary), the salary shall be decreased by a minimum of at least approximately 5%, or to the maximum of the new range if that is a greater decrease.

Lateral Transfers. For non-competitive lateral moves or reassignments, there will normally be no change in salary. For a lateral move into a competitively recruited position, a salary increase may be granted based on the qualifications of the employee and the requirements of the position.

Reclassifications. An employee whose position is reclassified to a higher salary grade due to a change in the labor market will receive a pay increase according to guidelines established by the Human Resources Department and Town budget availability.

If a position is reclassified to a lower pay range, the employee's salary shall remain the same. If the employee's salary is above the maximum established for the new range, the salary of that employee shall be maintained at the current level until the range is increased above the employee's salary. An employee must be meeting performance expectations to receive a pay increase based on position reclassification

An employee whose position is reclassified due to significant job duty changes, such as taking on a supervisory role, or added responsibility for a major function at a higher level of responsibility which changes the employee's role, will be handled as a Promotion in accordance with the guidelines for promotional increases. A reclassification of this type typically results in a salary grade change of 2 or more grades.

Special Assignment. An employee may be eligible for special assignment pay if assigned to a duty of greater than 30 days where the duties differ significantly from those duties typical in the employee's normal job classification, or when the duties are increased significantly due to the additional assignment (such as serving as training officer for a new Police recruit.) The assignment pay increase amount may vary depending on assignment, but typically will not exceed of 5% and does not change the employee's classification or salary grade. Assignment pay is rescinded upon the expiration of the special assignment, unless otherwise stated in departmental policies.

Section 11. Salary Effect of Salary Range Adjustments

The Town's salary ranges will be evaluated annually to determine if adjustments are needed for inflation or other competitive pay purposes. Any recommended salary adjustments will be presented to Town Council for approval as part of the annual budget process. Approved adjustments will be effective the first full pay period of the fiscal year, or as determined by Council as part of the budget approval.

If, as a result of adjusting the salary ranges, the salary of an employee falls below the minimum of the adjusted pay range, that employee's salary will be increased to the minimum of the pay range.

Employees whose salaries remain within the adjusted pay range may receive an increase up to the amount of the pay range adjustment, based on Town budget availability and Council approval.

Section 12. Transition to a New Salary Plan

The following principles shall govern the transition to a new salary plan:

- 1) No employee shall receive a salary reduction as a result of the transition to a new salary plan.
- 2) All employees being paid at a rate lower than the minimum rate established for their respective classes shall have their salaries raised to the new minimum for their classes.
- 3) All employees being paid at a rate below the maximum rate established for their respective classes shall be paid at a rate listed in the salary schedule; all employees not at a listed rate shall have their salaries raised to a listed rate.
- 4) All employees being paid at a rate above the maximum rate established for their respective classes shall be maintained at that salary level until such time as the employees' salary range is increased above the employees' current salary.

Section 13. Effective Date of Salary Changes

Salary changes shall become effective as of the effective date of the change that warranted the salary adjustment, or at such specific date as may be provided by procedures approved by the Town Manager or their designee.

Section 14. Overtime Pay Provisions

Employees of the Town can be requested and may be required to work overtime hours as necessitated by the needs of the Town and determined by the Department Head.

To the extent that local government jurisdictions are so required, the Town will comply with the Fair Labor Standards Act (FLSA). The Human Resources Director shall determine which jobs are "non-exempt" and are therefore subject to the Act in areas such as hours of work and work periods, rates of overtime compensation, and other provisions.

Non-exempt employees will be paid at a straight time rate for hours up to the FLSA established limit for their position (usually 40 hours in a 7 day period; 171 hours for police and 212 for fire personnel in a 28 day cycle). Hours worked beyond the FLSA established limit will be compensated in either time or pay at the appropriate overtime rate. In determining eligibility for overtime in a work period, only hours actually worked shall be considered. In no event will vacation, sick leave or holidays be included in the computation of hours worked for overtime compensation.

The Town prefers for employees to take comp-time at the appropriate rate wherever possible, as this reduces the budget impact to the Town. However, employees who have worked more than 40 hours in the workweek (171 hours in a 28-day cycle for non-exempt sworn law-enforcement officers and 212 in a 28-day cycle for firefighters) may receive paid overtime wages if approved in advance by their supervisor, and based on budget availability. In all cases, if the method for compensating overtime changes, the employee shall be made aware of the change prior to working the overtime. Compensatory leave balances may not exceed 100 hours at any time; however, departments may enforce a lower comp-time balance threshold, if needed, for budget related reasons. Employees must use compensatory leave time in advance of using accrued vacation leave to account for time off.

Whenever practicable, departments will schedule time off on an hour-for-hour basis within the applicable work period for non-exempt employees, instead of paying overtime. When time off within the work period cannot be granted, overtime worked will be paid in accordance with the FLSA.

Non-exempt employees will be compensated for any remaining balance of compensatory time upon separation from the organization. Requests to 'cash in' earned compensatory time while employed are not allowed; however, the Town reserves the right to pay out or pay down comp balances at any time.

Employees are required to report any time in which they have worked but may not have been compensated; however, authorization to work overtime should be approved prior to working the extra hours; failure to do so may result in disciplinary action.

Employees in positions determined to be "exempt" from the FLSA will not receive pay for hours worked in excess of their normal work periods. These employees may be granted "professional leave" on an hour-for-hour basis, as approved by the Department Head. Exempt employees may not exceed a balance of 40 "professional" leave hours. Such leave time is not guaranteed to be taken and will not be compensated for any remaining hours upon separation from the organization.

The Town intends to make deductions from the pay of exempt employees only for authorized reasons as allowed under the Fair Labor Standards Act, and prohibits improper pay deductions. Exempt employees who wish to question deductions they believe to be improper should notify their supervisor and the Human Resources Director who will promptly investigate the concern. If

the deduction is found to be improper the Town will reimburse the employee for lost pay and take corrective action to ensure that such deductions do not occur again.

In emergency situations, where employees are required to work long and continuous hours, the Town Manager may approve compensation at time and one half for those hours worked and/or grant time off with pay for rest and recuperation to ensure safe working conditions.

Section 15. Call-back and Stand-by Pay

The Town provides a continuous twenty-four hour a day, seven day a week service to its customers. Therefore, it is necessary for certain employees to respond to any reasonable request for duty at any hour of the day or night. One of the conditions of employment with the Town is the acceptance of a share of the responsibility for continuous service, in accordance with the nature of each job position. If an employee fails to respond to reasonable calls for emergency service, either special or routine, the employee shall be subject to disciplinary actions up to and including dismissal.

Stand-by Status – A non-exempt employee who is on “stand-by” status and is required to remain on Town premises, or so close to the Town's premises that the employee cannot use the time effectively for his own purposes, is considered to be working and all hours are compensable under the FLSA as “engaged to wait.”

On Call Status – Non-exempt employees who are required to remain “on call” but are otherwise able to lead their normal off duty activities will not be compensated for time spent in on-call status. Under the FLSA, this type of situation is defined as “waiting to be engaged.” Although the employee is not limited in where and how they spend their time, they must carry a cell phone or pager and remain available with a professional demeanor in the event they are called back to respond to a critical situation. Employees are required to respond to the call back request within 10 minutes and must arrive at the designated work site of the emergency within 1 hour (or other agreed upon time, as approved by the supervisor) from the time the call was made.

On Call Pay – Non-exempt employees required to be “on-call” will be paid 1.25 hours per day, not to exceed 8 hours a week.

Call-back Pay – When employees are called back to work outside of normal working hours, compensation will be provided for a minimum of 2 hours if the completion of the task(s) is less than two hours. Tasks performed over 2 hours will be compensated for the actual time worked.

Note: Additional calls that are received while responding to the initial call are not subject to the 2 hours minimum rule. A new 2 hour minimum only applies if the employee returns home and is then called away from home an additional time.

For non-exempt employees, compensable time in call back duty begins when the person leaves home and ends when the person returns home. If the employee does not go directly home after

the call back, the normal travel time from the employee's residence to the applicable department building shall be added to the time when the employee left home originally plus the hours worked during the call back. For the purposes of overtime, hours worked when responding to a call will be handled in accordance with the Fair Labor Standards Act.

Employees who are able to respond to calls from home (are not required to leave home or return to work to resolve the issue) will receive a minimum of one hour for responding to calls outside of normal working hours. Tasks performed over one hour will be compensated for the actual time worked. Additional calls that come in during the initial hour are not eligible for the minimum hour compensation, but will be included in total time worked for the employee.

Failure to be available for callback or failure to report to the duty station when called back to work may constitute insubordination and may be subject to disciplinary action. Employees who are assigned to positions that are subject to be called back but are unable to report due to legitimate environmental conditions or situations outside of their control, shall immediately contact their supervisor to inform them of the situation and to provide documentation of their circumstances. Based on the circumstances surrounding the individual situation, the Department Head, in consultation with the Human Resources Director, shall have discretion in deciding any further course of action.

Employees who hold positions that are classified as exempt from the provisions of the Fair Labor Standards Act are not eligible for call back pay.

Section 16. Fee-based Pay

Employees who offer a specialized Town service after normal working hours may be eligible for fee-based pay provided that the after-hours work generates a fee large enough to reimburse the full personnel costs of the service in addition to providing revenue to the Town. Fee-based pay rates may be set by the Town Council upon approval of the specialized Town service. Employees are not eligible for fee-based pay for work done during the Town's normal operating hours.

Section 17. Special Event Pay

Special Event Pay is provided to non-exempt employees who are required/volunteer to work in a special event that occurs outside of their regularly scheduled work hours within the same week of a pay period that the Town observes a holiday in which Town offices generally are closed. Administration will provide an annual calendar designating which special events qualify for Special Event Pay.

For non-exempt Fire and Police employees, Special Event Pay is provided when employees work in a special event that occurs outside of their regularly scheduled work hours within the same two-week pay period that the Town observes a holiday in which Town offices generally are closed.

For the purposes of this policy, if a non-exempt employee has completed a full work shift on the same day as an event and also works the event afterward, the event is considered to be outside of their regular schedule as referenced above.

Special Event Pay provides pay at 1.5 times the employee's hourly rate. Special event pay is for hours worked on an employee's regular day-of-rest, Saturday, Sunday, or "special days" and is therefore not subject to overtime hours/calculations and cannot be treated as compensatory time.

Hours worked in special events not designated on the Special Event Pay calendar will be addressed under regular Fair Labor Standards Act (FLSA) regulations, including eligibility for overtime compensation or compensatory time. Use of flexible schedules is encouraged, when possible, to allow employees the benefit of time off that would otherwise not be realized due to working a special event.

Exempt employees who work special events may either flex their schedules or accrue professional time per the personnel policy.

Section 18. Payroll Deduction

Deductions shall be made from each employee's salary, as required by law. Additional deductions may be made upon the request of the employee on determination by the Town Manager or their designee as to capability of payroll equipment and appropriateness of the deduction.

ARTICLE IV. RECRUITMENT AND EMPLOYMENT

Section 1. Equal Employment Opportunity Policy

It is the policy of the Town to foster, maintain and promote equal employment opportunity. The Town shall select employees on the basis of the applicant's qualifications for the job and award them with respect to compensation and opportunity for training and advancement, including upgrading and promotion, without regard to age, race, religion, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status. Applicants with physical disabilities shall be given equal consideration with other applicants for positions in which their disabilities do not represent an unreasonable barrier to satisfactory performance of essential duties with or without reasonable accommodation.

It is a violation of Town policy to retaliate in any way against an employee who assists, participates in, or supports this policy or anyone making a bona-fide complaint under the this policy or who participates or assists in any EEOC, OSHA or other internal or external investigative processes protected by law.

Section 2. Implementation of Equal Employment Opportunity Policy

All personnel responsible for recruitment and employment will continue to review regularly the implementation of this personnel policy and relevant practices to assure that equal employment opportunity based on reasonable, job-related requirements is being actively observed to the end that no employee or applicant for employment shall suffer discrimination because of age, race, religion, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status. Notices with regard to equal employment matters shall be posted in conspicuous places on Town premises in places where notices are customarily posted.

Section 3. Recruitment, Selection and Appointment

Recruitment Sources. When position vacancies occur, Department Heads shall notify Human Resources concerning the number and classification of positions that are to be filled. Human Resources shall publicize these opportunities for employment, including applicable salary information and employment qualifications. It is the general practice that information concerning job openings and hiring practices shall be provided to recruitment sources, including organizations and other media available to ensure a diverse pool of applicants. In addition, notices of vacancies shall be posted on the Town website. Individuals shall be recruited from a geographic area as wide as necessary to ensure that well-qualified applicants are obtained for Town service. The local Department of Employment Security office may be notified of job

vacancies and may be used as a referral source. A vacancy may be filled using only internal recruitment to provide opportunities for qualified Town employees. In rare situations (because of emergency conditions, high turnover, lack of qualified applicants, etc. or where previous town experience is essential or exceptional qualifications of an internal candidate so indicate), the Town may hire or promote without advertising jobs, upon approval of the Town Manager or their designee.

Job Advertisements. Employment advertisements shall contain assurances of equal employment opportunity and shall comply with Federal and State statutes.

Application for Employment. All persons expressing interest in employment with the Town shall be given the opportunity to file an application for employment for positions which are vacant.

Application Reserve File. Applications shall be kept in an inactive reserve file for a period of two years, in accordance with the records retention schedule issued by the N.C Division of Archives and History.

Screening. The Human Resources Department shall oversee the process for screening applications for employment and selecting a pool of candidates for further consideration.

Selection. Hiring Supervisors shall make such investigations and conduct such examinations as necessary to assess accurately the knowledge, skills, and experience qualifications required for the position. All selection devices administered by the Town shall be valid measures of job performance.

Appointment. Before any commitment is made to an applicant, either internal or external, the Hiring Supervisor shall make recommendations to Human Resources including the position to be filled, the salary to be paid, and the reasons for selecting the candidate over other candidates.

Temporary/Seasonal Employee Appointments. Department Heads may recruit and hire temporary/seasonal employees without the approval of the Human Resources Director and Town Manager provided that the temporary/seasonal employee is not a relative of a regular employee (as defined in the Town's "Employment of Relatives" policy) and the wages for the temporary/seasonal employee are included in the department's budget. Department Heads are responsible for ensuring that the average workweek of a temporary/seasonal employee does not exceed 20 hours per week unless the temporary/seasonal assignment is less than 12 months in duration. The Human Resources Department will assist with recruitment efforts when necessary to fill on- going temporary/seasonal assignments.

Section 4. Probationary Period

All new employees or employees promoted to a regular position shall serve a probationary period. Employees shall serve a six-month probationary period, except that sworn police and fire personnel shall serve a twelve-month probationary period. During the probationary period,

supervisors shall monitor an employee's performance and communicate with the employee concerning performance progress. Before the end of the probationary period, the supervisor shall conduct a performance evaluation conference with the employee and discuss accomplishments, strengths, and needed improvements. A summary of this discussion shall be documented in the employee's personnel file. The supervisor shall recommend in writing whether the probationary period should be completed, extended, or the employee transferred, demoted, or dismissed. Probationary periods may be extended for a maximum of three additional months.

While an employee is on probationary status, he/she is not eligible to apply for other positions within the Town, except in matters of direct placement, or with the Town Manager's approval.

While serving on probationary status, all new full and part time employees shall receive all benefits provided in accordance with this Policy (any mandatory waiting periods will apply), but shall not be entitled to utilize the complaint resolution procedures established by this Policy.

Disciplinary action, including demotion and dismissal, may be taken at any time during the probationary period of a new hire without stating a reason and without following the steps outlined in this Policy. A promoted employee who does not successfully complete the probationary period may be transferred or demoted to a position in which the employee shows promise of success. If no such position is available, the employee shall be dismissed. Promoted employees retain all other rights and benefits such as the right to use of the complaint resolution process.

Section 5. Promotion

Promotion is the movement of an employee from one position to a vacant position in a class assigned to a higher salary range. It is the Town's policy to create career opportunities for its employees whenever possible. Therefore, when a current employee applying for a vacant position is best suited of all applicants, that applicant shall be appointed to that position. The Town will balance three goals in the employment process: 1) the benefits to employees and the organization of promotion from within; 2) providing equal employment opportunity and a diversified workforce to the community; and 3) obtaining the best possible employee who will provide the most productivity in that position.

The Town Manager has the authority to make a direct internal promotion, especially where previous town experience is essential (such as promotions to Police Sergeant), or exceptional qualifications of an internal candidate so indicate; however, in most cases, the Town will consider both external and internal candidates rather than automatically promote from within. Candidates for promotion shall be chosen on the basis of their qualifications and their work records. Internal candidates shall apply for promotions using the same application process as external candidates.

Section 6. Demotion

Demotion is the movement of an employee from one position to a position in a class assigned to a lower salary range. An employee whose work or conduct in the current position is unsatisfactory may be demoted provided that the employee shows promise of becoming a satisfactory employee in the lower position. Such demotion shall follow the disciplinary procedures outlined in this policy.

Disciplinary demotions are not subject to “save pay” or “save grade” adjustments. Reassignment to a lower grade or lower pay position is a part of the disciplinary action and therefore there is no intent to retain or protect the employee’s previous pay or grade.

Section 7. Transfer

Transfer is the movement of an employee from one position to a position in a class in the same salary range. If a vacancy occurs and an employee in another department is eligible for a transfer, the employee shall apply for the transfer using the usual application process.

A Department Head wishing to transfer an employee to a different department or classification shall make a recommendation to the Town Manager, or their designee, with the consent of the receiving Department Head. Any employee transferred without requesting the action may ask for a review of the action in accordance with the complaint resolution process outlined in this policy.

An employee who has successfully completed a probationary period may be transferred into the same classification without serving another probationary period.

ARTICLE V. CONDITIONS OF EMPLOYMENT

Section 1. Work Schedule

Department Heads shall establish work schedules that meet the operational needs of the department in the most cost effective manner possible. All schedules must be approved by the Town Manager, or their designee, and will be in accordance with the Fair Labor Standards Act.

Section 2. Meal Periods and Rest Breaks

The work schedule of fulltime employees should normally include a meal break of a minimum of 30 minutes to provide the employee the opportunity to rest and eat during the workday. Meal breaks for employees who do not work in public safety are unpaid and the employee is free to leave the work premises.

Section 3. Lactation Breaks

A nursing mother will be provided with reasonable paid breaks during the work day for the purpose of expressing breast milk for her child. If the employee does not have a private office, the employee shall be provided with a private space (not a bathroom) in close proximity to the work area, where she can express milk in privacy.

Section 4. Attendance

An employee is expected to report to his/her workstation at the required time. If the employee is going to be absent or tardy, the employee must notify the supervisor with as much notice as possible, in accordance with department notice procedures. If the supervisor is unavailable, the employee should contact their Department Head or Human Resources, if the Department Head is not available.

Employees who are delayed and who have not notified their supervisor of their expected tardiness or absence for that day may be charged leave without pay for the period of their absence. Repeated absences, tardiness, and/or unapproved leave can result in disciplinary action, including termination.

Section 5. Political Activity

Each employee has a civic responsibility to support good government by every available means and in every appropriate manner. Each employee may join or affiliate with civic organizations of a partisan or political nature, may attend political meetings, may advocate and support the principles or policies of civic or political organizations in accordance with the Constitution and laws of the State of North Carolina and in accordance with the Constitution and laws of the United States. However, no employee shall:

- a) Engage in any political or partisan activity while on duty;
- b) Use official authority or influence for the purpose of interfering with or affecting the result of a nomination or an election for office;
- c) Be required as a duty of employment or as condition for employment, promotion or tenure of office to contribute funds for political or partisan purposes;
- d) Coerce or compel contributions from another employee of the Town for political or partisan purposes;
- e) Use any supplies or equipment of the Town for political or partisan purposes; or
- f) Be a candidate for nomination or election to office for the Town of Apex;

Any violation of this section shall subject the employee to disciplinary action including dismissal.

Section 6. Secondary Employment

The work of the Town shall have precedence over other occupational interests of employees. All outside employment for salaries, wages, or commission and all self-employment must be reported in advance to the employee's supervisor, who in turn will report it to the Department Head. The Department Head will review such employment for possible conflict of interest and decide whether to approve the work.

Conflicting or unreported outside employment is grounds for disciplinary action up to and including dismissal.

Secondary employment is not permitted when it:

- Creates either directly or indirectly a conflict of interest with the Town, or
- Brings discredit to the Town or conflicts with the Town's goals, mission, or vision, or
- Impairs the employee's ability to perform all expected duties, and/or the ability to make decisions and carry out in an objective view the duties and responsibilities of the Town.

No regular employees are permitted to work a second job with the Town.

Special exceptions to the rules above may be made, with the approval of the Town Manager, when deemed to be in the best interest of the Town.

Approval for secondary employment may be withdrawn at any time if it is determined that secondary employment has an adverse impact on primary employment. Secondary Employment arrangements should be reviewed annually for approval.

Section 7. Expectation of Ethical Conduct

Successful business operation and reputation of the Town of Apex is built upon the principles of fair dealing and ethical conduct of our employees. Our reputation for integrity and excellence requires careful observance of the spirit and letter of all applicable laws and regulations, as well as a scrupulous regard for the highest standards of conduct and personal integrity. Continued success of the Town of Apex is largely dependent upon the public's trust, which we are dedicated to preserving. Employees owe a duty to the Town of Apex, the public, and Council members to act in a way that will merit the continued trust and confidence.

The Town of Apex will comply with all applicable laws and regulations. All employees are to conduct Town business in a professional manner and in accordance with the letter, spirit, and intent of all relevant laws and to refrain from any illegal, dishonest, or unethical conduct. All Town employees are to be treated with dignity and respect. In general, the use of good judgment, based on high ethical principles, will guide employees with respect to acceptable conduct. If a situation arises where it is difficult to determine the proper course of action, the employee should seek advice and consultation by discussing the matter openly with his/her immediate supervisor and, if necessary, with the Human Resources Department. Compliance with this policy is the responsibility of every Town of Apex employee. Disregarding or failing to comply with this standard of business ethics and conduct could lead to disciplinary action, up to and including possible termination of employment.

Section 8. Conduct and Working Environment

Employees are expected to conduct themselves in an appropriate manner as judged by a reasonable person.

The Town encourages a congenial work environment of respect and professionalism. Decorum, collegiality, kindness, respect, and professional courtesy are ideals to be pursued amongst employees.

Disrespectful conduct or actions are prohibited. This prohibition includes but is not limited to intentional acts such as:

- Verbal abuse: slandering, ridiculing or maligning a person or his/her family; persistent name calling which is hurtful, insulting or humiliating; using a person as butt of jokes; abusive and offensive remarks
- Physical abuse: pushing; shoving; kicking; poking; tripping; assault, or threat of physical assault; damage to a person's work area or property
- Hostile Gestures: non-verbal threatening gestures
- Exclusion: socially or physically excluding or disregarding a person in work-related activities
- Persistent singling out of one person

- Shouting and/or yelling at an individual in public and/or in private
- Personal insults and use of offensive nicknames
- Deliberately interfering with mail and other communications
- Spreading rumors and gossip regarding individuals
- Refusing reasonable requests for leave in the absence of work-related reasons not to grant leave
- Using intimidation tactics and making threats
- Sabotaging another's work
- Stalking others
- Making malicious, false, and harmful statements about others or the Town
- Publicly disclosing another's private information (outside of public records law requirements)
- Fraud
- Falsification of records for personal profit

Any of the above actions, or conduct that is otherwise deemed as bullying or discriminatory, will not be tolerated and will be handled in accordance with Article IX. Unsatisfactory Job Performance and Detrimental Personal Conduct.

Section 9. Use of Town Time, Equipment, Supplies and Vehicles

Town supplies and equipment are to be used for the Town's business. During working hours, employee personal use must be restricted to occasional use that does not interfere with the conduct of Town business. Personal use should be limited to personal time (breaks, after hours) and personal use of the phone, internet and e-mail on Town time must be kept to a minimum. Supervisors are expected to monitor the extent of personal use of these assets during regular working hours. For more information regarding appropriate use of Town supplies and equipment, please refer to the Town's Information Technology Policy.

Employees are responsible for assuring the security of Town confidential material in their possession and similarly maintaining the security of Town-provided equipment.

Town employees are required to report time worked in the Town's time & attendance system. Time claimed as "work time" shall accurately report actual time and physical attendance. Failing to accurately report time worked will be deemed as waste, fraud, and abuse and will be subject to disciplinary action.

All employees who use Town vehicles are required to follow applicable motor vehicle and safety requirements. Violation of Town vehicle policies or misuse of Town vehicles also subjects the employee to disciplinary action, up to and including dismissal.

Section 10. Employment of Relatives

The Town prohibits the hiring and employment of immediate family members or domestic

partners (as defined herein) into any regular full or part-time position within the same work unit or department, or to any temporary/seasonal position in the same work unit or department, unless the temporary/seasonal position is either short-term in duration or only involves occasional and sporadic work. "Immediate family" shall be defined to include spouses, children, parents, siblings, grandparents, grandchildren (regardless of whether such family members are related by blood, adoption or marriage) and guardians.

The Town also prohibits the hiring and employment of any person who is an immediate family member of individuals holding the following positions: Town Manager, Assistant Town Manager, Finance Director, Town Attorney, or any members of the Human Resources Department.

Otherwise, the Town will consider employing family members or related persons in the service of the Town, provided that such employment does not:

- 1) result in a relative supervising relatives;
- 2) result in a relative auditing the work of a relative;
- 3) create a conflict of interest with either relative and the Town; or
- 4) create the potential or perception of favoritism.

The Town also prohibits the hiring and employment of an immediate family member of the Mayor or a Town Council Member. An immediate family member of an elected official may remain employed if hired prior to the official's election or appointment to office.

For purposes of this Section, "domestic partners" shall mean two individuals who have reached the age of majority and live together in a relationship of indefinite duration, with an exclusive mutual commitment (i.e., are not married to anyone else, do not have another domestic partner, and are not related by blood more closely than would bar their lawful marriage pursuant to the laws of North Carolina) in which the partners share the necessities of life.

Section 11. Job Related Discrimination and Workplace Harassment

The Town is committed to maintaining a work environment free of workplace harassment for its employees, customers and citizens. Town of Apex employees are prohibited from engaging in workplace harassment, which is defined as offensive and unsolicited speech or conduct that denigrates or shows hostility or aversion toward a person or group of persons because of such person's or persons' age, race, religion, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status.

The speech and conduct prohibited by this policy include, but are not limited to, any offensive and unsolicited speech or conduct based on age, race, religion, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status,

natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status (i) that has the purpose or effect of creating a hostile work environment (as defined below), or (ii) submission to which is made, either explicitly or implicitly, a term or condition of a person's (or group of persons') employment or is used as the basis for employment decisions affecting such person (or group of persons).

For purposes of this policy, workplace harassment shall be deemed to create a hostile work environment if the speech or conduct, taking into account all of the relevant circumstances, (i) is objectively severe enough or sufficiently pervasive enough to create a work environment that a reasonable person would find to be hostile or abusive, (ii) is perceived to be hostile or abusive by the complainant(s), and (iii) has the purpose or effect of substantially interfering with an employee's (or group of employees') work performance.

For purposes of this policy, workplace harassment because of a person's sex shall include, but not be limited to, unwelcome sexual advances, requests for sexual favors, and other speech or conduct of a sexual nature when submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's employment, or is used as the basis for employment decisions affecting such person.

Each employee is responsible for creating an atmosphere free of discrimination. Employees are responsible for respecting the rights of their coworkers.

If an employee experiences any job-related discrimination or harassment based on age, race, religion, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status, or if an employee believes to have been treated in an unlawful, discriminatory manner or have been unlawfully harassed, the incident should be promptly reported to the supervisor. If the employee believes it would be inappropriate to discuss the matter with his/her supervisor, the incident should be reported directly to the Department Head or the Human Resources Department. Once made aware of the complaint, the Town is committed to commence an immediate, thorough investigation of the allegations. Complaints will be kept confidential to the maximum extent possible.

If, at the completion of the investigation, the Town determines that an employee is guilty of discriminatory or harassing behavior, appropriate disciplinary action will be taken against the offending employee.

The Town prohibits any form of retaliation against any employee for filing a bona fide complaint under this policy or for assisting in the complaint investigation. However, if, after investigating any complaint of unlawful discrimination, the Town determines that any employee intentionally provided false information regarding the complaint, disciplinary action

may be taken against the one who gave the false information.

Violations of this policy shall constitute detrimental personal conduct pursuant to Article IX of the Town's Personnel Policies, and shall subject violators to disciplinary action, up to and including dismissal.

Section 12. Acceptance or Granting of Gifts and Favors

No employee of the Town shall accept any gift, favor, or thing of value which could appear to influence such employee in the discharge of the employee's duties, or generate the appearance of impropriety. Acceptance of any item regardless of perceived value must be reported to the Department Head with the exception of token gifts and trinkets, acts of generosity with nominal value given to a group of employees in appreciation, and corporate discounts provided to all public safety or Town personnel regardless of position. No preferential treatment or improper favor, service or thing of value may be conveyed or granted in the discharge of duties.

Section 13. Performance Evaluation

Supervisors and/or Department Heads shall conduct Performance Evaluation conferences with each employee at least once a year. These performance evaluations shall be documented in writing and placed in the employee's personnel file.

Guidelines regarding when and how performance evaluations are to be conducted are maintained by the Human Resources Department.

Section 14. Safety

Safety is the responsibility of both the Town and employees. It is the policy of the Town to establish a safe work environment for employees. The Town shall establish a safety program including policies and procedures regarding safety practices and precautions and training in safety methods. Department Heads and supervisors are responsible for ensuring the safe work procedures of all employees and providing necessary safety training programs. Employees shall follow the safety policies and procedures and attend safety training programs as a condition of employment. Employees who violate such policies and procedures shall be subject to disciplinary action up to and including dismissal.

The violation of safety rules may be considered detrimental personal conduct and can result in disciplinary action including suspension, demotion or dismissal. Examples of safety-related detrimental personal conduct include but are not limited to:

- Workplace Violence
- Dangerous use of Vehicle or Equipment (i.e. racing, use as a weapon)
- Horseplay resulting in Injury or Property Damage
- Purposely and Repeatedly not using PPE

- Possession and/or use of Drugs/Alcohol at workplace
- Entering Confined Space without using proper procedures

Section 15. Substance Abuse Policy

The Town may establish policies and procedures related to employee substance abuse in order to ensure the safety and well-being of citizens and employees, and to comply with any state, federal, or other laws and regulations.

Section 16. Immigration Law Requirements

All employees are required to furnish proof of citizenship or other required documents indicating a legal right to work in the United States. Completed I-9 forms are maintained separately from the personnel file.

Section 17. Workers' Compensation and Return to Work

All employees of the Town are covered by the North Carolina Workers' Compensation Act and are required to report all injuries arising out of and in the course of employment to their immediate supervisors at the time of the injury in order that appropriate action may be taken at once.

Filing a Workers' Compensation Claim

Town of Apex Worker's Compensation claims are handled by Human Resources. All claims are managed in accordance with the NC Workers' Compensation statutes and the North Carolina Industrial Commission. Benefits are determined by law, as provided in General Statutes of NC, Chapter 97. The Human Resources Department will assist employees if unresolved problems arise. To qualify, an employee must immediately report any job-related injury to their supervisor or Department Head who will take actions necessary to attain appropriate help for the employee. Responsibility for claiming compensation under the Workers' Compensation Act falls upon the injured employee, and the employee must file such claims with the North Carolina Industrial Commission within two years from date of injury. Employees must report an on-the-job injury or illness to their supervisor within twenty-four (24) hours, regardless of how minor the injury. The supervisor will assist the employee in filing the claim. Additionally, injury reports must be filed as detailed in the Town of Apex Risk Management Manual.

Medical Treatment for Work-related Injuries

Under NC Workers' Compensation law, the Town of Apex has the right to direct medical care for employees who suffer work related injuries or illnesses. Town employees shall seek medical treatment for work related injuries from the Town's designated healthcare provider. Employees may not seek medical treatment for work related injuries from other healthcare providers unless emergency treatment is needed. In life-threatening emergencies, 911 should be called and the employee should be transported to the nearest hospital emergency room. If emergency treatment is necessary outside of the business hours of the Town's designated healthcare provider, the employee may go to a hospital emergency room.

After treatment from the health care provider, the employee must return the physician's work limitations or release form or other instructions from an emergency room physician to their supervisor. The injured employee will not be charged sick or vacation leave while receiving initial medical care. Employees are responsible for providing their supervisor with all related physician notes and any updates on their status.

Modified Duty Assignments

The Town encourages early return to work for employees who suffer work related injuries or illnesses. If the healthcare provider determines that the injured employee cannot return to their job without restrictions, a modified work assignment or reassignment to a different job will be considered. In all cases, managers and supervisors are expected to work with employees to identify modified duty opportunities, with the primary focus being the return of the employee to their regular job. If a suitable modified duty position cannot be found Human Resources should be contacted to assist in finding reasonable accommodations, including tasks within the department that may be different than the employee's regular job or reassignment to a different job. Employees who return to a modified duty assignment must perform the work within the restrictions indicated by the healthcare provider.

Employees must report to their next scheduled shift once the healthcare provider releases them to work. Failure to report to a modified duty assignment may result in disciplinary action. Employees are responsible for providing their supervisor with written notice of the healthcare provider's change in restrictions. The modified duty assignment will end when the employee reaches maximum medical improvement. If the employee reaches maximum medical improvement but cannot return to the original job, the Human Resources Department will consider all other options available under the Town's personnel policies.

Absence Due to Work-Related Injury

An employee unable to work due to a work related injury or illness may use accrued sick, vacation, or compensatory leave during the first seven calendar days of the work related disability, which by law are not eligible for Workers' Compensation pay. If the injury results in a disability requiring absence from work totaling 21 calendar days or more, the Workers' Compensation pay shall be retroactive beginning with the first day of absence. All leave time expended during the first seven days of the disability, in excess of the maximum allowed to

supplement the Workers' Compensation payment, may be reinstated to the employee if the employee makes arrangements with the Town of Apex Finance Department to make payment for the hours requested to be reinstated.

Under the Worker's Compensation Act no contributions are made by the employer into an employee's retirement fund during any period an employee receives Workers' Compensation pay.

If the work related disability qualifies, the employee will be placed in Family Medical Leave status in accordance with the Family Medical Leave Act. The town will pay the individual's premium for medical insurance, life insurance, and dental benefits. Premiums for dependent coverage are the employee's responsibility.

If total disability exists, employees may receive additional assistance through a Social Security disability and/or a disability retirement through the NCLGERS, provided the employee has reached maximum medical improvement and has received a permanent total disability rating from the approved healthcare provider. Human Resources can provide more information in these cases.

Return to Work

Employees released by their treating physician or therapist to return to full duty will be required to complete a Fitness for Duty certification. This form shall be completed by the employee and the employee's treating physician prior to the return to work release date.

Employees on Workers' Compensation leave status can expect to return to an equivalent position in the Town if they return to work within 52 weeks from the date of the Workers' Compensation disability absence. If the employee is medically unable to perform previous job duties, they will be placed in a suitable position according to their qualifications, availability of a position, and North Carolina Workers' Compensation Law.

After one year during which an employee is unable to perform full duties and/or a full schedule due to an on-the-job (or other) injury, the employee may be terminated after all options have been considered in accordance with federal and state laws.. Termination of employment at any point may also take place if medical information indicates that the employee is unlikely ever to be able to perform the full duties of the position. Upon termination, the Human Resources Department will assist the employee in obtaining whatever benefits are available through Workers' Compensation, and/or the Local Government Employees' Retirement System.

Section 18. Fitness for Duty

The Town is committed to providing a safe workplace for employees. In order to provide a safe work environment, employees must be able to perform their job duties in a safe, secure, productive, and effective manner for the duration of their work schedule. Employees who are

not fit for duty may present a safety hazard to themselves, their co-workers or the public.

Purpose

The purpose of this policy is to establish procedures and criteria by which the Town can ensure that employees are fit for duty. In addition, this policy will provide guidelines for determining light duty assignments regarding employees that are unable to perform their regular assigned duties as a result of a non-work related injury/illness/psychological condition.

Scope

This policy applies to all Town employees.

Definitions

Fit for duty - means the employee is able to perform their regular assigned duties in a safe, secure, productive, and effective manner.

Light Duty - is a temporary, modified work assignment, different from an employee's regular assignment that may be offered to employees that are unable to perform their regular assigned duties as a result of a non-work related injury/illness/psychological condition.

Roles & Responsibilities

A. Employee Responsibilities

- 1) Employees must come to work fit for duty, and be able to perform their job responsibilities in a safe, secure, productive, and effective manner during the entire time they are working.
- 2) Employees are responsible for notifying their supervisors when they are not fit for duty.
- 3) Employees must immediately notify their supervisors of any non-work-related illness/injury/condition that may affect their ability to perform their job duties and/or compromise their safety, the safety of their co-workers, or the public.
- 4) Employees must notify their supervisor of any medication they are taking (prescription or over-the-counter) that may affect their ability to perform their job duties.
- 5) Employees must keep their supervisor updated on any subsequent changes to the status of their injury/illness/psychological condition or use of medication.
- 6) While performing their light duty assignment, employees must comply with the temporary work restrictions and recommendations from their personal physician.
- 7) Employees are responsible for notifying their supervisor when they observe a coworker acting in a manner that indicates the coworker may be unfit for duty.
- 8) Employees must comply with all aspects of the Fitness for Duty Policy. Failure to comply may be grounds for disciplinary action up to and including termination.

B. Supervisor Responsibilities

- 1) Supervisors are responsible for observing the attendance, performance, and behavior of their employees.
- 2) Supervisors must maintain confidentiality of the employee's medical information and records.
- 3) Supervisors should contact Human Resources with any questions concerning the employee's work restrictions.
- 4) Supervisors are responsible for ensuring compliance with all aspects of the Fitness for Duty Policy. Failure to comply may be grounds for disciplinary action up to and including termination.

Light Duty Eligibility

In order for employees to be eligible for a light duty assignment, documentation must be provided from a licensed medical provider authorizing the employee to return to work in a light duty capacity. The medical documentation must clearly define the following information:

- a. Employee's work status
- b. Specific work restrictions
- c. Duration of restrictions
- d. Medication regimen
- e. Prognosis for recovery
- f. Physical therapy schedule (if applicable)

Documentation shall be submitted to the immediate supervisor and forwarded through the chain of command to the Department Head. The Department Head will be responsible for providing Human Resources with a copy of the documentation. The Department Head will consult with Human Resources on the feasibility of light duty within their department or within another Town department.

Medical Clearance

The employee's personal physician will make the initial medical determination whether to clear the employee back to work following a non-work related injury/illness/psychological condition, unless the conditions listed under "Fitness for Duty Examination Procedures" exist. If the conditions exist, the Town's authorized physician will make the medical determination by conducting a fitness for duty exam.

Fitness for Duty Examination Procedures

A fitness for duty medical examination will be required by the Town's authorized physician for a

non-work related injury/illness/psychological condition under the following conditions:

- 1) The employee's personal physician has cleared them to return to work but their supervisor or manager, based on direct observation, reasonably believes that the employee's injury/illness/psychological condition may interfere with their ability to perform their job duties safely, or could pose a direct threat to others.
- 2) The employee is taking medication (prescription or over-the-counter) that could interfere with their ability to perform their job duties safely, or could pose a direct threat to others.

Light Duty Criteria

The Town does not guarantee light duty assignments for employees that have a non-work related injury/illness/psychological condition. Light duty assignments will typically be scheduled during normal business hours, with the employee working their normal number of scheduled hours. Generally, overtime is not permitted. If overtime is being considered, Human Resources must be consulted and the Town Manager or their designee must approve. Accumulated leave may be used in the event that the employee is not able to work their normal work schedule.

