

October 7, 2020

**RE: APL-2020-0018.**

**Request for the Los Alamos County Council to reverse the June 10, 2020 decision of the Planning and Zoning Commission in Case No. SUP-2020-0014, a request for Special Use Permit to conduct an in-home daycare facility; and SUP-2020-0015, a request for Special Use Permit for a Home Business to employ more than one non-family member, 113 B LA SENDA, White Rock, NM 87547**

---

**COUNTY COUNCIL**

Sara C. Scott

Council Chair

Pete Sheehey

Council Vice-Chair

**COUNCILORS**

David Izraelevitz

Antonio Maggiore

Katrina Martin

James N. Robinson

Randall T. Ryti

**COUNTY MANAGER**

Harry Burgess

In accordance with paragraph 5 of the Los Alamos County Development Code Appeal Council Procedures, the Community Development Department received and evaluated requested corrections to the record, and accepted revisions were made accordingly and distributed to all parties on October 5, 2020.

After receipt of the revisions, Mr. David North contacted staff with an email that provided some clarification to a correction request that was not accepted (correspondence attached). Staff has evaluated and acknowledges that the Powerpoint presentation made by staff and shown within the video differs from the Powerpoint presentation included within the compiled record. These differences are found within Sec. 4.3, slides 11-13. One version has the applicant's response to the review criteria written, the other has staff's response.

Therefore, the 2<sup>nd</sup> Amended Record is now available.

**From:** [David North](#)  
**To:** [Lujan, Desirae J.](#)  
**Cc:** [Akkana Peck](#)  
**Subject:** [EXTERNAL]Re: Appeal Record, revised  
**Date:** Monday, October 5, 2020 2:53:48 PM

---

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.

Desirae,

Perhaps you can help me out with this. The staff response to requested corrections, top box, states "The Powerpoint is presented and referenced within the lines noted. It is included within the record, Sec. 4, Staff Presentation. Exhibits noted on the last slide noted are the same as those within the Staff Report and available throughout the record provided."

I'm not sure I can parse that, but I'm having trouble locating the powerpoint that includes the lines from 1233 through 1239 anywhere in the record. I'm sure I saw this document at some point. Perhaps you can point me to its location more specifically? The lines in question include the following text:

"For the special use permit 2020-0014, the daycare facility, it is a permitted within the RA district, subject to planning and zoning commission review and approval as a special sue. A daycare facility is not harmful, it will not be detrimental, injurious to the general welfare of the community. It will provide a needed community resource for the county large workforce. Peace and comfort of the persons residing or working in the vicinity is subjective and cannot \_\_\_ be proven either way."

Please forgive if that actually is in there somewhere, but look as I might I cannot find it.

Thanks,

Dave North

> On Oct 5, 2020, at 1:50 PM, Lujan, Desirae J. <[desiraej.lujan@lacnm.us](mailto:desiraej.lujan@lacnm.us)> wrote:

>

> Please see the attached correspondence regarding the received requests for corrections to the record of SUP-2020-0014 and SUP-2020-0015.

PARTY REQUEST/COMMENT	STAFF RESPONSE
<p>"There are some oddities regarding the documents I noted as "EXHIBITS SUBMITTED DURING HEARING". This is the stuff you reference from about lines 1118 through 1289 or possibly further. "</p>	<p>The Powerpoint is presented and referenced within the lines noted. It is included within the record, Sec. 4, Staff Presentation. Exhibits noted on the last slide noted are the same as those within the Staff Report and available throughout the record provided.</p>
<p>"...than the transcript is fairly incomplete in some regards. For example, in line 1237 the words 'be proven' are elided with an underscore."</p>	<p>Insert of words "be proven" were accepted and revised. (1238)</p>
<p>When I go to the page for the June 10 meeting and click on the link to "Items Submitted As Evidence at Public Hearing" and then click on "PZC_SUP_daycare_wexhibits" (which I thought would be those records) what comes down is the presentation slides by Denise Matthews. So I tried "Worms and Wildflowers Daycre_ppt" on the chance that the two files somehow got reversed, but whatever is there is unrecognized as PDF or any other format known to my computer (though it is marked as a pdf). This failed twice, and attempts to read any text matter included failed (unix "strings").</p>	<p>Referencing Agenda packet published on the Granicus Boards and Commission website? The Agenda packet published on the county website prior to meetings contained: the Agenda (Sec. 4.1), staff report (Sec. 4.2) and exhibits, which are: application (Sec. 1.1-1.3), vicinity map (pg 15 within Sec. 4.2), notification map and owner listing within 100 yd (Sec. 2.4-2.5), and letters from the public (Sec.3). All are provided within the record.</p>
<p>line 468: The name is Potocki, as listed on the parcel viewer line 471: Potocki -- same as above line 563: Same error for Potocki line 826: Same error for Potocki line 1327: Same error for Potocki line 1606: Same error for Potocki</p>	<p>Not Changed: "Potocki" is spelled phonetically within the transcript, but is spelled correctly and visible on the video.</p>
<p>line 500: Michelle said "the Pajarito Acres area" which is correct, rather than the transcript's "La Pajarito area" which does not exist.</p>	<p>Accepted and revised</p>
<p>line 641: the missing word is "flag"</p>	<p>Accepted and revised</p>
<p>line 1078: "Woman?" is Steph (Nakhleh, Stephanie)</p>	<p>Not Changed: the "Woman" is identified by video as Beverly Neal-Clinton speaking, but she does not identify herself.</p>
<p>line 1097: The comment was also from Steph (visible on the mp4 record).</p>	<p>Not Changed: the video shows Beverly Neal-Clinton speaking on line 1097, not "Steph", but she does not identify herself.</p>
<p>line 1139: Piadra is a misspelling of Piedra</p>	<p>Not Changed: Although the word is misspelled, it is typed as to how it was pronounced on the video.</p>
<p>line 1160: "Male" is Commissioner Sean Williams. Ditto line 1168</p>	<p>Not Changed: "Male" is shown on video as Sean Williams speaking, but does not identify himself.</p>
<p>line 1165: the underscore is clearly heard to be "under services."</p>	<p>Accepted and revised - edits pushed Bates Numbering down a line.</p>
<p>line 1193: the underscore should be "is applicable as well."</p>	<p>Not changed: "is not applicable as well" were the words spoken.</p>
<p>line 1201: should be "65 dba" rather than "65 bba"</p>	<p>Accepted and revised (1202)</p>
<p>line 1205: underscore should be "independently"</p>	<p>Accepted and revised (1207)</p>
<p>line 1217: underscore is "Eric"</p>	<p>Accepted nad revised (1218)</p>
<p>line 1237: underscore (lacuna) is clearly "be proven"</p>	<p>Accepted and revised (1238)</p>
<p>line 1284: Wendy's last name is "Servey"</p>	<p>Accepted and revised (1286)</p>
<p>line 1461: Monica's last name is "Noll"</p>	<p>Accepted and revised (1463)</p>
<p>line 1524: The elided word is an acronym: PEEC</p>	<p>Accepted and revised (1526)</p>

line 1527: "nice" was actually "nicely"	Accepted and revised (1529)
line 1544 "this" and "this" require description (low frequency and high frequency)	Not Changed: change of voice frequency is not captured within the transcript, but within the audio and video.
line 1557: last word "I" should be "is"	Accepted and revised (1560)
line 1570: the "d" is missing from "drivers" (final word)	Accepted and revised (1574)
line 1684: "Male" is David North (myself) and the word ". Is" was actually just "as" (in the sense of 'since')	Accepted and revised (1687)
line 1710: "Man" is again David North (myself)	Not Changed: David North is shown on video as speaking, but does not identify himself.
line 1711: "of who" should be "if it" (again, me speaking)	Accepted and revised (1714)
line 1718: "Man" is again David North (myself)	Not Changed: David North is shown on video as speaking, but does not identify himself.
line 1722: What was actually said is: "Neither does the law, sir." (Me speaking, but clear on the video recording though someone interrupts).	Accepted and revised (1725)
line 1809: "Male" is again David North (myself).	Not Changed: David North is shown on video as speaking, but does not identify himself.
line 1910: the missing word is clearly "regulator"	Accepted and revised (1913)



Record compilation [2nd Amended] for **Appeal Case No. APL-2020-0018** filed on June 23, 2020, requesting that the Los Alamos County Council reverse the June 10, 2020 decision of the Planning and Zoning Commission in Case No. SUP-2020-0014, a request for Special Use Permit to conduct an in-home daycare facility; and SUP-2020-0015, a request for Special Use Permit for a Home Business to employ more than one non-family member, 113 B LA SENDA, White Rock, NM 87547

---

Appellants:

1. Patricia Thames, 115 La Senda
2. David North, 111 La Senda
3. Akkana Peck, 111 La Senda
4. William M. Hodgson, 114 La Senda
5. Susan Mary Hodgson, 114 La Senda
6. Les DiLeva, 115 La Senda
7. Fredrick J. Berl, 117 La Senda
8. Theresa K. Berl, 117 La Senda
9. Cynthia L. Murphy, 110 Piedra Loop
10. Jeanette Metzger-Throp, 110 Piedra Loop
11. Phillip D. Noll, 114 Piedra Loop
12. Monica D. Noll, 114 Piedra Loop
13. Barham W. Smith, 116 Piedra Loop
14. Marilyn K. Smith, 116 Piedra Loop
15. Mikkell B. Johnson, 118 Piedra Loop
16. Lynne M. Johnson, 118 Piedra Loop
17. David L. Paulson, 122 Piedra Loop
18. Anne M. Paulson, 122 Piedra Loop

# CONTENTS

1. APPLICATION AND SUBMITTALS
  - 1.1. APPLICATION
  - 1.2. RESIDENTIAL PROPERTY TRANSFER DECLARATION AFFIDAVIT
  - 1.3. SITE PLAN
  - 1.4. WORMS & WILDFLOWERS PRESENTATION
2. PUBLIC NOTICES
  - 2.1 LEGAL NOTICE
  - 2.3 LETTER TO PROPERTY OWNERS
  - 2.4 PROPERTY OWNER LISTING, 100 YD
  - 2.5 NOTIFICATION MAP, 100 YD
3. CORRESPONDENCES FROM THE PUBLIC
  - 3.1 JOHNSON, LYNNE M. & MIKKEL B., 118 PIEDRA LOOP
  - 3.2 MURPHY, CYNTHIA L., 110 PIEDRA LOOP
  - 3.3 NOLL, PHILLIP & MONICA, 114 PIEDRA LOOP
  - 3.4 POTOCKI, MARK L., 105 LA SENDA
  - 3.5 NORTH, DAVID & PECK, AKKANA, 111 LA SENDA
  - 3.6 SMITH, MARILYN K. & BARHAM W, 116 PIEDRA LOOP
4. JUNE 10, 2020 PLANNING AND ZONING COMMISSION MEETING
  - 4.1 AGENDA
  - 4.2 STAFF REPORT
  - 4.3 STAFF PRESENTATION
  - 4.4 MEETING TRANSCRIPTION
  - 4.5 MEETING MINUTES
5. FINAL ACTION AND FINDINGS OF FACT
  - 5.1 LETTER TO THE APPLICANT
  - 5.2 FINDINGS OF FACT
6. APPEAL APPLICATION
  - 6.1 APL-2020-0018: APPEAL APPLICATION AND SUBMITTAL
7. BRIEFS AND RESPONSES
  - 7.1 BRIEFS RECEIVED
  - 7.2 RESPONSE(S) TO BRIEFS

## **APPLICATION AND SUBMITTALS**

- 1.1 APPLICATION
- 1.2 RESIDENTIAL PROPERTY TRANSFER DECLARATION AFFIDAVIT
- 1.3 SITE PLAN
- 1.4 WORMS & WILDFLOWERS PRESENTATION

**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 twelve children.  
Located in a studio guesthouse located on our 3 acre  
Property. Requesting special use permit for a daycare facility and  
Address to which this application applies: an in-home business.

113B La Senda Rd

Zoning District: RA

Related Applications (if any):

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

Name: Denise Matthews Phone: 541-740-5520 Cell #: > same  
Please Print

Address: 113B La Senda Rd Email: director@wormsandwildflowers.com  
White Rock, NM 87547

SIGNATURE Denise Matthews

DATE 3/4/20

**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.) *County providing*
- ☒ 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: \_\_\_\_\_

**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, 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.*

*See attached sheet*

- (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.*

- (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.*



#### **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 age range will be from 3-6 years. 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 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.



Title Company: TITLE GUARANTY, LLC

File Number: LA18-0089

### Residential Property Transfer Declaration Affidavit

**Transferor(s)/Seller(s)** Print full name(s) and mailing address(es):

Jonathan E. Bard  
113 B La Senda  
Los Alamos, NM 87547

**Transferor(s)/Buyer(s)** Print full name(s) and mailing address(es):

Christopher Matthews and Denise Matthews  
1505 Camino Redondo  
Los Alamos, NM 87544

**Legal Description** 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

**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.**

Sales Date: May 15, 2018

Consideration paid or exchanged: \$1,025,000.00

Value of Personal Property included: \$0.00

Description of personal property: \_\_\_\_\_

Terms of sale including any seller incentives: \_\_\_\_\_

Signature of Buyer X Seller \_\_\_\_\_ or Authorized Agent \_\_\_\_\_ (Check one and sign)

Signature: \_\_\_\_\_

**Christopher Matthews**

Date: 5/15/18

Signature: \_\_\_\_\_

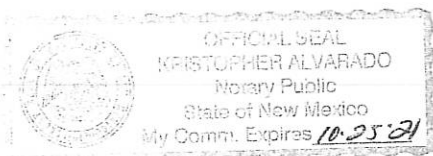
**Denise Matthews**

Date: 5/15/18

**Acknowledgement of individual or in representative capacity**

STATE OF NEW MEXICO  
COUNTY OF LOS ALAMOS

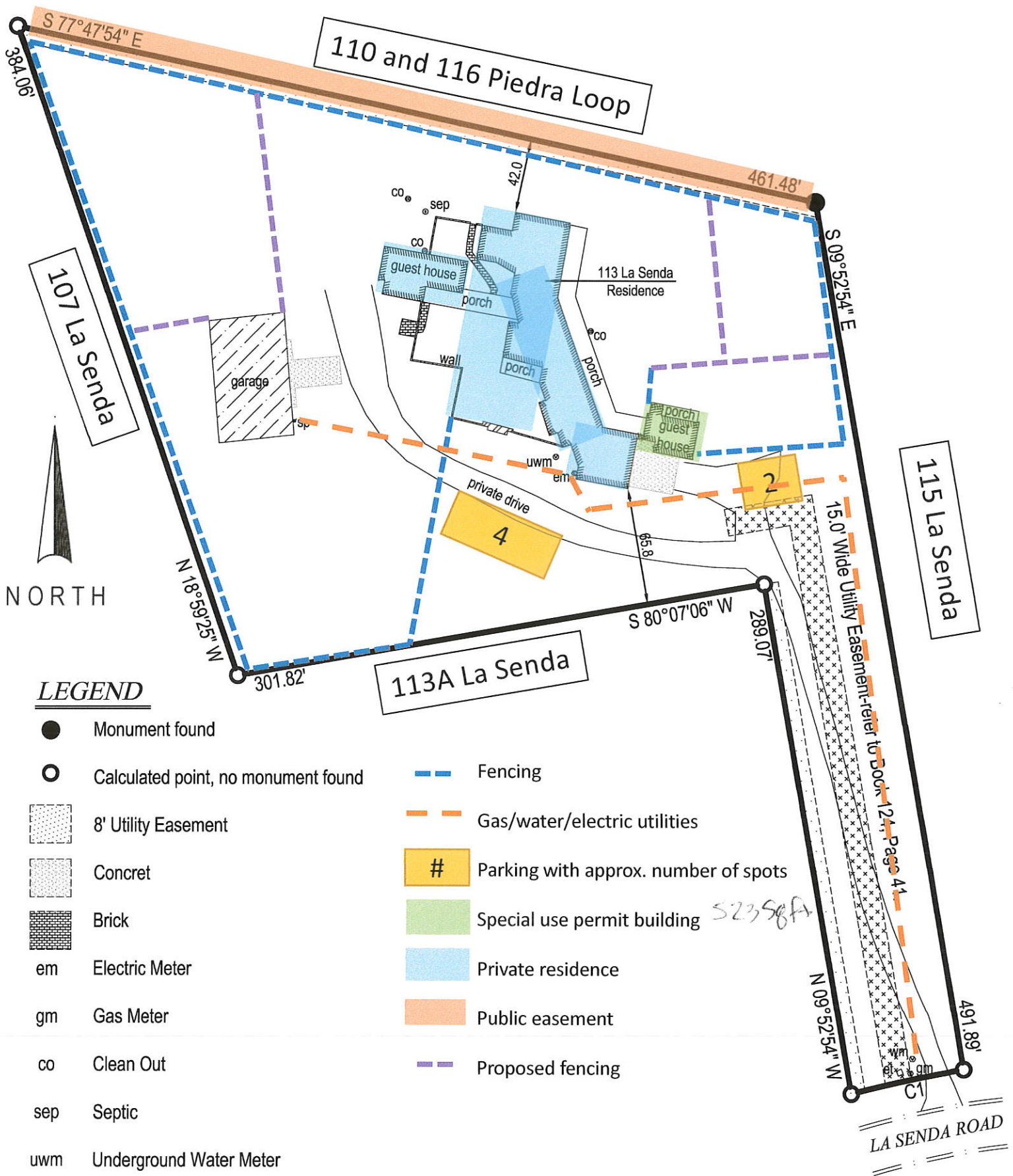
Signed and sworn to (or affirmed) before me on May 15, 2018 by **Christopher Matthews and Denise Matthews**



\_\_\_\_\_  
Notary Public

My Commission Expires: 10/25/2021

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



# Worms and Wildflowers Home Daycare

## Special Use Permit Application

Denise Matthews  
Director and Lead Educator



**Business Name:** Worms and Wildflowers Home Daycare

**Location:** 113 B La Senda  
White Rock, NM 87547

**Hours of Operation:** 8:00-5:00, with occasional weekend special events.

*Initial hours of operation will be part time: T, W, Th, 8:00-5:00*

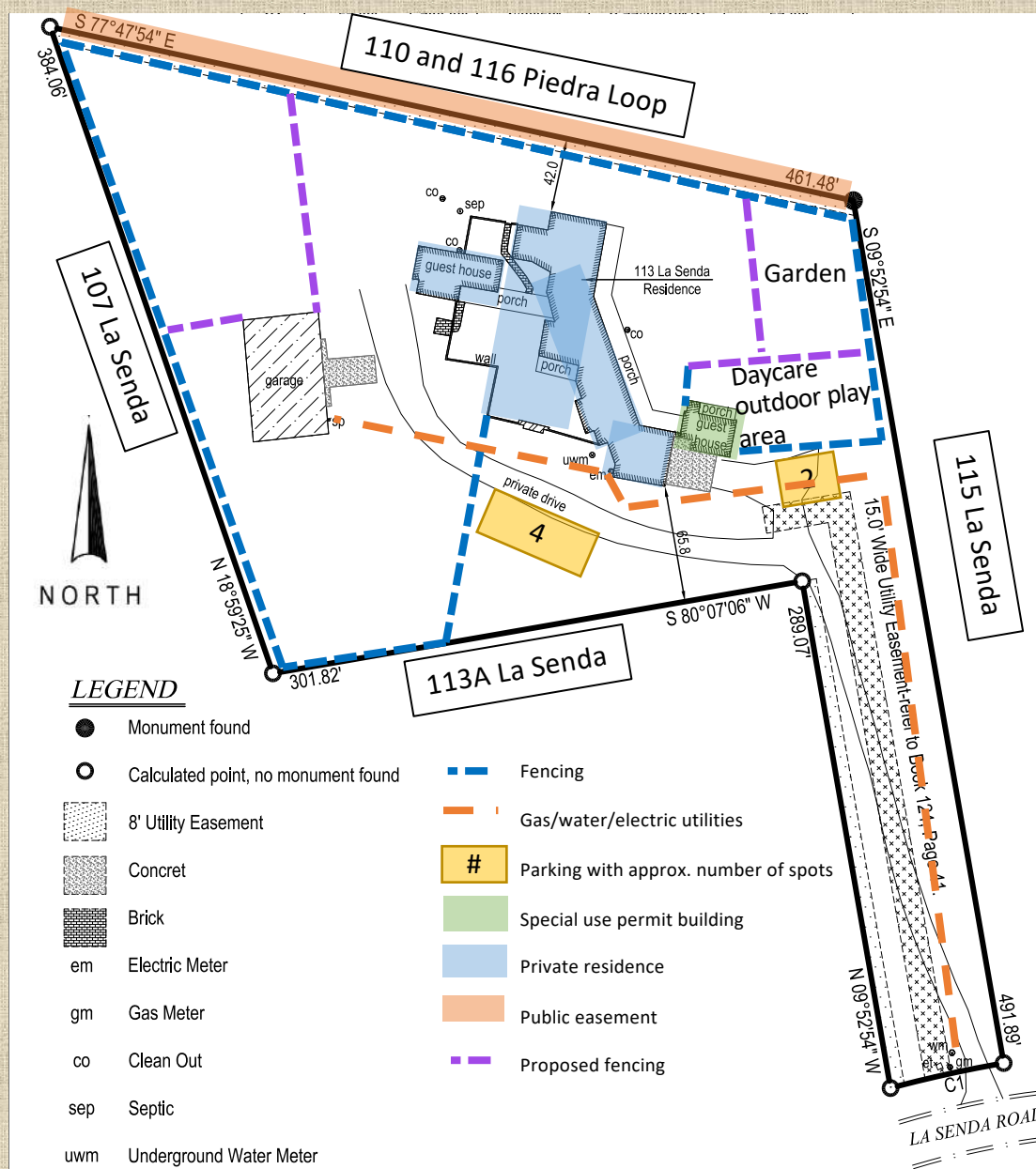
*Drop-off from 8:00-9:00, pick-up from 3:30-5:00.*

**Ages Range:** 3-6 years

**Adult/Child Ratio:** 1:6, requiring two instructors when more than 6 children, max class size 12 children, including my own two children.

**Mission:** Build upon the natural rhythms of child-centered play to allow all children the opportunity to grow as resilient global citizens capable of developing their own interests, working cooperatively, feeling empathy, managing risk, and connecting to the natural world.

**Philosophy:** Worms and Wildflowers Home Daycare believes it is the right of every child to have ample outdoor playtime. We understand that sustained child-centered play allows for the opportunity to engage in truly meaningful learning. The role of educators in our class is to help facilitate the process of children identifying their own interest, questions, and ideas. Through the introduction of engaging materials and unique interactions with peers and the natural world, student's interests will be celebrated and used to guide future activities and learning moments.



Daycare Location:  
113B La Senda Rd  
White Rock, NM

Lot size: 3 Acres

# Planning and Zoning Committee's Five Criteria for SUP

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.

The request must:

1. Not be detrimental to the health, safety, peace, comfort or general welfare of persons , or be detrimental or injurious the value of property in the vicinity
2. Have sufficient parking facilities that are adequately designed, shielded, landscaped and lighted to serve the use applied for.
3. Have on-site and off-site ingress/egress and traffic circulation are be 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.
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.
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.

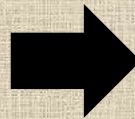


# Health, Safety and Peace

- 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.***

## **Sec. 18-72. - Policy and purpose.**

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, comfort, convenience, safety, welfare and property and may constitute a trespass upon the privacy of others;  
(Ord. No. 74-78, § 10-1-14(B), 1983;  
Code 1985, § 8.28.020)



## **Included within Policy and Purpose guidelines**

### **Sec. 18-73. - Prohibited noise; decibel provisions.**

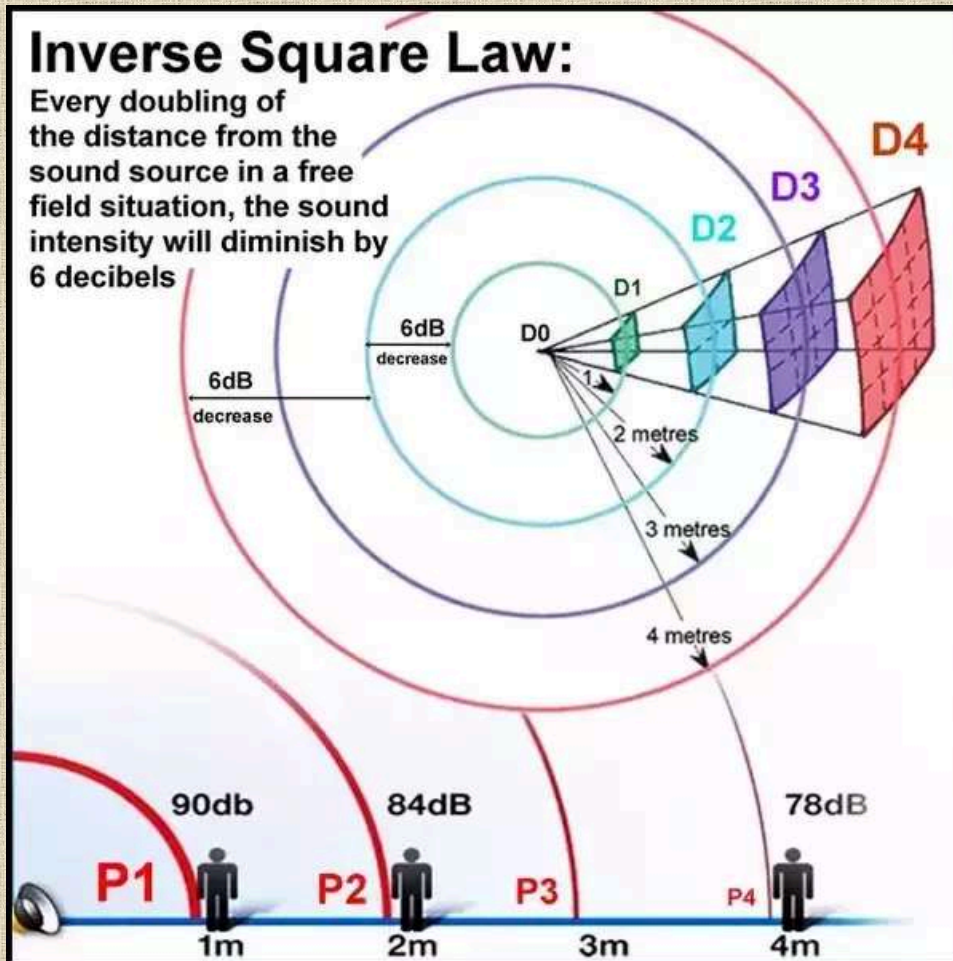
Except in connection with the operation of motor vehicles on a public thoroughfare and otherwise as provided in subsection (c) of this section, it shall be a violation of this article for ***any person to cause or permit the production of sound in such a manner as to let escape more than 65 dBA across any residential property line***, nor more than 53 dBA during the hours of 9:00 p.m. to 7:00 a.m.

## Expected Home Daycare Sounds:

- Group circle time, songs, and conversations
- Group story time
- Kids playing
- Parent conversations

## Sec. 18-73. - Prohibited noise; decibel provisions.

Noises more than 65 dBA should not pass across any residential property line.



Normal conversation measures at 60 dBA







Site location of studio building  
to be used for home daycare.

(Landscaping still in progress)

Activities within a home daycare are not different from typical conversations and noise generated from family activities.

Kids playing does not constitute a trespass upon the privacy of others as stated; "creation or maintenance of such excessive, unnecessary, unnatural or unusually loud noises which are prolonged, unusual or unnatural in their time."

**Sec. 18-72. - Policy and purpose.**





# Parking

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.*

Parking at 113B La Senda:

- Gravel driveway leads to two parking areas for families:

Driveway Entrance:



(All required parking lots or parking facilities, **except in the R-A and R-E districts** shall be paved and have grading and drainage as approved by the county.) Sec. 16-367. - Design requirements.





**Parking Continued:** *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.*

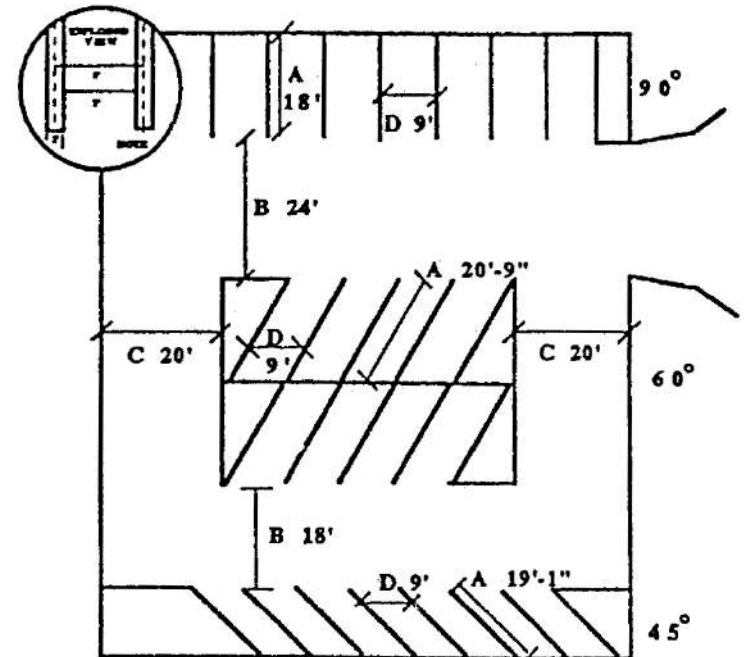
## ARTICLE IX. - OFF-STREET PARKING AND LOADING

**Sec. 16-364:** All required off-street parking spaces shall be ***located on the same lot or within 500*** feet of the use to be served. If not on the same lot, the right granted to provide off-site parking space shall not be subject to termination during the existence of the use served.

**Sec. 16-367:** Minimum parking stall dimensions ***shall be 9 feet by 18 feet***. Parking facilities shall meet the following minimum parking area dimensions design standards:

**Sec. 16-367:** Bumper guards and/or wheelstops shall be required on the periphery of all required parking facilities so that cars will not protrude into the public right-of-way or strike a building, fence, landscaping or protrude over public or private sidewalks.

DESIGN DIMENSIONS FOR PARKING LOTS (OFF-STREET)



		45°	60°	90°
A	MINIMUM STALL DEPTH	19'-1"	20'-9"	18'
B	MINIMUM AISLE WIDTH	14'	18'	24'
C	MINIMUM TURN-AROUND	20'	17'-4"	15'
D	MINIMUM STALL WIDTH	9'	9'	9'





View as you  
approach  
studio building  
and parking  
area.

Parking Area 1

Bumper guards  
to be installed



Railroad ties





**Parking Area 2**

A total of 6 parking spaces will be available for parents and employees. This does not include our private parking area.

