



# County of Los Alamos

Los Alamos, NM 87544  
www.losalamosnm.us

## Agenda - Final County Council - Special Session

*Randall Ryti, Council Chair; Denise Derkacs, Vice-Chair; Melanee Hand; David Izraelevitz; Keith Lepsch; David Reagor, and Sara Scott, Councilors*

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Monday, August 1, 2022

1:00 PM

Council Chambers - 1000 Central Avenue

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**NOTE: This meeting is in person and open to the public. However, for convenience, the following Zoom meeting link and/or telephone call in numbers may be used for public viewing and participation:**

**<https://us06web.zoom.us/j/84192549403>**

**Or Telephone:**

**Dial(for higher quality, dial a number based on your current location):**

**US: +1 346 248 7799 or +1 669 444 9171 or +1 720 707 2699 or +1 253 215 8782  
or +1 646 931 3860 or +1 301 715 8592 or +1 312 626 6799 or +1 386 347 5053 or +1  
564 217 2000 or +1 646 558 8656**

**Webinar ID: 841 9254 9403**

**1. OPENING/ROLL CALL**

**2. APPROVAL OF AGENDA**

**3 PUBLIC HEARING(S)**

- A. [15995-22](#)** CASE NO. APL-2020-0020. An appeal to the Los Alamos County Council of the Planning and Zoning Commission's revised Final Order approving applications, Findings of Fact and Conclusion of Law in the matter of CASE No. SUP-2022-0020 Denise Matthews, dba Worms and Wildflowers Daycare, seeking Special Use Permit approval for a daycare facility to provide care, services, and supervision for a maximum of 12 children at her residence addressed as 113 B La Senda Rd., & CASE No. SUP-2022-0021 Denise Matthews, dba Worms and Wildflowers Daycare, seeking Special Use Permit approval for a Home Business, to employ more than one non-family member for a daycare facility to be located at 113 B LA SENDA RD. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A).

**Presenters:** Paul Andrus, Community Development Director and  
Sobia Sayeda, Acting Planning Manager

**Attachments:** [A - Special Use Permit Review Criteria](#)  
[B - Development Code Appeals 2008](#)  
[C - Legal Notice](#)  
[D - Owner Notification, 100 yds](#)  
[E - Amended Record, APL-2022-0020](#)

- B. [16205-22](#) Closed Session for Deliberations of a Public Body in Connection with  
an Administrative Adjudicatory Proceeding Pursuant to NMSA §  
10-51-1 (H) (3)

**Presenters:** County Council - Special Session

- C. [16206-22](#) Possible Final Action on this Proceeding.

**Presenters:** County Council - Special Session

#### 4. ADJOURNMENT

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the County Human Resources Division at 662-8040 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the personnel in the Office of the County Manager at 663-1750 if a summary or other type of accessible format is needed.



# County of Los Alamos

## Staff Report

August 01, 2022

Los Alamos, NM 87544  
www.losalamosnm.us

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**Agenda No.:** A.

**Index (Council Goals):**

**Presenters:** Paul Andrus, Community Development Director and Sobia Sayeda, Acting Planning Manager

**Legislative File:** 15995-22

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### **Title**

CASE NO. APL-2020-0020. An appeal to the Los Alamos County Council of the Planning and Zoning Commission's revised Final Order approving applications, Findings of Fact and Conclusion of Law in the matter of CASE No. SUP-2022-0020 Denise Matthews, dba Worms and Wildflowers Daycare, seeking Special Use Permit approval for a daycare facility to provide care, services, and supervision for a maximum of 12 children at her residence addressed as 113 B La Senda Rd., & CASE No. SUP-2022-0021 Denise Matthews, dba Worms and Wildflowers Daycare, seeking Special Use Permit approval for a Home Business, to employ more than one non-family member for a daycare facility to be located at 113 B LA SENDA RD. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A).

### **Recommended Action**

**I move that Council find that the decision of the Planning and Zoning Commission was in accordance with adopted County plans, policies and ordinances and that the facts on which the decision was based are supported by the record and that the decision was not arbitrary, capricious, or a manifest abuse of discretion. I further move that Council affirm the decision of the Planning and Zoning Commission in Case No SUP-2022-0020 and Case SUP-2022-0021.**

**Or**

**I move that Council find that the decision of the Planning and Zoning Commission was not in accordance with adopted County plans, policies and ordinances and that the facts upon which the decision was based are not supported by the record and that the decision was arbitrary or capricious or a manifest abuse of discretion. I further move that Council overturn the decision of the Planning and Zoning Commission and deny the application in Case No. SUP-2022-0020 and Case SUP-2022-0021.**

**Or**

**I move that Council find that the decision of the Planning and Zoning Commission was not based upon sufficient evidence that the decision was in accordance with adopted County plans, policies and ordinances nor was the decision supported by sufficient**

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evidence in the record that the decision was not arbitrary, capricious, or a manifest abuse of discretion. I further move that Council remand Case No. SUP-2020-0020 and Case SUP-2020-0021 to the Planning and Zoning Commission for further development of the facts [specify which matters are to be reconsidered and the reasons for remand] and for Planning and Zoning to reconsider its decision.

**And**

**I further move to authorize the Chair to sign Findings of Fact consistent with this Decision, prepared with the assistance of the County Attorney, and further move that these Findings of Fact be included in the record of this proceeding.**

#### **Body**

Copies of the complete record for Appeal Case APL-2020-0020 have been provided to Council and the parties. A copy of the complete record is available for public review within the county's website: <https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:56c48582-f323-326e-8197-3b90ad64c023> and attached hereto as Attachment "E."

Pursuant to the Development Code Appeals Council Procedures (attached hereto as Attachment "B"), each party will be allowed an oral presentation of no less than three minutes. Oral presentations will be limited to matters relevant to the appeal, and in no instance will any new evidence be introduced in the oral presentation. Council may question any party and the staff of CDD. Questions and answers will be limited to matters relevant to the appeal, and while questions and answers may reference evidence in the record, no new evidence may be introduced. The introduction of new facts or further development of facts found in the record is not permissible on appeal. Council will not accept or consider evidence outside of the record in accordance with Code Section 16-493(c)(2) and any new facts or further development of the facts provided by any party in the statement of legal issues, in any response, or in the oral presentation will be disregarded by Council.

Pursuant to Code Section 16-493(c), Council will affirm the decision appealed unless it finds that the decision was not in accordance with adopted county plans, policies, and ordinances, the facts on which the decision was based are not supported by the record, or the decision was arbitrary, capricious, or a manifest abuse of discretion. A decision to reverse or modify the decision appealed will be effective only on motion and affirmative vote of a majority of the Council, and in no event less than four (4) votes. If no action is taken or approved at a hearing at which a quorum of the members of the Council are present, the decision shall be considered affirmed.

#### **Alternatives**

Council may modify or reverse the decision of the Planning and Zoning Commission or Council may remand this matter back to the Planning and Zoning Commission for reconsideration and it shall specifically state the matters to be reconsidered and the reasons for remand.

#### **Attachments**

- A - Special Use Permit Review Criteria
- B - Development Code Appeals 2008
- C - Legal Notice
- D - Owner Notification, 100 yds

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E - Amended Record, APL-2020-0020



# NOTICE OF APPEAL FROM A DECISION OF THE PLANNING & ZONING COMMISSION OR BOARD OF ADJUSTMENT

Los Alamos County Community Economic & Development Department

1000 Central Ave., Suite 150

Los Alamos, NM 87544

505-662-8120 (Fax) 505-662-8363

In order to process your appeal you will need to fill out this Notice of Appeal form and submit it to the Community Economic & Development Department within the required time period as described in the attached sheets. Please feel free to consult with a Planning Division staff member on the completeness of your Notice of Appeal or for any questions you may have regarding this process. We cannot accept or process incomplete or incorrect applications.

## 1. DECISION-MAKING BODY BEING APPEALED

Please indicate the decision-making body whose decision you are appealing.

☒ Appeal from a decision of the Planning & Zoning Commission    ☐ Appeal from a decision of the Board of Adjustment  
(Please consult with the Planning Division planner and choose only one type per form.)

## 2. CASE BEING APPEALED

Enter the Planning Division Case Number and Case Name being appealed.

SUP-2022-0020 and SUP-2022-0021 Denise Matthews, dba Worms and Wildflowers Daycare

Enter the property address or other form of identification associated with the case being appealed.

113B La Senda Road, White Rock, NM 87547

## 3. TYPE OF PARTY APPEALING THE DECISION

Please check only one box. (If you are unsure of your status, check with your assigned planner.)

☐ Original case Applicant    ☒ Affected party within 300 feet of the case property boundary    ☐ Other affected party  
(Please explain your status in the space below.)

We the undersigned (see attached) who live within 300 feet of the subject property at 113B La Senda Road

## 4. APPELLANT INFORMATION

Name: Patricia Thames Phone: N/A Cell #: 707-738-3313 Fax: N/A

Address: 115 La Senda Road, White Rock, NM 87547

NOTE: If the appellant is a corporation, partnership, Los Alamos County, Los Alamos School Board, or other group, also identify the single individual who will be "Appellant's Authorized Representative" in the spaces below OR CHECK

☐ Not applicable.

Appellant's Authorized Representative: Patricia Thames

Phone: N/A Cell #: 707-738-3313 Fax: N/A

Address: 115 La Senda Road, White Rock, NM 87547

The Appellant's Authorized Representative is the person authorized to represent the appellant during the appeal process and act for the appellant at the Council hearing.

**5. GROUNDS OF THE APPEAL**

In the space below cite the reasons for the appeal and specifically cite one or more errors in the decision of the Planning and Zoning Commission or Board of Adjustment. (Attach additional sheets if needed.)

The applicant did not present a preponderance of evidence that the day care substantially conforms to the Comprehensive Plan.

The applicant did not present substantive evidence that the day care will not be detrimental to the health, peace, comfort and general welfare of persons residing or working in the vicinity.

The applicant did not present any evidence that operation of the day care will not be detrimental to the value of property in the vicinity.

The Findings Of Fact approved by the Planning & Zoning commission at their February 23, 2022 meeting were insufficient to establish that the day care substantially conforms to the Comprehensive Plan, or that it would not be detrimental to the health, peace, comfort, or general welfare of persons residing or working in the vicinity, or that it would not be detrimental to the value of properties in the vicinity.  
Further details and explanations are attached.

Various errors of fact were given in evidence supporting approval of the Special Use Permits.  
Further details and explanations are attached.

Errors of procedure may require some corrective action. Further details and explanations attached.

Procedural note: Single Point Of Contact is fine for US mail, but due to chronic email problems with CDD prior to hearing, would appreciate using multiple addresses for email communications to guarantee delivery. Please use: tishthames@gmail.com d@vidnorth.com akkana@shallowsky.com latoty07@gmail.com  
Appellants can circulate communications from there. Thanks!

**6. REQUEST FOR RELIEF**

I am requesting that the County Council ☒ Reverse, ☐ Modify, or ☐ Remand this case on appeal.  
(Check the appropriate box.)

**7. APPELLANT'S CERTIFICATION & SIGNATURE**

I hereby acknowledge that I have read this Notice of Appeal and accompanying information. To the best of my knowledge and belief the information supplied as part of this Notice of Appeal is true and correct.

If the party is a corporation, partnership, Los Alamos County, Los Alamos School Board, Homeowners Association or other entity, I have been authorized to file this Notice of Appeal on its behalf.

Sign and Date Here: Patricia Thames 03/06/2022

**8. ATTACH \$200 CHECK FOR APPEAL HERE Payable to Los Alamos County**

**PHILLIP D. NOLL, JR.**  
**MONICA D. NOLL**  
114 PIEDRA LOOP  
LOS ALAMOS, NM 87544

6756  
95-101/1070

3-8-2022  
DATE

PAY TO THE ORDER OF Los Alamos County \$ 200.00  
Two hundred and 00/100 DOLLARS

**LANB** PO BOX 60  
Los Alamos, NM 87544  
1-800-684-LANB  
Member F.D.I.C.  
Creating a better way.

FOR Appeal SUP-2022-0020 Monica D. Noll MP  
SUP-2022-0020

10 700 10 1 2 6 7 5 6 0 0 8 4 0 2 0 3 0 1 1 1

ATTACHMENT A

**Appeal of the Decision to Approve Special Use Permits  
SUP-2022-0020 and SUP-2022-0021  
Granted February 23, 2022**

**APPELLANTS CERTIFICATIONS AND SIGNATURES**

We the undersigned affected residents (within 100 yards of 113B La Senda Road) are participating in the appeal to reverse the Planning and Zoning Commission approval of the above Special Use Permit. We hereby acknowledge that we have read this Notice of Appeal and accompanying information. To the best of our knowledge and belief the information supplied as part of this Notice of Appeal is true and correct.

Signature: David M. North Date: 2/28/2022  
Printed Name: David M. North  
Address: 111 La Senda Road

Signature: Akka Peck Date: 2/28/2022  
Printed Name: Akkana Peck  
Address: 111 La Senda Road

\* Signature: See next page Date: \_\_\_\_\_  
Printed Name: Leslie Di Leva  
Address: 115 La Senda Road

Signature: Patricia Thames Date: 2/28/2022  
Printed Name: Patricia Thames  
Address: 115 La Senda Road

Signature: Fredrick J. Berl Date: 3/6/22  
Printed Name: Fredrick J. Berl  
Address: 117 La Senda Road

**Appeal of the Decision to Approve Special Use Permits  
SUP-2022-0020 and SUP-2022-0021  
Granted February 23, 2022**

**APPELLANTS CERTIFICATIONS AND SIGNATURES**

We the undersigned affected residents (within 100 yards of 113B La Senda Road) are participating in the appeal to reverse the Planning and Zoning Commission approval of the above Special Use Permit. We hereby acknowledge that we have read this Notice of Appeal and accompanying information. To the best of our knowledge and belief the information supplied as part of this Notice of Appeal is true and correct.

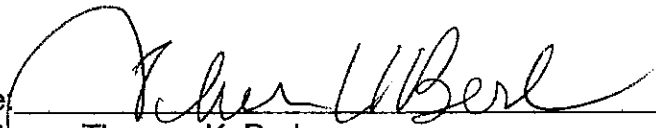
Signature: David M. North Date: 2/28/2022  
Printed Name: David M. North  
Address: 111 La Senda Road

Signature: Akka Peck Date: 2/28/2022  
Printed Name: Akkana Peck  
Address: 111 La Senda Road

\* Signature: Leslie Di Leva Date: 2/28/2022  
Printed Name: Leslie Di Leva  
Address: 115 La Senda Road

Signature: Patricia Thames Date: 2/28/2022  
Printed Name: Patricia Thames  
Address: 115 La Senda Road

Signature: Signature on first page Date: \_\_\_\_\_  
Printed Name: Frederick J. Berl  
Address: 117 La Senda Road

Signature:   
Printed Name: Theresa K. Berl  
Address: 117 La Senda Road

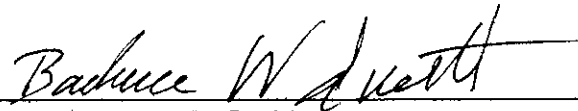
Date: 3/6/22

Signature:   
Printed Name: Phillip D. Noll  
Address: 114 Piedra Loop

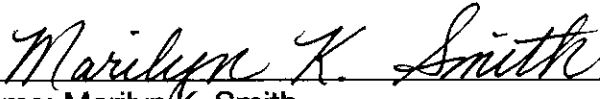
Date: 2/24/22

Signature:   
Printed Name: Monica D. Noll  
Address: 114 Piedra Loop

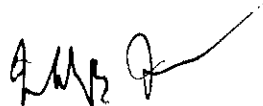
Date: 2-24-2022

Signature:   
Printed Name: Barham W. Smith  
Address: 116 Piedra Loop

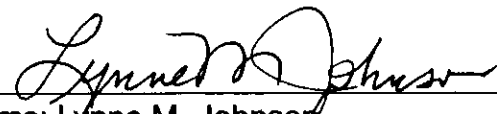
Date: 2-24-2022

Signature:   
Printed Name: Marilyn K. Smith  
Address: 116 Piedra Loop


Date: February 24, 2022

Signature:   
Printed Name: Mikkel B Johnson  
Address: 118 Piedra Loop

Date: 2.24.2022

Signature:   
Printed Name: Lynne M. Johnson  
Address: 118 Piedra Loop

Date: 2.24.2022

Signature:   
Printed Name: David L. Paulson  
Address: 122 Piedra Loop

Date: 3/1/2022

☐ Signature: Anne M. Paulson Date: 3/1/2022  
Printed Name: Anne M. Paulson  
Address: 122 Piedra Loop


☒ Signature: See next page Date: \_\_\_\_\_  
Printed Name: William M. Hodgson  
Address: 114 La Senda Road

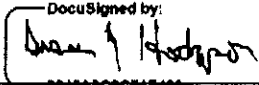
☒ Signature: See next page Date: \_\_\_\_\_  
Printed Name: Susan Mary Hodgson  
Address: 114 La Senda Road

☒ Signature: Vicki B. Cobble Date: 4/24/2022  
Printed Name: Vicki B. Cobble  
124 A Piedra Loop

☒ Signature: Mark Potocki Date: Feb 24, 2022  
Printed Name: Mark Potocki  
105 La Senda Road

○ Signature: See previous page Date: \_\_\_\_\_  
Printed Name: Anne M. Paulson  
Address: 122 Piedra Loop

★ Signature:  Date: 3/1/2022  
Printed Name: William M. Hodgson  
Address: 114 La Senda Road

★ Signature:  Date: 3/1/2022  
Printed Name: Susan Mary Hodgson  
Address: 114 La Senda Road

X Signature: Signature on previous page Date: \_\_\_\_\_  
Printed Name: Vicki B. Cobble  
124 A Piedra Loop

X Signature: Signature on previous page Date: \_\_\_\_\_  
Printed Name: Mark Potocki  
105 La Senda Road

**Certificate Of Completion**

Envelope Id: 440E43F2C1A746A5B4C4C710EE8B370F  
 Subject: Please DocuSign: 2022 DAYCARE APPEAL SIGNATURE SHEET-2.pages.pdf  
 Source Envelope:  
 Document Pages: 3  
 Certificate Pages: 5  
 AutoNav: Enabled  
 EnvelopeId Stamping: Enabled  
 Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Status: Completed

Envelope Originator:  
 Tish Thames  
 11450 Barnett Valley Road  
 Sebastopol, CA 95472-9242  
 tish.thames@winecountrygroup.com  
 IP Address: 69.254.150.166

**Record Tracking**

Status: Original  
 March 1, 2022 | 08:17


Holder: Tish Thames  
 tish.thames@winecountrygroup.com

Location: DocuSign

**Signer Events**

Susan Mary Hodgson  
 msusanhodgson@gmail.com  
 Security Level: Email, Account Authentication  
 (None)

**Signature**

DocuSigned by:  
  
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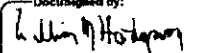
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 Signed using mobile

**Timestamp**

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 Signed: March 1, 2022 | 10:21

Electronic Record and Signature Disclosure:  
 Accepted: March 1, 2022 | 10:19  
 ID: b2e7846a-9dc7-4834-a4cc-f3873976bc50

William M. Hodgson  
 msusanhodgson@gmail.com  
 Security Level: Email, Account Authentication  
 (None)

DocuSigned by:  
  
 304BA809C71E483...

Signature Adoption: Drawn on Device  
 Using IP Address: 174.198.144.17  
 Signed using mobile

Sent: March 1, 2022 | 08:20  
 Viewed: March 1, 2022 | 10:24  
 Signed: March 1, 2022 | 10:26

Electronic Record and Signature Disclosure:  
 Accepted: March 1, 2022 | 10:24  
 ID: c17c99b9-27cc-4f98-8738-e27e0e35f375

**In Person Signer Events****Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp****Witness Events****Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent  
 Certified Delivered

Hashed/Encrypted  
 Security Checked

March 1, 2022 | 08:20  
 March 1, 2022 | 10:24

**Envelope Summary Events****Status****Timestamps**

Signing Complete

Security Checked

March 1, 2022 | 10:26

Completed

Security Checked

March 1, 2022 | 10:26

**Payment Events****Status****Timestamps****Electronic Record and Signature Disclosure**

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, Valley of The Moon Realty (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact Valley of The Moon Realty:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [natalie@bhghome.com](mailto:natalie@bhghome.com)

**To advise Valley of The Moon Realty of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [natalie@bhghome.com](mailto:natalie@bhghome.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from Valley of The Moon Realty**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [natalie@bhghome.com](mailto:natalie@bhghome.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with Valley of The Moon Realty**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [natalie@bhghome.com](mailto:natalie@bhghome.com) and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

**\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.**

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Valley of The Moon Realty as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Valley of The Moon Realty during the course of my relationship with you.

**Reasons for Appeal of Special Use Permits SUP-2022-0020 and SUP-2022-0021  
Granted on February 23, 2022**

These reasons are based solely on the Findings Of Fact presented, amended, and approved at the resumption of the hearing on February 23, 2022. Appellants show the findings fail to establish that the applicant offered substantial evidence to demonstrate compliance with any of the listed issues, all of which are required by county ordinance.

**Regarding Property Value**

There was no evidence presented that operation of the day care will not be detrimental to the value of property in the vicinity.

A neighbor within 300 feet presented testimony that the day care would diminish property values from 5-15%. The commission acknowledged this, while noting that the report was not physically in evidence, merely read into the record (including an attribution that was literally spelled out).

Council should note that the findings include testimony considered to be admissible and evidentiary on lines 151-55, 156-57 and 186-88 without actually quoting any source or producing any hard copy or reference to data in any way. Yet the author of the findings considered this admissible without comment, and the commission did not object.

The author further quoted a classic strawman argument into the findings starting on line 199 through 203 to the effect that no residential property report is required. This is correct, but only serves to illustrate that broad latitude is given the applicant. There is literally no limit to the kind or amount of evidence required to establish that property values will not suffer. There is only the requirement that the applicant demonstrate that there will be no detriment.

**Regarding The Comprehensive Plan**

The applicant failed to present a preponderance of evidence that the application substantially conforms to the Comprehensive Plan.

**Synopsis:**

1. Because three of four known permitted day care operations in White Rock have openings, there is no substantive argument that day care is hard to find or unavailable.

2. Because the applicant never describes the proposed fee structure, there is no evidence the proposed business will offer any price advantage over existing options.

3. Because the applicant argues the outdoor hours will be similar to other existing day cares, and presents no evidence that other operations have less nature-based content, there is no reason to differentiate the proposed business on curriculum.

This is the only evidence presented by the applicant that her day care home occupation complies with the Comprehensive Plan.

The Comprehensive Plan states: "A consistent theme heard throughout development of the Plan was the importance to the community of its existing neighborhoods and the desire to preserve their residential character and scale." There was no evidence whatsoever presented by the applicant that her day care operation would "protect the character of existing residential neighborhoods" as is required by the Comprehensive Plan.

Regarding the scarcity of day care: lines 141-157 note testimony from numerous parties and commissioners that "daycare services in the County are both difficult to find and obtain a spot at for a reasonable fee. As such, any new and alternative daycare facility would substantially comply with the intent and purpose of the Comprehensive Plan."

At 3:01:58 in the video of the hearing, Marilyn Smith testified there are at least four Day Care businesses in White Rock, and three currently have space available. There was no objection or contradiction to this testimony, and no reference elsewhere in the hearing that any of the three were full. Therefore, evidence indicates that in White Rock, there is day care easily found and readily available. Several people presented incorrect evidence of the "everybody knows" sort about lack of day care. This merely stands to illustrate that most of the testimony on this subject was from people who did not know the facts as they stand. So it's obvious neither the applicant nor anyone else presented substantial evidence that day care is difficult to find or indeed obtain.

Next there is the question of a reasonable fee. Neither the applicant, nor staff, nor anyone else ever described the fee structure of the proposed day care in any way. So it's simply impossible for the commission to argue this proposed day care would have more reasonable fees than the existing unfilled day care businesses, or even reasonable fees at all.

There is also some argument about the importance of nature-based content differentiating the proposed day care from others. However, the applicant argues that the time spent outdoors will only be modestly above average, and offers no evidence that other available options lack similar nature content.

At line 149-150 of the findings, the author suggests viewing the interaction of the applicant and one of the commissioners at 1:44:19 in the hearing. Going to that time will be confusing since the time listed is incorrect. The actual time is 1:45:45, at least on the video record on losalamos.legistar.com. Nothing of substance is presented but it is an extraordinarily embarrassing example of a commissioner acting as an agent for a party to a hearing. Council should ask if this is appropriate in light of code Section 30-4 (c).

At line 150 the testimony of Kathryn Keith was noted as particularly persuasive because of anticipated hires at the lab that include younger families. First, the author has confused the tenses of the code requirements. While peace, comfort and property value are speculative about what might happen in the future, the proposed day care is required to substantially conform to the Comprehensive Plan at the time of approval, which is to say on February 23, 2022. That it may conform at some later date is not relevant. Further, Los Alamos is boom and bust at the fiat of congress. Predictions about both hiring and population have never born out in the past.

In presenting these matters as evidence, the findings attempt to turn county ordinance on its head. The requirement is for the applicant to produce evidence to demonstrate compliance with the Comprehensive Plan. Claiming unsupported supposition and factually incorrect testimony as proof is contrary to that requirement.

Lines 148-149 refer to the results of the informal survey performed by the Applicant on the need for daycares in the area. This is sourced from social media groups frequented by the

applicant and therefore not informative. Further, the majority of participants at the hearing were from Los Alamos townsite, Espanola or Santa Fe. That there might be fewer slots available outside White Rock is clearly not relevant to day care operations in White Rock, since persons from those areas are not filling the available slots.

. There follow some general opinions without any reference to evidence until line 164, where the author claims a commissioner said "the County Codes already allows (sic) for a daycare facility in R-A zoned districts, that such application and use, if approved, would also be in line with the Comprehensive Plan's goal of preserving the character of neighborhoods as well as enhance the housing stock and quality."

Of course, county code does not allow a day care facility in R-A districts. It allows parties to apply for a Special Use Permit for same. This rambling statement is either nonsense, or arguing that because someone can apply for a Special Use Permit, compliance with the Comprehensive Plan is automatic. Not only is that contrary to law, it's a fair example of the sort of analysis used to decide this issue.

### **Regarding Health, Safety, Peace and Comfort**

#### **Synopsis:**

1. The findings argue incorrectly that it is difficult to quantify peace and comfort, even though relevant metrics were supplied.

2. Commissioners note that it is hard for the applicant to demonstrate there will be no detriment to peace and comfort, apparently proposing that there is no requirement to obey county ordinances if it's difficult, even if a high bar was obviously intended by the ordinance.

Lines 174-177 of the findings indicate the P&Z Commissioners found it difficult to quantify a measure of peace or comfort. To make this objection, they have to reject measurement of noise as a factor in peace and comfort, and further reject the standards proposed by both law (Los Alamos County Code Sec. 18-73) and expert bodies as presented to them in evidence.

Both the applicant and appellants presented evidence regarding the scale of noise relating to the Los Alamos County noise ordinance. The applicant used her iPhone to create the misdated chart on page 24 of the record. Appellants listed exhaustive examples on pages 69-71 in the staff report, and further developed this information in the testimony of Akkana Peck at 3:18 in the video record, noting a max reading of 83.6 dBA two feet from the property line equivalent (3:19:18 on the video record). Ultimately, all evidence in this category led to the conclusion that sound would exceed legal levels at the property line.

However, various parties argued the applicant was not required to establish conformance with the noise ordinance. This reasoning is unclear. At no time was the commission informed they were legally required to ignore, or even not consider, evidence quantifying noise in excess of legal limits. Notably, the staff report on page 14 in the section titled "Staff Response" refers to an iPhone noise study of average sound levels and claims "Based on this evidence..." that the proposed day care is not detrimental to peace and comfort. However, after it becomes increasingly apparent the applicant's noise study was deeply flawed, only then is compliance with the noise ordinance mooted by staff.

Nevertheless, the commission also had to ignore the World Health Organization guidelines as cited on page 7 of the letter on page 72 of the staff report record near the middle of the page: "...the World Health Organization ([https:// www.who.int/docstore/peh/noise/Comnoise-4.pdf](https://www.who.int/docstore/peh/noise/Comnoise-4.pdf), near the bottom of page 55) considers children playing outdoors to qualify as an annoyance when it gets to 55 dBA..." and in oral testimony at 4:07:12. The WHO has been repeatedly cited as an acceptable authority for standards in New Mexico law, including State ex rel. Riddle v. Toulouse Oliver 2021-NMSC-018 (point at which a pandemic is reached), State v. Martinez 2020-NMCA-043 (guidelines for drawing blood), et al, and various Executive Orders (see first sentence of Executive Order 2021-045 for example).

There really is no difficulty in quantifying the noise issue, or peace and comfort, unless the commission assumes itself competent to reject standards set by the World Health Organization.

The findings next submit as evidence testimony from the applicant that "although children will be outside at some points of the day, they will not be just running around screaming and yelling." This artful statement is literally specious in that it does not assert that they will not run around and scream, but that is not what they will do all the time they are outdoors. The appellants concur but do not allow that the statement has any evidentiary value whatsoever.

What remains is vague reference to various opinions with no specificity. There is reference on line 188 of the findings to testimony by Ms. Sayeda @ 2:01:49, but there is nothing at that time stamp on the published hearing video. There is some testimony by Commissioner Nakhleh starting at 4:58:55, but it is not evident where she supports an opinion that day care will enhance peace.

That being the totality of the evidence presented regarding noise levels and peace and comfort, it is not clear at all that the findings point to any substantial proof that the applicant presented evidence that there will be no detriment to peace and comfort. Even more, there is no actual indication that the applicant, as opposed to other parties, submitted any proof at all.

The first and most emphatic point the commission makes in the findings is that it is hard for the applicant to prove compliance with Criterion 1 (Los Alamos County Code Sec. 16-156 (1)), especially peace and comfort. Again, appellants concur. Further, it is apparent from any direct reading of the law that it was the intent of the authors to make it difficult to prove compliance with that criterion, from which we may derive that the intent was quite reasonably to make the default to deny an opposed application for a Special Use Permit unless the evidence is clear and obvious that peace and comfort would not be disturbed.

### **Regarding Consistency**

One point raised by some commissioners during discussion of the Findings prior to the vote was concern that if the standards in the five criteria were actually applied, especially criterion one, this would not be consistent with the handling of previous applications for Special Use Permits, with Commissioner Martin singling out the five years of his tenure as a period of measure.

In the eight Special Use Permit hearings found from January 2017 through February 2022, all were approved and only one did not clearly supply a preponderance of evidence to support conformance with the five criteria.

The single exception was the first hearing for the Worms & Wildflowers proposed day care, SUP-2020-0014/15. Commissioner Martin would not necessarily remember this because he was not present for that hearing.

### **Procedural Errors**

#### **Persons Not Within 300 Feet Of The Proposed Daycare Were Allowed To Testify Without Any Legal Standing Or Being Called As Witnesses.**

At 10:04 in the video record of the February 9 hearing, Chair Adler includes in her instructions the standard rule, "Other persons in addition to the applicant including property owners within 300 feet of the boundary of the property under consideration, and those who have a legally recognized interest in this case may also be recognized as parties. Parties may call witnesses to present facts to support that party's position."

Note that in the June 28, 2017 hearing for Special Use Permit SUP-2017-0010. Chair Michael Redondo at 6:20 into the hearing says in regard to a nearby neighbor wishing to testify, "Since you are not within the 300 feet we won't recognize you as a party, but you can appear as a witness. So if there is someone here who is a party, we'll have them call you as a witness."

Since none of the parties outside the 300-foot radius was called as a witness, and offered no proof of material interest in the case, their testimony should be removed from the official record.

#### **Letters from persons not at the hearing should be removed from the record.**

Former P&Z Chair Gursky says "I did not note or hear that that Peggy Pendergast was here. If she's not here then I'm going to, I'm not going to include that letter in the record since she will not be subject to cross-examination." This occurs at about 15:13 in the video record for the hearing for 15-SUP-007 on October 28, 2015. Based on that precedent, the letters from persons not present at this hearing should also be removed from the record.

### **Objection To Commissioner April Wade's Presence Was Unreasonably Limited**

About April Wade being in a business relationship with Denise Matthews, Attorney Powers says: "The commission does have the option to take a vote to not let her be included in the proceedings. Unless there's a motion to do that we move forward."

At the time, several appellants were of the opinion that they should have been allowed to object, but that the legal limitation placed by the assistant county attorney overruled any such protest before it could even be offered. It could have convinced the commission to at least consider the matter.

In retrospect, appellants consider this an unreasonable instruction, and request Ms. Wade's testimony and subsequent vote be removed from the record.

### **Errata**

There is an error in the date on the "Noise Level Recording of Comparable Daycare" table on Page 24 of the original staff report. The date shown (1/11/21) is a year prior to the actual date of measurement, which caused considerable confusion because there was no Dragonfly Daycare at Rover & Meadow at that time.

### **Explanation Of Appeal Procedure**

Appellants presume the procedures used in the last two appeals will be repeated, particularly in respect to briefs, responses and motions.

The last item, motions, having only appeared at the most recent hearing, might require some clarification. Appellants understand motions at the county level do not require a request for concurrence, and will not reset the record though they will be included. There will be no hearing on any motion prior to the actual date set for the appeal hearing, and there is no requirement for response to any motion to be in writing or presented before the appeal hearing.

If we misunderstand any of those procedural rules, we request an explanation, in writing, of the actual procedure the County wishes to follow.


A PDF of this file is available at: <https://kafkasoft.com/appeal/reasons.pdf>

## DEVELOPMENT CODE APPEALS Council Procedures

1. As soon as reasonably available following a hearing before Planning and Zoning Commission (P&Z) or the Board of Adjustment (BoA), the Community Development Department will provide, upon request, to any person who participated in the hearing before P&Z or BoA a copy of the audio recording of the hearing and copies of any exhibits or other documents submitted as evidence during the hearing or as part of the case record
2. An appeal from a decision of the Planning and Zoning Commission or Board of Adjustment may be taken by filing with the Community Development Department written notice of appeal within fifteen (15) days from the date of the decision by P&Z or BoA, in accordance with Section 16-492 of the Development Code.
3. After the filing of a timely appeal CDD will make, or have made, a transcript of the audio recording of the hearing and such transcript will be available to the appellant and other parties to the appeal.
4. After filing of a timely appeal, and in reasonable time before the Council hearing on the appeal, CDD will prepare a complete record of the case on appeal. Such record will include the decision of the P&Z or BoA, the hearing transcript, all exhibits, notices, appeal filing and any other pertinent documents related to the appeal either required under the Code or these procedures. The case record will be made available to all parties to the appeal and the record will be timely supplemented by CDD in accordance with documents filed under these procedures.
5. If any party finds the record prepared by the CDD to be incomplete or inaccurate, that party may file with CDD, within five (5) business days after the record is made available by the CDD, a statement specifying how the record is incomplete or inaccurate and providing copies of any materials the party believes should be, but are not, included in the record.
6. CDD will make any corrections to the record requested by the parties, if appropriate. If CDD does not make the requested corrections to the record, then CDD will provide, within five (5) business days after receipt of the request, a statement explaining why the proposed corrections were not accepted. In that event, both the request to correct the record and CDD's response will be provided with the record to Council. However, Council will not consider any evidence not included in the record in its deliberations on the appeal.
7. Any party and CDD as staff, may file with CDD a signed brief or statement of argument of the legal issues and the application of the law to the facts contained in the record, including, as appropriate, the basis for any requested remand.. The statement or brief must be filed no later than ten (10) business days after the record is first made available by CDD and must be provided at the same time to the other parties on appeal. The brief or statement of argument will not exceed five (5) typed, double-spaced, letter-size pages in length. The font must be no smaller than 12 point and the page margins will be no smaller than 1 inch.

8. CDD and any other party (other than the party filing the brief or statement of argument pursuant to paragraph 7 above) may file a response to the brief or statement of argument, within five (5) business days after filing of the brief or statement pursuant to paragraph 7. The response will be filed with CDD and must be provided at the same time to the other parties on appeal. The statement will not exceed five (5) typed, double-spaced, letter-size pages in length. The font must be no smaller than 12 point and the page margins will be no smaller than 1 inch.
9. CDD will provide a complete copy of the record, as may have been corrected, any timely filed brief or statement of argument and any timely filed response, to the Council and the parties not later than two (2) weeks before the appeal hearing.
10. The date of the appeal hearing will be set by Council following the same process as other matters are set for Council meetings. CDD will provide notice of the appeal hearing in accordance with Article V of the Development Code.
11. At the appeal hearing, each party will be allowed an oral presentation of no less than three minutes. Oral presentations will be limited to matters relevant to the appeal and in no instance will any new evidence be introduced in the oral presentation.
12. At the appeal hearing, Council may question any party and the staff of CDD. Questions and answers will be limited to matters relevant to the appeal and, while questions and answers may reference evidence in the record, no new evidence may be introduced.
13. The introduction of new facts or further development of the facts found in the record is not permissible on appeal. Council will not accept or consider evidence outside of the record in accordance with Section 16-493(c)(2) and any new facts or further development of the facts provided by any party in the statement of legal issues, in any response, or in the oral presentation will be disregarded by the Council.
14. Pursuant to Section 16-493(c)(1), Council will affirm the decision appealed unless it finds that the decision was not in accordance with adopted county plans, policies, and ordinances, the facts on which the decision was based are not supported by the record, or the decision was arbitrary, capricious, or a manifest abuse of discretion.
15. For good cause shown or with the agreement in writing of CDD and all of the parties to the appeal, the Council Chair may reset the date of the appeal hearing or modify the times set in these procedures for providing the brief or statement of argument, or a response.
16. The County Attorney's office represents the County's interests in Development Code appeals.

ADOPTED this 15<sup>th</sup> day April, 2008.

  
\_\_\_\_\_  
James W. Hall  
Council Chair

**NOTICE OF CASE NO. APL-2022-0020**

**STATE OF NEW MEXICO, COUNTY OF LOS ALAMOS**

Notice is hereby given that the Council of the Incorporated County of Los Alamos, State of New Mexico, has directed publication of Case No. APL-2022-0020. This will be considered by the County Council at an open Special Meeting on Monday, August 1, 2022, at 1:00 p.m., at 1000 Central Avenue, Los Alamos, New Mexico 87544. The full copy is available for inspection or purchase, during regular business hours, in the County Clerk's Office: 1000 Central Avenue, Suite 240.

**CASE NO. APL-2022-0020**

**A REQUEST FOR THE LOS ALAMOS COUNTY COUNCIL TO REVERSE THE FEBRUARY 23, 2020 PLANNING AND ZONING COMMISSION DECISION CONCERNING CASE NO. SUP-2022-0020, A REQUEST FOR SPECIAL USE PERMIT TO CONDUCT AN IN-HOME DAYCARE FACILITY; AND SUP-2022-0021, A REQUEST FOR SPECIAL USE PERMIT FOR A HOME BUSINESS TO EMPLOY MORE THAN ONE NON-FAMILY MEMBER AT 113 B LA SENDA RD, WHITE ROCK, NM 87547.**

By: /s/ Randall T. Ryti, Council Chair

Attest: /s/ Naomi D. Maestas, County Clerk

Publication Date: Thursday, July 14, 2022

July 11, 2022

Dear Property Owner:

This notice was sent to you as a property owner within 100 yards of the subject site, pursuant to the Los Alamos County Code of Ordinances, Chapter 16, Article V, Sec. 16-192(b)(2).

**NOTICE OF CASE NO. APL-2022-0020  
STATE OF NEW MEXICO, COUNTY OF LOS ALAMOS**

**COUNTY COUNCIL**

Randall T. Ryti  
Council Chair

Denise Derkacs  
Council Vice Chair

**COUNCILORS**

Melanee Hand  
David Izraelevitz  
David Reagor  
Sara Scott  
Keith Lepsch

**COUNTY MANAGER**

Steven Lynne

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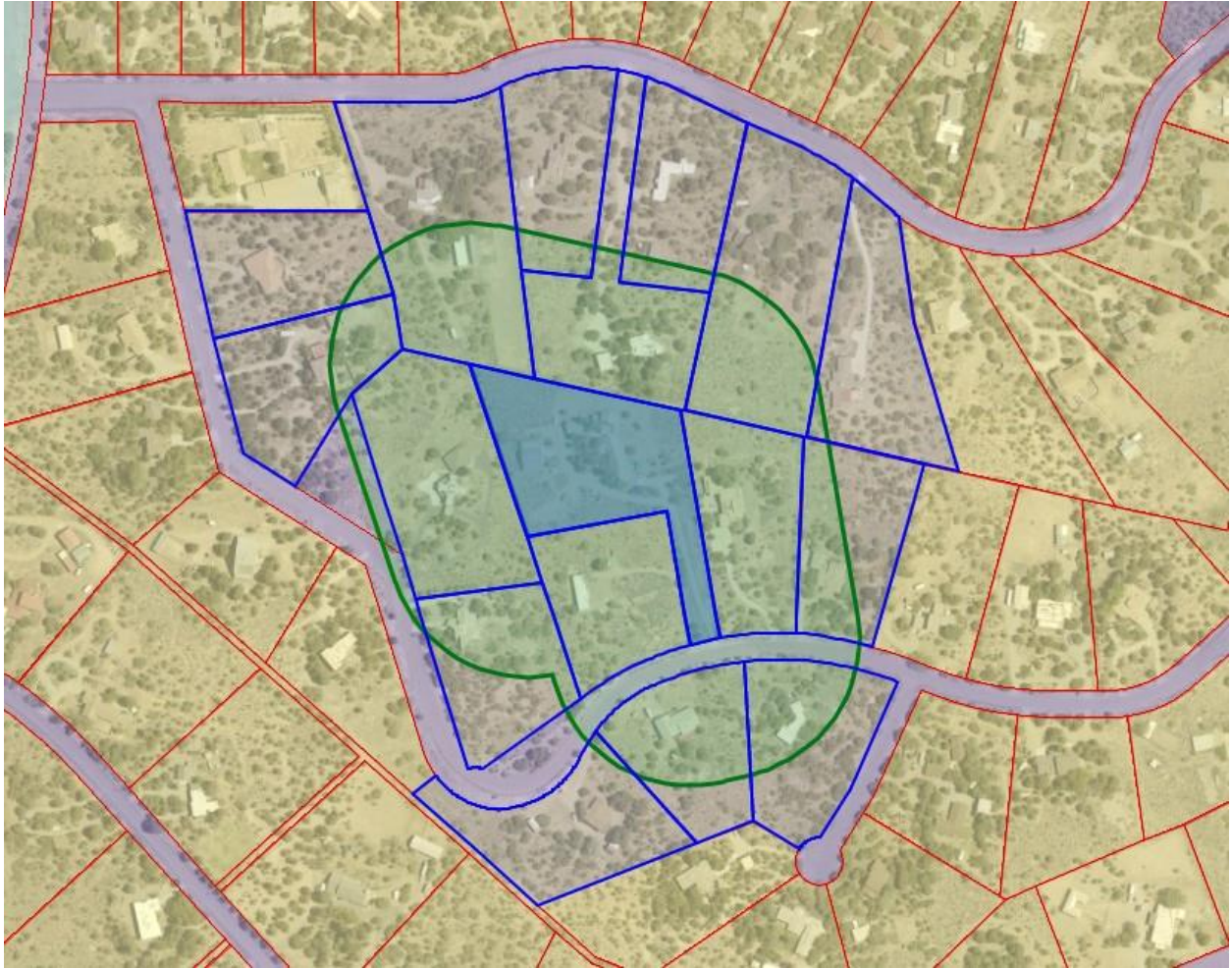
If you would like to watch the meeting online, the Agenda and live stream can be accessed at: <http://losalamos.legistar.com/Calendar.aspx>.

Case Manager: Sobia Sayeda, Acting Planning Manager

Email: [planning@lacnm.us](mailto:planning@lacnm.us)

Telephone: (505) 662-8120

**Properties within 100 Yards**





**Community  
Development  
Department**

**Appeal Case No.  
APL-2022-0020**

A Request for The Los Alamos County Council to reverse the Planning and Zoning Commission's Revised Final Order approving applications and Findings of Fact And Conclusions of Law in the matter of SUP-2022-0020 and SUP-2022-0021 - Special Use Permits for an In-Home Daycare for up to 12 Children and a Home Business to employ more than one non-family member at 113 B La Senda Rd, White Rock, NM, 87547.

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FINAL ACTION

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APPEAL BRIEFS & RESPONSES

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# **APL-2022-0020**

## **APPLICATION AND SUBMITTALS**

# LOS ALAMOS

Community Development

## SPECIAL USE PERMIT APPLICATION

Los Alamos County Community Development Department

1000 Central Ave, Suite 150, Los Alamos NM 87544

(505) 662-8120

Special Use (describe): In-home daycare for up to 12 children.  
Located in a studio guesthouse on our 3 acre property.

Requesting Permit for a daycare facility  
 Address to which this application applies

113 B La Senda Rd, White Rock NM 87547

Zoning District: RA

Related Applications (if any):

**APPLICANT** (Unless otherwise specified, all communication regarding this application shall be to Applicant):

Name: Denise Matthews Phone: Same Cell #: 541-740-5520

Please Print

Address: 113 B La Senda Rd, WR 87547 Email: director@wormsandwildflowers.com

Denise Matthews

11/5/21

SIGNATURE

DATE

**PROPERTY OWNER** (If different from Applicant)

☒ Check here if same as above

Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Cell #: \_\_\_\_\_

Please Print

Address: \_\_\_\_\_ Email: \_\_\_\_\_

My signature below indicates that I authorize the Applicant to make this rezoning application on my behalf.

SIGNATURE

DATE

**SPECIAL USE PERMIT CRITERIA:**

The Los Alamos County Code of Ordinances, Chapter 16, Development Code, Sec. 16-156 establishes five (5) criteria for the Planning and Zoning Commission to use when reviewing an application for Special Use Permit approval. Please review each of the criteria listed and provide brief responses as to how your application meets the criteria. Use the space provided or attach separate sheets if needed. You will also be asked to discuss the criteria at your public hearing. (1) The request substantially conforms to the comprehensive plan, and the establishment.

***Special Use Permit Application***

- (1) The request substantially conforms to the comprehensive plan, and the establishment, maintenance or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort or general welfare of persons residing or working in the vicinity of such proposed use, or be detrimental or injurious to property or to the value of property in the vicinity, or to the general welfare of the county.***

My in-home daycare will serve a small group (12 or less) of children and operate during normal business hours of 8:30-5:00. The daycare will be licensed by the state CYFD guidelines that maintain a safe and healthy environment for all involved. My ratio of children to adult will be kept to 1:6, requiring me to hire one other employee. This employee will be background checked and have no criminal background, a requirement to work with kids. The daycare will take place in an existing building on our property and not require the construction or destruction of any buildings. We will complete the modifications needed to meet the county code in order to operate a day care facility serving up to 12 children. This daycare will add an important resource to the community as daycare providers are in high demand, with many daycares having extended waitlists.

- (2) There are sufficient parking facilities that are adequately designed, shielded, landscaped and lighted to serve the use applied for based on the requirements of this chapter as found in article IX of this chapter.***

The nature of our property, a flag lot on three acres, has an extended driveway allowing all parking to be well of the roadway and out of sight of neighbors. We have six designated spots for parent parking (which can easily be extended) and we plan to extend our driveway to include a loop for easy turn-around. A licensed architect is designing all modifications needed to parking, including ADA accessibility. Solar lights will provide lighting to all parking areas.

- (3) The provisions for on-site and off-site ingress/egress and traffic circulation are in conformance with the county's construction standards, that the public streets serving the use applied for are adequate to meet the traffic needs of the proposed use and that the proposed use will not adversely affect neighboring properties by virtue of the type of traffic generated by the use.***

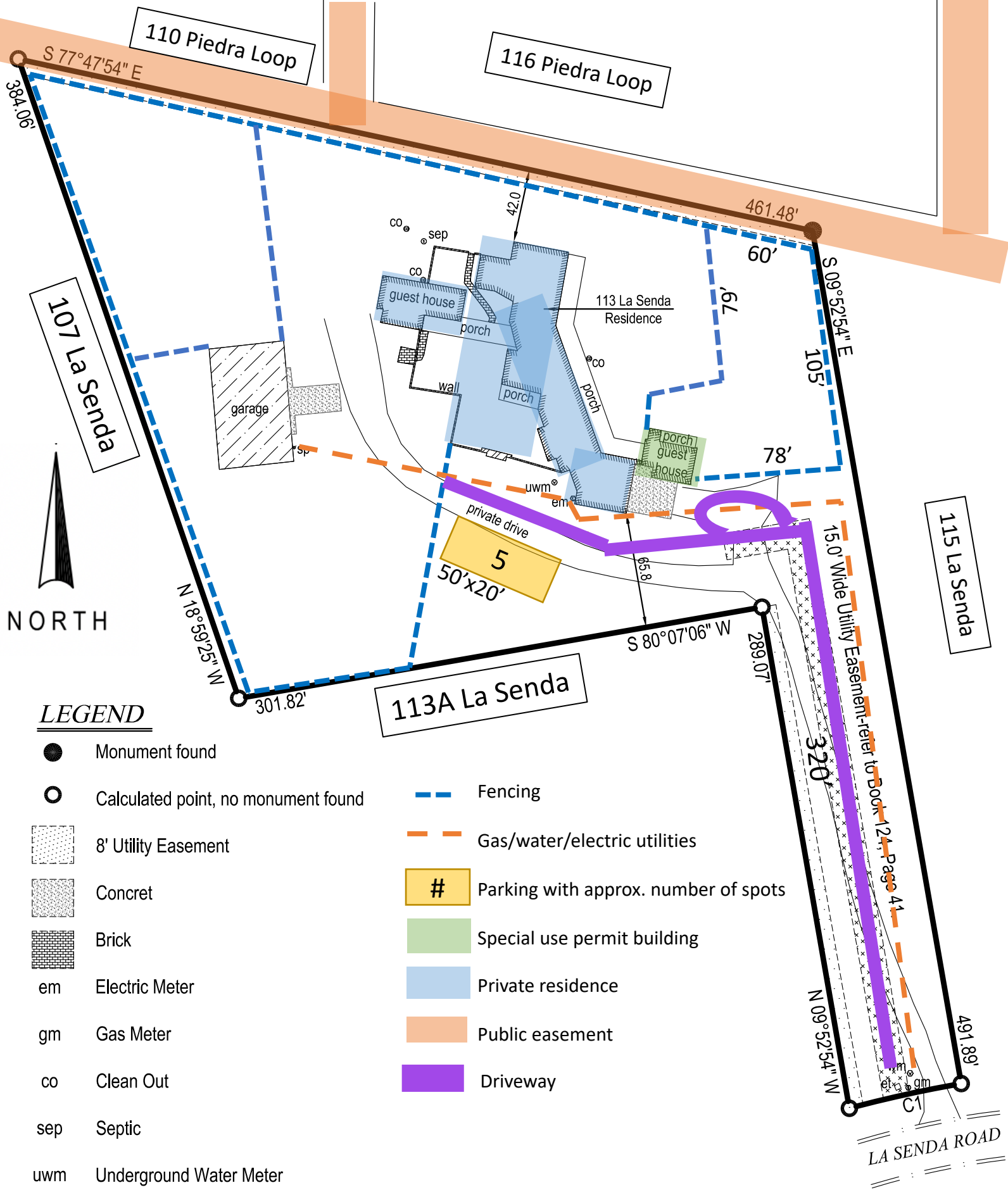
The nature of a small home daycare business does not bring a lot of extra traffic to a neighborhood. Pick-up and drop-off hours will be the busiest, however parents will have a half-hour to pick-up or drop-off allowing a spread of time for arrival and departure. La Senda road is a wide, two-way road that will not be adversely affected by the parents coming and going.

- (4) The setbacks of buildings and parking facilities from the property lines, right-of-way, and adjacent land uses are in conformance with this chapter and provide protection to and a transition from residential development, existing and contemplated in the vicinity; and that the height and bulk of the proposed buildings and structures are compatible with the general character of development in the vicinity of the use applied for.***

No new development will be needed for this home daycare to take place. The daycare will be located in a current studio guesthouse that was originally built on the property. This guest house is sufficiently set back from all neighbors and has parking readily available. The guest house has two entrance/exits and is directly located off our driveway.

- (5) The site plan including, but not limited to, landscaping, screen planting, and fencing of the proposed development demonstrates that the site development will be compatible with adjoining areas and will conform to the site development standards of the district regulations.***

The site plan includes fencing an area of our property to be used for the daycare facility. The perimeter of our entire property is already fenced. A second fenced area next to the daycare facility grounds will be used as a garden and accessed by the children attending the daycare. We will landscape to include kid friendly sites such as a sand digging area and patio. This easily aligns with the RA zone that our property falls under. Fruit trees have already been planted and much of the native landscape is intact, providing a barrier to our closest neighbor, located at 115 La Senda.



LA SENDA ROAD

C1

Page 4

Book 124

Refer to

15.0' Wide Utility Easement

320'

289.07'

N 09°52'54" W

491.89'

115 La Senda

78'

105'

S 09°52'54" E

461.48'

60'

69'

42.0'

113 La Senda Residence

porch

porch

porch

porch

guest house

garage

116 Piedra Loop

110 Piedra Loop

107 La Senda

384.06'

S 77°47'54" E

N 18°59'25" W

301.82'

113A La Senda

private drive

50'x20'

5

uwm

em

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289.07'

113 La Senda Residence

porch

porch

porch

porch

guest house

garage

116 Piedra Loop

110 Piedra Loop

107 La Senda

384.06'

S 77°47'54" E

N 18°59'25" W

301.82'

113A La Senda

private drive

50'x20'

5

uwm

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# Noise Level Recording of Comparable Daycare

Measured by the Niosh Sound Measuring Application

Date	Location	Time of Day	Recorded Time	Distance to children	LAeq (dBA)	TWA (dBA)	Dose %
1/11/21	Dragonfly Daycare 10 Kids Mixed Ages: 0-5	9:53	15:44	55 feet	54.9	40.0	0.0
1/11/21	Dragonfly Daycare 5 Kids Mixed Ages: 0-5	3:59	15:19	35 feet	56.7	41.7	0.0
1/11/21	Worms and Wildflowers Home Daycare 113B La Senda Rd No Children	1:45	15:28	At location	46.3	31.2	0.0

**LAeq** = Best described as the **Average Sound Level** over the period of the measurement. The equivalent ("eq") sound level corresponds to the average received sound energy over time, and is easier to read on a display than the instantaneous sound level.

**Industry Standard: An LAeq of 80 dBA or below is considered non-hazardous. Los Alamos County allows up to 65 dBA to cross residential property lines during business hours. Sec. 18-73.**

**Noise Dose** = It is the percentage of time a person is exposed to noise that is potentially damaging to hearing. Zero represents no exposure and 100 or more represents complete exposure.

## TWA = Time Weighted Average Noise Levels - and Noise Dose

The TWA shows a worker's daily exposure to occupational noise (normalized to an 8 hour day), taking into account the average levels of noise and the time spent in each area. This is the parameter that is used by the OSHA Regulations and is essential in assessing a workers exposure and what action should be taken.

Sources: <https://www.noisemeters.com/help/faq/leg/> <https://www.nti-audio.com/en/support/know-how/what-are-laeq-and-lafmax>

Dear La Senda Neighbors:

May 3, 2021

I hope this finds you all well during trying times.

It has been brought to my attention that some of you feel "broad-sided" by me taking the initiative to reinstate the La Senda HOA. I apologize to anyone who felt that way. Please know my intentions were to reactivate it so that the former Treasurer, Lynn Johnson, can let the La Senda HOA bank-account reserves close. She has been gracious in handling the monies for years, and she is ready to make it come to an end, as it serves no purpose sitting idle. There was a lot of chatter on social media that I made myself President, I stole money, etc. I am NOT President (and hold no position), and there is currently no standing BOD, since there was no HOA and the intentions were to let it go after we did what we set out to do. I have absolutely no access to any money, nor do I want any.

I obtained several banker-boxes of notes from Chuck and spent hours pouring over them trying to figure out a way that the money could go back to its rightful owner(s). It's essentially impossible for this to happen. Too much time has passed, and there is nothing that really spells out who is entitled to what; and of course people have moved, passed on etc. At the request of Chuck these documents will be donated to the Historical Society when this is finished. If any of you have any interest in looking through them, that can be arranged. Myself and a few former BOD members discussed how best to distribute the monies in the account.

Some ideas from other homeowners (for ALL homeowners to vote on) were the following:

1. Buy and place "dog poop bag stations" on the corner of Sherwood and Piedra Loop to help encourage dog walkers to clean up after their dogs. Maybe a few other spots too?
2. Put some benches around the neighborhood (maybe with views?)
3. Re-pave the walking trails (although it hasn't been determined if these are County-owned easements or part of La Senda).
4. Donate some or all of it to a local charity.

After this task at hand is complete, I am very open to getting rid of the HOA again. Like many of you, I am not a fan of HOA's. In my mind they serve no purpose.

I would also like to be clear, I do not run a dog-boarding business. I was starting one when we first moved here and then Covid happened, and we rescued a few other dogs so our house is full. There is not and will not be a dog business.

I would like for homeowners to understand that the CCR's and Bylaws run with your property. Reinstating the HOA has nothing to do with these documents.

Also, Some of the newer homeowners had to pay some HOA fees through escrow when they bought. Lynn has tried a few times to talk to the title companies to get this to stop. I will try to follow-up on this, as nobody seems to know where that money goes.

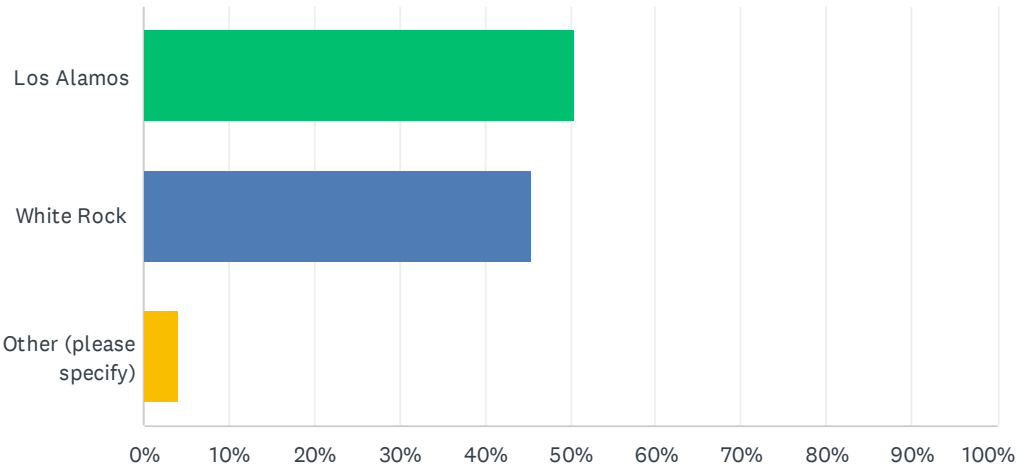
A big thank-you to everyone who has served on the La Senda BOD in past years and for all the volunteers who have helped organize the annual picnic. That was put on hold due to Covid, but I believe the general consensus is that most people would like to keep that tradition going. Obviously, you don't have to go if you don't want to.

Lastly, I think we all have the same common goal, and that is to have a friendly, safe, quiet, and respectful neighborhood.

Warmly,  
Tish Thames  
707-738-3313

Q1 Where does your family live?

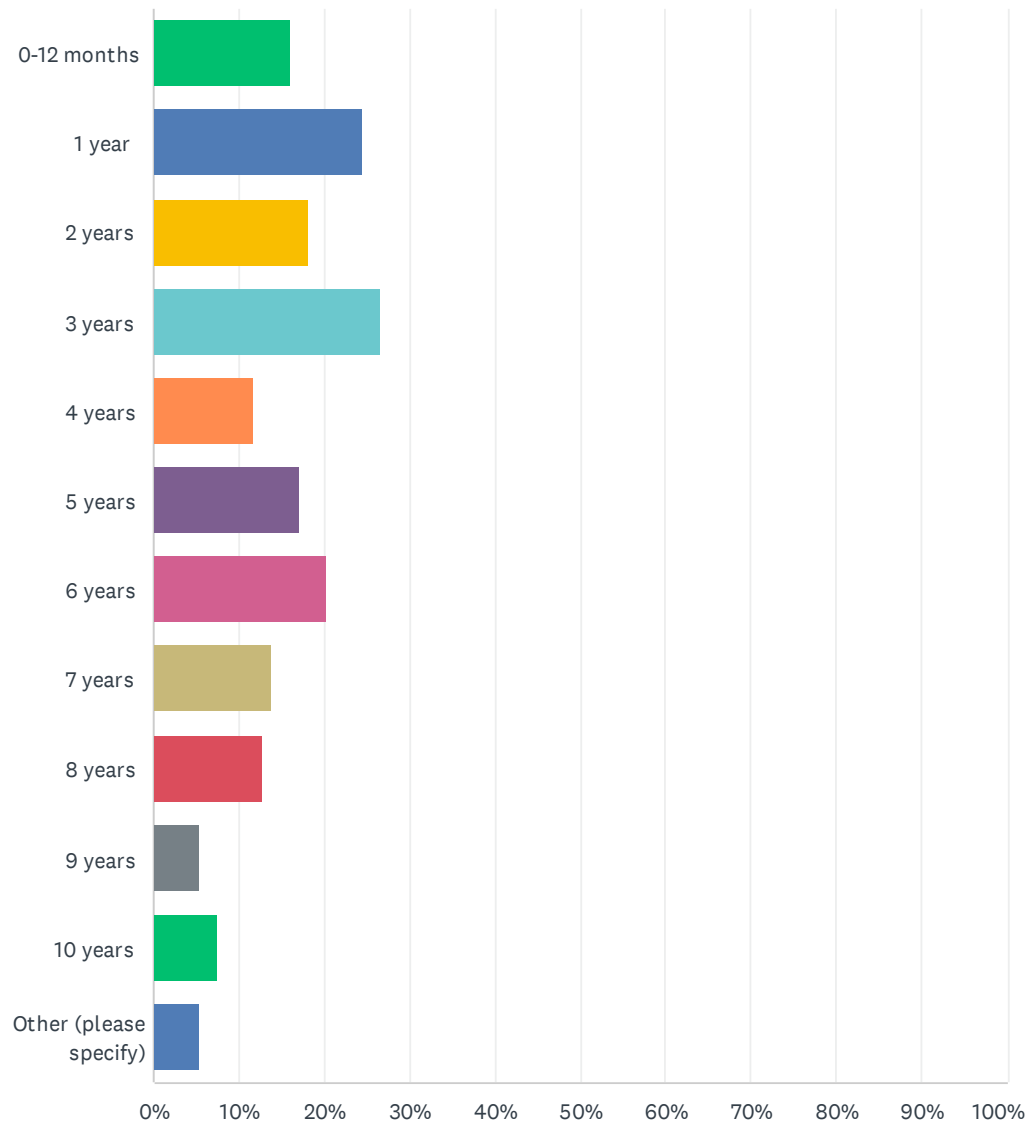
Answered: 99    Skipped: 0



ANSWER CHOICES	RESPONSES	
Los Alamos	50.51%	50
White Rock	45.45%	45
Other (please specify)	4.04%	4
Total Respondents: 99		

## Q2 What are the ages of your children under the age of 10?

Answered: 94 Skipped: 5

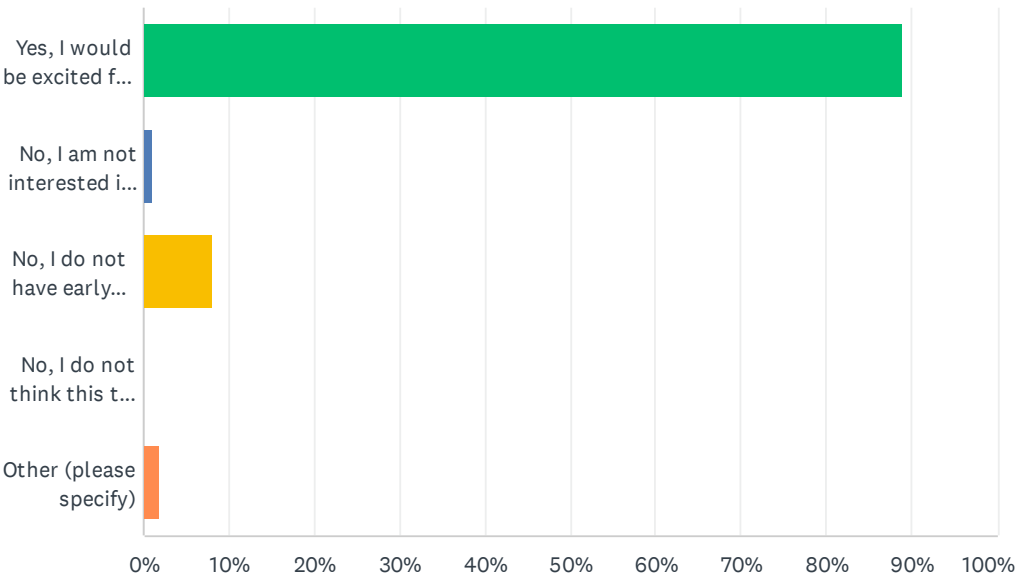


## Application - Daycare

ANSWER CHOICES	RESPONSES	
0-12 months	15.96%	15
1 year	24.47%	23
2 years	18.09%	17
3 years	26.60%	25
4 years	11.70%	11
5 years	17.02%	16
6 years	20.21%	19
7 years	13.83%	13
8 years	12.77%	12
9 years	5.32%	5
10 years	7.45%	7
Other (please specify)	5.32%	5
Total Respondents: 94		

Q3 Would you be interested in sending your own children to an outdoor nature-based daycare/school for early childhood and elementary age children?

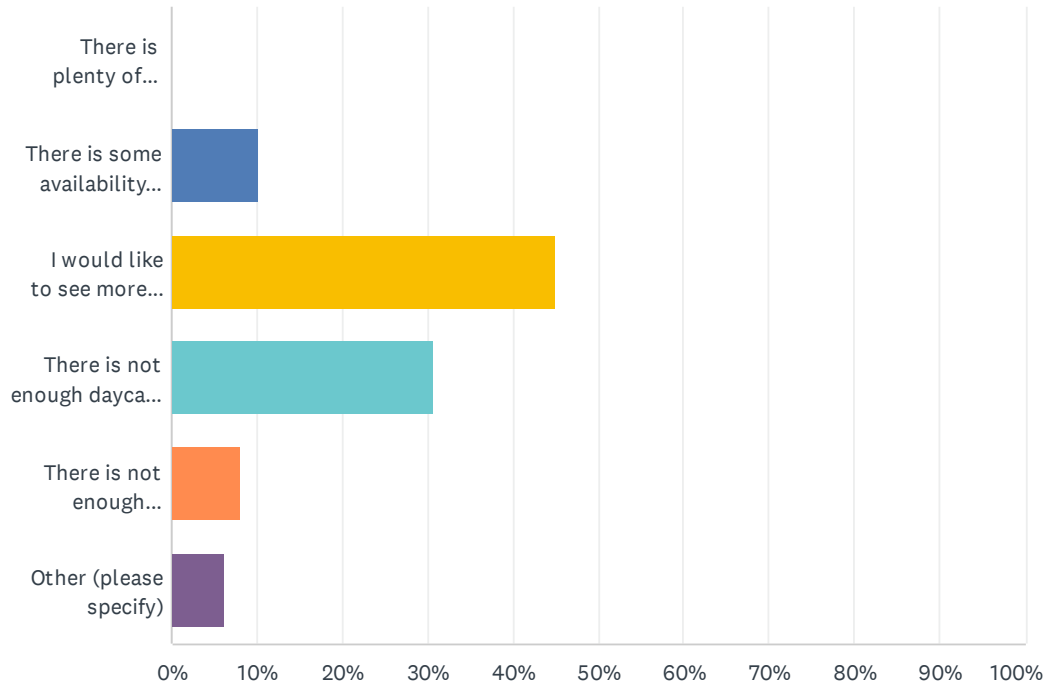
Answered: 99 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes, I would be excited for this option in the community.	88.89%	88
No, I am not interested in this option for daycare or school.	1.01%	1
No, I do not have early childhood or elementary age children, but I think it is a needed resource in the community.	8.08%	8
No, I do not think this type of program is needed in our community.	0.00%	0
Other (please specify)	2.02%	2
TOTAL		99

## Q4 How do you feel about the options for daycare and early childhood education in Los Alamos County?

Answered: 98 Skipped: 1



ANSWER CHOICES	RESPONSES	
There is plenty of availability and options for my family.	0.00%	0
There is some availability but I would like to see more part-time programs offered.	10.20%	10
I would like to see more diverse program options including more nature-based programing.	44.90%	44
There is not enough daycare in the county and I have difficulty finding daycare/preschool programming that works for our family.	30.61%	30
There is not enough daycare/preschool options in the county and I have not found a good placement for my child/children.	8.16%	8
Other (please specify)	6.12%	6
<b>TOTAL</b>		<b>98</b>

## SPECIAL USE PERMIT APPLICATION

Los Alamos County Community Development Department  
1000 Central Ave, Suite 150, Los Alamos NM 87544  
(505) 662-8120

<b>Special Use (describe):</b> <u>The ability to employ more than one non-family member to work at our in-home day care.</u>	
<b>Address to which this application applies:</b> <u>113 B La Senda Rd, White Rock NM 87547</u>	
<b>Zoning District:</b> <u>RA</u>	
<b>Related Applications (if any):</b> <u>Special Use Permit for an in-home day care facility</u>	
<b>APPLICANT</b> (Unless otherwise specified, all communication regarding this application shall be to Applicant):	
<b>Name:</b> <u>Denise Matthews</u> <small>Please Print</small>	<b>Phone:</b> <u>541-740-5520</u> <b>Cell #:</b> <u>87547</u>
<b>Address:</b> <u>113 B La Senda Rd, WR, NM</u>	<b>Email:</b> <u>director@wormsandwildflowers.com</u>
<u>Denise Matthews</u> <b>SIGNATURE</b>	<u>11/6/22</u> <b>DATE</b>
<b>PROPERTY OWNER (If different from Applicant)</b>	
<input type="checkbox"/> <b>Check here if same as above</b>	
<b>Name:</b> _____ <small>Please Print</small>	<b>Phone:</b> _____ <b>Cell #:</b> _____
<b>Address:</b> _____	<b>Email:</b> _____
<i>My signature below indicates that I authorize the Applicant to make this rezoning application on my behalf.</i>	
_____ <b>SIGNATURE</b>	_____ <b>DATE</b>

Revised: 03/01/17

(4) *The setbacks of buildings and parking facilities from the property lines, right-of-way, and adjacent land uses are in conformance with this chapter and provide protection to and a transition from residential development, existing and contemplated in the vicinity; and that the height and bulk of the proposed buildings and structures are compatible with the general character of development in the vicinity of the use applied for.*

(5) *The site plan including, but not limited to, landscaping, screen planting, and fencing of the proposed development demonstrates that the site development will be compatible with adjoining areas and will conform to the site development standards of the district regulations.*

#### REQUIRED SUBMITTALS:

Check each of the boxes to indicate that you have attached two (2) paper copies of each of the following, and one complete copy of all materials on disk:

- ☒ Proof of property ownership.
- ☒ A Vicinity map, 8½ by 11 inch or 8½ by 14 inch format, showing the boundaries of the property and all adjacent lots within 300 feet. (County staff can provide the vicinity map if requested.)
- ☒ A scaleable site plan including, at a minimum, the following information:
  - ☒ Show and dimension all access and parking related to the site, including existing and any proposed curbcuts.
  - ☒ Locate and label all existing utility lines on the site. (Existing gas and electric service lines must be located by the Los Alamos County Utilities Department prior to submittal of this application.)
  - ☒ Show and label the footprint of all existing buildings and structures on the site.
  - ☒ Show the footprint of all buildings and public rights-of-way within 20 feet of all boundaries of the site.
  - ☒ Show, dimension and label all existing and proposed easements.
  - ☒ Show existing and proposed landscaping, fencing, lighting, signage and any other proposed improvements.

#### THIS SECTION TO BE COMPLETED BY THE COMMUNITY DEVELOPMENT DEPARTMENT

##### For County Use:

Date of Submittal: \_\_\_\_\_

Staff Initial: \_\_\_\_\_

CDD Application Number: \_\_\_\_\_

Fees Paid: \_\_\_\_\_

Revised: 03/01/17

**SPECIAL USE PERMIT CRITERIA:**

The Los Alamos County Code of Ordinances, Chapter 16, Development Code, Sec. 16-156 establishes five (5) criteria for the Planning and Zoning Commission to use when reviewing an application for Special Use Permit approval. Please review each of the criteria listed and provide brief responses as to how your application meets the criteria. Use the space provided or attach separate sheets if needed. You will also be asked to discuss the criteria at your public hearing. (1) The request substantially conforms to the comprehensive plan, and the establishment.

***Special Use Permit Application***

- (1) The request substantially conforms to the comprehensive plan, and the establishment, maintenance or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort or general welfare of persons residing or working in the vicinity of such proposed use, or be detrimental or injurious to property or to the value of property in the vicinity, or to the general welfare of the county.***

This permit allows for the required number of daycare staff to be available for state licensing by CYFD. I will be operating a residential in-home daycare facility where a maximum of 12 children will be cared for. CYFD requires a ratio of 1:6 teachers per students. I and one other educator will work together at one time. I will need to have trained substitutes or potentially part-time educators to cover different days. This requires the need to employ more than one non-family member to work on the premises. This will not be detrimental to any persons residing or working in the general vicinity of our property as it is only one additional staff member present (besides my-self) at one time.

- (2) There are sufficient parking facilities that are adequately designed, shielded, landscaped and lighted to serve the use applied for based on the requirements of this chapter as found in article IX of this chapter.***

A special use permit for an in-home daycare requires one parking spot per employee working. This means my daycare needs one parking space each day for the one employee working. This is easily met as we will have 5 parking spaces available with room for additional if needed.

Current parking is shown below. Bumper guards and ground lights will be added to meet code.



- (3) The provisions for on-site and off-site ingress/egress and traffic circulation are in conformance with the county's construction standards, that the public streets serving the use applied for are adequate to meet the traffic needs of the proposed use and that the proposed use will not adversely affect neighboring properties by virtue of the type of traffic generated by the use.***

The in-home daycare will be located on a three-acre property that is a flag lot. It has a long 320 foot driveway, setting the house far back from La Senda Road. La Senda Road is a wide two-lane road that is not heavily traveled. The driveway has a loop where turn-around is easily accessed. There would be an addition of one car each day of preschool operation for this employee.

- (4) The setbacks of buildings and parking facilities from the property lines, right-of-way, and adjacent land uses are in conformance with this chapter and provide protection to and a transition from residential development, existing and contemplated in the vicinity; and that***

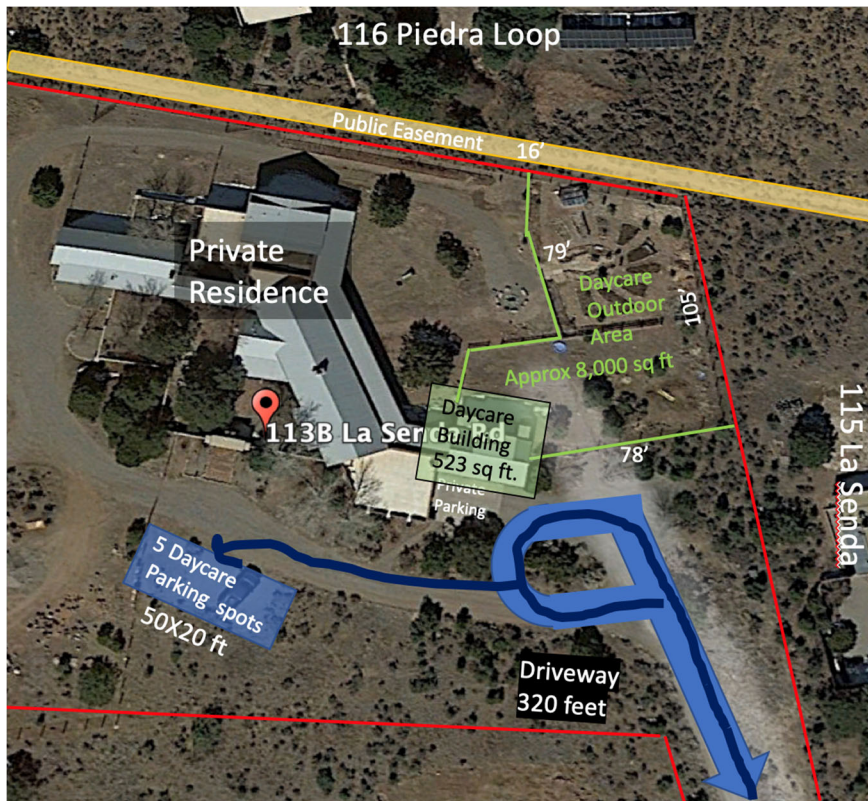
***the height and bulk of the proposed buildings and structures are compatible with the general character of development in the vicinity of the use applied for.***

This permit simply allows for an additional employee during operating hours. It will not affect any land use issues and is compatible with the general character of the neighborhood.

- (5) The site plan including, but not limited to, landscaping, screen planting, and fencing of the proposed development demonstrates that the site development will be compatible with adjoining areas and will conform to the site development standards of the district regulations.***

No new buildings, parking areas, or landscaping will be needed to have an additional employee work on the premises.

A sight map of the premises with parking area and driveway can be seen below:


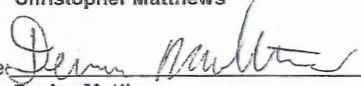
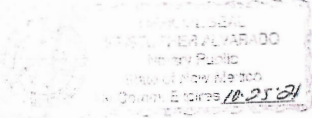
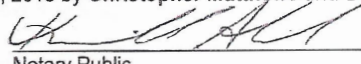


La Senda Road entrance to 113B La Senda Road, the site of the in-home daycare facility.



Title Company: TITLE GUARANTY, LLC  
 File Number: LA18-0089

### Residential Property Transfer Declaration Affidavit

<b>Transferor(s)/Seller(s)</b> Print full name(s) and mailing address(es): Jonathan E. Bard 113 B La Senda Los Alamos, NM 87547	
<b>Transferor(s)/Buyer(s)</b> Print full name(s) and mailing address(es): Christopher Matthews and Denise Matthews 1505 Camino Redondo Los Alamos, NM 87544	
<b>Legal Description</b> of the real property transferred as it appears in the document of transfer: La Senda - Tract A, Block 3, Lot 24A, Los Alamos County 113 B La Senda Road Los Alamos, NM 87547	
<b>Full consideration including money or other thing of value paid or exchanged for the transfer, and the terms of the sale including any amount of seller incentives.</b> Sales Date: <u>May 15, 2018</u> Consideration paid or exchanged: <u>\$1,025,000.00</u> Value of Personal Property included: <u>\$0.00</u> Description of personal property: _____ Terms of sale including any seller incentives: _____	
Signature of Buyer <u>X</u> Seller _____ or Authorized Agent _____ (Check one and sign)	
Signature:  Christopher Matthews	Date: <u>5/15/18</u>
Signature:  Denise Matthews	Date: <u>5/15/18</u>
<b>Acknowledgement of individual or in representative capacity</b> STATE OF NEW MEXICO COUNTY OF LOS ALAMOS  Signed and sworn to (or affirmed) before me on May 15, 2018 by Christopher Matthews and Denise Matthews	
	 Notary Public My Commission Expires: <u>10/25/21</u>

Pursuant to NMSA 1978, Section 7-38-12.1 and 7-38-12.2(2005)

# **APL-2022-0020**

## **PUBLIC NOTICES**

## LEGAL NOTICE

### Community Development Department

Notice is hereby given that the Planning and Zoning Commission of the Incorporated County of Los Alamos, State of New Mexico, has directed publication of their scheduled meeting to be held on Wednesday, February 9, 2022, beginning at 5:30 PM, online via Zoom. Members of the public can, also, join this meeting session to make public comment via Zoom by pasting into their browser the following:

<https://us06web.zoom.us/j/82392149707>

Or One tap mobile : US: +16699006833,,82392149707# or +12532158782,,82392149707#

Or Telephone: Dial (for higher quality, dial a number based on your current location):

US: +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799 or +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799

Webinar ID: 823 9214 9707

International numbers available: <https://us06web.zoom.us/j/82392149707>

A copy of the complete Agenda is available at least 72-hours prior for public inspection during regular business hours of 8am-5pm, within the Community Development Department at 1000 Central Ave, Suite 150, or online at <https://losalamos.legistar.com/Calendar.aspx>.

**CASE NO. SUP-2022-0020.** Denise Matthews, dba Worms and Wildflowers Daycare, is seeking Special Use Permit approval for a daycare facility to provide care, service, and supervision for a maximum of 12 children at her residence addressed as 113 B LA SENDA RD. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A).

**CASE NO. SUP-2022-0021.** Denise Matthews, dba Worms and Wildflowers Daycare, is seeking Special Use Permit approval for a Home Business, to employ more than one non-family member for a daycare facility to be located at 113 B LA SENDA RD. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A).

SUBMITTED BY:

/S/ Paul Andrus  
Community Development Director

"If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Human Resources Department at (505)662-8040 at least one-week prior to the meeting, or as soon as possible. Public documents, including the Agenda and Minutes, can be provided in various accessible formats. Please contact the personnel in the County Administrator's Office at (505) 662-8080 if a summary or other type of accessible format is needed."

PUBLISHED IN THE LA DAILY POST ON: Thursday, January 20, 2021.



Planning

January 20, 2022

FIFE TIMOTHY T & JUDITH H REVOC TRUST Or Current Resident  
112 LA SENDA RD  
LOS ALAMOS, NM, 87547

**RE:**

**CASE NO. SUP-2022-0020.** *Denise Matthews, dba Worms and Wildflowers Daycare, is seeking Special Use Permit approval for a daycare facility to provide care, service, and supervision for a maximum of 12 children at her residence addressed as 113 B LA SENDA RD. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A).*

**CASE NO. SUP-2022-0021.** *Denise Matthews, dba Worms and Wildflowers Daycare, is seeking Special Use Permit approval for a Home Business, to employ more than one non-family member for a daycare facility to be located at 113 B LA SENDA RD. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A).*

**COUNTY COUNCIL**

Randall T. Rytli  
Council Chair

James N. Robinson  
Council Vice-Chair

**COUNCILORS**

Denise Derkacs  
David Izraelevitz  
David Reagor

Sara Scott

Sean Jameson Williams

**COUNTY MANAGER**

Steve Lynne

Dear Property Owner:

This notice was sent to you as a property owner within 100 yards of the subject site, pursuant to the Los Alamos County Code of Ordinances, Chapter 16, Article V, Sec. 16-192(b)(2).

The Los Alamos County Planning and Zoning Commission will be considering the above-mentioned applications at a public hearing on Wednesday, February 9, 2022, beginning at 5:30 PM (MST). The meeting will be held virtually. Members of the public, can also, join virtually (via Zoom):

<https://us06web.zoom.us/j/82392149707>

Or One tap mobile :

US: +16699006833,,82392149707# or +12532158782,,82392149707#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799 or +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799

1000 Central Avenue, Suite 150  
Los Alamos, NM 87544  
P 505.662.8120 F 505.662.8363

losalamosnm.us

Webinar ID: 823 9214 9707

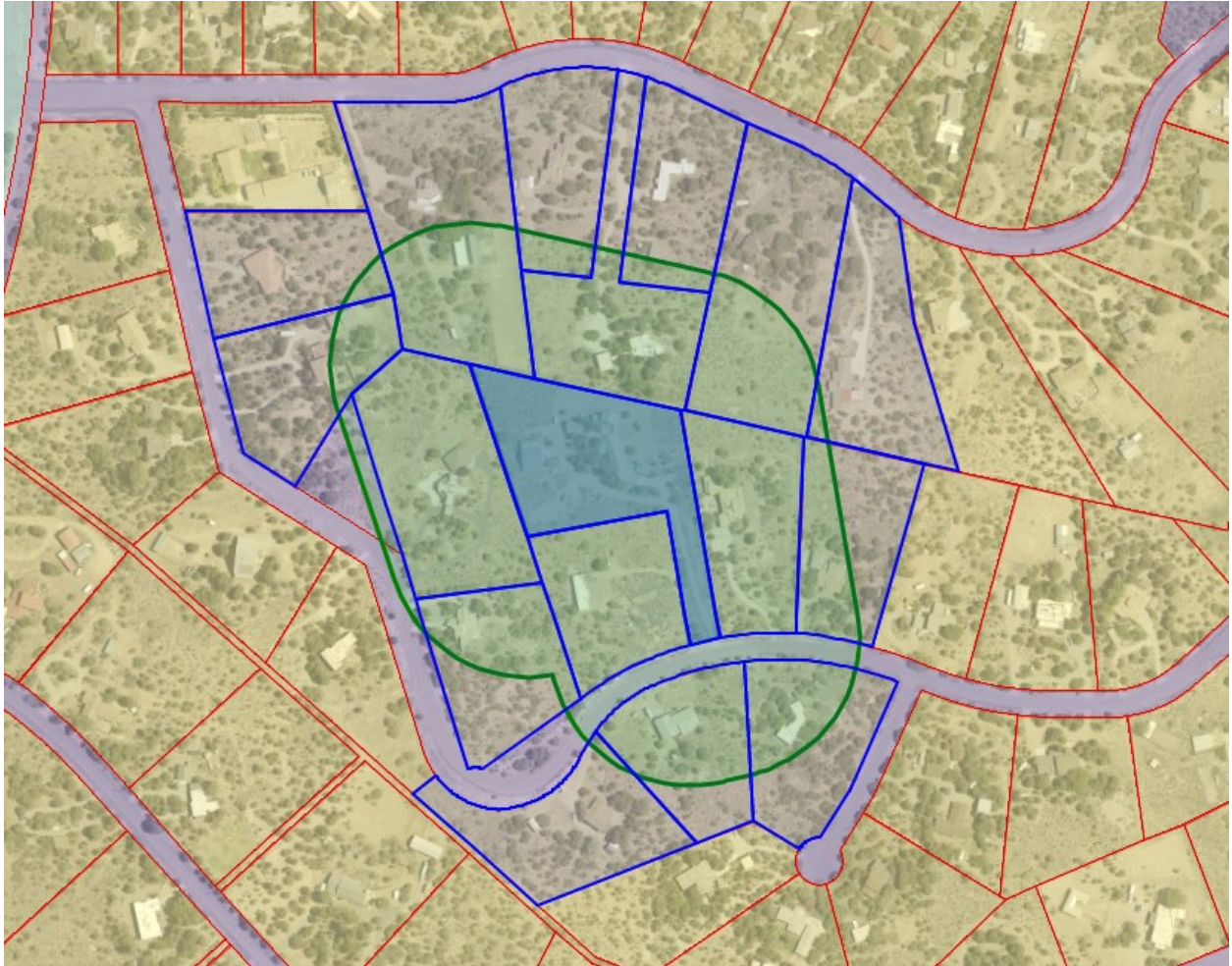
International numbers available: <https://us06web.zoom.us/j/kMZZZoVcn>

If you would like to participate virtually as a party, please contact the Case Manager for panelist access. However, if you wish not to speak, but are interested in only watching the meeting, the Agenda and live stream can be accessed at: <http://losalamos.legistar.com/Calendar.aspx>.

Please be advised that Planning and Zoning Commission hearings follow formal public hearing procedures and rules of conduct which parties must follow, including sworn testimony and cross-examination.

