

M I N U T E S
PLANNING AND ZONING COMMISSION
 April 24, 2014

The Planning and Zoning Commission met in a regular session on April 24, 2014, at 3:00 p.m., in the City Council Chambers, 800 Municipal Drive, Farmington, New Mexico.

P&Z Members Present:	Chair:	Joyce Cardon
	Commissioners:	Shay Davis
		Clint Freeman
		Rory Jaques
		Kristin Langenfeld
		Cheryl Ragsdale
		Paul Thompson
		Daniel Arnold (Alt)
		Del Washburn (Alt)

P&Z Members Absent:	Commissioner:	Carl Waldroup
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Staff Present:	Mary Holton
	Cynthia Lopez
	Dee Dee Moore

Others Who Addressed the Commission:	David Alexander
	Robert Campbell
	Linda Drinen
	Lloyd Drinen
	Bill Gales
	Laura Hodges
	Richard Hodges
	Annette Lane
	Terry Nelson
	Ernest Martinez
	Attorney Tyson Quail
	Attorney Patricia Simpson

Call to Order

The meeting was called to order at 3:06 p.m. by Chair Cardon. There being a quorum present the following proceedings were duly had and taken.

Presentation of the Agenda

There were no changes to the agenda.

Approval of the Minutes

A motion was made by Commissioner Ragsdale and seconded by Commissioner Freeman to approve the minutes of the April 10, 2014 P&Z Meeting. This motion was approved unanimously by a 9-0 vote.

<p>COMMUNITY DEVELOPMENT PETITION REPORT FP 14-02 – Little Creek Subdivision Phase IV</p>
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Planning and Zoning Commission Discussion of FP 14-02 on April 24, 2014

Senior Planner Cynthia Lopez presented the staff report which identified Phase IV as being located s/o Piedras Street within the newly annexed area. This subdivision has 24 lots located off of Starling Drive and Mockingbird Circle. The preliminary plans were approved by this commission and City Council. The construction drawings have also been approved. There are no major changes to the plan and staff recommends approval of FP14-02. Commissioner Thompson stated that he had heard complaints that the process for a subdivision is often arduous and is there any way to streamline the process. Ms. Lopez stated that there things such as water, sewer, drainage, streets, etc. takes a little time to get those done. She added that State Statutes identified timeframe for staff to meet. Ms. Lopez stated that she did not think the process was arduous. Director Holton stated that this petition was accepted from the developer before it was

complete, the application did not include a drainage plan. However, the preliminary plan was processed through P&Z and City Council. Director Holton assured the commission that staff is conscious about maintaining the State Statues and the City Code timeline. She added that to expedite the preliminary plan helped move this application along and that the final plan drainage was critical and could not be completed without being evaluated. Commissioner Thompson asked how long the preliminary plan application takes. Director Holton stated, about a month and added that the preliminary plan and the final plan are two separate applications, so there would be a month for each application.

Petitioner Joe Kozimor of 503 French Drive, Aztec and his representative Sherry Blackman of Sakura Engineering, 125 W. Main Street were asked by Chair Cardon if they had reviewed the staff report. Mr. Kozimor stated he had and added that Director Holton was super with everything that she had to deal with. He stated that the drainage plan is for Phase V, not Phase IV and that the City was requiring it at this time. Chair Cardon asked if he was happy with the documentation regarding sidewalks and curbing, and the comments about a park area. Mr. Kozimor stated that all drainage and walking paths are developed in Phase V, and that has been some confusion during this Phase IV process.

A motion was made by Commissioner Freeman, seconded by Commissioner Davis, to approve Petition FP 14-02 as recommended by staff.

Planning and Zoning Commission Action of FP 14-02 on April 24, 2014

A motion was made by Commissioner Freeman, seconded by Commissioner Davis, to **approve** Petition FP 14-02 a request from Joe Kozimor, represented by Sakura Engineering and Surveying for a 24-lot subdivision, Little Creek Subdivision Phase IV.

- AYE: Chair Cardon, Commissioners Davis, Freeman, Jaques, Langenfeld, Ragsdale, Thompson, Arnold (Alt) and Washburn (Alt)
- NAY: None
- ABSTAINED: None
- ABSENT: Commissioners Waldroup

Motion passed 9-0

Chair Cardon advised that the following proceeding would be held as a quasi-judicial meeting and provided a brief explanation of how the meeting would be run. Anyone wishing to speak on behalf of this petition was sworn in by Secretary Dee Dee Moore.

**COMMUNITY DEVELOPMENT PETITION REPORT
 SUP 14-05 – Reconsideration of Crematorium located at
 Memory Gardens, 6917 E. Main Street**

Planning and Zoning Commission Discussion of SUP 14-05 on April 24, 2014

Community Development Director Mary Holton addressed the Commission and asked that the property owner’s representative be allowed to speak to the Commission prior to staff presenting the report. Director Holton added that the property owners have reviewed the recommendations and would like to present some alternatives to the Commission.

Attorney Simpson of 500 W. Main Street, Suite 200 stated she is the attorney for the property owners and that they have reviewed staff’s recommendation, but would like to go over the recommendations and avoid a public hearing if we could get together and agree and then forward this petition to City Council for approval.

Attorney Simpson referred to the recommendations on page 14 of the staff report. She stated that they still object to the Commission having the authority to reconsider and would simply like to streamline this and get the process finalized. Her client would like to propose that the Commission consider these conditions. Modify the quarterly testing to be by the State Environmental Protection Agency and if they find any issues then the manufacturer would be brought in to test the equipment with a timeframe of 2-3 years rather than indefinitely. The cost for the manufacturer to run this testing is \$2-3,000 each time which could cost the property owner \$8-12,000 per year.

In regards to training, Attorney Simpson stated that her clients would agree to annual training, also with a timeframe on that condition.

Attorney Simpson stated that the property owner was willing to install an 8-foot split face block fence from the crematory building to the south end of the storage. The City is proposing that the fence start at the maintenance building, which is not a part of the special use permit. The proposed fencing would be block, with a Knox box to restrict entry to public safety and that access would also be available through the office parking lot. Attorney Simpson stated that her client would like to choose the color of the wall to match the office building and not leave that decision to the neighbors. She added that it may take about 3 months to get that wall completed. Attorney Simpson addressed the requirement for additional landscaping that would need to be replaced because of the installation of the wall.

Attorney Simpson stated that the restriction of operation hours was not acceptable. The operation of this business needs to be open from 8:00am to 5:00pm, Monday to Friday. She stated that each cremation takes between 2 to 2.5 hours and that the restriction of hours would reduce the number of cremations possible during the day. She stated that in 2013 the client processed 385 cremations. It is possible during an emergency that a cremation may need to take place on the weekend.

Attorney Simpson stated that her client has no issues with item six and that the owner is willing to accept the recommendation with modifications from staff and proceed with the hearing. She asked for staff's input and that Mr. Guttman, the property owner, is willing to answer any questions. She would like to forward these recommendations to City Council with the modified changes.

Director Holton responded that Community Development staff is not the petitioner. Assistant City Manager Bob Campbell is listed as the applicant's representative and he needs to respond to that request.

Bob Campbell, 800 Municipal Drive stated that he felt the hearing should go forward and that the citizens had a right to be heard and there may be a willingness to come to reasonable solutions or reasonable compromises. There were no questions from the Commission for Assistant City Manager Campbell at this time.