Employees must meet the following criteria:

- 1) Employee must be capable of doing productive work for their assigned department or another Town department.
- 2) Light duty assignments shall not exceed 90 days. In certain circumstances this period may be extended based on the treating physician recommendations, the availability of qualifying light duty assignments, and the approval of the Town Manager or their designee.
- 3) Employee must attend regular follow-up medical appointments.

Light Duty Assignments

Guidelines for determining appropriate light duty assignments:

- 1) Light duty assignments must comply with the employee's temporary work restrictions issued by the licensed, treating physician.
- 2) Light duty assignments must involve tasks that are meaningful and valuable to the Town.
- 3) Light duty assignments will always have an ending date. This date may be extended as specified under "Light Duty Criteria" in this policy.

If a light duty assignment meeting the employee's work restrictions isn't available within the employee's department, the Department Head will contact Human Resources for assistance in securing a suitable assignment in another Town Department. The

Department Head, in consultation with Human Resources, will make the final determination regarding the light duty assignment. If a light duty assignment meeting the employee's work restrictions isn't available in another department, the employee must use accrued sick, vacation, or compensatory time in order to be paid for time away from work. In such cases, the Human Resources Department shall be notified so that FMLA eligibility can be assessed.

Section 19. Inclement Weather

The Town of Apex recognizes that severe weather conditions and other rare emergency circumstances may make it difficult to provide a full range of Town services to the citizens. This policy clarifies the designation of service critical personnel and provides direction on how to account for work hours when the Town's normal operating hours are modified.

Declaration of an Emergency

The Town Manager will determine when emergency conditions exist that warrant the alteration of the Town's normal business operating hours of 8:00 am – 5:00 pm.

When the Town Manager alters the Town's normal work hours (late opening, early closing, or closed for the day) this decision will be communicated as soon as possible through the Employee Notification Hotline: 919-249-3405, the Town's email system, and on the Town's intranet. Employees who are not deemed to be Service Critical do not have to report to work during the closing period and may qualify for administrative leave during this period.

Designation of Service Critical Personnel

The Town provides a range of essential services that require personnel to be physically present at work to respond to emergency conditions regardless of the weather conditions. Department Heads are responsible for designating employees as Service Critical Personnel in the event of inclement weather or other emergency conditions. Service Critical personnel are expected to report to work during emergency situations unless specifically directed not to report to work.

Employees should be clear on their designation as "Service Critical" in advance of an emergency event. Service Critical personnel are expected to follow departmental leave request policies, and use accrued leave time (sick, vacation, comp) to cover missed work time during the emergency event.

When severe weather is predicted, the Town may make special arrangements for Service Critical personnel in order to ensure their availability to work. These provisions may include allowing personnel to drive Town vehicles home, arranging for hotel rooms and meals, or setting up sleeping quarters on-site. When submitting time sheets to payroll after an

emergency event, "Service Critical" must be noted on the employee's timesheet to ensure proper processing.

Any overtime earned by a non-exempt employee during emergency situations will be calculated in accordance with the Fair Labor Standard Act.

Exempt employees who are required to work during a designated period of declared disaster or local emergency will receive pay at 1.5 hours of their calculated hourly rate (based on annual salary) for any hours worked over 40 in the week. This provision only applies to exempt employees who are at the Assistant Town Manager level and below.

Eligibility for Administrative Leave

When Town operations are closed for a full day, a fulltime employee whose job is not deemed to be service critical is eligible to receive administrative leave for the day if the employee was scheduled for work and planning to attend work during the closing period. Employees who are out on sick leave immediately before and immediately following an administrative leave period, are assumed to be sick, and must use sick leave to account for the absence during the period of administrative leave. Likewise, employees who are scheduled to be on vacation during the administrative leave period must use vacation leave unless they notify their supervisor that the vacation plans are canceled due to the emergency conditions and they report to work immediately following the administrative leave period. When the administrative leave period is granted for partial days, the following shall apply:

Delayed Opening – Unless the Town Manager sets a specific opening time, employees who work non-standard hours (i.e., 7:00–4:00 or 7:30–4:30) would apply the delay period to their normal work schedule. For example, if Town Hall is on a 2-hour delay, then employees who normally report at 7:30 am will report at 9:30 am unless other arrangements are made with their supervisor. Employees who are not scheduled to be at work during the delay period, do not receive any administrative leave for this period.

Early Closing – If the Town Manager sets a specific closing time for Town offices (i.e., 2:00 p.m.) employees receive administrative leave only from the time of closing. Employees who work non-standard hours are expected to work a normal schedule until the official closing time unless instructed otherwise.

Employees who are unable to report to work during periods of inclement weather when the Town offices are open must use compensatory or vacation leave to account for missed work hours. In the event an employee has exhausted all vacation and comp leave hours, sick leave may be used to account for the missed work time.

Compensation for Critical Service Personnel during Administrative Leave Periods

Non-exempt service critical personnel who work during a period of administrative leave will be granted compensatory leave time equal to the hours actually worked during the period of administrative leave, not to exceed 8 hours per day.

For example, when Town offices are closed all day, service critical personnel receive 8 hours of comp time even if they work a 12-hour shift. If Town offices close at 4 pm, and the service critical personnel would normally be off work at this time, then no additional comp time is granted. Shift employees who work a night shift on the days that Town offices are closed for a full day before the beginning of a night shift, will also receive 8 hours of compensatory leave time for that day. Employees not scheduled to be at work on a day Town offices are closed, do not receive compensatory leave time.

Exempt employees in service critical positions who work during periods when Town offices are closed may be provided with flexible work scheduling options as soon as possible when Town operations allow in order to recognize the work performed during the period of administrative leave.

Section 20. Appropriate Dress and Use of Town Logo

Employees shall represent the Town in a professional manner at all times and dress appropriately for conducting such business.

The same professional standards of behavior also apply when wearing the Town logo, seal, department logo, or “Town of Apex” marked clothing before or after work hours.

Department Heads shall determine the dress policy specific to their department requirements.

All employees are expected to be neat, clean and appropriately dressed according to the following guidelines:

- All clothes should be clean and of proper fit. If uniforms are required, they must be of the established color and style specified for the department.
- Hair must be secured so that it does not interfere with job performance or pose a safety threat.
- Any tattoo, body piercing, or related, that is visible and presents a safety hazard or may be determined to be offensive to members of the public (as determined by the respective Department Head) must be completely covered at all times.
- Athletic shoes may be worn in certain departments if approved by the Department Head, provided they are in good condition and do not pose a safety threat.
- Safety toed shoes and boots may be required in specific departments.

Departments have authority to use discretion to determine what constitutes appropriate dress. Supervisors shall advise employees of the appropriate dress or uniform for certain positions as well as items of clothing or shoes that are prohibited if they present a safety hazard, if they do not promote a professional image, or may be determined to be offensive to members of the public.

Section 21. Identification Badges & Access Control

Badge Issue and Use

- 1) Upon initial employment, identification and electronic access badges will be issued by the Human Resources Department to regular full-time and part-time employees, and temporary/seasonal employees if required by the position.
- 2) Vendors will be issued identification badges when work requires building access during hours the building is not normally open to the public, or upon specific request by the Department employing the vendor.

Badge Security and Control

1. Department Directors will designate the appropriate level of building access for each employee. Typically this access will include exterior door building access, and access to the doors in an employee's department or regular work area.
2. Employees must maintain control of their ID badges at all times. ID badges should not be left unsecure in a vehicle or other areas where they can be accessed by an unauthorized person. ID badges may not be "loaned" to any other person for any reason.
3. An employee who loses an ID badge must report this loss to the supervisor and HR Department immediately so the badge can be deactivated.
4. Replacement badges will be issued for free the first time a badge is lost or damaged. Employees will be charged a \$5.00 fee for subsequent replacement badges requested within a 1 year period. Replacement badges for name and department changes will be issued without a fee.
5. Identification badges must be relinquished upon separation from employment, and will be shredded by HR or the supervisor and immediately deactivated. ID badges will be deactivated during the period of time an employee is on an extended leave of absence

ARTICLE VI. EMPLOYEE BENEFITS

Section 1. Eligibility

All full-time and part-time employees of the Town are eligible for employee benefits as provided for in this policy. These benefits are subject to change at the Town's discretion. Temporary/seasonal employees are eligible only for workers' compensation.

Section 2. Group Health and Hospitalization Insurance

The Town provides group health and hospitalization insurance programs for full-time and part-time employees.

Employees who are scheduled to work 20 hours or more per week on a continuous year-round basis may, if they so desire, purchase available group health through the Town for themselves or for themselves and qualified dependents. A pro-rated amount of the cost of coverage paid for a full-time employee shall be paid by the Town with the remainder of the cost being paid by the employee. This pro-rated amount shall be based on regularly scheduled hours.

Information concerning cost and benefits shall be available to all employees from the Human Resources Office.

Section 3. Retiree Health Insurance

Employees hired prior to July 1, 2020

An employee who meets the conditions set forth under the provision of the North Carolina Local Government Employee's Retirement System (NCLGERS) may elect to retire and receive all benefits earned under the retirement plan. An employee who retires directly from the Town with 15 years of Town service may elect to continue on the Town's group health insurance plan if requested within 30 days of the retirement date. The retiree may continue dependent coverage (and pay the cost of this coverage) if enrolled in dependent coverage at the time of retirement. The Town will subsidize the cost of the health insurance premiums for the retiree as follows:

- 15* years of service: 50% subsidy
- 20* years of service: 75% subsidy
- 25* years of service: 100% subsidy

**Unused sick leave counted by the NCLGERS as creditable service time will count in determining total years of Town service.*

When a retiree reaches age 65, the retiree enrolls in Medicare Part A and B and pays the cost. The Town provides Medicare supplement insurance for the retiree and subsidizes the cost of the Medicare supplement (as shown above) not to exceed the Town's monthly premium contribution toward employee health insurance coverage. If the Town's Medicare plan is not available in the retiree's residing State, a plan with the most comparable coverage, as identified by the Town, will be offered.

Employees who were hired prior to July 1, 2020 and separate from Town service will forfeit this benefit unless re-hired with the Town into a benefits eligible position within 2 years of the separation date, at which point previous service years will count towards overall service with the Town for the purpose of this benefit.

Employees who separate from service and are re-employed 2 or more years later will be considered a new hire and will not be eligible for the retiree health insurance benefit.

Employees hired on or after July 1, 2020

Employees hired on or after July 1, 2020 are not eligible for retiree health insurance.

Section 4. Group Life Insurance

The Town may elect to provide group life insurance for each employee subject to the stipulations of the insurance contract. Employees may elect to purchase additional coverage and/or to insure other family members under this plan at their expense subject to the stipulations of the insurance contract.

Section 5. Other Optional Group Insurance Plans

The Town may make other group insurance plans available to employees upon authorization of the Town Manager or Town Council.

Section 6. Retirement

Town employees who work in a position requiring more than 1,000 hours annually shall join the North Carolina Local Government Employees' Retirement System when eligible as a condition of employment. Participation begins on the first day of employment for all new hires. Guidelines for participating in the NC LGERS can be found in the LGERS Employee Handbook or in Human Resources,

Section 7. Supplemental Retirement Benefits

The Town contributes to a 401(k) retirement plan for each employee participating in the North

Carolina Local Government Retirement System. Each law enforcement officer shall receive 401(k) benefits as prescribed by North Carolina State Law. General employees also receive a contribution, as established by the Town Council.

Section 8. Social Security

The Town, to the extent of its lawful authority and power, extends Social Security benefits for its eligible employees and eligible groups and classes of such employees.

Section 9. Unemployment Compensation

Town employees are covered by unemployment insurance. Town employees who are terminated due to a reduction in force or released from Town service may apply for benefits through the local Employment Security Commission office, where a determination of eligibility will be made.

Section 10. Tuition Assistance Program

It is the policy of the Town of Apex to provide tuition assistance to employees who desire to further their education through a degree program in a career field that would benefit the Town and increase their ability and knowledge to pursue promotional opportunities. The amount of educational assistance provided per employee will be determined annually based on the approved budget and maintained in the Human Resources Department. Employees are expected to pursue coursework outside regular work hours, on their own time.

Employees interested in pursuing a degree from an accredited university or college shall submit a Tuition Reimbursement Application form for Town approval. Priority will be given to employees in a degree program for which approval has been given in the prior budget year (assuming the employee continues to meet all policy requirements). Town of Apex will reimburse the costs of registration, fees, tuition, student and lab fees, upon completion of the course and certification by the institution that final grades meet the standards of the Town of a "C" or better up to the maximum allowed for the fiscal year. For classes that are considered "Pass/Fail," a "Pass" for the course will be considered as satisfactory completion. The first and/or last day of the course must be within the fiscal year for which reimbursement is requested. Employees receiving additional reimbursements for coursework from sources outside the Town may not receive total reimbursements in excess of 100 percent of the total tuition cost.

Requests for tuition assistance shall be submitted to the Human Resources Department prior to course registration and are subject to review and approval by Human Resources.

All full-time regular employees who have successfully completed the Town's probationary

period are eligible to receive this benefit. Eligible employees must be employed continuously for the entire academic session in order to qualify for reimbursement. Employees who have been approved for tuition assistance but separate from the Town prior to the ending of the course and/or receiving reimbursement will not be eligible for reimbursement.

Human Resources will notify employees of the process for participation in the Tuition Reimbursement Program and will provide the forms for both application and reimbursement.

Section 11. Peak Lifestyle Allowance

Regular employees who have completed the new hire probationary period will receive a Peak Lifestyle Allowance each fiscal year to use towards expenses related to physical, emotional/mental, and financial well-being. The Peak Lifestyle Allowance is a one-time, taxable lump sum payment and is not built into base pay. The allowance will be paid on a scheduled pay day at the beginning of each fiscal year, at an amount determined each year and approved in the Town's annual budget. Employees must be actively employed on the day that the allowance is paid in order to receive the allowance. New hires will receive their Peak Lifestyle Allowance at the end of the quarter in which they successfully complete their probationary period.

Section 12. Longevity Pay

A program of longevity pay may be provided to recognize and reward the total years of service as a permanent Town employee. The annual payment is made the first week in December to those full-time employees who are employed by the Town as of November 30, and who have completed the required number of years of service as of November 30 of the year the payment is made. Longevity pay shall be made in a lump sum that does not build into base pay. Payments may be made in the following amounts:

2 through 4 years	\$100
5 through 9 years	\$300
10 through 14 years	\$500
15 through 19 years	\$700
20 plus years	\$1000

Section 13. Employee Assistance Program

The Town provides an Employee Assistance Program (EAP) to help employees resolve a wide range of personal problems or to help improve their job performance. This confidential counseling service is available to employees and their family members. Employees may choose to go to the EAP on their own, or they may be encouraged to use the EAP by their supervisor when their job performance is unsatisfactory. Employees participating in the EAP are required to meet existing job performance standards. The employee's use of the EAP does not replace the

use of established procedures for managing unsatisfactory job performance.

The Town will not have access to EAP records without written permission from the employee. All individual rights to confidentiality will be assured in the same manner as any other health records.. With approval of the supervisor, employees may use earned sick or vacation leave for a scheduled EAP appointment.

Section 14. Law Enforcement Officers' Special Separation Allowance

A law enforcement officer who retires under a full service retirement may be entitled to a Special Separation Allowance as provided under G.S. 143-166.42. This allowance will terminate at death or on the last day of the month when the officer attains 62 years of age, or upon the first day of re-employment as a benefits eligible employee in any capacity for a local government in North Carolina.

Section 15. Credit Union

Membership in the Local Government Federal Credit Union is open to all Town employees and their family members for various loan services, checking, and saving accounts.

Section 16. Section 125 Benefits

The Town offers pre-tax deductions for benefits premiums, dependent care, flexible medical spending accounts, and other voluntary benefits. Specific information on these plans is available from the Human Resources Office.

ARTICLE VII. HOLIDAYS AND LEAVES OF ABSENCE

Section 1. Policy

The policy of the Town is to provide vacation, sick leave, holiday leave and other leaves of absence, as described below, to all full-time and part-time employees, and to provide proportionately equivalent amounts to employees having average work weeks of different lengths.

Employees must exhaust all accrued paid leave and/or comp-time before going on an unpaid status, except in circumstances where an employee is receiving disability payments or is on a military leave of absence. Employees must use paid leave to cover their regularly scheduled work hours. Once an employee has exhausted all paid leave, they will cease to earn accruals until they are back actively at work.

Section 2. Holidays

The policy of the Town is to recognize the following Holidays as paid holidays for Town employees:

- New Year's Day
- Martin Luther King Jr. Day
- Good Friday
- Memorial Day
- Juneteenth
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving (2 days)
- Christmas (3 days)

The Human Resources Director shall prepare a schedule of holidays at the beginning of December for the following calendar year. Departments providing 24-hour operation may adopt a varying holiday schedule that designates the legal holiday as the designated holiday when a legal holiday observance falls on a Saturday or Sunday. Any special holiday schedule shall be approved in advance by the Town Manager or their designee.

Section 3. Holidays: Effect on Other Types of Leave

Regular holidays that occur during a vacation, sick or other paid leave period of any employee shall not be considered as vacation, sick, or other leave.

Section 4. Holidays: Compensation When Work is Required

Employees required to perform work on regularly scheduled holidays may be granted compensatory time off or paid at their hourly rate for hours actually worked in addition to any holiday pay to which they are entitled. Compensatory time shall be granted whenever feasible.

All shift personnel will receive holiday pay for every holiday the Town observes, regardless of whether they work the holiday or not. Shift personnel who work on a holiday will receive time and a half for all hours worked on the holiday, in addition to the holiday pay for that day.

Non-shift employees classified as exempt under the Fair Labor Standards Act are not eligible for holiday premium pay.

Section 5. Peak Paid Time Off

Regular employees who have completed the new hire probationary period will receive two weeks of Peak Paid Time Off (PPTO) per fiscal year for personal time off. PPTO will be provided at the beginning of each fiscal year and may be used at any time during the year, but will not carry over from one fiscal year to another (unused PPTO hours will be lost). Employee must request and be approved to use PPTO in advance, and in accordance with departmental procedures.

PPTO hours will be based on work schedule, as listed below:

General, 40-hour employees – 80 hours

Police Patrol – 84 hours

Fire Shift – 81 hours

Part-time – pro-rated based on hours worked

Employees serving their new hire probationary period may be granted access PPTO prior to successfully completing their probationary period if use of PPTO was negotiated and approved as part of their job offer or if they have a serious medical condition requiring them to be out of work unexpectedly. Use of PPTO for medical conditions must be accompanied by a doctor's note.

PPTO cannot be rolled over into a new fiscal year, roll into sick leave, or be paid out upon separation. Additionally, it cannot be used in lieu of a two-week notice or on the last day of employment.

Section 6. Vacation Leave

Vacation leave shall be used for personal time off, and may be used for sick time when sick leave accrual is depleted.

Section 7. Vacation Leave: Accrual Rate

Each full -time employee of the Town shall earn vacation at the following schedule. Leave earning is pro-rated for full-time and part-time employees working more or less than 40 hours per week.

<u>Years of Service</u>	<u>Hours Accrued Per Year</u>
Less than 2	80
2 through 4	96
5 through 9	120
10 through 13	144
Year 14	1,104
15 through 19	168
20 through 23	192
Year 24	1,152
25 plus	192

The accrual rate for part-time employees is prorated by the average number of hours in the workweek. An employee must be at work or on paid leave status to accrue vacation leave. Short-term disability and workers compensation leave are not considered paid leave. The accrual rate for an employee on any type of unpaid leave will be prorated based on the actual hours paid in the pay period.

Vacation leave may not be used prior to accruing it. Only vacation leave hours that display in an employee's vacation leave bank (HR Portal) are eligible to be used on a timesheet. Use of "pending" leave (leave that will accrue in the current pay period, but has not yet been earned) is not allowed.

Vacation leave accrual rates are based on years of service with the Town of Apex and cannot be transferred from other municipalities.

Section 8. Vacation Leave: Maximum Accumulation

Vacation leave may be accumulated without any applicable maximum until December 31 of each year. Effective the last payroll in the calendar year, any employee with more than this maximum of accumulated leave shall have the excess accumulation removed so that days equal to only thirty (30) days are carried forward to January 1 of the next calendar year. Any vacation time in excess of 30 days will be converted to sick leave.

Employees are cautioned not to retain excess accumulated vacation leave until late in the year. Because of the necessity to keep all functions in operation, large numbers of employees cannot be granted vacation leave at any one time. If an employee has excess leave accumulation during the latter part of the year and is unable to take such leave because of staffing demands, the

employee shall receive no special consideration either in having vacation leave scheduled or in receiving any exception to the maximum accumulation.

Section 9. Vacation Leave: Manner of Taking

Employees shall be granted the use of earned vacation leave upon request in advance at those times designated by the Department Head which will least obstruct normal operations of the Town. Department Heads are responsible for insuring that approved vacation leave does not hinder the effectiveness of service delivery.

Section 10. Vacation Leave: Payment upon Separation

An employee who has successfully completed six months of the probationary period will normally be paid for accumulated vacation leave upon separation not to exceed thirty (30) days, provided notice is given to the supervisor at least two weeks in advance of the effective date of resignation. Any remaining vacation hours above the maximum will be rolled to the employee's sick leave balance.

Any employee failing to give the notice required by this section shall forfeit payment for accumulated leave. The notice requirement may be waived by the Town Manager or their designee when deemed to be in the best interest of the Town. Employees who are involuntarily separated shall receive payment for accumulated vacation subject to the thirty day maximum.

Section 11. Vacation Leave: Payment upon Death

The estate of an employee who dies while employed by the Town shall be entitled to payment of all the accumulated vacation leave credited to the employee's account, but not to exceed thirty (30) days.

Section 12. Sick Leave

Sick leave may be granted to probationary and regular employees absent from work for any of the following reasons: sickness, bodily injury, required medical/physical or dental examinations or treatment, EAP visits, childbirth during the documented period of disability (generally 6 weeks), for the first 6 weeks following the adoption of a child, or exposure to a contagious disease when continuing work might jeopardize the health of others.

Sick leave may be used when an employee must care for a member of his or her immediate family who is ill but may not be used to care for healthy children when the regular caregiver is sick. Sick leave beyond 10 days will only be approved for a family member's serious health condition as defined by the FMLA and with appropriate FMLA medical documentation.

Sick leave may also be used to supplement Workers' Compensation Disability Leave both during

the waiting period before Workers' compensation benefits begin, and afterward to supplement the remaining one third of salary, except that employee may not exceed the net salary amount after all current payroll deductions (as of the date of the injury) are made.

“Immediate family” shall be defined to include spouses, children, parents, siblings, grandparents, grandchildren (regardless of whether such family members are related by blood, adoption or marriage) and guardians.

Notification of the desire to take sick leave shall be submitted to the employee's supervisor prior to the leave or not later than thirty minutes after the beginning of the scheduled work day.

Sick leave is not paid out upon separation of employment.

Section 13. Sick Leave: Accrual Rate and Accumulation

Sick leave shall accrue at a rate of 8 hours per month of service or 96 hours per year. Sick leave for full-time and part-time employees working other than the basic work schedule during any pay period shall be pro-rated as described in this Article. Sick leave will be cumulative for an indefinite period of time and may be converted upon retirement for service credit consistent with the provisions of the North Carolina Local Government Employees' Retirement System.

Sick leave may not be used prior to accruing it. Only sick leave hours that display in an employee's sick leave bank (HR Portal) are eligible to be used on a timesheet. Use of “pending” leave (leave that will accrue in the current pay period but has not yet been earned) is not allowed.

All sick leave accumulated by an employee shall end and terminate without compensation when the employee resigns or is separated from the Town, except as stated for employees retiring or terminated due to reduction in force.

Rehired employees who return to work for the Town within one year of separation may have their sick leave balance reinstated if they have not already transferred their balance to another government agency. Employees who have been separated from the Town for more than one year will not be allowed to reinstate their former sick leave balance. Special considerations may be made if the employee separated for military service or support (contract service).

Section 14. Sick Leave Transfer from Other Organizations

An employee who has credible service in the State or Local Employee's Retirement System may transfer his or her sick leave balance from the organization(s) in which the retirement service was gained, as long as the employee has not been separated from the organization for longer than 12 months. This sick leave balance is to be used as described above in section 12.

Section 15. Sick Leave: Medical Certification

The employee's supervisor or Department Head may require a physician's certificate stating the nature of the employee's or family member's illness and the employee's capacity to resume duties, for each occasion on which an employee uses sick leave or whenever the supervisor observes a "pattern of absenteeism." The employee may be required to submit to such medical examination or inquiry as the Department Head deems desirable. The Department Head shall be responsible for the application of this provision to the end that:

- 1) Employees shall not be on duty when they might endanger their health or the health of other employees; and
- 2) There will be no abuse of leave privileges.

Claiming sick leave under false pretense to obtain a day off with pay shall subject the employee to disciplinary action up to and including dismissal.

Section 16. Calculation for Pro-rated Leave

Holiday, annual, and sick leave earned by full-time and part-time employees with fewer or more hours than the basic work week shall be determined by the following formula:

- 1) The number of hours worked by such employees shall be divided by the number of hours in the basic work week (usually 40 hours).
- 2) The proportion obtained in step 1 shall be multiplied by the number of hours of leave earned annually by employees working the basic work week.
- 3) The number of hours in step 2 divided by 12 shall be the number of hours of leave earned monthly by the employees concerned.

Section 17. Unpaid Leave (Leave without Pay)

Any use of Leave without Pay (LWOP) must be approved by the Department Director. Prior to the use of Leave without Pay, employees must have exhausted all applicable paid leave, except in circumstances where an employee is receiving disability payments or is on a military leave.

Section 18. Family and Medical Leave

The Family Medical Leave Act (FMLA) policy is followed in accordance with federal regulations (29 U.S.C. § 2619). Employees who have at least 12 months of service and have worked at least 1,250 hours in the last consecutive 12 months are eligible. Employees who have questions concerning eligibility should contact the Human Resources Department.

FMLA provides for up to 12 weeks of unpaid leave under the following circumstances:

- a) For the birth of a child and to bond with the newborn child
- b) For the placement of a child with the employee for adoption or foster care, and to bond with that child
- c) To care for a parent, spouse or child with a serious health condition.
- d) The employee's own serious health condition makes the employee unable to perform the functions of his or her job
- e) For qualifying exigency arising out of the fact that the spouse, child, or parent of the employee is on active duty or called to active duty status in the National Guard or Reserves during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation, or Regular Armed Forces during deployment to a foreign country.

The FMLA also provides for up to 26 weeks of unpaid leave for eligible employees to care for a covered service member during a single 12-month period.

Employees who do not qualify for FMLA may still be eligible for the Town's Paid Parental Leave or Paid Caregiver Leave programs discussed in this Article.

Depending on circumstances, it may be permissible to use FMLA leave intermittently. The Town reserves the right to consider individual circumstances and needs in conjunction with business demands and federal/state requirements.

Certification and Eligibility Requirements:

- 1) Employees may request FMLA leave by submitting a FMLA Employee Request Form to their Supervisor or Human Resources. Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days' notice is not possible, the employee must provide notice as soon as practicable and generally must comply with the Town's normal call-in procedures.
- 2) The Town may require medical certification to assess FMLA eligibility, as well as updates at reasonable intervals for continued certification. If there is reason to doubt the validity of the medical certification, the Town may require the employee to get a second opinion. If the second opinion differs from the original certification provided, the Town may require the employee to get a third opinion, at which time the doctor will be jointly selected by the employee and the Town. The third opinion will be final and binding on both parties. The burden of the cost of the second and third opinions will be at the expense of the Town.
- 3) If the Town requires medical certification for leave the employee must provide sufficient information to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Employees also must inform the Town if the requested leave is for a reason for which FMLA leave was previously taken or certified. Failure to provide adequate information within fifteen calendar days may result in delayed or denied FMLA leave/protection until proper certification can be obtained.
- 4) The Town reserves the right to waive certification and can place the employee on leave upon

learning of the employee's circumstances, even if the employee has not yet requested FMLA leave or the request is pending the completion of the FMLA certification forms.

- 5) Generally, FMLA approved leave will begin on the first day of absence, when the leave is foreseeable. In the event of an unplanned leave, individual needs/circumstances, in accordance with federal regulations, will be reviewed to determine the appropriate start date of FMLA leave.
- 6) An eligible employee is entitled to up to twelve or twenty-six workweeks of leave, depending on circumstances – as identified above, on a rolling 12- month period measured backward from the date of any FMLA leave usage. If the employee returns to work before the twelve or twenty-six weeks is depleted and is able to physically perform his/her duties, the employee will be reinstated to the original, or equivalent position, with equivalent pay, benefits and other employment terms. If the twelve or twenty-six weeks of this leave are exhausted and the employee has not returned to work, the Town will determine if the employee will be reinstated.
- 7) Employees will be required to deplete their earned compensatory time and vacation leave during FMLA before being granted unpaid leave. If the approved FMLA is for circumstances for which sick leave usage is permissible per Town policy, then sick leave must also be depleted before being granted unpaid leave.
- 8) All benefits will continue to accrue during a period of paid leave.
- 9) When an employee is on leave under FMLA, the Town will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work. If an employee chooses not to return to work for reasons other than a continued serious health condition, the Town will require the reimbursement of the amount paid for the employee's health insurance premium during the FMLA leave period. Other insurance and payroll deductions are the responsibility of the employee and the employee must make those payments for continued coverage of that benefit.
- 10) Employees who are out of work under the provisions of FMLA are prohibited from engaging in any secondary employment during what would be their normal scheduled workday. Employees on leave as a result of their own serious health condition are NEVER approved for secondary employment. Employees who work secondary employment while on FMLA during what would have been normal work hours are considered to have voluntarily terminated their employment with the Town. Police employees may work extra-duty assignments while on FMLA with prior approval from the Chief of Police, in consultation with HR. Each request will be reviewed on a case by case basis.
- 11) Short-term disability, workers' compensation and approved medical leave of absence will run concurrently with FMLA leave.
- 12) An employee who is approved for FMLA for a personal illness or injury will not be allowed to return to work without a completed Fit for Duty Form, unless the employee was out to care for a family member or for birth of a child (Police sworn personnel who have given birth to a child must still complete the Fit for Duty form). An employee who does not return to work within three working days after their FMLA expires will be considered to have voluntarily terminated their employment with the Town.

It is the responsibility of the immediate supervisor to begin the process of placing the employee on leave. If a supervisor observes that an employee is out sick more than three consecutive days, the supervisor is to notify the Human Resources Department. If a supervisor is told by an employee that the employee will need to be out for an extended period of time for reasons

other than a normal vacation, the supervisor is to notify Human Resources and instruct the employee to do the same.

Section 19. Military Leave

Military leave is provided for employees who are members of an Armed Forces Reserve organization or National Guard, or any other duty that falls within the “uniformed services” as defined and covered under the Uniformed Service Employment Reemployment Rights Act (USERRA). Military service is defined as any performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty, inactive duty training (such as drills), and funeral honors duty performed by National Guard and reserve members, as well as the period for which an employee is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty. Employees who are eligible for military leave have all job rights specified by the Uniformed Service Employment and Reemployment Act.

Employees on Military Leave may choose to take their leave on a paid or unpaid status. An employee on military leave will continue to accrue vacation and sick leave, regardless of whether or not paid leave was used.

Differential Pay

Military differential pay is partial compensation for the difference between the base pay salary that the employee earned while on military leave and the salary that would have been earned during the same period as a Town employee. Differential pay is not available for employees using paid leave or switching shifts to cover absences. Employees may switch shifts with other employees to attend drill, if approved by their supervisor/manager.

Employees will be granted two calendar weeks of military differential pay, per year. The effect will be to maintain the employee's salary at the normal level during the period of leave.

In addition to the 2 weeks above, when employees are called to active duty for state or national emergency, the Town will provide military differential pay during the first 180 days of active duty.

The employee must provide a Leave and Earnings Statement (LES) to payroll as soon as it is available to verify military pay. The Town will make normal deductions and/or contributions based on this difference in pay for taxes, FICA and other applicable benefits.

Job Benefits: Health premiums for employees who are performing services in the uniformed services for less than 31 days will remain in effect. Employees who are performing services in the uniformed services for 31 or more days may choose from the following two options:

- Option One: The employee and their dependents may elect to continue health coverage and /or dental benefits through the Town of Apex's group policy at full cost to the employee for a period of up to 24 months. See Human Resources for more details.
- Option Two: The employee may elect to cancel health and/or dental coverage through the Town of Apex, as coverage is provided to all military personnel and their families. Employee's health coverage will be reinstated with no waiting period when the employee returns to active employment with the Town.

While taking military leave the employee's leave credits and other benefits shall continue to accrue as if the employee physically remained with the Town during this period. The Town's contributions to the NC 401(k) retirement will continue and be based on the employee's regular salary, regardless of whether or not paid leave is being used. Life and Disability insurance benefits will be handled in accordance with vendor policies.

Reinstatement Following Military Service

An employee returning from military service shall be reinstated with full benefits provided the employee:

- 1) Applies for reinstatement within the applicable timeframe established under USERRA; and Is able to perform the duties of the former position or similar position; or
- 2) Is unable to perform the duties of the former position or a similar position due to disability sustained as a result of the military service, but is able to perform the duties of another position in the service of the Town. In this case the employee shall be employed in such other position as will provide the nearest approximation of the seniority, status, and pay which the employee otherwise would have been provided, if available.

Section 20. Personal Leave of Absence

The Town Manager or their designee may grant a personal leave of absence for unique or extraordinary reasons that may not apply to other types of leave. The leave shall be used for reasons of personal disability, sickness or disability of immediate family members, time with a newborn or adopted child, continuation of education, special work that will permit the Town to benefit by the experience gained or the work performed, or for other reasons deemed justifiable by the Town Manager or their designee. The Town Manager, or their designee, will consider the nature of the position, the impact on the Town, and the employee's tenure when reviewing a request for personal leave. The maximum amount of time that can be granted for a personal leave is six weeks in any 12-month period (calculated by using the rolling method). Vacation requests that exceed 31 calendar days will be considered a personal leave of absence.

Personal Leave will not be granted to allow an employee time off to seek employment elsewhere or to work for another employer. Employees who begin employment elsewhere while personal

leave are considered to have voluntarily terminated their employment.

Job Benefits: Benefits will be handled in accordance with State & Federal laws and vendor policies. For more information, contact Human Resources.

Return to Work: The employee is obligated to return to duty within or at the end of the time determined appropriate by the Town Manager or their designee. Upon returning to duty after being on personal leave, the employee shall be entitled to return to the same position held at the time leave was granted or to one of like classification and pay. If the employee decides not to return to work, the supervisor shall be notified immediately. Failure to report at the expiration of personal leave shall be considered a voluntary resignation.

Section 21. Civil Leave

A Town employee called for jury duty or as a court witness for the federal or state governments, or a subdivision thereof, shall receive leave with pay for such duty during the required absence without charge to accumulated leave. The employee may keep fees and travel allowances received for jury or witness duty in addition to regular compensation; except, that employees must turn over to the Town any witness fees or travel allowance awarded by that court for court appearances in connection with official duties. While on civil leave, benefits and leave shall accrue as though on regular duty.

Section 22. Educational Leave with Pay

A leave of absence at full or partial pay during regular working hours may be granted to an employee to take one course which will better equip the employee to perform assigned duties upon the recommendation of the Department Head, and with the approval of the Town Manager or their designee.

Educational leave at full or partial pay for a period not to exceed twelve calendar months may be granted to an employee to take one or more courses that will better equip the employee to perform assigned duties upon the recommendation of the Department Head and the Town Manager or their designee and with the approval of the Town Council. An employee granted such extended educational leave with pay shall agree to return to the service of the Town upon completion of training and remain in the employ of the Town for a period of twice the educational leave received, or the employee shall reimburse the Town for all compensation received while on educational leave.

An employee on educational leave with full pay shall continue to earn leave credits and other benefits to which Town employees are entitled. An employee on educational leave with partial pay shall earn proportional leave credits.

Section 23. Shared Leave

An employee may donate vacation leave to another employee who meets the criteria to participate in the Town's shared leave program. An employee is eligible to receive shared leave when the employee:

- has been a full-time employee of the Town of Apex for one year*;
- has a serious medical condition or has an immediate family member with a serious health condition, as qualified under FMLA, that requires the employee to miss 20 consecutive workdays, or experience excessive intermittent absences due to the same or another serious health condition;
- has exhausted all sick, vacation and compensatory leave time;
- produces medical documentation to support the need for leave beyond the available accumulated leave;
- applies for, or is nominated by a co-worker to receive shared leave.

** This requirement may be waived by the Town Manager or their designee if the full-time employee can provide medical documentation to support the need for leave in advance of meeting the one-year requirement. In most cases, this will be for very serious health conditions or medical procedures of an emergent nature.*

Employees out of work on workers' compensation leave or employees receiving short-term disability benefits are not eligible for shared leave.

All applications or nominations for shared leave should be made to the Human Resources Department who will administer the shared leave policy. Leave may be made available for use on a current basis and is not retroactive beyond the current pay period. All leave donations are strictly voluntary and are kept confidential. Leave donations must be a minimum of 4 hours and are credited to the sick leave account of the shared leave recipient. Any unused donated leave shall be returned to the donor(s) on a pro-rata basis and credited to the leave account from which it was donated.

It is the responsibility of the employee requesting leave to monitor their leave usage and notify Human Resources/Payroll of the amount of leave they need for each pay period. Once the donations have run out, the employee may request for HR to send another announcement requesting donations; however, HR announcements for shared leave requests will be made no more than every 4 weeks. Requests for shared leave will be active for a period of 3 months from the date the leave is requested, assuming the leave is still needed for the same condition. After 3 months, the shared leave request is considered void and a new request must be made, documenting the reasons for need of continued shared leave.

Section 24. Bereavement Leave

Employees will be granted up to 3 days (24 hours) of paid bereavement leave as needed in the event of the death of an immediate family member. "Immediate family" shall be defined to include spouses, children, parents, siblings, grandparents, grandchildren (regardless of whether such family members are related by blood, adoption or marriage) and guardians.

Sick leave, as approved by the Department Head, may be used for any additional time, if needed, for this purpose.

Section 25. Paid Parental Leave

Employees who have completed their initial probationary period (or successfully completed six months of their probationary period for Police and Fire) are eligible for Paid Parental Leave. Paid parental leave is in addition to an employee's accrued vacation or sick leave. Qualifying events for parental leave include the following:

- Birth of a child of the employee;
- The legal placement of a child with the employee for adoption, foster care or guardianship; or
- The placement of a child with the employee for whom the employee permanently assumes and discharges parental responsibilities (in loco parentis).

An employee may receive paid parental leave for one qualifying event within a rolling twelve-month period. The amount of paid parental leave for any one person shall not exceed eight weeks in a twelve-month period.

If both parents are employed by the Town and have one qualifying event, each parent is eligible for the eight weeks of paid parental leave. Each parent can use their allocated eight weeks of paid parental leave.

Employees shall provide advance notice to their supervisor of paid parental leave dates. The total amount of paid parental leave shall not exceed 320 hours for employees who work a 40-hour week schedule and is pro-rated for employees who work more or less than 40 hours per week.

An employee out of work and receiving paid parental leave may not work a secondary job during the same hours an employee would normally be at work, or work any off duty assignments during the parental leave period.

All Town-provided benefits will continue to be paid by the Town during the time the employee is out of work on Parental Leave. Sick and vacation leave will continue to accrue while the employee is in a paid parental leave status.

An employee who wishes to use parental leave shall follow the Town's procedures for requesting paid parental leave. Paid parental leave is approved through the HR Department, and no individual supervisor may deny an employee's request for paid parental leave. Employees will be required to submit supporting documentation to satisfy eligibility requirements for paid parental leave.

An employee must return to work after the duration of any approved parental leave. An employee who does not return and at least provide and work the 2 weeks' notice requirement will be required to pay the Town back for any paid parental leave received and their last day physically worked will be considered their last day of employment.