Case Manager:       Sobia Sayeda Senior Planner  
Email:               [planning@lacnm.us](mailto:planning@lacnm.us)  
Telephone:         (505) 662-8120

**Properties within 300 Feet**





Planning

January 20, 2022

HODGSON WILLIAM M & MARY SUSAN Or Current Resident  
17855 PIONEER CROSSING  
COLORADO SPRINGS, CO, 80908

**RE:**

**CASE NO. SUP-2022-0020.** *Denise Matthews, dba Worms and Wildflowers Daycare, is seeking Special Use Permit approval for a daycare facility to provide care, service, and supervision for a maximum of 12 children at her residence addressed as 113 B LA SENDA RD. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A).*

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David Reagor

Sara Scott

Sean Jameson Williams

**COUNTY MANAGER**

Steve Lynne

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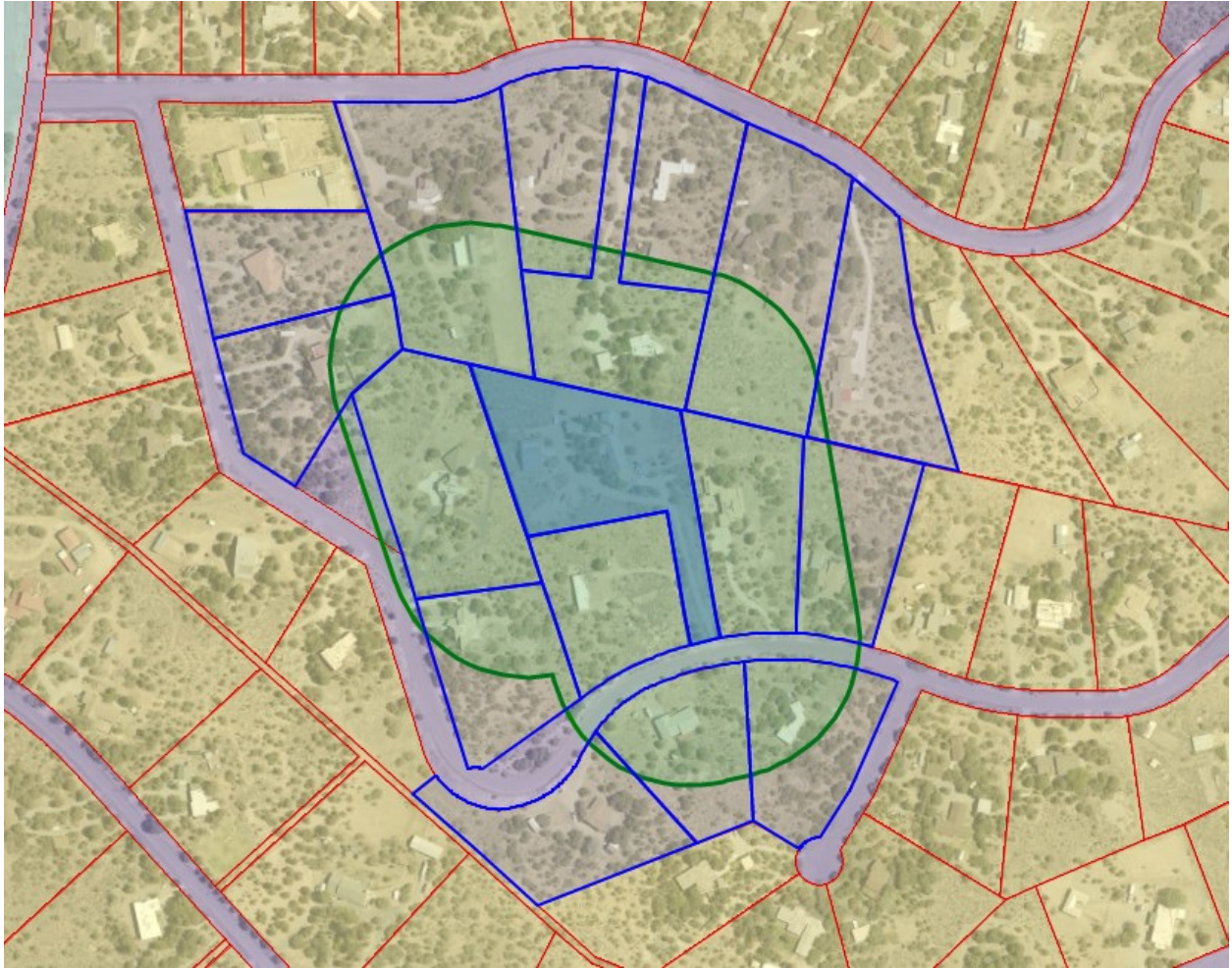
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Case Manager:       Sobia Sayeda Senior Planner  
Email:               [planning@lacnm.us](mailto:planning@lacnm.us)  
Telephone:           (505) 662-8120

**Properties within 300 Feet**





Planning

January 20, 2022

FINN JOHN M & AGNES S REV TRUST Or Current Resident  
116 LA SENDA RD  
LOS ALAMOS, NM, 87547

**RE:**

**CASE NO. SUP-2022-0020.** *Denise Matthews, dba Worms and Wildflowers Daycare, is seeking Special Use Permit approval for a daycare facility to provide care, service, and supervision for a maximum of 12 children at her residence addressed as 113 B LA SENDA RD. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A).*

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Council Chair

James N. Robinson  
Council Vice-Chair

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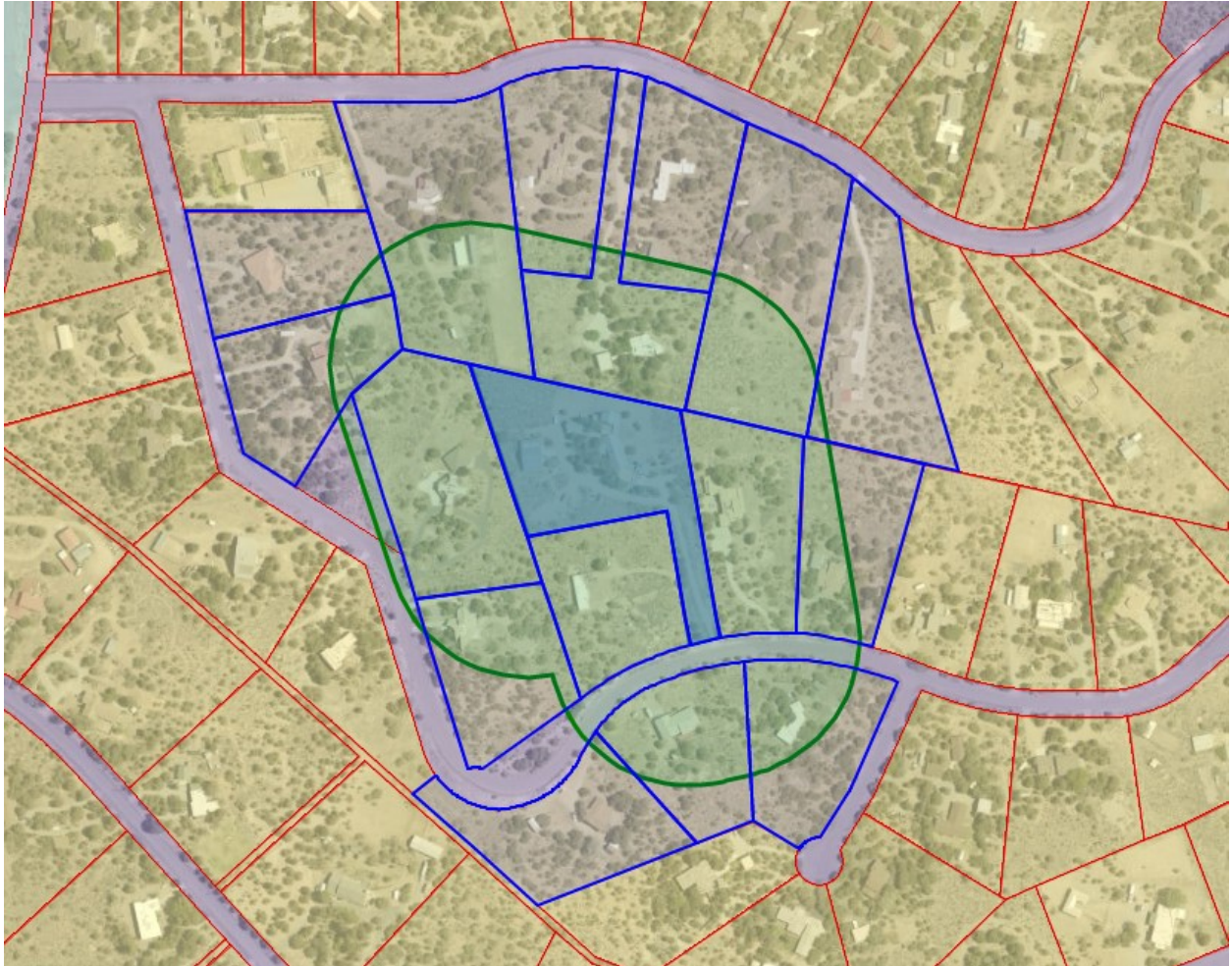
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Telephone:         (505) 662-8120

**Properties within 300 Feet**





Planning

January 20, 2022

DUB PAVEL A & DEMESHKO IRINA Or Current Resident  
103 LA SENDA RD  
LOS ALAMOS, NM, 87547

**RE:**

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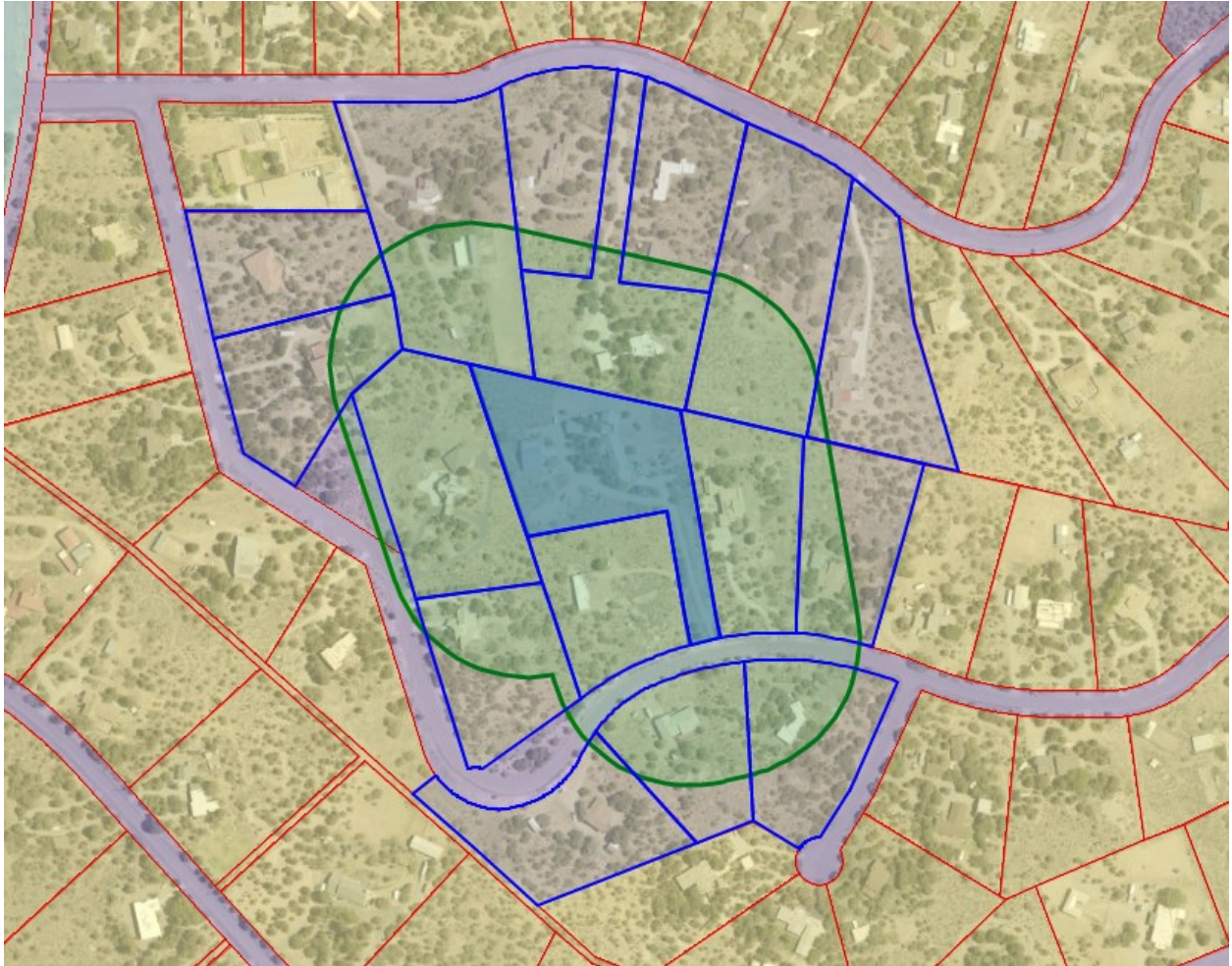
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**Properties within 300 Feet**





Planning

January 20, 2022

POTOCKI MARK L & TSUGIKO REVOC LIVING TRUST Or Current  
Resident  
105 LA SENDA RD  
LOS ALAMOS, NM, 87547

**RE:**

**COUNTY COUNCIL**

Randall T. Ryti  
Council Chair

James N. Robinson  
Council Vice-Chair

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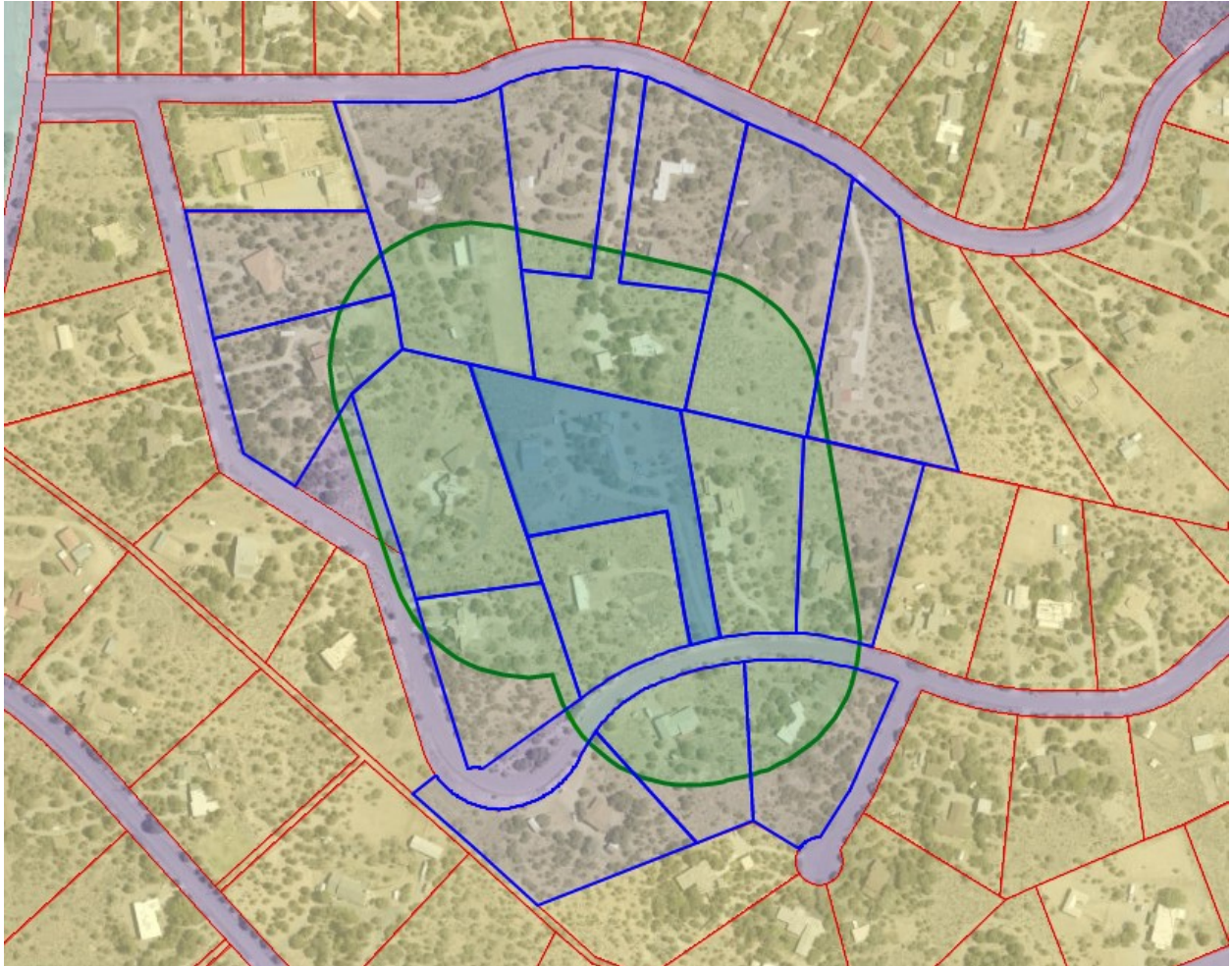
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**Properties within 300 Feet**





Planning

January 20, 2022

YOUNG CHRISTOPHER T & LINDSAY J Or Current Resident  
110 PIEDRA LOOP  
LOS ALAMOS, NM, 87547

**RE:**

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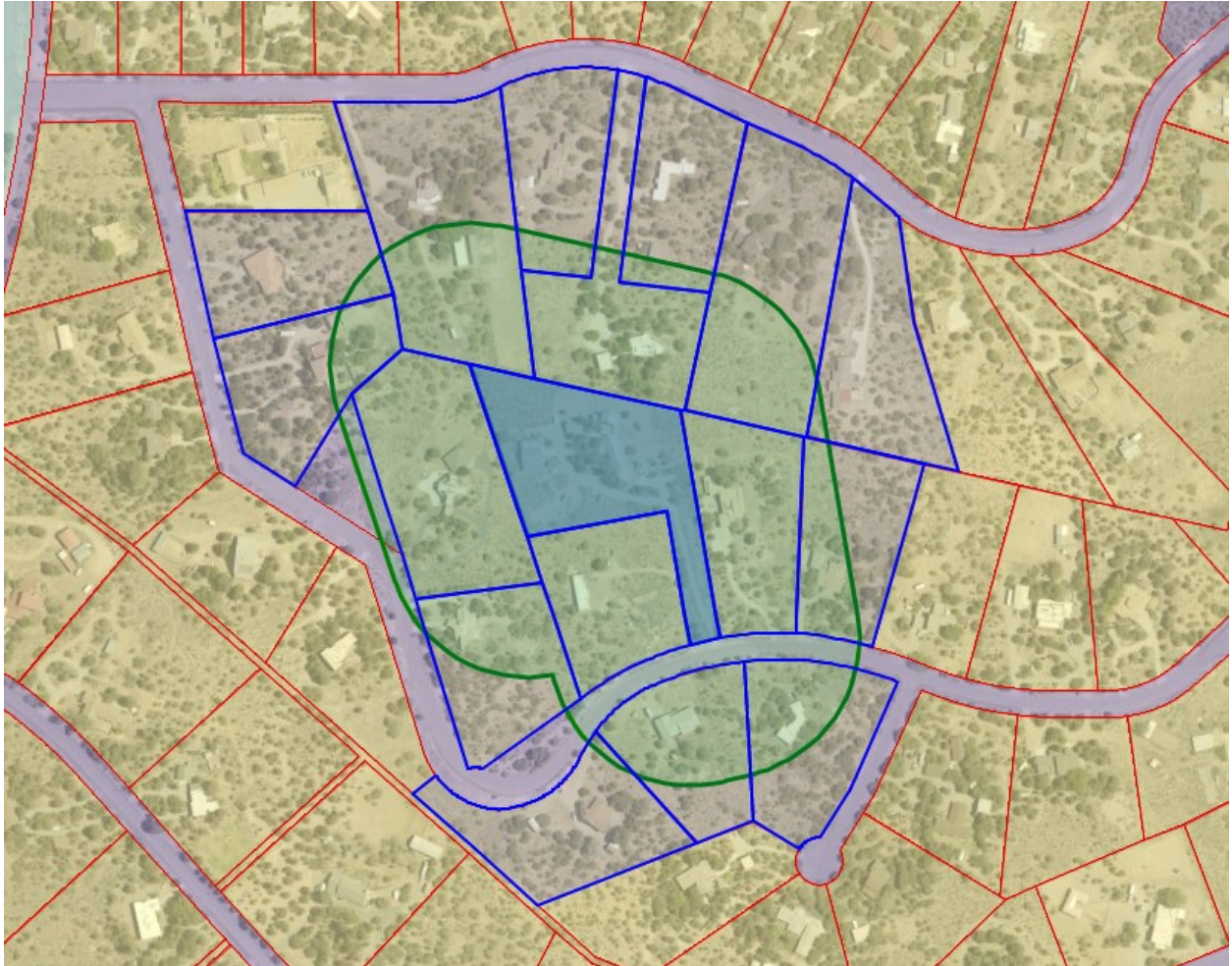
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**Properties within 300 Feet**





Planning

January 20, 2022

RICHARDSON CHARLES MICHAEL & VANESSA Or Current Resident  
107 LA SENDA RD  
LOS ALAMOS, NM, 87547

**RE:**

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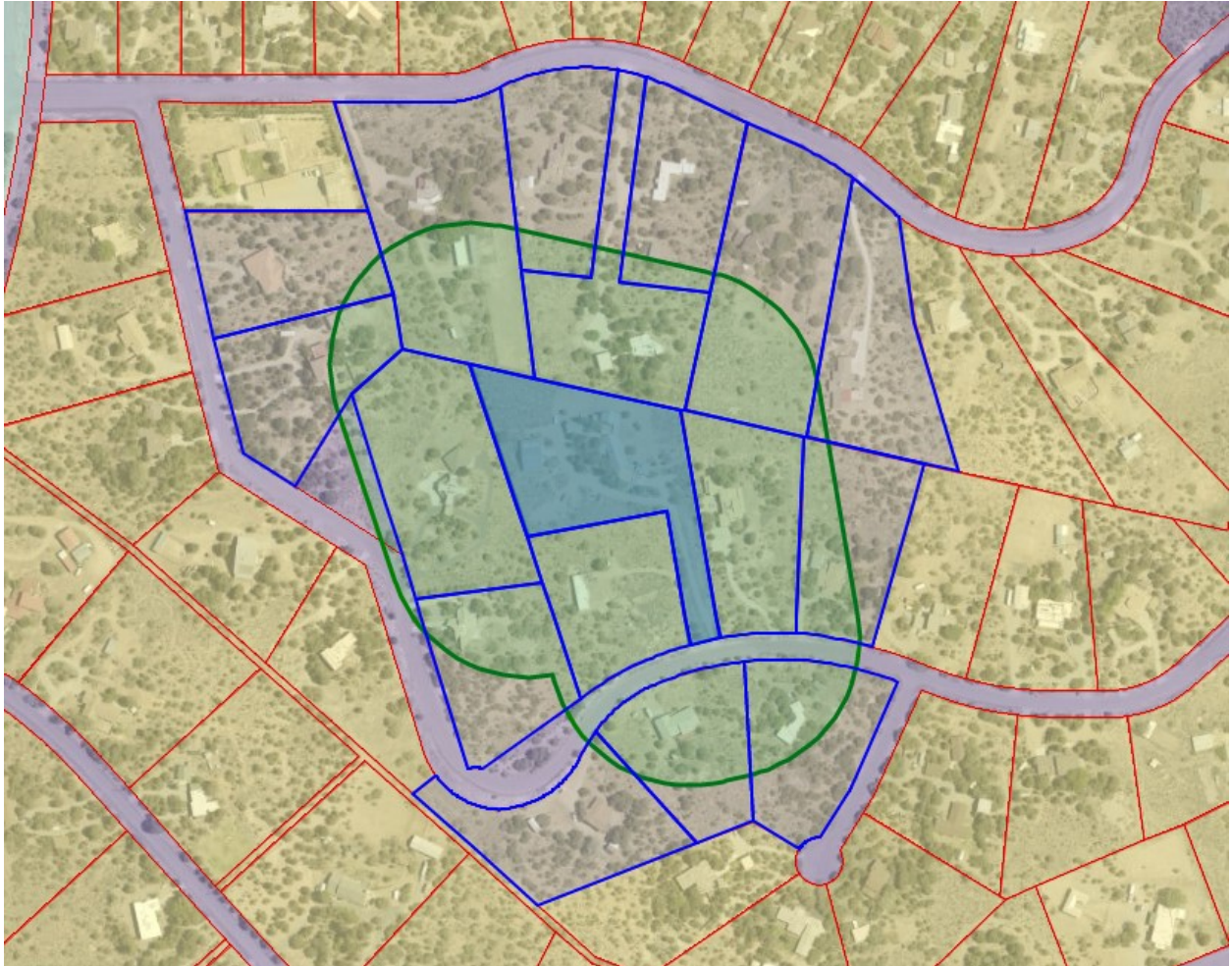
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**Properties within 300 Feet**





Planning

January 20, 2022

NORTH DAVID M & PECK AKKANA Or Current Resident  
111 LA SENDA RD  
LOS ALAMOS, NM, 87547

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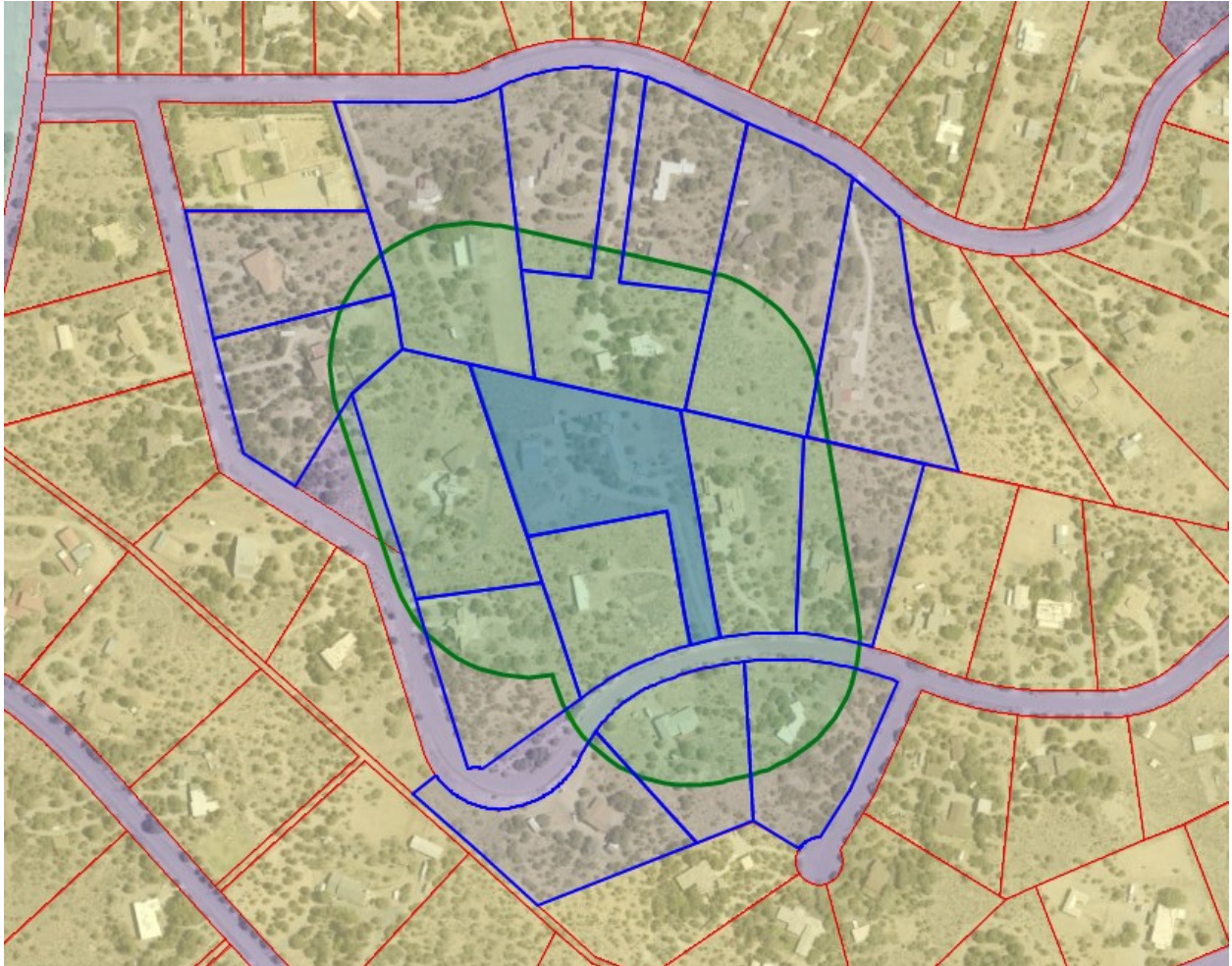
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**Properties within 300 Feet**





Planning

January 20, 2022

NOLL PHILLIP D JR & MONICA D REVOC TRUST Or Current Resident  
114 PIEDRA LP  
LOS ALAMOS, NM, 87547

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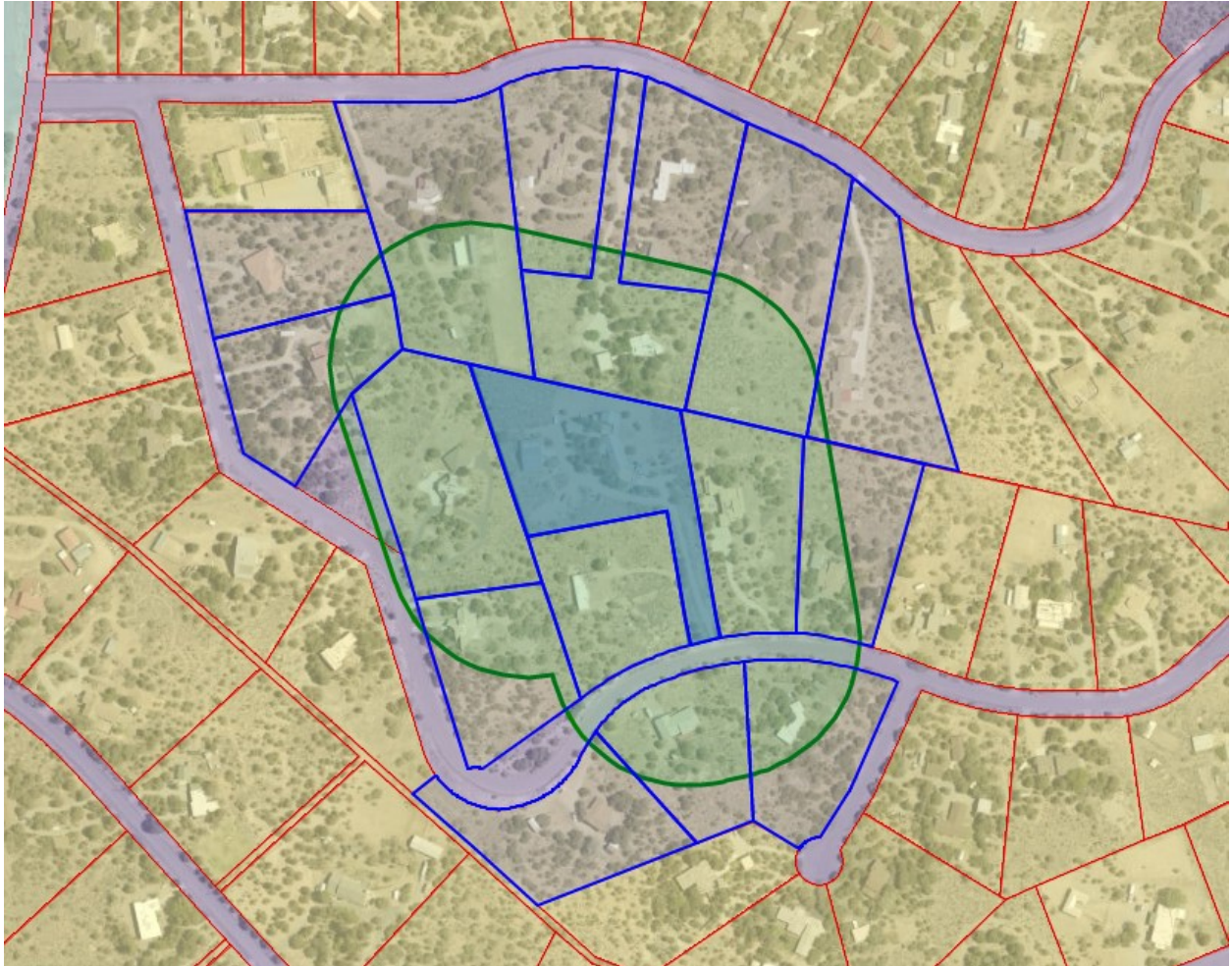
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**Properties within 300 Feet**





Planning

January 20, 2022

MATTHEWS CHRISTOPHER & DENISE Or Current Resident  
113 B LA SENDA RD  
LOS ALAMOS, NM, 87547

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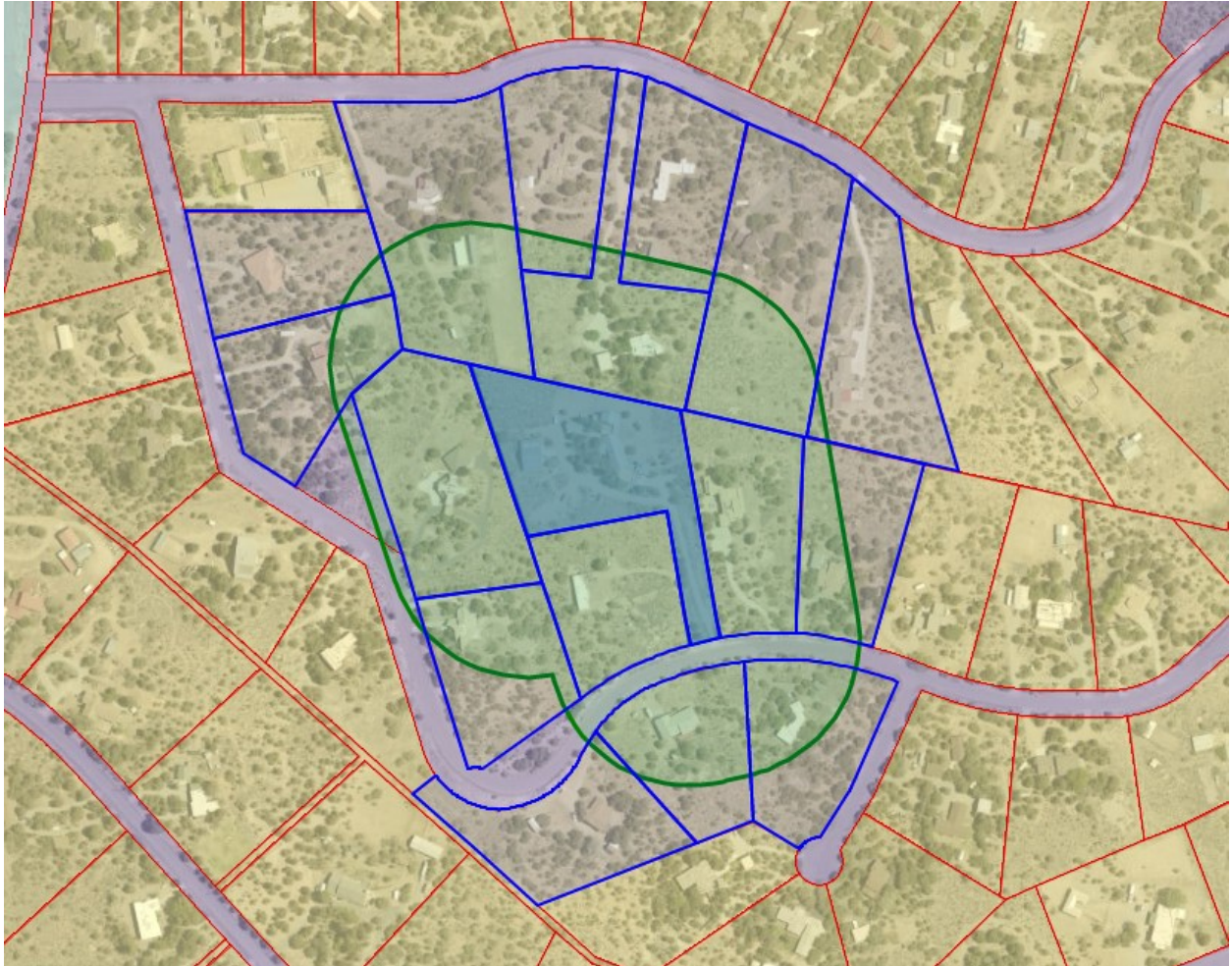
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Case Manager:       Sobia Sayeda Senior Planner  
Email:               [planning@lacnm.us](mailto:planning@lacnm.us)  
Telephone:           (505) 662-8120

**Properties within 300 Feet**





Planning

January 20, 2022

JONES ROLLIN T & REBECCA N Or Current Resident  
113 A LA SENDA RD  
LOS ALAMOS, NM, 87547

**RE:**

**CASE NO. SUP-2022-0020.** *Denise Matthews, dba Worms and Wildflowers Daycare, is seeking Special Use Permit approval for a daycare facility to provide care, service, and supervision for a maximum of 12 children at her residence addressed as 113 B LA SENDA RD. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A).*

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Randall T. Rytli  
Council Chair

James N. Robinson  
Council Vice-Chair

**COUNCILORS**

Denise Derkacs  
David Izraelevitz  
David Reagor

Sara Scott

Sean Jameson Williams

**COUNTY MANAGER**

Steve Lynne

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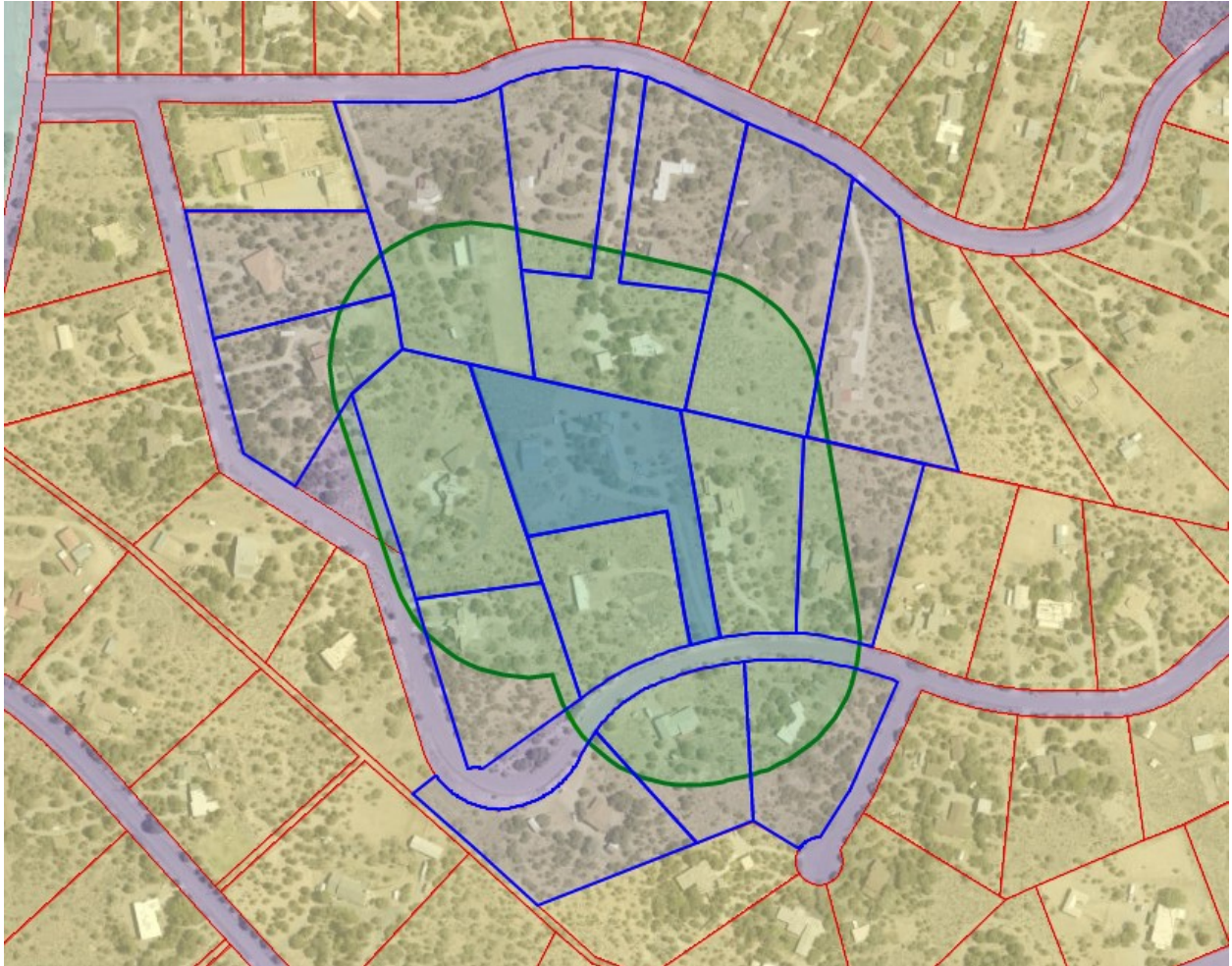
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**Properties within 300 Feet**





Planning

January 20, 2022

SMITH BARHAM W & MARILYN K Or Current Resident  
116 PIEDRA LOOP  
LOS ALAMOS, NM, 87547

**RE:**

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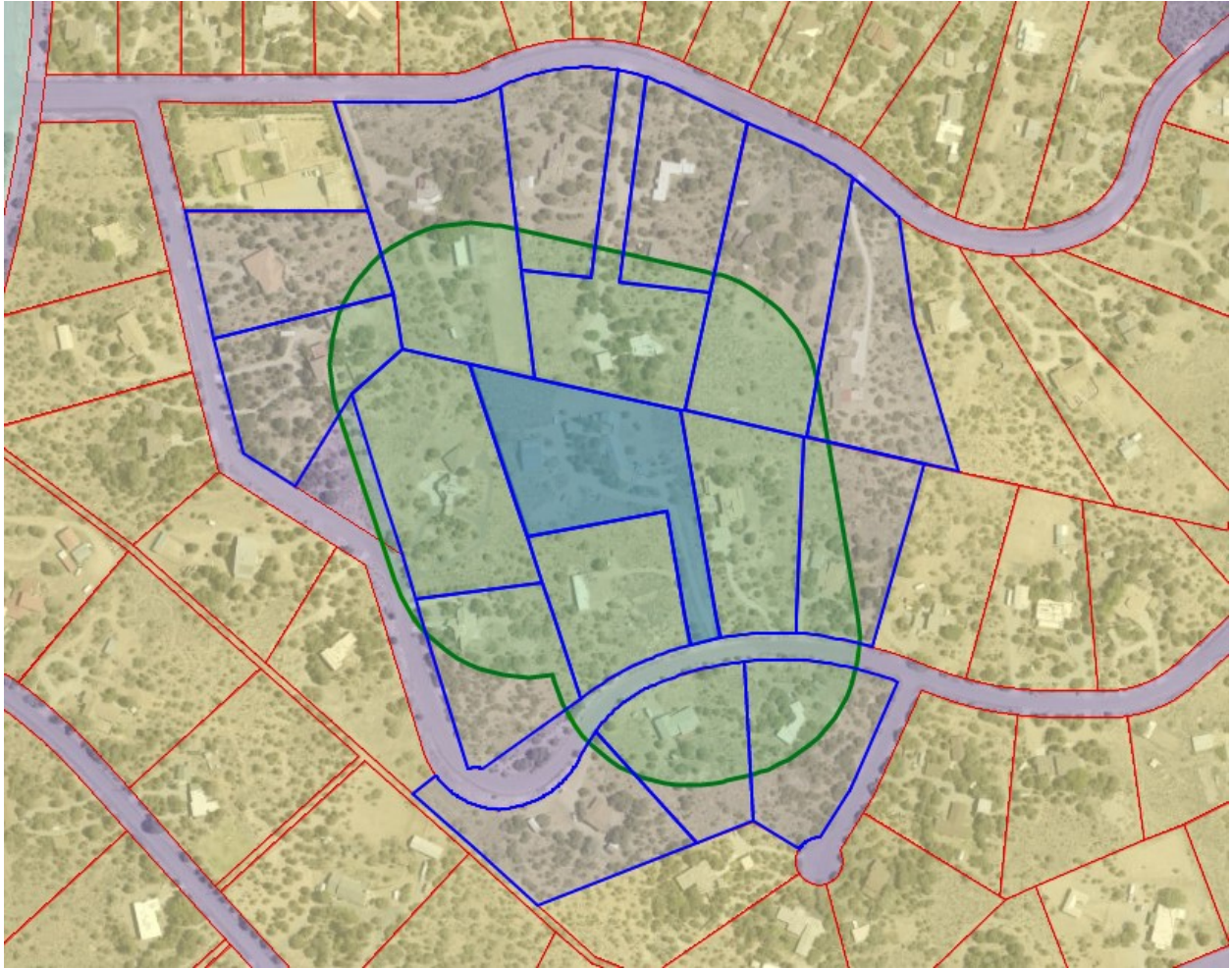
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**Properties within 300 Feet**





Planning

January 20, 2022

JOHNSON MIKKEL B & LYNNE M REVOC TRUST Or Current Resident  
118 PIEDRA LOOP  
LOS ALAMOS, NM, 87547

**RE:**

**CASE NO. SUP-2022-0020.** *Denise Matthews, dba Worms and Wildflowers Daycare, is seeking Special Use Permit approval for a daycare facility to provide care, service, and supervision for a maximum of 12 children at her residence addressed as 113 B LA SENDA RD. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A).*

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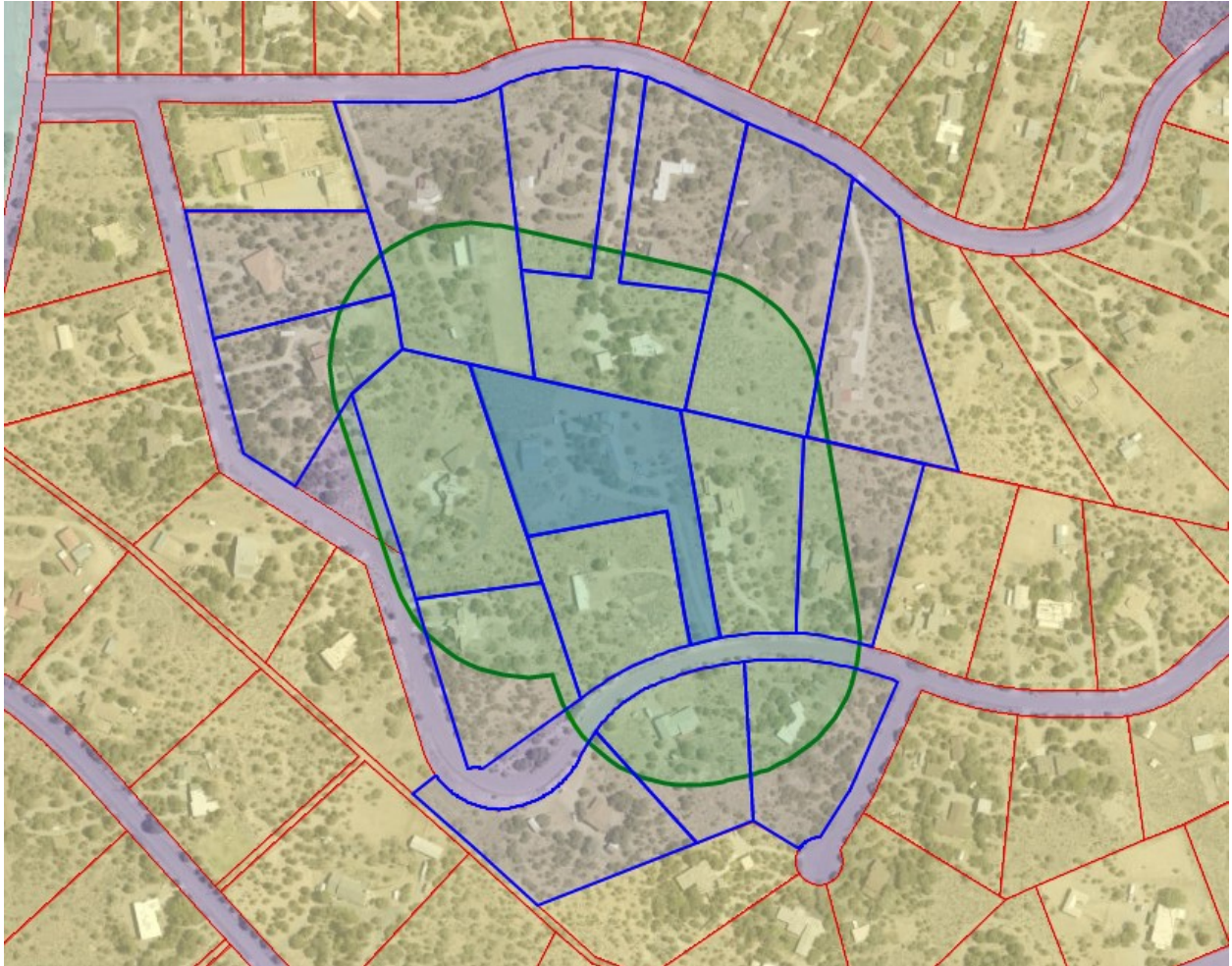
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**Properties within 300 Feet**





Planning

January 20, 2022

PAULSON DAVID L & ANNE M Or Current Resident  
122 PIEDRA LOOP  
LOS ALAMOS, NM, 87547

**RE:**

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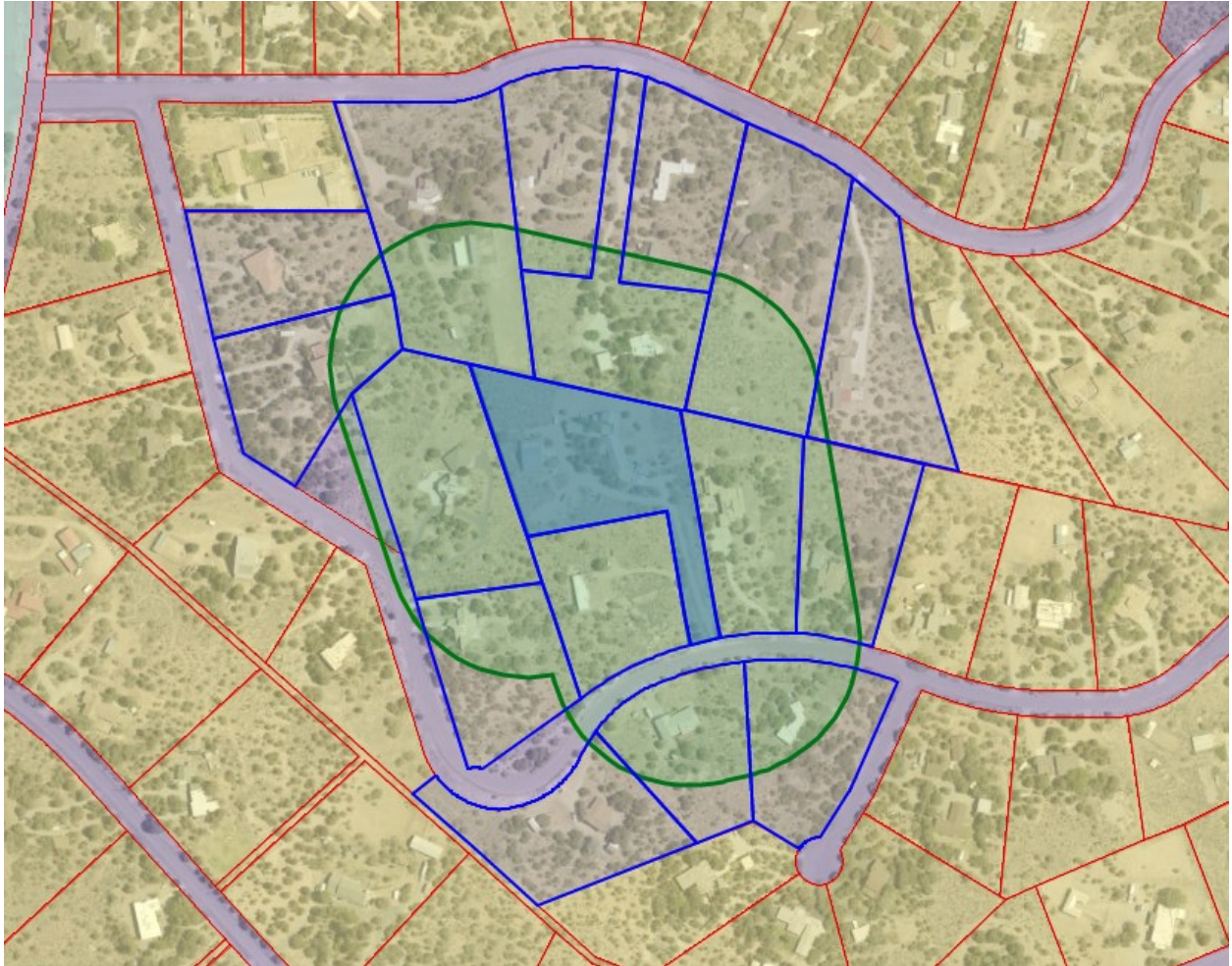
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**Properties within 300 Feet**





Planning

January 20, 2022

BERL FREDRICK J & THERESA K Or Current Resident  
117 LA SENDA RD  
LOS ALAMOS, NM, 87547

**RE:**

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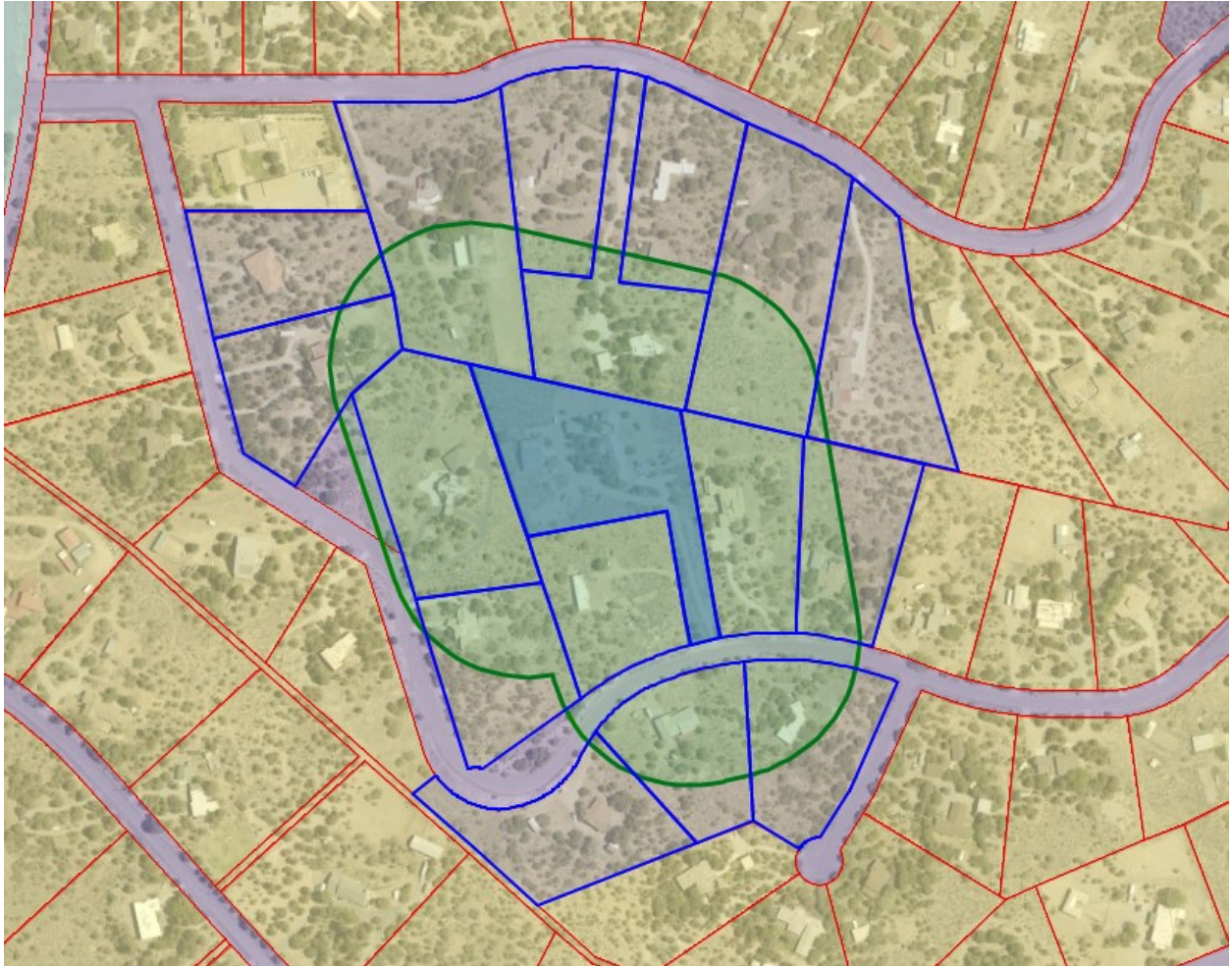
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**Properties within 300 Feet**





Planning

January 20, 2022

COBBLE JAMES A & VICKI B Or Current Resident  
124 A PIEDRA LP  
LOS ALAMOS, NM, 87547

**RE:**

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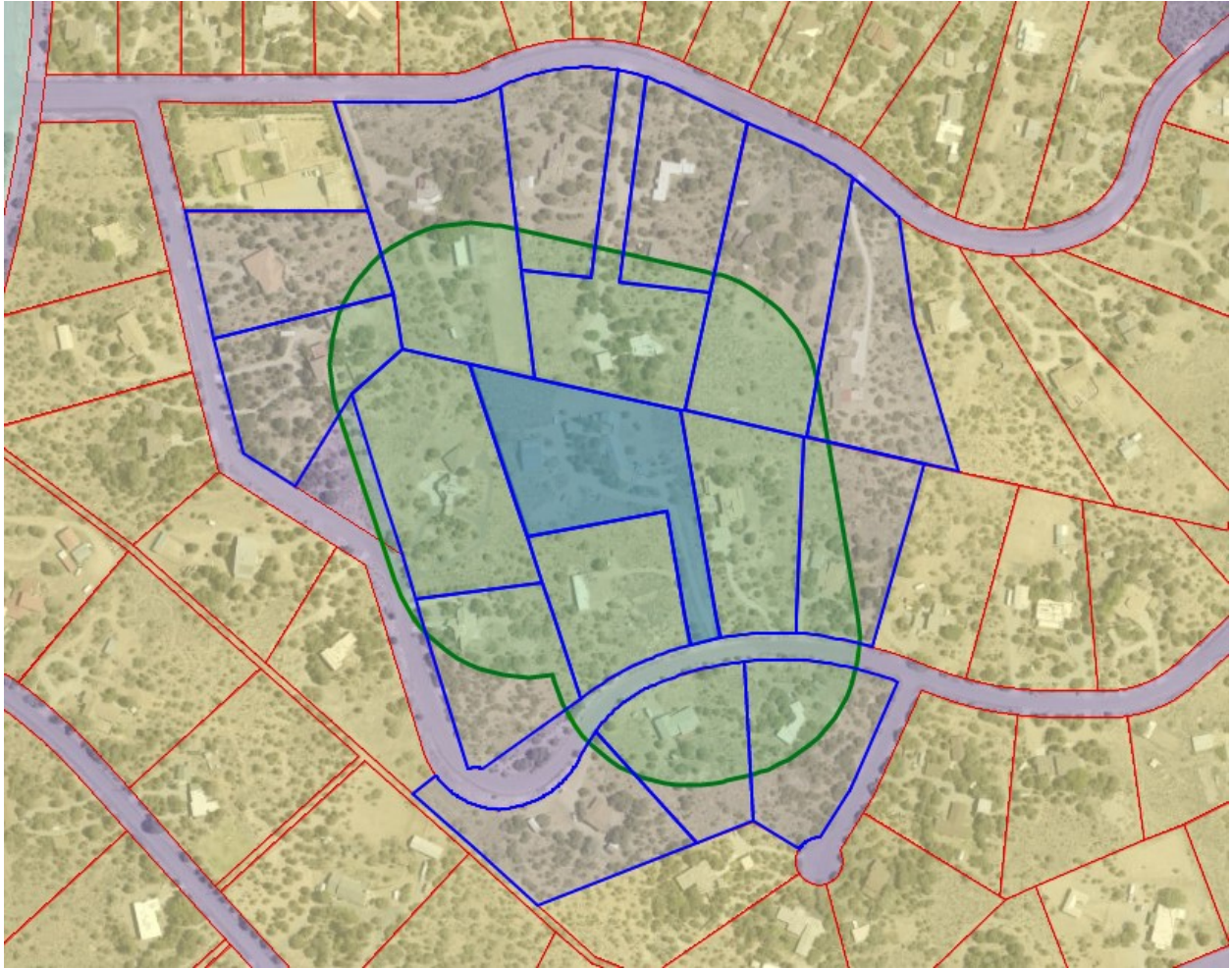
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**Properties within 300 Feet**





Planning

January 20, 2022

DI LEVA LESLIE V & THAMES PATRICIA A Or Current Resident  
115 LA SENDA RD  
LOS ALAMOS, NM, 87547

**RE:**

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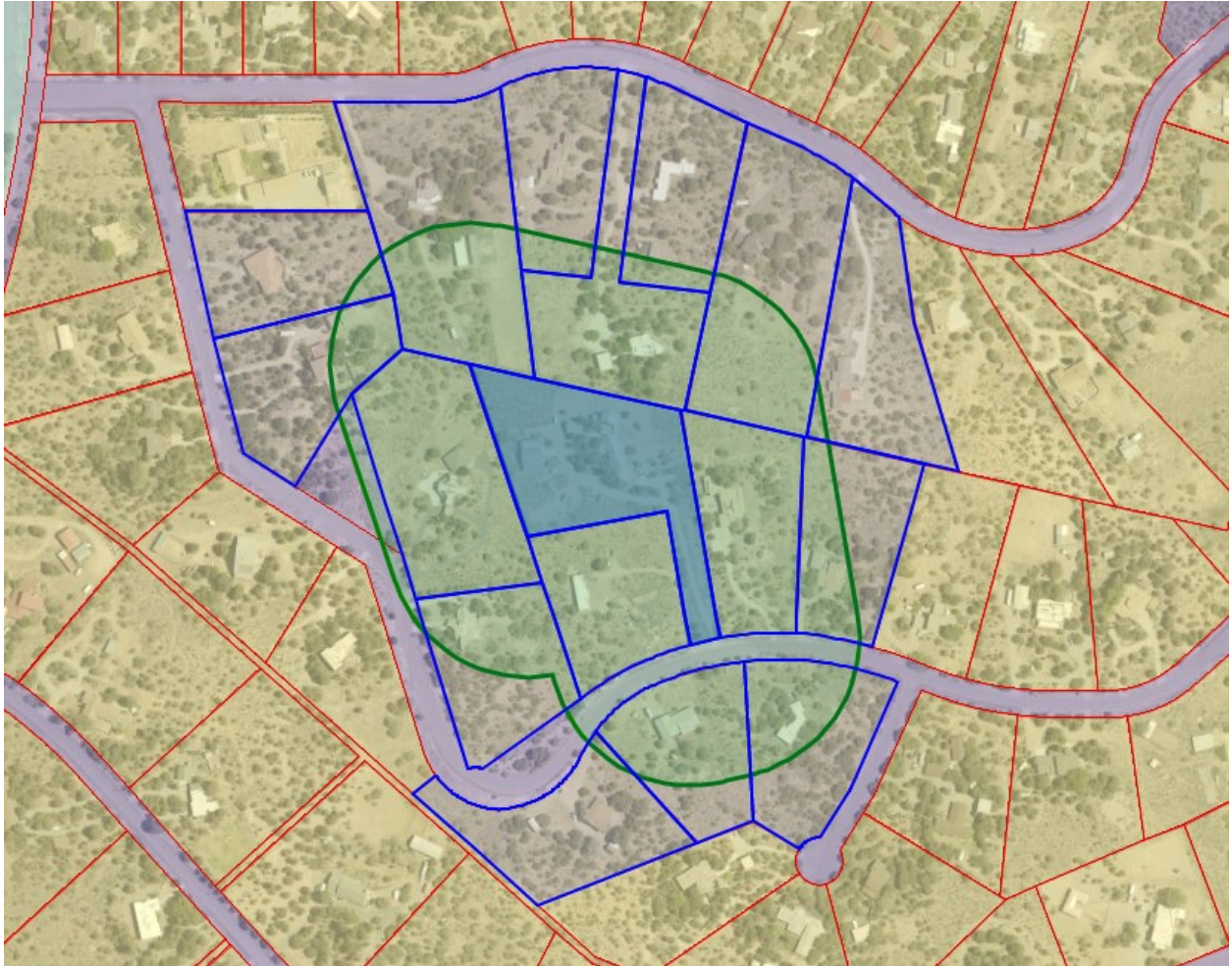
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**Properties within 300 Feet**



# **APL-2022-0020**

## **PUBLIC INPUT**

**From:** [Irina Demeshko](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]Denise Matthew's Nature play school support letter  
**Date:** Thursday, February 3, 2022 10:20:54 AM

---

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am writing in strong support for Denise Matthew's request to open a nature play school called Worms and Wildflowers Farm and Nature School at her personal residence. I am Denise's neighbour (within a 300 ft distance) and a mother of a 5-Years-old boy. We have been waiting for Denise's daycare to open for over 2 Years now, hoping that our child can go there. It was really hard to find good childcare in White Rock since I started to look for one for the following reasons: the classes are often full and you need to sign-up log in advance; all daycare centers in White Rock are montessori-based, which doesn't fit well to some kids; teacher-to-child ratio is too high; outdoor time is limited. Our child has been enrolled in 3 pre-schools to date: first two in White Rock and last one in Los Alamos. Those in White Rock didn't work for our son because of the program they offer, and currently he is enrolled at the home-based daycare at Los Alamos where he is much happier. Lack of good quality childcare has been one of the biggest issues for our family while living in Los Alamos county. I believe that the daycare program that Denise offers is unique and very appealing to the parents of many kids not only in White Rock, but also in the entire county. Denise is a wonderful person and I believe their property meets all criteria for a daycare: it is safe, large and in a good distance from neighbors. As a neighbor myself, I don't see any issues related to Denise operating childcare at her property, only positive things. And I strongly believe this school should be supported by the county!

Should you have any questions please feel free to contact me.  
Irina Demeshko,  
103 La Senda Rd, NM, White Rock.

**From:** [Agnes Finn](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]Denise Matthews's proposed home daycare in White Rock  
**Date:** Wednesday, February 2, 2022 9:05:09 PM

---

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To the Los Alamos County Planning and Zoning Committee:

We are writing in support of Denise Matthews's proposed home daycare, to be located at her private residence which she shares with her husband and 2 young children at 113 B La Senda Rd in White Rock.

Our home at 116 La Senda Rd is within 100 yards of the Matthews's property. We have owned and lived in our home for 27 years. It is where we raised our 5 children and now our 11 grandchildren visit us frequently here.

We are in our 70s and are obviously classified as senior citizens as are some of our neighbors. We believe that the La Senda neighborhood should be a family community welcoming to all age groups and family compositions.

We do not believe that any harm would come to La Senda by having a small home daycare in our midst. We are not in fear of it lowering our property values, opening the door to inappropriate non family oriented businesses, or unduly increasing traffic or noise on a road that has very little of either. Quite the contrary, we believe that having a nature-based home daycare here would be quite an asset to the La Senda neighborhood. All 5 elementary schools in Los Alamos County, with several hundred students and staff, are located in residential neighborhoods surrounded by single family homes. Young children belong in residential neighborhoods, not in commercial/industrial areas of the county.

Presently more and more young families are moving into La Senda. All of us La Senda property owners are sitting on parcels of land of approximately 2 or more acres. It is an environment that is ideally suited to children feeding their curiosity of the natural world around them. Denise Matthews's Worms & Wildflowers Nature daycare is just perfect for the rural nature of La Senda.

Although Agnes lived her dream of staying home with our children, we fully recognize that it is not something that everyone wishes to do or can afford to do. Los Alamos needs quality daycare for the many working parents.

We believe that as a society and as individuals we have an obligation to provide and support the best possible environments for our children. We hope that Los Alamos County will step up and support places where our children will be safe and will flourish in their physical, emotional, intellectual and spiritual growth. There is no doubt that this investment in and acceptance of children's and families' needs will continue to support a vibrant and healthy Los Alamos.

We ask you, the Planning and Zoning Committee, which holds tremendous responsibility for the future well being of Los Alamos in your hands, to please support Denise Matthews's

daycare.

Respectfully,

John and Agnes Finn,  
116 La Senda Rd  
White Rock

**From:** [Tylerr Jones](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]Denise Matthews Day Care  
**Date:** Wednesday, February 2, 2022 8:11:57 AM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I just wanted to speak on behalf of the Matthews family and the proposed daycare. We live directly south of them at 113a. I'm a fireman in Santa Fe and work in code enforcement at the Fire Marshals office. They have been the kindest most neighborly people we've met. They are trying to open up a small daycare on a giant lot to help with the desperate need for childcare in the area and to teach children healthy living.

A couple from Southern California bought the house directly to the East of us. They opened a dog boarding business on their property. They have tried to open an HOA to control the neighbors. They actively try to campaign in the neighborhood to have things run through them. And you guys have allowed this kangaroo court. The people to the East opened a dog daycare and the family to the west has a loud model airplane he flies over the neighborhood and these are the two people complaining about peace and quiet. It's insane and ridiculous that it's been allowed to go on for this long. This should end immediately and Denise should be allowed to watch CHILDREN on her THREE ACRE property.

Common sense is not so common.

**From:** [Becca Jones](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]In Support of Denise Matthews Nature Daycare  
**Date:** Wednesday, February 2, 2022 7:57:31 AM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am writing in strong support for Denise Matthew's request to open a nature play school called Worms and Wildflowers Farm and Nature School at her personal residence.

I am the mother of a 10 year old, and I am also Denise's closest neighbor. My address is 113A La Senda and her address is 113B La Senda. We share property lines and part of our driveway is actually on their property. When my daughter was very young there were (and still are) very limited options for appropriate child care in Los Alamos County. So few in fact that I decided to start my own home based daycare, while here I'm White Rock, not at this current address. It was the only viable option for us, though doing home daycare is a solution for everyone, and therefore childcare in Los Alamos County is in high demand. Not only is it incredibly hard to find availability, there is little variety in the programs offered. Having one more option would be an immense boost to the current childcare environment in Los Alamos. Lack of quality childcare not only negatively impacts children's and parents' mental health, it also adversely affects families financial security and overall prosperity. Without childcare, caregivers have a hard time returning to work, or going back to school to re-tool themselves to re-enter or advance in the workforce. Many families leave Los Alamos because one spouse is forced to abandon their career when they move here- more childcare would help this problem!

There is not currently a full-time nature school option available in Los Alamos and this is a schooling philosophy that many families in LA county resonate with. Living next to Denise for 3-years I have seen firsthand the loving space that Denise has created for her own children. I've coveted her beautiful vegetable gardens and been the recipient of her harvest. She and her husband have planned and carefully created spaces for animals, and planned their property in a way that is respectful of their neighbors; not only respectful, but also giving us glimpses of their beautiful outdoor spaces. They have enhanced the neighborhood!

I feel it necessary, as Denise's closest neighbor, to note a few things. The Matthew's property is large. A bit over 3 acres. It has been divided in a way that makes the house private. It is situated so that the areas where children play are not visible from the main road, La Senda Dr. I consider it unfortunate that, even though I know the Matthew's spend a considerable amount of time outside, we never hear them. This is due to the position of the house and outbuildings, as well as surrounding walls and vegetation. In addition, their driveway is very long, with a large parking area and turnarounds on their property. Vehicles coming and going would have little to no impact on other residents; especially given the small number of families she is requesting to accommodate.

It's important to remember, I believe, that children enhance a neighborhood. How they live in, and interact within a neighborhood is important to a community's future. Giving children positive interactions within neighborhoods creates memories that they will someday replicate. Having run my own home daycare, I think that my previous neighbors would have agreed that they really enjoyed seeing children play and enjoy life! Also, children do not scream at the top

of their lungs for 8-hours a day. The sounds of childhood are not an assault to quiet enjoyment, but an enhancement and reminder of the joys that exist in life.

Denise is a wonderful person to lead this school, as her background and passion for science and nature education are evident and proven. She is a local mom who understands the needs of the community and has carefully planned her school accordingly.

It is extremely disheartening that this process has already taken so long, but I hope that it is expedited as much as possible from here. There is no reason this school should not be encouraged and supported by the county- it would be an asset to the community and to our neighborhood.

I will do anything to support this new business that serves such a needed gap in the community.

Sincerely,  
Becca Jones  
Neighbor at 113A La Senda

--

Sent from Gmail Mobile

**From:** [Jacquelyn Connolly](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]Request for Approval of Denise Matthews daycare permit  
**Date:** Wednesday, February 2, 2022 9:47:21 AM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Planning Committee,

I write to you as a resident of White Rock, and while my children are now too old to attend the proposed daycare on La Senda Drive, I couldn't feel more strongly in its approval. When I moved here a few years ago I was astonished at how limited, expensive and frankly mid grade-low quality the childcare options were. I reluctantly had to turn down work opportunities. In the meanwhile, I attended the PEEC nature mornings which was the closest to the type of early childhood engagement I desired. Denise ran the program then and I wished desperately that I could have someone like her care for my children using similar methods as to what she presented in the nature mornings group. My first two children were able to attend high quality/affordable in-home childcare in Denver and in Vancouver of a similar style and I wished so much I could find similar in such an outdoorsy/educated community as this.

The care that my children received were located in homes that were in a typical suburban arrangement, i.e. not on large property, and not only did the neighbors not seem to mind but the presence of children reminded the community that these little people are deserving of a safe, happy, nurturing environment as they are a part of our society and our future.

Please approve this daycare. So many parents will be forever affected by your decision and so many children as well.

Thank you for your time,  
Respectfully,

Jacquelyn Connolly  
parent and resident of White Rock

**From:** [Kathy Brooks](#)  
**To:** [Sayeda, Sobia](#)  
**Subject:** [EXTERNAL]Fwd: Denise Matthews  
**Date:** Friday, January 14, 2022 4:10:49 PM

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Sent from my iPhone  
Kathy Brooks

Begin forwarded message:

**From:** Kathy Brooks <dockatnm@msn.com>  
**Date:** January 14, 2022 at 4:10:02 PM MST  
**To:** sibia.sayeda@lacnm.us  
**Subject:** Denise Matthews

I am writing in support of Denise and her day school. I am grandmother of five Los alamos children and we have all benefited from Denise's teaching and caring while she was helping at Pajarito Environmental Center. She has an incredible gift working with children and communicating with parents and grandparents. She and her school will add an important resource to our community and will benefit many families here.

I fully support her endeavor and hope you approve her application to open this wonderful day school.

Thank you.

Sent from my iPhone  
Kathy Brooks

**From:** [Megan Fox](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]In SUPPORT for Worms and Wildflowers  
**Date:** Monday, January 31, 2022 3:21:17 PM

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CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Planning Committee,

I am writing in strong support for Denise Matthew's request to open a nature play school called Worms and Wildflowers Farm and Nature School at her personal residence.

I am the mother of 2 children, ages 6 years old and 3 years old. For the past 5 years we have struggled to find appropriate child care to meet our needs. We have been enrolled in 4 preschools to date. Not only is it incredibly hard to find availability, there is little variety in the programs offered. Having one more option would be an immense boost to the current childcare environment in Los Alamos. Lack of quality childcare not only negatively impacts children's and parents' mental health, it also adversely affects families financial security and overall prosperity. Without childcare, caregivers have a hard time returning to work, or going back to school to re-tool themselves to re-enter or advance in the workforce. Many families leave Los Alamos because one spouse is forced to abandon their career when they move here- more childcare would help this problem!

There is not currently a nature school option available in Los Alamos and this is a schooling philosophy that many families in LA county resonate with. I believe Denise's school could pave the way and prove the concept that this is a desirable philosophy in our area- hopefully leading someone else to open another school down the road. Denise is a wonderful person to lead this school, as her background and passion for science and nature education are evident and proven. She is a local mom who understands the needs of the community and has carefully planned her school accordingly.

It is extremely disheartening that this process has already taken so long, but I hope that it is expedited as much as possible from here. There is no reason this school should not be encouraged and supported by the county- it would be a boon to the community.

I will do anything to support this new business that serves such a needed gap in the community.

Sincerely,  
Megan Fox

228 Canada Way  
White Rock

281-744-8722

**From:** [Jamie Allbach](#)  
**To:** [Planning](#)  
**Cc:** [Director@wormsandwildflowers.com](mailto:Director@wormsandwildflowers.com)  
**Subject:** [EXTERNAL]In support of Worms and Wildflowers Childcare  
**Date:** Monday, January 31, 2022 5:06:09 PM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Committee Members,

Thank you for dedicating time to potentially approve a needed service in Los Alamos County.

For years, I attended a PEEC program facilitated by Denise Matthews, and I was continually impressed by her ability to engage children, ignite passion for learning, and build trust with parents/caregivers.

If approved to open her own nature-based early childhood program, she will continue to do these things and so much more!

I am confused as to why this has not yet been approved as she has her own three acre property, and generally there is no significant source of traffic congestion in her area. I'm sure it's been complex, and there is much I don't know. What I do know is that if Worms and Wildflowers opens, I will contact Denise to see if my child is eligible to attend. This would be unlike any other childcare offered in Los Alamos County.

Let's uplift this treasured community member for the good of her family and those families who want outdoor education for their children.

Thank you, and I look forward to hearing more as this program blossoms!

Kind regards,  
Jamie Allbach  
Los Alamos Resident & Nonprofit Professional

**From:** [Emily Schulze](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]In support of Worms and Wildflowers  
**Date:** Monday, January 31, 2022 4:39:45 PM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am writing in strong support for Denise Matthew's request to open a nature play school called Worms and Wildflowers Farm and Nature School at her personal residence.

I am the mother of 2 children, ages 5 years old and 3 years old. For the past 5 years we have struggled to find appropriate child care to meet our needs. We spent well over \$10,000 to reserve spaces in local daycares before our children were even born due to the massive shortage in this community.

As another mother has said, "Not only is it incredibly hard to find availability, there is little variety in the programs offered. Having one more option would be an immense boost to the current childcare environment in Los Alamos. Lack of quality childcare not only negatively impacts children's and parents' mental health, it also adversely affects families financial security and overall prosperity. Without childcare, caregivers have a hard time returning to work, or going back to school to re-tool themselves to re-enter or advance in the workforce. Many families leave Los Alamos because one spouse is forced to abandon their career when they move here- more childcare would help this problem!"

I would like to reiterate that this is a serious, fundamental issue affecting women who work in our community. In fact, a recent LANL Women's Employee Resource Group event garnered over 175 participants who are upset and concerned with the community's lack of childcare options. Many hiring managers have even had applicants decline offers when they were unable to find care.

I cannot believe that this process has already taken so long, but I trust that this committee can get this approved immediately.

I will do anything to support this new business that serves such a needed gap in the community.

Sincerely,

Emily Schulze  
3604 Arizona Ave, Los Alamos NM

**From:** [Ashley Pryor](#)  
**To:** [Planning](#)  
**Cc:** [Denise Matthews](#)  
**Subject:** [EXTERNAL]Letter of support for preschool business in White Rock  
**Date:** Monday, January 31, 2022 4:31:16 PM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To Whom It May Concern:

I am writing to express my support for the permitting of a preschool business in White Rock by Ms. Matthews (cc'd). I think that there is a need for additional preschool options within Los Alamos County and providing such options is important to the community.

Please let me know if any questions regarding my expression of support.

Thank you,

Ashley Pryor  
Los Alamos County Resident

**From:** [Kiyana Allen Glass](#)  
**To:** [Sayeda, Sobia](#)  
**Subject:** [EXTERNAL]Support for Worms & Wildflowers permit  
**Date:** Friday, January 28, 2022 11:20:54 AM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Planning & Zoning Committee,

I am writing in support of Denise Matthews' application for a special use permit to open Worms and Wildflowers Farm and Nature School on her own property in White Rock. I live in Pajarito Acres and have two young children. I currently drive them up to Los Alamos every day to attend preschool/daycare even though my husband and I both work from home because that was where we could find availability. I am very happy with their current school but I would love nothing more than to have the option to send them to an outdoor preschool, and one so close to us no less. A small, nature-based daycare is absolutely in line with the character of our neighborhood and I really hope that you approve her permit.

Los Alamos does not have enough childcare options to support young, working families. I grew up here and moved home last summer to be closer to my family and roots, and especially, to the land. I grew up in Bandelier and bought my house in Pajarito Acres because it was the closest experience I could give my children to the free-roaming wilderness childhood I had here.

One of the big downsides of moving home was that I had my son pre-enrolled to attend an outdoor preschool program when he turned 3 in our previous home in the Denver metro area, and had to give up that spot. We were so excited for him to be able to learn in that environment. Outdoor play is so essential to early childhood development and it's also an important value for my family. Additionally, as we have all learned in the past two years, the risk of respiratory illness spread is much lower outside.

I would be so happy if Ms. Matthews' application could be approved in time for my daughter (currently almost 2) to be able to hopefully attend this program.

I also want to raise up that it is often very difficult for young, working families to find time to attend hearings like this or even send a letter so support for this program is likely very underrepresented.

Thank you so much for taking the time to consider my comments and for your public service.

Sincerely,  
Kiyana Allen Glass  
159 Monte Rey Dr. S.

**From:** [Nicholas Glass](#)  
**To:** [Sayeda, Sobia](#)  
**Subject:** [EXTERNAL]Support for Worms & Wildflowers permit  
**Date:** Friday, February 4, 2022 10:53:38 AM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello - I am writing in support of Denise Matthews' application for a special use permit to open Worms and Wildflowers Farm and Nature School on her own property in White Rock.

I live in Pajarito Acres and have two young children. I currently drive them up to Los Alamos every day to attend preschool/daycare even though my wife and I both work from home - because that was where we could find availability. While we are very happy with their current school, we would love nothing more than to have the option to send them to an outdoor preschool, and one so close to us no less!

In general, Los Alamos does not have enough childcare options to support young, working families. And specifically, I would be so happy if Ms. Matthews' application could be approved in time for my daughter (just turned 2) to be able to hopefully attend this program.

A small, nature-based daycare is absolutely in line with the character of our neighborhood and I really hope that you approve her permit.

Thank you for taking the time!

Sincerely,  
Nick

--

Nicholas Glass  
610-329-1995  
[glass.na@gmail.com](mailto:glass.na@gmail.com)

**From:** [Verena Geppert-Kleinrath](#)  
**To:** [Sayeda, Sobia](#)  
**Subject:** [EXTERNAL]Support for worms and wildflowers nature school daycare  
**Date:** Friday, January 14, 2022 3:22:04 PM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi,

I am a Los Alamos resident and mom of a young toddler and want to express my support for the worms and wildflowers nature school and daycare.

I urge the planning and zoning committee to approve the special use permit.

We as a community cannot afford to bend to the will of a few bitter people and outdated HOA ideas. My understanding is the property is already a working farm and sits on a large plot of land. In no way can a handful of children be considered an issue for neighbors.

Our community desperately needs more daycare options. And as a mum I would just love to see this outdoor farm based school come to life.

Committee members, please make a decision not based on antiquated ideas of children as a nuisance, but in the interest of our future - our children!

We as a community desperately need this resource.

Best,

Verena Geppert-Kleinrath

--

Mit freundlichen Grüßen/ Best regards

DI Dr.techn. Verena Geppert-Kleinrath

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[verena.kleinrath@gmail.com](mailto:verena.kleinrath@gmail.com) +1-505-695-8479

**From:** [Misa Cowee](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]Support for Worms and Wildflowers school  
**Date:** Thursday, February 3, 2022 2:25:47 PM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Planning and Zoning Committee,

I am a parent in White Rock and I would like to express my support for the proposed permit application for the in-home school run by Denise Matthews. I have two young kids (2 and 5) and have struggled with finding childcare and preschool options in town that fit our family's needs and provides an enriching environment for early childhood. I have read about the Worms and Wildflowers Farm and Nature school, and think it would make an excellent addition to our community. I have heard there are several concerns, for example about noise, but we already have daycares, schools, and parks next door to residences in our neighborhoods, which I believe to be a great strength and an appealing part of our small community, and which I believe ultimately benefits the community as a whole. As our community grows and attracts greater numbers of young families, we need to encourage local entrepreneurship aimed at providing diverse options for our community's early childhood education needs. I encourage the committee to approve the special-use permit for this school.

Thank you,  
Misa Cowee  
Resident of White Rock

**From:** [Ashley](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]Worms and Wildflowers Farm & Nature School  
**Date:** Wednesday, February 2, 2022 4:01:30 PM

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CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am writing today to put my support behind the opening of the new childcare center being proposed in White Rock. As a mother of three kids my husband and I have had to make excruciatingly difficult economic decisions because there is little to no childcare available in Los Alamos County. Beside the obvious need for ANY childcare Ms. Matthews is proposing an enriching, fun, educational option to the community. I cannot say enough how strongly I support Worms and Wildflowers Farm and Nature School.

Sincerely,  
Ashley Taylor-Wrightson

Sent from my iPhone

**From:** [Jessica Freer](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]Worms and Wildflowers Farm and Nature School, 113B La Senda-Denise Matthews  
**Date:** Thursday, February 3, 2022 12:20:38 PM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Afternoon,

I am writing to show my support for the approval of Worms and Wildflowers Farm and Nature School at 113B La Senda. This nature and play based home daycare is a necessity for our community, as it will provide a much needed solution to the daycare needs in Los Alamos, White Rock and close surrounding areas. The director has a solid background to support this type of facility, not only with her years of experience, but with her education as well. To my understanding, with the way that her property is set up, it should not cause issues or become a nuisance to the neighborhood or any neighbors living nearby. The school/daycare will be facilitating a small number of families/children, therefore an increase in traffic will be minimal, if even noticed. I truly hope that you give this great consideration as not only will it be of great benefit to the youth of our community, but to working parents as well.

Thank you for your time.

A 28 year resident and strong supporter of The Worms and Wildflowers Farm and Nature School,  
Jessica Freer-Gurley

**From:** [Katie Bruell](#)  
**To:** [Sayeda, Sobia](#)  
**Subject:** [EXTERNAL]Worms and Wildflowers preschool letter of support  
**Date:** Saturday, January 22, 2022 3:55:15 PM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello,

I would like to express my support for the Worms and Wildflowers preschool. Los Alamos is in need of more childcare options for working families. Denise is a caring, thoughtful, smart teacher, and will do a wonderful job of preparing kids for life. Worms and Wildflowers will be a wonderful addition to Los Alamos, and should be allowed open.

Thank you.

Katie Bruell  
3550 Ridgeway  
writing as a private citizen

**From:** [Nicholas Glass](#)  
**To:** [Sayeda, Sobia](#)  
**Subject:** [EXTERNAL]Support for Worms & Wildflowers permit  
**Date:** Friday, February 4, 2022 10:53:38 AM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello - I am writing in support of Denise Matthews' application for a special use permit to open Worms and Wildflowers Farm and Nature School on her own property in White Rock.

I live in Pajarito Acres and have two young children. I currently drive them up to Los Alamos every day to attend preschool/daycare even though my wife and I both work from home - because that was where we could find availability. While we are very happy with their current school, we would love nothing more than to have the option to send them to an outdoor preschool, and one so close to us no less!

In general, Los Alamos does not have enough childcare options to support young, working families. And specifically, I would be so happy if Ms. Matthews' application could be approved in time for my daughter (just turned 2) to be able to hopefully attend this program.

A small, nature-based daycare is absolutely in line with the character of our neighborhood and I really hope that you approve her permit.

Thank you for taking the time!

Sincerely,  
Nick

--

Nicholas Glass  
610-329-1995  
[glass.na@gmail.com](mailto:glass.na@gmail.com)

**From:** [Jyl DeHaven](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]Worms and Wildflowers Farm and Nature School  
**Date:** Wednesday, February 2, 2022 11:52:21 AM

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CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning. I am writing a letter of support for Denise Knaebel Matthews and her Worms and Wildflowers Farm and Nature School.

Although I am not a resident of Los Alamos County - or a neighbor of Denise's - I do make my living in Los Alamos as a commercial real estate broker.

After decades in commercial real estate and on faculty at community colleges and Universities teaching sustainable development - programs like Denise's are critical for the health - both literally and figuratively - of a community.

The reality is day care programs in Los Alamos are in VERY short supply. A program that focuses on nature and its power/science/beauty is a gift.

I appreciate that some neighbors may feel this is an infringement on their neighborhood. The fact is - with 3 acres of land and small class sizes, this is a creative solution to overcoming the realities that hinder all forms of business, retail, and services in the County. The land is limited. It is incredibly expensive. Construction costs are even higher than in most places in the state due to lack of crews and penalties of access.

Planning and Zoning can and should find creative ways to fill the needs of the community. I believe that the Worms and Wildflowers Farm and Nature School is trying to do the same thing.

Thanks in advance for your time.

Respectfully,  
Jyl DeHaven, MS

**From:** [attelia](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]Worms and Wildflowers farm and Nature school  
**Date:** Wednesday, February 2, 2022 12:28:13 PM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To whom it may concern:

I am writing in support for Denise Matthew's request to open a nature play school called Worms and Wildflowers Farm and Nature School at her personal residence.

As a working mother of 3 children, I am unfortunately very familiar with the lack of child care options available in the Los Alamos/ White Rock community. Not only is it incredibly hard to find availability, there is little variety in the programs offered. Having one more option would be an immense boost to the current childcare environment in Los Alamos. Lack of quality childcare negatively impacts children's and parents' mental health, as well as adversely affecting families financial security.

I love the idea of having a nature school option available in Los Alamos and I believe Denise's school will be a great addition to my neighborhood. Denise's background and passion for science and nature education make her a wonderful person to lead this school. She is a local mom who understands the needs of the community and is trying to do her part to make this town a better place to raise a family.

It is extremely unfortunate that this process has already taken so long, hopefully it will be expedited as much as possible from here. This school and others like it should be encouraged and supported by the county. It is a much needed service and will make the community a better place.

Sincerely,  
Attelia Hollander  
109 Monte Rey Dr N.

**From:** [Ali Culp](#)  
**To:** [Sayeda, Sobia](#)  
**Subject:** [EXTERNAL]Worms and Wildflowers  
**Date:** Saturday, January 15, 2022 7:01:58 AM

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CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello,

This letter is in support of Denise Knaebel and her permit to open a nature school on her property in White Rock, NM. I know Denise to be an excellent educator whose enthusiasm is infectious and engaging for children. I've also seen pictures of her amazing garden and think her property would provide an amazing backdrop for a nature school.

As far as noise concerns from neighbors: I live in Los Alamos, directly across the canyon from a preschool. For one, yes we can hear the children playing but it is not a nuisance. It is not loud or disruptive (and there are dozens of children outside at any given time). It is a nice ambient background noise that reminds us we're living in a thriving community alongside people of all ages. Secondly, after watching Denise interact with children in an outdoor setting at PEEC, I can confirm it was never loud. She never had to raise her voice to rally the children, and the children were involved with the various activities (not running around screaming).

Another childcare option in LA county would be so appreciated by parents. More importantly, Denise is a passionate and talented educator that our community would be lucky to have, her nature school would be a huge asset to this community!

Please approve the permit for Worms and Wildflowers Farm and Nature School.

Thank you,  
Ali Culp  
505-709-0294

Sent from my iPhone

21 January 2022

To Whom it May Concern

We are writing this letter in support of the Special Use Permit Application for Worms and Wildflowers Farm and Nature School located at 113B La Senda, White Rock, as submitted by Denise Matthews.

Recently, upon searching for daycare options for our 2 year old, we have found the number of daycare/preschools to be significantly limited. Many of the options currently have no availability, and/or require a full-time commitment. This is not likely to get any better with LANL expecting to hire more staff over the next few years. Additionally, impacts of covid have closed a lot of daycares around the county. New daycare and preschool facilities are a must on the county priority list.

In addition, the preschool proposed by Denise offers a unique approach which is not currently offered in the community. A nature based, outdoor preschool will give children the opportunity to experience both indoor learning and exploring the outdoors. It is important for our children at a young age to develop knowledge of what is around them in the outdoor environment as well as academic learning. Studies have shown:

- Students who learn outdoors develop a sense of self, independence, confidence, creativity, decision-making and problem-solving skills, empathy towards others, motor skills, self-discipline and initiative.
- Playing and relaxing in natural settings can defuse stress, reduce anxiety, distraction, and symptoms of ADHD.
- When schools take kids outside to learn, kids have become more motivated and self-directed.
- Outdoor learning connects families and the community to the school.
- Gardening provides children in experiences with natural ecosystems, enhancing children's understanding of food systems, and helping them develop positive environmental attitudes and behaviors.

We thank you for this opportunity to show our support for Denise's preschool. If we can be any further assistance, please do not hesitate to contact us.

Yours sincerely

David Rutherford and Nicola Winch

Cell: (505) 709-7742 (David)  
(505) 709-8473 (Nicola)

**From:** [Susan](#)  
**To:** [Sayeda, Sobia](#)  
**Subject:** [EXTERNAL]Daycare on La Senda Rd  
**Date:** Monday, January 31, 2022 8:34:13 PM

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My husband's and I purchased the property at 114 LA Senda Rd. In 1990. Prior to that, we had lived in a congested neighborhood and we were attracted to the quiet peaceful area where everyone had two acres. That is specifically the reason we purchased our property . There were not many cars and it was a safe place for our children to play and ride their bicycles. The area was completely residential, and certainly not zoned for commercial use! We are against having a daycare operating right across the street from our home and all of the problems that it would incur. Thank you for reconsidering this idea that would be so disruptive to our neighborhood! William Mark and Mary Susan Hodgson  
Sent from my iPhone

**From:** [Phillip Noll](#)  
**To:** [Sayed, Sobia](#)  
**Subject:** [EXTERNAL]Re: SUP  
**Date:** Monday, January 31, 2022 4:47:53 PM

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Sobia,

Below is the letter I sent to you this morning as a pdf file. Hopefully you will still get that. (If you do get the pdf please note that I have mistakenly listed the SUPs in question as 0020 and 0002. It should be 0020 and 0021. I corrected this below.) If not, I have included the text of the letter below. Thank you for your help!

Phillip Noll  
114 Piedra Loop  
Los Alamos, NM 87547

\*\*\*\*\*  
\*\*\*\*\*

PHILLIP NOLL, PH.D.  
114 Piedra Loop, Los Alamos, NM 87547 | 505.672.2037 | [antelope@canyonechos.com](mailto:antelope@canyonechos.com)

January 31, 2022  
Planning and Zoning Commission  
Los Alamos County  
1000 Central Ave  
Los Alamos, NM 87544

**RE: SUP-2022-0020 and SUP-2022-0021 (Proposed Daycare at 113-B La Senda Rd.)**

Dear Planning and Zoning Commissioners,

The proposed indoor/outdoor daycare operation at a private residence within the La Senda neighborhood (SUP-2022-0020 and SUP-2022-0021) clearly does not conform to the Comprehensive Plan which is an absolute requirement for any special use permit. Unlike other, more general considerations that come before the Planning & Zoning Commission, when considering a Special Use Permit the Comprehensive Plan takes on the force of law. Compliance with the Comprehensive Plan is a condition of granting such a permit. From **LAC Municipal Code Section 16-156: "... the planning and zoning commission shall utilize the following criteria ... (1) The request substantially conforms to the Comprehensive Plan ..."**

Additionally, Phase 2 of the current Zoning Code Update Project has stated that **"the goal of this project is to align the [LAC] code with the goals of the Comprehensive Plan. These adjustments aim to encourage the right development, within the appropriate location.... to enhance the health, welfare and overall quality of living within Los Alamos County."** Thus

compliance with the Comprehensive Plan is of utmost importance when considering Special Use Permit applications.

Given the above, the Comprehensive Plan weighs in on its role in Section 1.5: ***"The Planning and Zoning Commission (P&Z) will use the Plan as guidance in the review of ... special use permits.... Conformance with the goals of the plan will be paramount in their decision making."***

The applicant has had little to say on this subject. Considering the legal requirement to prove compliance with the Comprehensive Plan, that alone should have settled the issue against approval of these permit requests. These being Special Use Permits, with some emphasis on the word "Special", it is incumbent on the applicant to demonstrate that their proposal meets all the conditions required:

Los Alamos County Code Sec 16-451 (b) (3) states: ***"The applicant shall present evidence supporting the application and shall bear the burden of demonstrating that the application should be granted."*** (In no way should it be incumbent on the affected parties to prove in some absolute sense they will suffer detriment to their peace or comfort.)

Los Alamos County staff have previously argued that the Comprehensive Plan is merely a "guidance" document. This is incorrect. The Comprehensive Plan states on page vii: ***"The Comprehensive Plan is a policy document..."*** Thus the Comprehensive Plan is County POLICY, not guidance, and its requirements must be met. The current rewriting of the county codes will ensure this.

County Staff have also argued that the proposed daycare operation "supports the promotion of a diverse economic base and the encouragement of new business growth" which is a goal of the County Council. However, there has been no mention of how the proposed daycare operation meets the requirements of the Comprehensive Plan. Namely:

- ***Revitalize and eliminate blight in the downtown areas of Los Alamos and White Rock. Pages 34, 70***
- ***Promote growth in the downtown. Page 70***
- ***Protect existing residential neighborhoods. Pages viii, 57, 62, 65, 66, 84, 104, & 105***
- ***Provide transition buffers to nearby existing housing as needed. Page 66***

The Comprehensive Plan repeatedly makes the case that the Planning and Zoning Commission must consider ***"protecting the character of existing residential neighborhoods"*** when reviewing Special Use Permits. The concept of "protecting neighborhoods" is repeated more than any other issue throughout the Comprehensive Plan and is obviously of supreme importance to the community. Omitting any such discussion should be, in and of itself, grounds for rejection of these Special Use Permits.

It is also unreasonable to construe the Comprehensive Plan to say that business interests in residential areas override the protection of neighborhoods. In fact, the Comprehensive Plan clearly demonstrates the opposite, and specifically addresses this kind of issue, first by stating:

***"The categorization of land uses and traditional zoning have separated uses to protect***

***residential uses from incompatible uses that could be harmful or bothersome to people in their homes. Such separation is also intended to provide areas for business and manufacturing uses where they can operate as needed without the worry of negatively impacting residential use." Page 104.***

Additionally the Comprehensive Plan states: ***"Nevertheless, as the community continues to grow, it will be important to provide certain protections for existing neighborhoods as new development or redevelopment meets existing, especially in the case of long-standing, low-density residential areas. The Comprehensive Plan suggests the creation of buffer strategies and alternatives to protecting existing neighborhoods." Page 105.***

And finally, ***"A consistent theme heard throughout development of the Plan was the importance to the community of its existing neighborhoods and the desire to preserve their residential character and scale." Page 65.***

Furthermore, the importance of this desire to protect the residential nature of existing, long standing, low density neighborhoods is strongly supported by the past rejection of a similar daycare operation in the La Senda neighborhood. Therefore, it is already an established precedent that daycare operations are not consistent with the protection of the rural/residential nature of the La Senda subdivision. Additionally, there is absolutely no buffer between this proposed indoor/outdoor daycare operation and the neighboring properties. None whatsoever.

The Comprehensive Plan also states: ***"Members of the community will find assurance in Plan policies and the map about what to expect by way of change and also neighborhood preservation." Page 3.*** The clear intent here is to assure residents that the Comprehensive Plan will, as it should, offer protection against unwanted changes in the neighborhood. There are several mentions of integrating housing into business districts, but the Comprehensive Plan never mentions, or encourages, the idea of businesses in residential zones. The LAC code is currently being revised "to align with the Comprehensive Plan" and "to encourage the right development, within the appropriate location". A noisy daycare operation in a very quiet rural/residential zoned area flies in the face of the stated goals of both the Zoning Code Update Project and the Comprehensive Plan.

The Comprehensive Plan is, however, quite specific in the types of businesses it does wish to promote:

- ***"Support spin-off business opportunities from LANL." Page 34.***
- ***"Significantly improve the quantity and quality of retail business." Page 34.***
- ***"Attract new tourism-related business." Page 34.***
- ***"Promote growth in the downtown." Page 70.***
- ***"Promote access to broadband ...." Page 71.***
- ***"Promote Los Alamos County as a model for emerging technologies." Page 76.***
- ***"Promote economic diversity by building on the existing strengths of the community: technology, innovation, and information" Page 76.***

Notice that there is no mention at all of promoting daycare, child care, preschool, or private school businesses let alone such a businesses in an established residential neighborhood. The Comprehensive Plan does partly focus on various business activities as it should, but daycare

operations are not one of them. Therefore, daycare operations have no special status under the Comprehensive Plan and must be viewed as any other business would be in construing the actual emphasis of the Comprehensive Plan.

Promoting business is part of the Comprehensive Plan. So is protecting neighborhoods. It is obviously possible to accomplish both goals simultaneously. There is no need to degrade the peace and comfort of long established residential neighborhoods in the process when the county is facing problems of urban blight and an excess of empty commercial buildings. There are many commercial properties currently available that would be suitable for daycare operations in Los Alamos County. Daycare operations belong in “the appropriate location” (i.e. downtown in commercial facilities) and not in rural/residential neighborhoods.

When considering the conformance of these Special Use Permit Applications with the Comprehensive Plan it is critical for the Planning and Zoning Commission to remember that:

- a.) when considering a Special Use Permit the Comprehensive Plan takes on the force of law (***LAC Municipal Code Section 16-156***),
- b.) current rewriting of LAC zoning code will REQUIRE compliance with the Comprehensive Plan,
- c.) the burden of proof of compliance with the Comprehensive Plan lies with the Applicant, and
- d.) conformance with the goals of the Comprehensive plan will be paramount in the Planning and Zoning Commission’s decision making.

In order for the Planning and Zoning Commission to approve these Special Use Permit applications, it is necessary for the Applicant to prove that the proposed daycare operation complies with the Comprehensive Plan. As I have thoroughly demonstrated above, any daycare operation in a residentially zoned area in Los Alamos County is diametrically opposed to Los Alamos County POLICY as specified within the Comprehensive Plan. As such, the law requires rejection of the SUP-2022-0020 and SUP-2022-021 applications. Additionally, as mentioned above, precedent has already been established in that a similar proposed daycare operation within the La Senda subdivision was rejected a few years ago by the community.

It is clear that protection of the character and nature of existing neighborhoods is paramount to Los Alamos County and its residents and I urge the Planning and Zoning Commission to soundly reject SUP-2022-0020 and SUP-2022-021 thus ensuring compliance with the Comprehensive Plan.

Sincerely,

Phillip Noll, Ph.D.

On Jan 31, 2022, at 4:21 PM, Sayeda, Sobia <[sobia.sayeda@lacnm.us](mailto:sobia.sayeda@lacnm.us)> wrote:

Sobia Sayeda  
Senior Planner | Community Development Department  
1000 Central Avenue, Suite 150  
Los Alamos, NM 87544

Phone: 505.662.8122 | Main: 505.662.8120

**<image001.png>**

**From:** [L.D](#)  
**To:** [Sayeda, Sobia](#)  
**Subject:** [EXTERNAL]SUP-2022-0020 and SUP-2022-0021 (Proposed Daycare at 113-B La Senda Rd.  
**Date:** Monday, January 31, 2022 4:01:20 PM

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Chair and Commissioners,

This business proposed in SUP-2022-0020 and SUP-2022-0021 will commit visual trespass in both directions, in and out of the commercial area.

Section 16-277(1)(e) of the county municipal code states, "There shall be no visible exterior display or storage of materials used in the home occupation...in such a way as to be visible from off the lot."

This is a problem because the entire play area, swings, gardening zone, etc. are materials used in the home business. Since there is no significant visual obstruction surrounding these areas, or any other portions of the lot that might be used, it is a violation of the county code. Any fencing proposed to correct this deficiency would have to be high enough to obscure the area from second floor windows.

There is, however, a reverse effect also. Since the adjacent yards can be seen from the play and study areas, two burdens are placed on nearby residents. As one of the closest residents, with property immediately adjacent, this is especially important to me. Our house is only 52 feet from the play area, and our yard abuts it with no distance at all in between.

First, if we are at all thoughtful, we must modify our behavior to avoid distracting or upsetting the children.

And since it is a preschool and also a private school, we must be mindful of the law that says we can do nothing in our own yard that might interfere with the education of the youngsters. That's the law. And literally nobody knows the limits of what might comprise a visual distraction.

This is definitely a nuisance, and annoying.

\*\*\*\*\*Please confirm receipt of this email\*\*\*\*\*

Sincerely,

Les DiLeva  
115 La Senda Road  
White Rock, NM 87547

Dear Commissioners,

The county municipal code Section 16-156(1) tells us the proposed business must not "...under the circumstances of the particular case, be detrimental to the health ... or general welfare of persons residing or working in the vicinity of such proposed use..."

The detriment due to noise is well known. For example, "Exposure to noise constitutes a health risk. There is sufficient scientific evidence that noise exposure can induce hearing impairment, hypertension and ischemic heart disease, annoyance, sleep disturbance, and decreased school performance." (National Institute Of Health, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1637786/>)

WHO places the lower limit for annoyance at 55 dBA, "...guideline values for annoyance have been set at 50 or 55 dBA, representing daytime levels below which a majority of the adult population will be protected from becoming moderately or seriously annoyed, respectively."

Since the La Senda covenants forbid any business that \_may become\_ an annoyance (or nuisance), and there is no doubt the business will create noise over 55 dBA over the property line, it will be impossible for the applicant to prove the operation will not be an annoyance.

Which, according to more sources than is practical to list, will be detrimental to the health and/or general welfare of persons residing in the vicinity.

But what about those working in the vicinity? That would include the employee(s) working at the day care. They can be expected to be subjected, in a fairly regular basis, to sound levels exceeding 110 dBA and up to 120 dBA. CDC tells us with an average sound level -- measured in decibels -- of 110, "Hearing loss [is] possible in less than 2 minutes." With no minimum time at all, 120 dBA yields "Pain and ear injury." And of course measurements of screaming children being held yield those results.

Further, most sources that list occupations that cause hearing loss include preschool children, usually as "nursery school" or "kindergarten." For example, "Teachers who work in kindergarten classes and nurseries, especially with infants and young children, can find their hearing affected..."

(<https://www.hear.com/useful-knowledge/10-jobs/>)

"Working in preschool increases the risk of hearing-related symptoms"

(<https://link.springer.com/article/10.1007/s00420-019-01453-0>)

or "Usually the only risks teachers face is the risk of losing their sanity and patience. But for those teachers who school the younger students, the prolonged exposure to crying, screaming, and even singing is a risk few probably consider."

(<http://blog.e3diagnostics.com/10-professions-that-most-contributed-to-noise-induced-hearing-loss>)

or "Teachers. In particular, nursery school teachers can be exposed to a steady flow of loud and high-pitched noise of around of 80dB(A)..."

(<https://pulsarinstruments.com/news/most-hazardous-jobs-your-hearing/> -- previously endorsed by the applicant)

So there is significant evidence that day care workers will suffer health effects, including stress effects and hearing loss. It will be challenging, if not impossible, for the applicant to prove otherwise.

Going beyond that, there is also the problem of exposure to the elements without a break for so many hours a day, since the idea was originally to remain outdoors as much as possible (lightning being the exception). Whether that is still the case we cannot know at this point.

Aside from the hazards of heat and dehydration, or cold and frostbite, there's the ever-present problem of ultraviolet exposure and resultant skin damage. At 6500 feet elevation, this is problematical. A similar situation exists in construction work, but even there many of the days are avoided due to environmental issues. Not so this day care. Sun exposure with snow on the ground is particularly difficult to limit, and there is hardly any shade available on the property.

But a strange aspect of the law is, the children attending the school don't count. The applicant is not required to avoid detriment to their health, at least as far as the county is concerned. They are most likely to be proximal to the loudest noises, least likely to be able to recognize and communicate when they are overheating, drying out, or going numb from cold. They are least likely to maintain clothing cover and sun block when needed.

So if this application is approved, the county will find itself participating in a completely unprecedented experiment, at least as far as can be determined. There are no other day care operations in the world involving children of this age spending all day outdoors at such an elevation. And certainly not in someone's back yard.

Barham Smith  
116 Piedra Loop  
White Rock, NM 87547

Chair Priestley and Commissioners,

First, I regret the length of this letter, but after learning the legal process, it's unfortunately necessary. This hearing is the only opportunity to present evidence, including anything that might be important in the event of an appeal.

We are required to cover just about any contingency, since the information supplied on the application is sparse and has not been binding: the applicant made several significant changes during the original hearing.

If it's any consolation, just imagine how inconvenient it is to have to write this in the first place. But in the end, it proves beyond any reasonable doubt that the proposed day care will be noisy beyond legal limits, and certainly a nuisance. However, there is no need for persons objecting to the Special Use Permit to prove anything -- that problem is reserved for the person applying for a special use permit.

The applicant is required to prove the proposed business is unlikely to disturb the peace and comfort of nearby residents. Los Alamos County Municipal Code Sec. 16-451 (b)(3) "The applicant shall present evidence supporting the application and shall bear the burden of demonstrating that the application should be granted."

To avoid possible confusion over the word "demonstrate," it is usually a synonym for "prove." In New Mexico, if there's any doubt, any other uses of the word in the same document should be used. It, or variants, appear 25 times in the Code, 22 of which are the verb form, which in every instance has the same meaning as the word "prove."

The normal measure of the burden in a civil matter is the "preponderance of evidence." The applicant is charged with submitting evidence that makes it clear it is more likely there will be no detriment. If the evidence slightly favors those opposing the application, or even may be balanced or unclear, the application fails. There are two measures: the amount of evidence on each side, and the quality of that evidence.

But what is the applicant required to prove?

The answer is in Sec. 16-156. - Special use permit review criteria: "... the planning and zoning commission shall utilize the following criteria in making its determination of approval, conditional approval or denial:

(1) The request substantially conforms to the comprehensive plan, and the establishment, maintenance or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort or general welfare of persons residing or working in the vicinity of such proposed use, or be detrimental or injurious to property or to the value of property in the vicinity, or to the general welfare of the county."

I will concentrate on just three of those items: peace, comfort and general welfare. But the commission understands that a failure of the applicant to prove any one of those points would require denial of the permits.

Of course, peace and comfort doubtless played a part in the 2007 denial of a Montessori school just a few lots away from this proposal. The La Senda covenants read: "No noxious or offensive activity shall be conducted or carried out upon any lot. Nor shall anything be done thereon which is likely to become an annoyance or nuisance to the neighborhood."

Not only does this establish a precedent, which would be of particular importance in District Court, it broadly states a prohibition against anything likely to become an annoyance or nuisance. The future tense is critical in understanding how thoroughly this denies an outdoor, noisy, intrusive operation. If any of those things *could* happen, the permit must be denied.

While that should easily require refusal of the permit, it's prudent to include ample evidence, especially in light of previous experience.

Next we need to consider a statement from county staff in their original presentation: "Peace and comfort of persons residing and working in the vicinity is subjective, and cannot be proven either way."

This is, of course, an expert opinion. I agree within reasonable limits -- there are doubtless extreme examples that go beyond the subjective, but in this case it is probably correct. For example, someone who is deaf would hardly be troubled by any noise the business might generate, while someone with particularly sensitive hearing, or who is easily disturbed by noise, might find the constant sound of 12 children outdoors to be torture.

A more typical example might be someone who keeps their doors and windows closed all day, using either heat or air conditioning, and who keeps music or the tv playing all the time. Such people would probably not care much about an outdoor day care next to them. But there are also people who keep their windows open as much as possible and enjoy the sounds of nature -- birders are a prime example, since the songs are critical to many identifications (this is why there is a microphone in the bird feeding area at PEEC). The noise of the day care will make it hard to hear what few birds (or other wildlife) are not chased off by the raucous sounds.

Or even more simple, someone who goes away to an office all day probably wouldn't much mind. But for someone who works from home, or is retired, that would not hold true at all.

The list of examples could go on, but that should get the idea across.

Consider also that there's research indicating people who claim to be sensitive to noise actually are more sensitive. "Studies do find that adults differ in noise sensitivity, and people who say they are more sensitive do react more to noise, both physiologically and on questionnaires." Page 178 "Silent Scourge" By Madison Colleen F. Moore Professor of Psychology University of Wisconsin.

This means there is no objective way to judge this issue, and therefore the burden to prove is insurmountable. Naturally, that raises the question: then why is there a law allowing this kind of operation at all?

The simple answer is because not every neighborhood would object, and not every neighborhood is quiet in the first place. If a house is next to a school playground and wishes to open a day care operation, that may not mean much to the neighbors, who chose to live next to a play area anyway. Surely the commissioners could think of other examples.

But in this case, that is not true. Every single property that is directly exposed to this day care -- where there are no intervening buildings or other opaque barriers -- is objecting strenuously. If the commissioners could see how close and exposed they are, this would be easy to understand.

So, given there is no way for the applicant to prove there won't be detriment to their peace and comfort, and that there is very good reason to believe it will be detrimental, it is

inappropriate for this Commission, or any government body, to claim the applicant has proven otherwise.

And that alone should be enough to require a refusal of the permits. But it turns out that, while detriment to peace and comfort cannot be proven, noise levels actually can.

First, a quick review of the law. Section 16-493 (c)(1) states "The appellate body shall affirm the decision appealed unless it finds that the decision was not in accordance with adopted county plans, policies, and ordinances..." The key here is the requirement that the record show accordance with ordinances. No limit on this is specified.

Bearing that in mind, if we go to the use table for Day Care, Section 16-282, item 10 states, "Noise levels shall be governed by the provisions of article III, chapter 18 of this Code"

It stands to reason that if this is to be considered in the event of an appeal, the Commission should consider it in their deliberations. So it seems straightforward that day care operations are required to meet the chapter 18 provisions. But some of you may recall legal advice implying this is not the case, that this is a Section 16 commission, and therefore this aspect of noise is not under consideration.

Initially, I thought this argument unlikely to be correct, and in light of the above, still do. However, that may not be the case for commissioners remembering this statement.

If the commission considers that to be an expert opinion, there will be no objection, particularly because Section 16-277 (1)(f) of the code, "Home occupations", states "There shall be no noise, vibrations, smoke, dust, odor, heat or glare detectable beyond the boundaries of the lot on which the home occupation is located, so as to constitute a nuisance." Since that is in Section 16, it obviously does fall under the purview of the commission.

Because that allows no noise at all, there is no option but to refuse the application for this day care business. It seems impossible that the applicant could prove a Day Care operating outdoors a significant part of the day would cause no sound to cross the property line.

But since we must cover all contingencies, reasonable or not, there is still the matter of the Section 18 noise ordinance.

First, there is the issue of whether or not the sound of 12 children outdoors on weekdays is natural -- and whether that matters. Much has been made of the first sentence of Section 18-72, "The making, creation or maintenance of such excessive, unnecessary, unnatural or unusually loud noises which are prolonged, unusual or unnatural in their time, place and use are a detriment to the public health." There was a strong focus on the word "unnatural," and that the sound of children's voices is natural. True enough, but not the issue at all.

The question is actually whether the voices of 12 children between 3-6 or 7 years old (or whatever ages the applicant decides this time), outdoors all day, in perpetuity (never simply getting older) is even remotely natural. And of course it is not.

But leaning on the word natural is to ignore the other conditions in the sentence, such as "unusually loud." In a family back yard, twelve children between three and six outside every day would be at the very least unusual, if not unprecedented, and unusually loud as a result. That it would be prolonged, being outside every weekday and some weekends, is beyond dispute. Also, it would be usual "in their time" that children 5 or older would not even be at home most of the day, since their usual place would be in school.

So this argument has no merit, especially since the requirement is for the applicant to demonstrate that it will not be either prolonged, unusual, or unusually loud.

However, it is the next section of the code, 18-73, that deals with "Prohibited noise; decibel provisions." At this point another bit of confusion needs to be addressed: when it comes to decibel trespass, it does not matter if the sound is natural, unnatural, or anything in between. Regardless the source, the operation of the day care is simply not allowed to exceed the decibel limitations even with a Special Use Permit. During the expected hours of operation, that limit is 65 dBA at the lot line, with the provision that in any given ten-minute period per hour it can exceed 65 dBA but never 75 dBA.

To clarify: if the sound ever exceeds 75 dBA under any circumstance, it is illegal. If it exceeds 65 dBA twice in an hour, separated by 10 minutes or more, it is illegal. If the applicant cannot prove it will not be illegal, no permit should be approved.

So how loud are 12 children in that age range, and how likely is the noise to be an illegal encroachment?

First up is the Pleasant Hill Child Care Environmental Noise Assessment. (<http://www.ci.pleasant-hill.ca.us/DocumentCenter/View/16065/12-19-16-environmental-noise-assessment?bidId=>)

"We used data collected from an existing pre-school in May of 2008. Noise levels were measured at the edge of the playground area while approximately 25 toddler and pre-school age children were playing outdoors. Children ranged from approximately 5 feet to 50 feet from the sound meter. The average sound level for the 37-minute interval measured was 69 dB, and maximum sound levels ranged up to 84 dB."

The applicant's play area is larger, but since during the vast majority of the time the children will be roughly within 50 feet of the property line and sometimes closer, this is a good correspondence. However, it is immediately obvious that 25 children will be louder than 12.