Director Holton presented the staff report at this time, identifying that on March 11, 2014 the City Council directed staff to refer the reconsideration of the special use permit for the crematorium to the Planning and Zoning Commission. This reconsideration does not include the cemetery. The original special use permit was granted in 2012. This petition has been assigned a new number, SUP 14-05 for the reconsideration only. This building sits directly across the street from homes on Drinen Lane and has access on Drinen Lane. However, the property address is 6917 E. Main, where the cemetery has its driveway location. Director Holton showed recent photos of the green mesh screening for the outdoor storage, trees planted in front of the crematorium and to the south, during the summer, the foliage screens the construction/trash area. She added that general information regarding crematoriums from the American Planning Association and from the crematorium's manufacturer was also included in the staff report.

Director Holton stated that neighborhood complaints to the City Council have prompted the reconsideration of the special use permit. Complaints regarding the noise, black smoke, emissions, odors, traffic and the effects on property value were identified as concerns to the citizens. There are, included in the agenda, inspection reports from New Mexico Environmental Department, Code Compliance Officer Laura Avendano and Zoning Compliance Office Leona Simms. Director Holton stated that she would like to introduce the testimony of Zoning Compliance Office Leona Simms as part of the staff report at this time.

Leona Simms, Zoning Compliance Officer, 800 Municipal Drive stated that on April 9, 2014 at 8:30am she took a short video at the beginning of the burning, but that her camera wasn't holding a charge, and waited to take another video later in the process. She stated that there was just a heat ripple above the stack and that this was nothing to see, but you could hear it. Commissioner Thompson asked if this was an actual cremation. Zoning Compliance Officer Simms stated yes it was and that it was like the video the whole time, except for about 15 seconds. Chair Cardon asked if during those 15 seconds the smoke was white or black. Zoning Compliance Officer Simms stated it was black. Commissioner Thompson asked if the noise was from the chimney or from the open garage door on the building. Zoning Compliance Officer Simms stated it was coming from the door. Commissioner Arnold asked if having the door open was a

standard practice. Zoning Compliance Officer Simms stated she did not have that information. Commissioner Thompson asked if she smelled anything while she was there. Zoning Compliance Officer Simms stated that she did not smell anything, and there was a light breeze. Commissioner Freeman asked if she went to the other side of the building. Zoning Compliance Officer Simms stated she did, but you could only see the shadow of the heat. Commissioner Freeman asked if she saw them load the body into the crematorium. Zoning Compliance Officer Simms stated yes, she did watch them.

Attorney Simpson asked Zoning Compliance Officer Simms if she, Attorney Simpson, was in attendance at the crematory when Zoning Compliance Officer Simms was there and if it was at the property owner's request. Zoning Compliance Officer Simms stated she was there at her own request. Attorney Simpson asked about the January 2014 testing that Zoning Compliance Officer Simms performed. Zoning Compliance Officer Simms stated that she was there with the sound test and was located at the property located across Drinen Street. She stated it was basically the same as the other observation. A small plume of smoke, and that the noise was just a humming, that sounds like my furnace. Attorney Simpson asked about the visit to the crematory on April 1, 2014. Zoning Compliance Officer Simms stated that she visited the property to look at any improvements for landscaping. Attorney Simpson asked if she had witnessed the pulverizing of the bones. Zoning Compliance Officer Simms stated no. Attorney Simpson asked if there were any Zoning Compliance violations by the property owners. Zoning Compliance Officer Simms stated there are no zoning violations at this property.

Director Holton continued the staff report presentation by identifying the special use review criteria from the UDC 8.9.4:

- a. Effect on environment
- b. Compatible with surrounding area
- c. External impacts minimized
- d. Infrastructure impact minimized
- e. Consistent with Unified Development Code and Comprehensive Plan
- f. Parcel
- g. Site Plan

Director Holton identified the first three, a-c, as being the most important, due to the witnessing of the black smoke from the cremation. The questions for the property owner from the staff memo: how can black smoke be visible; is it in proper operation; and how often and how much training has been provided to the operator(s). Director Holton stated that some site improvements have been made and asked what Attorney Simpson's client plans to do additionally to mitigate these issues with the residents on Drinen Lane. Director Holton reminded the Commission that they may recommend additional and reasonable conditions as they feel necessary.

Director Holton covered the recommendations by staff, including the quarterly testing of the equipment by the manufacturer and proposing NMED testing annually, the training of the operator and if the use continues, the impacts to the neighborhood kept to a minimum. Regarding the 8-foot wall, she stated that occasionally this requirement is made on well sites, such as the one north of Sonic on 20th Street. Staff agrees that you cannot visually block the building and smokestack, but you could use the wall and landscaping to distract the eye. Additionally, the locked security entrance would limit traffic but still provide additional access in an emergency. She stated that the proposed hours of operations are to provide less of an impact of the use on the residents, since that would be during normal working hours. The owners are agreeable to clean up the trash and debris. If the owner cannot or will not comply with the conditions of this special use permit, then the special use permit for the crematorium should be revoked. Director Holton stood for questions from the Commission at this time.

Commissioner Freeman stated that he would like to go through each condition within the staff report one item at a time. Starting with 1, He asked what made staff request the testing by the manufacturer and not the state. Director Holton stated that in the packet the manufacturer's information stressed the importance of proper operating and testing being done before the installation. Commissioner Freeman asked if the quarterly testing was the manufacturer's recommendation. Director Holton stated no, it was staff's recommendation.

Commissioner Thompson asked what the testing by NMED would be for, and of the BTU of the burners. Director Holton stated that they would test to make sure the equipment is in full operating condition, so that there are no emissions or black smoke. She added that the noise level is within the thresholds as far as the City Code requirements.

Because of this, she stated that the noise is the least of the concerns, and that staff feels the block wall will draw the eye away from the building and smokestack. Commissioner Arnold restated that staff is basically saying that staff is recommending quarterly testing and calibration of the equipment by the manufacturer. He added that this is the testing that Attorney Simpson was asking for a timeframe to end the testing. Director Holton stated that the Commission needs to be comfortable with the conditions and that staff is recommending that when looking at this petition find a way in which the use could continue and take a reasonable approach to not shut down a business after it has been built. Commissioner Freeman asked if bi-annual inspections by the manufacturer and annual inspection by the NMED was agreeable. Director Holton stated that that would need to be addressed with the other interested parties and that all of staff's recommendations are just starting points for the Commission's discussion.

Next discussion is for item 2 regarding the quarterly training, and Commissioner Freeman asked what the employee turnover rate was. Director Holton also asked if there is a certification process and are the employees certified, being that this is in close proximity to the neighborhood and it would be best to have a well-trained operator. Commissioner Freeman asked for clarification that staff was not vested to these points and that they are basically for the Commission to consider. Director Holton agreed.

Director Holton addressed item 3, the 8' block fence stating that it would not cover the building and the smokestack from view. Commissioner Freeman asked how far from the property line the fence would need to be placed. Director Holton stated that there should be enough room for landscaping outside of the fence, about two feet. Chair Cardon asked if typically the fencing is five feet back to allow for sidewalk and are there any power lines that would cross the fence. Commissioner Thompson asked where the wall was recommended to be placed. Director Holton stated the wall was to be placed along the property line from the edge of the crematory past the maintenance building to a crash gate area. Commissioner Davis asked Director Holton to identify on the photo where she was recommending. The area was identified from the Storage yard south to the end of the crematory. Chair Cardon asked if staff could provide a site plan.

Commissioner Freeman stated that item 4, additional landscaping, was agreeable to the owner as stated by Attorney Simpson.