**Sec. 16-370. - Off-street parking requirements.**

*Residential Use:*

<i>Use</i>	<i>Minimum space requirement</i>
Day care homes and facilities and child care centers	1 space for each employee

**Sec. 16-369. - Handicapped parking.**

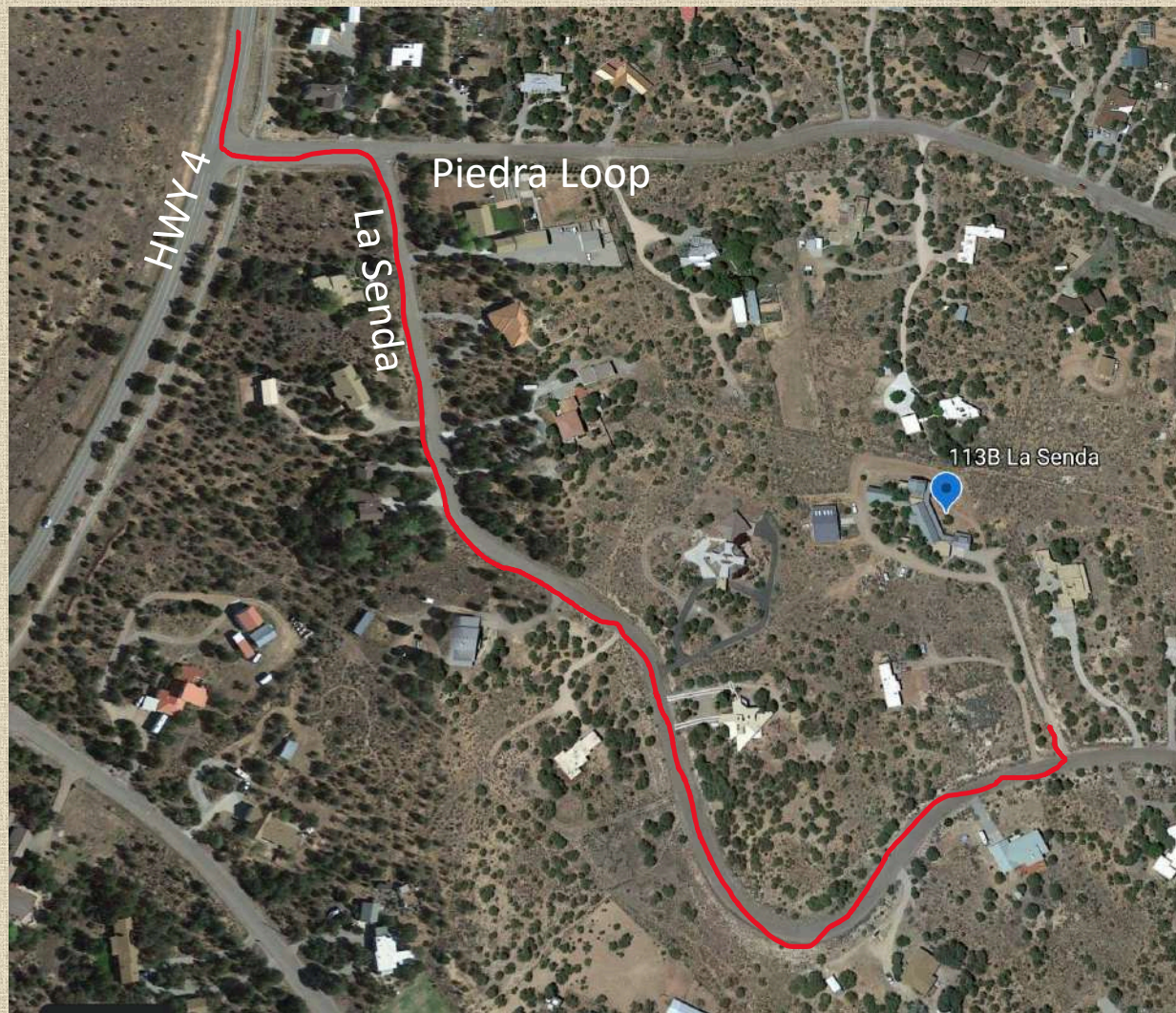
Handicapped parking spaces shall be required **for all nonresidential** uses and for multiple-family uses with common parking areas according to the following schedule:

**A home daycare is considered residential.**



# Ingress/Egress

***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.***



- Up to 10 families would be using the ingress/egress sight during drop-off and pick-up.
- La Senda Road is intended for the public flow of traffic and will not be adversely affected by the small increase of cars during pick-up and drop-off.
- La Senda neighborhood, by nature, has large lots with spaced out driveways allowing plenty of room for parents turning into our driveway.



# La Senda Road



La Senda is a wide two way road.



# Building Setback

***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 building will be created for this business. The daycare will reside in the existing studio guesthouse.
- General character of the vicinity will remain consistent and compatible with the residence on the property.
- Parking Area 1 is set back from closest property line by 28 feet.





# Site Development

***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.***

- Property is in an R-A zone and was built to district regulations. No new building will be added.
- Site plan includes adding a sand digging area, patio, and gathering circle. These all conform to district regulations.



**Sec. 16-282. - Day care.**

- Day care facilities, and child care centers shall be a special use, requiring a special use permit.
- Day care homes, day care facilities and child care centers shall meet the following standards:

As a condition of the special use permit, the applicant must obtain a state license prior to conducting business. The state license will be required to be submitted to the community development director, prior to commencing business. A copy of the state license shall be kept by the community development director.	<b>Will license with CYFD</b>
A business license must be secured from the county.	Will apply with SUP
Provide off-street parking of one space per employee and a procedure for pickup and delivery of children according to a plan filed with the application.	Parking provided and drop-off and pick-up outlined
In residential districts, no major alterations to the structure are allowed that prevent the continuing use or the structure as a residence.	No alterations made
As a condition of the special use permit, the planning and zoning commission shall establish the maximum number of children allowed.	Daycare facility includes up to 12 children.
Outside recreation areas shall be fenced from adjoining residential properties.	Entire property fenced and daycare facility area.
Landscaping, walls or fences may be considered by the planning and zoning commission as part of the special use permit, if necessary to shield neighboring properties from the day care use.	Ok
No outdoor activities for children shall be allowed before 7:30 a.m. or after 6:00 p.m.	Hours of operation are within these times
Noise levels shall be governed by the provisions of article III, <a href="#">chapter 18</a> of this Code	Discussed in criteria #1

## **PUBLIC NOTICES**

- 2.1 LEGAL NOTICE
- 2.2 LETTER TO PROPERTY OWNERS
- 2.3 PROPERTY OWNER LISTING, 100 YD
- 2.4 NOTIFICATION MAP, 100 YD

## **LEGAL NOTICE**

### ***Community Development Department***

The following cases will be considered by the Planning and Zoning Commission at a virtual meeting on June 10, 2020, at 5:30 p.m., at 1000 Central Avenue, Los Alamos, New Mexico 87544. The format will be used to comply with the New Mexico Department of Health's public emergency order governing mass gathering because of COVID-19. Public in-person attendance will not be allowed. Members of the public can view the agenda and live stream the meeting using this link: <http://losalamos.legistar.com/Calendar.aspx>. Interested parties are asked to email their public comments to [planning@lacnm.us](mailto:planning@lacnm.us) in advance and include the words "Public Comment" in the subject line. Comments will be read into the record. A copy of the complete agenda is available for public inspection or purchase, during regular business hours of 8am-5pm, in the Community Development Department: 1000 Central Avenue, Suite 150.

### **Case No. SUB-2020-0011**

A request for approval of a three (3) lot Subdivision addressed as 2436 46<sup>th</sup> St., located in the North Pine Subdivision, Subdivision NC1 Lot 239A. The proposed development will consist of 3 new single-family residential units contained within 3 separate lots, with associated on-site parking and traffic circulation, on 0.28± acres of land.

*Owner: Ian Maes,*

*Applicant: Mike Englehardt, Surveyor/ Applicant*

*Case Manager: Anita Barela, Associate Planner*

### **Case No. SUP-2020-0014**

Denise Matthews, property owner/applicant, requests approval for a Special Use Permit to conduct an in-home daycare facility for up to 12 children at her location of 113 B LA SENDA, Los Alamos, NM. The property, Lot LSA03024A, is within the La Senda Community and is zoned Residential-Agriculture (R-A).

*Case Manager:*

*Desirae J. Lujan, Associate Planner*

**Case No. SUP-2020-0015**

Denise Matthews, property owner/applicant, requests Special Use Permit approval for a Home Business at 113 B LA SENDA, to employ more than one non-family member for an in-home day care facility. The property, Lot LSA03024A, is within the La Senda Community and is zoned Residential-Agriculture (R-A).

*Case Manager:*

*Desirae J. Lujan, Associate Planner*

SUBMITTED BY:

Paul Andrus /s/  
Community Development Director

**“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 Human Resources Department 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 County Administrator’s Office at 662-8080 if a summary or other type of accessible format is needed.”**

To be posted on Thursday, May 21, 2020.



***NOTICE - IMPORTANT INFORMATION ENCLOSED***

Date: May 26, 2020

**RE: Case No. SUP-2020-0014, Denise Matthews, property owner/applicant, requests approval for a Special Use Permit to conduct an in-home daycare facility for up to 12 children at her location of 113 B LA SENDA, Los Alamos, NM. The property, Lot LSA03024A, is within the La Senda Community and is zoned Residential-Agriculture (R-A).**

**Case No. SUP-2020-0015, Denise Matthews, property owner/applicant, requests Special Use Permit approval for a Home Business at 113 B LA SENDA, to employ more than one non-family member for an in-home day care facility. The property, Lot LSA03024A, is within the La Senda Community and is zoned Residential-Agriculture (R-A).**

Dear Property Owner:

The public hearing for the above referenced case will be considered by the Incorporated County of Los Alamos, Planning and Zoning Commission at a virtual public hearing and meeting on June 10, 2020, at 5:30 p.m. (MST). The virtual meeting format is used to comply with the New Mexico Department of Health's public emergency order governing mass gathering because of the COVID-19 pandemic. You were sent this notice pursuant to the Los Alamos County Code of Ordinances, Chapter 16, Article XI and because you own property located within 100 yards of the referenced and subject property. If you wish to participate as a party in the public hearing on this case, please contact the Case Manager below on how to attend the virtual public hearing. All evidence and presentations to be presented or used by you in the hearing must be provided to the Case Manager at least two business days before the hearing. For those interested in only watching the meeting you can view the agenda and live stream of the meeting at:

<http://losalamos.legistar.com/Calendar.aspx>.

**CDD Case Manager:** Ms. Desirae J. Lujan, Associate Planner  
Email: [planning@lacnm.us](mailto:planning@lacnm.us)  
Telephone: (505) 662-8120

Please be advised that Planning & Zoning Commission hearings follow formal public hearing procedures and rules of conduct which parties must follow. If you are the applicant or have standing pursuant to the above code section, you will be formally sworn in and your testimony will be subject to cross-examination.

Sincerely,

Community Development, Planning

Paul Andrus, Director  
Community Development Department

## 113 B La Senda - Neighbors in a 300-foot Radius

### CITY COUNCIL

Sara C. Scott  
Council Chair

Randall T. Ryti  
Council Vice-Chair

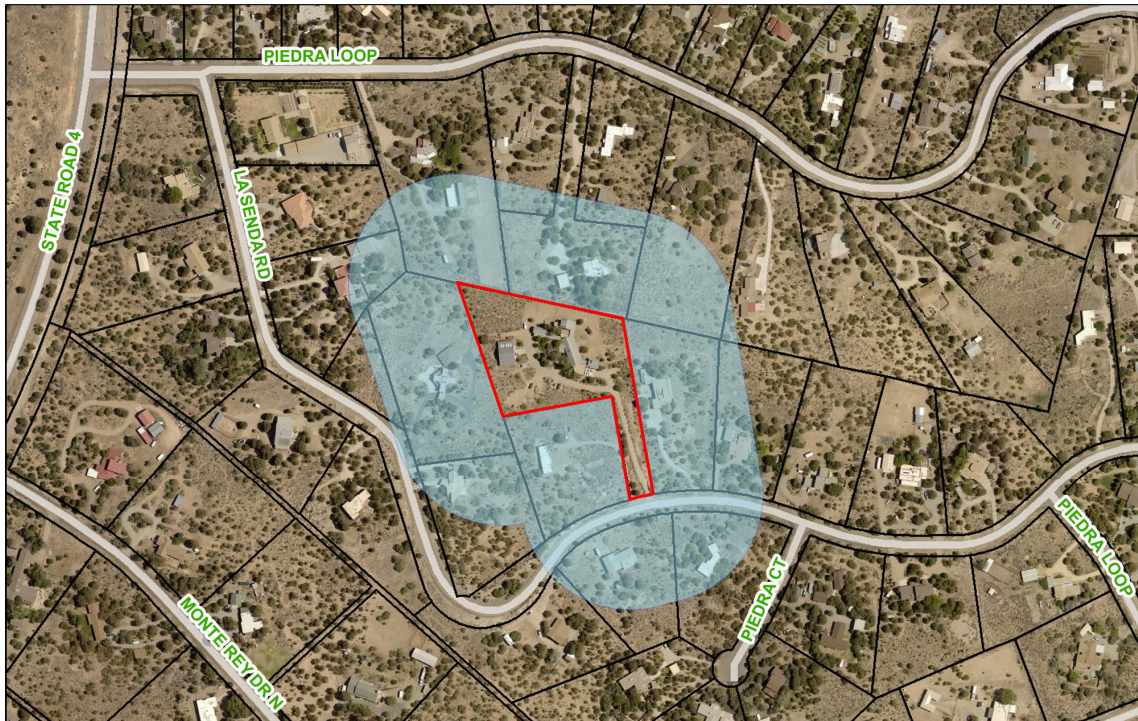
### COUNCILORS

David Izraelvitz  
Antonio Maggiore  
Les N. Robinson  
Pete Sheehy

### CITY MANAGER

Harry Burgess

100 YD PUBLIC NOTIFICATION



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

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

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

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

POTOCKI MARK L & TSUGIKO REVOC LIVING TRU...  
105 LA SENDA RD  
LOS ALAMOS, NM 87547

STARKEY PATRICIA L  
110 PIEDRA LOOP  
LOS ALAMOS, NM 87547

O'BRIEN REVOC TRUST  
107 LA SENDA RD  
LOS ALAMOS, NM 87547

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

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

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

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

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

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

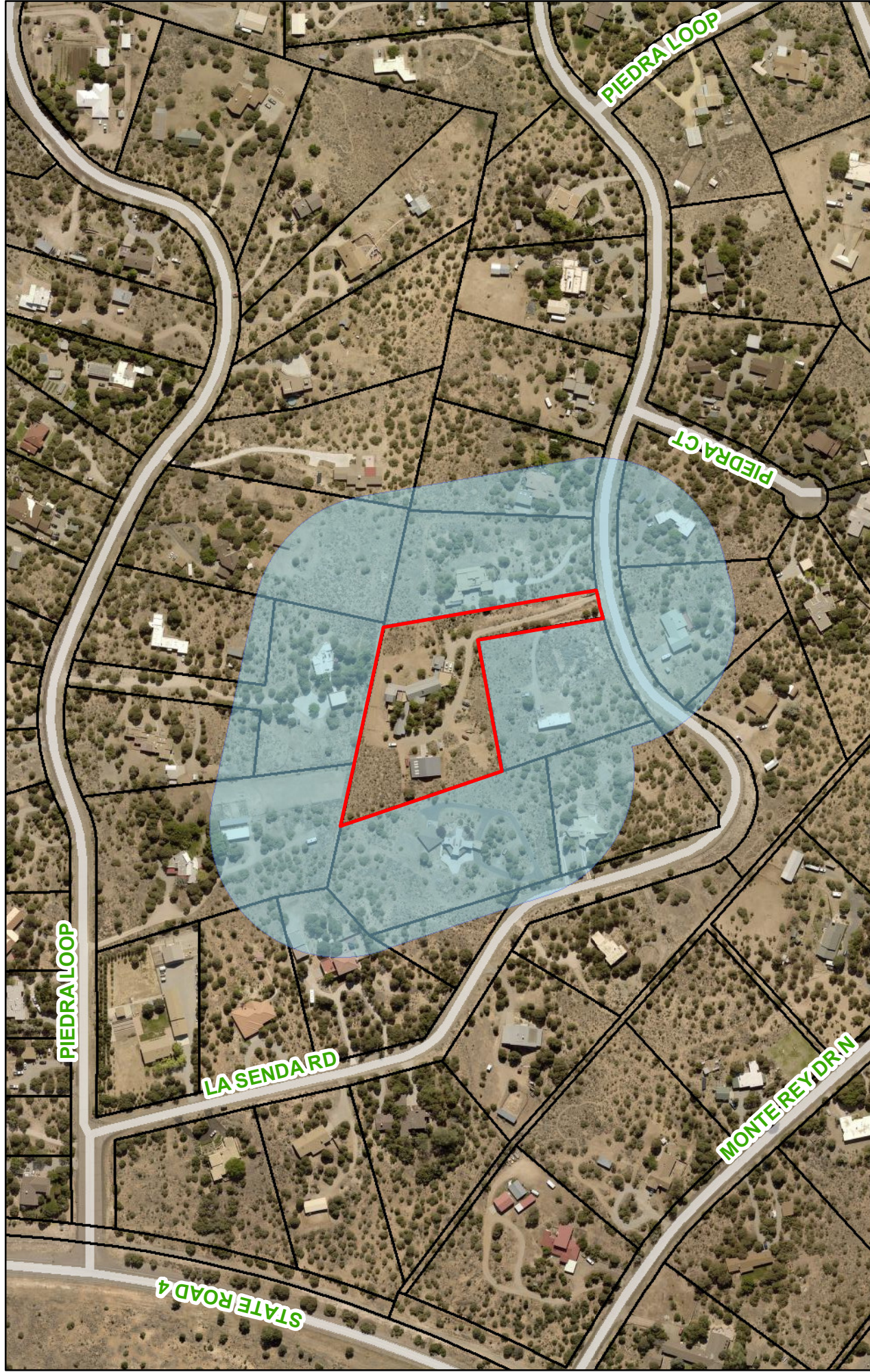
PAULSON DAVID L & ANNE M  
122 PIEDRA LOOP  
LOS ALAMOS, NM 87547

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


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

BAKER GEORGE A JR  
115 LA SENDA RD  
LOS ALAMOS, NM 87547





# 113 B LA SENDA

-  113 B LA SENDA
-  100 YD BUFFER (300 ft)
-  PROPERTY PARCELS



Mapping information is for reference only. Users are solely responsible to confirm data accuracy. Los Alamos County assumes no liability for errors associated with the data.

1 inch = 300 feet



## CORRESPONDENCES FROM THE PUBLIC

- 3.1 JOHNSON, LYNNE M. & MIKKEL B., 118 PIEDRA LOOP
- 3.2 MURPHY, CYNTHIA L., 110 PIEDRA LOOP
- 3.3 NOLL, PHILLIP & MONICA, 114 PIEDRA LOOP
- 3.4 POTOCKI, MARK L., 105 LA SENDA
- 3.5 NORTH, DAVID & PECK, AKKANA, 111 LA SENDA
- 3.6 SMITH, MARILYN K. & BARHAM W, 116 PIEDRA LOOP

**Lujan, Desirae J.**

---

**From:** Lynne Johnson <jenks118@centurylink.net>  
**Sent:** Wednesday, June 3, 2020 3:44 PM  
**To:** Planning  
**Subject:** SUP-2020-0014 and SUP-2020-0015

To: Los Alamos County Planning and Zoning Commission

Re: Case No. SUP-2020-0014 and SUP-2020-0015: Special use permits for 113 B La Senda Road, Los Alamos, NM 87547

We are submitting this letter to state our three concerns about the above requests for Special Use Permits in our neighborhood (Lot LSA03024A).

We bought our lot in the La Senda neighborhood in 1974 and built our home in 1976. We love living in this neighborhood and we respect and enjoy the peacefulness and privacy of the La Senda community.

Our first concern about the proposed daycare facility is that, if approved, it will set a precedent challenging the Residential-Agriculture (R-A) status of our entire La Senda community. This precedent and further approvals could eventually allow an entire change in the quality of life in the La Senda community.

Our other two concerns address the question of having a 12-child daycare center in this neighborhood, which would involve: (1) some level of noise and (2) perhaps a larger issue of traffic with 12 families dropping children off and picking them up from a residential property. All this traffic on La Senda Road could potentially become a problem/safety issue.

Thank you for taking our concerns into consideration as you review these Special Use Permit requests.

Sincerely,

Lynne M. Johnson

and

Mikkel B. Johnson

118 Piedra Loop

Los Alamos, NM 87547

505.672.1143



**From:** [Lynne Johnson](#)  
**To:** [Planning](#)  
**Subject:** SUP-2020-0014 and SUP-2020-0015  
**Date:** Wednesday, June 3, 2020 3:43:38 PM

---

To: Los Alamos County Planning and Zoning Commission

Re: Case No. SUP-2020-0014 and SUP-2020-0015: Special use permits for 113 B La Senda Road, Los Alamos, NM 87547

We are submitting this letter to state our three concerns about the above requests for Special Use Permits in our neighborhood (Lot LSA03024A).

We bought our lot in the La Senda neighborhood in 1974 and built our home in 1976. We love living in this neighborhood and we respect and enjoy the peacefulness and privacy of the La Senda community.

Our first concern about the proposed daycare facility is that, if approved, it will set a precedent challenging the Residential-Agriculture (R-A) status of our entire La Senda community. This precedent and further approvals could eventually allow an entire change in the quality of life in the La Senda community.

Our other two concerns address the question of having a 12-child daycare center in this neighborhood, which would involve: (1) some level of noise and (2) perhaps a larger issue of traffic with 12 families dropping children off and picking them up from a residential property. All this traffic on La Senda Road could potentially become a problem/safety issue.

Thank you for taking our concerns into consideration as you review these Special Use Permit requests.

Sincerely,

Lynne M. Johnson

and

Mikkel B. Johnson

118 Piedra Loop

Los Alamos, NM 87547

505.672.1143

**From:** [Cyndee Murphy](#)  
**To:** [Planning](#)  
**Subject:** Attention Ms. Desirae J. Lujan RE: Case No. SUP-2020-0014 and Case No. SUP-2020-0015  
**Date:** Thursday, June 4, 2020 4:17:04 PM

---

Dear Ms. Lujan,

I tried to call you today, 6/3/2020, but the voicemail box was full. In regard to the letter sent to Patricia Starkey at 110 Piedra Loop, Los Alamos, NM regarding the above case No.s, Mrs. Starkey died on March 18, 2020. I am the eldest one of her two daughters my name is Cynthia L. Murphy, and my sister is Jeanette Metzger-Thorp. We became the owner of this property upon her death. There is a Transfer On Death deed, however due to the Covid-19, the county has not been able to get the paperwork done to complete the transfer and to my attorney.

In regards to Case No. SUP-2020-0014 and Case No. SUP-2020-0015, We are opposed to the request for a daycare facility. This subdivision was not set up for businesses of this caliber. The traffic it will generate will be an intrusion to the serenity these properties are afforded. These are horse properties with riding trails throughout and rural property. The road is not designed for the extra traffic this will generate nor the upkeep it would require to maintain.

Thank you for your consideration. If you need to contact me my phone is 1-480-363-5780.

Sincerely,  
Cynthia L. Murphy

June 5th, 2020

Paul Andrus, Director  
Community Development Department  
Los Alamos County

Dear Mr. Andrus,

We are in receipt of a letter from the Community Planning Department dated May 26, 2020 notifying us of Denise Matthews' intention of opening a daycare facility at her home at 113B La Senda Road in White Rock (Case No. SUP-2020-0014). We are writing to you to let you know that we are very much **opposed** to the opening of such a facility in a residential neighborhood.

We have lived at 114 Piedra Loop (within 100yds of the proposed daycare facility) for over 20 years. Several of our neighbors have lived in their homes for 30-40 or more years! We all moved here because we love the neighborhood and the 2+ acre sized lots, but most of all we love the peace and quiet of our neighborhood. This was the single most important factor in our decision to move here. And for the last 20 years it has remained blissfully quiet. We have worked very hard for most of our lives in order for us to obtain a house we love in a quiet neighborhood that would serve as our sanctuary. This is our home and the place where we can escape the hustle and bustle of everyday life and the noise that comes along with it. We are now retired and are at home all day most days. We relish the peace and quiet. In fact it is a necessity for us to maintain our health and wellbeing as we both suffer from anxiety disorders and depression. Truly peaceful and quiet neighborhoods are few and far between. This makes our neighborhood invaluable to us! Our windows are open day and night for most of the warmer months as we do not have air conditioning and we spend most of our time outside in our gardens, working on projects, or playing with our dogs. We are **extremely concerned** that a daycare facility will destroy the residential character of the neighborhood and the noise from said facility will take away the peace and quiet that we rely on and have worked so hard to obtain.

**The La Senda neighborhood is zoned Rural-Agriculture. In the County's own words:**

*"The R-A residential agricultural district is intended to accommodate single-family dwellings and accessory structures and uses and is further intended to maintain and protect a residential character of development characterized by large lots having a rural atmosphere, where agricultural, horticultural and animal husbandry activities may be pursued by the residents of the R-A district."*

**Additionally, the Los Alamos County Special Use Permit states the following:**

*"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."*

As long time residents of this neighborhood we feel the addition of a commercial daycare facility with up to a dozen children (and two employees) playing outside will be substantially detrimental to the "*peace, comfort and general welfare of persons residing in the vicinity*". Children, especially in groups, make noise. It's a fact of life. Sound travels far in the open areas of our neighborhood. We can easily hear people talking on their patios over 100 yards away. We can even hear the school bell at Piñon Elementary which is well over 2000 yards away! We moved to a rural area so that we can escape noisy commercial businesses and live in peace and quiet. We want to keep our neighborhood residential and we cannot understand how the addition of a commercial daycare facility helps to "*maintain and protect a residential character*" of the neighborhood. It does not. If it did, a Special Use Permit would not be necessary!

We have lived here for decades and plan to live here till the end of our days. It should NOT be incumbent upon us to prove that this daycare facility will not detract from the residential character of the neighborhood nor should we have to prove that there will be no noise generated by the operation of the facility. We are not the ones proposing a major change to the character of the neighborhood. Rather, it should be incumbent on the party who is proposing to open and run the facility to prove to the long time residents that their daycare facility will not be detrimental to the "*peace, comfort, and general welfare of persons residing in the vicinity*". Having lived here for decades we should have the right to maintain the quality of our neighborhood and we are entitled to the peace and quiet that currently exists here.

Because of the potential noise issues stemming from a commercial daycare facility in a residential neighborhood, and because we feel a daycare facility is inappropriate given the R-A Zoning of the area, we respectfully request that Los Alamos County **deny** this special use permit. We feel that a commercial daycare facility belongs in an area with appropriate zoning. There are many vacant, properly zoned, commercial facilities in Los Alamos/White Rock that could be rented and serve as daycare facilities. There is absolutely no need to bring such a facility into our neighborhood.

Sincerely,

Phillip & Monica Noll  
114 Piedra Loop  
Los Alamos, NM 87547

June 10, 2020

Paul Andrus, Director  
Community Development Department  
Los Alamos County

Dear Mr. Andrus,

My husband and I have already submitted a response to the letter from the Community Planning Department dated May 26, 2020 for the notification of the intent to open a daycare facility at Denise Matthews' home at 113B La Senda Road in White Rock (Case No. SUP-2020-0014). I am writing to you again with my additional heartfelt thoughts, and hope that you will take them into consideration when voting on this matter.

A 15 day notice is not sufficient time to put together an adequate response to this Special Use Permit request. In addition, we are under restrictions from the Governor and NM Department of Health for COVID-19. We should have been given adequate time (a couple months) to fully understand the scope of the proposed business and to meet with all our affected neighbors. During these trying times, this is not a fair method to address this situation.

### **Home is Where the Heart Is**

Home is our refuge. It's gives us comfort, shelter, and peace. Home is where we turn to when troubled, tired, or sick. Home is where we are happy and relaxed. Home is where we can retire to. It is a place to gather and share life with friends and family on special occasions. Home is very dear to us all.

La Senda is a special subdivision that we call home. Neighbors take pride in home ownership and it shows in how well their homes shine. This is a special R-A zoned subdivision with a country atmosphere marked by old pine trees (that have survived bark beetles and drought conditions), large lots, and animals. Life filters through from the sounds of a dog barking greeting it's owner or the delivery guy, horses neighing, goats baaing, roosters crowing, birds singing, and laughter coming from single family residences.

Everyone has made choices of where they will reside because of what they value most. Some people like to live in the cities where they will be near other people and the hustle and bustle of city life. Some people like to live in towns where they can still own a house to call a home but also have that closeness to their neighbors (and community). Some people even choose to live next to schools, churches, and parks. Some people like to live as far out in the country as possible so that they can live in quiet solitude. When buying a house you want to find a place where you can reside in a pleasant, friendly, and safe environment.

We are very emotional about this proposed daycare facility because of what we have to lose. Namely, our peace and quiet. If lost, it is lost forever. The subdivision is zoned for residential and agriculture. If this daycare business is allowed, then the subdivision no longer meets the original intent of a rural community.

My husband and I moved into this subdivision because of the quality atmosphere it provides. We have never really felt we were at home until we found this place. Having this tranquility and way of life is just what the doctor calls for. You can really stay in the moment. My husband and I have been here for 20 years and others have been here longer enjoying the benefits of this country living and community. We have worked very hard in order to obtain this way of life. Businesses that draw more nonresidents into our neighborhood will shatter that wonderful feel of country home living. It could divide the residents instead of bringing people closer together. We want to preserve our rural community and way of life. So I'm asking you to vote no on this Special Use Permit so that we may maintain the peace and quiet that we have enjoyed for the last 20 years. Please keep residential areas as residential and commercial areas as commercial.

Sincerely,

Monica Noll  
114 Piedra Loop  
Los Alamos, NM 87547



**From:** [CenturyLink Customer](#)  
**To:** [Planning; Sheehey, Pete](#)  
**Subject:** Case No. SUP-2020-0014  
**Date:** Monday, June 1, 2020 4:22:32 PM  
**Attachments:** [Objections to day care.docx](#)

---

Ms. Desirae Lujan, and Mr. Pete Sheehey,

I have several objections to the establishment of a professional "Day Care Center" established at 113 B La Senda, Los Alamos, NM as described in the letter of May 26, 2020.

Details of my objections are outlined in the attached document.

My objections center on the establishment of a commercial enterprise within our community, which is not zoned for such enterprises and will adversely impact on the livability in the neighborhood.

I also object as such an enterprise will adversely impact the value of our property.

I object as the establishment of the proposed "Day Care Center" would impact on the safety on La Senda Road.

I object as the proposed site does not have a fence or natural boundary that separates it from adjacent property and having a school established next to rustic landscapes of adjacent and near properties would incur an unreasonable risk to these neighbors.

I object as the establishment of a school would adversely impact the safety along La Senda Road.

I object as the total impact of the establishment of a school in our neighborhood has not been made known to us.

I object as only a limited number of the neighbors have been notified and due to both the short time and CoVid-19 restrictions only a limited number of comments can be made.

I intend to bring up the objections and the virtual public hearing.

Thank you for all of your hard work and continued support of us, the members of the Los Alamos community.

Mark Potocki

Mark L. Potocki  
105 La Senda  
White Rock, NM 87547

5/31/2020

I have several objections to the opening of a "Day Care" at 113 B La Senda, Los Alamos, NM and wish to make them known.

1. The first objection is on general use of property within the La Senda Community. The community is zoned for Residential-Agriculture use. As a covenant, we the residents have moved to the community to be separate from commercial enterprises. We pay an extra resident association fee to maintain our community to be free of signboards, advertising, excess traffic, and to maintain an atmosphere of quiet living. At the current time there are no commercial enterprises within the community. To enable the doors to be opened to any commercial enterprise is the first step in the destruction on the quiet neighborhood that we pay fees to maintain. Allowing commercial development of our neighborhood will impact all of us, and not just those that live within 100 yards of the proposed commercial site.
2. The second objection is on having a school established in the covenant which does not benefit the whole, or even a simple majority of the residents. I first need to make understood that a for profit "Day Care" which employs persons to assist in the care of children is normally considered a school. The following article explains this:

The Atlantic  
EDUCATION

*How 'Daycare' Became 'School'*  
*What the linguistic shift indicates about the state of early-childhood education*

*The question highlights recent changes in the favored everyday lexicon of parents to refer to programs for their babies and young toddlers—programs that were once simply called "daycare." Whether consciously or subconsciously, though, educators, psychologists, and parents themselves are noticing that parents are increasingly swapping out the term for the more in-vogue "school." Parents' "first day of school" photos on Facebook feature children not just in uniforms, but in onesies.*

*Technically, a school should meet the defining standard of serving as an institution whose primary goal is education. For under-2s, though, when everything from drinking out of a cup to peeing on the potty is technically educational, that distinction becomes more difficult to make.*

Understanding that a Day Care run for profit, which employs personnel, is a school, there are many regulations such a school legally imposes on the community. The standards are stated within:

<b>TITLE 8</b>	<b>SOCIAL SERVICES</b>
<b>CHAPTER 18</b>	<b>PRE-KINDERGARTEN PROGRAMS</b>
<b>PART 2</b>	<b>UNIFORM STANDARDS</b>

In the brief letter requesting comment by immediate residents, those whose property borders the proposed school, there was no assurance that any of these regulations would be met. Some of these regulations, taken from the New Mexico school standards, are:

*Professional caregivers work within the context of a center-based care (including crèches, daycare, [preschools](#) and schools) or a home-based care ([nannies](#) or family daycare). The majority of child care institutions that are available require that child care providers to have extensive training in [first aid](#) and be [CPR](#) certified. In addition, [background checks](#), [drug testing](#) at all centers, and [reference verification](#) are normally a requirement. Child care can consist of advanced learning environments that include [early childhood education](#) or [elementary education](#). "The objective of the program of daily activities should be to foster incremental developmental progress in a healthy and safe environment and should be flexible to capture the interests of the children and the individual abilities of the children." In many cases the appropriate child care provider is a teacher or personal with educational background in child development, which requires a more focused training aside from the common core skills typical of a child caregiver.*

3. I object as there has not been a study of the impact of increased traffic in the currently exclusively residential area due to the commercial traffic that will be felt.