But it turns out that when multiple similar sources of sound are combined, doubling the number of those sources only adds 3 dBA to the total sound level. (see: [https://www.engineeringtoolbox.com/adding-decibel-d\\_63.html](https://www.engineeringtoolbox.com/adding-decibel-d_63.html)) And in fact, that reduction is too high, because it presumes the peak noise level was caused by all the children screaming simultaneously, which is unlikely.

So we can expect at least 66 dBA average at the fence line, and about 81 dBA peak -- well in excess of the county's maximum allowance of 75 dBA (see Los Alamos County Municipal Code Sec. 18-73 (a) and (b)). But it's worse than that. If the average is 66 dBA, that means that over half the time outdoors the noise level is likely to be in excess of the legal limit. And also to consider: the measurement period was only 37 minutes. Statistics indicate that is likely not long enough to get an actual daily peak, much less monthly or yearly, so there can certainly be no claim of bias toward loudness in that regard.

There are a few fudge factors. For one thing, 66 dBA would be for 12.5 children, so 12 would be more like 65.85 dBA. For another, their measurement only allowed an approach of five feet, where a property line measurement would include zero feet, so the peak reading may well be several dBA higher -- up to twelve, theoretically.

But that's just one example. The next only has a maximum of 10 children at any one time, so we can see how the numbers match up.

This is from "Environmental Assessment For Children Noise" which is an extraordinarily thorough measure of the noise from a new day care location. (<http://publicaccess.staffs Moorlands.gov.uk/portal/servlets/AttachmentShowServlet?ImageName=167546>).

The play area is a bit over 32 feet by 32 feet, and the sound measurements were done a little over 16 feet away from it (at a neighbor's door). They used top-notch equipment, shielded to prevent contributions from ambient noise.

The result? During the times measured, there were between four and ten children present. Of two measurements, the first lasted 7 minutes and gave an average reading of 66 dBA with a peak of 79 dBA. The second result taken over 15 minutes later in the day gave exactly the same result: 66 dBA with a peak of 79 dBA.

Note the similarity to the first results from Pleasant Hill. The maximum distances are very similar at about 50 feet, but in the second case, no child was closer than 16 feet to the device doing the measurements. With an average reading of 66 dBA, about half the time the reading will be above that level, which will certainly mean an illegal noise level above 65 dBA. But of course, the children here would be able to get a lot closer than 15 feet.

The children will be within 50 feet of the property line most of the time, because that's the most likely used area. But just a random result would give a similar scattering, so the result is valid enough -- but with only ten children or less!

Next we have "The Cry of the Child and its Relationship to Hearing Loss in Parental Guardians and Health Care Providers" by Lindsay Calderon, Ph.D., Logan D. Carney, Kevin Kavanagh, M.D., Eastern Kentucky University

This was a controlled experiment with a calibrated instrument that was reading slightly low, but the authors decided not to correct the results because it was reasonably close. The point being, the readings were guaranteed to not be high.

This was not a playground test involving interaction with other children, but just an office setting. "The mother or guardian of each participant was present to comfort the child throughout the medical exam and ensure the environment was routine and unencumbered."

Further relevance comes with the ages most likely to be noisy: "Interestingly, all of the recorded sound levels fell between 99-120 dB(A) of sound pressure; children presenting the greatest risk for intense cries with potentially harmful sound intensities were between the ages of 9 months and 6 years. This study found that elevated noise levels produced from crying children can cause acute discomfort and pain to those exposed."

Measurements were made with a reference distance of 12 inches, which is the norm, with the microphone turned at a right angle to avoid direct input. They recorded "an average crying sound intensity of 112 dB(A) with a range of 102 to 120 dB(A)." The highest ranges were those three years old and above. When corrected for the age of expected children in the proposed day care, the average peak goes up to over 118 dBA.

With a standard session of about 45 minutes, it's reasonable to project that such an event would happen at least 8 times per day per pupil, giving an average 118 dBA blast about 96 times per day.

The furthest possible distance from the property line in the proposed play area is about 85 feet, looking at the applicant's map. Using the standard free-field attenuation of 6 dB per

doubling of distance, if you start with the 118 dB you get about 80 dBa at 128 feet. That's the average. If you adopt the 120 dBa peak figure, it's 81 dBa.

And since some of these events won't happen in the furthest possible corner, it is certain there will be at least one during the year that will be within 64 feet, which would give a value of 84 dBa at the property line. But in the real world, it's likely to happen even closer, with readings over 90 dBa. Here's a chart so you can see how it works out. You need only subtract 2 for the average rather than peak number. Over the course of a year, it will certainly exceed 90 dBa at the property line, and probably 100. Bear in mind this is the noise level from one child only, with no contribution from the other 11.

120 dB(A) @ 12 inches, expressed as feet for convenience.

Feet	dB(A)
1	120
2	114
4	108
8	102
16	96
32	90
64	84
128	78

In another test using more (but younger) children. they recorded a peak of over 103 dBa in over 75% of children, measured at 18 inches. Only one out of 20 was older than 3 years, where the max values generally occurred. Even so, that give us 9 out 12 children emitting a minimum of 70 dBa sound at the lot line during any given 37 minute period, for an average of 14 events per hour. All day. That's far beyond legal limits, and the absolute minimum possible if they were all crowded at the far end of the play area. The max value at 18 inches, by the way, was 110 dBa, which is 2 less than would be expected from the 12-inch measurements. However, that is well within the margin of error and a real possibility in the proposed play area: 110 dBa at the lot line.

Bear in mind that the reduction shown in the chart above is actually a bit low. The 6 dBa reduction for doubling distance assumes a point source of the sound, plus a free field expansion. Since vocal apparatus is directional (surely you've noticed this) sound does not radiate equally through a hemisphere as in a free field. But more important, when sound comes from a tube or other horn-shaped system (like a human) the reduction is only about 3 dBa for some distance -- related to the diameter and shape of the source -- and later begins to approach the 6 dBa reduction. (<https://www.acoustical.co.uk/distance-attenuation/how-sound-reduces-with-distance-from-larger-non-point-sources/>)

In view of that, it's essentially impossible for the applicant to demonstrate that the sound level will not exceed 75 dBa. It's even more unlikely that it won't exceed 65 dBa twice in one hour, separated by more than ten minutes, in any given day, much less during the duration of the permit.

That should be quite enough, but the next is the "unpersuasive" example I cited during the original hearing. With a bit more explanation, maybe it will persuade after all. At issue was a Montessori school in Davis, California, a town with which I have been familiar since the 1970s, which explains part of the reason it's so memorable to me. But the story itself is compelling enough to stick in just about anyone's mind.

<https://www.davisvanguard.org/2009/08/noise-problems-continue-to-plague-neighbors-of-montessori-day-care-center/>

The tussle over the noise from this Day Care ran for over 15 years. At one point, the owner decided to get a professional sound reading in dBa, convinced it would prove the operation was in compliance. The neighbors agreed to cooperate, but when the results came in, the owner refused to pay the fee to publish the report. So the neighbors paid the company instead. The most interesting result was taken in the house closest to the play area, where the number I remembered -- 90 dBa -- was recorded. Inside the house. With the double-pane windows and doors shut.

Some aspects of the operation are similar to the proposed business here, and others are not. The play area in Davis was actually a bit larger, about 85 x 105 feet. But the distance to the nearest house from the property lines was only about 23 feet. Further, there were a maximum of 70 children outside (usually less). So there's a little fudge in the numbers no matter what we do. Reducing the number of children by half three times gives us 8-1/4 children at 81 dBa. Doubling the distance from the lot line requires removing another 6 dBa, giving us 75 dBa inside the house. Considering that the Matthews play area is smaller, involves more (12) children instead of 8-1/4, and the nearest house is at 52 feet rather than 46, the numbers will correspond reasonably.

The upshot? We can expect a maximum noise level of about 75 dBa inside the neighbor's house. Even if it's off by 10 dBa, that would mean they would be subjected to a sound level -- inside their house -- equivalent to the maximum allowed by law at the property line during most of the day.

Does that qualify as a nuisance? Easily. In fact, the World Health Organization (<https://www.who.int/docstore/peh/noise/Comnoise-4.pdf>) considers children playing outdoors to qualify as an annoyance when it gets to 55 dBa, which is going to happen even inside nearby houses, not to mention their yards.

The Davis operation was notable in a couple of other ways. For one thing, it was obvious for years that the day care was illegally loud, but the city did nothing about it. In fact, the mayor described the noise as "the natural and delightful noise of children. He openly wondered who could object to the sounds of children, implying that those who did were simply being selfish and insensitive."

This points out why the neighbors have to try so hard to stop this before it gets started. The County has shown a similar sympathy toward day care. The requirements for testing sound levels cannot be met by the county due to lack of training and equipment, so it will fall to the neighbors to hire out those tests, and it will require taking the matter to District Court to settle. This process could take quite some time and involve considerable expense, but the eventual outcome is not in much doubt.

This would not be just some situation that arose naturally. It's a business that requires a Special Use Permit issued by the county -- so it is an open question who will end up absorbing the costs of proving what should be obvious from the evidence already presented.

Here are a few more brief points about decibel levels:

Design of Child Care Centers and Effects of Noise on Young Children  
by Dr. Lorraine E. Maxwell & Dr. Gary W. Evans of Cornell University; from DesignShare.com  
"The decibel levels in these studies ranged from 95 to 125 dBA peak. "  
<http://www.earlychildhoodmichigan.org/articles/12-03/Cornell12-03.htm>

Child Voice and Noise: A Pilot Study of Noise in Day Cares and the Effects on 10 Children's Voice Quality According to Perceptual Evaluation

Anita McAllister, Svante Granqvist, Peta Sjölander and Johan Sundberg

"Two omnidirectional electret condenser microphones (TCM 110, AA- video, Linköping, Sweden) were used and placed directly in front of the ears on each child .... The mean all-day noise level for the three day care centers was 82.6 dBA Leq, ranging from 81.5 to 83.6 dBA Leq." (Leq. is "equivalent continuous sound levels" or average sound over the measured period. Note this is 10 children rather than 12).

"Generally, a baby's cry can be about 130 decibels"

<https://abcnews.go.com/Travel/crying-baby-hearing-loss-jean-barnard-claimed-lost/story?id=11253932>

Two examples that will show up in any casual search:

A normal shout: 90 dBA

Full blown scream: 120 dBA

(<https://www.alpinehearingprotection.co.uk/5-sound-levels-in-decibels/>)

"As for the sounds of young children shouting and crying, babies can cry at around 110 decibels, and may be more damaging than other types of 110 decibel sound, as Dr Backus explains. Babies tend to cry at a particularly piercing pitch, measured as 2-4 kilohertz – where our ears are more sensitive – which could potentially do more damage to our hearing than other frequencies." (Note this is crying, not screaming, which meters louder).

<https://www.dailymail.co.uk/health/article-3384688/Can-having-CHILDREN-wreck-hearing.html>

"You will still hear loud crying, which can exceed 120 decibels (1 ft / 0.3 m) / 100 decibels (8 ft / 2.4 m)."

<https://noisyworld.org/block-out-baby-crying-sounds/>

I have to include this one because it is from the same source as the original chart the applicant used to claim 12 children will emit 60 dBA: "In recent studies[1] daily noise exposure for young people in schools in the UK averaged 72dB(A)" (<https://pulsarinstruments.com/solutions/classroom-noise/>)

In reviewing all these sources (and more) it's interesting to note they converge, with little variation, on the figure of about 80 dBA *or more* for the maximum predicted level of exposure at the lot line. Considering that 75 is the legal limit, the issue should be quite clear. But it is certain there will be more than 65 dBA traversing the lot line several times an hour.

Consequently, that constitutes near absolute proof the business will be illegal, considering it will be outdoors all day. But bear in mind, there is no need for nearby owners to prove anything -- it is the job of the applicant to prove it is unlikely those sound levels will be exceeded. And in view of the evidence presented, that is simply impossible.

Right now, there is no sound barrier at the property line. Since we have at this point no idea what the applicant is proposing, a new fence could be part of the deal. But what if, instead of a fence, a sound wall were put up? (Remember, we have to anticipate all contingencies).

From a legal point of view, it would make little difference. The most likely barrier would be wood, which turns out not to block sound very well. Further, it would not change the lot line,

but move the sound meter perhaps just a little higher (typically six feet). So no, that wouldn't make much difference at all.

A 10-foot cinderblock standard sound wall might make a difference near the wall, and would attenuate the readings a bit at the top, but still would almost certainly yield an illegal trespass. Also, the sound will tend to bend over the wall, so after a relatively short distance it will have made only minimal difference.

And of course, what if instead of the original plan, the day care were to move indoors for 50 minutes out of each hour? That would solve the 65 dBA issue, but since there's equally strong proof that the sound level will exceed 75 dBA, the operation would still be illegal.

Now for a little statement of opinion.

It's easy for anyone not in the direct line of fire to criticize my neighbors for not wanting this business disturbing their peace and degrading their comfort. I could say that myself. Our house is somewhat blocked from the play area by the Matthews residence, and is further away. I doubt it would be anything more than a mild annoyance most days. But I could be wrong, and that would be very irritating for many years.

The major problem is the four houses directly exposed to the open play area, with nothing much at all between them and this operation. Two of them are even closer than my own experience living across the street from a preschool of about the same size. One of them less than half that distance.

The noise was simply amazing. Even with the door and windows shut, 120 feet away from the closest part of the play area, it was distracting to the point of forcing us to move to the other side of the house. Going outside without ear protection was at times somewhat painful. I would plug my ears with my fingers.

I would not wish that on anyone.

We sold the house.

## Appendix A: Noise Weighting Scales From OSHA Technical Manual

### A-weighting:

A measurement scale that approximates the "loudness" of tones relative to a 40-dB sound pressure level, 1,000-Hz reference tone. A-weighting is said to best fit the frequency response of the human ear: when a sound dosimeter is set to A-weighting, it responds to the frequency components of sound much like your ear responds. A-weighting has the added advantage of being correlated with annoyance measures and is most responsive to the mid-frequencies, 500 Hz to 4,000 Hz.

This is the scale Los Alamos County uses (and almost everyone else). Note that the primary frequency of a child's scream is usually about 550 Hz, and the primary harmonic is about 2000 Hz: the "fingernails on the blackboard" frequency. Which is a technical explanation of something virtually everyone knows: screaming children are irritating.

## Appendix B: The notoriety of Los Alamos

Some Commissioners may recall a statement made at the previous hearing, "Los Alamos, according to CYFD, which is the state regulator of child care facilities, says that Los Alamos is notorious for not granting these, these exceptions, therefore there are no licensed home child cares in this town"

Nobody asked at CYFD thought the first statement was correct, and there is licensed home child care in Los Alamos. So it was, and is, completely incorrect.

## Appendix C: Outdoor Day Care Is Probably Illegal Anyway

There are two mentions of outdoor business in county ordinances.

County Code Section 16-277.- - Home occupations (1) a. states clearly "The home occupation or profession shall be carried on within the main building, an enclosed garage or other accessory building, or any combination of these, except agricultural, horticultural or animal husbandry uses may be carried on the outside of a building."

It would be fun to see an argument that day care is "animal husbandry."

The other mention appears in Sec. 16-282. - Day care (c)(9) "No outdoor activities for children shall be allowed before 7:30 a.m. or after 6:00 p.m." The County will inevitably argue this means outdoor activities are otherwise allowed, but it turns out that interpretation is probably incorrect (you never really know what a court will decide). However, arguing such complex law is beyond the scope of P&Z, and unlikely to be fruitful in this venue.

It is mentioned only to preserve it for possible future needs.

Thank you for your patience,

David North  
111 La Senda  
White Rock, NM 87547

d@vidnorth.com  
505 695-5808

January 31, 2022

Chair Priestly and Members of the Planning and Zoning Commission,

I am writing with regard to the proposed daycare at 113B La Senda Rd, Cases SUP-2022-0020 and SUP-2022-0021, since I live within 300 feet of the site.

Before coming to Los Alamos, while caring for my mother, my husband and I lived for a short time at a house across the street from a kindergarten playground (see attached diagram). The nearest corner of the playground was approximately 120 feet from one of the house's bedroom windows.

The noise of approximately 15 kindergarteners all trying to out-shriek each other was sometimes deafening, even with the windows closed. Certainly it would have been difficult to sleep or work in that room.

After my mother passed away, we briefly considered moving to that house permanently, but the proximity to the school was one of the factors that dissuaded us. Indeed, when we were house-hunting in Los Alamos, we considered and rejected two houses on the basis that they were too near schools, and we didn't want to deal with the noise and traffic. We ended up in La Senda partly because of its peaceful, natural environment.

We are not child haters, as some of the arguments in the previous round of discussions have tried to imply. Several families in the area have children, and no one complains about the sounds of a few children playing, or the occasional larger gathering. That is very different from having a professional day care operation with twelve pre-school aged children outdoors all day, day after day, year after year. There are people who don't mind that level of noise; they may choose to buy homes near pre-schools or day care facilities (or airports or railroad tracks) where noise is to be expected. People buying houses in La Senda had no such expectation. An outdoor day care would very much change the character of the La Senda neighborhood.

The Comprehensive Plan repeatedly stresses "protecting the character of existing residential neighborhoods". It's listed as the very first goal under Housing on page 62, and is repeated in many other places throughout the Comprehensive Plan. Adding a noisy outdoor business is in clear opposition to that goal. In addition, it violates County Code 18-72 (the noise ordinance) and is prohibited by the covenants of the La Senda HomeOwners' Association, which has refused a permit for at least one (indoor, not outdoor) daycare in the past.

I urge you to deny the application for SUP-2022-0020 and SUP-2022-0021.

Thank you,

Akkana Peck



Dear Planning And Zoning Commissioners,

I am a neighbor within the 100-yard radius of 113 B La Senda Road, White Rock, New Mexico, where the present owner, Denise Matthews, would like to conduct an in-home daycare facility for up to 12 children from 3-6 (or more) years of age. The following comments are made in hope to disallow such a business in the La Senda residential area at any future time.

As a 31-year-veteran early childhood educator I would like to comment on the amount of noise a group of twelve 3-6 year-old children create. As background information, I taught grades kindergarten through fifth grade in three states over my lengthy career. A majority of my experience was teaching grades kindergarten through third grade which is the early childhood stage of development for children. I taught kindergarten students, ages 5 and 6, for the longest period of time which is 12 years. I originally made this verbal comment on the noise created by young children during the very first virtual public hearing and meeting of the Los Alamos County Planning and Zoning Commission on June 10, 2020. Whether these children are inside a building or outside there is a great deal of noise. This is not a good or bad trait, it is a plain and simple fact. This age range is excited about learning and discovering their environment. Thus, they are very verbal and want to share information and ideas with each other. They do not have a "noise filter" on their voices and cannot judge how much noise they are making. When this age range gets together in one group, the noise generated will increase approximately as the square of the number of children in the group, because each child can interact with all the others. For example, a group of twelve children will generate about four times as much noise as a group of six. That doesn't mean they will get that much louder, it means they will be getting loud that much more often, and that much more consistently.

We can already hear their boy when he's out playing in the yard, even with our windows and doors closed. It's not too loud, but it's worrisome because one child playing alone is usually comparatively quiet. The amount of noise generated by a group of 12 children aged 3-6 years will definitely affect nearby neighbors. Location of such a daycare facility will be mostly in the Matthews' yard which abuts our backyard. Not only will the children's noise be heard in the open yard area, but it will reverberate off the Matthews' extensive residence -- ideally shaped to reflect sound toward the nearest neighbors -- and come back our way as well. So we will get a double dose of noise created by that group of children.

I would like to speak to another matter regarding available childcare facilities in Los Alamos County. One of the arguments for allowing such a daycare to exist in this residential location is the lack of daycare facilities. There is no dearth of childcare facilities in Los Alamos County. According to the June 3, 2021, Los Alamos Daily Post issue there are at least eight established preschool/daycare facilities in Los Alamos County. In addition Los Alamos Public Schools have five elementary schools that provide pre-Kindergarten preschool. Each school can service 30 students in two classrooms with one teacher and one instructional assistant per classroom. Los Alamos Public Schools also services children ages 3-4 in special education pre-Kindergarten preschools at two elementary school sites.

Another argument is that the lab finds it harder to hire young employees because there isn't enough day care. Maybe the Commission and county staff don't know the lab can solve that problem any time they want. "Federal agencies have the authority to establish workplace child care centers for federal families by donating space in their buildings for that use. At least 50 percent of the children enrolled in a child care center must be children of federal employees. Remaining available slots may be open to the general public," (Federal Workplace Child Care). "There are about 100 child care centers operating in General Services Administration-managed federal space, plus many others run by other agencies, including some at Defense Department facilities that are open to children of both military and civilian personnel, with the former category getting priority however."

There really isn't any need to put these businesses in residential neighborhoods.

The Commission may also want to consider that the state now requires a minimum of 50 square feet of open space per attendee at preschools, kindergartens, etc. Bathrooms, closets and other dedicated areas are not included in that allowance. This from the New Mexico Public School Adequacy Planning Guide ([https://webnew.ped.state.nm.us/wp-content/uploads/2017/12/COB\\_Misc\\_Reference\\_AdequacyPlanningGuide.file\\_.pdf](https://webnew.ped.state.nm.us/wp-content/uploads/2017/12/COB_Misc_Reference_AdequacyPlanningGuide.file_.pdf)). While this does not legally apply to private schools, it is nevertheless true that the state would consider a 523 square foot facility woefully inadequate for a day care with 12 children. Especially considering there is no floor plan, no indication of the room taken up by bathrooms, storage or other obstructions to the open space area, or even if the indicated 523 square feet is an interior or exterior measure.

Your consideration in this matter is appreciated.

Sincerely,

Marilyn Smith  
116 Piedra Loop  
White Rock, NM 87547

Commissioners,

There is a clause in the La Senda Covenants, Conditions and Restrictions (CC&Rs) that forbids any business of this sort. Further, there is a precedent specifically denying operation of a day care in La Senda.

Unfortunately, at the last hearing on this matter there was a fairly important mistake. The Commission was told there was nothing in the CC&Rs that addressed an operation of this sort. That could not have been more wrong.

There is a section titled "E. Nuisances," the full text of which is, "No noxious or offensive activity shall be conducted or carried out upon any lot. Nor shall anything be done thereon which is likely to become an annoyance or nuisance to the neighborhood." (See exhibit 1).

While this is general in nature, it was pivotal to refusing an application for a similar business a few lots away, at 101 Piedra Loop. After a hearing before the La Senda HOA Board, a letter of denial was sent, saying in part, "...after careful consideration, the board voted against supporting your plans to open such a daycare establishment on Piedra Loop in La Senda. Your proposal is inconsistent with the zoning requirements of a Residential/Agricultural (R/A) zone and is not permitted by the County's zoning of our residential area nor supported by LSHOA's covenants." (See exhibit 2).

Note the specific mention of the covenants.

The refusal of this application was mentioned at the hearing for the previous application, but no proof was offered and it was not clear that the CC&Rs were instrumental, or even why it was refused. Consequently, the Planning & Zoning Commission (P&Z) did not find it persuasive.

But it is crucial. It sets a legal precedent that supersedes other arguments based on county ordinances, because the CC&Rs are restrictions above and beyond the local ordinances. The County has no legal right to decide anything in opposition to these restrictions, nor ignore a precedent set by the board.

In that case, the owners were attempting to sell their house to a party that wanted to open a day care, and all parties wanted to be sure the operation could be permitted. The county deferred to the HOA board, as was correct, and subsequently the owners, who still live there, were unable to sell their house. (See exhibit 3).

We know of no record that the county attempted to contact the HOA before holding a hearing on the Special Use Permit for the current

proposed operation. The CC&Rs do state the HOA is the preferred vehicle for hearing these matters, but at that time it was listed as inactive with the state. Whether this played any part in the county's decision is unknown to us. However, the HOA has since been reactivated, which is a trivial matter of submitting a form and paying the annual fee. So had any of the listed board members been contacted about a hearing, they could have reactivated and fulfilled their role. The county should have followed that route to begin with, and the resolution may have been faster and less expensive as a result.

But the status of the HOA is not relevant to the standing of the precedent. The CC&Rs, as you no doubt know, travel with the property, not the HOA. The county can and should follow and enforce them. The same is true of District Court, if need be.

Note that the wording is "Nor shall anything be done thereon which is likely to become an annoyance or nuisance to the neighborhood." It is not necessary for objecting neighbors to establish that it is or will be annoying, but just that it is likely to eventually become annoying. Further, it puts the burden on the applicant to prove that it is more likely than not that the neighbors will not be annoyed at any time in the future.

We already know the HOA board said it would. That should settle the issue. However, it is prudent under the circumstances to pursue all reasonable avenues for evidentiary reasons.

So the next question is, can we establish what is a nuisance, or annoying? It's pretty simple in Los Alamos County, especially when it comes to businesses in residential areas. County Code Sec. 16-277. - Home occupations (1)(f) states, "There shall be no noise, vibrations, smoke, dust, odor, heat or glare detectable beyond the boundaries of the lot on which the home occupation is located, so as to constitute a nuisance."

Some of those are unlikely, but others are not, and one is absolutely certain: there will be noise. And it is officially a nuisance in Los Alamos.

The county may be able to argue their ordinances offer an exception for child care, but that is not relevant here. The CC&Rs make no exception for any reason whatsoever, and do not make any special exception for child care, preschool, private schools, or in any other way that could grant permission to the proposed operation. And the CC&Rs override the county's exception.

As the nearest neighbor, our house was estimated to be about 100 feet from the play area at the original hearing. It is actually 52 feet away, and that's definitely close enough for 12 kids and two adults to be annoying. That is closer than most people might guess. For example,

if you stand at the edge of the "dance area" at Ashley Pond and face the pavilion, you're about 52 feet from where the musicians typically place their speakers. There is not really any significant fencing, trees or anything else to buffer the play area from our house (see Exhibit 4, taken from our house).

But is there any quantifiable measure of annoyance? There is, according to the World Health Organization. They set the level at 55 dBA. Other measures fall into this same range, so it's a reasonable estimate.

At St. Annes Primary School in Stafford, a remarkably thorough and careful series of measurements of a play area with 4-10 children showed an average of 62 dBA measured at the door of a neighboring house 16 feet from the property line. That's an average. The peak value was 79 dBA. The result at the property line would have been much higher. Notably, their recommendation to reach acceptable sound levels was "the construction of a noise barrier and the restriction to a maximum of 4 children at any one time."

Measurements at Pleasant Hill Child Care indicate a sound level at the neighboring border averaging 66 dBA with a peak value of about 81 dBA. It's reasonable to expect about half the time the noise level will run between 66 and 81 dBA, well above the WHO level for annoyance. Since the source is approximately the same distance as that to the next house, there the sound level will peak well over 70 dBA. That is surely annoying.

But what if there's a fence? It's not easy to get reliable numbers, but perhaps the most scientific analysis was the "Parallel barrier effectiveness : Dulles noise barrier project" available at the National Transportation Library (<https://rosap.ntl.bts.gov/view/dot/8968>). "The barrier site contained two 14-foot high experimental barriers ... arranged to have absorptive and/or reflective faces ... The equivalent site, directly adjacent to the barrier site, was a 250-foot wide flat, grassy, open field with the same physical characteristics as the barrier site." Conditions are reasonably similar to the proposed day care.

The material used was measured as more effective than concrete when in absorptive mode, and even so the best result they got was near the wall, where the level dropped 16 dBA compared to similar measures without the wall. However, as the apparatus moved away from the wall to the approximate positions where nearby houses would be, the effectiveness dropped to as low as a 3 dBA reduction, due to the tendency of sound to bend over a barrier.

Bear in mind this is a solid 14-foot high barrier covered with acoustic dampening material.

Even a drop of 16 dBa near the wall would still leave peak noise levels over 65 dBa, and a drop of 3 dBa at the house location would still leave levels well above the WHO indication. But any fence proposal would not be anywhere near that effective.

So, it's pretty much certain to qualify as annoying from a noise standpoint, which makes it impossible for the applicant to prove it is unlikely to annoy.

There may be other potential annoyances to take into account. At this point we do not know the age range for the proposal, but previously it was 3-6 years old, or perhaps more. By including children of 5 or 6 years of age, it becomes a private school because of the Compulsory Education laws requiring all children past their 5th birthday to attend school.

While this involves no additional certification or permits in New Mexico, it does lead to some additional annual filing requirements not mentioned by the county. However, they are trivial and need not trouble the Commission.

Whether it is a school for purposes of liquor (or drug) purposes has been taken up before, in REGENTS OF UNIV. OF N.M. V. HUGHES, 1992-NMSC-049, paragraph {29} "The Liquor Control Act does not define the word "school." The word is defined, however, in our Public School Code. NMSA 1978, Section 22-1-2 (Cum. Supp. 1992), defines a school as "any supervised program of instruction designed to educate a person in a particular place, manner and subject area." This included day care operations where no certified instructors were present.

This places a couple of annoying encumbrances on the neighborhood. Since it is a school, it places the following restriction on the entire area: "It is a misdemeanor to willfully interfere with the educational process of any private school by an act that would disrupt the functioning of the school." State law NMSA 1978, §30-20-13.

This is similar to LA County Code Sec. 28-120 (d) "No person shall willfully interfere with the educational process of any public or private school by committing, threatening to commit or inciting others to commit any act which would disrupt, impair, interfere with or obstruct the lawful mission, processes, procedures or functions of a public or private school."

The fact that the act has to be willful is not much comfort, since it won't be easy to prove any interfering act does not qualify. Nor is there any indication of the degree or type of interference that might be at issue. So at the very least, there is some reason for the neighbors to worry, and that certainly is annoying.

Then there's NMSA 1978 §30-31-2, 'A private school and area within

1,000 feet of the school property line is a "drug-free school zone."

There are two problems here. First, it's very unclear what substances are prohibited. It's not just illegal drugs, but also perfectly legal drugs without a prescription, precursor chemicals for those drugs, and drug paraphernalia. Even fentanyl tests. Penalties are more severe, and while this may be of little trouble to most nearby neighbors, it could serve as a particular complication for people visiting who are unaware of this status, and for people simply nearby for no particular reason with a small quantity of some controlled substance. And finally, the laws on cannabis cultivation and use in the open air are evolving and it's unclear what future effects might be, which argues strongly that it may indeed become a significant annoyance.

As another complication, if there is to be a significant effect on people within 1000 feet rather than just 300 feet, notification of all those properties may be required in order that they may weigh in on whether they wish to have this restriction in their neighborhood.

Sincerely,

Patricia Thames  
115 La Senda Road  
White Rock, NM 97547

Exhibit 1

**B. ARCHITECTURAL CONTROL.** No building shall be erected, placed, or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony or external design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on any lot nearer to public road than the minimum building setback line.

**C. BUILDING LOCATION.** No building shall be located on any lot nearer than 35 feet to the front lot line, 35 feet to a side lot line abutting a public road, 25 feet to a side lot line not abutting a public road and 25 feet to a back lot line abutting another lot. No building housing animals or designed to house animals shall be located on any lot closer than 50 feet to a side lot line, 50 feet to a back lot line abutting another lot and 45 feet to a dwelling on the same lot. For purposes of interpreting this covenant, a front lot line is defined as any lot line immediately adjacent to or abutting a public road right of way. Eaves and steps shall be ignored in computing required setbacks for building locations. All setback distances shall be measured perpendicular to the tangent to the lot boundary at that point.

**D. EASEMENTS.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plats. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

**E. NUISANCES.** No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

**F. SIGNS.** No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

*Michael J. ... 1/18/22 ... 3/1/22*  
FOR THE ...

*La Senda*

**HOMEOWNERS**

**ASSOCIATION**

---

**P.O. Box 4851**

**Los Alamos, NM**

**87544**

Ms. Odalys Fernandez  
437 Pruitt  
Los Alamos, NM 87544

Dear Odalys,

The Board of Directors of La Senda Homeowner's Association (LSHOA) thanks you for attending the board meeting on October 23, 2007. We appreciate the hard work you did to prepare the informative presentation you put before the Board regarding your plans for a bilingual Montessori daycare and preschool.

We do recognize the need for additional daycare in White Rock, but after careful consideration the board voted against supporting your plans to open such a daycare establishment on Piedra Loop in La Senda. Your proposal is inconsistent with the zoning requirements of a Residential/Agricultural (R/A) zone and is not permitted by the County's zoning of our residential area nor supported by LSHOA's covenants. Our covenants are clearly based on keeping La Senda a residential subdivision and do not support a business with your proposed number of employees or with the associated increase in traffic in and around the residences close to your proposed school.

Again, thank you very much for your presentation. Please accept our warmest wishes in the successful pursuit and fulfillment of your plans to establish a daycare establishment in White Rock.

Sincerely,

Pat Roberts  
President

President:  
Vice President  
Secretary  
Treasurer

Pat Roberts  
Chuck Martin  
Bobbie Simpson  
Lynne Johnson

Tish Thames  
115 La Senda Rd  
White Rock, NM 87547

RE: La Senda Homeowners Association

The meeting of the La Senda Homeowners Association, in October 2007, in the presence of the prospective buyer, and us resulted in the Board of Directors voting against the Bilingual Montessori Daycare and Preschool being established in La Senda.

Los Alamos County deferred to the La Senda Homeowners Association to approve or disapprove the Daycare proposal.

The La Senda Homeowners Association Board of Directors sent a letter to the prospective buyer stating that the proposed Montessori Daycare and Preschool proposal was inconsistent with the residential/agricultural zoning in LaSenda. Thus, we lost the opportunity to sell our house to the Montessori/Daycare.

Kenneth and Sandra Johnson

Kenneth J. Johnson

Sandra K. Johnson

Notary Cheryl N. Vigil Date 12/30/2021

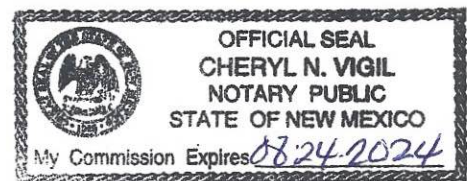


Exhibit 3

Exhibit 4



**APL-2022-0020  
FEBRUARY 9, 2022,  
PLANNING AND ZONING COMMISSION  
MEETING**



LOS ALAMOS

# County of Los Alamos

1000 Central Avenue  
Los Alamos, NM 87544

## Agenda Planning and Zoning Commission

*Rachel Adler, Chair; Neal Martin, Vice-Chair; Jean Dewart; Terry Priestley; Michelle Griffin; Stephanie Nakhleh; Beverly Neal-Clinton; Rodney Roberson, and April Wade, Commissioners*

Wednesday, February 9, 2022

5:30 PM

This meeting will be  
conducted remotely, via Zoom.  
1000 Central Avenue

Members of the public can join this meeting session to make public comment, via Zoom, by pasting into their browser the following URL:

<https://us06web.zoom.us/j/82392149707>

Or, by telephone:

US: +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7

Webinar: 823 9214 9707

1. CALL TO ORDER/ROLL CALL

2. APPROVAL OF AGENDA

*This section of the Agenda is reserved for comments from the public on items that are not otherwise included on this Agenda.*

3. PUBLIC COMMENT

4. PLANNING AND ZONING COMMISSION BUSINESS

A. [15510-22](#) Minutes from the Planning And Zoning Commission Meeting on January 26, 2022.

Attachments: [P&Z\\_MeetingMinutes26-Jan-2022](#)

5. PUBLIC HEARING

A. [15536-22](#) CASE NO. SUP-2022-0020. Denise Matthews, dba Worms and Wildflowers Daycare, is seeking Special Use Permit approval for a daycare facility to provide care, service and supervision for a maximum of 12 children at her residence addressed as 113 B LA SENDA RD. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A).

Attachments: [SUP-2022-2020 113B La Senda Road](#)

- B.**     [15535-22](#)     CASE NO. SUP-2022-0021. Denise Matthews, dba Worms and Wildflowers Daycare, is seeking Special Use Permit approval for a Home Business, to employ more than one non-family member for a daycare facility to be located at 113 B LA SENDA RD. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A).

**Attachments:**     [SUP-2022-2021 113B La Senda Road](#)

**6.       COMMISSION/DIRECTOR COMMUNICATIONS**

**A,**     ***Department Report***

**B.**     ***Chair's Report***

**C.**     ***Board of Adjustment Report***

**D.**     ***Council Liaison's Report***

**E.**     ***Commissioners' Comments***

**7.       PUBLIC COMMENT**

**8.       ADJOURNMENT**

PLEASE NOTE: Any action by the Planning and Zoning Commission in granting approval, conditional approval or disapproval of an application may be appealed by the applicant, or by the person(s) who have a personal or pecuniary interest adversely affected by the decision as defined by Section 16-454 of the County Code. Such appeals must be filed with the Community Development Department within 15-days of the action in accordance with Section 16-492.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the County Human Resources Division at 505-662-8040 at least one-week prior to the meeting, or as soon as possible.

Public documents, including the Agenda and Minutes, can be provided in various accessible formats. Please contact the personnel in the Community Development Office at 505-662-8006 if a summary or other type of accessible format is needed.



Los Alamos County  
Community Development Department  
**PLANNING & ZONING COMMISSION STAFF REPORT**

**Public Hearing Date:** February 9, 2022

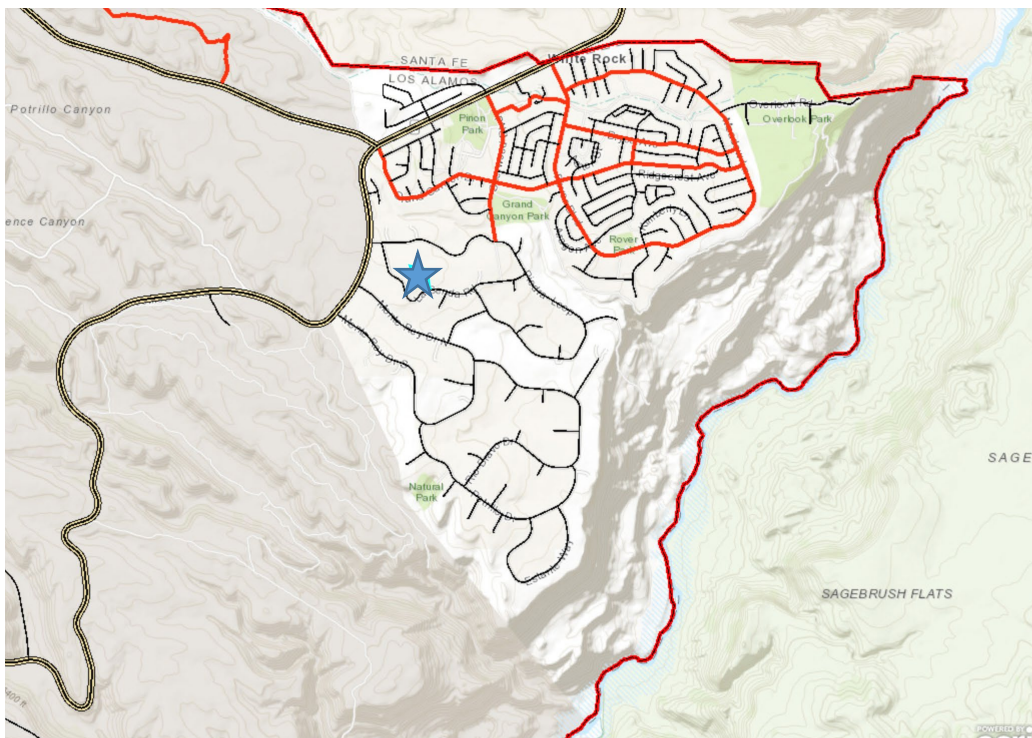
**Subject:** Case No. SUP-2022-0020

**Owners/Applicants:** Denise Matthews, dba Worms and Wildflowers Daycare

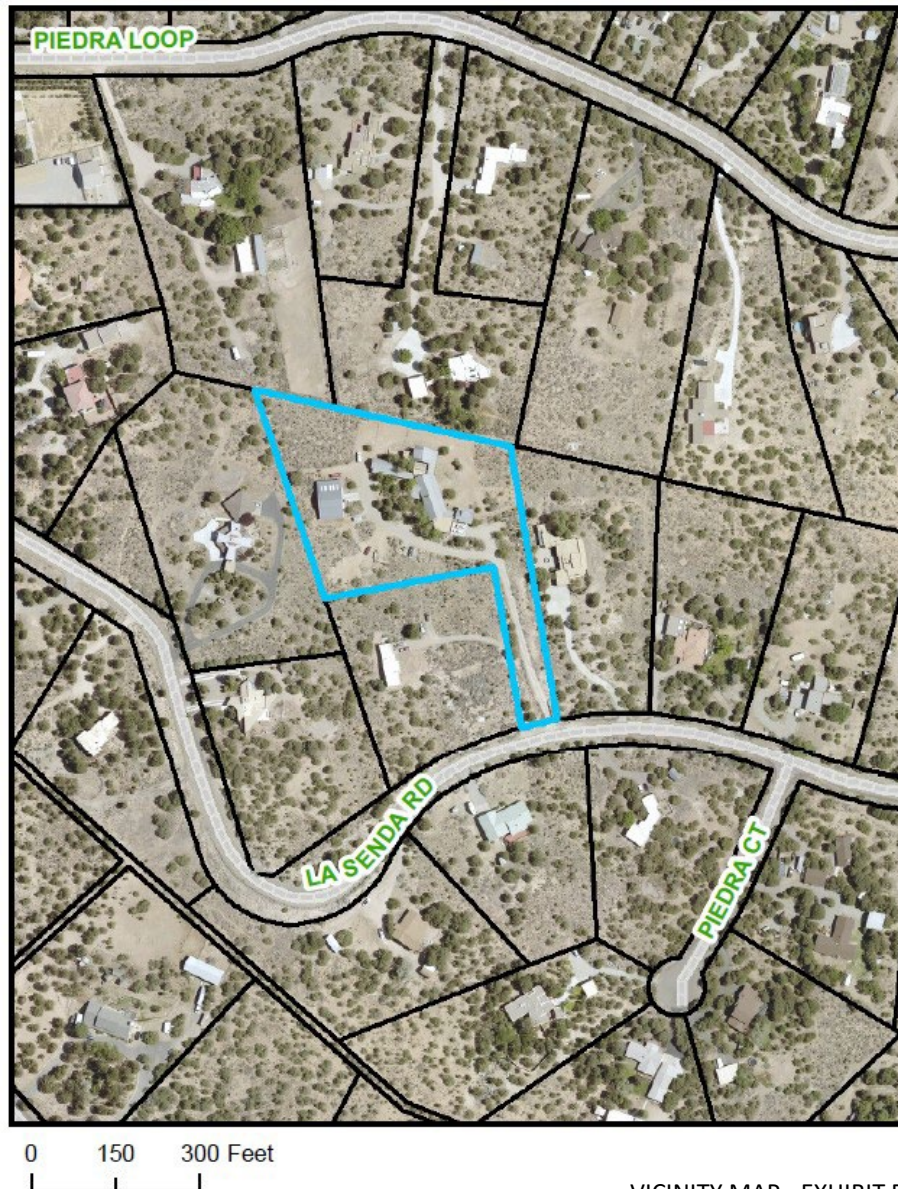
**Case Manager:** Sobia Sayeda, Senior Planner

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**CASE NO. SUP-2022-0020** Denise Matthews, dba Worms and Wildflowers Daycare, is seeking Special Use Permit approval for a daycare facility to provide care, service, and supervision for a maximum of 12 children at her residence addressed as 113 B LA SENDA RD. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A). Location and vicinity maps are attached below in **Exhibit A** and **B** respectively. An application for a request to employ more than one non-family member for a daycare facility has been subsequently submitted as SUP-2022-2021.



LOCATION MAP - EXHIBIT A



VICINITY MAP - EXHIBIT B

**BACKGROUND:** The lot, located within White Rock, contains 131,986 ft<sup>2</sup> (3-acres) and currently the property consists of a residential building, a garage, a studio, and associated parking. Additional structures on the property include a 6 foot high wire fence enclosure around portions of the east, north, and west property lines. The property consists of a flag lot with a private driveway from La Senda Road. The flag shape facilitates limited visibility to the main lot from street access. La Senda Road is a public street with its nearest intersection at La Piedra Loop, providing access from NM State Road 4.

**SPECIAL USE PERMIT DESCRIPTION:** The applicant requests review and approval of a Special Use Permit application to operate an in-home daycare facility for a maximum of 12 children. The request is consistent with the definition of a **daycare facility** as described within the Development Code, Sec. 16-9 as:

*“A home or business which provides care, service and supervision for at least four but not more than 12 children at one time for less than 24 hours per day; provided, however, that such facility is licensed by the county and state and conducted in accordance with county and state requirements.”*

*“Home business means a home occupation that employs more than one nonfamily member.”*

*“Home occupation means a business, profession or service conducted and/or operated in a residential zoning district and is clearly incidental and secondary to the dwelling purpose and does not change the character thereof.”*

According to Sec. 16-282, Daycare and Sec. 16-287, Use Index, a Daycare Facility is allowed at the subject site (R-A) with a Special Use permit (SUP-2022-0020), approved by the Planning and Zoning Commission.

The daycare facility is proposed to take place within the existing 523 sq. ft. accessory building and will operate from the hours of 8:00 am to 5:30 pm. Children will be dropped off between 8:00 am – 8:30 am and picked up between 4:00 pm – 5:30 pm. Five parking spaces are provided on-site for parent drop-off and pick-up and to facilitate two staff parking spaces. Existing six foot high wire fencing along the perimeter encloses the rear and side yards, and separates the residence from the accessory building. Fruit trees and native plants create an eight foot wide buffer to the adjacent property, 115 La Senda Road. Existing building view, site plan, existing street view, and outdoor play area are presented in **Exhibit C, D, E, and F** respectively.



ACCESSORY BUILDING VIEW FROM PRIVATE DRIVEWAY – EXHIBIT C





LA SENDA ROAD VIEW – EXHIBIT E



ACCESSORY BUILDING VIEW – EXHIBIT F

**COMPLIANCE TO CODE SECTION 16-282:** The application complies with all provisions for a daycare facility as outlined within Sec. 16-282:

***“Noise levels shall be governed by the provisions of article III, chapter 18 of this Code.”***

Article III of Chapter 18 regulates noise levels, specifically those that are a nuisance and above 53 dBA from the hours of 9 pm to 7 am and 65 dBA 7 am to 9 pm. The provision allows an additional 10 dBA for a period not to exceed ten minutes in any one hour during the hours of 7 am to 9 pm. The daycare facility will have up to 12 children between the ages of 3-6, with 2-adults from 8:00 am to 5:00 pm. Noise levels that do not adhere to this section are investigated and enforced by Code Compliance.

A Noise Study conducted by the applicant at a similar childcare facility in White Rock during peak outdoor playtime indicated the noise levels to be between 55 – 57 dBA at 55’ and 35’ distance from a similar outdoor playground setting. Los Alamos County Development Code Section 18-73 has an allowance of 65 dBA during the hours of 7 AM to 9 PM. The study is included in the application in Attachment 1. Existing special connections are presented in **Exhibit G**.



SPATIAL CONNECTIONS TO EXISTING ADJACENCIES – EXHIBIT G

A Traffic Study on La Senda Road adjacent to the subject property was conducted by the applicant upon direction from Los Alamos County traffic engineer. The analysis indicates that La Senda Road is adequately designed and will not have any adverse effects on the road by allowing the daycare facility to operate at the existing residence at 113 B La Senda Road. Traffic study results are presented in **Exhibit H**.

La Senda Road Traffic Study: Cars were counted three times throughout the day.

Date	8-9:00 AM	12-1:00 PM	4:30-5:30 PM	Total Roadway Users
1/28/21 Friday	6 Cars (including 1 school bus)  3 Pedestrians	11 Cars  1 Pedestrian	5 Cars  4 Pedestrians	22 Cars  8 Pedestrians
2/1/21 Tuesday	17 Cars (Including 1 school bus)  1 Pedestrian	5 Cars  0 Pedestrians	12 Cars  1 Pedestrian	34 Cars  2 Pedestrian

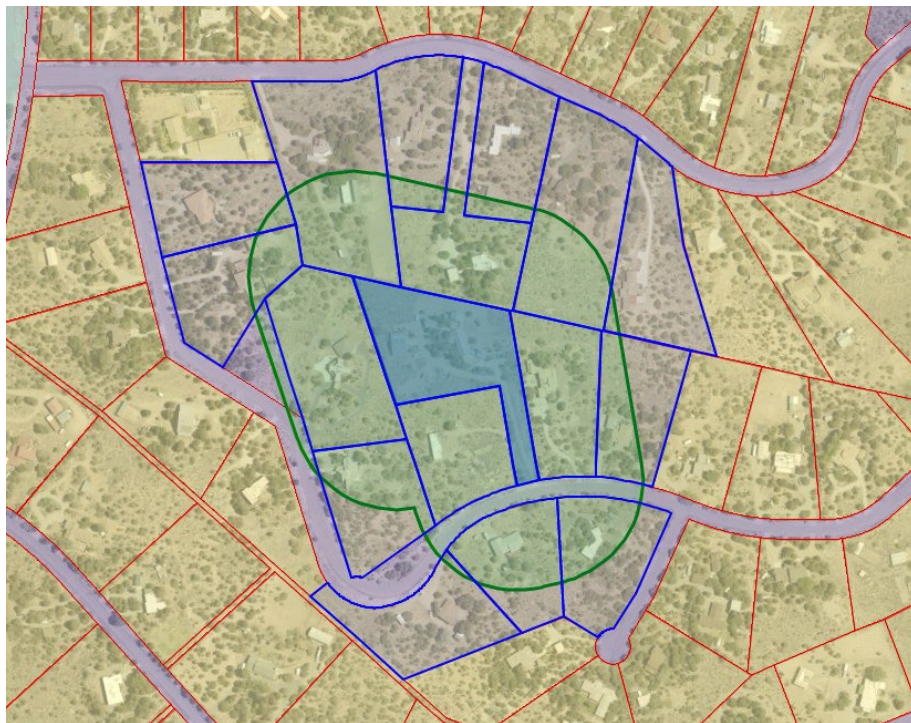
TRAFFIC STUDY ON LA SENDA ROAD – EXHIBIT H

**IDRC REVIEW:** The Interdepartmental Review Committee (IDRC) independently reviewed the application on January 9, 2022. The Fire Marshall and the Chief Building Officer noted that further information to be required to obtain a business license for the proposed homes business as a daycare facility. The Public Works Department noted that any increase in local traffic associated with daycare facility would not be significant based on existing traffic and circulation conditions.

**PUBLIC NOTICE:** Notice of this virtual public hearing has been given per the requirements of the Los Alamos County Code of Ordinances, Chapter 16, Development Code, §16-192 (a), which includes:

1. Notice of the request and meeting information published within the Los Alamos Daily Post on January 20, 2022, the County's official newspaper of record.
2. U.S. mail sent on January 20, 2022, to owners of real property within 100 yards (300') of the subject property, with Live Stream access and contact information to obtain a participation link. This format complies with the New Mexico Department of Health's public emergency order governing mass gathering due to the COVID-19 pandemic.
3. Notice of the request and meeting information posted at the Los Alamos County Municipal Building.
4. Notice of the request was posted on site at 113 B La Sedna Road fifteen days before the meeting.

As of February 4, 2022, staff has received several responses from adjacent property owners within 100 yards. All responses are included in Attachment 4.



Public Notification Map, EXHIBIT E

## **SITE PLAN APPLICATION CRITERIA:**

***(1) The request substantially conforms to the comprehensive plan, and the establishment, maintenance or operation of the use applied for will not under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort or general welfare of persons residing or working in the vicinity of such proposed use, or be detrimental or injurious to property or to the value of property in the vicinity, or to the general welfare of the county.***

### **Applicant Response:**

My in-home daycare will serve a small group (12 or less) of children and operate during normal business hours of 8:30-5:00. The daycare will be licensed by the state CYFD guidelines that maintain a safe and healthy environment for all involved. My ratio of children to adult will be kept to 1:6, requiring me to hire one other employee. This employee will be background checked and have no criminal background, a requirement to work with kids. The daycare will take place in an existing building on our property and not require the construction or destruction of any buildings. We will complete the modifications needed to meet the county code in order to operate a day care facility serving up to 12 children. This daycare will add an important resource to the community as daycare providers are in high demand, with many daycares having extended waitlists.

### **Staff Response:**

Staff supports this position as economic vitality is a strategic focus identified within the Comprehensive Plan through the promotion of a diverse economic base and encouragement of new business growth. A daycare facility and home business use are permitted within the R-A district, subject to Planning and Zoning Commission review and approval as a Special Use. The use will not be detrimental or injurious to the general welfare of the community but will provide a needed community resource to the county's large workforce.

Upon review of a Noise Study conducted by the applicant at a similar childcare facility in White Rock staff finds that during peak outdoor playtime the noise levels are indicated to be between 55 – 57 dBA at 55' and 35' distance from a similar outdoor playground setting. Los Alamos County Development Code Section 18-73 has an allowance of 65 dBA during the hours of 7 AM to 9 PM.

Based on this evidence, staff finds that the sounds normally and naturally associated with the operation of this day care facility including voices of groups of children engaging in outside activities such as recess and outdoor learning in a residentially zoned neighborhood in a supervised environment with an educational component is not detrimental to the health, safety, peace, comfort, or general welfare of persons residing or working in the vicinity of such proposed use or be detrimental or injurious to property or the value of the property in the vicinity, or the general welfare of the county.

***(2) There are sufficient parking facilities that are adequately designed, shielded, landscaped and lighted to serve the use applied for based on the requirements of this chapter as found in article IX of this chapter.***

### **Applicant Response:**

The nature of our property, a flag lot on three acres, has an extended driveway allowing all parking to be well off the roadway and out of sight of neighbors. We have six designated spots for parent parking (which can easily be extended) and we plan to extend our driveway to include a loop for easy turn-around. A licensed architect is designing all modifications needed to parking, including ADA accessibility. Solar lights will provide lighting to all parking areas.

**Staff Response:**

Staff supports this position as ample parking spaces are provided. Ingress/egress, including traffic circulation, would conform to all safety provisions for motorists, bicyclists, and pedestrians. Existing parking is in conformance with Los Alamos County Development Code.

***3) The provisions for on-site and off-site ingress/egress and traffic circulation are in conformance with the county's construction standards, that the public streets serving the use applied for are adequate to meet the traffic needs of the proposed use and that the proposed use will not adversely affect neighboring properties by virtue of the type of traffic generated by the use.***

**Applicant Response:**

The nature of a small home daycare business does not bring a lot of extra traffic to a neighborhood. Pick-up and drop-off hours will be the busiest, however parents will have a half hour to pick-up or drop-off allowing a spread of time for arrival and departure. La Senda road is a wide, two-way road that will not be adversely affected by the parents coming and going.

**Staff Response:**

Existing ingress and egress for the property would not change and its shape provides a private driveway for on-site and off-site access from La Senda Road. The County Engineer has reviewed this request and had no comments or concerns.

***(4) The setbacks of buildings and parking facilities from the property lines, right-of-way, and adjacent land uses are in conformance with this chapter and provide protection to and a transition from residential development, existing and contemplated in the vicinity; and that the height and bulk of the proposed buildings and structures are compatible with the general character of development in the vicinity of the use applied for.***

**Applicant Response:**

No new development will be needed for this home daycare to take place. The daycare will be located in a current studio guesthouse that was originally built on the property. This guest house is sufficiently set back from all neighbors and has parking readily available. The guest house has two entrance/exits and is directly located off our driveway.

**Staff Response:**

No new construction is being proposed and the proposed day care facility is to be located in an already existing current studio guesthouse, and that the existing buildings on the parcel are compliant with the development code standards for an R-A zoning district, and that the setbacks of buildings and parking facilities from the property lines, rights of way and adjacent land uses are in conformance with the Development Code. Further, it should be noted that this application was reviewed and approved by the County Engineer and the County Fire Marshall who voiced no concerns on this topic.

***(5) The site plan including, but not limited to, landscaping, screen planting, and fencing of the proposed development demonstrates that the site development will be compatible with adjoining areas and will conform to the site development standards of the district regulations.***

**Applicant Response:**

The site plan includes fencing an area of our property to be used for the daycare facility. The perimeter of our entire property is already fenced. A second fenced area next to the daycare facility grounds will be used as a garden and accessed by the children attending the daycare. We will landscape to include kid friendly sites such as a sand digging area and patio. This easily aligns with the RA zone that our property falls under. Fruit trees have already been planted and much of the native landscape is intact, providing a barrier to our closest neighbor, located at 115 La Senda.

**Staff Response:**

Staff supports this position since existing landscape plan enhances the site and improves the current relationship to adjacent properties. Existing conditions are in conformance with Los Alamos County Development Code.

**FINDINGS OF FACT**

1. The Special Use Permit application #SUP-2022-0020 is for a daycare facility to provide care, service, and supervision for a maximum of 12 children at her residence addressed as 113 B LA SENDA RD. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A).
2. Proposed daycare facility use, listed within §16-9, Use Index, is allowed in Residential-Agricultural District (R-A).
3. The request to operate a daycare facility at 113 B La Senda Road will not be detrimental to the health, safety, peace, comfort or general welfare of persons residing or working in the vicinity, as economic vitality is a strategic focus identified within the Comprehensive Plan through the promotion of a diverse economic base and encouragement of new business growth. A daycare facility and home business use are permitted within the R-A district, subject to Planning and Zoning Commission review and approval as a Special Use. The use will not be detrimental or injurious to the general welfare of the community but will provide a needed community resource to the county's large workforce and is consistent with proposed development of the subject property and conforms to the comprehensive plan. The proposed design including architectural, parking, and landscaping elements are in conformance with Los Alamos County Development Code.
4. Proposed use adheres to Article III of Chapter 18 which regulates noise levels, specifically those that are a nuisance and above 53 dBA from the hours of 9 pm to 7 am and 65 dBA 7 am to 9 pm. The provision allows an additional 10 dBA for a period not to exceed ten minutes in any one hour during the hours of 7 am to 9 pm. The daycare facility will have up to 12 children between the ages of 3-6, with 2-adults from 8:00 am to 5:00 pm. Noise levels that do not adhere to this section are investigated and enforced by Code Compliance. Furthermore, a Noise Study conducted by the applicant at a similar childcare facility in White Rock during peak outdoor playtime indicated the noise levels to be between 55 – 57 dBA at 55' and 35' distance from a similar outdoor playground setting.

The applicant, understanding that sound and noise may be a major concern for the proposed use, presented testimony and evidence that due to the size of the lot, 3 acres, placement of proposed day care areas, the hours of operation, and distance to adjacent property structures, sound would not exceed the 65 decibels over the Property line or 57 decibels from 9 p.m. to 7 a.m. Further Applicant presented persuasive testimony that pursuant to Chapter 18, Article III, Section 18-72 of the County code, which is the County's noise ordinance, that the voices of children ages 3 to 6 years old are not unnatural or unusually excessive in residentially zoned areas. Based on this evidence, the sounds normally and naturally associated with the operation of this day care facility including voices of groups of children engaging in outside activities such as recess and outdoor learning in a residentially zoned neighborhood in a supervised environment with an educational component is not detrimental to the health, safety, peace, comfort, or general welfare of persons residing or working in the vicinity of such proposed use or be detrimental or injurious to property or the value of the property in the vicinity, or the general welfare of the county.

5. Existing parking spaces are sufficiently and adequately designed, shielded and landscaped. Required off-site parking spaces are provided and Ingress/egress including traffic circulation will conform to all safety provisions for motorists, bicyclists, and pedestrians. Existing parking lot is in conformance with Los Alamos County Development Code.
6. The provisions for on-site and off-site ingress/egress and traffic circulation will be in conformance with the county's construction standards. Existing ingress and egress for the property will not change and the shape of the lot provides a private driveway for on-site and off-site access from La Senda Road.
7. Existing building setbacks from the property lines, and right-of-way are in conformance with Los Alamos County Development Code and provide a transition from residential development in the vicinity. Existing buildings and property are compatible with the general character of development in the vicinity of the use as applied for and no changes are planned. The site plan has been reviewed by Public Works staff in accordance with applicable code.
8. The proposed use adheres to provisions of noise levels for childcare and daycare facilities per section 16-282 and Article III, chapter 18 of Los Alamos County Code. A Noise Study conducted by the applicant at a similar childcare facility in White Rock during peak outdoor playtime indicated the noise levels to be between 55 – 57 dBA at 55' and 35' distance from a similar outdoor playground setting. Los Alamos County Development Code Section 18-73 has an allowance of 65 dBA during the hours of 7 AM to 9 PM. Therefore, the proposed use would not be in violation of County Code.
9. A Traffic Study on La Senda Road adjacent to the subject property was conducted by the applicant upon direction from Los Alamos County traffic engineer. The analysis indicates that La Senda Road is adequately designed and will not have any adverse effects on the road by allowing the daycare facility to operate at the existing residence at 113 B La Senda Road.
10. The public hearing was held in online format to comply with the New Mexico Department of Health's public emergency order governing mass gatherings because of the COVID-19 pandemic.
11. Notice of this public hearing, setting forth the nature of the request, the specific parcel of property affected, and the date, time and place of the public hearing, was announced and

published in The Los Alamos Daily Post, the official newspaper of record; and property owners of real property located within 100 yards of the subject property were notified of this public hearing by U.S. mail, notice of meeting was posted on the subject lot, all in accordance with the requirements of §16-192 of the Los Alamos County Development Code and as the format complies with the New Mexico Department of Health's public emergency order governing mass gathering due to the COVID-19 pandemic.

12. The public hearing was held in-person on February 9, 2022 virtually due to concerns regarding the COVID-19 pandemic.
13. The proposed application, SUP-2022-0020, including attachments, were presented to the Planning & Zoning Commission for review and approval or denial on February 9, 2022.

### **CONCLUSIONS OF LAW**

After full hearing and consideration, the Planning and Zoning Commission finds that the application has met each applicable Special Use Permit review criteria contained in §16-156 of the Los Alamos County Development Code and is acting under the authority granted it by §16-452(c)(1)(a) of the Development Code.

### **MOTION:**

#### **Motion Option 1:**

I move to **recommend approval** of Case No. SUP-2022-0020 a request for a Special Use Permit approval to operate a daycare facility to provide care, service, and supervision for a maximum of 12 children at 113 B La Senda Road. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A). Recommendation is based on the Findings of Fact established at the hearing and conclusion that the Applicant has met each applicable review criteria contained in §16-156 of the Los Alamos County Development Code and that the Commission is acting under the authority granted by §16-452(b)(1)(a) of the Development Code.

I further move to authorize the Chair to sign a Final Order approving the application and Findings of Fact and Conclusions of Law for this case, based on this decision and to be subsequently prepared by County staff.

#### **Motion Option 2:**

I move to **recommend denial** of Case No. SUP-2022-0020 a request for a Special Use Permit approval to operate a daycare facility for up to 12 children at 113 B La Senda Road as the application does not conform to the review criteria contained in §16-156 of the Los Alamos County Development Code.

I further move to authorize the Chair to sign a Final Order approving the application and Findings of Fact and Conclusion of Law for this case, based on this decision and to be subsequently prepared by County staff.

## **ATTACHMENTS**

ATTACHMENT 1: Permit Application and Criteria Responses  
ATTACHMENT 2: Ownership Affidavit  
ATTACHMENT 3: Public Input

**LOS ALAMOS**  
Community Development

**SPECIAL USE PERMIT APPLICATION**

Los Alamos County Community Development Department  
1000 Central Ave, Suite 150, Los Alamos NM 87544  
(505) 662-8120

Special Use (describe): In-home daycare for up to 12 children.  
Located in a studio guesthouse on our 3 acre property.

Requesting Permit for a daycare facility  
Address to which this application applies

113 B La Senda Rd, White Rock NM 87547

Zoning District: RA

Related Applications (if any):

**APPLICANT** (Unless otherwise specified, all communication regarding this application shall be to Applicant):

Name: Denise Matthews Phone: Same Cell #: 541-740-5520

Please Print

Address: 113 B La Senda Rd, WR 87547 Email: director@wormsandwildflowers.com

Denise Matthews

11/5/21

SIGNATURE

DATE

**PROPERTY OWNER** (If different from Applicant)

☒ Check here if same as above

Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Cell #: \_\_\_\_\_

Please Print

Address: \_\_\_\_\_ Email: \_\_\_\_\_

*My signature below indicates that I authorize the Applicant to make this rezoning application on my behalf.*

SIGNATURE

DATE

**SPECIAL USE PERMIT CRITERIA:**

The Los Alamos County Code of Ordinances, Chapter 16, Development Code, Sec. 16-156 establishes five (5) criteria for the Planning and Zoning Commission to use when reviewing an application for Special Use Permit approval. Please review each of the criteria listed and provide brief responses as to how your application meets the criteria. Use the space provided or attach separate sheets if needed. You will also be asked to discuss the criteria at your public hearing. **(1) The request substantially conforms to the comprehensive plan, and the establishment.**

***Special Use Permit Application***

- (1) The request substantially conforms to the comprehensive plan, and the establishment, maintenance or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort or general welfare of persons residing or working in the vicinity of such proposed use, or be detrimental or injurious to property or to the value of property in the vicinity, or to the general welfare of the county.***

My in-home daycare will serve a small group (12 or less) of children and operate during normal business hours of 8:30-5:00. The daycare will be licensed by the state CYFD guidelines that maintain a safe and healthy environment for all involved. My ratio of children to adult will be kept to 1:6, requiring me to hire one other employee. This employee will be background checked and have no criminal background, a requirement to work with kids. The daycare will take place in an existing building on our property and not require the construction or destruction of any buildings. We will complete the modifications needed to meet the county code in order to operate a day care facility serving up to 12 children. This daycare will add an important resource to the community as daycare providers are in high demand, with many daycares having extended waitlists.

- (2) There are sufficient parking facilities that are adequately designed, shielded, landscaped and lighted to serve the use applied for based on the requirements of this chapter as found in article IX of this chapter.***

The nature of our property, a flag lot on three acres, has an extended driveway allowing all parking to be well of the roadway and out of sight of neighbors. We have six designated spots for parent parking (which can easily be extended) and we plan to extend our driveway to include a loop for easy turn-around. A licensed architect is designing all modifications needed to parking, including ADA accessibility. Solar lights will provide lighting to all parking areas.

- (3) The provisions for on-site and off-site ingress/egress and traffic circulation are in conformance with the county's construction standards, that the public streets serving the use applied for are adequate to meet the traffic needs of the proposed use and that the proposed use will not adversely affect neighboring properties by virtue of the type of traffic generated by the use.***

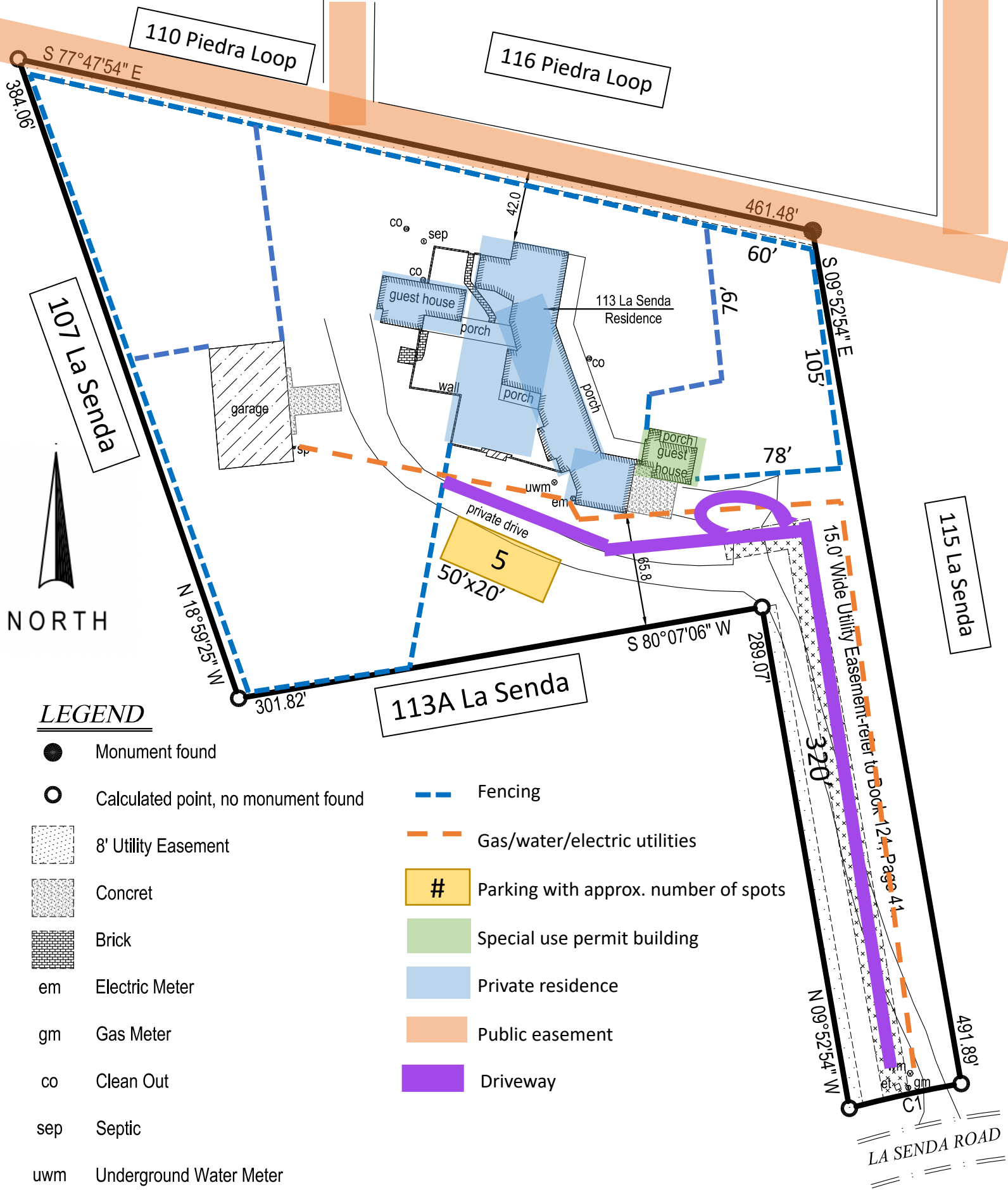
The nature of a small home daycare business does not bring a lot of extra traffic to a neighborhood. Pick-up and drop-off hours will be the busiest, however parents will have a half-hour to pick-up or drop-off allowing a spread of time for arrival and departure. La Senda road is a wide, two-way road that will not be adversely affected by the parents coming and going.

- (4) The setbacks of buildings and parking facilities from the property lines, right-of-way, and adjacent land uses are in conformance with this chapter and provide protection to and a transition from residential development, existing and contemplated in the vicinity; and that the height and bulk of the proposed buildings and structures are compatible with the general character of development in the vicinity of the use applied for.***

No new development will be needed for this home daycare to take place. The daycare will be located in a current studio guesthouse that was originally built on the property. This guest house is sufficiently set back from all neighbors and has parking readily available. The guest house has two entrance/exits and is directly located off our driveway.

- (5) The site plan including, but not limited to, landscaping, screen planting, and fencing of the proposed development demonstrates that the site development will be compatible with adjoining areas and will conform to the site development standards of the district regulations.***

The site plan includes fencing an area of our property to be used for the daycare facility. The perimeter of our entire property is already fenced. A second fenced area next to the daycare facility grounds will be used as a garden and accessed by the children attending the daycare. We will landscape to include kid friendly sites such as a sand digging area and patio. This easily aligns with the RA zone that our property falls under. Fruit trees have already been planted and much of the native landscape is intact, providing a barrier to our closest neighbor, located at 115 La Senda.



LA SENDA ROAD

# Noise Level Recording of Comparable Daycare

## Measured by the Niosh Sound Measuring Application

Date	Location	Time of Day	Recorded Time	Distance to children	LAeq (dBA)	TWA (dBA)	Dose %
1/11/21	Dragonfly Daycare 10 Kids Mixed Ages: 0-5	9:53	15:44	55 feet	54.9	40.0	0.0
1/11/21	Dragonfly Daycare 5 Kids Mixed Ages: 0-5	3:59	15:19	35 feet	56.7	41.7	0.0
1/11/21	Worms and Wildflowers Home Daycare 113B La Senda Rd No Children	1:45	15:28	At location	46.3	31.2	0.0

**LAeq** = Best described as the **Average Sound Level** over the period of the measurement. The equivalent ("eq") sound level corresponds to the average received sound energy over time, and is easier to read on a display than the instantaneous sound level.

**Industry Standard: An LAeq of 80 dBA or below is considered non-hazardous. Los Alamos County allows up to 65 dBA to cross residential property lines during business hours. Sec. 18-73.**

**Noise Dose** = It is the percentage of time a person is exposed to noise that is potentially damaging to hearing. Zero represents no exposure and 100 or more represents complete exposure.

### TWA = Time Weighted Average Noise Levels - and Noise Dose

The TWA shows a worker's daily exposure to occupational noise (normalized to an 8 hour day), taking into account the average levels of noise and the time spent in each area. This is the parameter that is used by the OSHA Regulations and is essential in assessing a workers exposure and what action should be taken.

Sources: <https://www.noisemeters.com/help/faq/leg/> <https://www.nti-audio.com/en/support/know-how/what-are-laeq-and-lafmax>

Dear La Senda Neighbors:

May 3, 2021

I hope this finds you all well during trying times.

It has been brought to my attention that some of you feel "broad-sided" by me taking the initiative to reinstate the La Senda HOA. I apologize to anyone who felt that way. Please know my intentions were to reactivate it so that the former Treasurer, Lynn Johnson, can let the La Senda HOA bank-account reserves close. She has been gracious in handling the monies for years, and she is ready to make it come to an end, as it serves no purpose sitting idle. There was a lot of chatter on social media that I made myself President, I stole money, etc. I am NOT President (and hold no position), and there is currently no standing BOD, since there was no HOA and the intentions were to let it go after we did what we set out to do. I have absolutely no access to any money, nor do I want any.

I obtained several banker-boxes of notes from Chuck and spent hours pouring over them trying to figure out a way that the money could go back to its rightful owner(s). It's essentially impossible for this to happen. Too much time has passed, and there is nothing that really spells out who is entitled to what; and of course people have moved, passed on etc. At the request of Chuck these documents will be donated to the Historical Society when this is finished. If any of you have any interest in looking through them, that can be arranged. Myself and a few former BOD members discussed how best to distribute the monies in the account.

Some ideas from other homeowners (for ALL homeowners to vote on) were the following:

1. Buy and place "dog poop bag stations" on the corner of Sherwood and Piedra Loop to help encourage dog walkers to clean up after their dogs. Maybe a few other spots too?
2. Put some benches around the neighborhood (maybe with views?)
3. Re-pave the walking trails (although it hasn't been determined if these are County-owned easements or part of La Senda).
4. Donate some or all of it to a local charity.

After this task at hand is complete, I am very open to getting rid of the HOA again. Like many of you, I am not a fan of HOA's. In my mind they serve no purpose.

I would also like to be clear, I do not run a dog-boarding business. I was starting one when we first moved here and then Covid happened, and we rescued a few other dogs so our house is full. There is not and will not be a dog business.

I would like for homeowners to understand that the CCR's and Bylaws run with your property. Reinstating the HOA has nothing to do with these documents.

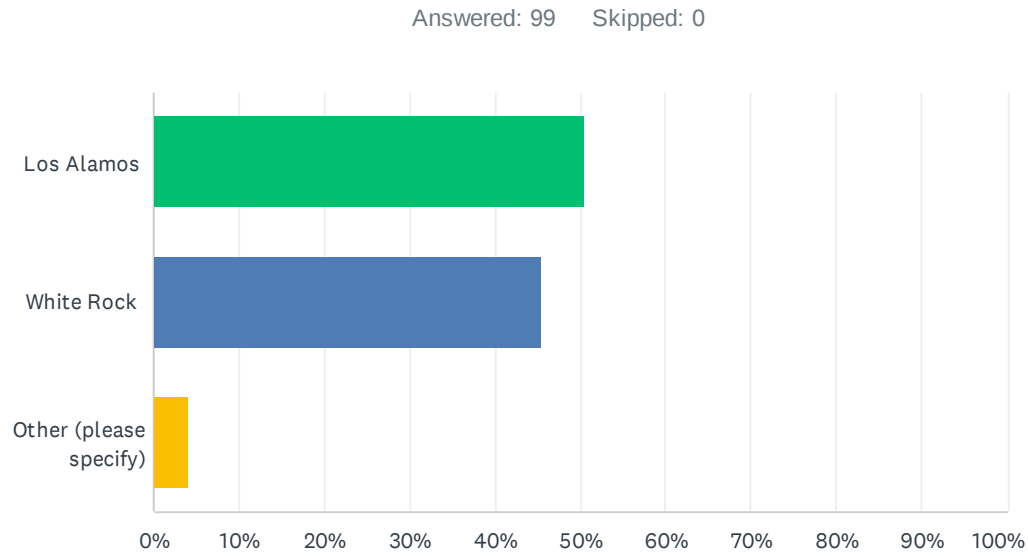
Also, Some of the newer homeowners had to pay some HOA fees through escrow when they bought. Lynn has tried a few times to talk to the title companies to get this to stop. I will try to follow-up on this, as nobody seems to know where that money goes.

A big thank-you to everyone who has served on the La Senda BOD in past years and for all the volunteers who have helped organize the annual picnic. That was put on hold due to Covid, but I believe the general consensus is that most people would like to keep that tradition going. Obviously, you don't have to go if you don't want to.

Lastly, I think we all have the same common goal, and that is to have a friendly, safe, quiet, and respectful neighborhood.

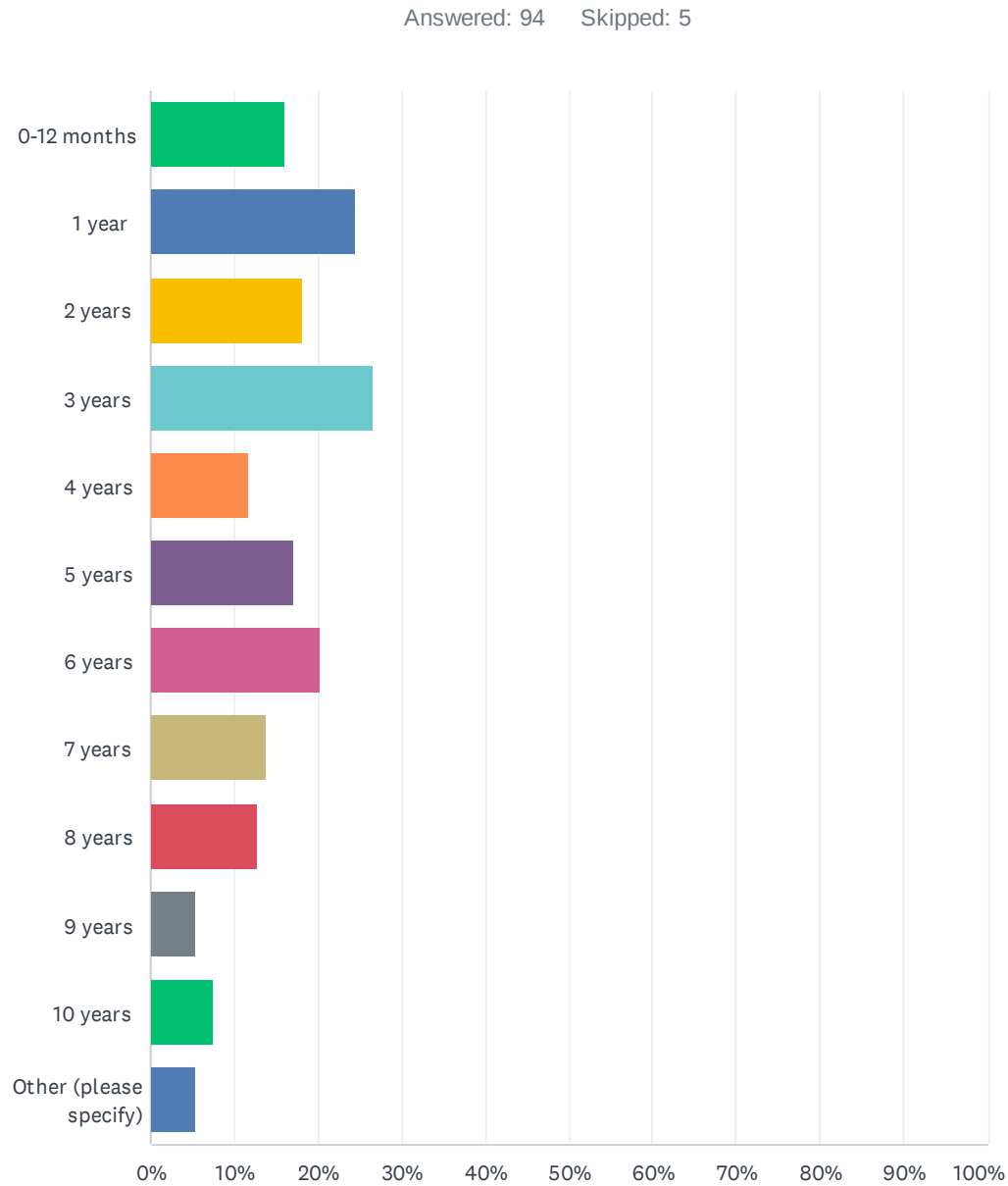
Warmly,  
Tish Thames  
707-738-3313

## Q1 Where does your family live?



ANSWER CHOICES	RESPONSES	
Los Alamos	50.51%	50
White Rock	45.45%	45
Other (please specify)	4.04%	4
Total Respondents: 99		

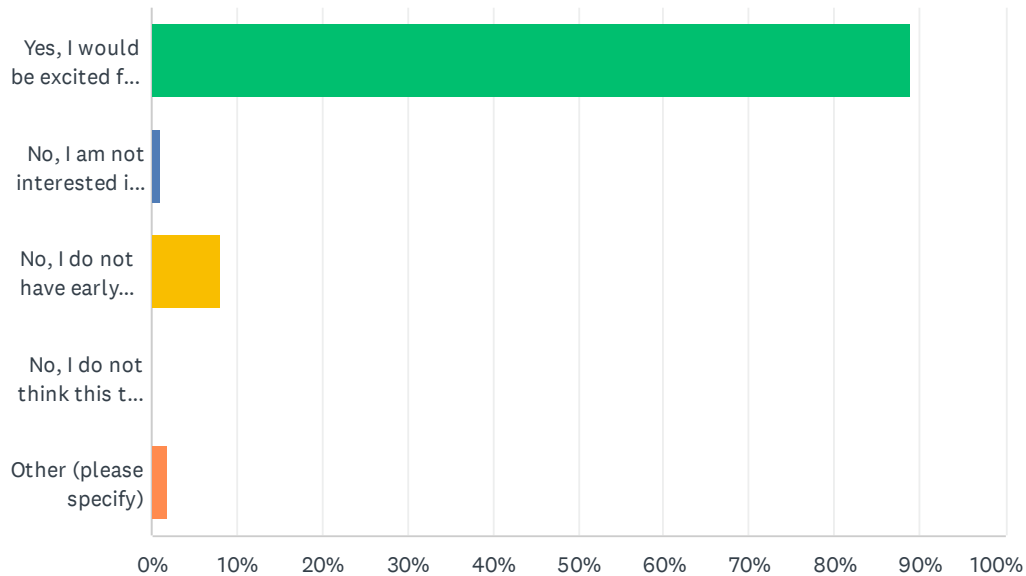
## Q2 What are the ages of your children under the age of 10?



ANSWER CHOICES	RESPONSES	
0-12 months	15.96%	15
1 year	24.47%	23
2 years	18.09%	17
3 years	26.60%	25
4 years	11.70%	11
5 years	17.02%	16
6 years	20.21%	19
7 years	13.83%	13
8 years	12.77%	12
9 years	5.32%	5
10 years	7.45%	7
Other (please specify)	5.32%	5
Total Respondents: 94		

### Q3 Would you be interested in sending your own children to an outdoor nature-based daycare/school for early childhood and elementary age children?

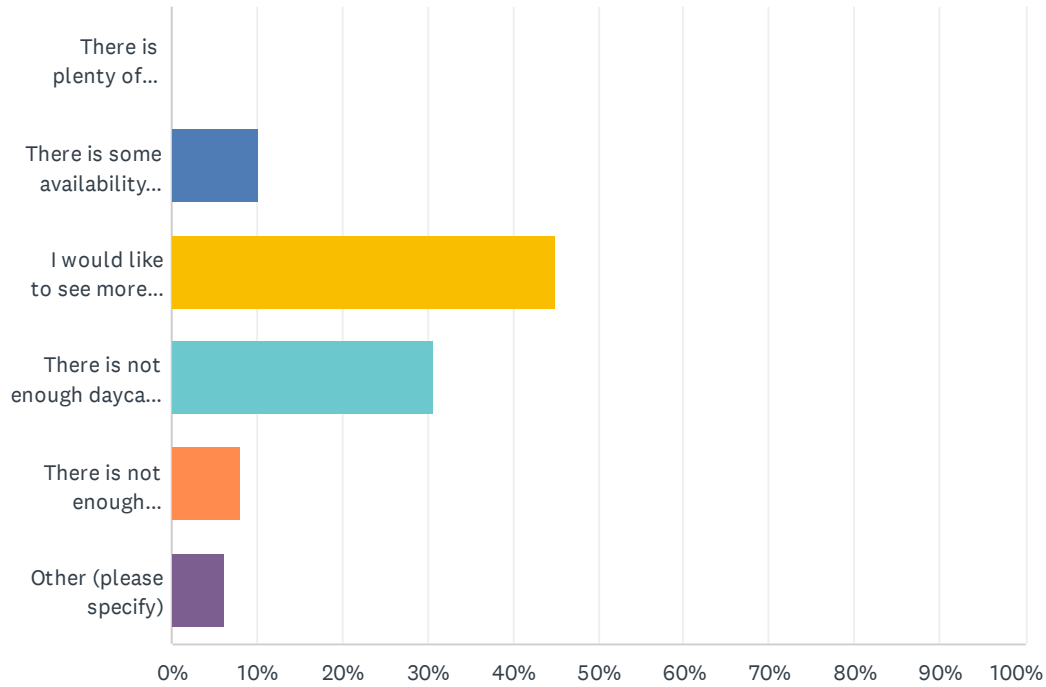
Answered: 99 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes, I would be excited for this option in the community.	88.89%	88
No, I am not interested in this option for daycare or school.	1.01%	1
No, I do not have early childhood or elementary age children, but I think it is a needed resource in the community.	8.08%	8
No, I do not think this type of program is needed in our community.	0.00%	0
Other (please specify)	2.02%	2
<b>TOTAL</b>		<b>99</b>

## Q4 How do you feel about the options for daycare and early childhood education in Los Alamos County?

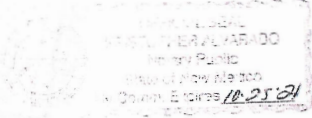
Answered: 98 Skipped: 1



ANSWER CHOICES	RESPONSES	
There is plenty of availability and options for my family.	0.00%	0
There is some availability but I would like to see more part-time programs offered.	10.20%	10
I would like to see more diverse program options including more nature-based programing.	44.90%	44
There is not enough daycare in the county and I have difficulty finding daycare/preschool programming that works for our family.	30.61%	30
There is not enough daycare/preschool options in the county and I have not found a good placement for my child/children.	8.16%	8
Other (please specify)	6.12%	6
TOTAL		98

Title Company: TITLE GUARANTY, LLC  
 File Number: LA18-0089

### Residential Property Transfer Declaration Affidavit

<b>Transferor(s)/Seller(s)</b> Print full name(s) and mailing address(es): Jonathan E. Bard 113 B La Senda Los Alamos, NM 87547	
<b>Transferor(s)/Buyer(s)</b> Print full name(s) and mailing address(es): Christopher Matthews and Denise Matthews 1505 Camino Redondo Los Alamos, NM 87544	
<b>Legal Description</b> of the real property transferred as it appears in the document of transfer: La Senda - Tract A, Block 3, Lot 24A, Los Alamos County 113 B La Senda Road Los Alamos, NM 87547	
<b>Full consideration including money or other thing of value paid or exchanged for the transfer, and the terms of the sale including any amount of seller incentives.</b> Sales Date: <u>May 15, 2018</u> Consideration paid or exchanged: <u>\$1,025,000.00</u> Value of Personal Property included: <u>\$0.00</u> Description of personal property: _____ Terms of sale including any seller incentives: _____	
Signature of Buyer <u>X</u> Seller _____ or Authorized Agent _____ (Check one and sign)	
Signature:  Christopher Matthews	Date: <u>5/15/18</u>
Signature:  Denise Matthews	Date: <u>5/15/18</u>
<b>Acknowledgement of individual or in representative capacity</b> STATE OF NEW MEXICO COUNTY OF LOS ALAMOS  Signed and sworn to (or affirmed) before me on May 15, 2018 by Christopher Matthews and Denise Matthews	
	 Notary Public My Commission Expires: <u>10/25/2021</u>

Pursuant to NMSA 1978, Section 7-38-12.1 and 7-38-12.2(2005)

**From:** [Irina Demeshko](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]Denise Matthew's Nature play school support letter  
**Date:** Thursday, February 3, 2022 10:20:54 AM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am writing in strong support for Denise Matthew's request to open a nature play school called Worms and Wildflowers Farm and Nature School at her personal residence. I am Denise's neighbour (within a 300 ft distance) and a mother of a 5-Years-old boy. We have been waiting for Denise's daycare to open for over 2 Years now, hoping that our child can go there. It was really hard to find good childcare in White Rock since I started to look for one for the following reasons: the classes are often full and you need to sign-up log in advance; all daycare centers in White Rock are montessori-based, which doesn't fit well to some kids; teacher-to-child ratio is too high; outdoor time is limited. Our child has been enrolled in 3 pre-schools to date: first two in White Rock and last one in Los Alamos. Those in White Rock didn't work for our son because of the program they offer, and currently he is enrolled at the home-based daycare at Los Alamos where he is much happier. Lack of good quality childcare has been one of the biggest issues for our family while living in Los Alamos county. I believe that the daycare program that Denise offers is unique and very appealing to the parents of many kids not only in White Rock, but also in the entire county. Denise is a wonderful person and I believe their property meets all criteria for a daycare: it is safe, large and in a good distance from neighbors. As a neighbor myself, I don't see any issues related to Denise operating childcare at her property, only positive things. And I strongly believe this school should be supported by the county!

Should you have any questions please feel free to contact me.  
 Irina Demeshko,  
 103 La Senda Rd, NM, White Rock.

**From:** [Agnes Finn](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]Denise Matthews's proposed home daycare in White Rock  
**Date:** Wednesday, February 2, 2022 9:05:09 PM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To the Los Alamos County Planning and Zoning Committee:

We are writing in support of Denise Matthews's proposed home daycare, to be located at her private residence which she shares with her husband and 2 young children at 113 B La Senda Rd in White Rock.

Our home at 116 La Senda Rd is within 100 yards of the Matthews's property. We have owned and lived in our home for 27 years. It is where we raised our 5 children and now our 11 grandchildren visit us frequently here.

We are in our 70s and are obviously classified as senior citizens as are some of our neighbors. We believe that the La Senda neighborhood should be a family community welcoming to all age groups and family compositions.

We do not believe that any harm would come to La Senda by having a small home daycare in our midst. We are not in fear of it lowering our property values, opening the door to inappropriate non family oriented businesses, or unduly increasing traffic or noise on a road that has very little of either. Quite the contrary, we believe that having a nature-based home daycare here would be quite an asset to the La Senda neighborhood. All 5 elementary schools in Los Alamos County, with several hundred students and staff, are located in residential neighborhoods surrounded by single family homes. Young children belong in residential neighborhoods, not in commercial/industrial areas of the county.

Presently more and more young families are moving into La Senda. All of us La Senda property owners are sitting on parcels of land of approximately 2 or more acres. It is an environment that is ideally suited to children feeding their curiosity of the natural world around them. Denise Matthews's Worms & Wildflowers Nature daycare is just perfect for the rural nature of La Senda.

Although Agnes lived her dream of staying home with our children, we fully recognize that it is not something that everyone wishes to do or can afford to do. Los Alamos needs quality daycare for the many working parents.

We believe that as a society and as individuals we have an obligation to provide and support the best possible environments for our children. We hope that Los Alamos County will step up and support places where our children will be safe and will flourish in their physical, emotional, intellectual and spiritual growth. There is no doubt that this investment in and acceptance of children's and families' needs will continue to support a vibrant and healthy Los Alamos.

We ask you, the Planning and Zoning Committee, which holds tremendous responsibility for the future well being of Los Alamos in your hands, to please support Denise Matthews's

daycare.

Respectfully,

John and Agnes Finn,  
116 La Senda Rd  
White Rock

**From:** [Tylerr Jones](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]Denise Matthews Day Care  
**Date:** Wednesday, February 2, 2022 8:11:57 AM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I just wanted to speak on behalf of the Matthews family and the proposed daycare. We live directly south of them at 113a. I'm a fireman in Santa Fe and work in code enforcement at the Fire Marshals office. They have been the kindest most neighborly people we've met. They are trying to open up a small daycare on a giant lot to help with the desperate need for childcare in the area and to teach children healthy living.

A couple from Southern California bought the house directly to the East of us. They opened a dog boarding business on their property. They have tried to open an HOA to control the neighbors. They actively try to campaign in the neighborhood to have things run through them. And you guys have allowed this kangaroo court. The people to the East opened a dog daycare and the family to the west has a loud model airplane he flies over the neighborhood and these are the two people complaining about peace and quiet. It's insane and ridiculous that it's been allowed to go on for this long. This should end immediately and Denise should be allowed to watch CHILDREN on her THREE ACRE property.

Common sense is not so common.

**From:** [Becca Jones](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]In Support of Denise Matthews Nature Daycare  
**Date:** Wednesday, February 2, 2022 7:57:31 AM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am writing in strong support for Denise Matthew's request to open a nature play school called Worms and Wildflowers Farm and Nature School at her personal residence.

I am the mother of a 10 year old, and I am also Denise's closest neighbor. My address is 113A La Senda and her address is 113B La Senda. We share property lines and part of our driveway is actually on their property. When my daughter was very young there were (and still are) very limited options for appropriate child care in Los Alamos County. So few in fact that I decided to start my own home based daycare, while here I'm White Rock, not at this current address. It was the only viable option for us, though doing home daycare is a solution for everyone, and therefore childcare in Los Alamos County is in high demand. Not only is it incredibly hard to find availability, there is little variety in the programs offered. Having one more option would be an immense boost to the current childcare environment in Los Alamos. Lack of quality childcare not only negatively impacts children's and parents' mental health, it also adversely affects families financial security and overall prosperity. Without childcare, caregivers have a hard time returning to work, or going back to school to re-tool themselves to re-enter or advance in the workforce. Many families leave Los Alamos because one spouse is forced to abandon their career when they move here- more childcare would help this problem!

There is not currently a full-time nature school option available in Los Alamos and this is a schooling philosophy that many families in LA county resonate with. Living next to Denise for 3-years I have seen firsthand the loving space that Denise has created for her own children. I've coveted her beautiful vegetable gardens and been the recipient of her harvest. She and her husband have planned and carefully created spaces for animals, and planned their property in a way that is respectful of their neighbors; not only respectful, but also giving us glimpses of their beautiful outdoor spaces. They have enhanced the neighborhood!

I feel it necessary, as Denise's closest neighbor, to note a few things. The Matthew's property is large. A bit over 3 acres. It has been divided in a way that makes the house private. It is situated so that the areas where children play are not visible from the main road, La Senda Dr. I consider it unfortunate that, even though I know the Matthew's spend a considerable amount of time outside, we never hear them. This is due to the position of the house and outbuildings, as well as surrounding walls and vegetation. In addition, their driveway is very long, with a large parking area and turnarounds on their property. Vehicles coming and going would have little to no impact on other residents; especially given the small number of families she is requesting to accommodate.

It's important to remember, I believe, that children enhance a neighborhood. How they live in, and interact within a neighborhood is important to a community's future. Giving children positive interactions within neighborhoods creates memories that they will someday replicate. Having run my own home daycare, I think that my previous neighbors would have agreed that they really enjoyed seeing children play and enjoy life! Also, children do not scream at the top

of their lungs for 8-hours a day. The sounds of childhood are not an assault to quiet enjoyment, but an enhancement and reminder of the joys that exist in life.

Denise is a wonderful person to lead this school, as her background and passion for science and nature education are evident and proven. She is a local mom who understands the needs of the community and has carefully planned her school accordingly.

It is extremely disheartening that this process has already taken so long, but I hope that it is expedited as much as possible from here. There is no reason this school should not be encouraged and supported by the county- it would be an asset to the community and to our neighborhood.

I will do anything to support this new business that serves such a needed gap in the community.

Sincerely,  
Becca Jones  
Neighbor at 113A La Senda

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Sent from Gmail Mobile

**From:** [Jacquelyn Connolly](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]Request for Approval of Denise Matthews daycare permit  
**Date:** Wednesday, February 2, 2022 9:47:21 AM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Planning Committee,

I write to you as a resident of White Rock, and while my children are now too old to attend the proposed daycare on La Senda Drive, I couldn't feel more strongly in its approval. When I moved here a few years ago I was astonished at how limited, expensive and frankly mid grade-low quality the childcare options were. I reluctantly had to turn down work opportunities. In the meanwhile, I attended the PEEC nature mornings which was the closest to the type of early childhood engagement I desired. Denise ran the program then and I wished desperately that I could have someone like her care for my children using similar methods as to what she presented in the nature mornings group. My first two children were able to attend high quality/affordable in-home childcare in Denver and in Vancouver of a similar style and I wished so much I could find similar in such an outdoorsy/educated community as this.

The care that my children received were located in homes that were in a typical suburban arrangement, i.e. not on large property, and not only did the neighbors not seem to mind but the presence of children reminded the community that these little people are deserving of a safe, happy, nurturing environment as they are a part of our society and our future.

Please approve this daycare. So many parents will be forever affected by your decision and so many children as well.

Thank you for your time,  
Respectfully,

Jacquelyn Connolly  
parent and resident of White Rock

**From:** [Kathy Brooks](#)  
**To:** [Sayeda, Sobia](#)  
**Subject:** [EXTERNAL]Fwd: Denise Matthews  
**Date:** Friday, January 14, 2022 4:10:49 PM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Sent from my iPhone  
Kathy Brooks

Begin forwarded message:

**From:** Kathy Brooks <dockatnm@msn.com>  
**Date:** January 14, 2022 at 4:10:02 PM MST  
**To:** sibia.sayeda@lacnm.us  
**Subject:** Denise Matthews

I am writing in support of Denise and her day school. I am grandmother of five Los alamos children and we have all benefited from Denise's teaching and caring while she was helping at Pajarito Environmental Center. She has an incredible gift working with children and communicating with parents and grandparents. She and her school will add an important resource to our community and will benefit many families here.

I fully support her endeavor and hope you approve her application to open this wonderful day school.

Thank you.

Sent from my iPhone  
Kathy Brooks

**From:** [Megan Fox](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]In SUPPORT for Worms and Wildflowers  
**Date:** Monday, January 31, 2022 3:21:17 PM

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CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Planning Committee,

I am writing in strong support for Denise Matthew's request to open a nature play school called Worms and Wildflowers Farm and Nature School at her personal residence.

I am the mother of 2 children, ages 6 years old and 3 years old. For the past 5 years we have struggled to find appropriate child care to meet our needs. We have been enrolled in 4 preschools to date. Not only is it incredibly hard to find availability, there is little variety in the programs offered. Having one more option would be an immense boost to the current childcare environment in Los Alamos. Lack of quality childcare not only negatively impacts children's and parents' mental health, it also adversely affects families financial security and overall prosperity. Without childcare, caregivers have a hard time returning to work, or going back to school to re-tool themselves to re-enter or advance in the workforce. Many families leave Los Alamos because one spouse is forced to abandon their career when they move here- more childcare would help this problem!

There is not currently a nature school option available in Los Alamos and this is a schooling philosophy that many families in LA county resonate with. I believe Denise's school could pave the way and prove the concept that this is a desirable philosophy in our area- hopefully leading someone else to open another school down the road. Denise is a wonderful person to lead this school, as her background and passion for science and nature education are evident and proven. She is a local mom who understands the needs of the community and has carefully planned her school accordingly.

It is extremely disheartening that this process has already taken so long, but I hope that it is expedited as much as possible from here. There is no reason this school should not be encouraged and supported by the county- it would be a boon to the community.

I will do anything to support this new business that serves such a needed gap in the community.

Sincerely,  
Megan Fox

228 Canada Way  
White Rock

281-744-8722

**From:** [Jamie Allbach](#)  
**To:** [Planning](#)  
**Cc:** [Director@wormsandwildflowers.com](mailto:Director@wormsandwildflowers.com)  
**Subject:** [EXTERNAL]In support of Worms and Wildflowers Childcare  
**Date:** Monday, January 31, 2022 5:06:09 PM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Committee Members,

Thank you for dedicating time to potentially approve a needed service in Los Alamos County.

For years, I attended a PEEC program facilitated by Denise Matthews, and I was continually impressed by her ability to engage children, ignite passion for learning, and build trust with parents/caregivers.

If approved to open her own nature-based early childhood program, she will continue to do these things and so much more!

I am confused as to why this has not yet been approved as she has her own three acre property, and generally there is no significant source of traffic congestion in her area. I'm sure it's been complex, and there is much I don't know. What I do know is that if Worms and Wildflowers opens, I will contact Denise to see if my child is eligible to attend. This would be unlike any other childcare offered in Los Alamos County.

Let's uplift this treasured community member for the good of her family and those families who want outdoor education for their children.

Thank you, and I look forward to hearing more as this program blossoms!

Kind regards,  
Jamie Allbach  
Los Alamos Resident & Nonprofit Professional

**From:** [Emily Schulze](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]In support of Worms and Wildflowers  
**Date:** Monday, January 31, 2022 4:39:45 PM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am writing in strong support for Denise Matthew's request to open a nature play school called Worms and Wildflowers Farm and Nature School at her personal residence.

I am the mother of 2 children, ages 5 years old and 3 years old. For the past 5 years we have struggled to find appropriate child care to meet our needs. We spent well over \$10,000 to reserve spaces in local daycares before our children were even born due to the massive shortage in this community.

As another mother has said, "Not only is it incredibly hard to find availability, there is little variety in the programs offered. Having one more option would be an immense boost to the current childcare environment in Los Alamos. Lack of quality childcare not only negatively impacts children's and parents' mental health, it also adversely affects families financial security and overall prosperity. Without childcare, caregivers have a hard time returning to work, or going back to school to re-tool themselves to re-enter or advance in the workforce. Many families leave Los Alamos because one spouse is forced to abandon their career when they move here- more childcare would help this problem!"