Commissioner Freeman addressed item 5, the days and time of 10am to 4pm, and asked if a typical cremation takes 3 hours, or as previously stated 2 to 2.5 hours. Commissioner Thompson asked if there was any justification for these hours, because they are more restrictive than oil drilling requirements. Chair Cardon stated that if the employees worked through the lunch hour that they could possibly process three bodies, but felt that 9:00am may be a better starting time. Chair Cardon also felt that both sides should be looked at, and that in order to provide the service of the business that a maximum number of hours should be given. Commissioner Freeman asked what the restrictions for well site drilling were. Director Holton stated that it is identified in the code and that each application is site specific and depends on input from the neighbors. Commissioner Ragsdale asked that when this special use permit was first heard in 2012 there were no stipulations. Director Holton stated that at that time only 1 neighbor came and his concern was regarding a possible increase in traffic. Commissioner Ragsdale asked if these conditions were because of the current situation with the neighborhood. Director Holton stated each petition is handled on a case-by-case basis. Commissioner Thompson stated he thought that the crematorium was to be built attached to the existing building. Director Holton stated that there was no site plan submitted with that application and when the permit was issued it was approved for a freestanding building.

Commissioner Freeman stated that the property owner was okay with the conditions of item 6.

Commissioner Arnold asked about the property owners that have responded to this request. Director Holton stated there are individuals and groups, and that the Commission can direct those questions to the neighborhood. Commissioner Langenfeld asked for clarification regarding the lack of a site plan and at what point is one required. Director Holton identified that one should have been submitted with the petition application.

Attorney Simpson asked Director Holton about the staff report, which is now a part of the record, and how UDC Section 8.9.4 a, b, & c. affect the quality. Director Holton stated that the basis is the neighborhood's complaints as well as the special use permit criteria. The conclusions are based on what the neighbors have seen, the black smoke, and the impacts to the surrounding compatibility of the neighborhood. She stated that all

property owners have received a notice. Attorney Simpson asked if the previous special use permit recommendation for approval was made before the Planning and Zoning Commission had heard the report and if there were any complaints at that time. Director Holton stated that the recommendation was based on the materials provided and that staff feels that a crematorium is a benefit to the community, and that the issue is the crematorium's location. Attorney Simpson asked if staff was aware of any inspections being conducted that were not prompted by a neighbor complaint, regarding health, safety or welfare. Director Holton stated no, there were not. Attorney Simpson asked if the complaints were that this is not in harmony with neighborhood. Director Holton stated that the building has an industrial look that is not compatible, and if there is black smoke because the crematory is not operating properly, then it too is not compatible. Attorney Simpson asked about item 3, the recommendation for an 8' fence, and why is needed to go to the maintenance building, which was in place prior to the original special use permit. Director Holton stated that the fence and landscaping would draw their eyes away from the smokestack and that this was a recommendation for the Commission to take into consideration. Attorney Simpson stated that if the crematory was not in place, a fence at the maintenance building wouldn't even be considered. She asked if there were any code violations. Director Holton stated she was not aware of any. She added that this petition application was at the direction of the City Council to be brought back before the Planning and Zoning Commission as a reconsideration, not by Attorney Simpson or her client, the property owner. Director Holton stated that at this time she recommended that the Code Compliance Office, Laura Avendano to testify and Chair Cardon called her to the podium.

Code Compliance Officer Laura Avendano of 900 Municipal Drive stated that her first visit, January 9, 2014, to the property was at the request of the Community Development Department. She was asked to do a sound test and explained the process of taking two overall readings, three per reading, one as an ambient reading and the other as the sound test. She stated that the readings were taken from 2:45-3:00pm and 3:20-3:45pm and that during both readings there were interrupting noises such as dogs barking, a tractor, hammering, vehicles driving along Drinen Lane and a person walking through dead leaves. These readings were taken from the property line on 6825 Drinen Lane, approximately 40 feet from the crematorium. The 1st reading was a 46.9 db and the 2nd reading was 53.7 db with interrupting noise. Code Compliance Officer Avendano stated that on April 9, 2014 the readings were taken at 8:40am and 9:01am and also had interrupting noises present. Neither of these readings were in violation of the code. Commissioner Thompson asked if the interrupting noises were included in the averages. Code Compliance Officer Avendano stated they were, and that is why there are three readings at a length of two minutes each, then the totals are averaged. Commissioner Thompson asked if the garage doors were open during her readings. She stated that she could not see if they were because of where she was standing. Commissioner Davis asked her to explain what those db readings are equivalent to. She stated that the interrupting noises were greater than the crematory noises.

Attorney Simpson asked her where she was while performing the readings and if there was any wind, and if she smelled any odor. Code Compliance Officer Avendano stated she was in front of 6825 Drinen Lane, she couldn't remember if it was windy, but there was no smoke that she observed and she didn't smell any odor. Attorney Simpson asked if she had been a witness to the pulverizing of the bones. Code Compliance Officer Avendano stated no, she left before Zoning Compliance Officer Simms left. She also stated that she wears a lapel camera that records audio, but it was not requested and she hadn't listened to the recording.

Assistant City Manager Bob Campbell wished to make a couple of comments. He stated that he appreciated the process and wishes for it to go forward. He added that neither he nor the City Council have made a pre-determination in regards to this reconsideration. He did acknowledge that there may be issues that are worse than when this was represented in 2012, but he is hopeful that there is a solution to this process and that everyone can live with the mitigations which will allow this business to continue their service to our community.

Attorney Simpson, representative for the property owner of Memory Gardens, located at 6917 E. Main Street began her statement. She stated that the owners of this property also own 5 other funeral homes in Farmington and San Juan County. They also own the crematorium at this location and the one at the previous location on Bloomfield Highway. She stated the 92% of all crematories are located in a cemetery or a funeral home. Attorney Simpson stated that she believes that the City of Farmington does not have the authority to revoke or revise the special use permit bases on case law. There is not a current city ordinance to revoke or modify these permits, but there used to be, and it was

left out of the current code. If there is an appeal, the old city code had that provision but the new code does not. There is no provision that allows the revoking of a special use permit. Attorney Simpson stated that case law says that if you have the power to grant, you have the power to take away, if you have an ordinance. She stated that she also sent a letter to the City's Legal Department on March 11, 2014 and to the City Council stating there is no power to revoke this permit. With that said, she agreed to proceed with the hearing.

Attorney Simpson stated that the neighbors that are here now could have been heard two years ago and didn't but are wanting to now. The neighbors need to prove beyond a reasonable doubt and show with evidence, not conjecture that this is affecting their health and that it is not compatible with and is detrimental to the neighborhood. The petitioner, the City of Farmington, also has to prove beyond a reasonable doubt and show with evidence, not conjecture that the health of the residence is not compatible with this process and that it is a detriment to the neighborhood. She added that before conditions can be added to the permit there must be evidence to staff's conclusions that Section 8.9.4 a, b, and c are not being met. Attorney Simpson pointed out that it is noted in the staff report that there are no code violation at this property and that they are in total compliance with the special use permit, city codes and state regulations and requirements. She stated that there will not be any evidence, or proof, only statements. The property owner will answer any questions but does not have to show proof, but the city, as the petitioner, does. Attorney Simpson stated that the first special use permit came to the city and based on very thorough criteria review, a recommendation for approval was given. That gave the property owner the constitutional right and he has shown evidence that he has spent \$174,000 to put in that business based on the recommendation of the Planning and Zoning Commission and the approval of the City Council. Attorney Simpson stated that the property owner has proven that this is a needed service and that the GRT for the city last year was nearly \$1 million dollars. If this permit is revoked, those GRT dollars will be gone.

Attorney Simpson stated that owners, Mr. Guttman and Mr. McDonald, installed and operated equipment that was manufacturer certified and the operators are continuing to be trained. She stated an occasional puff of smoke, of opacity levels less than 20, which Mr. Collins of the NMED has stated, that no permit is required. Attorney Simpson stated that Ms. Lopez and Zoning Compliance Officer Simms testified that this business is fully operating within the ordinances, codes and statues. She requested that the Commission deny this application and leave the 2012 special use permit in place or to continue with conditions for the special use permit. Commissioner Freeman asked that if, regardless if the reconsideration takes place or not, that the property owner cares about the neighborhood. Attorney Simpson stated she had not discussed that with the owners, but the Commission could ask them directly.