Interpreting the letter, there will be in excess of twelve cars every day, during rush hour, to deliver and pick up children. There is no commercial parking available. Multiple car parking on the corner La Senda and intersection of the driveway will create a traffic hazard. At the current time with the speed limit set at 30 miles per hour, if traffic were to be blocked by multiple cars dropping off or picking up children, an accident would be very likely.

4. I object as the establishment of a professional "Day Care" would require that the speed limit on La Senda, currently set at 30 miles per hour, would have to be limited to 15 miles per hour, according to New Mexico laws which recognize professional "Day Care Centers" to be schools. I do not believe that any of the residents within the covenant are eager to have such speed restriction within the covenant.
5. I object as the property at 113B La Senda is not fenced, nor is made separate from adjacent property by any restriction. There is nothing to keep children from wandering off of this property. If children wander off the "Day Care Center" and become injured while on adjacent property there are several legal obligations of these property owners. Within the covenant the yards are generally rustic. There are several types of bushes with thorns, sharp rocks, and uneven surfaces. The majority of the property adjacent to 113B La Senda is not maintained to be playgrounds for children that wander away from class. I believe it is unreasonable for us to take the added responsibility and cost of possible liability.
6. I object as the total list of requirements that will be imposed on our community have not been made known to us. We should have the right to fully understand the impact of having a school/day care center established so close to us before we make comment.
7. Finally I object as I understand that letter was sent to only a few of the residents in the community and gave a very short time to respond. It is unfair to the residents within the covenant of La Senda to give a response that impacts all of the residents, especially when we are restricted, due to CoVid-19, and thus from discussing this issues with neighbors. There should be a much longer time afforded for discussions and an effort made to reach all of the residents within the covenant rather than this hurried push to grant this unreasonable request.

Mark L. Potocki



## **Lujan, Desirae J.**

---

**From:** David North <north@znet.com>  
**Sent:** Sunday, June 7, 2020 7:40 PM  
**To:** Planning  
**Subject:** Case No. SUP-2020-0014 and SUP-202-0015

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

June 7, 2020

To: Ms. Desirae Lujan  
CDD Case Manager  
Mr. Paul Andrus  
SUP-202-0014  
SUP-202-0015

In re: Application For Daycare Facility at 113 B La Senda

Ms. Lujan et al,

First, from observing Denise Matthews in her volunteer work at PEEC we would offer that she is both capable and enthusiastic when it comes to dealing with groups of young children. It should also be noted that the Matthews property has been maintained and upgraded very nicely since purchased.

On the other hand, many -- perhaps most -- of us in the neighborhood moved here in hopes of peace and quiet. Twelve children can make a lot of noise. We lived briefly across from a day care operation, and the cultural imperative of those children was to scream as loudly and as often as possible. That is specifically why we didn't choose a house next to a school or day care center (in fact rejecting several candidates primarily for that reason).

I do not know if the county noted that the driveway is strictly one lane, with little pullout room. Inevitably people will be backing up due to others entering the property or waiting in the road. The driveway is not paved, and in snowy conditions an inexperienced driver may find the driveway exciting, but most people around here have some experience dealing with that.

Denise would certainly do a first-class job; that's not the issue. It is a question of whether this will be a quiet residential neighborhood or increasingly busy and noisy.

It also poses a significant issue to the commission: if the overwhelming majority of respondents object, what point would there be to public engagement if the day care is approved? Probably it would be best for everyone if the application were withdrawn.

David North and Akkana Peck  
111 La Senda  
White Rock NM 87547

116 Piedra Loop  
White Rock, New Mexico 87547  
June 7, 2020

Mr. Paul Andrus, Director  
Community Development Department  
White Rock, New Mexico 87547

Dear Mr. Andrus,

We are writing in regard to the notice we received about Denise Matthews' request for a Special Use Permit to conduct an in-home daycare facility at her residence, 113 B La Senda Road, Los Alamos, New Mexico.

The Special Use Permit Criteria in the Los Alamos County Code of Ordinances are substantially violated by her request. Her play school, as proposed, would substantially violate the peace and comfort of neighboring properties and owners, as well as the general welfare.

Our residence lot, 116 Piedra Loop, has a long border with the Matthews' property, and our house is about 60 feet from that border. In talking with Denise, it appears that the daycare work and play area on her property will be located directly across from our backyard. That location will maximize the daily broadcast of children's voices (and the noise of parents, delivering and picking up their children) toward our home, and at us with no barrier, if we choose to sit in our own backyard, where we often do. We are both retired, and our yard is our best asset after our house. Up to now it has been a valuable refuge, generally quiet and peaceful. In contrast, directly across a fence from a daycare facility, that will no longer be the case.

The prospect of this loss is a huge issue for us. We have lived on our lot for nearly 40 years! Up to now, it has always been quiet and peaceful.

When we have brought these issues up with Denise, she shows no interest whatever in the concerns we have with her plans. Moreover, she applied for her special-use permit without informing us that she was doing that. She is an environmental crusader, and seems to think that this outweighs any objections. The substantial degradation of her neighbors' environment does not seem to bother her.

We respectfully beg the Community Development Department to deny her Special Use Permit.

Respectfully,

Marilyn K. Smith  
Barham W. Smith

cc: Ms. Desirae J. Lujan, Associate Planner, CDD Case Manager

**JUNE 10, 2020  
PLANNING AND ZONING  
COMMISSION MEETING**

- 4.1 AGENDA
- 4.2 STAFF REPORT
- 4.3 STAFF PRESENTATION
- 4.4 MEETING TRANSCRIPTION
- 4.5 MEETING MINUTES





# County of Los Alamos

1000 Central Avenue  
Los Alamos, NM 87544

## Agenda - Final Planning and Zoning Commission

---

Wednesday, June 10, 2020

5:30 PM

Council Chambers  
1000 Central Avenue

---

1. **CALL TO ORDER/ROLL CALL**

2. **PUBLIC COMMENT**

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

3. **APPROVAL OF AGENDA**

4. **PUBLIC HEARING(S)**

- A. [13051-20](#) Case SUB-2020-0011: A request for approval of a three (3) lot Subdivision addressed as 2436 46th St., located in the North Pine Subdivision, Subdivision NC1 Lot 239A. The proposed development will consist of 3 new single-family residential units contained within 3 separate lots, with associated on-site parking and traffic circulation, on 0.28± acres of land.

**Presenters:** Anita Barela, Assistant Planner

**Attachments:** [StaffReport SUB-2020-0011 with exhibits](#)

- B [13052-20](#) SUP-2020-0014 Denise Matthews, property owner/applicant, requests Special Use Permit approval for a Home Business at 113 B LA SENDA, to employ more than one non-family member for an in-home day care facility. The property, Lot LSA03024A, is within the La Senda Community and is zoned Residential-Agriculture (R-A).

SUP-2020-0015 Denise Matthews, property owner/applicant, requests Special Use Permit approval for a Home Business at 113 B LA SENDA, to employ more than one non-family member for an in-home day care facility. The property, Lot LSA03024A, is within the La Senda Community and is zoned Residential-Agriculture (R-A).

**Presenters:** Desirae Lujan

**Attachments:** [STAFF REPORT SUP-2020-0014, 0015](#)

5. **PLANNING AND ZONING COMMISSION BUSINESS**

- A. [12905-20](#) Minutes for the Planning and Zoning Commission Meeting(s) on February 26, 2020

**Attachments:** [PZ Minutes 2020-0226 DRAFT](#)

**6. COMMISSION/DIRECTOR COMMUNICATIONS**

A. *Department Report*

B. *Chair's Report*

C. *Council Report*

D. *Commissioner's 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 persons 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 Department 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:** June 10, 2020

**Subject:** Case No. SUP-2020-0014, SUP-2020-0015

**Owners/Applicants:** Los Alamos County, Owner/Applicant

**Case Manager:** Desirae J. Lujan, Associate Planner

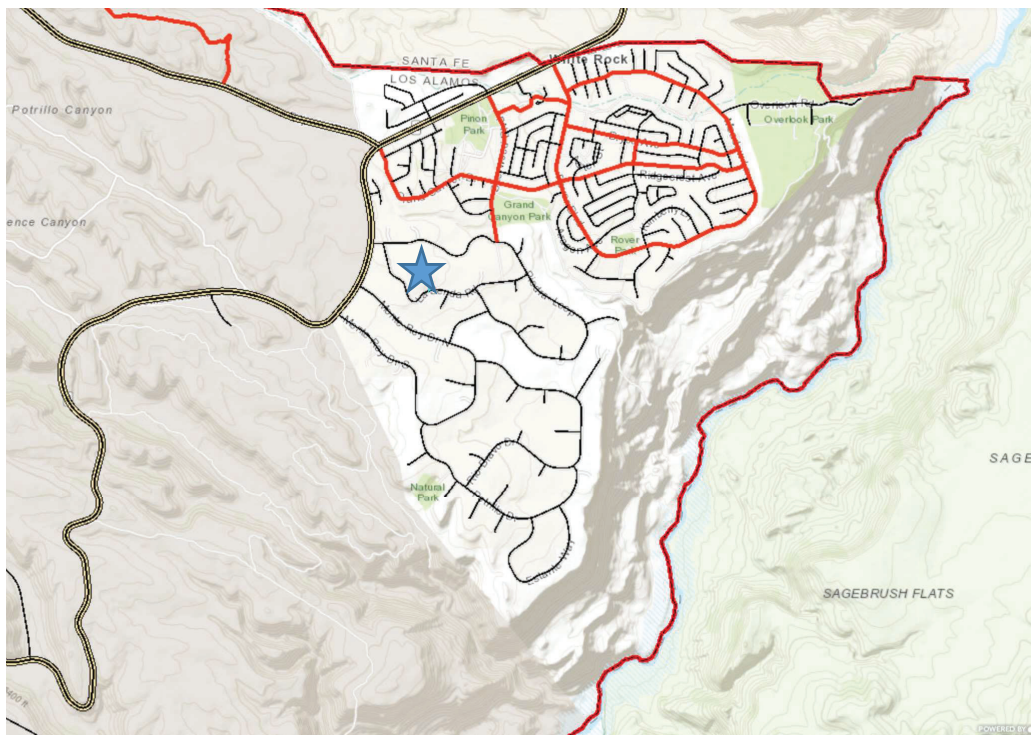
---

**Case No. SUP-2020-0014:**

Denise Matthews, property owner/applicant, requests approval for a Special Use Permit to conduct an in-home daycare facility for up to 12 children at her location of 113 B LA SENDA, Los Alamos, NM. The property, Lot LSA03024A, is within the La Senda Community and is zoned Residential-Agriculture (R-A).

**Case No. SUP-2020-0015:**

Denise Matthews, property owner/applicant, requests Special Use Permit approval for a Home Business at 113 B LA SENDA, to employ more than one non-family member for an in-home day care facility. The property, Lot LSA03024A, is within the La Senda Community and is zoned Residential-Agriculture (R-A).



Location Map



**Case No. SUP-2020-0014, Motion Option 1:**

I move to **approve** Case No. SUP-2020-0014 — a request for a Special Use Permit to conduct an in-home daycare facility for up to 12 children at 113 B LA SENDA, Lot LSA03024A, within the La Senda Community.

Approval is based on the reasons stated within the staff report and per testimony entered at the public hearing, subject to the following condition(s):

1. The applicant must obtain a state license and submit it to the Community Development Department prior to conducting business.
2. A business license must be secured from the county prior to operation.
3. Approval is for no more than 12 children.
4. At a minimum, a working smoke stand-alone alarm notification device, with a 10 service life shall be installed, or a fire alarm protection system that migrates to the studio (1-detector) from the house system serviced by a certified fire protection contractor to ensure the system is working as designed before operation and final fire and life safety inspection and annually.
5. The installation of one (1) fire extinguisher to be mounted by one of the exit doors from the studio.
6. A final fire and life safety inspection shall be scheduled through the Fire Marshal's Office before the issuance of a Certificate of Occupancy.
7. Annual fire and life safety inspection shall be scheduled annually as needed for occupancy use of day care.

I further move to authorize the Chair to sign Findings of Fact for this case and, based on this decision, to be prepared by County staff.

**Case No. SUP-2020-0014, Motion Option 2:**

I move to **deny** Case No. SUP-2020-0014 — a request for a Special Use Permit to conduct an in-home daycare facility for up to 12 children at 113 B LA SENDA, Lot LSA03024A, within the La Senda Community. Denial is due to the proposal failing to meet the Los Alamos County Code of Ordinances, Chapter 16 — Development Code, §16-156, Special Use Permit review criteria for the following reasons:

1. ...

**Case No. SUP-2020-0015, Motion Option 1:**

I move to **approve** Case No. SUP-2020-0015 — for a Home Business at 113 B LA SENDA, Lot LSA03024A, within the La Senda Community to employ more than one non-family member for an in-home day care facility for the reasons stated in the staff report and per testimony entered at the public hearing, subject to the following condition(s):

1. ...

I further move to authorize the Chair to sign Findings of Fact for this case and, based on this decision, to be prepared by County staff.

**Case No. SUP-2020-0015, Motion Option 2:**

I move to **deny** Case No. SUP-2020-0015 — request for a Home Business at 113 B LA SENDA, Lot LSA03024A, within the La Senda Community to employ more than one non-family member for an in-home day care facility. Denial is due to the proposal failing to meet the Los Alamos County Code of Ordinances, Chapter 16 — Development Code, §16-156, Special Use Permit review criteria for the following reasons:

1. ...

**BACKGROUND:** Currently, the home is utilized as a single-family residence by the owner. The lot, located within White Rock, contains 131,986 f<sup>2</sup> (3-acres) and consists of the principle residence, an accessory building and garage. Its flag shape provides a private driveway from La Senda Road, a local street. Its nearest intersection is La Piedra Loop, providing access from NM State Road 4.

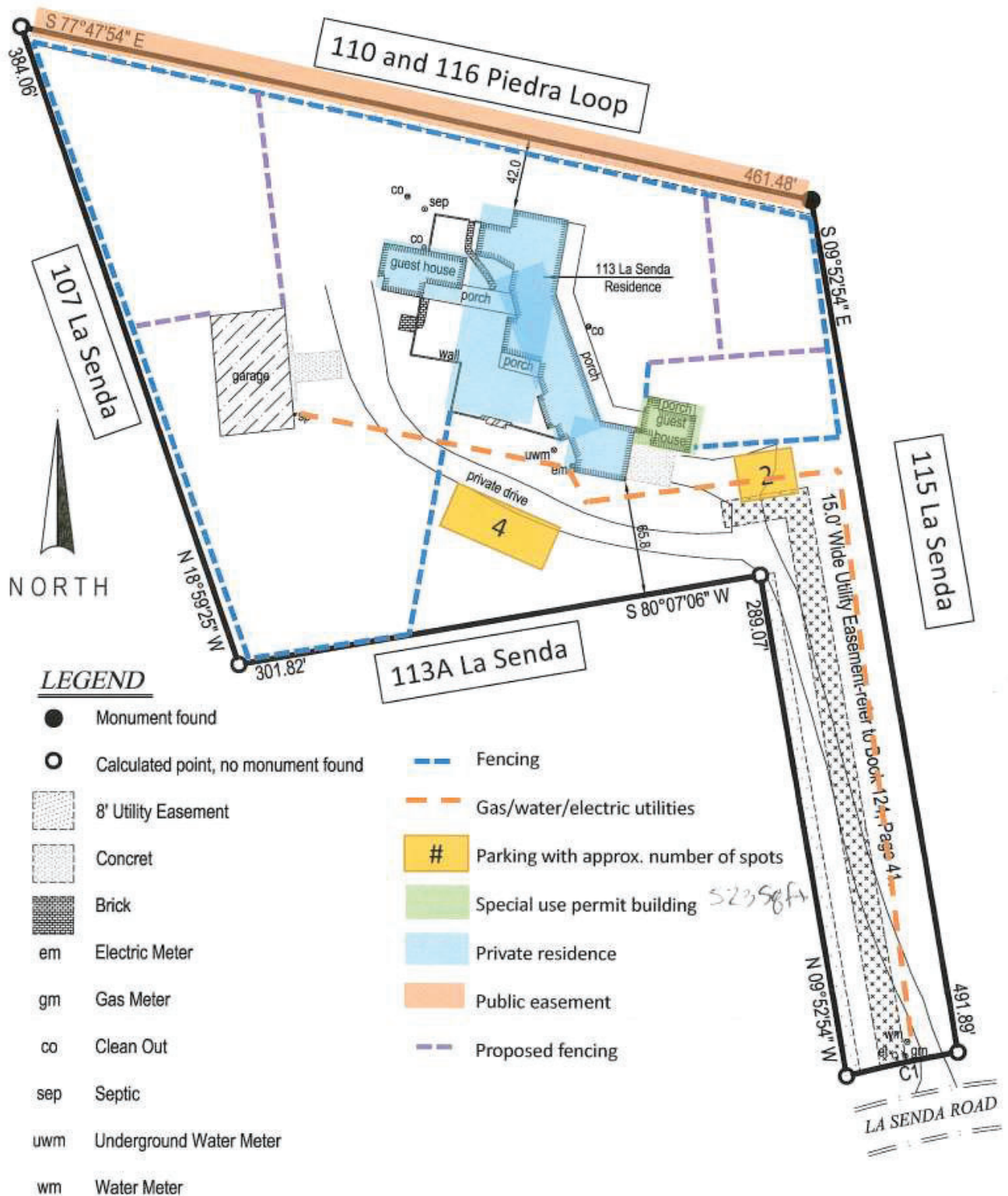


**SUMMARY:** Ms. Matthews plans on operating an in-home daycare facility for a maximum of 12 children between the ages of 3-6 years. The request is consistent with the definition of a **daycare facility** as described within the Development Code, Sec. 16-9, as:

*“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.”*

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-2020-0014), approved by the Planning and Zoning Commission. 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, also with the granting of a Special Use Permit (SUP-2020-0015).



Proposed Site Plan, EXHIBIT C



The daycare is proposed to take place within the existing 523 ft<sup>2</sup> accessory building and will operate from the hours of 8:30 am to 5 pm, with the provision of six (6) parking spaces. Existing fencing along the perimeter encloses the rear and side yards and in the front yard separates the residence from the day care. New fencing is proposed to enclose dedicated spaces for the facility. It will be landscaped and includes play areas and a garden, where the children will have the opportunity to learn agriculture hands-on. Fruit trees and native plants create a buffer to the adjacent property, 115 La Senda.

Childcare specifics and provisions for a daycare facility are outlined within Sec. 16-282:

	Day Care Homes	Day Care Facilities	Child Care Centers
<p><b>1</b> <i>As a condition of the special use permit, the applicant must obtain a state license prior to conducting business. The state license will be required to be submitted to the community development director, prior to commencing business. A copy of the state license shall be kept by the community development director.</i></p> <p>The state of New Mexico licenses and regulates childcare facilities. This code section makes the license a condition for approval of the special use and is listed within staff's recommendations.</p>		X	X
<p><b>2</b> <i>A business license must be secured from the county.</i></p> <p>A business license will be required as per County Code, Chapter 12, Sec.12-33 (a) and is applied for within the Community Development Department. The daycare, like any other business, may not operate unless a license is issued.</p>	X	X	X
<p><b>3</b> <i>Provide off-street parking of one space per employee and a procedure for pickup and delivery of children according to a plan filed with the application.</i></p> <p>The applicant will provide six (6) off-street parking spaces, where code requires one per employee.</p>	X	X	X
<p><b>4</b> <i>In residential districts, no major alterations to the structure are allowed that prevent the continuing use or the structure as a residence.</i></p> <p>N/A</p>	X		



5	<b><i>The special use permit shall specify the extent of structural alterations to be allowed.</i></b>  No alterations are being considered with this application.		X	X
6	<b><i>As a condition of the special use permit, the planning and zoning commission shall establish the maximum number of children allowed.</i></b>  N/A			X
7	<b><i>Outside recreation areas shall be fenced from adjoining residential properties.</i></b>  Existing and proposed fencing will enclose the recreational area from the rest of the lot and adjoining residential properties.	X	X	X
8	<b><i>Landscaping, walls or fences may be considered by the planning and zoning commission as part of the special use permit, if necessary, to shield neighboring properties from the day care use.</i></b>  Some fencing exists and more is proposed to secure the facility.		X	X
9	<b><i>No outdoor activities for children shall be allowed before 7:30 a.m. or after 6:00 p.m.</i></b>  Hours of operation will be between 8:30 am and 5:00 pm.	X	X	X
10	<b><i>Noise levels shall be governed by the provisions of article III, chapter 18 of this Code.</i></b>  Referenced Chapter and Article regulate noise levels, specifically those that are a nuisance and above 53 dBA from the hours of 9 pm to 7 am 65 dBA 7 am to 9 pm. The provision allows an addition 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 8:30 am to 5:00 pm. Noises levels that do not adhere to this section are investigated and enforced by Code Compliance.	X	X	X

**IDRC REVIEW:** The Interdepartmental Review Committee (IDRC) independently reviewed the requests from March 9 - March 13, 2020. Below are the responses received:

**MEMBER RESPONSES:**

---

Wendy Servey, Fire Chief, LAC Fire Department conducted a site visit on March 12, 2020 and approves the in-home daycare use with the following conditions:

1. Not more than 12 children
2. At a minimum install a working smoke stand-alone alarm notification device with a 10 service life OR # 3 below;
3. Have the fire alarm protection system that migrates to the studio (1-detector) from the house system serviced by a certified fire protection contractor to ensure the system is working as designed before operation and final fire and life safety inspection and annually
4. Install (1) fire extinguisher mounted by one of the exit doors from the studio
5. Schedule a final fire and life safety inspection through the Fire Marshal's Office before the Certificate of Occupancy
6. Schedule an annual fire and life safety inspection annually as needed for occupancy use of day care.

She added that she approves SUP-2020-0015.

---

Eric Martinez, County Engineer, Public Works, reported that the he approves the requests as submitted, without comment or conditions.

---

Angelica Gurule, Environmental Services Manager, Public Works, had questions, but did not make any conditions.

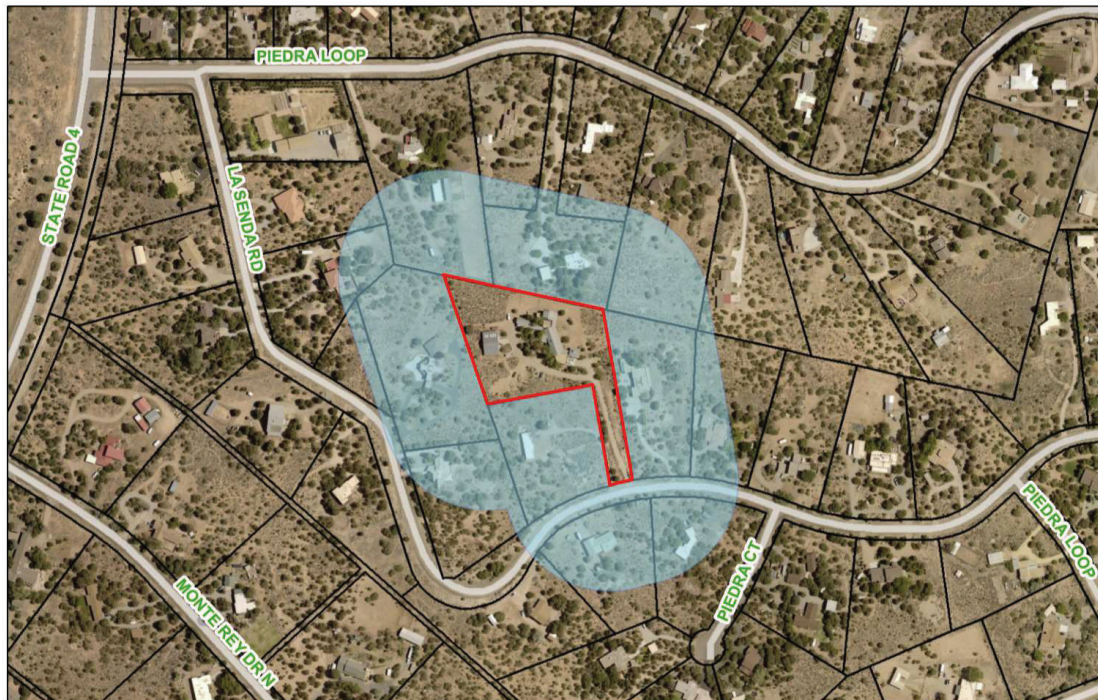
---

**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, Sec. 16-192 (a), which includes:

1. Notice of the request and meeting information published within the Los Alamos Daily Post on May 21, 2020, the County's official newspaper of record.
2. U.S. mail 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; and
3. Notice of the request and meeting information posted at the Los Alamos County Municipal Building.

As of June 4, 2020, staff has heard from more than five property owners within 100 yards. All parties received a link to be participants at the virtual meeting and provide public comment. Additionally, their written concerns are attached as EXHIBIT D.

100 YD PUBLIC NOTIFICATION



**113 B LA SENDA**

- 113 B LA SENDA
- 100 YD BUFFER (300 ft)
- PROPERTY PARCELS



Mapping information is for reference only. Users are solely responsible to confirm data accuracy. Los Alamos County assumes no liability for errors associated with the data.

1 inch = 300 feet

Public Notification Map, EXHIBIT C

**SPECIAL USE PERMIT REVIEW CRITERIA:** *Sec. 16-156 of the Los Alamos County Development Code states that 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.**

**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 age range will be from 3-6 years. 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:** 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.

- 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 of the roadway and out of sight of neighbors. We have six designated spots for parent parking (which can easily be extended) and 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:** Sec. 16-282, Daycare and Sec. 16-370, Off-Street Parking Requirements states that a daycare facility shall have one parking spaces per employee. Adequate parking has been provided with six spaces.

- 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 will 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. Existing buildings are within the development envelop and adhere to the development standards for the R-A zoning district. The property has boundary fencing, and more is proposed for segregating the daycare from the residence.

- 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:** The site was previously developed and constructed in compliance with adopted standards. Existing landscaping, screen planting, and fencing meet current County development standards and district regulations. New fencing will require a building permit, at which time the development standards would be applied. The County has no additional design requirements that would apply to this application.

**STAFF RECOMMENDATION:** Staff has applied the Special Use Permit review criteria to both applications and recommends as follows:

Approval of SUP-2020-00014 with the following conditions:

1. The applicant must obtain a state license and submit it to the Community Development Department prior to conducting business.
2. A business license must be secured from the county prior to operation.
3. Approval is for no more than 12 children.
4. At a minimum, a working smoke stand-alone alarm notification device, with a 10 service life shall be installed, or a fire alarm protection system that migrates to the studio (1-detector) from the house system serviced by a certified fire protection contractor to ensure the system is working as designed before operation and final fire and life safety inspection and annually.
5. The installation of one (1) fire extinguisher to be mounted by one of the exit doors from the studio.
6. A final fire and life safety inspection shall be scheduled through the Fire Marshal's Office before the issuance of a Certificate of Occupancy.
7. Annual fire and life safety inspection shall be scheduled annually as needed for occupancy use of day care.

Approval of SUP-2020-0015.

## FINDINGS OF FACT

- The Special Use Permit application #2020-0014 is for the operation of an in-home daycare facility for up to 12 children at 113 B LA SENDA, Los Alamos, NM.
- The Special Use Permit application #2020-0015 is for a Home Business at 113 B LA SENDA, to employ more than one non-family member for an in-home day care facility.
- The Special Use Permit Review Criteria, Section 16-156, has been applied.
- Daycare requirements for a daycare facility, listed within Section 16-282, have been or will be met prior to operation, as conditions of approval.
- 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, 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

## EXHIBITS

- Exhibit A: Application  
Exhibit B: Vicinity Map  
Exhibit C: Notification Map and Property Owner listing – 100 yards (300') from site location  
Exhibit D: Letters from the Public

A background image showing children playing in a sandbox. A blue semi-transparent overlay covers the entire image. The text is positioned on the left side of the overlay.

**SUP#2020-0014**  
**Daycare Facility**


**SUP#2020-0015**  
**Home Business**


---

# Agenda


---

 Application and Background

 Definitions and Uses


 Summary


 Daycare Provisions

 Interdepartmental Review Committee

 Special Use Review Criteria

 Public Notice

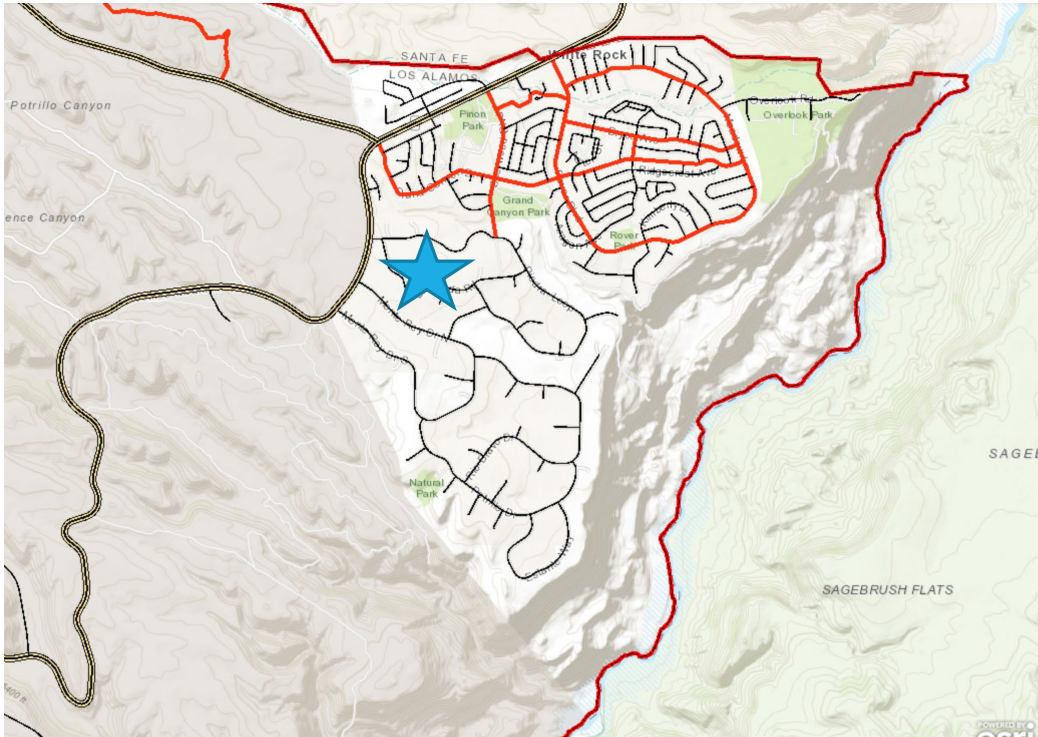
 Recommendation

 Findings of Fact



# Application

---



## **Case No. SUP-2020-0014:**

Denise Matthews, property owner/applicant, requests approval for a Special Use Permit to conduct an in-home daycare facility for up to 12 children at her location of 113 B LA SENDA, Los Alamos, NM. The property, Lot LSA03024A, is within the La Senda Community and is zoned Residential-Agriculture (R-A).