I would like to reiterate that this is a serious, fundamental issue affecting women who work in our community. In fact, a recent LANL Women's Employee Resource Group event garnered over 175 participants who are upset and concerned with the community's lack of childcare options. Many hiring managers have even had applicants decline offers when they were unable to find care.

I cannot believe that this process has already taken so long, but I trust that this committee can get this approved immediately.

I will do anything to support this new business that serves such a needed gap in the community.

Sincerely,

Emily Schulze  
3604 Arizona Ave, Los Alamos NM

**From:** [Ashley Pryor](#)  
**To:** [Planning](#)  
**Cc:** [Denise Matthews](#)  
**Subject:** [EXTERNAL]Letter of support for preschool business in White Rock  
**Date:** Monday, January 31, 2022 4:31:16 PM

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To Whom It May Concern:

I am writing to express my support for the permitting of a preschool business in White Rock by Ms. Matthews (cc'd). I think that there is a need for additional preschool options within Los Alamos County and providing such options is important to the community.

Please let me know if any questions regarding my expression of support.

Thank you,

Ashley Pryor  
Los Alamos County Resident

**From:** [Kiyana Allen Glass](#)  
**To:** [Sayeda, Sobia](#)  
**Subject:** [EXTERNAL]Support for Worms & Wildflowers permit  
**Date:** Friday, January 28, 2022 11:20:54 AM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Planning & Zoning Committee,

I am writing in support of Denise Matthews' application for a special use permit to open Worms and Wildflowers Farm and Nature School on her own property in White Rock. I live in Pajarito Acres and have two young children. I currently drive them up to Los Alamos every day to attend preschool/daycare even though my husband and I both work from home because that was where we could find availability. I am very happy with their current school but I would love nothing more than to have the option to send them to an outdoor preschool, and one so close to us no less. A small, nature-based daycare is absolutely in line with the character of our neighborhood and I really hope that you approve her permit.

Los Alamos does not have enough childcare options to support young, working families. I grew up here and moved home last summer to be closer to my family and roots, and especially, to the land. I grew up in Bandelier and bought my house in Pajarito Acres because it was the closest experience I could give my children to the free-roaming wilderness childhood I had here.

One of the big downsides of moving home was that I had my son pre-enrolled to attend an outdoor preschool program when he turned 3 in our previous home in the Denver metro area, and had to give up that spot. We were so excited for him to be able to learn in that environment. Outdoor play is so essential to early childhood development and it's also an important value for my family. Additionally, as we have all learned in the past two years, the risk of respiratory illness spread is much lower outside.

I would be so happy if Ms. Matthews' application could be approved in time for my daughter (currently almost 2) to be able to hopefully attend this program.

I also want to raise up that it is often very difficult for young, working families to find time to attend hearings like this or even send a letter so support for this program is likely very underrepresented.

Thank you so much for taking the time to consider my comments and for your public service.

Sincerely,  
 Kiyana Allen Glass  
 159 Monte Rey Dr. S.

**From:** [Nicholas Glass](#)  
**To:** [Sayeda, Sobia](#)  
**Subject:** [EXTERNAL]Support for Worms & Wildflowers permit  
**Date:** Friday, February 4, 2022 10:53:38 AM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello - I am writing in support of Denise Matthews' application for a special use permit to open Worms and Wildflowers Farm and Nature School on her own property in White Rock.

I live in Pajarito Acres and have two young children. I currently drive them up to Los Alamos every day to attend preschool/daycare even though my wife and I both work from home - because that was where we could find availability. While we are very happy with their current school, we would love nothing more than to have the option to send them to an outdoor preschool, and one so close to us no less!

In general, Los Alamos does not have enough childcare options to support young, working families. And specifically, I would be so happy if Ms. Matthews' application could be approved in time for my daughter (just turned 2) to be able to hopefully attend this program.

A small, nature-based daycare is absolutely in line with the character of our neighborhood and I really hope that you approve her permit.

Thank you for taking the time!

Sincerely,  
Nick

--

Nicholas Glass  
610-329-1995  
[glass.na@gmail.com](mailto:glass.na@gmail.com)

**From:** [Verena Geppert-Kleinrath](#)  
**To:** [Sayeda, Sobia](#)  
**Subject:** [EXTERNAL]Support for worms and wildflowers nature school daycare  
**Date:** Friday, January 14, 2022 3:22:04 PM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi,

I am a Los Alamos resident and mom of a young toddler and want to express my support for the worms and wildflowers nature school and daycare.

I urge the planning and zoning committee to approve the special use permit.

We as a community cannot afford to bend to the will of a few bitter people and outdated HOA ideas. My understanding is the property is already a working farm and sits on a large plot of land. In no way can a handful of children be considered an issue for neighbors.

Our community desperately needs more daycare options. And as a mum I would just love to see this outdoor farm based school come to life.

Committee members, please make a decision not based on antiquated ideas of children as a nuisance, but in the interest of our future - our children!

We as a community desperately need this resource.

Best,

Verena Geppert-Kleinrath

--

Mit freundlichen Grüßen/ Best regards

DI Dr.techn. Verena Geppert-Kleinrath

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[verena.kleinrath@gmail.com](mailto:verena.kleinrath@gmail.com) +1-505-695-8479

**From:** [Misa Cowee](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]Support for Worms and Wildflowers school  
**Date:** Thursday, February 3, 2022 2:25:47 PM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Planning and Zoning Committee,

I am a parent in White Rock and I would like to express my support for the proposed permit application for the in-home school run by Denise Matthews. I have two young kids (2 and 5) and have struggled with finding childcare and preschool options in town that fit our family's needs and provides an enriching environment for early childhood. I have read about the Worms and Wildflowers Farm and Nature school, and think it would make an excellent addition to our community. I have heard there are several concerns, for example about noise, but we already have daycares, schools, and parks next door to residences in our neighborhoods, which I believe to be a great strength and an appealing part of our small community, and which I believe ultimately benefits the community as a whole. As our community grows and attracts greater numbers of young families, we need to encourage local entrepreneurship aimed at providing diverse options for our community's early childhood education needs. I encourage the committee to approve the special-use permit for this school.

Thank you,  
Misa Cowee  
Resident of White Rock

**From:** [Ashley](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]Worms and Wildflowers Farm & Nature School  
**Date:** Wednesday, February 2, 2022 4:01:30 PM

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CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am writing today to put my support behind the opening of the new childcare center being proposed in White Rock. As a mother of three kids my husband and I have had to make excruciatingly difficult economic decisions because there is little to no childcare available in Los Alamos County. Beside the obvious need for ANY childcare Ms. Matthews is proposing an enriching, fun, educational option to the community. I cannot say enough how strongly I support Worms and Wildflowers Farm and Nature School.

Sincerely,  
Ashley Taylor-Wrightson

Sent from my iPhone

**From:** [Jessica Freer](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]Worms and Wildflowers Farm and Nature School, 113B La Senda-Denise Matthews  
**Date:** Thursday, February 3, 2022 12:20:38 PM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Afternoon,

I am writing to show my support for the approval of Worms and Wildflowers Farm and Nature School at 113B La Senda. This nature and play based home daycare is a necessity for our community, as it will provide a much needed solution to the daycare needs in Los Alamos, White Rock and close surrounding areas. The director has a solid background to support this type of facility, not only with her years of experience, but with her education as well. To my understanding, with the way that her property is set up, it should not cause issues or become a nuisance to the neighborhood or any neighbors living nearby. The school/daycare will be facilitating a small number of families/children, therefore an increase in traffic will be minimal, if even noticed. I truly hope that you give this great consideration as not only will it be of great benefit to the youth of our community, but to working parents as well.

Thank you for your time.

A 28 year resident and strong supporter of The Worms and Wildflowers Farm and Nature School,  
Jessica Freer-Gurley

**From:** [Katie Bruell](#)  
**To:** [Sayeda, Sobia](#)  
**Subject:** [EXTERNAL]Worms and Wildflowers preschool letter of support  
**Date:** Saturday, January 22, 2022 3:55:15 PM

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Hello,

I would like to express my support for the Worms and Wildflowers preschool. Los Alamos is in need of more childcare options for working families. Denise is a caring, thoughtful, smart teacher, and will do a wonderful job of preparing kids for life. Worms and Wildflowers will be a wonderful addition to Los Alamos, and should be allowed open.

Thank you.

Katie Bruell  
3550 Ridgeway  
writing as a private citizen

**From:** [Nicholas Glass](#)  
**To:** [Sayeda, Sobia](#)  
**Subject:** [EXTERNAL]Support for Worms & Wildflowers permit  
**Date:** Friday, February 4, 2022 10:53:38 AM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello - I am writing in support of Denise Matthews' application for a special use permit to open Worms and Wildflowers Farm and Nature School on her own property in White Rock.

I live in Pajarito Acres and have two young children. I currently drive them up to Los Alamos every day to attend preschool/daycare even though my wife and I both work from home - because that was where we could find availability. While we are very happy with their current school, we would love nothing more than to have the option to send them to an outdoor preschool, and one so close to us no less!

In general, Los Alamos does not have enough childcare options to support young, working families. And specifically, I would be so happy if Ms. Matthews' application could be approved in time for my daughter (just turned 2) to be able to hopefully attend this program.

A small, nature-based daycare is absolutely in line with the character of our neighborhood and I really hope that you approve her permit.

Thank you for taking the time!

Sincerely,  
Nick

--

Nicholas Glass  
610-329-1995  
[glass.na@gmail.com](mailto:glass.na@gmail.com)

**From:** [Jyl DeHaven](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]Worms and Wildflowers Farm and Nature School  
**Date:** Wednesday, February 2, 2022 11:52:21 AM

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CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning. I am writing a letter of support for Denise Knaebel Matthews and her Worms and Wildflowers Farm and Nature School.

Although I am not a resident of Los Alamos County - or a neighbor of Denise's - I do make my living in Los Alamos as a commercial real estate broker.

After decades in commercial real estate and on faculty at community colleges and Universities teaching sustainable development - programs like Denise's are critical for the health - both literally and figuratively - of a community.

The reality is day care programs in Los Alamos are in VERY short supply. A program that focuses on nature and its power/science/beauty is a gift.

I appreciate that some neighbors may feel this is an infringement on their neighborhood. The fact is - with 3 acres of land and small class sizes, this is a creative solution to overcoming the realities that hinder all forms of business, retail, and services in the County. The land is limited. It is incredibly expensive. Construction costs are even higher than in most places in the state due to lack of crews and penalties of access.

Planning and Zoning can and should find creative ways to fill the needs of the community. I believe that the Worms and Wildflowers Farm and Nature School is trying to do the same thing.

Thanks in advance for your time.

Respectfully,  
Jyl DeHaven, MS

**From:** [attelia](#)  
**To:** [Planning](#)  
**Subject:** [EXTERNAL]Worms and Wildflowers farm and Nature school  
**Date:** Wednesday, February 2, 2022 12:28:13 PM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To whom it may concern:

I am writing in support for Denise Matthew's request to open a nature play school called Worms and Wildflowers Farm and Nature School at her personal residence.

As a working mother of 3 children, I am unfortunately very familiar with the lack of child care options available in the Los Alamos/ White Rock community. Not only is it incredibly hard to find availability, there is little variety in the programs offered. Having one more option would be an immense boost to the current childcare environment in Los Alamos. Lack of quality childcare negatively impacts children's and parents' mental health, as well as adversely affecting families financial security.

I love the idea of having a nature school option available in Los Alamos and I believe Denise's school will be a great addition to my neighborhood. Denise's background and passion for science and nature education make her a wonderful person to lead this school. She is a local mom who understands the needs of the community and is trying to do her part to make this town a better place to raise a family.

It is extremely unfortunate that this process has already taken so long, hopefully it will be expedited as much as possible from here. This school and others like it should be encouraged and supported by the county. It is a much needed service and will make the community a better place.

Sincerely,  
Attelia Hollander  
109 Monte Rey Dr N.

**From:** [Ali Culp](#)  
**To:** [Sayeda, Sobia](#)  
**Subject:** [EXTERNAL]Worms and Wildflowers  
**Date:** Saturday, January 15, 2022 7:01:58 AM

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CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello,

This letter is in support of Denise Knaebel and her permit to open a nature school on her property in White Rock, NM. I know Denise to be an excellent educator whose enthusiasm is infectious and engaging for children. I've also seen pictures of her amazing garden and think her property would provide an amazing backdrop for a nature school.

As far as noise concerns from neighbors: I live in Los Alamos, directly across the canyon from a preschool. For one, yes we can hear the children playing but it is not a nuisance. It is not loud or disruptive (and there are dozens of children outside at any given time). It is a nice ambient background noise that reminds us we're living in a thriving community alongside people of all ages. Secondly, after watching Denise interact with children in an outdoor setting at PEEC, I can confirm it was never loud. She never had to raise her voice to rally the children, and the children were involved with the various activities (not running around screaming).

Another childcare option in LA county would be so appreciated by parents. More importantly, Denise is a passionate and talented educator that our community would be lucky to have, her nature school would be a huge asset to this community!

Please approve the permit for Worms and Wildflowers Farm and Nature School.

Thank you,  
Ali Culp  
505-709-0294

Sent from my iPhone

21 January 2022

To Whom it May Concern

We are writing this letter in support of the Special Use Permit Application for Worms and Wildflowers Farm and Nature School located at 113B La Senda, White Rock, as submitted by Denise Matthews.

Recently, upon searching for daycare options for our 2 year old, we have found the number of daycare/preschools to be significantly limited. Many of the options currently have no availability, and/or require a full-time commitment. This is not likely to get any better with LANL expecting to hire more staff over the next few years. Additionally, impacts of covid have closed a lot of daycares around the county. New daycare and preschool facilities are a must on the county priority list.

In addition, the preschool proposed by Denise offers a unique approach which is not currently offered in the community. A nature based, outdoor preschool will give children the opportunity to experience both indoor learning and exploring the outdoors. It is important for our children at a young age to develop knowledge of what is around them in the outdoor environment as well as academic learning. Studies have shown:

- Students who learn outdoors develop a sense of self, independence, confidence, creativity, decision-making and problem-solving skills, empathy towards others, motor skills, self-discipline and initiative.
- Playing and relaxing in natural settings can defuse stress, reduce anxiety, distraction, and symptoms of ADHD.
- When schools take kids outside to learn, kids have become more motivated and self-directed.
- Outdoor learning connects families and the community to the school.
- Gardening provides children in experiences with natural ecosystems, enhancing children's understanding of food systems, and helping them develop positive environmental attitudes and behaviors.

We thank you for this opportunity to show our support for Denise's preschool. If we can be any further assistance, please do not hesitate to contact us.

Yours sincerely

David Rutherford and Nicola Winch

Cell: (505) 709-7742 (David)  
(505) 709-8473 (Nicola)

**From:** [Susan](#)  
**To:** [Sayeda, Sobia](#)  
**Subject:** [EXTERNAL]Daycare on La Senda Rd  
**Date:** Monday, January 31, 2022 8:34:13 PM

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My husband's and I purchased the property at 114 LA Senda Rd. In 1990. Prior to that, we had lived in a congested neighborhood and we were attracted to the quiet peaceful area where everyone had two acres. That is specifically the reason we purchased our property . There were not many cars and it was a safe place for our children to play and ride their bicycles. The area was completely residential, and certainly not zoned for commercial use! We are against having a daycare operating right across the street from our home and all of the problems that it would incur. Thank you for reconsidering this idea that would be so disruptive to our neighborhood! William Mark and Mary Susan Hodgson  
Sent from my iPhone

**From:** [Phillip Noll](#)  
**To:** [Sayed, Sobia](#)  
**Subject:** [EXTERNAL]Re: SUP  
**Date:** Monday, January 31, 2022 4:47:53 PM

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Sobia,

Below is the letter I sent to you this morning as a pdf file. Hopefully you will still get that. (If you do get the pdf please note that I have mistakenly listed the SUPs in question as 0020 and 0002. It should be 0020 and 0021. I corrected this below.) If not, I have included the text of the letter below. Thank you for your help!

Phillip Noll  
 114 Piedra Loop  
 Los Alamos, NM 87547

\*\*\*\*\*  
 \*\*\*\*\*

PHILLIP NOLL, PH.D.  
 114 Piedra Loop, Los Alamos, NM 87547 | 505.672.2037 | [antelope@canyonechos.com](mailto:antelope@canyonechos.com)

January 31, 2022  
 Planning and Zoning Commission  
 Los Alamos County  
 1000 Central Ave  
 Los Alamos, NM 87544

**RE: SUP-2022-0020 and SUP-2022-0021 (Proposed Daycare at 113-B La Senda Rd.)**

Dear Planning and Zoning Commissioners,

The proposed indoor/outdoor daycare operation at a private residence within the La Senda neighborhood (SUP-2022-0020 and SUP-2022-0021) clearly does not conform to the Comprehensive Plan which is an absolute requirement for any special use permit. Unlike other, more general considerations that come before the Planning & Zoning Commission, when considering a Special Use Permit the Comprehensive Plan takes on the force of law. Compliance with the Comprehensive Plan is a condition of granting such a permit. From **LAC Municipal Code Section 16-156: "... the planning and zoning commission shall utilize the following criteria ... (1) The request substantially conforms to the Comprehensive Plan ..."**

Additionally, Phase 2 of the current Zoning Code Update Project has stated that **"the goal of this project is to align the [LAC] code with the goals of the Comprehensive Plan. These adjustments aim to encourage the right development, within the appropriate location.... to enhance the health, welfare and overall quality of living within Los Alamos County."** Thus

compliance with the Comprehensive Plan is of utmost importance when considering Special Use Permit applications.

Given the above, the Comprehensive Plan weighs in on its role in Section 1.5: ***"The Planning and Zoning Commission (P&Z) will use the Plan as guidance in the review of ... special use permits.... Conformance with the goals of the plan will be paramount in their decision making."***

The applicant has had little to say on this subject. Considering the legal requirement to prove compliance with the Comprehensive Plan, that alone should have settled the issue against approval of these permit requests. These being Special Use Permits, with some emphasis on the word "Special", it is incumbent on the applicant to demonstrate that their proposal meets all the conditions required:

Los Alamos County Code Sec 16-451 (b) (3) states: ***"The applicant shall present evidence supporting the application and shall bear the burden of demonstrating that the application should be granted."*** (In no way should it be incumbent on the affected parties to prove in some absolute sense they will suffer detriment to their peace or comfort.)

Los Alamos County staff have previously argued that the Comprehensive Plan is merely a "guidance" document. This is incorrect. The Comprehensive Plan states on page vii: ***"The Comprehensive Plan is a policy document..."*** Thus the Comprehensive Plan is County POLICY, not guidance, and its requirements must be met. The current rewriting of the county codes will ensure this.

County Staff have also argued that the proposed daycare operation "supports the promotion of a diverse economic base and the encouragement of new business growth" which is a goal of the County Council. However, there has been no mention of how the proposed daycare operation meets the requirements of the Comprehensive Plan. Namely:

- ***Revitalize and eliminate blight in the downtown areas of Los Alamos and White Rock. Pages 34, 70***
- ***Promote growth in the downtown. Page 70***
- ***Protect existing residential neighborhoods. Pages viii, 57, 62, 65, 66, 84, 104, & 105***
- ***Provide transition buffers to nearby existing housing as needed. Page 66***

The Comprehensive Plan repeatedly makes the case that the Planning and Zoning Commission must consider ***"protecting the character of existing residential neighborhoods"*** when reviewing Special Use Permits. The concept of "protecting neighborhoods" is repeated more than any other issue throughout the Comprehensive Plan and is obviously of supreme importance to the community. Omitting any such discussion should be, in and of itself, grounds for rejection of these Special Use Permits.

It is also unreasonable to construe the Comprehensive Plan to say that business interests in residential areas override the protection of neighborhoods. In fact, the Comprehensive Plan clearly demonstrates the opposite, and specifically addresses this kind of issue, first by stating:

***"The categorization of land uses and traditional zoning have separated uses to protect***

***residential uses from incompatible uses that could be harmful or bothersome to people in their homes. Such separation is also intended to provide areas for business and manufacturing uses where they can operate as needed without the worry of negatively impacting residential use." Page 104.***

Additionally the Comprehensive Plan states: ***"Nevertheless, as the community continues to grow, it will be important to provide certain protections for existing neighborhoods as new development or redevelopment meets existing, especially in the case of long-standing, low-density residential areas. The Comprehensive Plan suggests the creation of buffer strategies and alternatives to protecting existing neighborhoods." Page 105.***

And finally, ***"A consistent theme heard throughout development of the Plan was the importance to the community of its existing neighborhoods and the desire to preserve their residential character and scale." Page 65.***

Furthermore, the importance of this desire to protect the residential nature of existing, long standing, low density neighborhoods is strongly supported by the past rejection of a similar daycare operation in the La Senda neighborhood. Therefore, it is already an established precedent that daycare operations are not consistent with the protection of the rural/residential nature of the La Senda subdivision. Additionally, there is absolutely no buffer between this proposed indoor/outdoor daycare operation and the neighboring properties. None whatsoever.

The Comprehensive Plan also states: ***"Members of the community will find assurance in Plan policies and the map about what to expect by way of change and also neighborhood preservation." Page 3.*** The clear intent here is to assure residents that the Comprehensive Plan will, as it should, offer protection against unwanted changes in the neighborhood. There are several mentions of integrating housing into business districts, but the Comprehensive Plan never mentions, or encourages, the idea of businesses in residential zones. The LAC code is currently being revised "to align with the Comprehensive Plan" and "to encourage the right development, within the appropriate location". A noisy daycare operation in a very quiet rural/residential zoned area flies in the face of the stated goals of both the Zoning Code Update Project and the Comprehensive Plan.

The Comprehensive Plan is, however, quite specific in the types of businesses it does wish to promote:

- ***"Support spin-off business opportunities from LANL." Page 34.***
- ***"Significantly improve the quantity and quality of retail business." Page 34.***
- ***"Attract new tourism-related business." Page 34.***
- ***"Promote growth in the downtown." Page 70.***
- ***"Promote access to broadband ...." Page 71.***
- ***"Promote Los Alamos County as a model for emerging technologies." Page 76.***
- ***"Promote economic diversity by building on the existing strengths of the community: technology, innovation, and information" Page 76.***

Notice that there is no mention at all of promoting daycare, child care, preschool, or private school businesses let alone such a businesses in an established residential neighborhood. The Comprehensive Plan does partly focus on various business activities as it should, but daycare

operations are not one of them. Therefore, daycare operations have no special status under the Comprehensive Plan and must be viewed as any other business would be in construing the actual emphasis of the Comprehensive Plan.

Promoting business is part of the Comprehensive Plan. So is protecting neighborhoods. It is obviously possible to accomplish both goals simultaneously. There is no need to degrade the peace and comfort of long established residential neighborhoods in the process when the county is facing problems of urban blight and an excess of empty commercial buildings. There are many commercial properties currently available that would be suitable for daycare operations in Los Alamos County. Daycare operations belong in “the appropriate location” (i.e. downtown in commercial facilities) and not in rural/residential neighborhoods.

When considering the conformance of these Special Use Permit Applications with the Comprehensive Plan it is critical for the Planning and Zoning Commission to remember that:

- a.) when considering a Special Use Permit the Comprehensive Plan takes on the force of law (*LAC Municipal Code Section 16-156*),
- b.) current rewriting of LAC zoning code will REQUIRE compliance with the Comprehensive Plan,
- c.) the burden of proof of compliance with the Comprehensive Plan lies with the Applicant, and
- d.) conformance with the goals of the Comprehensive plan will be paramount in the Planning and Zoning Commission’s decision making.

In order for the Planning and Zoning Commission to approve these Special Use Permit applications, it is necessary for the Applicant to prove that the proposed daycare operation complies with the Comprehensive Plan. As I have thoroughly demonstrated above, any daycare operation in a residentially zoned area in Los Alamos County is diametrically opposed to Los Alamos County POLICY as specified within the Comprehensive Plan. As such, the law requires rejection of the SUP-2022-0020 and SUP-2022-021 applications. Additionally, as mentioned above, precedent has already been established in that a similar proposed daycare operation within the La Senda subdivision was rejected a few years ago by the community.

It is clear that protection of the character and nature of existing neighborhoods is paramount to Los Alamos County and its residents and I urge the Planning and Zoning Commission to soundly reject SUP-2022-0020 and SUP-2022-021 thus ensuring compliance with the Comprehensive Plan.

Sincerely,

Phillip Noll, Ph.D.

On Jan 31, 2022, at 4:21 PM, Sayeda, Sobia <[sobia.sayed@lacnm.us](mailto:sobia.sayed@lacnm.us)> wrote:

Sobia Sayeda  
Senior Planner | Community Development Department  
1000 Central Avenue, Suite 150  
Los Alamos, NM 87544

Phone: 505.662.8122 | Main: 505.662.8120

**<image001.png>**

**From:** [L.D](#)  
**To:** [Sayeda, Sobia](#)  
**Subject:** [EXTERNAL]SUP-2022-0020 and SUP-2022-0021 (Proposed Daycare at 113-B La Senda Rd.  
**Date:** Monday, January 31, 2022 4:01:20 PM

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**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Chair and Commissioners,

This business proposed in SUP-2022-0020 and SUP-2022-0021 will commit visual trespass in both directions, in and out of the commercial area.

Section 16-277(1)(e) of the county municipal code states, "There shall be no visible exterior display or storage of materials used in the home occupation...in such a way as to be visible from off the lot."

This is a problem because the entire play area, swings, gardening zone, etc. are materials used in the home business. Since there is no significant visual obstruction surrounding these areas, or any other portions of the lot that might be used, it is a violation of the county code. Any fencing proposed to correct this deficiency would have to be high enough to obscure the area from second floor windows.

There is, however, a reverse effect also. Since the adjacent yards can be seen from the play and study areas, two burdens are placed on nearby residents. As one of the closest residents, with property immediately adjacent, this is especially important to me. Our house is only 52 feet from the play area, and our yard abuts it with no distance at all in between.

First, if we are at all thoughtful, we must modify our behavior to avoid distracting or upsetting the children.

And since it is a preschool and also a private school, we must be mindful of the law that says we can do nothing in our own yard that might interfere with the education of the youngsters. That's the law. And literally nobody knows the limits of what might comprise a visual distraction.

This is definitely a nuisance, and annoying.

\*\*\*\*\*Please confirm receipt of this email\*\*\*\*\*

Sincerely,

Les DiLeva  
 115 La Senda Road  
 White Rock, NM 87547

Dear Commissioners,

The county municipal code Section 16-156(1) tells us the proposed business must not "...under the circumstances of the particular case, be detrimental to the health ... or general welfare of persons residing or working in the vicinity of such proposed use..."

The detriment due to noise is well known. For example, "Exposure to noise constitutes a health risk. There is sufficient scientific evidence that noise exposure can induce hearing impairment, hypertension and ischemic heart disease, annoyance, sleep disturbance, and decreased school performance." (National Institute Of Health, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1637786/>)

WHO places the lower limit for annoyance at 55 dBA, "...guideline values for annoyance have been set at 50 or 55 dBA, representing daytime levels below which a majority of the adult population will be protected from becoming moderately or seriously annoyed, respectively."

Since the La Senda covenants forbid any business that \_may become\_ an annoyance (or nuisance), and there is no doubt the business will create noise over 55 dBA over the property line, it will be impossible for the applicant to prove the operation will not be an annoyance.

Which, according to more sources than is practical to list, will be detrimental to the health and/or general welfare of persons residing in the vicinity.

But what about those working in the vicinity? That would include the employee(s) working at the day care. They can be expected to be subjected, in a fairly regular basis, to sound levels exceeding 110 dBA and up to 120 dBA. CDC tells us with an average sound level -- measured in decibels -- of 110, "Hearing loss [is] possible in less than 2 minutes." With no minimum time at all, 120 dBA yields "Pain and ear injury." And of course measurements of screaming children being held yield those results.

Further, most sources that list occupations that cause hearing loss include preschool children, usually as "nursery school" or "kindergarten." For example, "Teachers who work in kindergarten classes and nurseries, especially with infants and young children, can find their hearing affected..."

(<https://www.hear.com/useful-knowledge/10-jobs/>)

"Working in preschool increases the risk of hearing-related symptoms"

(<https://link.springer.com/article/10.1007/s00420-019-01453-0>)

or "Usually the only risks teachers face is the risk of losing their sanity and patience. But for those teachers who school the younger students, the prolonged exposure to crying, screaming, and even singing is a risk few probably consider."

(<http://blog.e3diagnostics.com/10-professions-that-most-contributed-to-noise-induced-hearing-loss>)

or "Teachers. In particular, nursery school teachers can be exposed to a steady flow of loud and high-pitched noise of around of 80dB(A)..."

(<https://pulsarinstruments.com/news/most-hazardous-jobs-your-hearing/> -- previously endorsed by the applicant)

So there is significant evidence that day care workers will suffer health effects, including stress effects and hearing loss. It will be challenging, if not impossible, for the applicant to prove otherwise.

Going beyond that, there is also the problem of exposure to the elements without a break for so many hours a day, since the idea was originally to remain outdoors as much as possible (lightning being the exception). Whether that is still the case we cannot know at this point.

Aside from the hazards of heat and dehydration, or cold and frostbite, there's the ever-present problem of ultraviolet exposure and resultant skin damage. At 6500 feet elevation, this is problematical. A similar situation exists in construction work, but even there many of the days are avoided due to environmental issues. Not so this day care. Sun exposure with snow on the ground is particularly difficult to limit, and there is hardly any shade available on the property.

But a strange aspect of the law is, the children attending the school don't count. The applicant is not required to avoid detriment to their health, at least as far as the county is concerned. They are most likely to be proximal to the loudest noises, least likely to be able to recognize and communicate when they are overheating, drying out, or going numb from cold. They are least likely to maintain clothing cover and sun block when needed.

So if this application is approved, the county will find itself participating in a completely unprecedented experiment, at least as far as can be determined. There are no other day care operations in the world involving children of this age spending all day outdoors at such an elevation. And certainly not in someone's back yard.

Barham Smith  
116 Piedra Loop  
White Rock, NM 87547

Chair Priestley and Commissioners,

First, I regret the length of this letter, but after learning the legal process, it's unfortunately necessary. This hearing is the only opportunity to present evidence, including anything that might be important in the event of an appeal.

We are required to cover just about any contingency, since the information supplied on the application is sparse and has not been binding: the applicant made several significant changes during the original hearing.

If it's any consolation, just imagine how inconvenient it is to have to write this in the first place. But in the end, it proves beyond any reasonable doubt that the proposed day care will be noisy beyond legal limits, and certainly a nuisance. However, there is no need for persons objecting to the Special Use Permit to prove anything -- that problem is reserved for the person applying for a special use permit.

The applicant is required to prove the proposed business is unlikely to disturb the peace and comfort of nearby residents. Los Alamos County Municipal Code Sec. 16-451 (b)(3) "The applicant shall present evidence supporting the application and shall bear the burden of demonstrating that the application should be granted."

To avoid possible confusion over the word "demonstrate," it is usually a synonym for "prove." In New Mexico, if there's any doubt, any other uses of the word in the same document should be used. It, or variants, appear 25 times in the Code, 22 of which are the verb form, which in every instance has the same meaning as the word "prove."

The normal measure of the burden in a civil matter is the "preponderance of evidence." The applicant is charged with submitting evidence that makes it clear it is more likely there will be no detriment. If the evidence slightly favors those opposing the application, or even may be balanced or unclear, the application fails. There are two measures: the amount of evidence on each side, and the quality of that evidence.

But what is the applicant required to prove?

The answer is in Sec. 16-156. - Special use permit review criteria: "... the planning and zoning commission shall utilize the following criteria in making its determination of approval, conditional approval or denial:

(1) The request substantially conforms to the comprehensive plan, and the establishment, maintenance or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort or general welfare of persons residing or working in the vicinity of such proposed use, or be detrimental or injurious to property or to the value of property in the vicinity, or to the general welfare of the county."

I will concentrate on just three of those items: peace, comfort and general welfare. But the commission understands that a failure of the applicant to prove any one of those points would require denial of the permits.

Of course, peace and comfort doubtless played a part in the 2007 denial of a Montessori school just a few lots away from this proposal. The La Senda covenants read: "No noxious or offensive activity shall be conducted or carried out upon any lot. Nor shall anything be done thereon which is likely to become an annoyance or nuisance to the neighborhood."

Not only does this establish a precedent, which would be of particular importance in District Court, it broadly states a prohibition against anything likely to become an annoyance or nuisance. The future tense is critical in understanding how thoroughly this denies an outdoor, noisy, intrusive operation. If any of those things *could* happen, the permit must be denied.

While that should easily require refusal of the permit, it's prudent to include ample evidence, especially in light of previous experience.

Next we need to consider a statement from county staff in their original presentation: "Peace and comfort of persons residing and working in the vicinity is subjective, and cannot be proven either way."

This is, of course, an expert opinion. I agree within reasonable limits -- there are doubtless extreme examples that go beyond the subjective, but in this case it is probably correct. For example, someone who is deaf would hardly be troubled by any noise the business might generate, while someone with particularly sensitive hearing, or who is easily disturbed by noise, might find the constant sound of 12 children outdoors to be torture.

A more typical example might be someone who keeps their doors and windows closed all day, using either heat or air conditioning, and who keeps music or the tv playing all the time. Such people would probably not care much about an outdoor day care next to them. But there are also people who keep their windows open as much as possible and enjoy the sounds of nature -- birders are a prime example, since the songs are critical to many identifications (this is why there is a microphone in the bird feeding area at PEEC). The noise of the day care will make it hard to hear what few birds (or other wildlife) are not chased off by the raucous sounds.

Or even more simple, someone who goes away to an office all day probably wouldn't much mind. But for someone who works from home, or is retired, that would not hold true at all.

The list of examples could go on, but that should get the idea across.

Consider also that there's research indicating people who claim to be sensitive to noise actually are more sensitive. "Studies do find that adults differ in noise sensitivity, and people who say they are more sensitive do react more to noise, both physiologically and on questionnaires." Page 178 "Silent Scourge" By Madison Colleen F. Moore Professor of Psychology University of Wisconsin.

This means there is no objective way to judge this issue, and therefore the burden to prove is insurmountable. Naturally, that raises the question: then why is there a law allowing this kind of operation at all?

The simple answer is because not every neighborhood would object, and not every neighborhood is quiet in the first place. If a house is next to a school playground and wishes to open a day care operation, that may not mean much to the neighbors, who chose to live next to a play area anyway. Surely the commissioners could think of other examples.

But in this case, that is not true. Every single property that is directly exposed to this day care -- where there are no intervening buildings or other opaque barriers -- is objecting strenuously. If the commissioners could see how close and exposed they are, this would be easy to understand.

So, given there is no way for the applicant to prove there won't be detriment to their peace and comfort, and that there is very good reason to believe it will be detrimental, it is

inappropriate for this Commission, or any government body, to claim the applicant has proven otherwise.

And that alone should be enough to require a refusal of the permits. But it turns out that, while detriment to peace and comfort cannot be proven, noise levels actually can.

First, a quick review of the law. Section 16-493 (c)(1) states "The appellate body shall affirm the decision appealed unless it finds that the decision was not in accordance with adopted county plans, policies, and ordinances..." The key here is the requirement that the record show accordance with ordinances. No limit on this is specified.

Bearing that in mind, if we go to the use table for Day Care, Section 16-282, item 10 states, "Noise levels shall be governed by the provisions of article III, chapter 18 of this Code"

It stands to reason that if this is to be considered in the event of an appeal, the Commission should consider it in their deliberations. So it seems straightforward that day care operations are required to meet the chapter 18 provisions. But some of you may recall legal advice implying this is not the case, that this is a Section 16 commission, and therefore this aspect of noise is not under consideration.

Initially, I thought this argument unlikely to be correct, and in light of the above, still do. However, that may not be the case for commissioners remembering this statement.

If the commission considers that to be an expert opinion, there will be no objection, particularly because Section 16-277 (1)(f) of the code, "Home occupations", states "There shall be no noise, vibrations, smoke, dust, odor, heat or glare detectable beyond the boundaries of the lot on which the home occupation is located, so as to constitute a nuisance." Since that is in Section 16, it obviously does fall under the purview of the commission.

Because that allows no noise at all, there is no option but to refuse the application for this day care business. It seems impossible that the applicant could prove a Day Care operating outdoors a significant part of the day would cause no sound to cross the property line.

But since we must cover all contingencies, reasonable or not, there is still the matter of the Section 18 noise ordinance.

First, there is the issue of whether or not the sound of 12 children outdoors on weekdays is natural -- and whether that matters. Much has been made of the first sentence of Section 18-72, "The making, creation or maintenance of such excessive, unnecessary, unnatural or unusually loud noises which are prolonged, unusual or unnatural in their time, place and use are a detriment to the public health." There was a strong focus on the word "unnatural," and that the sound of children's voices is natural. True enough, but not the issue at all.

The question is actually whether the voices of 12 children between 3-6 or 7 years old (or whatever ages the applicant decides this time), outdoors all day, in perpetuity (never simply getting older) is even remotely natural. And of course it is not.

But leaning on the word natural is to ignore the other conditions in the sentence, such as "unusually loud." In a family back yard, twelve children between three and six outside every day would be at the very least unusual, if not unprecedented, and unusually loud as a result. That it would be prolonged, being outside every weekday and some weekends, is beyond dispute. Also, it would be usual "in their time" that children 5 or older would not even be at home most of the day, since their usual place would be in school.

So this argument has no merit, especially since the requirement is for the applicant to demonstrate that it will not be either prolonged, unusual, or unusually loud.

However, it is the next section of the code, 18-73, that deals with "Prohibited noise; decibel provisions." At this point another bit of confusion needs to be addressed: when it comes to decibel trespass, it does not matter if the sound is natural, unnatural, or anything in between. Regardless the source, the operation of the day care is simply not allowed to exceed the decibel limitations even with a Special Use Permit. During the expected hours of operation, that limit is 65 dBA at the lot line, with the provision that in any given ten-minute period per hour it can exceed 65 dBA but never 75 dBA.

To clarify: if the sound ever exceeds 75 dBA under any circumstance, it is illegal. If it exceeds 65 dBA twice in an hour, separated by 10 minutes or more, it is illegal. If the applicant cannot prove it will not be illegal, no permit should be approved.

So how loud are 12 children in that age range, and how likely is the noise to be an illegal encroachment?

First up is the Pleasant Hill Child Care Environmental Noise Assessment. (<http://www.ci.pleasant-hill.ca.us/DocumentCenter/View/16065/12-19-16-environmental-noise-assessment?bidId=>)

"We used data collected from an existing pre-school in May of 2008. Noise levels were measured at the edge of the playground area while approximately 25 toddler and pre-school age children were playing outdoors. Children ranged from approximately 5 feet to 50 feet from the sound meter. The average sound level for the 37-minute interval measured was 69 dB, and maximum sound levels ranged up to 84 dB."

The applicant's play area is larger, but since during the vast majority of the time the children will be roughly within 50 feet of the property line and sometimes closer, this is a good correspondence. However, it is immediately obvious that 25 children will be louder than 12.

But it turns out that when multiple similar sources of sound are combined, doubling the number of those sources only adds 3 dBA to the total sound level. (see: [https://www.engineeringtoolbox.com/adding-decibel-d\\_63.html](https://www.engineeringtoolbox.com/adding-decibel-d_63.html)) And in fact, that reduction is too high, because it presumes the peak noise level was caused by all the children screaming simultaneously, which is unlikely.

So we can expect at least 66 dBA average at the fence line, and about 81 dBA peak -- well in excess of the county's maximum allowance of 75 dBA (see Los Alamos County Municipal Code Sec. 18-73 (a) and (b)). But it's worse than that. If the average is 66 dBA, that means that over half the time outdoors the noise level is likely to be in excess of the legal limit. And also to consider: the measurement period was only 37 minutes. Statistics indicate that is likely not long enough to get an actual daily peak, much less monthly or yearly, so there can certainly be no claim of bias toward loudness in that regard.

There are a few fudge factors. For one thing, 66 dBA would be for 12.5 children, so 12 would be more like 65.85 dBA. For another, their measurement only allowed an approach of five feet, where a property line measurement would include zero feet, so the peak reading may well be several dBA higher -- up to twelve, theoretically.

But that's just one example. The next only has a maximum of 10 children at any one time, so we can see how the numbers match up.

This is from "Environmental Assessment For Children Noise" which is an extraordinarily thorough measure of the noise from a new day care location. (<http://publicaccess.staffs Moorlands.gov.uk/portal/servlets/AttachmentShowServlet?ImageName=167546>).

The play area is a bit over 32 feet by 32 feet, and the sound measurements were done a little over 16 feet away from it (at a neighbor's door). They used top-notch equipment, shielded to prevent contributions from ambient noise.

The result? During the times measured, there were between four and ten children present. Of two measurements, the first lasted 7 minutes and gave an average reading of 66 dBA with a peak of 79 dBA. The second result taken over 15 minutes later in the day gave exactly the same result: 66 dBA with a peak of 79 dBA.

Note the similarity to the first results from Pleasant Hill. The maximum distances are very similar at about 50 feet, but in the second case, no child was closer than 16 feet to the device doing the measurements. With an average reading of 66 dBA, about half the time the reading will be above that level, which will certainly mean an illegal noise level above 65 dBA. But of course, the children here would be able to get a lot closer than 15 feet.

The children will be within 50 feet of the property line most of the time, because that's the most likely used area. But just a random result would give a similar scattering, so the result is valid enough -- but with only ten children or less!

Next we have "The Cry of the Child and its Relationship to Hearing Loss in Parental Guardians and Health Care Providers" by Lindsay Calderon, Ph.D., Logan D. Carney, Kevin Kavanagh, M.D., Eastern Kentucky University

This was a controlled experiment with a calibrated instrument that was reading slightly low, but the authors decided not to correct the results because it was reasonably close. The point being, the readings were guaranteed to not be high.

This was not a playground test involving interaction with other children, but just an office setting. "The mother or guardian of each participant was present to comfort the child throughout the medical exam and ensure the environment was routine and unencumbered."

Further relevance comes with the ages most likely to be noisy: "Interestingly, all of the recorded sound levels fell between 99-120 dB(A) of sound pressure; children presenting the greatest risk for intense cries with potentially harmful sound intensities were between the ages of 9 months and 6 years. This study found that elevated noise levels produced from crying children can cause acute discomfort and pain to those exposed."

Measurements were made with a reference distance of 12 inches, which is the norm, with the microphone turned at a right angle to avoid direct input. They recorded "an average crying sound intensity of 112 dB(A) with a range of 102 to 120 dB(A)." The highest ranges were those three years old and above. When corrected for the age of expected children in the proposed day care, the average peak goes up to over 118 dBA.

With a standard session of about 45 minutes, it's reasonable to project that such an event would happen at least 8 times per day per pupil, giving an average 118 dBA blast about 96 times per day.

The furthest possible distance from the property line in the proposed play area is about 85 feet, looking at the applicant's map. Using the standard free-field attenuation of 6 dB per

doubling of distance, if you start with the 118 dB you get about 80 dBa at 128 feet. That's the average. If you adopt the 120 dBa peak figure, it's 81 dBa.

And since some of these events won't happen in the furthest possible corner, it is certain there will be at least one during the year that will be within 64 feet, which would give a value of 84 dBa at the property line. But in the real world, it's likely to happen even closer, with readings over 90 dBa. Here's a chart so you can see how it works out. You need only subtract 2 for the average rather than peak number. Over the course of a year, it will certainly exceed 90 dBa at the property line, and probably 100. Bear in mind this is the noise level from one child only, with no contribution from the other 11.

120 dB(A) @ 12 inches, expressed as feet for convenience.

Feet	dB(A)
1	120
2	114
4	108
8	102
16	96
32	90
64	84
128	78

In another test using more (but younger) children. they recorded a peak of over 103 dBa in over 75% of children, measured at 18 inches. Only one out of 20 was older than 3 years, where the max values generally occurred. Even so, that give us 9 out 12 children emitting a minimum of 70 dBa sound at the lot line during any given 37 minute period, for an average of 14 events per hour. All day. That's far beyond legal limits, and the absolute minimum possible if they were all crowded at the far end of the play area. The max value at 18 inches, by the way, was 110 dBa, which is 2 less than would be expected from the 12-inch measurements. However, that is well within the margin of error and a real possibility in the proposed play area: 110 dBa at the lot line.

Bear in mind that the reduction shown in the chart above is actually a bit low. The 6 dBa reduction for doubling distance assumes a point source of the sound, plus a free field expansion. Since vocal apparatus is directional (surely you've noticed this) sound does not radiate equally through a hemisphere as in a free field. But more important, when sound comes from a tube or other horn-shaped system (like a human) the reduction is only about 3 dBa for some distance -- related to the diameter and shape of the source -- and later begins to approach the 6 dBa reduction. (<https://www.acoustical.co.uk/distance-attenuation/how-sound-reduces-with-distance-from-larger-non-point-sources/>)

In view of that, it's essentially impossible for the applicant to demonstrate that the sound level will not exceed 75 dBa. It's even more unlikely that it won't exceed 65 dBa twice in one hour, separated by more than ten minutes, in any given day, much less during the duration of the permit.

That should be quite enough, but the next is the "unpersuasive" example I cited during the original hearing. With a bit more explanation, maybe it will persuade after all. At issue was a Montessori school in Davis, California, a town with which I have been familiar since the 1970s, which explains part of the reason it's so memorable to me. But the story itself is compelling enough to stick in just about anyone's mind.

<https://www.davisvanguard.org/2009/08/noise-problems-continue-to-plague-neighbors-of-montessori-day-care-center/>

The tussle over the noise from this Day Care ran for over 15 years. At one point, the owner decided to get a professional sound reading in dBa, convinced it would prove the operation was in compliance. The neighbors agreed to cooperate, but when the results came in, the owner refused to pay the fee to publish the report. So the neighbors paid the company instead. The most interesting result was taken in the house closest to the play area, where the number I remembered -- 90 dBa -- was recorded. Inside the house. With the double-pane windows and doors shut.

Some aspects of the operation are similar to the proposed business here, and others are not. The play area in Davis was actually a bit larger, about 85 x 105 feet. But the distance to the nearest house from the property lines was only about 23 feet. Further, there were a maximum of 70 children outside (usually less). So there's a little fudge in the numbers no matter what we do. Reducing the number of children by half three times gives us 8-1/4 children at 81 dBa. Doubling the distance from the lot line requires removing another 6 dBa, giving us 75 dBa inside the house. Considering that the Matthews play area is smaller, involves more (12) children instead of 8-1/4, and the nearest house is at 52 feet rather than 46, the numbers will correspond reasonably.

The upshot? We can expect a maximum noise level of about 75 dBa inside the neighbor's house. Even if it's off by 10 dBa, that would mean they would be subjected to a sound level -- inside their house -- equivalent to the maximum allowed by law at the property line during most of the day.

Does that qualify as a nuisance? Easily. In fact, the World Health Organization (<https://www.who.int/docstore/peh/noise/Comnoise-4.pdf>) considers children playing outdoors to qualify as an annoyance when it gets to 55 dBa, which is going to happen even inside nearby houses, not to mention their yards.

The Davis operation was notable in a couple of other ways. For one thing, it was obvious for years that the day care was illegally loud, but the city did nothing about it. In fact, the mayor described the noise as "the natural and delightful noise of children. He openly wondered who could object to the sounds of children, implying that those who did were simply being selfish and insensitive."

This points out why the neighbors have to try so hard to stop this before it gets started. The County has shown a similar sympathy toward day care. The requirements for testing sound levels cannot be met by the county due to lack of training and equipment, so it will fall to the neighbors to hire out those tests, and it will require taking the matter to District Court to settle. This process could take quite some time and involve considerable expense, but the eventual outcome is not in much doubt.

This would not be just some situation that arose naturally. It's a business that requires a Special Use Permit issued by the county -- so it is an open question who will end up absorbing the costs of proving what should be obvious from the evidence already presented.

Here are a few more brief points about decibel levels:

Design of Child Care Centers and Effects of Noise on Young Children  
by Dr. Lorraine E. Maxwell & Dr. Gary W. Evans of Cornell University; from DesignShare.com  
"The decibel levels in these studies ranged from 95 to 125 dBA peak. "  
<http://www.earlychildhoodmichigan.org/articles/12-03/Cornell12-03.htm>

Child Voice and Noise: A Pilot Study of Noise in Day Cares and the Effects on 10 Children's Voice Quality According to Perceptual Evaluation

Anita McAllister, Svante Granqvist, Peta Sjölander and Johan Sundberg

"Two omnidirectional electret condenser microphones (TCM 110, AA- video, Linköping, Sweden) were used and placed directly in front of the ears on each child .... The mean all-day noise level for the three day care centers was 82.6 dBA Leq, ranging from 81.5 to 83.6 dBA Leq." (Leq. is "equivalent continuous sound levels" or average sound over the measured period. Note this is 10 children rather than 12).

"Generally, a baby's cry can be about 130 decibels"

<https://abcnews.go.com/Travel/crying-baby-hearing-loss-jean-barnard-claimed-lost/story?id=11253932>

Two examples that will show up in any casual search:

A normal shout: 90 dBA

Full blown scream: 120 dBA

(<https://www.alpinehearingprotection.co.uk/5-sound-levels-in-decibels/>)

"As for the sounds of young children shouting and crying, babies can cry at around 110 decibels, and may be more damaging than other types of 110 decibel sound, as Dr Backus explains. Babies tend to cry at a particularly piercing pitch, measured as 2-4 kilohertz – where our ears are more sensitive – which could potentially do more damage to our hearing than other frequencies." (Note this is crying, not screaming, which meters louder).

<https://www.dailymail.co.uk/health/article-3384688/Can-having-CHILDREN-wreck-hearing.html>

"You will still hear loud crying, which can exceed 120 decibels (1 ft / 0.3 m) / 100 decibels (8 ft / 2.4 m)."

<https://noisyworld.org/block-out-baby-crying-sounds/>

I have to include this one because it is from the same source as the original chart the applicant used to claim 12 children will emit 60 dBA: "In recent studies[1] daily noise exposure for young people in schools in the UK averaged 72dB(A)" (<https://pulsarinstruments.com/solutions/classroom-noise/>)

In reviewing all these sources (and more) it's interesting to note they converge, with little variation, on the figure of about 80 dBA *or more* for the maximum predicted level of exposure at the lot line. Considering that 75 is the legal limit, the issue should be quite clear. But it is certain there will be more than 65 dBA traversing the lot line several times an hour.

Consequently, that constitutes near absolute proof the business will be illegal, considering it will be outdoors all day. But bear in mind, there is no need for nearby owners to prove anything -- it is the job of the applicant to prove it is unlikely those sound levels will be exceeded. And in view of the evidence presented, that is simply impossible.

Right now, there is no sound barrier at the property line. Since we have at this point no idea what the applicant is proposing, a new fence could be part of the deal. But what if, instead of a fence, a sound wall were put up? (Remember, we have to anticipate all contingencies).

From a legal point of view, it would make little difference. The most likely barrier would be wood, which turns out not to block sound very well. Further, it would not change the lot line,

but move the sound meter perhaps just a little higher (typically six feet). So no, that wouldn't make much difference at all.

A 10-foot cinderblock standard sound wall might make a difference near the wall, and would attenuate the readings a bit at the top, but still would almost certainly yield an illegal trespass. Also, the sound will tend to bend over the wall, so after a relatively short distance it will have made only minimal difference.

And of course, what if instead of the original plan, the day care were to move indoors for 50 minutes out of each hour? That would solve the 65 dBA issue, but since there's equally strong proof that the sound level will exceed 75 dBA, the operation would still be illegal.

Now for a little statement of opinion.

It's easy for anyone not in the direct line of fire to criticize my neighbors for not wanting this business disturbing their peace and degrading their comfort. I could say that myself. Our house is somewhat blocked from the play area by the Matthews residence, and is further away. I doubt it would be anything more than a mild annoyance most days. But I could be wrong, and that would be very irritating for many years.

The major problem is the four houses directly exposed to the open play area, with nothing much at all between them and this operation. Two of them are even closer than my own experience living across the street from a preschool of about the same size. One of them less than half that distance.

The noise was simply amazing. Even with the door and windows shut, 120 feet away from the closest part of the play area, it was distracting to the point of forcing us to move to the other side of the house. Going outside without ear protection was at times somewhat painful. I would plug my ears with my fingers.

I would not wish that on anyone.

We sold the house.

## Appendix A: Noise Weighting Scales From OSHA Technical Manual

### A-weighting:

A measurement scale that approximates the "loudness" of tones relative to a 40-dB sound pressure level, 1,000-Hz reference tone. A-weighting is said to best fit the frequency response of the human ear: when a sound dosimeter is set to A-weighting, it responds to the frequency components of sound much like your ear responds. A-weighting has the added advantage of being correlated with annoyance measures and is most responsive to the mid-frequencies, 500 Hz to 4,000 Hz.

This is the scale Los Alamos County uses (and almost everyone else). Note that the primary frequency of a child's scream is usually about 550 Hz, and the primary harmonic is about 2000 Hz: the "fingernails on the blackboard" frequency. Which is a technical explanation of something virtually everyone knows: screaming children are irritating.

## Appendix B: The notoriety of Los Alamos

Some Commissioners may recall a statement made at the previous hearing, "Los Alamos, according to CYFD, which is the state regulator of child care facilities, says that Los Alamos is notorious for not granting these, these exceptions, therefore there are no licensed home child cares in this town"

Nobody asked at CYFD thought the first statement was correct, and there is licensed home child care in Los Alamos. So it was, and is, completely incorrect.

## Appendix C: Outdoor Day Care Is Probably Illegal Anyway

There are two mentions of outdoor business in county ordinances.

County Code Section 16-277.- - Home occupations (1) a. states clearly "The home occupation or profession shall be carried on within the main building, an enclosed garage or other accessory building, or any combination of these, except agricultural, horticultural or animal husbandry uses may be carried on the outside of a building."

It would be fun to see an argument that day care is "animal husbandry."

The other mention appears in Sec. 16-282. - Day care (c)(9) "No outdoor activities for children shall be allowed before 7:30 a.m. or after 6:00 p.m." The County will inevitably argue this means outdoor activities are otherwise allowed, but it turns out that interpretation is probably incorrect (you never really know what a court will decide). However, arguing such complex law is beyond the scope of P&Z, and unlikely to be fruitful in this venue.

It is mentioned only to preserve it for possible future needs.

Thank you for your patience,

David North  
111 La Senda  
White Rock, NM 87547

d@vidnorth.com  
505 695-5808

January 31, 2022

Chair Priestly and Members of the Planning and Zoning Commission,

I am writing with regard to the proposed daycare at 113B La Senda Rd, Cases SUP-2022-0020 and SUP-2022-0021, since I live within 300 feet of the site.

Before coming to Los Alamos, while caring for my mother, my husband and I lived for a short time at a house across the street from a kindergarten playground (see attached diagram). The nearest corner of the playground was approximately 120 feet from one of the house's bedroom windows.

The noise of approximately 15 kindergarteners all trying to out-shriek each other was sometimes deafening, even with the windows closed. Certainly it would have been difficult to sleep or work in that room.

After my mother passed away, we briefly considered moving to that house permanently, but the proximity to the school was one of the factors that dissuaded us. Indeed, when we were house-hunting in Los Alamos, we considered and rejected two houses on the basis that they were too near schools, and we didn't want to deal with the noise and traffic. We ended up in La Senda partly because of its peaceful, natural environment.

We are not child haters, as some of the arguments in the previous round of discussions have tried to imply. Several families in the area have children, and no one complains about the sounds of a few children playing, or the occasional larger gathering. That is very different from having a professional day care operation with twelve pre-school aged children outdoors all day, day after day, year after year. There are people who don't mind that level of noise; they may choose to buy homes near pre-schools or day care facilities (or airports or railroad tracks) where noise is to be expected. People buying houses in La Senda had no such expectation. An outdoor day care would very much change the character of the La Senda neighborhood.

The Comprehensive Plan repeatedly stresses "protecting the character of existing residential neighborhoods". It's listed as the very first goal under Housing on page 62, and is repeated in many other places throughout the Comprehensive Plan. Adding a noisy outdoor business is in clear opposition to that goal. In addition, it violates County Code 18-72 (the noise ordinance) and is prohibited by the covenants of the La Senda HomeOwners' Association, which has refused a permit for at least one (indoor, not outdoor) daycare in the past.

I urge you to deny the application for SUP-2022-0020 and SUP-2022-0021.

Thank you,

Akkana Peck



Dear Planning And Zoning Commissioners,

I am a neighbor within the 100-yard radius of 113 B La Senda Road, White Rock, New Mexico, where the present owner, Denise Matthews, would like to conduct an in-home daycare facility for up to 12 children from 3-6 (or more) years of age. The following comments are made in hope to disallow such a business in the La Senda residential area at any future time.

As a 31-year-veteran early childhood educator I would like to comment on the amount of noise a group of twelve 3-6 year-old children create. As background information, I taught grades kindergarten through fifth grade in three states over my lengthy career. A majority of my experience was teaching grades kindergarten through third grade which is the early childhood stage of development for children. I taught kindergarten students, ages 5 and 6, for the longest period of time which is 12 years. I originally made this verbal comment on the noise created by young children during the very first virtual public hearing and meeting of the Los Alamos County Planning and Zoning Commission on June 10, 2020. Whether these children are inside a building or outside there is a great deal of noise. This is not a good or bad trait, it is a plain and simple fact. This age range is excited about learning and discovering their environment. Thus, they are very verbal and want to share information and ideas with each other. They do not have a "noise filter" on their voices and cannot judge how much noise they are making. When this age range gets together in one group, the noise generated will increase approximately as the square of the number of children in the group, because each child can interact with all the others. For example, a group of twelve children will generate about four times as much noise as a group of six. That doesn't mean they will get that much louder, it means they will be getting loud that much more often, and that much more consistently.

We can already hear their boy when he's out playing in the yard, even with our windows and doors closed. It's not too loud, but it's worrisome because one child playing alone is usually comparatively quiet. The amount of noise generated by a group of 12 children aged 3-6 years will definitely affect nearby neighbors. Location of such a daycare facility will be mostly in the Matthews' yard which abuts our backyard. Not only will the children's noise be heard in the open yard area, but it will reverberate off the Matthews' extensive residence -- ideally shaped to reflect sound toward the nearest neighbors -- and come back our way as well. So we will get a double dose of noise created by that group of children.

I would like to speak to another matter regarding available childcare facilities in Los Alamos County. One of the arguments for allowing such a daycare to exist in this residential location is the lack of daycare facilities. There is no dearth of childcare facilities in Los Alamos County. According to the June 3, 2021, Los Alamos Daily Post issue there are at least eight established preschool/daycare facilities in Los Alamos County. In addition Los Alamos Public Schools have five elementary schools that provide pre-Kindergarten preschool. Each school can service 30 students in two classrooms with one teacher and one instructional assistant per classroom. Los Alamos Public Schools also services children ages 3-4 in special education pre-Kindergarten preschools at two elementary school sites.

Another argument is that the lab finds it harder to hire young employees because there isn't enough day care. Maybe the Commission and county staff don't know the lab can solve that problem any time they want. "Federal agencies have the authority to establish workplace child care centers for federal families by donating space in their buildings for that use. At least 50 percent of the children enrolled in a child care center must be children of federal employees. Remaining available slots may be open to the general public," (Federal Workplace Child Care). "There are about 100 child care centers operating in General Services Administration-managed federal space, plus many others run by other agencies, including some at Defense Department facilities that are open to children of both military and civilian personnel, with the former category getting priority however."

There really isn't any need to put these businesses in residential neighborhoods.

The Commission may also want to consider that the state now requires a minimum of 50 square feet of open space per attendee at preschools, kindergartens, etc. Bathrooms, closets and other dedicated areas are not included in that allowance. This from the New Mexico Public School Adequacy Planning Guide ([https://webnew.ped.state.nm.us/wp-content/uploads/2017/12/COB\\_Misc\\_Reference\\_AdequacyPlanningGuide.file\\_.pdf](https://webnew.ped.state.nm.us/wp-content/uploads/2017/12/COB_Misc_Reference_AdequacyPlanningGuide.file_.pdf)). While this does not legally apply to private schools, it is nevertheless true that the state would consider a 523 square foot facility woefully inadequate for a day care with 12 children. Especially considering there is no floor plan, no indication of the room taken up by bathrooms, storage or other obstructions to the open space area, or even if the indicated 523 square feet is an interior or exterior measure.

Your consideration in this matter is appreciated.

Sincerely,

Marilyn Smith  
116 Piedra Loop  
White Rock, NM 87547

Commissioners,

There is a clause in the La Senda Covenants, Conditions and Restrictions (CC&Rs) that forbids any business of this sort. Further, there is a precedent specifically denying operation of a day care in La Senda.

Unfortunately, at the last hearing on this matter there was a fairly important mistake. The Commission was told there was nothing in the CC&Rs that addressed an operation of this sort. That could not have been more wrong.

There is a section titled "E. Nuisances," the full text of which is, "No noxious or offensive activity shall be conducted or carried out upon any lot. Nor shall anything be done thereon which is likely to become an annoyance or nuisance to the neighborhood." (See exhibit 1).

While this is general in nature, it was pivotal to refusing an application for a similar business a few lots away, at 101 Piedra Loop. After a hearing before the La Senda HOA Board, a letter of denial was sent, saying in part, "...after careful consideration, the board voted against supporting your plans to open such a daycare establishment on Piedra Loop in La Senda. Your proposal is inconsistent with the zoning requirements of a Residential/Agricultural (R/A) zone and is not permitted by the County's zoning of our residential area nor supported by LSHOA's covenants." (See exhibit 2).

Note the specific mention of the covenants.

The refusal of this application was mentioned at the hearing for the previous application, but no proof was offered and it was not clear that the CC&Rs were instrumental, or even why it was refused. Consequently, the Planning & Zoning Commission (P&Z) did not find it persuasive.

But it is crucial. It sets a legal precedent that supersedes other arguments based on county ordinances, because the CC&Rs are restrictions above and beyond the local ordinances. The County has no legal right to decide anything in opposition to these restrictions, nor ignore a precedent set by the board.

In that case, the owners were attempting to sell their house to a party that wanted to open a day care, and all parties wanted to be sure the operation could be permitted. The county deferred to the HOA board, as was correct, and subsequently the owners, who still live there, were unable to sell their house. (See exhibit 3).

We know of no record that the county attempted to contact the HOA before holding a hearing on the Special Use Permit for the current

proposed operation. The CC&Rs do state the HOA is the preferred vehicle for hearing these matters, but at that time it was listed as inactive with the state. Whether this played any part in the county's decision is unknown to us. However, the HOA has since been reactivated, which is a trivial matter of submitting a form and paying the annual fee. So had any of the listed board members been contacted about a hearing, they could have reactivated and fulfilled their role. The county should have followed that route to begin with, and the resolution may have been faster and less expensive as a result.

But the status of the HOA is not relevant to the standing of the precedent. The CC&Rs, as you no doubt know, travel with the property, not the HOA. The county can and should follow and enforce them. The same is true of District Court, if need be.

Note that the wording is "Nor shall anything be done thereon which is likely to become an annoyance or nuisance to the neighborhood." It is not necessary for objecting neighbors to establish that it is or will be annoying, but just that it is likely to eventually become annoying. Further, it puts the burden on the applicant to prove that it is more likely than not that the neighbors will not be annoyed at any time in the future.

We already know the HOA board said it would. That should settle the issue. However, it is prudent under the circumstances to pursue all reasonable avenues for evidentiary reasons.

So the next question is, can we establish what is a nuisance, or annoying? It's pretty simple in Los Alamos County, especially when it comes to businesses in residential areas. County Code Sec. 16-277. - Home occupations (1)(f) states, "There shall be no noise, vibrations, smoke, dust, odor, heat or glare detectable beyond the boundaries of the lot on which the home occupation is located, so as to constitute a nuisance."

Some of those are unlikely, but others are not, and one is absolutely certain: there will be noise. And it is officially a nuisance in Los Alamos.

The county may be able to argue their ordinances offer an exception for child care, but that is not relevant here. The CC&Rs make no exception for any reason whatsoever, and do not make any special exception for child care, preschool, private schools, or in any other way that could grant permission to the proposed operation. And the CC&Rs override the county's exception.

As the nearest neighbor, our house was estimated to be about 100 feet from the play area at the original hearing. It is actually 52 feet away, and that's definitely close enough for 12 kids and two adults to be annoying. That is closer than most people might guess. For example,

if you stand at the edge of the "dance area" at Ashley Pond and face the pavilion, you're about 52 feet from where the musicians typically place their speakers. There is not really any significant fencing, trees or anything else to buffer the play area from our house (see Exhibit 4, taken from our house).

But is there any quantifiable measure of annoyance? There is, according to the World Health Organization. They set the level at 55 dBA. Other measures fall into this same range, so it's a reasonable estimate.

At St. Annes Primary School in Stafford, a remarkably thorough and careful series of measurements of a play area with 4-10 children showed an average of 62 dBA measured at the door of a neighboring house 16 feet from the property line. That's an average. The peak value was 79 dBA. The result at the property line would have been much higher. Notably, their recommendation to reach acceptable sound levels was "the construction of a noise barrier and the restriction to a maximum of 4 children at any one time."

Measurements at Pleasant Hill Child Care indicate a sound level at the neighboring border averaging 66 dBA with a peak value of about 81 dBA. It's reasonable to expect about half the time the noise level will run between 66 and 81 dBA, well above the WHO level for annoyance. Since the source is approximately the same distance as that to the next house, there the sound level will peak well over 70 dBA. That is surely annoying.

But what if there's a fence? It's not easy to get reliable numbers, but perhaps the most scientific analysis was the "Parallel barrier effectiveness : Dulles noise barrier project" available at the National Transportation Library (<https://rosap.ntl.bts.gov/view/dot/8968>). "The barrier site contained two 14-foot high experimental barriers ... arranged to have absorptive and/or reflective faces ... The equivalent site, directly adjacent to the barrier site, was a 250-foot wide flat, grassy, open field with the same physical characteristics as the barrier site." Conditions are reasonably similar to the proposed day care.

The material used was measured as more effective than concrete when in absorptive mode, and even so the best result they got was near the wall, where the level dropped 16 dBA compared to similar measures without the wall. However, as the apparatus moved away from the wall to the approximate positions where nearby houses would be, the effectiveness dropped to as low as a 3 dBA reduction, due to the tendency of sound to bend over a barrier.

Bear in mind this is a solid 14-foot high barrier covered with acoustic dampening material.

Even a drop of 16 dBa near the wall would still leave peak noise levels over 65 dBa, and a drop of 3 dBa at the house location would still leave levels well above the WHO indication. But any fence proposal would not be anywhere near that effective.

So, it's pretty much certain to qualify as annoying from a noise standpoint, which makes it impossible for the applicant to prove it is unlikely to annoy.

There may be other potential annoyances to take into account. At this point we do not know the age range for the proposal, but previously it was 3-6 years old, or perhaps more. By including children of 5 or 6 years of age, it becomes a private school because of the Compulsory Education laws requiring all children past their 5th birthday to attend school.

While this involves no additional certification or permits in New Mexico, it does lead to some additional annual filing requirements not mentioned by the county. However, they are trivial and need not trouble the Commission.

Whether it is a school for purposes of liquor (or drug) purposes has been taken up before, in REGENTS OF UNIV. OF N.M. V. HUGHES, 1992-NMSC-049, paragraph {29} "The Liquor Control Act does not define the word "school." The word is defined, however, in our Public School Code. NMSA 1978, Section 22-1-2 (Cum. Supp. 1992), defines a school as "any supervised program of instruction designed to educate a person in a particular place, manner and subject area." This included day care operations where no certified instructors were present.

This places a couple of annoying encumbrances on the neighborhood. Since it is a school, it places the following restriction on the entire area: "It is a misdemeanor to willfully interfere with the educational process of any private school by an act that would disrupt the functioning of the school." State law NMSA 1978, §30-20-13.

This is similar to LA County Code Sec. 28-120 (d) "No person shall willfully interfere with the educational process of any public or private school by committing, threatening to commit or inciting others to commit any act which would disrupt, impair, interfere with or obstruct the lawful mission, processes, procedures or functions of a public or private school."

The fact that the act has to be willful is not much comfort, since it won't be easy to prove any interfering act does not qualify. Nor is there any indication of the degree or type of interference that might be at issue. So at the very least, there is some reason for the neighbors to worry, and that certainly is annoying.

Then there's NMSA 1978 §30-31-2, 'A private school and area within

1,000 feet of the school property line is a "drug-free school zone."

There are two problems here. First, it's very unclear what substances are prohibited. It's not just illegal drugs, but also perfectly legal drugs without a prescription, precursor chemicals for those drugs, and drug paraphernalia. Even fentanyl tests. Penalties are more severe, and while this may be of little trouble to most nearby neighbors, it could serve as a particular complication for people visiting who are unaware of this status, and for people simply nearby for no particular reason with a small quantity of some controlled substance. And finally, the laws on cannabis cultivation and use in the open air are evolving and it's unclear what future effects might be, which argues strongly that it may indeed become a significant annoyance.

As another complication, if there is to be a significant effect on people within 1000 feet rather than just 300 feet, notification of all those properties may be required in order that they may weigh in on whether they wish to have this restriction in their neighborhood.

Sincerely,

Patricia Thames  
115 La Senda Road  
White Rock, NM 97547

## Exhibit 1

**B. ARCHITECTURAL CONTROL.** No building shall be erected, placed, or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony or external design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on any lot nearer to public road than the minimum building setback line.

**C. BUILDING LOCATION.** No building shall be located on any lot nearer than 35 feet to the front lot line, 35 feet to a side lot line abutting a public road, 25 feet to a side lot line not abutting a public road and 25 feet to a back lot line abutting another lot. No building housing animals or designed to house animals shall be located on any lot closer than 50 feet to a side lot line, 50 feet to a back lot line abutting another lot and 45 feet to a dwelling on the same lot. For purposes of interpreting this covenant, a front lot line is defined as any lot line immediately adjacent to or abutting a public road right of way. Eaves and steps shall be ignored in computing required setbacks for building locations. All setback distances shall be measured perpendicular to the tangent to the lot boundary at that point.

**D. EASEMENTS.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plats. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

**E. NUISANCES.** No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

**F. SIGNS.** No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

*Michael J. 182...*

*La Senda*

**HOMEOWNERS**

**ASSOCIATION**

---

**P.O. Box 4851**

**Los Alamos, NM**

**87544**

Ms. Odalys Fernandez  
437 Pruitt  
Los Alamos, NM 87544

Dear Odalys,

The Board of Directors of La Senda Homeowner's Association (LSHOA) thanks you for attending the board meeting on October 23, 2007. We appreciate the hard work you did to prepare the informative presentation you put before the Board regarding your plans for a bilingual Montessori daycare and preschool.

We do recognize the need for additional daycare in White Rock, but after careful consideration the board voted against supporting your plans to open such a daycare establishment on Piedra Loop in La Senda. Your proposal is inconsistent with the zoning requirements of a Residential/Agricultural (R/A) zone and is not permitted by the County's zoning of our residential area nor supported by LSHOA's covenants. Our covenants are clearly based on keeping La Senda a residential subdivision and do not support a business with your proposed number of employees or with the associated increase in traffic in and around the residences close to your proposed school.

Again, thank you very much for your presentation. Please accept our warmest wishes in the successful pursuit and fulfillment of your plans to establish a daycare establishment in White Rock.

Sincerely,

Pat Roberts  
President

President:  
Vice President  
Secretary  
Treasurer

Pat Roberts  
Chuck Martin  
Bobbie Simpson  
Lynne Johnson

Tish Thames  
 115 La Senda Rd  
 White Rock, NM 87547

RE: La Senda Homeowners Association

The meeting of the La Senda Homeowners Association, in October 2007, in the presence of the prospective buyer, and us resulted in the Board of Directors voting against the Bilingual Montessori Daycare and Preschool being established in La Senda.

Los Alamos County deferred to the La Senda Homeowners Association to approve or disapprove the Daycare proposal.

The La Senda Homeowners Association Board of Directors sent a letter to the prospective buyer stating that the proposed Montessori Daycare and Preschool proposal was inconsistent with the residential/agricultural zoning in LaSenda. Thus, we lost the opportunity to sell our house to the Montessori/Daycare.

Kenneth and Sandra Johnson

Kenneth J. Johnson

Sandra K. Johnson

Notary

Cheryl N. Vigil

Date

12/30/2021

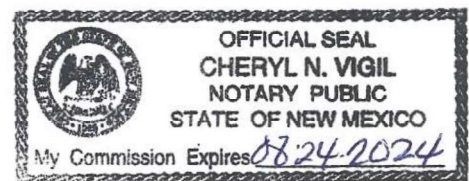


Exhibit 3

Exhibit 4





Los Alamos County  
Community Development Department  
**PLANNING & ZONING COMMISSION STAFF REPORT**

**Public Hearing Date:** February 9, 2022

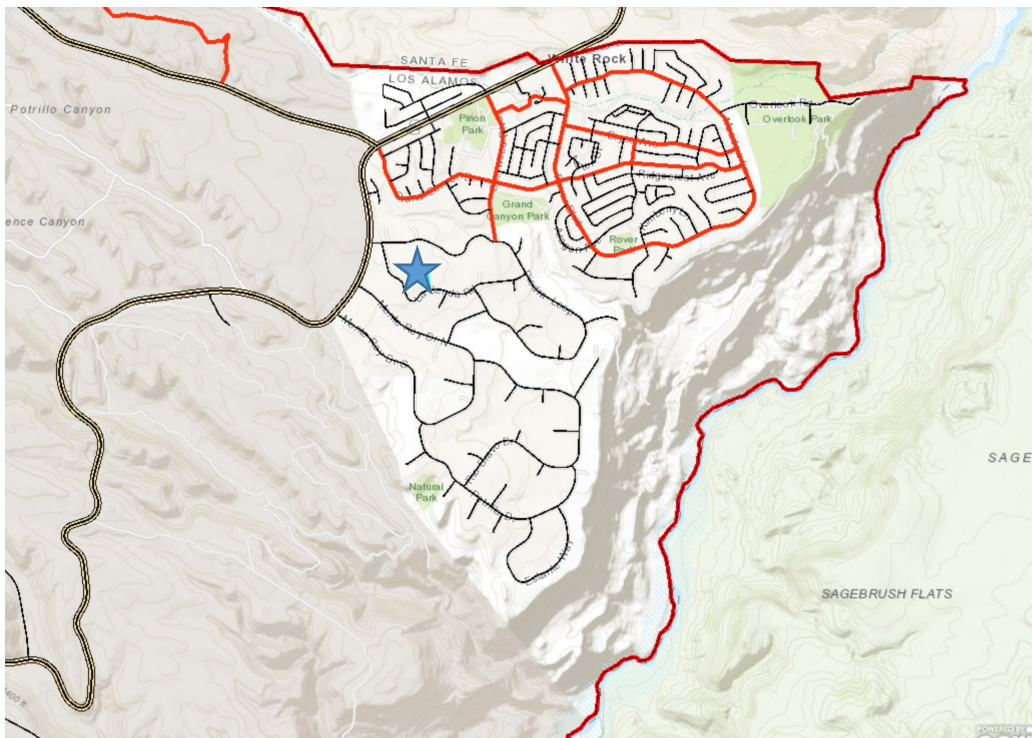
**Subject:** Case No. SUP-2022-0021

**Owners/Applicants:** Denise Matthews, dba Worms and Wildflowers Daycare

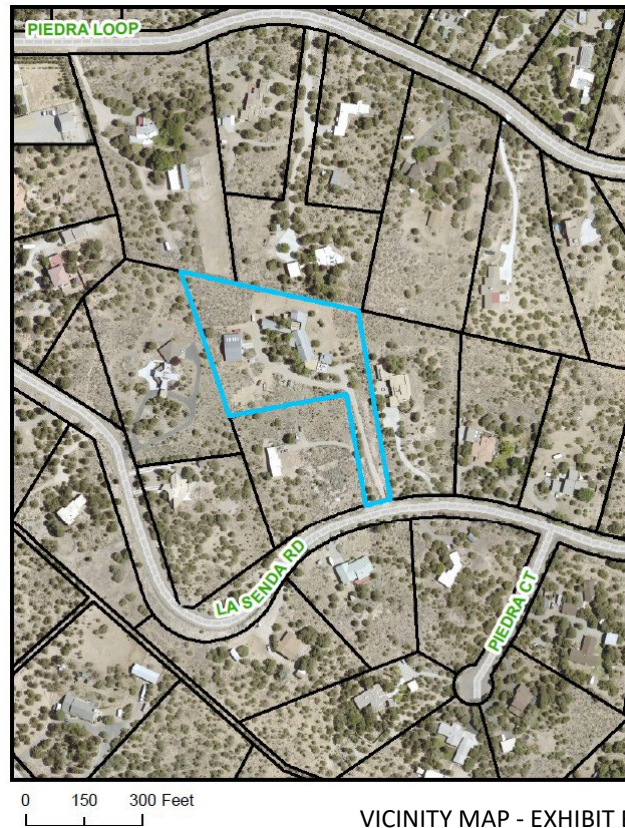
**Case Manager:** Sobia Sayeda, Senior Planner

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**CASE NO. SUP-2022-0021** Denise Matthews, dba Worms and Wildflowers Daycare, is seeking Special Use Permit approval for a Home Business, to employ more than one non-family member for a daycare facility to be located at 113 B LA SENDA RD. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A). Location and vicinity maps are attached below in **Exhibit A** and **B** respectively. An application for a request to operate a daycare facility for a maximum of 12 children has been subsequently submitted as SUP-2022-2020.



LOCATION MAP - EXHIBIT A

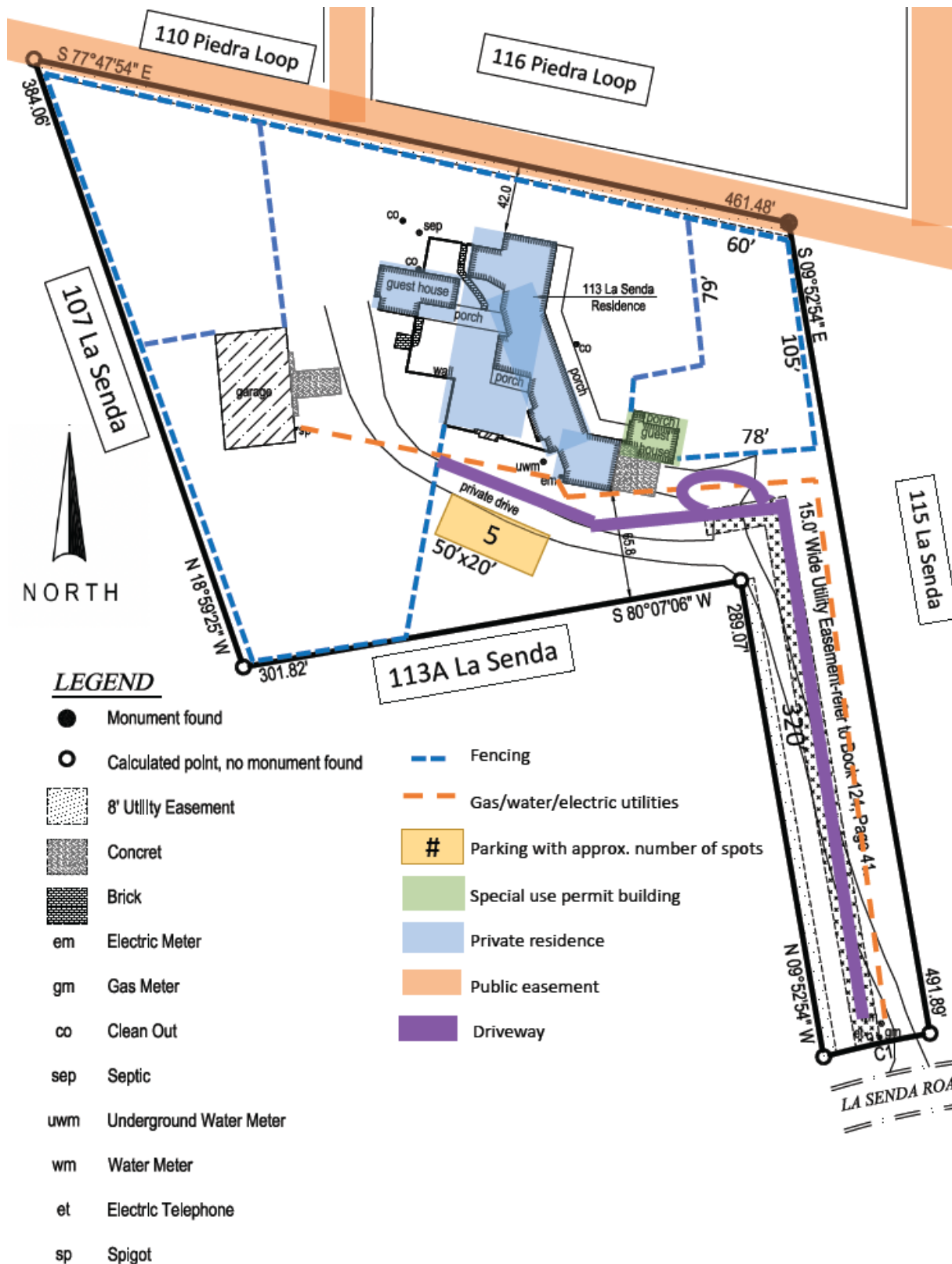


VICINITY MAP - EXHIBIT B

**BACKGROUND:** The lot, located within White Rock, contains 131,986 f<sup>2</sup> (3acres) and currently the property consists of a residential building, a garage, a studio, and associated parking. Additional structures on the property include a 6 foot wire fence enclosure around portions of east, north, and west property lines. The property consists of a flag lot with a private driveway from La Senda Road, the flag shape facilitates limited visibility to the main lot from street access. La Senda Road is a public street with its nearest intersection at La Piedra Loop, providing access from NM State Road 4.

**SPECIAL USE PERMIT DESCRIPTION:** The applicant requests review and approval of a Special Use Permit application to employ more than one non-family member to operate an in-home daycare facility for a maximum of 12 children. The age and number of children will require an additional adult to maintain a 1:6 ratio – creating the need to hire another employee. In-home businesses are reclassified from home occupation to home business when more than one nonfamily member is employed. Home businesses are allowed within all residential districts.

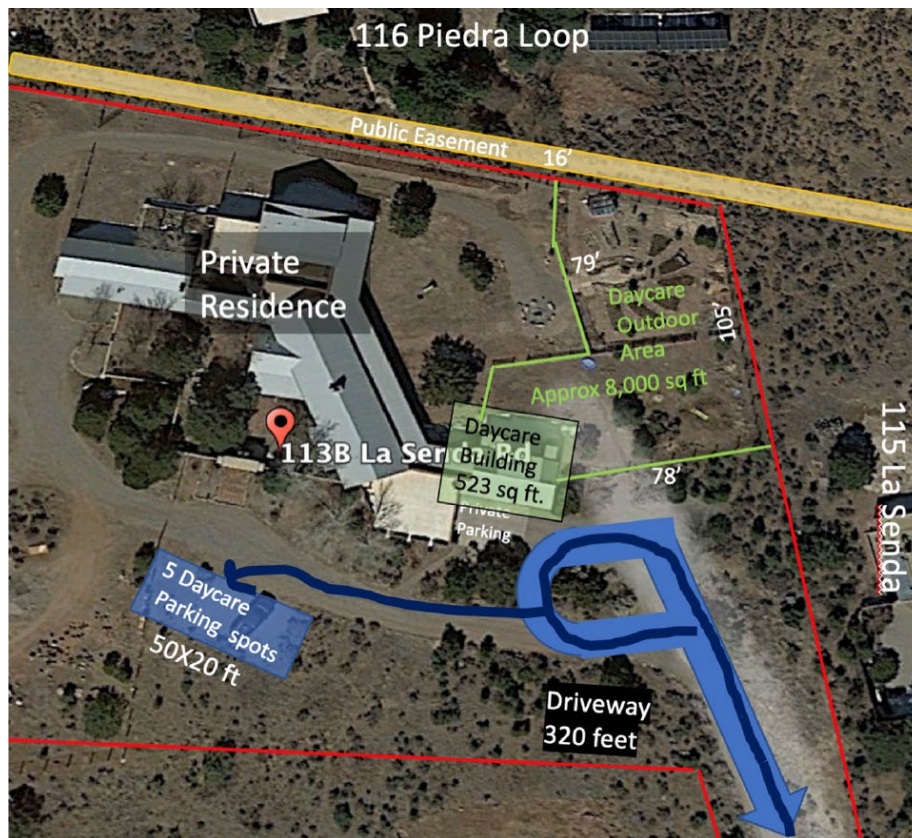
Overall Site Plan, existing parking view, and an ingress/egress site plan are provided in **Exhibit C, D,** and **E** respectively.



Proposed Site Plan, EXHIBIT C



EXISTING PARKING VIEW – EXHIBIT D



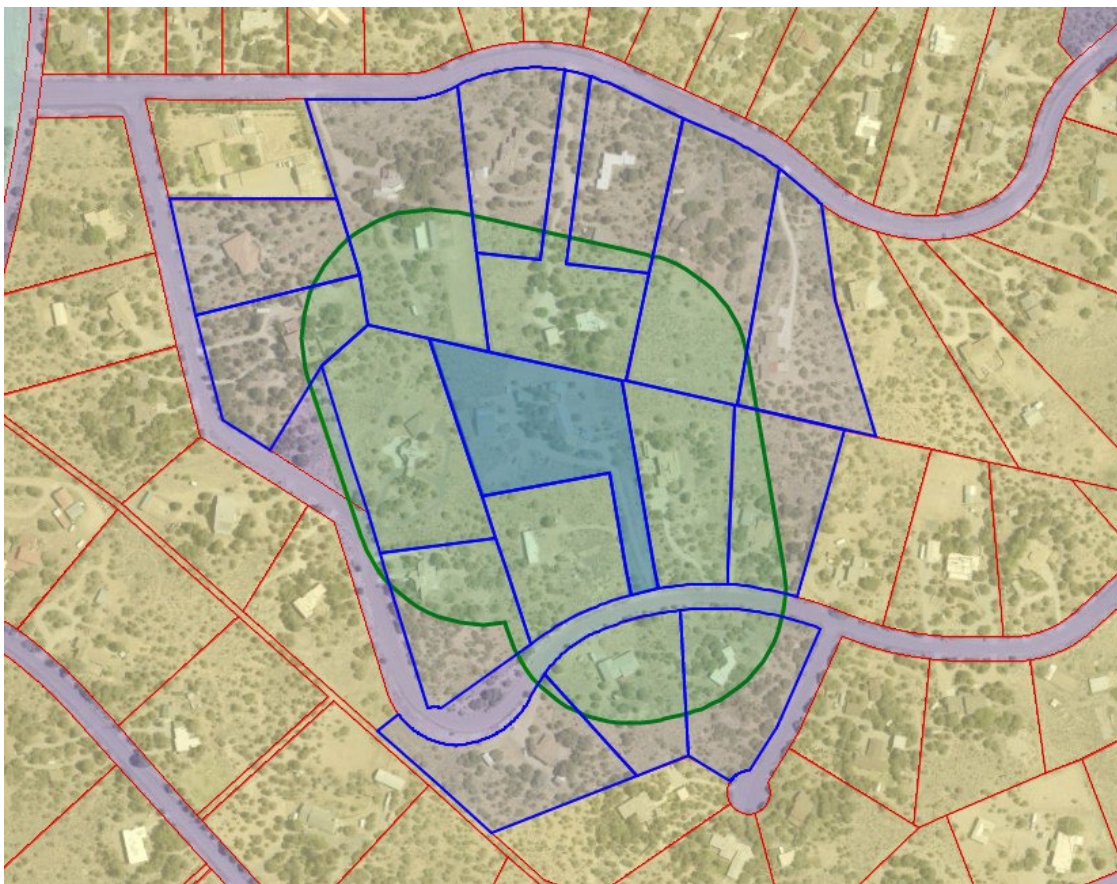
INGRESS/EGRESS SITE PLAN – EXHIBIT E

**IDRC REVIEW:** The Interdepartmental Review Committee (IDRC) independently reviewed the application on January 9, 2022. No concerns were raised by the committee for this application.

**PUBLIC NOTICE:** Notice of this virtual public hearing has been given per the requirements of the Los Alamos County Code of Ordinances, Chapter 16, Development Code, §16-192 (a), which includes:

1. Notice of the request and meeting information published within the Los Alamos Daily Post on January 20, 2022, the County's official newspaper of record.
2. U.S. mail sent on January 20, 2022, to owners of real property within 100 yards (300') of the subject property, with Live Stream access and contact information to obtain a participation link. This format complies with the New Mexico Department of Health's public emergency order governing mass gathering due to the COVID-19 pandemic.
3. Notice of the request and meeting information posted at the Los Alamos County Municipal Building.
4. Notice of the request was posted on site at 113 B La Sedna Road fifteen days before the meeting.

As of February 4, 2022, staff has received several responses from adjacent property owners within 100 yards. All responses are included in Attachment 4.



Public Notification Map, EXHIBIT E

## **SITE PLAN APPLICATION CRITERIA:**

***(1) The request substantially conforms to the comprehensive plan, and the establishment, maintenance or operation of the use applied for will not under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort or general welfare of persons residing or working in the vicinity of such proposed use, or be detrimental or injurious to property or to the value of property in the vicinity, or to the general welfare of the county.***

### **Applicant Response:**

This permit allows for the required number of daycare staff to be available for state licensing by CYFD. I will be operating a residential in-home daycare facility where a maximum of 12 children will be cared for. CYFD requires a ratio of 1:6 teachers per students. I and one other educator will work together at one time. I will need to have trained substitutes or potentially part-time educators to cover different days. This requires the need to employ more than one non-family member to work on the premises. This will not be detrimental to any persons residing or working in the general vicinity of our property as it is only one additional staff member present (besides my-self) at one time.

### **Staff Response:**

Staff supports this position as economic vitality is a strategic focus identified within the Comprehensive Plan through the promotion of a diverse economic base and encouragement of new business growth. A daycare facility for a maximum of 12 children and a home business use are permitted within the R-A district, subject to Planning and Zoning Commission review and approval as a Special Use. New Mexico State regulations require a minimum of two employees for up to 12 children. The use will not be detrimental or injurious to the general welfare of the community but will provide a needed community resource to the county's large workforce.

***(2) There are sufficient parking facilities that are adequately designed, shielded, landscaped and lighted to serve the use applied for based on the requirements of this chapter as found in article IX of this chapter.***

### **Applicant Response:**

A special use permit for an in-home daycare requires one parking spot per employee working. This means my daycare needs one parking space each day for the one employee working. This is easily met as we will have 5 parking spaces available with room for additional if needed. Current parking is shown below. Bumper guards and ground lights will be added to meet code.

### **Staff Response:**

Staff supports this position as ample parking spaces are provided. Ingress/egress, including traffic circulation, would conform to all safety provisions for motorists, bicyclists, and pedestrians. Existing parking is in conformance with Los Alamos County Development Code.

***3) The provisions for on-site and off-site ingress/egress and traffic circulation are in conformance with the county's construction standards, that the public streets serving the use applied for are adequate to meet the traffic needs of the proposed use and that the proposed use will not adversely affect neighboring properties by virtue of the type of traffic generated by the use.***

**Applicant Response:**

The in-home daycare will be located on a three-acre property that is a flag lot. It has a long 320 foot driveway, setting the house far back from La Senda Road. La Senda Road is a wide two-lane road that is not heavily traveled. The driveway has a loop where turn-around is easily accessed. There would be an addition of one car each day of preschool operation for this employee.

**Staff Response:**

Existing ingress and egress for the property will not change and the lot shape and location of the driveway provides private on-site and off-site access from La Senda Road. The County Engineer has reviewed the application and expressed no concerns.

***(4) The setbacks of buildings and parking facilities from the property lines, right-of-way, and adjacent land uses are in conformance with this chapter and provide protection to and a transition from residential development, existing and contemplated in the vicinity; and that the height and bulk of the proposed buildings and structures are compatible with the general character of development in the vicinity of the use applied for.***

**Applicant Response:**

This permit simply allows for an additional employee during operating hours. It will not affect any land use issues and is compatible with the general character of the neighborhood.

**Staff Response:**

No new construction is being proposed. Existing buildings are within the development envelope and adhere to the development standards for the R-A zoning district. The property has boundary fencing and vegetation segregating the daycare from the residence and adjacent properties.

***(5) The site plan including, but not limited to, landscaping, screen planting, and fencing of the proposed development demonstrates that the site development will be compatible with adjoining areas and will conform to the site development standards of the district regulations.***

**Applicant Response:**

No new buildings, parking areas, or landscaping will be needed to have an additional employee work on the premises.

**Staff Response:**

Staff supports this position as existing conditions are in conformance with Los Alamos County Development Code.

**FINDINGS OF FACT**

1. The Special Use Permit application #SUP-2022-0021 is for review and approval of an application to employ more than one non-family member for a daycare facility to provide

care, service, and supervision for a maximum of 12 children at 113 B LA SENDA RD. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A).

2. Proposed daycare facility use, listed within §16-9, Use Index, is allowed in Residential-Agricultural District (R-A).
3. The request to employ more than one non-family member at a daycare facility at 113 B La Senda Road will not be detrimental to the health, safety, peace, comfort or general welfare of persons residing or working in the vicinity, as economic vitality is a strategic focus identified within the Comprehensive Plan through the promotion of a diverse economic base and encouragement of new business growth. A home business use is permitted within the R-A district, subject to Planning and Zoning Commission review and approval as a Special Use. The use required 1:6 staff to child ratio to provide care, services, and supervision of children by New Mexico State regulations and will not be detrimental or injurious to the general welfare of the community but will provide a needed community resource to the county's large workforce and is consistent with proposed development of the subject property and conforms to the comprehensive plan.
4. The existing parking spaces are sufficiently and adequately designed, shielded and landscaped. Required off-site parking spaces are provided and Ingress/egress including traffic circulation will conform to all safety provisions for motorists, bicyclists, and pedestrians. Existing parking is in conformance with Los Alamos County Development Code.
5. The provisions for on-site and off-site ingress/egress and traffic circulation will be in conformance with the county's construction standards. Existing ingress and egress for the property will not change and the shape of the lot provides a private driveway for on-site and off-site access from La Senda Road. The County Engineer has reviewed this request and expressed no concerns.
6. The setbacks of buildings and facility on adjacent lot from the property lines, right-of-way, and adjacent land uses are in conformance with Los Alamos County Development Code and provide protection to and a transition from residential development in the vicinity. Existing buildings and property are compatible with the general character of development in the vicinity of the use as applied for and no changes are planned. The site plan has been reviewed by Public Works staff in accordance with applicable code.
7. The public hearing was held in online format to comply with the New Mexico Department of Health's public emergency order governing mass gatherings because of the COVID-19 pandemic.
8. Notice of this public hearing, setting forth the nature of the request, the specific parcel of property affected, and the date, time and place of the public hearing, was announced and published in The Los Alamos Daily Post, the official newspaper of record; and property owners of real property located within 100 yards of the subject property were notified of this public hearing by U.S. mail, notice of meeting was posted on the subject lot, all in accordance with the requirements of §16-192 of the Los Alamos County Development Code and as the format complies with the New Mexico Department of Health's public emergency order governing mass gathering due to the COVID-19 pandemic.
9. The public hearing was held in-person on February 9, 2022 virtually due to concerns regarding the COVID-19 pandemic.

10. The proposed application, SUP-2022-0021, including attachments, were presented to the Planning & Zoning Commission for review and approval or denial on February 9, 2022.

### **CONCLUSIONS OF LAW**

After full hearing and consideration, the Planning and Zoning Commission finds that the application has met each applicable Special Use Permit review criteria contained in §16-156 of the Los Alamos County Development Code and is acting under the authority granted it by §16-452(c)(1)(a) of the Development Code.

### **MOTION:**

#### **Motion Option 1:**

I move to **recommend approval** of Case No. SUP-2022-0021 a request for a Special Use Permit approval to employ more than one non-family member to operate a daycare facility to provide care, service, and supervision for a maximum of 12 children at 113 B La Senda Road. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A). Recommendation is based on the Findings of Fact established at the hearing and conclusion that the Applicant has met each applicable review criteria contained in §16-156 of the Los Alamos County Development Code and that the Commission is acting under the authority granted by §16-452(b)(1)(a) of the Development Code.

I further move to authorize the Chair to sign a Final Order approving the application and Findings of Fact and Conclusions of Law for this case, based on this decision and to be subsequently prepared by County staff.

#### **Motion Option 2:**

I move to **recommend denial** of Case No. SIT-2022-0021 a request for a Special Use Permit approval to employ more than one non-family member to operate a daycare facility for up to 12 children at 113 B La Senda Road as the application does not conform to the review criteria contained in §16-156 of the Los Alamos County Development Code.

I further move to authorize the Chair to sign a Final Order approving the application and Findings of Fact and Conclusion of Law for this case, based on this decision and to be subsequently prepared by County staff.

### **ATTACHMENTS**

ATTACHMENT 1: Permit Application and Criteria Responses  
ATTACHMENT 2: Ownership Affidavit

## SPECIAL USE PERMIT APPLICATION

Los Alamos County Community Development Department  
1000 Central Ave, Suite 150, Los Alamos NM 87544  
(505) 662-8120

Special Use (describe): The ability to employ more than one non-family member to work at our in-home day care.

Address to which this application applies:

113 B La Senda Rd, White Rock NM 87547

Zoning District: RA

Related Applications (if any):

Special Use Permit for an in-home day care facility

APPLICANT (Unless otherwise specified, all communication regarding this application shall be to Applicant):

Name: Denise Matthews Phone: 541-740-5520 Cell #: 87547  
Please Print

Address: 113 B La Senda Rd, WR, NM Email: director@wormsandwildflowers.com

Denise Matthews 11/6/22  
SIGNATURE DATE

PROPERTY OWNER (If different from Applicant)

☐ Check here if same as above

Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Cell #: \_\_\_\_\_  
Please Print

Address: \_\_\_\_\_ Email: \_\_\_\_\_

My signature below indicates that I authorize the Applicant to make this rezoning application on my behalf.

\_\_\_\_\_  
SIGNATURE DATE

(4) *The setbacks of buildings and parking facilities from the property lines, right-of-way, and adjacent land uses are in conformance with this chapter and provide protection to and a transition from residential development, existing and contemplated in the vicinity; and that the height and bulk of the proposed buildings and structures are compatible with the general character of development in the vicinity of the use applied for.*

(5) *The site plan including, but not limited to, landscaping, screen planting, and fencing of the proposed development demonstrates that the site development will be compatible with adjoining areas and will conform to the site development standards of the district regulations.*

**REQUIRED SUBMITTALS:**

Check each of the boxes to indicate that you have attached two (2) paper copies of each of the following, and one complete copy of all materials on disk:

- ☒ **Proof of property ownership.**
- ☒ **A Vicinity map, 8½ by 11 inch or 8½ by 14 inch format, showing the boundaries of the property and all adjacent lots within 300 feet. (County staff can provide the vicinity map if requested.)**
- ☒ **A scaleable site plan including, at a minimum, the following information:**
  - ☒ Show and dimension all access and parking related to the site, including existing and any proposed curbcuts.
  - ☒ Locate and label all existing utility lines on the site. (Existing gas and electric service lines must be located by the Los Alamos County Utilities Department prior to submittal of this application.)
  - ☒ Show and label the footprint of all existing buildings and structures on the site.
  - ☒ Show the footprint of all buildings and public rights-of-way within 20 feet of all boundaries of the site.
  - ☒ Show, dimension and label all existing and proposed easements.
  - ☒ Show existing and proposed landscaping, fencing, lighting, signage and any other proposed improvements.

**THIS SECTION TO BE COMPLETED BY THE COMMUNITY DEVELOPMENT DEPARTMENT**

**For County Use:**

**Date of Submittal:** \_\_\_\_\_

**Staff Initial:** \_\_\_\_\_

**CDD Application Number:** \_\_\_\_\_

**Fees Paid:** \_\_\_\_\_

Revised: 03/01/17

**SPECIAL USE PERMIT CRITERIA:**

The Los Alamos County Code of Ordinances, Chapter 16, Development Code, Sec. 16-156 establishes five (5) criteria for the Planning and Zoning Commission to use when reviewing an application for Special Use Permit approval. Please review each of the criteria listed and provide brief responses as to how your application meets the criteria. Use the space provided or attach separate sheets if needed. You will also be asked to discuss the criteria at your public hearing. (1) The request substantially conforms to the comprehensive plan, and the establishment.

***Special Use Permit Application***

- (1) The request substantially conforms to the comprehensive plan, and the establishment, maintenance or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort or general welfare of persons residing or working in the vicinity of such proposed use, or be detrimental or injurious to property or to the value of property in the vicinity, or to the general welfare of the county.***

This permit allows for the required number of daycare staff to be available for state licensing by CYFD. I will be operating a residential in-home daycare facility where a maximum of 12 children will be cared for. CYFD requires a ratio of 1:6 teachers per students. I and one other educator will work together at one time. I will need to have trained substitutes or potentially part-time educators to cover different days. This requires the need to employ more than one non-family member to work on the premises. This will not be detrimental to any persons residing or working in the general vicinity of our property as it is only one additional staff member present (besides my-self) at one time.

- (2) There are sufficient parking facilities that are adequately designed, shielded, landscaped and lighted to serve the use applied for based on the requirements of this chapter as found in article IX of this chapter.***

A special use permit for an in-home daycare requires one parking spot per employee working. This means my daycare needs one parking space each day for the one employee working. This is easily met as we will have 5 parking spaces available with room for additional if needed.

Current parking is shown below. Bumper guards and ground lights will be added to meet code.



- (3) The provisions for on-site and off-site ingress/egress and traffic circulation are in conformance with the county's construction standards, that the public streets serving the use applied for are adequate to meet the traffic needs of the proposed use and that the proposed use will not adversely affect neighboring properties by virtue of the type of traffic generated by the use.***

The in-home daycare will be located on a three-acre property that is a flag lot. It has a long 320 foot driveway, setting the house far back from La Senda Road. La Senda Road is a wide two-lane road that is not heavily traveled. The driveway has a loop where turn-around is easily accessed. There would be an addition of one car each day of preschool operation for this employee.