Chair Cardon asked if there were any interested parties that wished to speak in favor of the reconsideration of the special use permit for the crematorium at Memory Gardens.

Joe Farris of 6925 E. Main stated he was there to speak for Calvary Chapel, the church adjacent to the cemetery. He stated that the church did not show up to the first hearing because the owner said there would be no impact to our property. However there are times when black smoke comes over the property. There are church functions 2-3 times a weeks and several functions that include children. We don't feel it is safe to breathe that smoke and if the weather is damp, you can smell an odor. Chair Cardon asked if the church had ever called Code Compliance. Commissioner Thompson asked if this was worse then 2013. Mr. Farris stated there is black smoke once in a while. He added that one of their members came to the City Council meeting and reported back the there would be no effect. Chair Cardon asked if he had received a letter denoting that he was within 100-feet of this property. He stated yes they did. Commissioner Freeman asked how he felt about the proposed hours of operation. He stated that they have always been a great neighbor, so they have no direct issues and don't want to see the cemetery lose any business, but they don't want to be harassed by the smoke and odors. He added that during the summer the church has people present all the time. He concluded by stating that he has no facts that this smoke and smell can hurt you.

Attorney Simpson asked if the church was located about 1,000 feet or more from the crematory. Mr. Farris stated that it is quite a ways and that he does not hear any noise from the operation. Attorney Simpson asked if he had any evidence that the odor or emissions comes from the crematorium. Mr. Farris stated he did not. Attorney Simpson asked if anyone from the church was in attendance at the first meeting. Mr. Farris stated yes, that Mr. Lippincott was present at the City Council meeting and listened to the testimony and presented his approval to the church. Attorney Simpson asked if he had

seen the puff of smoke. Mr. Farris stated that he had seen a puff of smoke, but it was heavier and darker and it flowed across the children's playground. Attorney Simpson asked if the church was located in the county and if they understood that it could have been moved closer to the church. Mr. Farris stated yes to both questions. Attorney Simpson asked his opinion about the conditions that staff is recommending. Mr. Farris stated that a fence would not help them since it would be on the Drinen Lane side, and that he is not sure about the hours, since the crematory will not be operational on Sundays.

Attorney Tyson Quail, representative for Russell and Laurel Hodges asked if he noticed the odor before the crematory was there. Mr. Farris stated no. Attorney Quail asked if he recognizes the odor during the time the cremation occurs. Mr. Farris stated yes. Attorney Quail asked if staff recommendations would abate the odor. Mr. Farris stated he did not see how they could, except maybe not operate on rainy days.

Director Holton pointed out that the church was on the interested party list within the 100-feet from the property, but it is in the county and Code Compliance has no jurisdiction in the county.

A short break was taken at 4:58pm, until 5:03 when the meeting resumes.

Chair Cardon asked City of Farmington Deputy City Attorney Jennifer Breakell to clarify the city's position on whether the Planning and Zoning Commission can hear this petition. Deputy City Attorney Breakell stated that they did receive a letter, but are in disagreement with the interpretation provided by Attorney Simpson of whether the City of Farmington has the power to revoke a special use permit. This question will need to be worked out in court, not through questions from the Commission.

Chair Cardon called names of interested parties from the listed contained within the agenda. The following names were called, but no one was in attendance at this meeting. Graves Family, Larry and Sharon Lee, Marilyn Anderson, Michael Shavers, Trandy Partnership, Elvonna Nelson, and Charles & Joanne Smith. Donna Drinen was in attendance but requested to speak at a later time.

Lloyd and Linda Drinen of 6825 Drinen Lane stated that their concern is the smoke and when the wind changes it crosses over to their house. They felt it would be worse during the summer when they have their swamp cooler on. Chair Cardon asked how close their home is to the crematory and if they noticed whether the doors were open or not. Mr. Lloyd Drinen answered at 40-50 feet away and no they do not see the doors from their home. Commissioner Davis asked if they had noticed if the smoke has decreased. Mr. Lloyd Drinen stated no, the smoke has increased. Mrs. Linda Drinen stated that sometimes the smoke is really bad. Commissioner Thompson asked if the smoke is every day. Mr. Lloyd Drinen stated no. Commissioner Langenfeld asked if when the smoke is bad, is it visible. Mrs. Linda Drinen stated when it is visible, the smoke is black. Chair Cardon asked how long the smoke was visible. Mrs. Linda Drinen stated it goes away after 2-3 minutes, but that she doesn't watch it all the time. Commissioner Thompson asked if you can smell the odor when the smoke is over their house or on Sundays. Mr. Lloyd Drinen stated yes and it is a yucky smell.

Attorney Simpson asked Mr. Lloyd Drinen to clarify the distance to the crematory, which he stated as 50 feet. Mr. Lloyd Drinen stated it was yards, not feet. Attorney Simpson asked if they had any evidence that the smoke is harmful to your health, safety and welfare. The Drinen's answered no to each of those questions. Attorney Simpson asked if they had any proof it would impact the value of their property. They answered no, but they feel that it will but that they had not looked into that. Attorney Simpson asked if the Drinen's were able to hear the crematory. Mr. Lloyd Drinen stated that they have heard it since it's gone in and saw the smoke about 1 time a week but that it dissipated after 2-3 minutes. They stated that they don't really pay attention to it that often. The Drinen's stated that what if 5-10 years from now it does affect their health, and somebody dies.

Russell and Laura Hodges 6821 Drinen Lane stated their first issues are with public safety, and felt that the fire marshal should be informed. The video was taken after the inspection on the 9th and they know that somehow the crematory controlled the body size during the inspection. They stated that they had installed video cameras and are scared to death because of the fire and black smoke. They presented numerous videos. Mrs. Hodges stated that she has experienced burning of her ears, eyes, and throat and the smell is superic in nature. On April 11, 2014 the video shows flames and black smoke and they feel that this is injurious to their property values. The smoke has been in

our front yard several times. She stated that she does not think the black ash is just a cardboard box but human fat tissue. She too felt that this human tissue would come in to their home through their evaporative cooler.

Various videos were shown. Chair Cardon asked if they have had ash on any of their possessions. Mrs. Hodges stated that have to wipe off the pellet bags that are stored on their front porch before they can bring them in to the house. She added that an 8-foot wall is not going to stop the smoke from coming into their yard. Mr. Hodges stated that he was concerned about the proximity of the power lines to the flames shooting out of the smokestack and felt this could be a code violation. Chair Cardon asked if he had reported the flames to code compliance. Mr. Hodges stated that they contacted Councilor Dan Darnell and was told that this would go through the Planning & Zoning, so please don't allow this to operate in front of our home. Commissioner Thompson asked how long the smoke goes for. Mr. Hodges stated that it is not the same for every cremation, 30-40 seconds, and it is not as loud when staff is there, but louder when they are not there. He added that he is concerned about his grandchildren breathing it. He also stated that this is not harmonious with the surrounding properties. There is noise, and the glare from the roof as the morning sun hits it. Their concerns include smoke, fumes, fire hazard no access in case of fire, since Drinen Lane is a dead end. He added that they have hired an attorney and are taking this seriously and would like to have the crematory removed.