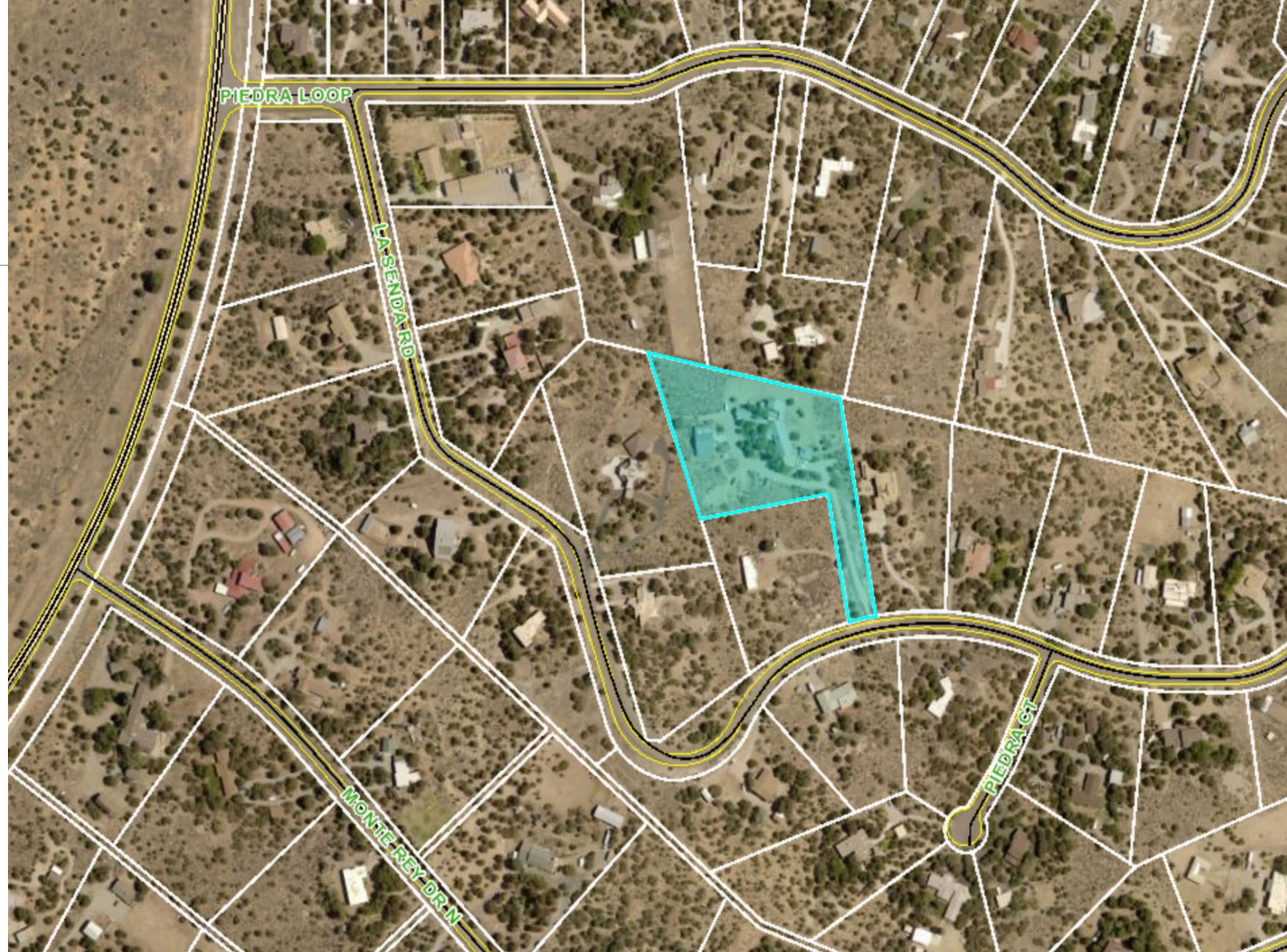
## **Case No. SUP-2020-0015:**

Denise Matthews, property owner/applicant, requests Special Use Permit approval for a Home Business at 113 B LA SENDA, to employ more than one non-family member for an in-home day care facility. The property, Lot LSA03024A, is within the La Senda Community and is zoned Residential-Agriculture (R-A)



# Background

- The lot, located within White Rock, contains 131,986 ft<sup>2</sup> , or 3-acres
- It consists of the principle residence, an accessory building and garage.
- Its flag shape provides a private driveway from La Senda Road, a local street.
- Its nearest intersection is La Piedra Loop, providing access from NM State Road 4



# Use Definitions

---

## **DAYCARE FACILITY:**

*“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:**

*“A home occupation that employs more than one non-family member .”*

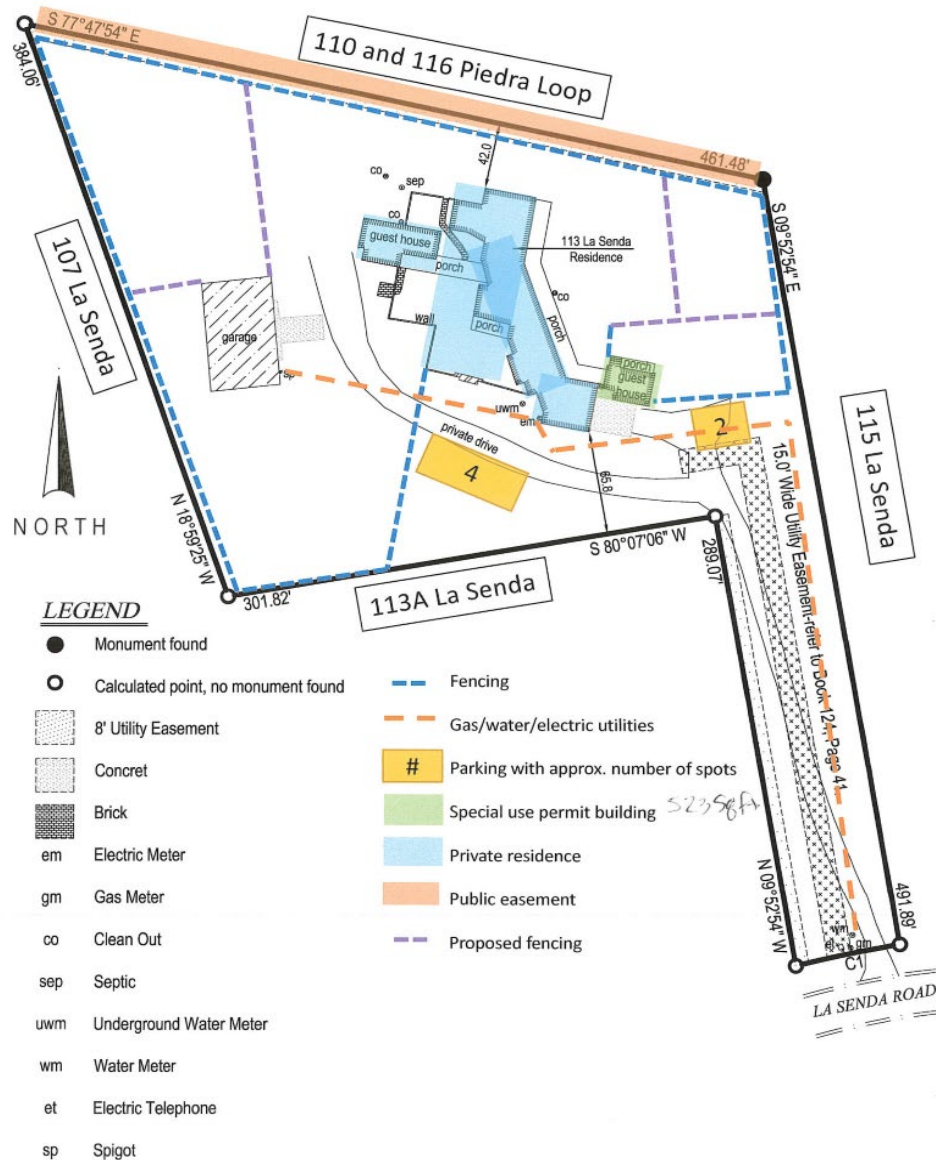


Name	R-A	R-E	R-1	R-M	R-3-L	R-3-H	R-3-H-40	R-4	R-5	R-6	*P-D
<b>Residential</b>											
Home occupations	A	A	A	A	A	A	A	A	A	A	A
Home business	S	S	S	S	S	S	S	S	S	S	S
<b>Institutional</b>											
Schools; business or vocational											
Schools, private or parochial	S	S	S	S	S	S		S	S	S	S
<b>Services</b>											
Childcare centers	S	S	S	S	S	S	S	S	S	S	S
Day care facilities	S	S	S	S	S	S	S	S	S	S	S
Day care homes	A	A	A	A	A	A	A	A	A	A	A

*Excerpt of Use Index Table, Sec. 16-287*



# Summary



- The daycare will take place within an existing 523 ft<sup>2</sup> building
- Hours of operation will be from 8:30 am to 5 pm
- Private driveway from La Senda to daycare
- Six (6) parking spaces
- Existing fencing along the perimeter encloses the rear and side yards and in the front yard it separates the residence from the daycare.
- New fencing will enclose dedicated spaces for the facility.

SEC. 16-282 - Daycare		Day Care Homes	Day Care Facilities	Child Care Centers
1	As a condition of the special use permit, the applicant must obtain a state license prior to conducting business. The state license will be required to be submitted to the community development director, prior to commencing business. A copy of the state license shall be kept by the community development director.		X	X
2	A business license must be secured from the county.	X	X	X
3	Provide off-street parking of one space per employee and a procedure for pickup and delivery of children according to a plan filed with the application.	X	X	X
4	In residential districts, no major alterations to the structure are allowed that prevent the continuing use or the structure as a residence.	X		
5	The special use permit shall specify the extent of structural alterations to be allowed.		X	X
6	As a condition of the special use permit, the planning and zoning commission shall establish the maximum number of children allowed.			X
7	Outside recreation areas shall be fenced from adjoining residential properties.	X	X	X
8	Landscaping, walls or fences may be considered by the planning and zoning commission as part of the special use permit, if necessary, to shield neighboring properties from the day care use.		X	X
9	No outdoor activities for children shall be allowed before 7:30 a.m. or after 6:00 p.m.	X	X	X
10	Noise levels shall be governed by the provisions of article III, chapter 18 of this Code.	X	X	X

# Interdepartmental Review Committee

---

The Interdepartmental Review Committee (IDRC) independently reviewed the requests from March 9 - March 13, 2020, via email. Below are the responses received:

Wendy Servey, Fire Chief, LAC Fire Department conducted a site visit on March 12, 2020 and approves the in-home daycare use with the following conditions:

- Not more than 12 children
- At a minimum install a working smoke stand-alone alarm notification device with a 10 service life OR # 3 below;
- Have the fire alarm protection system that migrates to the studio (1-detector) from the house system serviced by a certified fire protection contractor to ensure the system is working as designed before operation and final fire and life safety inspection and annually
- Install (1) fire extinguisher mounted by one of the exit doors from the studio
- Schedule a final fire and life safety inspection through the Fire Marshal's Office before the Certificate of Occupancy
- Schedule an annual fire and life safety inspection annually as needed for occupancy use of day care.

She added that she approves SUP-2020-0015.

# IDRC, continued

---

Eric Martinez, County Engineer, Public Works, reported that the he approves the requests as submitted, without comment or conditions.

Angelica Gurule, Environmental Services Manager, Public Works, had questions, but did not note any concerns or conditions.



# Special Use Permit Review 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.

## Staff Response:

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.

**SUP-2020-0014** A daycare facility is a permitted within the R-A district, subject to Planning and Zoning Commission review and approval as a Special Use. A daycare facility is not harmful – it would 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. Peace and comfort of persons residing and working in the vicinity is subjective, and cannot be proven either way.

**SUP-2020-0014** Home Business, as the daycare facility is permitted with the SUP. Adding one more employee to the facility would be not be detrimental or injurious to the listed areas noted within the criterion.

# Special Use Permit Review Criteria

---

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.

## Staff Response:

SUP-2020-0014 Sec. 16-282, Sec. 16-282, Daycare and Sec. 16-370, Off-Street Parking Requirements states that a daycare facility shall have one parking spaces per employee. Adequate parking has been provided with six spaces.

SUP-2020-0015 The Development Code does not specify parking requirements for a Home Business, but single-family residences must maintain two off-street parking spaces.

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.

## Staff Response:

SUP-2020-0014 and SUP-2020-0015 Existing ingress and egress for the property will 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.

# Special Use Permit Review Criteria

---

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.

## Staff Reponse:

SUP-2020-0014 and SUP-2020-0015 No new construction is being proposed. Existing buildings are within the development envelop and adhere to the development standards for the R-A zoning district. The property has boundary fencing, and more is proposed for segregating the daycare from the residence.

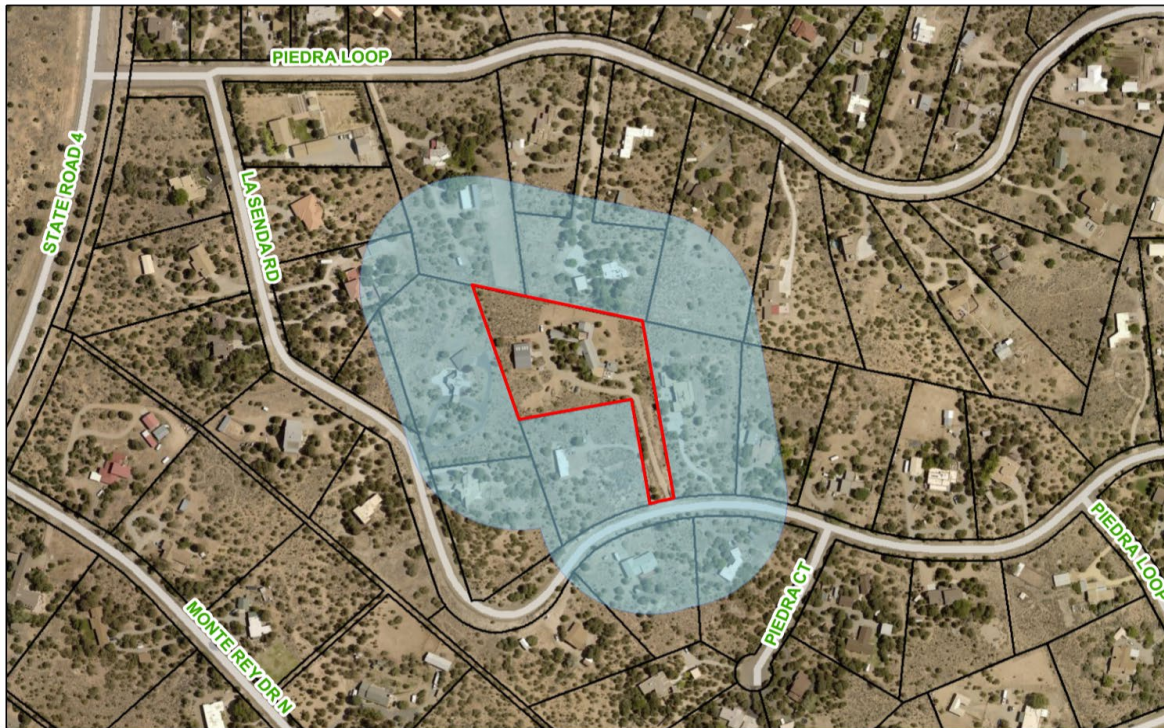
5. The site plan including, but not limited to, landscaping, screen planting, and fencing of the proposed development demonstrates that the site development will be compatible with adjoining areas and will conform to the site development standards of the district regulations.

## Staff Response:

SUP-2020-0014 and SUP-2020-0015 The site was previously developed and constructed in compliance with adopted standards. Existing landscaping, screen planting, and fencing meet current County development standards and district regulations. New fencing will require a building permit, at which time the development standards would be applied. The County has no additional design requirements that would apply to this application.

# Public Notification

100 YD PUBLIC NOTIFICATION



**113 B LA SENDA**

- 113 B LA SENDA
- 100 YD BUFFER (300 ft)
- PROPERTY PARCELS



Mapping information is for reference only. Users are solely responsible to confirm data accuracy. Los Alamos County assumes no liability for errors associated with the data.

1 inch = 300 feet

1. Notice of the request and meeting information published within the Los Alamos Daily Post on May 21, 2020, the County's official newspaper of record.
2. U.S. mail 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; and
3. Notice of the request and meeting information posted at the Los Alamos County Municipal Building.



# Staff Recommendation

---

Staff has applied the Special Use Permit review criteria to both applications and recommends as follows:

Approval of SUP-2020-00014 with the below conditions:

1. The applicant must obtain a state license and submit it to the Community Development Department prior to conducting business.
2. A business license must be secured from the county prior to operation.
3. Approval is for no more than 12 children.
4. At a minimum, a working smoke stand-alone alarm notification device, with a 10 service life shall be installed, or a fire alarm protection system that migrates to the studio (1-detector) from the house system serviced by a certified fire protection contractor to ensure the system is working as designed before operation and final fire and life safety inspection and annually.
5. The installation of one (1) fire extinguisher to be mounted by one of the exit doors from the studio.
6. A final fire and life safety inspection shall be scheduled through the Fire Marshal's Office before the issuance of a Certificate of Occupancy.
7. Annual fire and life safety inspection shall be scheduled annually as needed for occupancy use of day care.

Approval of SUP-2020-0015.

# Findings of Fact

---

1. The Special Use Permit application #2020-0014 is for the operation of an in-home daycare facility for up to 12 children at 113 B LA SENDA, Los Alamos, NM.
2. The Special Use Permit application #2020-0015 is for a Home Business at 113 B LA SENDA, to employ more than one non-family member for an in-home day care facility.
3. The Special Use Permit Review Criteria, Section 16-156, has been applied.
4. Daycare requirements for a daycare facility, listed within Section 16-282, have been or will be met prior to operation, as conditions of approval.
5. 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, 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

# Exhibits

Application

Vicinity Map

Notification Map & Property Owners  
list – within 100 yards

---

1 **LOS ALAMOS PLANNING & ZONING MEETING**

2 **June 10, 2020**

3  
4 Commissioners:

5 Jean Dewart, Jean  
6 Michelle Griffin, Michelle  
7 Craig Martin, Craig  
8 Steph Nakhleh, Stephanie  
9 Bev Neal-Clinton, Beverly (Vice Chair)  
10 Chair Priestley, Terry  
11 Sean Sean Williams  
12 April Wade, April

13  
14 Absent: Neal Martin

15  
16 Staff:

17 Ryan Ryan Foster  
18 Desirae Desirae J. Lujan  
19 Anita Anita Barela  
20 Kevin Kevin Powers  
21 Steve Steve ?

22  
23 Council Liaison:

24 James Robinson

25  
26 *First few minutes is casual chatter amongst participants. Chair welcomes the*  
27 *participants as they join in.*

28  
29 Stephanie  
30 Jean  
31 Robinson  
32 Ian ?  
33 Beverly  
34 Michelle  
35 Ryan  
36 Craig Martin  
37 April

38  
39 Ryan

40  
41 *More casual chatter amongst those commissioners who have joined.*



43 Chair Ryan, at some point, I think we should have the chair at least acknowledge who's  
 44 on line as an attendee. They won't be able to talk until I guess it's appropriate for  
 45 whichever item.

46 *Still more chatter – how are you – where they've been ...*

47 Chair Can I ask who's the phone number ending in 3503 ...

48 Ryan That would be David Poulson.

49 Chair Thank you.

50 *More pleasantries*

51 Steph How does the public join us, if they do. How does that work.

52 Ryan We're utilizing a zoom webinar as a platform. And actually this hearing is the  
 53 guinea pig for all the other boards and commissions. What this platform is, it  
 54 allows \_\_, which is really folks who are on video mostly right now. Those that  
 55 have standing, the 300 foot radius of the project area for each case gets sent a link  
 56 to come in as an attendee. That's a platform that we're trying out in order to.  
 57 Certainly we take comments and read them into the record. If they're emailed to  
 58 us. But our case are a little bit different in that folks have standing in 300 foot  
 59 radius. So that's how we're, we're doing what we can to virtually accommodate  
 60 public comments. And we have had a number that have been sent the link that  
 61 have standing on at least one of our cases tonight.

62 Chair Before we call the meeting to order, do we expect anybody else, Ryan to – I see a  
 63 couple empty blocks. Your staff is here as needed. There's Anita.

64 Ryan Yes, I believe, let me see here. Yes, the presentation is correct. I see some  
 65 applicants. Actually, I believe some folks who have phoned in are those that have  
 66 standing on some cases as well. Just a reminder, Terry, when we get to the cases  
 67 we should take a moment to ask about those who have standing within the 300  
 68 foot radius. I'll work with Steve about being able to get those folks the opportunity  
 69 to speak.

70 Chair Definitely. One bit of housekeeping before we start, we just have one last person,  
 71 one of the panelists, phone number ending in 4262, could you identify yourself,  
 72 please, so I can get your name up.

73 ME Yes, this is Mike Engelhart with Christenson surveys. And my company prepared  
 74 the three lot subdivision plat, which is I believe, item one on tonight's agenda.

75 Chair Thank you very much. Who was just talking, I didn't see any lips move.

76 ? I apologize. I'll put my real face up, Barry, this is me, ...

77 Chair I'm trying to host this tonight, and I appreciate you all willing to be the guinea  
 78 pigs. We are trying out this format.

79 Let's call this meeting to order – I don't have a clock near me, so if somebody  
80 could help me on the time. *(cannot understand what is said)* ... Anita, are you  
81 going to do the roll call, or ...

82 Anita I believe Desirae.

83 Chair Okay, do a roll call, Desirae

84 Des Terry Priestly – here

85 Beverly Neal-Clinton – here

86 Neal D. Martin – no audible response

87 April Wade - here

88 Craig Martin - here

89 Jean Dewart - here

90 Michelle Griffin - here

91 Stephanie Nakhleh - here

92 Sean Williams - here

93 Des We have a quorum, sir.

94 Chair Before we get into the public comment, I do have 2 announcements. We want to  
95 welcome Stephanie to our commission. She was, applied for it several months ago.  
96 We had a little bit of delay because of the COVID type stuff, but this afternoon,  
97 the county council approved her addition to the commission. So welcome,  
98 Stephanie.

99 Steph Thank you very much.

100 Chair For those who do not know Stephanie, she's got parks and rec experience on their  
101 board. And there is another park that you were on, is that right.

102 Steph No, I was just with parks and rec.

103 Chair Welcome, Stephanie. Associated with that Craig Martin and Sean Williams were  
104 approved for another 3 years. Congratulations to them, thanks for continuing with  
105 us.

106 Public comment. I know Ryan, I kind of missed a little bit. We have a spot on our  
107 agenda for public comment. This is for items that are not otherwise on the agenda.  
108 How are we going to do that.

109 Ryan I would go ahead and proceed as we normally would and see if there is public  
110 comment. I know we are atypical as far as being in chambers and able to take a  
111 comment that isn't related to the cases. We'll go ahead and see.

112 Chair Next step on the agenda is the approval of the agenda. We have 2 hearings tonight  
113 and then our business, so to speak. Anybody like to make a motion to either accept  
114 of make any changes to the agenda.

115 Craig I move that we accept the agenda as presented.

116 Sean Second.

117 Chair We have a first and a second, all in favor – see hands. All right. Looks like it's a  
118 consensus there.

119 We are going to go to our first hearing tonight. *(checked to see if everyone can still*  
120 *hear him ... positive responses)* I'm learning this. I've done a lot of zoom stuff,  
121 but not this big and not as a public hearing.

122 Woman I'm not very computer savvy anyway.

123 Smith Hello, can anybody hear us ... okay, because we asked to join the meeting. This is  
124 Barry and Marilyn Smith and we don't see our picture up. We can see all of you.

125 Chair We have a square with your name on it, so you're here.

126 ? Turn on your video. ... lower left hand corner of your screen, press the button to  
127 turn on the video.

128 Ryan I'm going to jump in for a moment. Those folks that have received letters and have  
129 registered are participating as attendees. As attendees, we're going to wait for you  
130 as the chair to recognize them. For convenience, I've unmuted them because this  
131 is a first go-through. But if they're going to stand up and have standing on any of  
132 these particular cases, at that point, I would unmute them and they would be able  
133 to testify. If they have material that they want to present or share their screen, I  
134 could change them to panelists and then their video would be enabled. So if it's  
135 just verbal testimony, their video won't be on. If they need to display something,  
136 we'll change that on a case-by-case basis.

137 Chair We're going to figure this out, so please be patient and everybody will get the  
138 opportunity to have their turn here as we go through our process.

139 The next item on our agenda is a public hearing for the case of the Subdivision-  
140 2020-0011. This is a request for approval of a three lot subdivision, address is  
141 2436 46<sup>th</sup> street, located in the North Pine subdivision, which is subdivision NC1  
142 Lot 239A, and the proposed development will consist of 3 new single-family  
143 residential units contained within 3 separate lots, with associated on-site parking  
144 and traffic circulation, on a .28 plus or minus acre of land.

145 The commission's decision on this case must be based on the criteria contained in  
146 Chapter 16 of the county code, known as the Development Code. Again, the issue  
147 to be decided at this specific hearing is whether to approve the conditions or deny  
148 the application for a subdivision request for approval of 3-lot subdivision at 2436  
149 46<sup>th</sup> Street in the North Pine subdivision..

150 The planning and zoning commission is charged with making this determination  
151 based solely upon the criteria adopted by the county commission, as set forth in  
152 our development code. Testimony will be limited by the chair of the commission  
153 to the subject matter of this case, which means that we will hear testimony that  
154 relates to the criteria for approval that is set out in the development code. Copies  
155 of this criteria are available and we may limit redundant or repetitive testimony.

156 The commission will accept the following documents as exhibits and incorporate  
157 them as part of the record of this case, unless a valid objection is raised. The  
158 parties have had the opportunity to have these exhibits in advance and they are  
159 able to use them in their presentation. So we have the application and associated  
160 exhibits. We have the staff report and associated exhibits. Are there any other  
161 exhibits to be presented tonight.

162 Male? I did submit a revision to the plat which was discussed back at the February 26  
163 meeting. Ian and I, I added, Ian had me revise the plat from a 4 lot subdivision  
164 down to 3 lots and that has been submitted to community development, and I hope  
165 a PDF of the plat was given to Anita and I hope that was given to everyone on the  
166 commission.

167 Chair It looks like the package I have indicates that.

168 Anita It's in the agenda packet.

169 Chair So is in the packet, the updated plat is what we have in our packet, very good. If  
170 there are any other exhibits that may be proposed by either party of the  
171 presentation we will either admit or exclude those items as they are presented, and  
172 if an exhibit is excluded, we'll still maintain a copy of that excluded exhibit to  
173 keep as part of the record.

174 The hearing tonight will be conducted in the procedures developed from New  
175 Mexico case law. And the procedures are intended to protect due process rights of  
176 all parties. All parties and witnesses will be identified. All persons who expect to  
177 offer testimony will be sworn in and testimony will be given under oath. All  
178 persons offering testimony will be subject to cross examination by other parties.  
179 Please remember that the purpose of the cross examination is to ask questions and  
180 to solicit relevant facts, not to be argumentative, just state your own position. The  
181 commission again intends to limit testimony to information relevant to the matter  
182 being considered, and the commission chair person may limit redundant or  
183 repetitive testimony.

184 Parties to this case include Ian and Devina Maes, I think I saw Ian, there you are,  
185 and Mike Englehart, who is representing Ian as well. Is that right.

186 Mike Ian is the property owner and so he'll discuss the actual, what's actually going to  
187 be built on the property. I'm just going to cover how we're splitting up the  
188 property.



189 Chair Very good. The community development department staff will assist the  
190 commission to fully develop the record. And other persons in addition to the  
191 applicants, including property owners within 300 feet of the boundary of the  
192 property under consideration and those who have a legally recognized interest in  
193 this case may also be recognized. Parties may call witnesses to submit facts to  
194 support the parties' position. So if you wish to speak at this hearing and believe  
195 you have a direct interest in this case and want to be recognized as a party, please  
196 raise your hand. We have Ian and anybody else raise their hand.

197 Mike I don't know if my video is turned on, but I'm raising my hand virtually through  
198 the phone.

199 Chair I think we can work with that. So Ian and Michael, is that right.

200 Mike Mike Englehart with Precision Surveys.

201 Chair And with the county.

202 Anita Anita.

203 Steve I'm raising my hand with a procedural question. Do we need to poll the attendees  
204 and see if they are people of standing for this case.

205 Chair Thank you for the suggestion. We do have several people on this zoom meeting  
206 that are not part of our normal planning and zoning commission. Are any of you  
207 that are participating on line, are any of you parties with standing associated with  
208 this case of the subdivision. Okay, I don't hear of any. We're going to take that as  
209 a no. If you lost your mute button and you need to come back on, we'll adjust that  
210 if that comes to be the case.

211 For those that are going to be presenting tonight, state your name and address and  
212 present your interest in the outcome of this case. Let's go with Ian first.

213 Ian Ian Maes located at 117 El Corto, here in Los Alamos. I am hoping to subdivide  
214 and put 3 units on subject property.

215 Mike Mike Englehart with Precision Surveys, I am at 1362 Trinity drive, suite A2. My  
216 company did the plat that subdivides this one lot into 3 lots.

217 Chair Thank you, Mike. I don't believe there's anybody else besides the county staff. Is  
218 that correct. We are now going to poll the commissioners as to potential conflicts  
219 of interest or ex parte communication. Does any commissioner have a potential  
220 conflict of interest in this case, and if so, please disclose this case. If you are a  
221 commissioner and have a potential conflict of interest, please speak up. Seeing  
222 none, has any commissioner received any ex parte communication regarding this  
223 case. An ex parte communication means discussion about a quasi judicial case, an  
224 applicant or others outside of the normal official planning and zoning meeting  
225 process. If you have any ex parte communication regarding this case, please speak  
226 up. I see none.

227 Desirae, are you the commission reporter for tonight. Would you please swear in  
 228 all persons who wish to testify.

229 Des Do you affirm under penalty of perjury that the testimony that you are about to  
 230 give in this matter is the truth, the whole truth, and nothing but the truth.

231 Ian and Mike ... yes.

232 Chair We're going to move on to the presentation and the way we're going to do this is,  
 233 the applicant will get opportunity to present, and then the applicant could be cross  
 234 examined by the staff or other parties and then be questioned by the commission.  
 235 Following that, the staff will make their presentation, with the opportunity to be  
 236 cross examined and then questioned by the commission. If there are other parties  
 237 with standing, they will have the opportunity to make a presentation. So if anyone  
 238 joins us, we will give them the opportunity to make their presentation. First up is  
 239 the applicant, Mr. Maes \_\_.

240 Ian I have pretty straightforward, as you can see on the agenda. I was out of town, I  
 241 apologize, at a business conference in February when this first came to. It was  
 242 rejected at the time, or I guess tabled. I'm not sure why, because everything in the  
 243 application was within what the building zoning permitted. We did make it,  
 244 because it was a 3 lot and not a 4. We actually could do a 4 lot based off what is  
 245 currently allowed. So I hope this time it's approved, and if you have any  
 246 questions, happy to answer whatever.

247 Chair We do have the application. County staff, any questions for the applicant.

248 Anita None, thank you.

249 Chair Commissioners, are there any questions from the commissioners for the applicant.  
 250 Okay. You got off easy, Ian. Any other parties have questions for the applicant.  
 251 All right, Anita, are you going to make the presentation for the county.

252 Anita Yes, but I need to make sure the screen is all right, Steve. Can I do that ... you  
 253 disabled it ... Steve ...

254 Mike Anita, this is Mike, I can see you.

255 Steve I need to turn that on for you. So hold on. It should be ...

256 Anita Not yet.

257 *(working on it)*

258 Steve Hold on. Now ... there you go. Sorry I just had to enable it, thank you.

259 Anita So I'm doing this via PDF. Good evening, chair, commissioners. This request is  
 260 for approval of a subdivision plat to subdivide a \_\_ parcel into 3 new lots. The  
 261 applicant is proposing to create individual lots that will be developed into new  
 262 housing units. The submitted sketch plans shows the proposed single family  
 263 attached and detached dwelling units for future construction should this

application receive approval from planning and zoning commission. That's what the application is.

Plats 5 lots or less after utility or public or private roadway improvements under article 6 of this chapter may submit sketch preliminary and final plats as a single plat for approval. Since the subdivision contains fewer than five lots, the final plat may be approved under one application and hearing. This application will not return to P&Z. The subject property is roughly rectangular in shape with a maximum depth of 120 feet. It contains 122 feet of frontage along 46<sup>th</sup> Street.

This subject property formerly contained a four unit condominium, which was destroyed by the Cerro Grande fire in May 2000. Section 16-537h1 states, for a conforming or legal nonconforming dwelling, two family or multi family existing on a lot on May 9, 2000, may be considered a conforming site for a dwelling, single family attached and may be subdivided into a number of lots less than or equal to the number of dwelling units located on the lot on May 9, 2000. The resulting dwelling single family attached the site and the lot shall be considered conforming as the lot \_\_\_ in maximum density. Prior to this date there was a four unit condominium occupying this site. The structure was destroyed in the fire and the project they're proposing was replacing the former condominium contains three units, which is less than three of the former condominiums previously that were there.

The maximum density per acre for a 16 by 37 C3 limits the number of dwelling units per acre to 14.5 dwelling units. At this density, each lot shall not contain less than 3000 square feet variance. Each lot shall not contain less than 3000 square feet per area. The smallest lot proposed contains 3218 square feet. This criteria is satisfied. The North Mesa district PLNC allows the following types of residential housing: A dwelling, single family attached or detached; a dwelling two family; a dwelling multi-family. The applicant is proposing one single family detached and two family attached, which is a duplex.

Staff recommends approval, because the criteria for the subdivision has been applied, and for the subdivision is at 2436 46<sup>th</sup> Street. I have the exhibits up here if anybody has questions about them.

*A moment of silence*

Anita These exhibits are included in your packet if you've had a chance to look at them.

