



# 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

⑆ 107001012⑆ 6756 0081020301⑈

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: 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**

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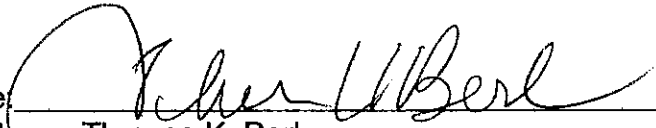
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Printed Name: David M. North  
Address: 111 La Senda Road

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

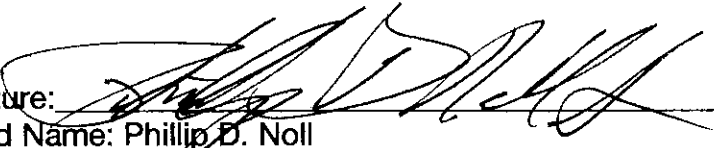
\* Signature: Leslie Di Leva Date: 2/28/2022  
Printed Name: Leslie Di Leva  
Address: 115 La Senda Road

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

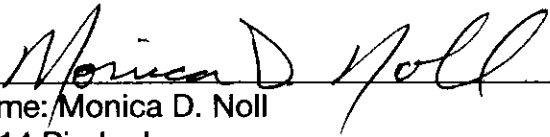
Signature: Signature on first page Date: \_\_\_\_\_  
Printed Name: Frederick J. Berl  
Address: 117 La Senda Road

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

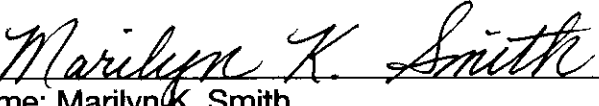
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Signature:   
Printed Name: Monica D. Noll  
Address: 114 Piedra Loop

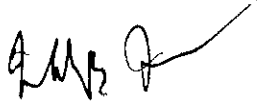
Date: 2-24-2022

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

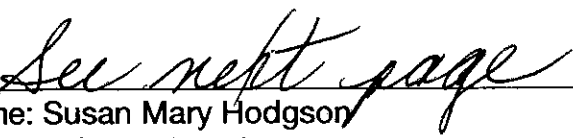
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Signature:   
Printed Name: David L. Paulson  
Address: 122 Piedra Loop

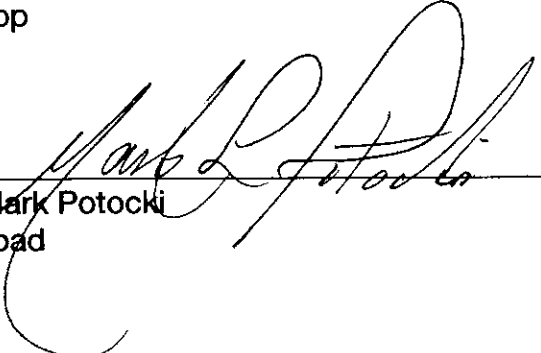
Date: 3/1/2022

 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

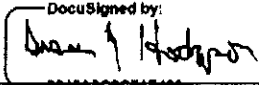
 Signature: See next page Date: \_\_\_\_\_  
Printed Name: Susan Mary Hodgson  
Address: 114 La Senda Road

 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:  
  
 304BA809C71E483...

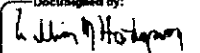
Signature Adoption: Drawn on Device  
 Using IP Address: 174.198.144.17  
 Signed using mobile

**Timestamp**

Sent: March 1, 2022 | 08:20  
 Viewed: March 1, 2022 | 10:19  
 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:  
  
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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**

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 March 1, 2022 | 10:24



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### **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>