Commissioner Jaques asked how often they have seen fire from the smokestack. Mr. Hodges stated twice and it is getting worse. Commission Thompson asked about during the 2013 year and the cremations then. Mr. Hodges stated that this operation began in December 2013 and that cremations before that were at the other facility on Bloomfield Highway. He added that the first night after installation the facility ran all night long. He stated that Mr. Guttman said this equipment was state of the art and had all the filter it needed, and original the smoke stack would be about 1 foot high, and now its about 3 feet. Commissioner Arnold asked if they were told that it would be calibrated or seen anyone service the equipment. Mrs. Hodges stated she has not seen anyone. Commissioner Freeman asked if the Hodges feel there is any mitigation they feel to keep it operating where it is. Mr. Hodges stated that if this is state of the art equipment, he would hate to see what happens when bad equipment is used. He added that the smoke comes out at a 90 degree angle and does not rise into the jet stream but just falls to the ground. They added that they shouldn't have to run inside their house to get away from the smoke.

Attorney Simpson asked if they attended the first meeting in June 2013 since they were on the original list of interested parties. They stated they were not able to attend since they would have had to close their business. Attorney Simpson asked if they had attended the City Council Meeting in 2013. They answered no. Attorney Simpson asked if they operated a pellet stove and does it emit smoke. Mrs. Hodges stated that no, it does not smoke. Attorney Simpson asked if they had evidence that the smoke is harmful to their health, safety and welfare, other than their belief. Mrs. Hodges stated that it can't be healthy to breathe in the remains of another person. Attorney Simpson asked if they had any medical documentation that their health issue is caused by the crematory. Mrs. Hodges stated no, she had not been to a doctor. Attorney Simpson asked if they had proof that the substance wiped off of the pellet bags stored on their porch was from the crematory. Mrs. Hodges stated that she has seen the smoke travel to their front porch. Attorney Simpson asked if it was true that they have seen fire from the smokestack twice. Mrs. Hodges answered yes. Attorney Simpson asked if the crematory runs all night. Mrs. Hodges answered that it shuts off at 7:15pm to 7:30pm. Attorney Simpson asked if they had any evidence that the operation is detrimental to her mother's health. Mrs. Hodges stated that her mother cannot have any irritation, but that she does not have medical evidence. Attorney Simpson asked about the burning of her eyes and throat. Mrs. Hodges stated that she did not suffer from that before December and that she hasn't gone to the doctor so she has no medical evidence. Attorney Simpson asked if they had any evidence that the flames are a safety issue other then their belief. Mr. Hodges stated no but there is a lot of noise from the crematorium. Attorney Simpson stated that the findings in the staff report shows there is no noise violation.

Attorney Quail asked about the traffic along Drinen Lane. Mr. Hodges explained that the vehicle that brings the bodies in, probably 6-10 times a day to and from. Attorney Quail asked if the traffic is away from their house. Mr. Hodges stated that no, it is always in front and there was a hazardous waste truck that crossed over our easement.

Terry Nelson of 6817 Drinen Lane stated she has 2-3 concerns which are the noise, smoke and property values. She is concerned about the health of her grandkids. She stated that the trees were providing some kind of cover, but that it is unsatisfactory. Ms. Nelson stated that when they met with Mr. Guttman he said they wouldn't hear, smell or see anything. She feels that when the inspections are set up to take the noise readings, that it is a completely controlled environment. She felt that she shouldn't be asked to only use her yard from 5:00pm to 7:00pm or to have to run into the house when there is smoke. She stated she did not attend the previous meeting because she was in Wyoming. Commissioner Thompson asked that other than the smoke that comes and goes, is there any soot on your property that you could prove came from the crematory. Ms. Nelson stated not that she had noticed. She also stated that she doesn't notice the noise as much when she is in the back yard. Commissioner Thompson asked where her house was located. Ms. Nelson stated that she is next door to the Hodges. Commissioner Thompson asked if she had noticed the smoke last for longer than 10 minutes. She stated she personally had not seen a lot of smoke, but feels that it can't be healthy, and asked if the property owner can prove that it is okay.

Attorney Simpson asked when did she meet with Mr. Guttman. Ms. Nelson stated right after they poured the concrete for the building. Attorney Simpson asked if that was after the special use permit was approved and did she attend the meeting of the Planning and Zoning Commission. Ms. Nelson stated that she attended the meeting in March at the City Council. Attorney Simpson reworded her question to ask if she had attended the meeting in 2012. Ms. Nelson stated no. Attorney Simpson asked if she had any evidence other than fear to support her testimony. Ms. Nelson stated that is how she feels, but no. Attorney Simpson asked if she had proof that the crematory is affecting the value of her property. Ms. Nelson stated no. Attorney Simpson asked if she had tried to sell her property. Ms. Nelson stated no, but she is worried if she does. Attorney Simpson asked about the allegation that the inspection was a controlled environment and was there any proof. Ms. Nelson stated no. Attorney Simpson asked about the inspection in January where the owner was not notified and did she think that was a controlled environment. Ms. Nelson stated no.

Attorney Quail asked if she has noticed an odor. Ms. Nelson stated that she hasn't been around much and the winds blow west to east, but if the wind blows toward us, the odor is in the front yard, a strong sulpheric odor. Attorney Quail asked if this odor was present when the crematory is operating. Ms. Nelson stated yes it was.

Chair Cardon called the following names of interested parties from the list contained within the agenda. The following names were called but no one was in attendance at this meeting. Edgar Meraz, Dan & Wanda Spangler, Murphy Development, LLC, Anthony & Linda Montoya, and Merl & Shirley Farnsworth. That concluded the list of interested parties, except for the property owner, Mr. Guttman, who advised he would speak after the rest of the citizens had spoken.

Annette Lane of 31 Road 3128 stated that she was visiting on April 7, 2014 in the afternoon and had smelled the odor. She added that she had run in ambulances, had a 90 year old die in her home and lived in Third World countries and had not smelled anything like that smell. She stated she was instantly nauseated and got back in her car and left. After returning home she stated she had to do a sinus rinse and have a drink to get rid of the taste and smell. She stated she would be upset if the crematory was in her area. Commissioner Arnold asked how long she experienced the smell. Ms. Lane stated that the minutes she smelled it, she left, about 5 seconds to walk to her car.

Attorney Simpson asked if April 7th was on a Sunday. Ms. Lane stated it was on a Monday. Attorney Simpson asked if there was any proof that the odor was from the crematory. Ms. Lane stated no, there was not.

David Alexander of 1515 E. 20th Street stated that he has not read the staff report or reviewed the documentation for the special use permit. He stated that he is a realtor and has been in business for 8-10 years in Farmington. He added that he was asked by Mr. Hodges about the property at 6821 Drinen Lane and Mr. Hodges was interested in a comparative market analysis on this house. Mr. Alexander stated that he is not an appraiser but is a license realtor/broker. He informed the Commission that an appraiser goes to more of an extent to assess the actual value and provide that assessment to the realtor. He stated that during his comparative market analysis on March 10, 2014 he arrived at 11:30am, but experienced the odor at that time. He stated it was pungent and couldn't identify where it was coming from. The odor was a nuisance odor but there was also noise coming from the building, it wasn't extremely loud, though he did notice it. Mr. Alexander explained external obsolescence as an incurable thing outside of the property

boundary, out of the property owners control, that is factored into the cost value of a property, such as; barking dogs, a chicken farm, or an industrial building in a residential area. He stated that a seller is required to fill out a property disclosure statement which asks questions like whether there is excessive noises, etc. Mr. Alexander stated that a realtor is required to disclose to clients or customers that could possibly affect their ability to resell in the future. He stated that he informed Mr. Hodges that he does have a case of external obsolescence, in the smoke and the odor, which could have an effect on financing through the FHA.