Steph Anita, I don't know when the appropriate time to ask this is, but I, since I'm just starting, I don't quite know the history of what happened. I read the materials, but I still don't understand the history of what happened last month or why it changed from 4 to 3. So, when's the right time to ask about that.

Chair Let me try to answer that. When this came before the commission a couple months ago, it was planned to have 3 units, just like we're seeing now. The application had indicated it was for 4 units. So there's a discrepancy in the application. So we

304 wanted to have that changed. And there was also a question about the height of  
 305 the units. So it was sent back to have those addressed.

306 Steph Thank you, that answers that question.

307 Chair Correct me if I'm wrong, Anita or Ian, nothing has changed as far as the plan  
 308 itself. That's been to correct those discrepancies, but the design and the intentions  
 309 of the lots have not changed.

310 Ian Nothing has changed, but I don't know if this is the time to, but I'd like to speak to  
 311 the fact that I was very discouraged when I heard that the height came into play  
 312 when the subdividing of these lots has absolutely nothing to do with the structure  
 313 that's going to be on there. That's something that would be addressed later with  
 314 the building commission. And I'm not quite sure how that played any sort of a  
 315 factor in denying it.

316 Chair I think it was a matter of discussion. My recollection was really making sure that  
 317 the application reflected the four lots versus three lots, that was the major piece of  
 318 it. We kind of got out of order a little bit, and that's fine. We're working through  
 319 this. So we've had the presentation by the applicant, the presentation by the  
 320 county. Are there any questions for the county from the commissioners.

321 Anita None.

322 Chair Okay. Are there any other parties. Did anybody come on line since we started this,  
 323 any affected parties that have a presentation that they want to have this evening for  
 324 this specific hearing.

325 Kevin Powers Chair Priestley, this is Kevin Powers. I just want to let you know I  
 326 just joined, just in case.

327 Chair Thank you, Kevin. I don't believe there are any other presentations by the other  
 328 parties. What we're going to do now is, we're going to close the public hearing to  
 329 receipt of evidence and ask the commission to make and discuss a motion. Now  
 330 this is opportunity if there's somebody on the commission who would like to  
 331 propose a motion, or make a motion.

332 Sean I suppose I can. I move to approve case number Sierra Uniform Bravo 2020-0011,  
 333 a request for approval of a Preliminary and Final Subdivision Plat, creating a new  
 334 subdivision consisting of three (3) lots, for the reasons stated in the staff report and  
 335 per testimony at the public hearing, and subject to the following conditions:

336 1. Future developments proposed for Lots 1, 2 and 3 shall meet the minimum side  
 337 yard setback of fifteen (15) feet from dwellings on adjoining lots (this will be  
 338 reviewed at the time of building permit submittal).

339 2. Building permits shall be secured prior to the start of construction.

340 Chair Thank you. Other commissioner want to second that motion.

341 ? Second.



342 Chair I think I spoke over you, who seconded that motion?

343 April I seconded. I think Craig and I both seconded it.

344 Chair Thank you. This is the opportunity now for the commission, if there's any  
345 commissioners who want to make a discussion on the motion.

346 Sean So I guess I'd like to provide a little bit more recollection on what happened last  
347 time. As I recall, what appeared before the commission last time was a  
348 combination of two things: There were two lots, and the action was for a lot line  
349 adjustment between them and then for one of the lots to be subdivided into three.  
350 So it was a conversion of 2 lots into 4 lots. So in this case the application has been  
351 simplified, so I believe the lot line adjustment was done administratively, and now  
352 we're seeing the big lot just being subdivided down to three.

353 Ian That's correct, Sean, the lot line adjustment between lot 3 of this subdivision and  
354 lot 3 CR is going to be done after this plat is approved.

355 Woman Originally there were 4 units on this lot, right, so that's correct, before the  
356 fire.

357 Ian Yes, before, pre-Cerro Grande fire there was a quad on this lot, and that's shown  
358 on the, one of the exhibits in Anita's staff report that shows, I believe it was a  
359 1977 survey that shows a quad.

360 Woman Okay.

361 Chair Any other discussion from the commissioners. We have a motion and we have a  
362 second to that motion. Just to make sure we're all clear on what we'll be voting  
363 on. A motion has been made to approve case number SUB 2020-0011, a request  
364 for approval of a Preliminary and Final Subdivision Plat, creating a new  
365 subdivision consisting of three (3) lots, for the reasons stated in the staff report,  
366 per testimony at public hearing and subject to the following conditions:

367 1. Future developments proposed for Lots 1, 2 and 3 shall meet the minimum side  
368 yard setback of fifteen (15) feet from dwellings on adjoining lots (this will be  
369 reviewed at the time of building permit submittal).

370 2. Building permits shall be secured prior to the start of construction.

371 I'd like to have a roll call vote, please.

372 Craig Martin, yes

373 Jean Dewart, yes

374 Stephanie Nakhleh, yes

375 Sean Williams, yes

376 Michelle Griffin, yes

377 Terry Priestley, yes

378 Beverly Neal-Clinton, yes

379 April Wade, yes

380 Motion passes unanimously.

381 Craig Thank you, as a reminder, any action by the planning and zoning commission in  
 382 granting approval, conditional approval, or disapproval of an application may be  
 383 appealed by the applicant, any aggrieved person, by any member of the county  
 384 council, or by the county administrator \_\_ bring it to the county council within 15  
 385 calendar days after the date of the action, pursuant to section 16-492 of this  
 386 chapter. That concludes this hearing. Thank you very much, thank you, Mr. Maes.

387 Ian Thank you everybody.

388 Mike Thank you, planning and zoning commission. I'm going to go ahead and sign off.

389 Chair Thank you. We're going to move on to the second hearing. The next item on the  
 390 agenda is the public hearing for two special use permits, and this is special use  
 391 permit 2020-0014. Denise Mathews, property owner and applicant, requests  
 392 approval for a special use permit to conduct an in-home daycare facility for up to  
 393 12 children at her location at 113Bravo, La Senda, Los Alamos, New Mexico. The  
 394 property, which is lot LSA 03024A, is within the La Senda community and is  
 395 zoned residential agriculture, or RA.

396 The second special use permit is SUP2020-0015, via Denise Matthews, property  
 397 owner and applicant, requests a special use permit approval for a home business at  
 398 113Bravo La Senda, to employ more than one non-family member for an in-home  
 399 daycare facility. The property again is lot LSA03024A, it's within the La Senda  
 400 community and is zoned as residential agriculture.

401 So again, the commission's decision on this case must be based on the criteria  
 402 contained in chapter 16 of the county code, also known as the development code.

403 The issue to be decided here at this hearing are two special use permits associated  
 404 with a proposed in-home daycare facility at 113 B La Senda that would employ  
 405 more than one non-family member. The planning and zoning commission is  
 406 charged with making this determination based solely upon the criteria adopted by  
 407 the county commission, as set out in the development code.

408 Testimony is going to be limited by the chair to subject matter of this case. Which  
 409 means that we will hear testimony that relates to criteria for approval that is set out  
 410 in the development code. Copies of this criteria have been made available. We  
 411 may limit redundant or repetitive testimony.

412 The commission will accept the following documents as exhibits and incorporate  
 413 them as part of the record in this case, unless a valid objection is raised. Parties  
 414 have had the opportunity to have these exhibits in advance, and they are able to  
 415 use them in their presentation as desired. So we have the applicant itself,

416 application itself. We have the staff report, and we have the exhibits to the staff  
417 report. Are there any other exhibits, any other documents that we want to present  
418 as exhibits tonight.

419 Anita Chairman Priestley, we have three additional letters that were submitted after  
420 publication of the agenda and packet. Would you like to read them into the record,  
421 or would you like to do that at another time.

422 Chair This is what I propose, is that we will have an opportunity for affected parties to  
423 make a presentation. I think that would be an appropriate time to enter those  
424 emails, or letters into the record.

425 Anita Perfect, thank you.

426 Chair Is there anything else. Additional exhibits may be proposed by anybody as part of  
427 their presentation. Is there another comment. ... Michelle, go ahead.

428 Michelle I just need to recuse myself from this case.

429 Chair We'll give that opportunity just in a second, but I hear you.

430 So again, additional exhibits may be proposed. We may either admit or exclude  
431 those as they are presented. If it's excluded we will maintain a copy of the  
432 excluded exhibit, to keep as part of the record. The hearing tonight will be  
433 conducted under procedures developed from New Mexico case law, and the  
434 procedures are intended to protect the due process right of all parties. Parties and  
435 witnesses will be identified. All persons who expect to offer testimony will be  
436 sworn in and testimony will be given under oath. All persons offering testimony  
437 will be subject to cross examination by other parties. And again remember that the  
438 purpose of cross examination is to ask question, solicit relevant facts, not to be  
439 argumentative or to state your own position. We do intend to limit testimony to  
440 information relevant to the matter.

441 The parties in this case include Denise Matthews, the property owner and  
442 applicant. And the county development department staff will assist the  
443 commission in fully developing the record.

444 Other persons in addition to the applicants, including property owners within 300  
445 feet of the boundary of this property under consideration, and those who have a  
446 legally recognized interest in this case may also be recognized as parties. Parties  
447 may call witnesses to present facts to support that party's position. So if you wish  
448 to speak at this hearing and believe you have a direct interest in this case and want  
449 to be recognized as a party, we're going to ask you to come forward now.

450 I think the way we'll do this is, I have on my screen a list of names. So rather than  
451 everybody trying to speak over each other. We have Cynthia Murphy, are you on  
452 line, via the phone. You're on mute, we can't hear you.

453 Anita You have to raise your hand.

454 Cynthia I'm unmuted now, yes I'm here.

455 Chair Can you state your name and address and present your interest in the outcome of  
456 this case please.

457 Cynthia Cynthia Murphy, 110 Piedra Loop. I am half owner of this property.

458 Chair Thank you, and we have listed here Marilyn and Barry, I don't have your last  
459 name in front of me.

460 Smith Smith.

461 Chair Marilyn and Barry Smith. Are both of you planning on speaking.

462 Marilyn We can, yes.

463 Chair If you can state your name and address and your interest in the outcome of this  
464 case, please.

465 Marilyn Marilyn and Barry Smith, 116 Piedra Loop. We are exactly across the  
466 easement from the Mathews, we have a long border with their property, and we  
467 are concerned about having a daycare across from us.

468 Chair We have Mark Petotskey. I'm sorry if I said that wrong.

469 Mark ... Can you hear me now.

470 Chair I can hear you now.

471 Mark So this Mark Petotskey, 105 La Senda. I have interest in this case because I  
472 believe it may impact the onset of commercial enterprise in the neighborhood. It  
473 may impact property values \_\_\_. And I also have a concern that only I think 14 of  
474 the residents of La Senda and Piadra Loop were notified concernng this. Part of  
475 that is due to our larger boundary. We all have acreage. Normally, a lot more of  
476 the population in the community would have been notified.

477 Chair Mark, thank you, and we're going to have opportunity for all the parties to make a  
478 presentation. We've got you on the list here. I have David Poulson, if you could  
479 state your name and address

480 Poulson You have Ann and David Poulson on the phone. We are bordering the  
481 property, we are at 122 Piedra Loop.

482 Chair And you are neighbors in that community, then. We have Perry Rutherford listed.

483 Ryan Perry is a staff member. He's manning the booth and the broadcast.

484 Chair Okay, thank you. Jessica Moffin.

485 Jessica This is Jessica, I'm sorry, I'm now unmuted. I'm an attorney. But I'm not  
486 representing Denise Matthews. I'm just simply helping her with this case.

487 Jessica Moffin, I'm at 131 Monterey Drive North, and my interest was simply as a  
488 potential person who would be using the services she's providing.



489 Chair I have a David North and a name I can't see on my screen.

490 Peck David North and Akkana Peck. We share a corner with the lot. We're at 111 La  
491 Senda.

492 Chair And, according to my screen, that is everybody. Is there anybody that wishes to  
493 make a presentation or has an interest in this that we have not called upon. Hearing  
494 none, we'll move forward. If somebody does join or finds the mute button, we'll  
495 figure that out.

496 Now, we're going to poll the commission as to potential conflicts of interests or  
497 ex parte communication. Does any commissioner have a potential conflict of  
498 interest in this case, and if so, please disclose that interest. Michelle, go ahead.

499 Michelle I will need to recuse myself in this case. My husband works with the  
500 Matthews and we're friends with the Matthews, and as a mom and neighbor in ~~La~~  
501 ~~Pajarita area~~ the Pajarito Acres area, I too would want to see this service and  
502 would probably get good benefit from this daycare, so.

503 Chair So you are going to recuse yourself from this hearing. Does any other  
504 commissioner have a potential conflict of interest in this case.

505 Ward Terry, this is April Wade. I need to let you guys know, Denise Matthews is our  
506 board president at my place of employment \_\_\_\_ play school. So I do work with  
507 her \_\_\_\_

508 *Some distortion of words*

509 Chair Knowing a person involved in a case is not necessarily a conflict of interest, but  
510 would that conflict of interest have an impact on your ability to effectively  
511 evaluate the merits of the case.

512 Ward No, I feel I can still be fair, so ...

513 Chair Thanks. Craig.

514 Craig I know both the applicant and several of the parties, but I feel that I can remain  
515 unbiased and make a decision on this case, despite that.

516 Beverly Terry, I'm going to echo the same thing that Craig just said. I am familiar  
517 with some of the other people who will be participating, but I do feel I can be  
518 impartial.

519 Chair Living in a small town, everybody knows everybody somehow.

520 Has any commissioner received any ex parte communications regarding this case.  
521 Again, ex parte communications are any discussions with an applicant or others  
522 outside of the normal official planning and zoning process. Has any commissioner  
523 had any ex parte communication regarding this case.

524 Sean This is really bland. I did email Desirae Lujan just asking a clarifying question  
525 about the case, which was whether or not this is a new daycare or an expansion of

526 an existing daycare, but I think she's going to cover that in her report, or  
527 somebody's going to cover this. So not really a very important communication.

528 Chair Any other ex parte communication. We'll go to the next question, has any  
529 commissioner reached a decision on the merits of this case as a result of ex parte  
530 communication.

531 Sean No.

532 Chair The next piece here, is the commissioner recorder is going to swear in all persons  
533 who wish to testify. We have a lot of people on this one, so any suggestions on  
534 how to do that, Anita or Kevin.

535 Kevin I think we should do it one person at a time, just to make sure we get an oath and  
536 affirmation that they will tell the truth. If we try to do it all at once, there's no way  
537 to tell who says yes or who says no.

538 Chair That seems reasonable. Anita, do you have the names as they presented  
539 themselves.

540 Anita I have the list of participants. So Kevin, do you suggest I just ask each person and  
541 swear them in separately, is that what ...

542 Kevin I think that's the right way to go, so just work your way down the list.

543 Anita I will do that. Can everybody hear me ... okay.

544 Denise Matthews, do you swear under, do you affirm under penalty of perjury that  
545 the testimony you are about to give in this matter is the truth, the whole truth, and  
546 nothing but the truth. *I do.*

547 Jessica Moffin, can you hear me ... *I can* ... do you affirm under penalty of  
548 perjury that the testimony you are about to give in this matter is the truth, the  
549 whole truth, and nothing but the truth.... *I do.*

550 David North, and I'm sorry, I didn't catch the second name ... *yes ... yes Akkana*  
551 *Peck is the second name.*

552 Anita Could you spell your second name please, and your first name.

553 Peck Akkana Peck ... yes

554 Anita Do you affirm under penalty of perjury that the testimony you are about to give in  
555 this matter is the truth, the whole truth, and nothing but the truth ... *yes, yes.*

556 Anita David Poulson, do you affirm under penalty of perjury that the testimony you are  
557 about to give in this matter is the truth, the whole truth, and nothing but the truth.  
558 *Yes I do.*

559 David Did you also want to swear in my wife, Ann.

560 Anita Ann? Yes, I'll swear you in separately. Ann, do you affirm under penalty of  
561 perjury that the testimony you are about to give in this matter is the truth, the  
562 whole truth, and nothing but the truth. ... *yes*.

563 Anita Mark Petotskey ... do you affirm under penalty of perjury that the testimony you  
564 are about to give in this matter is the truth, the whole truth, and nothing but the  
565 truth. ... *I do*.

566 Anita Is that everybody ...

567 Chair Marilyn and Barry Smith

568 Anita So separately, Marilyn Smith, do you affirm under penalty of perjury that the  
569 testimony you are about to give in this matter is the truth, the whole truth, and  
570 nothing but the truth. ... *yes*.

571 Anita Barry Smith, do you affirm under penalty of perjury that the testimony you are  
572 about to give in this matter is the truth, the whole truth, and nothing but the truth.  
573 ... *I do*.

574 Chair I think we have Cynthia Murphy, is the last person that we had on our list here.

575 Anita Cynthia Murphy, do not see her, she's still muted. Cynthia ... do you affirm under  
576 penalty of perjury that the testimony you are about to give in this matter is the  
577 truth, the whole truth, and nothing but the truth. ... *yes*.

578 Thank you.

579 Chair Thank you, Anita. Did we miss anybody. I think we got it. We're going to go on to  
580 presentations. Again, we're going to have a presentation by the applicant, Miss  
581 Matthews. Upon completion of her presentation, that'll be the opportunity for the  
582 staff and other parties that have been recognized to ask questions. Again those are  
583 questions, not presenting your opinion. And then we'll have the opportunity for  
584 the commission to ask questions. Following that, the county staff will make their  
585 presentation. Again, questions can be asked by the applicant or affected parties.  
586 And then we'll have the opportunity for the affected parties to make their  
587 presentations.

588 As a heads up, one thing we've seen in the past is when you're given the  
589 opportunity to ask questions, it's very easy to fall into making your presentation. I  
590 want to assure all the affected parties will have an opportunity to make your  
591 presentation, and that will happen. Work through the process. We'll have a  
592 presentation followed by questions. Presentation followed by questions. And then  
593 presentation followed by questions.

594 Miss Matthews, as the applicant, would you like to make your presentation.

595 Denise Yes, hello, good evening. Thank you all for listening tonight. I can go  
596 ahead and pull up my presentation, and then share my screen with you, I believe.  
597 *(a moment to work through this)*

598 So the name of the daycare that I'm proposing is Worms and Wildflowers Home  
599 Daycare, and I'm asking for a special use permit for, to have the daycare and then  
600 also to hire another person to work at the daycare.

601 Just a little bit of information about the business. We are located at 113B La Senda  
602 in White Rock. The hours of operation would be normal business hours between 8  
603 and 5. It's possible we could have a weekend event, but that's not something that's  
604 part of the schedule. Something to take of note I think is important is, when I first  
605 start, I will be operating at just a part-time schedule. We'll be meeting on Tuesday,  
606 Wednesday, Thursday, and then we have dropoff from 8 to 9 in the morning and  
607 pickup from 3:30 to 5. The age range will be 3 to 6 years old.

608 When you're working with CYFD, the ratio of instructors to children is one to 6.  
609 So it would require two instructors. Myself would be an instructor and then I  
610 would need one other instructor. And so I would need to hire somebody. I know  
611 the permit says hiring more than one person outside of your household, and the  
612 reason it's more than one person is because I need to be able to have substitutes,  
613 so if that other instructor was sick or something like that, I need to have at least  
614 one other person or two other people that are available and part of my trained staff  
615 that could come in in place of them, although we would only have one other  
616 person on property each day.

617 A little bit of background about the mission and philosophy. I am a big proponent  
618 of childhood indoor and outdoor play, and so the daycare would be more of like an  
619 outdoor based nature preschool where we're really working with the children's  
620 interest and working to build those kinds of social and emotional skills. I have my  
621 philosophy there, too, and I know you don't want me to go too much into that. I  
622 can talk more about that if you guys want me to, but I know we're just here to talk  
623 about the logistics.

624 Chair Denise. What I see on my screen is just your first page of your presentation. Are  
625 you working your way through that.

626 Denise You don't see me when I switch screens?

627 Chair I see Worms and Wildflowers Home Daycare is pretty much all I see.

628 Denise Okay, thank you. (*a moment*)

629 Chair Anita or Desirae, as we're getting this figured out, we do want to include the  
630 presentation as part of our record. So if we don't have a hard copy of that, make  
631 sure we get a copy for the record. That looks much better ... I see hours of  
632 operation, age ranges, things like that.

633 Denise Yeah. So sorry about that. You can kind of see there what the mission and  
634 the philosophy is. Just the fact that I'm really trying to offer something to the  
635 community that is different than what is currently available in that we are trying to  
636 really get kids outside and have that nature experience on a daily basis, so that kids



are developing that connection to the environment and to the local ecosystems around here. That's really the passion behind the project. If there's more questions about that part, please ask.

The location. Here is a map of our property. It's a 3 acre property and it's kind of a flag lot, so you come up a long driveway and then our driveway kind of splits and you can go towards the, where it says the green little guest house and that green guest house is our studio what we call it, and it would be where the daycare is going to be. You can see the daycare outdoor play area. That part is fenced in as an initial play area. And there is a garden next to it that we would be using as well.

The rest of it is our property, so you can see our house and all of our utility and all that kind of stuff.

So parking, there's a 2 parking spots right next to the green guest house, and then there's also a larger parking area, if you come up the driveway and go left, you can park there as well, and that provides more parking. Really, we don't need a ton of parking. There will only be one other employee there during the day. But for parent pickup and dropoff, we think that would be useful.

For the planning and zoning committee's five criteria, kind of review them there and then I'll go through them each one individually.

The first one being that the project must not be detrimental to the health, safety, peace, comfort, or general welfare of the persons, having sufficient parking facilities, and then having onsite and offsite ingress and egress and traffic circulation. And then having setbacks of the parking facilities from the property lines. And then the site plan, including but not limited to landscaping, screen planting, fencing, those kinds of things.

We'll go through each one of those. First one, health, safety and peace. The idea is that the project doesn't infringe on other people's peace around the neighborhood, health, safety, peace or general comfort or welfare. It's been brought to my attention that the noise is the biggest concern from neighboring people. So I wanted to talk a little bit more about the policy with that. With noise in terms of the environment within a residential area, the policy says that you can't make, create or maintain excessive, unnecessary, unnatural, or unusually loud noises, which are prolonged, unusual or unnatural in their time. \_\_\_ and use are a detriment to the public health, comfort, convenience, safety, welfare, and property. I looked into that more. What really is the noise regulation for a neighborhood, and it says that, for decibel levels, you can't permit the production of sound in such a manner to have more than 65 decibels cross over a residential property line, or 53 during, from 9 to 7, but that's in the evening, so that wouldn't really apply to us.

Thinking about that noise level and the decibel level provisions, I looked into how much noise, does, do people talking and kids playing, that kind of thing, how much does it really create. I thought of expected home daycare sounds, what is it

677 really going to sound like. You're going to have your group circle time, with,  
678 when you're thinking, it's 10 to 12, like 4, 5, 6 year old kids, it's a pretty small  
679 group. And you're going to have circle time, songs and conversations, you're  
680 going to have story time, you're going to have kids playing and you'll have  
681 conversations. So where would that fall in this chart over here. We have normal  
682 conversation at 60 decibels, and that's really where we're going to be at. We're  
683 not really going to be creating really loud music or any kind of heavy machinery  
684 or anything like that. Normal conversation would be in a just figure for how much  
685 noise we really would be creating. I think it's also important to remember that this  
686 kind of law about noise, in that, even if we are creating 65 decibels of noise, that  
687 every time you travel the distance from the sound, you go down six decibels. So  
688 the likeliness that the neighbors would be hearing 65 decibels is not very likely.  
689 There is going to be diminished, especially because of the amount of space that  
690 surrounds our property. And just the natural lot lines of La Senda with everyone  
691 having such large lots, it really dissipates quickly.

692 Just to give you an idea of where the daycare would be. Here's the site location,  
693 the studio building, so you see looking out the patio. That's the play area that will  
694 be landscaped more for the daycare. You have the building, on down in the right  
695 corner, and that's the studio building and beyond that you can see the entrance.  
696 And I'll also show more pictures of that, too.

697 So I would argue that the activities within a home daycare are not different from a  
698 typical conversation, and noise generated from any family activities. Sometimes  
699 there's large families, especially on large properties, so this could be just the same  
700 type of noise you would hear from a family with kids living next door to you. I  
701 would say that it does not constitute a trespass upon the privacy of others, as  
702 stated. In that it does not create, maintain such excessive unnecessary, unnatural or  
703 unusually loud noises, which are prolonged, unusual or natural in their time. I  
704 would argue that kids playing is a very natural sound for a neighborhood, in that  
705 it's a good sound. People like to have kids around and having a vibrant  
706 community. So I think that it doesn't fall into that.

707 Next one. Parking. There are sufficient parking facilities that are adequately  
708 designed and landscapes. Right here you can see this kind of reverses the map  
709 from the other way that I showed it. You have the driveway coming up. Our  
710 driveway is about 32 feet, and have the two parking areas, and you see the daycare  
711 outdoor area right there. Really, you only need one parking area as far as I can tell,  
712 based on the fact that I have one employee, but I do think it's important to have  
713 more parking than that for parents dropoff and pickup. So those would be the two  
714 parking areas.

715 Then there is the requirement about some paving, except it said in the R and RA  
716 district, since we are in the RA district, then we do not have the requirement to

717 pave the road. You can see a picture of our driveway right there on the left, that's  
718 coming from La Senda road.

719 Just in terms of design, I did see there are some requirements for that. Making sure  
720 that we have the parking spots large enough for parents to turn around and park.  
721 I'm not sure that we are actually required to have these, because it only requires to  
722 have one parking spot. But either way, we would follow these guidelines, having  
723 the parking within the same lot and having the lot be 9 by 18 feet, and then  
724 installing the parking guards at the parking areas, so there's no going past that  
725 point.

726 Here you can see as you approach – so the picture on the top is the studio there,  
727 and you're approaching the driveway and then you would turn right to go park in  
728 that one spot right there, and the gate to go into the studio is that red gate right  
729 there. And then the bottom picture just shows what that parking spot looks like,  
730 and you can see there's a lot of trees and landscaping behind that parking area, and  
731 we would put railroad ties as the bumper guards right there. This is the other  
732 parking spot, so this has 4 parking spots available, so there'd be a total of 6  
733 parking spaces. We can increase that if we need to, we do have more space, but it  
734 seemed like that was enough. For the actual requirements for off street parking, it  
735 said that the daycare homes and facilities and childcare centers require one space  
736 for each employee. I'm assuming that's each employee that's working at the time.  
737 It also says that handicap parking spaces shall be required for nonresidential and  
738 since home daycare is considered residential, I don't believe we need a handicap  
739 parking area.

740 Ingress and egress. This is how to get to our house. If you're coming through  
741 White Rock and you go all the way past, on highway 4, you're going to turn first  
742 on Piedra Loop and then turn onto La Senda that takes you turn around and then  
743 you can turn into our driveway. It is a wide road that's meant for common traffic  
744 and residential traffic, which this would not be an exception, having ten families.  
745 So the fact that this is a preschool up to 12 kids includes my own kids, and since I  
746 have two kids, then I would only be able to have 10 other kids coming. That would  
747 be 10 families adding to the traffic of the road, which is not a significant amount,  
748 and I don't think it would pose a big problem for a street that is intended to have  
749 flow through. I have a picture of the road right here. It's a wide two-way road,  
750 there's not parking on the sides of it, but it seems it could handle the cars just fine.

751 Setbacks. The setbacks of buildings of buildings and parking facilities from the  
752 property lines, right of ways and adjacent planned uses. The biggest part where I  
753 felt that is affected our area as the parking for parking area one, as we do have a  
754 house, that property line right along the left side of the picture there, which is 115  
755 La Senda. I did measure how far that parking area is from that property line, that's  
756 28 feet, which does fall into the category. I believe it's 25 feet that it needs to be  
757 from the property line.

It's also important to note that we will not be building any new buildings for this. There's no new construction or any kind of thing like that happening. The daycare will be in the existing studio guesthouse, and the general character of the vicinity or anything like that will not be changed. The value of the property will not be changed. It's really just using the space for a home daycare, which is the right of us as property owners with a special use permit. It's something that the house is already designed for.

Site development. This one talks about what we would do to the areas. It's really just simple things to make it more friendly for the kids. We already have put a grass patch in and we already planted fruit trees. We're planning to put a patio and a walkway and a \_\_ area, and a gathering circle outside, but no new buildings will be created or anything that's going to be tall or blocking views or anything like that.

Just to review the requirements for a home daycare. These are the requirements set out by the county. With the special use permits that you must obtain a state license, and so we will be doing that with the CYFD, I'm assuming that's what it's referring to for a daycare, and then a business license from the county, which we can apply for once we have zoning approved. Off street parking, which we've outlined already. No major alterations to structures are going to be made. So the planning and zoning commission shall establish the maximum number of children. In the county code that says up to 12 children. It is important to note that I could just have 5, but the county code allows you to have 5 children anyway, without a special use permit. It's just that since I have 2 kids already it makes a lot more sense if I want to have a nice group of kids to apply for this, so that I can have a few more kids. The area is already fenced off, our entire property is fenced off, as well as the places where the children will be. We can add more landscaping or fencing or anything else that seems necessary.

The hours are within the time allowed. And we talked about noise levels and what I discussed about criteria one before.

Those are the review for all the requirements, and I'm definitely open for questions or anything that anybody else wants to know.

Chair Thank you very much. I will say that most of our applicants who make presentations to planning and zoning are not as well prepared. So that is really nice to be well prepared. Thank you.

We've had the presentation by the applicant. Now is the opportunity for the staff to ask questions. Once the staff has asked questions, it will be the opportunity for the other parties to ask questions. Are there any questions by the staff.

Anita I have no questions, Terry.

Chair This is an opportunity for other parties to ask questions. I'll just remind you again that it's ask questions to gather information and we'll have the opportunity for



798 presentation of opinions and comments later. I'm going to open the floor, so to  
799 speak, to other parties that have questions of the applicant. I'm not exactly sure  
800 how we're going to do this. If we start talking over each other we'll try to figure  
801 out, maybe I'll work through it one at a time. Does any affected parties have a  
802 question for Ms. Matthews. *Yes.* I think that's David North. *Correct.* Do you have  
803 a question, please go ahead.

804 North The start time for operations that I saw in the handouts was 8:30. Earlier on in the  
805 presentation it became 8 o'clock, and then yet later there was a reference to 7:30  
806 for activities starting. It might be a good idea if we knew when the actual start  
807 time for operations might be.

808 Denise Sure. I can go ahead and answer these questions, is that right?

809 Chair That's the idea.

810 Denise I think the 7:30 time that you were referring to was the time that was in one  
811 of the county codes. But the time that may have been listed originally could have  
812 said 8:30 in the application. That's fine. Really, I put 8 to 9 just because I was  
813 trying to give a window for parents to come and go not all at the same time. So 8  
814 or 8:30 would be fine.

815 Marilyn The presentation you just gave the last page you showed said outdoor  
816 activities start at 7:30.

817 Denise Let's see what you're referring to. Oh, okay. So you're referring to, the  
818 county makes like a list of all the things that need to be met to apply for a special  
819 use permit. Their criteria says that no outdoor activities for children shall be  
820 allowed for before 7:30 and after 6. So that's their hours, that's saying that I could  
821 not start the daycare before 7:30. But I'm not planning to start the daycare until 8.  
822 So I was saying I'm within those times. If that makes sense.

823 David So your start time is 8 o'clock.

824 Denise Yeah.

825 David Thank you.

826 Chair Other questions from the affected parties ... Mark Petotskey ...

827 Mark That is correct. I asked a question of the planning commission, it might be more  
828 appropriate for you to answer the question. The question seems to be that this  
829 might be the onset of a commercial enterprise. I want to know if that actually  
830 changes the residential agricultural use zoning requirement. Was this restricted to  
831 this one and only one activity.

832 Chair I'm going to answer for Ms. Matthews. I don't think that's a question that she's  
833 going to be able to answer.

834 Mark That's why I said, it's probably more for the committee.

835 Chair Right. So I think what we'll do is when the county has their presentation, it may be  
836 included in their presentation already. But if not, I think that would be the  
837 appropriate time to ask the county. Let's don't forget the question. Any other  
838 affected parties with questions for Ms. Matthews.

839 Cynthia Murphy How do you plan to handle the deer and the elk that come into your  
840 yard through the, with the fruit trees.

841 Denise Yes, gardening in La Senda can be a challenge for sure, with a lot of deer  
842 around. When we first moved in, we did build a 6 foot fence that surrounds our  
843 entire property with an electric fence too. We haven't had any deer or elk coming  
844 in. I do have a pretty large garden going right now and I haven't had any deer  
845 coming in, so it hasn't been a problem.