- (4) The setbacks of buildings and parking facilities from the property lines, right-of-way, and adjacent land uses are in conformance with this chapter and provide protection to and a transition from residential development, existing and contemplated in the vicinity; and that***

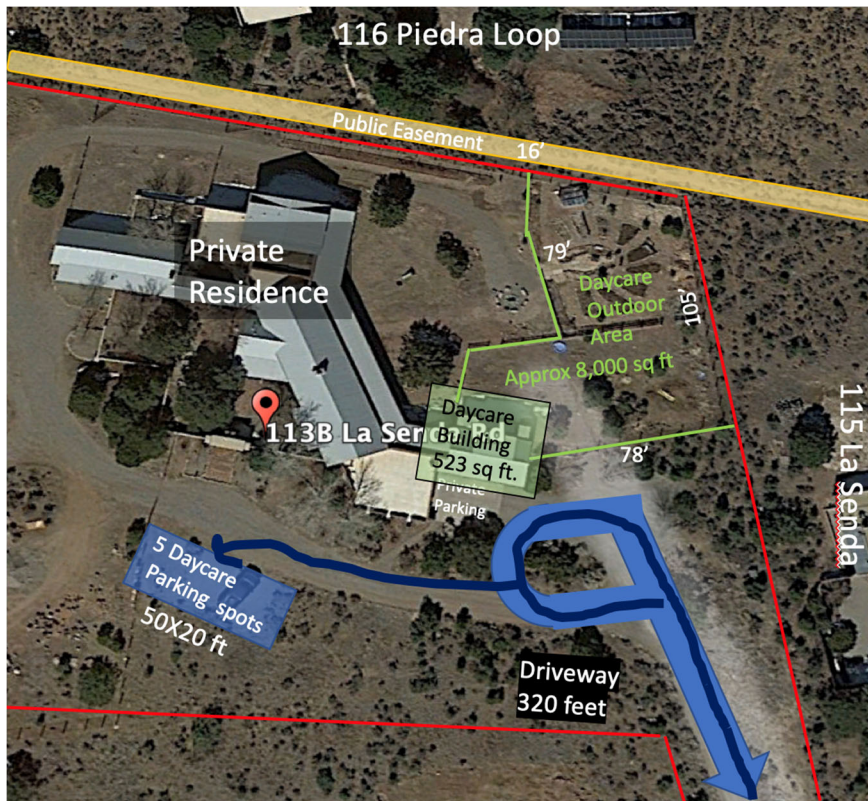
***the height and bulk of the proposed buildings and structures are compatible with the general character of development in the vicinity of the use applied for.***

This permit simply allows for an additional employee during operating hours. It will not affect any land use issues and is compatible with the general character of the neighborhood.

- (5) The site plan including, but not limited to, landscaping, screen planting, and fencing of the proposed development demonstrates that the site development will be compatible with adjoining areas and will conform to the site development standards of the district regulations.***

No new buildings, parking areas, or landscaping will be needed to have an additional employee work on the premises.

A sight map of the premises with parking area and driveway can be seen below:


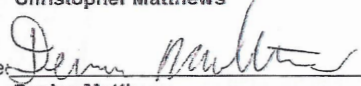
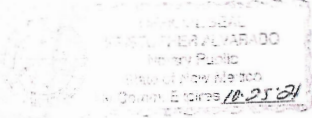


La Senda Road entrance to 113B La Senda Road, the site of the in-home daycare facility.



Title Company: TITLE GUARANTY, LLC  
File Number: LA18-0089

**Residential Property Transfer Declaration Affidavit**

<b>Transferor(s)/Seller(s)</b> Print full name(s) and mailing address(es): Jonathan E. Bard 113 B La Senda Los Alamos, NM 87547	
<b>Transferor(s)/Buyer(s)</b> Print full name(s) and mailing address(es): Christopher Matthews and Denise Matthews 1505 Camino Redondo Los Alamos, NM 87544	
<b>Legal Description</b> of the real property transferred as it appears in the document of transfer: La Senda - Tract A, Block 3, Lot 24A, Los Alamos County 113 B La Senda Road Los Alamos, NM 87547	
<b>Full consideration including money or other thing of value paid or exchanged for the transfer, and the terms of the sale including any amount of seller incentives.</b> Sales Date: <u>May 15, 2018</u> Consideration paid or exchanged: <u>\$1,025,000.00</u> Value of Personal Property included: <u>\$0.00</u> Description of personal property: _____ Terms of sale including any seller incentives: _____	
Signature of Buyer <u>X</u> Seller _____ or Authorized Agent _____ (Check one and sign)	
Signature: 	Date: <u>5/15/18</u>
Christopher Matthews	
Signature: 	Date: <u>5/15/18</u>
Denise Matthews	
<b>Acknowledgement of individual or in representative capacity</b> STATE OF NEW MEXICO COUNTY OF LOS ALAMOS  Signed and sworn to (or affirmed) before me on May 15, 2018 by Christopher Matthews and Denise Matthews   _____ Notary Public My Commission Expires: <u>10/25/2021</u>	

Pursuant to NMSA 1978, Section 7-38-12.1 and 7-38-12.2(2005)

**APL-2022-0020  
FEBRUARY 23, 2022,  
PLANNING AND ZONING COMMISSION  
MEETING**



LOS ALAMOS

# County of Los Alamos

1000 Central Avenue  
Los Alamos, NM 87544

## Agenda Planning and Zoning Commission

*Rachel Adler, Chair; Neal Martin, Vice-Chair; Jean Dewart; Terry Priestley; Michelle Griffin; Stephanie Nakhleh; Beverly Neal-Clinton; Rodney Roberson, and April Wade, Commissioners*

Wednesday, February 9, 2022

5:30 PM

This meeting will be  
conducted remotely, via Zoom.  
1000 Central Avenue

Members of the public can join this meeting session to make public comment, via Zoom, by pasting into their browser the following URL:

<https://us06web.zoom.us/j/82392149707>

Or, by telephone:

US: +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7

Webinar: 823 9214 9707

1. CALL TO ORDER/ROLL CALL

2. APPROVAL OF AGENDA

*This section of the Agenda is reserved for comments from the public on items that are not otherwise included on this Agenda.*

3. PUBLIC COMMENT

4. PLANNING AND ZONING COMMISSION BUSINESS

A. [15510-22](#) Minutes from the Planning And Zoning Commission Meeting on January 26, 2022.

Attachments: [P&Z\\_MeetingMinutes26-Jan-2022](#)

5. PUBLIC HEARING

A. [15536-22](#) CASE NO. SUP-2022-0020. Denise Matthews, dba Worms and Wildflowers Daycare, is seeking Special Use Permit approval for a daycare facility to provide care, service and supervision for a maximum of 12 children at her residence addressed as 113 B LA SENDA RD. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A).

Attachments: [SUP-2022-2020 113B La Senda Road](#)

- B.**     [15535-22](#)     CASE NO. SUP-2022-0021. Denise Matthews, dba Worms and Wildflowers Daycare, is seeking Special Use Permit approval for a Home Business, to employ more than one non-family member for a daycare facility to be located at 113 B LA SENDA RD. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A).

**Attachments:**     [SUP-2022-2021 113B La Senda Road](#)

**6.       COMMISSION/DIRECTOR COMMUNICATIONS**

**A,**       ***Department Report***

**B.**       ***Chair's Report***

**C.**       ***Board of Adjustment Report***

**D.**       ***Council Liaison's Report***

**E.**       ***Commissioners' Comments***

**7.       PUBLIC COMMENT**

**8.       ADJOURNMENT**

PLEASE NOTE: Any action by the Planning and Zoning Commission in granting approval, conditional approval or disapproval of an application may be appealed by the applicant, or by the person(s) who have a personal or pecuniary interest adversely affected by the decision as defined by Section 16-454 of the County Code. Such appeals must be filed with the Community Development Department within 15-days of the action in accordance with Section 16-492.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the County Human Resources Division at 505-662-8040 at least one-week prior to the meeting, or as soon as possible.

Public documents, including the Agenda and Minutes, can be provided in various accessible formats. Please contact the personnel in the Community Development Office at 505-662-8006 if a summary or other type of accessible format is needed.

## **FINAL ACTION**

**BEFORE THE PLANNING AND ZONING COMMISSION  
OF THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO**

CASE NO. SUP-2022-0020. An application by Denise Matthews, dba Worms and Wildflowers Daycare, for Special Use Permit to operate a daycare facility to provide care, service and supervision for a maximum of 12 children at 113 B La Senda Rd.; *and*

CASE NO. SUP-2022-0021. An application by Denise Matthews, dba Worms and Wildflowers Daycare, for Special Use Permit to operate a Home Business employing more than one non-family member at 113 B La Senda Rd.

**ORDER OF THE PLANNING AND ZONING COMMISSION  
ON APPLICATIONS SUP-2022-0020 AND SUP-2022-021**

COMES NOW, the Planning and Zoning Commission ("Commission") of the Incorporated County of Los Alamos, New Mexico ("County"), that finds and orders as follows:

**I. FINDINGS OF FACT**

**A. APPLICATIONS FOR SPECIAL USE PERMIT**

1. This matter is to determine whether the Commission should approve, approve with conditions, or deny the requests of Denise Matthews, dba Worms and Wildflowers Daycare ("Applicant") for two special use permits.

2. The first special use application by the Applicant requests the Commission's approval to operate a new home-based daycare facility for a maximum of 12 children at her home located at 113 B La Senda Rd., in the community of White Rock in Los Alamos

County (hereafter "Property"). This application was assigned the case number SUP-2022-0020. See CDD Staff Report, SUP-2022-0020, Attachment 1 (Permit Application), pages 15-19. This application was submitted on January 5, 2022.<sup>1</sup>

3. The Applicant's second special use permit application requested the Commission's approval of a home-based business that employs more than one non-family member. This application was assigned case number SUP-2022-0021. CDD Staff Report, SUP-2022-0021, Attachment 1 (Permit Application), pages 10-15. This application was submitted on January 6, 2022.

4. Both applications included evidence that demonstrated the Applicant owned the Property pursuant to Sec. 16-122(a)(3) of the Los Alamos County Code of Ordinances ("County Code").<sup>2</sup>

### C. THE PROPERTY

5. The Property is located at 113 B La Senda Rd. The Property is located in the area and community known as White Rock. The Property's legal designation as used by the County Assessor is LSA03024A and contains approximately 131,986 sq. ft<sup>2</sup> equaling approximately 3 acres. The Property is within the La Senda A Subdivision which is zoned entirely as Residential-Agriculture (R-A) on the County's currently adopted Zoning Map. CDD Staff Report, SUP-2022-0020, page 1.

6. Located currently on the Property are a residential building, a garage, a studio, and associated parking. Additional structures on the Property include a 6-foot wire fence

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<sup>1</sup> Although the SUP-2022-0020 application had the date of January 5, 2021, the actual date of submittal was January 6, 2022.

<sup>2</sup> Available at [https://library.municode.com/nm/los\\_alamos\\_county/codes/code\\_of\\_ordinances](https://library.municode.com/nm/los_alamos_county/codes/code_of_ordinances).

enclosure around portions of east, north, and west property lines. CDD Staff Report, SUP-2022-0021, page 3, 14; Testimony of Applicant Denise Matthews.

7. The property is a flag lot with a private driveway from La Senda Rd., the flag shape facilitates limited visibility to the main lot from street access. La Senda Rd. is a public street with its nearest intersection at Piedra Loop, providing access to and from NM State Road 4. See *generally* CDD Staff Report, SUP-2022-0020, pages 1 through 6 and testimony of Applicant.

#### D. IDRC REVIEW

8. The Commission finds, based on the CDD Staff Report and testimony of CDD Staff Sayeda that pursuant to Section 16-54 of the Los Alamos County Code of Ordinances ("County Code"), the Interdepartmental Review Committee ("IDRC") met on January 9, 2022, to review the two applications. As noted in the CDD Staff Report and testimony of CDD Staff Sayeda, the County's Fire Marshal and the County's Chief Building Officer noted that the Applicant will be required to obtain a valid business license for the proposed homes business. As provided in testimony, the County's Public Works Department found that the increase in local traffic associated with the daycare facility and the employment of more than one non-family member would not be significant based on existing traffic and circulation conditions. No further conditions or requirements were recommended for the two applications.

#### E. PUBLIC NOTICE

54 9. A full quorum of the Commission was present at the duly noticed public meeting  
55 on February 9, 2022. During the public meeting, the Commission held the public hearing  
56 on Applicant's two applications numbered SUP-2022-0020 and SUP-2022-0021.

57 10. Pursuant to Section 16-192(b)(1) of the County Code, the Commission finds that  
58 notice of the public hearing, setting forth the nature of the request, the specific parcel of  
59 property affected, and the date, time, and place of the public hearing, was announced  
60 and published in the *Los Alamos Daily Post*, a newspaper of general circulation in the  
61 County, on January 20, 2022. See CDD Staff Report, SUP-2022-0020 and SUP-2022-  
62 0021 and testimony of CDD Staff Sayeda.

63 11. Pursuant to Section 16-192(b)(2), the Commission finds that notice setting forth  
64 the nature of the request, the specific parcel of property affected, and the date, time, and  
65 place of the public hearing was mailed to the owners or occupants of real property located  
66 within 100 yards of the subject property via U.S. first class mail. *Id.*, see also CDD Staff  
67 Report, SUP-2022-0020, page 8 and SUP-2022-0021, page 5.

68 12. The Commission finds that notice was also properly posted at the County's  
69 Municipal Building. *Id.*

70 13. The public meeting was held virtually due to the recent substantial rise in the  
71 COVID Omicron variant. This format complies with the New Mexico Department of  
72 Health's public emergency order governing mass gatherings due to the COVID-19  
73 pandemic. This meeting format complied with the County's annual public meeting  
74 resolution as required by the State's Open Meeting Act as adopted in County Resolution  
75 22-01.

14. Present at the virtual public hearing on the two applications were over fifty public (50) attendees including the Applicant, supporters of the application both within and outside the 100-yard public notice distance, and opponents to the applications, again both within and outside the 100-yard public notice distance. County staff present were Sobia Sayeda- Senior Planner, and Bryce Ternet- Planning Division Manager. Assistant County Attorney Kevin Powers was present as the legal advisor to the Commission pursuant to County Charter, Section 307.

#### F. COMMISSION REVIEW CRITERIA

15. Prior to the start of the public hearing and pursuant to Section 16-451(a)(1), Commissioner Griffin recused herself from participating in the hearing due to a direct conflict. See *generally* Hearing Video starting at 0:26:15.<sup>3</sup> Commissioner Wade also disclosed that she is the Executive Director of the Little Forest Daycare and that the Applicant, Mrs. Matthews, sits on the Board of Directors. Commissioner Wade stated that she could be neutral, had not prejudged the matter, and had not had any further ex parte communications with the Applicant or others. *Id.* As no party objected to the continued participation of Commissioner Wade and having no other Commissioner moving to exclude Commissioner Wade, the hearing proceeded. *Id.*

16. Pursuant to Section 16-122, to obtain a special use permit, the requesting party must submit an application of a form provided by the County. Sec. 16-122(a)(1). The application(s) must contain all the required information and the applicable fees must be

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<sup>3</sup> The Zoom hearing video is used herein for references to the hour:minute:second (00:00:00) and is available at <https://us06web.zoom.us/rec/share/JDoucfXtmnLJHlO6hDzqVQfn4tSrdqc6mf5X30n38MIMQuxJQdWfhNPenJbvsUbP.eaas3opCvvhZRGQN>. Use passcode 13ea6@&T to access the video. The hearing video is also available at [Planning and Zoning Commission on 2022-02-09 5:30 PM - Feb 9th, 2022 \(granicus.com\)](#), however the times used in this order may not coincide with the times with that of the hearing video found on granicus.com.

96 paid. Sec. 16-122(a)(2). The application(s) must be signed by the property owner or other  
97 authorized agent. Sec. 16-122(a)(3). The Commission finds, based on the information  
98 contained in the CD Staff Reports for SUP-2022-0020 and SUP-2022-0021, these  
99 conditions were satisfied by the Applicant.

100 17. As a preliminary matter, the Commission finds, in review of the two applications  
101 the review criteria, Section 16-156 of the County Code, is the same for both applications.  
102 As such, the Commission, in the interest of time and to reduce the necessity for the  
103 presentation of redundant evidence and testimony on each of the applications,  
104 consolidated the matters into one public hearing.

105 18. The Commission further finds, based on the testimony of CDD Staff Sayeda and  
106 in review of the criteria found in sections 16-282 and 16-277, those Code sections apply  
107 only once the specific land use is granted. For example, Section 16-282(b) requires that  
108 a daycare facility require a special use permit. That is the matter that is now before the  
109 Commission. The applicability of other 16-282 provisions, such as obtaining and  
110 submitting a CYFD license, are separate conditions precedent in addition to obtaining the  
111 special use permits to operate the proposed business but are not conditions precedent to  
112 obtain a special use permit. In short, if the applicant does not obtain a CYFD license the  
113 applicant cannot exercise the privileges granted by the special use permits granted.

114 19. Section 16-451 of the County Code outlines those procedures to be utilized in  
115 review of applications presented to the Commission. Sec. 16-451(a). The Applicant must  
116 present evidence supporting the application(s) and shall bear the burden of  
117 demonstrating the application should be granted. Sec. 16-451(b)(3). Evidence and

testimony of those participating in the hearing must be given under oath and be subject to cross-examination. Sec. 16-451(b)(1).

20. County CDD Staff may provide factual information related to the property and factual information and may include references to the applicable County Code requirements. Sec. 16-451(b)(2).

21. The Applicant must show by substantial evidence that each review criteria has been met. Substantial evidence is evidence that a reasonable mind would need to accept as adequate to support the conclusion reached. *N.M. Indus. Energy Consumers v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-015, ¶ 8, 450 P.3d 393, citing *N.M. Indus. Energy Consumers v. N.M. Pub. Regulation Comm'n*, 2007-NMSC-053, ¶ 24, 142 N.M. 533, 168 P.3d.

#### **COMMISSION SPECIAL USE PERMIT REVIEW CRITERIA**

22. The Commission first reviews the two special use permit applications pursuant to the review criteria found in Section 16-156 (1) of the County Code. These criteria require the Applicant demonstrates that the issuance of the special use permit [a]<sup>4</sup> “substantially conforms to the comprehensive plan, and [b] the establishment, maintenance or operation of the use applied for will not, under the circumstances of the particular case, be [c] detrimental to the health, safety, peace, comfort or general welfare of persons residing or working in the vicinity of such proposed use, or be [d] detrimental or injurious to property or to the value of property in the vicinity, or to [e] the general welfare of the county.” Application of each of these review criteria is discussed below.

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<sup>4</sup> Numbers in the [#] brackets are added for review purposes only and are not contained in Section 16-156(1) of the County Code.

139 23. A majority of the Commission finds the review criteria of Section 16-156(1) has  
140 been met based on the following:

141 a. Comprehensive Plan. The testimony and evidence received at the hearing  
142 from the Applicant, CDD Staff Sayeda, and that of many attendees, including that of  
143 Agnes Finn, Charles and Vanessa Richardson, Dennis Erickson, and many others  
144 demonstrate that a daycare facility would provide a valuable new business that is  
145 greatly needed in the Community, especially for those young families that work at the  
146 Los Alamos National Laboratory, the major employer in the County. See generally the  
147 testimony and presentation of Denise Matthews at 0:39:45 minutes of the Hearing  
148 Video including the results of the informal survey performed by the Applicant on the  
149 need for daycares in the area. See also testimony of Applicant in response to  
150 questions of Commissioner Martin at 1:44:19 of the Hearing Video. The testimony of  
151 Kathryn Keith, at 4:24:59 of the Hearing Video, Executive Director of the LANL  
152 Community Partnership, was particularly persuasive that as LANL is seeking to hire  
153 over 2,000 employees, many of which have younger families, to fill open and vacant  
154 positions, childcare in the community is greatly needed for LANL to both attract and  
155 retain the employees. As stated by numerous parties to the hearing, and as agreed to  
156 by several Commissioners in their discussion on this criterion, daycare services in the  
157 County are both difficult to find and obtain a spot at for a reasonable fee. As such, any  
158 new and alternative daycare facility would substantially comply with the intent and  
159 purpose of the Comprehensive Plan. As provided by Commission Chair Adler, the  
160 content of the Applicant's applications as well as the testimony of CDD Staff Sayeda  
161 and other parties presents the necessary evidence in support of whether the

162 applications substantially conform to the County's Comprehensive Plan. This position  
163 was similarly supported by Commissioner Dewart, Wade, Martin, Roberson, and  
164 Nakhleh. Commissioner Martin further noted that as the County Codes already allows  
165 for a daycare facility in R-A zoned districts, that such application and use, if approved,  
166 would also be in line with the Comprehensive Plan's goal of preserving the character  
167 of neighborhoods as well as enhance the housing stock and quality.

168       b.     Health, Safety, Peace, Comfort or General Welfare of Persons Residing or  
169 Working in the Vicinity and General Welfare of the County. As presented during the  
170 Commission's discussion on these criteria, the Commission found this element the  
171 hardest to apply. During public testimony some near neighbors within 300 feet of the  
172 Property the proposed daycare would negatively affect the values of their properties  
173 while other neighbors testified it would not. One Commissioner was unable to find that  
174 the Applicant had presented sufficient evidence to demonstrate that the proposed use,  
175 that of a daycare and the addition of more than one non-family employee in the  
176 business, would not affect the peace and comfort of those working or residing in the  
177 vicinity. Commission Chair Adler noted that the terms 'peace' and 'comfort' are  
178 subjective and are not defined as part of the criteria, making this section of criteria  
179 difficult to prove or disprove in a quantifiable manner. Several Commissioners agreed  
180 on this point. Taking into account the subjectivity of the criteria, six (6) Commissioners  
181 found that the addition of a daycare for up to 12 children between the ages of 3 to 7,  
182 and the addition of only one non-family employee, would not disturb the health, safety,  
183 peace, comfort, or general welfare of those in the vicinity. For example, the  
184 Commission finds the testimony of the Applicant, in response to the questions of

Commissioner Priestly, stated that although children will be outside at some points of the day, they will not be just running around screaming and yelling. The Applicant's program will involve the guided education of children outdoors. See Hearing Video at 0:39:59. The Commission was further persuaded by the testimony of CDD Staff Sayeda, that the daycare as presented would not disturb the health, safety, peace, comfort, or general welfare of those in the vicinity. See Hearing Video starting at 2:01:49.

c. As provided by Commissioner Dewart, sufficient evidence was presented by the Applicant, CDD Staff Sayeda, and many parties that demonstrated the use would not affect the health, safety, peace, comfort, or general welfare of those residing or working in the vicinity. As provided by Commissioner Nakhleh, in her view approval of the applications would only enhance the peace and comfort of the vicinity. See Hearing Video starting at 4:58:55.

d. Property Values. One near neighbor within 300 feet presented testimony that indicated that the use of the Property as a daycare would negatively affect their property. The report referenced by the neighbor was not entered into evidence. A majority of the Commission finds that the testimony and evidence of the Applicant and CDD Staff Sayeda, as well as that of several residents living in the vicinity of the Property, including that of Becca Jones, persuasive because there is no addition of new structures and there will be no effect to the current property values of homes in the vicinity. See Hearing Video starting at 3:35:25. As discussed by Commissioner Martin in response to Commissioner Priestley's concern, Martin did not believe that the Commission must have some residential property evaluation report entered into

the hearing to determine whether the applications would impact local property values.

Commissioner Martin found the testimony of the Applicant, staff, and other parties sufficient for the Commission to determine these review criteria. See Hearing Video starting at 1:44:19.

24. As these findings address the review criteria for both the addition of the home-based daycare and the addition of more than one non-family member in the context of SUP-2022-0020 and SUP-2022-0021, the Commission finds that the review criteria of Section 16-156(1) have been met.

25. The Commission next considers the two special use permit criteria as found in Section 16-156(2). This criterion requires the Applicant to demonstrate that there will be sufficient parking facilities that are adequately designed, shielded, landscaped, and lighted to serve the use applied for based on the requirements of Chapter 16, Article IX. The Applicant, in her testimony and presentation, provided that a total of 5 parking spaces will be provided for parents and employees. See Hearing Video at 1:04:27 to 1:05:34.

26. The Commission finds that the testimony and evidence presented by Applicant and CDD Staff Sayeda, and not hearing or receiving any opposing testimony or objection from any other party in the proceeding, finds that there will be sufficient parking for both SUP-2022-0020 daycare and SUP-2022-0021 additional employee(s). The Commission specifically references the staff's review provided by CDD Staff Sayeda in her Staff Report that clearly demonstrates there is adequate off-street parking for up to six (6) vehicles. See SUP-2022-0020, pages 4, 9 and 10; see *also* SUP-2022-0021, pages 3, 6 and 7. Based on the evidence and testimony presented above, the Commission finds that the criteria found in Section 16-156(2) has been met.

231 27. The Commission next considered the two special use permit criteria as found in  
232 Section 16-156(3). This criterion requires the Applicant to demonstrate that on-site and  
233 off-site ingress/egress and traffic circulation will be in conformance with the County's  
234 Construction Standards, that the public streets serving the use applied for are adequate  
235 to meet the traffic needs of the proposed use and that the proposed use will not adversely  
236 affect neighboring properties by virtue of the type of traffic generated by the use. The  
237 Commission as a whole finds that this criteria have been met. The testimony and evidence  
238 relied on by the Commission in reaching this decision were as follows:

239 a. The testimony of CDD Staff Sayeda (at 2:00:00 of the Hearing Video) and  
240 the findings of the IDRC in the two Staff Reports, demonstrate that the ingress and  
241 egress and traffic circulation patterns are in conformity with the County's construction  
242 standards, and that the streets serving the daycare are adequate to meet the traffic  
243 needs of the proposed use and that the proposed use will not adversely affect  
244 neighboring properties by virtue of the type of traffic generated by the use. See  
245 generally SUP-2022-0020, page 10 ("The County Engineer has reviewed this request  
246 and had no comments or concerns."); *see also* testimony of CDD Staff Sayeda at  
247 2:06:16 of the Hearing Video.

248 b. Testimony and evidence from the Applicant, including her own traffic survey  
249 as provided in her Application, discussed above, and as testified to at the hearing, *see*  
250 hearing video starting at 1:06:45, further supports CDD Staff's position that the  
251 proposed use as a daycare and the addition of more than one non-family employee  
252 to the daycare are in conformity with the County's construction standards and that the  
253 streets serving the daycare and one non-family employee will be adequate to the

proposed uses, and will not adversely affect neighboring properties by the increased use. See generally testimony and presentation of Applicant at 1:05:35 of the Hearing Video which showed the general roadways from NM State Road 4 to Applicant's Property as well as the size and width of La Senda Rd. The Applicant further presented a self-conducted traffic study by counting the number of vehicles at three different times (8-9 am, 12-1 pm, and 4:30-5:30 pm) over two days, a Tuesday and Friday. *Id.*, at 1:07:20 of Hearing Video.

c. Given the relatively small number of children attending this facility, a maximum of 10 families in two daily 30-minute drop-off and pick-up times (see testimony of Applicant at 0:40:12 of the Hearing Video), the Commission is persuaded that the existing on-site and off-site egress and traffic circulation are in conformance with the County's construction standards and the roadways are adequate to meet the traffic needs of the proposed use.

d. Although Commissioner Chair Adler noted that some parties expressed concerns with the intersection near State Road 4, that intersection is quite distant from the Property and is unrelated to the applications before the Commission. See Hearing Video at 5:13:21.

28. Based on the evidence and testimony presented the Commission finds that the criteria found in Section 16-156(3) are satisfied.

29. The Commission next considered the two special use permit criteria as found in Section 16-156(4). This criterion requires the Applicant to demonstrate the setbacks of buildings and parking facilities from the property lines, right-of-way, and adjacent land uses are in conformance with Chapter 16 and provide protection to and a transition from

residential development, existing and contemplated in the vicinity; and that the height and bulk of the proposed buildings and structures are compatible with the general character of development in the vicinity of the use applied for. The Commission finds these criteria have been met as the application for both SUP-2022-0020 and SUP-2022-0021 clearly shows that, based on the testimony and application of the Applicant and the testimony and Staff Report of CDD Staff Sayeda, no new development or changes to the current and existing Property will occur. See generally Hearing Video at 2:06:09 of Staff review of property values and changes. As such, the Commission finds that these criteria have been met.

30. The Commission next considered the two special use permit criteria as found in Section 16-156(5). These criteria require the Applicant to demonstrate the site plan including, but not limited to, landscaping, screen planting, and fencing of the proposed development demonstrates that the site development will be compatible with adjoining areas and will conform to the site development standards of the district regulations. As the two applications did not require a site plan and no new development was occurring in relation to SUP-2022-0020 and SUP-2022-0021, the Commission finds these criteria are not applicable.

## **2. Review and Application of Sections 16-282 and 16-277**

31. The Commission, in review of the two special use permit applications, finds that the application of County Code ordinances 16-277 and 16-282 are indirectly related to the Commissions' approval or conditional approval of the Applicant's requested special use permits. The Commission specifically notes that these criteria only apply once the special use permits are approved or conditionally approved and the Commission does

have the authority to determine, before the actual use of land, whether the approved special uses will violate either of those two County Code sections. As provided in the testimony of CDD Staff Sayeda, enforcement of these provisions will occur only if the two special use permits are granted, *e.g.*, enforcement of the County's noise ordinance under Chapter 18, Article III.

## II. CONCLUSION OF LAW

1. The Commission, acting under the authority granted it by Chapter 16, Article II, Division 2, Section 16-53(c)(c) of the County Code, has the authority to hear and determine, as a final action, all applications for special use permits.

2. The review criteria to be used by the Commission in evaluating the Applicant's special use permit applications is Section 16-156 of the County Code.

3. Public Notice of the hearing on the applications is governed by Section 16-192 of the County Code.

4. The Commission, pursuant to Section 16-451 of the County Code, held a public hearing on the two applications on February 9, 2022, which lasted over five and one-half (5 ½) hours.


5. The Commission, pursuant to Section 16-451 of the County Code, and under the basic principles of due process, allowed all attendees at the public hearing to present testimony and evidence in support of their position. No person was denied the opportunity to speak or present evidence.

6. Pursuant to Section 16-452(d) of the County Code, the Commission finds, after hearing and deliberation, that the two special use permits, SUP-2022-0020 and SUP-

322 2022-0021, are in conformity with the review criteria of Section 16-156, and shall be  
323 **APPROVED.**

324 7. The parties have duly been appraised of their right to appeal this decision pursuant  
325 to Section 16-454 and Chapter 16, Article XII of the County Code.

326 APPROVED this 28 day of February 2022.

A handwritten signature in black ink, appearing to read 'Rachel Adler', is written over a horizontal line.

328 Rachel Adler, Chair of the Planning & Zoning  
329 Commission for the Incorporated County of Los  
330 Alamos



# MINUTES

## Planning and Zoning Commission

February 23, 2022 – 5:30 P.M.

*Due to COVID-19, virtual participation for this meeting was made available via Zoom.*

*The proceeding can, also, be viewed at <http://losalamos.legistar.com/Calendar.aspx>*

### 1. CALL TO ORDER / ROLL CALL

Vice Chair Martin called the meeting to order at 5:34 PM. Roll call was administered. A quorum was present.

#### **Members Present:**

Neal D. Martin, Vice Chair (presiding Chair)  
Jean M. Dewart, Commissioner  
Terry Priestley, Commissioner  
April Wade, Commissioner  
Stephanie Nakhleh, Commissioner  
Rodney Roberson, Commissioner  
Rachel Adler, Chair (arrived at 7:52 PM)

#### **Members Absent:**

Michelle Griffin, Commissioner  
Beverly Neal-Clinton, Commissioner

### 2. APPROVAL OF AGENDA

Commissioner Martin motioned to amend the Agenda and move Item #6: PRESENTATION(S) before #5 PUBLIC HEARING(S). Commissioner Nakhleh seconded. The Agenda was amended with a 6-1 vote, with Commissioner Priestley opposing.

### 3. PUBLIC COMMENT

No comment.

### 4. PLANNING AND ZONING COMMISSION BUSINESS

#### **A. Minutes from Planning and Zoning Commission Meeting on February 9, 2022.**

Commissioners discussed amending the drafted Minutes to exclude the list of participants, and instead state that sworn testimony was received by more than 20 participants.

***Vice Chair Martin motioned to approve the Minutes as amended. Seconded by Commissioner Nakhleh. Motion carried 6-0 vote.***

### 5. PRESENTATION(S)

#### **A. LAC Development Code Update, Module 2: Development Standards**

Jessica Lawlis and Will Gleason, with Dekker/Perich/Sabatini, Los Alamos County consultants, gave an overview of the Development Code Update, specifically Module 2, which contains revisions to the development standards, including district-specific standards, off-street parking, landscaping, outdoor lighting, walls and fences, and signage.

Councilor David Reagor inquired how Module 2 would affect parking requirements.

Galen Gisler and Wendy Staples with the Jemez Mountain Night Sky Coalition made comments concerning the Outdoor Lighting portion of the Code Update and advocated for light reduction within the county to achieve Dark Sky compliance.

Commissioner Priestley provided his input on the outdoor lighting, communicating his view for the County to commit to reaching new standards, but did not agree with an amortization for private residences. He added that hearing no complaints - the 2200K temperature seems reasonable for the county and new developments. He concluded that a lighting curfew should be encouraged, but not regulated; Electronic Message Centers should comply with the color limits outlined, and temporary construction lighting should comply with the overall lighting standards.

Commissioner Nakhleh acknowledged the reservations of overregulating private property with a light curfew but expressed that it would be appreciated because they can be bright, as she has personally experienced. She communicated that in general she is supportive of the dark sky's initiative and their recommendations and sees no argument in reaching 2200K.

7:00 – recess

7:10 – meeting reconvened

Barbara Calef and Akkana Peck shared their thoughts on the uses as it pertains to the Parks and Open Space Sub-zones. Commissioner Dewart noted that it would be good to acknowledge that the county will need to go through a rezoning process to have everything align, and zone the White Rock Canyon as passively used open space. Will Gleason shared that it is common practice for an entity to follow-up a year after a major code update with logical zone changes.

Cameron Staples reiterated support for minimizing lights and regulating them at 2000K to attain a dark sky. Additionally, Denise Matthews questioned the use regulations and how Module 2 would address daycare facilities.

Commissioner Dewart discussed the new Neighborhood Protection Standards; thereafter she and Commissioner Nakhleh commented on the proposed Review/Approval Procedures and District Standards for the Downtown Districts. Vice Chair Martin suggested that the Sign Code be addressed separately from the Code Update, and voiced support for the dark sky and the 2200K color temperature. He concluded that he would like to see Electronic Message Centers restricted, as they distract from the town's natural assets.

7:57 – recess

8:07 – meeting reconvened

## **6. PUBLIC HEARING(S)**

- Cases continued from February 9, 2022

- A. Case No. SUP-2022-0020. Denise Matthews, dba Worms and Wildflowers Daycare, is seeking Special Use Permit approval for a daycare facility to provide care, service, and supervision for a maximum of 12 children at her residence addressed as 113 B LA SENDA RD. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A).**
- B. Case No. SUP-2022-0021. Denise Matthews, dba Worms and Wildflowers Daycare, is seeking Special Use Permit approval for a Home Business, to employ more than one non-family member for a daycare facility to be located at 113 B LA SENDA RD. The property, LSA03024A, is within the La Senda Subdivision and zoned Residential-Agriculture (R-A).**

Vice Chair Martin opened the cases continued and communicated that the February 9, 2022 hearing had closed to receipt of testimony, and would open to Commission discussion of a motion and review of the Final Order prepared by Kevin Powers, Assistant Attorney. Vice Chair Martin described the Final Order as a synopsis of summary of the discussion made at the last meeting. He communicated that discussion will be for commentary specifically on the prepared Order, at which time the Commission will decide to pass the Order as presented, pass the Order as amended, or offer a new Order.

Commissioner Priestley asked for clarification on the intent of the Findings of Fact presented to them. Mr. Powers acknowledged and provided explanation. Commissioner Priestley stated the Commission's discussion points within the Order are not evidence, but opinions. Mr. Powers explained how the opinions, discussion of the criteria and evidence work together to outline the Commission's basis for their decision.

Commissioner Priestley asked to insert a statement that owners within 300' testified that the proposed daycare would negatively impact their health, safety, peace, comfort, and general welfare. The Commission and Mr. Powers continued discussion on the specific lines and how to proceed with edits.

**Commissioner Nahkleh motioned to move into closed session. Commissioner Dewart seconded. Motion failed with the Commission unanimously voting to continue discussion in public.**

Vice Chair Martin and Commissioner Priestley requested that a statement be included that demonstrates that the neighbors had two different opinions on the effects that the Special Use Permit would have on their health, safety, peace, comfort, and general welfare. Mr. Powers acknowledged and the Order [line 171-173] was amended accordingly. In addition, a statement concerning property values [line 198] was amended to include that one near neighbor within 300' provided testimony and referenced a study – not entered into the record - that showed that property values would negatively be impacted.

**Vice Chair Martin motioned to accept the Final Order as presented, which includes within it a motion to approve the aforementioned Special Use Permits. Motion seconded by Chair Adler.**

Commissioner Priestley expressed that not enough weight has been given to the immediate neighbors' concerns. There is a need for childcare but is not the Commission's job to solve a lab problem and placing the burden on the near neighbors is not appropriate. He stated he felt that there were several criteria that was not addressed in the application, nor the staff report. Commissioner Nahkleh responded that lack of childcare is not a LANL problem, but a town and business problem, and it is within their purview.

Chair Adler added that it is important to note that there were several near neighbors within the 300' radius who supported the daycare. She voiced support for the Final Order as amended.

*Roll Call Vote:*

In Favor:

April Wade  
Jean Dewart  
Neal Martin  
Rachel Adler  
Rodney Roberson  
Stephanie Nahkleh

Against:

Terry Priestley

**Motion carried 6-1 vote.**

**7. COMMISSION/DIRECTOR COMMUNICATIONS**

***A. Department Report***

***B. Chair's Report***

***C. Board of Adjustment Report***

***D. Council Liaison Report***

***E. Commissioners' Comments***

**8. ADJOURNMENT**

9:20 PM

*Neal Martin*

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Neal D. Martin, Residing Chair

# MEETING TRANSCRIPTS

COUNTY OF LOS ALAMOS  
PLANNING AND ZONING COMMISSION  
February 9, 2022

BEFORE THE COMMISSION:

Chair Rachel Adler  
Terry Priestley  
Beverly Neil-Clinton  
Jean Dewart  
Michelle Griffin  
Stephanie Nakhleh  
Neal Martin  
Rodney Roberson  
April Wade

1                   MADAME CHAIR: Let's go ahead and call the  
2 meeting to order. Could we please have a roll call?

3                   THE CLERK: Excuse me, Desiree. Cheryl Bell  
4 is speaking in the chat. Okay. She's answering her.

5                   So I will do the roll call. I am going to be  
6 the clerk tonight and swear in everybody and do the roll  
7 call.

8                   So Commissioner Neil Martin?

9                   COMMISSIONER: I am present.

10                  THE CLERK: Commissioner Neil Clinton is  
11 absent.

12                  Commissioner Priestley?

13                  MR. POWERS: I'm here.

14                  THE CLERK: Commissioner Dewart?

15                  COMMISSIONER DEWART: Here.

16                  THE CLERK: Commissioner Wade?

17                  COMMISSIONER WADE: Here.

18                  THE CLERK: Commissioner Griffin?

19                  COMMISSIONER GRIFFIN: Here.

20                  THE CLERK: Commissioner Nakhleh? I think I  
21 saw her.

22                  COMMISSIONER NAKHLEH: Sorry. I kept muting  
23 myself. Here.

24                  THE CLERK: Commissioner Roberson?

25                  COMMISSIONER ROBERSON: Present.

1 THE CLERK: And Chair Adler?

2 MADAME CHAIR: Here.

3 THE CLERK: We have a quorum. Thank you.

4 MADAME CHAIR: Thank you.

5 All right. Let's move on to the approval of  
6 tonight's agenda.

7 MR. POWERS: Chair Adler, this is Kevin  
8 Powers, assistant county attorney. I don't know if we  
9 want to use the record option for tonight. It might be a  
10 wise option to go ahead and --

11 (Recording in progress.)

12 MR. POWERS: Thank you.

13 MADAME CHAIR: Yes, thank you. Thank you for  
14 reminding us of that.

15 I'll just repeat since we're recording now  
16 that we do have a quorum, and we're moving on to the  
17 approval of tonight's agenda. If I can get a motion to  
18 approve.

19 COMMISSIONER: I move we approve the agenda as  
20 presented.

21 MADAME CHAIR: Thank you.

22 COMMISSIONER: I'll go ahead and second that  
23 motion.

24 MADAME CHAIR: All right. Can I have a show  
25 of hands to approve the agenda?

1 THE CLERK: It's unanimous. Thank you.

2 MADAME CHAIR: Thank you.

3 All right. We're going to move on now to  
4 public comment. And just an explanation for everyone on  
5 the call. This section is for public comment that is not  
6 related to the hearings that we'll be discussing tonight.  
7 So this is public comment for the commission that is not  
8 related to those hearings, that is related to other  
9 claims and matters that may or may not be discussed in  
10 the future. So if anybody has, again, comment not  
11 related to these proceedings, please go ahead and  
12 promptly raise your hand.

13 Do we have anybody?

14 THE CLERK: David Paulson has his hand raised.

15 MR. PAULSON: Well, I was having trouble. Can  
16 you hear me?

17 MADAME CHAIR: Yes, we can hear you.

18 MR. PAULSON: Okay. I was just going to say I  
19 couldn't quite hear what you said. It was a little  
20 garbled. What were you saying about raising your hand?

21 MADAME CHAIR: Oh, just that this section of  
22 the meeting is for public comment that is not related to  
23 this evening's proceeding. So if you have anything to  
24 say that's not related to tonight's hearings, now is the  
25 time to -- to speak. So if you have having something to

1 say, again, not regarding this evening's hearings, raise  
2 your hand electronically. And if not, we'll move on to  
3 the next item on the agenda.

4 MR. PAULSON: I do.

5 MADAME CHAIR: Uh-huh. I do not see other  
6 hands raised. So now we will move on to the approval of  
7 the minutes from our meeting of January 26th.

8 COMMISSIONER NAKHLEH: I move to approve the  
9 minutes from January 26th.

10 MADAME CHAIR: Thank you.

11 COMMISSIONER: And I second that.

12 MADAME CHAIR: All right. Can we have a show  
13 of hands to approve those meeting minutes?

14 THE CLERK: That is unanimous and I have  
15 Commissioner Nakhleh and Commissioner Roberson as the  
16 mover and the secondary; is that correct?

17 MADAME CHAIR: Yes, that's correct.

18 THE CLERK: Thank you.

19 MADAME CHAIR: Thank you.

20 Okay. Now we will move on to the public  
21 hearing portion of the meeting. So we will get started.  
22 So because we have two similar hearings on the agenda  
23 tonight, the commission will be combining the processes  
24 for those two hearings, short hearing evidence and  
25 testimony. However, the commission will be issuing two

1 separate orders, one for each case.

2 That being said, the next items on the agenda  
3 are public hearings for case number SUP-2022-20, Denise  
4 Matthews, d/b/a Worms and Wildflowers Daycare is seeking  
5 a special use permit approval for a daycare facility to  
6 provide care, service, and supervision for a maximum of  
7 12 children at her residence address as 113 B La Senda  
8 Road. The property LSA 03024A is within the La Senda  
9 subdivision as zoned residential agriculture.

10 We'll also be hearing case number SUP  
11 2022-0021, Denise Matthews d/b/a Worms and Wildflowers  
12 Daycare is seeking a special use approval for a home  
13 business to employ more than one non-family member for a  
14 daycare facility to be located at 113 B La Senda Road.  
15 The property LSA 03024A is within the La Senda  
16 subdivision and zoned residential agriculture.

17 The commission's decision on this case must be  
18 based on the criteria contained in chapter 16 of the  
19 county code (inaudible) and development code. The issue  
20 to be decided at this hearing is whether to approve,  
21 approve with conditions, or deny an application for a  
22 special use permit for a daycare facility to provide  
23 care, service, and supervision for a maximum of 12  
24 children, and a special use permit for a home business to  
25 employ more than one non-family member.

1                   The planning and zoning commission is charged  
2     with making this determination based solely on the  
3     criteria adopted by the county commission as set out in  
4     the development code. Testimony will be limited by the  
5     chair of the commission to the subject matter of this  
6     case, which means that we will hear testimony that  
7     relates to the criteria for approval that is set out in  
8     the development code. Copies of the criteria are  
9     available online, and the Chair may limit redundant or  
10    repetitive testimony.

11                  As this is a new application for the special  
12    use permits, information relating to previous hearings  
13    regarding this matter will not be considered as evidence  
14    during this hearing.

15                  The commission will accept the following  
16    documents as exhibits and incorporate them as part of the  
17    record in this case unless a valid objection is raised.  
18    Parties will have the opportunity to have these exhibits  
19    in advance and they're able to use them during their  
20    presentation as desired: The application, the staff  
21    report, and exhibits to the staff report. Additional  
22    exhibits may be proposed by any party as a part of their  
23    presentation. The Chair will either admit or exclude  
24    those items as they are presented. If an exhibit is  
25    excluded the Chair will still maintain a copy of the

1 excluded exhibit to keep as part of the record.

2 The hearing tonight will be conducted under  
3 procedures developed from New Mexico case law. The  
4 procedures are intended to protect the due process rights  
5 of all parties. Parties and witnesses will be  
6 identified. All persons who expect to offer testimony  
7 will be sworn in and testimony will be given under oath.  
8 All persons offering testimony will be subject to  
9 cross-examination by other parties.

10 Please remember that the purpose of  
11 cross-examination is to ask questions and solicit  
12 relevant facts from the witness, not to be argumentative  
13 or to state your own position. The commission intends to  
14 limit testimony to information relevant to the matter  
15 being considered and the commission chairperson may limit  
16 redundant or repetitive testimony.

17 Parties to this case include Ms. Denise  
18 Matthews, representing Worms and Wildflowers Daycare, and  
19 Ms. Sobia Sayeda representing Los Alamos County Community  
20 Development Department.

21 The community development department staff  
22 will assist the commission in fully developing the  
23 record. Other persons in addition to the applicants,  
24 including property owners within 300 feet of the boundary  
25 of the property under consideration and those who have a

1     legally recognized interest in this case may also be  
2     recognized as parties. Parties may call witnesses to  
3     present facts to support that party's position.

4                   All right. If you wish to speak at this  
5     hearing and believe you have a direct interest in this  
6     case and want to be recognized as a party, please let us  
7     know by electronically waving your hand. So again, if  
8     you have an interest in this case and want to be  
9     recognized as a party, please let us know by raising your  
10    hand electronically.

11                  And, Anita, when you have a count on that, if  
12    you could let me know what that is.

13                  THE CLERK: Currently there are 10 people who  
14    have raised their hand. Denise Matthews probably should  
15    (inaudible) her hand raised. I don't see her. Denise.

16                  MADAME CHAIR: Yes, her hand is now raised.

17                  THE CLERK: Okay. I see. So I see 10, 12  
18    people have raised hair hand.

19                  MR. POWERS: So, Chair, this is attorney Kevin  
20    Powers. I just want to maybe make for those present, I  
21    see we have quite a number, if you plan to comment or  
22    provide a comment on this case, you will need to be a  
23    party to be able to submit comments. And so I just want  
24    to make sure everybody is clear on that position.

25                  MR. ERICKSON: This is Dennis Erickson again.

1 I wish to make comment but I still do not see my photo in  
2 the distribution. Can you hear me?

3 MADAME CHAIR: Yes, we can hear you.

4 MR. ERICKSON: Can I -- can I testify without  
5 being shown?

6 MR. POWERS: Yes. Yes, Chair, that is  
7 correct.

8 MADAME CHAIR: Okay. Yes, that is all right  
9 for you to testify even if we can't see you.

10 MR. ERICKSON: Okay. Is there something  
11 somebody can suggest to get my photo, my picture in the  
12 gallery?

13 THE CLERK: Do you see the stop video on the  
14 lower left-side of the stream?

15 MR. ERICKSON: Yes.

16 THE CLERK: Can you click on that?

17 MR. ERICKSON: See what on the lower left?  
18 All I see is the mute or unmute.

19 THE CLERK: Oh, so there's no video?

20 MR. ERICKSON: No.

21 THE CLERK: Okay.

22 MR. ERICKSON: I don't wish to tie the hearing  
23 up. If you're willing to listen to me on audio, that's  
24 okay.

25 THE CLERK: Okay.

1                   MADAME CHAIR: Yeah, I think that we are okay  
2 with that. And if that can be figured out by the time  
3 that you wish to speak, that's great. But if not, we  
4 will accept your testimony even though we cannot  
5 currently see you.

6                   MS. ALLEN: Hi. Can you hear me?

7                   MADAME CHAIR: Yes.

8                   MS. ALLEN: Hi. This is Sharon Allen. So I  
9 think -- I'm not sure if you can see my question, but I  
10 think I'm having the same issue where I don't see myself  
11 and don't have the ability to like click on the video.  
12 But I can -- I guess you can hear and I can see everyone  
13 else.

14                  MADAME CHAIR: Okay. Yes, we can hear you and  
15 we can see that your hand is raised. And so we will go  
16 ahead and accept testimony even from people without video  
17 this evening just because issues happen. So I think  
18 we're all okay with that.

19                  MS. ALLEN: Okay, perfect.

20                  MADAME CHAIR: Okay. So I believe because we  
21 have a fair number of people who wish to present as  
22 parties this evening, what we will do is have them -- so  
23 if we could go through and have everyone state your name  
24 and address and present your interest in the outcome of  
25 this case. And so again, this isn't for presenting

1     opinions or testimony. All we're asking for is your name  
2     and your address and a very brief description of what  
3     your interest in the case is.

4                   MALE VOICE: (Inaudible), I was not able to  
5     (inaudible) today, so I'm going to (inaudible) subject.

6                   MADAME CHAIR: I believe that is fine. We'll  
7     just make sure that that is recorded by tonight's clerk.

8                   MALE VOICE: Thank you.

9                   THE CLERK: So I'm going to go through and the  
10    hands I see raised, I'm going to ask for your address.

11                   So Laurel Horton, what is your address?

12                   MS. HORTON: Hi, sorry. 123 La Senda.

13                   THE CLERK: The next person I see on my screen  
14    is David North.

15                   MR. NORTH: 111 La Senda Road. My interest is  
16    I'm within 300 feet.

17                   THE CLERK: 300 feet, okay.

18                   And I'm sorry, Ms. Horton, what is your  
19    interest in the case?

20                   MS. HORTON: I am not within 300 feet. I'm  
21    probably just beyond that, but I am a proponent with a  
22    small child in the area.

23                   THE CLERK: Okay.

24                   The next is Marilyn and Barham Smith. Can you  
25    state your address?

1 MS. SMITH: Our address is 116 Piedra Loop,  
2 and we are within the 300-foot radius of the Matthews  
3 property.

4 THE CLERK: Okay. Thank you.

5 The next is Akkana Peck.

6 MS. PECK: Hi, I'm Akkana Peck, 111 La Senda.  
7 I'm a neighbor within 100 yards.

8 THE CLERK: Is next one I see is Vanessa and  
9 Charles Richardson. All right.

10 MR. RICHARDSON: We're the Richardsons. We  
11 live at 107 La Senda, and we're within 300 feet.

12 THE CLERK: Thank you.

13 Let's see, Debbie Morely, could you please  
14 state your address and your interest.

15 MS. MORELY: I'm at 119 La Senda. I'm two  
16 doors from the property. I'm not sure about the 300 feet  
17 by tape measure. I am interested in seeing a daycare in  
18 the area. Thank you.

19 THE CLERK: The next one is Agnes Finn. Could  
20 you state your address?

21 MS. FINN: My address is 116 La Senda, and I'm  
22 within 300 feet of the property.

23 THE CLERK: Thank you.

24 The next one is Denise Matthews.

25 MS. MATTHEWS: Hi. I'm Denise Matthews, and

1 I'm applying for the special use permit for 113 B  
2 La Senda. I did have a quick question. If people are to  
3 come on after like throughout the meeting and wish to  
4 speak, are they still able to speak?

5 THE CLERK: They will be sworn in before they  
6 speak.

7 MS. MATTHEWS: Okay. Just I'm thinking  
8 somebody may come on like, you know, in 20 minutes and  
9 still want to speak at the public comment part. And so  
10 they can just raise their hand at that point?

11 THE CLERK: When the time comes in the hearing  
12 and then they will do the swearing in. We're not  
13 swearing in yet, so we're almost. Thank you.

14 MS. MATTHEWS: Thanks.

15 THE CLERK: Cheryl Bell. I cannot hear you.  
16 I'm sorry. Maybe you should make sure your volume is  
17 turned up.

18 MS. BELL: Can you hear me now?

19 THE CLERK: Yes.

20 MS. BELL: All right. I'm Cheryl Bell. I'm  
21 at 9 La Rosa Court in La Senda. And my interest is  
22 purely, I want -- I'm kind of just interested to see what  
23 happens. I have concerns as on (inaudible) level.

24 THE CLERK: Thank you.

25 I see David Paulson next.

1                   MR. PAULSON: Yes, this is David Paulson. I'm  
2 here with my wife Ann Paulson. We live at 122 Piedra  
3 Loop. We may both want to speak, but I would like to for  
4 sure.

5                   MS. PAULSON: And we're within 3 --

6                   MR. PAULSON: Yeah, we're neighbors within 300  
7 feet.

8                   THE CLERK: Thank you.

9                   The next one on my screen is Emily Shulze.

10                  MS. SHULZE: Hi. I'm Emily Shulze. My  
11 address is 3604 Arizona Avenue in Los Alamos. And I am  
12 interested. I have two small children who would be  
13 interested in using this facility.

14                  THE CLERK: Okay. The next one on my screen  
15 is Tish Thames.

16                  MS. THAMES: Hi. Tish Thames here, 115  
17 La Senda. I'm within the 300-foot club, and I am the  
18 closest neighbor to Denise.

19                  THE CLERK: Thank you.

20                  The next one on my list is Lindsay Young.

21                  MS. YOUNG: Can you hear me?

22                  THE CLERK: Yes, now we can hear you.

23                  MS. YOUNG: Yes, I'm Lindsay Young. We live  
24 at 110 Piedra Loop, and we are within 300 feet. And we  
25 are for this daycare, so --

1 THE CLERK: Thank you, Ms. Young.

2 Kiyana Allen.

3 MS. ALLEN GLASS: Hi. Yeah, my name is Kiyana  
4 Allen Glass. I live at 159 Monterey Drive South. I'm in  
5 (inaudible) Acres, and I am interested in sending to my  
6 young children to this facility if it's able to open.

7 THE CLERK: Thank you.

8 And I think there was somebody who raised  
9 their hand electronically and I don't see them anymore.

10 MADAME CHAIR: Was it Mr. Dileva?

11 THE CLERK: Yes, it was Mr. Dileva.

12 MR. DILEVA: Hi. This is Mr. Dileva. I  
13 reside at 115 La Senda Road.

14 MALE VOICE: Oh, it's (inaudible). Thank you.

15 THE CLERK: Okay.

16 MALE VOICE: Pardon me.

17 THE CLERK: That is the last one I see on the  
18 screen. Thank you.

19 MR. JONES: Oh, excuse me.

20 THE CLERK: Tyler Jones.

21 MR. JONES: Yeah, sorry about that. I think  
22 when I got put on as a panelist it took my hand back  
23 down.

24 THE CLERK: Okay. Sorry.

25 MR. JONES: The Matthews family lives at

1 113 B, and I live at 113 B. So we split the 113 up.

2 THE CLERK: Okay. Thank you.

3 MADAME CHAIR: And then we had another  
4 extended (inaudible) panelist.

5 THE CLERK: Berl (inaudible).

6 MR. BERL: Yes, can you hear me?

7 THE CLERK: Yes.

8 MR. BERL: Okay. I'm at 117 La Senda. I'm  
9 within 300 feet.

10 THE CLERK: Okay.

11 MR. POWERS: Could you say your name, please,  
12 sir?

13 MR. BERL: Berl, B-e-r-l.

14 THE CLERK: Thank you, Mr. Berl.

15 And that is all I see. Is there somebody in  
16 the panelist that we're missing?

17 MADAME CHAIR: And did you get Denny Erickson?

18 THE CLERK: Not as a raised hand.

19 MR. ERICKSON: I'm the one that doesn't show  
20 on the gallery for some reason.

21 THE CLERK: Okay. So could you please state  
22 your address?

23 MR. ERICKSON: I'm Dennis Erickson. I'm a  
24 resident at 400 Brighton Drive. And I am a friend of the  
25 requester.

1 THE CLERK: Okay.

2 MR. ERICKSON: And a 50-year resident of the  
3 county.

4 THE CLERK: Thank you.

5 I see somebody else now. (Inaudible)  
6 Schaffer.

7 MR. SCHAFFER: Hello?

8 THE CLERK: Hi, Mr. Schaffer.

9 MR. SCHAFFER: Can you hear me?

10 THE CLERK: I can hear you. Can you --

11 MR. SCHAFFER: I -- for some reason I can't  
12 see the gallery. All I see is the speaker. But I -- I  
13 live at 113 Piedra Loop across the street from the  
14 Smiths. And I had a comment letter that didn't get into  
15 the package. So I just wanted to read my brief letter.

16 THE CLERK: Okay. When the time comes we will  
17 be calling you.

18 MR. SCHAFFER: And how do I do the gallery? I  
19 can't -- something is wrong here. I see you as the  
20 speaker, but I don't see the gallery.

21 THE CLERK: Well, we'll try and figure that  
22 out.

23 MR. SCHAFFER: Well, anyway, I will -- when  
24 the time comes, like I said, I'm not within the 300 feet.  
25 I'm across the street from the Smiths. And I would just

1 simply like to read my letter. That's all.

2 THE CLERK: Okay.

3 MR. SCHAFFER: And it's -- it's a short  
4 letter.

5 THE CLERK: All right. When we get to that  
6 time in the hearing you will be called, Mr. Schaffer.

7 MR. SCHAFFER: Okay.

8 THE CLERK: There's a Kelsey McGrue who just  
9 arrived.

10 MS. McGRUE: Hi. My name is Kelsey McGrue.  
11 I'm here on behalf of the requester. And my address is  
12 111 Cherlain Place, White Rock.

13 THE CLERK: Okay.

14 And I see Rachel Landman. Rachel Landman,  
15 please state your address and your interest.

16 I don't think she can hear me. There is a  
17 Rachel Landman. I don't know what her address is or what  
18 her interest is. We can get with her later on, I  
19 suppose.

20 MADAME CHAIR: Yeah, she does have to speak.  
21 I'm not sure if she -- maybe she's just having technical  
22 problems.

23 THE CLERK: Okay.

24 MADAME CHAIR: There's also a Christine  
25 McCullan that would like to be moved to a panelist.

1                   THE CLERK:   There's a Laurel Horton.  I don't  
2   think I -- I don't believe I --

3                   MADAME CHAIR:  She already spoke.  Yeah, she  
4   was the very first one.  Yeah.

5                   THE CLERK:  I'm going to lower people's hands  
6   down.

7                   MADAME CHAIR:  And can I ask, please, that if  
8   you are not actively speaking that you make sure you are  
9   muted.

10                  THE CLERK:  So the only one I did not hear  
11   from was Rachel Landman.

12                  MS. LANDMAN:  Hi there.  Sorry.  I was having  
13   some technical issues.  But I'm here on behalf of Denise  
14   Matthews and previously worked with her at (inaudible)  
15   Education Center.

16                  THE CLERK:  Okay.  And what is your address?

17                  MS. LANDMAN:  1022 Marcelo Street.

18                  THE CLERK:  Thank you.

19                  I believe that's it, Chair Adler.

20                  MADAME CHAIR:  All right.  Thank you for  
21   bearing with us through that.

22                  So next will be the commission disclosure  
23   where the Chair, myself, will now poll the commission as  
24   to potential conflicts of interest or ex parte  
25   communications.

1                   So does any commissioner have a potential  
2   conflict of interest in this case? If so, please  
3   disclose that interest. So are there any commissioners  
4   who would like to make a disclosure?

5                   Yes, Commissioner Griffin?

6                   COMMISSIONER GRIFFIN: I'll have to recuse  
7   myself from the two cases due to I live in the  
8   neighborhood and I'm friends with the Matthews and I have  
9   received ex parte communication.

10                  MADAME CHAIR: All right. Thank you for  
11   letting us know.

12                  Are there any other commissioners who wish to  
13   disclose a conflict of interest?

14                  COMMISSIONER WADE: Not -- this is  
15   Commissioner Wade. I just want to disclose that Denise  
16   Matthews, she is the board president at my job. I do not  
17   believe it will affect my judgment, but I did want to  
18   disclose that.

19                  MADAME CHAIR: Thank you.

20                  I'm going to ask Mr. Powers if that is  
21   acceptable?

22                  MR. POWERS: Thank you, Chair Adler. I think  
23   the commission, she's made a disclosure, so I think she's  
24   indicated she can be fair. But the commission does have  
25   the option to take a vote to not let her be included in

1 the proceedings. Unless there's a motion to do that, we  
2 move forward.

3 MADAME CHAIR: Okay. Not hearing a motion, I  
4 am just going to go ahead and move forward.

5 So the next question is has any commissioner  
6 received any ex parte communications regarding this case?  
7 Ex parte communication means discussions about a quasi  
8 judicial case with an applicant or others outside the  
9 normal or official planning and zoning meeting process.  
10 So this does include any emails that we may received that  
11 were not included in the agenda packet or any information  
12 that you may have received outside of the official  
13 process. So were there any commissioners who need to  
14 disclose ex parte communications?

15 COMMISSIONER: Chair, you're asking if we've  
16 received any emails regarding this, and I have received a  
17 number of emails. I don't have all of them listed. And  
18 as per kind of our sort of MO on this commission, I  
19 haven't spent any time really going through that. I'm  
20 looking to receive information here during this hearing.  
21 And of course I've read what is being presented in the  
22 staff report submitted to the county in that regard. So  
23 I'll just disclose that I've received a number of emails.  
24 I can't even recite all of them. But I did just want to,  
25 for the sake of, you know, being comprehensive just

1 disclose all of that.

2 MADAME CHAIR: I appreciate that. I think all  
3 of us have received at least some communication outside  
4 of the official proceedings. I think it's important to  
5 have, you know, that information as part of the record.  
6 I'd like just to restate that the decisions made by the  
7 commission will be based on the evidence and the  
8 testimony that they're presented as part of this hearing  
9 or these hearings.

10 So the next question, has any commissioner  
11 reached a decision on the merits of this case as a result  
12 of ex parte communications? And if so, I will need to  
13 ask you to step down and not participate. Are there any  
14 commissioners who have reached a decision based on the ex  
15 parte communications? Not seeing, I will go ahead and  
16 move on.

17 Next up is the swearing of witnesses. Excuse  
18 me, will the commissioner recorder swear all persons who  
19 wish to testify. I think because we have some many  
20 people who would like to testify this evening, would we  
21 be able to read the oath and then have people go through  
22 individually and state their names and swear themselves  
23 in?

24 THE CLERK: I believe if that's okay with  
25 Kevin Powers, I could read the oath and then I could go

1 through the list of the people I took down as parties and  
2 then ask if they affirm to provide correct testimony. So  
3 is that all right with you, Chair and Kevin?

4 MR. POWERS: Chair, that's what I think is the  
5 best course at this time, if that's good with you.

6 MADAME CHAIR: Certainly.

7 THE CLERK: Okay. So those who wish to give  
8 testimony at this hearing, please raise your right hand.  
9 Do you affirm under penalty of perjury that the testimony  
10 you are about to give in this matter is the truth, the  
11 whole truth, and nothing but the truth? So I am going to  
12 ask the people on my list to say yes or no.

13 Laurel Horton?

14 MS. HORTON: Yes.

15 THE CLERK: David North?

16 MR. NORTH: Yes.

17 THE CLERK: The Smiths? The Smith family?

18 MS. SMITH: Sorry, yes.

19 MR. SMITH: Yes.

20 THE CLERK: Ms. Peck?

21 MS. PECK: Yes.

22 THE CLERK: Richard -- what was the name I  
23 have here? Richardsons. I'm sorry, the Richardsons?

24 MS. RICHARDSON: Yes.

25 MR. RICHARDSON: Yes.

1 THE CLERK: Yes, okay.  
2 Ms. Morely?  
3 MS. MORELY: Yes.  
4 THE CLERK: Ms. Finn?  
5 MS. FINN: Yes.  
6 THE CLERK: Ms. Matthews?  
7 MS. MATTHEWS: Yes.  
8 THE CLERK: Mr. Paulson?  
9 MR. PAULSON: Yes, and my wife is here as  
10 well.  
11 MS. PAULSON: Yes.  
12 THE CLERK: Thank you.  
13 Ms. Shulze?  
14 MS. SHULZE: Yes.  
15 THE CLERK: Ms. Thames?  
16 MS. THAMES: Yes.  
17 THE CLERK: I have Lindsay, and I didn't write  
18 down the last name.  
19 MS. YOUNG: Young.  
20 THE CLERK: Young, okay. Thank you.  
21 MS. YOUNG: Yes.  
22 THE CLERK: Thank you.  
23 Kiyana Allen?  
24 MS. ALLEN GLASS: Yes.  
25 THE CLERK: Mr. Dileva?

1 MR. DILEVA: Yeah.

2 THE CLERK: Kevin Jones?

3 MR. JONES: Yes.

4 THE CLERK: Mr. Berl?

5 MR. BERL: Yes.

6 THE CLERK: Dennis Erickson?

7 MR. ERICKSON: Yes.

8 THE CLERK: Mr. Schaffer?

9 Kelsey McGrue?

10 MS. McGRUE: Yes.

11 THE CLERK: Rachel Landman?

12 MS. LANDMAN: Yes.

13 THE CLERK: Okay.

14 MR. POWERS: I had one that you didn't get,

15 Bell, Cheryl Bell.

16 MS. BELL: Yes.

17 MALE VOICE: Becca Jones that lives at 113 is

18 also on here. She needs to say yes.

19 THE CLERK: Okay. Becca and Tyler Jones?

20 MS. JONES: Yes.

21 MR. JONES: Yes.

22 THE CLERK: All right. Is there anyone else?

23 MADAME CHAIR: Did we hear from Mr. Schaffer?

24 THE CLERK: No. I don't know what's going on.

25 There he is. Okay.

1 Mr. Schaffer?

2 MR. SCHAFFER: Yes.

3 THE CLERK: Okay. So it's going to --

4 MR. SCHAFFER: And now my picture is on there.

5 THE CLERK: Okay, good.

6 MR. SCHAFFER: What about Denny? He didn't  
7 get his picture on?

8 THE CLERK: Not yet, but we're working on  
9 that. Thank you.

10 MR. SCHAFFER: Okay. How do I get the  
11 gallery? There's no way to do it?

12 THE CLERK: On the upper right hand of the  
13 screen there's a view. So click on view and one of your  
14 options should be gallery.

15 MR. SCHAFFER: Oh, shoot, I don't see it.  
16 Well, it's all right.

17 THE CLERK: Okay.

18 MR. SCHAFFER: I hate -- I hate Zooms. Okay.

19 THE CLERK: Chair Adler, is there anything  
20 else?

21 MR. POWERS: I have everyone checked in and  
22 confirmed on my list.

23 THE CLERK: Okay. So I don't have an address  
24 for Cheryl Bell.

25 MS. BELL: Hi. It's 9 La Rosa Court.

1 THE CLERK: Okay. Thank you.

2 MS. SAYEDA: Anita, do I need to be sworn in  
3 at this point?

4 THE CLERK: Oh, I'm sorry, Sobia?

5 MS. SAYEDA: Yes.

6 THE CLERK: Yes, okay.

7 MS. SAYEDA: Thank you.

8 MADAME CHAIR: All right. So we'll now move  
9 on to the presentation by the applicant. And I will turn  
10 it over to Ms. Matthews.

11 MS. MATTHEWS: Okay. So I'm able to share my  
12 screen now? All right. Then everyone can see that slide  
13 show?

14 THE CLERK: Yes.

15 MADAME CHAIR: Yes.

16 MS. MATTHEWS: Okay. All right. So thank  
17 you, Commissioners, for hearing my case tonight and thank  
18 you for everyone who has attended. I'll be reviewing my  
19 two requests for special use permits, the residential  
20 daycare facility and the home business. And I'll start  
21 by just stating a little bit more about what that means.

22 So for a residential daycare facility, I just  
23 want to be clear of what I'm actually applying for, that  
24 this is a residential in-home daycare facility for a  
25 maximum of 12 children and not a commercial business. I

1 think there has been some misunderstanding that this is a  
2 commercial operation. And it is not. It's a residential  
3 in-home daycare. And a daycare facility is defined in  
4 the county code as a business that has less than 12  
5 children.

6 The home business permit is the second  
7 application as it allows me to maintain my CYFD ratios  
8 for a one to six teacher to child ratio. So if I were to  
9 have 12 children I would need two teachers, myself being  
10 one teacher and then I would have to hire another  
11 teacher. So this allows me to have more than one  
12 non-family member.

13 I will say that the daycare facility is  
14 allowed on an RA in an RA zoned area with a special use  
15 permit. And the special use permit does have criteria  
16 which I'm reviewing tonight.

17 To start I just wanted to tell a little bit  
18 more about myself as well. So I am Denise Matthews, and  
19 I have a master's in science education. I'm a certified  
20 science and SOL teacher. And I have 15 years experience  
21 teaching environmental education, including five years  
22 with PEEC as their core based education specialist.

23 In terms of the daycare, I -- oops, sorry, I  
24 was trying to move something. In terms of the daycare,  
25 we'll -- the hours of operation will be 8 to 5:30 with

1 occasional weekend events. And that means something like  
2 where I invite the families to come and see the garden  
3 and the classroom and see a little bit more about what  
4 their kids are doing. The adult child ratio is one to  
5 six, which I just explained. The ages are 3 to 7.

6 The mission is to build upon the natural  
7 rhythms of child centered play to allow for all  
8 children -- sorry, this is blocking my view. Okay. To  
9 allow for -- oh, shoot. Okay. There we go. To allow  
10 all children the opportunity to grow as resilient global  
11 citizens capable of developing their own interests,  
12 working cooperatively, feeling empathy, managing risks,  
13 and connecting to the natural world. So it has a real  
14 wholistic approach to it.

15 The -- I do want to speak to the need a little  
16 bit. Ongoing (inaudible) efforts have regenerated county  
17 demographics with an influx of young families with  
18 children. As a measure of need, a survey of some 100  
19 Los Alamos families was conducted where 88 percent of  
20 survey participants said that they would be excited about  
21 the opportunity to send their child to a nature-based  
22 daycare with 100 percent of families claiming not enough  
23 daycare options in LA County and a desire to see more  
24 options of variety and programming.

25 I do have a little bit more details on the

1 specifics of that survey. So a survey was sent out with  
2 Survey Monkey at the end of January and four questions  
3 were included. Question one was just where do people  
4 live. And so it was split between Los Alamos and White  
5 Rock with a few others being like Espanola or Pueblo or  
6 Santa Fe or the Jemez. And then age ranges with people  
7 with children between 0 and 10 years old, some with  
8 children on the way. There's a lot of people.

9               Here we have for question number three, would  
10 you be interested in sending your own child to an outdoor  
11 nature-based daycare for early childhood and elementary  
12 aged children. And that showed 88 percent would be  
13 excited for this option in the community. And that is  
14 just a huge number. It really speaks to what people are  
15 looking for in their daycare options.

16              And then for question number four, how do you  
17 feel about the options for daycare and early childhood  
18 education in Los Alamos County. And we have, I think the  
19 big number here is that zero families chose there is  
20 plenty of options available in Los Alamos. People are  
21 clearly not happy with the options and availability and  
22 the variety of programming. 44 percent said they would  
23 like nature-based programming and with 30 percent saying  
24 there's not enough daycare and they have difficulty  
25 finding daycare and preschools that works for their

1 family. And this is, you know, 100 people in the  
2 community, and that was just taken very quickly. It  
3 was -- the answers were coming in very, very rapidly once  
4 I put this out because people are eager to find something  
5 else in the community that can meet their needs and have  
6 availability. So that speaks to the need.

7           There's also a community need for this type of  
8 programming. This is -- there's been a huge increase in  
9 outdoor education and nature-based preschools in  
10 programs. There are 585 nature-based preschool programs  
11 in the U.S. as of 2020. And we can see that this number  
12 has rose like exponentially over the last 10 years. But  
13 New Mexico still has less than 10. And that means that  
14 we are due for some growth in our nature-based  
15 programming. And this preschool would bring that to  
16 Los Alamos. You can see map up here, all the different  
17 places where it is growing a little bit more. And  
18 New Mexico is in need.

19           And so one reason people are so excited about  
20 nature-based programming is because it has been connected  
21 in the educational community to so many benefits,  
22 including improving resiliency and emotional wellbeing,  
23 social emotional development, increasing self confidence  
24 and conflict resolution skills, increasing a sense of  
25 ownership over the local environment, and understanding

1 of scientific concepts, increasing cognitive functions,  
2 and increasing ability to manage risks. So these all  
3 huge things that people are looking for and can be  
4 brought into the community with a nature-based program.  
5 So kind of the big idea here is that families in the Los  
6 Alamos County have expressed a great desire for a  
7 nature-based daycare option where children learn and grow  
8 and become strong global citizens.

9 Now I'll get into a little bit more of the  
10 specifics about where the daycare will be. So this is a  
11 site plan for our property. My husband and I live on the  
12 property, or own the property. And it's residential  
13 agriculture. It's 113 B La Senda and it's three acres.  
14 It is a five lot, so you can see how we have a real long  
15 driveway that comes up and puts us way off the road,  
16 which is really nice for a daycare because we're not  
17 right on the road and we don't have the cars, you know,  
18 going in and out right there right where the children  
19 will be. You have the parking area over here with the  
20 five -- the number five and the green building is the  
21 daycare classroom area. And then it shows the outdoor  
22 daycare area as well.

23 So the Planning and Zoning Commission has five  
24 criteria for a standard -- or for a special use permit.  
25 And these are the five criteria. So summarizing number

1 one, not to be detrimental to the health, safety, peace  
2 and comfort or general welfare or injure the value of  
3 property.

4 Number two to have sufficient parking  
5 facilities that are adequately designed.

6 Number three, have on site and off site  
7 ingress and egress and traffic circulation in conformance  
8 with the county's construction standards.

9 Number four, the setbacks of buildings and  
10 parking facilities from the property lines right of way  
11 and adjacent land uses are in conformance with this  
12 charter.

13 And number five, the site plan including but  
14 not limited to landscapes, cleaning, fencing of the  
15 proposed development, that the site be compatible with  
16 the adjoining areas.

17 So I'll go through each of these much more in  
18 depth to show how I do in fact meet all five of these.  
19 Number one, persons and property. So this speaks to the  
20 health, safety, peace, comfort, or general welfare in the  
21 code. So I kind of looked into what does that really  
22 mean, what does it mean to -- what is detrimental to the  
23 health, safety, and peace of neighbors. And so I found  
24 the code that says the making, creation, or maintenance  
25 of such excessive, unnecessary, unnatural, or unusually

1 loud noises which are prolonged, unusual, or unnatural in  
2 their time, place, and use are detrimental to the public  
3 health and so comfort and safety and welfare.

4           And so I thought, okay, well, what is  
5 unnatural or unusually loud. And so the county does have  
6 a code that says that you cannot emit more than 65  
7 decibels across fence lines. And so I wanted to make  
8 sure that I was of course in bounds of these codes. And  
9 so I looked further into, you know, how much noise will  
10 this create and thinking about what kinds of activities  
11 you'd see in a home daycare and then how much noise that  
12 makes. And here we have things that you might see in a  
13 home daycare. Group circle time, songs and  
14 conversations, story time, kids playing, parent  
15 conversations. All of these things are kind of similar  
16 type of noises.

17           You can see over here on the chart that a  
18 normal conversation is 60 decibels, and the limit is 65  
19 decibels. So there wouldn't be any big reason to believe  
20 that noise would be over 65 decibels. And you also want  
21 to think about the kids have a lot of space on our  
22 property, and so you can see that here noise does  
23 diminish over time. So this says that every doubling of  
24 distance, as the noise is, will allow for the sound to  
25 diminish by 6 decibels. And so you can think about,

1     okay, that should -- you know, sound should diminish over  
2     space where playing outside. But I did want to look into  
3     this even further, so I did do a noise survey driving by  
4     a daycare and our own home to see what kind of noises are  
5     daycares really producing.

6                     And so I used the neo sound measuring  
7     application. And I saw -- so this was done on January  
8     11th, and I did a morning and an afternoon study for  
9     about 15 minutes. One distance of 55 feet and one  
10    distance of 35 feet. And these are -- it was a mixed  
11    group of ages. And we have the 55 feet producing  
12    decibels of 54.9 and the 35 feet producing 56.7. So you  
13    can see that those are well under the 65 decibels. And  
14    those kids doing all the -- or yeah, kids doing all the  
15    things that kids do. They were running around and  
16    playing and doing -- and getting into things and teachers  
17    were telling them to stop doing whatever they were doing  
18    or they were getting excited on the swing. Those are all  
19    just normal sounds from a playground.

20                    And so then I also did the study at my own  
21    home when there was no children present as kind of like a  
22    control like what is the sound when nothing is happening.  
23    And I got 46.3. So there's not a huge difference between  
24    what is normally there versus having the kids present.  
25    And all of it is well under the 65 decibels.

1                   The last two numbers are really referred to  
2   the amount of dose you would receive if you were to  
3   listen to that amount of sound for an entire day. And  
4   this is through like an industry standard type of  
5   situation because this is a safety and health  
6   organization that makes this application with the  
7   industry standard being 80 decibels. And of course  
8   that's higher than what the county says, but that's where  
9   those numbers come from at the end of the chart.

10                  Okay. So with those, you know, you can say,  
11   okay, well, the kids are really not producing as much  
12   sound as you might -- as some people might think. And I  
13   just wanted to give people a good idea about where we are  
14   at, like how did I take these numbers. So here you can  
15   see the Dragonfly Daycare and you can see 35 feet and 5  
16   feet. You also can notice that there is a private  
17   residence directly across the fence. And so it's not  
18   unlike a situation except for that it's closer than what  
19   our house has. Because you can see over at our house  
20   that -- so I went -- I did like the center of the play  
21   lot and then I went from there to people's houses, how  
22   far is it.

23                  So you can see from the center of the play lot  
24   to 116 Piedra Loop is 201 feet. And from the center of  
25   the play lot to 115 La Senda is 100 feet. Now, if you go

1 to the fence line from the center of the play lot it  
2 would be 55 feet. So that measurement is very similar to  
3 the one from the daycare, when in reality the kids are  
4 going to be all around the play area. They're going to  
5 be farther. They may be closer to the 35 feet range. So  
6 you can see that the fence line is going to be where it  
7 is, but people's houses are even further than that. And  
8 either way the decibels are way below 65 decibels.

9               So I just want to remind people that all the  
10 residential and commercial daycares in Los Alamos County  
11 are required to conform to the noise ordinances of 65  
12 decibels. So many of these preschools are in higher  
13 density residential areas if you think about where  
14 Dragonfly Daycare is or Ponderosa or any of the ones up  
15 in town, they all have houses near them and they're all  
16 following the 65 decibels. And Worms and Wildflowers  
17 Daycare would not be any different. We would follow the  
18 65 decibel ordinance as well as be located in a rural  
19 agricultural zone where sound could actually dissipate  
20 farther than how far the distances dissipate in a  
21 residential compacted area.

22               This is the -- so we're continuing on with  
23 criteria number one, persons and property. This will be  
24 the classroom where the daycare will take place. So it  
25 is a renovated pottery studio. It's 523 square feet and

1 it meets the state requirement of 35 square feet per  
2 child, which is 420 feet. The space is really nice. It  
3 has elevated ceilings and lots of windows and a full  
4 bathroom and kitchen. The island and the bed would be  
5 taken out obviously to open up the space. I just wanted  
6 to give you guys a good idea of where the classroom is  
7 and with that, you can see it from the outside. So this  
8 is like the entrance to the classroom looking out.

9 This would be looking towards the property  
10 line of 115 La Senda. And then you can see the mountains  
11 in the background. It's a beautiful area. And then this  
12 is also from our garden, so this would be looking south,  
13 looking towards the classroom. That's the outside of the  
14 classroom. And so I think -- I think it's important to  
15 recognize that in this environment activities within a  
16 home daycare are not different from a typical  
17 conversation or noise generated from family activities.  
18 Kids playing does not constitute a trespass upon the  
19 privacy of others as stated, creation or maintenance of  
20 such excessive unnecessary unnatural or unusually loud  
21 noises which are prolonged, prolonged, unusual or  
22 unnatural.

23 I would say kids are very natural and a part  
24 of our community and deserve to be allowed to play in an  
25 environment that is beautiful and gives them enrichment

1     rather than put into like a small type of strip mall for  
2     the parking area for a play area.

3                 All right. So I did just want to continue  
4     with that. What does -- what do the indoor lessons look  
5     like, what do outdoor lessons look like? So we will use  
6     the flow of seasons in the natural world to guide the  
7     curriculum. Lessons will be taught in the classroom and  
8     outdoors. We will do -- inside, we can bring nature  
9     inside. Of course so you can do like dry flower  
10    collections, nature crafts, microscopes. There will be  
11    stations for imaginary play, pottery, simple cooking.

12                Outdoor will have things like track and scat  
13    hunts, planting, harvesting in the garden, fairy houses,  
14    weather studies, natural art and natural nature  
15    collections. I will say that this place is not somewhere  
16    that can be duplicated. I've spent like the last three  
17    years working on the soil and the garden to set this up  
18    so that it is a beautiful, wonderful place to learn. And  
19    so it would not be the same to go just build some raised  
20    boxes in the back of a building somewhere. This is a  
21    garden that has had a lot of time and effort put into it  
22    and I'm planning to share that with the children.

23                Okay. So how long will children spend  
24    outdoors? This is a question that has come up. So a  
25    nature-based school typically spends 50 percent of their

1 day outside. So this is similar to many traditional  
2 preschools actually. Not all preschools, of course, but  
3 a lot of preschools spend quite a bit of time outside.  
4 So I did a little, just to see kind of how long are other  
5 schools and towns spending outside. And so we have  
6 Dragonfly Daycare spending three and a half hours,  
7 Ponderosa spending three hours, Little Forest spending  
8 one to six really depending on what the weather is, which  
9 is of course pertinent information. You know, if it's  
10 really cold obviously you're going to be coming in to  
11 warm up and do things inside. On ongoing warm days you  
12 might be outside longer.

13 Worms and Wildflowers Daycare is no different.  
14 It will of course be centering curriculum around the  
15 natural environment, but we will be spending time inside  
16 as well starting with part-time hours to start with.

17 Okay. So we've gotten through a lot about  
18 noise and what the school will look like. There has been  
19 some people that have brought up the fact that there's an  
20 HOA. There's an idea that there's an HOA in La Senda, so  
21 I wanted to talk about the status of La Senda HOA and the  
22 subdivision covenants. So in reality the La Senda is  
23 inactive with no board of directors. There has been an  
24 HOA in the past, but it is no longer active. So  
25 covenants were last defined in 2005 and at this point

1     there is no board of directors to approve or deny an  
2     in-home daycare. And in any regard, if there was, there  
3     is no statement that prohibits an in-home residential  
4     daycare in the covenants. Appealing neighbors have cited  
5     that the clause is a clause that says no noxious odors,  
6     offensive activities, annoyances or nuisances are  
7     allowed.

8                     And I would say that children are not  
9     offensive or an annoyance or a nuisance. They are a part  
10    of our community that we love and we want to help teach  
11    and learn and grow. So again, the HOA covenants are not  
12    active and have no board. So even if they did, children  
13    playing and learning in their own community are neither  
14    offensive nor a nuisance.

15                    And just to give some evidence to this, so  
16    there was some activity that happened last year, last  
17    spring about the board of directors. And so Tish Thames,  
18    who is one of the appealing neighbors, did send a letter  
19    to the entire La Senda neighborhood addressing the status  
20    of the HOA. And I took an excerpt of it. I did submit  
21    the letter in the packet, so the commissioners, you  
22    probably have already seen this. But I think it's  
23    important to notice a couple of lines from here. It does  
24    say that there -- that she is not the president and there  
25    is currently no standing board of directors. And since

1     there is no HOA intentions were to let it go after what  
2     we did what we set out to do.

3                 So basically they were trying to reinstate the  
4     HOA to be able to close the account for the money that  
5     has been in the account for a long time. And it's just  
6     kind of sitting there and has no purpose. So really what  
7     happened was she was trying to reinstate the HOA to close  
8     that account so that the HOA could be dissolved and then  
9     there's no HOA board of directors at this point anyway.  
10    So I just wanted to clear that up just because I know in  
11    some of the letters it does cite that that is a reason  
12    why the daycare would not be allowed.

13                So in terms of this, an in-home daycare is not  
14    a detriment to any persons or property. So that is kind  
15    of a summary statement for the entire idea of persons and  
16    property. So noise, location, and HOA.

17                I'll move on to criteria number two, parking.  
18    So here we have sufficient parking facilities. You can  
19    see the parking. We have a driveway coming up and you  
20    turn to the left and you have five daycare parking spots.  
21    Those can be increased if we need to. That's just what's  
22    there right now but it seems like it might be fine. And  
23    then we have the daycare building at 523 square feet. We  
24    have the 8,000 square feet outdoor area. So you can kind  
25    of get an idea of how things are laid out. But you can

1 see the picture of our driveway coming in from La Senda  
2 Road over there. And it is a gravel driveway and it does  
3 not need to be paved based on the county code.

4 Let's see, so here's another image just to  
5 kind of give you a farther out picture. So here you can  
6 see where 113 A is. I included that with the central  
7 location of the daycare outdoor area. And then you can  
8 see the turnaround where the parking, where you come up  
9 the driveway, you have the turnaround, or you can go down  
10 and park. You can also see the public easement over here  
11 that separates us from 113 B from 116 Piedro Loop. So  
12 there is a horse. All the properties in La Senda and  
13 Pajarito Acres have a lot of public easements between  
14 different properties for like people to walk and really  
15 horse trails is why they were started initially. So  
16 you'll see horses come through there and people walking  
17 their dogs and things like that.

18 So this is just showing that, yes, we are  
19 planning to follow the code for parking. You need to  
20 have that nine feet of space for each parking spot and 18  
21 feet in length, and our parking spaces are -- well, the  
22 area is 50 feet by 20 feet, so it would be enough for  
23 five parking spaces. And then we plan to put those  
24 bumper guards on the back to define the parking space.

25 Here you can see this is the approach as you

1     come up the driveway looking at the daycare. You'd be  
2     going through the red fence and the red gate to get to  
3     the daycare. And here's the parking area where we would  
4     install the bumper guards. So it says that if you're  
5     concerned about the handicapped parking, you don't need  
6     to actually supply handicapped parking spaces for  
7     non -- for residential uses, only for non-residential.

8                     And then down here we have one space -- so the  
9     requirement for employees is to have one space for each  
10    employee. And so we would have that would be one space  
11    of that space would be used for the employee. So the  
12    conclusion here is that sufficient, adequate parking  
13    facilities are present on the property.

14                    Number three, ingress and egress. This shows  
15    how people would approach their house if they were coming  
16    from Highway 4. So you turn down Piedro Loop and then  
17    turn onto La Senda. These are main roads that are very  
18    wide and fair. So for 10 families to be using them for  
19    pickup and drop off would not be -- it would be a very  
20    modest increase to traffic and it would not be considered  
21    an adverse effects. La Senda Road is intended for the  
22    public traffic. La Senda, by nature, has large lots with  
23    spaced out driveways and allowing plenty of space for  
24    parents to be dropping off and picking up.

25                    So we can see over here La Senda is wide

1 two-way thoroughfare. It wouldn't be hard at all for  
2 cars to be going back and forth. And the property is  
3 well marked for vehicles going east or west. I did do a  
4 traffic study just to see how many cars are really going  
5 by every day. And so we did one on Friday and Tuesday,  
6 Friday being a day that may not be quite as much traffic  
7 because of the land. And then Tuesday more. And it did  
8 show that we had in the morning there was six vehicles  
9 and the school bus. And then 11 at lunch, five in the  
10 afternoon, a total of 22 vehicles. And then you have  
11 that in (inaudible) to 17 in the morning on a Tuesday, 12  
12 in the evening and 34 vehicles total. So having 10 more  
13 vehicles would not make so much traffic on this that it  
14 would be not appropriate for the type of road that La  
15 Senda is.

16 Okay. So number four, setbacks. So this is  
17 looking at the setbacks of our property from all the  
18 surrounding properties. So I did show a map similar to  
19 this already. I will say that no new buildings will be  
20 traded for this business and the daycare will reside in  
21 the existing renovated art studio. So it's being --  
22 we're using the property exactly how it was intended when  
23 it was built. It doesn't have any -- we aren't having to  
24 build any new structures. You can see the 201 feet from  
25 the other house, the 100 feet to the 115 La Senda and

1     then the 310 feet to 113 A. So we're set back from all  
2     the other houses. As the neighborhood is, with everyone  
3     having, you know, between two and four, five acres,  
4     there's large lots. So there's plenty of setback that  
5     will allow for people to kind of do their own thing and  
6     noise to dissipate and not be too big of a bother to  
7     anybody.

8                     It says all setbacks are in conformance with  
9     the general character of the vicinity and will remain  
10    consistent. You can see the rest of my slide. Are  
11    consistent with the county, with the character and  
12    development in the vicinity.

13                    Okay. So for criteria number five, the site  
14    plan. That's just them addressing are we going to be  
15    adding anything new, what else is coming to make this  
16    area a good area for children. And so there are a few  
17    things, we're doing the patio, the walkway. There is a  
18    meadowy grassy area right here. We're going to be  
19    putting a sand digging area. There's fruit trees along  
20    the fence with like a large 10 -foot flower bed that's  
21    going in right there.

22                    CYFD requires 75 square feet of outdoor space  
23    per child, which is about 900 square feet. And this area  
24    is 8,000 square feet. So there's way more space than  
25    required, which gives the kids plenty of space to space

1 out and work independently and work in the garden. These  
2 are not, you know, disruptive activities. These are like  
3 learning activities that are guided. All right. So the  
4 site plan conforms to the county standards and codes.

5 So next steps, for -- once you are licensed  
6 with the county for special use permit there are certain  
7 things that need to happen to continue with that process.  
8 So one thing will be to get a license with the CYFD,  
9 which is the state license. And that will be a yearly  
10 thing that the daycare is inspected for. And then the  
11 business license from the county as well, making sure to  
12 provide parking for an employee. There will be no  
13 alterations made to the structure. The daycare facility  
14 includes up to 10 children.

15 Outside recreation area should be fenced. So  
16 the entire property is fenced. And any kind of  
17 landscaping can be considered. And then my hours are  
18 within the county hours of 7:30 to 6. And the noise  
19 levels shall be governed by the provisions of article.  
20 And I discussed that in my presentation earlier.

21 So that is all planned once the special permit  
22 goes through. I do want to say that there was several  
23 letters that didn't make it into the packet because they  
24 came in over the weekend and on Monday and Tuesday. So  
25 I'm going to use this time to submit those letters.

1     There was seven more letters that came in that were  
2     supporting the preschool. And I do feel they're very  
3     important to include because four of them are direct  
4     La Senda residents. And so I just thought I would show  
5     them here and obviously not read all of them but maybe  
6     just highlight a little bit.

7             Amber Rushtin says that, you know, there's  
8     been talk about how this daycare, if people are wanting  
9     to have it or not. And she said that most are either  
10    passionately in favor or don't mind it here.

11            This one is from Debra Morely on 119 La Senda,  
12    which is pretty close to my house. And she talks about  
13    the sound of children not carrying far. That there's  
14    lots of children in the neighborhood and that it's not  
15    something that has been an issue at all and that she  
16    barely hears them. And that humans -- human sound just  
17    doesn't travel far through the open space. And that it's  
18    a wonderful natural setting here in La Senda. And that  
19    it would be beneficial for local families to have the  
20    option to let their children play and learn. And I think  
21    that's very true. We want to use our resources to  
22    benefit our children. So that's her letter.

23            This is from Laurel Horton down the street.  
24    And she says I would absolutely love the opportunity for  
25    our child to attend a nature-based school on our street.

1                   So again these are kids in our community on  
2     our streets. They're not coming from far away like it's  
3     a big operation. It's kids in our community getting  
4     quality care in our neighborhoods.

5                   This person is from a retired kindergarten  
6     teacher. She says that she's very attuned to the needs  
7     of quality and development of the appropriate daycare in  
8     the community and that it's hard to find. And that it's  
9     something that our community really needs. That's Sharon  
10    Allen.

11                  We have the Richardsons who are directly on  
12    our fence line. And they -- they bring up a good point  
13    in that, you know, this is not like a serene wilderness.  
14    This is a neighborhood and there are lots of noises  
15    already. And there's animals, there's Highway 4.  
16    There's lots of things that create noise in a  
17    neighborhood and children playing is something that you  
18    would expect to hear and not overly consuming or a  
19    nuisance.

20                  Yes, this one speaks to the fact that there  
21    are lots of daycares in the community that are in  
22    residential neighborhoods with neighbors close by and  
23    everyone is agreeing to the noise levels and not -- this  
24    one would be no different.

25                  And lastly, this is from Jonathan Creil that I

1 worked with at the nature center just speaking to my  
2 history with environmental education and my teaching  
3 skills and how much I have offered to the community in  
4 the past and how I could bring those skills to a daycare  
5 atmosphere and fill a need in the community.

6               So as a conclusion, I would say that I'm  
7 requesting for a special use permit for a residential  
8 in-home daycare facility for up to 12 children and a  
9 special use permit for a home business to employ more  
10 than one non-family member. All five of the special use  
11 criteria are satisfied. Worms and Wildflowers Daycare  
12 will provide a much needed and desired service in the  
13 community. Many people in the community have stepped  
14 forward to show their support. There's been 29 letters  
15 of support submitted with nine from the La Senda  
16 subdivision directly. And there's even more people here  
17 to speak tonight who may or may not have sent letters.

18              So I just wanted to thank the Planning and  
19 Zoning Commission for your view and consideration of  
20 approval for my special use permit application. I also  
21 want to thank the many county staff who have helped us  
22 navigate this process, including Sofia, Bryce, Desiree,  
23 and Kevin. And finally I want to thank my family and  
24 loyal friends and community who continue to inspire me in  
25 this process and support our efforts. So thank you.

1 MADAME CHAIR: All right. Thank you very  
2 much.

3 So at this point I'm going to ask the  
4 applicant to confirm that the application is factually  
5 accurate to the best of your knowledge and that it be  
6 entered into the record.

7 MS. MATTHEWS: Yes.

8 MADAME CHAIR: Thank you.

9 MR. POWERS: Chair, if I may, is it her intent  
10 to enter the presentation into the record as well?

11 MS. MATTHEWS: Yes.

12 MR. POWERS: Thank you.

13 MADAME CHAIR: All right. So the presentation  
14 will be entered into the record.

15 And I'm going to -- would it be possible for  
16 you to stop sharing your screen or unless it should  
17 be -- I think, yeah, so I can return to --

18 MS. MATTHEWS: Sorry. Stop share. Oh, there  
19 it is.

20 MADAME CHAIR: Thank you.

21 Okay. So at this point we'll ask for  
22 cross-examination of the applicant by staff and by any  
23 other parties. A reminder that this opportunity is only  
24 for questioning. It is not for comments or for stating  
25 opinions. That opportunity will come later. So this is

1 for staff and other parties to ask questions of the  
2 applicant. And I would ask that you do by that by  
3 electronically raising your hand.

4 All right. I see that we have a question from  
5 David North. Go ahead.

6 MR. NORTH: Okay. Denise, good evening. When  
7 reading on the chart that you submitted for the noise  
8 levels, you did read the instructions, right? Let me ask  
9 that first.

10 MS. MATTHEWS: Yes.

11 MR. NORTH: Okay, good.

12 MS. MATTHEWS: Are you talking about the neo  
13 sound survey?

14 MR. NORTH: That is correct, the neo sound  
15 measuring application, I believe it is. Yes.

16 MS. MATTHEWS: Yes, uh-huh.

17 MR. NORTH: And at the bottom of the first  
18 page, did you notice the phrase the app is not intended  
19 for compliance purposes?

20 MS. MATTHEWS: Yes, I did.

21 MR. NORTH: Okay. I assume then that you know  
22 that this app, even calibrated and used by an expert no  
23 matter what, is not allowed for evidence anywhere  
24 including Los Alamos County?

25 MS. MATTHEWS: So it's a sound application

1     that can be done to give you a general idea.  It's not  
2     something that is a professional level sound measuring  
3     system.

4                   MR. NORTH:  Yeah, I understand that.  But  
5     you're allowed, it's not -- it's not allowed to be  
6     presented as evidence anywhere.

7                   MR. POWERS:  Unless there's some facts in  
8     evidence that proves that, I think that's just a matter  
9     of opinion at this point.

10                  MR. NORTH:  Actually, it's stated in the  
11     literature that comes with the application.

12                  MR. POWERS:  I think you were referencing a  
13     legal standard of the county.  And so that's my only --

14                  MR. NORTH:  Oh, okay.  I can reference that if  
15     you want.  But let's move on.

16                  Were you aware that the reading error is  
17     almost always on the low side?

18                  MS. MATTHEWS:  No.

19                  MR. NORTH:  Okay.  That's in the literature  
20     too.  Okay.  Your chart says the average is easy to read  
21     on a display than the instantaneous reading.  And I  
22     completely agree.  That changes about every second,  
23     right?  However, on my phone running the same software,  
24     the max reading appears just below the LAQ.  Is that the  
25     same on your phone?

1 MS. MATTHEWS: The way it looks on my screen;  
2 is that what you mean?

3 MR. NORTH: On my screen, well, I -- yeah,  
4 there's -- you know, there's the instantaneous reading  
5 that shows up. Then there's the LAQ, the average  
6 reading. Then right below that is the max reading on  
7 mine. Is that the same on yours?

8 MS. MATTHEWS: I would have to look back. It  
9 sounds like it might be.

10 MR. NORTH: Yeah, okay. And at the end of the  
11 session your average reading shows up, right?

12 MS. MATTHEWS: Yeah.

13 MR. NORTH: On mine, right below that there's  
14 the maximum reading. In other words the highest reading  
15 that appeared during that period. And you could just  
16 look at it. So I'm kind of assuming it's the same as  
17 yours but you did it a year before. So maybe the  
18 software has changed. I'm just asking.

19 Now, the county ordinance actually says the  
20 maximum level should be recorded at the LAQ line. Were  
21 you aware of that?

22 MS. MATTHEWS: Yes.

23 MS. HORTON: Okay. All right. Those are  
24 the -- that if we're trying to find out what the maximum  
25 sound level is, that reporting the maximum sound level

1 would be the way to do that.

2 MS. MATTHEWS: Yes, sure.

3 MR. NORTH: Okay. All right. Now, your  
4 proposed daycare actually does extend the outdoors to the  
5 lot line, does it not?

6 MS. MATTHEWS: Uh-huh, yeah.

7 MS. HORTON: Okay, great.

8 MS. MATTHEWS: I mean, I can see what you're  
9 getting at. But what I would say is that's why I did  
10 55 -- that's why I did a distance of 55 feet, so like if  
11 kids are playing --

12 MR. NORTH: We'll get there. Okay. Just a  
13 quick question on something else. It sounds like, and I  
14 just want to make sure, that you didn't know that the  
15 covenants traveled with the property, not with the HOA;  
16 is that correct?

17 MS. MATTHEWS: I've heard people use  
18 that -- use those words before, yes.

19 MR. NORTH: Okay. All right. Now, you took  
20 the readings about a year ago, almost to the day, right?

21 MS. MATTHEWS: No, I took them like last week.

22 MR. NORTH: Oh. Oh, well, that explains some  
23 confusion that I had. The dates shown on the chart are  
24 1/11/21.

25 MS. MATTHEWS: Oh. Oh, that was a mistake.

1 It was '22, yeah.

2 MR. NORTH: Okay. I'm not -- yeah, I'm not  
3 going to make a big deal about that, but it confused me  
4 because there was no Dragonfly Daycare there then.

5 MS. MATTHEWS: Yes.

6 MR. NORTH: But of course there is this week.

7 MS. MATTHEWS: Yes, I -- I wrote the wrong  
8 year. Yes.

9 MR. NORTH: Okay. You do know that it was  
10 behind a house at that time?

11 MS. MATTHEWS: What do you mean?

12 MR. NORTH: A year ago it was behind a house  
13 on Barrel Street. Okay, you didn't know. It doesn't  
14 matter.

15 MS. MORELY: What was, Sage, the daycare?

16 MR. NORTH: No, there was a place called  
17 Dragonfly Daycare.

18 MS. MATTHEWS: Oh, oh. Oh, I don't know that,  
19 yeah.

20 MR. NORTH: It's okay. It's okay. The  
21 confusion all just comes from the date on the chart. I  
22 get it.

23 MADAME CHAIR: I'm going to ask that we limit  
24 our questions to the case at hand and not talk about  
25 the --

1 MR. NORTH: This actually --

2 MADAME CHAIR: I would like to move things  
3 along.

4 MR. NORTH: Okay.

5 Now, do you know the depth of the play area  
6 that you were measuring from?

7 MS. MATTHEWS: So you can see in the picture,  
8 and I can go back to it if you'd like.

9 MR. NORTH: Yeah, please.

10 MS. MATTHEWS: There was 35 feet and 55 feet.  
11 I was not at the very back of the playground.

12 MR. NORTH: No, no, no, what I mean is the  
13 actual depth of the play area itself, from the fence to  
14 where the kids cannot get any closer to you.

15 MS. MATTHEWS: This is at Dragonfly?

16 MR. NORTH: Yes, correct.

17 MS. MATTHEWS: So can kids were in a play area  
18 that was separate from the area that I was in.

19 MR. NORTH: Yes, I understand.

20 MS. MATTHEWS: Yeah, so I was 35 feet and 55  
21 feet. I could have gone further, which would have  
22 probably been about 100 feet.

23 MR. NORTH: No, that's not what I'm getting  
24 at. At any rate, I of course went by there, and it's the  
25 best I could tell the play area was about 20 feet deep.

1 Does that sound right?

2 MS. MATTHEWS: The play area is fairly small,  
3 yeah.

4 MR. NORTH: Yeah, okay. Now, you have a chart  
5 that says for every doubling of distance the decibel  
6 level goes down by six. That's correct, isn't it?