Section 26. Paid Caregiver Leave

Employees who have completed their initial probationary period (or successfully completed six months of their probationary period for Police and Fire) with the Town of Apex are eligible for up to three (3) weeks of Paid Caregiver Leave. Paid Caregiver leave is in addition to an employee's accrued vacation or sick leave. Qualifying events for Caregiver leave include the following:

- To care for an immediate family member with a serious health condition. "Immediate family member" shall be defined as spouses, children (regardless of age), parents, siblings, grandparents, grandchildren (regardless of whether such family members are related by blood, adoption or marriage) and guardians.

An employee may receive paid Caregiver leave for all qualifying events within a rolling twelve-month period. The amount of paid Caregiver leave for any one person shall not exceed three weeks in a twelve-month period.

Employees shall provide advance notice to their supervisor of paid Caregiver leave dates. The total amount of paid Caregiver leave shall not exceed 120 hours for employees who work a 40-hour week schedule and is pro-rated for employees who work more or less than 40 hours per week.

An employee out of work and receiving paid Caregiver leave may not work a secondary job during the same hours an employee would normally be at work, or work any off duty assignments during the Caregiver leave period.

All Town-provided benefits will continue to be paid by the Town during the time the employee is out of work on Caregiver Leave. Sick and vacation leave will continue to accrue while the employee is in a paid Caregiver leave status.

An employee who wishes to use Caregiver leave shall follow the Town's procedures for

requesting Paid Caregiver leave. Paid Caregiver leave is approved through the HR Department, and no individual supervisor may deny an employee's request for Paid Caregiver leave. Employees will be required to submit supporting documentation to satisfy eligibility requirements for Paid Caregiver leave.

An employee must return to work after the duration of any approved Caregiver leave. An employee who does not return and at least provide and work the 2 weeks' notice requirement will be required to pay the Town back for any paid caregiver leave received and their last day physically worked will be considered their last day of employment.

ARTICLE VIII. SEPARATION AND REINSTATEMENT

Section 1. Types of Separations

All separations of employees from positions in the service of the Town shall be designated as one of the following types and shall be accomplished in the manner indicated: Resignation, reduction in force, disability, voluntary retirement, dismissal, or death.

Section 2. Resignation

An employee may resign by submitting the reasons for resignation and the effective date in writing to the immediate supervisor as far in advance as possible. In all instances, the minimum notice requirement is two weeks. The effective date of a resignation shall be the last day worked. Vacation leave and compensatory time cannot be used during the two-week notice period. Sick leave will only be approved during the final two weeks of a notice with a physician's certification or comparable documentation. Failure to provide minimum notice shall result in forfeit of payment for accumulated vacation unless the notice is waived upon recommendation of the Department Head and approval by the Town Manager or their designee.

Three consecutive days of absence without contacting the immediate supervisor or Department Head may be considered to be a voluntary resignation.

Section 3. Reduction in Force

In the event that a reduction in force becomes necessary due to economic circumstances, program elimination, or privatization of existing programs the Town will attempt to accomplish a reduction in force without layoffs if at all possible, and if not possible, aid the transition of employees into other employment outside the organization.

Procedures

Determinations of reductions: The determination of positions to be eliminated or employees subjected to layoff will be based (in priority order) on (1) the need for the employee's services; (2) the quality of the employee's past performance; and (3) seniority. The individual(s) selected for layoff may or may not be the incumbent of the position(s) to be eliminated. Based on the above criteria, the Department Head will develop a rationale for the proposed reductions and changes in positions and personnel, and present it to the Human Resources Director and Town Manager or their designee. All reductions in force require the approval of the Town Manager.

Layoff Avoidance: Prior to a layoff, the Town will take the following steps to assist employees who are targeted to lose their current position to locate other employment within the

organization.

1. The Town will attempt to locate alternate Town employment for affected employees whose past performance has met performance requirements. Employees may be required to accept a transfer to another Town position for which they meet the basic qualifications. Employees not occupying affected positions may be re-assigned to another position at the same salary grade in order to create a better match of experience and skills with existing Town positions and to prevent a layoff from occurring within the Town. Such movement will be the prerogative of the Department Head or Town Manager. Pay decisions regarding transfers will be in accordance with the Town's pay policies.
2. If the reason for potential reduction is driven by economic reasons, management may offer employees in full-time positions the option of reducing their work schedule to less than 40 hours a week (but no less than 20 hours). Benefits would be pro-rated in accordance with Town policy. The reduced schedule must be agreed to for a minimum of one year and may be renewed with the mutual consent of the employee and Department Head on an annual basis.

Transition Assistance

Negotiated Employment. In any privatization effort, the Town will negotiate to the fullest extent possible, for the continued employment of all who are involved in a Town function with the new private contractor.

Outplacement Services. The Town will provide standard outplacement services either internally or through a contracted party. The services will include (1) career counseling, (2) resume application preparation, (3) allowances for reasonable time off for interviews and employment follow-up as approved by the employee's supervisor, (4) reasonable office support and telephone access as approved by the employee's supervisor to use for the job search.

Retirement. Employees whose positions have been designated for elimination may be eligible for a full or reduced retirement through the North Carolina Local Government Employees' Retirement System. As allowed under G.S. 128-27(a2) The Town Council may approve a discontinued service retirement allowance for employees who are at least 55 years of age and have 20 years of creditable service, or a reduced discontinued service allowance for employees who are 50-54 years of age and have 20 years of creditable service. Employees granted a discontinued service retirement are not eligible for severance pay.

Severance Pay. Employees whose positions are being eliminated under a reduction in force will be eligible for seniority-based severance pay as outlined below if all of the following conditions are met as of their last day of employment with the Town:

1. The employee has not elected one of the above-referenced retirement options;
2. The employee has not refused alternate full time employment with the Town; and
3. The employee has not refused reasonable employment offers with a contractor (in the event of negotiated privatization). A reasonable employment offer shall be defined as one in which the employment offer does not result in a permanent reduction in the rate of pay of more than 15%.
4. The employee executes and returns the Town's standard waiver and release form.

Severance pay is based on total years of service with the Town of Apex. Severance pay is the equivalent of two weeks base pay for employees with less than one year of service, with an additional week of pay granted for each additional full year of Town service. Severance pay will be paid out on a bi-weekly basis and is not subject to employee or employer retirement contributions, and as a result, will not be included in computing the average final compensation for retirement purposes. Any period covered by severance pay will not be counted as an active employment period for the purposes of earning retirement service credit or for qualifying for employer-paid insurance coverage.

Benefits

Employees who receive severance pay will be eligible for continuation of insurance coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 as amended (COBRA), at the employee's expense. Employees who retire with full, early or discontinued service retirement may be eligible for retiree health benefits under the "Voluntary Retirement" policy of the Apex Personnel Policies. No other benefits will apply after termination of employment.

Notice Requirements

Employees who are laid off due to a reduction in force will be given as much notice as possible and at least two weeks' notice of anticipated layoff. If this is not possible, employees will receive two weeks compensation in addition to the severance pay noted above.

Reinstatement

An employee in good standing who is separated because of a reduction in force will be given the first opportunity to be reinstated in the same or similar position within one year of separation. All sick leave will be reinstated as long as the employee has remained an active member of the North Carolina Local Government Retirement System, and other seniority-based benefits will be calculated based on total Town service.

Section 4. Disability

An employee who cannot perform the required duties with reasonable accommodation because

of a physical or mental impairment may be separated for disability. Action may be initiated by the employee or the Town. In cases initiated by the employee, such action must be accompanied by medical evidence acceptable by Human Resources. The Town may require an examination, at the Town's expense, performed by a physician of the Town's choice.

Section 5. Voluntary Retirement

An employee who meets the conditions set forth under the provision of the North Carolina Local Government Employee's Retirement System (NCLGERS) may elect to retire and receive all benefits earned under the retirement plan.

Section 6. Death

Separation shall be effective as of the date of death. All compensation due shall be paid to the estate of the employee.

Section 7. Dismissal

An employee may be dismissed in accordance with the provisions and procedures of Article IX.

Section 8. Reinstatement

An employee who is separated because of reduction in force may be reinstated within one year of the date of separation, upon recommendation of the Department Head, and upon approval of the Town Manager or their designee. An employee who is reinstated in this manner shall be re-credited with his or her previously accrued sick leave.

Section 9. Rehiring

An employee who resigns while in good standing may be rehired as a new employee, subject to all of the provisions of rules and regulations of this Policy. An employee in good standing who is separated due to a reduction in force shall be given the first opportunity to be rehired in the same or a similar position.

ARTICLE IX. UNSATISFACTORY JOB PERFORMANCE AND DETRIMENTAL PERSONAL CONDUCT

Section 1. Coverage

Article IX applies to all Town employees. While the Town will generally follow a progressive disciplinary process, employees may be separated from service at any time if the employee's job performance or conduct fails to meet the expectations of the supervisor and Department Head or if funding for the position is no longer available.

Section 2. Employee Legal Representation

The Town prohibits the participation or presence of an attorney or any form of legal representation in any informal or formal employer/employee meetings or conferences.

Section 3. Disciplinary Actions

When an employee fails to meet the job responsibilities of his or her position, the supervisor is responsible for correcting the failure and initiating disciplinary action when appropriate. Disciplinary action, when imposed, is for the purpose of improving employee and Town performance. Disciplinary action may be based on unsatisfactory job performance or detrimental personal conduct when the employee is not meeting the job performance requirements or personal conduct standards set for the position. The type of disciplinary action taken depends on the facts and circumstances of the situation, but may include a written warning, final written warning, suspension, demotion or dismissal.

Section 4. Unsatisfactory Job Performance Defined

Disciplinary Action may be taken for unsatisfactory job performance. Unsatisfactory job performance includes any aspect of the employee's job that is not performed as required to meet the standards set by the supervisor. Examples of unsatisfactory job performance include, but are not limited to, the following:

- 1) Demonstrated inefficiency, negligence, incompetence, or lack of prudent judgment in the performance of duties.
- 2) Careless, negligent or improper use of Town property or equipment.
- 3) Physical or mental inability to perform duties after reasonable accommodation.
- 4) Discourteous treatment of the public or other employees.
- 5) Disruption of work environment – displaying unproductive behaviors such as promoting rumors, bad-mouthing others and other demeaning behaviors distracting from a positive working environment.
- 6) Excessive absences, late reporting, absence without approved leave, or repeated improper use of leave privileges.
- 7) Failure to meet work standards established in work plan.

- 8) Failure to follow established departmental or Town policies and procedures.
- 9) Failure to carry out supervisor's assignments or instructions.
- 10) Failure to maintain credentials or license required for position.

Section 5. Detrimental Personal Conduct Defined

Detrimental personal conduct includes behavior, whether on-duty or off-duty, intentional or unintentional, of such a serious detrimental nature that the functioning of the Town may be or has been impaired; the safety of persons or property may be or have been threatened; the laws of any government may be or have been violated or public confidence in Town government is likely to be undermined. Examples of detrimental personal conduct include, but are not limited to, the following:

- 1) Fraud, theft or dishonesty
- 2) Conviction of a felony or the entry of a plea of *nolo contendere* thereto.
- 3) Falsification of records for personal profit, to grant special privileges, or to obtain employment.
- 4) Misusing or directing the misuse of Town work time, funds, equipment or property.
- 5) Careless, negligent, reckless, willful or wanton damage to or destruction of Town property.
- 6) Careless, negligent, reckless, willful or wanton acts that endanger the lives or property of others.
- 7) Possession of unauthorized firearms or other lethal weapons on the job.
- 8) Communication of a threat or engaging in threatening behavior;
- 9) Brutality in the performance of duties.
- 10) Any violation of the Town's Drug and Alcohol Policy.
- 11) Engaging in incompatible employment or serving a conflicting interest.
- 12) Request or acceptance of gifts in exchange for favors or influence.
- 13) Engaging in political activity prohibited by the Town's Personnel Policies.
- 14) Engaging in acts during or outside duty hours that negatively affect the image of the Town and which interfere with the working relationship between the employee and co-workers or between the employee and the public that employee serves.
- 15) Harassment of an employee or the public with threatening, obscene or derogatory language or gestures.
- 16) Stated refusal to perform assigned duties (insubordination) or flagrant violation of work rules and regulations.
- 17) Flagrant behavior or repeated rude or uncivil behavior directed toward citizens or co-workers.
- 18) Workplace Violence or workplace harassment.

Section 6. Disciplinary Action Process for Unsatisfactory Job Performance

An employee whose job performance is unsatisfactory or grossly inefficient will normally receive progressive warnings before disciplinary action resulting in suspension, demotion or dismissal is taken by the Department Head or the Town Manager; however, the Town reserves the right to administer any disciplinary action, up to and including dismissal, at any time under employment at-will. When appropriate, progressive warnings should include the following steps:

1. When an employee's job performance is unsatisfactory, or when incidents or inappropriate actions warrant, the supervisor should meet with the employee as soon as possible in one or more counseling sessions to discuss specific performance problems. A brief summary of these counseling sessions should be noted in the employee's file by the supervisor.
2. An employee whose job performance remains unsatisfactory over a period of time normally would receive at least one written warning in addition to a final written warning from the supervisor before suspension, demotion or dismissal are initiated. The first written warning would include the dates of discussions with the employee, the performance deficiencies discussed, the corrective actions recommended, and the time frames set for improvement. A copy of each written warning should be submitted to Human Resources for placement in the employee's personnel file.
3. If the employee's performance continues to be unsatisfactory after one or more written warnings, then the supervisor should give the employee a final written warning serving notice that corrected performance must take place immediately in order to avoid disciplinary suspension, demotion or dismissal. A copy of the final written warning should be submitted to Human Resources for placement in the employee's personnel file.
4. In the event that the employee's performance fails to improve after the final written warning, or if the employee's performance deficiency is the result of one incident severe enough that it negatively impacts on the image of the Town or compromises the safety of persons or property, or creates significant financial liability for the Town, then the supervisor may recommend disciplinary demotion, suspension or dismissal by following the process outlined in Section 7 of this policy.

Section 7. Disciplinary Action for Detrimental Personal Conduct

With the approval of the Town Manager, an employee may be placed on disciplinary suspension, demoted or dismissed without prior warning due to personal conduct detrimental to town service in order to avoid undue disruption of work, to protect the safety of persons or property, or for other serious reasons. When an employee is suspended or dismissed immediately, the employee may be told to leave town property at once and either to report to a supervisor at a specific time or to remain away until further notice.

Section 8. Notification of disciplinary action

Supervisors are encouraged to meet with employees to inform them of proposed disciplinary actions for suspensions, demotions, and dismissals. The intent of the meeting is to notify the employee of the proposed disciplinary action and provide an opportunity for the employee to provide further information, if any, for the supervisor to consider in making a final decision. While this meeting is encouraged, it does not prevent the Town from taking disciplinary action, up to and including dismissal, without prior notice, when necessary.

Section 9. Disciplinary actions relating to special job requirements

An employee may be placed on disciplinary suspension, demoted or dismissed for failing to obtain or maintain a required license, certificate, registration or similar document, or for failing to maintain a satisfactory driving record when driving town equipment or vehicles is a job requirement.

Section 10. Non-Disciplinary Suspension

The Department Head may suspend an employee with pay for the following reasons. Any suspension without pay requires approval of the Human Resources Director.

1. To investigate the circumstances surrounding any alleged violation of any Federal, State or Town laws, statutes, ordinances, rules, regulations or policies.
2. To investigate any alleged act or omission in the scope and course of employment which might constitute a criminal offense.
3. To investigate when an employee is charged with a criminal offense or becomes a party to a civil action or other non-criminal proceeding not arising out of the scope or course of employment to determine if the circumstances of the case cast substantial doubt on the employee's ability to satisfactorily perform their normal duties, or result in a lack of public confidence in the delivery of Town services if the employee were to remain employed.

Following an investigation of an employee's actions which involve possible criminal charges or civil actions, the Department Head may take disciplinary action even if criminal or civil proceedings are pending. After conclusion of the criminal or civil proceedings, the Department Head may review the initial disciplinary decision to determine if additional disciplinary action is necessary.

If an employee is placed on an unpaid non-disciplinary suspension and is reinstated following the suspension, the employee shall not lose any compensation or benefits to which the employee would have been entitled had the suspension not occurred. All health, dental and life insurance benefits are maintained during the period of non-disciplinary suspension.

Section 11. Disciplinary Suspension and Deductions

Deductions from pay of exempt employees may be made for unpaid disciplinary suspensions imposed in good faith for infractions of workplace conduct rules and/or workplace safety violations, in accordance with Federal and State regulations.

ARTICLE X. COMPLAINT RESOLUTION PROCESS

Section 1. Purpose

The Town recognizes that there are times when the need arises for employees to express concerns or complaints in a formal manner. The following procedures will ensure that employees receive a fair and unbiased review of workplace concerns.

The timelines that are listed below (both for the employee and supervisor/Town Manager) are intended to provide a quick and prompt response to concerns/complaints; however, these timelines may be modified, if needed, upon mutual agreement of the employee and supervisor/Town Manager. Any agreed upon changes to the timeline should be documented in writing by both parties.

Section 2. Procedures

Step 1: Informal discussion with supervisor

Employee concerns should first be discussed with the employee's immediate supervisor. Many concerns can be resolved informally when an employee and supervisor take time to review the concern and discuss options to address the issue.

Step 2: Written complaint to supervisor

If the employee is not satisfied with the results of the informal discussion in Step 1, the employee may submit a written complaint within fifteen calendar days of the event or within fifteen calendar days of learning of the event to his or her appropriate supervisor (the person who took the action which created the concern - could be immediate supervisor, division head, Department Head, etc.) to include:

- The nature of the complaint.
- Detailed information including evidence of the issue, witnesses, related policies, etc.
- The remedy or outcome desired.

The supervisor will have ten calendar days to respond to the employee in writing.

If the employee complaint is regarding illegal harassment, discrimination or retaliation, the employee should submit the written complaint directly to Human Resources.

Step 3: Written complaint to next level supervisor

If the employee is not satisfied with the response from the supervisor, the employee may submit a written complaint to next level supervisor (Division Head, Department Head, Town

Manager, etc.) for review within ten calendar days after received of the response from Step 2. A copy should also be sent to Human Resources. The request for review should include:

- An explanation of the complaint and details of all previous efforts to resolve the issue.
- A copy of the written complaint submitted to the immediate supervisor.
- A copy of the immediate supervisor's written response to the employee's complaint.
- Detailed information regarding the employee's dissatisfaction with the immediate supervisor's response.

The next level supervisor will have ten calendar days to respond to the employee in writing.

Step 4: Written complaint to the Town Manager

If the employee is not satisfied with the response in Step 3, the employee may submit a written complaint to the Town Manager for review. A copy should also be sent to Human Resources. The request for review should include:

- An explanation of the complaint and details of all previous efforts to resolve the issue.
- A copy of the written complaint submitted to all previous supervisors.
- A copy of the previous supervisors' written responses to the employee's complaint.
- Detailed information regarding the employee's dissatisfaction with the previous supervisor's response.

The Town Manager will consult with the employee's immediate supervisor, Human Resources and any other relevant parties to evaluate the complaint and provide a written response to the employee within ten calendar days after receipt of the written concern. The outcome of the review by the Town Manager will be final unless new evidence or other circumstances warrant additional review of the complaint. The Town Manager would notify the Town Council of any impending legal action.

Section 3. Recordkeeping

Human resources will maintain records of the complaint resolution process confidentially and securely.

ARTICLE XI. RECORDS AND REPORTS

Section 1. Public Information

In compliance with GS 160A-168(b), the following information with respect to each Town employee is a matter of public record: name; age; date of original employment or appointment to the service; current position title; current salary; date and amount of each increase or decrease in salary; date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification; date and general description of the reasons for each promotion; date and type of each dismissal, suspension or demotion for disciplinary reasons. If the disciplinary action was a dismissal, a copy of the written notice of the final decision setting forth the specific acts or omissions that are the basis of the dismissal; and the office to which the employee is currently assigned. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the Town may adopt.

Section 2. Access to Confidential Records

All information contained in a Town employee's personnel file, other than the information mentioned above is confidential and shall be open to inspection only in the following instances:

1. The employee or his/her duly authorized agent may examine all portions of his/her personnel file except letters of reference solicited prior to employment, and information concerning a medical disability, mental or physical, that a prudent physician would not divulge to the patient.
2. A licensed physician designated in writing by the employee may examine the employee's medical record.
3. A Town employee having supervisory authority over the employee may examine all material in the employee's personnel file.
4. By order of a court of competent jurisdiction, any person may examine all material in the employee's personnel file.
5. An official of an agency of the State or Federal Government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the Town Manager to be necessary and essential to the pursuit of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution of the employee, or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of the personnel records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.
6. An employee may sign a written release to be placed in his/her personnel file that permits the record custodian to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.

7. The Town Manager, with the concurrence of the Town Council, may inform any person of the employment, non-employment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a Town employee, and the reasons for that action. Before releasing that information, the Town Manager shall determine in writing that the release is essential to maintaining the level and quality of Town services. The written determination shall be retained in the Town Manager's office, is a record for public inspection, and shall become a part of the employee's personnel file.

Section 3. Personnel Actions

The Human Resources Director, with the approval of the Town Manager, will prescribe necessary forms and reports for all personnel actions and will retain records necessary for the proper administration of the personnel system. The official personnel files are those which are maintained in the Human Resources Department. These files shall contain documents such as employment applications and related materials, records of personnel actions, documentation of employee warnings, disciplinary actions, performance evaluations, retirement and insurance records, letters of recommendation, and other personnel-related documents.

Section 4. Records of Former Employees

The provisions for access to records apply to former employees as they apply to present employees.

Section 5. Remedies of Employees Objecting to Material in File

An employee who objects to material in his/her file may place a statement in the file relating to the material considered to be inaccurate or misleading. The employee may seek removal of such material in accordance with established complaint resolution procedures.

Section 6. Penalties for Permitting Access to Confidential Records

Section 160A-168 of the General Statutes provides that any public official or employee who knowingly and willfully permits any person to have access to any confidential information contained in an employee personnel file, except as expressly authorized by the designated custodian, is guilty of a misdemeanor and upon conviction shall be fined in an amount consistent with the General Statutes.

Section 7. Examining and/or Copying Confidential Material without Authorization

Section 160A-168 of the General Statutes of North Carolina provides that any person, not specifically authorized to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a misdemeanor and upon conviction shall be fined consistent with the General Statutes.

Section 8. Destruction of Records Regulated

No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with GS 121.5, without the consent of the State Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or whoever alters, defaces, mutilates or destroys it will be guilty of a misdemeanor and upon conviction will be fined in an amount provided in Policy 132.3 of the General Statutes.

PART XII. IMPLEMENTATION OF POLICIES

Section 1. Conflicting Policies Repealed

All policies, ordinances, or resolutions that conflict with the provisions of these policies are hereby repealed.

Section 2. Separability

If any provision of these policies or any rule, regulation, or order there under of the application of such provision to any person or circumstances is held invalid, the remainder of these policies and the application of such remaining provisions of these policies of such rules, regulations, or orders to persons or circumstances other than those held invalid will not be affected thereby.

Section 3. Amendments

The Town Council has the authority to amend, revise, or repeal all or any portion of this policy as it sees fit.

Section 4. Effective Date

These policies shall become effective on January 14, 2025.

Section 6. Secondary Employment

The work of the Town shall have precedence over other occupational interests of employees. All outside employment for salaries, wages, or commission and all self-employment must be reported in advance to the employee's supervisor, who in turn will report it to the Department Head. The Department Head will review such employment for possible conflict of interest and decide whether to approve the work.

Conflicting or unreported outside employment is grounds for disciplinary action up to and including dismissal.

Secondary employment is not permitted when it:

- Creates either directly or indirectly a conflict of interest with the Town, or
- Brings discredit to the Town or conflicts with the Town's goals, mission, or vision, or
- Impairs the employee's ability to perform all expected duties, and/or the ability to make decisions and carry out in an objective view the duties and responsibilities of the Town.

No regular employees are permitted to work a second job with the Town.

Special exceptions to the rules above may be made, with the approval of the Town Manager, when deemed to be in the best interest of the Town.

Approval for secondary employment may be withdrawn at any time if it is determined that secondary employment has an adverse impact on primary employment. Secondary Employment arrangements should be reviewed annually for approval.

Section 18. Family and Medical Leave

The Family Medical Leave Act (FMLA) policy is followed in accordance with federal regulations (29 U.S.C. § 2619). Employees who have at least 12 months of service and have worked at least 1,250 hours in the last consecutive 12 months are eligible. Employees who have questions concerning eligibility should contact the Human Resources Department.

FMLA provides for up to 12 weeks of unpaid leave under the following circumstances:

- a) For the birth of a child and to bond with the newborn child
- b) For the placement of a child with the employee for adoption or foster care, and to bond with that child
- c) To care for a parent, spouse or child with a serious health condition.
- d) The employee's own serious health condition makes the employee unable to perform the functions of his or her job
- e) For qualifying exigency arising out of the fact that the spouse, child, or parent of the employee is on active duty or called to active duty status in the National Guard or Reserves during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation, or Regular Armed Forces during deployment to a foreign country.

The FMLA also provides for up to 26 weeks of unpaid leave for eligible employees to care for a covered service member during a single 12-month period.

Employees who do not qualify for FMLA may still be eligible for the Town's Paid Parental Leave or Paid Caregiver Leave programs discussed in this Article.

Depending on circumstances, it may be permissible to use FMLA leave intermittently. The Town reserves the right to consider individual circumstances and needs in conjunction with business demands and federal/state requirements.

Certification and Eligibility Requirements:

- 1) Employees may request FMLA leave by submitting a FMLA Employee Request Form to their Supervisor or Human Resources. Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days' notice is not possible, the employee must provide notice as soon as practicable and generally must comply with the Town's normal call-in procedures.
- 2) The Town may require medical certification to assess FMLA eligibility, as well as updates at reasonable intervals for continued certification. If there is reason to doubt the validity of the medical certification, the Town may require the employee to get a second opinion. If the second opinion differs from the original certification provided, the Town may require the employee to

get a third opinion, at which time the doctor will be jointly selected by the employee and the Town. The third opinion will be final and binding on both parties. The burden of the cost of the second and third opinions will be at the expense of the Town.

- 3) If the Town requires medical certification for leave the employee must provide sufficient information to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Employees also must inform the Town if the requested leave is for a reason for which FMLA leave was previously taken or certified. Failure to provide adequate information within fifteen calendar days may result in delayed or denied FMLA leave/protection until proper certification can be obtained.
- 4) The Town reserves the right to waive certification and can place the employee on leave upon learning of the employee's circumstances, even if the employee has not yet requested FMLA leave or the request is pending the completion of the FMLA certification forms.
- 5) Generally, FMLA approved leave will begin on the first day of absence, when the leave is foreseeable. In the event of an unplanned leave, individual needs/circumstances, in accordance with federal regulations, will be reviewed to determine the appropriate start date of FMLA leave.
- 6) An eligible employee is entitled to up to twelve or twenty-six workweeks of leave, depending on circumstances – as identified above, on a rolling 12- month period measured backward from the date of any FMLA leave usage. If the employee returns to work before the twelve or twenty-six weeks is depleted and is able to physically perform his/her duties, the employee will be reinstated to the original, or equivalent position, with equivalent pay, benefits and other employment terms. If the twelve or twenty-six weeks of this leave are exhausted and the employee has not returned to work, the Town will determine if the employee will be reinstated.
- 7) Employees will be required to deplete their earned compensatory time and vacation leave during FMLA before being granted unpaid leave. If the approved FMLA is for circumstances for which sick leave usage is permissible per Town policy, then sick leave must also be depleted before being granted unpaid leave.
- 8) All benefits will continue to accrue during a period of paid leave.
- 9) When an employee is on leave under FMLA, the Town will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work. If an employee chooses not to return to work for reasons other than a continued serious health condition, the Town will require the reimbursement of the amount paid for the employee's health insurance premium during the FMLA leave period. Other insurance and payroll deductions are the responsibility of the employee and the employee must make those payments for continued coverage of that benefit.
- 10) Employees who are out of work under the provisions of FMLA are prohibited from engaging in any secondary employment during what would be their normal scheduled workday. Employees on leave as a result of their own serious health condition are NEVER approved for secondary employment. Employees who work secondary employment while on FMLA during what would have been normal work hours are considered to have voluntarily terminated their employment with the Town. Police employees may work extra-duty assignments while on FMLA with prior approval from the Chief of Police, in consultation with HR. Each request will be reviewed on a case by case basis.
- 11) Short-term disability, workers' compensation and approved medical leave of absence will run concurrently with FMLA leave.
- 12) An employee who is approved for FMLA for a personal illness or injury will not be allowed to

return to work without a completed Fit for Duty Form, unless the employee was out to care for a family member or for birth of a child (Police sworn personnel who have given birth to a child must still complete the Fit for Duty form). An employee who does not return to work within three working days after their FMLA expires will be considered to have voluntarily terminated their employment with the Town.

It is the responsibility of the immediate supervisor to begin the process of placing the employee on leave. If a supervisor observes that an employee is out sick more than three consecutive days, the supervisor is to notify the Human Resources Department. If a supervisor is told by an employee that the employee will need to be out for an extended period of time for reasons other than a normal vacation, the supervisor is to notify Human Resources and instruct the employee to do the same.

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: April 08, 2025

Item Details

Presenter(s): Steve Adams, Real Estate and Utilities Acquisition Specialist

Department(s): Transportation and Infrastructure Development

Requested Motion

Motion to approve the acquisition of property located at 0 Pristine Water Drive (Recombination Plat Pin No 0741-93-8441 and 0741-93-2178) in Apex, North Carolina, for a purchase price of \$15,000.00, to authorize the Town Attorney or Town Manager make minor modifications to the Offer to Purchase and Contract not affecting the cost or acreage, and authorize the Town Manager, or their designee, to execute on behalf of the Town.

Approval Recommended?

Yes

Item Details

The Town of Apex has the opportunity to purchase .9468 acres adjacent to Town on property on Pristine Water Drive . The area is highlighted in the attached unrecorded map will capture a portion of the future Pristine Water drive and areas needed for future utility easements. The area is being subdivided from the larger Dixie Pipeline parcel and recombined with Town owned property.

Attachments

- CN10-A1: Offer to Purchase and Contract - Property Acquisition 0 Pristine Water drive - Apex, North Carolina
- CN10-A2: Unrecorded Plat by Smith & Smith Surveyors - for 0 Pristine Water Drive -Apex, North Carolina



Real Estate Sales Contract

This Real Estate Sales Contract (“**Contract**”) is entered into by and between the Seller and Buyer identified below and is effective on the date (“**Effective Date**”) of the last of the signatures by Seller and Buyer as parties to this Contract.

Seller: **DIXIE PIPELINE COMPANY LLC**
1100 Louisiana
Houston, Texas 77002
Attention: Elizabeth Neidlinger
Phone: 713-381-3111
E-Mail: eaneidlinger@eprod.com

Seller’s Attorney: Parker Poe Adams & Bernstein LLP
Attn: Brandon Bordeaux
PNC Plaza
301 Fayetteville Street
Suite 1400
Raleigh, NC 27601
Phone: 919-890-4179
E-Mail: brandonbordeaux@parkerpoe.com

Buyer: **TOWN OF APEX**
73 Hunter Street
P.O. Box 250
Apex, North Carolina 27502

Phone: 919-249-3400

Buyer’s Attorney: Chris Welch, Assistant Town Attorney
Phone: 919-372-7479
E-Mail: christopher.welch@apexnc.org

Property: That certain real property commonly known as Pristine Water Drive and associated fee property, containing approximately 0.9468 acres, as more particularly described on **Exhibit A** attached hereto and incorporated herein for all purposes (the “**Land**”); together with all of Seller’s right, title and interest, if any, in (i) all access, development rights, entitlements, utility commitments, permits, water and wastewater taps and connection rights, if any, each and only to the extent related to the Land and to the extent transferrable (“**Entitlements**”), (ii) all streets, easements, alleys, rights of way, strips, gores and roadways in, upon and bounding and benefiting the Land, and (iii) all minerals in, on or under the Land (collectively, the “**Property**”).

Purchase Price: The purchase price (“**Purchase Price**”) to be paid by Buyer to Seller for the Land shall be Fifteen Thousand Dollars (\$15,000.00).

Independent Contract

Consideration: The parties agree that the sum of Five Hundred Dollars (\$500.00) shall be deemed to be independent consideration (the “**Independent Contract Consideration**”) which amount the parties bargained for and agreed to as consideration for Seller’s grant to Buyer of Buyer’s right to purchase the Property pursuant to the terms of this Contract and for Seller’s execution, delivery and performance of this Contract. The Independent Contract Consideration shall be paid to Seller within five (5) business days of the Effective Date and is in addition to and independent of any other consideration or payment provided in this Contract, is non-refundable under any circumstances (but will be applied to the Purchase Price) and will be retained by Seller notwithstanding any other provisions of this Contract.

A. Deadlines and Other Dates

All deadlines in this Contract expire at 5:00 P.M. local time where the Land is located. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government.

1. Delivery of Survey: On or before the expiration of forty-five (45) days after the Effective Date.
2. End of Inspection Period: Sixty (60) days after the Effective Date.
3. Closing Date: Within thirty (30) days after the End of the Inspection Period, but may be such earlier date as the parties may mutually agree.

B. Closing Documents

1. At closing, Seller will:
 - (a) Deliver a duly executed and acknowledged Special Warranty Deed in the form attached hereto as **Exhibit B** conveying the Land according to the legal description shown on the Survey of the Land;
 - (b) Deliver a certification of Seller to the effect that Seller is not a “foreign person” as defined in 7701(a)(1) and 7701(a)(5) of the Internal Revenue Code of 1954, as amended, in the form attached hereto as **Exhibit C**;
 - (c) Deliver an incumbency certificate authorizing Seller to close this transaction;

(d) Deliver such other documents as are customarily executed in the State of North Carolina in connection with the conveyance of real property, including all required Closing statements, releases, and affidavits, all of which shall be subject to Seller's approval;

(e) Deliver full and immediate possession of the Land.

2. At closing, Buyer will deliver the following items:

(a) The Purchase Price, less the Independent Contract Consideration, in cash or other readily available funds;

(b) Evidence of Buyer's authority to consummate this transaction;

(c) Notices, statements, certificates, or other documents required by this Contract or law necessary to close the sale of the Land; and

(d) Such other documents as are customarily executed in the State of North Carolina in connection with the conveyance of real property, including all required Closing statements, releases, affidavits, evidences of authority to execute the documents and consents to the purchase.

The documents listed in this **Paragraph B** are collectively known as the "**Closing Documents**."

C. Exhibits

The following are attached to and are a part of this Contract:

<u>Exhibit A</u>	-	Description of the Land
<u>Exhibit B</u>	-	Special Warranty Deed Form
<u>Exhibit C</u>	-	Non-Foreign Affidavit Form
<u>Exhibit D</u>	-	Seller's and Buyer's Representations

D. Purchase and Sale of Property

Seller agrees to sell and convey its interest in the Property to Buyer, and Buyer agrees to buy and pay Seller for the Property, pursuant to the terms and conditions of this Contract. The promises by Buyer and Seller stated in this Contract are the consideration for the formation of this Contract.

E. Survey

1. Survey. Prior to the deadline specified in **Paragraph A.1** above, Buyer, at its sole cost and expense, shall obtain a new ALTA survey of the Land (the "**Survey**") by a registered surveyor. The legal description contained on the Survey will be used for the Closing Documents to convey the Land, subject to Seller's approval.

2. Survey Objections. Provided that Seller delivers objections to the Survey by the deadline provided in **Paragraph A.1**, Buyer shall notify Seller of Buyer's objections to the Survey ("**Survey Objections**"). Buyer will be deemed to have approved all matters reflected by the Survey to which Buyer has made no Survey Objection by the Survey Objection Deadline. The standard taxes and assessments for the year in which the Closing occurs and subsequent years, such state of facts which would be shown by a current survey of the Property and not timely objected to by Buyer pursuant to this Agreement, approved by Buyer or not timely objected to by Buyer pursuant to this Contract. If Buyer properly notifies Seller of any Survey Objections prior to the deadline for doing so, Seller shall have fifteen (15) days from receipt of Buyer's notice to notify Buyer whether Seller agrees to cure any such Survey Objections before closing ("**Cure Notice**"). Notwithstanding anything to the contrary contained herein, Seller shall have no obligation to bring any action or proceeding or otherwise to incur any expense whatsoever to eliminate or modify Buyer's Survey Objections, other than to remove any monetary liens, security interests and claims of liens or security interests (other than the lien for non-delinquent taxes that are arising by, through or at the direction of Seller) ("**Seller Cure Items**"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure any or all of the Survey Objections before closing, Buyer may, as its sole and exclusive remedies, within five (5) days after Buyer's receipt of Seller's Cure Notice or the deadline for the giving of Seller's Cure Notice (if Seller failed to deliver its Cure Notice), either (a) give Seller written notice that Buyer has elected to terminate this Contract, which termination shall be effective immediately or (b) give Seller notice that Buyer will proceed to close and waives any such objections in which event Seller shall be obligated to cure only the Survey Objections that Seller has agreed to cure in the Cure Notice, if any. If Buyer fails to terminate this Contract as provided in the immediately preceding sentence, Buyer shall be deemed to have elected option (b) above.

G. Inspection Period

1. Inspection Period. Buyer shall have until the deadline specified in **Paragraph A.2** above within which to conduct a due diligence inspection of the Land upon twenty-four (24) hours' written notice to Seller (hereinafter referred to as the "**Inspection Period**"). Written notice under the aforementioned sentence shall be sent to Liz Neidlinger at EANEIDLINGER@eprod.com. Buyer may conduct a Phase I environmental site assessment of the Land and make a geotechnical study (including, without limitation, normal geo-tech soil borings consistent with a Phase I study) at Buyer's sole cost and expense, without Seller's consent, but with providing Seller forty-eight (48) hours' written notice prior to performing a geotechnical study disclosing the time, date, and scope of the work that will be performed and, at Seller's option and sole cost, Seller may provide a representative to be present at the testing. Seller shall cooperate in good faith during Buyer's performance of the inspections. Buyer may only conduct a Phase II environmental site assessment (a "**Phase II**") with Seller's express written consent and at Buyer's sole cost and expense. Buyer agrees that any **Phase II** results will be kept confidential by Buyer, its environmental consultants, legal counsel, and other agents, and Buyer shall not disclose the **Phase II** results in any manner without the prior written consent of Seller. Notwithstanding the foregoing, Buyer may disclose **Phase II** results: (a) as may be required by law or by an order of a court of other governmental authority; and/or (b) if the disclosure is of information that is or becomes a matter of public record or public knowledge other than by way of a breach of this Contract by Buyer. Buyer may also

conduct such studies or tests as Buyer deems necessary (other than a **Phase II**, which Buyer may not conduct without Seller's express written consent), at Buyer's sole cost and expense, including topographical, engineering and feasibility studies, zoning, utility and wastewater capacity and availability and other similar work. Buyer will restore any area of the Property disturbed by Buyer to as near its original condition as possible. Buyer shall release, defend, indemnify and hold harmless the Land, Seller and all of Seller's partners, officers, trustees, representatives, beneficiaries, agents and employees from and against any claims, losses, damages, costs, expenses (including court costs and reasonable attorneys' fees), liens, personal injury, and/or liabilities occasioned by or arising from any action or omission by Buyer, or any person acting as agent, contractor, employee or otherwise on behalf of Buyer, in connection with any access or activity on the Land including, but not limited to, holding the Land and Seller harmless and free from any mechanic's or materialmen's lien arising out of such activities. Buyer's indemnity shall not apply to, and Buyer shall not be obligated to, repair any pre-existing conditions of the Property merely discovered by Buyer's inspections or tests. The obligations of the Buyer under this paragraph shall survive the closing and any termination of this Contract.

Buyer shall, in its sole discretion, determine whether the Land, or any aspect thereof, is suitable to Buyer and, should the Land not prove satisfactory for any reason in the sole and absolute discretion of Buyer, this Contract may be terminated at Buyer's option by Buyer giving written notice of same to Seller on or before the expiration of the Inspection Period, in which case this Contract shall terminate automatically and unconditionally and the Parties shall have no further liability one to the other, except for any obligations expressly surviving hereunder.