846 Cynthia We're right behind you and we have them daily and they go over the fence.

847 Denise You guys have the horse. Yeah, we love the horse, we come and pet the  
848 horse. They can jump, over, a lot of them, but I don't know if they haven't got in  
849 yet, but we've been here for almost two years, and we planted about 20 fruit trees,  
850 and we haven't had any deer getting them, so I think the fence is working.

851 Cynthia Okay.

852 Chair Other questions from affected parties.

853 Barry Yes, we have questions. This is Barry and Marilyn Smith. We have a border about  
854 300 feet long with the Matthews' lot where this would occur. I bought our lot in  
855 1980. And I have lived on it for nearly 40 years. During that time the  
856 neighborhood has always been very peaceful and quiet. I think the noise that  
857 would be generated by this facility is unacceptable for the neighborhood. The  
858 noise is certainly going to be different from normal conversation. Kids yell, they  
859 laugh, shout, scream, and the noise level from a group of kids does not rise  
860 linearly with the number of kids. I can make an argument that it rises  
861 exponentially. So there's going to be a lot of noise from this. Nearly all of the  
862 surrounding properties are occupied by retirees. I also think that ...

863 Chair I'm going to interrupt you real quick, Barry. What you're doing is, you're making  
864 comments and those are valid comments, but do you have a question for Ms.  
865 Matthews, because you'll get the opportunity to make your opinions and  
866 comments known shortly. So do you have any questions for Ms. Matthews at this  
867 time.

868 Barry I would like her to explain why she doesn't think that 12 kids and 2 adults won't  
869 make a lot of noise.

870 Denise I understand the concern and I can see how it is a change from some of the  
871 ways the land has been used previously. I would argue that the case – so we talked  
872 about before that, in the ordinance it says it has to be an unnatural noise. So this is  
873 noise that you wouldn't normally hear in a neighborhood. This would be – it says

874 creation or maintenance of such expected unnecessary, unnatural or unusually  
875 loud noises. I would argue that kids playing is not an excessive or unnecessary or  
876 unnatural noises. It's something that you would expect in a neighborhood. It's not  
877 prolonged. Usually when kids are playing, they get excited about something, it's  
878 not going to be something that's a prolonged noise, such as loud machinery or  
879 something like that. It might just be a little squeal here or there. they are young  
880 children, so it's not something that is not expected from a neighborhood. That's  
881 what I would argue.

882 Barry Why do you think that this is an appropriate thing to do in a neighborhood that's  
883 full of very quiet retired people who have lived with very, very low noise levels  
884 for decades.

885 Denise Well, I mean there's two reasons there. For one, the community is  
886 changing, and there's a lot of new families that have moved in, and daycare is a  
887 huge need. There's a lot of families that can't find daycare, and outdoor daycare is  
888 like a nature based type of program, is not something exists, and so I think that La  
889 Senda is a really great place to do that, because there are large lots, and there's  
890 space for ...

891 I realize that people have lived in the community in these lots for a long time, but  
892 it is the right of the property owner to use the property in the way that they would  
893 like to use it. Kids and families moving into a neighborhood might change the  
894 dynamics. But this is not a retirement community. This is a public neighborhood  
895 that anybody can live in. So making. kids playing outside is a noise that you would  
896 expect to hear.

897 Barry Well, I, I, okay, let me ask it a different way. Why do you think all of this noise is  
898 natural in a community of surrounding properties that is all very quiet retirees.  
899 Because I think it is not natural. It's going to be a huge change in the  
900 neighborhood.

901 Denise Yeah, you're definitely, that's a valid opinion for you to have, the fact that  
902 kids playing outside and kids' families moving in might change the dynamics of  
903 some of the properties around here. But that's just how life goes sometimes. If we  
904 wanted to make this a retirement community and say that children couldn't live  
905 here, that would be a different argument. But the fact that children do live here and  
906 that a home daycare is allowed, but the special use permit is the fact of how this  
907 area was zoned. Having kids outside playing is something that goes along with the  
908 territory.

909 Barry So but this obviously does require a special use permit.

910 Denise Um hum.

911 Barry It is not within the standard zoning.

912 Denise It's not, you're right, and that's why I'm arguing that I do meet the noise  
 913 criteria for the zoning. The noise criteria being that it's not an unnatural,  
 914 unnecessary noise or prolonged or something that's extremely high decibel, such  
 915 as loud machinery or something like that. In general, the noise level compared to  
 916 other types of noise sources is not that high, and it's a natural part of a  
 917 neighborhood.

918 Barry This is not a commercial neighborhood.

919 Denise No it's not, and I'm applying for a residential home daycare. It's a  
 920 residential business.

921 Poulson I was just wondering if you looked at commercial property that you could  
 922 run your business out of.

923 Denise That's a good question. I have, I have. One of the issues that you come into  
 924 when you start looking at properties is that the locations of the business, like a  
 925 building, doesn't, is not often on large properties. So since I do want to focus on a  
 926 nature based type of program, where we're outside and we're learning about all  
 927 the ecology and animals and wildlife, I would like to have a property that is large.  
 928 That is basically impossible to find. Up on top of the hill, you can't really find  
 929 anything larger than a quarter, half an acre. The same is in White Rock, except for  
 930 Pajarito Acres or La Senda.

931 Poulson How about taking the children to a outside location where they could,  
 932 there's a lot of open space around white Rock where you could take them if you  
 933 had a commercial location.

934 Kevin Chair Priestley, this is Kevin Powers. I think that's a little – I don't know if that's  
 935 directly on point about the application. It may be moving off the topic.

936 Chair Thanks, Kevin, we'll let the question go. A reminder of all the participants, there's  
 937 a lot of interest here, and again, this is our opportunity to ask questions.  
 938 Obviously, some of the questions contain a comment and that's kind of hard to  
 939 separate sometimes. So let's just we're asking questions to make sure we  
 940 understand the proposal. Again, we'll get the opportunity to present our opinions  
 941 here at the right time in the hearing. David, do you want to repeat your question.

942 Poulson If you had a commercial property, you would still have access to a lot of  
 943 open space here in White Rock. It's everywhere. The Laboratory actually offers  
 944 two large TA center, great for taking kids out for nature walks and that kind of  
 945 thing. And our park sites, as well.

946 Denise That's an option that I could have taken, for sure. I think we will go on  
 947 some field trip days where our parents drop off. Going on field trip sites can be  
 948 difficult sometimes when you don't have transportation. So we, we are planning to  
 949 do forest field trips with a drop off, pick up from that site, and that's a different  
 950 issue. Yeah, there just hasn't been something that I found that meets all those



951 criteria that I would like to do, especially with the fact that we have a large garden  
952 going and we have chickens and things like that that you would not necessarily be  
953 able to have on a commercial property.

954 Chair Any other questions from the affected properties.

955 Smith This is Barry. I don't know where the 65 decibels allowed number comes from,  
956 but do you have any evidence that 12 children playing outside with 2 adults would  
957 be a noise level in general even less than 65 decibels. There's going to be times  
958 when it goes a lot higher than that, I suspect.

959 Denise What the county code says is that, to be able to tell how loud the noise is,  
960 you do have to have a certified trained person come out and measure that level.  
961 Since the daycare is not actually going, it's kind of hard to measure that at this  
962 point. So I'm using different graphs that you get just based on how loud things are  
963 from previous tests on line. Almost universally, they said conversations are 60,  
964 and once you get up to 70 or 80, I could look back to my graph, it goes into some  
965 other machinery. Since I wouldn't consider kids as loud as loud machinery, I think  
966 it would fall somewhere in that. You also have to remember the dissipation level  
967 as it going down 6 decibels at the distance that it goes away for like 1 meter, 2  
968 meters. The amount of sound actually passing over your property line would be  
969 dissipated.

970 Marilyn Smith When we, after we received the notice that you were applying for  
971 this special use permit on May 26, 2020, I was in the back yard and you were in  
972 your garden and I just talked to you across the fence, which is across the easement.  
973 Originally, you told me that the hours were going to be 9 to 4. And now, I notice  
974 in your presentation that the hours have expanded, as well as you said there may  
975 be some weekend activities, and you said, and I'm wondering if the days are going  
976 to expand. You told me that it would be Tuesday, Wednesday, Thursday. Are the  
977 days and hours expanding from our original discussion across the fence.

978 Denise I'm applying for the permit to operate on Monday through Friday with an  
979 occasional weekend event because I don't want to limit myself in the future. I'm  
980 not planning to run it Monday through Friday right now, but I just don't want to  
981 limit myself at this point. Very likely, I will keep it Tuesday, Wednesday,  
982 Thursday for several years. It's hard to say what the future brings, but in terms of  
983 this permit, that's what I'm applying for. And the hours, yeah, I was just trying to  
984 remember, I had looked at my outline of my whole business plan that I had already  
985 looked at, and I just didn't remember exactly the hours that I had said, and I  
986 expanded to 8 from 8:30 because I was trying to give parents a larger window for  
987 drop off.

988 M Smith I guess I feel like I've been duped a little bit, because in our original  
989 conversation I didn't hear any of that information.

990 Denise Yeah, well, I feel like, I hope I'm being clear right now. I mean, we talked  
 991 about how I wanted to open up part time, but in terms of a permit, usually you  
 992 wouldn't limit yourself like that.

993 Chair Any other questions. ... Open up to questions to the commissioners from the  
 994 commissioners. Do the commissioners have any questions for Ms. Matthews. Go  
 995 ahead, Sean.

996 Sean I just have two questions. First off, so within this discussion of sound, one thing  
 997 that is very clear is that, like decibel is a measure both of the noise being generated  
 998 by something and how far away you're measuring it from. You had a table there, I  
 999 don't know, a graph sort of thing, of decibel levels of various activities. You might  
 1000 have seen a really close-up of my forehead as I was trying to look at that. Does  
 1001 your figure contain the reference distance with those measurements you're taking  
 1002 from. Because what it then says is that a doubling of distance reduces by 6  
 1003 decibels, but we need to know the initial distance to know what doubling that is.

1004 Denise Sure. Can you see that now?

1005 Sean There's fine print on it that I can't read ...

1006 Denise It says exposure action value, exposure limit value. I'm not seeing a  
 1007 distance on there.

1008 Sean That at least makes it hard to interpret this, although that was more a point of  
 1009 curiosity I guess. My other question for you is – so you have a very long driveway  
 1010 going into the property. How wide is the driveway. And I'll ask the really  
 1011 substantial question. Does your driveway allow cars to pass each other going  
 1012 opposite directions.

1013 Denise Yeah, we thought about that. It does not. It can, we do have property on  
 1014 both sides, so we could widen that driveway so that they could pass by. It  
 1015 wouldn't be too difficult, but right now it is a single car.

1016 Sean Do you have any plans to widen it.

1017 Denise What I was thinking of doing was making some pull outs, so that if a car, a  
 1018 parent was coming up or someone was going down, they could just pull off to the  
 1019 side, but making the whole driveway wider is an option too.

1020 Sean As far as I'm concerned, pull outs is an acceptable solution.

1021 Chair Any other questions from the commission.  
 1022 I have a few questions. I think in your application, you had indicated that you are  
 1023 looking at a facility for 3 to 6 year olds. Is that a commitment, is that what you're  
 1024 going to start with and maybe change later. What's your plan there.

1025 Denise That is the age group that I want to work with. If the permit does specify  
 1026 age group, then I might expand that, just because, as like my son gets older, maybe  
 1027 doing a program for second or third graders, I would consider it an option.

1028            Depending on how specific the special use permit. I didn't think that age range, I  
1029            don't know if it's a factor in the special use permit.

1030    Chair    It's something you included in your application. You talked about fencing around  
1031            the playground area and also fencing between your property and your neighbors'  
1032            property. Is that sound dampening fencing, is it a barb wire fence. What kind of  
1033            fence we talking about.

1034    Denise        It's like a wire fence. It's not sound dampening. Just like a pretty standard  
1035            pole and wire fence, and then the horse (?) fence is around the preschool area.

1036    Chair    Are you planning on installing playground equipment, swings and slides and  
1037            things like that.

1038    Denise        Not really. The idea is really more of a nature based type of program, which  
1039            doesn't usually involve a lot of structural equipment. We might do some  
1040            landscaping that lends itself to play structures that possibly would have a slide on  
1041            it, but I'm not planning on making a big playground structure.

1042    Chair    A couple times during your presentation you use the term daycare and other times  
1043            you use the term preschool. Two questions: what is it, and are there different  
1044            criteria that you're aware of for a daycare facility versus a preschool facility.

1045    Denise        No, it's the same thing, it's just sometimes say preschool, but I'm really,  
1046            it's a daycare facility.

1047    Chair    Thank you. Any other questions from the commissioners.

1048    April    Denise, can you tell me the distance between your closest neighbor and your  
1049            furthest away neighbor from where you are conducting the business.

1050    Denise        Yes.

1051    April    If you have it ...

1052    Denise        Let me pull up this map, and this might help.

1053    Chair    We can see the map now.

1054    Denise        115 La Senda would be our closest neighbor for the daycare area. Our  
1055            property line does go along that, and the daycare property line does butt up to their  
1056            property line. On the far side, 110 and 116, there's an 8 foot easement between our  
1057            property and those properties. You can see there's one measurement given on the  
1058            edge of our house to that property line is 42 feet. And then you have. So if you're  
1059            thinking over here from the daycare area to that property line, I have not measured  
1060            that space, but it would be around a hundred and something feet. The farthest  
1061            neighbors would be over here, 107 and then 113A would be the property that  
1062            people would be driving by as they come in. They actually have the best view of  
1063            the driveway and everything, since our driveway does kind of parallel, but I have  
1064            talked with them and they are very supportive of the preschool.

1065 April For this 115 property, where is their home in relation to where your facility would  
 1066 be, because those are property lines, but those properties are really spaced out  
 1067 obviously, so what is, how far back is their home from that property line.

1068 Denise Let me see if this one shows that better, yeah, it does show it. You see the  
 1069 blue dot where our house is, so their property is right next to it, to the right.

1070 April That like gray box.

1071 Denise It's a tan roof, it would be to the right of our driveway. So if you come up  
 1072 our driveway ... one small driveway past our driveway.

1073 April I see it, okay. ... Got it.

1074 Denise So their house. It's not far, I wouldn't say, but that is the backside of their  
 1075 house and they have their whole patio and everything on the whole other side of  
 1076 their house.

1077 Chair Other questions from the commission.

1078 Woman? I have a quick question and this may not be appropriate but it's just  
 1079 something that ran through my mind. I notice you kept saying that it was a nature  
 1080 based program. What about in the winter months and during monsoon season,  
 1081 looking at the size of \_\_ will they be in, because they're not going to be able to \_\_  
 1082 as much. *(breaking up, unknown who asked the question)*

1083 Denise Yeah so. That's a great question, the idea is that kids are outside in the  
 1084 wintertime, and that is a new type of preschool design or daycare design. It's been  
 1085 used a lot in the European countries and it becomes bigger in the East Coast and  
 1086 up in the Pacific Northwest. So it's really expanding and the idea is that you really  
 1087 teach kids how to be prepared to be outside. So you put on all the snow suits and  
 1088 gloves and hats, and the nice thing about having it be on a property where you  
 1089 have a building where we can come inside if you need to, especially during the  
 1090 biggest issue would be lightning during monsoon months. We do have that as an  
 1091 option. Because For there are many outdoor nature based programs that are  
 1092 entirely outdoors and take place in parks and places like that, but I felt like in New  
 1093 Mexico \_\_ lightning, it would be a good idea to have the building inside. So the  
 1094 intention is to spend most time outside and go on field trips to the forest and  
 1095 garden and play in the snow and play in the rain and all that. So we do have the  
 1096 building option.

1097 ? Sounds a lot like Steiner to me.

1098 Denise Yeah.

1099 Chair Are there any other comments from the commission. We'll go on to the county's  
 1100 presentation. Thank you very much Ms. Matthews for being prepared and  
 1101 answering the questions. From the staff, who's going to make the presentation  
 1102 today.

1103 Desirae Before we get started, I don't believe I took the oath.

1104 Anita Desirae, do you swear under penalty of perjury that the testimony you are about to  
1105 give in this matter is the truth, the whole truth, and nothing but the truth.

1106 Desirae Yes.

1107 Chair When you're ready.

1108 Desirae Let me share my screen here, one moment. This is my first time doing this  
1109 type of meeting. There we go. Are you able to see my screen.

1110 Chair Not yet.

1111 *(someone [Steve?] giving her instructions)*

1112 Chair While we're figuring out technology here, I'm going to offer it up to all the  
1113 commissioners, we're all at home. I think it's appropriate to take a break. If you're  
1114 on your phone, put it on mute if you do that.

1115 *(success!)*

1116 Desirae I think we're waiting for commissioner Williams to get back.

1117 Chair I'm comfortable going along with your staff presentation.

1118 Desirae As we all know, we're here tonight to discuss SUP2020-0014 for the \_\_  
1119 facility and SUP202-20015 for home business. My presentation will include the  
1120 topics here and we'll begin with the application. Case number SUP2020-0014,  
1121 Denise Matthews, property owner applicant is requesting approval for special use  
1122 permit to conduct an in home daycare facility for up to 12 children at her location  
1123 at 113B La Senda in Los Alamos, New Mexico. The property lot LSA030248 is  
1124 within the La Senda community and is zoned residential agriculture. We are  
1125 currently reviewing SUP202-0015, Denise Matthews as the owner-applicant  
1126 requesting special use permit approval for a home business at 113B La Senda to  
1127 employ more than one non-family member for an in-home daycare facility. The  
1128 property lot LSA030248 (A?) is in the La Senda community zoned residential  
1129 agriculture.

1130 The intent of RA zoning district is to accommodate single family dwellings and  
1131 accessory structure in use there. It is further intended to maintain and protect a  
1132 residential character, a development characterized by large lots, having a rural  
1133 atmosphere for agriculture, horticulture and animal activities may be pursued by  
1134 the residents of a RA district.

1135 The proposed site is illustrated there in blue. A little background here is the lot is  
1136 located within White Rock. It contains 131,986 square feet, or three acres. It  
1137 consists of a comfortable residence and accessory building, which they are  
1138 proposing as the daycare facility, and a garage. It is \_\_ a private driveway from  
1139 La Senda Road \_\_. It's near the intersection of Piadra Loop is providing access  
1140 from New Mexico state road 4.



1141 Use definition: Ms. Matthews plans on operating an in-home daycare facility for a  
1142 maximum of 12 children, between the ages of 3 to 6 years. The request is  
1143 consistent with the definition of a daycare facility as described within the  
1144 development code and posted on the screen. The number of children cared for  
1145 determines the classification and terminology that is used throughout chapter 16.  
1146 Due to the age and number of children, the state of New Mexico requires an  
1147 additional adult to maintain a 1 to 6 ratio, creating the need to hire another  
1148 employee. The additional employee, according to definition, classifies an in-home  
1149 business from a standard home occupation to a home business.

1150 As mentioned, the subject site is zoned RA. And this slide is an excerpt of section  
1151 16-2017, the use index table. It shows the use is relevant to this case and the Los  
1152 Alamos County residential district. The table shows that the daycare facilities \_\_  
1153 with this, and it is an allowed use but only with the granting of a special use  
1154 permit. This type of permit allows the use to have been determined to be  
1155 compatible with the purpose of a particular zoning district that requires additional  
1156 review at a public hearing, therefore requiring approval from the planning and  
1157 zoning commission. A home occupation is allowed as an accessory use in a  
1158 residential district. However, a home business must obtain a special use permit to  
1159 operate. Are there any questions.

1160 Male I guess I do have a quick question. The applicant mentioned in her presentation,  
1161 the whole ADA parking issue came up. I am a bit unclear on this, whether or not  
1162 this is considered a commercial, or residential or nonresidential use or a  
1163 commercial. Because use se is where you fall in this table. And service is I think is  
1164 generally a commercial category. Can you clarify.

1165 Desirae In the use index table a child care facility is under services, there is a  
1166 whole other subcategory for commercial, and it's not listed there. It's under  
1167 services that are allowed, and it's allowed here in a residential district through a  
1168 special use permit.

1169 Male You would consider this a residential use.

1170 Desirae It's the, here it's a service, and it's allowed in a residential district with a  
1171 special use permit.

1172 Highlighted in green is the existing 523 square foot accessory building where the  
1173 daycare hopes to operate. The application for the hours were from 8:30 to 5 PM.  
1174 As we learned, Ms. Matthews is still working out the details. Most likely it will be  
1175 from 8 to 5, so it will be in the general operating hours of 8 to 5. The lot provides a  
1176 private driveway from La Senda to the daycare, where six parking spaces shaded  
1177 in yellow are proposed. The blue dash lines around the perimeter here illustrate  
1178 fencing within the boundary enclosing the rear and the side yard. And in the front  
1179 yard, it separates the residence from the daycare, and that's this fencing right here.  
1180 New fencing that's shown in purple is proposed to enclose the dedicated space just

for the facility. It will be landscaped and include play areas and the garden. Fruit trees and native plants create a buffer to adjacent property at 115 La Senda.

On the screen now is section 16-282 daycare. This specifies and provides provisions for daycare facility, and their outline is in this section. All but four, all but four and six apply to a daycare facility. As you see on the right, the facility is highlight, those that are checked off are applicable for this. So \_\_\_ New Mexico license code regulates child facilities, so this code makes the license a condition of approval of the special use, and it is listed within staff recommendations. Number two, business license is also required as per county code, section 12-33, subsection a, and is applied for in the community development department. The daycare, like any other business, may not operate unless the license is issued. Number three, code requires a daycare facility to provide one parking space per employee. The application will provide six. Number four is not applicable to this request. Five, no structural alterations are being considered for this application. And six is \_\_\_, and number seven existing proposed fencing will enclose the recreational area for the rest of the lot and adjoining residential properties. Number eight, some fencing exists and more is proposed to secure the facility, and children will not be present before 7:30 or after 6 PM, will be operating within those hours. As far as number ten, the noise levels, noise levels are referenced in chapter and article regulating noise levels, specifically those that are a nuisance and above 53 dba within the hours of 9 PM to 7 AM, which will not apply. They are not going to be in operation. 65 ~~bba~~ dba from 7 AM to 9 PM. The provision allows an additional 10 bbas for a period not to exceed 10 minutes or one hour during the hours of 7 AM to 9 PM. Noise levels that do not adhere to this section are enforced by code compliance during an investigation.

We'll move on to the interdepartmental review committee or IDRC. The \_\_\_ independently reviewed request from March 9 to March 13 via email. The \_\_\_ responses that we received \_\_\_ fire chief, conducted a site visit on March 12 and approved the home daycare with the following conditions: No more than 12 children; at a minimum install a working smoke and standalone alarm notification device that \_\_\_, or a certified fire protection contractor to insure the system is working and designed before operation of final inspection of life safety inspection annually; install one fire extinguisher mounted by one of the exit doors by the studio; schedule a final fire and life safety inspection through the fire marshal's office before the \_\_\_ and schedule an annual fire and life safety inspection annually, as needed for occupancy use of a daycare. She also added that she approved SUP2020-0015 without conditions.

\_\_\_ Eric Martinez our county engineer, reports that he approves the request as submitted without comments or conditions.

Angelico Gurule, environmental service manager, public works, had no questions. Had a question but had no concerns or conditions.

1222 We'll be going over a special use permit review criteria. This is something Ms.  
1223 Matthews has already gone over and her responses. Section 16-156 of the Los  
1224 Alamos county development code says that the planning and zoning commission  
1225 shall use this criteria to base its decision to approve, conditional approve, or deny  
1226 special use permit. Criterion one: substantially conform to the comprehensive  
1227 plan; be detrimental to the health, safety, peace, comfort or general welfare of  
1228 persons residing or working in the vicinity; or be detrimental, injurious to the  
1229 property to the value of property in the vicinity, or to the general welfare of this  
1230 county. Economic vitality is a strategic focus identified within the comprehensive  
1231 plan for the promotion of a diverse economic base and encouragement of new  
1232 business growth.

1233 For the special use permit 2020-0014, the daycare facility, it is a permitted within  
1234 the RA district, subject to planning and zoning commission review and approval  
1235 as a special sue. A daycare facility is not harmful, it will not be detrimental,  
1236 injurious to the general welfare of the community. It will provide a needed  
1237 community resource for the county large workforce. Peace and comfort of the  
1238 persons residing or working in the vicinity is subjective and cannot — be proven  
1239 either way.

1240 SUP2020-0014, home business. As a daycare facility is permitted within the SUP,  
1241 adding one more employee to the facility will not be detrimental or injurious to the  
1242 areas noted within the criterion.

1243 We'll highlight number two, sufficient parking facilities. Section 16-282, daycare  
1244 and off street parking requirements in section 16-370. This states that one parking  
1245 space is required per employee. The adequate parking is being provided with six  
1246 spaces. In the case of SUP202-0015, the development code does not specify  
1247 parking requirement for a home business, but single family residents must  
1248 maintain two off street parking spaces per dwelling unit.

1249 Criteria 3, provisions of for onsite and offsite ingress and egress, and traffic  
1250 circulation. And in conformance with the county's construction standards, will  
1251 meet the traffic needs the proposed use will not adversely affect neighboring  
1252 properties. \_\_\_ is existing ingress and egress for the property will not change, and it  
1253 shall provide a private driveway for onsite and offsite access from the La Senda  
1254 road. The county engineer has reviewed this request and has had no comments or  
1255 concerns.

1256 Male That's ridiculous.

1257 Chair Desirae, I'm sorry. Somebody doesn't have their phone or computer on mute and  
1258 so please do that, so we can hear the presentation.

1259 Desirae Criterion 4, it addresses the setbacks of buildings and parking facilities  
1260 from the property line, right of way, and adjacent land uses, are in conformance  
1261 with this chapter and provide protection to or transition from residential

1262 development. Our response is that there is no construction being proposed at this  
 1263 time. Existing buildings are within the development and adhere to the  
 1264 development standards for the RA zoning district. The property has boundary  
 1265 fencing and more is proposed \_\_\_ the daycare from the residence.

1266 Criterion 5, the site plan. Landscaping, screen planting and fencing demonstrates  
 1267 compatible with adjoining areas and conforms to site development standards of the  
 1268 district regulations. The site was previously developed and constructed in  
 1269 compliance in adopted standards. Existing landscaping, screen planting and fence  
 1270 meets current county development standards and district regulation. New fencing  
 1271 will require a building permit, at which time development standards will be  
 1272 applied. The county has no additional design requirements that would apply to this  
 1273 application.

1274 That concludes special use permit with new criteria.

1275 On your screen now is public notification. It has been completed and pursuant to  
 1276 county ordinance section 16-192. All property owners of record within a hundred  
 1277 yards or 300 feet were notified of this need. As of June 4, 2020, staff has received  
 1278 responses from five property owners within a hundred yards. All parties received a  
 1279 link to be participants of the virtual meeting and provide public comment.  
 1280 Additionally, their written concerns are attached to the packet and a part of the  
 1281 record. I will add, as I mentioned earlier, that we got three more responses from  
 1282 the publication of the agenda and packet.

1283 Staff recommendation: Staff has applied the special use permit review criteria on  
 1284 both applications and recommends as follows:

1285 Approval of SUP202-0014 with the below conditions as read earlier by fire  
 1286 marshal Wendy—Survey. And includes the applicant must obtain a state license  
 1287 and submit to the community development department prior to commencing  
 1288 business, and a business license must be secured from the county prior to  
 1289 operations. Staff also recommends approval of SUP202-0015.

1290 I'll move on to findings of fact and \_\_\_ there for you. And we have exhibits  
 1291 available should you guys want to refer to any of them.

1292 Chair Thank you. Do you have any exhibits that were not part of the agenda packet.

1293 Desirae I have three letters that were not a part of the agenda packet, as well as in  
 1294 included Ms. Matthews' power point presentation will be included at the end.

1295 Chair Okay and we need to make sure that your presentation is included as part of the  
 1296 record as well.

1297 Thank you very much. This is the opportunity for the applicant. Ms. Matthews, if  
 1298 you have any questions of the county, and then we'll move on to questions from  
 1299 the affected parties. So, Ms. Matthews, do you have any questions for the county.  
 1300 And you're on mute.

1301 Denise I don't think I have any questions right now. I hope that we have gone over  
1302 everything. I appreciate everybody listening and hearing my plans.

1303 Chair Thank you. Now we'll go, we'll do the same thing with the affected parties. I think  
1304 you went well last time, as far as talking over everybody. So I think it went very  
1305 well, frankly. I do remind you that this is the opportunity to ask questions. As soon  
1306 as we're done with the county will be the opportunity for the affected parties to  
1307 make their presentations. So if there's any questions for Ms. Lujan or anybody  
1308 else from the county staff, this would be the opportunity from the applicants. I'm  
1309 sorry, for the affected parties.

1310 North I have a question ... did the county do any analysis for the noise situation or  
1311 potential to the borders of the property. ... Is that a no.

1312 Chair Desirae, you were on mute when you answered.

1313 Desirae The county did not perform any voice or noise analysis.

1314 North So that's basically an unknown from the county's point of view.

1315 Desirae We can't go out and measure sound because the facility is not in operation.  
1316 So typically, when a business is in operation or if there is any residential nuisance  
1317 when it comes to noise, co-compliance is notified and they go out and they have a  
1318 measuring device to be able to investigation those properly.

1319 North I believe that means the answer is no.

1320 Chair I'm sorry, I think she answered the question and we're not going to go back  
1321 around. You may not like the answer, I think she answered it.

1322 North I was just seeking clarification.

1323 Chair I think she said that there was no noise analysis.

1324 North Actually, my question had to do with whether that was an unknown to the county.

1325 Chair I think she said that there was no analysis done. I think there was a logical  
1326 connection there that no ...

1327 North Thank you.

1328 Chair Any other questions from the affected parties.

1329 Petoskey Can I ask a question. One of the concerns is that I read the regulations for  
1330 establishment of a daycare center or a preschool that would impact the speed limit  
1331 along La Senda road. I understand that the, our police department has done an  
1332 evaluation and will the speed limit change on La Senda road from 30 miles an  
1333 hour to 15 (?) miles an hour near the establishment of the daycare center.

1334 Desirae To my knowledge, no, it will not change. County engineer has reviewed the  
1335 plans and he had no comment that indicated that the speed limit would change in  
1336 that area.



1337 Petoskey Okay, I had made, I actually referenced the state ordinance that said that  
 1338 that had to be a consideration. And so, I did not see that when I took a look at his  
 1339 evaluation that was published online. That even took a look at that. Do you know  
 1340 if he did.

1341 Desirae I can't answer for that. The application was sent to IDRC, and they  
 1342 responded, and he responded that he had no comments or conditions.

1343 Petoskey Thank you very much.

1344 Chair Are there more questions from the members of the affected parties. Okay, thank  
 1345 you very much. This is opportunity now for commissioners to ask questions of the  
 1346 county staff.

1347 Sean So I guess what I was getting at earlier was use is, since it's another recurring  
 1348 theme of this commission. Is, do you agree with the applicant's assessment  
 1349 that they will not require ADA parking.

1350 Desirae That section of code was cited in Ms. Mathews' report, and it does say that  
 1351 residential districts would not have to \_\_\_ by the ADA requirements, and it is a  
 1352 residential district.

1353 Sean Thanks.

1354 Chair Any other questions from the commissioners.

1355 Woman Are there any decibel regulations regarding the livestock that live in that  
 1356 area.

1357 Desirae that section of code is not specific in terms of animals or uses or ...

1358 Woman Thanks.

1359 Chair Other commissioner questions. I'm going to stick on this noise question, or sound  
 1360 question. So we do have daycare facilities in the county. Do we have any kind of a  
 1361 reference that \_\_\_ outside of another daycare facility, what would the noise level  
 1362 be. It does seem a little rough to say we can't measure noise until we have a  
 1363 problem. So, do we have a reference for what a typical daycare outdoor area, what  
 1364 kind of noise they would generate.

1365 Desirae We do not. I also went online and researched a little bit on sound, and 65  
 1366 dba of, they were marked as normal conversation \_\_\_ or business office.

1367 Chair Let's see here. Are there any other special use permits, active special use permits  
 1368 in the La Senda community.

1369 Desirae I don't have that off the top of my head. I'd have to do a report.

1370 Chair Not to your knowledge.

1371 Desirae Yeah, Anita might know – she's been here longer, but not since I've been  
 1372 here. I haven't processed any.

1373 Chair Anita, are you still online.

1374 Anita Yes, I'm here. So a few years ago, there was a nursery, Dave Fox's (?) nursery. I  
1375 not sure where it is in Pajarito Acres. There was another business, but I don't think  
1376 it's open anymore. There was a vineyard with a tasting room, and that was  
1377 probably it. They didn't get special use permits for those uses.