Attorney Simpson asked if, in his opinion, the crematorium is an external obsolescence. Mr. Alexander said that his experience has proven it is. Attorney Simpson asked if the FHA form identified a crematorium specifically on the form. Mr. Alexander stated that it is an external obsolescence and there is a condition where that falls within that category. Does it say crematorium, no but the environmental contaminant and noxious odor can be noted. Attorney Simpson asked if a cemetery, a well site, or livestock are on the list. Mr. Alexander answered yes. He stated that he did not know the odor he smelled was from the crematorium until after his observation of the property. Attorney Simpson asked if he was doing a comparable, could the crematorium be an external obsolescence that he would take into consideration. Mr. Alexander answered yes. Attorney Simpson asked if there was any proof that says it is an external obsolescence. Mr. Alexander stated no, but in his opinion it is.

Attorney Quail asked Mr. Alexander for his opinion. Mr. Alexander stated that from a buyers standpoint the smell and noise are an external obsolescence and you would want to know where it is coming from. Attorney Quail asked if he was hired to list the Hodges home on the market would he list that as an external obsolescence. Mr. Alexander stated that there is no category for that information, and there is nothing on the MLS that lists that information, but it should be in the property disclosure statement. Attorney Quail asked what could happen if the property owner failed to disclose the odor or noise and the potential buyer found out. Mr. Alexander stated that the purchase contract could be cancelled or after the purchase is complete there may be recourse through legal actions. He added that in his business it is not good not disclose that type of information but there is no law that the seller has to disclose it, even if the question is on the form; however if a realtor is asked, they have to answer.

There was no one else to speak regarding this petition from the public.

Jerry Guttman 7220 N. 16th Street, Suite C, Phoenix, AZ stated he is a partner in this business. Attorney Simpson asked how he came to own this property. Mr. Guttman stated that they had purchased the facility which came with a crematorium on Bloomfield Highway. He stated that he felt it was a good time to move and have the facility at the cemetery. He added that there are about 5,000 crematories in the country and they are effective good quality machines. Mr. Guttman stated that they went through the process and the city did their investigative work. They followed the rules and laws and became a small business owner in the city. Attorney Simpson asked if he had spoken with any of the residents before the initial petition. Mr. Guttman stated there have been emails back and forth and I wanted to meet them, but that he doesn't remember the date. Attorney Simpson asked if the crematory is state of the art. Mr. Guttman stated that the equipment has lasers that shut off the unit if it senses particulate matter. He added that the local Burger King has more emissions than this unit. Attorney Simpson asked if this state of the art equipment has installation specifications. Mr. Guttman stated that when it was installed it had to run for 15 hours prior to the testing and that there were no issues. He added that Mr. Martinez has many years of experience and has attended the 3-4 day training, is certified and oversees the staff that operates the equipment. The equipment operator has been doing cremations for 3-4 years.

Attorney Simpson asked what the investment has been for this equipment installation. Mr. Guttman stated that he has invested between \$170,000-180,000 and if the families had stepped up then and said they had a concern, we may not have made that investment. He wondered how a small business can have confidence in what the commission does. He stated that they had done what they were asked and the neighbor chose not to attend. Attorney Simpson asked what the average cost of a cremation was based on the 385 cremations done in 2013. Mr. Guttman stated the cost is about \$2,000, and the number of cremations have risen. He stated that in the west about 90% of bodies are cremated and that in the east only about 10%. He bases this increase on the cost of the traditional services as being unaffordable for most people.

Mr. Guttman stated that there is black smoke occasionally and he feels that it is caused by the cardboard boxes and the moisture in them from the refrigerator, and some of the

items included on the body, such as blankets. He added that large bodies of 500 to 600 pounds will also cause some smoke, but that the equipment has been tested and no violations were found to exist. Mr. Guttman said that unfortunately this is a reality and a change but that the neighbors should have spoken up. He identified that this isn't easy for anybody sitting in this room, but it is what it is and families ask for it. He stated that he did not have \$180,000 to toss away.

Mr. Guttman addressed concerns about the position of the smokestack to the power lines. He stated that the smokestack is about 6-7 feet above the roof line and that the power lines are about 25 feet away, so no problems will be created. He stated that the delay in the landscaping around the new building was due to having to wait until spring to plant. Mr. Guttman identified that the fences around the property have been replaced and new meshing added to screen storage. He has plans to add new trees to the property and to also replace sod as needed. He wants this property to look good and is willing to invest in his business.

Attorney Simpson asked about families wanting to attend the cremation. Mr. Guttman said that the City told him no, because they wanted to restrict the traffic on Drinen Lane. He added that only Billy's truck uses that road to retrieve bodies for cremations.

Mr. Guttman addressed the condition of restricting the hours of operation and stated that the city doesn't restrict other businesses operating hours and that by limiting his hours, it will hurt his business. Attorney Simpson asked how the black smoke could be mitigated and if improper operation could be the cause. Mr. Guttman stated the smoke is not from improper operation, but he believes it come from the items such as boxes, blankets and some religious items included with the body.

Attorney Simpson asked if that were any other improvements planned at this location. Mr. Guttman stated before this petition was approved, the grounds had a two 300 or 500 gallon rusty ugly gas tanks. They have been cleaning up the grounds in the back and the planting trees. When this happened he stated they stopped making improvements, and are not going to put anymore money into this property only to be told to take this business out. Attorney Simpson asked about the mitigation to the owners on Drinen Lane. Mr. Guttman stated they would be planting more trees and that the debris has been collected from other parts of the property including a tractor that was intertwined in a tree. They have plans to bring in dumpsters to haul away the trash and debris but have had to wait for the weather.

Mr. Guttman shared that everybody has an opinion and that they are allowed to voice it, but the neighborhood should have shared that two years ago. He stated that he cannot change the pitch of the fan and equipment, but could keep the garage doors closed during operation.

Attorney Simpson asked if the recommendations proposed at the beginning of the hearing were the same recommendation he is requesting of the Commission. Mr. Guttman stated that he would like to eliminate this process entirely, but he is willing to work with folks. Attorney Simpson asked if the inspections and training requested by staff would change anything with concerns to the neighbors. Mr. Guttman stated the neighbors were given a choice to speak before, but that he would request testing by done by the NMED rather than the third party that sold them the equipment. In regards to the training, he stated that quarterly training is not needed. The Crematorium Association of North America (CANA) guidelines have checks and balances already in place for operation. Attorney Simpson asked about the large truck that the neighbors saw at the site. Mr. Guttman stated that there are very stringent guidelines regarding health and safety for the disposal of humans.

Mr. Guttman stated that the location of the crematory was to originally attach it to the other building, but because of a septic tank system it was feared that the new building would collapse that system. Because of the slope of the ground it was moved farther to the south.

Commissioner Freeman asked how many crematories Mr. Guttman owns. Mr. Guttman stated that he has the one here and five in Las Vegas, Nevada. Commissioner Freeman asked about any preventative maintenance such as cleaning the chimney or any of the moving equipment. Mr. Guttman stated that the equipment goes through that process every time, and that the chimney is cement with metal inside and there is nothing in the federal requirements to require that. Commissioner Freeman asked if this was new or relocated equipment. Mr. Guttman stated that this location has brand new equipment and the other equipment is still at the Bloomfield Highway location. Commissioner

Freeman asked how technical the process was. Mr. Guttman stated not very technical, but there are temperatures to be monitored and then the body is placed into the chamber. Chair Cardon asked if there was any further training besides the 4-day training previously mentioned. Mr. Ernest Martinez of 203 N. Locke stated he is a licensed and certified practitioner for the crematory. Chair Cardon asked if he had completed all of the training. Mr. Martinez stated he is now certified for 5 years and that the employee that works at the crematorium will have the same certification. He indicated that his employee, Mr. Gales, will be attending the CANA training will also be certified for 5 years. Commissioner Arnold asked about calibration and the frequency that it is maintained. Mr. Martinez stated there are parameters that they meet but there are no regulations. Mr. Martinez explained that the equipment has sensors that will alert the operator to a problem and the equipment actually regulates itself, it is a smart machine.

