



compound stayed behind. He said that they had begun an initial investigation to find if an actual danger was present. He said upon initial testing of arsenic and chromium levels that they did find arsenic and chromium levels that were above the NM Environmental Department's threshold for toxicity. He said samples were taken of the soil, and that they had taken a proactive approach and removed all of the charred wood so there was no exposure hazard. He stated that further characterization of those materials needed to be done in order to give them an idea of the extent of a remediation project that would be undertaken. He stated that the burned section of the park had been closed off until they could further investigate, and that a plan for a complete remediation would be done after they had further information on the characterization of the materials. Fire Marshal Lambert answered questions from the Council.

## **9. PUBLIC HEARINGS –**

**A. Approval / Disapproval of Ordinance No. 1165: An Ordinance amending Municipal Code Chapter 151, §151.031 (Land Use Code, Use Table) by modifying the “Use Table” to include child care centers as a conditional use in Residential “A” zoned districts within the Town of Silver City, Grant County, NM.** Mayor Marshall stated that the Town Council would serve as the hearing board and he would serve as the presiding officer. He asked if any member of the hearing board had ex-parte discussions with any person regarding the subject, or had any communication from any party to the case, and none had. Mayor Marshall asked all parties and witnesses, including staff members, to be sworn in to testify by the Town Clerk. The Town Clerk swore in 1 witness for the hearing. Mayor Marshall read the procedures of how the hearing would be conducted. Peter Russell, Community Development Director, read the Planning and Zoning Commission's Notice of Decision, and stated the Commission voted unanimously to approve Notice of Intent Ordinance No. 1165 to amend the text of the Land Use Code during their regular meeting on July 6, 2010. He stated the Commission recommended striking the language in the Definitions section of the Land Use Code that said that a Child Care Center is located in a non-residential area if the Town Council approved the NOI ordinance, and that the amendment be made as part of the Land Use Code revision process. He said staff recommended the zone change. Mayor Marshall commented on the State requirements of a day care center, and said there was actual square footage requirements per child and for emergency access. There were no other questions or comments from the Council (the applicant). There was no opposition. Mayor Marshall asked the hearing board if they were ready to render a decision. Councilor Wheaton-Smith made a motion to approve Ordinance No. 1165 with the amendment to the definition of Child Care Center as contained in Chapter 151, Section 151.015B Definitions, Day Care is amended as follows: (b) Child Care Center, delete the phrase, "is located in a non-residential area and", with the remaining text to be unchanged. Councilor Bettison seconded the motion as stated. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Wheaton-Smith - aye; Councilor Thomson - aye; and Councilor Bettison - aye. Motion passed.

**B. Approval / Disapproval of AP10-1: An appeal of the Planning and Zoning Commission's decision to deny a request for a Variance to allow encroachments into the side setbacks for a property located at 4008 Hwy. 90S. Appellant is Charles Cassady.** Mayor Marshall stated that the Town Council would serve as the hearing board and he would serve as the presiding officer. He asked if any member of the hearing board had ex-parte discussions with any person regarding the subject, or had any communication from any party to the case. Councilor Wheaton-Smith and Mayor Marshall commented on discussions they had with Mr. Cassady, and there were no objections by the hearing board of the discussions. Mayor Marshall asked all parties and witnesses, including staff members, to be sworn in to testify by the Town Clerk. The Town Clerk swore in 5 witnesses for the hearing. Mayor Marshall read the procedures of how the hearing would be conducted. Peter Russell, Community Development Director, asked if he should read aloud the Planning and Zoning Commission's Notice of Decision. Mayor Marshall asked the hearing board if they had read the document since it was part of the record, and they had so it was not necessary for Mr. Russell to read it. Mr. Russell confirmed to Councilor Wheaton-Smith that he still stood by the staff report that was submitted to the Planning and Zoning Commission. Appellant Charles Cassady testified and presented his case, and answered questions from the hearing board. There were no other witnesses in support of the appellant. Karen McClish, owner of the property adjacent to the appellant's, testified against the appeal, and answered questions from the hearing board. Mr. Russell answered questions from the hearing board and commented on set back requirements in rural, commercial, and industrial zones. There was further discussion. Ms. McClish answered questions from the hearing board, and had nothing else to add to the record. There were no other witnesses in opposition of the appeal. Mr. Cassady provided further testimony, asked that they grant the appeal, and answered questions from the hearing board. There was further discussion. Mr. Cassady had nothing else to add to the record. Mayor Marshall asked the hearing board if they were ready to render a decision. Councilor Wheaton-Smith made a motion to approve the Appeal