1378 Chair So, maybe I'm, my lack of knowledge, is La Senda a sub-neighborhood of Pajarito  
1379 Acres, or are they two separate, what's the difference between La Senda and  
1380 Pajarito Acres.

1381 Anita I know they have two different homeowners associations. So that might be one  
1382 way to – the county as a zone, it's all Pajarito Acres.

1383 Chair Those are my questions. Once more time for the county commissioners. Are there  
1384 any questions for the county staff. Thank you very much, Desirae.

1385 At this time, we're going to move on to the next piece of our hearing, which is the  
1386 opportunity for affected parties to make presentations and, let's see, I think it  
1387 worked fairly well before. I'll open the floor. Please try not to talk over each other.  
1388 And again, this is your opportunity to make your presentation, make your opinions  
1389 known, have comments.

1390 Male So, Terry, can we start with the three letters that were presented.

1391 Chair Hold on just a second. We will make sure we get those. I will tell you that we want  
1392 to hear all the opinions. At the same time, if they become redundant, I may ask  
1393 you if you have a different angle or a different concern. There's no reason to hear  
1394 the same thing five times. But we want to make sure that we hear all concerns. If I  
1395 somewhat cut you off, please bear with me, and if you think that's inappropriate,  
1396 we'll discuss it. But we just don't need to see the same thing 5 or 6 times.

1397 Cynthia This is Cynthia Murphy.

1398 Chair Hold in just a second. I do want to make everybody has the opportunity to have  
1399 their comments heard. I'm sorry, Cynthia, I talked over you. Go ahead.

1400 Cynthia I sent an email to Ms. Lujan and gave me reasoning behind why I didn't  
1401 want it. I know you have it in the packet, so I'm not going to be redundant. But  
1402 one thing was added that I do, am very troubled with, is the fact that we have one  
1403 horse right now. But we have facilities for four horses that have been here since  
1404 1974. And at times we've had four horses in there. She's telling me that she's  
1405 petting a skittish horse without permission over the fence, or she's coming onto  
1406 the property. I don't know which. But I do very much object to having small  
1407 children around horses and horse trails. This place is linked with horse trails all  
1408 over, and there are people that ride all over on these horse trails.

1409 Chair I hear then this safety concern.

1410 Cynthia Yes and also, it is interrupting the peacefulness of this neighborhood.

1411 Chair That's understood. So I will ask Desirae to, let's read those, I think you said  
1412 there's three emails that are not included in the packet. If you could read those, I  
1413 think this would be a good time to do that.

1414 Desirae So the three letters I have one of the neighbor who is not in attendance  
1415 tonight, so I'm going to start with that one. And this is addressed to director Paul  
1416 Address, on June 10, 2020.

1417 Dear Mr. Address, My husband and I have already submitted a response to a letter  
1418 from the community planning development dated May 26, 2020, for the  
1419 notification of the intents to open a daycare facility at Denise Matthews' home at  
1420 113B La Senda road in White Rock. Case number SUP2020-0014. I am writing to  
1421 you again with my additional heartfelt thoughts and hope that you will take them  
1422 into consideration when voting on this matter. A 15 day notice is not sufficient  
1423 time to put together an adequate response to this special use permit request. In  
1424 addition, we are under restriction from the governor and the New Mexico  
1425 Department of Health for COVID-19. We should have been given adequate time, a  
1426 couple of months, to fully understand the scope of the proposed business and to  
1427 meet with all our affected neighbors. During this trying time, this is not a fair  
1428 method to address the situation. Home is where the heart is. Home is our refuge.  
1429 \_\_ comfort, shelter and peace. Home is where we turn to when troubled, tired or  
1430 sick. Home is where we're happy and relaxed. Home is where we can retire to. It  
1431 is a place to gather and share life with friends and family on special occasions.  
1432 Home is very dear to us all. La Senda is a special subdivision that we call home.  
1433 Neighbors take pride in home ownership, and this shows them how well their  
1434 homes shine. This is a special RA zoned subdivision with the county atmosphere  
1435 marked by old pines that have been survived bark beetles and drought conditions.  
1436 Large lots and animals. Light filters through from sounds of dog barking, greeting  
1437 its owner, or the delivery guy, horses' neighs, goats \_\_, roosters crowing and birds  
1438 singing and laughter coming from single family residences. Everyone has made  
1439 choices of where they will reside because of what they value most. Some people  
1440 like to live in the cities where they will not be near other people and hustle and  
1441 bustle of city life. Some people like to live in towns where they can still own a  
1442 home, a house to call a home, so also have closeness to their neighbors and  
1443 community. Some people even choose to live next to schools, churches and parks.  
1444 Some people like to live as far in the country as possible so that they can live in  
1445 the quiet solitude. When buying a house, you want to find a place where you can  
1446 reside in a pleasant, friendly and safe environment.

1447 We are very emotional about this proposed daycare facility because of what we  
1448 have to lose. Namely, our peace and quiet. It's lost forever. The subdivision is  
1449 zoned for residential agriculture. If this daycare business is allowed, then the  
1450 subdivision no longer meets the original intent of a rural community. My husband  
1451 and I moved into this subdivision because the quality atmosphere it provides. We  
1452 have never really felt more at home until we found this place. And having this

1453 tranquility and the way of life is just what the doctor calls for. You can really stay  
1454 in the moment. My husband I have been there for 20 years and others have been  
1455 here longer, enjoying the benefits of this country living and community. We have  
1456 worked very hard in order to obtain this way of life. Business that draw more non-  
1457 residents into our neighborhood will shatter what wonderful feel of country home  
1458 living. It would divide the residents instead of bringing people closer together. We  
1459 want to preserve our rural community and way of life.

1460 So I'm asking you to vote no on this special use permit, so that we maintain the  
1461 peace and quiet that we have enjoyed for the last 20 years. Please keep residential  
1462 areas as residential and commercial areas as commercial. Sincerely, signed  
1463 Monica — Noll, 114 Piedra Loop.

1464 Kevin Powers Chair Priestley, I just want to remind the commission that, since  
1465 there is no ability to cross examine this person by Ms. Matthews or anyone else,  
1466 you need to give that the weight as you determine appropriate.

1467 Chair Thank you.

1468 Desirae Chair Priestley, I have two more letters, both of which their authors are on  
1469 the attending list and present tonight. Would you like me to read those letters, or  
1470 ...

1471 Chair Give me a name.

1472 Desirae We have the Smith family, Marilyn and Barry. And we have the North and  
1473 Peck family – David North and ...

1474 Chair So, Marilyn and Barry, is that right. A letter from them.

1475 Desirae Yes.

1476 Chair I'll offer that up to Marilyn and Barry, would you like to make your presentation  
1477 now, or would you like to have Desirae read it, either way, your letter or your  
1478 email is part of the record.

1479 Powers Chair Priestley, the impartial testimony is preferred over reading that into  
1480 the transcript.

1481 Chair Understood. That Marilyn or Barry, would you like to make your presentation, or  
1482 you're welcome to read your letter as well.

1483 Marilyn Yes, we'll try to synthesize it. In Denise's application, the very first number  
1484 one, it talks about violating the peace and comfort of neighboring properties and  
1485 owners. And we feel that this special use permit would violate the peace and  
1486 comfort of neighboring properties and owners, as well as the general welfare. I'm  
1487 a retired early childhood educator, after 31 years. And I know that young children  
1488 can really make a lot of noise, and especially up to 12. The Matthews right now  
1489 only have one son who's 4 and when he's outside, we can hear him, sometimes

1490 even inside our house. Our house is 60 feet from the property line where this  
 1491 daycare is proposed to take place.

1492 Also, their driveway is gravel, just as ours is, and we can hear cars coming and  
 1493 going on the gravel driveway. This is just going to go up exponentially with a  
 1494 number of parents driving in and out, especially up to 12.

1495 I didn't quite understand, I don't think, maybe I misunderstood Denise in her  
 1496 presentation. I thought she said that the house was designed for daycare, but that's  
 1497 not true. They are not the original owners. The original owners built that house, it  
 1498 was only a couple, and they built their own residence with a guest house. And then  
 1499 what Denise is proposing to be a daycare facility was an artist studio. So it was not  
 1500 originally designed for a daycare facility.

1501 I just have one comment for the county. When we received the notice about this  
 1502 proposal, it says in here that we are to provide evidence at least two business days  
 1503 before the hearing. When our letter didn't get put in there, in the packet, one of our  
 1504 neighbors called Ms. Lujan and asked her about it. And she told them at the time  
 1505 that, that a report was produced 72 hours before this presentation was to happen.  
 1506 So I think the county needs to make it, clarify whether it's going to be 48 hours or  
 1507 72 hours. So that we all are on the same page. Thank you.

1508 Chair There was another letter or email from one of our attendees.

1509 Desirae Yes, the last letter was from David North and Akkada Peck at 111 La  
 1510 Senda.

1511 Chair So, David or Akkada, would you like to make your presentation now.

1512 North Sure. I think that, well, one of the things I'd like to start with is actually a question  
 1513 you posed to staff. Which is the differences between La Senda and Pajarito. They  
 1514 are two different HOAs, the Pajarito HOA is fairly active. The one in La Senda is  
 1515 essentially inactive. But the covenants in the two areas are different. They do not  
 1516 apply to this. So that's not important. The only real significant difference between  
 1517 the two that might apply to this issue is that the La Senda properties are by law  
 1518 essentially smaller than the ones in Pajarito, usually about two-thirds or less the  
 1519 size. So these are not as big as Pajarito. And it is not a sub unit, it's a completely  
 1520 different unit. They were established about 10 years apart. So there's a little  
 1521 history.

1522 Our letter, which I would like to read, but I'd like to differentiate between when  
 1523 I'm reading it and when I'm – uh, speaking off the cuff because of issues that have  
 1524 come up while we were listening tonight. It starts out by addressed to Ms. Lujan  
 1525 and et al.

1526 It says, first, for observing Denise Matthews and her volunteer work at PEEC.  
 1527 She does work there. We would offer that she is both capable and enthusiastic  
 1528 when it comes to dealing with groups of young children. It should also be noted



1529 that the Matthews' property has been maintained and updated very ~~nice~~nicely  
1530 since purchase.

1531 But on the other hand, many, perhaps most of us in the neighborhood moved here  
1532 in hopes of peace and quiet. Small children can make a lot of noise. We lived  
1533 briefly across from a daycare operation, and the cultural imperative of those  
1534 children was to scream as loudly and as often as possible. It was outdoors. That is  
1535 specifically why we didn't choose a house next to a school or a daycare center.  
1536 *Laughs* ... In fact, rejecting several candidates primarily for that reason.

1537 I would like to digress just a little bit. There was a chart that said that it's  
1538 considered to be a little bit excessive, well, excessive by law, if the sound crossing  
1539 the border of a property is 65 decibels or above. The daycare center actually  
1540 extends to the border of the property. That means that distance is not an issue in  
1541 this case. If the daycare center were to emit 65 decibels, that makes it not in  
1542 compliance. While it's true that a casual conversation may be lower than that, 12  
1543 screaming children, I can absolutely assure you, is above that. On the same chart,  
1544 it said that a noisy restaurant is about 80 decibels. Now, let me point out  
1545 something that a lot of people listening might not know. Decibels is a measure of  
1546 sound energy or pressure. It does not differentiate frequency. So there's a big  
1547 difference between 80 decibels of this and 80 decibels of this. It can really make a  
1548 huge difference in terms of the penetration and travel of the sound.

1549 And one thing is the decibel scale is not linear. It's logarithmic. That means that  
1550 66 decibels is well in excess of two times as loud as 65. And that multiplying  
1551 factor keeps going.

1552 I have also seen research that indicates that typically a loud daycare operation will  
1553 generally run in the range of 90 decibels, which is way above a loud restaurant. So  
1554 there's little doubt at this point before even doing the measurement that more than  
1555 even 65 decibels over an extended period time from an outside daycare center is  
1556 going to go across the boundary of the property. This may lead to significant  
1557 problems down the road back and forth. In particular, with the people who are  
1558 closest. We are not. We are, however, in direct line of sight from the bedroom  
1559 window to this facility.

1560 Okay, back to the letter. I do not know if the county noted that the driveway ~~is~~  
1561 strictly one lane with little pullout room. You already know that. Inevitably,  
1562 people will be backing up, due to others entering the property, or waiting in the  
1563 road. This is not that big a problem. I simply mentioned it because I'm not sure  
1564 anybody noticed that. The line of sight at the road is pretty good. On the other  
1565 hand, there are people who drive through here pretty darn fast. So it may lead to a  
1566 screech every now and then, but I doubt that it would get any more serious than  
1567 that. Also, they're talking about putting in pullouts. Another point is that that  
1568 driveway and the one next to it used to, and I emphasize used to, wash out in a  
1569 heavy rain. Both the Matthews and their neighbors have since done work on the

1570 driveway. I don't know if we know for sure that's going to happen again or not.  
 1571 Because there hasn't been any really big rain since then. But probably won't be  
 1572 anywhere near as bad as it used to be.

1573 Okay. The driveway is not paved and in snowy conditions, inexperienced rivers  
 1574 drivers may find the driveway exciting. And I say exciting because what you don't  
 1575 see on the plat there is that it's steeply downhill. The potential for sliding out into  
 1576 the road is significant. On the other hand, going back to the letter, most people  
 1577 around here have some experience dealing with that. So I don't really see that as  
 1578 being a big issue, but it's something to think about.

1579 Next paragraph. Denise would certainly do a first-class job. That's not the issue.  
 1580 It's a question of whether this will be a quiet residential neighborhood or  
 1581 increasingly busy and noisy. It also poses a significant issue to the commission.  
 1582 The overwhelming majority of respondents object. Actually, I think it's  
 1583 everybody. What point would there be to public engagement if the daycare is  
 1584 approved. Probably it would be best for everyone if the application were simply  
 1585 withdrawn.

1586 I would also point out that, as many people have said, it clearly has already upset  
 1587 the peace and comfort of a number of residents. It will probably continue to do so.

1588 I think Akkana might have comments as well.

1589 Akkana I do. I only have a few brief comments to add based on the presentation we  
 1590 heard tonight. One is that, I love the image Denise gives of the nature play and the  
 1591 group story time and the conversations and the story circles and everything. That  
 1592 all sounds great. I just have a hard time believing it, because I have lived near  
 1593 preschools and children like to run around and scream when they play. And that's  
 1594 okay, but 12 children really make a lot of noise. She mentioned that family noises  
 1595 are typical. This neighborhood does have families. I don't think it has any families  
 1596 that have 12 children that all play at once. Most of the families around here have  
 1597 maybe 2 or 3 kids. So there is quite a bit of difference between a family noise and  
 1598 a daycare that's going all the time with 12 children. That's all I have to say.

1599 Chair Thank you to both of you. I think, Desirae, that's the last of the letters. Is that  
 1600 right.

1601 Desirae That's the last.

1602 Chair Again, opportunity for other affected parties to make a comment. Again, I  
 1603 encourage you to think about the comments that have already been made and try  
 1604 not to be too repetitive. But this is an opportunity. We do want to have public  
 1605 engagement. So if there's anybody else who would like to make a comment or  
 1606 express an opinion.

1607 Petoskey Make I make a comment.

1608 Chair Mark, I see your hand raised, go ahead.

1609 Petoskey Thank you for giving me a chance to address the case before us. \_\_\_ Denise  
1610 to request approval for a special permit. I think everybody that has talked, from the  
1611 county governmental side, as well as the neighbors, we all want to maintain a safe  
1612 neighborhood. When I read the letters that were posted online, there was a  
1613 unanimous voice that was raised in opposing the granting of the waiver to the  
1614 current zoning restrictions. When I received the county's letter, I, too, initially  
1615 objected for many reasons. We have been paying a residential association fee for  
1616 years to help maintain the quiet and safe residential only neighborhood. Now, my  
1617 wife and I, we live at the extreme of the 300 foot radius of, from the, Denise  
1618 Matthews' property. And so, the sounds that might impact from children would  
1619 not be nearly as loud for us as it would be maybe for the adjacent neighbors.  
1620 However, I like the sound of children. I think Denise Matthews has done an  
1621 admirable job, as well as Desirae Lujan, in answering all of the safety and security  
1622 questions that I had, especially dealing with traffic along the road and people  
1623 parking along the road, because it is kind of a blind corner on La Senda. But I  
1624 don't believe that the safety concerns are nearly as great as they used to be.

1625 I also understand that the granting of these permits will not change the zoning  
1626 restrictions of the neighborhood. I hope I am not wrong in making that  
1627 assumption. But I believe the zoning restrictions, keeping this as a residential and  
1628 agricultural area, do not change with the issue of this special permit.

1629 Finally, I would like to say that, due to COVID-19, it has been difficult for us to  
1630 discuss this issue with our neighbors. And I feel that this has been kind of rushed.  
1631 We were given only a little over a week from the time of the announcement until  
1632 our comments had to be made. All of the concerns that I have have been really  
1633 well addressed. I no longer have, from my perspective, \_\_\_ the permits \_\_\_ perhaps  
1634 anybody that was on the notification list of noise or safety or zoning restrictions.  
1635 So I have no further restrictions. And I don't believe that our property values and  
1636 property taxes would be impacted as well.

1637 So I thank Denise and Desirae, for all of the work that you've done in helping us  
1638 understand what the impacts would be. Thank you.

1639 Chair Thank you. Any other affected parties want to make a comment.

1640 Poulson Yeah, Terry. I just wanted to be on the record just saying that we've  
1641 been talking about noise on this issue. That's the reason I moved here is because it  
1642 was such a quiet neighborhood. I had several people that had told me as I was  
1643 moving out here that sound travels incredibly well. You'll be hearing the  
1644 neighbors so easily. And I was like, oh, how could that be, they're so far away.  
1645 But when I moved out here, I realized how much I can hear everything that's  
1646 going on in this neighborhood. Children in this neighborhood, 12 of them, 10 of  
1647 them, 8 of them, are going to make a difference. I've got one neighbor that's got 5  
1648 kids. I hear them all the time. It's not too bad, but once we start increasing them  
1649 up to 7, 8, 10, it's gonna get pretty loud. That's all the comments I had.

1650 Chair Thank you David ...

1651 Barry May I make a comment. There is a technical mistake in Denise's presentation. She  
 1652 showed how sound transmits and how the decibel level goes down, but that was in  
 1653 what's called a free field, that is, empty space. Sound travels much farther over a  
 1654 solid ground. So I think we need a new calculation with that.

1655 Chair Thanks for the clarification. Any other comments from the affected parties.

1656 Marilyn I just have one last comment to make. We didn't realize, we live right on  
 1657 the other side of the fence from where this daycare is going to take place. And we  
 1658 didn't realize that the Matthews were applying, or Denise was applying for this  
 1659 special use permit. So we're disappointed that we weren't informed directly by her  
 1660 that this was going to be happening. I'm also disappointed that the conditions of  
 1661 the daycare keep increasing hours and days. And maybe age of children. So that's  
 1662 all very disappointing. Thank you.

1663 Chair I think everybody's had the opportunity. I will tell you that I appreciate the  
 1664 involvement from the community. You guys have been on the phone here for a  
 1665 couple of hours now, waiting this out, so I appreciate the input.

1666 Per our process, someone makes a presentation, this is opportunity for the  
 1667 applicant, the county, and the commissioners to ask questions. I'll just send it out  
 1668 to you, Denise, first. Ms. Matthews, do you have any questions for any of the  
 1669 presenters we just heard.

1670 Denise Questions. I don't have questions. I do have a couple of responses, if that's  
 1671 okay.

1672 Chair Actually, no ... it's time for questions. They had the opportunity to question you  
 1673 and not make comments at the time.

1674 Denise I guess I would just like everyone to think about the value that something  
 1675 like this can add to the community and that I have never been trying to change  
 1676 anything that I said. I'm just trying to clarify everything at this point, and I just  
 1677 like for everyone to think about the value that this would give to the community.

1678 Chair Thank you. For the county, any questions for the participants, affected parties, I  
 1679 should say. Commission, does the commission have any questions for the affected  
 1680 parties. Sean (?), did you have your hand up.

1681 Sean I guess I do have to ask the obvious question, which is, would you all object to a  
 1682 family of 12 children moving in.

1683 Marilyn? Yes, but we wouldn't be able to do anything about it. This is a special use  
 1684 permit. This is not about a family of 12 children moving in.

1685 Akkana? I agree with that response.

1686 Woman So do I.

1687 Male I on the other hand, do not. ~~Is~~ as the question is patently unfair. It would be very,  
1688 very difficult to find a family of 12 kids between 3 and 6 years old. (*generally*  
1689 *laughter*) But if you ever do, it would be interesting to see what that sounds like.

1690 Chair Any other questions from the commissioners.

1691 Cynthia May I add a comment. I've been watching this \_\_\_ who recused herself from  
1692 this, making faces through this whole thing, laughing, showing her displeasure at  
1693 statements and her pleasure at statements. And having her little boy in her lap and  
1694 all of those kinds of things. I think that's kind of unfair for everybody.

1695 Chair Thank you.

1696 Stephanie I have a quick question for the people who have just spoken. Are there any  
1697 decibel complaints about animals, which can be very noisy. And why.

1698 Woman No ... because they're not that noisy.

1699 Woman No and because they're very short lived here ...

1700 Woman ... and besides, there's not 12 of them in one place.

1701 Woman There are some noisy dogs in the neighborhood.

1702 Woman \_\_\_'s neighborhood has that.

1703 Chair Other questions.

1704 Woman I wanted to say also that \_\_\_ for animals as well. Not for a preschool.

1705 Chair Understood. Other questions for the affected parties.

1706 Male I have a couple questions. I asked the county if there was any other home  
1707 businesses in the La Senda community. They weren't aware of any. So I asked the  
1708 folks who actually live in La Senda. Are you guys aware of any other home  
1709 businesses in the La Senda community.

1710 Woman No.

1711 Woman I don't know if any. I know of several, a handful in Pajarito, but none in La  
1712 Senda.

1713 Man I believe actually that there was a home business on the property that the  
1714 Matthews now own. I do not know ~~of who~~ if it was ever permitted, and it's a story  
1715 in and of itself, but I won't go in too deeply. I believe that there is another  
1716 probably unpermitted business, but since nobody knows it's there, it's obviously a  
1717 bit unobtrusive.

1718 Chair Another question for the homeowners. I think I heard that you do have a  
1719 homeowners association, but your covenants to not address this type of situation.  
1720 Is that a true statement.

1721 Man To the best of my knowledge that's correct. Mostly it addresses animals and in  
1722 fact, it reads as if it never anticipated a situation like this.



1723 Chair And that's a case you see a lot. Homeowners associations, the covenants don't  
 1724 keep up with the times all the time.

1725 Man ~~It's not against~~ Neither does the law, sir.

1726 Woman There was another house that was going to go up for sale down at the  
 1727 corner of Piedra Loop and highway 4, and there was a woman who was interested  
 1728 in buying it and having a daycare facility there. And she presented it to the La  
 1729 Senda HOA and it was denied.

1730 Chair So that did not come before the planning and zoning commission.

1731 Woman No.

1732 Chair One last opportunity for the commissioners, if there's any questions for the  
 1733 affected parties.

1734 We're going to now close the public hearing to receipt of evidences. I'm going to  
 1735 ask the commission to make and discuss a motion on the case. This is opportunity  
 1736 not to discuss the case right now, but if somebody would like to make a motion on  
 1737 the case, this would be the opportunity to do that.

1738 Let me kind of clarify that. We do have two separate cases here. We have a special  
 1739 use permit for a daycare facility, and we have a special use permit for having a  
 1740 home business employing more than one outside family member, or non-family  
 1741 member. So for right now, if we have a motion, I would like to have a motion  
 1742 addressing the first special use permit about allowing an in-house daycare facility  
 1743 for up to 12 children. So that's special use permit 2020-0014. So we'll address  
 1744 these in two separate stages. Does anybody have a motion regarding the in-home  
 1745 daycare facility.

1746 Jean Terry, I'll put one forward.

1747 Chair Thank you, Jean.

1748 Jean I move to approve case number SUP2020-0014, a request for a special use permit  
 1749 to conduct an in-home daycare facility for up to 12 children at 113B La Senda, lot  
 1750 LSA03024A, within ...

1751 *Interruption cannot understand ...*

1752 Chair I'm sorry. Those kind of comments are not acceptable. So please put your phone  
 1753 on mute and I will ask if that occurs again, I will ask Steve to cut you off. This has  
 1754 been a very civil hearing, and I'd like to keep it that way. Jean, please continue.

1755 Jean I'll go back a couple of words ... A daycare facility for up to 12 children at 113B  
 1756 La Senda, lot LSA03024A, within the La Senda community. Approval is based on  
 1757 the reasons stated within the staff report and per testimony entered at the public  
 1758 hearing, subject to the following conditions. One, the applicant must obtain a state  
 1759 license and submit it to the community development department prior to  
 1760 conducting business. Two, a business license must be secured from the county

1761 prior to operation. Three, approval is for no more than 12 children. Four, at a  
 1762 minimum, a working smoke stand alone alarm notification device, with a 10  
 1763 service life, shall be installed; or a fire alarm protection system that migrates to the  
 1764 studio, one detector from the house system serviced by a certified fire protection  
 1765 contractor, to insure the system is working as designed, before operation and final  
 1766 fire and life safety inspection and annually. Five, the installation of one fire  
 1767 extinguisher to be mounted by one of the exit doors from the studio. Six, a final  
 1768 fire and life safety inspection shall be scheduled through the fire marshal's office  
 1769 before the issuance of a certificate of occupancy. Seven, annual fire and life safety  
 1770 inspections shall be scheduled annually as needed for occupancy use of daycare.

1771 I further move to authorize the chair to assign findings of fact for this case and  
 1772 based on this decision to be prepared by the county staff.

1773 Chair Thank you. We have processes, we have a motion, and then the next thing is if  
 1774 there is another commissioner who would like to second the motion. Following  
 1775 that, we'll have a discussion of the motion. So we have a motion on the table.  
 1776 Would another commissioner like to second that motion.

1777 Wade I second the motion.

1778 Chair We have a second by April Wade. Now is the opportunity to discuss the motion.  
 1779 Would any commissioner like to make comments regarding this. Go ahead, Sean.

1780 Sean I know that in the discussion section, we also often rope in Mr. Powers. So Kevin,  
 1781 can we talk about section 18-72 and 73.

1782 Kevin Yes, let me pull those up.

1783 Sean Tell me when you're ready.

1784 Woman May I ask a question ... I just want to know who Kevin Powers is.

1785 Chair Kevin is part of the county attorney's office. He assists the commission in making  
 1786 sure that we stay within our regulations.

1787 Kevin Okay, Commissioner Williams, I'm ready.

1788 Sean If I'm reading it right, it says, excessive, unnecessary, unnatural, or unusually loud  
 1789 noises, which are prolonged, unusual or unnatural in their time, etc. ... may  
 1790 constitute a trespass upon the privacy of others. I have two legal questions. First  
 1791 off, this 65 decibels we've been talking about is in the following section 18-73,  
 1792 which is titled prohibited noise. So does that, does 18-73 only apply to noises that  
 1793 are considered trespass under the text of 18-72?

1794 Kevin Yes I believe so. If any property owner or property exhibits noise over that level,  
 1795 they may be cited for violation of the noise ordinance.

1796 Sean So that's any noise and not just excessive, unnecessary, unnatural, unusually loud  
 1797 noises, which are prolonged unusual, unnatural in their time, and so forth.

1798 Kevin That pretty much means the same thing, yes. It pretty much means any noise.  
 1799 However, you might get into different situations where it's an industrial complex  
 1800 or those kind of things that are permitted in those certain areas.

1801 Sean So your interpretation then, 18-73 applies to noises generally.

1802 Kevin Correct.

1803 Sean Okay. Then I guess my, I would sort of have a bit of a rhetorical question, which is  
 1804 open to sort of anyone who is on the floor now. Which is: if children are pretty  
 1805 much guaranteed to make noise in excess of 65 decibels, then why would the code  
 1806 allow home based daycare. It seems that home based daycare would be impossible  
 1807 under those restrictions. As is, we're talking about the place where it's sort of most  
 1808 likely to work, because the properties are so large. So the inverse square law can  
 1809 do the most action here. So basically, it's the question for anybody who cares to  
 1810 answer, among the commission and Kevin, Ryan, whoever. Is home based daycare  
 1811 possible under the code?

1812 Male If you mean anybody includes me, the answer is, indoors.

1813 Chair The floor is only open to the commissioners right now.

1814 Wade (*breaking up*) So Little Forest Playschool is \_\_\_ at and it sits right in the middle of  
 1815 residential area, although it is not a home. It is actually quite large. It used to be an  
 1816 elementary school. But we have almost two acres of outside property. And all of  
 1817 them are surrounded by homes. And we never get noise complaints. Probably the  
 1818 closest home to us is that of a retired family. And so, I'm kind of having trouble  
 1819 with the noise discussion and \_\_\_ to it being unnatural. I mean, they're humans, it's  
 1820 very natural to make \_\_\_ be children. So I understand ...

1821 Kevin Commissioner Wade, I hate to say and to Chair Priestley, as you've recused  
 1822 yourself from this hearing, maybe, maybe.

1823 Wade I didn't recuse myself ... it's okay.

1824 Kevin I'm sorry ... I was worried about making sure we didn't cross any boundaries  
 1825 there.

1826 Stephanie What about Cañoncito. That's also right there, isn't it? In the middle of a  
 1827 neighborhood.

1828 Wade Right.

1829 Kevin Chair Priestley and members, I think the operative words for me is in subsection  
 1830 A. It says that any person that lets that sound level cross their property line, their  
 1831 boundary. And so, you can have as much sound as loud as you want inside your  
 1832 property, so long as it doesn't reach higher than 63 at the edge of the property, or  
 1833 on the other side of that property line. That's sort of reflected in one of the other  
 1834 subsections where there's a common wall between two properties. Measured on  
 1835 the other side of the wall it can't be higher than 55 decibels I believe. And so it

1836 really allows you to do, and it respects a person's right to have their property and  
1837 do what they want with it internally, so long as it meets certain requirements. One  
1838 of those is, you can do what you want until it starts interfering with the rights of  
1839 others on the other side of your property line. So I think that's where the measure  
1840 you have to take a look at.

1841 Sean I do have another question for you, Kevin. Which is: given that the noise we're  
1842 talking about is in chapter 18, whereas this is a chapter 16 board, is it even  
1843 appropriate for us to be talking about this.

1844 Kevin It really isn't. My understanding, that's a law that's going to apply to every single  
1845 piece of property, no matter whether it's this property or the neighbor themselves  
1846 that are participating here, or even my office or even my property at home. That's  
1847 going to be there all the time. So whether that noise is there today or yesterday or  
1848 anything else, it really doesn't matter to the overall aspect, so long as I think some  
1849 of the requirement is that the proposed use does not interfere with other people's  
1850 rights. I would rely on Desirae to sort of outline that section again where noise is  
1851 considered a factor in one of the things. I think there's some leeway that the  
1852 commission has in the health and safety aspect review powers you have. However,  
1853 I don't know if noise is one of those health and safety issues directly.

1854 Sean Thanks, and you, I'll obviously let someone else talk now.

1855 Chair Any other commissioner have a comment they'd like to make.

1856 My comment is, as a reminder, that when we take a look at these hearings, that we  
1857 are charged with making the determination based solely upon the criteria adopted  
1858 by the county commission. So we have five criteria that were discussed in the  
1859 packet, discussed by Ms. Matthews and Desirae as well. I personally have a hard  
1860 time understanding, or agreeing, I should say, that we, that this proposal, this  
1861 application meet the first criteria. When I say that, I say that the, the verbiage here  
1862 is that, I think this application will be detrimental to the health, safety, peace,  
1863 comfort, and general welfare of the people residing, or working in the vicinity.  
1864 Talk about decibel levels and laws of physics and, yeah, it's all there. I don't see  
1865 how we meet that criteria.

1866 I have other concerns regarding the one way driveway. This not a home, this is a  
1867 business in a residential area with kids. And so, if we needed to have emergency  
1868 vehicles get down there, and parents are leaving at the same time, I think that's an  
1869 issue. I don't see, I just don't see this as appropriate for this neighborhood. I'm not  
1870 saying that a daycare facility is not a good idea. I'm not saying that the people  
1871 planning on running it wouldn't do an outstanding job. I just don't believe it meets  
1872 the criteria as set forth in the special use permit.

1873 That's where I stand on it. But right now, we do have – is there any other  
1874 comment. Our process is, we have a motion, we have a second, we discuss, and  
1875 then we have a vote.