If this Contract is terminated as provided in this **Paragraph G.1**, Buyer shall (a) promptly return to Seller or destroy any documents that Seller delivered to Buyer and destroy or eliminate all electronic copies or versions of such documents in Buyer's and its agent's, representative's, and advisor's possession and (b) deliver to Seller, if Seller so requests, copies of any or all reports, studies, inspections prepared by or for Buyer regarding the Land specifically excluding any proprietary information.

If Buyer has not notified Seller in writing on or before the expiration of the Inspection Period that the Land is not satisfactory and that Buyer has terminated this Contract, then (a) Buyer shall be deemed to have approved the Land in all respects and (b) the parties shall proceed to closing, Buyer being deemed to have waived its right to terminate this Contract under this **Paragraph G.1**.

2. Cooperation. Seller covenants and agrees that during the Inspection Period Seller shall reasonably cooperate with Buyer with respect to any reasonable request in furtherance of Buyer's evaluation, inspection, audit, or study of the Land; provided, however, that Seller shall not be obligated to incur any cost or expense or liability in connection therewith and the Closing Date shall not be extended for such purposes.

H. Representations/Property Condition

1. Representations: The parties' representations stated in **Exhibit D** are true and correct as of the Effective Date and must be true and correct on the Closing Date.

2. “As Is, Where Is” Condition: Notwithstanding anything contained in this Contract to the contrary, Buyer acknowledges and understands and agrees:

A. THAT EXCEPT FOR THE REPRESENTATIONS EXPRESSLY SET FORTH IN THIS CONTRACT, NEITHER SELLER NOR ANY PARTNER, AGENT, EMPLOYEE, ATTORNEY, CONTRACTOR, OR REPRESENTATIVE OF SELLER HAS MADE ANY (AND SELLER SPECIFICALLY DISCLAIMS ANY) REPRESENTATION OR WARRANTY, WHETHER STATUTORY, EXPRESS OR IMPLIED, REGARDING THE SUBJECT MATTER OF THIS CONTRACT OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO (I) THE DEVELOPMENT POTENTIAL OF THE LAND OR THE VALUE, NATURE, QUALITY, OR CONDITION OF THE LAND, INCLUDING, WITHOUT LIMITATION, ACCESS, SIZE, PERMITS, ZONING, UTILITY SERVICES OR WATER, SANITARY SEWER OR STORM SEWER CAPACITY OF THE LAND; (II) THE INCOME, PROFITS, VALUE, OR FINANCIAL GAIN TO BE DERIVED FROM THE LAND; (III) THE SUITABILITY OF THE LAND FOR ANY AND ALL ACTIVITIES, OPERATIONS, AND USES WHICH BUYER MAY CONDUCT THEREON; (IV) THE DISPOSAL OR EXISTENCE, IN OR ON THE LAND, OF ANY ASBESTOS, PCB EMISSIONS, RADON GAS, HYDROCARBONS, AND HAZARDOUS OR TOXIC MATERIALS; (V) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE LAND; (VI) THE EXISTENCE OR NON-EXISTENCE OF WETLANDS; OR (VII) THE COMPLIANCE OF THE LAND AND ITS USE WITH ANY LAWS OR REGULATIONS (REGARDLESS OF APPLICABILITY) PROMULGATED BY ANY GOVERNMENTAL AUTHORITY;

B. THAT EXCEPT FOR THE REPRESENTATIONS EXPRESSLY SET FORTH IN THIS CONTRACT, BUYER, IN EXECUTING, DELIVERING, OR PERFORMING UNDER THIS CONTRACT, IS NOT RELYING UPON ANY STATEMENT OR INFORMATION TO WHOMSOEVER GIVEN, DIRECTLY OR INDIRECTLY, BY SELLER OR ANY PARTNER, AGENT, EMPLOYEE, ATTORNEY, CONTRACTOR, OR OTHER REPRESENTATIVE OF SELLER;

C. THAT THE INSPECTION PERIOD PROVIDED PURSUANT TO THIS CONTRACT GIVES BUYER AMPLE OPPORTUNITY TO CONDUCT ALL INSPECTIONS, ENGINEERING STUDIES, REPORTS, FEASIBILITY STUDIES, REVIEWS, AND EXAMINATIONS OF THE LAND, AND OTHER MATTERS RELEVANT TO THE LAND AS DEEMED NECESSARY OR DESIRABLE BY BUYER;

D. THAT EXCEPT FOR THE REPRESENTATIONS EXPRESSLY SET FORTH IN THIS CONTRACT AND FOR THE LIMITED WARRANTY OF TITLE TO BE CONTAINED IN THE SPECIAL WARRANTY DEED TO BE DELIVERED AT CLOSING, BUYER WILL RELY SOLELY UPON ITS OWN INSPECTIONS, ENGINEERING STUDIES, REPORTS, FEASIBILITY STUDIES, REVIEWS, AND EXAMINATIONS OF THE LAND, AND OTHER MATTERS RELEVANT TO THE LAND IN MAKING DECISION TO PURCHASE THE LAND;

E. THAT EXCEPT FOR BUYER'S RIGHT TO TERMINATE THIS CONTRACT AS SET FORTH IN **PARAGRAPH G.1**, TO TAKE THE LAND "AS IS" AND "WHERE IS" WITH ALL FAULTS ON THE CLOSING DATE, WITHOUT ANY REPRESENTATION OR WARRANTY EXCEPT FOR THE LIMITED WARRANTY OF TITLE TO BE CONTAINED IN THE SPECIAL WARRANTY DEED TO BE DELIVERED AT CLOSING AND THE REPRESENTATIONS EXPRESSLY CONTAINED IN THIS CONTRACT BUT ONLY TO THE EXTENT THE SAME MAY EXPRESSLY SURVIVE THE CONTRACT;

F. THAT THE TOTAL PURCHASE PRICE REFLECTS ITS EXISTING CONDITION; AND

G. THAT THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE CLOSING OR ANY TERMINATION OF THIS CONTRACT.

H. ON AND AFTER CLOSING, AS BETWEEN BUYER AND SELLER, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF BUYER. ONCE CLOSING HAS OCCURRED, BUYER RELEASES SELLER FROM LIABILITY TO BUYER FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), OR THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA). BUYER FURTHER RELEASES SELLER FROM ANY LIABILITY TO BUYER FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON SELLERS IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.

I. Condition of the Land until Closing; No Recording of Contract

1. Maintenance and Operation. Until closing, Seller will (a) reasonably maintain the Property as it existed on the Effective Date, except for reasonable wear and tear and casualty damage, and use of the Property in the ordinary course of business; (b) operate the Property in a comparable manner as it was operated on the Effective Date; and (c) comply in good faith with all contracts and governmental regulations affecting the Property. Until the end of the Inspection Period, Seller will not enter into any new or amend or terminate any existing lease or contract that affects the Property without Buyer's prior written consent, which shall not be unreasonably withheld. After the end of the Inspection Period, Seller will not enter into any new lease or contract or amend or terminate any existing lease or contract that affects the Property without Buyer's prior written consent.

2. Condemnation. Seller will notify Buyer promptly after Seller receives notice that any part of the Land has been or is threatened to be condemned or otherwise taken by a governmental or

quasi-governmental authority. Buyer may terminate this Contract only if the condemnation would materially and substantially affect Buyer's intended use of the Land by giving notice to Seller within fifteen (15) days after receipt of Seller's notice to Buyer (or before Closing if Seller's notice is received less than fifteen (15) days before closing). If Buyer does not terminate this Contract, (a) Buyer and Seller will each have the right to appear and defend their respective interests in the Land in the condemnation proceedings, (b) any award in condemnation will be assigned to Buyer at Closing and (c) if the taking occurs before Closing, the description of the Land will be revised to delete the portion taken.

3. Claims; Hearings. Seller will notify Buyer promptly of any claim or administrative hearing that is threatened, filed, or initiated before closing that affects the Land.

4. No Recording. Neither Buyer nor Seller may file this Contract or any memorandum or notice of this Contract in the real property records of any county, without the prior written consent of the other party.

J. Termination

Duties after Termination. If this Contract is terminated, Buyer shall (a) promptly return to Seller or destroy any documents that Seller delivered to Buyer and destroy or eliminate all electronic copies or versions of such documents in Buyer's and its agent's, representative's, and advisor's possession and (b) deliver to Seller, if Seller so requests, copies of any or all reports, studies, inspections prepared by or for Buyer regarding the Land specifically excluding any proprietary information, provided that after return of the documents and copies, neither party will have further duties or obligations to the other under this Contract, except for those obligations that expressly survive termination.

K. Closing

1. Closing. This transaction will close by escrow on the Closing Date. At closing, the following will occur:

a. *Closing Documents.* The parties will execute and deliver the Closing Documents.

b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts Buyer is obligated to pay under this Contract by wire transfer or other readily available funds. The Independent Contract Consideration will be applied to the Purchase Price.

c. *Disbursement of Funds; Recording; Copies.* The parties will be instructed to record the deed and the other Closing Documents directed to be recorded and upon confirmation of such recording, disburse the Purchase Price and other funds in accordance with this Contract, and distribute documents and copies in accordance with the parties' written instructions.

d. *Possession.* Seller will deliver possession of the Land to Buyer, subject only to the Permitted Exceptions.

2. Transaction Costs.

a. *Seller's Costs.* Seller will pay the costs to prepare the Deed; the costs to obtain, deliver, and record releases of all liens to be released by Seller at Closing; the costs to record all documents to cure Survey Objections agreed, in writing, to be cured by Seller; and Seller's expenses and attorney's fees;

b. *Buyer's Costs.* Buyer will pay the costs to obtain, deliver, and record all documents other than those to be recorded at Seller's expense; the costs of the Survey; the costs to obtain financing of the Purchase Price, including the recording and taxes relating to any Buyer's financing of the Property; cost to record the Deed; and Buyer's expenses and attorney's fees.

c. *Ad Valorem Taxes.* Ad valorem taxes for the Land for the calendar year of closing will be prorated between Buyer and Seller as of the Closing Date. Seller's portion of the prorated taxes will be paid to Buyer at closing as an adjustment to the Purchase Price on the settlement statement. If the assessment for the calendar year of closing is not known at the Closing Date, the proration will be based on taxes for the previous tax year, and Buyer and Seller will adjust the prorations in cash within thirty (30) days of when the actual assessment and taxes are known. Seller will promptly notify Buyer of all notices of proposed or final tax valuations and assessments that Seller receives after the Effective Date and after closing. All taxes due as of closing will be paid at closing. This provision shall survive closing.

d. *Rollback Taxes.* Any additional ad valorem taxes relating to the year of Closing and/or prior years which arise due to the change in usage or ownership of the Land arising from this Contract ("**Rollback Taxes**") shall be the responsibility of Buyer. This provision shall survive Closing.

e. *Postclosing Adjustments.* If errors in the prorations made at closing are identified within ninety (90) days after closing, Seller and Buyer will make postclosing adjustments to correct the errors within fifteen (15) days of receipt of notice of the errors. This provision shall survive closing.

f. *Brokers' Commissions.* It is understood and agreed that the only brokers that have been involved in the negotiation and consummation of this Contract are the brokers identified as "**Seller's Broker**" and "**Buyer's Broker**" in the Defined Terms section of this Contract, if any. Notwithstanding anything to the contrary contained herein, the commissions are due and payable only in the event of the closing of the sale of the Land under this Contract. No commission shall be due and owing if this Contract is terminated, rescinded or otherwise does not close for any reason. Seller shall indemnify and hold harmless Buyer from and against all liabilities, costs, damages and expenses (including reasonable attorneys' fees), arising from any other claims for brokerage commissions or

other similar fees in connection with the transactions covered by this Contract insofar as such claims shall be based upon alleged arrangements or agreements made by Seller or on Seller's behalf. Likewise, Buyer shall indemnify and hold harmless Seller, from and against all liabilities, costs, damages and expenses (including reasonable attorneys' fees), arising from any claims for brokerage commissions or other similar fees in connection with the transactions covered by this Contract insofar as such claims shall be based upon alleged arrangements or agreements made by Buyer or on Buyer's behalf. Such indemnities shall survive the closing or any termination of the Contract and not be merged therein.

L. Default and Remedies

1. Buyer's Default. Buyer shall be in default hereunder if Buyer (i) fails to close timely or (ii) fails to comply with any of its other obligations hereunder and such failure continues for a period of five (5) days after written notice thereof from Seller to Buyer. Upon either such default, Seller shall be entitled to terminate this Contract, whereupon the parties shall have no further rights or obligations hereunder, except for those which expressly survive any such termination.

2. Seller's Default. Seller shall be in default hereunder if Seller (i) fails to close timely or (ii) fails to comply with any of its other obligations hereunder and such failure continues for a period of five (5) days after written notice thereof from Buyer to Seller. Upon either such default, Buyer shall, as Buyer's sole and exclusive remedies, be entitled to either (a) terminate this Agreement, whereupon the parties shall have no further rights or obligations hereunder, except for those which expressly survive any such termination, or (b) seek specific performance of Seller's obligations to convey the Property to Seller under this Contract and if Buyer succeeds in its action for specific performance, the conveyance of the Property will be pursuant to the requirements of this Contract.

3. Liquidated Damages. The parties agree that just compensation for the harm that would be caused by a default by either party cannot be accurately estimated or would be very difficult to accurately estimate and that the sum of One Thousand Five Hundred Dollars (\$1,500.00) is a reasonable forecast of just compensation to the non-defaulting party for the harm that would be caused by a default.

4. Attorney's Fees. If either party retains an attorney to enforce this Contract, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

M. Miscellaneous Provisions

1. Notices. Any notice required by or permitted under this Contract must be in writing and delivered to the person to whom the notice is directed, either (a) in person, or (b) by a recognized overnight courier service (such as Federal Express) that provides a delivery receipt, or (c) via electronic mail with confirmation of receipt requested. Any notice required by this Contract will be deemed to be delivered and received when first delivered to the address of the receiving party as stated herein or upon refusal of delivery (provided that electronic mail sent other than on a business day will be deemed given on the next business day thereafter). Any address for notice may be changed by written notice delivered as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given.

2. Entire Contract. This Contract, together with its exhibits, and any Closing Documents delivered at closing constitute the entire agreement of the parties concerning the sale of the Property by Seller to Buyer. There are no oral representations, warranties, agreements, or promises pertaining to the sale of the Property by Seller to Buyer not incorporated in writing in this Contract. Any portion of this Contract not otherwise consummated at the closing will survive the closing of this transaction as a continuing agreement by and between the parties and may be documented by a written agreement at closing upon the request of either party.
3. Amendment. This Contract may be amended only by an instrument in writing signed by the parties.
4. Assignment. Buyer shall not assign its rights or interests in this Contract to any third party without Seller's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the generality of the foregoing, Buyer may, without Seller's prior consent, assign all of Buyer's rights under this Contract to any existing or newly formed entity which is owned or controlled by, or under common control with, Buyer. Any such assignment by Buyer shall be further subject to the following conditions: (a) such assignee must assume, in a written agreement, all of Buyer's obligations hereunder, (b) Buyer shall provide Seller with written notice of such assignment and evidence that the foregoing condition is satisfied at least fourteen (14) days prior to the Closing Date and (c) Buyer shall nevertheless remain legally responsible for all obligations and liabilities under this Contract.
5. Survival. The obligations of this Contract that cannot be performed before termination of this Contract or before the Closing Date will survive termination of this Contract or closing, and the legal doctrine of merger will not apply to these matters. If there is any conflict between the Closing Documents and this Contract, the Closing Documents will control.
6. Choice of Law; Venue; Alternative Dispute Resolution. This Contract will be construed under the laws of the State of North Carolina, without regard to choice-of-law rules of any jurisdiction. Venue is in the county in which the Land is located. Time permitting, the parties will submit in good faith to an alternative dispute resolution process before filing a suit concerning this Contract.
7. Waiver of Default. It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays taking any action with respect to the default.
8. No Third-Party Beneficiaries. There are no third-party beneficiaries of this Contract.
9. Severability. The provisions of this Contract are severable. If a court of competent jurisdiction finds that any provision of this Contract is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.
10. Ambiguities Not to Be Construed against Party Who Drafted Contract. The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Contract.

11. No Special Relationship. The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.
12. Counterparts. If this Contract is executed in multiple counterparts, all counterparts taken together will constitute this Contract.
13. Confidentiality. The parties will keep confidential this Contract, this transaction, and all information learned in the course of this transaction, except to the extent disclosure is required by law or court order or to enable third parties to advise or assist Buyer to investigate the Land or either party to close this transaction.
14. Firm Offer. Buyer's execution of this Contract constitutes an offer to purchase the Property. Unless this Contract is accepted by Seller and a fully executed copy is delivered to Buyer within five (5) days of the date Buyer executed this Contract, then the offer of this Contract is fully revoked.
15. Binding Agreement. All of the terms and conditions of this Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
16. Captions. The captions used in connection with the Sections of this Contract are for convenience only and shall not be deemed to construe or limit the meaning of the language of the Contract.
17. Facsimile/Email Transmission. A telecopied facsimile or email copy of a duly executed counterpart of this Contract shall be sufficient to evidence the binding agreement of each party to the terms hereof. However, each party agrees to promptly return to the other an original, duly executed counterpart of this Contract.

[Signatures to follow]

IN WITNESS WHEREOF, the parties have executed this Contract on the date(s) indicated below but to be effective as of the Effective Date.

SELLER:

DIXIE PIPELINE COMPANY LLC, a Delaware limited liability corporation

By: _____
Graham W. Bacon, Executive Vice
President and Chief Operating Officer

Date: _____

BUYER:

TOWN OF APEX

By: _____

It's: _____

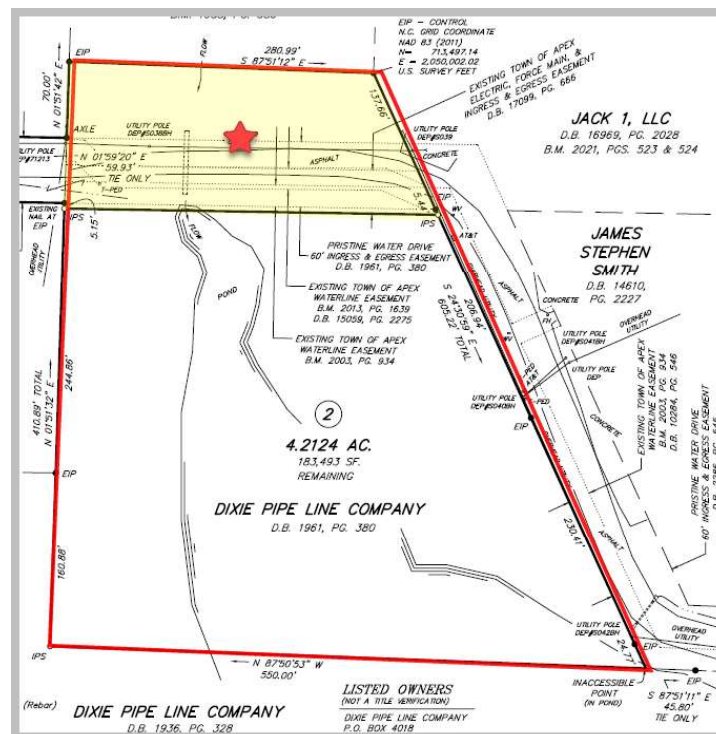
Date: _____

[Signature page to Real Estate Sales Contract]

Exhibit A**Description of the Land**

Lying and being in Town of Apex, White Oak Township, Wake County, North Carolina and described more fully as follows to wit:

BEGINNING at an existing iron pipe, the southeast corner of Apex Tool U.S. Real Estate Holding, LLC (D.B. 15329, Pg. 2263) and the southwest corner of Jack 1, LLC (D.B. 16969, Pg. 2028) having NAD 83 (2011) coordinate values of North 713,497.14 feet, East 2,050,002.02 feet; thence with Jack 1, LLC South $24^{\circ} 30' 59''$ East, 143.10 feet to an iron pipe set, a new property corner of Dixie Pipe Line Company (D.B. 1961, Pg. 380); thence a new property line with Dixie Pipe Line Company North $89^{\circ} 02' 57''$ West, 344.74 feet to an iron pipe set, a new property corner of Dixie Pipe Line Company; thence with Town Of Apex (D.B. 4145, Pg. 440) North $01^{\circ} 51' 32''$ East, 5.15 feet to an existing nail at an existing iron pipe; thence with a former property line North $01^{\circ} 59' 20''$ East, 59.93 feet to an existing axle, the southeast corner of Eastern Services Holdings, LLC (D.B. 13240, Pg. 462); thence with Eastern Services Holdings, LLC North $01^{\circ} 51' 42''$ East, 70.00 feet to an existing iron pipe, the southwest corner of Apex Tool U.S. Real Estate Holding, LLC; thence with Apex Tool U.S. Real Estate Holding, LLC South $87^{\circ} 51' 12''$ East, 280.99 feet to the BEGINNING, containing 0.9468 total acres (41,243 square feet) more or less as shown on a map prepared by Smith & Smith Surveyors, P.A. entitled "Recombination Plat For Town Of Apex and Dixie Pipe Line Company", dated September 21, 2018.

**Exhibit B**

NORTH CAROLINA SPECIAL WARRANTY DEED

Excise Tax: \$30.00

Real Estate ID: 0120972

PIN: 0741 93 8441

Mail after recording to: Grantee

This instrument was prepared by: Parker Poe Adams & Bernstein LLP, PO Box 389, Raleigh, NC 27601 (BGB)

Brief Description for the Index: Pristine Water Drive

THIS DEED made this _____ day of _____, 2025, by and between:

GRANTOR	GRANTEE
DIXIE PIPELINE COMPANY LLC , a Delaware limited liability company 1100 Louisiana Street Houston, TX 77002	TOWN OF APEX 73 Hunter Street P.O. Box 250 Apex, North Carolina 27502

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that Grantor, for a valuable consideration paid by Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto Grantee in fee simple, all that certain lot or parcel of land situated in the Sandhills Industrial Park, Moore County, North Carolina and more particularly described as follows:

See Exhibit A attached hereto and made a part hereof by reference.

Subject to all encumbrances, rights-of-way, easements and restrictions, and all recorded and validly existing instruments that may affect the Property, and ad valorem taxes for 2025 and subsequent years' ad valorem taxes.

All or a portion of the Property herein conveyed does not include the primary residence of a Grantor.

The Property was acquired by Grantor by instrument recorded in Book 1961, Page 380, Wake County Registry.

A map showing the Property is recorded in Book of Maps 1970, Page 106, Wake County Registry, Raleigh, North Carolina.

TO HAVE AND TO HOLD the Property and all privileges and appurtenances thereto belonging to Grantee in fee simple, subject to the terms and conditions of this instrument.

And Grantor covenants with Grantee that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor.

(Signature page follows)

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed as of the day and year first above written, under seal.

GRANTOR:

DIXIE PIPELINE COMPANY LLC, a Delaware
limited liability corporation

By: _____
Name: Graham W. Bacon
It's: Executive Vice President and Chief
Operating Officer

STATE OF TEXAS
COUNTY OF HARRIS

I, _____, a Notary Public of the County and State set forth
above, do hereby certify that Graham W. Bacon personally came before me this day and
acknowledged that Executive Vice President and Chief Operating Officer for **DIXIE PIPELINE
COMPANY LLC**, a Delaware limited liability company, and that by authority duly given and as
the act of the limited liability company, he executed the foregoing instrument.

Witness my hand and official stamp of seal this _____ day of _____, 2025.

Signature of Notary

Notary Printed Name

My Commission Expires: _____

(Official Seal)

EXHIBIT A

Property Description

Lying and being in Town of Apex, White Oak Township, Wake County, North Carolina and described more fully as follows:

BEGINNING at an existing iron pipe, the southeast corner of Apex Tool U.S. Real Estate Holding, LLC (D.B. 15329, Pg. 2263) and the southwest corner of Jack 1, LLC (D.B. 16969, Pg. 2028) having NAD 83 (2011) coordinate values of North 713,497.14 feet, East 2,050,002.02 feet; thence with Jack 1, LLC South 24° 30' 59" East, 143.10 feet to an iron pipe set, a new property corner of Dixie Pipe Line Company (D.B. 1961, Pg. 380); thence a new property line with Dixie Pipe Line Company North 89° 02' 57" West, 344.74 feet to an iron pipe set, a new property corner of Dixie Pipe Line Company; thence with Town Of Apex (D.B. 4145, Pg. 440) North 01° 51' 32" East, 5.15 feet to an existing nail at an existing iron pipe; thence with a former property line North 01° 59' 20" East, 59.93 feet to an existing axle, the southeast corner of Eastern Services Holdings, LLC (D.B. 13240, Pg. 462); thence with Eastern Services Holdings, LLC North 01° 51' 42" East, 70.00 feet to an existing iron pipe, the southwest corner of Apex Tool U.S. Real Estate Holding, LLC; thence with Apex Tool U.S. Real Estate Holding, LLC South 87° 51' 12" East, 280.99 feet to the BEGINNING, containing 0.9468 total acres (41,243 square feet) more or less as shown on a map prepared by Smith & Smith Surveyors, P.A. entitled "Recombination Plat For Town Of Apex and Dixie Pipe Line Company", dated September 21, 2018, and revised October 31, 2024 (the "Plat").

PROVIDED THAT GRANTOR RESERVES for itself and its successors and assigns, perpetual, non-exclusive easements on, across, over, under, and along the following described portion of the Property described above:

BEGINNING at a metal spike set located South 24 ° 30' 59" East, 71.27 feet from an existing iron pipe bearing NAD 83 (2011) coordinate values of North 713,497.14 feet, East 2,050,002.02 feet; thence from aforementioned metal spike set South 24° 30' 59" East, 66.39 feet to an existing iron pipe; thence South 24° 30' 59" East, 5.44 feet to an iron pipe set; thence North 89° 02' 57" West, 344.74 feet to an iron pipe set; thence North 01 ° 51' 32" East, 5.15 feet to an existing nail at existing iron pipe; thence North 01 ° 59' 20" East, 59.93 feet to an existing axle; thence South 89° 00' 34" East, 312.68 feet to the BEGINNING, containing 0.4902 total acres more or less (21,353 square feet more or less) being that certain area labeled on the Plat as the "Private Non-Exclusive Access & Utility Easement Reserved by Dixie Pipeline Company LLC".

Said reserved non-exclusive easements may be used for the provision of ingress and egress (by vehicles and pedestrians) to and from the remainder of Grantor's property labeled as Lot 2 on the Plat, together with the right to install, operate, maintain, repair, and replace such utilities as Grantor may require, in its discretion, for any current and future uses of said Lot 2. Such easements shall run with the land and shall be used by Grantor, its successors and assigns, and those parties authorized by Grantor, in such a manner as not to interfere with any other parties' lawful use of same.

Exhibit C
Non-Foreign Affidavit Form

Section 1445 of the Internal Revenue Code of 1986, as amended (the “**Code**”) provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by **DIXIE PIPELINE COMPANY LLC**, a Delaware limited liability company (the “**Transferor**”), the undersigned hereby certifies the following on behalf of the Transferor:

4. The Transferor is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Code and treasury regulations promulgated pursuant thereto);
2. The Transferor’s taxpayer identification number is 73-1511442; and
3. The Transferor’s address is: 1100 Louisiana Street, Houston, Texas 77002.
4. The Transferor is not a disregarded entity as defined in Section 1.1445-2(b)(ii) of the Code’s Income Tax Regulations.

The Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of the Transferor. This affidavit is being given in connection with sale of the property described on Exhibit A attached hereto and made a part hereof.

DIXIE PIPELINE COMPANY LLC, a Delaware
limited liability corporation

By: _____
Graham W. Bacon, Executive Vice
President and Chief Operating Officer

(Notary acknowledgment follows)

STATE OF TEXAS
COUNTY OF HARRIS

I, _____, a Notary Public of the County and State set forth above, do hereby certify that **Graham W. Bacon**, personally came before me this day and acknowledged that he is Executive Vice President and Chief Operating Officer of **DIXIE PIPELINE COMPANY LLC**, a Delaware limited liability company, and that by authority duly given and as the act of the limited liability company, he executed the foregoing instrument.

Witness my hand and official stamp of seal this _____ day of _____, 2023

Signature of Notary

Notary Printed Name

My Commission Expires: _____

(Official Seal)

Exhibit D

Seller's and Buyer's Representations

A. Seller's Representations to Buyer

Seller represents to Buyer that the following are true and correct as of the Effective Date and will, in all material respects, be true and correct on the Closing Date. As used herein or otherwise in this Contract, any and all references to "Seller's knowledge", "knowledge of Seller" or similar phrases shall mean the actual (not constructive) knowledge of Elizabeth A. Neidlinger, Land Director. It is also expressly agreed and understood that such individual has no duty imposed or implied to investigate, inspect, or audit any such matters contained in this Contract and such individual is acting solely in the capacity stated hereinabove and any liability resulting hereunder based on the actions of such individual including, but not limited to, the breach of any representation contained herein, shall merely be that of Seller and not such individual. To the extent Buyer has or acquires actual knowledge prior to Closing that any representation of Seller herein is inaccurate, untrue, or incorrect in any material way, such representation shall be deemed modified to reflect Buyer's actual knowledge.

1. Authority. Seller is a Delaware company with authority to convey its interest in the Property to Buyer. This Contract is, and all documents required by this Contract to be executed and delivered to Buyer at closing will be, duly approved, authorized, executed, and delivered by Seller.
2. Litigation. There is no litigation pending or, to Seller's actual knowledge, threatened against Seller that might affect the Land or Seller's ability to perform its obligations under this Contract.
3. Governmental Proceeding. Seller has not received any notice, and has no actual knowledge, of any condemnation, pending or threatened, or similar proceeding affecting the Land or any portion thereof.
4. Foreign Entity. Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code, and at the Closing, Seller will deliver a sworn "Non-Foreign Status Affidavit" to such effect to Buyer.
5. Environmental Conditions. Seller represents and warrants to Buyer that to Seller's knowledge, Seller has not received any written complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Property.

After the Effective Date and until the closing, Seller shall advise Buyer of any developments known to Seller that would cause any of Seller's representations contained in this **Section A** to be no longer accurate in any material respect. If, prior to Closing, Buyer discovers that any of the representations made by Seller herein were when made, or have subsequently become, materially false or misleading and Seller does not, upon request of Buyer as to any such

false or misleading statement, cause, at Seller's expense, a change in the underlying facts to make such statement no longer materially false or misleading, then Buyer shall have the right, as its sole and exclusive remedy, by written notice delivered to Seller given prior to the Closing Date to terminate this Contract. In the event Buyer fails to so terminate within such time period, Buyer shall be deemed to have waived any objection to such untrue or inaccurate representation and no rights or remedies shall ever be available to Buyer with respect to such untrue or inaccurate representation that Buyer had actual knowledge was untrue or inaccurate.

Except to the extent otherwise provided herein, all representations of Seller in this Contract shall not be deemed to be merged therein. Specifically, but without limitation, Buyer's failure to make written demand on Seller to enforce any of the representations set forth herein within ninety (90) days after the Closing Date (the "Representation Period") shall result in Seller being fully released by Buyer from all of Buyer's claims, liabilities, duties and obligations arising out of such representations with respect to which written demand has not been made except for those items deemed to constitute fraud. No such written demand shall be effective unless Buyer specifies in such written demand the representation being breached and the circumstances regarding such alleged breach. Seller shall be liable only for direct and actual damages suffered by Buyer on account of Seller's breach, up to the applicable limits described hereunder, and shall in no event be liable for consequential or punitive damages. Any liability of Seller hereunder for breach of any such representations or warranties shall be limited to (a) claims in excess of an aggregate of ONE THOUSAND AND No/100 Dollars (\$1,000.00); and (b) a maximum aggregate cap of TWO THOUSAND AND No/100 Dollars (\$2,000.00).

B. Buyer's Representations to Seller

Buyer hereby represents and warrants to Seller that this Contract and all agreements, instruments and documents herein provided to be executed or caused to be executed by Buyer are, or on the Closing Date will be, duly authorized, executed and delivered by and are binding upon Buyer. The representations and warranties of Buyer shall survive the closing for a period of ninety (90) days after the closing.

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: April 08, 2025

Item Details

Presenter(s): Steve Adams, Real Estate and Utilities Acquisition Specialist

Department(s): Transportation and Infrastructure Development

Requested Motion

Motion to approve the acquisition of property located at, 0 Tingen Road (PIN No. 0731-70-6441) in Apex, North Carolina, for a purchase price of \$135,000.00, to authorize the Town Attorney and Town Manager to make minor modifications to the Offer to Purchase and Contract not affecting the cost or acreage, and authorize the Town Manager, or their designee, to execute on behalf of the Town.

Approval Recommended

Yes

Item Details

The Town of Apex has the opportunity to purchase 5.5926 acres of undeveloped property adjacent to the existing park. The area is shown as Lot 1 in the attached unrecorded map.

The property will serve as off site RCA for the Town.

Attachments

- CN11-A1: Offer to Purchase and Contract - Property Acquisition 0 Tingen Road - Apex, North Carolina
- CN11-A2: Unrecorded Plat - Property Acquisition 0 Tingen Road -Apex, North Carolina



OFFER TO PURCHASE AND CONTRACT

For valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Buyer offers to purchase and Seller upon acceptance agrees to sell and convey the Property on the terms and conditions of this Offer To Purchase and Contract and any addendum or modification made in accordance with its terms (together the "Contract").

1. **TERMS AND DEFINITIONS:** The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) **"Seller":** Marshall Scot and Kristi Walker Hahn

(b) **"Buyer":** Town of Apex

(c) **"Property":** The Property shall include all that real estate described below together with all appurtenances thereto including the improvements located thereon and the fixtures and personal property listed in Paragraphs 2 and 3 below. **NOTE:** If the Property will include a manufactured (mobile) home(s), Buyer and Seller should consider including the Manufactured (Mobile) Home provision in the Additional Provisions Addendum (Standard Form 2A11-T) with this offer.

Street Address: 0 Tingen Road

City: Apex

Zip: 27502

County: Wake, North Carolina

NOTE: Governmental authority over taxes, zoning, school districts, utilities and mail delivery may differ from address shown.

Legal Description: (Complete *ALL* applicable)

Plat Reference: Lot/Unit _____, Block/Section _____, Subdivision/Condominium _____, as shown on Plat Book/Slide _____ at Page(s) _____

The PIN/PID or other identification number of the Property is: TBD; Western Portion of 0731-70-6441

Other description: Real Estate ID: TBD Lot 1 as shown on Survey for Town of Apex by Smith & Smith Surveyors, P.A. dated February 18, 2025. Subdivision Plat forthcoming

Some or all of the Property may be described in Deed Book 17239 at Page 1490

(d) **"Purchase Price":**

\$ 135,000.00

\$ n/a

\$ n/a

\$ n/a

\$ n/a

\$ n/a

\$ n/a

\$ 135,000.00

paid in U.S. Dollars upon the following terms:

BY DUE DILIGENCE FEE made payable and delivered to Seller by the Effective Date

BY INITIAL EARNEST MONEY DEPOSIT made payable and delivered to Escrow Agent named in Paragraph 1(f) by ☐ cash ☐ personal check ☐ official bank check ☐ wire transfer, ☐ electronic transfer, EITHER ☐ with this offer OR ☐ within five (5) days of the Effective Date of this Contract.

BY (ADDITIONAL) EARNEST MONEY DEPOSIT made payable and delivered to Escrow Agent named in Paragraph 1(f) by cash or immediately available funds such as official bank check, wire transfer or electronic transfer no later than _____, **TIME**

BEING OF THE ESSENCE with regard to said date.

BY ASSUMPTION of the unpaid principal balance and all obligations of Seller on the existing loan(s) secured by a deed of trust on the Property in accordance with the attached Loan Assumption Addendum (Standard Form 2A6-T).

BY SELLER FINANCING in accordance with the attached Seller Financing Addendum (Standard Form 2A5-T).

BY BUILDING DEPOSIT in accordance with the attached New Construction Addendum (Standard Form 2A3-T).

BALANCE of the Purchase Price in cash at Settlement (some or all of which may be paid with the proceeds of a new loan)

Should Buyer fail to deliver either the Due Diligence Fee or any Initial Earnest Money Deposit by their due dates, or should any check or other funds paid by Buyer be dishonored, for any reason, by the institution upon which the payment is drawn, Buyer shall

Buyer Initials _____ Seller Initials _____

have one (1) banking day after written notice to deliver cash or immediately available funds to the payee. In the event Buyer does not timely deliver cash or immediately available funds, Seller shall have the right to terminate this Contract upon written notice to Buyer.

(e) **“Earnest Money Deposit”**: The Initial Earnest Money Deposit, the Additional Earnest Money Deposit and any other earnest monies paid or required to be paid in connection with this transaction, collectively the “Earnest Money Deposit”, shall be deposited and held in escrow by Escrow Agent until Closing, at which time it will be credited to Buyer, or until this Contract is otherwise terminated. In the event: (1) this offer is not accepted; or (2) a condition of any resulting contract is not satisfied, then the Earnest Money Deposit shall be refunded to Buyer. In the event of breach of this Contract by Seller, the Earnest Money Deposit shall be refunded to Buyer upon Buyer’s request, but such return shall not affect any other remedies available to Buyer for such breach. In the event of breach of this Contract by Buyer, the Earnest Money Deposit shall be paid to Seller as liquidated damages and as Seller’s sole and exclusive remedy for such breach, but without limiting Seller’s rights under Paragraphs 4(d) and 4(e) for damage to the Property or Seller’s right to retain the Due Diligence Fee. It is acknowledged by the parties that payment of the Earnest Money Deposit to Seller in the event of a breach of this Contract by Buyer is compensatory and not punitive, such amount being a reasonable estimation of the actual loss that Seller would incur as a result of such breach. The payment of the Earnest Money Deposit to Seller shall not constitute a penalty or forfeiture but actual compensation for Seller’s anticipated loss, both parties acknowledging the difficulty determining Seller’s actual damages for such breach. If legal proceedings are brought by Buyer or Seller against the other to recover the Earnest Money Deposit, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney fees and court costs incurred in connection with the proceeding.

(f) **“Escrow Agent”** (insert name): N/A

NOTE: In the event of a dispute between Seller and Buyer over the disposition of the Earnest Money Deposit held in escrow, a licensed real estate broker (“Broker”) is required by state law (and Escrow Agent, if not a Broker, hereby agrees) to retain the Earnest Money Deposit in the Escrow Agent’s trust or escrow account until Escrow Agent has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, if a Broker or an attorney licensed to practice law in North Carolina (“Attorney”) is holding the Earnest Money Deposit, the Broker or Attorney may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A-12.

THE PARTIES AGREE THAT A REAL ESTATE BROKERAGE FIRM ACTING AS ESCROW AGENT MAY PLACE THE EARNEST MONEY DEPOSIT IN AN INTEREST BEARING TRUST ACCOUNT AND THAT ANY INTEREST EARNED THEREON SHALL BE DISBURSED TO THE ESCROW AGENT MONTHLY IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

(g) **“Effective Date”**: The date that: (1) the last one of Buyer and Seller has signed or initialed this offer or the final counteroffer, if any, and (2) such signing or initialing is communicated to the party making the offer or counteroffer, as the case may be. The parties acknowledge and agree that the initials lines at the bottom of each page of this Contract are merely evidence of their having reviewed the terms of each page, and that the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement.

(h) **“Due Diligence”**: Buyer’s opportunity during the Due Diligence Period to investigate the Property and the transaction contemplated by this Contract, including but not necessarily limited to the matters described in Paragraph 4 below, to decide whether Buyer, in Buyer’s sole discretion, will proceed with or terminate the transaction.