7 MS. MATTHEWS: Yes.

8 MR. NORTH: Okay. Now, if you took the center  
9 of that play area, which would be, I don't know, 10, 15  
10 feet to where the closest the kid can get. Let's say 15.  
11 I think it's probably closer to 10. And then you double  
12 that. You'd be at 15 feet actually from the line, the  
13 closest place that the kids could go. And then if you  
14 did another 30 feet, that would be 45 feet. Then you  
15 would be doubled again. And according to your chart that  
16 would be another 12 -- excuse me, that would be another  
17 12 decibels added to the number that you had.

18 So at the line, the place that the kids could  
19 not come any closer, which would be very much like your  
20 property line, your measurement would have been 66.9  
21 decibels average.

22 MS. MATTHEWS: You would be subtracting, not  
23 adding. So the noise would be given --

24 MR. NORTH: Well, you have to add when you go  
25 the other way. See, you're further away. So if you were

1 at 55 feet and you subtracted 30 it would be at 25 feet.  
2 And then if you subtracted another 15 you'd be at 10  
3 feet. But we're just brushing away the 10 feet. The  
4 bottom line is that your measurement at the fence would  
5 have been at least 12 decibels.

6 MS. MATTHEWS: So if you're saying if the kids  
7 were, you know, 15, 20 feet closer then the noise would  
8 be going up. So I also have a measurement for 35 feet,  
9 and that also has a decibel level of 54 decibels. So by  
10 going forward 20 feet --

11 MR. NORTH: Five children.

12 MS. MATTHEWS: Yeah.

13 MR. NORTH: Uh-huh.

14 MS. MATTHEWS: The difference between five and  
15 10 children was pretty negligible when I did the test.

16 MR. NORTH: Okay. Okay. The normal number  
17 given is 3 decibels, but that's neither here nor there.

18 MS. MATTHEWS: I feel like there's a lot  
19 of --

20 MR. NORTH: So what you're saying is the  
21 closer measurement was correct and the further  
22 measurement was not?

23 MS. MATTHEWS: They're both correct.

24 MR. NORTH: Oh, okay. Then what I'm saying is  
25 essentially correct?

1 MS. MATTHEWS: No.

2 MR. NORTH: Why not?

3 MS. MATTHEWS: Because you're -- you're trying  
4 to extrapolate with data that's not really there.

5 MR. NORTH: I see. So extrapolating using the  
6 60B that you were saying your chart is not correct?

7 MS. MATTHEWS: It is correct but it's not  
8 intended to work in the way that you're saying. It's  
9 intending to work for dissipating away from a distance,  
10 not getting closer.

11 MR. NORTH: Okay. But if you start at that  
12 line, which is what I was doing, and you add 15 feet and  
13 then you add 30, okay --

14 MS. MATTHEWS: I think we all get -- I think  
15 we all understand where you're going. I'm kind of over  
16 answering questions about the sound distance.

17 MR. NORTH: Okay. All right. Good. That's  
18 all I have.

19 MS. MATTHEWS: Okay.

20 MADAME CHAIR: All right. Thank you.

21 I also see a question from Ms. Peck.

22 MS. PECK: Hi. You talked about your survey.  
23 On your survey, who were the people who were invited to  
24 participate?

25 MS. MATTHEWS: For the Survey Monkey for

1 people that are interested?

2 MS. PECK: Right.

3 MS. MATTHEWS: So that went out to -- I posted  
4 it on Los -- it went out there social media on Facebook.  
5 So I posted it on the Los Alamos Moms group, which is a  
6 local group of moms from all around the community. And  
7 then I also posted it on my own business page.

8 MS. PECK: Okay. And do you have any sort of  
9 sound blocking at the property boundaries? I may have  
10 missed that in your presentation?

11 MS. MATTHEWS: Not -- not particularly. The  
12 sound, or the fencing is a wire fence, so there is trees  
13 and things that are there, but there's not any like  
14 soundproofing.

15 MS. PECK: Okay. Thank you.

16 MADAME CHAIR: All right. Our next question  
17 is from Ms. Thames.

18 MS. THAMES: Hello. Thanks everybody for  
19 coming.

20 I have a couple of questions, Denise. I'm a  
21 little confused by your presentation about the hours that  
22 your daycare would be. It says that there would be no  
23 outdoor activity from 7:30 AM until 6 PM. But then you  
24 say your business hours are going to be from 8:30 to  
25 5:30.

1 MS. MATTHEWS: I'm not sure, I never said that  
2 there was no outdoor activity from 7:30 to -- from 7:30  
3 to -- the whole day; is that what you just said?

4 MS. THAMES: No, not the whole day. Just, I'm  
5 sorry, before 7:30 or after 6.

6 MS. MATTHEWS: Oh, yeah. That's required by  
7 the county.

8 MS. THAMES: But why are you putting 6 in  
9 there if your hours to shut down each day are 5:30 or  
10 whatever it was?

11 MS. MATTHEWS: Oh, so my hours are 8 to 5:30.  
12 The county, so the chart at the end there that shows  
13 those hours, those are -- that's a chart made by the  
14 county. The county says that you're not allowed to  
15 have --

16 MS. THAMES: Okay. Okay. And then I also  
17 just wanted to point out that the HOA in La Senda is  
18 active. There is no BOD but the HOA is active and it has  
19 been since last year.

20 COMMISSIONER MARTIN: Point of order. Tish,  
21 you're providing testimony right now. This is an  
22 opportunity to ask the applicant questions. If you would  
23 like to provide testimony and introduce facts into the  
24 record, you'll have an opportunity to do that later.

25 MS. THAMES: Okay. Okay, understood. Thank

1     you.

2                   MALE VOICE: This is (inaudible). I have a  
3     quick point that I'd like to bring up, if I may.

4                   MADAME CHAIR: Yes, go ahead. Questions, is  
5     that what you said? You have questions?

6                   MALE VOICE: Yeah, can you hear me okay?

7                   MADAME CHAIR: You're a little bit muffled.

8                   MALE VOICE: Sorry. How about now, am I  
9     clearer?

10                  MADAME CHAIR: Yeah, that's a little better.

11                  MALE VOICE: Okay. So I just want to make one  
12     brief comment. The measurement that was provided in the  
13     document, it's SUP 1.200286, page 14, the measurement  
14     that is on that page is showing from -- it shows 100 feet  
15     from proposed --

16                  COMMISSIONER MARTIN: A point of order, this  
17     sounds like testimony, like you're trying to introduce  
18     facts into the record. This is a time where we are doing  
19     cross-examination, cross-examination. So if you've got  
20     questions for Denise, ask those questions. I don't want  
21     to have anything too muddled up by having people  
22     introduce testimony while they're, you know, supposed to  
23     be asking for cross-examination.

24                  MALE VOICE: Well, I'm almost done with my  
25     statement. I said I would be very brief. The

1 measurement on the (inaudible) to all properties is not  
2 100 feet. I just want to --

3 MADAME CHAIR: Okay. Again, what Commissioner  
4 Martin is saying is that this is not a time for testimony  
5 and making statements. This is only a time for questions  
6 for the applicant. So if you have a question, please go  
7 ahead and ask the question. If you'd like to make a  
8 statement or testimony, that opportunity will be coming  
9 later on.

10 MALE VOICE: My question to Denise is were you  
11 aware from the fence line the closest part of the fence  
12 to our property is 52 feet?

13 MS. MATTHEWS: Yes.

14 MALE VOICE: (Inaudible) 100 feet from the  
15 play area. It's not from the fence line. You are aware  
16 of the 52 feet?

17 MS. MATTHEWS: Yes, so the point in the play  
18 area is like a central location in the play area  
19 that's -- that I have like radiating out to all the  
20 houses. It's not exactly at the fence line.

21 MALE VOICE: Right. But the kids can be up to  
22 the fence line.

23 MS. MATTHEWS: They could, yeah. Uh-huh.

24 MALE VOICE: It would be 52 feet. I just want  
25 to make that clear, and I'll (inaudible) move on. Thank

1     you very much.

2                   MADAME CHAIR:  Oh, and I see a question from  
3     Vanessa and Charles Richardson.

4                   MR. RICHARDSON:  Denise, is your intent to let  
5     the children stand or not fence line and yell?

6                   MS. MATTHEWS:  That is not my intent.  I would  
7     not imagine kids would play directly on a fence line.  
8     That's why I had the measurement from the central play  
9     area where kids will more likely be.  Thank you.

10                  MR. RICHARDSON:  Okay.  Thank you.

11                  MADAME CHAIR:  All right.  Not seeing any  
12     other questions --

13                  MALE VOICE:  Is it possible that the children  
14     could get to the fence line and be at a high level of  
15     noise?

16                  MS. MATTHEWS:  Well, so the fence line has  
17     like a 10-foot flower bed in front of it and then the  
18     fruit trees are growing out of the flower bed, so --

19                  MALE VOICE:  (Inaudible).

20                  MS. MATTHEWS:  If they were at the fence line  
21     they would be standing in the flower bed.

22                  MALE VOICE:  Okay.  And would they -- if they  
23     were at the fence line, which is 52 feet, they would be  
24     able to make loud noises.

25                  MS. MATTHEWS:  Well, they would make any noise

1 that might expect a noise to make -- a kid to make.

2 MALE VOICE: But it could be loud.

3 MS. MATTHEWS: Well, I mean, that's up to an  
4 opinion and that's why I introduced the survey of how  
5 much noise do kids really create.

6 MALE VOICE: Okay. (Inaudible).

7 MS. MATTHEWS: I'm sorry, what was that?

8 MALE VOICE: Thank you.

9 MS. MATTHEWS: Oh, yeah, you're welcome.

10 MADAME CHAIR: All right. Then we will go  
11 ahead and move on to questions for the applicant from the  
12 commissioners.

13 Commissioner Priestley?

14 COMMISSIONER PRIESTLEY: Yes, thank you. Can  
15 you hear me?

16 So, Ms. Matthews, a couple questions. So when  
17 we look at the, you know, the case here, we do look at  
18 the five criteria for the special use permit and that's  
19 what we need to stick with. So when I look at the first  
20 criteria, which in my mind is kind of the toughest one,  
21 it's your responsibility as the applicant to demonstrate  
22 compliance with this. It's not anybody else's  
23 responsibility to refute it. So my question is, you  
24 know, the statement says the request substantially  
25 conforms to the comprehensive plan. And in your response

1 in the application or in your testimony I don't remember  
2 hearing how does this conform with the comprehensive  
3 plan. Can you give us some background on that, ma'am?

4 MS. MATTHEWS: Yeah, so I don't have the  
5 specifics of the comprehensive with the master plan right  
6 now. I know that one of the letters addressed it very  
7 well. But in general I think the master plan is  
8 going -- like helping meet the community in a direction  
9 of growth and making sure that there's a chance for  
10 economic growth and tourism and development and all that  
11 kind of thing. And I think that a daycare definitely  
12 applies in the situation very well because you can't  
13 really have economic growth and people working without  
14 daycare options.

15 So if there's not enough daycares in town and  
16 people aren't willing to move here for growth, and to  
17 allow for growth in our community because of daycare  
18 options then this would be something that is very much  
19 needed for the master plan to continue.

20 COMMISSIONER PRIESTLEY: So are you aware,  
21 does the master plan address daycare, and specifically  
22 does it address this --

23 MS. MATTHEWS: Not that I saw. But I think  
24 that it goes along with the idea that how are you going  
25 to have economic growth and new businesses if you don't

1 have a daycare for those families that are working.

2 COMMISSIONER PRIESTLEY: Okay. Thank you. So  
3 going on to the first criteria, there's some verbiage in  
4 there that talks about the business, detrimental to the  
5 health, safety, peace or general welfare of persons  
6 working in the general vicinity. So peace, how do you  
7 demonstrate that this is not going to be detrimental to  
8 the peace of the persons residing in the vicinity?

9 MS. MATTHEWS: Uh-huh, yeah, it's a good  
10 question. So I think through all the criteria, number  
11 one, that I addressed for the noise survey and the  
12 activities that we are going to be doing and the parking  
13 that is much farther off the road because our driveway is  
14 so long, I've shown that the way that the home daycare  
15 will operate really minimizes the amount of impact it  
16 will have on anybody nearby. It really is not something  
17 that is going to be in view of people like driving by.  
18 We're going to have classroom space.

19 When they are outside, and that's why I  
20 included the slide on there, you know, what are kids  
21 going to be doing when they're outside. And I think some  
22 people have this idea like that can kids are running  
23 around screaming. And when in reality this is a guided  
24 education program where kids are going to be doing  
25 activities like gardening and going out to look for signs

1 of wildlife and doing things that are not going to be  
2 like just loud free-for-all screaming like people would  
3 expect.

4 And I think because of that it lends itself to  
5 being a peaceful type of program where kids actually  
6 enjoy. I mean, having a loud program is very stressful  
7 for kids. So kids do enjoy that individual peaceful type  
8 of environment. And that's what would be promoted. And  
9 that's why for the neighbors around us it would not be  
10 like interfering with their peace.

11 COMMISSIONER PRIESTLEY: Okay. And so last  
12 question on this criteria. It says that this business  
13 will not be detrimental to the value of property in the  
14 vicinity. So how do you demonstrate -- I have not seen  
15 anything from you that demonstrates that it will not be  
16 detrimental to the value of property in the vicinity.

17 MS. MATTHEWS: Uh-huh. Well, we're  
18 not -- we're not changing the house or the structure, any  
19 of the building or structures in any way. And so, you  
20 know, sometimes property values can change based on what  
21 their neighbor's houses are, like the status of their  
22 neighbor's houses. But there's nothing that we're doing  
23 that changes any of that. This would just be a daytime  
24 activity that would be happening on the premises. So it  
25 in no way would effect the value of the neighbor's next

1 door's houses.

2 COMMISSIONER PRIESTLEY: So how do you come to  
3 that conclusion that it would no way effect the value of  
4 the neighbor's?

5 MS. MATTHEWS: I guess there -- I haven't seen  
6 data that shows that that does effect that.

7 COMMISSIONER PRIESTLEY: Yeah, but it's your  
8 responsibility to demonstrate that it doesn't. So have  
9 you seen -- you didn't present any of that type of data.

10 MS. MATTHEWS: No, I didn't present anything  
11 like that.

12 COMMISSIONER PRIESTLEY: Okay. That's all my  
13 questions. Thank you.

14 MADAME CHAIR: Are there any other  
15 commissioners who have questions for Ms. Matthews?

16 COMMISSIONER: Yeah, I'll have some questions.

17 MADAME CHAIR: Go ahead.

18 COMMISSIONER: Thank you, Denise Matthews for  
19 joining us today and for your application. I just want  
20 to ask you a little bit, because you sort of -- as I read  
21 your application and listen to your testimony, I mean, I  
22 hear some things that resonate with the comprehensive  
23 plan, although you didn't cite them specifically. But I  
24 was hoping that I could just ask you to comment on them  
25 and just provide your point of view and perspective for

1 the commission. And there's just a few criteria and  
2 goals that I think may be relevant. So maybe you could  
3 just give us kind of your thoughts on that.

4 Specifically growth criteria for support and  
5 retain LANL is the best wealth producing employer. You  
6 feel that your, you know, business would in any way  
7 support LANL and LANL employees?

8 MS. MATTHEWS: I feel that it directly  
9 supports LANL employees, yes. I've had many people from  
10 LANL reach out to me saying that they would be interested  
11 in the services and that they have not been able to find  
12 daycare or have not moved here because they have not been  
13 able to find daycare that they would like, which means  
14 that they didn't take jobs at LANL because of the daycare  
15 situation. I know that there is several -- there's been  
16 a lot of discussions at LANL about the daycare situation  
17 and there's like parent groups through LANL that are very  
18 supportive of the effort to increase daycare in the  
19 community.

20 COMMISSIONER: All right. Thank you. Thank  
21 you, Ms. Matthews. Also, could you comment on the  
22 development goal six of comprehensive plan, promote  
23 economic and diversification by building on the existing  
24 strengths of the community, namely technology, innovation  
25 information as well as natural resource amenities.

1 MS. MATTHEWS: Yes, and that, you know, I  
2 spoke to the fact that we live in a beautiful place and a  
3 lot of people move here because of the natural resources  
4 around us. We have amazing hiking trails, amazing areas  
5 to visit. And with that we have amazing houses and  
6 communities that we live in. And so I would be using my  
7 own natural resources on our own property to share that  
8 with children. And that would support the interest of  
9 the community and the -- and reasons why people would  
10 want to live here and share that with their children.

11 COMMISSIONER: So it sounds here, and I don't  
12 want to put any words in your mouth, but I just want to  
13 make sure that I'm understanding you. It sounds like  
14 what you're saying is that you want to use these natural  
15 resource amenities that are on your own very own property  
16 in service of education and child care and are also going  
17 to be doing so in a way that provides a sort of need  
18 service to the community, filling an economic need and  
19 promoting economic diversity of Los Alamos County; is  
20 that correct?

21 MS. MATTHEWS: Yes. Yeah, I think you  
22 summarized that very well.

23 COMMISSIONER: All right. Well, thank you  
24 very much, Denise.

25 I'll hold my questions for now. Chair, back

1 to you.

2 MADAME CHAIR: All right. Thank you.

3 Commissioner Priestley, do you have your hand  
4 raised again?

5 COMMISSIONER PRIESTLEY: Yeah, I do. Thank  
6 you.

7 I'd just like to say I think the questions  
8 from Commissioner Neil Martin provided testimony  
9 basically for the applicant. I think that was very  
10 inappropriate and should not have been allowed. Thank  
11 you.

12 COMMISSIONER MARTIN: Well, I disagree,  
13 Mr. Priestley. I asked her about the specific criteria  
14 and the written comprehensive plan. I think that's a  
15 perfectly valid thing to do. And I just want to make  
16 sure that, you know, you had raised personally yourself  
17 some concerns. She hadn't addressed those. I wanted to  
18 give her a chance to address those. So I'm just doing my  
19 job.

20 MADAME CHAIR: Yes, Commissioner Dewart?

21 COMMISSIONER DEWART: Denise, could I get a  
22 clarification on the noise survey you did? You provided  
23 some data at 55 feet and 35 feet from the center of the  
24 play area. Could you remind me on one of your graphs, or  
25 site plans, where is the 5 feet distance from the center

1 of the play area? Which way is that going, towards which  
2 property, and which property is the one from the 35 feet?  
3 If I understand correctly.

4 MS. MATTHEWS: Sure. Yes, so the Dragonfly  
5 Daycare I did at 55 feet and 35 feet. And that was  
6 at -- that was on their property. And for the directions  
7 of that, let's see if I can -- I can pull up my slide  
8 again, if you'd like. I can go back to it. Well, I  
9 believe I was standing north. I'm not sure exactly sure  
10 how I was -- so I think I was north of the play area.  
11 And so they were both the same direction, 55 feet and 35  
12 feet. I just moved back farther away from 35 to 55 feet.

13 When I was at my own property, I stood in the  
14 center of the play area. I don't know if that answers  
15 your question though. Would you like me to pull that  
16 slide up again?

17 COMMISSIONER DEWART: That would be really  
18 helpful. That would be very helpful.

19 MS. MATTHEWS: I think I just have to share my  
20 screen again. I can't -- it's like blocked with  
21 the -- oh, there you go. So Dragonfly Daycare is on the  
22 corner of Rover and Meadow. And so it's in the old  
23 building where Sage Preschool used to be. And so the  
24 play area is where it says play space. And then I was  
25 standing -- and there's a fence right there. And then I

1 was standing 35 feet and then 55 feet. And the reason I  
2 did those distances is because I thought it gave a  
3 comparable distance to where children would be playing in  
4 the play area at our own daycare.

5 COMMISSIONER DEWART: Right. And I was trying  
6 to understand, make sure I understood your play area.  
7 Was that to any of the fence lines?

8 MS. MATTHEWS: So in my -- in my picture from  
9 my house, I have this like kind of central location in  
10 the center of the play area. Really the kids could go  
11 anywhere in that space. But from that central location I  
12 just wanted to kind of give an idea like how far -- how  
13 much space is this in the play area and then where would  
14 55 feet be from that fence line. Because the -- the  
15 county code says at the fence line, you know.

16 COMMISSIONER DEWART: Okay. So it's  
17 towards -- the 55 feet is towards the 115 La Senda  
18 property line?

19 MS. MATTHEWS: Yeah. Yes.

20 COMMISSIONER DEWART: Okay. I get it. Okay.  
21 Thank you.

22 MADAME CHAIR: Commissioner Wade, do you have  
23 questions? You are muted, Commissioner Wade.

24 COMMISSIONER WADE: Sorry about that.

25 Denise, so you say in here that you chose to

1 be licensed through CYFD. Can you tell me a little bit  
2 why you chose to go that route instead of being  
3 unlicensed like so many people do in this county.

4 MS. MATTHEWS: Yeah, thanks. Well, I think  
5 licensing is important. I think it shows that you have  
6 the credentials to provide a safe environment for sure.  
7 There's also things that go along with it, like you can  
8 become certified in star levels that show, you know, the  
9 type of environment that you are providing and the type  
10 of education that you are providing. It gives you the  
11 extra credentials and just shows that you are serious  
12 about providing quality education or community.

13 You can become a home daycare and you can have  
14 only, you know, up to five kids without a license. But I  
15 think that invites a lot of risk and uncertainty for  
16 parents for, you know, what environment is my child  
17 really going to be in and what kinds of things are they  
18 learning and what kind of structure do they have. And so  
19 that home -- that state licensure ensures that you have  
20 those credentials that show that you are providing  
21 quality education.

22 COMMISSIONER WADE: So in this -- so you're  
23 saying anyone can have five children in their home -- I'm  
24 sorry, I have a husky at the house. So you're saying  
25 that anyone can have five children playing in their

1 backyard unlicensed without going through this process?

2 MS. MATTHEWS: That's my understanding, yeah.

3 COMMISSIONER WADE: Okay. Thank you.

4 MADAME CHAIR: All right. Do we have any  
5 other commissioners with questions for Ms. Matthews?

6 All right. Seeing none, I'm going to move on  
7 to presentation by the county staff.

8 FEMALE VOICE: Chair, may I ask before you  
9 start that, that we maybe a bio break?

10 MADAME CHAIR: Yes, absolutely. Good call.

11 All right. Let's go ahead and take five  
12 minutes, a five-minute bio break and come back at 7:37.

13 (Recess taken.)

14 MADAME CHAIR: All right. Let's go ahead and  
15 get started again.

16 We'll move on now to the presentation by  
17 county staff.

18 MS. SAYEDA: Thank you, Chair Adler,  
19 Commissioners. I'm Sobia Sayeda, senior staff, senior  
20 planner in the community development department. I would  
21 like to say that the applicant has done a very thorough  
22 job of going over her two applications. So I will keep  
23 it brief, and I would just like to mention that these two  
24 cases, special use permit 2022-0020 and special use  
25 permit 2022-0021 were -- they were submitted in

1 conjunction with each other.

2 I reviewed the application and confirmed that  
3 the application was complete. So we went through  
4 internal departmental review committee meeting and we  
5 looked at the application and reviewed the criteria and  
6 the facts that were presented in the application. Our  
7 internal departmental review committee is comprised of  
8 various departments within the county. Public Works  
9 reviewed it from traffic and other safety measures. Fire  
10 reviewed it from fire safety concerns. No concerns were  
11 brought up.

12 No noise study was recommended or required  
13 during that IBRC committee. A traffic study was not  
14 required, but the applicant took it upon, you know,  
15 herself to submit a study beforehand. That's part of the  
16 application and then submitted a traffic study, which was  
17 also reviewed by Public Works and a traffic engineer.  
18 And no comments or concerns were mentioned in review of  
19 those two reports.

20 I would go through staff responses to the  
21 criteria that are required to submit that are part of the  
22 application. So the first criteria staff responses  
23 regarding requesting (inaudible) will conform to  
24 substantiate conform to comprehensive plan. Staff  
25 response is that staff positions as economic vitality is

1 a strategic focus identified within the comprehensive  
2 plan for the promotion of a diverse economic base and  
3 encouragement of new business growth. A daycare facility  
4 and home business are permitted within the RA district  
5 subject to Planning and Zoning Commission, subject to  
6 Planning and Zoning Commission review and approval as a  
7 special use.

8           The use will not be detrimental or injurious  
9 to the general welfare of the community, but will provide  
10 a needed community resource to the county's large  
11 workforce. Upon the review of the noise study conducted  
12 by the applicant at a similar child care facility in  
13 White Rock, staff finds that during peak outdoor play  
14 time the noise levels are indicated to be between 55 to  
15 57 DBA at 55 foot and 35 foot distance from a similar  
16 outdoor playground setting.

17           The Los Alamos County development code section  
18 18-73 has an allowance of 65 DBA during the hours of 7 AM  
19 to 9 PM. Based on this evidence, staff finds that the  
20 sounds normally and naturally associated with the  
21 operation of this daycare facility, including voices of  
22 groups of children engaging in outside activities such as  
23 recess and outdoor learning in a residentially zoned  
24 neighborhood in a supervised environment with an  
25 educational component is not detrimental to the health,

1 safety, peace, comfort, or general welfare of persons  
2 residing or working in the vicinity of such proposed use  
3 or be detrimental or injurious to property or the value  
4 of the property in the vicinity of the general welfare of  
5 the county.

6 Criterion number two, staff's responses, staff  
7 reports this position as ample parking spaces are  
8 provided, ingress and egress, including traffic  
9 circulation would conform to all safety provisions for  
10 motorists, bicyclists, and pedestrians. Existing parking  
11 is in conformance with Los Alamos County development  
12 code.

13 Criterion number three, staff response is  
14 existing ingress and egress for the property would not  
15 change, and it's shape provides a private driveway for on  
16 site and off site access for the road. The county  
17 engineer has reviewed this request and had no comments or  
18 concerns.

19 Criterion number four, staff responses, no new  
20 construction is being proposed and the proposed daycare  
21 facility is to be located in an already existing current  
22 studio guest house and that the existing building on  
23 parcel are compliant with the development code standards  
24 for an RA zoning district. And that the setbacks of  
25 buildings and parking facilities from the property lines

1 right of way and adjacent land uses are in conformance  
2 with the development code. Further it should be noted  
3 that this application was reviewed and approved by the  
4 county engineer and the county fire marshal who voiced no  
5 concerns on this topic.

6 Criterion five, staff responses, staff  
7 supports this position since existing landscape plan  
8 enhances the site and improves the current relationship  
9 to adjacent properties. Existing conditions are in  
10 conformance with Los Alamos County development code.

11 I would also add that based on my experience  
12 and expertise in this position, I testified that all the  
13 facts and everything in my staff report is factual and  
14 based on the applicant's application packet. I stand for  
15 any questions.

16 MADAME CHAIR: All right. Thank you very  
17 much.

18 We will move on now to cross-examination by  
19 other county staff. Are there any other parties? Again,  
20 a reminder that we are only looking for questions now of  
21 the county staff representative and that opinions,  
22 comments, and statements will come at a later time. So  
23 at this point do we have any questions from other county  
24 staff or interested parties?

25 I see that the Smiths have a question. Go

1 ahead.

2 MS. SMITH: Ms. Sayeda, I live within the  
3 300-foot radius, we do, and I have a question about La  
4 Senda Road. You may have noticed that in Denise's slide  
5 La Senda has absolutely no sidewalks on either side of  
6 it. And it also has a very sharp curve. So were those  
7 two items not of concern to the county for pedestrians?  
8 And also I know that people sometimes run late for going  
9 to work, and that's a very sharp curve. I have been on  
10 that road and that curve myself as a pedestrian and there  
11 have been cars going by me very fast. And if I didn't  
12 step off the road I would have been hit. So is that not  
13 a concern to the county?

14 MS. SAYEDA: During our Public Works review of  
15 La Senda Road and the traffic related to the road, no  
16 concerns were brought up. It was stated that, you know,  
17 La Senda is not a highly trafficked area. And it's  
18 designed to handle the traffic within that neighborhood.  
19 And no concerns were raised.

20 MS. SMITH: Thank you.

21 MADAME CHAIR: Do the Richardsons have a  
22 question? Please go ahead.

23 MR. RICHARDSON: Can you help me by defining a  
24 natural noise from --

25 MS. RICHARDSON: Or how kids would qualify as

1     unnatural noise.

2                   MR. RICHARDSON:   What would classify as  
3     unnatural noise?

4                   MS. SAYEDA:   My personal opinion of natural  
5     noise and unnatural noise or what's allowed in the RA  
6     district, you know, RA district it's residential and  
7     agricultural district, and various noises are part of  
8     that district.   And, you know, children's noises,  
9     children playing, children talking, that is very  
10    comparable to adults talking and, you know, other noises.  
11    And in RA district there are animals allowed.   There are,  
12    you know, tractors allowed.   There are several different  
13    noises that are allowed in RA district.   So children  
14    playing would be part of that.

15                  MR. RICHARDSON:   Okay.   Thank you.

16                  MS. RICHARDSON:   Thank you.

17                  MADAME CHAIR:    Ms. Thames?

18                  MS. THAMES:    Hi.   I actually have a question  
19    for Commissioner Neil Martin.   Do you know Denise  
20    Matthews personally?

21                  MADAME CHAIR:    So we are right now accepting  
22    questions only for the county representative who has just  
23    made her presentation.   So we're going to limit our  
24    questions to Ms. Sayeda.

25                  Mr. North?

1                   MR. NORTH: Good evening, Ms. Sayeda. Just a  
2 real quick question. We had quite a few email problems  
3 last week. Did you ever get my email about the  
4 covenants, or do you remember?

5                   MS. SAYEDA: Yes. Yes, I did.

6                   MR. NORTH: Okay. Okay. Now, the staff  
7 report seems to say that the community development  
8 department accepts the chart as adequate evidence that  
9 noise from the proposed daycare will not exceed the  
10 section 18 maximums; is that correct?

11                  MS. SAYEDA: Yes.

12                  MR. NORTH: Okay. Very good. Are you at all  
13 familiar with the -- sorry, the sound measuring  
14 application?

15                  MS. SAYEDA: I personally am not familiar with  
16 it.

17                  MR. NORTH: Okay. Very good. The staff  
18 report says article 3 of chapter 18 regulates the noise  
19 level 65 DBA during business hours plus 75 DBA for 10  
20 minutes each hour. However the report never mentions  
21 where the measurement is to be made. Isn't it supposed  
22 to be taken at the loudest point on the property line?

23                  MS. SAYEDA: Yes, it's along the property  
24 line.

25                  MR. NORTH: At the loudest point.

1                   MS. SAYEDA: I -- I can't recall whether it's  
2 the loudest point or not, but it's at the property line,  
3 yes.

4                   MR. NORTH: Okay. Okay. You did know that  
5 the play area extends to the property line when you wrote  
6 the report; is that correct?

7                   MS. SAYEDA: Play area, to my knowledge, is  
8 about 10 feet away from the property line on the east,  
9 and it does extend to the property line on the north.  
10 Not the play area, the garden part does. But on the east  
11 side it's about 10 feet, it stops about 10 feet away.  
12 There's a flower bed with planting in it. And it's --  
13 yeah, so not quite to the property line but about 10 feet  
14 away from the property line.

15                  MR. NORTH: Okay. That's all the way along  
16 the east side entirely.

17                  MS. SAYEDA: On the east, yes, the extent of  
18 the play area is 10 feet away from the property line on  
19 the east side.

20                  MR. NORTH: Okay. All right. One  
21 last -- well, no, I just -- don't we need to know, I mean  
22 on the chart, what we have is the average sound level.  
23 But what's forbidden is the maximum sound level. So  
24 shouldn't we have -- don't we need to know that maximum  
25 sound level before we can say what might cross the

1 property line?

2 MS. SAYEDA: So we don't really look -- we  
3 don't require noise studies be done for applications like  
4 this. It's not part of our code requirement. So the  
5 noise ordinance is part of our code enforcement. And if  
6 there are noises that are more than 65 DBA those will be  
7 addressed by code enforcement and not by us. And that's  
8 why we don't require a noise study be done.

9 MR. NORTH: I'm not sure I understand what  
10 you're saying.

11 MS. SAYEDA: Well, the noise study was  
12 submitted and staff looked at it. And we -- you know, we  
13 looked at what was presented. But we did not require a  
14 noise study. And I did not really get myself  
15 familiarized with the -- you know, with the  
16 application -- the app that was used or how the noise  
17 study was conducted. As long as it indicates that the  
18 DBA is under 65, those were the numbers I was looking for  
19 just to reiterate in my staff report. But again, if  
20 there are noises that are -- that exceed 65 DBA between  
21 the hours of 7 AM to 9 PM, that would be addressed by  
22 code enforcement.

23 MR. NORTH: So you're completely unconcerned  
24 about the maximum noise level?

25 MS. SAYEDA: It's not part of the requirement.

1                   MR. NORTH:   Okay, huh.   All right.   That's all  
2   the questions I have at this time.   Thank you.

3                   MADAME CHAIR:   Ms. Peck, you have a question?

4                   MS. PECK:   I do.   I'm not sure if this is  
5   really your area because it wasn't in your oral  
6   presentation, but it was something that I saw in the  
7   packet.   I'm confused by the findings of fact and  
8   conclusions of law in the staff report.   I'm not a  
9   lawyer, but I looked it up, you know, tried to look it up  
10   on the Internet.   And aren't those normally prepared  
11   after the hearing based on the evidence presented?   In  
12   this case it was already written and published before the  
13   hearing even happened.   And, you know, am I  
14   misunderstanding what findings of fact and conclusions of  
15   law are?

16                  MS. SAYEDA:   I can answer that and Kevin, if  
17   he needs to jump in, he can add onto my answer.   But what  
18   we add in our report is basically a draft.   And we ask  
19   the commission to direct us to finalize the findings of  
20   fact and conclusion of law based on further testimony at  
21   the -- presented by the applicant at the hearing.   And  
22   then staff finalizes it and we record that and the Chair  
23   signs it at a later date after the hearing.

24                  MS. PECK:   Okay.   So it's just based on the  
25   applicant, not based on the hearing?

1 MS. SAYEDA: No, what you see presented in the  
2 staff report is just a draft of findings of fact and  
3 conclusion of law. It will be added onto and finalized  
4 after the hearing based on the applicant's testimony and  
5 other evidence provided during this hearing. And then  
6 it's presented to the Chair and then the Chair signs it,  
7 approves it and signs it.

8 MS. PECK: Okay. Thank you.

9 MADAME CHAIR: All right. Are there any other  
10 questions from the public about the presentation from  
11 staff?

12 All right. Not seeing in any, we'll move on  
13 to questions from commissioners for the staff.

14 Again, I would ask that if you're not actively  
15 speaking you please mute your microphone.

16 Commissioner Priestley?

17 COMMISSIONER PRIESTLEY: Okay. Thank you. I  
18 a couple questions. We heard a little bit about HOA and  
19 covenants and conditions and restrictions of CCRs. So  
20 how does that play in the -- or does it have any role in  
21 the planning and zoning process tonight? How does  
22 that --

23 MS. SAYEDA: Commissioner Priestley, so  
24 we -- when we receive an application, we're looking at  
25 the ordinance and how the application complies with the

1 ordinance itself, which is the Los Alamos County  
2 development code. And covenants are, you know, privately  
3 held. They -- we don't really review those. We strictly  
4 look at Los Alamos County development code.

5 COMMISSIONER PRIESTLEY: Okay. So then is it  
6 fair to say the Planning and Zoning Commission should not  
7 consider anything associated with the covenants?

8 MS. SAYEDA: That's correct.

9 COMMISSIONER PRIESTLEY: Okay.

10 MS. SAYEDA: That's correct. Yes, so the  
11 special use permit application and the criteria reviewing  
12 the applications is what we look at.

13 COMMISSIONER PRIESTLEY: Okay. Thank you.

14 MS. SAYEDA: That is what's required.

15 COMMISSIONER PRIESTLEY: Okay. So it looked  
16 like on the map there's maybe 15 or 16 residents that are  
17 within that 300-foot whatever we call it, 300 feet from  
18 the permit. Of those do we have some kind of a breakdown  
19 of how many of those residents provided comment back?  
20 And if we do, do we have kind of a breakdown of, you  
21 know, is it 50/50 or do we have kind of a sense of what  
22 the 300-foot residents --

23 MS. SAYEDA: Yes. So there are -- I believe  
24 there are about 13, 14 -- 14 people. And then the  
25 breakdown that you want, could you repeat like what type

1 of a breakdown you're asking for?

2 COMMISSIONER PRIESTLEY: So when I read the  
3 packet, right, there's a lot of letters, there's a lot of  
4 emails. And it's not clear at all of those emails which  
5 of those emails are parties, you know, that have standing  
6 room. So I don't have a sense of the people that  
7 surround the property, I don't have a sense or is the  
8 majority in favor or not? So we have maybe an indication  
9 of the 13 or 15 people or houses around that, what  
10 their -- their approach on this?

11 MS. SAYEDA: Yes. Yes, I do. If you give me  
12 a minute, I -- so there were about 27 letters that were  
13 in support and there were about 8 letters that were not  
14 in support. And based on the people that are here  
15 providing testimony in support, it seems like there are  
16 like 9 or so out of -- out of the people that are within  
17 that 300-foot that are here in support. And there are 3,  
18 3 properties that I received letters from that are not in  
19 support.

20 COMMISSIONER PRIESTLEY: Okay. Thank you.  
21 That's all the questions I have. Thank you.

22 MADAME CHAIR: Thank you.

23 Commissioner Nakhleh, you have questions?

24 COMMISSIONER NAKHLEH: Yes. I had a follow-up  
25 question on the noise studies. From what you said,

1     Sobia, it seems like those noise studies are maybe  
2     irrelevant if they're not part of the purview of our  
3     decisionmaking. It only comes up in code enforcement; is  
4     that accurate?

5                   MS. SAYEDA: That would be accurate. It's not  
6     part of -- it's not a requirement for a special use  
7     permit application. We don't require it. You know, in  
8     my experience with the county, this is my third daycare  
9     that application that I'm bringing forward, we have not  
10    required the other applicants to provide a noise study or  
11    a traffic study.

12                  COMMISSIONER NAKHLEH: Okay. So should we  
13    discount that information then if it's not -- or is it  
14    just part of our general knowledge or is it something  
15    we're supposed to judge anyway?

16                  MS. SAYEDA: Yeah, I mean, you know, it was  
17    part of the application and it was printed in the  
18    application. And it may have been based on the previous  
19    case and the testimony that was given at the previous  
20    case. I'm not, you know, too sure, you know, why it was  
21    included. But since it was included, you know, I just  
22    cross checked with our noise study to make sure that it  
23    was -- that the DBA matched. But yeah, I would think  
24    that it would be not relevant if it's not -- if it's not  
25    a requirement, yeah.

1 COMMISSIONER NAKHLEH: What do you mean you  
2 cross checked -- sorry, what did you mean you cross  
3 checked? You did your own study too?

4 MS. SAYEDA: No, no, no, not -- just the --  
5 you know, the numbers that were submitted in that noise  
6 study. I just looked at those and I looked at the  
7 ordinance to see if it was -- if it was in line. You  
8 know, if they -- what was submitted was in line with our  
9 noise ordinance.

10 COMMISSIONER NAKHLEH: Okay. I understand.  
11 Thank you.

12 MS. SAYEDA: Yeah.

13 COMMISSIONER NAKHLEH: Okay. Thanks.

14 MADAME CHAIR: Are there any other questions  
15 from commissioners?

16 COMMISSIONER MARTIN: Yeah, I've got a few  
17 questions.

18 MADAME CHAIR: All right. Commissioner  
19 Martin, go ahead.

20 COMMISSIONER MARTIN: Okay. So I just want to  
21 follow up on criteria A, and just for reference the  
22 component of criteria A that I'm going to be asking about  
23 is, you know, that the request may not be detrimental or  
24 injurious to the property or the value of the property in  
25 the vicinity. Can you explain why -- you supported this

1 application and staff report in your testimony. Can you  
2 explain why you felt the applicant met criteria A despite  
3 the applicant not supplying an estimate, economic model  
4 or rationale providing information on how this request  
5 would effect property values?

6 MS. SAYEDA: Yes, Commissioner Martin. I  
7 reviewed the application that was submitted, you know, in  
8 the entire application as part of the site plan. And  
9 there are no substantial improvements proposed by the  
10 applicant. There are no buildings that are being  
11 erected. There isn't any alteration to the existing  
12 residential character of the buildings. And, you know,  
13 what's outside is, you know, the improvements that the  
14 applicant is mentioning that are -- that will be done in  
15 the play area and in the garden area, those are not in  
16 our purview anything that's under 30 inches above ground  
17 is not -- it does not necessarily -- it's not considered  
18 part of a building or alterations to a building.

19 So based on that, the property is not being  
20 altered from its condition. You know, there won't be any  
21 structures, you know, anything that will be changed on  
22 this property that will change the character of this  
23 residence itself or the property itself. And, you know,  
24 if the applicant decides to stop operating the daycare,  
25 you know, the property will be considered residential

1 again. So there's no alterations done. So it does not  
2 really change the character of the property itself and  
3 it's not -- it doesn't really effect neighborhood  
4 properties.

5 COMMISSIONER MARTIN: Just a follow up on  
6 that. I mean, do you know or have any knowledge of  
7 experience of in a similar application in Los Alamos  
8 County where the applicant submitted an evaluation of  
9 how, you know, their request would effect property  
10 values?

11 MS. SAYEDA: No. In my experience I have not  
12 seen that and it's not a requirement for a special use  
13 permit either. It is -- you know, alterations to a  
14 residential building to change it to look like a  
15 commercial building that's something that we do consider.  
16 But in this case, you know, it's not really changing the  
17 character of the building by -- you know, by operating a  
18 daycare out of this accessory structure.

19 COMMISSIONER MARTIN: All right. Well, thank  
20 you. Thank you, Sobia and Chair. That's all my  
21 questions for now. Thank you.

22 MADAME CHAIR: Thank you.

23 Commissioner Wade?

24 COMMISSIONER WADE: So I just have a question  
25 just kind of going back on the noise level. So as a

1 county, when we think about children and we think about  
2 noise and we think about schools, we have five elementary  
3 schools all in residential areas. How does the county  
4 deal with that situation when you're talking about this,  
5 you know, number one in the site plan and then you also  
6 have child care centers who also reside in residential  
7 areas with homes butted up right against property lines.  
8 How does the county -- you know, how do you guys work  
9 with that?

10 MS. SAYEDA: So the schools -- you know, the  
11 public schools and other private schools and daycares  
12 they all have to adhere to the -- you know, the 65 DBA.  
13 That's just the noise ordinance that everybody adheres  
14 to. And again, that's something, you know, the noise  
15 ordinance in chapter 18, and we -- in Planning and Zoning  
16 we strictly look at chapter 18 and solve that. So if  
17 somebody was to complain about a school then code  
18 enforcement would -- you know, would get involved.

19 COMMISSIONER WADE: And that includes  
20 elementary schools?

21 MS. SAYEDA: That includes -- yeah, that  
22 includes all -- you know, all schools, all daycares,  
23 elementaries.

24 COMMISSIONER WADE: So elementary schools that  
25 have been in existence in residential areas for many

1 years with hundreds of children are not reaching that  
2 level; is that what you're saying? Or if they are the  
3 residents aren't bothered by it?

4 MS. SAYEDA: Yeah, we don't -- if we don't  
5 hear a complaint, if nobody complains, our code  
6 enforcement doesn't get alerted and we don't send them  
7 out. That's essentially what it is.

8 COMMISSIONER WADE: Okay. Thank you.

9 MADAME CHAIR: Do we have any other questions  
10 from commissioners?

11 All right. Seeing no further questions from  
12 commissioners, we'll move on now to presentations of  
13 other parties and witnesses.

14 MALE VOICE: I do have a question. Is it not  
15 allowed at this point?

16 MADAME CHAIR: It is not. We have past the  
17 time for other parties to question the county staff.

18 So now we will move on to presentations of  
19 other parties and other witnesses. This is the time  
20 where if public can express their opinions and comments.  
21 And so at this point we will invite public comment on  
22 this hearing. I ask that if you were not here at the  
23 beginning of the meeting to be sworn in as a witness,  
24 that you let us know so we can swear you in before you  
25 give your testimony. And I would ask that if you would

1 like to speak, you'd please electronically raise your  
2 hand. We will move through as -- in as organized way as  
3 possible in this.

4 So I will start with Mr. Jones.

5 MR. JONES: Hi. How are you guys doing?

6 (Inaudible) commissioners.

7 MADAME CHAIR: You are coming in and out. We  
8 cannot --

9 MR. JONES: I wanted to thank the  
10 commissioners. Can you hear me?

11 MADAME CHAIR: That's better, yeah.

12 MR. JONES: Yeah, thank you guys for putting  
13 the time in. I do fire code in Santa Fe, so I kind of  
14 inspect a lot of daycares and stuff as well. I was  
15 curious if anybody knew if there's ever been complaints.  
16 We personally had a home daycare in White Rock and I was  
17 just curious, you know, in history if anybody has heard  
18 of complaints about daycares in White Rock, if that's a  
19 common complaint?

20 And I wanted to say, you know, (inaudible) our  
21 street, an advertisement for dog boarding a while back  
22 that I think just a few houses down, and we never heard  
23 anything. Nobody complained. We did hear -- I mean we'd  
24 hear dogs barking but it's never been an issue. And I  
25 was wondering if anybody brought that up, that there was

1 a dog boarding on our street.

2                   You know, I think a lot of this is kind of a  
3 precedent that we're setting. I've met Tish and I know  
4 David and they're great people. And I certainly think  
5 the Matthews are incredible neighbors. We share the  
6 property with them. We're at 113 B. I think we're  
7 setting the precedence of complaining about things before  
8 they even happen and bringing up noise levels about kids  
9 that we don't know what they're going to be doing. I  
10 mean, a lot of these things can be fixed before by just  
11 talking to neighbors. Children, Denise (inaudible)  
12 people never met and they're extremely amicable.

13                   So I just think that like in a city where we  
14 have a lab and a serious need for daycare, I think it's a  
15 really bad precedence for like one of the most quiet  
16 three-acre spot in a rural area, if this place can't get  
17 residential daycare then there's literally nowhere in  
18 White Rock that should be able to have it. Like we're  
19 basically saying that no one can do residential daycare  
20 in White Rock. If you can't do it on a three-acre parcel  
21 of land in a residential agricultural area, it's  
22 just -- I think that precedence is (inaudible).

23                   MADAME CHAIR: All right. Thank you.

24                   The next person I see is Ms. Finn. Oh, you're  
25 muted.

1 MS. FINN: Okay. Can you hear me?

2 MADAME CHAIR: Yes, now I can hear you.

3 MS. FINN: Okay. Hi. Okay. I'm Agnes Finn  
4 and this is my husband John Finn sitting next to me. I'm  
5 speaking in support of the daycare. My husband and I  
6 have been at 116 La Senda for 27 years raising our five  
7 kids and now 11 grand kids visit frequently here. We are  
8 within 300 feet of the Matthews property. Along with  
9 some of our neighbors, we obviously are part of the  
10 senior citizen age group. We believe that La Senda  
11 should be a family community, welcoming to all age groups  
12 and family compositions. La Senda is not a retirement  
13 community.

14 Over the years our community has been  
15 accepting or at least tolerant of the things that  
16 families and kids do. They ride bikes and skateboard in  
17 the street, practice loudly their tubas, trombones, and  
18 trumpets. Kids yell and scream while jumping on  
19 trampolines. We hear roosters crowing and dogs barking  
20 early in the morning and sometimes in the middle of the  
21 night. Home daycare by its very nature takes place in  
22 the family home and homes are located in residential  
23 areas. Perhaps some of the opponents here tonight have  
24 taken advantage of home daycare located in other  
25 neighborhoods. I don't think that licensing for

1 New Mexico home daycare requires that they be located in  
2 lower cost housing markets. We do not believe that just  
3 because we own more expensive homes we should be exempt  
4 from welcoming home daycares to our neighborhood. Is  
5 this really just a case of not in my backyard?

6 Objections to this daycare shout to me loud and clear  
7 economic privilege.

8 We do not believe that any harm would come to  
9 La Senda by having a home daycare in our midst. We are  
10 not in fear that lowering our property values, opening  
11 the door to inappropriate non-family oriented business or  
12 unduly increasing traffic or noise on a road that has  
13 very little of either. Further, La Senda is not a gated  
14 community. Our roads are open to the public.

15 As someone mentioned earlier, all five  
16 elementary schools in the county with several hundred  
17 students, staff, busses, and cars are located in  
18 residential areas surrounded by single family homes. We  
19 La Senda homeowners are sitting on two or more acres of  
20 land. The proposed daycare is just perfect for the rural  
21 nature of La Senda. A home daycare would in fact be a  
22 real asset to this community of La Senda.

23 As a society we have an obligation to provide  
24 and support the best possible environments for our  
25 children. Los Alamos must step up and support places

1     where our children will be safe and will flourish  
2     physically, emotionally, intellectually, and spiritually.  
3     This investment will continue to support a healthy and  
4     vibrant Los Alamos. The Planning and Zoning Commission  
5     has tremendous responsibility for the future wellbeing of  
6     Los Alamos. Please do the right thing and approve this  
7     daycare. Thank you.

8                     MADAME CHAIR: Thank you.

9                     Let's go to Ms. Morely.

10                    MS. MORELY: I would also like to strongly  
11     support this daycare. I looked at the map and I believe  
12     I'm within the 300 feet of the property as measured along  
13     the road. I feel that supporting small children and  
14     their wellbeing is one of the most important things we  
15     can do as a community otherwise we're just a bunch of  
16     individual people.

17                    To speak to some of the issues that have been  
18     raised here, my front window, living room window faces  
19     the road. We have probably some of the lowest traffic in  
20     the county on La Senda Road. Probably most of the day  
21     there's not one car every half hour. If they doubled  
22     that I'd have two cars every half hour. Traffic is just  
23     not a problem here. We also have a 25-mile an hour speed  
24     limit like the rest of the county. Anyone who is  
25     exceeding that speed limit is doing an illegal action any

1 place in the county.

2 The house in question has completely off  
3 street parking and property. You can't see it from the  
4 road except for the entrance to the driveway. So the  
5 children exiting and entering cars will be completely  
6 safe. There'll be (inaudible) than my front door.

7 Noise was addressed. I realize that they said  
8 that's not completely to be taken into account. But  
9 during the 15 years I have lived two doors from the  
10 property, two houses were constructed from scratch. I  
11 did not hear abnormal amounts of noise. By the time you  
12 throw a couple hundred pinion trees between you and a  
13 chain saw or a nail and hammer, it is not bad noise. The  
14 house in question was one of the ones constructed  
15 actually in the last 10 years or so.

16 I don't hear voices from other properties. If  
17 there are voices they're very, very muffled, including  
18 straight across the street. I do sometimes hear animals  
19 but it's mostly the peacock that has a very, very high  
20 pitched noise like a cat or a scream sort of. So I  
21 really rarely hear anything. The people directly behind  
22 me have moved this year. But they had seven children and  
23 I didn't hear the seven children. We were -- and they  
24 also home schooled so their children were home all the  
25 time. I just don't think the noise travels through the

1     pinion trees.

2                     I feel we have -- so as another point of  
3     support of children, families, and daycares, I feel we  
4     have a responsibility as a community to support families,  
5     to make it -- to help them should they have working  
6     families, should they need daycare for other reasons, I  
7     feel we need to give that support. We need to give good  
8     schools. We need to be known for good schools here. We  
9     need to -- also in La Senda we have a great rural area  
10    with open spaces that some children in White Rock and  
11    Los Alamos might not have in their home. My son living  
12    here and his favorite thing was to watch communities of  
13    ants running around. He spent about two years obsessed  
14    with ants and he loved living here.

15                    We also have a responsibility to help small  
16    business. Los Alamos tends to not support small business  
17    for some -- or at least has that reputation. And I think  
18    I see efforts in the county to turn that around and I  
19    would like to appeal for the small businesses to heed as  
20    much support as we can legally give them so that these  
21    kind of options are here. But again, I strongly support  
22    the daycare. I do not believe in any way, shape, or form  
23    if I sold my house next week anybody would mind in the  
24    least that there was a daycare two doors away. Thank you  
25    very much.

1 MADAME CHAIR: Thank you.

2 I'll move now to the Richardsons.

3 MS. RICHARDSON: I am Vanessa Richardson.

4 This is Charlie. We live at 107 La Senda, which is the  
5 property immediately east -- or west, excuse me. We  
6 share a very long property line with them and we are  
7 fully in support of Denise and her plans to open her  
8 school.

9 As I know people have mentioned this isn't a  
10 place of quiet solitude. Highway 4 is nearby. The  
11 construction of the new subdivision can be heard. You  
12 can hear Pinion Elementary's bells during the day from  
13 our house. And then during the summer there's hikers.  
14 There's an easement that goes through all the properties  
15 and people walk along those. There's bikers. There's  
16 just people out doing their thing. And I can't imagine  
17 the sounds of children during normal business hours  
18 Monday through Friday as being an issue. I know it won't  
19 decrease how much we enjoy our property and it won't  
20 decrease the value of living here.

21 And I will say that I grew up in this town and  
22 I was really excited to move back when I got a job at  
23 LANL. And one of the things that made it difficult was  
24 finding child care. There are options in town, but they  
25 often have very long waiting lists. So an extra addition

1 of qualified, excited child care in this town, I think,  
2 would be huge. And I've seen Denise work with children.  
3 And if my kids were of the right age I'd be trying to get  
4 them into her program when she opened it.

5 So did you want to say anything?

6 MR. RICHARDSON: Yeah, I'd just like to add  
7 that it will provide a much needed service to the  
8 community. It'll improve the community. It'll add  
9 another amenity within the neighborhood. We're close to  
10 a grocery store and we have the advantage of being close  
11 to the library and parks and then having a daycare center  
12 in that proximity would also be a benefit.

13 And then I just, I guess the last statement is  
14 that I actually kind of look forward to the soft noises  
15 of children playing. I think that will be peaceful and  
16 kind of enjoyable. Thank you very much.

17 MADAME CHAIR: Thank you.

18 We'll move now to Mr. Erickson who we can see  
19 now.

20 MR. ERICKSON: Commissioner Chair Adler,  
21 Commissioners, I'm Denny Eric kson. I live at 400  
22 Brighton Drive in the middle of White Rock. I speak this  
23 evening in support of Denise Matthews's special use  
24 permit request for a home-based daycare facility in La  
25 Senda subdivision. As context, my wife Mary Lou and I

1 are 50-year county residents. All of those 50 years  
2 while residing in White Rock.

3 We came to Los Alamos long ago with two  
4 toddlers and added a third during our first year. We  
5 were and are grateful for the then limited access to  
6 home-based daycare during our kids early years. As  
7 further context, I've spent much of the last decade plus  
8 as a citizen volunteer advisor to the county as member  
9 and chair of the White Rock committee commissioned in  
10 2008 to help guide and champion implementation of the  
11 White Rock master plan and economic development strategy.  
12 Among the important projects implemented to improve  
13 community quality and welcomeness was the plan capstone  
14 project development of the Mirador subdivision which  
15 anticipated the need for new housing in this now and  
16 active build out.

17 My support of the permit are twofold. The  
18 first, there is a substantial, a growing need for  
19 additional daycare in Los Alamos and its communities.  
20 Thanks to the lab's multiyear and ongoing efforts to  
21 regenerate its workforce, most of the demographics of the  
22 lab and the county are changing and growing thanks to the  
23 influx of young staff and their families. These changes  
24 are happening across the county, perhaps and especially  
25 in our White Rock neighborhoods, including even the La

1     Senda division.

2                   For the first time in my memory there is an  
3     increasing demand for daycare -- excuse me, for the first  
4     time in my memory the average age of a county resident is  
5     trending downward, that is we're getting younger on the  
6     average. As a consequence, there's an increasing demand  
7     more daycare. A testament to that demand is Denise's  
8     recent survey with some 100 responses equally split  
9     between the town site and White Rock and strongly in  
10    favor of more daycare.

11                  Secondly, I urge the commission to weigh  
12    heavily the county staff's objective and comprehensive  
13    findings of fact and conclusions of law for the two  
14    requests, which conclusively find the proposed home  
15    daycare in full accordance with the five special use  
16    permit review and approval of criteria.

17                  As a final comment, I am pleased to commend  
18    the Matthews family for its willingness and commitment to  
19    use their home and their property to meet the emerging  
20    needs of a younger Los Alamos community. I am also  
21    pleased that Denise's proposal offers an innovative and  
22    entrepreneurial option with its nature-based emphasis.

23                  In conclusion, and as a long-time resident and  
24    citizen champion for quality of life improvement and  
25    enhancement of services in Los Alamos, I strongly

1 encourage the commission to approve the special use  
2 permit requests in support of growing needs of the young  
3 among us. I also want to say in conclusion that it takes  
4 a long time for progress to happen in this community. We  
5 ask lots of questions. It takes a lot of patience, and I  
6 commend especially Denise for her patience, her  
7 objectivity, and her first class representation of her  
8 proposition.

9 Thank you, Commission, for the opportunity to  
10 testify.

11 MADAME CHAIR: Thank you.

12 We'll move now to the Smiths.

13 MS. SMITH: Thank you, Chair and  
14 Commissioners. My husband and I would like to speak to  
15 the comprehensive plan for the county. And he's going to  
16 share part and I'm going to share part. And I'd just  
17 like to add in that we're 45 and 48-year residents of Los  
18 Alamos County.

19 MR. SMITH: The proposed business does not  
20 conform to the comprehensive plan. When considering the  
21 special use permit the comprehensive plan takes on the  
22 force of law. County law states that the Planning and  
23 Zoning Commission will use this plan as guidance in the  
24 review of special use permits. Conformance with the  
25 goals of the plan will be paramount in their

1 decisionmaking.

2 County staff argues only that the proposed  
3 daycare, quote, supports the promotion of a diverse  
4 economic base and the encouragement of new business  
5 growth, end quote. There is no attempt to explain how  
6 this removes the need to consider, quote, protecting the  
7 character of existing residential neighborhoods, end  
8 quote. This concept is addressed at least 25 times  
9 throughout the plan. It is unreasonable to construe the  
10 comprehensive plan to say that business interests in  
11 residential areas overrides the protection of  
12 neighborhoods.

13 From page 104 of the plan we find, quote,  
14 zoning separated uses to protect residential uses from  
15 incompatible uses that could be harmful or bothersome to  
16 people in their homes, end quote. And on the next page,  
17 quote, it will be important to provide certain  
18 protections for existing neighborhoods, especially in the  
19 case of longstanding low density residential areas, end  
20 quote. On page 65, quote, a consistent theme heard  
21 throughout development of the plan was in (inaudible) to  
22 the community of its existing neighborhoods and a desire  
23 to preserve their residential character and scale.

24 And then the next page, goals, protecting  
25 existing residential neighborhoods. And economic

1 vitality policies, provide transition buffers to nearby  
2 existing housing as needed. This daycare provides no  
3 buffer whatever. Our property line is 10 feet from one  
4 of the play areas. This all should have been part of the  
5 information supplied by staff and certainly should play a  
6 role in the commission's decision. The question is has  
7 the applicant proven that the daycare will conform to the  
8 comprehensive plan? And the answer is no.

9 MS. SMITH: The applicant considers that the  
10 daycare will conform the comprehensive plan because,  
11 quote, this daycare will add an important resource to the  
12 community as daycare providers are in high demand with  
13 many daycares having extended wait lists, end quote. The  
14 plan does encourage promotion of business, but it is  
15 actually specific as to what kind of business. Quoting  
16 directly, supports spinoff businesses opportunities from  
17 LANL, significantly improve the quantity and quality of  
18 retail business, attract new tourism related business,  
19 promote growth in the downtown, promote access to  
20 broadband, promote Los Alamos County as a model for  
21 emerging technologies, promote economic diversity by  
22 building on the existing strengths of a community,  
23 technology, invasion, and information.

24 There is not a single mention of daycare.  
25 Should the authors have considered preschool among the

1 important businesses it could have. For example, it  
2 makes several mentions of senior housing and care. As to  
3 extended wait lists, there is some truth to that. In  
4 White Rock the bilingual Montessori School has a few  
5 people on their waiting list. However, the Ponderosa  
6 Daycare has no waiting list. And both the Dragonfly  
7 Playhouse and New Horizon Daycare say they are enrolling  
8 now. So other than Montessori, it looks like supply is  
9 meeting or outstripping demand right now.

10 It is further not clear how the market will be  
11 effected long term by the added funds and programs put  
12 forth by the state. What little evidence the applicant  
13 offers that the daycare conforms to the comprehensive  
14 plan doesn't add up to anything really. But that proof  
15 is required by law before the special use permits can be  
16 issued. Meanwhile, there are the protections and  
17 preservations of the neighborhoods more than  
18 counterbalancing these business interests.

19 And I'd just like to add that I'm a 31-year  
20 veteran early childhood educator with a master's degree  
21 in early childhood education, and I know that young  
22 children of that age that Denise is going to service can  
23 be very loud whether they're in guided lessons or not.  
24 And I have taught in the schools in Los Alamos. I've  
25 taught in Iowa and Minnesota, and so I do have experience

1 with this. And her play area, from where she measures,  
2 I'm sure she's not intending to keep the children from  
3 that main spot in the play area that, you know, they're  
4 going to be spread all over there. And they will be near  
5 the fences. And our fence is right across from theirs in  
6 the easement.

7 And so -- and I also -- they have now two  
8 children, but we can hear their youngest, their oldest  
9 Jasper, when he was outside along by himself when our  
10 doors and windows were closed. And, you know, that's not  
11 a bad thing. I mean, it's okay. We expect families to  
12 have children. We raised a family here and we expect  
13 families to have children. And to the other point about  
14 noise in the development, yes, there are noises but they  
15 are not consistent noises. And this will be consistent  
16 noise from 8 to 5:30 five days a week Monday through  
17 Friday.

18 And thank you, Commissioners. We appreciate  
19 you listening.

20 MADAME CHAIR: Thank you.

21 We'll move now to Ms. Allen Glass.

22 MS. ALLEN GLASS: Hi. Thanks so much for  
23 having me here. Thanks so much for this opportunity to  
24 give public comment at this hearing and for your public  
25 service. I have a few points that I wanted to cover.

1 First I just wanted to reiterate my strong support for  
2 Ms. Matthews's permit request. I grew up here and plan  
3 to raise my children here where I grew up. I actually  
4 grew up in Bandelier itself due to my father's job. And  
5 I had a (inaudible) childhood where I was able to explore  
6 and be outdoors in all weather where it's so incredibly  
7 valuable in making me into the person that I am today.

8 I brought my children, who are now two and  
9 three years old home because I wanted to give them as  
10 close to that same thing as I could. And this is not in  
11 my prepared comments, but I did just want to say there  
12 are actually very long waiting lists at all the daycares  
13 in Los Alamos, and I can speak to that from personal  
14 experience and feel really lucky that we were able to get  
15 a spot where we were.

16 I am fortunate that we were able to buy a  
17 house in (inaudible) Acres which if you don't know is  
18 like the neighborhood directly adjacent to La Senda.  
19 It's also very rural. So this is exactly what we wanted  
20 because of the large lots and the rural character of the  
21 neighborhood. I love the fact that so many of our  
22 neighbors have essentially small farms and working  
23 homesteads with a healthy level of natural noise.

24 I just want to reiterate that a small daycare  
25 and 10 to 12 students is incredibly small, is absolutely

1 in line with the character of this area. And beyond my  
2 very strong support for this program and the need for it,  
3 I wanted to speak to two additional pieces of the  
4 hearing. First is the real burden and a piece of this  
5 process that makes it difficult for the general public to  
6 participate. For example, my mom submitted a support  
7 letter on Friday which (inaudible) sub letters and got an  
8 email saying she submitted it too late. This is the  
9 retired teacher letter that Denise raised in her  
10 presentation. My mom had a prior commitment so she  
11 couldn't give her comments in this hearing verbally. But  
12 just to make an example of another support.

13 And I also just wanted to raise up the real  
14 burden that it honestly is for me to participate in this  
15 hearing. I have two young children and a full-time job.  
16 Evenings are generally our sacred family time and I'm  
17 giving that up to be here with you. I have now sat  
18 through more than three hours to get to the public  
19 comment portion, like checking back in and out, making  
20 sure I hadn't missed the time that was allocated for the  
21 public to speak while trying to help my husband wrangling  
22 my children to bed and doing dinner. I can't say that  
23 I'm happy to do it, per se, but I do see that it's  
24 necessary to be here. There's so many barriers like this  
25 to young families who are the most in need of this

1 service for us to be able to really participate in this  
2 process.

3 I think this can often lead to a situation  
4 where sometimes like the loudest and most persistent  
5 voices who have time and resources to commit can be  
6 prioritized in public decisionmaking processes over the  
7 majority of working people who have the most need because  
8 that is who decision makers like yourself end up hearing  
9 the most from. So I just -- I'm sure that there are  
10 probably at least a hundred other families in our  
11 position who would support this daycare but just don't  
12 have the time to give in order to be here to speak out in  
13 support.

14 Also, several of the comments and questions  
15 here has honestly hurt my feelings a little bit as  
16 someone who spent my whole childhood here and is now a  
17 relatively young mother. I think it just kind of speaks  
18 a little bit to a broader societal issue where it seems  
19 like children can be treated a little bit as an  
20 inconvenience rather than as like an integral part of the  
21 community. Children and young families have needs that  
22 are not currently being met in this community.  
23 Ms. Matthews is trying to help meet those needs and I'm  
24 so grateful to her for doing so. I think it's been a  
25 long time since many people were young parents and they

1 might not recognize how acute the need for child care is  
2 in this community or the fact that in most young families  
3 both parents do need to work just as a reality of how  
4 life is for us now.

5 I'm so appreciative of all the Planning and  
6 Zoning committee members who donate your precious time to  
7 sit on this committee and tend to the very non-glamorous  
8 work of local governments and keeping the best interest  
9 of the whole community in mind. Thank you so much for  
10 taking the time to hear me out and I really hope that you  
11 approve this permit in time for at least one of my  
12 children to have the opportunity to attend this program.  
13 Thank you so much for your time and your service.

14 MADAME CHAIR: Thank you.

15 I'll move now to Ms. Fox.

16 MS. FOX: Okay. My name is Megan Fox. I was  
17 not here at the very beginning. Did you say I needed to  
18 be sworn in or was that for somebody else?

19 MADAME CHAIR: No, if you were not here, we  
20 would like you to be sworn in by the clerk, if you  
21 wouldn't mind.

22 MS. FOX: Okay.

23 THE CLERK: Yes. And also I think Laurel  
24 Horton was not here when we did the swearing in. Was  
25 that correct, Laurel?

1 MS. HORTON: No. I was here. I was sworn in.

2 Thank you.

3 THE CLERK: Okay.

4 So again, please raise your right hand. Do  
5 you affirm under penalty and perjury that the testimony  
6 you're about to give in this matter is the truth, the  
7 whole truth, and nothing but the truth?

8 MS. FOX: Yes.

9 THE CLERK: Thank you very much.

10 MS. FOX: All right. So I (inaudible)  
11 speaker, but listening to this meeting has been really  
12 discouraging. It's hard to believe that someone would be  
13 so opposed to a lovely school. Young families are really  
14 needed in our town to grow as outlined as an objective in  
15 the master plans for both Los Alamos and White Rock. Los  
16 Alamos families do drive to White Rock to access child  
17 care. Denise will not have that many spaces available to  
18 go around, but that's the thing people do because we need  
19 it so badly.

20 We -- my family and I have lived here for five  
21 years again. I went to high school here and moved away.  
22 But we've been back for five years and we currently have  
23 two children who are six years old and three years old.  
24 So I've been dealing with daycare shortages for the last  
25 five years. Despite misconceptions, this is not a

1 friendly place for families with small children. There's  
2 no drop-in daycare. There's no mother's day out programs  
3 like other -- many other communities have. It's hard to  
4 go to the dentist or the doctor as a caregiver without  
5 child care.

6 And I'd like to respond to Ms. Smith. She  
7 pointed out that senior facilities are called out in the  
8 master plan. The fact that child care was specifically  
9 not mentioned supports the fact that families and  
10 children are not a focus of Los Alamos County.

11 I'd also like to point out in response to  
12 Ms. Smith that many of the preschool programs she  
13 mentioned had -- did not have waiting lists, having  
14 extremely restrictive rules, Bilingual had the minimum of  
15 four days enrollment, I believe, per week. They do not  
16 offer after school programs. New Horizons has limited  
17 hours and days that they operate. I think they've  
18 expanded, but it used to be like just a morning program  
19 Monday through Thursday. Other schools have other  
20 requirements and restrictions. Ponderosa has a \$300  
21 application fee which does not guarantee you a placement.  
22 That's really cost prohibitive for many families to  
23 pursue as a part-time care possible option.

24 More importantly, family's financial health is  
25 directly related to the after child care. While Denise's

1 child care program will not solve this problem entirely,  
2 it could directly positively impact up to 12 families and  
3 more if you include families of herself or her staff who  
4 would benefit from this child care and therefore be able  
5 to take on jobs, employment, advance their careers, go  
6 back to school, start their own business.

7 My children have attended four different  
8 preschools in Los Alamos County and we've toured three  
9 more. None of them were what we're looking for. We've  
10 always had to settle due to lack of options.

11 My property backs up to La Senda and we hear  
12 lots of animal noises all times of the day. We hear  
13 donkeys, horses, chickens, and that persistent peacock at  
14 all hours of the day. Noise and disruption does not come  
15 from children. It comes from other things around us. So  
16 many aspects of Denise's program are unique and valuable  
17 to our community. Her education, her passion, and her  
18 experience in education are a valuable asset that we  
19 should not be passing up on. Her dedication to providing  
20 a safe and enriching space is unique and inspiring. Her  
21 property with its natural beauty and open spaces will  
22 benefit these children so much. Nature has been proven  
23 to benefit children, their mental wellbeing, their  
24 physical wellbeing. This is something we should try to  
25 offer to all of our children.

1                   Quality daycare is an essential need and  
2   Denise's thoughtful request should be approved. Thank  
3   you.

4                   MADAME CHAIR: Thank you.

5                   We'll move down now to Ms. Horton.

6                   MS. HORTON: Hi. Thank you. I appreciate the  
7   opportunity to speak. Yeah, I am new to Los Alamos as of  
8   this summer and I wanted to just touch on a couple of the  
9   points related to the comments of master plan and our  
10   reasons as a family for moving here.

11                  You know, my partner get a job at LANL. We  
12   were excited about the opportunity to come to such a  
13   beautiful area, had some hesitation, one of those  
14   hesitations being child care to the point that we could  
15   not find child care before moving or anything that would  
16   be guaranteed. So he moved about two or three months  
17   before I moved down here to join him because there were  
18   no child cares that didn't have a waiting list that was  
19   uncertain about when we could -- our son could be  
20   enrolled in the child care. We didn't move until  
21   Dragonfly opened in, I guess that was September, I think,  
22   when we knew that we would have a spot so that I could  
23   continue working because I had support in our last  
24   residence.

25                  We moved to La Senda. We live down the street

1 from the proposed facility. And one of the reasons we  
2 moved here was for the natural beauty, for the space, for  
3 the land, to be near people with horses and animals and  
4 have a garden and have space to roam. And that's one of  
5 the things we love about it, one of the things our child  
6 loves about it, and one of the things that would make it  
7 a perfect place for a daycare.

8               So I guess that touches on two of the points  
9 of the master plan. One of them is that if the community  
10 is going to continue to attract the top LANL employees it  
11 wants to attract, there needs to be consistent available  
12 and a wide variety of daycare because families are  
13 multiple people. Some of them work at the lab. Maybe  
14 both partners will work at the lab. But however it is,  
15 they need a place where they're happy to have their  
16 children. And where we're lucky to have been able to  
17 move, you know, apart from each other but eventually find  
18 a place, there really are waiting lists. There's still  
19 waiting lists at other daycares now. There aren't places  
20 where you can call and say, hey, I'd like to sign my kid  
21 up, can we take a tour. That just isn't an option right  
22 here. And the lab continues to hire, I think I heard  
23 somewhere it was 250 new employees in January. You've  
24 got to believe that those families have children and will  
25 need daycare.

1           The other point was protecting the character  
2   of existing neighborhoods. While I'm not by any means a  
3   longtime resident in this neighborhood, one of the  
4   reasons we chose this neighborhood was the existing  
5   character. And part of that existing character is the  
6   openness and the nature, nature meaning the environment  
7   that we're in. And I guess the ability to access that,  
8   which I saw as characteristic of this area, and I think  
9   opening up that opportunity to other families who may not  
10   have it in their backyards is exactly what I would want  
11   to support in the neighborhood and the future of the  
12   neighborhood.

13           I think that that covers everything I wanted  
14   to say. Like I said, I'm right down the street. I love  
15   the idea of a daycare in my neighborhood. And I think it  
16   would have helped me and our family move together if we  
17   had had that opportunity previously. Thanks.

18           MADAME CHAIR: Thank you.

19           And next we'll move to Ms. Peck.

20           MS. PECK: Sorry. I'm having a little trouble  
21   getting the video turned back on.

22           Chair Adler and members of the Commission, one  
23   of the biggest questions for those of us who live nearby  
24   is how much noise will 12 children actually make. The  
25   applicant includes a table of sound readings from another

1 daycare in White Rock, but her table only lists average  
2 readings, nothing over that's critical to this  
3 discussion, the maximum sound reading. We were curious,  
4 so we installed the (inaudible), the same one the  
5 applicant used a year ago -- not a year ago, a few weeks  
6 ago to make her table. And we headed over to Dragonfly  
7 Daycare. We had to go back a few times to find a time  
8 when kids were actually outside because it's a little  
9 cold right now.

10                   And when they finally were, there were only  
11 three children playing. Dragonfly has a tall wooden  
12 fence all the way around its perimeter. So we sat  
13 outside the fence and we let the iPhone record for about  
14 six minutes while three children played. It recorded an  
15 average sound level of 63.7 DBA with a maximum of 83.6.  
16 And this was just three children. And remember, we were  
17 outside the fence too, so the fence was blocking some of  
18 the sound. So, you know, I'm not sure what was going on  
19 when Denise made her reading, but we got very different  
20 numbers.

21                   Also notice how big a difference there is  
22 between the average sound pressure and the maximum 63  
23 versus 83. So those are two very different numbers. And  
24 you have to remember that when you see a table that only  
25 shows average reading and omits maximum.

1                   We also took a reading at our house because I  
2   was kind of surprised how high her reading was for the  
3   house at La Senda. Our reading here at our house was 36  
4   DB average with a maximum of 47.2 even with a few cars  
5   going by on the road. So I guess our house must be a  
6   lot -- a whole lot quieter than hers.

7                   Now, our numbers at Dragonfly Daycare line up  
8   with existing studies. There have been several good  
9   studies of noise from daycares and preschools like the  
10   one from Staffordshire, England which is in the packet.  
11   But basically they measured sound levels from a  
12   playground with four to 10 children using professional  
13   calibrated equipment shielded from wind and other noises.  
14   They made several readings lasting 10 to 20 minutes at 16  
15   feet outside the playing area. So this is quite a bit  
16   lower than you would see at the property line in the  
17   current case.

18                  And they measured an average of 66 DBA with  
19   maximum measurements that ranged from 75 to 79. So it's  
20   pretty high. And that's from only 10 children. It would  
21   be a little higher for 12. Other studies we found gave  
22   numbers in the same ballpark. So all the studies we  
23   found, as well as our own casual measurement found every  
24   maximum noise levels well over Los Alamos's legal limit  
25   of 65 DB at the property line and even Los Alamos's

1 absolutely maximum legal limit of 75 DBA at the property  
2 line.

3 Now, remember nobody is saying that children  
4 are obnoxious or offensive or that it's unnatural noise  
5 or any of those strongmen. We're just saying that large  
6 groups of children are loud and they do change the  
7 character of a neighborhood if it's going on all day,  
8 every day. So unless these kids are a lot quieter than  
9 the ones in England or California or Dragonfly, it's  
10 pretty clear that a daycare will be over the legal limit.

11 Now, Ms. Sayeda said earlier that the  
12 commission doesn't need to take noise into account. But  
13 since the applicant is supposed to prove that the daycare  
14 would not be a detriment to peace and comfort, how could  
15 noise not be a part of that? I just don't understand  
16 that.

17 Thank you, Commissioners, and please include  
18 my letter in the record.

19 MADAME CHAIR: Thank you.

20 We'll move on now to Ms. Thames.

21 MS. THAMES: Hi. I'm Tis h Thames at 115 La  
22 Senda, so I am the neighbor that's closest to Denise.  
23 And the HOA was resurrected last year for other purposes,  
24 not because of her daycare, because as we have learned  
25 the covenants conditions and restrictions run with the

1 land. They're all -- so they're active. And one of the  
2 paragraphs in the CC&Rs says that nor shall anything be  
3 done thereon which may be or may become an annoyance or  
4 nuisance to the neighborhood.

5 The words may come are crucial. The author  
6 anticipated the desire to expand the land uses beyond the  
7 agricultural residential nature. The covenants  
8 explicitly allow outdoor horticulture, agriculture,  
9 animal husbandry within fairly specific limits. But then  
10 they make this extremely broad provision to ensure no  
11 other activities that had been even a potential to be  
12 annoying or a nuisance. The idea was to make it  
13 impossible to carry out a business such as this noisy  
14 outdoor daycare in La Senda.

15 In fact, another daycare operation was  
16 prohibited in 2007 just a few blocks away at 101 Piedra  
17 Loop, which is in the La Senda subdivision citing the  
18 covenants. And that sets a legal precedence. So the  
19 folks that had their house on the market 10 years ago or  
20 so, 15 years ago, they lost the sale of their house  
21 because the woman who wanted to purchase it, the CC&Rs,  
22 the board, told them that they couldn't do it because of  
23 the CC&Rs. CC&Rs add restrictions beyond county law  
24 overriding any exceptions. In that sense they're even  
25 more binding than the county ordinance. Daycare is the

1     only other outdoor business the county plans to allow in  
2     the RA zone. Every other outdoor business that lets any  
3     noise at all across the property line is legally defined  
4     as a nuisance.

5                 So the county itself says this daycare is a  
6     nuisance. But the covenants make no exception for  
7     daycare unlike the county. County ordinance require the  
8     applicant to prove her business will be in accordance  
9     with the law. Noise will cross the property line. The  
10    World Health Organization tells us noises, including  
11    children's voices, are annoying at 5 decibels or above.  
12    The applicant's chart shows she believes her operation  
13    will generate an average of that much noise all day at  
14    over 55 feet into nearby properties, a distance that  
15    includes part of my house.

16                Its just isn't possible for the applicant to  
17    prove this operation will not be annoying or a nuisance.  
18    So there's no legal way to approve her application.

19                And also my husband, Les Dileva, is on here to  
20    talk but for some reason he doesn't have the electronic  
21    hand. So can somebody please make sure that he gets his  
22    opportunity to talk?

23                Oh, you want to talk in here?

24                MR. DILEVA: Right.

25                MS. THAMES: Is it okay if Les talks now here?

1 MADAME CHAIR: Yeah, that would be fine.

2 MS. THAMES: Okay. Thank you all.

3 MR. DILEVA: Hi everybody. You know, I had  
4 a -- and thank you for letting me talk if there was  
5 someone else. For some reason my microphone is not  
6 working.

7 I had a written statement that has been  
8 submitted in the 95-page packet. So I was going to quote  
9 that, but I'm actually going to just talk about other  
10 important things briefly because there's a lot of time  
11 that's been spent on this and I want to try to be brief  
12 and straight to the point.

13 You know, I commend Denise for what she wants  
14 to do. I think daycare is needed. Unfortunately, and as  
15 a father of three daughters struggling in the past to try  
16 to do daycare and have a husband and a wife who worked  
17 and try to find daycare, it is hard. And I hear  
18 everybody's concerns and I agree with them. However, I  
19 don't believe that the La Senda area and the way it was  
20 set up intended for any type of home businesses in this  
21 fashion. We've had a lot of people talk for it and  
22 against it tonight. But there's really five things that  
23 I just want to hit on real quick.

24 Number one, and if I mispronounce your name, I  
25 apologize. Is it Ms. Sayeda? She stated that there was

1     only three letters in the package, the official package  
2     that was submitted. There was seven actually, so I'd  
3     like on record if she could recount what's in the package  
4     and make sure that she has an accurate account. And  
5     these are seven letters from people who live 300 yards  
6     from the proposed daycare.

7                 The second thing is the noise. I find it  
8     extremely hard to believe, after spending a few hours  
9     going through all of the county records, there's things  
10    on noise that are documented in there and it's just going  
11    to be ignored. I find that extremely hard to believe.  
12    So that just doesn't make sense to me that you cannot  
13    include a noise study for exactly what is being proposed.  
14    And that -- that just surprises me. So I think the  
15    counsel members and the commission really needs to look  
16    at that again.

17                Secondly, we're 52 feet away. We're probably  
18    the most impacted out of everybody. 52 feet is not far  
19    from the fence. And the fence does have egresses where,  
20    you know, the kids can go. I mean, hey, I was a kid  
21    once. I didn't want to always stick with the ground. I  
22    always went off and ventured off. And yeah, as you can  
23    tell, I'm a pretty loud guy. I was a loud guy when I was  
24    a kid. I have nothing against children, but if there's  
25    that many out there I think that noise will be a factor

1 and it's going to be right on top of us. And I wanted to  
2 point that out. And again, for the record, that quote  
3 earlier on the particular diagram, we're 52 feet on the  
4 fence line. And I think the county needs to take that  
5 into consideration.

6 The CC&Rs, that's my next point, I think  
7 that's been greatly overlooked. It surprises me that the  
8 county didn't even look into the fact that those do exist  
9 with the property. That is a huge oversight. It has  
10 nothing to do with the HOA. It is something that when  
11 you buy a house here, you get a copy of that and it tells  
12 you exactly what the rules and regulations are. You need  
13 to take that into consideration. You cannot overlook  
14 that.

15 The other thing that Tish mentioned about the  
16 property that was sold a few years back -- excuse me, a  
17 few years back.

18 MS. THAMES: It wasn't sold.

19 MR. DILEVA: And that -- pardon?

20 MS. THAMES: It wasn't sold. It was on the  
21 market.

22 MR. DILEVA: Well, it wasn't sold. But I  
23 mean, the CC&Rs at that point in time overruled them, the  
24 county, for allowing a daycare.

25 I had one other point but I -- I think at this

1 point in time I've said enough and I just hope that the  
2 county considers all these items that everybody has  
3 pointed out that are in the 300-yard vicinity. And I  
4 appreciate everybody's time and effort on discussing this  
5 topic. And thank you much for giving me time to talk.

6 MADAME CHAIR: All right. Thank you.

7 We'll move on now to Mr. Paulson.

8 MR. PAULSON: Hello everyone. I'm D. Paulson.  
9 I have been born and raised in Los Alamos, went to the  
10 schools here. Pretty much been here my entire life. I  
11 just have a few things to cover. I'll try to make it  
12 quick. I know I do appreciate your time. This has been  
13 long. There have been a lot of people, you know, voicing  
14 their concerns. And I know we've heard a lot of the same  
15 things multiple times.

16 One of my concerns -- first of all, I'd like  
17 to start by saying I support Ms. Matthews. I support her  
18 idea, I support having a daycare, I don't support the  
19 location. It was a bad choice to try to put it in a  
20 residential neighborhood that is very quiet. We talked  
21 about the different noises that are out here in the La  
22 Senda area. We enjoy the natural noises and that's one  
23 of the reasons that Ms. Matthews would like to have her  
24 daycare out here because it is very quiet. It's a  
25 natural setting. And one of the reasons that I moved

1 here, one of the things that would have deterred me from  
2 buying the property here would have been there is a  
3 daycare in the yard next -- or right behind mine.

4 I do live right behind the Matthews and I have  
5 no doubt -- I hear their kids. If they wanted to have 12  
6 kids at least I would understand that those kids would  
7 grow up and over time, you know, they would be attending  
8 schools, they would move on, and eventually that family  
9 would grow up as well. What I'm looking at here is 12  
10 kids that are going to continue to be on the borderline,  
11 or the fence line or property possibly for the rest of my  
12 life depending on how long she decides to run this  
13 daycare. So it's not something that is going to be an  
14 inconvenience for a short period of time but it's going  
15 to be an inconvenience for the rest of our lives,  
16 possibly, depending on how long she wants to run that.

17 If the neighbors that are primarily effected  
18 by this daycare are going to be to the northeast of her  
19 property. It's not the south. It's not -- we've had a  
20 few supporters for Ms. Matthews's daycare, most of  
21 those -- all of the ones that have shown support are not  
22 going to be directly impacted by the noise of these  
23 children. They're all going to be on the other side of  
24 the house and that house is going to provide a buffer for  
25 most of it.

1                   If you want to look at the map, look at her  
2     drawing, you will see that her house is shaped like a  
3     crescent. If you know anything about sound you'll know  
4     that if you have that crescent shape you're going to  
5     amplify the sound and it is going to be projected out in  
6     that direction. Now, several people that have talked  
7     today, you talked to the closest neighbors that just got  
8     done speaking, the Smiths. They're going to have the  
9     brunt of it, but I live in the center of that crescent  
10    and I will be definitely getting some noise from those  
11    children.

12                  Right now if I'm in my backyard enjoying the  
13    peace and quiet I can hear people talking from several of  
14    the different neighbors because of the interesting sound  
15    that is projection out here, including the Matthews  
16    themselves. I don't mind the sounds of the kids. I  
17    would mind the sounds of kids not ever going away Monday  
18    through Friday, you know, during the entire day.

19                  So also these neighbors that are being  
20    impacted are also at home all day. We don't have anybody  
21    that's really being impacted that is off to work. I work  
22    from home. I'm soon to retire. Everybody else that is  
23    out here that is objecting to, or a lot of them, most of  
24    them are stay at home all day. They're retired. So, you  
25    know, we will be dealing with this hearing that all day

1 long.

2 And I've heard several comments about acreage  
3 and that that means something. But what we really need  
4 to look at is the proximity of those children to the  
5 properties, to where these people are going to be  
6 spending their day. A lot of the residents out here  
7 enjoy being in their backyards on their patios. And, you  
8 know, the two closest neighbors, if they are outside,  
9 they will be right there with the kids. They will be  
10 there with the children and they will be impacted.

11 You know, I think at driving to White Rock and  
12 I listened to the comments that were made earlier about  
13 the vitality of Los Alamos and White Rock and trying to  
14 improve our community. And I see the vacant commercial  
15 buildings and think why can't we have some of these  
16 businesses that are trying to be brought into a  
17 neighborhood put those into a commercial location like  
18 most of the daycares in White Rock. I think it seems to  
19 make sense.

20 I also think that, you know, operating these,  
21 you know, daycares in a residence can also disadvantage  
22 those other daycares that are trying to make it and  
23 having to pay the rent in these commercial areas. I  
24 think that comment has already been made about, you know,  
25 they're not completely full and they could use additional

1 children at these other daycares that are commercially  
2 operated.

3 So ask the commission to please deny the  
4 special permit. By granting this permit the business is  
5 assured to impact the health, peace, and comfort for the  
6 surrounding neighbors. And thank you for your time.

7 Now, did my wife -- okay. My wife doesn't  
8 have anything to say.

9 Thank you, Commissioners. I appreciate it.

10 MADAME CHAIR: Thank you.

11 We'll move on now to Ms. Landman.

12 MS. LANDMAN: Hi there. Thank you so much,  
13 Commissioners, for your time. I previously worked at the  
14 Pajarito Environmental Education Center with Denise. And  
15 through that position I was lucky enough to see her work  
16 with kids of all ages through PEEC's nature play times on  
17 field trips and other programs. And I just want to say  
18 that in my personal opinion Denise brings so much  
19 creativity, expertise, and passion to her work. And I  
20 believe she greatly heightened the quality of PEEC's  
21 programming and that she connected so many kids of all  
22 ages to nature through her unique background and talent  
23 for working with children. And I have no doubt that her  
24 school would be incredibly high quality educational and  
25 valuable to Los Alamos families.

1 Denise has a really unique background in  
2 environmental education that I don't think I've met  
3 anyone that has that same background. And kids and  
4 families in the Los Alamos area would be extremely lucky  
5 to be a part of that. The entire community would really  
6 benefit from a young generation that cares deeply for Los  
7 Alamos's unique environment and feels a sense of  
8 connection to the area too.

9 So that's really all I have to say. Thank you  
10 so much for your time.

11 MADAME CHAIR: Thank you.

12 I will move now to Ms. Jones.

13 MS. JONES: Hi. Good evening. My name is  
14 Becca Jones.

15 MR. POWERS: Chair, if I may.

16 I'm sorry, Ms. Jones.

17 I don't think you were here when we got sworn  
18 in. Were you sworn in?

19 MS. JONES: I believe I just noted my  
20 appearance but I didn't -- I wasn't sworn in, no.

21 MR. POWERS: Okay. That can be taken care of.

22 MS. JONES: Sure.

23 MADAME CHAIR: I do want to go ahead and take  
24 care of that now.

25 Thank you for catching that.

1                   THE CLERK: Yes, Ms. Jones, can you raise your  
2 right hand? Do you swear under penalty of perjury that  
3 the testimony you're about to give in this matter is the  
4 truth, the whole truth, and nothing but the truth?

5                   MS. JONES: Yes.

6                   THE CLERK: Thank you very much.

7                   MS. JONES: Thank you. So good evening. My  
8 name is Becca Jones. I am at 113 A La Senda, so we  
9 actually share an address with Ms. Matthews as well as  
10 several property lines. Our lot was subdivided many,  
11 many years ago, so they are at 113 B and we are at 113 A.

12                   I feel like being one of their closest  
13 neighbors I want to note a few things that have already  
14 been pointed out. But the Matthews property is large,  
15 it's over three acres. It's been divided in a way that  
16 makes the house very private. I consider it unfortunate  
17 that even though I know the Matthews spend a considerable  
18 amount of time outside, we actually never hear them, and  
19 this is due to the position of the house and /O\*UT  
20 buildings.

21                   I do understand that this may be different for  
22 other neighbors occasionally. I also think it pertinent  
23 to mention that in addition to being the Matthews  
24 neighbor I'm also an educator here in Los Alamos and for  
25 eight years I ran a home daycare here in Los -- or, I'm

1     sorry, here in White Rock in a much more high density  
2     area of White Rock. We weren't living out in La Senda at  
3     the time. And I'm also a real estate agent here in town.  
4     I've lived in Los Alamos for 37 years. I grew up here.  
5     And so I am well versed in the lack of daycare options in  
6     Los Alamos as well as property and property values and  
7     the aspects of home daycare that are pertinent to this.

8                 I have to tell you in eight years of doing  
9     home daycare, and to back up just a little bit, the  
10    reason we did that was because there were not good  
11    options for us for daycare that we could afford. So one  
12    of the previous speakers said, you know, the home daycare  
13    options may be taking options away from some of the  
14    larger operations, and I have to argue with that because  
15    there are wait lists and there are considerable admission  
16    fees. And there are things that are cost prohibitive to  
17    many families in Los Alamos. They were for us. It was  
18    not an option. So home daycare was the only way for me  
19    to be at home with our daughter and provide some income  
20    for us. And it also gave an option for families who  
21    could not afford some of the larger businesses.

22                So in addition to providing a unique  
23    experience, Denise is offering a home daycare experience  
24    which traditionally is more cost effective for families  
25    who are more of a strict budget. We are not a two LANL

1 income family. We are a teacher and a firefighter. And  
2 we had to look for alternative options, which now Denise  
3 is providing.

4 And I want to say that in my years of doing  
5 home daycare, and I should say also that my mom also did  
6 home daycare in Los Alamos for nearly 20 years in a high  
7 density area in Los Alamos and provided care for dozens  
8 of children in that time. She never received a noise  
9 complaint from a neighbor. I never once received a noise  
10 complaint from a neighbor in much higher density areas.  
11 And I have to say like our neighbors actually, you know,  
12 would come over and enjoy hearing sounds of children  
13 playing outside.

14 I also can assure you that knowing Denise she  
15 is not going to allow a child to stand at a property line  
16 and scream for the three or four hours that they might be  
17 outside. Your refrigerator and your dishwasher in your  
18 home run at a higher decibel level than children playing  
19 outside. The average stated decibel level of a  
20 playground is 50 to 55 decibels. So that is normal  
21 neighborhood noise and should be considered as such.

22 It is crazy to me, honestly, that we even have  
23 to consider that children are not a normal sound making  
24 part of a neighborhood and that they would be considered  
25 nuisance or annoyance especially when there are two

1     trained and responsible adults standing around them the  
2     entire time that they're outdoors controlling levels of  
3     sound. I had to do it myself to make sure that I wasn't  
4     bothering people and it's just something you do as a care  
5     provider. It's something that I do as a teacher.

6                     To speak to the comments about the HOAs and  
7     the previous daycare that were applied for, initially  
8     that was applied for as a commercial daycare, which is  
9     very different than a home daycare according to the rules  
10    in the county as well as the HOA that existed before in  
11    La Senda. And those were voted on by a board of  
12    directors. La Senda does not have a current board of  
13    directors. Regardless of whether or not the HOA is  
14    active or inactive, there is no board of directors to  
15    vote on such a matter. And that needs to be considered.

16                    I also want to say, just to speak to the real  
17    estate side of some of the arguments saying that possibly  
18    she should move into a commercial area, you know, I do  
19    real estate in Los Alamos so I can speak to the fact that  
20    I work with a lot of families trying to come the Los  
21    Alamos, and daycare is a huge option. And we have lost  
22    some really excellent people and candidates even for high  
23    level county positions because of a lack of daycare in  
24    the county.

25                    And to Megan's point about the fact that it

1 wasn't mentioned in the larger master plan for White Rock  
2 or Los Alamos, that daycares were not mentioned, that  
3 child care was not mentioned is a huge failing on the  
4 part of the county. However, I want to say like the fact  
5 is with three acres of land and small class sizes this is  
6 a creative solution to overcoming the realities that  
7 hinder all forms of business, retail and services in the  
8 county. The land is limited. It is incredibly  
9 expensive. Construction costs are even higher than in  
10 most places in the state due to lack of crews and  
11 penalties of success.

12 Planning and Zoning can and should find  
13 creative ways to fill the needs of the community. And I  
14 believe that the Worms and Wildflowers Farm and Nature  
15 School is trying to do that same thing. Thank you very  
16 much for your time.

17 MADAME CHAIR: Thank you.

18 Let's move now to Ms. McGrue. And I  
19 don't -- I can't remember, were you here towards the  
20 beginning of the meeting when we swore people in?

21 MS. McGRUE: I was, yes.

22 MADAME CHAIR: Okay. Perfect. Go ahead.

23 MS. McGRUE: Well, thank you all for the  
24 opportunity to speak here today. I'm here as a  
25 soon-to-be resident of White Rock, and my husband and I

1 are soon to start a family here.

2 I must echo the message that this meeting is  
3 definitely sending the message of a lack of support for  
4 welcoming the educational wellbeing of the future  
5 generations of our community. My husband is a LANL  
6 employee, and as I work full time, child care options are  
7 essential to us residing here. For this and for many  
8 reasons we support the proposal for Worms and  
9 Wildflowers.

10 Hearing concerns regarding noise, I thought it  
11 might be worth noting that the home that we are moving  
12 into previously had seven children, all home schooled,  
13 and oftentimes had 12 present at a time with no issues  
14 from neighbors in much closer proximity than Denise's  
15 neighbors.

16 I've had the pleasure of seeing Denise's  
17 property and am confident this education program would be  
18 non-disruptive to the community and in fact a celebrated  
19 asset.

20 I'd also like to note that I've worked with  
21 Denise in a professional outdoor education setting and  
22 her programming is very favorable in a peaceful child  
23 care environment. Denise has great awareness and respect  
24 for those around her, and not to mention the impact her  
25 programming on the children was glaringly positive.

1                   My husband and I representative of the younger  
2 families moving to the area that are starting a family.  
3 We have a community of early 30s, family starters who are  
4 in the same walk of life as we are and are over the moon  
5 excited at the prospect of a nature-based child care  
6 program in White Rock and have great concern of the lack  
7 of.

8                   Thank you, and please consider approving this  
9 permit for the betterment of our community and the next  
10 generation.

11                  MADAME CHAIR: Thank you.

12                  We'll move now to Mr. Walker, who I believe  
13 you do need to swear in.

14                  MR. WALKER: I do. And are there any other  
15 requirements for me to give comment? I don't want to say  
16 anything (inaudible).

17                  MADAME CHAIR: Nope. You will -- we'll swear  
18 you in. And if you could state your name and address,  
19 yeah.

20                  Oh, Anita, I believe you're on mute.

21                  THE CLERK: Oh, I'm sorry.

22                  Mr. Walker, what is your address?

23                  MR. WALKER: 113 Pruitt Avenue, White Rock.

24                  THE CLERK: Okay. And raise your right hand.

25 Do you affirm under penalty of perjury that the testimony

1     you're to give in this matter is the truth, the whole  
2     truth, and nothing but the truth?

3                     MR. WALKER:    Yes.

4                     THE CLERK:    Thank you very much.

5                     MR. WALKER:    All right.   Thank you, Madame  
6     Chairs, thank you, Commissioners.

7                     So it's really important that this get  
8     approved.   I mean, there's been a lot of arguments  
9     tonight about the sound levels and things like that, but  
10    if the issue is truly sound then people are trying to say  
11    that children are a nuisance.   Whether that's what they  
12    want to say or if it's not what they want to say, if the  
13    issue is sound the argument they are making is that  
14    children are a nuisance.

15                    Children are not a nuisance.   They are a fact  
16    of life.   They are a part of everyday life in this  
17    community.   If our front yard we have upwards of 12 to 16  
18    kids within a four-house radius of us all playing right  
19    outside our front yard.   They're not a noise problem.   I  
20    have no issue with them.   The neighbors don't have a  
21    problem with them.   It's a safe place for them to be.  
22    And if this is a home daycare, that's an even safer place  
23    for them to be rather than playing outside where they  
24    could be playing in the street.   Fortunately our streets  
25    are quite safe here.

1                   As for the commercial side of it, to qualify  
2   for a commercial business loan, most of the time you have  
3   to have like two years of profit and loss statements. So  
4   as a start-up business it is extremely hard to qualify  
5   for a commercial business loan. And on top of that, the  
6   rents that are charged in this community for commercial  
7   properties are excessive.

8                   This lady is trying to do something beneficial  
9   for our community for the young people that are living in  
10   this community and moving to this community. We need to  
11   have this sort of economic diversity inside our  
12   community. Economic vitality is the comprehensive plan,  
13   is in the comprehensive plan. This will help with that.  
14   This will help people send their kids to daycare and go  
15   to work and be able to provide for their family and  
16   provide additional income for their family so that they  
17   can spend it here in this community rather than taking  
18   people off the hill or moving off the hill because they  
19   don't have that support system in place here in this  
20   community.

21                  It's extremely important that we allow this  
22   business to start up. If La Senda isn't the proper place  
23   for it then you can't have a daycare anywhere in this  
24   county. La Senda is perfect place for something like  
25   this. It is the perfect place for what Ms. Matthews is

1     trying to do for this community. Thank you.

2                   MADAME CHAIR: Thank you.

3                   We'll move now to Mr. Schaffer. Oh, you are  
4     on.

5                   MR. SCHAFFER: I'm in.

6                   MADAME CHAIR: You are good now.

7                   MR. SCHAFFER: Can you hear me?

8                   MADAME CHAIR: We can hear you.

9                   MR. SCHAFFER: Okay. We don't even need to  
10    have had this meeting had the commission done its job.  
11    Commercial enterprise is not allowed within an RA  
12    neighborhood. That's just the way it is. So I'm going  
13    to read a letter that I wrote because it didn't get in  
14    the package. Okay? It's a short letter.

15                  But I'm not very -- I'm not at all very happy  
16    with all of this. They're missing the point about RA  
17    does not allow commercial business. So let me go ahead  
18    and read the letter. Can you hear me?

19                  MADAME CHAIR: Yes.

20                  MR. SCHAFFER: Can you hear me?

21                  MADAME CHAIR: Yes, we can hear you.

22                  MR. SCHAFFER: Okay. I'm just reading. My  
23    wife and I strongly object to the proposed special use  
24    permit, SUP 2022-0020 and SUP 2022-0021. In our opinion  
25    the zoning commission made a serious blunder when they

1 granted the SUP in the first place. Although we are not  
2 directly effected by the proposed SUP (we live at 113  
3 Piedra Loop on the north side of Piedra Loop) we believe  
4 the proposed SUP should not be allowed.

5 Okay, second paragraph: in effect, the  
6 proposed SUP is tantamount to rezoning a parcel of land  
7 from RA to commercial, which is unprecedented and should  
8 not be permitted especially over the objections of the  
9 near neighbors. This proposed action is probably also  
10 illegal.

11 And then finally we question the competence of  
12 the zoning committee and allowing this SUP blunder to  
13 continue for so long accumulating appreciable legal fees  
14 for both parties in the dispute. In our opinion the  
15 zoning committee should be forced to resign immediately.

16 No apologies. I'm done.

17 MADAME CHAIR: Thank you.

18 I will move now to Ms. Lindsay Young.

19 MS. YOUNG: Hi there. Yes, I'm Lindsay Young.  
20 My husband joined me. He was not here to be sworn in as  
21 he worked late, but he is here now. So I think he has a  
22 piece as well. So when it comes to his time to speak, if  
23 we can do that.

24 But we are new to the neighborhood at 110  
25 Piedra so we are within 300 feet of Denise. So we have

1 had the chance to meet her and her husband and her  
2 wonderful children and we can walk by our stables and we  
3 can be on our property. So we would be affected.

4 And I just want to say as a mom, as a wife, as  
5 a new member of this community, I commend you, Denise.  
6 Just watching you tonight with first class poise you are  
7 class. You are first class, so I commend you as a woman,  
8 as a wife, and as a mom. So thank you for showing that  
9 tonight.

10 But I want to say that I work at kindergarten  
11 at Chamisa, so I'm with kids, I do recess three times a  
12 day with children. And just to hear nuisance with  
13 children in the same statement, I am so appalled. I'm  
14 just completely disturbed by that statement. They are  
15 our next generation. That is who we are raising. And as  
16 a mom of two children on my own, I just -- I can't even  
17 fathom that in the same sentence.

18 So with your expertise, Denise, and your  
19 experience at Pajarito, because I actually have a mom  
20 that worked with you at Pajarito, and I know what you  
21 have to offer to our kids. And I think I'm most sad that  
22 my kids won't get to benefit with your daycare as they  
23 are teenagers. So I think I'm most sad that, you know,  
24 they've outgrown that.