AP10-1 and he re-stated the title given to the Public Hearing agenda item. Councilor Morones seconded the motion as stated. Attorney Scavron stated that the appeal was a process and the motion would be better to affirm or to reverse or to remand. Mayor Marshall clarified that a motion to reverse would issue the variance, affirming would deny the variance, and remanding would send it back to the Planning and Zoning Commission for reconsideration. Attorney Scavron agreed. Councilor Wheaton-Smith amended his motion and moved to reverse the decision of the Planning and Zoning Commission based on the Appeal AP10-1. Councilor Morones seconded his motion. All were in favor, motion passed.

Councilor Bettison made a motion for a short recess at 8:35 PM. Councilor Wheaton-Smith seconded the motion. All were in favor, motion passed. Mayor Marshall called the meeting back to order at 8:47 PM.

## **10. UNFINISHED BUSINESS –**

**A. Approval / Disapproval of action on Penny Park in order to provide the Council guidance to staff regarding the contract/process to be utilized in repair of the burned section of Penny Park.** Mayor Marshall asked for public input that would present a process to re-build the burnt part of the park. Comments were received from Kevin Bailey, Gwyn Jones, Chelsea Beltran, and Sam Castello. There was further discussion about how long it would take volunteers to re-build the park with Leathers & Associates; potential remediation; checking standards; raising money through donations and grants; the insurance settlement; the cost if volunteers were used versus a contractor; and how the claim would be re-opened after the final report from the Environment Department was received. Manager Brown said a certified letter was sent to Leathers & Associates about how the materials used were toxic, especially if burned, and to ask about safety hazards and warnings, but no response had been received in over 2 weeks. There was further discussion about a community built park; risk management on remediation; the insurance claim; how the Environment Department requirements for remediation were unknown; understanding remediation and the financial burden to the Town; and to make sure there was a safe park to build from. Mayor Marshall said he would like to see the item tabled until the environmental concerns were addressed. Councilor Bettison moved to table further discussion on the item until more information was made available on the concerns that had been expressed by the Council and the residents. Councilor Wheaton-Smith seconded the motion as stated. There was further discussion. All were in favor, motion passed.

**B. Approval / Disapproval of Ordinance No. 1166: an Ordinance amending Municipal Code Chapter 70, §70.07(B) (Schedule of Penalty Assessments).** Attorney Scavron presented the details of Ordinance No. 1166 and said it was suggested by Police Chief Reynolds. There was further discussion. Councilor Wheaton-Smith moved to adopt Ordinance No. 1166, and Councilor Bettison seconded. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Wheaton-Smith - aye; Councilor Thomson - aye; and Councilor Bettison - aye. Motion passed.

**C. Approval / Disapproval of Ordinance No. 1167: an Ordinance amending Municipal Code Chapter 30, §30.02 (A) (Town Council, Meetings; Regular).** Councilor Bettison presented the details of Ordinance No. 1167 to change the time of the regular Council meetings from 7:00 PM to 6:00 PM, and moved to adopt it. Councilor Wheaton-Smith seconded the motion. There was no further discussion. A roll call vote was taken with the following results: Councilor Bettison - aye; Councilor Thomson - aye; Councilor Wheaton-Smith - aye; and Councilor Morones - aye. Motion passed.