(i) **“Due Diligence Fee”**: A negotiated amount, if any, paid by Buyer to Seller with this Contract for Buyer’s right to conduct Due Diligence during the Due Diligence Period. It shall be the property of Seller upon the Effective Date and shall be a credit to Buyer at Closing. The Due Diligence Fee shall be non-refundable except in the event of a material breach of this Contract by Seller, or if this Contract is terminated under Paragraph 8(n) or Paragraph 12, or as otherwise provided in any addendum hereto. Buyer and Seller each expressly waive any right that they may have to deny the right to conduct Due Diligence or to assert any defense as to the enforceability of this Contract based on the absence or alleged insufficiency of any Due Diligence Fee, it being the intent of the parties to create a legally binding contract for the purchase and sale of the Property without regard to the existence or amount of any Due Diligence Fee.

(j) **“Due Diligence Period”**: The period beginning on the Effective Date and extending through 5:00 p.m. on sixty (60) days after the Effective Date ***TIME BEING OF THE ESSENCE*** with regard to said date.

(k) **“Settlement”**: The proper execution and delivery to the closing attorney of all documents necessary to complete the transaction

Buyer Initials _____ Seller Initials _____

contemplated by this Contract, including the deed, settlement statement, deed of trust and other loan or conveyance documents, and the closing attorney's receipt of all funds necessary to complete such transaction.

(l) **"Settlement Date":** The parties agree that Settlement will take place within _____sixty (60) days of the Effective Date_(the "Settlement Date"), unless otherwise agreed in writing, at a time and place designated by Buyer.

(m) **"Closing":** The completion of the legal process which results in the transfer of title to the Property from Seller to Buyer, which includes the following steps: (1) the Settlement (defined above); (2) the completion of a satisfactory title update to the Property following the Settlement; (3) the closing attorney's receipt of authorization to disburse all necessary funds; and (4) recordation in the appropriate county registry of the deed(s) and deed(s) of trust, if any, which shall take place as soon as reasonably possible for the closing attorney after Settlement. Upon Closing, the proceeds of sale shall be disbursed by the closing attorney in accordance with the settlement statement and the provisions of Chapter 45A of the North Carolina General Statutes. If the title update should reveal unexpected liens, encumbrances or other title defects, or if the closing attorney is not authorized to disburse all necessary funds, then the Closing shall be suspended and the Settlement deemed delayed under Paragraph 13 (Delay in Settlement/Closing).

WARNING: The North Carolina State Bar has determined that the performance of most acts and services required for a closing constitutes the practice of law and must be performed only by an attorney licensed to practice law in North Carolina. State law prohibits unlicensed individuals or firms from rendering legal services or advice. Although non-attorney settlement agents may perform limited services in connection with a closing, they may not perform all the acts and services required to complete a closing. A closing involves significant legal issues that should be handled by an attorney. Accordingly it is the position of the North Carolina Bar Association and the North Carolina Association of REALTORS® that all buyers should hire an attorney licensed in North Carolina to perform a closing.

(n) **"Special Assessments":** A charge against the Property by a governmental authority in addition to ad valorem taxes and recurring governmental service fees levied with such taxes, or by an owners' association in addition to any regular assessment (dues), either of which may be a lien against the Property. A Special Assessment may be either proposed or confirmed.

"Proposed Special Assessment": A Special Assessment that is under formal consideration but which has not been approved prior to Settlement.

"Confirmed Special Assessment": A Special Assessment that has been approved prior to Settlement whether or not it is fully payable at time of Settlement.

2. FIXTURES AND EXCLUSIONS:

(a) **Items Leased or Not Owned:** Any item which is leased or not owned by Seller, such as fuel tanks, antennas, satellite dishes and receivers, appliances, and alarm and security systems must be identified here and shall not convey:

_____.

(b) **Specified Items:** Unless identified in subparagraph (d) below the following items, if any, are deemed fixtures and are included in the Purchase Price free of liens: range/stove/oven, any built-in appliances, light fixtures, ceiling fans, attached floor coverings, blinds, shades, drapery rods and curtain rods, brackets and all related hardware, window and door screens, storm windows, combination doors, awnings, antennas, satellite dishes and receivers, mounting brackets for televisions and for speakers and all related hardware, burglar/fire/smoke/carbon monoxide alarms and security systems, pool, hot tub, spa and all related equipment, solar energy systems, attached fireplace screens, gas logs, fireplace inserts, electric garage door openers with controls, outdoor plants and trees (other than in movable containers), basketball goals, storage sheds, mailboxes, all bathroom wall mirrors and all attached wall and/or door mirrors, fuel tank(s) whether attached or buried and including any contents that have not been used, removed or resold to the fuel provider as of Settlement*, landscape and/or foundation lighting, invisible fencing including all related equipment, lawn irrigation systems and all related equipment, and water softener/conditioner and filter equipment.

(c) **Other Fixtures/Unspecified items:** Unless identified in subparagraph (d) below, any other item legally considered a fixture is included in the Purchase Price free of liens.

(d) **Other Items That Do Not Convey:** The following items shall not convey (*identify those items to be excluded under subparagraphs*

Buyer Initials _____ Seller Initials _____

(b) and (c): _____

Seller shall repair any damage caused by removal of any items excluded above.

***NOTE:** Seller's use, removal or resale of fuel in any fuel tank is subject to Seller's obligation under Paragraph 8(c) to provide working, existing utilities through the earlier of Closing or possession by Buyer.

3. **PERSONAL PROPERTY:** The following personal property shall be transferred to Buyer at no value at closing:

(NOTE: Buyer is advised to consult with Buyer's lender to assure that the Personal Property items listed above can be included in this Contract.)

4. **BUYER'S DUE DILIGENCE PROCESS:**

(a) **Loan:** During the Due Diligence Period, Buyer, at Buyer's expense, shall be entitled to pursue qualification for and approval of the Loan if any.

NOTE: Buyer is advised to consult with Buyer's lender prior to signing this offer to assure that the Due Diligence Period allows sufficient time for the appraisal to be completed and for Buyer's lender to provide Buyer sufficient information to decide whether to proceed with or terminate the transaction since the Loan is not a condition of the Contract.

(b) **Property Investigation:** During the Due Diligence Period, Buyer or Buyer's agents or representatives, at Buyer's expense, shall be entitled to conduct all desired tests, surveys, appraisals, investigations, examinations and inspections of the Property as Buyer deems appropriate, including but NOT limited to the following:

(i) **Inspections:** Inspections to determine the condition of any improvements on the Property, the presence of unusual drainage conditions or evidence of excessive moisture adversely affecting any improvements on the Property, the presence of asbestos or existing environmental contamination, evidence of wood-destroying insects or damage therefrom, and the presence and level of radon gas on the Property.

(ii) **Review of Documents:** Review of the Declaration of Restrictive Covenants, Bylaws, Articles of Incorporation, Rules and Regulations, and other governing documents of any applicable owners' association and/or subdivision. If the Property is subject to regulation by an owners' association, it is recommended that Buyer review the completed Residential Property and Owners' Association Disclosure Statement provided by Seller prior to signing this offer. It is also recommended that the Buyer determine if the owners' association or its management company charges fees for providing information required by Buyer's lender or confirming restrictive covenant compliance.

(iii) **Insurance:** Investigation of the availability and cost of insurance for the Property.

(iv) **Appraisals:** An appraisal of the Property.

(v) **Survey:** A survey to determine whether the property is suitable for Buyer's intended use and the location of easements, setbacks, property boundaries and other issues which may or may not constitute title defects.

(vi) **Zoning and Governmental Regulation:** Investigation of current or proposed zoning or other governmental regulation that may affect Buyer's intended use of the Property, adjacent land uses, planned or proposed road construction, and school attendance zones.

(vii) **Flood Hazard:** Investigation of potential flood hazards on the Property, and/or any requirement to purchase flood insurance in order to obtain the Loan.

(viii) **Utilities and Access:** Availability, quality, and obligations for maintenance of utilities including water, sewer, electric, gas, communication services, stormwater management, and means of access to the Property and amenities.

(ix) **Streets/Roads:** Investigation of the status of the street/road upon which the Property fronts as well as any other street/road used to access the Property, including: (1) whether any street(s)/road(s) are public or private, (2) whether any street(s)/road(s) designated as public are accepted for maintenance by the State of NC or any municipality, or (3) if private or not accepted for public maintenance, the consequences and responsibility for maintenance and the existence, terms and funding of any maintenance agreements.

(x) **Fuel Tank:** Inspections to determine the existence, type and ownership of any fuel tank located on the Property.

(xi) **Environmental Site Assessment:** Inspection(s) of the environmental conditions of the Property, such as a Phase I Environmental Site Assessment, which may include, but is not limited to an evaluation of: soil conditions, water quality, and the health of vegetative matter on the Property.

(NOTE: Buyer is advised to consult with the owner of any leased fuel tank regarding the terms under which Buyer may lease the tank and obtain fuel.)

Buyer Initials _____ Seller Initials _____

(c) **Repair/Improvement Negotiations/Agreement:** Buyer acknowledges and understands that unless the parties agree otherwise, THE PROPERTY IS BEING SOLD IN ITS CURRENT CONDITION.

(NOTE: See Paragraph 8(c), Access to Property/Walk-Through Inspection, and Paragraph 8(m), Negotiated Repairs/Improvements.)

(d) **Buyer's Obligation to Repair Damage:** Buyer shall, at Buyer's expense, promptly repair any damage to the Property resulting from any activities of Buyer and Buyer's agents and contractors, but Buyer shall not be responsible for any damage caused by accepted practices either approved by the N.C. Home Inspector Licensure Board or applicable to any other N.C. licensed professional performing reasonable appraisals, tests, surveys, examinations and inspections of the Property. This repair obligation shall survive any termination of this Contract.

(e) **Indemnity:** Buyer will indemnify and hold Seller harmless from all loss, damage, claims, suits or costs, which shall arise out of any contract, agreement, or injury to any person or property as a result of any activities of Buyer and Buyer's agents and contractors relating to the Property except for any loss, damage, claim, suit or cost arising out of pre-existing conditions of the Property and/or out of Seller's negligence or willful acts or omissions. This indemnity shall survive this Contract and any termination hereof.

(f) **Buyer's Right to Terminate:** Buyer shall have the right to terminate this Contract for any reason or no reason, by delivering to Seller written notice of termination (the "Termination Notice") during the Due Diligence Period (or any agreed-upon written extension of the Due Diligence Period), **TIME BEING OF THE ESSENCE**. If Buyer timely delivers the Termination Notice, this Contract shall be terminated and the Earnest Money Deposit shall be refunded to Buyer.

WARNING: If Buyer is not satisfied with the results or progress of Buyer's Due Diligence, Buyer should terminate this Contract, *prior to the expiration of the Due Diligence Period*, unless Buyer can obtain a written extension from Seller. SELLER IS NOT OBLIGATED TO GRANT AN EXTENSION. Although Buyer may continue to investigate the Property following the expiration of the Due Diligence Period, Buyer's failure to deliver a Termination Notice to Seller prior to the expiration of the Due Diligence Period shall constitute a waiver by Buyer of any right to terminate this Contract based on any matter relating to Buyer's Due Diligence. Provided however, following the Due Diligence Period, Buyer may still exercise a right to terminate if Seller fails to materially comply with any of Seller's obligations under Paragraph 8 of this Contract or for any other reason permitted under the terms of this Contract or North Carolina law.

(g) **CLOSING SHALL CONSTITUTE ACCEPTANCE OF THE PROPERTY IN ITS THEN EXISTING CONDITION UNLESS PROVISION IS OTHERWISE MADE IN WRITING.**

5. BUYER REPRESENTATIONS:

(a) **Loan:** Buyer ☐ does ☒ does not have to obtain a new loan in order to purchase the Property. If Buyer is obtaining a new loan, Buyer intends to obtain a loan as follows: ☐ FHA ☐ VA (attach FHA/VA Financing Addendum) ☐ Conventional ☐ Other: _____ loan at a ☐ Fixed Rate ☐ Adjustable Rate in the principal amount of _____ plus any financed VA Funding Fee or FHA MIP for a term of _____ year(s), at an initial interest rate not to exceed _____ % per annum (the "Loan").

NOTE: Buyer's obligations under this Contract are not conditioned upon obtaining or closing any loan. If Buyer represents that Buyer does not have to obtain a new loan in order to purchase the Property, Seller is advised, prior to signing this offer, to obtain documentation from Buyer which demonstrates that Buyer will be able to close on the Property without the necessity of obtaining a new loan.

(b) **Other Property:** Buyer ☐ does ☒ does not have to sell or lease other real property in order to qualify for a new loan or to complete the purchase.

(NOTE: This Contract is not conditioned upon the sale of Buyer's property unless a contingent sale addendum such as Standard Form 2A2-T is made a part of this Contract.)

(c) **Performance of Buyer's Financial Obligations:** To the best of Buyer's knowledge, there are no other circumstances or conditions existing as of the date of this offer that would prohibit Buyer from performing Buyer's financial obligations in accordance with this Contract, except as may be specifically set forth herein.

Buyer Initials _____ Seller Initials _____

(d) **Residential Property and Owners' Association Disclosure Statement** (*check only one*):

- ☐ Buyer has received a signed copy of the N.C. Residential Property and Owners' Association Disclosure Statement prior to the signing of this offer.
- ☐ Buyer has NOT received a signed copy of the N.C. Residential Property and Owners' Association Disclosure Statement prior to the signing of this offer and shall have the right to terminate or withdraw this Contract without penalty (including a refund of any Due Diligence Fee) prior to **WHICHEVER OF THE FOLLOWING EVENTS OCCURS FIRST**: (1) the end of the third calendar day following receipt of the Disclosure Statement; (2) the end of the third calendar day following the Effective Date; or (3) Settlement or occupancy by Buyer in the case of a sale or exchange.
- ☒ Exempt from N.C. Residential Property and Owners' Association Disclosure Statement because (SEE GUIDELINES): _____
47E-2(a)(8)

(e) **Mineral and Oil and Gas Rights Mandatory Disclosure Statement** (*check only one*):

- ☐ Buyer has received a signed copy of the N.C. Mineral and Oil and Gas Rights Mandatory Disclosure Statement prior to the signing of this offer.
- ☐ Buyer has NOT received a signed copy of the N.C. Mineral and Oil and Gas Rights Mandatory Disclosure Statement prior to the signing of this offer and shall have the right to terminate or withdraw this Contract without penalty (including a refund of any Due Diligence Fee) prior to **WHICHEVER OF THE FOLLOWING EVENTS OCCURS FIRST**: (1) the end of the third calendar day following receipt of the Disclosure Statement; (2) the end of the third calendar day following the Effective Date; or (3) Settlement or occupancy by Buyer in the case of a sale or exchange.
- ☒ Exempt from N.C. Mineral and Oil and Gas Rights Mandatory Disclosure Statement because (SEE GUIDELINES): _____
47E-2(a)(8)

Buyer's receipt of a Mineral and Oil and Gas Rights Mandatory Disclosure Statement does not modify or limit the obligations of Seller under Paragraph 8(g) of this Contract and shall not constitute the assumption or approval by Buyer of any severance of mineral and/or oil and gas rights, except as may be assumed or specifically approved by Buyer in writing.

(NOTE: The parties are advised to consult with a NC attorney prior to signing this Contract if severance of mineral and/or oil and gas rights has occurred or is intended.)

6. BUYER OBLIGATIONS:

- (a) **Responsibility for Proposed Special Assessments:** Buyer shall take title subject to all Proposed Special Assessments.
- (b) **Responsibility for Certain Costs:** Buyer shall be responsible for all costs with respect to:
- (i) any loan obtained by Buyer, including charges by an owners association and/or management company as agent of an owners' association for providing information required by Buyer's lender;
 - (ii) charges required by an owners' association declaration to be paid by Buyer for Buyer's future use and enjoyment of the Property, including, without limitation, working capital contributions, membership fees, or charges for Buyer's use of the common elements and/or services provided to Buyer, such as "move-in fees";
 - (iii) determining restrictive covenant compliance;
 - (iv) appraisal,
 - (v) title search,
 - (vi) title insurance,
 - (vii) recording the deed, and
 - (viii) preparation and recording of all instruments required to secure the balance of the Purchase Price unpaid at Settlement.

(c) **Authorization to Disclose Information:** Buyer authorizes the Buyer's lender(s), the parties' real estate agent(s) and closing attorney: (1) to provide this Contract to any appraiser employed by Buyer or by Buyer's lender(s); and (2) to release and disclose any buyer's closing disclosure, settlement statement and/or disbursement summary, or any information therein, to the parties to this transaction, their real estate agent(s) and Buyer's lender(s).

7. SELLER REPRESENTATIONS:

- (a) **Ownership:** Seller represents that Seller:
- ☒ has owned the Property for at least one year.
- ☐ has owned the Property for less than one year.

Buyer Initials _____ Seller Initials _____

q does not yet own the Property.

(b) Lead-Based Paint (*check if applicable*):

☐ The Property is residential and was built prior to 1978 (Attach Lead-Based Paint or Lead-Based Paint Hazards Disclosure Addendum {Standard Form 2A9-T}).

(c) Assessments: To the best of Seller's knowledge there are no Proposed Special Assessments except as follows (Insert "None" or the identification of such assessments, if any): None.

Seller warrants that there are no Confirmed Special Assessments except as follows (Insert "None" or the identification of such assessments, if any): None.

(d) Owners' Association(s) and Dues: Seller authorizes and directs any owners' association, any management company of the owners' association, any insurance company and any attorney who has previously represented the Seller to release to Buyer, Buyer's agents, representative, closing attorney or lender true and accurate copies of the following items affecting the Property, including any amendments:

- Seller's statement of account
- master insurance policy showing the coverage provided and the deductible amount
- Declaration and Restrictive Covenants
- Rules and Regulations
- Articles of Incorporation
- Bylaws of the owners' association
- current financial statement and budget of the owners' association
- parking restrictions and information
- architectural guidelines

☐ (specify name of association): _____ whose regular assessments ("dues") are \$ _____ per _____. The name, address and telephone number of the president of the owners' association or the association manager is: _____.

Owners' association website address, if any: _____.

☐ (specify name of association): _____ whose regular assessments ("dues") are \$ _____ per _____. The name, address and telephone number of the president of the owners' association or the association manager is: _____.

Owners' association website address, if any: _____.

8. SELLER OBLIGATIONS:

(a) Evidence of Title and Payoff Statement(s): Seller agrees to use best efforts to deliver to Buyer as soon as reasonably possible after the Effective Date, copies of all title information in possession of or available to Seller, including but not limited to: title insurance policies, attorney's opinions on title, surveys, covenants, deeds, notes and deeds of trust, leases, and easements relating to the Property. Seller shall provide to the closing attorney all information needed to obtain a written payoff statement from any lender(s) regarding any security interest in the Property as soon as reasonably possible after the Effective Date, and Seller designates the closing attorney as Seller's agent with express authority to request and obtain on Seller's behalf payoff statements and/or short-pay statements from any such lender(s).

(b) Authorization to Disclose Information: Seller authorizes: (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys and (3) the closing attorney to release and disclose any seller's closing disclosure, settlement statement and/or disbursement summary, or any information therein, to the parties to this transaction, their real estate agent(s) and Buyer's lender(s).

(c) Access to Property/Walk-Through Inspection: Seller shall provide reasonable access to the Property (including working,

Buyer Initials _____ Seller Initials _____

existing utilities) through the earlier of Closing or possession by Buyer, including, but not limited to, allowing Buyer an opportunity to conduct a final walk-through inspection of the Property.

(d) **Removal of Seller's Property:** Seller shall remove, by the date possession is made available to Buyer, all personal property which is not a part of the purchase from the Property.

(e) **Affidavit and Indemnification Agreement:** Seller shall furnish at Settlement an affidavit(s) and indemnification agreement(s) in form satisfactory to Buyer and Buyer's title insurer, if any, executed by Seller and any person or entity who has performed or furnished labor, services, materials or rental equipment to the Property within 120 days prior to the date of Settlement and who may be entitled to claim a lien against the Property as described in N.C.G.S. §44A-8 verifying that each such person or entity has been paid in full and agreeing to indemnify Buyer, Buyer's lender(s) and Buyer's title insurer against all loss from any cause or claim arising therefrom.

(f) **Designation of Lien Agent, Payment and Satisfaction of Liens:** If required by N.C.G.S. §44A-11.1, Seller shall have designated a Lien Agent, and Seller shall deliver to Buyer as soon as reasonably possible a copy of the appointment of Lien Agent. All deeds of trust, deferred ad valorem taxes, liens and other charges against the Property, not assumed by Buyer, must be paid and satisfied by Seller prior to or at Settlement such that cancellation may be promptly obtained following Closing. Seller shall remain obligated to obtain any such cancellations following Closing.

(g) **Good Title, Legal Access:** Seller shall execute and deliver a GENERAL WARRANTY DEED for the Property in recordable form no later than Settlement, which shall convey fee simple marketable and insurable title, without exception for mechanics' liens, and free of any other liens, encumbrances or defects, including those which would be revealed by a current and accurate survey of the Property, except: ad valorem taxes for the current year (prorated through the date of Settlement); utility easements and unviolated covenants, conditions or restrictions that do not materially affect the value of the Property; and such other liens, encumbrances or defects as may be assumed or specifically approved by Buyer in writing. The Property must have legal access to a public right of way.

(NOTE: Buyer's failure to terminate this Contract prior to the expiration of the Due Diligence Period as a result of any encumbrance or defect that is or would have been revealed by a title examination of the Property or a current and accurate survey shall not relieve Seller of any obligation under this subparagraph.)

(NOTE: If any sale of the Property may be a "short sale," consideration should be given to attaching a Short Sale Addendum (Standard Form 2A14-T) as an addendum to this Contract.)

(h) **Deed, Taxes and Fees:** Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Contract, and for state and county excise taxes, and any deferred, discounted or rollback taxes, and local conveyance fees required by law. The deed is to be made to: Town of Apex.

(i) **Agreement to Pay Buyer Expenses:** Seller shall pay at Settlement \$ 0 toward any of Buyer's expenses associated with the purchase of the Property, including any FHA/VA lender and inspection costs that Buyer is not permitted to pay, less any portion disapproved by Buyer's lender.

NOTE: Examples of Buyer's expenses associated with the purchase of the Property include, but are not limited to, discount points, loan origination fees, appraisal fees, attorney's fees, inspection fees, and "pre-pays" (taxes, insurance, owners' association dues, etc.).

(j) **Owners' Association Fees/Charges:** Seller shall pay: (i) any fees required for confirming Seller's account payment information on owners' association dues or assessments for payment or proration; (ii) any fees imposed by an owners' association and/or a management company as agent of the owners' association in connection with the transaction contemplated by this Contract other than those fees required to be paid by Buyer under paragraph 6(b) above; and (iii) fees incurred by Seller in completing the Residential Property and Owners' Association Disclosure Statement, and resale or other certificates related to a proposed sale of the Property.

(k) **Payment of Confirmed Special Assessments:** Seller shall pay all Confirmed Special Assessments, if any, provided that the amount thereof can be reasonably determined or estimated.

(l) **Late Listing Penalties:** All property tax late listing penalties, if any, shall be paid by Seller.

(m) **Negotiated Repairs/Improvements:** Negotiated repairs/improvements shall be made in a good and workmanlike manner and Buyer shall have the right to verify same prior to Settlement.

Buyer Initials _____ Seller Initials _____

(n) **Seller's Failure to Comply or Breach:** If Seller fails to materially comply with any of Seller's obligations under this Paragraph 8 or Seller materially breaches this Contract, and Buyer elects to terminate this Contract as a result of such failure or breach, then the Earnest Money Deposit and the Due Diligence Fee shall be refunded to Buyer and Seller shall reimburse to Buyer the reasonable costs actually incurred by Buyer in connection with Buyer's Due Diligence without affecting any other remedies. If legal proceedings are brought by Buyer against Seller to recover the Earnest Money Deposit, the Due Diligence Fee and/or the reasonable costs actually incurred by Buyer in connection with Buyer's Due Diligence, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney fees and court costs incurred in connection with the proceeding.

9. **PRORATIONS AND ADJUSTMENTS:** Unless otherwise provided, the following items shall be prorated through the date of Settlement and either adjusted between the parties or paid at Settlement:

- (a) **Taxes on Real Property:** Ad valorem taxes and recurring governmental service fees levied with such taxes on real property shall be prorated on a calendar year basis;
- (b) **Taxes on Personal Property:** Ad valorem taxes on personal property for the entire year shall be paid by Seller unless the personal property is conveyed to Buyer, in which case, the personal property taxes shall be prorated on a calendar year basis;
- (c) **Rents:** Rents, if any, for the Property;
- (d) **Dues:** Owners' association regular assessments (dues) and other like charges.

10. **HOME WARRANTY:** Select one of the following:

- ☒ No home warranty is to be provided by Seller.
- ☐ Buyer may obtain a one-year home warranty at a cost not to exceed \$ _____ and Seller agrees to pay for it at Settlement.
- ☐ Seller has obtained and will provide a one-year home warranty from _____ at a cost of \$ _____ and will pay for it at Settlement.

(NOTE: Home warranties typically have limitations on and conditions to coverage. Refer specific questions to the home warranty company.)

11. **CONDITION OF PROPERTY AT CLOSING:** Buyer's obligation to complete the transaction contemplated by this Contract shall be contingent upon the Property being in substantially the same or better condition at Closing as on the date of this offer, reasonable wear and tear excepted.

12. **RISK OF LOSS:** The risk of loss or damage by fire or other casualty prior to Closing shall be upon Seller. If the improvements on the Property are destroyed or materially damaged prior to Closing, Buyer may terminate this Contract by written notice delivered to Seller or Seller's agent and the Earnest Money Deposit and any Due Diligence Fee shall be refunded to Buyer. In the event Buyer does NOT elect to terminate this Contract, Buyer shall be entitled to receive, in addition to the Property, any of Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property being purchased. Seller is advised not to cancel existing insurance on the Property until after confirming recordation of the deed.

13. **DELAY IN SETTLEMENT/CLOSING:** Absent agreement to the contrary in this Contract or any subsequent modification thereto, if a party is unable to complete Settlement by the Settlement Date but intends to complete the transaction and is acting in good faith and with reasonable diligence to proceed to Settlement ("Delaying Party"), and if the other party is ready, willing and able to complete Settlement on the Settlement Date ("Non-Delaying Party") then the Delaying Party shall give as much notice as possible to the Non-Delaying Party and closing attorney and shall be entitled to a delay in Settlement. If the parties fail to complete Settlement and Closing within fourteen (14) days of the Settlement Date (including any amended Settlement Date agreed to in writing by the parties) or to otherwise extend the Settlement Date by written agreement, then the Delaying Party shall be in breach and the Non-Delaying Party may terminate this Contract and shall be entitled to enforce any remedies available to such party under this Contract for the breach.

14. **POSSESSION:** Possession, including all means of access to the Property (keys, codes including security codes, garage door openers, electronic devices, etc.), shall be delivered upon Closing as defined in Paragraph 1(m) unless otherwise provided below:

- ☐ A Buyer Possession Before Closing Agreement is attached (Standard Form 2A7-T)
- ☐ A Seller Possession After Closing Agreement is attached (Standard Form 2A8-T)
- ☐ Possession is subject to rights of tenant(s) (NOTE: Consider attaching Additional Provisions Addendum (Form 2A-11-T) or Vacation Rental Addendum (Form 2A13-T))

15. **ADDENDA:** CHECK ALL STANDARD ADDENDA THAT MAY BE A PART OF THIS CONTRACT, IF ANY, AND ATTACH HERETO. ITEMIZE ALL OTHER ADDENDA TO THIS CONTRACT, IF ANY, AND ATTACH HERETO.

Buyer Initials _____ Seller Initials _____

☐ Additional Provisions Addendum (Form 2A11-T)

☐ Additional Signatures Addendum (Form 3-T)

☐ Back-Up Contract Addendum (Form 2A1-T)

☐ Contingent Sale Addendum (Form 2A2-T)

☐ FHA/VA Financing Addendum (Form 2A4-T)

☐ Lead-Based Paint Or Lead-Based Paint Hazard Addendum (Form 2A9-T)

☐ Loan Assumption Addendum (Form 2A6-T)

☐ New Construction Addendum (Form 2A3-T)

☐ Seller Financing Addendum (Form 2A5-T)

☐ Short Sale Addendum (Form 2A14-T)

☐ Vacation Rental Addendum (Form 2A13-T)

☐ Identify other attorney or party drafted addenda: _____

NOTE: UNDER NORTH CAROLINA LAW, REAL ESTATE BROKERS ARE NOT PERMITTED TO DRAFT ADDENDA TO THIS CONTRACT.

16. **ASSIGNMENTS:** This Contract may not be assigned without the written consent of all parties except in connection with a tax-deferred exchange, but if assigned by agreement, then this Contract shall be binding on the assignee and assignee's heirs and successors.

17. **TAX-DEFERRED EXCHANGE:** In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Buyer and Seller shall execute such additional documents, including assignment of this Contract in connection therewith, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

18. **PARTIES:** This Contract shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective heirs, successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

19. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the Closing, it shall survive the Closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

20. **ENTIRE AGREEMENT:** This Contract contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed herein. All changes, additions or deletions hereto must be in writing and signed by all parties. Nothing contained herein shall alter any agreement between a REALTOR® or broker and Seller or Buyer as contained in any listing agreement, buyer agency agreement, or any other agency agreement between them.

21. **CONDUCT OF TRANSACTION:** The parties agree that any action between them relating to the transaction contemplated by this Contract may be conducted by electronic means, including the signing of this Contract by one or more of them and any notice or communication given in connection with this Contract. Any written notice or communication may be transmitted to any mailing address, e-mail address or fax number set forth in the "Notice Information" section below. Any notice or communication to be given to a party herein, and any fee, deposit or other payment to be delivered to a party herein, may be given to the party or to such party's agent. Seller and Buyer agree that the "Notice Information" and "Acknowledgment of Receipt of Monies" sections below shall not constitute a material part of this Contract, and that the addition or modification of any information therein shall not constitute a rejection of an offer or the creation of a counteroffer.

22. **EXECUTION:** This Contract may be signed in multiple originals or counterparts, all of which together constitute one and the same instrument.

23. **COMPUTATION OF DAYS/TIME OF DAY:** Unless otherwise provided, for purposes of this Contract, the term "days" shall mean consecutive calendar days, including Saturdays, Sundays, and holidays, whether federal, state, local or religious. For the purposes of calculating days, the count of "days" shall begin on the day following the day upon which any act or notice as provided in this Contract was required to be performed or made. Any reference to a date or time of day shall refer to the date and/or time of day in the State of North Carolina.

[THIS SPACE INTENTIONALLY LEFT BLANK]

Buyer Initials _____ Seller Initials _____

THE NORTH CAROLINA ASSOCIATION OF REALTORS[®], INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

This offer shall become a binding contract on the Effective Date. Unless specifically provided otherwise, Buyer's failure to timely deliver any fee, deposit or other payment provided for herein shall not prevent this offer from becoming a binding contract, provided that any such failure shall give Seller certain rights to terminate the contract as described herein or as otherwise permitted by law.

Entity Buyer:
Town of Apex
(Name of LLC/Corporation/Partnership/Trust/etc.)

Seller:
Marshall Scot & Kristi Walker Hahn

By: _____

By: _____

Name: Randal E. Vosburg

Title: Town Manager

Date: _____

Date: _____

*This instrument has been preaudited in the manner
required by the Local Government Fiscal Control Act.*

Antwan Morrison, Finance Director

Buyer Initials _____ Seller Initials _____

NOTICE INFORMATION

NOTE: INSERT THE ADDRESS AND/OR ELECTRONIC DELIVERY ADDRESS EACH PARTY AND AGENT APPROVES FOR THE RECEIPT OF ANY NOTICE CONTEMPLATED BY THIS CONTRACT. INSERT "N/A" FOR ANY WHICH ARE NOT APPROVED.

BUYER NOTICE ADDRESS:

Mailing Address:
P. O. Box 250
Apex, NC 27502

Buyer Fax#: 919-249-3305

Buyer E-mail: Randy.Vosburg@apexnc.org

[THIS SPACE INTENTIONALLY LEFT BLANK]

ACKNOWLEDGMENT OF RECEIPT OF MONIES

Seller: _____ ("Seller")

Buyer: _____ ("Buyer")

Property Address: _____ ("Property")

☐ SELLER ACKNOWLEDGMENT OF RECEIPT OF DUE DILIGENCE FEE

Paragraph 1(d) of the Offer to Purchase and Contract between Buyer and Seller for the sale of the Property provides for the payment to Seller of a Due Diligence Fee in the amount of \$_____, receipt of which Seller hereby acknowledges.

Date _____

Seller: _____
(Signature)

Date _____

Seller: _____
(Signature)

☐ ESCROW AGENT ACKNOWLEDGMENT OF RECEIPT OF INITIAL EARNEST MONEY DEPOSIT

Paragraph 1(d) of the Offer to Purchase and Contract between Buyer and Seller for the sale of the Property provides for the payment to Escrow Agent of an Initial Earnest Money Deposit in the amount of \$_____. Escrow Agent as identified in Paragraph 1(f) of the Offer to Purchase and Contract hereby acknowledges receipt of the Initial Earnest Money Deposit and agrees to hold and disburse the same in accordance with the terms of the Offer to Purchase and Contract.

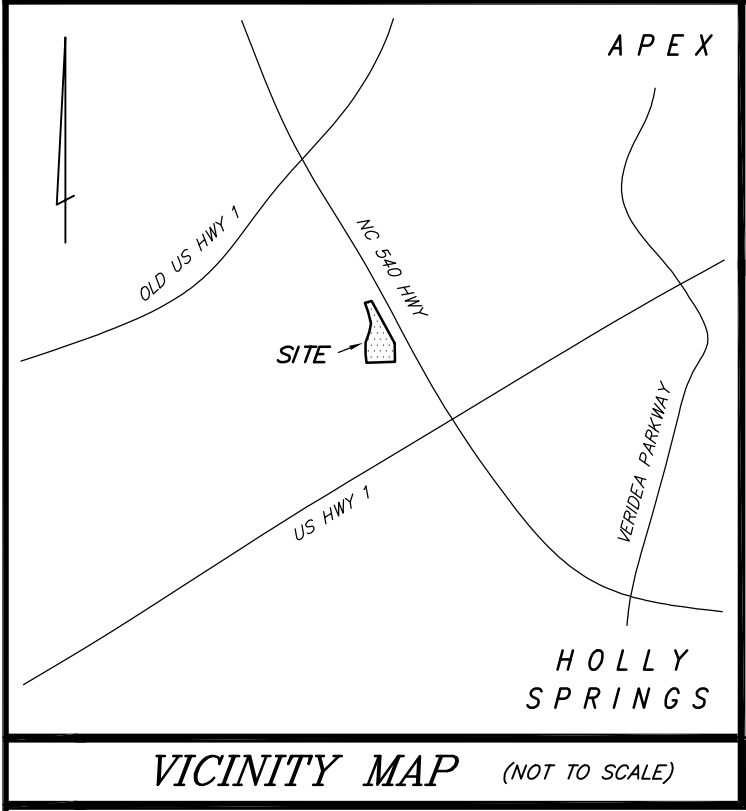
Date _____

Firm: _____

By: _____
(Signature)

(Print name)

Buyer Initials _____ Seller Initials _____



I, STALEY C. SMITH, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION AS RECORDED IN:
DEED BOOK 17239, PAGE 1490 (REM Left)
THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS BROKEN LINES AND WERE PLOTTED FROM INFORMATION AS REFERENCED HEREON; THAT THE RATIO OF PRECISION AS CALCULATED WAS 1: +10,000 AND THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED.
THAT THE SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND OR ONE OR MORE EXISTING EASEMENTS AND DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET.
WITNESS MY ORIGINAL SIGNATURE, LICENSE NUMBER, AND SEAL THIS 25TH DAY OF FEBRUARY, A.D., 2025.

PRELIMINARY

THIS IS A PRELIMINARY DRAWING AND IS NOT TO BE USED AS A SURVEY OR TO TRANSFER ANY PROPERTY SHOWN HEREON.

Professional Land Surveyor
L-3766
License Number

TOWN OF APEX
D.B. 15834, PG. 40
B.M. 2014, PG. 1539

JOSEPH J. BURNS, JR., REVOCABLE LIVING TRUST
DATED FEBRUARY 27, 2018

D.B. 18222, PG. 1688
B.M. 1985, PG. 1661

LEGEND

- NCDOT DISC ● - Existing Aluminum Disc
- EIP ● - Existing Iron Pipe
- IPS ○ - Iron Pipe Set
- x - Branch Location By This Surveyor (B.M. 2014, PG. 1539)
- R/W - Right Of Way (Approximate Location)
- ETJ - Extraterritorial Jurisdiction
- PIN - Parcel Identification Number
- FEMA - Federal Emergency Management Agency
- PDE - Permanent Drainage Easement ~ D.B. 14034, PG. 1316
- TDE - Temporary Drainage Easement ~ D.B. 14034, PG. 1316
- PUE - Permanent Utility Easement ~ D.B. 14034, PG. 1316
- (C/A) - Control Of Access
- C/A - Control Of Access
- NCDOT - North Carolina Department Of Transportation
- NCDOTTA - North Carolina Department Of Transportation Turnpike Authority
- Surveyed Line
- Surveyed Line
- Line (not surveyed)
- - - - - Approximate Right Of Way Line (not surveyed)

NOTES:

- THE PROPERTY SHOWN HEREON MAY BE SUBJECT TO COVENANTS, CONDITIONS, RESTRICTIONS, RIGHTS OF WAY, AND EASEMENTS OF RECORD AFFECTING THE SAME.
- NO TITLE SEARCH HAS BEEN PERFORMED BY THIS FIRM DURING THE COURSE OF THIS SURVEY.
- SUBJECT IS LOCATED WITHIN A 100 YEAR FLOOD PLAIN PER FEMA FIRM No. 3720073100K WITH AN EFFECTIVE DATE OF 7/19/2022 & FIRM No. 3720073000K WITH AN EFFECTIVE DATE OF 7/19/2022
- IT APPEARS NCDOTTA LEGAL DESCRIPTIONS PREPARED CONTEMPORANEOUSLY WITH PROJECT #R-2635B CHANGED THE LOCATION OF THIS WINCHESTER / TINGEN WALKER LINE.
- SEE WAKE COUNTY ROAD PETITIONS 1800-1829, NC DEPARTMENT OF ARCHIVES AND HISTORY.

RECORDED IN BOOK OF MAPS **2025**, PAGE _____.

ROSEWOOD 1322, LLC
D.B. 15794, PG. 1652

APEX TINGEN, LLC
D.B. 19179, PG. 2282

MARSHALL SCOT HAHN
KRISTI WALKER HAHN
D.B. 17239, PG. 1490 (REM Right)

A PORTION OF
PIN 0731-70-6441

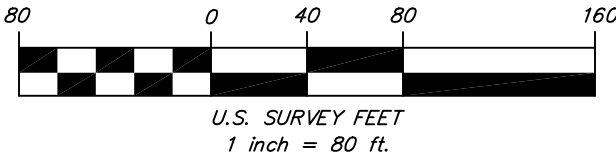
NC 540 HIGHWAY
VARIABLE WIDTH PUBLIC R/W
NCDOTTA PROJECT #R-2635B
D.B. 14034, PG. 1316
I.M. 4, PG. 242
SEE WINCHESTER PARCEL NO. 21 ON SHEET NO. 6

1
5.5926 AC.
243,615 SF.

INCLUDES AREAS IN EASEMENTS
A PORTION OF
PIN 0731-70-6441

WFINV, LLC
D.B. 18591, PG. 252

ROBERT C. KECK, JR.
SANDRA G. KECK
D.B. 3621, PG. 667
B.M. 1985, PG. 1661



SURVEY FOR
TOWN OF APEX
TOWN APEX ETJ, WHITE OAK TOWNSHIP, WAKE COUNTY, NC

LISTED OWNER
(NOT A TITLE VERIFICATION)
MARSHALL SCOT HAHN
KRISTI WALKER HAHN
3016 TINGEN RD
APEX, NC 27502

PIN A PORTION OF
0731-70-6441 SEVERED BY
FEE SIMPLE R/W OF NC 540



Smith & Smith,
Surveyors, P.A.