Commissioner Washburn asked Mr. Guttman about the statement that the equipment was odorless. Mr. Guttman stated that he stood outside the building and didn't smell what they smelled, the city didn't smell what they smelled, and maybe there are some barn animals or possible a little bit of everything, we just don't know that it is coming from this building. Commissioner Langenfeld asked how many cremations have been done at this location. Mr. Guttman stated he didn't have that number but if you divide last years number by 12 it will give you an estimate, and that he feels the numbers will increase. Commissioner Langenfeld asked if there is an expansion filtration system or what type of filtration system the equipment has. Mr. Guttman stated that he did not have an answer for that. Commissioner Langenfeld asked what purpose the lasers serve. Mr. Guttman stated that if the laser gets an incorrect reading it will shut down the equipment, and is set to guidelines that are federally and state accepted. Commissioner Langenfeld asked if there is a continuous emissions monitor. Mr. Guttman stated there was and except for a NM Gas Company meter problem there have been no interruptions with the equipment.

Commissioner Thompson asked about the inconsistencies that have initiated this hearing. He stated that in 2012, the plan was to build onto the existing maintenance building, but there was no site plan at that time, and that the only person that attended the hearing had concerns about the traffic. Mr. Guttman stated that the only vehicle using Drinen Lane is Billy's truck to pick up the bodies, and that the noise the neighbors may hear are the gas burners. Commissioner Thompson asked about the environment test done by the state when the equipment was set up and how often it should be required. Mr. Guttman stated that the smoke is from the cardboard or because the body in really large, and that there will be some smoke. Commissioner Thompson asked how come the Commission was not told that two years ago. Mr. Guttman stated that there has been testimony that they smell things on days that the crematory isn't even running. Commissioner Thompson asked if Mr. Guttman could get with the manufacturer, show them the video and get some feedback. Mr. Guttman stated he would have no problem doing that. Chair Cardon asked how long Mr. Guttman felt it would take to have them attend a meeting and speak to these questions. Mr. Guttman stated he would like to have them test it first, but felt 2-3 weeks was sufficient time. Commissioner Freeman asked if he had seen the videos before this meeting. Mr. Guttman stated that he had not seen these videos before today. Chair Cardon asked about the smoke and if he had seen it personally. Mr. Guttman stated that he had never stood outside and watched for smoke. Commissioner Freeman asked if the event of the smoke was not typical. Mr. Guttman stated that it is typical and maybe some flame, since it is a furnace. Chair Cardon asked if he could get a document from the manufacturer as to what is happening to cause the smoke.

Attorney Quail asked Mr. Guttman if he was correct in that Mr. Martinez is the manager and has certification and that Mr. Gales is the operator and has been doing cremations for 4 years. Attorney Quail asked if Mr. Gales was certified. Mr. Guttman stated no. Attorney Quail asked if Mr. Gales was performing cremations without being certified by CANA. Mr. Guttman answered yes. Attorney Quail asked if Mr. Gales is not allowed to leave the property. Mr. Guttman stated yes. Attorney Quail asked if the facilities on Bloomfield Highway can meet the demand for cremation. Mr. Guttman stated that it still has working equipment. Attorney Quail asked if there was some type of additional items that could have been purchased for the furnace, such as extra filtration equipment. Mr. Guttman stated that the equipment comes with the blowers and filters already in place. Attorney Quail asked if he purchased the machine and anything additional to the unit. Mr. Guttman stated that he did purchase the machine but there was not any additional items necessary. Attorney Quail asked if Mr. Guttman owned a crematory prior to this one. Mr. Guttman stated yes, he was familiar with the process. Attorney Quail asked if all bodies are placed in boxes and wrapped in blankets. Mr. Guttman stated that some

bodies are not in boxes and he believes those items cause the smoke. Attorney Quail asked if Mr. Guttman would want his kids to ride their bikes up and down Drinen Lane. Mr. Guttman stated he was okay with that.

Attorney Simpson called Ernest Martinez of 203 Locke Avenue back to the podium. She asked how long he has been certified by CANA. He stated about 2½ months, and that he attended the certification seminar which covered 5 components, basic operation responsibility to the family, ethical aspects of the process, disposing of a body, and how to protect ourselves medically. Attorney Simpson asked if there was training to run the equipment. Mr. Martinez said no, it was not geared to our facilities or any specific brand of equipment. Attorney Simpson asked where he was trained to run the equipment. Mr. Martinez stated that when the manufacturer sets up the equipment they run through the procedure. Attorney Simpson asked if there was any certification received from the manufacturer. Mr. Martinez stated he received a certificate. Attorney Simpson asked if there was any smoke or odor during the manufacturer training. Mr. Martinez answered no. Attorney Simpson asked Mr. Martinez if he knew the cause of the smoke. Mr. Martinez stated he could only speculate that the smoke comes from moisture, from a body has been embalmed, from a casket designed for cremation, or from just a plain pine box. Attorney Simpson asked about the recommendation for the property owner to have the operators trained quarterly and is training available. Mr. Martinez stated that his certificate is valid for 5 years and that he felt quarterly training would be a waste of money and time and that he would end up with the same certification that he already has. Attorney Simpson asked if CANA requires the crematory operators to be certified. Mr. Martinez stated no, that it is voluntary for the company.

Commissioner Freeman asked about the discharge from this equipment, since a wood burning stove discharges about 18 grams per hour. Mr. Bill Gales of 413 Paralee Drive stated that they measure in percentages, and if the smoke is less than 20% for up to 10 minutes it is under the EPA Standards. Mr. Gales explained that during the second and third cremations the furnace is up to 1500 degrees and the body is being kept at 42 degrees. Commissioner Freeman asked if it was not a surprise for you to see smoke. Mr. Gales stated that he understands there will be a bit of smoke. Commissioner Freeman asked if this equipment smoked more than the other one on Bloomfield Highway. Mr. Gales stated that this is way better, but even the neighbors at the old location didn't know the facility was there until they were told. He stated that once the machine is started, you can't leave, the machine is fully automated and there is a regulator of the smoke which will shut off the burners. Commissioners Thompson asked if he knew what causes the fireballs. Mr. Gales stated that a 600 pound body would cause more than normal flames.

Attorney Quail asked Mr. Martinez if he managed or operated a facility prior to this one. Mr. Martinez stated no. Attorney Quail asked what type of training he received at this facility. Mr. Martinez stated it was the same as the operator, from the manufacturer, Matthews Cremation. Attorney Quail asked if they were made aware that the size of a person could create black smoke. Mr. Martinez stated that the largest body is usually cremated at the beginning of the day. Attorney Quail asked if the first body was at 1:00pm. Mr. Martinez stated no, because then the next would not be processed until 4:00pm and the business closes at 5:00pm, so there would not be time to finish by 5:00pm. Attorney Quail asked if Mr. Guttman was there when the training took place. Mr. Martinez stated he believed he was, but he does remember Mr. McDonald specifically. Attorney Quail asked if in his opinion it has gotten worse since December 1st and can you make it go away. Mr. Martinez stated that their current operation is below the standards and there is nothing to go away. Attorney Quail asked if there were no emissions and the neighbors would never know when it was running, would you agree that they do know when it is running. Mr. Martinez answered yes. Attorney Quail asked if there was any way to get rid of the smoke and odor. Mr. Martinez answered no.