**D. Approval / Disapproval of Resolution No. 2010-18: a Resolution amending Resolution No. 2010-01 (Open Meetings) to reflect the time-change provisions of Ordinance No. 1167 regarding time and place of Town Council meetings.** Councilor Bettison presented the details of Resolution No. 2010-18 to amend Resolution No. 2010-01(Open Meetings) in order to change the time of the regular Council meetings from 7:00 PM to 6:00 PM. There was further discussion. Councilor Bettison made a motion to adopt Resolution No. 2010-18, and Councilor Wheaton-Smith seconded. There was no further discussion. A roll call vote was taken with the following results: Councilor Bettison - aye; Councilor Thomson - aye; Councilor Wheaton-Smith - aye; and Councilor Morones - aye. Motion passed.

Councilor Wheaton-Smith made a motion for a short recess at 9:48 PM. Councilor Bettison seconded. All were in favor, motion passed. Mayor Marshall called the meeting back to order at 9:58 PM.

**11. NEW BUSINESS –**

**A. Approval / Disapproval of Resolution No. 2010-17: participation in Local Government Road Fund Program administered by NM Department of Transportation.** Peter Pena, Public Works Director, presented the details of Resolution No. 2010-17 for intersection improvements at 10th and Mountain View, and he answered questions from the Council. Councilor Wheaton-Smith moved to approve Resolution No. 2010-17, and Councilor Morones seconded. Councilor Wheaton-Smith made a friendly amendment to incorporate the revised language in Item 2 as follows: "2. The project for the referenced Cooperative Agreement is adopted and has a priority standing." Councilor Morones seconded. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Wheaton-Smith - aye; Councilor Thomson - aye; and Councilor Bettison - aye. Motion passed.

**B. Approval / Disapproval of Resolution No. 2010-19: a Resolution authorizing the purchase of a certain parcel of improved property commonly known as 1007 Pope Street, Silver City, NM.** Manager Brown presented the details of Resolution No. 2010-19 and said the Town was awarded \$1,000,000 in a legislative allocation for the purpose of constructing a dental facility for Hidalgo Medical Services within Grant County. He described the process and said the sellers of the property would assume the cost of the environmental assessment and the demolition of the building. He said the total purchase price was \$500,000, and that no funds would come out of the city coffers. There was further discussion. Councilor Morones moved to approve Resolution No. 2010-19, and Councilor Wheaton-Smith seconded as stated. There was further discussion. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Wheaton-Smith - aye; Councilor Thomson - aye; and Councilor Bettison -aye. Motion passed.

**C. Appointment of 3 members to the Museum Board.** Mayor Marshall received the Council's consensus to re-appoint Norman Ruebush, and to appoint Ralph Gauer and Robert Schweitzer to the Museum Board.

**D. Appointment of 1 member to the Planning and Zoning Commission.** Mayor Marshall received the Council's consensus to appoint George F. Lundy to the Planning and Zoning Commission, and he said that Mr. Lundy would replace Douglas Abbott on the Commission. There was further discussion on how other positions on the Commission were being advertised.

**E. Discussion and possible action for a change in the distribution of lodgers tax.** Manager Brown presented the current process and how the lodgers tax funds were allocated. Mayor Marshall commented on the current process and how funds were being passed out for events and not goals and objectives. He said he would like the Request for Proposal to advertise for somebody to put together a marketing plan for Silver City that listed goals, objectives, how they would do it, and to present it to the Council for their consideration and approval. He said it should include a marketing plan for the Town's keystone events, i.e. Blues Festival, Tour of the Gila, car shows, etc. There was further discussion on the following: how the Town did not fund organizations, but funded the promotion of Silver City; and that the Request for Proposal should mention the Town's Mission Statement, the vision and statements received during the Council's Strategic Planning Sessions, the Town's Comprehensive Plan, and should allow lodgers tax funds for the acquisition of land, and attractions, and transportation systems. Terri Menges, Zia Publishing, said event planning and marketing a town were two different things, and that using a marketing firm would be cost prohibitive. There was further discussion and Manager Brown said a local company would get a 5% preference in the RFP process. Mayor Marshall confirmed with Manager Brown that he had sufficient guidance from the discussions.

**12. ADJOURNMENT** – Councilor Wheaton-Smith made a motion to adjourn at 10:50 PM. Councilor Bettison seconded the motion. All were in favor, motion passed.

/s/

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James R. Marshall, Mayor

Attest:

/s/

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Ann L. Mackie, Town Clerk