P.O. BOX 457
APEX, N.C. 27502
(919) 362-7111

FIRM LICENSE No. C-0155

FIELD DATE
FEBRUARY 18, 2025

SCALE 1" = 80'

DRAWN BY WBH

PROJECT NO. 2025-04



"The Peak of Good Living"

TOWN OF APEX NORTH CAROLINA

Proclamation

Child Abuse Prevention Month 2025

from the Office of the Mayor

WHEREAS, Child abuse is a horrific, cowardly crime that impacts millions of children annually, with instances of it occurring all over the country, including here in Wake County; and,

WHEREAS, Child abuse exists in many different forms, including physical abuse, emotional abuse, sexual abuse, and neglect, and the harm from these atrocities permeate throughout all aspects of a child's life; and,

WHEREAS, The effects of child abuse can linger for the rest of a child's life, even into adulthood, through the immense weight of the psychological and emotional trauma that often occurs; and,

WHEREAS, The children of our town are our most precious gem, and it is vital that we do everything in our power to enable residents and law enforcement to help put an end to child abuse; and,

WHEREAS, The Town of Apex reminds residents that it is the law to report any instance of child abuse they see or suspect to local authorities, and we thank the dedicated staff with Wake County Health and Human Services and Child Protective Services for all the important work they do.

NOW, THEREFORE, I, Jacques K. Gilbert, Mayor of Apex, North Carolina, do hereby proclaim the Month of April, 2025, "Child Abuse Prevention Month" in the Town of Apex, and encourage the community to learn more about the potential signs of child abuse and do their part in protecting the children of Apex.

I hereby set my hand and have caused the Seal of the Town of Apex, North Carolina, to be affixed this the 8th day of April 2025

Jacques Gilbert, Mayor



"The Peak of Good Living"

TOWN OF APEX NORTH CAROLINA

Proclamation

National Public Safety Telecommunicator Week 2025

from the Office of the Mayor

WHEREAS, The Town of Apex recognizes the invaluable contributions of its dedicated team of 14 public safety emergency telecommunicators; and,

WHEREAS, These unsung first responders serve as the vital point of contact for residents in need of emergency assistance by providing a calming presence to callers and critical information to law enforcement officers, firefighters, and emergency medical personnel; and,

WHEREAS, The Apex Police Department Emergency Communications Center receives an average of 4,000 emergency 911 calls, 56,000 non-emergency calls, and 68,000 calls for service annually, demonstrating the immense volume and complexity of their daily responsibilities; and,

WHEREAS, In the aftermath of Hurricane Helene, our telecommunicators provided immense support to the Western part of our state, demonstrating their passion to their job and dedication to serving beyond our local community; and,

WHEREAS, The Town of Apex is grateful for our exceptional emergency telecommunicators and the tireless work they do to help keep our community safe.

NOW, THEREFORE, I, Jacques K. Gilbert, Mayor of Apex, North Carolina, do hereby proclaim April 13-19, 2025 as "Public Safety Telecommunicator Week" in the Town of Apex, and encourage all residents to extend their appreciation to these heroes for the crucial service they provide to our town.

I hereby set my hand and have caused the Seal of the Town of Apex,
North Carolina, to be affixed this the 8th day of April 2025

Jacques Gilbert, Mayor



"The Peak of Good Living"

TOWN OF APEX NORTH CAROLINA

Proclamation

Nepal Day 2025

from the Office of the Mayor

WHEREAS, Wake County is home to more than 6,000 Nepali families, with many of these having their roots planted in the Town of Apex; and,

WHEREAS, The Nepal Center of North Carolina is a non-profit organization that seeks to promote Nepali culture and traditions, and has done tremendous work in the community through highway cleanups, blood donation programs, youth college preparations, and much more; and,

WHEREAS, The Town of Apex is honored to be home to many Nepali families, as they are friendly neighbors, committed community members, and excellent contributors to our local economy; and,

WHEREAS, As a blend of culture with one of Nepal's most popular sports, the Town is proud to celebrate the first full year of operation of the cricket pitch at Apex Jaycee Park this past March; and,

WHEREAS, Paying homage to the iconic Nepali landmark of Mount Everest and to the history of North Carolina, the motto of the Nepal Center of North Carolina is "First in Height, First in Flight", symbolizing the connections between the cultures and the unity that has been created between the communities.

NOW, THEREFORE, I, Jacques K. Gilbert, Mayor of Apex, North Carolina, do hereby proclaim Saturday, April 19th, 2025 as "Nepal Day" in the Town of Apex, and extend my appreciation to all the Nepali residents in Apex for helping make our town so special.

I hereby set my hand and have caused the Seal of the Town of Apex,
North Carolina, to be affixed this the 8th day of April 2025

Jacques Gilbert, Mayor

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: PRESENTATION

Meeting Date: April 08, 2025

Item Details

Presenter(s): Mayor Jacques K. Gilbert

Brianne Gill, Community Engagement Manager

Department(s): Governing Body

Community Development and Neighborhood Connections

Requested Motion

Presentation of the Tenth Annual "Think Apex" Awards to the "Top Thinker" and "Honorable Mention" in the categories of Business, Individual or Group, Non-Profit, and Youth.

Approval Recommended?

N/A

Item Details

This will be the presentation of the 10th annual "Think Apex" Awards. Awards will be given to the "Top Thinker" and "Honorable Mention" in the categories of: Business, Individual or Group, Non-Profit and Youth. The "Think Apex" initiative was created in 2014 to foster and encourage a local mindset within the Apex community among businesses, residents and visitors. Think Apex empowers the community to celebrate, engage, play, volunteer, shop, eat and work locally.

The Think Apex Awards recognizes local businesses, individuals, groups, non-profits and youth for their dedicated service to others and to the Apex community at large. Nominations were received through a public, online application process. Nominees must be physically located in Apex and were considered for their acts of service in 2024.

During the ceremony, the Apex Town Council will be asked to stand in front of the dais and form a line to shake hands with each award recipient. Winners will come forward when their name is called. The Mayor and former Mayor Pro Tempore Nicole Dozier will be positioned at the end of the line to present the award to recipients. After receiving the awards, winners will pose for a quick photo.

Attachments:

- PR4 - Think Apex Award Certificates (***to be announced during the meeting***)

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: PUBLIC HEARING

Meeting Date: April 08, 2025

Item Details

Presenter(s): Dianne Khin, Director

Department(s): Planning

Requested Motion

Conduct a Public Hearing and possible motion to adopt Ordinance on the Question of Satellite Annexation - Apex Town Council's intent to annex 7.243 acres, commonly referred to as Jainix South, located on Jenks Road, Satellite Annexation No. 792, into the Town Corporate limits.

Approval Recommended?

Yes

Item Details

The annexation has been certified and a public hearing has been posted as required.

Attachments

- PH1-A1: Annexation Ordinance - Satellite Annexation No. 792 - Jainix South - Jenks Road - 7.243 acres
- PH1-A2: Public Hearing Notice - Satellite Annexation No. 792 - Jainix South - Jenks Road - 7.243 acres
- PH1-A3: Legal Description - Satellite Annexation No. 792 - Jainix South - Jenks Road - 7.243 acres
- PH1-A4: Aerial Map - Satellite Annexation No. 792 - Jainix South - Jenks Road - 7.243 acres
- PH1-A5: Plat Map - Satellite Annexation No. 792 - Jainix South - Jenks Road - 7.243 acres
- PH1-A6: Annexation Petition - Satellite Annexation No. 792 - Jainix South - Jenks Road - 7.243 acres





TOWN OF APEX, NORTH CAROLINA

Municipality No. 333

After recording, please return to: Town Clerk, Town of Apex, P.O. Box 250, Apex, NC 27502

ORDINANCE NO. 2025-
SATELLITE ANNEXATION PETITION NO. 792
JAINIX SOUTH – JENKS ROAD – 7.243 ACRES

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS
OF THE TOWN OF APEX, NORTH CAROLINA
P.O. Box 250, Apex, North Carolina 27502

WHEREAS, the Apex Town Council has been petitioned under G.S.§160A-58.1, as amended, to annex the area described herein; and

WHEREAS, the Apex Town Council has by Resolution directed the Town Clerk to investigate the sufficiency of said petition; and

WHEREAS, the Town Clerk has certified the sufficiency of said petition and a public hearing on the question of this annexation was held at Apex Town Hall at 6:00 p.m. on April 08, 2025, after due notice by posting to the Town of Apex website, <http://www.apexnc.org/news/public-notices-legal-ads>; and

WHEREAS, the Apex Town Council finds that the area described therein meets the standards of G.S.§160A-58.1(b), to with:

- a) The nearest point on the proposed satellite corporate limits is not more than three (3) miles from the corporate limits of the Town;
- b) No point on the proposed satellite corporate limits is closer to another municipality than to the Town;
- c) The area described is so situated that the Town will be able to provide the same services within the proposed satellite corporate limits that it provides within the primary corporate limits;

- d) No subdivision, as defined in G.S. 160A-376, will be fragmented by this proposed annexation;

WHEREAS, the Apex Town Council further finds that the petition has been signed by all the owners of real property in the area who are required by law to sign; and

WHEREAS, the Apex Town Council further finds that the petition is otherwise valid, and that the public health, safety and welfare of the Town and the area proposed for annexation will be best served by annexing the area described;

NOW, THEREFORE, BE IT ORDAINED by the Town Council of Apex, North Carolina:

Section 1. By virtue of the authority granted by G.S. §160A-58.2, as amended, the described non-contiguous territory is hereby annexed and described in the attached property description and also shown as "NEW TOWN OF APEX CORPORATE LIMITS", on the below identified survey plat is hereby annexed and made part of the Town of Apex, North Carolina, as of the date of adoption of this Ordinance on April 08, 2025. The survey plat that describes the annexed territory is that certain survey plat entitled "JAINIX SOUTH SATELLITE ANNEXATION PLAT". The survey plat printed date is October 18, 2024, and Land Surveyor dated March 10, 2025, PIN No. 0733-10-8632, 0733-10-8321, 0733-10-8018, and 0732-19-8808, and recorded in Book of Maps book number 2025 and page number _____, Wake County Registry.

Section 2. Upon and after the adoption of this ordinance, the territory described herein and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Apex, North Carolina, and shall be entitled to the same privileges and benefits as other parts of the Town of Apex. Said territory shall be subject to municipal taxes according to G.S. §160A-58.10, as amended.

Section 3. The Clerk of the Town of Apex, North Carolina shall cause to be recorded in the Office of the Register of Deeds of Wake County and in the Office of the Secretary of State at Raleigh, North Carolina and in the Office of the Wake County Board of Elections an accurate map of the annexed territory, described in Section 1 hereof, together with a duly certified copy of this Ordinance.

Adopted this the 08th day of April, 2025.

Jacques K. Gilbert
Mayor

ATTEST:

Allen L. Coleman, CMC, NCCCC
Town Clerk

APPROVED AS TO FORM:

Laurie L. Hohe
Town Attorney

Legal Description

Jainix South Annexation

Being a parcel of land located in White Oak Township, Town of Apex, Wake County, North Carolina, Being Lots 1-3 of the Jainix South Phase 1 as recorded in BM2023 PG 409 and the Jainix, LLC property as recorded in DB 17239 PG 1509 in the Wake County Register of Deeds and being more specifically described as follows:

Beginning at a found iron pipe at the common corner with the Jainix Green Subdivision as recorded in DB 2022 PG 1032-1033 and marking the westerly right-of-way margin of NC Highway 540 being the northeast corner of this property and having NC State Plane Coordinates of North 730,846.99 and East 2,032,014.85.

Thence along the westerly right-of-way of NC Highway 540 the following six (6) calls:
South 11 deg. 57 min. 17 sec. West, 96.01 feet to a found aluminum disk.

Thence, South 06 deg. 05 min. 06 sec. West, 358.64 feet to a set 1/2" iron rod capped ELI-LLC.

Thence, South 06 deg. 05 min. 06 sec. West, 155.72 feet to a found aluminum disk.

Thence, South 03 deg. 05 min. 34 sec. West, 17.81 feet to a found iron pipe.

Thence, South 03 deg. 05 min. 34 sec. West, 288.57 feet to a found aluminum disk.

Thence, South 04 deg. 49 min. 59 sec. East, 53.68 feet to a found aluminum disk.

Thence, leaving said right-of-way, South 02 deg. 42 min. 52 sec. East, 278.56 feet to a point at the northwest corner of Carillon Assisted Living of Apex, LLC a Delaware limited liability company as recorded in DB 19442 PG 778-783; said point located on the southerly right-of-way margin of Jenks Road, NCSR 1601.

Thence, along said right-of-way of Jenks Road, NCSR 1601 the following two (2) calls:
North 81 deg. 56 min. 11 sec. West, 131.39 feet to a point.

Thence, along a curve to the right having a radius of 2080.00 feet, an arc length 106.41 feet, a chord bearing of South 87 deg. 01 min. 42 sec. West, and a chord length of 106.40 feet.

Thence leaving said right-of-way, North 00 deg. 59 min. 54 sec. West, 159.84 feet to an iron pipe found on the northerly right-of-way margin of Jenks Road, NCSR 1601; said

pipe marking the southwest corner of Lot 4 of Jainix South Subdivision and being a common corner with Reams Grove Homeowners Association, Inc as recorded in DB 19476 PG 1494. PG 2 of 2

Thence along the common line with Reams Grove Homeowners Association, Inc, the following for (4) calls: North 00 deg. 50 min. 02 sec. West, 161.59 feet to a found iron pipe

Thence, North 00 deg. 50 min. 02 sec. West, 285.60 feet to a set 1/2" iron rod capped ELI-LLC.

Thence, North 00 deg. 50 min. 02 sec. West, 172.63 feet to a set 1/2" iron rod capped ELI-LLC.

Thence, North 00 deg. 50 min. 02 sec. West, 81.25 feet to a found iron pipe at the common corner of John & Kristel Weldon as recorded in DB 16653 PG 1598.

Thence, North 00 deg. 50 min. 02 sec. West, 365.09 feet along the common line of John & Kristel Weldon to a found iron pipe at the common corner of Jainix Green Subdivision as recorded in DB 2022 PG 1032-1033.

Thence, North 89 deg. 15 min. 22 sec. East, 327.90 feet along the common line of Jainix Green Subdivision to the point of Beginning.

Containing 315,515 square feet or 7.241 acres (42,402 square feet or 0.973 acres for right-of-way of Jenks Road, NCSR 1601 & 27,623 square feet or 0.634 acres for Jainix Drive-Private right-of-way) The bearings for this description are based on North Carolina State Plane (2011). Distances are Ground units in U.S. Survey feet with a combination factor of 0.99989624 ground to grid.

Subject to all easements and rights-of-way of record.

Basis of bearing: NC State Plane Coordinate System (NAD 83/2011.)

Reference is hereby made to the attached Satellite Annexation Plat prepared by Energy Land & Infrastructure, PLLC dated February 20, 2025.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

CLERK'S CERTIFICATION

I, Allen L. Coleman, Town Clerk, Town of Apex, North Carolina, do hereby certify the foregoing is a true and correct copy of Satellite Annexation Ordinance No. 2025-_____, adopted at a meeting of the Town Council, on the 08th day of April, 2025, the original of which will be on file in the Office of the Town Clerk of Apex, North Carolina.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official Seal of the Town of Apex, North Carolina, this the 08th day of April, 2025.

Allen L. Coleman, CMC, NCCCC
Town Clerk

(SEAL



"The Peak of Good Living"

OFFICE OF THE TOWN CLERK

TOWN OF APEX NORTH CAROLINA

Media Contact:

Allen Coleman, Town Clerk to the Apex Town Council

FOR IMMEDIATE RELEASE

PUBLIC NOTICE – PUBLIC HEARING

APEX, N.C. (March 26, 2025) – The Town Council of Apex, North Carolina has scheduled a Public Hearing to be held at **6:00 p.m.** at Apex Town Hall, 73 Hunter Street, on the **8th day of April, 2025**, on the question of annexation of the following property requested by petition filed pursuant to G.S. 160A-31:

Satellite Annexation No. 792 Janix South Development | Jenks Road | 7.243 acres





"The Peak of Good Living"

OFFICE OF THE TOWN CLERK

TOWN OF APEX NORTH CAROLINA

CONTINUED – PUBLIC NOTICE – PUBLIC HEARING

Residents may submit written comments to the Town Council with attention marked to the Town Clerk Allen Coleman; P.O. Box 250; Apex, NC 27502 or by email at public public.hearing@apexnc.org. Please use subject line "Annexation Petition No. 792" and include your first and last name, your address, and your phone number in your written statements. Written comments will be accepted until 3:00 PM on Tuesday, April 8, 2025.

Members of the public can access and view the meeting on the Town's YouTube Channel <https://www.youtube.com/c/TownofApexGov> or attend in-person.

Anyone needing special accommodations to attend this meeting and/or if this information is needed in an alternative format, please contact the Town Clerk's Office. The Town Clerk is located at 73 Hunter Street in Apex Town Hall on the 2nd Floor, (email) allen.coleman@apexnc.org or (phone) 919-249-1260. We request at least 48 hours' notice prior to the meeting to make the appropriate arrangements.

Questions should be directed to the Town Clerk's Office.

###

February 20, 2025
Jainix South Annexation

Being a parcel of land located in White Oak Township, Town of Apex, Wake County, North Carolina, Being Lots 1-3 of the Jainix South Phase 1 as recorded in BM2023 PG 409 and the Jainix, LLC property as recorded in DB 17239 PG 1509 in the Wake County Register of Deeds and being more specifically described as follows:

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Thence, South 03 deg. 05 min. 34 sec. West, 288.57 feet to a found aluminum disk.

Thence, South 04 deg. 49 min. 59 sec. East, 53.68 feet to a found aluminum disk.

Thence, leaving said right-of-way, South 02 deg. 42 min. 52 sec. East, 278.56 feet to a point at the northwest corner of Carillon Assisted Living of Apex, LLC a Delaware limited liability company as recorded in DB 19442 PG 778-783; said point located on the southerly right-of-way margin of Jenks Road, NCSR 1601.

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Containing 315,515 square feet or 7.241 acres (42,402 square feet or 0.973 acres for right-of-way of Jenks Road, NCSR 1601 & 27,623 square feet or 0.634 acres for Jainix Drive-Private right-of-way) The bearings for this description are based on North Carolina State Plane (2011). Distances are Ground units in U.S. Survey feet with a combination factor of 0.99989624 ground to grid.

Subject to all easements and rights-of-way of record.

Basis of bearing: NC State Plane Coordinate System (NAD 83/2011.)

Reference is hereby made to the attached Satellite Annexation Plat prepared by Energy Land & Infrastructure, PLLC dated February 20, 2025.



SATELLITE ANNEXATION PLAT FOR THE TOWN OF APEX

I, DAVID M. SHEEHAN, P.L.S CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION. DESCRIPTION RECORDED IN DEED BOOK 17341 PAGE 1696. THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS BEING DRAWN FROM INFORMATION FOUND IN MAP BOOK N/A. THAT THE RATIO OF PRECISION AS CALCULATED BY COORDINATE COMPUTATION IS 1/10000; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 4730 AS AMENDED, WITNESS MY ORIGINAL SIGNATURE REGISTRATION NUMBER AND SEAL, THIS 10th DAY OF March, 2025

I, DAVID M. SHEEHAN, P.L.S L-5300 CERTIFY THAT THIS PLAT IS OF A SURVEY OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT ORDERED SURVEY, OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION.

Annexation # _____

I, Allen Coleman, CMC, NCCCC, Town Clerk, Apex, North Carolina certify this a true and exact map of annexation adopted the _____ day of _____, 2025 , by the Town Council. I set my hand and seal of the Town of Apex, _____ Day/Month/Year

Allen Coleman, CMC, NCCCC, Town Clerk

Line Table		
LINE	LENGTH	DIRECTION
L1	40.00	N89° 09' 58"E
L2	43.07	S00° 50' 02"E
L3	16.93	N90° 00' 00"E
L4	20.50	S00° 00' 00"E
L5	13.88	N90° 00' 00"W
L6	40.05	S86° 22' 45"W

Curve Table				
CURVE	LENGTH	RADIUS	DIRECTION	CHORD LENGTH
C1	21.92	36.71	S69° 48' 15"E	21.60
C2	25.34	30.07	S67° 49' 10"W	24.59
C3	106.41	2080.00	S87° 01' 42"W	106.40

- NOTES:
- THE GRID COORDINATES WERE DETERMINED FROM AN ACTUAL GNSS SURVEY USING TRIMBLE R121 WITH RTK CORRECTIONS.
 - ALL DISTANCES SHOWN ARE HORIZONTAL GROUND DISTANCES.
 - ALL AREAS COMPUTED BY COORDINATE METHOD.
 - IRON PIPES SET/FOUND AT ALL PROPERTY CORNERS.
 - ONLY UTILITIES WITH VISIBLE EVIDENCE SHOWN. UNDERGROUND UTILITIES SHOWN ARE APPROXIMATE & MAY BE INCOMPLETE. EXCAVATION MAY BE REQUIRED TO VERIFY LOCATIONS. OTHER UNDERGROUND UTILITIES MAY EXIST. CALL ONE CALL CENTER AT 811 BEFORE DIGGING.
 - NO PART OF THE LOTS SHOWN ON THIS MAP ARE IN A FLOODPLAIN AREA. FEMA FLOOD MAP: 3720073300J MAY 2, 2006
 - ZONE: RR
 - PROPERTY ADDRESSES: 601, 615, 625, 641 JAINIX DRIVE, APEX, NC 27523
 - PROPERTY IDENTIFICATION NUMBERS (PIN): 0733108632, 0733108321, 0733108018, 0732198808
 - TOTAL ANNEXED AREA: 7.241 ACRES

GPS SURVEY CERTIFICATION

I, DAVID M. SHEEHAN, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL GPS SURVEY MADE UNDER MY SUPERVISION AND THE FOLLOWING INFORMATION WAS USED TO PERFORM THE SURVEY:

- CLASS OF SURVEY: A
- POSITIONAL ACCURACY: < 0.10'
- TYPE OF GPS FIELD PROCEDURE: RTK
- DATES OF SURVEY: 10/18/2024
- DATUM/EPOCH: NAD83 (2011)
- PUBLISHED/FIXED-CONTROL USE: NC CORS
- GEOID MODEL: CONTINENTAL U.S. - NGS 2012B
- COMBINED GRID FACTOR(S): 0.99989624
- UNITS: U.S. SURVEY FEET

PROPERTY OWNER: JAINIX LLC
1012 TIMBER MIST CT., CARY, NC 27519

LEGEND

- ▲

IRON ROD SET W/CAP
- ⊙

IRON PIPE FOUND
- NC DOT R/W DISK
- N/F

NOW OR FORMERLY
- R/W

RIGHT-OF-WAY
- NCSR

NORTH CAROLINA SECONDARY ROAD

—

GUARD RAIL

—

SUBJECT BOUNDARY

—

ADJOINER PROPERTY LINE

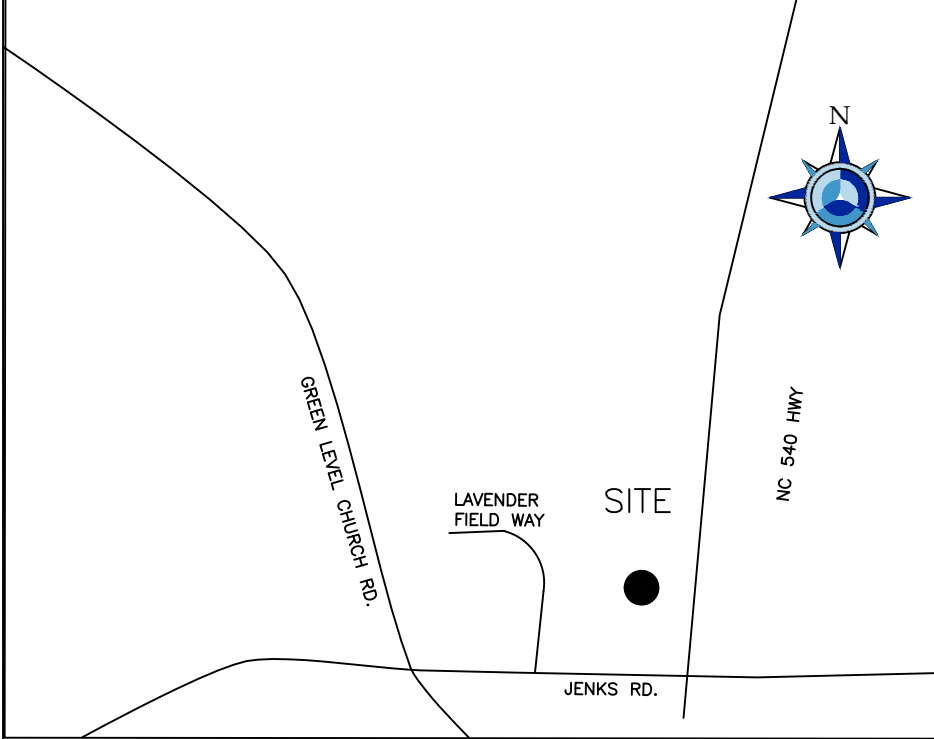
—

RIGHT-OF-WAY

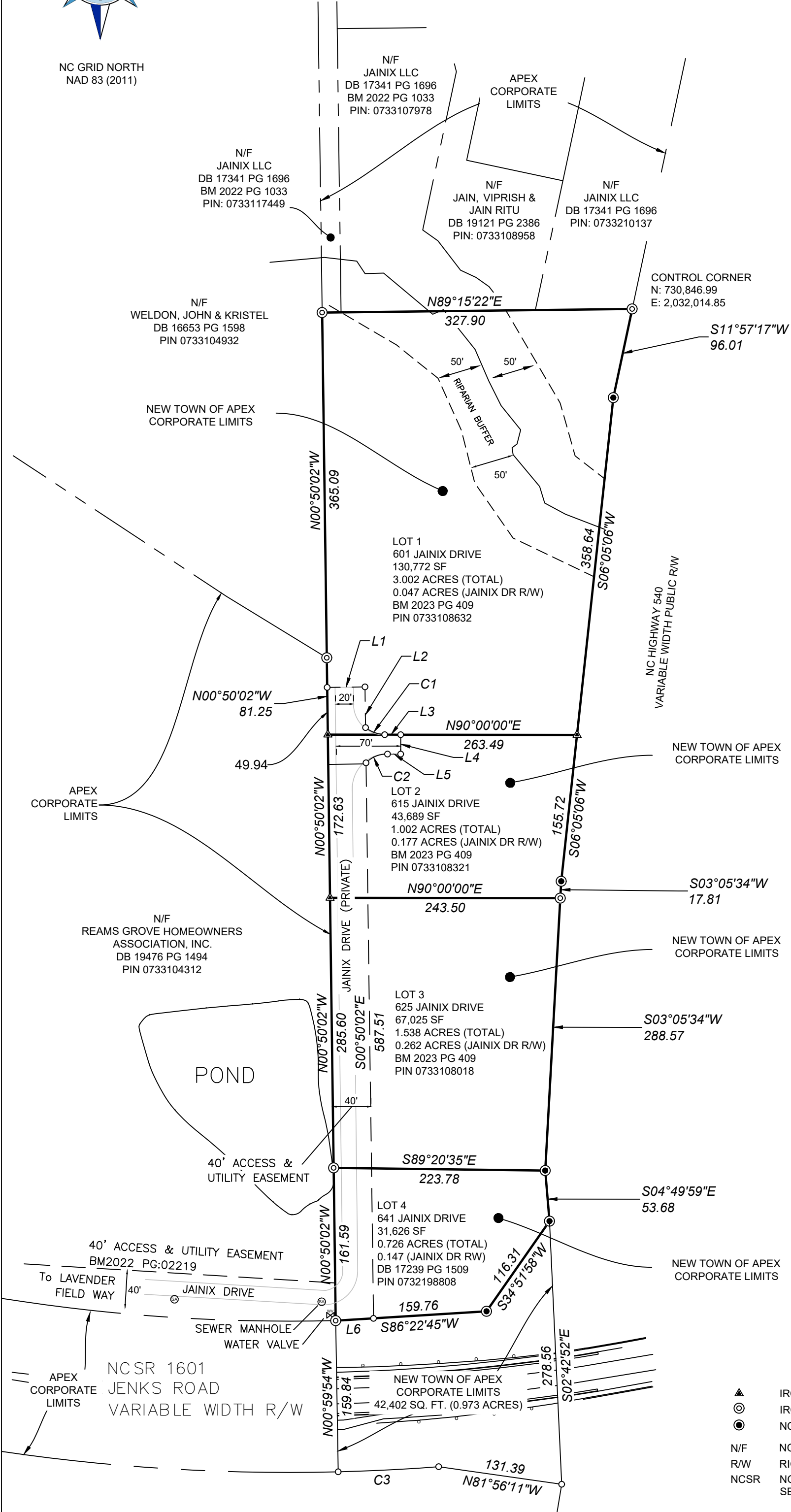
—

RIPARIAN BUFFER

SCALE: 1" = 100'



NC GRID NORTH
NAD 83 (2011)



Date of Survey:	10/18/2024	Rev.	Date	Revision Description
Project No:	24-21-6011.2			
Drafted By:	TJM			
Checked By:	DMS			
Sheet Number:	1 of 1			

JAINIX SOUTH
SATELLITE ANNEXATION PLAT
WHITE OAK TOWNSHIP, TOWN OF APEX
WAKE COUNTY, NORTH CAROLINA

500 GREGSON DRIVE · SUITE 180 · CARY, NC 27511
OFFICE 919-234-1974 · WWW.ELI-LLC.COM
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PETITION FOR VOLUNTARY ANNEXATION

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Application #:	_____	Submittal Date:	<u>Jan 30, 2025</u>
Fee Paid	\$ _____	Check #	_____

TO THE TOWN COUNCIL APEX, NORTH CAROLINA

1. We, the undersigned owners of real property, respectfully request that the area described in Part 4 below be annexed to the Town of Apex, ☒ Wake County, ☐ Chatham County, North Carolina.
2. The area to be annexed is ☒ contiguous, ☐ non-contiguous (satellite) to the Town of Apex, North Carolina and the boundaries are as contained in the metes and bounds description attached hereto.
3. If contiguous, this annexation will include all intervening rights-of-way for streets, railroads, and other areas as stated in G.S. 160A-31(f), unless otherwise stated in the annexation amendment.

OWNER INFORMATION

Jainix, LLC - Vipresh Bobby Jain

Owner Name (Please Print)

571 212 7326

Phone

BM2023 Pg 409; 0733108632, 0733108321, 0733108018, 0732198808

Property PIN or Deed Book & Page #

bobby@jainix.com

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

SURVEYOR INFORMATION

Surveyor: Energy Land & Infrastructure - David M. Sheehan, Gary C. Clark

Phone: 774 249 8383, 865 254 4407

Fax: _____

E-mail Address: david.sheehan@eli-llc.com, gary.clark@eli-llc.com

ANNEXATION SUMMARY CHART

Property Information		Reason(s) for annexation (select all that apply)	
Total Acreage to be annexed:	<u>7.243</u>	Need water service due to well failure	<input type="checkbox"/>
Population of acreage to be annexed:	<u>0</u>	Need sewer service due to septic system failure	<input type="checkbox"/>
Existing # of housing units:	<u>0</u>	Water service (new construction)	<input checked="" type="checkbox"/>
Proposed # of housing units:	<u>4</u>	Sewer service (new construction)	<input checked="" type="checkbox"/>
Zoning District*:	<u>RR</u>	Receive Town Services	<input checked="" type="checkbox"/>

*If the property to be annexed is not within the Town of Apex's Extraterritorial Jurisdiction, the applicant must also submit a rezoning application with the petition for voluntary annexation to establish an Apex zoning designation. Please contact the Planning Department with questions.

PETITION FOR VOLUNTARY ANNEXATION

Application #:

Submittal Date:

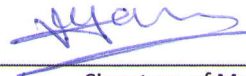
Jan 30, 2025

COMPLETE IF IN A LIMITED LIABILITY COMPANY

In witness whereof, Jainix, LLC a limited liability company, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the 30th day of January, 20 25

Name of Limited Liability Company Jainix, LLC

By:



Vipresh Bobby Jain

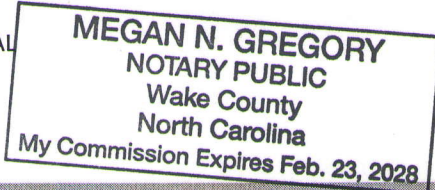
Signature of Member/Manager

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, VIPRESH BOBBY JAIN, a Notary Public for the above State and County, this the 29th day of JANUARY, 20 25.


Notary Public

SEAL



My Commission Expires:

FEB 23, 2028

COMPLETE IF IN A PARTNERSHIP

In witness whereof, _____, a partnership, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the _____ day of _____, 20 ____.

Name of Partnership _____

By:

Signature of General Partner

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County, this the _____ day of _____, 20 ____.

Notary Public

SEAL

My Commission Expires:

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: PUBLIC HEARING

Meeting Date: April 08, 2025

Item Details

Presenter(s): Bruce Venable, Planner II

Department(s): Planning

Requested Motion

Public Hearing and possible motion regarding amendments to the sign standards of the Unified Development Ordinance (UDO) as requested by East West Partners.

Approval Recommended?

The Planning Department recommends approval.

The Planning Board heard these amendments at their March 10, 2025, meeting and unanimously recommended approval.

Item Details

Requested by East West Partners:

1. Amendments to Sec. 8.7 *Signs* in order to add projecting signs as a permitted permanent sign type in all zoning districts and to set standards for such signage.

Attachments

- PH2-A1: Staff Report - Unified Development Ordinance (UDO) Amendments-Projecting Signs-March/April 2025
 - Public Notice - Unified Development Ordinance (UDO) Amendments-Signs-April 2025
- PH2-A2: Planning Board Report to Town Council - Unified Development Ordinance (UDO) Amendments- Projecting Signs
- PH2-A3: Ordinance - Unified Development Ordinance (UDO) Amendments-Projecting Signs-March/April 2025



STAFF REPORT

Amendments to the Unified Development Ordinance

April 8, 2025 Town Council Meeting



Requested by East West Partners:

- Amendments to Sec. 8.7 Signs in order to add projecting signs as a permitted permanent sign type in all zoning districts and to set standards for such signage.**

Background: The applicant, East West Partners, is requesting amendments to the Unified Development Ordinance (UDO) to permit projecting signs as a permanent sign type for all uses in all zoning districts. This sign type is currently only permitted within the Small Town Character Overlay District. The applicant collaborated with Planning Staff on the proposed standards. These standards will provide an additional signage option for residential, commercial, industrial, and office/institutional uses.

During the Planning Board review of the amendment, a member asked a question regarding the number of signs in Sec. 8.7.1.A.20.d. The wording presented in that report was:

Projecting signs shall be limited to one (1) per tenant with frontage on a street; or if on a corner lot, one (1) projecting sign per tenant per facade with street frontage.

To address the concern, staff has amended the text as shown in the proposed text below. Staff reviewed this change with the applicant and they are in agreement.

Originally Posted:

The number projecting signs shall be limited to one (1) per ground-floor public entrance with frontage on a street; or if on a corner lot, one (1) projecting sign per ground-floor public entrance per facade with street frontage.

REVISED

The number **of projecting signs shall be limited to one (1) per ground-floor public entrance with frontage on a street; or if on a corner lot, one (1) projecting sign per ground-floor public entrance per façade with street frontage**

8.7 Signs

...

8.7.1 Permitted Signs: Location, Size, and Number

...

Table 8.7.1

P = allowed with permit X = not allowed v = allowed without permit

Sign Type	Conditions	Residential Uses	Commercial Uses	Industrial Uses	Office & Institutional Uses	Illumination ¹
Permanent Sign Types						
...						
20 Projecting	8.7.1.A.20	P	P	P	P	Yes
...						
Sign Design and Color						

¹Subject to Sec. 8.7.4.C Uniform Color Scheme, 8.6 Exterior Lighting, and 8.7.6.B Sign illumination.

A) *Permanent Sign Types*

...

20) Projecting Signs

A sign affixed to a building or wall in such a manner that its leading edge extends more than 12 inches beyond the surface of said building or wall and meets the conditions below:

- a) Projecting signs shall maintain a minimum vertical clearance of nine (9) feet and shall not project higher than the building height, roof line, or parapet wall.
- b) Projecting signs may only be used as an alternative to a wall sign. In no instance shall a single tenant have a projecting sign, and a wall sign located on the same building façade.
- c) The maximum sign area permitted for such sign shall be determined by the mounting height of the top of the sign as listed in Table 8.7.1.A.20 below.

Table 8.7.1.A.20

<u>Projecting Sign Location</u>	<u>Maximum Sign Area</u>
<u>Ground Floor</u>	<u>12 square feet</u>
<u>Between ground floor and secondary story</u>	<u>18 square feet</u>
<u>Between second story and third story</u>	<u>32 square feet</u>
<u>Third story and above</u>	<u>48 square feet</u>

- d) Originally Posted:
The number projecting signs shall be limited to one (1) per ground-floor public entrance with frontage on a street; or if on a corner lot, one (1) projecting sign per ground-floor public entrance per facade with street frontage.

REVISED:

The number of projecting signs shall be limited to one (1) per ground-floor public entrance with frontage on a street; or if on a corner lot, one (1) projecting sign per ground-floor public entrance per façade with street frontage

- e) The outside edge of the projecting sign shall not project more than five (5) feet beyond the façade of the building.
- f) Also subject to Sec. 8.7.3 Sign Area Measurement, Sec. 8.7.4 Sign Design and Color, 8.7.5 Master Sign Plan Requirement, and 8.7.6.B Sign Illumination.

- g) Projecting signs in compliance with the above regulations may project into the air rights of a public right-of-way if approval for such encroachment is obtained from the governmental authority having jurisdiction over improvements in the public right-of-way prior to the approval of the sign permit.



Figure 8.7.1.A.20 Examples of projecting sign type.

8.7.6 Installation Requirements

...

B) *Sign Illumination*

...

- 4) *Style of internally illuminated signs.* Internally illuminated signs shall have individually illuminated letters and logos. Such letters shall have opaque sides, and the acrylic front shall be flush with the sides instead of held by a lip. **Provided, however, projecting signs shall be allowed to be internally illuminated only with the use of individual face or edge-lit halo letters, logos, and design forms with a maximum of one-half-inch visible acrylic on a common cabinet.**

PLANNING STAFF RECOMMENDATION:

Planning staff recommend approval of the proposed amendments.

PLANNING BOARD RECOMMENDATION:

The Planning Board reviewed these amendments at their March 10, 2025, meeting and unanimously recommended approval.



TOWN OF APEX

POST OFFICE BOX 250
APEX, NORTH CAROLINA 27502
TEL. 919-249-3426

PUBLIC NOTIFICATION OF PUBLIC HEARING AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE (UDO)

Pursuant to the provisions of North Carolina General Statutes §160D-601 and to the Town of Apex Unified Development Ordinance (UDO) Sec. 2.2.11, notice is hereby given of a public hearing before the Town Council of the Town of Apex for the purpose of soliciting comments relative to the following amendment(s) to the Unified Development Ordinance that are applicable Town-wide:

Requested by East West Partners:

Amendments to Sec. 8.7 *Signs* in order to add projecting signs as a permitted permanent sign type in all zoning districts and to set standards for such signage.

Public Hearing Location: Apex Town Hall
Council Chamber, 2nd floor
73 Hunter Street, Apex, North Carolina

Town Council Public Hearing Date and Time: April 8, 2025, 6:00 PM

You may attend the meeting in person or view the meeting through the Town's YouTube livestream at: <https://www.youtube.com/c/townofapexgov>.