25 But I feel like a blessing to the 12 families

1     you're going to bless. And in Texas I have had my own  
2     daycare at home, because it allowed me to stay at home  
3     with my own children to raise them, and it was a blessing  
4     to the people in our community and it only furthered them  
5     in preschool and to kinder into our communities. And it  
6     allowed those workers in our community to work. And if a  
7     mom couldn't stay at home, that's what I was able to  
8     allow. So I commend you offering that in your home.

9                     And if any noise violation, I would want to  
10    apologize for our roosters and goats, Denise. So there's  
11    my apology.

12                    But we support this. I think it's wonderful.  
13    I just -- also, to Mr. Thames's note, we closed in  
14    January of 2021 and our broker, our seller, steward  
15    title, they never issued any HOA documents, so we were  
16    unaware. We weren't even with an H OA. We were told  
17    Pajarito had dues and they were with an HOA. So we are  
18    unaware that we are even with an HOA. So I guess come  
19    tomorrow I will be calling the city just to make aware of  
20    what entails because I'm not even aware we are part of an  
21    HOA.

22                    And to someone else's point, you know, I think  
23    it was Mr. Jones saying you're setting the precedent of  
24    La Senda, of that attitude of it's too noisy and all that  
25    negative energy. And, you know, it's -- you need -- I

1     just -- it's sad to me this is how I'm meeting some of my  
2     fellow neighbors tonight because COVID has made us stay  
3     inside and so we have not had the opportunity to meet as  
4     many of you. Which the people we have met have been so  
5     gracious. But some of you tonight that I've met, I mean,  
6     I just -- you know, it's -- I'm just taken aback a little  
7     bit because it's not the neighbor -- the neighbors that  
8     we were used to back home.

9                     So anyway, my husband is here as well,  
10    Christopher Young at 110 Piedra. So can he be sworn in  
11    to say a few comments?

12                    MADAME CHAIR: Yes, that is fine.

13                    And I'm actually going to suggest we have a  
14    Sharon Bell who also has a hand raised. And I am going  
15    to ask if we can get you both sworn at the same time  
16    because I don't think Ms. Bell was here at the beginning  
17    of the meeting.

18                    MR. YOUNG: That sounds great. Thank you.

19                    MS. BELL: Actually, I've been here since the  
20    very beginning, so --

21                    MADAME CHAIR: Oh, I am so sorry.

22                    MS. BELL: Four hours, going strong.

23                    MADAME CHAIR: Then, Mr. Young, let's go ahead  
24    and get you sworn in.

25                    MS. YOUNG: Okay. Thank you.

1                   THE CLERK: Mr. Young, could you raise your  
2 right hand? Do you affirm under penalty of perjury that  
3 the testimony you're about to give in this matter is the  
4 truth, the whole truth, and nothing but the truth?

5                   MS. YOUNG: I do.

6                   THE CLERK: Thank you so much.

7                   MS. YOUNG: Yeah, I just wanted to say a  
8 couple things. First of all, you guys have been in a  
9 marathon to want. I apologize for joining in late. I  
10 got home late from work.

11                   But to the commissioners and lawyers,  
12 everybody that's involved here tonight, I really  
13 appreciate your tenacity. For me personally, where I  
14 work in the laboratory, it is -- there's a lot of growth  
15 that we're seeing right now. And the job market is hard  
16 to bring in folks. We've hired over a dozen employees in  
17 the last six months or so and the easiest ones that are  
18 to bring in, the easiest folks there are to grab and  
19 bring into the area, because if we do internal hiring  
20 it's really not doing any good. We're just robbing or  
21 creating more issues. The easiest folks that there are  
22 to bring in are younger people and it's very difficult to  
23 get mid career employees. I just wanted to kind of throw  
24 that out. Your tenacity, your patience tonight, and I  
25 know what you guys are going through is tough. We

1 appreciate your vision, your patience sticking through  
2 all of this situation.

3 And, you know, I just kind of -- all the  
4 neighbors we've met personally, we just really appreciate  
5 how you treated us coming into this neighborhood. We  
6 were lucky enough to meet the folks that are looking to  
7 open a daycare here. And, you know, just really looking  
8 forward to the opportunity. I just wanted to say that.

9 And it is disappointing to hear that our next  
10 generation is considered a noise violation or a nuisance  
11 or an impact to the community. I think this is a  
12 wonderful place. And I do appreciate everyone here  
13 tonight. Thank you.

14 MADAME CHAIR: Thank you.

15 All right. I see two more hands raised. So I  
16 see Ms. Bell and David North. And I'm going to  
17 just -- so people have an idea, I'm going to call for a  
18 break after Mr. North speaks. So keep that in mind. I  
19 think we all need a break. It is coming.

20 So go ahead and, Ms. Bell, if you would like  
21 to share.

22 MS. BELL: Sure. Thank you so much to  
23 everyone. Oh, my gosh, this is long. My name is Cheryl  
24 Bell. My husband is also here with me.

25 We live in La Senda. We are not close to the

1 proposed daycare. I want to qualify, I don't think it's  
2 black or white. I don't think if you say you're against  
3 a particular daycare in a neighborhood they are against  
4 children and the sound of children's voices. I'm a mom.  
5 I have teenagers. We raised them here. I love kids.  
6 But there is a reason why we moved here. You know, there  
7 was some comment about all -- you know, the schools  
8 Pinion and Sage Montessori and Ponderosa or -- is it  
9 Ponderosa over by the park?

10 We moved here for a reason. We moved here  
11 because it wasn't in an area that had higher traffic,  
12 higher noise. I love kids. And I mean, I think the  
13 daycare sounds fabulous. I really do. I just -- and my  
14 main concern is more about precedent. If a daycare  
15 decided to open up next door to us, my husband and I both  
16 work from home. And, you know, yeah, kids voices are  
17 great, but kids voices all day long is not really why we  
18 chose this neighborhood. And so I just wanted to say  
19 that.

20 I will say that I wholeheartedly agree with  
21 the couple, I think it was the Smiths that came early on  
22 talking about the safety on La Senda Road. I walk that  
23 road regularly. Frankly, it's dangerous. My husband  
24 rides his bicycle. That curve is frightening. A woman  
25 was killed this past year at the intersection of Piedra

1 Loop and State Route 4. An increase of traffic, yeah,  
2 there's not much traffic on our roads, but people drive  
3 like maniacs. I almost got hit yesterday on the corner  
4 of La Senda and Piedra Loop. So that concerns me a  
5 little bit.

6 I guess that's all I really have to say. I  
7 don't want to be in this place of I'm against child care,  
8 I'm against all this. I just, I want to make a point  
9 that in our community, in this neighborhood it's rural,  
10 it's agriculture. I love the sound of roosters. I love  
11 the sound of horses and dogs. And yeah, kids, my  
12 neighbors, that's great. I just, it's not something I  
13 was looking for to have a daycare next to me. So I'm  
14 just looking at this from a precedence standpoint, and I  
15 hope you'll consider that as you make this decision.

16 Thank you so much.

17 MADAME CHAIR: Thank you.

18 And we will move now to Mr. North. And again,  
19 I'll just state that after Mr. North speaks we're going  
20 to take a brief break. I do see that we now have  
21 somebody else with a raised hand, so we're not  
22 going -- everyone who needs to speak or who wants to  
23 speak will get a chance.

24 So, Mr. North, go ahead.

25 MR. NORTH: Thank you.

1 First there was -- excuse me, please pardon my  
2 voice. I've had something wrong with it for days.

3 Commissioner Priestley asked about the  
4 households, I believe, pro and con that have spoken or  
5 sent letters. And by my count it's four, five against  
6 six when you include the letters and the people who  
7 commented tonight. Really it's just a tie as far as  
8 people who are in the 300-foot area.

9 Moving along, I agree with Mr. Paulson's  
10 comments that it sounds like a nice daycare. I agree  
11 with Ms. Landman when she says that Denise is good with  
12 kids. I've watched her and she is. That's not really  
13 the issue. Mr. Paulson's comment that the people who are  
14 going to be mostly affected are to the north and east,  
15 and that's correct and we are not. So really I'm not  
16 going to be that heavily affected, I don't think. I  
17 think maybe it will be annoying at times but no big deal.

18 The thing that got me interested in this was  
19 going and visiting my neighbors and when I saw how close  
20 and actually how easily we can hear what's going on in  
21 that yard. I think it would be an irritation for the  
22 people who live near there.

23 As far as nobody seems to be terribly  
24 concerned about whether or not an inexpensive daycare  
25 would affect the people who trying to run commercial

1 businesses. And I have to say I'm in agreement with  
2 that. But one of the things that surprises me about this  
3 whole situation is that people are saying that in order  
4 to get working people to come here what we need is more  
5 daycare. Perhaps they don't know that there is federal  
6 money that can just any time the lab wanted to, they  
7 could start a daycare. They could even give free daycare  
8 to their employees and they choose not to do that. I'm  
9 not exactly sure that another 12 kids or six is going to  
10 make that much difference when you have this huge  
11 problem. And I can understand that it would contribute a  
12 little bit of something and it would be a different  
13 choice but it's not really going to do that much.

14 One of the things that puzzles me is if the  
15 decibel provisions of section 18 are of no interest  
16 whatsoever to this commission but you're stuck with the  
17 problem of trying to decide if the applicant has proven  
18 that there will be no detriment to peace and comfort,  
19 what exactly is the criteria that you're supposed to  
20 apply? There is one in Los Alamos code, actually in the  
21 16-277, I think it's F, there should be no noise or  
22 vibration that crosses the property line from a business.  
23 Now, that's section 16, not section 18, no noise. And  
24 I'm not exactly sure that that's a fair criterion. If  
25 you go to the World Health Organization you'll find that

1 it's 55 decibels that's an announce, period. There you  
2 go. And that happens from quite a radius from a  
3 property.

4 So what criteria are you supposed to use to  
5 establish? You might ask -- I can't, but you might ask  
6 that question and try to get a determination on that so  
7 that you can make a legal decision.

8 Now, when we're talking about the covenants,  
9 let me read you a couple of little things. The covenants  
10 are to run with the land and shall be binding all  
11 properties, and it goes on to explain the period which is  
12 essentially forever in the last -- the majority of the  
13 residents voted out. That has nothing to do with the  
14 HOA.

15 The next clause is enforcement. Enforcement  
16 shall be by proceedings at law or in equity against any  
17 person or persons violating or attempting to violate any  
18 covenant. Okay. Now what that really means is that if  
19 this commission does not want to consider those  
20 covenants, and you can regardless of what the staff says,  
21 that what you're really saying is, okay, we're not going  
22 to pay any attention to that aspect of the law and you  
23 can just go to court, which is probably what would end up  
24 happening. But the covenants are enforceable in court.  
25 It says so right there.

1                   Now, so I'm trying to figure out if I  
2 covered -- now I'm going to move into a subject that's  
3 come up, and as far as I know there's absolutely no  
4 evidence been presented in this matter, or at least any  
5 evidence that is substantive. When I was looking through  
6 the record I realized going down the list of things, and  
7 bear in mind that it's my understanding in a way that the  
8 applicant has to approve every single point of the  
9 conditions. And one of those is that there be in effect  
10 on the property values.

11                   It seemed to me that there probably would be  
12 because one of the things that we were very concerned  
13 about because we used to live next to a daycare, and it  
14 was really loud, is so when we went looking for a house  
15 we didn't want to live next to a daycare or a school.  
16 Some people do, some people don't. We're one of the  
17 people who don't. But it seemed to me that, okay, if  
18 people don't want to live near daycares that's probably  
19 going to lower the property value. It shrinks the buying  
20 pool. It's just logic, so let's see if we can find  
21 something that's evidentiary in that manner. And noises  
22 now acknowledge to be enough of a problem that Realtors  
23 call it out in their listings. It's just kind of  
24 automatic. Sellers are required to disclose known noise  
25 issues or they could possibly face liability issues. But

1 the question is can you put a number on that? Is it  
2 real?

3 And speaking about neighborhood noise, the  
4 Appraisal Institute at present, Richard Al Borgess said  
5 I've seen many situations where external factors can  
6 lower home values by more than 5 to 10 percent. 5 to 10  
7 percent. But that's general. That's just noise. And  
8 okay, maybe there's something better. So I kept looking.

9 I found an almost identical case to ours had  
10 come up in a small town in Philadelphia or Pennsylvania.  
11 I'm sorry, a professional appraiser with 10 years of  
12 experience, Joseph F. Tolotta, that's T-o-l-o-t-t-a, was  
13 consulted about a daycare in the Hill Crest area of  
14 Philipsburg with a maximum of eight children. Wow. He  
15 said if there is a house with a daycare across the  
16 street, across the street is going to have an effect on  
17 my appraisal. If it's a \$100,000 that doesn't mean it's  
18 going to drop \$50,000. The drop would not be huge, about  
19 10 to 15 percent. 10 to 15 percent. Not only in Hill  
20 Crest, that's everywhere.

21 Okay. Now, if it's a \$600,000 house, which is  
22 probably a low average for La Senda, that would be 60 to  
23 \$90,000 each contributed. Even if you use the 5 percent  
24 that was originally said by Mr. Borgess, that's still  
25 30,000, or you could say, nah, it doesn't scale at all.

1 Let's go back to the original 100,000. That would be 10  
2 or \$15,000 each. That's what you're asking people to  
3 give up on their evaluation.

4 Now, another problem is that is that many of  
5 the people here probably will end up having to move their  
6 properties along because of one reason or another before  
7 this daycare closes down. So it's really going to be a  
8 loss. We're not talking theoretical. We're talking for  
9 real.

10 Another point, the Hill Crest area of  
11 Philipsburg is coincidentally just south of the main part  
12 of town just like La Senda. It also has larger than  
13 usual lots just like La Senda. Now, it's my  
14 understanding that the applicant was required to  
15 demonstrate that there would be no loss to property  
16 value. We now have both logic and expert testimony tell  
17 us there will be a detriment. I can't really see that  
18 there is any legal way to approve a special use permit in  
19 those situations or for that matter how you're going to  
20 arrive at a peace and comfort decision that can hold up  
21 in law.

22 Another little quick point about the 83.6  
23 decibel reading that we got at Dragonfly. It's real  
24 point is to point out how much the maximum value can be  
25 greater than the red value. In our case it came out to

1 be essentially 20 decibels. So there's no telling what  
2 the actual difference between Ms. Matthews's average  
3 readings and maximum readings were, but it can be a lot.  
4 And the maximum reading is what's determined in section  
5 18. Now, I know you're not required to think about  
6 section 18. On the other hand, we have to have some  
7 criteria to decide at what point noise becomes a problem  
8 to peace and comfort, particularly to the neighbors of  
9 the north and east.

10 I don't envy you coming up with an answer to  
11 that, but I think I've established beyond at least any  
12 evidence that's been presented or likely to be presented  
13 that we really are looking at a loss of property value if  
14 this business starts up. And I think that means that it  
15 just won't be a legal business.

16 Thank you for your time. That's all I really  
17 need to say at this time.

18 MADAME CHAIR: Thank you.

19 Okay. As promised, I'm going to recommend a  
20 10-minute break. I see that we do have two people with  
21 their hands raised. You will be given an opportunity to  
22 speak. I thank you very much for hanging in for this  
23 long, and that goes for everybody. We appreciate it.  
24 And so I will see people back here at 10 o'clock.

25 (Recess taken.)

1                   MADAME CHAIR: All right. We are back at  
2 10:01 and we will continue where we left off, which was  
3 public comment. And I believe Ms. Keith is next.

4                   And remind me, please, were you here at the  
5 beginning of the meeting to be sworn in?

6                   MS. KEITH: I was not, so I need to be sworn  
7 in.

8                   MADAME CHAIR: Okay. We can take care of  
9 that.

10                  THE CLERK: Sure.

11                  Ms. Keith, could you raise your right hand?  
12 Do you affirm under penalty of perjury that the testimony  
13 you're about to give in this matter is the truth, the  
14 whole truth, and nothing but the truth?

15                  MS. KEITH: I do.

16                  THE CLERK: Thank you so much.

17                  MADAME CHAIR: Okay. Go ahead.

18                  MS. KEITH: Thank you, so I know it's been a  
19 long evening and I will be quick.

20                  I am Cathy Keith, the director of the  
21 Community Partnership Office at Los Alamos National  
22 Laboratory. So we have heard tonight about the need for  
23 child care from LANL employees. I would just like to  
24 reiterate tonight that we are hearing from Los Alamos  
25 National Laboratory employees about their dire need for

1 child care especially an emphasis for child care for  
2 preschool age students and our employees struggling to  
3 find that.

4 I just want to, you know, note that for the  
5 first time in Los Alamos National Laboratories history we  
6 have more employees who live outside Los Alamos County  
7 than inside of Los Alamos County. However, we have heard  
8 an out crying from those employees who live in Los Alamos  
9 County more than others about the lack of child care.

10 Sorry about that.

11 I also wanted to address really quickly some  
12 that we've heard tonight around housing (inaudible) and  
13 potentially --

14 THE CLERK: It looks like she got  
15 disconnected.

16 MADAME CHAIR: Yes, I believe that we lost  
17 her. I'm going to recommend that we move forward with  
18 Ms. Shulze and hopefully Ms. Keith can rejoin us and  
19 finish her statement.

20 MS. SHULZE: All right. Can you hear me?

21 MADAME CHAIR: Yes, we can hear you.

22 MS. SHULZE: All right. Hi, my name is Emily  
23 Shulze. I would like to strongly support the issuance of  
24 a special use permit for Worms and Wildflowers. I  
25 actually grew up in Los Alamos and I moved back here

1 following graduate school with my husband who grew up in  
2 White Rock. We have both moved back here and chose to  
3 raise our family here. We currently have a three year  
4 old daughter and a five year old son.

5               So firstly I'd like to illustrate my personal  
6 journey attempting to secure child care in Los Alamos.  
7 Due to our schedules as full-time employees at LANL,  
8 which at the time did not offer maternity leave. I knew  
9 we would need child care approximately two months after  
10 my children were born, and I had exhausted both my  
11 vacation and sick leave. So in order to secure a spot in  
12 Los Alamos from the waiting list, I had to begin paying  
13 full monthly tuition greater than \$800 a month before my  
14 children were even born to secure spots for child care in  
15 this community. This was for both of my children,  
16 costing my young family thousands of dollars before  
17 service was even rendered.

18              My older sister who currently lives in Boise,  
19 Idaho has recently received a job offer from LANL as well  
20 and has not been able to start -- to set a start date  
21 because she has not been able to secure a spot that fits  
22 her family's needs in Los Alamos.

23              Further, I'd also like to speak to Mr. North's  
24 comments on LANL's supposed federally funded child care,  
25 and I think Cathy will probably be speaking to that as

1 well. I am also the coach here at the Institutional LANL  
2 Women's ERG, the employee resource group for sitting  
3 women in Los Alamos at the National Laboratory. On  
4 December 7th, so just two months ago, we hosted a panel  
5 discussion that was attended by over 140 members on this  
6 very topic of child care scarcity in this community.

7 And this panel was led by two LANL deputy  
8 directors, the director of HR and the director of  
9 community programs, Cathy, who I'll leave to this topic  
10 to address it directly with the staff. To child care  
11 availability is dismal in this community and is clearly  
12 effecting the laboratory's able to hire and especially  
13 retain women. And so, you know, I strongly support the  
14 issuance of a permit to allow more daycare spots. And I  
15 also, you know, personally hearing from Denise's  
16 testimony, I would love to put my children, myself, into  
17 this program. Thank you.

18 MADAME CHAIR: Thank you.

19 It does look like Ms. Keith has rejoined us.

20 MS. KEITH: My apologies for losing the  
21 connection really quickly. So if it's okay, I'll just  
22 finish briefly my statement.

23 We also heard a little bit tonight about  
24 property values. And I just want to make the point that  
25 in my experience property values are usually driven by

1 supply and demand. As of last week we had 18 properties  
2 for sale in Los Alamos County. And the laboratory  
3 projects hiring 2,000 employees this year, which I think  
4 puts Los Alamos County property owners in one of the most  
5 prime positions in terms of property values in this  
6 country based on the laws of supply and demand.

7 So in closing, I just want to reiterate that  
8 Los Alamos National Laboratory is in support of increased  
9 child care opportunities for our employees. Thank you  
10 for your time tonight.

11 MADAME CHAIR: Thank you.

12 Seeing no hands raised currently, now is the  
13 time for cross-examination by the applicant, by county  
14 staff, or by other parties. And so did I -- yes, and so  
15 again, these are questions only. The time for stating  
16 opinions or statements of evidence has passed. So if  
17 anyone -- if the applicant, if staff, or if other parties  
18 have questions to any of the people who just presented  
19 testimony or evidence, now is the time to do that.

20 All right. Seeing no hands, it is now time  
21 for the commissioners to ask questions of any of the  
22 witnesses or interested parties who have presented  
23 evidence.

24 All right. Oh, Commissioner Dewart.

25 COMMISSIONER DEWART: Thank you. I'd like to

1 ask a question to Cathy Keith.

2                   You mentioned that the laboratory is  
3 interested in expanding child care opportunities. Is  
4 there anything specifically that the laboratory is  
5 interested in doing to help expand child care  
6 opportunities?

7                   MS. KEITH: Commissioner, thank you so much  
8 for the question. So it's really something that as the  
9 director of the Community Partnerships Office that we  
10 need to work with our communities on, right, is expanding  
11 child care opportunities. What we hear from our  
12 employees is it's children under five, under school age,  
13 that our parents are grappling with child care  
14 opportunities. So we're most interested in the community  
15 being able to supply more child care opportunities in  
16 birth to five year range based on the needs of employees.

17                   COMMISSIONER DEWART: So I'm not hearing any  
18 specific activity that the laboratory at this point  
19 thinks that it can take to support child care?

20                   MS. KEITH: You're correct. We've had  
21 numerous conversations with the employees, but child care  
22 is not the business that Los Alamos National Laboratory  
23 is in as an R&D facility. We are in the business of  
24 furthering national security for the country but not  
25 really in the business of offering child care. And we

1 would rely on community partners and small businesses to  
2 offer those, which I think in turn really strengthens our  
3 communities and our economies around the laboratory.

4 COMMISSIONER DEWART: Thank you.

5 MADAME CHAIR: All right. Are there other  
6 questions from commissioners?

7 All right. Seeing none, excuse me, the  
8 commission can now allow parties to make rebuttal. And  
9 any party making a rebuttal will also be subject to  
10 cross-examination by other parties and further commission  
11 questions.

12 All right. Seeing no hands, do any of the  
13 commissioners wish to recall any party or witnesses for  
14 further commission questions?

15 All right. Then before we close this hearing  
16 to the receipt of evidence and discuss the decision, I'm  
17 going to turn it over to our legal counsel, Kevin Powers,  
18 to discuss this issue of the HOA and CCRs that have been  
19 addressed several times during this meeting.

20 MR. POWERS: Thank you, Chair Adler, and  
21 Commissioners. I know one of the topics that's discussed  
22 and sent in already to the commission earlier has been  
23 the homeowner covenants and land restrictions based upon  
24 those private contracts. And the commission's  
25 responsibility is not to enforce those. Those are

1 private agreements between an active homeowner  
2 association and the landowners or the property owners in  
3 subdivision that are subject to the HOA.

4                   Unfortunately, the commission has a  
5 specifically set criteria it must review, and that is  
6 found in 16-156. Any action under the covenants needs to  
7 be taken by the homeowners association or the owners  
8 lots. It is unfortunately just outside the scope and  
9 ability of the county to enforce as well as the  
10 commission.

11                   MADAME CHAIR: Okay. Thank you for that  
12 clarification.

13                   All right. I will now close the public  
14 hearing to receipt of evidence and ask the commission to  
15 review and discuss the applicable criteria. Following  
16 the discussion of the criteria, I will ask the commission  
17 to discuss a motion on this case. So I do want to  
18 explain that we are doing things a little bit differently  
19 this evening because we're in the process of sort of  
20 changing our procedures. And so what the commission will  
21 be doing is discussing the evidence and how it relates to  
22 the decisions to be made in both of these cases. And we  
23 will then be recessing for legal counsel and for myself  
24 to put together the order, orders, one for each case,  
25 that will be voted upon by the commission. And that vote

1 will happen at our next meeting.

2 So I know that it's quite different from other  
3 things, from how we've done things in the past, but this  
4 will give the commission an opportunity to review the  
5 order, to have more time to review the order and make  
6 sure that all of our bases are covered before we vote and  
7 make a legal decision.

8 Kevin, is that accurate? Did I miss anything?

9 MR. POWERS: Yes, Chair, Commissioners, that's  
10 correct.

11 MADAME CHAIR: Thank you very much.

12 So at this point the commission will go  
13 through the discussion of the criteria. And for -- we  
14 will using, because we are looking at the two cases, the  
15 criteria we will be using are section 16-156 and section  
16 16-282. And I believe are those criteria the same?

17 MR. POWERS: Chair, if I may.

18 MADAME CHAIR: Yes, please.

19 MR. POWERS: And we've heard a little bit of  
20 discussion about it tonight. 16-156 and our guiding  
21 review criteria for granting of a special use permit.  
22 282, 16-282 and 16-277 are land use restrictions. So  
23 once a permit is granted those will apply to the  
24 operation of a business if it's granted to be done.

25 So the first permit is the SUP 2022-0020. And

1     that implies the 282 sections of operation of a daycare  
2     facility. And so that criteria you look to, just to make  
3     sure if the SUP is approved, those criteria will apply  
4     and they're sort of conditions to the grant of a permit.  
5     If you are a daycare you have to comply with those  
6     provisions. And one of those is being the noise  
7     ordinance. And that's complying with it after it's in  
8     operation. And that's one of the points that was made  
9     here tonight.

10                 So your main criteria you have to go through  
11     is 16-156, 1 through 5. And I think as just an initial  
12     point, because there's no site plan in landscaping and  
13     stuff, 16-156-5 really doesn't apply to this special use  
14     permit. So really we have four criteria to review for  
15     tonight.

16                 MADAME CHAIR: Okay. Thank you. Thank you  
17     for clarifying that.

18                 So let us address section 16-156, criteria 1,  
19     that the request substantially conforms with the  
20     comprehensive plan and the establishment, maintenance, or  
21     operation of the use applied -- the use applied for will  
22     not under the circumstances of the particular case be  
23     detrimental to the health, safety, peace, comfort, or  
24     general welfare of persons residing or working in the  
25     vicinity of such proposed use or be detrimental or

1 injurious to property or to the value of property in the  
2 vicinity or to the general welfare of the county.

3 And I would ask for participation from all of  
4 the commissioners who are present. And I think the  
5 easiest way to do that is to raise our hands  
6 electronically in Zoom, and we can have our discussion  
7 that way.

8 Commissioner Priestley?

9 COMMISSIONER PRIESTLEY: Yes, thank you. So  
10 before we get into the -- my comments specific to this  
11 first criteria, I do want to point out that it is the  
12 applicant's responsibility to demonstrate compliance with  
13 the criteria. And so when I look at the special use  
14 permit application criteria one, I do not believe that  
15 the applicant has demonstrated compliance with that  
16 criteria.

17 Specifically we heard a lot about peace and  
18 comfort, which are pretty generic type terms. We heard  
19 about, I wouldn't even call them noise surveys. They  
20 weren't scientific. They weren't -- they were using an  
21 app, lots of different variables. But we heard a lot  
22 about noise, and I think does go into the peace and  
23 comfort and general welfare. The applicant did not  
24 address how the application complies or conforms with the  
25 comprehensive plan. The applicant did not have any kind

1 of information that would talk about how the proposal  
2 would not be detrimental to the property value.

3 And so I just feel like the criteria one was  
4 not addressed by the applicant to the point that it  
5 demonstrates compliance. Thank you.

6 MADAME CHAIR: I want to say that I have a --  
7 you know, I think the term peace, comfort, and general  
8 welfare are too subjective to really be used as metrics  
9 in a decision like this. I think everyone has a  
10 different definition of what those words mean. And so it  
11 is really difficult for me to apply those -- to apply any  
12 of this evidence to whether or not it meets those  
13 specific criteria because that -- you know, they're not  
14 really defined. And so I just don't think it's a  
15 possibility, honestly. So that is -- that's my main  
16 concern there.

17 I will turn it over to Commissioner Martin.

18 COMMISSIONER MARTIN: Yes, thank you, Chair.

19 Broadly speaking, I think that I support the  
20 views. I feel like the applicant met the criteria and  
21 support the views that the applicant put forward and the  
22 opinions of staff regarding the application and whether  
23 it meets criteria and particularly criteria A.

24 So in particular, significantly, in many ways  
25 this doesn't add anything to the detriment, to the

1    general welfare of our community. But it substantially  
2    adds to it by meeting a critical need, a critical need in  
3    a moderate economy to be providing child care, critical  
4    in our community. So I think about the harms that people  
5    have presented here today. And, you know, we'll address  
6    them. But I didn't find those arguments persuasive. And  
7    I'll try to take time to address them individually, but  
8    I'll also try to be as brief as possible because I know  
9    that we're all -- you know, this is a long meeting here  
10   so I don't want to extend this or be, you know, more long  
11   than I have to be.

12               I do think also it's important that we, as a  
13   commission, apply a consistent -- apply the criteria  
14   consistently, consistently across time, and that includes  
15   asking for a consistent burden of proof from our  
16   applicants. And I just got to say it's surprising to  
17   hear concerns being raised about, you know, the ires for  
18   noise studies, for property value studies, for all this,  
19   none of this has been asked for. And when we talk to the  
20   staff itself this stuff doesn't need to be provided. In  
21   fact, she couldn't name a single time it's been provided.  
22   I can't think of a time when a commissioner has asked for  
23   a study about how things will effect property. And it's  
24   impossible, really, kind of indelible to tell. I mean,  
25   we can maybe -- maybe there's some areas where there's

1     persuasive evidence.

2                     But, you know, some people might like living  
3     next door to a daycare and they might reasonably, I can  
4     as the commissioner could reasonably see how that could  
5     be a desirable trait. Because then you can just kind of,  
6     you know, walk your kids next door. So I don't know, as  
7     far as it effects property values, I don't know how it  
8     will effect property values. I don't think anybody here  
9     knows, but I do think that this commission has not really  
10    asked for a high burden of proof on that element ever in  
11    my, you know, coming on five years here.

12                    So I think we really need to be consistent how  
13    we apply those criteria. And so I don't view any -- I  
14    don't have any concerns about that particular element as  
15    articulated by Commissioner Priestley, and I would  
16    dissent from him on that point of view.

17                    You know, I do think that there was -- the  
18    comprehensive plan was brought up many times, many  
19    elements and aspects of the comprehensive plan. And I'll  
20    just touch upon them, and there was a lot of concern  
21    about whether or not this changes the character of the  
22    neighborhood, supports the character, is detrimental to  
23    the character. It's very subjective. We heard from a  
24    lot of people with different views on this. And again, I  
25    don't know how you can provide a sort of objective answer

1 to that.

2 But I feel like I think about it in terms of  
3 the activities that are taking place at that proposed  
4 use. And the activities as I see them, you know, the  
5 provision of child care, you know, co-locating children  
6 for social and emotional educational development, these  
7 uses are already occurring and they're intrinsically a  
8 part of the neighborhood already. So in my view, I view  
9 it as consistent with the character of the neighborhood  
10 because the uses that would be happening in this area are  
11 consistent with the uses already going on. And I would  
12 make the same argument about light traffic, which is  
13 already happening in the area. And, you know, people  
14 have talked about noise levels as well. And I would view  
15 that in a similar light.

16 So I don't want to see us start imposing out  
17 of thin air like whole new essentially burdens of proof  
18 on people to come to the table with scientific studies  
19 about, you know, for noise, which we've never required,  
20 ever for something like this. Or, you know, effort --  
21 you know, economic (inaudible) and economic models about  
22 property values as if moving forward if we were to do  
23 that that would be a significant burden on all our  
24 applicants moving forward. And it would be also just  
25 impermissible to apply that only for this particular

1 case.

2 I want to take a moment to address some other,  
3 you know, objections. You know, a lot of the objections  
4 that were raised tonight were not really specific to  
5 this, you know, daycare. And, you know, the objections  
6 about property values and the study, you know, that's not  
7 an argument against this daycare. That's an argument  
8 that said residential daycares in this community are just  
9 not -- would not be permissible anywhere, right. There's  
10 nothing about this particular site.

11 And to accept that argument would be  
12 essentially to accept that, hey, the commission has erred  
13 in every single residential daycare that it's approved  
14 since its beginning, essentially. Likewise with the  
15 noise. I mean, you know, I'm not going to assess the  
16 claims that, you know, they're getting decibels of 85 --  
17 you know, 85 decibels out of a near daycare. It seems  
18 pretty high. I mean, you know, but I'm not there. I'm  
19 not doing the noise measurements.

20 So, you know, but I will say that you have a  
21 safeguard against noise. We have a noise code. That's  
22 enforceable. You know, if they're right about this and  
23 this is making a ton of noise, they have actions,  
24 corrective actions that they can take under chapter 18,  
25 chapter 18 outside of our purview. But I want to point

1 out that the concerned neighbors do have -- you know,  
2 they're not going to be necessarily subjected to  
3 enduring, you know, crazy amounts of noise, which is the  
4 concern that they've articulated.

5 Very briefly, you know, there was a claim by  
6 one of the opponents who said, you know, this is sort of  
7 tantamount to zoning this parcel. It's commercial.  
8 That's not accurate. This is a permitted use of chapter  
9 16. So, you know, he can talk to staff about it if he's  
10 confused. But that's the way it is. That's it. And  
11 so --

12 MADAME CHAIR: Commissioner Martin, I just  
13 want to remind you that the purpose of this discussion  
14 more specifically addressing the criteria, the first  
15 criteria in this special use permit.

16 COMMISSIONER MARTIN: All right. I  
17 understand. That last one was not particularly germane  
18 to this criteria. But, you know, people come to this  
19 hearing, they want to make sure that we're responding to  
20 their concerns. And I just wanted to provide a response.  
21 So I do apologize, Chair, if I'm a little bit outside the  
22 domain. But I thought that was worth addressing here.  
23 So I'll conclude my remarks. That sums up my views.  
24 Thank you.

25 MADAME CHAIR: Thank you.

1 Commissioner Wade?

2 COMMISSIONER WADE: So I just -- I think I  
3 want to expand a little bit more on the applicant's  
4 response because I do think her answer does actually  
5 speak to the first criteria. So the fact that she's  
6 choosing to be a licensed home provider is directly  
7 taking care of criteria one when we're talking about the  
8 health, safety, peace, comfort, and welfare of people  
9 residing and working in the vicinity, not only the  
10 children but ensuring that the property and, you know,  
11 the community that it resides in is actually going to be  
12 safe to everyone that is nearby. And that is actually  
13 backed up by the state because the state will come out  
14 and they will come at least a couple times a year to  
15 guarantee that or she will not have a license.

16 Now, what the -- what I don't know if people  
17 understand, Los Alamos, as far as I know and I am -- so  
18 those of you that don't know me, I am the executive  
19 director at Little Forest Play School. I have been there  
20 for over 11 years. So I work directly with the state for  
21 many years and I have been a director in other states  
22 from DC to Washington state, so this is very much my  
23 wheelhouse. So what people may not understand is that  
24 from my knowledge and from the licensers that I work  
25 with, Los Alamos does not currently have a state licensed

1 home care provider. There are many home care providers  
2 but they are not licensed through the state.

3 So the fact that Denise is choosing to go  
4 through the state is directly meeting criteria one. And  
5 I -- so I want to really highly emphasize that. And, you  
6 know, several other commissioners have already said this,  
7 but I'm going to say this again, the wording of peace and  
8 things like that, it's very subjective because what I  
9 heard throughout this whole process was this peacock. I  
10 don't know whose peacock it is, but I heard this over and  
11 over. And I'm going this sounds like this peacock is  
12 making some pretty loud noise that's kind of annoying the  
13 neighbors but that's not an issue. So if we can -- if  
14 peacocks are okay, children are okay.

15 And Little Forest is surrounded by homes a lot  
16 closer than this property line. We spend a lot of time  
17 outside because we also believe in outdoor play, and so  
18 we are outside as much as we can. Children do not run  
19 around screaming as loud as they can for hours on end.  
20 That's not happens. They may laugh for a, you know,  
21 burst of energy, they may giggle. If that's an  
22 annoyance, I'm sorry, like that hurts my heart for anyone  
23 who feels that way. But again, subjective, right, this  
24 is my -- this is my perspective. So this is where I  
25 really struggle with this debate of what is peace.

1     Because to me, children's laughter, peace. Peacock,  
2     maybe not so much, right. Love animals, but I don't  
3     know, I -- you know, when I have to pick one, I'm going  
4     to go with children.

5                 So when you talk about the comprehensive plan  
6     you can't have growth, an economy vitality without taking  
7     care of your youth. You can't have one without the  
8     other. You can't keep building a tower without making  
9     sure the foundation is sound and solid. Children are our  
10    foundation. And if we forget about them we will crumble.  
11    That's just real life. So I -- again, I would argue that  
12    this is directly supporting our comprehensive plan. And  
13    it may not be written verbatim that child care is a vital  
14    importance to our county. That's an error on our part,  
15    and that should be written in there because it is.  
16    Because we can't have 2,000 employees coming into LANL  
17    with no place to put their children. That doesn't work.  
18    It just -- like what are you going to do with the kids,  
19    take them to work? But you can't, right, they can't get  
20    badges. You can't take them to school with you. It's  
21    not take your kid to school every day, right, so we have  
22    to take care of our youth. It's not an option. It's a  
23    have to.

24                So that is my -- that is where I stand with  
25    criteria one.

1 MADAME CHAIR: Thank you.

2 Commissioner Nakhleh.

3 COMMISSIONER NAKHLEH: Thanks, Chair.

4 Yeah, just to reiterate what everybody else  
5 has said. I've been keeping notes, and my first note is  
6 you can't actually prove a word like peace because it's  
7 subjective. And I know we've all been saying that but  
8 obviously I agree.

9 So if you can't prove something that's  
10 subjective, I don't see, to reiterate Neil's point, how  
11 that burden of proof can land on this applicant when I  
12 don't think we've ever asked that from -- I don't  
13 remember asking that of other applicants before. So we  
14 have to be consistent, like we said, about the burden of  
15 proof. And I think it can be argued that, as April said,  
16 that a daycare itself offers peace, comfort, and welfare  
17 to many residents.

18 I actually lived next to an in-home daycare in  
19 Santa Fe, and it did not disturb my peace, comfort, or  
20 welfare. If anything, it contributed to it because  
21 occasionally I could send my kid over there. And so just  
22 sticking to criteria one, I think it has been met.

23 MADAME CHAIR: Thank you.

24 I am going to interject here my thoughts,  
25 especially as regards to addressing the comprehensive

1 plan. First I would like to sort of reiterate what  
2 Commissioner Martin said about consistently -- you know,  
3 dealing with these cases consistently and that we don't  
4 ask for -- we don't place a higher burden of proof on any  
5 one applicant over another.

6 I also think it's important to address the  
7 fact that, you know, I think the assumption is that as  
8 the Planning and Zoning Commission we are familiar with  
9 the county comprehensive plan and so it is not -- it's  
10 not necessary in all cases for those criteria to be  
11 addressed verbatim directly. We are familiar with the  
12 comprehensive plan, and I think that it's acceptable for  
13 applications to demonstrate through their content how  
14 they meet the goals of that comprehensive plan.

15 And I know the two big ones were, you know,  
16 economic diversity, which I think has been addressed. I  
17 do want to address this idea of neighborhood character.  
18 And, you know, I do want to clarify that the character of  
19 the neighborhood is just that, it is the character of the  
20 entire neighborhood and not just the character of the  
21 immediate vicinity of, you know, wherever the proposed  
22 action is taking place. And I do tend to agree that  
23 although La Senda is zoned as residential agricultural,  
24 it is written into the code that a special use permit is  
25 an option for home daycares. And I think there's a

1 reason that is in the code. And if we're going to be  
2 going by these county approved documents that we need to  
3 take that into account and we need to think about why  
4 that exemption is in there in the first place.

5 So, you know, I do think that approving this  
6 application does not negatively effect the character of  
7 the neighborhood but is in keeping with the character of  
8 that neighborhood as a place that is zoned residential  
9 agricultural. So that is my piece.

10 I'm going to turn it over to Commissioner  
11 Dewart.

12 COMMISSIONER DEWART: I concur with the  
13 observations that the other commissioners have made about  
14 having kind of a level playing field in evaluating  
15 applications. We want to do that.

16 I see this as a balance, and I think, Chair  
17 Adler, you -- I think you kind of addressed it fairly  
18 directly.

19 Our community is changing. As was noted, we  
20 are becoming a younger community after many years of many  
21 decades of getting older. And so the question about  
22 preserving the character of neighborhoods, it has kind of  
23 been in my view, it has to be looked in the fact that our  
24 community is changing by the laboratory, by what's  
25 happening with the laboratory.

1           I think the questions of noise are legitimate  
2   and they're good questions. But we never want to say  
3   that -- and a number of commenters said this, we never  
4   want to associate children with being obnoxious or a  
5   nuisance, because they're not. They're a part of the  
6   heart of our community. So in general, in the broader  
7   community, the noise, as a number of people in the  
8   neighborhood have said, it's not going to effect them.  
9   But it will effect -- it will be a change for some of the  
10   near neighbors, and that's a truth. But whether that is  
11   a detriment to the peace and comfort and general welfare,  
12   I think, is a subjective value.

13           And so I do believe the applicant has met the  
14   burden of proof for criteria one. Thank you.

15           MADAME CHAIR: Thank you.

16           Commissioner Roberson, do you have something  
17   to add?

18           COMMISSIONER ROBERSON: I certainly do. Thank  
19   you, Chair.

20           I look at this in a couple different ways.  
21   But my first approach to this looking at it from being an  
22   advocate for young families in Los Alamos, specifically  
23   White Rock, in doing so the first things that come to  
24   mind are words like, you know, unmet need, added value,  
25   economic vitality. And I think that said, that also ties

1 to the comprehensive plan as well. All that said,  
2 because it looks like to me, in my opinion, should I say,  
3 that this will be the right direction that we need to go  
4 in at this point in time.

5 And here again, I kind of got tied up with the  
6 being detrimental to the health, safety, peace, comfort.  
7 You know, as stated earlier, I'm not going to repeat all  
8 that because they said it already about how you measure  
9 those things. You can't really in the big scheme of  
10 things, peace, comfort, general welfare, and health. You  
11 know, there's other -- there's bigger fish to fry. In  
12 layman's terms, there's bigger fish to fry going on in  
13 comparison with a daycare center that I think in my  
14 opinion should not have any -- it does not have any  
15 detrimental -- it's not detrimental to the health,  
16 safety, peace, comfort, or general welfare of persons  
17 residing or working in the vicinity.

18 To make a long story short, that said, it's my  
19 opinion that the applicant meets the criteria for  
20 criteria one. And I'll leave it at that. Enough said.  
21 Thank you.

22 MADAME CHAIR: Thank you.

23 Are there any other comments? Commissioner,  
24 is your hand just still raised from before or did you  
25 have another comment? Good. Thank you.

1                   Is there any other discussion, are there any  
2 other commissioners that would -- yes, Commissioner  
3 Priestley?

4                   COMMISSIONER PRIESTLEY: Yeah, thank you.

5                   So I disagree with a lot of what has been  
6 discussed tonight. But, you know, we're not talking  
7 about being in favor or against -- you know, who can't be  
8 in favor of a daycare center. We all know that that's a  
9 need in the community. But the Planning and Zoning  
10 Commission looks at land use and we have criteria that we  
11 follow. It's not whether we think it's a good idea or a  
12 bad idea. We have to look at the criteria.

13                  And I heard a couple times where, at least in  
14 my impression what I heard was, well, that criteria  
15 really doesn't -- it's hard to -- it's hard to measure  
16 them. But that's the criteria we're given. And some of  
17 them, I think, we're just ignoring. And I don't think  
18 that's what we should be doing.

19                  You know, in this case here as opposed to most  
20 of the cases we hear, there was opposition. And so I  
21 think when there is opposition there is a different  
22 standard. You do expect -- and the person, the  
23 applicant, knew there was going to be opposition. And so  
24 when there's no opposition, you know, some things we  
25 don't have to discuss in such detail. But there was

1 opposition. And I think the other landowners who we also  
2 need to be taking into account here deserve their say and  
3 they deserve to understand how these criteria are being  
4 met.

5 So thank you.

6 MADAME CHAIR: Thank you.

7 COMMISSIONER: I'll just respond to that. You  
8 know, I don't know, I'm not sure I agree just with the  
9 very premise of the idea that we should oppose different  
10 burdens of proof depending on, you know, who shows up in  
11 favor. I'm not sure that's a very legally sound approach  
12 to this situation. But I do think -- I do think that in  
13 my view Commissioner Wade put forward an argument,  
14 actually probably more articulate than myself, that  
15 affirmatively gave some reasons why CYFD approval in  
16 particular supported the views that this -- you know,  
17 supported this applicant's meeting this particular  
18 criteria.

19 And I won't try to repeat them. I'm sure I'm  
20 not going to say them as cleanly as Commissioner Wade,  
21 but I will just say that I second those viewpoints. And  
22 I think that does present an affirmative case addressing  
23 those criteria in my view. Now that's me. That doesn't  
24 mean else has to agree with it.

25 But that is how I see it, Commissioner

1 Priestley. So I'll just say that I do feel I agree with  
2 you, yes, we do need to affirmatively meet the criteria.  
3 I do believe that that has been met. So that's my  
4 perspective.

5 And, Chair, I will leave it at that.

6 MADAME CHAIR: Thank you.

7 So I'll just ask once more if there's any more  
8 discussion that needs to happen regarding criteria one of  
9 section 16-156.

10 And not seeing any hands raised, I'm going to  
11 move on to section 16-156, criteria two. There are  
12 sufficient parking facilities that are adequately  
13 designed, shielded, landscaped and lighted to serve the  
14 use applied for based on the requirements of this chapter  
15 as found in article 9 of this chapter.

16 I'm just going to start things off by saying  
17 that I think the applicant demonstrated in her  
18 presentation that there were sufficient parking  
19 facilities that were adequately designed, et cetera, to  
20 serve the purpose.

21 COMMISSIONER: I'll just agree with Chair  
22 Adler, and also just add that I support the conclusions  
23 in the staff report that were uncontested to want.

24 MADAME CHAIR: Commissioner Nakhleh?

25 COMMISSIONER NAKHLEH: I agree that I believe

1     that criteria has been met.

2                   MADAME CHAIR:   And Commissioner Priestley?

3                   COMMISSIONER PRIESTLEY:   I also agree that  
4     criteria has been met.

5                   MADAME CHAIR:   Commissioner Dewart?

6                   COMMISSIONER DEWART:   I agree that the  
7     criteria has been met.

8                   MADAME CHAIR:   And Commissioner Roberson?

9                   COMMISSIONER ROBERSON:   I agree that the  
10    criteria has been met as well.

11                  MADAME CHAIR:   Thank you.

12                  So we'll move on then to -- unless anyone has  
13    anything further to discuss regarding criteria two, we  
14    will move on to criteria -- oh, I'm sorry, Commissioner  
15    Wade, did you weigh in on that?

16                  COMMISSIONER WADE:   I didn't, but I agree.

17                  MADAME CHAIR:   Thank you.   Zoom is real hard  
18    sometimes.

19                  COMMISSIONER WADE:   That's okay.

20                  MADAME CHAIR:   All right.   Criteria three, the  
21    provisions for on site and off site ingress and egress  
22    and traffic circulation are in conformance with the  
23    county's construction standards that the public streets  
24    serving the use applied for are adequate to meet the  
25    traffic needs of the proposed use.   The proposed use will

1 not adversely effect neighboring properties by virtue of  
2 the type of traffic generated by the use.

3 And I guess again to lead things off, I'm in  
4 support of the staff answers to the question that there  
5 were no -- as I understand it, there were no concerns  
6 brought forward regarding the traffic. I do understand  
7 that some people brought up a concern about the  
8 intersection that was near State Route 4. And I do  
9 understand that it is a concern. I just don't agree that  
10 it is a concern that is on any of the parties of this  
11 application to address. And I think that if concerns  
12 were not raised by the county staff and their consultants  
13 then we need to go with that information.

14 Commissioner Dewart?

15 COMMISSIONER DEWART: I agree.

16 MADAME CHAIR: Commissioner Priestley?

17 COMMISSIONER PRIESTLEY: I also agree. I  
18 agree with the way you presented it.

19 MADAME CHAIR: Commissioner Nakhleh?

20 COMMISSIONER NAKHLEH: I also agree.

21 MADAME CHAIR: Commissioner Martin?

22 COMMISSIONER MARTIN: Yes, I agree on staff's  
23 conclusions on criteria three. I believe they  
24 supported -- I believe they have met the criteria.

25 MADAME CHAIR: Thank you.

1 Commissioner Wade?

2 COMMISSIONER WADE: I also agree.

3 MADAME CHAIR: Thank you.

4 And Commissioner Roberson?

5 COMMISSIONER ROBERSON: I agree.

6 MADAME CHAIR: Is there any further discussion  
7 of criteria three?

8 All right. We'll move on then to criteria  
9 four, the setbacks of buildings and parking facilities  
10 from the property lines right of way and adjacent land  
11 uses are in conformance with this chapter and provide  
12 protection to and a transition from a residential  
13 development existing and contemplated in the vicinity.  
14 And that the height and bulk of the proposed buildings  
15 and structures are compatible with the general character  
16 of development in the vicinity of the use applied for.

17 And again, I will just lead with saying  
18 because there is no new construction and there's no new  
19 development happening on the site, I believe that this  
20 criteria has been met by virtue of the fact that no  
21 changes are being made regarding property lines right of  
22 way and other architecture on the site.

23 So I'm just going to say for this one, if you  
24 have any strong objections, go ahead and raise your hand.  
25 And if I don't hear or see a raised hand or hear

1 objections I'm going to assume that people are okay with  
2 this application having met criteria four.

3 All right. Then as per what Kevin stated  
4 earlier, we do not need to address criteria five; is that  
5 correct, or should we address it just, you know --

6 MR. POWERS: If you could put something in the  
7 record that's always better than just not addressing it.

8 MADAME CHAIR: Okay. Thank you.

9 So criteria five states the site plan,  
10 including but not limited to landscaping, screen  
11 planting, and fencing of the proposed development  
12 demonstrates that the site development will be compatible  
13 with adjoining areas and will conform to the site  
14 development standards of the district regulations.

15 Again, because there is no new development  
16 happening at this site, I do not believe that there is an  
17 issue. I think this criteria is automatically met by  
18 virtue of the fact that no new development will be taking  
19 place.

20 COMMISSIONER: I agree.

21 MADAME CHAIR: Thank you.

22 And I'm going to take the same tactic, unless  
23 I see a raised hand or hear strong objections, I'm going  
24 to assume that the other commissioners are generally in  
25 agreement.

1 All right. Thank you very much. So we have  
2 addressed the criteria. And I'm going to ask Kevin to  
3 help me out now a little bit just because this procedure  
4 is relatively new. I believe that we now will need a  
5 motion to recess this particular portion of proceedings  
6 so that the orders can be developed and so that in the  
7 future the commissioners can review those orders. And  
8 then they can be voted upon at the next meeting.

9 MR. POWERS: Yes, Chair and Commissioners, the  
10 way we have envisioned this, chapter 16 and 192-C allows  
11 the commission to recess a hearing or sort of end the  
12 hearing at this time and reconvene it within 21 days  
13 without a new public notice of the hearing, you know, the  
14 formal notice that must go out to all the properties. So  
15 that is allowed so long as it's done within 21 days.

16 And the proposal, as I understand (inaudible),  
17 just kidding, it is to bring it back at the February 22nd  
18 Planning and Zoning Commission, and that will be a duly  
19 noticed Planning and Zoning meeting, so there will be an  
20 agenda. And likely attached to that will be a draft  
21 order that the commission at that time, we can do live  
22 edits at the meeting to finalize the order, make sure  
23 it's tweaked correctly. And then the commission can take  
24 a vote on the motion or there can be amendments. So yes,  
25 Chair.

1 MADAME CHAIR: Thank you.

2 So at this point does motion to recess on this  
3 portion of the proceedings for tonight's meeting?

4 COMMISSIONER ROBERSON: Yes, Chair. This is  
5 Rodney Roberson, I make a motion that we recess this  
6 portion of the session.

7 MADAME CHAIR: Commissioner Roberson.

8 COMMISSIONER: I'll second that.

9 MADAME CHAIR: Thank you.

10 Can I see a show of hands? Thank you.

11 THE CLERK: I see seven hands.

12 MADAME CHAIR: All right.

13 MR. POWERS: Chair, just to make sure -- I'm  
14 sorry. Chair, just to make sure for all the parties that  
15 are here, there will be just a general agenda. No  
16 further notice will go out. And the meeting will be at  
17 the February -- is it the --

18 COMMISSIONER: 23rd.

19 MR. POWERS: 23rd. I said 22nd. So it will  
20 be the February 23rd, 2022. Access instructions will be  
21 provided with the agenda that's going to be coming out.  
22 And if there's any questions, please contact the  
23 Community Development Department.

24 MADAME CHAIR: And again just to clarify,  
25 again, please correct me if I'm wrong, the discussion

1     that will be happening at the next meeting will not  
2     involve any new evidence or public comment. It will only  
3     be for discussion among commissioners regarding the  
4     orders that are developed over the next weeks.

5                 MR. POWERS: That is correct, Chair. The  
6     hearing has been closed in receipt of the testimony in  
7     evidence.

8                 MADAME CHAIR: Thank you very much.

9                 Okay. So I think then -- let me go back the  
10    95 pages to the beginning of the agenda. Okay. Then I  
11    do believe we are moving on to commissioner director of  
12    communications, and I will ask for the department report.

13                MR. POWERS: Sure. Thank you, Chair Adler.  
14    As far as the developmental report, I will just state  
15    that our next meeting will be February 23rd for the  
16    continuance. But also at the February 23rd meeting will  
17    have a presentation by our consultant's TPS module 2 of  
18    the chapter 16 update.

19                MADAME CHAIR: Thank you.

20                And I guess Chair's report comes next. I want  
21    to thank everybody who has stuck around for this long. I  
22    also want to thank the people who did not stick around  
23    for this long but contributed to this meeting. I know  
24    it's been a long slog and I really appreciate everybody's  
25    patience, patience with me and patience with each other

1 and the respect that everybody showed.

2 And I want to especially thank my fellow  
3 commissioners for all of the hard work that has been put  
4 in and will continue to be put in at this meeting and at  
5 future meetings. Thank you.

6 All right. Board of adjustment report?

7 FEMALE VOICE: The board of adjustment has not  
8 met since our last meeting.

9 MADAME CHAIR: Thank you.

10 And now we will turn to the council liaison?

11 COUNCILOR REGER: Hello. Yeah, this is  
12 Councilor Reger, and I just wanted to say that there's a  
13 whole series of, you know, chapter 16 and chapter 18  
14 updates that everybody is coming through. But I really  
15 don't want to talk too much right now because I think  
16 this has been a very long meeting, and I think everybody  
17 would like to go. So just say hello to everyone. We  
18 have changed liaisons for all the committees. So I'm the  
19 new one for P&C. Thank you very much.

20 MADAME CHAIR: Thank you. And thank you for  
21 keeping it brief.

22 Are there any commissioner's comments, any  
23 comments that any commissioners would like to make?

24 Chair Priestley -- I'm sorry, it's old habit.  
25 Commissioner Priestley.

1 COMMISSIONER PRIESTLEY: Thank you.

2 So I want to kind of double up on what Jeb  
3 said, Rachel. I think you did a great job on the meeting  
4 tonight. I think we had upwards to 60 people listening  
5 in, participating. And part of the challenge is, you  
6 know, this is the making of the sausage and there's a lot  
7 of discussion going back and forth and, you know, lots of  
8 points of view that deserve to be heard. And it's not  
9 always a pretty thing, but I think in the end the product  
10 is going to be sound. And so thank you for running a  
11 quality meeting tonight.

12 That's it. Thank you.

13 MADAME CHAIR: Thank you.

14 And Commissioner Martin?

15 COMMISSIONER MARTIN: Yeah, thank you, Chair.

16 And I just want to -- I'll second, first of all, what  
17 Commissioner Priestley just represented. So great job  
18 tonight to you, to staff, to everybody. This was a bit  
19 long, so you hung in there. You all get a good prize in  
20 my book.

21 And I just also want to say, you know, Kevin  
22 Powers, if -- I don't want to rush you or anything with  
23 this order, but is there a possibility that we could see  
24 sort of in the near term, maybe by email, a draft of that  
25 order? Is that a possible that we could receive it? I

1 just think it would be a lot easier while this is fresh  
2 in our head to go over that. So I don't know what the  
3 timeline is, but I just want to make an inquiry to see if  
4 it's possible to get that maybe in advance of the actual  
5 meeting.

6 MR. POWERS: Definitely. I did take copious  
7 notes tonight. And the reason I said recording at the  
8 beginning of this is it's going to be helpful for me to  
9 go back and look at it before the Legistar. You know,  
10 you can watch the video through Legistar. I presume we  
11 can have that pretty quickly and make sure Rachel and I  
12 work together to get a good order. It is going to be  
13 lengthy. I won't kid you. I'm looking at at least 40  
14 pages probably from tonight and double spaced.

15 So just to let you know, our goal is to get a  
16 good solid order for both sides of the issue to express  
17 the points that were made and write something. I'm  
18 hoping in a week or so. And hopefully if we can get that  
19 earlier. The only problem with that, Commissioners, is  
20 if there are inner discussions between everyone. If we  
21 get the order and provide it, I would request to prevent  
22 a rolling quorum or similar issue that you address your  
23 issues before the meeting, keep those with you. If you  
24 feel like you need to talk with staff, contact Bryce or  
25 myself or the Chair, and then we'll figure out what to do

1 from there.

2 MADAME CHAIR: Yeah, and if you don't mind my  
3 adding a little bit to that. That is one of the reasons  
4 I think we decided to go in this direction is that it  
5 would give us the opportunity to review the orders ahead  
6 at the next meeting because I know that it is sometimes  
7 difficult to make these decisions in the moment during  
8 the meeting. And so my hope is that by giving people the  
9 time to review all of the evidence and what comes up in  
10 the order and, you know, write down your questions or  
11 proposed amendments or changes beforehand that we can all  
12 be a little bit more thoughtful about the decisionmaking  
13 process. And that, as Kevin said, in turn our final  
14 product will be more defensible and will hold up, which I  
15 know has been a concern. So that's my two cents on that.

16 Are there any other comments on --

17 COMMISSIONER: Chair Adler?

18 MADAME CHAIR: Yes?

19 COMMISSIONER: I did forget to mention, we  
20 are -- by the end of the March we are going to have some  
21 vacancies on the commission. So where our current  
22 commission members, there are members who are not  
23 continuing their term beyond their subsequent terms.  
24 Please spread the word that we are looking for viable  
25 candidates and we would love to have some new members.

1 And we've had some great commenters on this call tonight  
2 that would be well qualified.

3 And just one quick question, a point of  
4 clarification. I hate to bring up a belaboring point  
5 here, but I just want to make sure can Kevin Powers that  
6 we don't need to go through the criteria specifically for  
7 a second SUP home occupation special use permit at this  
8 meeting.

9 I think you're on mute.

10 MR. POWERS: I don't believe so, but my best  
11 reading of the code, as Chair Adler mentioned at the  
12 beginning, because the criteria is so integral for both  
13 of those that the testimony and evidence would apply to  
14 both of those.

15 COMMISSIONER: Okay. I thought so. I just  
16 wanted to make sure.

17 MR. POWERS: Yeah.

18 COMMISSIONER: It's been a long time. All  
19 right. Thank you.

20 MADAME CHAIR: Okay. Any other commissioner  
21 comments? All right. Then we move on to there's another  
22 opportunity for public comment. And again, correct me if  
23 I'm wrong, this public comment is only regarding matters  
24 that do not -- that do not pertain to the cases that we  
25 heard tonight; is that correct?

1                   So if there's anything who is still around who  
2   wishes to make a public comment regarding any other  
3   Planning and Zoning matters not related to these two  
4   cases now is your last chance for this meeting.

5                   All right. In that case, one more final thank  
6   you to my fellow commissioners, to the county staff, and  
7   to Kevin for all of your assistance and advice. And with  
8   that, I am going to adjourn the meeting unless I hear  
9   other objections otherwise, which I feel like that's not  
10  going to happen.

11                  All right. Goodnight everybody. Thank you.

12                  FEMALE VOICE: Goodnight.

13                  (The recording concludes.)

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1 In Re:

2 County of Los Alamos Planning and Zoning Meeting

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C E R T I F I C A T E

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8 I, Lisa Reinicke, New Mexico Certified Steno  
9 Transcriptionist, DO HEREBY CERTIFY that the above  
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COUNTY OF LOS ALAMOS  
PLANNING AND ZONING COMMISSION  
February 23, 2022

BEFORE THE COMMISSION:

Chair Neal Martin  
Rachel Adler  
Terry Priestley  
Beverly Neil-Clinton  
Jean Dewart  
Michelle Griffin  
Stephanie Nakhleh  
Rodney Roberson  
April Wade

1 (Agenda items SUP 2022-0020 and SUP 2022-0021.)

2 MR. CHAIR: All right. The time is 8:07, so  
3 we will end our recess and we will move on to the next  
4 item on our agenda packet. I think previously I said it  
5 was item 4. That was incorrect. This is item 5, item 5  
6 of the agenda packet. This is public hearing, case  
7 number SUP 2022-0020. And concurrently we'll also be  
8 discussing case number SUP 2022-0021. This is Denise  
9 Matthews d/b/a Worms and Wildflowers Daycare seek a  
10 special use permit approval for a daycare facility and  
11 seeking special use permit for approval for a home  
12 business concurrently. So we'll be addressing both of  
13 those items now at this point in time in our meeting as  
14 part of this agenda item.

15 And we will resume our public hearing from  
16 last week. And I believe that we are now joined by Chair  
17 Adler.

18 Rachel, are you there? I just want to double  
19 check. Okay.

20 COMMISSIONER ADLER: Yes.

21 MR. CHAIR: And I think I already double  
22 checked with the County. But, Kevin, it's permissible  
23 that Rachel, having missed the first part of the meeting,  
24 is going to join us for this part of the meeting and as a  
25 member of the last week's quorum; is that acceptable?

1                   MR. POWERS: I believe so, Chair, unless  
2     somebody, one of the commissioners disagrees, I think we  
3     can proceed.

4                   MR. CHAIR: All right. Well, fantastic.

5                   Seeing no objections, we will now reopen the  
6     public hearing into the aforementioned cases and we'll  
7     pick up where we left off in the hearing. And at that  
8     point in time, we -- just to remind everybody where we  
9     are, we have closed the hearing to the receipt of  
10    testimony. So we are at the point where we are  
11    discussing a motion before us. And in the intervening  
12    period of time, Kevin Powers has supplied us with an  
13    order that is basically a synopsis or summary of our  
14    discussion last week and has the major points.

15                  So what we'll be doing at this point in time  
16    is commenting on specifically that order. And if we want  
17    to pass that order as written, pass the order as amended,  
18    or, you know, potentially authoring a new order. So I  
19    will -- I trust everybody had a chance to review the  
20    order that was delivered to everybody and got to read it.  
21    As just if you're looking to find it right now in your  
22    agenda packet, I have it starting at page 91 of the  
23    agenda packet just if you're trying to find out where it  
24    is. I know we've got a huge agenda packet. It can be a  
25    little hard to flip through.

1                   So I will open the -- open this up for  
2    comments from the commission about the order that is  
3    before us, the case that is before us. And I welcome  
4    your comments. So yeah, any hands?

5                   Stephanie, go for it.

6                   COMMISSIONER NAKHLEH: I just -- just a point  
7    of order, I thought, maybe it's different because of the  
8    order, but I thought the order of events was somebody  
9    makes a motion, we get a second, then we have a  
10   discussion.

11                  MR. CHAIR: Yes. Well, so we have to -- so I  
12   guess we'll have -- at some point in time we will have to  
13   make a motion. So we haven't arrived at that point of  
14   making a motion. Certainly you're welcome to make a  
15   motion at this point if you feel like this is the  
16   appropriate to do so. But if there's --

17                  COMMISSIONER NAKHLEH: Well, I don't have a  
18   feeling about it. Just when I was learning Robert's  
19   rules that's what I was taught, the way we had to do it.  
20   But Kevin can tell me -- you know, chime in.

21                  MR. CHAIR: That's exactly the way we're going  
22   to do it. So the commission can make -- someone in the  
23   commission is free to make an order, a motion. But we're  
24   also allowed to just have discussion prior to that motion  
25   being made. So just if anybody had any general thoughts

1 or comments prior to making a motion, you're free to add  
2 those in. Or if you'd like to just make a motion, I  
3 welcome that as well.

4 I see Chair Priestley, or Commissioner  
5 Priestley, I see your hand is raised. Please, we welcome  
6 your comments.

7 COMMISSIONER PRIESTLEY: Thank you. So I just  
8 want to make sure I understand, and I think this question  
9 is really to Kevin. The findings of fact, you know,  
10 what's the purpose of the findings of fact that we're  
11 looking at? What is the intent here? Can you kind of  
12 give us an overview?

13 MR. POWERS: Yes, Chair Martin and  
14 Commissioner Priestley, as we've learned in the last  
15 several months, the findings and facts need to be a  
16 fairly good recitation of the commission as a whole  
17 findings. And so the findings of fact are generally  
18 statements that you believe that the testimony and the  
19 evidence presented to you as a commission, you found  
20 persuasive, these things or unpersuasive. It again  
21 doesn't have to be a full recitation of a hearing word by  
22 word. That's what the record is for.

23 But as we've learned, we do need to recount  
24 and go through all the elements that are required in  
25 approving an application. As you see in the proposed

1 order or the draft order, there's information about the  
2 property that was testified at the hearing. There was  
3 information about the public notice that was published,  
4 and then going through each of the criteria for the  
5 special use permit criteria.

6 COMMISSIONER PRIESTLEY: So I guess my  
7 understanding then that this is -- maybe I'm going to  
8 paraphrase what you just said. So we had testimony and  
9 receipt of evidence from lots of different people. And  
10 we had the opportunity to cross-examine and stuff like  
11 that. So that's what is supposed to be included is the  
12 evidence and the testimony that we heard that influenced  
13 our decision; is that right?

14 MR. POWERS: Yes. Yeah, Chair and  
15 Commissioner, that's correct.

16 COMMISSIONER PRIESTLEY: Okay. So what I see  
17 in here is quite a bit of the discussion that the  
18 commissioners had after the close of evidence. So how  
19 does that fit? Because that's not evidence. Those are  
20 opinions expressed by commission members not as part of  
21 the hearing, or am I -- is that -- am I getting --

22 MR. POWERS: Thank you. Thank you,  
23 Commissioner Priestley. It fits hand in hand. The basis  
24 of the opinion is what you found persuasive, and each of  
25 the commissioners sort of went through each of the

1 criteria and sort of said, well, in my memory  
2 Commissioner -- or Chair Adler at the time saying, well,  
3 for the parking element I think there's been no contest  
4 in the evidence of testimony that there's not adequate  
5 parking. You know, the staff report, I think she went  
6 through a few elements. And then the rest of the  
7 commission agreed.

8 And so that's sort of been relayed into the  
9 order. It is the commission's end review, court  
10 reviewing this document. They would say whether -- what  
11 was the basis of the commission's decision. Did they  
12 have some rational basis to look at the facts and did  
13 they come to some reasonable conclusion based upon what  
14 was presented.

15 COMMISSIONER PRIESTLEY: Okay. But still,  
16 like I see in here like around line 160 and 160 to 167  
17 that, you know, in this case it's, you know, Commissioner  
18 Martin further noted that as the county codes already  
19 allows for a daycare facility, such application, if  
20 approved, would also be in line with the comprehensive  
21 plan's goals of preserving character. And that was true.  
22 That was stated.

23 MR. POWERS: Yes.

24 COMMISSIONER PRIESTLEY: But I don't see it as  
25 evidence or testimony. That was a summary of, in this

1 case, Commissioner Martin. And there's other ones in  
2 there because we did discuss, you know, what we thought  
3 was important and what we didn't think was important.

4 But that discussion is not testimony. It's  
5 not facts. It was our discussion and our opinion based  
6 on the testimony and the evidence that we saw. So I see  
7 a lot of the facts that were presented during the  
8 testimony but then I also see intermingled in there is  
9 our opinion, individual counselor's, or individual,  
10 excuse me, commissioner's opinion. And that just doesn't  
11 seem like facts. And so when I hear, I see findings of  
12 facts, I'm -- answer my question. I see -- and I guess I  
13 didn't expect that. I haven't seen them in other places  
14 of findings of fact.

15 MR. POWERS: I think we've done it in several  
16 other orders. I think in the last La Senda order there  
17 were similar. I think in this situation, you know, you  
18 can always elaborate a little bit more and get more  
19 detail. We were under the gun to get this out. And, you  
20 know, at least in my opinion as one of the writers or at  
21 least drafting the document for the commission as a  
22 whole, you know, there is some -- you've got to say,  
23 well, the facts -- you know, at some point the  
24 commissioner has to make a saying about this is what I  
25 believe. This is -- I was persuaded by the testimony and

1 evidence presented.

2                   You don't have to cite each individual fact  
3 that that one commissioner believed. You have to sort of  
4 take it as a consolidated whole to understand, well, did  
5 the commission really, all of you, take all the evidence,  
6 weigh it, come to some rational decision. And there's  
7 going to be unbearably be some discussion that, you know,  
8 commissioners as a whole agreed that the parking element  
9 had been met even though we don't go through all of the  
10 specific times that testimony or evidence was presented.

11                   COMMISSIONER PRIESTLEY: Okay. I guess that  
12 helps. Thank you.

13                   MR. CHAIR: Commissioner Nakhleh.

14                   COMMISSIONER NAKHLEH: I just looked up  
15 findings of fact just because I thought that was a really  
16 good point about the opinions. And it actually says  
17 findings of fact is the decision opinion or observation  
18 arrived at by a judge or jury on the issues related to  
19 the facts that are submitted for decision. So it does  
20 include, in spite of the word fact, opinions in it,  
21 apparently. It is a little confusing.

22                   COMMISSIONER PRIESTLEY: Yeah, I guess what I  
23 would expected it would say, you know, here's the facts  
24 that were presented and then the conclusion is the  
25 opinion. And based on those facts the commission, in our

1 case, found it to be unpersuasive or found it to be  
2 persuasive and thought that this criteria was met. But  
3 to have discussion in here about, any more than that.

4 So I agree with you, Stephanie. Yeah, based  
5 on those facts this was our opinion or, you know, the  
6 majority of the opinion or whatever. But I've seen more  
7 than that in the writing, more than just our conclusion  
8 based on the facts.

9 So I'm splitting hairs, so I apologize. I'll  
10 stop.

11 MR. CHAIR: Yeah, I mean, in a sense I  
12 sympathize. I mean, these are terms of art that we  
13 haven't previously really gotten our teeth into yet. So,  
14 you know -- and, you know, findings of facts, certainly  
15 these are not objective like physical -- you know, this  
16 is not objective physical reality. My views about like  
17 the -- you know, the comprehensive plan, right, that's  
18 just -- that is an opinion. But I think that it's more  
19 of a -- I think maybe the word fact is maybe, you know,  
20 not the one we would use.

21 But it's -- I do think that this is consistent  
22 how the legal profession has applied this, right, it's  
23 just what is kind of our reasoning, our findings and our  
24 reasoning for those, for our conclusions and not  
25 specifically, you know, a delineation of the exact facts

1     that have been articulated is my understanding of this.  
2     So I don't find it objectionable given that understanding  
3     that I have.

4                     And I'll let Kevin correct me, if I misspoke  
5     about the terms of, legal terms of art.

6                     MR. POWERS: I think everyone raises good  
7     points on this.

8                     MR. CHAIR: Any other comments about the order  
9     or thoughts?

10                    Go for it, Terry.

11                    COMMISSIONER PRIESTLEY: Okay. So if we're  
12     going to talk about facts, what I don't see in here, and  
13     this goes -- I've got to find the right place now. So  
14     this goes on page -- or I'm sorry, line 168. And this  
15     is, you know, frankly, the part that I think the least  
16     for me, I felt the most uncomfortable with when we're  
17     talking about the criteria about the health, safety,  
18     peace, and comfort, very qualitative, very subjective,  
19     you know, and stuff like that. I think everybody agrees  
20     that this is qualitative and it was not. It's a tough  
21     one. But it is something we have to deal with.

22                    What I don't see in here is the fact that I'll  
23     say several, maybe it's few near neighbors did testify  
24     that the daycare would negatively impact their health,  
25     safety, peace, and comfort. It certainly wasn't

1 everybody. It certainly wasn't everybody, but there were  
2 some near neighbors that testified to that, and it's not  
3 included here. I wish, looking back, that I had done a  
4 better job, as the public testified, provided testimony,  
5 I wish I would have done a better job of understanding  
6 are you a neighbor, a 300-foot neighbor, because I think  
7 a 300-foot neighbor's opinion has, in this case, because  
8 it's a special use permit has a different weight than a  
9 community member.

10 And so as we went through, you know, we talked  
11 earlier. We had a couple dozen people provide testimony,  
12 which is great. But what we didn't do, or at least I  
13 didn't catch it, was as someone spoke are you a near  
14 neighbor or are you a member of the community. So a lot  
15 of people testified in favor of this, of course. But we  
16 don't see anything in here about a handful or whatever.  
17 I think it was three, maybe it was six. I don't know,  
18 people testified that it did impact, negatively impact or  
19 they feel like it will negatively impact their health,  
20 safety, peace, and comfort. So I don't see that in here.  
21 And I think that -- that was presented and it ought to be  
22 in here.

23 So that's one thing that I don't see in here.  
24 And I also, one of the near neighbors provided testimony  
25 that the daycare, he provided testimony and referred to a

1 report. I don't remember which report it was. But he  
2 referred to a report that a daycare in your neighborhood  
3 would negatively impact the housing prices. And I don't  
4 see that in here at all either. So they're missing. And  
5 so what I feel in some ways is that some of the facts  
6 that don't support what I think is going to be the  
7 conclusion of the commission are missing out of here, and  
8 I think they should be included. Whether all those facts  
9 mount to anything else, they were presented and I don't  
10 see them in here. So --

11 MR. CHAIR: Well, I think we do have the  
12 possibility of amending the -- amending the order. I  
13 think we could even have Kevin share his screen and if we  
14 wanted to insert some language we could go ahead and do  
15 that. So that's certainly possible. You know, as for  
16 the, you know, people making testimony that, you know, in  
17 saying in their opinion they -- you know, they felt this  
18 compromised their, you know, health, safety, peace,  
19 comfort, general welfare, I am fine with the denoting  
20 those.

21 The study I'm a little bit not sure about. I  
22 mean, that study wasn't entered into evidence.  
23 It's -- I'm not sure if it's -- it might even be hearsay.  
24 I would have to get Kevin's opinion to see if that would  
25 be appropriate to put that in there. But, you know, I

1     guess depending on what Kevin says, I would defer to him  
2     on that. That's my thought.

3                 Rachel, you've got your hand up. What do you  
4     think?

5                 COMMISSIONER ADLER: Yeah, so my question is  
6     regarding the order. It references the recording of the  
7     meeting several times. And I'm wondering if the  
8     recording is included as part of the order, if that is  
9     sufficient to -- I mean, I think it's appropriate if that  
10    is the case to mention in the order, you know, at these  
11    timestamps these people mention these objections.  
12    Because I know several other places in the order it does  
13    say, you know, at this time during the recording this is  
14    mentioned.

15                So I guess I'm just wondering if the recording  
16    of the hearing is a part of the order because it is  
17    referenced in the order because it was referenced in the  
18    order.

19                MR. CHAIR: Kevin, you want to take that one?

20                MR. POWERS: Thanks, Chair and Commission. I  
21    think first going to Commissioner Priestley and Chair  
22    Martin's comment, it's easy to add a couple phrases into  
23    the order. I'm looking around line 171, one  
24    commissioner, based on testimony and evidence presented  
25    by adjoining neighbors did express concern. However

1 the -- you know, the commissioner was unable to find that  
2 the applicant that criteria. That's easy enough to do.

3 But I think the second point that Commissioner  
4 Adler at this point expressed is also very relevant. The  
5 order is not to be a recitation of every piece of  
6 evidence, who presented what, when, you know, what did  
7 they present. Was it accepted or not. That is the  
8 record. The order is to simply give a review in court to  
9 say was there enough presented for you to be able to  
10 reach a decision. And that's all the real order is  
11 intended to do. It can be very detailed. It could be  
12 100 pages but at some point that becomes just a  
13 transcript of the hearing that was presented.

14 And I know, Terry, that's not -- or  
15 Commissioner Priestley, that's not what you're saying.

16 But it's always good to put in a document the  
17 opposing views so the review in court can say, well, they  
18 did have some opponents to this and there was opinion  
19 expressed. But what happens, at least in my opinion in  
20 working in this, is that that may come later. That if an  
21 opponent says my view was not properly heard, and I don't  
22 want to go in too much details because this is sort of a  
23 tricky area and a lot of it should be done in closed  
24 session with the commission, which I always recommend  
25 talking about these kind of issues.

1           The real purposes of the findings of fact,  
2   conclusions of law is to give a reviewing body, in this  
3   situation it would be counsel, to say did they have  
4   enough before you to reach a decision. And if that is  
5   questioned then you revert back to the whole record  
6   review and say, okay, let's look at -- if there's enough  
7   there that creates a doubt then we look to the whole  
8   record. And that's really where you find the arguments  
9   against and for, you know, a brief by the department to  
10   the counsel on appeal would cite out each of the points  
11   where there was enough before you as the reviewing body  
12   to come to a reasonable decision.

13           I hope that helps.

14           COMMISSIONER ADLER: So, Kevin, can I try to  
15   reiterate what I heard you saying? I think what I heard  
16   you saying is that the order is meant, and I might be  
17   off, but the order is meant to be a supporting document  
18   for the expected motion rather than a recitation of  
19   everything?

20           MR. POWERS: The terminology is a little  
21   back -- the motion is just to approve the application,  
22   and that's at the end of the order. The findings of fact  
23   are sort of the road map of how you got there. It  
24   doesn't have to be a very, very detailed road map. It  
25   just has to be enough to show in a written final order,

1     because this is your order. This is --

2                   COMMISSIONER ADLER: But it's leading  
3     somewhere. It's leading somewhere, right?

4                   MR. POWERS: That's right.

5                   COMMISSIONER ADLER: Right. Okay.

6                   MR. POWERS: As we know, it can't be a  
7     two-page order just saying, well, we heard evidence and  
8     we reached a conclusion. It's approved. That's simply  
9     not enough for a court or a counsel to look back and say,  
10    well, how did you get there. And so that's why we sort  
11    of changed our procedures to sort go through each of  
12    those elements to say let's have a discussion,  
13    Commission. What did you find persuasive and not? And,  
14    you know, the majority wins.

15                   I mean, you know, if the majority opinion is,  
16    well, so many -- the majority found that all the criteria  
17    has been met and there's enough to support that basic  
18    decision. It's really, again, if you add the opponents  
19    and all the -- even in this decision we don't list every  
20    time somebody mentioned health or safety or peace because  
21    then, again, we revert back to just a transcript. So  
22    this is just a simple road map to show somebody, somebody  
23    in review, that you all did think about it, there was  
24    people presented stuff, gave them a chance. Nobody was  
25    denied the opportunity to present anything. And you made

1 a decision. And that's simply all it is.

2 MR. CHAIR: Commissioner Priestley?

3 COMMISSIONER PRIESTLEY: Hi. Thanks again.

4 But I think, I want to make sure I understand, this  
5 is -- this should present the -- in a summary, not the  
6 detail of what was considered. And by excludeing  
7 elements that were not in favor of what I think is going  
8 to be or conclusion, it really seems like it is a  
9 justification for our conclusion. I think it's a better  
10 record to say we considered this and we considered that,  
11 but based on the totality of what we heard this was our  
12 conclusion.

13 But by not having that in there it seems -- by  
14 not identifying that there was -- that there were --  
15 there was testimony that was not in favor of it, it seems  
16 like that's inappropriate. You know, we heard pros, we  
17 heard cons. We heard all kinds of stuff. And based on  
18 all that the majority of the commissioners decided that,  
19 you know, it was met or it was not met. It should not be  
20 a justification for our decision. It should be a  
21 presentation of what we considered to make our decision.

22 So I just think by leaving it out presents an  
23 incomplete set of facts that we considered.

24 MR. CHAIR: All right. Thank you,  
25 Commissioner Priestley.

1 Chair Adler.

2 COMMISSIONER ADLER: Yes, thank you. I do,  
3 I'm inclined to agree with Terry. I think that it's  
4 appropriate in the order to mention. These opposing  
5 views were heard and these commissioners did not find  
6 that evidence persuasive. I think, you know, that to  
7 have it in the record is important so that we can  
8 demonstrate that we did take all of the evidence into  
9 account when making our decision. But I also agree with  
10 Chair Martin that things like reports that were mentioned  
11 in evidence but that we don't actually have in evidence  
12 or we don't -- we haven't seen them, that, I think, gets  
13 into tricky territory because, you know, again, we don't  
14 know what the report -- when it was written or what  
15 it -- we haven't actually seen it with our own eyes. And  
16 so it makes me a little bit uncomfortable to take that as  
17 evidence without actually seeing it, seeing the evidence,  
18 if that makes sense.

19 MR. CHAIR: All right. Thank you.

20 Any other comments?

21 COMMISSIONER: I'm sorry, I'm just going to do  
22 a real quick counter. But we do have in the findings of  
23 fact a discussion that says, hey, since there's no  
24 building going to be -- new construction, therefore it's  
25 not going to impact house values. But we don't have any

1 evidence of that either. But we include that in the  
2 report. All right. There's no report that says that.  
3 And so a person provided testimony under oath that he  
4 found this report that says this. And, you know, there's  
5 some legitimacy to that. We didn't get it on paper, we  
6 didn't get in writing or anything like that, I agree.  
7 But we also included in our findings and fact a lot of  
8 the opinion that's not justified by anything written  
9 either.

10 And so somewhere in there there's a mix just  
11 because -- anyway, there's a mix.

12 COMMISSIONER ADLER: How do we -- Chair  
13 Martin, how do we move forward with amending it if that  
14 seems like maybe that's where we're going, unless someone  
15 objects.

16 MR. CHAIR: Well, what I would propose is if  
17 you have an amendment to make, maybe why don't you sort  
18 of say which line or thereabouts where you'd like to see  
19 the amendment made and kind of tell us in sort of plain  
20 English what the content that you'd like to see added.  
21 You know, let us know what that is. And then I think  
22 Kevin will go ahead and he'll load up his screen and  
23 share it. We'll get to see the edits. And the that  
24 aligns with -- you know, I suspect he may try to make  
25 things a little bit more precise. This is a legal

1 document. So he may adjust certain terms.

2 But I think at the end of it we'll review it  
3 and we'll ask if that satisfies kind of your vision for  
4 the amendment. And then we can kind of take it from  
5 there. Does that sound -- anyway, that's my proposed way  
6 of doing it.

7 Do you have a specific line, does anybody have  
8 a specific line that they would like to see amended?

9 COMMISSIONER PRIESTLEY: So I think this  
10 directed towards me. I would like to see in, I guess  
11 it's paragraph B, 23B, which starts at line item -- or  
12 line 168 somewhere in there a discussion that several  
13 near neighbors within 300 feet testified that the  
14 proposed daycare would negatively impact their health,  
15 safety, peace, comfort, and general welfare. I would  
16 like to see that in there.

17 On paragraph D, delta, which starts at line  
18 item 195, I would like to see in here that one near  
19 neighbor provided testimony and referenced a study that  
20 showed property values would be negatively impacted and  
21 that the applicant provided no information that countered  
22 that. I think those two things are facts that ought to  
23 be included.

24 COMMISSIONER ADLER: I would like to add to  
25 that.

1                   MR. CHAIR: Before we move on, I just want to  
2 say, Kevin, can we make sure track exchanges are on so we  
3 can get a good sense of where the -- visual sense of  
4 where the changes are being made?

5                   MR. POWERS: Yeah, and if -- Commissioner  
6 Priestley, if you can go back through the first one you  
7 made? I can hold so much in my brain at a time.

8                   COMMISSIONER PRIESTLEY: Yeah, I'm sorry, this  
9 is not a pretty way to do them, so I apologize. So  
10 some -- I don't know where, I mean, this -- you know,  
11 someplace in this paragraph here there ought to be a  
12 sentence that says that several near neighbors within 300  
13 feet testified that the proposed daycare would negatively  
14 impact their health, safety, peace, comfort, general  
15 welfare. I don't know, I haven't -- I don't know where  
16 in that paragraph it would fit best.

17                   MR. POWERS: How does that look, Commissioner  
18 Priestley?

19                   COMMISSIONER PRIESTLEY: No, no, that's my  
20 opinion. I think what you're writing there is that, hey,  
21 I -- I think that --

22                   MR. POWERS: But that's how you reached your  
23 decision is based upon that testimony that was presented.  
24 You found, you found that that did not meet the criteria.  
25 So that's -- that is an opinion, but it's your opinion

1 based upon the evidence that you received.

2 COMMISSIONER PRIESTLEY: So I think another  
3 way of looking at that, Kevin, is to say the people who  
4 provided that testimony, right, and your neighbors  
5 provided that testimony. That's a true statement. But I  
6 think, and I speak for myself and I think I'll speak for  
7 the rest of the people here, but although because of  
8 that, that was a part of their testimony. But even in  
9 light of that the majority of the commission found that  
10 the health, safety, peace, and comfort was not negatively  
11 impacted.

12 MR. POWERS: Yeah, that's covered in the  
13 lighter part of that paragraph that recites that based on  
14 their weighing of the evidence. So we're talking about,  
15 and this is -- again, I'd prefer to do this in closed  
16 session to talk to you about the deliberation of what  
17 you're looking to. You had to reach a decision based on  
18 something, and that's what the court wants to see in  
19 review. Why did you as one commissioner say no or yes  
20 when other ones didn't. And was it just based on  
21 nothing.

22 COMMISSIONER PRIESTLEY: So I guess it says  
23 one commissioner was (inaudible) applicant after  
24 sufficient evidence. I don't know if that's true. We  
25 didn't -- you know, we went around the table and talked

1 in picture and stuff, but maybe there was another  
2 commissioner that said, well, you know what, they didn't  
3 present enough evidence there, but all things considered  
4 associated with the comprehensive plan, the need for  
5 daycare, I'm okay with that. So I don't know that it's a  
6 true statement that only one commissioner had that  
7 concern. I have no idea. I know I did.

8 So I think the fact that we can present and so  
9 you can hear is not how it impacted my decision but the  
10 fact is we did have people present testimony that it  
11 would impact their health, safety, and so forth. I don't  
12 want to speak to how other commissioners internalize that  
13 testimony.

14 MR. POWERS: I took from the video and your  
15 discussions made at the hearing that you were not -- you  
16 clearly stated you were unable to find that that criteria  
17 had not been met because there wasn't sufficient evidence  
18 presented on that point.

19 COMMISSIONER PRIESTLEY: That's a true  
20 statement there.

21 MR. POWERS: And that's what that sentence, I  
22 believe, says.

23 COMMISSIONER PRIESTLEY: I'm not speaking for  
24 the rest of the commissioners.

25 MR. POWERS: Well, no, I didn't say -- that

1 doesn't say. It says one commissioner. If you want me  
2 to say Commissioner Priestley was unable to find that the  
3 applicant presented sufficient evidence, I can change it  
4 to that.

5 COMMISSIONER PRIESTLEY: Well, how do you know  
6 it wasn't two commissioners?

7 MR. POWERS: Well, nobody else in the video  
8 that I saw expressed any concern on that. And I talked  
9 with Chair Adler on that. If they do, I'm happy to  
10 change that two commissioners were unable to or amend it  
11 as you see appropriate.

12 COMMISSIONER ADLER: Can I interrupt for such  
13 a second?

14 Several times, Kevin, you have suggested we do  
15 this in closed session, so I'm going to ask the Chair  
16 whether we ought to in fact do that.

17 MR. CHAIR: So we can move to closed session  
18 to discuss the order. So that is certainly any member of  
19 the commission can make a motion to move to closed  
20 session to do that. And I'll leave it up to the  
21 commissioners if they'd like to propose that. I'm a  
22 little hesitant to do it myself, but I'm open to, of  
23 course, considering a motion from any of the  
24 commissioners.

25 COMMISSIONER ADLER: I don't have strong

1 feelings about it, but I feel like if the lawyer tells us  
2 that's what we should be doing, probably we should be  
3 doing that. But I would like -- before I make that  
4 motion, I would like to get a sense of whether anybody is  
5 going to object to it. Or I suppose I find out when we  
6 vote on it, don't I?

7 All right. I'm going to move that we move  
8 this to closed session. I don't know what the rest of  
9 the motion is supposed to be.

10 MR. CHAIR: I think we catch it from that.

11 All right. Do we have a second to move to a  
12 closed session?

13 COMMISSIONER: I second.

14 MR. CHAIR: All right. So I believe under  
15 Robert's rules we can have a moment to discuss the  
16 motion. And so I will let people share whether or not  
17 they think they want to go to closed session or not.

18 COMMISSIONER: I think it's fine. I don't  
19 know the -- I'm not 100 percent in understanding of the  
20 goal, but it's okay for me to try it. It's okay for me.

21 MR. CHAIR: If it expedites things, you know,  
22 I -- we have the -- we had everything kind of in -- I  
23 prefer to keep things as open as possible. So -- but I  
24 think if we can do this briefly and expeditiously, moving  
25 to closed session, you know, I'd go along with that.

1 Kevin, do you have something to add?

2 MR. POWERS: It will take Anita and Desiree to  
3 set up a separate Zoom meeting. It may take a few  
4 minutes, so we might want to recess. That does take  
5 time. We will have to exit this meeting and then rejoin  
6 the other meeting. It is a procedure. It is a process  
7 to go through, so just alerting the commission.

8 COMMISSIONER ADLER: Oh, I did not know that  
9 part.

10 MR. CHAIR: Oh, yeah, that changes things.  
11 All right.

12 COMMISSIONER ADLER: Well, do we want to do a  
13 roll call vote on it?

14 MR. CHAIR: Sure. If there's no further  
15 comments, we'll proceed with the roll call vote.

16 And I believe, Desiree, if you want to take  
17 the vote?

18 THE CLERK: Yes, sir.

19 Terry Priestley?

20 COMMISSIONER PRIESTLEY: I do not vote in  
21 favor of going to a closed session.

22 THE CLERK: Stephanie Nakhleh?

23 COMMISSIONER NAKHLEH: No.

24 THE CLERK: Neal Martin?

25 MR. CHAIR: No.

1 THE CLERK: Rachel Adler?

2 COMMISSIONER ADLER: No.

3 THE CLERK: Jean Dewart?

4 COMMISSIONER DEWART: No.

5 THE CLERK: April Wade?

6 COMMISSIONER WADE: No.

7 THE CLERK: And Rodney Roberson.

8 COMMISSIONER ROBERSON: No.

9 THE CLERK: Can you repeat yourself?

10 COMMISSIONER ROBERSON: No.

11 THE CLERK: Motion fails.

12 MR. CHAIR: All right. Is there any  
13 possibility, Kevin, I just quantity to expedite this, and  
14 I don't -- you know, I think we're -- the thing is I  
15 think we're 95 percent on the same page here. And if  
16 there is ways that we can add just some -- a quick -- a  
17 few sentences just saying, you know, maybe something on  
18 the order of, you know, several neighbors within the  
19 300-foot, or I don't even know if it was several. I  
20 mean, I don't know how much -- so a number of neighbors  
21 within the 300-foot radius testified that, you know, they  
22 felt or in their opinion the proposed special use permits  
23 would, you know, impair their health, safety, welfare,  
24 peace, et cetera.

25 And maybe also include something like while

1 several others, a number of others, you know, said that  
2 it would boost their health, safety, welfare, et cetera,  
3 right. Like if we could just put in like a generic  
4 statement that says like some say A, some say B. And if  
5 that moves us forward that would be great. Can we do  
6 something like that?

7 MR. POWERS: Yes, Chair. Let me share my  
8 screen and see if we can figure out a place to put that.  
9 Is this the Word version you're seeing?

10 MR. CHAIR: Yes, we're seeing the screen.  
11 Yeah, Microsoft Word.

12 MR. POWERS: And that's it, you see me  
13 highlighting right now?

14 MR. CHAIR: Yep. Yep.

15 MR. POWERS: Unfortunately I'm working with  
16 three screens across. Okay.

17 COMMISSIONER PRIESTLEY: Can I make a  
18 recommendation? If you scroll up just a bit.

19 MR. POWERS: Yes, sir.

20 COMMISSIONER PRIESTLEY: Right where it says,  
21 right before the sentence that says one commissioner.

22 MR. POWERS: Yes, sir.

23 COMMISSIONER PRIESTLEY: Can you just say  
24 during public testimony some near neighbors, or 300-foot  
25 neighbors, whatever the right term is, testified that the

1 proposed daycare would negatively impact their health,  
2 safety, and general welfare while other -- while other  
3 near neighbors testified that it would not negatively  
4 impact. As far as that captures it in my mind. It shows  
5 both -- I mean, we have different opinions, different  
6 testimony based on a very qualitative criteria.

7 MR. POWERS: How does that look, Chair  
8 Priestley?

9 COMMISSIONER PRIESTLEY: I'm comfortable with  
10 that. Thank you.

11 MR. POWERS: Yes, sir.

12 Chair Martin, anything further?

13 MR. CHAIR: If there are no further comments  
14 from the commission, I would welcome a motion to, let's  
15 see --

16 COMMISSIONER PRIESTLEY: So I'm sorry, we had  
17 the other one that had to do with the property values.  
18 So under paragraph D, it starts on page or line item 195,  
19 I think right after property values, what I would propose  
20 is one near neighbor provided testimony and referred to a  
21 study that showed property values would be negatively  
22 impacted by the proposed daycare. The study, the  
23 referred to study was not part of the record. And also  
24 I'd add a comment that the applicant did not address  
25 impact on property values during her -- or in her

1 application nor during testimony.

2 I think if you go back to although, I just  
3 make a -- you know, it says property and then, comma, the  
4 report reference was not entered into evidence or entered  
5 into the record.

6 MR. POWERS: Gotcha, sir.

7 COMMISSIONER ADLER: The report referenced.

8 COMMISSIONER PRIESTLEY: Yeah, the reference  
9 report. Yeah. And I would add another sentence after  
10 that is the applicant did not address property values in  
11 her application nor during testimony.

12 MR. POWERS: Is that your -- see, that's where  
13 we have to --

14 MR. CHAIR: Yeah, I specifically asked staff.  
15 I don't -- I think that's a little bit misleading because  
16 I did specifically ask staff about that specific  
17 criteria. And they did supply testimony supporting the  
18 view that this would not effect property values. So I  
19 think that's a little bit selective to put in something  
20 like that to say the applicant.

21 COMMISSIONER PRIESTLEY: The applicant is  
22 responsible for addressing criteria and the applicant did  
23 not provide testimony.

24 MR. CHAIR: And, see, I think that's also -- I  
25 think you're off base there, Terry. And we have -- we

1 frequently rely on the views of staff to evaluate site  
2 plans. They evaluate all sorts of stuff, stuff about  
3 utilities, water pressure citing grading and drainage,  
4 right, like those are technical evaluations that we rely  
5 on staff all the time to make and are not ever supplied  
6 by the applicant.

7                   So I think this is a distinction that is maybe  
8 a little bit misleading because to suggest that the  
9 applicant exclusively, we should only evaluate the  
10 applicant's testimony, not the testimony of the county  
11 staff or other applicants in favor of this proposal, I  
12 think that's a distortion of our objectives here.

13                   COMMISSIONER PRIESTLEY: Okay. So I'm not  
14 disagreeing that later on the county staff addressed it  
15 and somebody else addressed it. I don't know who this  
16 person was. But I think it's a fact that the applicant  
17 did not address it in their application nor in their  
18 testimony. I think that's a simple fact. Now, whether  
19 that's a huge issue or not, I think it is a fact. I  
20 believe it's -- it is a fact.

21                   MR. POWERS: Chair Martin and Chair Priestley,  
22 I thought she did. In my review of the video there  
23 was -- she did at a later time talk about the property  
24 values of the neighboring properties. It was much later  
25 in the hearing.

1 COMMISSIONER PRIESTLEY: Okay.

2 MR. POWERS: But that's my representation.

3 You can --

4 COMMISSIONER PRIESTLEY: I'm not going to  
5 rewatch the video.

6 MR. POWERS: This is where we get into  
7 trouble. It's hard to write the order for you. And what  
8 we go on is a basis of the whole commission as a whole.  
9 I'm sorry, Commissioner Martin, Chair, Commissioner  
10 Priestley.

11 COMMISSIONER ADLER: Yeah, I'm not comfortable  
12 with that language either, and I -- I do not feel  
13 confident that she never addressed it. I'm not sure  
14 about that.

15 MR. POWERS: Do we move forward or -- Chair?

16 MR. CHAIR: You know, I mean, I -- I'm happy  
17 to move forward. But if Commissioner Priestley has  
18 additional comments then of course I'd like to hear them.

19 COMMISSIONER PRIESTLEY: I have no additional  
20 comments. I'll stand by what I've always said.

21 In your review, Kevin, of the record and your  
22 write up, you did not include any comment there that the  
23 applicant addressed it. You addressed that this person  
24 Rebecca Jones or Becca Jones provided comment,  
25 not -- provided comment and also Ms. Sayeda provided

1 comment. But the applicant did not. I don't think it's  
2 going to -- it's not going to lead anybody one way or the  
3 other. I think it's a true statement, but I'm not going  
4 to hang my hat on it.

5 MR. POWERS: And, Commissioners, please take  
6 my role not as a witness. I am not a witness in this  
7 proceeding. I've been requested by the commission as a  
8 whole to prepare an order to the best of my ability based  
9 on the record that I have reviewed. The problem is if I  
10 advocate for a position or not, I'm not doing my duty to  
11 the commission and not providing a fair representation to  
12 you. So I just want to make sure we're all clear on  
13 that.

14 COMMISSIONER ADLER: Right. That's why I  
15 voiced my own opinion on that. I'd like to hear from the  
16 other commissioners, too, and then maybe we can move on.

17 MR. CHAIR: I'm just taking a moment to read  
18 this section. So I'll chime in in a moment.

19 Regarding the changes that have been made, I  
20 mean, these seem like, you know, very small, very small  
21 changes that don't really change the overall summary of  
22 the order or the overall thrust of reasoning of the  
23 commission. And so regarding things that aren't  
24 that -- the changes that have -- are in red that Kevin  
25 has placed in the order that are amendments, I think

1     those are fine.  And if it's -- helps us gain consensus  
2     on this issue, I'm happy to accept those and move  
3     forward.  So those are my views.

4                     Does anybody else have any thoughts or any  
5     additional concerns or thoughts you'd like to share?

6                     Go for it, Jean.

7                     COMMISSIONER DEWART:  Chairman, these changes  
8     seem appropriate to me.

9                     MR. CHAIR:  All right.  Thank you.

10                    Well, it seems that we're in general consensus  
11    around this.  So I will go ahead and make a motion to  
12    accept the order as presented, which includes within it a  
13    motion to approve the aforementioned special use permits.  
14    So I'll go ahead and make that motion.

15                    Does anybody second that motion?

16                    COMMISSIONER:  I'll second that motion.

17                    MR. CHAIR:  All right.  Thank you.

18                    A motion has been made and seconded.  We'll  
19    now have sort of final discussion.

20                    Go ahead, Commissioner Priestley.

21                    COMMISSIONER PRIESTLEY:  I just want to make  
22    sure, we're going to -- we have one motion that is going  
23    to approve the order and also approve the two special use  
24    permits; is that the intent?  Because I can tell you I  
25    can personally, I agree that the order as amended is the

1 accurate representation of the facts represented. I'm  
2 good with that, but I'm not good with the second piece of  
3 that. So I'm not sure why we would roll that up  
4 in -- and I think they're two different things. One is a  
5 representation of, you know, the meeting and our  
6 conclusions. And the other one is a vote on the special  
7 use permit. I think they're two different things. And  
8 so I would not recommend going forward with this motion.

9 MR. CHAIR: I understand your procedural  
10 concerns.

11 And, Kevin, what do you think? Should we  
12 split this up or how do you think we should go  
13 about -- should we have an order, a motion for the order  
14 and then two motions for the individual permits? Should  
15 we do two orders, one for the motion, one for the permits  
16 together? Or, you know, how do you feel is the best way  
17 to proceed on this? I welcome your legal advice and  
18 expertise in procedure.

19 MR. POWERS: Thank you, Chair and  
20 Commissioners.

21 I think, as Terry mentioned, approving the  
22 order as amended is sufficient because the order will  
23 then be adopted by the commission which has all the  
24 approvals as noted. And in/HEFRPBT in that is the  
25 approval of both of those permits based upon those facts

1 and findings. So one motion is all that's needed is to  
2 adopt the order as amended.

3 MR. CHAIR: All right. Thank you for your  
4 counsel, Counselor Powers.

5 So we'll proceed with the discussion of the  
6 order. Any other thoughts?

7 All right. Go ahead, Commissioner Priestley.

8 COMMISSIONER PRIESTLEY: I apologize. I just  
9 want to -- I don't agree with going ahead with rolling  
10 these all into one. I made that point.

11 I do think that when somebody applies for a  
12 special use permit it is their -- they want to do  
13 something with their property to be used in a manner that  
14 is a deviation from the normally accepted activities.  
15 And that's why we have the special use permit. So  
16 there's a process to allow them to do that, and that's  
17 the special use permit. And so when we do that we need  
18 to take into consideration the impact on their immediate  
19 neighbors.

20 And we had a lot of testimony from the  
21 community, and frankly we had testimony from a  
22 representative of the lab, and I think we all agree that  
23 daycare is an important thing. But that's not what this  
24 is about. This is about how is this going to impact the  
25 immediate neighbors. And I think we, as a commission,

1 have not given enough weight to the immediate neighbor's  
2 concerns. And so it's not our job to solve a lab  
3 problem. As you heard from the representative in the  
4 lab, the lab has flatly refused to address this problem.  
5 And why we should put that burden on the near neighbors  
6 of this is not appropriate in my mind.