Chair Cardon called Mr. Gales back to the podium. She asked if there was any way that he felt he could control the smoke, like to shut the equipment down. Mr. Gales stated that you can shut the burners off, if there is too much fuel and not enough air. He added that the cremation continues, so a 600 pound body would cause that, and there are quite often large bodies. Attorney Simpson asked how long it takes for the cremation. Mr. Gales stated 3 to 3.5 hours depending on the size, longer for bigger bodies, most about 2 hours. He added that the second body is short than the first because the equipment is already up to temperature. Attorney Simpson asked when the normal time to start cremations is. Mr. Gales stated about 8:30am to 8:45am. Attorney Simpson asked if when the city, state and herself were there to observe, did she stage the cremation. Mr. Gales stated no, he found out a little bit before and he scheduled a pick-up and cremated the body that he was given. Attorney Simpson asked if she or any other

representative picked out a certain body to be cremated that day. Mr. Gales stated that there can be 3-4 depending on the need. Attorney Simpson stated that Mr. Hodges stated that he had witnessed 10-15 cremations. Mr. Gales stated that they do not cremate bodies at night because of the sound. He explained that the decibel level during the day is 76db but that level goes down at 7:00pm. If the equipment is running after that time it is only reforming the cool down to prevent damage to the bricks, and only the blower is running at the time. Attorney Simpson asked if restricting business hours to 10:00am to 4:00pm would be practical. Mr. Gales stated yes, if we only have 1-2 bodies to cremate. Attorney Simpson re-addressed Commissioner Freeman's question about the maintenance and if there is a weekly or monthly maintenance plan. Mr. Gales stated that they do clean the spark plugs, and check the fire rods, stuff that make the burners work but there is nothing to make it run better. They do not touch anything to make the machine run different. Attorney Simpson asked if the manufacturer recommends cleaning the equipment. Mr. Gales stated that during the 4 years at the location on Bloomfield Highway he has never cleaned the chimney.

Attorney Simpson asked if he was aware of any other training. Mr. Gales stated that he is not aware of any other training in New Mexico. Attorney Simpson asked if the equipment malfunctions, is there a warning. Mr. Gales stated that the equipment will shut itself down, including the burners. Attorney Simpson asked about any pollution control on the equipment. Mr. Gales stated that the light shines through the stack and if it doesn't meet the sensor it shuts off the burners. Attorney Simpson asked if this is the same as what you would do. Mr. Gales stated that they manually watch the equipment. Attorney Simpson asked what would happen if the equipment was not operating properly. Mr. Gales stated that this equipment would not work at all if it is not operating properly.

Commissioner Arnold asked about the mid-stream sensor and the process if it malfunctioned, would the unit shut down and the body that is continuing to burn cause smoke. Mr. Gales stated not if the equipment shut down. Commissioner Arnold asked if the machine has gone into a failure since he has been operating it. Mr. Gales stated no, it has not. Commissioner Langenfeld asked for clarification if he could monitor for smoke. Mr. Gales stated that it is an automatic machine, but he still has to monitor it, so he is normally not outside to see if it is smoking. Commissioner Langenfeld asked if he could monitor for smoke. Mr. Gales stated he would have to stand outside the building, but could only try to do his best.

Attorney Quail asked if Mr. Gales testifies that the smoke is created when the burners get too hot. Mr. Gales said that when there is too much fuel and not enough oxygen. Attorney Quail asked if this happens during every cremation. Mr. Gales stated that it does if the body is really fatty, and if there is no body fat there is no smoke. Attorney Quail asked if they would cremate a 500 pound body as the third one in a day. Mr. Gales stated no, because it would overheat the machine. Attorney Quail asked if that body would be done the first one of the day. Mr. Gales stated sometimes, but you would have to heat up the equipment all night. Attorney Quail asked if that same body would be cremated after 1:00pm. Mr. Gales stated that sometimes. Attorney Quail asked if, in Mr. Gales experience if the black smoke was created by fat, fuel, oxygen, blankets or moisture. Mr. Gales stated that sometimes they get a bag of clothing that is wet.

The meeting was recessed for a 5 minute break and resumed at 8:08pm.

Chair Cardon stated that at this time the public hearing was closed and that the commissioners would now go into their discussion, which is for clarification on issues, any statements and to ask questions. Commissioner Thompson stated that he initially felt that this commission was previously misled, but now feels there could be something wrong with the facilities and felt this hearing should be postponed until the machine could be checked out and answers found as to why this machine has both smoke and odor, Commissioner Thompson felt that was the best the commission could do, to find out if there could have been an order of a super add-on material, since the owner nor the operator can answer those questions, and it may take from 3 weeks up to a month to wait for the answers. Commissioner Freeman stated that he felt the petition should be tabled and the operations cease until then. Chair Cardon asked legal counsel for a clarification on this issue. Deputy City Attorney Breakell stated that this Commission does not have the authority to require them to cease operations. The property owners have a legal right to continue operations and that the hearing could be recessed to continue on a certain date. Chair Cardon asked if there was a motion to recess, should the commissioners' statement be finished and then go forward with the motion. Deputy City Attorney Breakell stated that the manufacturer, if in attendance at that meeting can be cross-examined by interested parties. Chair Cardon asked if what Mr. Guttman

needs to communicate to his attorney the questions that he has to get the answers from Matthews. Chair Cardon felt that if this hearing was recessed it could be picked up from this point and new evidence can be submitted from the manufacturer. She thought that they should test the facility and if anyone had other information they required, that this is the time to bring it back up into discussion. Commissioner Davis felt that he would like to see a report from the manufacturer, Matthews, or best to have them speak to the commission. Chair Cardon asked Mr. Guttman if he would like the manufacturer to report directly to the commission. Mr. Guttman stated that he would and could he get those questions that the commission is looking for answers to. Commissioner Thompson stated that the commission is allowed to talk with the manufacturer. Chair Cardon said that she would like to see the machine tested again by NMED. Deputy City Attorney Breakell stated that for clarification all concerns voiced during the hearing could be pulled from the records. Attorney Simpson asked if she would get copies of the videos provided by Mr. Hodges, as they had not seen them before today. Chair Cardon stated she could because they are part of the record. Attorney Simpson asked that she be advised and contacted to review the records of the testing of the facilities.

Chair Cardon advised the commissioner that they are not to contact or speak to anyone regarding this petition since they are still in a quasi-judicial hearing process.

Planning and Zoning Commission Action of SUP 14-05 on April 24, 2014

A motion was made by Commissioner Thompson, seconded by Commissioner Davis, to **recess** Petition SUP 14-05 until the second meeting in May, to provide the property owner time to contact the manufacturer’s representative, have the equipment re-inspected, and have the manufacturer in attendance to answer questions.

- AYE: Chair Cardon, Commissioners Davis, Freeman, Jaques, Langenfeld, Ragsdale, Thompson, Arnold (Alt) and Washburn (Alt)
- NAY: None
- ABSTAINED: None
- ABSENT: Commissioners Waldroup

Motion passed 9-0

Business from the Floor: There was no business from the Floor.

Business from the Chair: There was no business form the Chair

Business from Members: Commissioner Thompson mentioned the PRCA Meeting was at 4:00pm & 7:00pm.

Business from Staff: Director Holton informed the commission that Corey Styron, PRCA Director, is planning to give an overview of the information from that meeting.

Director Holton stated that City Council adopted the P&Z recommendation for approval of the annexation. It will need to go back to the City Council twice more, on May 13, 2014 to discuss the ordinance and on May 27, to adopt the ordinance.

Adjournment

The Planning and Zoning Commission meeting of April 24 2014, was adjourned at 8:21 p.m.

Joyce Cardon
Chair

Dee Dee Moore
Office Manager