If you are unable to attend, you may provide a written statement by email to public.hearing@apexnc.org, or submit it to the Office of the Town Clerk (73 Hunter Street or USPS mail - P.O. Box 250, Apex, NC 27502), at least two business days prior to the Town Council vote. You must provide your name and address for the record. The written statements will be delivered to the Town Council members prior to their vote. Please include the Public Hearing name in the subject line.

The UDO can be accessed online at: <http://www.apexnc.org/233>.

Dianne F. Khin, AICP
Planning Director

Published Dates: March 14, 2025 – April 8, 2025

**TOWN OF APEX**

POST OFFICE BOX 250
APEX, NORTH CAROLINA 27502
TEL. 919-249-3426

NOTIFICACIÓN PÚBLICA DE AUDIENCIAS PÚBLICAS**Modificación de la Ordenanza
de Desarrollo Unificado (UDO)**

De conformidad con las disposiciones de los Estatutos Generales de Carolina del Norte §160D-601 y con la sección 2.2.11 de la Ordenanza de Desarrollo Unificado (UDO) del pueblo de Apex, por la presente se notifican las audiencias públicas ante el Consejo Municipal del pueblo de Apex a fin de solicitar comentarios relativos a la siguiente modificación de la Ordenanza de Desarrollo Unificado que se aplican a toda la ciudad:

Solicitado por East West Partners:

Enmiendas a la sección 8.7 *Señales* para añadir las señales que sobresalen como tipo de señal permanente permitida en todos los distritos de zonificación y establecer normas para dichas señales.

Lugar de la audiencia pública: Ayuntamiento de Apex
Cámara del Consejo, 2º piso
73 Hunter Street, Apex, Carolina del Norte

Fecha y hora de la audiencia pública del Consejo Municipal: 8 de abril de 2025 6:00 PM

Puede asistir a la reunión de manera presencial o seguir la transmisión en directo por YouTube a través del siguiente enlace: <https://www.youtube.com/c/townofapexgov>.

Si no puede asistir, puede enviar una declaración escrita por correo electrónico a public.hearing@apexnc.org, o presentarla a la Oficina del Secretario Municipal (73 Hunter Street o por correo USPS a P.O. Box 250, Apex, NC 27502), al menos dos días hábiles antes de la votación del Consejo Municipal. Debe proporcionar su nombre y dirección para que conste en el registro. Las declaraciones escritas se entregarán al Consejo Municipal antes de la votación. No olvide incluir el nombre de la audiencia pública en el asunto.

Se puede acceder a la UDO en línea en: <http://www.apexnc.org/233>.

Dianne F. Khin, AICP
Directora de Planificación

Fechas de publicación: 14 de marzo de 2025 – 8 de abril de 2025



Modificación de la Ordenanza de Desarrollo Unificado (UDO)

Solicitado por East West Partners:

Lugar de la audiencia pública: Ayuntamiento de Apex
Cámara del Consejo, 2ª piso
73 Hunter Street, Apex, Carolina del Norte

Fecha y hora de la audiencia pública del Consejo Municipal: 8 de abril de 2025 6:00 PM

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Se puede acceder a la UDO en línea en: <http://www.apexnc.org/233>.

Dianne F. Khin, AICP
Directora de Planificación

Fechas de publicación: 14 de marzo de 2025 – 8 de abril de 2025

PLANNING BOARD REPORT TO TOWN COUNCIL

Unified Development Ordinance Amendments: Requested by East West Partners

Planning Board Meeting Date: March 10, 2025



Report Requirements:

Per NCGS §160D-604, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the Planning Board for review and comment. If no written report is received from the Planning Board within 30 days of referral of the amendment to the Planning Board, the Town Council may act on the amendment without the Planning Board report. The Town Council is not bound by the recommendations, if any, of the Planning Board.

Planning Board Recommendation:

Motion: To recommend approval as presented.

Introduced by Planning Board member: Sarah Soh

Seconded by Planning Board member: Preston Mitchell

- ☒ Approval of the proposed UDO amendment(s)
☐ Approval of the proposed UDO amendment(s) with the following conditions:

☐ Denial of the proposed UDO amendment(s)

With 8 Planning Board Member(s) voting "aye"

With 0 Planning Board Member(s) voting "no"

Reasons for dissenting votes:

This report reflects the recommendation of the Planning Board, this the 10th day of March 2025.

Attest:

Tim Royal
Tim Royal, Planning Board Vice-Chair

Dianne Khin

Dianne Khin, Planning Director

Digitally signed by Dianne Khin
Date: 2025.03.10 16:50:31
-04'00'

AN ORDINANCE TO AMEND CERTAIN SECTIONS OF THE UNIFIED DEVELOPMENT ORDINANCE

BE IT ORDAINED by the Town Council of the Town of Apex as follows:

Section 1. Section 8.7 of the Unified Development Ordinance is amended to read as follows with additions shown as bold underlined text and deletions shown as struck-through text:

8.7 Signs

...

8.7.1 Permitted Signs: Location, Size, and Number

...

Table 8.7.1

P = allowed with permit X = not allowed V = allowed without permit

Sign Type	Conditions	Residential Uses	Commercial Uses	Industrial Uses	Office & Institutional Uses	Illumination ¹
Permanent Sign Types						
...						
20	Projecting	8.7.1.A.20	P	P	P	Yes
...						
Sign Design and Color						
¹ Subject to Sec. 8.7.4.C <i>Uniform Color Scheme</i> , 8.6 <i>Exterior Lighting</i> , and 8.7.6.B <i>Sign illumination</i> .						

A) *Permanent Sign Types*

...

20) *Projecting Signs*

A sign affixed to a building or wall in such a manner that its leading edge extends more than 12 inches beyond the surface of said building or wall and meets the conditions below:

- a) **Projecting signs shall maintain a minimum vertical clearance of nine (9) feet and shall not project higher than the building height, roof line, or parapet wall.**
- b) **Projecting signs may only be used as an alternative to a wall sign. In no instance shall a single tenant have a projecting sign, and a wall sign located on the same building façade.**
- c) **The maximum sign area permitted for such sign shall be determined by the mounting height of the top of the sign as listed in Table 8.7.1.A.20 below.**

Table 8.7.1.A.20

<u>Projecting Sign Location</u>	<u>Maximum Sign Area</u>
<u>Ground Floor</u>	<u>12 square feet</u>
<u>Between ground floor and secondary story</u>	<u>18 square feet</u>

<u>Between second story and third story</u>	<u>32 square feet</u>
<u>Third story and above</u>	<u>48 square feet</u>

- d) The number of projecting signs shall be limited to one (1) per ground-floor public entrance with frontage on a street; or if on a corner lot, one (1) projecting sign per ground-floor public entrance per façade with street frontage

The outside edge of the projecting sign shall not project more than five (5) feet beyond the façade of the building.

- e) Also subject to Sec. 8.7.4 Sign Design and Color, 8.7.5 Master Sign Plan Requirement, Sec. 8.7.3 Sign Area Measurement, and 8.7.6.B Sign Illumination.

- f) Projecting signs in compliance with the above regulations may project into the air rights of a public right-of-way if approval for such encroachment is obtained from the governmental authority having jurisdiction over improvements in the public right-of-way prior to the approval of the sign permit.



Figure 8.7.1.A.20 Examples of projecting sign type.

8.7.6 Installation Requirements

...

B) *Sign Illumination*

...

- 4) *Style of internally illuminated signs.* Internally illuminated signs shall have individually illuminated letters and logos. Such letters shall have opaque sides, and the acrylic front shall be flush with the sides instead of held by a lip.
Provided, however, projecting signs shall be allowed to be internally

illuminated only with the use of individual face or edge-lit halo letters, logos, and design forms with a maximum of one-half-inch visible acrylic on a common cabinet.

Section 2. The Planning Director and/or Town Manager are hereby authorized to renumber, revise formatting, correct typographic errors, to verify and correct cross references, indexes and diagrams as necessary to codify, publish, and/or accomplish the provisions of this ordinance or future amendments as long as doing so does not alter the terms of this ordinance.

Section 3. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. If any section, paragraph, subdivision, clause or provision of this ordinance shall be adjudged invalid, such adjudication shall apply only to such section, paragraph, subdivision, clause or provision so adjudged and the remainder of the ordinance shall be deemed valid and effective.

Section 4. The ordinance shall be effective upon enactment on the ____ day of _____ 2025.

Introduced by Council Member _____

Seconded by Council Member _____

Attest:

TOWN OF APEX

Allen Coleman, CMC, NCCCC
Town Clerk

Jacques K. Gilbert
Mayor

Approved as to Form:

Laurie L. Hohe
Town Attorney

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: PUBLIC HEARING

Meeting Date: April 08, 2025

Item Details

Presenter(s): Bruce Venable, Planner II
Amanda Bunce, Current Planning Manager

Department(s): Planning

Requested Motion

Public Hearing and possible motion regarding various amendments to the Unified Development Ordinance (UDO).

Approval Recommended?

The Planning Department recommends approval.

The Planning Board heard these amendments at their March 10, 2025, meeting and unanimously recommended approval.

Item Details

Requested by Planning Staff:

1. Amendments to Secs. 2.1.2 *Planning Board*, 2.1.4 *Transit Advisory Committee*, 2.1.5 *Parks, Recreation, and Cultural Resources Advisory Commission*, 2.1.9 *Apex Environmental Advisory Board*, and 2.1.10 *Housing Advisory Board* in order to increase the membership, add attendance requirements, and change term length and limits for various advisory boards; add voting power to the Historical Society Member of the Planning Board; change the name of the Parks, Recreation, and Cultural Resources Advisory Commission; remove the sections for the Transit Advisory Committee and Housing Advisory Board; remove staff as ex-officio members of advisory boards; and change the threshold for rezonings that must be reviewed by the Environmental Advisory Board. Amendments to Secs. 2.3.7.D.1 *Subdivision, Master Subdivision Plan, Procedures*, 7.1.7 *Substitution of Fees in Lieu of Public Improvements* and 14.1 *Park, Recreation, and Open Space Sites* are needed to reflect the proposed name change for the Parks, Recreation, and Cultural Resources Advisory Commission.
2. Amendments to Secs. 2.2.7 *Neighborhood Notice* and 2.2.11 *Public Notification* in order to increase the minimum distance for all neighborhood and public hearing notices from 300 feet to 500 feet. The effective date of this amendment would be July 1, 2025.
3. Amendments to Sec. 2.3.6 *Site Plan* to allow for linear utility, infrastructure, and public works projects submitted by the Town to go directly to construction plans after a pre-application meeting.

Attachments

- PH3-A1: Staff Report - Unified Development Ordinance (UDO) Amendments-Staff - April 2025
 - Public Notice - Unified Development Ordinance (UDO) Amendments-Staff - April 2025
- PH3-A2: Planning Board Report to Town Council - Unified Development Ordinance (UDO) Amendments-Staff

- PH3-A3: Ordinance - Unified Development Ordinance (UDO) Amendments-Staff - April 2025



STAFF REPORT

Amendments to the Unified Development Ordinance

March 10, 2025 Planning Board Meeting



Requested by Planning Staff:

1. **Amendments to Secs. 2.1.2 Planning Board, 2.1.4 Transit Advisory Committee, 2.1.5 Parks, Recreation, and Cultural Resources Advisory Commission, 2.1.9 Apex Environmental Advisory Board, and 2.1.10 Housing Advisory Board** in order to increase the membership, add attendance requirements, and change term length and limits for various advisory boards; add voting power to the Historical Society Member of the Planning Board; change the name of the Parks, Recreation, and Cultural Resources Advisory Commission; remove the sections for the Transit Advisory Committee and Housing Advisory Board; remove staff as ex-officio members of advisory boards; and change the threshold for rezonings that must be reviewed by the Environmental Advisory Board. **Amendments to Secs. 2.3.7.D.1 Subdivision, Master Subdivision Plan, Procedures, 7.1.7 Substitution of Fees in Lieu of Public Improvements and 14.1 Park, Recreation, and Open Space Sites** are needed to reflect the proposed name change for the Parks, Recreation, and Cultural Resources Advisory Commission.

Background: The Mayor and Town Council held a work session in December 2024 to discuss the roles and responsibilities of the resident advisory boards and to consider several administrative policy recommendations. The purpose of the changes is to improve board functionality, clarify roles and responsibilities, ensure broader representation such as youth involvement, and ensure the current advisory boards are aligned with Game Plan Apex, the Town's Strategic Goal Framework. The standards for the Transit Advisory Committee is proposed to be moved to the Town Code along with the name of the board changing to Multimodal Transportation Advisory Board. The Housing Advisory Board is proposed to be removed as there is now full-time staff to handle those duties. Implementation includes the UDO Amendments below along with amendments to the Town Code.

Additionally, the Mayor and Town Council directed the Town Clerk to develop a Resident Advisory Board Administrative Policy which will provide direction as it relates to attendance requirements, clarify membership eligibility requirements, provide guidance on annual reporting from advisory boards to the governing body, clarify eligibility for advisory board stipends, provide guidance on meeting minute format, and conflict of interest declarations. Each appointed member will be required to sign an acknowledgement stating they understand with the administrative policies.

2.1.2 Planning Board

...

B) Membership

- 1) **Number.** The Planning Board shall consist of ~~nine (9)~~ **10** voting members and one (1) non-voting member **youth representative as defined in the Resident Advisory Board Administrative Policy.**
- 2) **Composition of the Members**
 - a) Composition between Town and ETJ. The composition of membership between the Town and ETJ shall be as follows:

- (i) The composition of the members shall reflect proportional representation between the Town's corporate limits and the ETJ.
 - (ii) ETJ membership shall be based on the proportionality of population between the Town and the ETJ. This shall be determined by estimating the total population in the ETJ as a percentage of the population in the Town's corporate limits and the ETJ and multiplying this percentage by ~~nine (9)~~ **10** (the total required voting membership), rounding up to the next whole number. Members appointed from the ETJ shall be residents of the ETJ and citizens of Wake County.
 - (iii) The balance of the Planning Board's membership shall reside within the Town's corporate limits, with the exception of the members referenced in Secs. 2.1.2.B.2.b and 2.1.2.B.2.c, whose residency requirements shall be determined by those Sections.
 - (iv) Membership composition shall be adjusted to reflect changes in the population between the Town and the ETJ every two (2) years.
- b) One (1) member of the Planning Board shall reside outside the corporate limits and ETJ, but within the area covered by the Town's 2045 Land Use Map.
 - c) One (1) ~~non-voting~~ member of the Planning Board shall be a member of the Apex Historical Society and may reside either within or outside the Town's corporate limits. However, the Town Council is not authorizing the Planning Board to operate as a historic preservation commission pursuant to NCGS 160D-303.
 - d) All members of the Planning Board, except the non-voting ~~member from the Apex Historical Society~~ **youth representative**, shall have voting power on all matters of business.

...

4) *Appointment.* Members shall be appointed as follows:

- a) Regular members of the Planning Board from the ETJ shall be appointed by the Wake County Board of County Commissioners.
- b) Regular members of the Planning Board from the Town shall be recommended by the Mayor and appointed by the Town Council.
- c) The regular member of the Planning Board who resides outside the corporate limits and ETJ, but within the area covered by the Town's 2045 Land Use Map shall be recommended by the Mayor and appointed by the Town Council.
- d) The non-voting ~~member~~ **youth representative** of the Planning Board shall be recommended by the Mayor and appointed by the Town Council.

5) Terms. Members shall be appointed for terms of two (2) years, except for the youth representative who shall be appointed for a term of one (1) year. No member of the Planning Board may serve more than ~~five (5)~~ three (3) consecutive two (2) year terms with the exception of the youth representative who may serve no more than two (2) consecutive terms.

6) Removal. Any member of the Planning Board shall be removed for cause (~~neglect of duty, malfeasance, misconduct, or failure to faithfully attend meetings~~) by the Town Council upon written charge as defined in the Resident Advisory Board Administrative Policy.

...

C) Officers

1) *Chair and vice-chair*. The chair and vice-chair of the Planning Board shall be appointed by the ~~m~~Mayor from the voting members of the Board and confirmed by the Town Council. The term of the chair and vice-chair shall be one (1) year. A past chair or vice-chair may be re-appointed, even though no chair or vice-chair shall serve for more than four (4) consecutive terms. Vacancies within a term shall be filled by the same method as the original appointment. The chair shall decide all points of order on procedure, and shall take such action as shall be necessary to preserve the order and integrity of all proceedings before the Planning Board. In the absence of the chair, the vice-chair shall act as chair and shall have all powers of the chair. In the absence of both the chair and vice-chair, an acting chair shall be selected for that meeting by a simple majority of those members present. The acting chair shall have the authority and responsibilities of the chair for that meeting.

2) *Secretary*. The Planning Director or designee shall serve as Secretary of the Planning Board and shall keep minutes of all proceedings. These minutes shall be a summary of all proceedings before the Planning Board, which shall include the vote of all members upon every consideration, and be attested to by the Secretary. The minutes shall be approved by a majority of the Planning Board members voting. In addition, the Secretary shall maintain all records of the Planning Board meetings, hearings, proceedings, and correspondence, as public records in the offices of the Planning Department.

D) Quorum

No meeting of the Planning Board shall be called to order, nor may any business be transacted by the Planning Board, without a quorum consisting of the majority of the Planning Board's membership excluding vacant seats and the non-voting member youth representative.

...

H) Meetings

Meetings of the Planning Board shall be held monthly to consider matters properly before the Board. Additional meetings may be called by the ~~C~~chair or in writing by ~~five~~ six (6) members of the Board. All meetings and public hearings shall be held in the Town in a place accessible and open to the public.

...

2.1.4 Transit Advisory Committee Reserved

A) ~~_____~~ Powers and Duties

The Transit Advisory Committee shall have the following powers and duties under the provisions of this Ordinance:

- 1) ~~_____~~ *Review transit plans and services.* Review proposed local transit plans, policies, capital improvements, and service changes, and provide recommendations regarding revisions and/or approval. Review regional transit plans, policies, capital improvements, and proposed services changes relevant to the Town of Apex and provide recommendations regarding revisions and/or approval.
- 2) ~~_____~~ *Recommendations to Mayor and Town Council.* Recommend to the Mayor and Town Council local transit plans, policies, capital improvements, and service changes.
- 3) ~~_____~~ *Provide information to the Mayor and Town Council.* Provide information to the Mayor and Town Council regarding transit customer experience and stakeholder opinions and needs.

B) ~~_____~~ Membership

- 1) ~~_____~~ *Number.* The Transit Advisory Committee shall consist of nine (9) members. Up to three (3) members may be ex-officio, non-voting members consisting of Town staff. No member of the Town Council shall serve on the Transit Advisory Committee.
- 2) ~~_____~~ *Appointment.* Members shall be recommended by the Mayor and appointed by the Town Council.
- 3) ~~_____~~ *Initial establishment.* At the initial establishment of the Transit Advisory Committee, three (3) members shall be appointed for a term of three (3) years, three (3) members shall be appointed for a term of two (2) years, and all remaining members shall be appointed for a term of one (1) year. Thereafter, new appointments for terms of three (3) years shall be made. No member of the Transit Advisory Committee may serve more than three (3) consecutive three (3) year terms with the exception of ex-officio members.
- 4) ~~_____~~ *Removal.* Any member of the Transit Advisory Committee shall be removed for (neglect of duty, malfeasance, misconduct, or failure to faithfully attend meetings) by the Town Council upon written charge and after a public hearing.
- 5) ~~_____~~ *Filling of vacancy.* Vacancies shall be filled by the same method as the original appointment. Vacancies occurring for reasons other than expiration of terms shall be filled for the period of the unexpired term by the same method as the original appointment. 6) ~~_____~~ *Voting.* All regular members shall vote on any issue unless they have been disqualified pursuant to Sec. 2.1.4.E *Conflict of Interest.*
- 6) ~~_____~~ *Voting.* All regular members shall vote on any issue unless they have been disqualified pursuant to Sec. 2.1.4.E *Conflict of Interest.*

C) ~~_____~~ Officers

1) ~~Chair and vice-chair.~~ The chair and vice-chair of the Transit Advisory Committee shall be appointed by the mayor from the members of the Committee and confirmed by the Town Council. The term of the chair and vice-chair shall be for one (1) year. A past chair or vice-chair may be re-appointed, even though no chair or vice-chair shall serve for more than four (4) consecutive terms. Vacancies within a term shall be filled by the same method as the original appointment. The chair shall decide all points of order on procedure, and shall take such action as shall be necessary to preserve the order and integrity of proceedings before the Transit Advisory Committee. In absence of the chair, the vice-chair shall act as chair and shall have all powers of the chair. In the absence of both the chair and vice-chair, an acting chair shall be selected for that meeting by a majority of those members present. The acting chair shall have the authority and responsibilities of the chair for that meeting.

2) ~~Secretary.~~ The Planning Director or designee shall serve as the Secretary of the Transit Advisory Committee and shall keep minutes of all proceedings. These minutes shall be a summary of all proceedings before the Transit Advisory Committee, which shall include the vote of all members upon every consideration, and be attested to by the Secretary. The minutes shall be approved by a majority of the Transit Advisory Committee members voting. In addition, the Secretary shall maintain all records of the Transit Advisory Committee meetings, hearings, proceedings, and correspondence as public records in the offices of the Planning Department.

D) ~~Quorum~~

No meeting of the Transit Advisory Committee shall be called to order, nor may any business be transacted by the Transit Advisory Committee, without a quorum consisting of the majority of the Transit Advisory Committee's membership, excluding vacant seats, being present.

E) ~~Conflict of Interest~~

Per 160D-109(b), Transit Advisory Committee members shall not vote on any advisory decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Any member who has an interest in a matter under consideration by the Transit Advisory Committee shall declare such interest prior to the vote of the Committee and abstain from voting on the question. The member declaring the interest is not exempted from participation in the discussions of the Committee on the matter prior to its vote.

F) ~~Staff~~

The Planning Department shall be the professional staff to the Transit Advisory Committee.

G) ~~Rules of Procedure~~

The Transit Advisory Committee shall, by a majority vote of the entire membership, adopt rules and regulations governing its procedure as it may consider necessary or advisable.

H) ~~Meetings~~

~~Meetings of the Transit Advisory Committee shall be held quarterly to consider matters properly before the Committee. Additional meetings may be called by the Chair or in writing by a majority of the Committee.~~

~~I) Compensation~~

~~The members of the Transit Advisory Committee shall serve with compensation as authorized by Town Council in the annual budget.~~

2.1.5 Parks, and Recreation, ~~and Cultural Resources~~ Advisory ~~Commission~~ Board

A) Powers and Duties

The Parks, and Recreation, ~~and Cultural Resources~~ Advisory ~~Commission~~ Board shall have the following powers and duties under the provisions of this Ordinance:

...

B) Rules Governing ~~Commission~~ Board

The professional staff of the ~~Commission~~ Board shall be the Parks, Recreation, and Cultural Resources Department. The rules governing the other responsibilities and procedures of the Parks, and Recreation, ~~and Cultural Resources~~ Advisory ~~Commission~~ Board are established in Sec. 15-4, Code of Ordinances, Town of Apex, North Carolina.

C) Compensation

The members of the Parks, and Recreation, ~~and Cultural Resources~~ Advisory ~~Commission~~ Board shall serve with compensation as authorized by Town Council in the annual budget.

2.1.9 Apex Environmental Advisory Board

A) Powers and Duties

The Environmental Advisory Board shall have the following powers and duties under the provisions of this Ordinance:

...

- 2) Review, with applicants, during the staff review phase of a proposal, certain requests for conditional rezoning and recommend zoning conditions to the applicant and Town Council that will mitigate anticipated impact to the natural environment as a result of the project under consideration. The following conditional rezoning requests shall be exempt from review by this Board:

- a) Rezoning to amend zoning conditions which have no environmental impact on a site including but not limited to revisions to architectural standards, building height, setbacks, and uses;
- b) Rezoning to resolve nonconformities;
- c) Rezoning of ~~one (1) acre~~ 10 acres or less; and
- d) Rezoning within the Small Town Character Overlay District.

...

2.1.10 Housing Advisory Board

A) ~~Powers and Duties~~

~~The Housing Advisory Board shall have the following powers and duties under the provisions of this Ordinance:~~

- ~~1) Recommendations to Mayor and Town Council. Recommend to the Mayor and Town Council, policies and funding recommendations related to affordable housing.~~
- ~~2) Housing Advocacy to Mayor, Town Council, and Planning Board. Advise the Mayor, Town Council, and Planning Board on housing advocacy efforts related to affordable housing.~~
- ~~3) Housing Annual Report. Assist in the creation of the housing annual report.~~

B) ~~Membership~~

- ~~1) Number. The Housing Advisory Board shall consist of nine (9) members. The Housing Advisory Board shall include one (1) Planning Board member and one (1) Town Council member. The Planning Board member and Town Council member shall be non-voting members.~~
- ~~2) Appointment. Members shall be recommended by the Mayor and appointed by the Town Council.~~
- ~~3) Initial establishment. At the initial establishment of the Housing Advisory Board, four (4) members shall be appointed for a term of three (3) years, three (3) members shall be appointed for a term of two (2) years, one Planning Board non-voting member shall be appointed for a term of (1) year and one Town Council non-voting member shall be appointed for a term of one (1) year. Thereafter, new appointments for terms of three (3) years shall be made with the exception of the Planning Board non-voting member and Town Council non-voting member which shall remain on a term of one (1) year. No member of the Housing Advisory Board shall serve more than nine (9) consecutive years after being appointed with the exception of the Planning Board non-voting member and Town Council non-voting member which shall serve no more than three (3) consecutive years after being appointed.~~
- ~~4) Removal. Any member of the Housing Advisory Board shall be removed for cause (neglect of duty, malfeasance, misconduct, or failure to faithfully attend meetings) by the Town Council upon written charge and after a public hearing.~~
- ~~5) Filling of vacancy. Vacancies shall be filled by the same method as the original appointment. Vacancies occurring for reasons other than expiration of terms shall be filled for the period of the unexpired term by the same method as the original appointment.~~
- ~~6) Voting. All regular members shall vote on any issue unless they have been disqualified pursuant to Sec. 2.1.10.E Conflict of Interest.~~

C) ~~Officers~~

- 1) ~~Chair and vice chair. The chair and vice chair of the Housing Advisory Board shall be appointed by the Mayor from the members of the Board and confirmed by the Town Council. The term of the chair and vice chair shall be for one (1) year. A past chair or vice chair may be re-appointed, even though no chair or vice chair shall serve for more than three (3) consecutive terms. Vacancies within a term shall be filled by the same method as the original appointment. The chair shall decide all points of order on procedure, and shall take such action as shall be necessary to preserve the order and integrity of all proceedings before the Housing Advisory Board. In absence of the chair, the vice chair shall act as chair and shall have all powers of the chair. In the absence of both the chair and vice chair, an acting chair shall be selected for that meeting by a majority of those members present. The acting chair shall have the authority and responsibilities of the chair for that meeting.~~
- 2) ~~Secretary. The Housing Program Manager or designee shall serve as the Secretary of the Housing Advisory Board and shall keep minutes of all proceedings. These minutes shall be a summary of all proceedings before the Housing Advisory Board, which shall include the vote of all members upon every consideration, and be attested to by the Secretary. The minutes shall be approved by a majority of the Housing Advisory Board members voting. In addition, the Secretary shall maintain all records of the Housing Advisory Board meetings, hearings, proceedings, and correspondence as public records in the offices of the Planning Department.~~
- D) ~~Quorum~~
~~No meeting of the Housing Advisory Board shall be called to order, nor may any business be transacted by the Housing Advisory Board, without a quorum consisting of the majority of the Housing Advisory Board's membership, excluding vacant seats, being present.~~
- E) ~~Conflict of Interest~~
~~Any member who has an interest in a matter under consideration by the Housing Advisory Board shall declare such interest prior to the vote of the Board and abstain from voting on the question. The member declaring the interest is not exempted from participation in the discussions of the Board on the matter prior to its vote.~~
- F) ~~Staff~~
~~The Planning Department shall be the professional staff to the Housing Advisory Board.~~
- G) ~~Rules of Procedure~~
~~The Housing Advisory Board shall, by a majority vote of the voting membership, adopt rules and regulations governing its procedure as it may consider necessary or advisable.~~
- H) ~~Meetings~~
~~Regular meetings of the Housing Advisory Board shall be held quarterly to consider matters properly before the Board. Special Board meetings may also be called on an as needed basis. The chair, vice chair, or any two (2) members of the Board may at any time call a special Board meeting by signing a written~~

~~notice stating the time and place of the meeting and the subjects to be considered. A special Board meeting may also be called or scheduled by vote of the Board in open session during another duly called meeting.~~

~~I) Compensation~~

~~The members of the Housing Advisory Board shall serve with compensation as authorized by Town Council in the annual budget.~~

2.3.7 Subdivision

...

D) Master Subdivision Plan

1) *Procedures*

...

b) Additionally, the Parks, Recreation, and Cultural Resources Director shall also provide a copy of any Master Subdivision Plan for residential development to the Parks, ~~and Recreation, and Cultural Resources~~ **Advisory Commission Board** which shall review the application and provide comments to the TRC about whether the proposed Master Subdivision Plan complies with the standards of Sec. 2.3.7.D.2 Standards.

7.1.7 Substitution of Fees in Lieu of Public Improvements

...

B) In the case of required parks, recreation, and open space facilities, the ~~Parks, Recreation, and Cultural Resources (PRCR) Advisory Committee~~ **Parks and Recreation Advisory Board** shall recommend whether dedication of land is feasible in a given plat and consistent with the Town's development plan, or rather, if fees in lieu should be paid, or if some dedication/fee combination is appropriate. See Article 14: Parks, Recreation, Greenways, and Open Space.

14.1 PARK, RECREATION, AND OPEN SPACE SITES

14.1.1 Dedication Generally; Fee in Lieu of Dedication Generally; Construction of Public Recreation Facilities with Fee-in-Lieu Monies Generally

...

B) As an alternative to the dedication of a portion of such land by the developer, and where it is recommended by the Parks, ~~and Recreation, and Cultural Resources (PRCR) Advisory Commission Board~~ and determined by the Town Council that a dedication of land is not feasible in a given development or incompatible with the Town's plan, the developer may be allowed to:

...

14.1.4 Standards for Town Council's Choice Between Land Dedication, Payment of Fee-in-Lieu, Construction of Public Recreation Facilities with Fee-in-Lieu Monies, or Combination Thereof

A) Whether the Town Council accepts the land dedication, elects to require payment of fee-in-lieu or construction of public recreation facilities with fee-in-lieu monies, or some combination thereof, shall be determined by consideration of the following:

- ...
- 2) The recommendations of the ~~PRCR Advisory Commission~~ **Parks and Recreation Advisory Board**;
- ...

14.1.5 Procedure for Determination of Choice Between Land Dedication, Payment of Fee-in-Lieu, Construction of Public Recreation Facilities with Fee-in-Lieu Monies, or Combination Thereof; Performance Guarantees

The procedure for determining whether the subdivider is to dedicate land, pay a fee-in-lieu, construct public recreation facilities with fee-in-lieu monies, or some combination thereof, shall be as follows:

- A) *Action of Town*
After a proposal by the developer as indicated in Sec. 14.1.5.B below, the ~~PRCR Advisory Commission~~ **Parks and Recreation Advisory Board** shall recommend, and the Town Council shall determine as a part of PD Plan approval or prior to TRC approval of a Master Subdivision Plan or Minor or Major Site Plan, whether to require a dedication of land, payment of a fee-in-lieu, construction of public recreation facilities with fee-in-lieu monies, or some combination thereof, pursuant to the standards in Sec. 14.1.4 *Standards for Town Council's Choice Between Land Dedication, Payment of Fee-in-Lieu, Construction of Public Recreation Facilities with Fee-in-Lieu Monies, or Combination Thereof*.

The procedure shall be as follows:

- 1) *Planned Development (PD) Plans*. At the time of the PD plan review, staff shall review and provide comments and a recommendation to the ~~PRCR Advisory Commission~~ **Parks and Recreation Advisory Board**. The ~~PRCR Advisory Commission~~ **Parks and Recreation Advisory Board** recommendation shall be provided to the Town Council at the time of public hearing for the PD Plan. The per-unit acreage and/or fee-in-lieu will be set as of the Town Council approval date for the PD Plan.
- 2) *Master Subdivision and Minor and Major Site Plans*. Unless set at the time of PD Plan approval, at the time of Master Subdivision Plan or Minor or Major Site Plan review, staff shall review and provide comments and a recommendation to the ~~PRCR Advisory Commission~~ **Parks and Recreation Advisory Board**. The ~~PRCR Advisory Commission~~ **Parks and Recreation Advisory Board** recommendation shall be provided to the Town Council prior to approval of such plans. The per-unit acreage and/or fee-in-lieu will be set as of the approval date of the Master Subdivision Plan or Minor or Major Site Plan.

14.1.8 Use of Land by Town; Sale of Land by Town; Use of Funds Received in Lieu of Dedication

- ...
- B) *Sale of Land*
The Town shall have the right to sell any land dedicated to the Town for neighborhood park and recreation purposes on finding by the ~~PRCR Advisory Commission~~ **Parks and Recreation Advisory Board** that a particular piece of

property is not feasible or compatible with the Parks, Recreation, Greenways and Open Space Master Plan.

2. **Amendments to Secs. 2.2.7 *Neighborhood Notice* and 2.2.11 *Public Notification* in order to increase the minimum distance for all neighborhood and public hearing notices from 300 feet to 500 feet. The effective date of this amendment would be July 1, 2025.**

2.2.7 Neighborhood Notice

A) Notification Letter

The petitioner of a Minor Site Plan for uses that do not require a neighborhood meeting as outlined in Sec. 2.2.7.B Neighborhood Meetings, and which are located within ~~300~~ **500** feet of a residential land use and have not had a rezoning approval in the previous two (2) years, shall be required to send a letter to all property owners and tenants abutting and located within ~~300~~ **500** feet of the land subject to the application, to any neighborhood association that represents citizens within that notification area, and to the Town of Apex Planning Department at least 14 days prior to the submittal of the Minor Site Plan. The letter shall include the developer's and authorized agent's contact information and an explanation of the proposed project, and shall follow the guidelines in the Neighborhood Notification Letter Packet, including the procedure for requesting the notification address list from Town GIS staff.

B) Neighborhood Meetings

...

3) Notification

The applicant shall provide notification of the neighborhood meeting a minimum of 14 calendar days in advance of the meeting by mail, to all property owners and tenants abutting and located within ~~300~~ **500** feet of the land subject to the application, to any neighborhood association that represents citizens within that notification area, and to the Town of Apex Planning Department. The applicant shall request this notification list from Town GIS staff per the guidelines in the Neighborhood Meeting Packet. When less than an entire parcel of land is subject to the proposed zoning map amendment, the ~~300~~-**500**-foot notification area shall be measured from the property line of that entire parcel.

...

2.2.11 Public Notification

...

B) Written (Mailed) Notice

When the provisions of this Ordinance require that written or mailed notice be provided, the Planning Director shall be responsible for preparing the written notice and mailing the written notice. Notice shall be mailed to all property owners subject to the application, all property owners and tenants abutting and located within ~~300~~ **500** feet of the land subject to application, and any neighborhood association that represents citizens within the notification area unless otherwise specified in this Ordinance. However, as an alternate form of notification, NCGS 160D-602(b) may be used when a zoning map amendment proposes to change the zoning designation of more than 50 properties, owned by at least 50 different property owners, and the Town elects to use the expanded published notice provided for in that subsection.

Written notice shall be provided at the last addresses listed for such property owners on the county tax abstracts and all tenant and neighborhood association addresses on record with the Planning Department. Town GIS staff shall provide the applicant with a list of all property owners of land subject to the application, all property owners and tenants abutting and located within ~~300~~ **500** feet of the land subject to application, and any neighborhood association that represents citizens within the notification area. Notice shall be deemed mailed by its deposit in the United States mail, first class, properly addressed, postage paid. The applicant shall be responsible for providing the Planning Director with first class stamped envelopes (postage metering is not acceptable) addressed to all property owners subject to the application, all property owners and tenants abutting and located within ~~300~~ **500** feet of the land subject to application, and to any neighborhood association that represents citizens within the notification area.

The Planning Director shall be responsible for preparing an affidavit affirming that the mailed notice met the requirements of Sec. 2.2.11.A *Content*. The affidavit shall be conclusive that notice has been given pursuant to the terms of the subsection. When less than an entire parcel of land is subject to the proposed zoning map amendment, the entire parcel shall be used to determine abutting owners and the ~~300~~ **500**-foot notification area. Properties are “abutting” even if separated by a street, railroad, or other transportation corridor.

...

3. **Amendments to Sec. 2.3.6 *Site Plan* to allow for linear utility, infrastructure, and public works projects submitted by the Town to go directly to construction plans after a pre-application meeting.**

2.3.6 Site Plan

...

C) Exemptions

...

2) The following development or activities shall be exempted from the requirements of this Section:

...

d) *Utilities, **infrastructure**, and public works projects.* Utilities, **infrastructure**, and public works projects, including, but not limited to, road improvements, **sidewalk improvements**, utility improvements, above ground utility boxes, bus shelters, and co-location of communication equipment. **A linear utility, infrastructure, or public works project submitted by or on behalf of the Town of Apex shall not be required to receive administrative approval prior to submitting Site Construction Plans. However, a pre-application meeting, in accordance with Sec. 2.2.6 Pre-Application Meeting, shall be held prior to the submittal of Site Construction Plans.**

...

...

G) Site Construction Plan

After a Site Plan has been approved by the TRC, the applicant shall submit the Site Construction Plans to the Development Services Manager. The submission shall be in a form approved by the Development Services Manager. The applicant shall ensure that the Construction Plans conform to the approved Site Plan design and that all conditions imposed on the Site Plan by TRC for a Minor or Major Site Plan, are met in the Construction Plans. The Construction Plans shall be reviewed by the TRC to ensure compliance with the approved Site Plan and all applicable Town, county, state, and federal regulations and requirements, including all relevant construction standard specifications and details. Any modifications to or deviations from the approved Site Plans must be requested in writing to the Planning Director and may require additional review by the relevant permit issuing authority if deemed appropriate by the Planning Director. All Construction Plans shall bear the seal and signature of a professional engineer, landscape architect, surveyor, or architect, who is authorized to perform such work and licensed in the State of North Carolina. Once the Construction Plan is approved, it is signed by the relevant members of the TRC and forwarded to the applicant. The applicant is responsible for returning the requisite number of copies, as determined by the Development Services Manager, to the Development Services Manager.

- 1) **In accordance with Sec. 2.3.6.C.2.d Site Plan, Exemptions, a Site Construction Plan may be submitted by or on behalf of the Town of Apex without an administrative approval. The TRC shall ensure compliance with all applicable regulations and requirements during review of the Site Construction Plan.**

PLANNING STAFF RECOMMENDATION:

Planning staff recommend approval of the proposed amendments.

PLANNING BOARD REPORT TO TOWN COUNCIL

Unified Development Ordinance Amendments

Planning Board Meeting Date: March 10, 2025



Report Requirements:

Per NCGS §160D-604, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the Planning Board for review and comment. If no written report is received from the Planning Board within 30 days of referral of the amendment to the Planning Board, the Town Council may act on the amendment without the Planning Board report. The Town Council is not bound by the recommendations, if any, of the Planning Board.

Planning Board Recommendation:

Motion: To recommend approval as presented.

Introduced by Planning Board member: Jeff Hastings

Seconded by Planning Board member: Sarah Soh

- ☒ Approval of the proposed UDO amendment(s)
☐ Approval of the proposed UDO amendment(s) with the following conditions:

- ☐ Denial of the proposed UDO amendment(s)

With 8 Planning Board Member(s) voting "aye"

With 0 Planning Board Member(s) voting "no"

Reasons for dissenting votes:

This report reflects the recommendation of the Planning Board, this the 10th day of March 2025.