7 And the other thing, I guess something that  
8 we've dealt with before, and I think it's come up in this  
9 case, I think sometimes the staff turns into an advocate  
10 for an applicant. And I wish the staff would be a little  
11 bit more independent. You know, in this case there's  
12 several criteria that weren't addressed in the  
13 application. In my mind we're not addressing the  
14 application, and the staff report did not address them  
15 either. And I think some of this stuff would -- if the  
16 staff would be a little bit more independent as oppose to  
17 an advocate for the permit I think it would help us a  
18 lot.

19 Thank you.

20 MR. CHAIR: All right, thank you, Commissioner  
21 Priestley.

22 Any other thoughts?

23 COMMISSIONER: I would like to, Chair, just  
24 weigh in that I think this lack of daycare is not just a  
25 LANL problem. It's a town problem and a business

1 problem, and I think it is in our purview.

2 MR. CHAIR: Yeah, I'll just say, you know,  
3 we've had a lot of discussion about this and already laid  
4 out a lot of opinions about this. And many of  
5 our -- sort of a summary of our summary of our consensus  
6 to you is written up here in this order. So I don't  
7 necessarily want to go back into, you know, resurfacing  
8 the discussions themselves except perhaps to amend the  
9 order, although I think we've already done that to the  
10 satisfaction as much as we can. Obviously some  
11 commissioners would like to see the order be different  
12 because they'd like to see it represent a different view  
13 of the commission.

14 But the views of the commission being what it  
15 is, it seems like it's a reasonable order. So I  
16 don't -- I don't want to necessarily go through and have  
17 a longer discussion about this because I think it's  
18 not -- I think we've already said what we've said. You  
19 know, we've already aired those views. So that's my  
20 thought.

21 Chair Adler, do you have something you'd like  
22 to share?

23 COMMISSIONER ADLER: Yeah, just one last  
24 thing, and I apologize if this just goes against what you  
25 said about not wanting to rehash. I also think it's

1 important to note that there were several near neighbors  
2 that were within that 300-foot radius who also supported  
3 the daycare. So I just want it to be on record that that  
4 was also a fact that happened.

5 MR. CHAIR: Yes, so do you have any specific  
6 thoughts about the amendments that we've put forth or the  
7 motion? Do you support the motion as amended? I guess  
8 let me just ask you that.

9 COMMISSIONER ADLER: Yeah, no, I think that  
10 the amendments are appropriate, and I'm happy to move  
11 forward with the next step.

12 MR. CHAIR: All right.

13 All right. Soliciting any other comments from  
14 the commission? All right. Seeing none, I think we are  
15 ready to move forward and take a roll call vote on the  
16 motion.

17 Desiree, I welcome you to conduct the vote.

18 THE CLERK: April Wade.

19 COMMISSIONER WADE: Yes.

20 THE CLERK: Jean Dewart?

21 COMMISSIONER DEWART: Yes.

22 THE CLERK: Terry Priestley?

23 COMMISSIONER PRIESTLEY: No.

24 THE CLERK: Neal Martin.

25 MR. CHAIR: Yes.

1 THE CLERK: Rachel Adler?

2 COMMISSIONER ADLER: Yes.

3 THE CLERK: Rodney Roberson.

4 COMMISSIONER ROBERSON: Yes.

5 THE CLERK: And Stephanie Nakhleh.

6 COMMISSIONER NAKHLEH: Yes.

7 THE CLERK: Motion carries 6 to 1.

8 MR. CHAIR: All right. Let me read this  
9 statement. Any action by the Planning and Zoning  
10 Commission in granting approval, conditional approval, or  
11 disapproval of an application may be appealed by the  
12 applicant, any aggrieved person by any member of the  
13 county council or by the county administrator to the  
14 county council within 15 calendar days after the date of  
15 the action pursuant to section 16-492 of this chapter.

16 So the motion has been passed. This concludes  
17 our agenda item 4 in our packet.

18 (Agenda items SUP 2022-0020 and SUP 2022-0021  
19 discussion concludes.)  
20  
21  
22  
23  
24  
25

1 In Re:  
2 Los Alamos Hearing, February 23, 2022  
3 \_\_\_\_\_  
4

5 C E R T I F I C A T E  
6  
7

8 I, Lisa Reinicke, New Mexico Certified Steno  
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17 recording was of GOOD quality.

18 I FURTHER CERTIFY that I am neither employed  
19 by nor related to nor contracted with (unless excepted by  
20 the rules) any of the parties or attorneys in this  
21 matter, and that I have no interest whatsoever in the  
22 final disposition of this matter.  
23  
24  
25

\_\_\_\_\_  
Lisa Reinicke,  
Certified Steno Transcriptionist

# APPEAL APPLICATION



# NOTICE OF APPEAL FROM A DECISION OF THE PLANNING & ZONING COMMISSION OR BOARD OF ADJUSTMENT

Los Alamos County Community Economic & Development Department

1000 Central Ave., Suite 150

Los Alamos, NM 87544

505-662-8120 (Fax) 505-662-8363

In order to process your appeal you will need to fill out this Notice of Appeal form and submit it to the Community Economic & Development Department within the required time period as described in the attached sheets. Please feel free to consult with a Planning Division staff member on the completeness of your Notice of Appeal or for any questions you may have regarding this process. We cannot accept or process incomplete or incorrect applications.

## 1. DECISION-MAKING BODY BEING APPEALED

Please indicate the decision-making body whose decision you are appealing.

☒ Appeal from a decision of the Planning & Zoning Commission    ☐ Appeal from a decision of the Board of Adjustment  
(Please consult with the Planning Division planner and choose only one type per form.)

## 2. CASE BEING APPEALED

Enter the Planning Division Case Number and Case Name being appealed.

SUP-2022-0020 and SUP-2022-0021 Denise Matthews, dba Worms and Wildflowers Daycare

Enter the property address or other form of identification associated with the case being appealed.

113B La Senda Road, White Rock, NM 87547

## 3. TYPE OF PARTY APPEALING THE DECISION

Please check only one box. (If you are unsure of your status, check with your assigned planner.)

☐ Original case Applicant    ☒ Affected party within 300 feet of the case property boundary    ☐ Other affected party  
(Please explain your status in the space below.)

We the undersigned (see attached) who live within 300 feet of the subject property at 113B La Senda Road

## 4. APPELLANT INFORMATION

Name: Patricia Thames    Phone: N/A    Cell #: 707-738-3313    Fax: N/A

Address: 115 La Senda Road, White Rock, NM 87547

NOTE: If the appellant is a corporation, partnership, Los Alamos County, Los Alamos School Board, or other group, also identify the single individual who will be "Appellant's Authorized Representative" in the spaces below OR CHECK

☐ Not applicable.

Appellant's Authorized Representative: Patricia Thames

Phone: N/A    Cell #: 707-738-3313    Fax: N/A

Address: 115 La Senda Road, White Rock, NM 87547

The Appellant's Authorized Representative is the person authorized to represent the appellant during the appeal process and act for the appellant at the Council hearing.

CED Application Number \_\_\_\_\_ APL \_\_\_\_\_

**5. GROUNDS OF THE APPEAL**

In the space below cite the reasons for the appeal and specifically cite one or more errors in the decision of the Planning and Zoning Commission or Board of Adjustment. (Attach additional sheets if needed.)

The applicant did not present a preponderance of evidence that the day care substantially conforms to the Comprehensive Plan.

The applicant did not present substantive evidence that the day care will not be detrimental to the health, peace, comfort and general welfare of persons residing or working in the vicinity.

The applicant did not present any evidence that operation of the day care will not be detrimental to the value of property in the vicinity.

The Findings Of Fact approved by the Planning & Zoning commission at their February 23, 2022 meeting were insufficient to establish that the day care substantially conforms to the Comprehensive Plan, or that it would not be detrimental to the health, peace, comfort, or general welfare of persons residing or working in the vicinity, or that it would not be detrimental to the value of properties in the vicinity.  
Further details and explanations are attached.

Various errors of fact were given in evidence supporting approval of the Special Use Permits.  
Further details and explanations are attached.

Errors of procedure may require some corrective action. Further details and explanations attached.

Procedural note: Single Point Of Contact is fine for US mail, but due to chronic email problems with CDD prior to hearing, would appreciate using multiple addresses for email communications to guarantee delivery. Please use: tishthames@gmail.com d@vidnorth.com akkana@shallowsky.com latoty07@gmail.com  
Appellants can circulate communications from there. Thanks!

**6. REQUEST FOR RELIEF**

I am requesting that the County Council ☒ Reverse, ☐ Modify, or ☐ Remand this case on appeal.  
(Check the appropriate box.)

**7. APPELLANT'S CERTIFICATION & SIGNATURE**

I hereby acknowledge that I have read this Notice of Appeal and accompanying information. To the best of my knowledge and belief the information supplied as part of this Notice of Appeal is true and correct.

If the party is a corporation, partnership, Los Alamos County, Los Alamos School Board, Homeowners Association or other entity, I have been authorized to file this Notice of Appeal on its behalf.

Sign and Date Here:

*Petruia Thames. 03/06/2022*

**8. ATTACH \$200 CHECK FOR APPEAL HERE Payable to Los Alamos County**

<b>PHILLIP D. NOLL, JR.</b> <b>MONICA D. NOLL</b> 114 PIEDRA LOOP LOS ALAMOS, NM 87544		6756 95-101/1070
DATE <u>3-8-2022</u>		
PAY TO THE ORDER OF <u>Los Alamos County</u>		\$ <u>[REDACTED]</u>
<u>Two hundred and 00/100</u>		DOLLARS
PO BOX 60 Los Alamos, NM 87544 1-800-684-LANB Member F.D.I.C.		Photo Safe Deposit® Details on back
FOR <u>Appeal SUP-2022-0020</u> <u>SUP-2022-0020</u>		<u>Monica D. Noll</u>
10700101216756		

**Appeal of the Decision to Approve Special Use Permits  
SUP-2022-0020 and SUP-2022-0021  
Granted February 23, 2022**

**APPELLANTS CERTIFICATIONS AND SIGNATURES**

We the undersigned affected residents (within 100 yards of 113B La Senda Road) are participating in the appeal to reverse the Planning and Zoning Commission approval of the above Special Use Permit. We hereby acknowledge that we have read this Notice of Appeal and accompanying information. To the best of our knowledge and belief the information supplied as part of this Notice of Appeal is true and correct.

Signature: David M. North 505 Date: 2/28/2022  
Printed Name: David M. North  
Address: 111 La Senda Road

Signature: Akkana Peck Date: 2/28/2022  
Printed Name: Akkana Peck  
Address: 111 La Senda Road

\* Signature: See next page Date: \_\_\_\_\_  
Printed Name: Leslie Di Leva  
Address: 115 La Senda Road

Signature: Patricia Thames Date: 2/28/2022  
Printed Name: Patricia Thames  
Address: 115 La Senda Road

Signature: Fredrick J. Berl Date: 3/6/22  
Printed Name: Fredrick J. Berl  
Address: 117 La Senda Road

**Appeal of the Decision to Approve Special Use Permits  
SUP-2022-0020 and SUP-2022-0021  
Granted February 23, 2022**

**APPELLANTS CERTIFICATIONS AND SIGNATURES**

We the undersigned affected residents (within 100 yards of 113B La Senda Road) are participating in the appeal to reverse the Planning and Zoning Commission approval of the above Special Use Permit. We hereby acknowledge that we have read this Notice of Appeal and accompanying information. To the best of our knowledge and belief the information supplied as part of this Notice of Appeal is true and correct.

Signature: David M. North Date: 2/28/2022  
Printed Name: David M. North  
Address: 111 La Senda Road

Signature: Akkan Peck Date: 2/28/2022  
Printed Name: Akkana Peck  
Address: 111 La Senda Road

\* Signature: Leslie Di Leva Date: 2/28/2022  
Printed Name: Leslie Di Leva  
Address: 115 La Senda Road

Signature: Patricia Thames Date: 2/28/2022  
Printed Name: Patricia Thames  
Address: 115 La Senda Road

Signature: Signature on first page Date: \_\_\_\_\_  
Printed Name: Frederick J. Berl  
Address: 117 La Senda Road

Signature: Date: 3/6/22

Printed Name: Theresa K. Berl

Address: 117 La Senda Road

Signature: Date: 2/24/22

Printed Name: Phillip D. Noll

Address: 114 Piedra Loop

Signature: Date: 2-24-2022

Printed Name: Monica D. Noll

Address: 114 Piedra Loop

Signature: Date: 2-24-2022

Printed Name: Barham W. Smith

Address: 116 Piedra Loop

Signature: Date: February 24, 2022

Printed Name: Marilyn K. Smith

Address: 116 Piedra Loop

Signature: Date: 2.24.2022

Printed Name: Mikkel B Johnson

Address: 118 Piedra Loop

Signature: Date: 2.24.2022

Printed Name: Lynne M. Johnson

Address: 118 Piedra Loop

Signature: Date: 3/1/2022

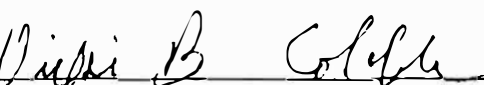
Printed Name: David L. Paulson

Address: 122 Piedra Loop

 Signature: \_\_\_\_\_ Date: 3/1/2022  
Printed Name: Anne M. Paulson  
Address: 122 Piedra Loop


 Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: William M. Hodgson  
Address: 114 La Senda Road

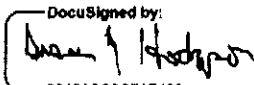
 Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: Susan Mary Hodgson  
Address: 114 La Senda Road

 Signature: \_\_\_\_\_ Date: 4/24/2022  
Printed Name: Vicki B. Cobble  
124 A Piedra Loop

 Signature: \_\_\_\_\_ Date: Feb 24, 2022  
Printed Name: Mark Potocki  
105 La Senda Road

○ Signature: See previous page Date: \_\_\_\_\_  
Printed Name: Anne M. Paulson  
Address: 122 Piedra Loop

★ Signature:  Date: 3/1/2022  
Printed Name: William M. Hodgson  
Address: 114 La Senda Road

★ Signature:  Date: 3/1/2022  
Printed Name: Susan Mary Hodgson  
Address: 114 La Senda Road

X Signature: Signature on previous page Date: \_\_\_\_\_  
Printed Name: Vicki B. Cobble  
124 A Piedra Loop

X Signature: Signature on previous page Date: \_\_\_\_\_  
Printed Name: Mark Potocki  
105 La Senda Road

**Certificate Of Completion**

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11450 Barnett Valley Road

Sebastopol, CA 95472-9242

tish.thames@winecountrygroup.com

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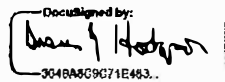
**Signer Events**

Susan Mary Hodgson

msusanhodgson@gmail.com

Security Level: Email, Account Authentication  
(None)**Signature**

DocuSigned by:



304BA8C9C71E463...

Signature Adoption: Drawn on Device

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Signed using mobile

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Viewed: March 1, 2022 | 10:19

Signed: March 1, 2022 | 10:21

**Electronic Record and Signature Disclosure:**

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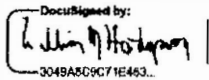
ID: b2e7846a-9dc7-4834-a4cc-f3873976bc50

William M. Hodgson

msusanhodgson@gmail.com

Security Level: Email, Account Authentication  
(None)

DocuSigned by:



304BA8C9C71E463...

Signature Adoption: Drawn on Device

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Signed: March 1, 2022 | 10:26

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**How to contact Valley of The Moon Realty:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [natalie@bhghome.com](mailto:natalie@bhghome.com)

**To advise Valley of The Moon Realty of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [natalie@bhghome.com](mailto:natalie@bhghome.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

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To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [natalie@bhghome.com](mailto:natalie@bhghome.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

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- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
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**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> <li>•Allow per session cookies</li> <li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li> </ul>

**\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.**

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Valley of The Moon Realty as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Valley of The Moon Realty during the course of my relationship with you.

**Reasons for Appeal of Special Use Permits SUP-2022-0020 and SUP-2022-0021  
Granted on February 23, 2022**

These reasons are based solely on the Findings Of Fact presented, amended, and approved at the resumption of the hearing on February 23, 2022. Appellants show the findings fail to establish that the applicant offered substantial evidence to demonstrate compliance with any of the listed issues, all of which are required by county ordinance.

**Regarding Property Value**

There was no evidence presented that operation of the day care will not be detrimental to the value of property in the vicinity.

A neighbor within 300 feet presented testimony that the day care would diminish property values from 5-15%. The commission acknowledged this, while noting that the report was not physically in evidence, merely read into the record (including an attribution that was literally spelled out).

Council should note that the findings include testimony considered to be admissible and evidentiary on lines 151-55, 156-57 and 186-88 without actually quoting any source or producing any hard copy or reference to data in any way. Yet the author of the findings considered this admissible without comment, and the commission did not object.

The author further quoted a classic strawman argument into the findings starting on line 199 through 203 to the effect that no residential property report is required. This is correct, but only serves to illustrate that broad latitude is given the applicant. There is literally no limit to the kind or amount of evidence required to establish that property values will not suffer. There is only the requirement that the applicant demonstrate that there will be no detriment.

**Regarding The Comprehensive Plan**

The applicant failed to present a preponderance of evidence that the application substantially conforms to the Comprehensive Plan.

**Synopsis:**

1. Because three of four known permitted day care operations in White Rock have openings, there is no substantive argument that day care is hard to find or unavailable.

2. Because the applicant never describes the proposed fee structure, there is no evidence the proposed business will offer any price advantage over existing options.

3. Because the applicant argues the outdoor hours will be similar to other existing day cares, and presents no evidence that other operations have less nature-based content, there is no reason to differentiate the proposed business on curriculum.

This is the only evidence presented by the applicant that her day care home occupation complies with the Comprehensive Plan.

The Comprehensive Plan states: "A consistent theme heard throughout development of the Plan was the importance to the community of its existing neighborhoods and the desire to preserve their residential character and scale." There was no evidence whatsoever presented by the applicant that her day care operation would "protect the character of existing residential neighborhoods" as is required by the Comprehensive Plan.

Regarding the scarcity of day care: lines 141-157 note testimony from numerous parties and commissioners that "daycare services in the County are both difficult to find and obtain a spot at for a reasonable fee. As such, any new and alternative daycare facility would substantially comply with the intent and purpose of the Comprehensive Plan."

At 3:01:58 in the video of the hearing, Marilyn Smith testified there are at least four Day Care businesses in White Rock, and three currently have space available. There was no objection or contradiction to this testimony, and no reference elsewhere in the hearing that any of the three were full. Therefore, evidence indicates that in White Rock, there is day care easily found and readily available. Several people presented incorrect evidence of the "everybody knows" sort about lack of day care. This merely stands to illustrate that most of the testimony on this subject was from people who did not know the facts as they stand. So it's obvious neither the applicant nor anyone else presented substantial evidence that day care is difficult to find or indeed obtain.

Next there is the question of a reasonable fee. Neither the applicant, nor staff, nor anyone else ever described the fee structure of the proposed day care in any way. So it's simply impossible for the commission to argue this proposed day care would have more reasonable fees than the existing unfilled day care businesses, or even reasonable fees at all.

There is also some argument about the importance of nature-based content differentiating the proposed day care from others. However, the applicant argues that the time spent outdoors will only be modestly above average, and offers no evidence that other available options lack similar nature content.

At line 149-150 of the findings, the author suggests viewing the interaction of the applicant and one of the commissioners at 1:44:19 in the hearing. Going to that time will be confusing since the time listed is incorrect. The actual time is 1:45:45, at least on the video record on losalamos.legistar.com. Nothing of substance is presented but it is an extraordinarily embarrassing example of a commissioner acting as an agent for a party to a hearing. Council should ask if this is appropriate in light of code Section 30-4 (c).

At line 150 the testimony of Kathryn Keith was noted as particularly persuasive because of anticipated hires at the lab that include younger families. First, the author has confused the tenses of the code requirements. While peace, comfort and property value are speculative about what might happen in the future, the proposed day care is required to substantially conform to the Comprehensive Plan at the time of approval, which is to say on February 23, 2022. That it may conform at some later date is not relevant. Further, Los Alamos is boom and bust at the fiat of congress. Predictions about both hiring and population have never born out in the past.

In presenting these matters as evidence, the findings attempt to turn county ordinance on its head. The requirement is for the applicant to produce evidence to demonstrate compliance with the Comprehensive Plan. Claiming unsupported supposition and factually incorrect testimony as proof is contrary to that requirement.

Lines 148-149 refer to the results of the informal survey performed by the Applicant on the need for daycares in the area. This is sourced from social media groups frequented by the

applicant and therefore not informative. Further, the majority of participants at the hearing were from Los Alamos townsite, Espanola or Santa Fe. That there might be fewer slots available outside White Rock is clearly not relevant to day care operations in White Rock, since persons from those areas are not filling the available slots.

. There follow some general opinions without any reference to evidence until line 164, where the author claims a commissioner said "the County Codes already allows (sic) for a daycare facility in R-A zoned districts, that such application and use, if approved, would also be in line with the Comprehensive Plan's goal of preserving the character of neighborhoods as well as enhance the housing stock and quality."

Of course, county code does not allow a day care facility in R-A districts. It allows parties to apply for a Special Use Permit for same. This rambling statement is either nonsense, or arguing that because someone can apply for a Special Use Permit, compliance with the Comprehensive Plan is automatic. Not only is that contrary to law, it's a fair example of the sort of analysis used to decide this issue.

### **Regarding Health, Safety, Peace and Comfort**

#### **Synopsis:**

1. The findings argue incorrectly that it is difficult to quantify peace and comfort, even though relevant metrics were supplied.

2. Commissioners note that it is hard for the applicant to demonstrate there will be no detriment to peace and comfort, apparently proposing that there is no requirement to obey county ordinances if it's difficult, even if a high bar was obviously intended by the ordinance.

Lines 174-177 of the findings indicate the P&Z Commissioners found it difficult to quantify a measure of peace or comfort. To make this objection, they have to reject measurement of noise as a factor in peace and comfort, and further reject the standards proposed by both law (Los Alamos County Code Sec. 18-73) and expert bodies as presented to them in evidence.

Both the applicant and appellants presented evidence regarding the scale of noise relating to the Los Alamos County noise ordinance. The applicant used her iPhone to create the misdated chart on page 24 of the record. Appellants listed exhaustive examples on pages 69-71 in the staff report, and further developed this information in the testimony of Akkana Peck at 3:18 in the video record, noting a max reading of 83.6 dBA two feet from the property line equivalent (3:19:18 on the video record). Ultimately, all evidence in this category led to the conclusion that sound would exceed legal levels at the property line.

However, various parties argued the applicant was not required to establish conformance with the noise ordinance. This reasoning is unclear. At no time was the commission informed they were legally required to ignore, or even not consider, evidence quantifying noise in excess of legal limits. Notably, the staff report on page 14 in the section titled "Staff Response" refers to an iPhone noise study of average sound levels and claims "Based on this evidence..." that the proposed day care is not detrimental to peace and comfort. However, after it becomes increasingly apparent the applicant's noise study was deeply flawed, only then is compliance with the noise ordinance mooted by staff.

Nevertheless, the commission also had to ignore the World Health Organization guidelines as cited on page 7 of the letter on page 72 of the staff report record near the middle of the page: "...the World Health Organization ([https:// www.who.int/docstore/peh/noise/Comnoise-4.pdf](https://www.who.int/docstore/peh/noise/Comnoise-4.pdf), near the bottom of page 55) considers children playing outdoors to qualify as an annoyance when it gets to 55 dBA..." and in oral testimony at 4:07:12. The WHO has been repeatedly cited as an acceptable authority for standards in New Mexico law, including State ex rel. Riddle v. Toulouse Oliver 2021-NMSC-018 (point at which a pandemic is reached), State v. Martinez 2020-NMCA-043 (guidelines for drawing blood), et al, and various Executive Orders (see first sentence of Executive Order 2021-045 for example).

There really is no difficulty in quantifying the noise issue, or peace and comfort, unless the commission assumes itself competent to reject standards set by the World Health Organization.

The findings next submit as evidence testimony from the applicant that "although children will be outside at some points of the day, they will not be just running around screaming and yelling." This artful statement is literally specious in that it does not assert that they will not run around and scream, but that is not what they will do all the time they are outdoors. The appellants concur but do not allow that the statement has any evidentiary value whatsoever.

What remains is vague reference to various opinions with no specificity. There is reference on line 188 of the findings to testimony by Ms. Sayeda @ 2:01:49, but there is nothing at that time stamp on the published hearing video. There is some testimony by Commissioner Nakhleh starting at 4:58:55, but it is not evident where she supports an opinion that day care will enhance peace.

That being the totality of the evidence presented regarding noise levels and peace and comfort, it is not clear at all that the findings point to any substantial proof that the applicant presented evidence that there will be no detriment to peace and comfort. Even more, there is no actual indication that the applicant, as opposed to other parties, submitted any proof at all.

The first and most emphatic point the commission makes in the findings is that it is hard for the applicant to prove compliance with Criterion 1 (Los Alamos County Code Sec. 16-156 (1)), especially peace and comfort. Again, appellants concur. Further, it is apparent from any direct reading of the law that it was the intent of the authors to make it difficult to prove compliance with that criterion, from which we may derive that the intent was quite reasonably to make the default to deny an opposed application for a Special Use Permit unless the evidence is clear and obvious that peace and comfort would not be disturbed.

### **Regarding Consistency**

One point raised by some commissioners during discussion of the Findings prior to the vote was concern that if the standards in the five criteria were actually applied, especially criterion one, this would not be consistent with the handling of previous applications for Special Use Permits, with Commissioner Martin singling out the five years of his tenure as a period of measure.

In the eight Special Use Permit hearings found from January 2017 through February 2022, all were approved and only one did not clearly supply a preponderance of evidence to support conformance with the five criteria.

The single exception was the first hearing for the Worms & Wildflowers proposed day care, SUP-2020-0014/15. Commissioner Martin would not necessarily remember this because he was not present for that hearing.

### **Procedural Errors**

#### **Persons Not Within 300 Feet Of The Proposed Daycare Were Allowed To Testify Without Any Legal Standing Or Being Called As Witnesses.**

At 10:04 in the video record of the February 9 hearing, Chair Adler includes in her instructions the standard rule, "Other persons in addition to the applicant including property owners within 300 feet of the boundary of the property under consideration, and those who have a legally recognized interest in this case may also be recognized as parties. Parties may call witnesses to present facts to support that party's position."

Note that in the June 28, 2017 hearing for Special Use Permit SUP-2017-0010. Chair Michael Redondo at 6:20 into the hearing says in regard to a nearby neighbor wishing to testify, "Since you are not within the 300 feet we won't recognize you as a party, but you can appear as a witness. So if there is someone here who is a party, we'll have them call you as a witness."

Since none of the parties outside the 300-foot radius was called as a witness, and offered no proof of material interest in the case, their testimony should be removed from the official record.

#### **Letters from persons not at the hearing should be removed from the record.**

Former P&Z Chair Gursky says "I did not note or hear that that Peggy Pendergast was here. If she's not here then I'm going to, I'm not going to include that letter in the record since she will not be subject to cross-examination." This occurs at about 15:13 in the video record for the hearing for 15-SUP-007 on October 28, 2015. Based on that precedent, the letters from persons not present at this hearing should also be removed from the record.

### **Objection To Commissioner April Wade's Presence Was Unreasonably Limited**

About April Wade being in a business relationship with Denise Matthews, Attorney Powers says: "The commission does have the option to take a vote to not let her be included in the proceedings. Unless there's a motion to do that we move forward."

At the time, several appellants were of the opinion that they should have been allowed to object, but that the legal limitation placed by the assistant county attorney overruled any such protest before it could even be offered. It could have convinced the commission to at least consider the matter.

In retrospect, appellants consider this an unreasonable instruction, and request Ms. Wade's testimony and subsequent vote be removed from the record.

### **Errata**

There is an error in the date on the "Noise Level Recording of Comparable Daycare" table on Page 24 of the original staff report. The date shown (1/11/21) is a year prior to the actual date of measurement, which caused considerable confusion because there was no Dragonfly Daycare at Rover & Meadow at that time.

### **Explanation Of Appeal Procedure**

Appellants presume the procedures used in the last two appeals will be repeated, particularly in respect to briefs, responses and motions.

The last item, motions, having only appeared at the most recent hearing, might require some clarification. Appellants understand motions at the county level do not require a request for concurrence, and will not reset the record though they will be included. There will be no hearing on any motion prior to the actual date set for the appeal hearing, and there is no requirement for response to any motion to be in writing or presented before the appeal hearing.

If we misunderstand any of those procedural rules, we request an explanation, in writing, of the actual procedure the County wishes to follow.

A PDF of this file is available at: <https://kafkasoft.com/appeal/reasons.pdf>

# **APPEAL BRIEFS & RESPONSES**

**Appellants' Brief Regarding The Applicant's Introduction Of A Material Error Of Fact And Regarding Agents Acting For The Appellant In The Planning & Zoning Hearing For SUP-2022-0020/21**

**There Were No Flower Beds As Described By The Applicant And Staff**

On line Transcript Page 66, Lines 13-15 (Transcript Page 66, Lines 13-15), Les DiLeva asked, "Is it possible that the children could get to the fence line and be at a high level of noise?" and applicant Denise Matthews replied, "Well, so, the fence line has like a ten-foot flower bed in front of it and then the fruit trees are growing out of the flower bed." She then reinforces the statement, "If they were at the fence line they would be standing in the flower bed."

As can be clearly seen in Exhibits E1 and E2, this is not correct. Exhibit E2, taken less than 48 hours after the hearing, shows plain dirt going at least ten feet back on the right side of the photo, and along the fence line. The thin snow cover elsewhere shows no sign of flowers, though a few weeds can be seen poking through. The untracked snow establishes that nobody has been out to remove the flower beds since the storm on the day of the hearing. The referenced fruit trees are shown, helping to locate the area. It's obvious that there is nothing to deter a child from walking up to the fence at the property line.

Three days later, on February 14, after Patricia Thames and Les DiLeva returned from a trip, Ms. Thames and David North reviewed the site from just across the fence on the Thames property when most of the snow had cleared. There was no sign of flowers or plantings of any sort.

Subsequently several other people observed the area, including Akkana Peck, Marilyn Smith, Barry Smith, Patricia Thames, Philip Noll and Monica Noll, with the same result: No flower beds.

**Statement Was A Material Error Of Fact**

Such a statement qualifies as an Error of Fact according to the Supreme Court of New Mexico in *Anadarko Petro. Corp. v. Baca - 1994-NMSC-019 {15}* ... An error of fact is "that

error which proceeds either from ignorance of that which really exists, or from a mistaken belief in the existence of that which has none."

This is not just some trivial slip, like putting the wrong date on a table. The testimony was clearly material to the case, being presented at least five times during the hearing to support the idea that there was a buffer between the play area and the closest neighbor.

From *State v. Benavidez, 1999-NMCA-053 {26}* "...A statement is material if it has a natural tendency to influence or the capability to influence the decision of the decision-making body to which it is addressed."

### **State Of Applicant's Knowledge Unclear**

It seems extremely unlikely anyone would fabricate a statement so easily disproven. It's only slightly less difficult to accept someone would not know they didn't have a ten-foot flower bed along one side of their back yard. Further, adding an extra ten foot buffer that isn't really there is consistent with reporting only the average, and not the maximum, sound level measurement, even though the sound measurement app displays both values (*see Transcript Page 55, Lines 1-9*). Or not recalling that if sound levels go down as you move away from the source, they go up by the same amount as you approach the source (*Transcript Page 59, Line 8 through page 61 Line 16*).

Fortunately, it is adequate for our purposes to establish that the statement is a factual error (*see Los Alamos County Municipal Code Sec. 16-493(c)(1)*).

### **Proper Procedure For Introducing Error Of Fact Not Supported By The Record**

Appellants could find no procedure in Los Alamos County Code or Appeal Procedures for submitting a factual error of this sort. Further, New Mexico State rules do not apply since LA County Attorney cited *2003-NMCA-014* at the December 16, 2021 *CASE NO. APL-2021-0019* hearing to the effect that "administrative hearings, are meant to be less formal than trials ... are not bound 'by common law or statutory rules as to the admissibility of evidence or by technical rules of procedure.'"

Therefore the appellants presume that inclusion in a brief is the appropriate procedure. If Council or Staff disagrees, we respectfully request advisement of the preferred procedure, at least some days prior to the expiration date for whatever process is invented.

### **Effect On Other Testimony**

It follows naturally to wonder what other uncorroborated Applicant testimony might suffer from a similar error. It is far too complex a task to winnow out which matters might qualify and then research their accuracy.

But it hardly stops there. Starting at *Transcript Page 86, Line 7* in answer to a question, Senior Planner Sayeda volunteers, "Play area, to my knowledge, is about ten feet away from the property line on the east ... on the east side ... it stops about ten feet away. There's a flower bed with planting ... not quite the property line but about ten feet away from the property line."

Asked to confirm, "Okay, that's all the way along the east side, entirely?" Planner Sayeda replies, "On the east, yes. The extent of the play area is ten feet away from the property line on the east side." (*Transcript Page 86 Lines 17-19*).

There is no reason to think Ms. Sayeda ever saw the play area in person, but rather in this and many other matters was entirely dependent on information supplied by the applicant. And so, most of Ms. Sayeda's testimony is also in doubt.

Incidentally, this would have been an excellent opportunity for the applicant to recant the earlier statement, if she knew it to be untrue.

### **Staff As Agents For The Applicant**

Ms. Sayeda's volunteering of this opinion is an indication of the County staff's role as an agent or advocate for the Applicant. This relationship is a natural result of the staff approval of the SUP, but has evolved more tightly over time.

It prompted then Chair of the P&Z to admonish staff for serving too much as an advocate, suggesting instead that they should coach the Applicant to present the evidence. This is at about seven minutes into the hearing for *SUP-2020-0012* on April 28, 2021.

As an aside, consider how the nearby residents felt when it turned out at the first hearing for this day care that staff was not a neutral informational party, but rather a support system for the Applicant, including a lawyer offering advice to ignore noise when considering peace and comfort.

This advocacy sometimes leads to interpretations that unfairly favor the Applicant, in particular by uncritical acceptance and interpretation of evidence. For example, in the above case the planner does not consider that as a predominantly outdoor nature-based preschool, a flower bed is actually a likely educational area, including inspection of the nature of the plants, weeding and care, or other teaching opportunities. Without any information about the spacing and type of plants, any conclusion that it would prevent rather than encourage children to approach the property line is unwarranted.

The same effect can be seen when the planner omits the location where sound readings should be taken (*see Transcript Page 85, Lines 17-22*), shows no interest in how the readings were taken (*see Transcript Page 86, Line 20 through all of page 87*) and in fact noted that her only critique was whether 55 dBA was lower than 65 dBA, regardless of distance, maximum readings, or any other factor.

Not to mention the absurd idea that noise should not be considered at a hearing where the Applicant is required to prove the peace and comfort of the neighbors will not be disturbed.

For these and other examples, the Commission was both misinformed and misguided by staff.

### **Commissioner As An Agent For The Applicant**

At Transcript Page 73, Line 11, one Commissioner says, "I don't want to put any words in your mouth," and then does exactly that. This exchange should be seen on video if possible to fully appreciate the tone. Appellants consider this outrageous. Councilors might also find the exchange at line *Transcript Page 74, Line 7* contributes a bit more context. It's worth watching the video at 1:45:45 to get the full impression.

This, and other lesser examples throughout, lend an impression that several of the Commissioners also were functioning as advocates for the Applicant. Obviously this is a judgement call, but if you imagine yourselves in the position of the nearby neighbors, it should be easy enough to see that impression is entirely reasonable. One of the Commissioners agreed, and admonished his fellow Commissioner.

Additionally, "A quasi-judicial proceeding provides parties with procedural due process protections by ensuring that the parties have the opportunity to be heard and present and rebut evidence before a fair and impartial tribunal." From *Section II. B. LA County, Sirphey v. Arellano ACTION NO: 2020-01* January 25, 2021.

Considering the above, Appellants have demonstrated the hearing was not before a fair or impartial tribunal. In all honesty, Council should agree.

Prepared for the Los Alamos County Council On May 18, 2022 by,

*Leslie DiLeva*

/s/ Les DiLeva  
115 La Senda Rd  
White Rock, NM 87547  
lvd001976@gmail.com

Attachments: Certification Of Service and Exhibits E1 and E2  
Hi-res Exhibit E1 at <https://kafkasoft.com/appeal/s1344date.jpg>  
Hi-res Exhibit E2 at <https://kafkasoft.com/appeal/s1344.jpg>

### **Certification of Service of Parties**

I, Les DiLeva, hereby certify that I have, this the 18<sup>th</sup> day of May, 2022 served the following individuals, via U.S. Mail and email, a copy of the foregoing document.

For County:

Sobia Sayeda  
Senior Planner, CDC  
1000 Central Avenue, Suite 150  
Los Alamos, NM 87544  
Email: sobia.sayeda@lacnm.us

For Appellee:

Denise Matthews  
113 B La Senda Road  
White Rock, NM 87547  
Email: director@wormsandwildflowers.com

For Appellants (email only; author lives at contact address):

David North & Akkana Peck  
111 La Senda Road  
White Rock, NM 87547  
Email: d@vidnorth.com

Phillip & Monica Noll  
114 Piedra Loop  
White Rock, NM 87547  
Email: shinumo@canyonechos.com

Les DiLeva & Patricia Thames  
115 La Senda Road  
White Rock, NM 87547  
Email: tishthames@gmail.com

Barham & Marilyn Smith  
116 Piedra Loop  
White Rock, NM 87547  
Email: latoty07@gmail.com

And to the other unlisted appellants.

*Leslie DiLeva*

/s/ Les DiLeva  
115 La Senda Road  
White Rock, New Mexico 87547  
Email: lvd001976@gmail.com



**Exhibit E1**

Taken February 11, 2022. EXIF date and time shown in the third box from the top.  
Higher resolution at <https://kafkasoft.com/appeal/s1344date.jpg>



**Exhibit E2**

Taken February 11, 2022. Note the bare earth to the right and undisturbed snow.  
Higher resolution at <https://kafkasoft.com/appeal/s1344.jpg>

**Appellant Brief Regarding "The Burden To Demonstrate" And Legislative Intent In  
SUP-2022-0020/21**

Maybe the most important question the Council must decide is what the Los Alamos County Code means when it states in Section 16-451 (3), "The applicant shall present evidence supporting the application and shall bear the burden of demonstrating that the application should be granted."

**The County Settled This Matter On December 16, 2021**

An LA County Attorney cited *2003-NMCA-014* at the December 16, 2021 *CASE NO. APL-2021-0019* hearing to the effect that "administrative hearings are meant to be less formal than trials ... are not bound 'by technical rules of procedure.'" Appellants realize this has the effect of placing NM State procedures in doubt as guidance for the Council.

However, Appellants contend that documents filed by LA County settle the issue. On page 5 at bottom, of the Board Of Appeals Decision in *Sirphey, LLC v Arellano*, "Throughout the appeal, Appellant had the burden to show the stop work order was arbitrary, capricious ..." and then on page 7, paragraph 3, "Based on the testimony, evidence and arguments before this Board of Appeals ... we determined that Appellant did not meet its burden to show ..." The testimony mentioned is that of both parties.

More to the point, in Section IV. CONCLUSION of the same document, "We conclude that Appellant did not meet its burden to show that the CBO had misinterpreted the law... There is substantial evidence to show that Appellant was in violation of the state and local building codes..."

The crux here is that the evidence the county used to show the Appellant did not "meet its burden" was *from the opposing party*, establishing that in administrative matters, the County does acknowledge that opposing evidence is to be considered in deciding whether the burden has been met.

This means the evidence for each required condition in *County Code Section 16-156* should be weighed, and when the Applicant fails to produce a preponderance of evidence for any of those conditions, then the SUP should not be approved.

### **The Equivalence Of "Show" and "Demonstrate"**

Appellants fully expect an objection that the word "show" is not the same as the word "demonstrate." However, starting with the *2nd Edition of Black's Law Dictionary*, considered definitive in most venues -- including the New Mexico First District Court, the definition of the word "demonstrate" was "to show." Some variation of that continues for several editions, but by the Tenth Edition, "demonstrate" has fallen out of favor and what remains is the latinate "demonstratio," which Black's translates as "to show." That should establish an adequate congruence.

### **The County's Record With SUPs Also Reflects The Requirement For A Preponderance Of Evidence**

All Planning & Zoning decisions that survived appeal in the last five+ years have met the "preponderance of evidence" test, for the simple reason that all of them offered some evidence that all criteria were met, but there was no opposing evidence offered.

Few if any met the "substantial evidence" test. For example, in the August 12, 2020 hearing of *SUP-2020-0016*, there is no evidence at all regarding peace or comfort except a vague statement by County staff that all the conditions were met. That is not "substantive." It stands to reason then that the Commission's concern about being consistent (see Transcript Page 175 Line 12, Page 176 Line 12 and Page 183 Line 13) is satisfied by the preponderance of evidence test, but if the measure is only substantial evidence as mentioned in the Findings at line 123-126, the above case should not have been approved.

### **The State Of New Mexico Asks For A Preponderance Of Evidence**

Though LA County is not required to follow state guidelines, Councilors may find them of interest. Section 22.600.1.18 A. of the *New Mexico Administrative Code* states, "Unless

otherwise specified by statute, the burden of proof in an administrative proceeding before the administrative hearings office is the preponderance of evidence."

But what about "prove" and "demonstrate?" Both NM Appellate and State Courts often use the words interchangeably, and usually assign the "preponderance of evidence" to "demonstrate" as shown in *City of Albuquerque v. Chavez* 1997-NMCA-034 {4} "...the Employee had "failed his burden" to demonstrate that there were adequate mitigating circumstances ..." leading to "...placing the burden of proof on employees would "significantly" increase the risk ... allocating preponderance of evidence burden of proof ... creates no comparable risk..."

"Demonstrate" is also used in *SONNTAG V. SHAW*, 2001-NMSC-015 {49} "... the plaintiff's ultimate burden of demonstrating intentional discrimination by a preponderance of the evidence..." And again, in *STATE V. GARCIA*, 2000-NMCA-014 {20} "It is the defendant's burden to demonstrate incompetency by a preponderance of the evidence."

Similar references can be found in *FLEETWOOD RETAIL CORP. OF N.M. V. LEDOUX*, 2007-NMSC-047, *STATE V. JUAREZ*, 1995-NMCA-085 {19}, *ARCH, LTD. V. YU*, 1988-NMSC-101 {8} & {10}, *State v. Jacob F.* 2019-NMCA-042 {1} & {2}, and others.

This means every level of government requires evidence from both sides to be weighed.

### **Procedures That Ignore Valid Evidence Yield An Unreasonable Result**

At the hearing for APL-2021-0019 mentioned above, at 1:02:05 in the video record the County Attorney states "If the appellants' interpretation of rule number 9 were accepted it would lead to an unreasonable result...this result defeats the purpose of our procedures."

Appellants contend that interpreting a procedure to allow evidence from both sides but ignoring one of the sides is an unreasonable result. It should be clear that a hearing that offers an opportunity for both sides to present evidence, and places the burden to demonstrate on the Applicant, should require the Applicant to at least supply evidence that, even if just to the smallest degree, outweighs that presented by those opposing the SUP.

## **Legislative Intent**

A final question was posed by the County Attorney at the hearing for *APL-2021-0019* (above) when he stated, "We do not construe our rules to defeat their intended purpose." and by citing *PADILLA V. MONTANO, 1993-NMCA-127*, "The fundamental principle of statutory construction is to further the legislative intent and purposes underlying the statute."

County ordinance provides for a hearing where both sides can present evidence, and the applicant is required to bear the burden to demonstrate their permit should be granted. Was the intent of this ordinance for the P&Z to consider all the evidence and decide which view had more weight? Or was it simply for the Commission to sift out whatever points it likes to support its personal preference? Appellants contend the answer is obvious, but that the Commission ignored that aspect of the law.

Several Commissioners found the Section 16-156 requirements regarding peace, comfort and property value to be difficult for the Applicant to prove (see Findings Of Fact lines 175-177). This is obviously correct. It is equally obvious that making it difficult was the intent of the legislation: that when substantive evidence is presented that there will be detriment to peace, comfort, or nearby property values -- as there was in this case -- if there is not more substantive evidence in opposition, no matter how difficult that may be, the SUP should not be approved.

## **Evidence About Peace, Comfort and Property Value Must Be Speculative**

Because detriment to peace, comfort and property value are directed at the future, and it is not possible to measure the effects of something that does not yet exist, only speculative evidence is possible. The framers of the County Code obviously knew this. Just as clearly, they knew the burden to prove that something will not happen at any time in the foreseeable future naturally militates against granting any SUP. So once again, the intent of the Code is to make the burden hard to bear. Complaints from the Commission about this difficulty are attempts to undermine that intent.

**Intent Of Creating County Boards And Commissions**

Bearing in mind the County's stated desire to follow the intent of the ordinances, Appellants wish to forward the idea that part of the intent behind the creation of citizen boards, commissions and the Council itself is to act as a buffer between the ambitions of government and the interests of common citizens; to give some recourse and succor when public agencies, acting on their own accord and convinced of their propriety, press too hard against the rights and protections of the residents.

Appellants request the Council to consider whether the Commission has not been mindful of this particularly important role, or abdicated it in part because they misunderstand the meaning and intent of the county's ordinances.

Prepared for the Los Alamos County Council on or before May 25, 2022 by,

/s/ Phillip Noll  
Phillip Noll  
114 Piedra Loop  
White Rock, NM 87547  
Email: shinumo@canyonechos.com

### **Certification of Service of Parties**

I, Phillip Noll, hereby certify that I have, on or before this the 25<sup>th</sup> day of May, 2022 served the following individuals, via U.S. Mail and email, a copy of the foregoing document.

For County:

Sobia Sayeda  
Senior Planner, CDC  
1000 Central Avenue, Suite 150  
Los Alamos, NM 87544  
Email: sobia.sayeda@lacnm.us

For Appellee:

Denise Matthews  
113 B La Senda Road  
White Rock, NM 87547  
Email: director@wormsandwildflowers.com

For Appellants (email only except Patricia Thames):

Les DiLeva & Patricia Thames  
115 La Senda Road  
White Rock, NM 87547  
Email: tishthames@gmail.com

Phillip & Monica Noll  
114 Piedra Loop  
White Rock, NM 87547  
Email: shinumo@canyonechos.com

David North & Akkana Peck  
111 La Senda Road  
White Rock, NM 87547  
Email: d@vidnorth.com

Barham & Marilyn Smith  
116 Piedra Loop  
White Rock, NM 87547  
Email: latoty07@gmail.com

And to the other unlisted appellants.

/s/ Phillip Noll  
Phillip Noll  
114 Piedra Loop  
White Rock, NM 87547  
Email: shinumo@canyonechos.com

## **Appellant Brief About Detriment To Property Value, Consistent Application Of Criteria, and Intent Of Criteria 1 In The Matter Of SUP-2022-0020/21**

There was no evidence presented at the Planning & Zoning hearing for *SUP-2022-0020/21* that the operation of a day care facility would not be detrimental to the value of nearby properties. The only point raised was that the exterior of the buildings would not change. The *Findings of Fact* concur (see lines 200-205).

### **What Changes Is What Matters**

First, in assessing detriment, the nearly endless list of things that are not expected to change is worthless as evidence. The question is rather, what actually does change, and will it be detrimental to property value?

Overwhelming evidence to that effect was presented, and ignored, at the hearing.

### **Expert Evidence Establishes A 5-15% Loss Of Property Value**

An expert opinion was cited from an experienced assessor, Joseph Tolotta, about a similar neighborhood that the cost in property value would be 10-15% (see *transcript page 160 lines 11-20 and Page 161 lines 10-21*). Since there is no counterbalancing evidence offered by either staff or the Appellant, that should be adequate to settle the matter of detriment to property value. While the P&Z did note the report was not submitted in the record other than as oral testimony, there was no question of its accuracy.

The President of the Appraisal Institute was also cited putting the detriment at 5-10% from external factors such as noise or other annoyances (see *transcript page 160 lines 3-8*).

Arguing to ignore this evidence, the Commission simply claims greater expertise than two respected appraisers, including one elected to be President of their Institute. (See *transcript page 160 lines 9-20*).

### **General Market Evidence Implies Some Detriment**

Also mentioned at the hearing were the inclusion of noise factors in real estate listings, and the requirement to disclose noise factors when selling a home (See *transcript page 159 lines 21-23*). These are generally regarded as undesirable traits.

It stands to reason that a smaller buying pool will reduce demand and therefore price pressure. The Council need look no further than this appeal to see that 10 of 16 residents faced with the real prospect of such an operation nearby oppose the presence of such a business, including all those exposed directly to the outdoor activities proposed.

Additionally, there is testimony from two households that they would not have bought their current properties if they knew this day care operation was in place (see *transcript page 133 lines 1-3* and page 119 in the complete record, paragraph 4).

### **The County's View Of The Burden To Demonstrate**

To approve the application, the Commission had to ignore all evidence except unchanged structures. That single point had to bear the burden for the applicant to establish there would be no detriment.

The County Attorneys disagree with the Commission on two counts.

First, in the *Board Of Appeals Decision, Sirphey v. Arellano ACTION NO: 2020-01 January 25, 2021, Section IV. CONCLUSION* states, "We conclude that Appellant did not meet its burden to show... There is substantial evidence to show that Appellant was in violation of the state and local building codes..."

The evidence presented was from the opposing party, so the County does require consideration of evidence from the party that does not bear the burden.

Second, in that same document *Section II. B. Paragraph 2* the County cites "...an action is arbitrary and capricious if there is "no rational connection between facts found and the choices made, or entirely omits consideration of relevant factors or important aspects of the problem at hand."

The only way possible way to believe the Appellant bore the burden of proof is to entirely ignore all aspects of the outdoor operation of the day care business, to ignore all the testimony of nearby neighbors, then further ignore the existence of all evidence about that operation's effect on property values, and the likelihood that there would be such a detriment. This neatly meets the second condition of the definition of "arbitrary and capricious" adopted by the County above. Consequently, the Applicant failed to bear the burden to demonstrate there would be no detriment to the value of properties in the vicinity.

Since the decision was both arbitrary and capricious, leading to one condition not being met of the required criteria, the decision of the Commission should be reversed. From *LA County Code Sec. 16-493 (c) (1)* "The appellate body shall affirm the decision appealed unless ... the decision was arbitrary, capricious, or a manifest abuse of discretion."

### **"I Don't Know" Means The Applicant Failed**

Prior to voting to support the SUP, one commissioner explains, "I can't think of a time when a commissioner has asked for a study about things that will affect property value. It's impossible, really ... So I don't know, as far as will it affect property values, I don't know. " (*See transcript page 175 line 22 through page 176 line 8*).

This illustrates a failure to understand the criterion. The Applicant was charged with demonstrating there will be no detriment to property values. By admitting it was unclear if there would be an effect on the property values, the commissioner established the Applicant failed to bear the burden to demonstrate there would be no detriment to the value.

This gets to the core of the problem. The Commission did not find evidence that property value would not be harmed, but rather found fault with the ordinance that specifically requires that evidence.

### **Criteria Should Be Applied Consistently**

Commissioners were repeatedly concerned about applying the criteria consistently, particularly regarding property value, peace, and comfort. In particular they were concerned that

none of these criteria had been enforced before. (See *Transcript Page 175 Line 12, Page 176 Line 12, Page 183 Line 13, and etc*).

In this they are misinterpreting a point of law. First, none of these Commissioners had ever heard an SUP application that was opposed except for this proposed day care. In each of those other cases evidence was presented to support compliance with all the criteria, while none was offered in opposition. So the same standard was applied until now -- that the preponderance of evidence favor the applicant.

Consequently, none of these Commissioners have any other experience evidence challenging a Special Use Permit, and were not sufficiently advised about the ordinance to understand that unopposed evidence is a preponderance. The only inconsistency is ignoring the evidence regarding property value, noise, and the Comprehensive Plan.

However, they also confuse their own experience with the overall record of the Planning & Zoning Commission. Going back a little before the tenure of any Commissioner present, to 2015, we find *15-SUP-007* which was rejected on the criteria in *Section 16-156 (1)*, which include detriment to property value, peace, and comfort. Assistant County Attorney Kevin Powers was in attendance, and Councilor Izraelevitz was present at the subsequent appeal, so they might recall this hearing.

Unfortunately, we don't know *what* aspect of the first section applied because (this should sound familiar) the Findings Of Fact were defective regarding that section -- actually entirely missing -- and Council could not agree on how to remand. During the P&Z hearing, Property Value and proximity to the property line were at issue, but without findings there is no way to establish which criteria were considered.

All we know for sure is the Section 1 criteria were applied, based on evidence opposing approval of the SUP, and the SUP was denied.

The same result would have been consistent in this case as well.

Prepared for the Los Alamos County Council on or before May 25, 2022 by,

/s/ David North  
111 La Senda Road  
White Rock, NM 87547  
Email: [d@vidnorth.com](mailto:d@vidnorth.com)

### **Certification of Service of Parties**

I, David North, hereby certify that I have, on or before this the 25<sup>th</sup> day of May, 2022 served the following individuals, via U.S. Mail and email, a copy of the foregoing document.

For County:

Sobia Sayeda  
Senior Planner, CDC  
1000 Central Avenue, Suite 150  
Los Alamos, NM 87544  
Email: sobia.sayed@lacnm.us

For Appellee:

Denise Matthews  
113 B La Senda Road  
White Rock, NM 87547  
Email: director@wormsandwildflowers.com

For Appellants (email only except Patricia Thames):

Les DiLeva & Patricia Thames  
115 La Senda Road  
White Rock, NM 87547  
Email: tishthames@gmail.com

Phillip & Monica Noll  
114 Piedra Loop  
White Rock, NM 87547  
Email: shinumo@canyonechos.com

David North & Akkana Peck  
111 La Senda Road  
White Rock, NM 87547  
Email: d@vidnorth.com

Barham & Marilyn Smith  
116 Piedra Loop  
White Rock, NM 87547  
Email: latoty07@gmail.com

And to the other unlisted appellants.

/s/ David North  
111 La Senda Road  
White Rock, NM 87547  
Email: d@vidnorth.com

## **Appellant Brief About Noise Expected From Approval Of SUP-2022-0020/21**

Noise is central to this dispute, especially regarding peace and comfort. Yet the Planning & Zoning Commission (P&Z) was repeatedly advised by staff to ignore evidence regarding noise, and they followed that advice. However, overwhelming evidence was submitted by the Appellants to establish that noise would exceed LA County legal levels, and would unquestionably exceed the World Health Organization standards for annoyance.

### **The Evolution Of The Value Of The Applicant's Noise Study**

The applicant's strongest bid to establish an acceptable level of noise was a chart of readings taken from an iPhone some distance from a day care play area. Initially, Senior Planner Sayeda said that the Applicant's study established conformity to the LA County Code Section 18 noise requirements (see transcript Page 85 lines 6-11).

A few minutes later, after being reminded that Section 18 requires readings at the loudest point on the property line, and that the readings taken were average and not maximum, suddenly the applicant's noise study was no longer important. Ms. Sayeda's only analysis was to note that 55 dBA is lower than the 65 dBA maximum, with no regard for how it was measured or where, or even which direction the microphone was pointing (see transcript Page 87 lines 11-25).

Appellants later established 83.6 dBA as the maximum reading two feet from the same play area's border, through a wood fence, with only three children present at the same day care, using the same sound measuring app. (See page 124 of the transcript.)

After a further 12 minutes elapsed, Planner Sayeda advised a Commissioner the sound study had become "almost irrelevant." (See all of transcript Page 92). Why then did she include it in her report and claim it satisfied the Section 18 requirements?

### **Staff Described Sound Studies As *Almost* (But Not Entirely) Irrelevant**

This is a critical issue. *All* noise studies are essentially set aside, starting with a question posed to Ms. Sayeda, on transcript page 92: "It seems like those noise studies may be irrelevant

if they're not part of the purview of our decision making. It only comes up in code enforcement. Is that accurate?" And then: "Should we discount that information then?"

Ms. Sayeda: "I would think that it would be almost irrelevant."

Appellants do not object to the irrelevance of The Applicant's noise study, since that means she failed to demonstrate there would be no detriment to peace or comfort, but there is a much larger problem. Since the Commissioner's question (above) did not specify *which* sound studies, it was inclusive of *all* those submitted, including the extensive reports from certified experts cited on pages 4-8 of the letter starting on page 109 in the Record, and starting on page 123 line 20 of the transcript. These clearly show that the noise level will almost certainly exceed legal maximums, not to mention being well above World Health Organization guidelines.

It is simply unreasonable and absurd to argue that noise should not be considered when a major issue at hand is peace and comfort. LA County weighed in on this at the prior hearing for this SUP on December 16, citing PADILLA V. MONTANO, 1993-NMCA-127, "We will not construe a statute to defeat the intended purpose or achieve an absurd result." The law requires proof *beforehand* that will be no detriment to peace, *not after* the SUP has been granted. (See LA County Code Sec. 16-156 (1)).

Completely ignoring legitimate noise studies clearly meets the definition of arbitrary and capricious adopted by LA County in ACTION NO: 2020-01 January 25, 2021 (prior to the hearing) "...an action is arbitrary and capricious if [it] entirely omits consideration of relevant factors or important aspects of the problem at hand." Which is grounds for reversal.

### **The Applicant's Other Evidence**

The findings only make one direct mention of evidence regarding noise, on lines 183-4, citing the Applicant stating "they will not be just running around and screaming." Obviously they will also be doing other things during their day, but as she indicates they will be running around and screaming at times. This fails to demonstrate there will be no detriment to peace or comfort. Rather, it confirms such a detriment.

Applicant also indicated that a 10-foot flower bed along the fence would prevent direct access to the property line, but it turns out there's no such flower bed or other impediment that would keep children from going right up to the property line. Once again, the Applicant failed to demonstrate there will be no detriment to peace or comfort.

### **Commissioner Statements About Noise**

The Findings refer to Commissioner Dewart, who says "I think the questions about noise are legitimate," (see Transcript page 186 line 1) which seems to support the Appellant argument, but she follows up with another cogent point, "we never want to associate children with being obnoxious or a nuisance." (See Transcript page 186 line 3-5).

Unfortunately, reality is not determined by what we *want* to think. Anyone who has been around children knows they can be very loud; this is not a good or bad trait, just a fact. Consequently, this argument fails to demonstrate there will be no detriment to peace or comfort.

One Commissioner (who later voted to approve the SUP) stated, "... 85 decibels out of a near daycare. It seems pretty high..." (See transcript page 178 lines 17-18). That's because it is really loud, beyond any measure of reasonable. In fact, as established by certified professional results, the maximum one might expect at the property line is 120 dBA, with 90 dBA virtually inevitable. (See first two complete paragraphs of the letter on page 200 in the complete record). Had the Commissioner read that, it might have made an even stronger impression.

Council is of course already familiar with these facts and others, being committed to a whole record review by LA County Code 16-493 (c) (1) "The appellate body shall hold a hearing on the entire record..."

### **Legal Maximums And The World Health Organization**

It is absurd to dismiss evidence that the noise level will exceed legal maximums. While there may be no requirement for an applicant to submit a noise report, that doesn't mean a Commission should ignore evidence that the result of issuing a Special Use Permit will be illegal. It is especially unreasonable when the burden falls on the applicant to demonstrate that

there *will be* no detriment to peace or comfort, and since that pertains to the future, only existing studies can be placed in evidence. The County staff position on this is simply untenable.

It is doubly absurd to ignore clear evidence that the guidelines for annoyance and nuisance issued by the World Health Organization would be exceeded by far. WHO sets the threshold between 50 and 55 dBA, including the noise from children (see Page 115 in the complete record). WHO standards are accepted as relevant in New Mexico law (see page 522 in the complete record, paragraph 5).

Commissioners repeatedly object that measures of peace and comfort are arbitrary and cannot be quantified. However, clear evidence addressing both points, in numbers, was repeatedly presented by the Appellants; the Commissioners simply didn't acknowledge it, or even perhaps see it.

This is hardly surprising. Staff buried the evidentiary presentations at the end of collection of largely irrelevant letters, mostly from persons who weren't directly affected, didn't live nearby and lacked standing. Even when these points were enumerated at the hearing, (see transcript page 125 lines 7-25) it would be easy to miss them with such a low signal to noise ratio.

Ultimately, noise *is* a central issue, and the evidence overwhelmingly establishes that the sound level is certain to disturb the peace. There is no reasonable way to claim the Applicant demonstrated there will be no detriment to peace and comfort.

### **Peace And Comfort Are Subjective And Hard To Prove Or Disprove**

The subjective nature of evaluating peace and comfort, making them hard to prove or disprove, is raised several times (see Findings line 177, transcript page 174 lines 7-9, p181 7-9, p 183 5-7, and others). Appellants concur that it is difficult, but point out emphatically that it is nevertheless required by law.

It's clear the Commission failed to grasp the intent of the Code. This failure is not hard to understand. The Commissioners are volunteers without extensive legal experience, and have been given no helpful guidance. Nevertheless, the County attorneys insist the intent of the law is

crucial in administrative hearings, "We will not construe a statute to defeat the intended purpose..." (PADILLA V. MONTANO, 1993-NMCA-127).

The authors of the criteria in LA County Code Sec. 16-156 (1) must have understood that it would be very hard for the applicant to demonstrate that the SUP "will not ... be detrimental to the health, safety, peace, comfort or general welfare of persons residing or working in the vicinity..."

That was the clear intent. The authors of the County Code acknowledged the "Special" aspect of the use permit. The burden to establish that it will not disturb the neighborhood is set high indeed. The Commission may not like that it makes approval of this SUP difficult, but that is not adequate reason to ignore an ordinance.

Though it was not required for the Appellants to establish both by numerical evidence and direct testimony that it will be detrimental to the peace and comfort, they did so. It was absolutely required of the Applicant to demonstrate it would not be detrimental, and Applicant failed to do so.

Prepared for the Los Alamos County Council on or before May 25, 2022 by,

/s/ Akkana Peck  
Akkana Peck  
111 La Senda Rd  
White Rock, NM 87547  
Email: akkana@shallowsky.com

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I, Akkana Peck, hereby certify that I have, on or before this the 25<sup>th</sup> day of May, 2022 served the following individuals, via U.S. Mail and email, a copy of the foregoing document.

For County:

Sobia Sayeda  
Senior Planner, CDC  
1000 Central Avenue, Suite 150  
Los Alamos, NM 87544  
Email: sobia.sayed@lacnm.us

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Denise Matthews  
113 B La Senda Road  
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Email: director@wormsandwildflowers.com

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Email: tishthames@gmail.com

Phillip & Monica Noll  
114 Piedra Loop  
White Rock, NM 87547  
Email: shinumo@canyonechos.com

David North & Akkana Peck  
111 La Senda Road  
White Rock, NM 87547  
Email: d@vidnorth.com

Barham & Marilyn Smith  
116 Piedra Loop  
White Rock, NM 87547  
Email: latoty07@gmail.com

And to the other unlisted appellants.

/s/ Akkana Peck  
Akkana Peck  
111 La Senda Road  
White Rock, NM 87547  
Email: akkana@shallowsky.com

## **Appellant Brief Regarding Conformity Of SUP-2022-0020/21 To The Comprehensive Plan**

Applicant asserts the proposed business is special in several regards congruent with the LA County Comprehensive Plan ("the Plan"), but not one claim is supported in the record. Applicant offers no substantial evidence or argument that the proposed day care would not be detrimental to the character of the neighborhood, whose protection is guaranteed by the Plan.

### **Reasons Given By The Applicant For Special Nature Of The Proposed Business**

There are four arguments made:

1. Day Care is hard to find or unavailable in L A County (see *Findings* at line 144 & 156).
2. Existing Day Cares are too costly or have onerous conditions (see *Findings* line 155).
3. This Day Care will be mostly outdoors and nature-based.
4. Other day care operations have extensive "waitlists" (see Staff Report Page 9, last sentence of 2nd paragraph).

All of those arguments are countered in the record, as follows.

### **Day Care Is Neither Hard To Find Nor Unavailable In White Rock**

Though there are several "stories" of difficulties locating the ideal day care situation in Los Alamos in some past times, there were no claims of unavailability now. Nor did anyone at the hearing say they could not secure Day Care at any time.

At the time of the hearing, Marilyn Smith (116 Piedra Loop) testified that three out of four large, well-known daycare operations were accepting enrollment (see *Transcript Page 112 lines 3-9*). County Staff mentioned two recently approved substantial day care operations (see *Transcript Page 92 Lines 7-9*) so this is hardly surprising.

Not only that, there are five elementary schools in LA County that can take 30 pre-K children each, plus two additional special education Pre-K sites (see the letter on page 121 of the complete record, last two sentences in the fourth paragraph).

Therefore it is obvious that day care is easily found and available. The Applicant, staff and others failed to demonstrate otherwise. This establishes that claims that day care is

unavailable or hard to find are both factual errors, and out of date if they ever were correct.

These assertions are foundational to the arguments that approval of this SUP would conform to the Plan. Therefore the Applicant failed to demonstrate that conformity.

### **The Comparative Cost And Rules Of The Proposed Day Care Are Unknown**

There is a tacit assumption that the proposed daycare will offer either better pricing or enrollment conditions compared to other operations. However, the Applicant revealed neither the pricing structure nor the application requirements of the proposed business, so there is no reason to believe any advantage will be present. Pricing could be prohibitive, for example. The Applicant failed to demonstrate otherwise.

### **The Comparative Curriculum Of Various Day Cares Is Unknown**

Applicant claims that by virtue of spending half of their day outside in a relatively large back yard, and due to curriculum choices, the proposed operation is set apart by being nature-based. Applicant provided a table (see *Transcript page 41 lines 4-9*) that shows the comparative time outdoors, but offers no evidence at all about the curriculum of other Day Cares, all of which have outdoor facilities. One Commissioner pointed out that another LA County daycare maximizes outdoor education (see *Transcript page 181 lines 16-18*). The Applicant failed to demonstrate these characteristics significantly differentiate the proposed operation from other day cares.

### **Waitlists Are To Be Expected No Matter What**

Even if all the available day care options are excellent, some will be favored over others, resulting in a desire to "move up" for cost or other reasons. When a service can be acquired, a waiting list does not imply a lack of availability, but rather a desire for mobility.

At one point during the hearing, the Applicant differentiates her proposal by saying it's not "put into like a small type of strip mall" (see *Transcript page 40 line 1*). The irony here is that the only local daycare with no openings is also the only one that could meet that description -- the Montessori on Longview. The Applicant failed to establish the evidentiary value of a "waitlist."

### **It's Actually A Less Desirable Business**

After the hyperbole and sentimentality are stripped away, this becomes just another business in a saturated market. The Comprehensive Plan does not differentiate day care or preschool from other businesses in any way. The Applicant's evidence points out that it is a relatively undesirable home occupation by virtue of being mostly outdoors, which is prohibited in *LA County Code Section 16-277 (1)a*. "The home occupation or profession shall be carried on within the main building, an enclosed garage or other accessory building, or any combination of these, except agricultural, horticultural or animal husbandry uses may be carried on the outside of a building." Consequently it deserves not a special exception, but more careful scrutiny than a more compliant business.

The Applicant failed to demonstrate the proposed daycare is special in any advantageous way, and further failed to demonstrate that the Comprehensive Plan in any way encourages, or even allows, a noisy outdoor business in residential neighborhoods. In fact, the Comprehensive Plan repeatedly states its goal to "Protect existing residential neighborhoods." Pages viii, 57, 62, 65, 66, 84, 104, & 105.

### **Protecting The Character Of Existing Neighborhoods**

At least 25 times in the Plan, protection of the character of existing neighborhoods is raised, including on page 104 "...especially in the case of long-standing, low-density residential areas."

In a rational world, it should hardly be necessary to explain how approving a Special Use Permit for a noisy outdoor business -- where there has never been one -- has a detrimental effect on the character of the neighborhood. Where, for that matter, a previous attempt to open such a business was quashed. Where ten of 16 neighbors within 300 feet of the proposed daycare disagree with its approval strongly enough to sign on to appeal such an obtuse decision. That includes all the neighbors directly facing the proposed outdoor site.

Instead, we're presented with a series of incongruous arguments that ignore both the law and the Comprehensive Plan:

- Apparently the Planning & Zoning commission holds the opinion that the mere fact that someone can apply for an SUP means it complies with the Plan (see *Findings* line 164), which is absolutely not the case and counter to law.
- The Plan didn't single out day care as a goal, so according to one Commissioner, "that's an error on our part, and that should be written in there" (see *Transcript Page 182 lines 14-15*). The Commissioner wants the Plan to conform to the SUP rather than the other way around, as the law reads.
- Somehow approving something that changes the character of the neighborhood is preserving it."...the question about preserving the character of neighborhoods, it has to kind of be, in my view, looked at in the fact that the community is changing by the laboratory" (see *Transcript Page 185 lines 21-25*).

Those aren't reasoned explanations, they're desperation. They are obvious fabrications from a Commission frustrated by their own rules and the Plan. The Applicant offered nothing regarding how a noisy outdoor business could be anything other than detrimental to preserving the character of the neighborhood, and so failed to demonstrate compliance with the Comprehensive Plan. Nor could the Commission produce any reasonable explanation for their decision, but not for lack of imagination.

### **Planning For The Future**

The current proposed update to Section 16 says it very well. "The goal of this project is to align the code with the goals of the Comprehensive Plan. These adjustments aim to encourage the right development, within the appropriate location .... to enhance the health, welfare and overall quality of living within Los Alamos County."

Prepared for the Los Alamos County Council on or before May 25, 2022 by,

/s/ Marilyn K. Smith

Marilyn K. Smith

116 Piedra Loop

White Rock, New Mexico 87547

Email: latoty07@gmail.com

/s/ Barham W. Smith

Barham W. Smith

116 Piedra Loop

White Rock, New Mexico 87547

Email: latoty07@gmail.com

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Senior Planner, CDC  
1000 Central Avenue, Suite 150  
Los Alamos, NM 87544  
Email: sobia.sayed@lacnm.us

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113 B La Senda Road  
White Rock, NM 87547  
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Email: d@vidnorth.com

Barham & Marilyn Smith  
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White Rock, NM 87547  
Email: latoty07@gmail.com

And to the other unlisted appellants.

/s/ Marilyn K. Smith  
Marilyn K. Smith  
116 Piedra Loop  
White Rock, New Mexico 87547  
Email: latoty07@gmail.com

/s/ Barham W. Smith  
Barham W. Smith  
116 Piedra Loop  
White Rock, New Mexico 87547  
Email: latoty07@gmail.com

**Appellants' Brief Regarding Peace, Comfort, Property Value And The Comprehensive Plan  
In The Planning & Zoning Commission Findings Of Fact For SUP-2022-0020/21**

Much of what is referenced in the Findings Of Fact and Conclusions Of Law ("Findings") from the Los Alamos Planning & Zoning Commission ("P&Z") in approval of *SUP-2022-0020/21* is too general to discern clearly. Appellants will attempt to explain in some detail why the Findings fail to establish adequate evidence to support approval of the SUP.

**A. The Findings Founder On The Comprehensive Plan**

*There Is No Shortage Of Day Care In White Rock.*

The Findings from line 141-150 depend entirely on the idea that day care is unavailable or hard to find, making this a particularly valuable business, and therefore conformant to the Comprehensive Plan ("the Plan"). Starting at page 112 line 3 in the transcript, Marilyn Smith establishes -- without objection or contradiction -- that there are at least four large day care businesses in White Rock, and three had space available at the time of the hearing. Obviously these two arguments fail as a result.

*What May Happen In The Future Is Unknown*

Findings line 150-155 argue that many new employees will come to the lab and they will need day care. First, such predictions have never panned out, and are unreliable. It's entirely possible those plans will collapse and the need for day care evaporate. Nor do they account for the fact that most of those hires will not be able to obtain housing in LA County, and will probably seek day care elsewhere. Nor do they account for the greater mobility of younger employees, who are more likely to leave for a better opportunity elsewhere.

Second, the Comprehensive Plan criterion in LA County Code Section 156 requires the SUP to be compliant *at the time of approval*. Whether it may qualify eventually is not relevant. Therefore this adds nothing to the argument that the SUP conforms to the Comprehensive Plan.

*There Is No Evidence Of Cost Relief*

In lines 155-159 of the findings, the only additional argument is that day care is difficult to find "for a reasonable fee." Since no fee structure was presented for the proposed day care, there is no evidence that it would help solve this problem. Rather, it is typical for such boutique operations to be more costly. This fails to add any support for conformance to the Plan.

*Lines 159-163 Are Too General To Indicate Anything*

The Findings list names and then point to the entire record as evidence. This fails to respect the point behind Findings. There is no limit on the space available to present specific evidence if it is present in the record, so there is no excuse for this excess verbiage.

*Applications For SUPs Are Automatically Granted*

The Commission's final argument regarding the Comprehensive Plan is that county code allows applications for day care businesses, and therefore they automatically would be compliant with the Comprehensive Plan, not affect the peace and comfort and would somehow enhance the housing stock and quality. Appellants are convinced some Commissioners clearly agree with this argument, but it is simply unreasonable. It's also an embarrassment and an insult to the intelligence of the Council.

That last is the only argument given that the SUP would comply with the numerous requirements in the Comprehensive Plan that the character of neighborhoods should be preserved. It is worse than useless as evidence.

Consequently, it is clear there is nothing special about this business, and on balance it is not justified to argue this SUP is compliant with the Comprehensive Plan.

**B/C. The Findings Fail For Peace And Comfort**

Paragraphs 23b. and 23c. on pages 9-10 of the Findings, titled "Health, Safety, Peace, Comfort..." are a mess, starting with a statement about property value which belongs in section d. Because of the disarray, it's unreasonable to proceed point by point, so Appellants are forced to summarize.

*Four Absurd Objections To The Ordinance Regarding Peace And Comfort*

The Commissioners raise four objections to the law requiring the Applicant to demonstrate there will be no detriment to peace and comfort: it's subjective, hard to prove, hard to quantify and neither "peace" nor "comfort" are defined in the ordinance. This is where they pretend to not understand that if something is noisy, it is not peaceful or comfortable.

To argue these objections the Commission must completely ignore the issue of noise, which is central to peace and comfort. They must also ignore the quantified expert evidence offered on pages 4-8 of the letter starting on page 109 in the Record, and the comments starting on page 123 line 20 in the transcript. Altogether they establish that noise will exceed LA County legal guidelines (*Code Section 16-282 (c) 10*) and the World Health Organization limits for annoying sound levels (see page 115 paragraph 4 in the record, and the sentence starting at page 157 line 24 the transcript).

When no detriment to peace is specifically required, it is absurd to argue that noise is irrelevant, and obviously counter to the intent of the ordinance. LA County staff have already endorsed this point in citing *PADILLA V. MONTANO, 1993-NMCA-127*, "We will not construe a statute to defeat the intended purpose or achieve an absurd result."

It is true the requirement to prove that there will be no detriment to peace or comfort places a heavy burden on the Applicant. That is obviously the intent of the law, and it is not an option for the Commission to issue a "get out of jail free" card because the law is hard to obey.

Ignoring noise also meets the definition of arbitrary and capricious adopted by LA County in ACTION NO: 2020-01, "...an action is arbitrary and capricious if [it] entirely omits consideration of relevant factors or important aspects of the problem at hand." That alone should establish a fatal defect in the findings.

#### *Other Evidentiary Offers*

Lines 185-187 explain that the children will only be running around and screaming part of the time, and otherwise will be participating in guided education. This overlooks the fact that all the decibel studies submitted were taken during "guided education," and were still beyond any measure of acceptable levels.

Then we have a vague hand-wave in the direction of Planner Sayeda's testimony starting 2:01:49 in the video record, where literally nothing is said. Later, when she begins her statement, it does not relate to peace or comfort in any way. It's impossible to figure out what is referenced.

There follows a few statements of unsupported opinion and a reference to Commissioner Nakhleah's statement at 4:58:55 in the video record, but at that time stamp, Commissioner Wade is speaking. A few minutes later (~5:02) Nakhleah starts, but actually says peace and comfort cannot be proven and therefore the Applicant shouldn't have to prove it.

Ultimately there doesn't appear to be anything presented that would convince a reasonable person that there would be no detriment to peace and comfort, therefore the Applicant failed to bear that burden.

#### **D. Property Value**

The statement included in section b, mentioned above, had no evidentiary value.

The Findings then proceed to mention some oral testimony without pointing out that it quoted two experienced appraisers, one the President of the Appraisal Institute, that the detriment to property value from a nearby day care operation would run from 5-15% (see Page 160 in the transcript), citing noise as one factor. Also mentioned was the need to disclose noise factors in real estate transactions. This evidence decisively supports a detriment to the property value from the operation of the day care, and is unopposed by anything presented at the hearing.

The Findings offer only that there will be no new construction, completely ignoring the presence of the outdoor activities. Failing to address the single most important aspect of the matter at hand definitely qualifies to be both arbitrary and capricious by the County's own definition listed previously. The Findings then refer to the hearing video at 3:35:25, which is actually David Paulson objecting to the inappropriate proposed location.

Finally, the Findings cite a Commissioner saying no residential property evaluation report is required. Appellants agree. There is no specific requirement for any particular kind of proof that there will be no detriment to the property value, just that it is demonstrated. The applicant failed to do so, and admitted as much (see Page 71 lines 2-11 in the transcript).

## Summary

Applicant and others presented factually erroneous testimony that day care is unavailable or hard to find in Los Alamos. Applicant failed to establish any cost or other advantage of the proposed day care. As such, it is a noisy business in a quiet neighborhood and should be subject to stringent review before granting an SUP. It obviously will change the neighborhood in ways unacceptable to a large majority of the residents within 300 feet (10 of 16, *or 63%*, have signed on to this appeal), therefore it fails to meet the Plan requirement to protect neighborhoods. Consequently the Applicant failed to demonstrate compliance with the Comprehensive Plan.

The Commission entirely ignores the noise issue, which is both arbitrary and capricious by the County's definition, and simply unreasonable when neighborhood peace is the primary issue. Further, the evidence presented by the Appellants is overwhelming that the noise will be excessive by legal and World Health Organization standards.

Applicant offers no evidence at all that operation of the day care will not harm nearby property values, against expert opinion that it will. That's a complete failure to demonstrate no detriment, and by ignoring the operation of the day care, again arbitrary and capricious by the county definition.

Inexplicably, many of the time references to the hearing are simply wrong, and most references are so general as to be meaningless.

Prepared for the Los Alamos County Council on or before May 25, 2022 by,

/s/ Patricia Thames  
115 La Senda Rd  
White Rock, NM 87547  
Email: tishthames@gmail.com

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Senior Planner, CDC  
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White Rock, NM 87547  
Email: director@wormsandwildflowers.com

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David North & Akkana Peck  
111 La Senda Road  
White Rock, NM 87547  
Email: d@vidnorth.com

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Email: latoty07@gmail.com

And to the other unlisted appellants.

/s/ Patricia Thames  
115 La Senda Road  
White Rock, New Mexico 87547  
Email: tishthames@gmail.com

**Appellee Brief Regarding Peace, Comfort, And the Comprehensive Plan In the Planning and Zoning Commission Findings of Fact For SUP-2022-0020/21**

On Feb. 9<sup>th</sup>, 2022 I presented my Special Use Permit Application to the Planning and Zoning Commission. This was the second time the Planning and Zoning commission had reviewed my application as it had previously been approved by the Planning and Zoning Commission on June 10, 2020. Over the past two years I have worked diligently to follow the correct processes and prove why my application meets the five criteria required by the county's Planning and Zoning Commission. Through an appeal from select neighbors my case was passed to County Council where genuine care, concern, and deliberation was given to all parties involved, ultimately approving my SUP. Through second appeals my case went to the State Judicial Court, where the request for the county to rewrite the order was made. I was then asked to re-present my case due to clerical error where a neighboring property owner was not informed of the original hearing correctly. I worked to resubmit my application, pay application fees a second time, and then present again.

During this time a request for mediation was hosted by the county between the appealing parties and myself. I was happy to meet for mediation and hoped we could come to a conclusion. Unfortunately, the appealing parties were not willing to sign the appropriate county paperwork for confidentiality and mediation discussions never began.

This series of events lead to the very lengthy and very well attended Planning and Zoning Commission meeting on Feb. 9<sup>th</sup>, 2022. A six-hour meeting provided ample time for all parties involved to present their case, cross examine each other, and hear from supporting community

members on both sides. During the meeting, numerous neighbors and community members strongly supported my SUP application which will allow me to open a small in-home daycare on my own property, for up to 12 children.

#### *Daycare Need in Los Alamos County*

Supporting community members and myself spoke to the great need of childcare in Los Alamos County. I presented a public survey with nearly 100 responses, where 100% of participants claim they are not happy with daycare options and nearly 90% would be interested in nature-based outdoor early childhood education. The lack of daycare options has become such an important topic that LANL has even joined the conversation. Kathy Keith, the director for LANL's Community Partnership office, spoke at the hearing in support of Worms and Wildflowers Daycare. My hearing was only days after a community-wide panel was organized by LANL to hear concerns regarding daycare availability. The appellants claim in their current brief response that daycare options are not a concern in Los Alamos county is simply misinformed and out of touch with the needs of young families in the community.

#### *Alignment with the Comprehensive Plan*

Worms and Wildflowers Daycare strongly aligns with the strategic goals of Los Alamos County's Comprehensive Plan. There is a clear connection between the need for daycare and the larger themes including housing, development, and open space. The Comprehensive Plan presents many goals, policies, and procedures for the community including an emphasis on workforce housing, growth of new businesses, providing economic vitality to the community, and the protection of open space. The use of the term "workforce housing" explicitly implies that the county would like to build a community that supports working families. Daycare is a necessary

logistical concern for parents looking to be part of the workforce and a service Worms and Wildflowers Daycare can provide. An appellant in one of the current brief responses brings up the fact that the comprehensive plan states to protect the character of the neighborhood. The Plan also states that development should be consistent with existing zoning. Fortunately Worms and Wildflowers Daycare, as a residential home business, does exactly that. No new construction will take place and instead be located in an existing building with newly designed gardens and a natural play area. This matches the neighborhood architecture and will serve children living in our neighborhood and community, which I would argue strongly supports the character of the neighborhood. An in-home daycare business is allowed with current R-A zoning code through the approval of a SUP. Additional daycare services in our county will help to strengthen the county's efforts to move towards their goals within the comprehensive plan.

Worms and Wildflowers Daycare will offer farm-based early childhood environmental education in a licensed environment. This is unique curriculum that does not currently exist in Los Alamos county. This type of education will serve to strengthen the Development Goals of the Comprehensive Plan, where the county states the desire to *build on the existing strengths of the community: technology, innovation, and information, as well as natural resource amenities (pg. 86)*. The La Senda neighborhood has beautiful multiple acre large lots that allows for enjoyment of the natural landscape. It is the right of children to experience this landscape in a playful educational setting where they can build place-based connections, potentially leading to a life of environmental stewardship. The county's plan describes their Open Space Land Use Policy as *"Be stewards of the natural environment, including the existing ecosystems."* (Pg. 101).

It is well documented in educational literature that children who learn to understand and connect with the natural environment are also more likely to go on and protect it.

The concerns of the appellants have been widely considered in this case. I have spent countless hours defending my application, deciphering county code, answering appellant questions and ensuring I have considered the five criteria required by Planning and Zoning Commission. At this point the SUP application has been approved three times and I believe I have provided in the record more than an appropriate amount of evidence and reasoning to justify my SUP being approved. While appealing parties may not like the decision made it does not justify continual appeals where the same arguments of peace and comfort are presented. Past commissioners have carefully considered all aspects of the Planning and Zoning Criteria and arrived at a decision to approve the SUP. At this point it is time to move forward with my daycare and provide a needed service to the community.

Prepared for the Los Alamos County Council on or Before May 25<sup>th</sup>, 2022 by,

Denise Matthews  
113B La Senda RD  
White Rock, NM 87547  
director@wormsandwildflowers.com

### **Certification of Service Parties**

I, Denise Matthews, hereby certify that I have, on or before this the 26<sup>th</sup> of May, 2022 served the following individuals via US Mail and email, a copy of the foregoing document.

#### **For County:**

Sobia Sayeda Senior Planner,  
CDC 1000 Central Avenue,  
Suite 150 Los Alamos, NM 87544  
Email: [sobia.sayed@lacnm.us](mailto:sobia.sayed@lacnm.us)

#### **For Appellee:**

Denise Matthews 113B  
La Senda Road  
White Rock, NM 87547  
Email: [director@wormsandwildflowers.com](mailto:director@wormsandwildflowers.com)

#### **For Appellants: (Email Only)**

Les DiLeva & Patricia Thames  
115 La Senda Road  
White Rock, NM 87547  
Email: [tishthames@gmail.com](mailto:tishthames@gmail.com)

David North & Akkana Peck  
111 La Senda Road  
White Rock, NM 87547  
Email: [latoty07@gmail.com](mailto:latoty07@gmail.com)

Phillip & Monica Noll  
114 Piedra Loop  
White Rock, NM 87547  
Email: [shinumo@canyonechos.com](mailto:shinumo@canyonechos.com)

Barham & Marilyn Smith  
116 Piedra Loop  
White Rock, NM 87547  
Email: [d@vidnorth.com](mailto:d@vidnorth.com)



Denise Matthews  
113B La Senda RD  
White Rock, NM 87547  
[director@wormsandwildflowers.com](mailto:director@wormsandwildflowers.com)

## **Appellant Response To Recap Of Events In Appellee's Brief Regarding SUP-2022-0020/21**

The Appellee's recent brief starts with an excellent idea: a recap of events leading to this hearing. However, there were some details omitted that may be of interest to Councilors who were not present for all the hearings on this application, which is now a majority.

### **The First P&Z Commission Hearing (June, 2020)**

Applicant presented no evidence regarding the effect of the proposed operation on property values, offered easily discounted evidence about noise (12 children and two adults outside constitutes a "normal conversation"), and indicated no understanding of the Comprehensive Plan requirement for the protection of the residential character of neighborhoods. All public comment was from neighbors objecting to a noisy, outdoor operation.

Nevertheless, the Commission, instructed by staff to ignore evidence about noise, and clearly unaware of the legal requirement of the Applicant to bear the burden to demonstrate all the conditions of the law (and having been given no such guidance by staff), approved the application.

Unknown at the time, a fatal error had already occurred: the county failed its obligation to personally notify the nearest neighbor of the hearing. Subsequently, the second fatal error happened when the Findings Of Fact and Conclusions Of Law neglected to include specific findings or facts.

### **The First Council Appeal (November 2020)**

Among the complaints forwarded by the Appellants were two particularly strong legal points.

First, as presented by attorney Joseph Karnes, the Findings Of Fact were "wholly conclusory" and it was therefore impossible to render a fair review of the appeal (see Transcript line 505 of the November 10, 2020 Council Hearing).

Countering this, the county attorney simply argued that no such specific findings are required. Council naturally followed the advice of their attorney on this issue.

Second, a lay response was submitted including the point that the current residents of 115 La Senda, the property closest to the proposed day care, had not been tendered personal notice. This being early in COVID 19 restrictions, neighborhood interaction was at a minimum, and they were unaware of the hearing. (See pages 192-193 in the record of *D-132-CV-2020-00109*).

In that response it was shown how the county attorney was attempting to inappropriately distort the law to argue that personal notification was not required (see pages 192-3 in the record of NO. *D-132-CV-2020-00109*). Council naturally sided with their own attorney once again.

### **Hearing In First District Court (May, 2021)**

Mr. Karnes pursued the issue of defective Findings in First Judicial District Court, where Judge Jason Lidyard indeed found the Findings *obviously* inadequate, as Mr. Karnes had alleged. The P&Z decision was vacated and remanded to the Planning & Zoning Commission to compose acceptable Findings. The total cost of this error on the county attorney's part is unknown to us, but probably runs in excess \$30,000 considering the Appellants alone spent over \$13,000.

Defective Findings are nothing new to the county, going back several years. Council approved a P&Z action with no Findings at all regarding the requirements of LA County Code *Sec. 16-156 (1)*, knowing it was inadequate (See appeal hearing for *15-SUP-007* time stamps 3:33-3:44). More recently, District Court brought the county to task on this same issue regarding their handling of *Sirphey, LLC v Arellano* with costs to the county expected to exceed hundreds of thousands of dollars.

This could have been avoided had the Council, given proper advice from their attorneys, simply remanded matters to the P&Z to produce adequate Findings. But as far as we know, all advice was to avoid remand.

### **The Second Council Appeal (December, 2021)**

The matter went back to P&Z, which issued new Findings of Fact. This presented the opportunity for a second appeal, eventually centering on the county staff's failure to notify the closest neighbors.

Appellants produced several case law examples proving beyond any rational doubt that the clearly stated requirement for personal notification was mandatory. This failure is the "clerical error" mentioned in the first paragraph of the Appellee's brief. Like the Findings, "It is a fundamental concept of the due process rights afforded by our state and federal constitutions," as expressed by Judge Lidyard about Findings in the Sirphey case when imposing sanctions against the County for their conduct. (See *D132CV202100002*).

The county presented a brief including an exceptionally desperate and specious argument that personal notice is not really required. (See page 367 of the *APL20210019* Record, second full paragraph).

This triggered a *pro se* motion requesting summary judgement due to the obvious inadequacy of the staff position. There was no full hearing because this motion was affirmed by Council, voiding all actions prior to that hearing.

The serious problem is not the "clerical error." It is the vehement insistence of staff to *repeatedly* attempt to hoodwink both the appellants and the Council when they certainly *should have known* that the failure to notify was fatal. This wasted thousands of dollars, hundreds of hours, and neutralized any claim to credibility staff may have had to that point.

This also provoked a very spooky turn of events. In her affidavit on page 370 Item 5 of the *APL20210019* Record a county associate planner testifies, "On February 28, 2020, I visited the County's Online Parcel Viewer to download a list to be used for mailing labels of those properties within 100 yards of Applicants property."

But on page 5 of the same record, the application for the SUP is clearly dated 3/4/20. The planner had printed the mailing labels *four days before* the application was even submitted!

### **The Second Commission Hearing (February 2022, The Subject Of The Current Appeal)**

More of the same from the Commission and their advisers: noise is not to be considered regarding peace and comfort, nothing a property owner does hurts neighboring property value as long as they do no exterior building construction, plunking a noisy business into neighborhood protects its character, the law is wrong, or even if the law is right there's no need for P&Z to

respect it since they never have before (see transcript pages 175-6) and etc. If that's not enough, just conjure up an imaginary flower bed.

### **The Application Has Only Been Approved Once**

Applicant asserts the application was approved three times. Technically, it has only been approved once. The first hearing was vacated for lack of standing, has no bearing in law, and therefore the first Council appeal hearing is irrelevant, whether that is an affirmation or not. Of course, due to the failure to notify, it is a matter of record that it *should not* have been affirmed.

### **Summary**

This series of hearings has established a pattern that continues to this day: For the Planning & Zoning Commission, their advisors, and the Applicant/Appellee the law is not a guiding light, but rather an inconvenience to be ignored whenever even the thinnest rationalization can be offered. There isn't the slightest concern for either the intent or the letter of the law. Their strategy is rather to take every step and promote every distortion that can further the approval of whatever course they "know" is best. Their reckless disregard for the law has proven very costly already, both for the County and the victims, and more trouble is yet likely.

The Appellants are not alone in this view. County staff's argument dismissing the need for personal notification is a perfect example of the behavior Judge Lidyard described: "...the government of Los Alamos County decided to disregard fundamental concepts of law ... indulging all possible interpretation against upholding its citizen's right."

It is the view of those appealing this SUP that governments should be particularly stringent in their efforts to follow their own laws, especially those bodies that actually write those laws.

At least twice it has been established in hearings that the law has been flaunted. We have repeatedly presented more than enough evidence that the practice has continued in this latest hearing.

It is now up to the Council to set this matter right.

Presented to the Los Alamos County Council on or before June 3, 2022 by:

/s/ David North  
David North  
111 La Senda Rd  
White Rock, NM 87547  
Email: d@vidnorth.com

**Certification of Service of Parties**

I, Patricia Thames, hereby certify that I have, on or before this the 3<sup>rd</sup> day of June, 2022 arranged service to the following individuals, via U.S. Mail and email, a copy of the foregoing document.

For County:

Sobia Sayeda  
Senior Planner, CDC  
1000 Central Avenue, Suite 150  
Los Alamos, NM 87544  
Email: [sobia.sayeda@lacnm.us](mailto:sobia.sayeda@lacnm.us)

For Appellee:

Denise Matthews  
113 B La Senda Road  
White Rock, NM 87547  
Email: [director@wormsandwildflowers.com](mailto:director@wormsandwildflowers.com)

For Appellants:

Patricia Thames  
115 La Senda Road  
White Rock, NM 87547  
Email: [tishthames@gmail.com](mailto:tishthames@gmail.com)

And by email to the other unlisted appellants.

/s/ David North  
David North  
111 La Senda Rd  
White Rock, NM 87547  
Email: d@vidnorth.com

## **Appellants' Response To Appellee's Brief Regarding SUP-2022-0020/21**

Appellee's brief title says it regards "Peace, Comfort, And the Comprehensive Plan In the Planning and Zoning Commission Findings of Fact For SUP-2022-0020/21." But nowhere in the brief is there any development of the issues surrounding peace, or comfort, or the Findings.

This illustrates the most important aspect of the Appellee's brief: what is missing.

### **Matters Not Addressed In The Appellee's Brief**

- There is no mention of noise, or any attempt to refute that it will exceed legal limits and World Health Organization guidelines.
- There is no explanation for why noise should not be considered *at the hearing* by the Planning & Zoning Commission (P&Z) when the Applicant was required to prove *prior to issuance of an SUP* that the peace and comfort of the neighbors would not be disturbed.
- There is no attempt to deny that a day care operation would cause a detriment to property value of between 5-15%, as established by the statements of two respected appraisers, one of them the President of their professional organization, the other describing an almost identical business. (See transcript page 160. There are two errors in the transcript. The "President" of the Appraisal Institute named was "Richard L. Borges").
- There is no explanation of how this outdoor business does not violate the Comprehensive Plan's guarantee to protect the character of neighborhoods, "...especially in the case of long-standing, low-density residential areas."
- There is no assertion that a preponderance of evidence was supplied to bear the burden of proof Appellant was required to produce in each of the above requirements of LA County Code Sec. 16-156 (1).
- There is no indication of evidence that day care is either unavailable or hard to find in White Rock, or even greater Los Alamos County.
- There is no fee structure or any other evidence to indicate this operation would offer any cost relief.

- There is no explanation offered why the legal entailments of the presence of a school are not a burden on the neighbors when there are neither visual nor sound barriers (see letter on Page 106 in the appeal record. Any operation serving children aged 5-6 is legally a school).
- There is quite naturally no mention that 10 of the 16 neighbors within 300 feet have signed on to this appeal and strongly object to the approval of this Special Use Permit.
- There is nothing to support the Commission's ill-considered argument that it would not be *consistent* to consider all the evidence presented or to follow county law with regards to burden of proof.
- There is no excuse for testimony claiming a large, ten-foot flower bed where there was none, or why any other unvetted evidence from the Appellee should be considered accurate, or any reason offered to rely on testimony from other parties based on that evidence.

### **Matters Actually Addressed In The Appellee's Brief**

Appellee mentions a mediation suggested to the residents of 115 La Senda and 116 Piedra Loop, clients of attorney Joseph Karnes. They were led to understand in order to participate they would have to sign away any right to further appeal, including oddly the rights of appellants not even present, before proceedings even started. That is not mediation. Understandably they declined to participate in a de facto binding arbitration run by the county.

Appellee establishes it is possible to get over 100 persons to state on social media that they would like more choices for day care. This is certainly true also for restaurants, hardware stores, or *any* other business in *any* community. It would doubtless still be true if this day care were to open. It does seem strange that not all of them were agreed that this proposed day care should be one of the expanded choices.

Then the brief presents Kathy Keith's explanation that LANL is *concerned* about a possible future lack of day care. The facts say otherwise. LANL could at any time get federal funding for day care, only 51% of which need be devoted to LANL employees. (See transcript page 157 lines 2-8). This would make available ample day care and a reasonable living wage for

the persons caring for the children, but according to Keith, "We are in the business of furthering national security for the country but not really in the business of offering child care" (see complete record page 207, last paragraph). This from a corporation that supports foundations and charitable grants throughout the area, but hasn't enough *concern* to lift a finger solve this problem at no cost to themselves. It is hard to take her testimony seriously.

Then there is a rambling list of assertions apparently aimed at compliance with the Comprehensive Plan, keying on the idea that the policy regarding open space says we should "Be stewards of the natural environment, including the existing ecosystems." This is ironic in that the day care area has almost no trace of the natural ecosystem of La Senda. That has been eradicated to create something more like what the Appellee describes as a "farm."

The Brief closes first by mentioning the "countless hours" spent defending the application. Appellants can sympathize, though our several hundred hours actually are countable, plus in excess of \$13,000 in expenses. We assume that to be less than the amount spent by the county on fruitless legal fees, along with staff time expended to coach the Appellee and prepare various reports and records (while even the simplest query from Appellants garnered the response "we cannot give legal advice"). Surely the Council can also sympathize, this being their third time to hear an appeal requiring whole-record review.

Finally, the brief ends by explaining that the Appellants' right to appeal is unjustified. This is completely consistent with the Commission's approach of criticizing the law rather than giving it due consideration.

Prepared for appeal signatories Patricia Thames, Les DiLeva, Marilyn Smith, Barham W. Smith, Monica Noll, Phillip Noll, Mikkell B. Johnson, Lynne M. Johnson, Akkana Peck, Vicki Cobble, William Hodgson, Susan Hodgson, Fredrick J. Berl, Theresa K. Berl, David L. Paulson, Anne M. Paulson, and Mark Potocki.

Presented to the Los Alamos County Council on or before June 3, 2022 by:

/s/ Patricia Thames  
Patricia Thames  
115 La Senda Rd  
White Rock, NM 87547  
Email: tishthames@gmail.com

### **Certification of Service of Parties**

I, Patricia Thames, hereby certify that I have, on or before this the 3<sup>rd</sup> day of June, 2022 arranged service to the following individuals, via U.S. Mail and email, a copy of the foregoing document.

For County:

Sobia Sayeda  
Senior Planner, CDC  
1000 Central Avenue, Suite 150  
Los Alamos, NM 87544  
Email: sobia.sayed@lacnm.us

For Appellee:

Denise Matthews  
113 B La Senda Road  
White Rock, NM 87547  
Email: director@wormsandwildflowers.com

For Appellants (email only; author lives at primary contact address):

David North & Akkana Peck  
111 La Senda Road  
White Rock, NM 87547  
Email: d@vidnorth.com

Phillip & Monica Noll  
114 Piedra Loop  
White Rock, NM 87547  
Email: shinumo@canyonechos.com

Les DiLeva & Patricia Thames  
115 La Senda Road  
White Rock, NM 87547  
Email: tishthames@gmail.com

Barham & Marilyn Smith  
116 Piedra Loop  
White Rock, NM 87547  
Email: latoty07@gmail.com

And to the other unlisted appellants.

/s/ Patricia Thames  
115 La Senda Road  
White Rock, New Mexico 87547  
Email: tishthames@gmail.com

# **CORRECTIONS TO RECORD**

PARTY	REQUEST/COMMENT	STAFF RESPONSE
David North	Transcript Page 53 Lines 12, 14 say "neo" sound application. That is actually "NIOSH" and it's clear on the recording that nobody says "NEO." (Starting at 1:21:13 in the MP4 recording of the hearing). This is particularly important because anyone with an iPhone can download the app and see exactly how it works. Does not work on Android.	Accepted and revised
	Transcript Page 55 Line 20 reads "at the LAQ line" but what was actually said was "at the lot line" as in the property line (1:24:16 in the MP4 file of the hearing). This is an important distinction, not only because the LAQ line actually makes no sense.	Accepted and revised
	Transcript Page 57 Line 13 reads "Barrel Street." The correct spelling is "Beryl."	Accepted and revised
	Transcript page 59 line 10 the word "to" is clearly "from" at 1:28:35 in the video recording.	Accepted and revised
	Transcript page 60 line 5 the word "higher" is missing from the end of the sentence (interrupted by the applicant but still audible).	Accepted and revised
	Transcript page 85 line 13 the word NIOSH is missing between "the" and "sound" at 2:16:35 in the video recording.	Accepted and revised
	Transcript page 92 line 24 "not relevant" is clearly "almost irrelevant." 2:29:20 in the video.	Accepted and revised
	Transcript page 112 line 11, "effected" should be "affected".	Accepted and revised
	Transcript page 128 line 11, the number "5" should be "55."	Accepted and revised
	Transcript page 156 line 5 the word "four" is actually "for" as in for (the day care) five and against (the day care) six.	Accepted and revised
	Transcript page 156 line 21 the word "really" is missing between "it" and "would." See 4:04:54 in the video.	Accepted and revised
	Transcript page 158 line 1 the seemingly nonsensical "announce" is actually two words, "an annoyance." 4:04:42 in the video.	Accepted and revised
	Transcript page 159 line 8 "approve" is clearly "prove." Video 4:10:20	Accepted and revised
	Same page, lines 21-22 "And noises now acknowledge" is actually the more meaningful "And noise is now acknowledged" Video 4:10:39.	Accepted and revised
	Transcript page 160 line 17 the word "house" is missing after \$100,000. Video 4:11:49.	Accepted and revised
	Transcript page 161 line 25 "red" is actually the past tense "read." Video 4:14:11	Accepted and revised
	Transcript page 175 line 17 "ires" should be "requirement"	Accepted and revised
	Transcript page 185 lines 22-23 "it has kind of been" is actually "it has to kind of be". 5:06:42 in the video record.	Accepted and revised



# County of Los Alamos

## Staff Report

August 01, 2022

Los Alamos, NM 87544  
www.losalamosnm.us

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**Agenda No.:** B.

**Index (Council Goals):**

**Presenters:** County Council - Special Session

**Legislative File:** 16205-22

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### **Title**

Closed Session for Deliberations of a Public Body in Connection with an Administrative Adjudicatory Proceeding Pursuant to NMSA § 10-51-1 (H) (3)

### **Recommended Action**

ENTRY:

**I move that the County Council enter into closed session pursuant to NMSA 1978 10-15-1(H)(3) for deliberations in connection with this administrative adjudicatory proceeding.**

EXIT:

**I move that the County Council exit its closed session, and further move that the following statement be entered into the record: the matters discussed in the closed session were limited to those specified in the motion for closure.**



# County of Los Alamos

## Staff Report

August 01, 2022

Los Alamos, NM 87544  
www.losalamosnm.us

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**Agenda No.:** C.

**Index (Council Goals):**

**Presenters:** County Council - Special Session

**Legislative File:** 16206-22

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### **Title**

Possible Final Action on this Proceeding.