Attest:

Tim Royal, Planning Board Vice-Chair

Dianne Khin

Digitally signed by Dianne Khin
Date: 2025.03.10 17:07:49
-04'00'

Dianne Khin, Planning Director

AN ORDINANCE TO AMEND CERTAIN SECTIONS OF THE UNIFIED DEVELOPMENT ORDINANCE

BE IT ORDAINED by the Town Council of the Town of Apex as follows:

Section 1. Sections 2.1.2, 2.1.4, 2.1.5, 2.1.9, 2.1.10, 2.3.7.D.1, 7.1.7 and 14.1 of the Unified Development Ordinance are amended to read as follows with additions shown as bold underlined text and deletions shown as struck-through text:

2.1.2 Planning Board

...

B) *Membership*

- 1) *Number.* The Planning Board shall consist of ~~nine (9)~~ **10** voting members and one (1) non-voting member **youth representative as defined in the Resident Advisory Board Administrative Policy.**
- 2) *Composition of the Members*
 - a) Composition between Town and ETJ. The composition of membership between the Town and ETJ shall be as follows:
 - (i) The composition of the members shall reflect proportional representation between the Town's corporate limits and the ETJ.
 - (ii) ETJ membership shall be based on the proportionality of population between the Town and the ETJ. This shall be determined by estimating the total population in the ETJ as a percentage of the population in the Town's corporate limits and the ETJ and multiplying this percentage by ~~nine (9)~~ **10** (the total required voting membership), rounding up to the next whole number. Members appointed from the ETJ shall be residents of the ETJ and citizens of Wake County.
 - (iii) The balance of the Planning Board's membership shall reside within the Town's corporate limits, with the exception of the members referenced in Secs. 2.1.2.B.2.b and 2.1.2.B.2.c, whose residency requirements shall be determined by those Sections.
 - (iv) Membership composition shall be adjusted to reflect changes in the population between the Town and the ETJ every two (2) years.
 - b) One (1) member of the Planning Board shall reside outside the corporate limits and ETJ, but within the area covered by the Town's 2045 Land Use Map.
 - c) One (1) ~~non-voting~~ member of the Planning Board shall be a member of the Apex Historical Society and may reside either within or outside the

Town's corporate limits. However, the Town Council is not authorizing the Planning Board to operate as a historic preservation commission pursuant to NCGS 160D-303.

- d) All members of the Planning Board, except the non-voting member ~~from the Apex Historical Society~~ **youth representative**, shall have voting power on all matters of business.

...

4) *Appointment.* Members shall be appointed as follows:

- a) Regular members of the Planning Board from the ETJ shall be appointed by the Wake County Board of County Commissioners.
- b) Regular members of the Planning Board from the Town shall be recommended by the Mayor and appointed by the Town Council.
- c) The regular member of the Planning Board who resides outside the corporate limits and ETJ, but within the area covered by the Town's 2045 Land Use Map shall be recommended by the Mayor and appointed by the Town Council.
- d) The non-voting member **youth representative** of the Planning Board shall be recommended by the Mayor and appointed by the Town Council.

5) *Terms.* Members shall be appointed for terms of two (2) years, **except for the youth representative who shall be appointed for a term of one (1) year.** No member of the Planning Board may serve more than ~~five (5)~~ **three (3)** consecutive two (2) year terms **with the exception of the youth representative who may serve no more than two (2) consecutive terms.**

6) *Removal.* Any member of the Planning Board shall be removed for cause ~~(neglect of duty, malfeasance, misconduct, or failure to faithfully attend meetings)~~ by the Town Council ~~upon written charge~~ **as defined in the Resident Advisory Board Administrative Policy.**

...

C) *Officers*

- 1) *Chair and vice-chair.* The chair and vice-chair of the Planning Board shall be appointed by the ~~m~~**M**ayor from the **voting** members of the Board and confirmed by the Town Council. The term of the chair and vice-chair shall be one **(1)** year. A past chair or vice-chair may be re-appointed, even though no chair or vice-chair shall serve for more than four **(4)** consecutive terms. Vacancies within a term shall be filled by the same method as the original appointment. The chair shall decide all points of order on procedure, and shall take such action as shall be necessary to preserve the order and integrity of all proceedings before the Planning Board. In the absence of the chair, the vice-chair shall act as chair and shall have all powers of the chair. In the absence of

both the chair and vice-chair, an acting chair shall be selected for that meeting by a simple majority of those members present. The acting chair shall have the authority and responsibilities of the chair for that meeting.

- 2) *Secretary.* The Planning Director or designee shall serve as Secretary of the Planning Board and shall keep minutes of all proceedings. These minutes shall be a summary of all proceedings before the Planning Board, which shall include the vote of all members upon every consideration, and be attested to by the Secretary. The minutes shall be approved by a majority of the Planning Board members voting. In addition, the Secretary shall maintain all records of the Planning Board meetings, hearings, proceedings, and correspondence, as public records in the offices of the Planning Department.

- D) Quorum
No meeting of the Planning Board shall be called to order, nor may any business be transacted by the Planning Board, without a quorum consisting of the majority of the Planning Board's membership excluding vacant seats and the non-voting ~~member~~ youth representative.

...

- H) Meetings
Meetings of the Planning Board shall be held monthly to consider matters properly before the Board. Additional meetings may be called by the ~~C~~chair or in writing by ~~five~~ six (6) members of the Board. All meetings and public hearings shall be held in the Town in a place accessible and open to the public.

...

2.1.4 Transit Advisory Committee Reserved

A) ~~_____~~ Powers and Duties

The Transit Advisory Committee shall have the following powers and duties under the provisions of this Ordinance:

- 1) ~~_____~~ *Review transit plans and services.* Review proposed local transit plans, policies, capital improvements, and service changes, and provide recommendations regarding revisions and/or approval. Review regional transit plans, policies, capital improvements, and proposed services changes relevant to the Town of Apex and provide recommendations regarding revisions and/or approval.
- 2) ~~_____~~ *Recommendations to Mayor and Town Council.* Recommend to the Mayor and Town Council local transit plans, policies, capital improvements, and service changes.
- 3) ~~_____~~ *Provide information to the Mayor and Town Council.* Provide information to the Mayor and Town Council regarding transit customer experience and stakeholder opinions and needs.

B) ~~_____~~ Membership

- 1) ~~Number.~~ The Transit Advisory Committee shall consist of nine (9) members. Up to three (3) members may be ex-officio, non-voting members consisting of Town staff. No member of the Town Council shall serve on the Transit Advisory Committee.
- 2) ~~Appointment.~~ Members shall be recommended by the Mayor and appointed by the Town Council.
- 3) ~~Initial establishment.~~ At the initial establishment of the Transit Advisory Committee, three (3) members shall be appointed for a term of three (3) years, three (3) members shall be appointed for a term of two (2) years, and all remaining members shall be appointed for a term of one (1) year. Thereafter, new appointments for terms of three (3) years shall be made. No member of the Transit Advisory Committee may serve more than three (3) consecutive three (3) year terms with the exception of ex-officio members.
- 4) ~~Removal.~~ Any member of the Transit Advisory Committee shall be removed for (neglect of duty, malfeasance, misconduct, or failure to faithfully attend meetings) by the Town Council upon written charge and after a public hearing.
- 5) ~~Filling of vacancy.~~ Vacancies shall be filled by the same method as the original appointment. Vacancies occurring for reasons other than expiration of terms shall be filled for the period of the unexpired term by the same method as the original appointment.
- 6) ~~Voting.~~ All regular members shall vote on any issue unless they have been disqualified pursuant to Sec. 2.1.4.E Conflict of Interest.

C) ~~Officers~~

- 1) ~~Chair and vice chair.~~ The chair and vice chair of the Transit Advisory Committee shall be appointed by the mayor from the members of the Committee and confirmed by the Town Council. The term of the chair and vice-chair shall be for one (1) year. A past chair or vice-chair may be re-appointed, even though no chair or vice-chair shall serve for more than four (4) consecutive terms. Vacancies within a term shall be filled by the same method as the original appointment. The chair shall decide all points of order on procedure, and shall take such action as shall be necessary to preserve the order and integrity of proceedings before the Transit Advisory Committee. In absence of the chair, the vice-chair shall act as chair and shall have all powers of the chair. In the absence of both the chair and vice-chair, an acting chair shall be selected for that meeting by a majority of those members present. The acting chair shall have the authority and responsibilities of the chair for that meeting.
- 2) ~~Secretary.~~ The Planning Director or designee shall serve as the Secretary of the Transit Advisory Committee and shall keep minutes of all proceedings. These minutes shall be a summary of all proceedings before the Transit Advisory Committee, which shall include the vote of all members upon every

consideration, and be attested to by the Secretary. The minutes shall be approved by a majority of the Transit Advisory Committee members voting. In addition, the Secretary shall maintain all records of the Transit Advisory Committee meetings, hearings, proceedings, and correspondence as public records in the offices of the Planning Department.

D) — Quorum

No meeting of the Transit Advisory Committee shall be called to order, nor may any business be transacted by the Transit Advisory Committee, without a quorum consisting of the majority of the Transit Advisory Committee's membership, excluding vacant seats, being present.

E) — Conflict of Interest

Per 160D-109(b), Transit Advisory Committee members shall not vote on any advisory decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Any member who has an interest in a matter under consideration by the Transit Advisory Committee shall declare such interest prior to the vote of the Committee and abstain from voting on the question. The member declaring the interest is not exempted from participation in the discussions of the Committee on the matter prior to its vote.

F) — Staff

The Planning Department shall be the professional staff to the Transit Advisory Committee.

G) — Rules of Procedure

The Transit Advisory Committee shall, by a majority vote of the entire membership, adopt rules and regulations governing its procedure as it may consider necessary or advisable.

H) — Meetings

Meetings of the Transit Advisory Committee shall be held quarterly to consider matters properly before the Committee. Additional meetings may be called by the Chair or in writing by a majority of the Committee.

I) — Compensation

The members of the Transit Advisory Committee shall serve with compensation as authorized by Town Council in the annual budget.

2.1.5 Parks, and Recreation, and Cultural Resources Advisory Commission Board

A) Powers and Duties

The Parks, and Recreation, and Cultural Resources Advisory Commission Board shall have the following powers and duties under the provisions of this Ordinance:

...

B) Rules Governing Commission Board

The professional staff of the ~~Commission~~ **Board** shall be the Parks, Recreation, and Cultural Resources Department. The rules governing the other responsibilities and procedures of the Parks, ~~and~~ Recreation, ~~and Cultural Resources Advisory Commission~~ **Board** are established in Sec. 15-4, Code of Ordinances, Town of Apex, North Carolina.

C) Compensation

The members of the Parks, ~~and~~ Recreation, ~~and Cultural Resources Advisory Commission~~ **Board** shall serve with compensation as authorized by Town Council in the annual budget.

2.1.9 Apex Environmental Advisory Board

A) Powers and Duties

The Environmental Advisory Board shall have the following powers and duties under the provisions of this Ordinance:

...

- 2) Review, with applicants, during the staff review phase of a proposal, certain requests for conditional rezoning and recommend zoning conditions to the applicant and Town Council that will mitigate anticipated impact to the natural environment as a result of the project under consideration. The following conditional rezoning requests shall be exempt from review by this Board:

- a) Rezoning to amend zoning conditions which have no environmental impact on a site including but not limited to revisions to architectural standards, building height, setbacks, and uses;
- b) Rezoning to resolve nonconformities;
- c) Rezoning of ~~one (1) acre~~ **10 acres** or less; and
- d) Rezoning within the Small Town Character Overlay District.

...

2.1.10 Housing Advisory Board

~~A) Powers and Duties~~

~~The Housing Advisory Board shall have the following powers and duties under the provisions of this Ordinance:~~

- ~~1) Recommendations to Mayor and Town Council. Recommend to the Mayor and Town Council, policies and funding recommendations related to affordable housing.~~
- ~~2) Housing Advocacy to Mayor, Town Council, and Planning Board. Advise the Mayor, Town Council, and Planning Board on housing advocacy efforts related to affordable housing.~~

3) ~~Housing Annual Report. Assist in the creation of the housing annual report.~~

B) ~~Membership~~

- 1) ~~Number. The Housing Advisory Board shall consist of nine (9) members. The Housing Advisory Board shall include one (1) Planning Board member and one (1) Town Council member. The Planning Board member and Town Council member shall be non-voting members.~~
- 2) ~~Appointment. Members shall be recommended by the Mayor and appointed by the Town Council.~~
- 3) ~~Initial establishment. At the initial establishment of the Housing Advisory Board, four (4) members shall be appointed for a term of three (3) years, three (3) members shall be appointed for a term of two (2) years, one Planning Board non-voting member shall be appointed for a term of (1) year and one Town Council non-voting member shall be appointed for a term of one (1) year. Thereafter, new appointments for terms of three (3) years shall be made with the exception of the Planning Board non-voting member and Town Council non-voting member which shall remain on a term of one (1) year. No member of the Housing Advisory Board shall serve more than nine (9) consecutive years after being appointed with the exception of the Planning Board non-voting member and Town Council non-voting member which shall serve no more than three (3) consecutive years after being appointed.~~
- 4) ~~Removal. Any member of the Housing Advisory Board shall be removed for cause (neglect of duty, malfeasance, misconduct, or failure to faithfully attend meetings) by the Town Council upon written charge and after a public hearing.~~
- 5) ~~Filling of vacancy. Vacancies shall be filled by the same method as the original appointment. Vacancies occurring for reasons other than expiration of terms shall be filled for the period of the unexpired term by the same method as the original appointment.~~
- 6) ~~Voting. All regular members shall vote on any issue unless they have been disqualified pursuant to Sec. 2.1.10.E Conflict of Interest.~~

C) ~~Officers~~

- 1) ~~Chair and vice-chair. The chair and vice-chair of the Housing Advisory Board shall be appointed by the Mayor from the members of the Board and confirmed by the Town Council. The term of the chair and vice-chair shall be for one (1) year. A past chair or vice-chair may be re-appointed, even though no chair or vice-chair shall serve for more than three (3) consecutive terms. Vacancies within a term shall be filled by the same method as the original appointment. The chair shall decide all points of order on procedure, and shall take such action as shall be necessary to preserve the order and integrity of all proceedings before the Housing Advisory Board. In absence of the chair, the vice-chair shall act as chair and shall have all powers of the chair. In the absence~~

~~of both the chair and vice chair, an acting chair shall be selected for that meeting by a majority of those members present. The acting chair shall have the authority and responsibilities of the chair for that meeting.~~

~~2) Secretary. The Housing Program Manager or designee shall serve as the Secretary of the Housing Advisory Board and shall keep minutes of all proceedings. These minutes shall be a summary of all proceedings before the Housing Advisory Board, which shall include the vote of all members upon every consideration, and be attested to by the Secretary. The minutes shall be approved by a majority of the Housing Advisory Board members voting. In addition, the Secretary shall maintain all records of the Housing Advisory Board meetings, hearings, proceedings, and correspondence as public records in the offices of the Planning Department.~~

~~D) Quorum~~

~~No meeting of the Housing Advisory Board shall be called to order, nor may any business be transacted by the Housing Advisory Board, without a quorum consisting of the majority of the Housing Advisory Board's membership, excluding vacant seats, being present.~~

~~E) Conflict of Interest~~

~~Any member who has an interest in a matter under consideration by the Housing Advisory Board shall declare such interest prior to the vote of the Board and abstain from voting on the question. The member declaring the interest is not exempted from participation in the discussions of the Board on the matter prior to its vote.~~

~~F) Staff~~

~~The Planning Department shall be the professional staff to the Housing Advisory Board.~~

~~G) Rules of Procedure~~

~~The Housing Advisory Board shall, by a majority vote of the voting membership, adopt rules and regulations governing its procedure as it may consider necessary or advisable.~~

~~H) Meetings~~

~~Regular meetings of the Housing Advisory Board shall be held quarterly to consider matters properly before the Board. Special Board meetings may also be called on an as needed basis. The chair, vice chair, or any two (2) members of the Board may at any time call a special Board meeting by signing a written notice stating the time and place of the meeting and the subjects to be considered. A special Board meeting may also be called or scheduled by vote of the Board in open session during another duly called meeting.~~

~~I) Compensation~~

~~The members of the Housing Advisory Board shall serve with compensation as authorized by Town Council in the annual budget.~~

2.3.7 Subdivision

...

D) Master Subdivision Plan

1) *Procedures*

...

- b) Additionally, the Parks, Recreation, and Cultural Resources Director shall also provide a copy of any Master Subdivision Plan for residential development to the Parks, ~~and Recreation, and Cultural Resources~~ Advisory Commission Board which shall review the application and provide comments to the TRC about whether the proposed Master Subdivision Plan complies with the standards of Sec. 2.3.7.D.2 Standards.

7.1.7 Substitution of Fees in Lieu of Public Improvements

...

- B) In the case of required parks, recreation, and open space facilities, the ~~Parks, Recreation, and Cultural Resources (PRCR) Advisory Committee~~ Parks and Recreation Advisory Board shall recommend whether dedication of land is feasible in a given plat and consistent with the Town's development plan, or rather, if fees in lieu should be paid, or if some dedication/fee combination is appropriate. See Article 14: Parks, Recreation, Greenways, and Open Space.

14.1 PARK, RECREATION, AND OPEN SPACE SITES

14.1.1 Dedication Generally; Fee in Lieu of Dedication Generally; Construction of Public Recreation Facilities with Fee-in-Lieu Monies Generally

...

- B) As an alternative to the dedication of a portion of such land by the developer, and where it is recommended by the Parks, ~~and Recreation, and Cultural Resources (PRCR) Advisory Commission~~ Board and determined by the Town Council that a dedication of land is not feasible in a given development or incompatible with the Town's plan, the developer may be allowed to:

...

14.1.4 Standards for Town Council's Choice Between Land Dedication, Payment of Fee-in-Lieu, Construction of Public Recreation Facilities with Fee-in-Lieu Monies, or Combination Thereof

- A) Whether the Town Council accepts the land dedication, elects to require payment of fee-in-lieu or construction of public recreation facilities with fee-in-lieu monies, or some combination thereof, shall be determined by consideration of the following:

...

- 2) The recommendations of the ~~PRCR Advisory Commission~~ Parks and Recreation Advisory Board;

...

14.1.5 Procedure for Determination of Choice Between Land Dedication, Payment of Fee-in-Lieu, Construction of Public Recreation Facilities with Fee-in-Lieu Monies, or Combination Thereof; Performance Guarantees

The procedure for determining whether the subdivider is to dedicate land, pay a fee-in-lieu, construct public recreation facilities with fee-in-lieu monies, or some combination thereof, shall be as follows:

A) Action of Town

After a proposal by the developer as indicated in Sec. 14.1.5.B below, the ~~PRCR Advisory Commission~~ **Parks and Recreation Advisory Board** shall recommend, and the Town Council shall determine as a part of PD Plan approval or prior to TRC approval of a Master Subdivision Plan or Minor or Major Site Plan, whether to require a dedication of land, payment of a fee-in-lieu, construction of public recreation facilities with fee-in-lieu monies, or some combination thereof, pursuant to the standards in Sec. 14.1.4 *Standards for Town Council's Choice Between Land Dedication, Payment of Fee-in-Lieu, Construction of Public Recreation Facilities with Fee-in-Lieu Monies, or Combination Thereof*.

The procedure shall be as follows:

- 1) Planned Development (PD) Plans. At the time of the PD plan review, staff shall review and provide comments and a recommendation to the ~~PRCR Advisory Commission~~ **Parks and Recreation Advisory Board**. The ~~PRCR Advisory Commission~~ **Parks and Recreation Advisory Board** recommendation shall be provided to the Town Council at the time of public hearing for the PD Plan. The per-unit acreage and/or fee-in-lieu will be set as of the Town Council approval date for the PD Plan.
- 2) Master Subdivision and Minor and Major Site Plans. Unless set at the time of PD Plan approval, at the time of Master Subdivision Plan or Minor or Major Site Plan review, staff shall review and provide comments and a recommendation to the ~~PRCR Advisory Commission~~ **Parks and Recreation Advisory Board**. The ~~PRCR Advisory Commission~~ **Parks and Recreation Advisory Board** recommendation shall be provided to the Town Council prior to approval of such plans. The per-unit acreage and/or fee-in-lieu will be set as of the approval date of the Master Subdivision Plan or Minor or Major Site Plan.

14.1.8 Use of Land by Town; Sale of Land by Town; Use of Funds Received in Lieu of Dedication

...

B) *Sale of Land*

The Town shall have the right to sell any land dedicated to the Town for neighborhood park and recreation purposes on finding by the ~~PRCR Advisory Commission~~ **Parks and Recreation Advisory Board** that a particular piece of property is not feasible or compatible with the Parks, Recreation, Greenways and Open Space Master Plan.

Section 2. Sections 2.2.7 and 2.2.11 of the Unified Development Ordinance are amended to read as follows with additions shown as bold underlined text and deletions shown as struck-through text:

2.2.7 Neighborhood Notice

A) Notification Letter

The petitioner of a Minor Site Plan for uses that do not require a neighborhood meeting as outlined in Sec. 2.2.7.B Neighborhood Meetings, and which are located within ~~300~~ **500** feet of a residential land use and have not had a rezoning approval in the previous two (2) years, shall be required to send a letter to all property owners and tenants abutting and located within ~~300~~ **500** feet of the land subject to the application, to any neighborhood association that represents citizens within that notification area, and to the Town of Apex Planning Department at least 14 days prior to the submittal of the Minor Site Plan. The letter shall include the developer's and authorized agent's contact information and an explanation of the proposed project, and shall follow the guidelines in the Neighborhood Notification Letter Packet, including the procedure for requesting the notification address list from Town GIS staff.

B) Neighborhood Meetings

...

3) Notification

The applicant shall provide notification of the neighborhood meeting a minimum of 14 calendar days in advance of the meeting by mail, to all property owners and tenants abutting and located within ~~300~~ **500** feet of the land subject to the application, to any neighborhood association that represents citizens within that notification area, and to the Town of Apex Planning Department. The applicant shall request this notification list from Town GIS staff per the guidelines in the Neighborhood Meeting Packet. When less than an entire parcel of land is subject to the proposed zoning map amendment, the ~~300-500-foot~~ notification area shall be measured from the property line of that entire parcel.

...

2.2.11 Public Notification

...

B) Written (Mailed) Notice

When the provisions of this Ordinance require that written or mailed notice be provided, the Planning Director shall be responsible for preparing the written notice and mailing the written notice. Notice shall be mailed to all property owners subject to the application, all property owners and tenants abutting and located within ~~300~~ **500** feet of the land subject to application, and any neighborhood association that represents citizens within the notification area unless otherwise specified in this Ordinance. However, as an alternate form of notification, NCGS 160D-602(b) may be used when a zoning map amendment proposes to change the zoning designation of more than 50 properties, owned by at least 50 different property owners, and the Town elects to use the expanded published notice provided for in that subsection.

Written notice shall be provided at the last addresses listed for such property owners on the county tax abstracts and all tenant and neighborhood association addresses on record with the Planning Department. Town GIS staff shall provide the applicant with a list of all property owners of land subject to the application, all property owners and tenants abutting and located within ~~300~~ 500 feet of the land subject to application, and any neighborhood association that represents citizens within the notification area. Notice shall be deemed mailed by its deposit in the United States mail, first class, properly addressed, postage paid. The applicant shall be responsible for providing the Planning Director with first class stamped envelopes (postage metering is not acceptable) addressed to all property owners subject to the application, all property owners and tenants abutting and located within ~~300~~ 500 feet of the land subject to application, and to any neighborhood association that represents citizens within the notification area.

The Planning Director shall be responsible for preparing an affidavit affirming that the mailed notice met the requirements of Sec. 2.2.11.A *Content*. The affidavit shall be conclusive that notice has been given pursuant to the terms of the subsection. When less than an entire parcel of land is subject to the proposed zoning map amendment, the entire parcel shall be used to determine abutting owners and the ~~300~~ 500-foot notification area. Properties are “abutting” even if separated by a street, railroad, or other transportation corridor.

...

Section 3. Section 2.3.6 of the Unified Development Ordinance is amended to read as follows with additions shown as bold underlined text and deletions shown as struck-through text:

2.3.6 Site Plan

...

C) Exemptions

...

2) The following development or activities shall be exempted from the requirements of this Section:

...

d) *Utilities, **infrastructure**, and public works projects.* Utilities, **infrastructure**, and public works projects, including, but not limited to, road improvements, **sidewalk improvements**, utility improvements, above ground utility boxes, bus shelters, and co-location of communication equipment. **A linear utility, infrastructure, or public works project submitted by or on behalf of the Town of Apex or a bus stop project submitted by or on behalf of the Town of Apex or other public transit agency, shall not be required to receive administrative approval prior to submitting Site Construction Plans. However, a pre-application meeting, in accordance with Sec. 2.2.6 Pre-Application Meeting, shall be held prior to the submittal of Site Construction Plans.**

...

...

- G) **Site Construction Plan**
After a Site Plan has been approved by the TRC, the applicant shall submit the Site Construction Plans to the Development Services Manager. The submission shall be in a form approved by the Development Services Manager. The applicant shall ensure that the Construction Plans conform to the approved Site Plan design and that all conditions imposed on the Site Plan by TRC for a Minor or Major Site Plan, are met in the Construction Plans. The Construction Plans shall be reviewed by the TRC to ensure compliance with the approved Site Plan and all applicable Town, county, state, and federal regulations and requirements, including all relevant construction standard specifications and details. Any modifications to or deviations from the approved Site Plans must be requested in writing to the Planning Director and may require additional review by the relevant permit issuing authority if deemed appropriate by the Planning Director. All Construction Plans shall bear the seal and signature of a professional engineer, landscape architect, surveyor, or architect, who is authorized to perform such work and licensed in the State of North Carolina. Once the Construction Plan is approved, it is signed by the relevant members of the TRC and forwarded to the applicant. The applicant is responsible for returning the requisite number of copies, as determined by the Development Services Manager, to the Development Services Manager.

- 1) **In accordance with Sec. 2.3.6.C.2.d Site Plan, Exemptions, a Site Construction Plan may be submitted by or on behalf of the Town of Apex without an administrative approval. The TRC shall ensure compliance with all applicable regulations and requirements during review of the Site Construction Plan.**

Section 4. The Planning Director and/or Town Manager are hereby authorized to renumber, revise formatting, correct typographic errors, to verify and correct cross references, indexes and diagrams as necessary to codify, publish, and/or accomplish the provisions of this ordinance or future amendments as long as doing so does not alter the terms of this ordinance.

Section 5. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. If any section, paragraph, subdivision, clause or provision of this ordinance shall be adjudged invalid, such adjudication shall apply only to such section, paragraph, subdivision, clause or provision so adjudged and the remainder of the ordinance shall be deemed valid and effective.

Section 6. The amendments in Section 3 of this ordinance shall be effective upon enactment on the ____ day of _____ 2025. The amendments in Sections 1 and 2 of this ordinance shall be effective July 1, 2025.

Introduced by Council Member _____

Seconded by Council Member _____

Attest:

TOWN OF APEX

Allen Coleman, CMC, NCCCC
Town Clerk

Jacques K. Gilbert
Mayor

Approved as to Form:

Laurie L. Hohe
Town Attorney

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: NEW BUSINESS

Meeting Date: April 08, 2025

Item Details

Presenter(s): B. Lamont Taylor, Housing Services Manager

Department(s): Community Development & Neighborhood Connections (CDNC)

Requested Motion

A. Motion to authorize the Town of Apex to extend a conditional commitment of \$1,470,000 (loan) and \$171,700 (grant) of Town Affordable Housing Funds for the Abbey Spring project to support the construction of 56 affordable rental housing units, subject to Wake County funding approval and the award of Federal tax credits.

B. Motion to adopt Budget Ordinance Amendment No. 10 transferring funds of up to \$1,641,700 for the Abbey Spring project from available funding in the Affordable Housing Fund.

Approval Recommended

Yes

Item Details

Staff recommends \$1,641,700 in funding to the Abbey Spring project which will be developed by Evergreen Construction Company for the construction of a 56-unit development serving low-income senior households aged 55 and over. The 5.01-acre site is located on West Williams Street. All of the units will be affordable to seniors earning less than 60% of area median income (AMI); 10% of the units will be targeted to persons with disabilities or who are homeless, and 10% of the units will be set aside for Wake County Rental Assistance Housing Program Voucher (RAHP) holders.

The Abbey Spring project aligns with Town Council's goal to increase affordable housing options in Apex. Committing funds to the project would support Town Council's affordable housing goal. Evergreen Construction Company has a strong track record of work in Wake County, and this project is particularly well-located in regard to transit access and proximity to shopping and other amenities.

Additional information about the project is included in the agenda materials.

Attachments

- NB1-A1: Abby Springs Recommendation Memo – Budget Ordinance Amendment No. 10
- NB1-A2: Evergreen Construction Company Memo – Funding Request - Budget Ordinance Amendment No. 10
- NB1-A3: Abby Springs Funding Recommendation PowerPoint - Budget Ordinance Amendment No. 10
- NB1-A4: Budget Ordinance Amendment No. 10 – Abbey Springs Affordable Housing Funding Commitment



**MEMO**

To: Randy Vosburg, Town Manager
From: Marla Y. Newman, CDNC Director
Date: April 1, 2025
Subject: Town Council Agenda – April 8, 2025
Abbey Spring Affordable Housing Town Investment Recommendation

What is Requested:

A. **AUTHORIZE** the Town to extend a conditional commitment of \$1,470,000 (loan) and \$171,700 (grant) of Town Affordable Housing Funds for the Abbey Spring project to support the construction of 56 affordable rental housing units, subject to Wake County funding approval and the award of Federal tax credits. The proposed development, the unit mix, and the recommended Town funding amount is as follows:

Proposed Development	Pop. Served	Town Funding Recommendation	Unit AMI Level			Rent Ranges
			30%	50%	60%	
Abbey Spring	Senior	\$1,641,700	14	14	28	\$654 - \$1,547

B. **AUTHORIZE** the associated budget amendments and transfers of funds of up to \$1,641,700 for the Abbey Spring project from available funding in the Affordable Housing Fund.

Background:

Abbey Spring was awarded 2022 Low-Income Housing Tax Credits and was previously approved for \$1,171,700 (loan and grant) in Town funding in January 2022. However, rising construction costs, particularly for site work, have significantly increased expenses. The need for substantial fill material and retaining walls has further escalated development costs, making the project more expensive than initially anticipated.

Evergreen Construction made cost reductions where possible within the constraints of the North Carolina Qualified Allocation Plan, which governs the Low-Income Housing Tax Credit Program (LIHTC), and has sought additional subsidy sources to bridge the funding gap. Despite these efforts, the project still faced a \$4.95 million shortfall.

In response, Evergreen Construction restructured the project's unit mix and financing and submitted a 9% LIHTC application to North Carolina Housing Finance Agency (NCHFA) for the 2025 award cycle, necessitating a reduction in the number of units from 84 to 56.

Description of Proposed Project:

The development proposed and the terms of Town investment are outlined below.

Abbey Spring: The 56-unit apartment community will be developed by Evergreen Construction Company. Once constructed, it will provide 56 units serving low-income senior households aged 55 and over in one building. The building will be a 3-story design, served by one elevator with all units opening into an interior hallway. On-site amenities will include a main lobby, a TV lounge area, a computer center, a fitness center, a multi-purpose room with kitchen, coin-operated laundry facilities and resident storage areas. All of the units will be affordable to seniors earning less than 60% of area median income (AMI); 10% of the units will be targeted to persons with disabilities or who are homeless, with Key Rental Assistance available to those persons from the North Carolina Housing Finance Agency; and 10% of the units will be set aside for Wake County Rental Assistance Housing Program Voucher (RAHP) holders. The Key Rental Assistance program provides assistance to persons with extremely low incomes who are disabled and/or are experiencing homelessness and can help pay for security deposits and certain costs incurred by property owners.

Location: The 5.01-acre site is located on West Williams Street with convenient access to shopping, grocery stores and other amenities.

Funding: The new request for Town funding for a 56-unit development will change the Town's commitment to the project as follows:

Funding Source	Amount	Per Unit Cost	% of New Total
Federal 9% Tax Credits	\$11,308,869	\$201,944	54.10%
Bank Loan	\$4,500,000	\$80,357	21.53%
Wake County Loan	\$1,470,000	\$26,250	7.03%
ToA Loan	\$1,470,000	\$26,250	7.03%
NCHFA-RPP	\$840,000	\$15,000	4.02%
Deferred Developer f Fee	\$644,000	\$11,500	3.08%
NCHFA-WHLP	\$500,000	\$8,929	2.39%
ToA Parks & Recreation Fee Reimbursement	\$171,700	\$3,066	0.82%

Unit Mix: The proposed development includes the following unit mix in compliance with the Low-Income Tax Credit Program's established rent limits and affordability levels.

Unit Type	Income Target	Unit Count	Monthly Rent
1 BR	30% AMI	7	\$654
2BR	30% AMI	7	\$797
1BR	50% AMI	7	\$1,079
2BR	50% AMI	7	\$1,297
1BR	60% AMI	14	\$1,279
2BR	60% AMI	14	\$1,547

Funding Considerations: Funding for the grant and the loan would come from the Affordable Housing Fund (AHF).

- *Town of Apex Parks and Recreation Fee Reimbursement:* Grant in the

amount of \$171,700 as an investment in the project.

- *Town of Apex Loan Terms:* Construction-to-permanent loan of \$1,470,000 at 2% interest with a 30-year term, with varying annual payments based on projected available cash flow. The units will remain affordable for a minimum of the 30-year loan term.

Recommendation: The Abbey Spring project aligns with Town Council's goal to increase affordable housing options in Apex. Committing funds to the project would support Town Council's affordable housing goal. Evergreen Construction Company has a strong track record of work in Wake County, and this project is particularly well-located in regard to transit access and proximity to shopping and other amenities. The development will not be viable without support from the Town and Wake County. Wake County staff will recommend funding approval for the project at the Board of County Commissioners meeting on April 21, 2025.

Staff recommends that the Town Council authorize the Town to extend a conditional commitment of \$1,470,000 (loan) and \$171,700 (grant) of Town Affordable Housing Funds for the Abbey Spring project to support the construction of 56 affordable rental housing units, subject to Wake County funding approval and the award of Federal tax credits; and authorize the associated budget amendments and transfers of funds of up to \$1,641,700 (grant and loan) for the Abbey Spring project from available funding in the Affordable Housing Fund.



January 17, 2025

Mr. Lamont Taylor
Housing Services Manager
Town of Apex
Community Development & Neighborhood Connections
73 Hunter Street
Apex, NC 27502

Re: Abbey Spring Funding Request (\$1,470,000) + (\$171,700 Rec Fee Reimbursement)

Dear Mr. Taylor:

Abbey Spring – A Senior Living Community is a proposed new construction development that is to be located on the parcel next to 511 W Williams Street in Apex. The project will consist of (28) one-bedroom, one bath units and (28) two- bedroom, one bath units for persons 55 years of age and older. The building will be a 3 story design, served by one elevator with all residential units opening into an interior hallway. The main entrance will have a call panel system with all exterior doors self-locking. On-site amenities will include a main lobby, a TV lounge area, a computer center, a fitness center, a multi-purpose room with kitchen, coin- op laundry facilities and tenant storage areas.

All 56 units will be affordable to seniors at or below 60% of the area median income with a portion of those set aside at or below 30% and 50% of the area median income. In addition, 10% of the units will be targeted to persons with disabilities or who are homeless, with KEY rental assistance available to those persons through the North Carolina Housing Finance Agency (NCHFA). In addition, 10% of the units will be set aside for Wake County Rental Assistance Housing Program (RAHP) holders.

I am requesting a permanent loan from Town of Apex in the amount of \$1,470,000 and \$171,700 as a parks and recreation fee reimbursement.. Funding has also been requested from Wake County in the amount of \$1,470,000 in the form of a construction to permanent loan. In addition, this proposal has been submitted to NCHFA as a 9% LIHTC deal, along with a \$840,000 RPP and a \$500,000 WHLP loan request. A loan in the amount of \$4,500,000 from a private placement lender will also be required.

I believe this development will provide a much-needed housing alternative for Apex's growing senior population.

Please advise if I can be of further service.

Sincerely,

Timothy G. Morgan
President



Equal Housing Opportunity



This institution is an equal opportunity provider and employer



Abbey Spring Funding Recommendation

Community Development & Neighborhood Connections

Abbey Spring Project Overview

- 56 affordable senior apartments
- Located on West Williams Street
- Developed by Evergreen Construction Company



Abbey Spring Background

- Previously approved for \$1,171,700 of Town Funds
- Due to a \$4.95 million financing gap, the project could not move forward as proposed
- Evergreen Construction has restructured the project's unit mix and financing, and submitted a 9% LIHTC application to NCHFA for the 2025 award cycle
- Evergreen Construction has resubmitted a funding request to the Town (\$1,641,700) and the County (\$1,470,000)
- Wake County staff will recommend the funding request for BOCC approval on April 21

Abbey Spring Unit Mix

The proposed development includes the following unit mix in compliance with the Low-Income Tax Credit Program's established rent limits and affordability levels.

Unit Type	Income Target	Unit Count	Monthly Rent
1BR	30% AMI	7	\$654
2BR	30% AMI	7	\$797
1BR	50% AMI	7	\$1,079
2BR	50% AMI	7	\$1,297
1BR	60% AMI	14	\$1,279
2BR	60% AMI	14	\$1,547

Town Funding Considerations

Funding for the grant and the loan would come from the Affordable Housing Fund (AHF).

- Town of Apex Parks and Recreation Fee Reimbursement: Grant in the amount of \$171,700 as an investment in the project.
- Town of Apex Loan Terms: Construction-to-permanent loan of \$1,470,000 at 2% interest with a 30-year term, with varying annual payments based on projected available cash flow. The units will remain affordable for a minimum of the 30-year loan term.

Abbey Spring Recommendation

- Authorize the commitment of \$1,641,700 to the project
- Authorize the associated budget amendments and transfers of funds of up to \$1,641,700 for the project from available funding in the Affordable Housing Fund

Proposed Development	Total Units	Total Town Funding Request	Unit AMI % Level			Rent Ranges
			30%	50%	60%	
Abbey Spring	56 Senior	\$1,641,700	14	14	28	\$654 - \$1,547



Town of Apex

Budget Ordinance Amendment No. 10

BE IT ORDAINED, by the Council of the Town of Apex that the following Budget Amendment for the Fiscal Year 2024-2025 Budget Ordinance be adopted:

Affordable Housing Fund

Section 1. Revenues:

39902	Fund Balance Appropriated	539,600
Total Revenues		\$539,600

Section 2. Expenditures:

49704	Affordable Housing Loans	539,600
Total Expenditures		\$539,600

Section 3. Within five (5) days after adoption, copies of this Amendment shall be filed with the Finance Officer and Town Clerk.

Adopted this the 8th day of April 2025.

Attest:

Jacques K. Gilbert, Mayor

Allen L. Coleman, CMC, NCCCC
Town Clerk

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for consideration by the Apex Town Council

Item Type: CLOSED SESSION

Meeting Date: April 08, 2025

Item Details

Presenter(s): Steve Adams, Real Estate and Utilities Acquisition Specialist

Department(s): Transportation and Infrastructure Development

Requested Motion

Possible motion to enter into closed session pursuant to NCGS § 143-318.11(a)(5) to discuss matters related to acquisition of real property.

Approval Recommended?

N/A

Item Details

NCGS § 143-318.11(a)(5)

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

Attachments

- N/A



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for consideration by the Apex Town Council

Item Type: CLOSED SESSION

Meeting Date: April 08, 2025

Item Details

Presenter(s): Laurie Hohe, Town Attorney

Department(s): Legal Services

Requested Motion

Motion to enter into closed session pursuant to NCGS 143-318.11(a)(3) to discuss the town's handling of the matter of Town of Apex v. Mills.

Approval Recommended?

N/A

Item Details

NCGS § 143-318.11(a)(3)

"To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body."

Attachments

- N/A