1876 Wade? The county is recommending this, though, yes?

1877 Chair The county staff has recommended this. County staff, county has an obligation to  
1878 kind of be the subject matter experts on the rules and requirements, and ...

1879 Wade And it meets the, from the county staff's point of views, it meets the rules and  
1880 requirements.

1881 Kevin Excuse me, Chair Priestley, that's the primary determination. The staff gets to give  
1882 you enough information to explain if, in their view, it meets the criteria. It's up to  
1883 you to determine ultimately whether it does or does not.

1884 Wade And on what are we supposed to base that.

1885 Kevin The evidence presented tonight only. It's been presented.

1886 Chair And that includes the agenda packet that Desirae went over and that Ms. Matthews  
1887 went over.

1888 Kevin I would add that, also your experience and your being part of the representation of  
1889 the community on this board also. You can bring your personal beliefs and the  
1890 information and your knowledge, so long as it doesn't overrule the facts and  
1891 evidence presented tonight.

1892 Wade That's helpful. Thank you.

1893 Chair Sean, did you have another comment.

1894 Sean Yeah, so I guess my counter to your objections to this is that if home based  
1895 daycare does constitute a detriment to health, safety, peace, comfort and general  
1896 welfare, then frankly, I'm just left with the question, why is a special use permit  
1897 even an option for a residential zone. But it seems like these same arguments that  
1898 have been presented would be true in any residential circumstance. So there is a  
1899 bit of a contradiction then, in that, this is an allowable use with a special use  
1900 permit. But if this, if this objection is true, then this special use permit can never  
1901 be granted. So why is it even allowed.

1902 Chair So I think my objection is true ... my objection is true and my beliefs is not a  
1903 history, this is not the third childcare facility in this neighborhood, right. If there  
1904 was a precedence, hey, we got three in the neighborhood, then yeah, how can you  
1905 say this is a change. I think the significant change to the vicinity, and that  
1906 significant change would be a detriment.

1907 Sean Right, but then, you have the same sort of inductive argument of, ...

1908 Chair I'm not arguing, Sean, I mean ... *speaking at same time* ...

1909 Sean So I'm more than anything else trying to explore the issues. Because this is very  
1910 sort of perplexing to me, and so I am trying to work through it. But I'm not setting  
1911 out to antagonize you or anything like that.



1912 Wade I would like to add just being in this field, Los Alamos, according to CYFD, which  
1913 is the state regulator of childcare facilities, says that Los Alamos is notorious  
1914 for not granting these exceptions. Therefore, there are no licensed home childcares  
1915 in this town. There are home facilities, but none of them are licensed.

1916 Chair Any other comments.

1917 Beverly As I'm listening to everyone speak, many of us here on this board are  
1918 parents, have children, and we raised our families here. There's an African  
1919 proverb that speaks to the health of a community based on how well you treat  
1920 children. Again, having raised a family here, I understand there's not a lot, you  
1921 have to really look for quality childcare. And I understand that this will be an  
1922 interrupt for those who have retired, for those who have that peace and quiet that  
1923 they worked towards, and yet at one time, they were children. So, things evolve,  
1924 things change. I think this would be a huge contribution to the county. And what's  
1925 not working now, then again, you can fix that. She's got the space. She's got the  
1926 land. If, by God, emergency vehicles do have to come in, I'm sure that she can  
1927 work it out. We're pretty smart here, we can do that. That's my comment.

1928 Ward? I totally agree with Beverly. I actually grew up in that neighborhood. I don't know  
1929 anybody there now, and I don't know anybody involved in this. But I grew up in  
1930 that neighborhood, and we had 12 children between us and next door neighbors  
1931 playing constantly, '70s and '80s, in that exact same area. It was loud, and we  
1932 were free roaming children, just running around, being kids. And there were no  
1933 complaints. And my parents strongly relied on in-home daycare when I was a kid.  
1934 I don't know what they would have done without it. So I agree with Beverly. I  
1935 think this would be a huge asset and the idea that the noise of children is not  
1936 natural, I am also struggling with that.

1937 Chair Any other comments.

1938 We do have a motion that has been seconded. I'm going to review the motion. I'm  
1939 not going to read it entirely, just to make sure we understand. This is the motion  
1940 for special use permit at 2020-0014, which is for the special use permit for the  
1941 daycare facility. There's going to be a second special use which we'll consider  
1942 here shortly.

1943 So the motion that's on the table that has been seconded is to approve the case for  
1944 special use permit to conduct the in-home daycare facility for up to 12 children at  
1945 113B La Senda, within the La Senda community, based on 7 conditions that were  
1946 recognized by the fire marshal and so forth. That is the motion that is on the table  
1947 and that we're going to take a vote on.

1948 Anita or Desirae, like to have a roll call vote.

1949 I will call the roll:

1950 Commissioner Dewart                      yes

1951 Commissioner Neal-Clinton      yes  
 1952 Commissioner Wade              yes  
 1953 Commissioner Nakhleh            yes  
 1954 Commissioner Williams            yes  
 1955 Commissioner Craig Martin      yes  
 1956 Chair Priestley                        no  
 1957 Motion carries 6 to 1.  
 1958 Chair So the next case that we to resolve is on the special use permit, 2020-0015. This is  
 1959            for the home business at the same residence, 113B in La Senda, that is going to  
 1960            employ more than one non-family member in this in-home daycare. Does anybody  
 1961            have a motion associated with that.  
 1962 Woman ?                                I move to approve case number SUP2020-0015, for a  
 1963            home business at 113B La Senda, lot LSA03024A, within the La Senda  
 1964            community, to employ more than one non-family member for an in-home daycare  
 1965            facility for the reasons stated in the staff report and per testimony entered at public  
 1966            hearing, subject to the following conditions. I further move to authorize the chair  
 1967            to sign finding that for this case and based on this decision to be prepared by the  
 1968            county staff.  
 1969 Chair we have a motion. Is there a second to that motion.  
 1970 Stephanie      I second.  
 1971 Chair We have a second by Stephanie. Opportunity for discussion on the special use  
 1972            permit associated with more than one non-family member.  
 1973            We have a motion, it has been seconded. We'll do a roll call vote.  
 1974 Commissioner Dewart                yes  
 1975 Commissioner Neal-Clinton        yes  
 1976 Commissioner Wade                yes  
 1977 Commissioner Nakhleh                yes  
 1978 Commissioner Williams                yes  
 1979 Commissioner Craig Martin        yes  
 1980 Chair Priestley                        no  
 1981 Motion carries 6 to 1.  
 1982 Chair Thank you very much. As a reminder, any action by the planning and zoning  
 1983            commission in granting approval, conditional approval, or disapproval of an  
 1984            application may be appealed by the applicant, any aggrieved person, by any

1985 member of the county council, or by the county administrator to the county  
 1986 council within 15 calendar days, after the date of action. Pursuant to section 16-  
 1987 492 of this chapter.

1988 That closes the two hearings. If we go to our agenda, next thing we have, we have  
 1989 a department report and then the chair's report, and we still have James on board.  
 1990 If we have a quick council liaison report.

1991 Ryan, anything from the department that you want to talk about, pretty quickly.

1992 *Interruption ...*

1993 Ryan Hold on there, Chair Priestley, fellow commissioners. Is the approval of the  
 1994 minutes actually next?

1995 Chair Yeah, that's what I was going to say.

1996 *Several talking at once ...*

1997 Chair We have meeting minutes. These are meeting minutes from way back when. Let's  
 1998 take a look at those and see if there's any feedback on those. We'll take a motion  
 1999 on that.

2000 Sean I do have a change to the minutes.

2001 Chair Go ahead, Sean.

2002 Sean On the, for the previous minutes, under the approval of the previous, previous  
 2003 minutes, by that point, Craig Martin had recused himself and left. So the in-favor  
 2004 vote was from Neal Martin ... on page 60.

2005 Chair Right. So Commissioner Neal Martin is the first commissioner there, as opposed  
 2006 to Craig Martin.

2007 Anita We'll fix that.

2008 Sean With that in mind, I move that we accept the minutes as amended.

2009 Chair We have a motion to accept the minutes as amended. Any other, any second for  
 2010 that.

2011 Craig Second.

2012 Chair Craig seconds that. All in favor. We don't have to do a roll call vote. Thank you  
 2013 very much. And thank you, Ryan for bringing us back around to the right part of  
 2014 the agenda.

2015 Quick departments report.

2016 Ryan Absolutely. Good evening, Chair Priestley and fellow commissioners. I have a  
 2017 handful of items. I'll make it brief, but it has been some time since we've met and  
 2018 there's been a lot of activities going on during the teleworking in the last three  
 2019 months or so ...

2020 Chair I'm going to ask you to make it brief and put the rest in an email.

2021 Ryan Preparing for a June 24 hearing. We do have a site plan that's for 1010 Central  
 2022 Avenue, adjacent to the municipal building. That's for Los Alamos schools credit  
 2023 union.

2024 Also, I did want to mention here about some addition agenda items that we'll be  
 2025 looking to put on the 24<sup>th</sup>. That is, we need to take a look at the BOA membership.  
 2026 I believe there's only 2 of 3 members BOA appointed ...

2027 Chair BOA is board of adjustments.

2028 Ryan Yes, BOA is board of adjustments. And actually, the other reason I mention that is  
 2029 we have received an application for a waiver that would be going to the board of  
 2030 adjustments. I know it's been some time since we've had a stand-alone waiver.  
 2031 That would be looking at a BOA meeting date of 7-27. So on 6-24, we have plenty  
 2032 of time to be able to address the BOA membership.

2033 The other one being to vote on the chair and vice chair. Those don't need to  
 2034 change, it's just the commission to vote on that.

2035 The other two items I have are council approved the contracts on May 26 to hire  
 2036 consultants for the downtown master plan and the development code update. The  
 2037 internal kickoff occurred on 6-2. We're doing a site visit with the consultants and  
 2038 some county departments next week. What I would like to point out to the  
 2039 commission is, really the next big benchmark for the consultants infer essentially  
 2040 outreach is on 7-7, a council work session. There's going to be a presentation  
 2041 based on the existing conditions in site analysis from the consultant, as well as a  
 2042 discussion of the next steps focusing on the outreach plan. Again, there's going to  
 2043 be a lot of outreach opportunities for both these downtown master plans and the  
 2044 code update.

2045 The last item I have is the North Mesa housing study. There will be a presentation  
 2046 from the consultant on the final report also on July 7<sup>th</sup> at the council work session.

2047 Those are all the items that I want to make sure I passed along, and certainly let  
 2048 me know if anybody has any questions even now or via email.

2049 Chair Thank you, Ryan. Any questions for Ryan. Chair's report, two comments.

2050 One I appreciate everybody's attention tonight. I think, obviously, there was some,  
 2051 I don't know what you would call it, there's different opinions amongst the  
 2052 audience members. I think that we were able to get everybody's participation, and  
 2053 they kept it very civil. I think that's good. I think we as a commission need to  
 2054 make sure that we are open and are engaging in the community. Thank you for  
 2055 staying with it.

2056 Tomorrow, just an FYI. We do have a special board, a special hearing board that  
 2057 I'm going to participate in as the chair of the planning and zoning commission.

2058 Just an FYI. It's not directly related to planning and zoning, but this has to do with  
2059 the Sturfey (?) versus the county issue. That'll be happening tomorrow.

2060 One of the activities, one of the requests we had at a previous meeting was to have  
2061 a specific line item on our agenda for our council liaison, if they have any  
2062 comments. So James, if you're still here. You have any comments that you'd like  
2063 to make from the county council perspective.

2064 James Thanks, Mr. Chair. I did receive the email from Commissioner Dewart about  
2065 receiving a summary report on the planning initiatives from the council's point of  
2066 view. Mainly concerning the land transfer, the Merrimac Center conference plan,  
2067 and master plan that Ryan alluded to.

2068 When it comes to the land transfer, that was the request that Chair Scott and the  
2069 previous land use subcommittee sent to NMSA was initially just the start of the  
2070 process. To even form that letter, we had to give them a cursory overview of what  
2071 we could possibly do with the land. That is a requirement for any DOE land  
2072 transfer. And so if we say we would like it for housing, recreation and for  
2073 commercial development, we kind of need to tell them how much and where we  
2074 think it could go. So the details noted in her report were broad estimates. We  
2075 won't know what we can do out there until we get the land. As anyone who has  
2076 ever worked for the Lab knows that the government is nothing but thorough and  
2077 takes its time doing almost everything. So this isn't happening tomorrow. This is  
2078 just a start of a conversation between us, Triad, and DOE. And we were fulfilling  
2079 their requirements to even start the process.

2080 As for the Merrimac shopping center ...

2081 Chair James, I'm gonna, you have a couple different topics. I just want to make sure that  
2082 we talk about this land transfer. If anybody has any questions or comments ...

2083 I'll tell you just personally, this is the planning and zoning commission. And I,  
2084 myself, had no idea this was going on. That seems odd to me that maybe we  
2085 should have been either informed or ask to participate in an advisory role or  
2086 something. It seems very odd to me that we had no clue. So maybe to keep in  
2087 mind as they move forward.

2088 James I definitely hear that. That was a common thing. In fact, I was not even on the land  
2089 use subcommittee. I was notified by Chair Scott that they had sent the letter and  
2090 here is the content. I know CDB had some rough help in generating the letter, but I  
2091 will definitely take that back, because this won't be the last land transfer we're  
2092 going to look at. I will note that any planning initiative, should we get the land,  
2093 will come before planning and zoning long before any shovel meets the dirt ... As  
2094 Craig probably knows, there's a lot more than just open space out there. There's  
2095 cultural amenities, there's deep canyon. So even if we were to get the land, it's  
2096 gonna be a long effort, and planning and zoning will be integral into anything we  
2097 might want to do.



2098 Chair So I see this as bigger than planning and zoning. The county has several  
2099 commissions and boards.

2100 James Yes, exactly.

2101 Chair So when we start looking at activities that above or across from those boards and  
2102 commissions, that's why the boards and commissions are here to help represent  
2103 the community.

2104 James I completely agree ...

2105 Chair So why wouldn't we use the resource \_\_\_\_

2106 James To me, again, this is from how I understand it, this is just initiating letters, with the  
2107 back of a napkin idea of what we could possibly use the land, based on a  
2108 topographical view. Anyone who lives in White Rock knows that that's not  
2109 exactly shovel-able dirt. So any plan going forward will probably generate yet  
2110 another master planning process should we get the land. Which will include what  
2111 we're about to do with the downtown master plan, the North Mesa stuff. It will be  
2112 community involved. We will not just handle this at the council level. For one  
2113 thing, I feel that's highly inappropriate, because we have so many boards and  
2114 naturally, this one would cross parks and rec, with Stephanie, Craig, and planning  
2115 and zoning, because there's recreation and development potential.

2116 Chair Any other questions.

2117 James So next in the email is the demolishing of the Merrimac shopping center. I think  
2118 that came to a lot of people's surprise that the words demolishing and  
2119 redevelopment were used in an announcement on a KRSN interview. *Chuckle* ...  
2120 from what I've been privy to and what has been discussed is, of course, that would  
2121 be the ultimate goal of any developer for that land. But again, private sale between  
2122 that developer and Kroger. Any push on that would have to come before planning  
2123 and zoning and the CDD and council. So we're in the – again – very early stages. I  
2124 have no idea what the new owner would plan to do with the existing businesses.  
2125 That was not discussed at my level. So I know there's been a lot of push-back on  
2126 that. The only thing I could say is at least as it appears now, the old Smiths will be  
2127 dealt with for, finally. We have a buyer for the old Smiths. At that point I don't  
2128 have any more information to provide the board. I know that this was a shock to  
2129 the community, and its delivery was less than well received by the community.  
2130 And as well there should be, there should not be a footnote in a KRSN interview  
2131 discussing the land transfer and then kind of throwing that \_\_\_\_

2132 Chair James, it's also worth pointing out, as far as I know, it's under contract.

2133 James Yes, exactly. So it is under contract, nothing's set in stone.

2134 Chair It's been dealt with finally is unfortunately not ...

2135 James Unfortunately, you're right. We actually have someone who's interested in buying  
2136 it. So that is a step forward in what we've had in the last like eight years.

2137 Chair And of course, that's for the businesses that it does depend in principle on the  
2138 terms of the lease. A standard lease is attached to the property, not the landlord. So  
2139 presumably, that'll mean that the developer, if he wants to demolish them on a  
2140 timeline, is probably going to have to buy out the leases.

2141 James Exactly. So that's ...

2142 Female ... pass you something that I heard from the Daniels café owner. I don't  
2143 know how true it is. But he said, there's a fellow in town who actually owns that  
2144 property. It's not Kroger, it's somebody Olson or something. And the rights stay  
2145 with them, no matter who buys or sells the property.

2146 Chair What I've heard about Daniel's Café is that it's actually a separate property and is  
2147 commercial condominium, which means that the land and common areas are  
2148 jointly owned by unit owners. I'm not sure if that's true. That's just what I've  
2149 heard.

2150 Female Okay, he was talking about Merrimac as a whole, as a ...

2151 *Interrupting each other ...*

2152 James ... is the information that's on our county assessor's website, which puts Smith's  
2153 food and drug as owners of everything from Smith's up to 24 Hour Fitness, over to  
2154 Daniel's Café. Daniel's café is its own building. If that's owned by someone else,  
2155 it's not listed in the county ...

2156 Female ... He wasn't talking about his own building. He was talking about  
2157 Merrimac. So okay, I'll just put that in the rumor bucket ...

2158 James I guess advertising for the initiative for the downtown master plan and the chapter  
2159 16 development that Ryan kind of went into. There's not much more on the  
2160 council side for that one. We're just kind of waiting to see what the contractor will  
2161 bring us. I mean that does not mean that we as council members will not  
2162 participate or really push the contractor to come to the associated boards. Chapter  
2163 16 is your guys's domain. So obviously, the contractor will seek your input on  
2164 redevelopment of the chapter 16, but at that point, council – Council's looking at  
2165 all these as a strategic goal to bring new housing opportunities, new business  
2166 opportunities, and new development to Los Alamos. So we're kind of acting in the  
2167 realm that this falls into our strategic planning sessions, which was voted on and  
2168 approved in January.

2169 Chair Thank you, James. Any questions for James on what he discussed or just our  
2170 relationship with the council, as our council liaison. Okay, Michelle.

2171 Michelle I would just like to say. I would encourage the council to be more  
2172 transparent and to form commissions, rather than to just go ahead forward and put

2173 out a letter to the, their land transfers and things. To consult with, I mean, your  
2174 community, your people, and ask what they want. Also, I would like to see how  
2175 this would, the new proposed land transfers and things would fit in with our  
2176 housing study and things. And how that all connects. Is it really needed? Is it, you  
2177 know, I know we've had a housing study, and we're trying to move forward with  
2178 this land transfer. I would just like to see just some kind of transparency, some  
2179 kind of commission, something to make it connect more with the people.

2180 James Sure. And I can speak briefly to that. Paul and Ryan can jump in any time they  
2181 feel like it. So the housing study did show that we have a significant shortage of  
2182 housing and reflected findings that were from a housing study done several  
2183 decades ago. Where the land transfers come into play to help that is, it is open land  
2184 that the government might not need any more that is available to us to open for  
2185 new development. Currently, Los Alamos has less than a hundred acres of green  
2186 field land. That's land that is untouched that would need demolishing. So where  
2187 land transfers come in is it's kind of new land, new space, and it allows us to have  
2188 a better way of developing that area from the ground up. Essentially, it's just  
2189 adding more space. Now, it could turn out to be, out of these three thousand acres,  
2190 only two hundred or so are even available for any kind of development. Because  
2191 of what we've experienced with the housing development down there – sorry, I'm  
2192 blanking on the name – and other factors, such as topography, cultural, sensitivity  
2193 with any kind of Native American ruins. At which point, council's idea was to just  
2194 make that recreation space. So if we only get twenty-two hundred acres out of that,  
2195 the twenty-eight hundred acres would then become probably open space and trails,  
2196 maintaining what we could.

2197 I could work with the CDD and council to get that alignment as to why land  
2198 transfers are key to meeting our housing crisis and get that to you guys. I think  
2199 Chair Scott has that, that she's used in presentations. I can reach out to her. But as  
2200 a sky-high view, that is the idea behind land transfers. Is we realize there's certain  
2201 amenities we need to keep the people that LANL is hiring, but we also need the  
2202 housing to put them. So to, instead of utilizing our golf course, our open space,  
2203 and our airport, which are open to development, which would be terrible, we're  
2204 looking to the government to give us land that they're not using. And that would  
2205 allow us to do untouched land.

2206 Michelle I'm just imploring you to create some kind of communication with like,  
2207 maybe the White Rock master planning committee or us or, you know, just some  
2208 kind of advisory board ...

2209 James As your liaison, I will definitely keep you guys in the loop as much as I can. I'm  
2210 sorry that this one fell through the cracks. I don't know why the previous liaison  
2211 and the council chair did not bring this to you guys beforehand. But I will do my  
2212 best to keep Chair Priestley and the board informed of anything that goes forward.  
2213 And I'll implore Paul and Ryan to help me with that. So I will definitely take that

2214 back to the heart, because that was one thing that we're seeing all over is  
 2215 communication was lacking.

2216 Ryan? Mr. Chair, we have, I'm just saying we have plenty of opportunity for follow up  
 2217 on this conversation. Because there are certainly lots of points of very interesting  
 2218 and compelling information on how these processes work. We can even go  
 2219 through what happened when, since the early 2000s one that last land transfer was  
 2220 made that now we are just getting to developing one parcel in White Rock and the  
 2221 other in \_\_\_\_\_. So there's a whole history and process in how that works. We  
 2222 could absolutely bring that to planning and zoning, and I think it would be really  
 2223 interesting to folks.

2224 Chair Thanks. I do think we're looking forward, though, right, as we go forward, use us.

2225 James I fully intend to. I came up through boards and commissions, and I know your  
 2226 guys's role and how imperative your input is to making my decisions on council.  
 2227 So I fully intend to use you guys as much as I possibly can and to help council  
 2228 make their decisions.

2229 Chair Thanks, James. Again, we're going to try to do this every meeting and have the  
 2230 opportunity to talk about what's going on and how we can \_\_ better.

2231 James Perfect. I look forward to it.

2232 Chair Last item on the agenda is, is there any other presentations or comments, feedback,  
 2233 from the councilors, or commissioners, I'm sorry. Go ahead, Michelle.

2234 Michelle I just wanted to apologize formally for any faces that I might have made  
 2235 during the meeting that were inappropriate or out of conduct. I did have my four  
 2236 year old fell, and that's why he needed a hug. So I apologize, and I will try to keep  
 2237 my kids out of the meetings in the future. It just wasn't logistically possible this  
 2238 evening. Because my husband had a meeting as well at the same time. So, I  
 2239 apologize.

2240 Chair Thank you. We'll all learn how to do this. Every meeting is different ...

2241 Michelle How do you turn off the camera. I couldn't, ...

2242 Stephanie ... Do you see the, on the bottom left, it says, mute and stop video, on the  
 2243 bottom left, if you wiggle your mouse around on the screen.

2244 Chair Not on your picture, but way at the bottom ... that big button over there.

2245 Michelle But you know what, everybody needs to have a lot of slack ... I really do  
 2246 need to work on my poker face ... like I wear my heart on my face, like it's just  
 2247 that you know exactly what I'm thinking, and I do apologize completely. Like  
 2248 Craig said, we're all figuring this out.

2249 Chair It looks like Beverly had the coolest background.

2250 Michelle How do you do that

2251 Beverly When you click on stop video, or start video, there's an up arrow, and you  
2252 select that, and there's a 'choose virtual background.' So you can be in San  
2253 Francisco, outer space ...  
2254 *Several chatting at once ...*  
2255 Who has a green screen unless you're a weather person.  
2256 I just want to say, I really enjoyed us meeting this way. It really worked for me. I  
2257 think we're still working out the logistics and be over-speaking. But overall, I  
2258 really am appreciative of Steven pulling this together and making it happen.  
2259 Several said 'agree'  
2260 Chair All right guys. It is past my bedtime. We're going to adjourn the meeting here at  
2261 9:13.  
2262 *Thank you all around.*  
2263  
2264 *End of recording*  
2265 *Transcribed by Kay Carlson Word Processing on August 18, 2020.*



# MINUTES

## Planning and Zoning Commission



**June 10, 2020– 5:30 P.M.**

Virtual Meeting held via Zoom

### **Commissioners**

**Present:** Terry Priestley, Chair  
Beverly Neal-Clinton  
April Wade  
Jean M. Dewart  
Michelle Griffin  
Stephanie V. Nakhleh  
Sean J. Williams  
Craig Martin

**Absent:** Neal D. Martin

**Staff Present:** Ryan Foster, Principle Planner  
Paul Andrus, Community Development Director  
Anita Barela, Associate Planner  
Desirae J. Lujan, Associate Planner  
Kevin Powers, Assistant County Attorney  
Margaret Ambrosino, Senior Planner  
Steve Lynne, Deputy County Manager  
Perry Rutherford, IM

### **1. CALL TO ORDER / ROLL CALL**

Chair Priestley called the meeting to order. A quorum was present.

### **2. PUBLIC COMMENTS**

None

### **3. APPROVAL OF AGENDA**

A typo on the Agenda was recognized and accepted. ***Commissioner C. Martin made a motion to approve the agenda as amended. Commissioner Williams seconded; motion passed unanimously.***

### **4. PUBLIC HEARING**

- A. Case No. SUB-2020-0011. A request for approval of a three (3) lot-split subdivision addressed as 2436 46<sup>th</sup> St., located in the North Pine Subdivision, Subdivision NC1 Lot 239A. The proposed development will consist of 3 new single-family residential units contained within 3 separate lots, with associated on-site parking and traffic circulation on 0.28 +/- acres of land.**

Ian Maes, property owner/applicant, and Michael Englehardt, Precision Surveys, presented the request. Anita Barela, Associate Planner outlined the staff report with a presentation to include applicant's request; Subdivision Review Criteria; and Findings of Fact.

**Commission Williams made a motion to approve** Case No. SUB-2020-0011, a request for approval of a Preliminary and Final Subdivision Plat, creating a new subdivision consisting of three (3) lots, for the reason stated in the staff report and per testimony at the public hearing. He further moved to authorize the Chair to sign Findings of Fact for this case and, based on this decision, to be prepared by County staff. **Commissioner Neal-Clinton seconded the motion.** Motion carried 8-0 vote.

*In Favor:*

*Terry Priestley*  
*Michelle Griffin*  
*Jean M. Dewart*  
*Craig Martin*  
*Stephanie V. Nakhleh*  
*Beverly Neal-Clinton*  
*April Wade*  
*Sean J. Williams*

*Absent:* *Neal D. Martin*

**B. Case No. SUP-2020-0014. Denise Matthews, property owner/applicant, requests approval for a Special Use Permit to conduct an in-home daycare facility for up to 12 children at her location of 113 B LA SENDA, Los Alamos, NM. The property, Lot LSA03024A, is within the La Senda Community and is zoned Residential-Agriculture (R-A).**

**Case No. SUP-2020-0015. Denise Matthews, property owner/applicant, requests Special Use Permit approval for a Home Business at 113 B LA SENDA, to employ more than one non-family member for an in-home day care facility. The property, Lot LSA03024A, is within the La Senda Community and is zoned Residential-Agriculture (R-A).**

Denise Matthews, property owner/applicant, communicated her requests and responses to the Special Use Permit Review Criteria with a presentation that included her site plan for *Worms and Wildflowers Home Daycare*. Desirae J. Lujan, Associate Planner, outlined the staff report with a presentation that included Special Use Permit Review Criteria.

**Commission Dewart made a motion to approve** Case No. SUP-2020-0014, a request for a Special Use Permit to conduct an in-home daycare facility for up to 12 children at 113 B LA SENDA, Lot LSA03024A, with the following conditions:

1. The applicant must obtain a state license and submit it to the Community Development Department prior to conducting business.
2. A business license must be secured from the county prior to operation.
3. Approval is for no more than 12 children.
4. At a minimum, a working smoke stand-alone alarm notification device, with a 10 service life shall be installed, or a fire alarm protection system that migrates to the studio (1-detector) from the house system serviced by a certified fire protection contractor to ensure the system is working as designed before operation and final fire and life safety inspection and annually.
5. The installation of one (1) fire extinguisher to be mounted by one of the exit doors from the studio.
6. A final fire and life safety inspection shall be scheduled through the Fire Marshal's Office before the issuance of a Certificate of Occupancy.

7. Annual fire and life safety inspection shall be scheduled annually as needed for occupancy use of day care.

She further moved to authorize the Chair to sign Findings of Fact for this case and, based on this decision, to be prepared by County staff. **Commissioner Wade seconded.** Chair Priestley voiced that he did not feel that Criterion 1 had been met.

**Motion passed 6-1 vote.**

*In Favor:*                    Jean M. Dewart  
                                 Craig Martin  
                                 Stephanie V. Nakhleh  
                                 Beverly Neal-Clinton  
                                 April Wade  
                                 Sean J. Williams

*Against:*                    Terry Priestley

*Abstained:*                Michelle Griffin

*Absent:*                    Neal D. Martin

**Commissioner Neal-Clinton made a motion to approve** SUP-2020-0015 for a Home Business at 113 B LA SENDA, Lot LSA03024A, within the La Senda community to employ more than one non-family member for an in-home day care facility for the reasons stated in the staff report and per testimony entered at the public hearing. She further moved to authorize the Chair to sign Findings of Fact for this case and, based on this decision, to be prepared by County staff. **Commissioner Nakhleh seconded the motion.**

**Motion passed 6-1 vote.**

*In Favor:*                    Jean M. Dewart  
                                 Craig Martin  
                                 Stephanie V. Nakhleh  
                                 Beverly Neal-Clinton  
                                 April Wade  
                                 Sean J. Williams

*Against:*                    Terry Priestley

*Abstained:*                Michelle Griffin

*Absent:*                    Neal D. Martin

## **5. PLANNING AND ZONING COMMISSION BUSINESS**

- A. **Minutes for the Planning and Zoning Commission Meeting(s) on February 26, 2020.**  
The Commission noted an edit.

**Commissioner Williams motioned to approve as amended. Commissioner C. Martin seconded. Motion passed unanimously.**

## **6. COMMISSION/DIRETOR COMMUNICATIONS**

**A. Department Report**

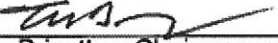
**B. Chair's Report**

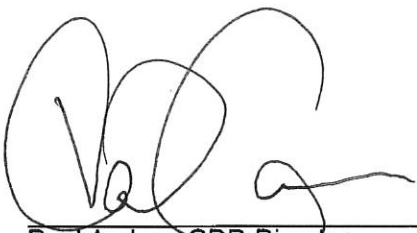
**C. Board of Adjustment Report**

**D. Commissioners' Comments**

**7. PUBLIC COMMENT**

**8. ADJOURNMENT**  
9:13 PM

  
\_\_\_\_\_  
Terry Priestley, Chairman

  
\_\_\_\_\_  
Paul Andrus, CDD Director

## FINAL ACTION AND FINDINGS OF FACT

- 5.1 LETTER TO THE APPLICANT
- 5.2 FINDINGS OF FACT



July 13, 2020

Denise Matthews  
113 B La Senda Rd  
White Rock, NM 87547

**RE: SUP-2020-0014 and SUP-2020-0015**

Dear Ms. Matthews,

**COUNTY COUNCIL**

Sara C. Scott  
Council Chair

Randall T. Rytli  
Council Vice-Chair

**COUNCILORS**

David Izraelevitz

Antonio Maggione

Katrina Martin

James N. Robinson

Pete Sheehey

**COUNTY MANAGER**

Harry Burgess

This letter is to formally inform you that although your Special Use Permit applications were approved by the Planning and Zoning Commission during the June 10, 2020 meeting, an application to appeal and reverse its decision was received on June 23, 2020. At this time, the filing of an appeal suspends the action of the Commission until such a time as the appeal shall be heard and acted upon by the County Council. Furthermore, no permit, license or certificate of approval or use of land or structures involved in the application on appeal shall be issued until the appeal has been acted upon.

We will continue to keep you informed on the process moving forward. Should you have questions, or concerns, please feel free to contact our office.

Sincerely,



Paul Andrus  
Community Development Director

**LOS ALAMOS COUNTY  
PLANNING & ZONING COMMISSION**

**IN THE MATTER OF:**

Case No. SUP-2020-0014: )  
A request for approval of a Special Use Permit to conduct )  
an in-home daycare facility for up to 12 children at )  
113 B LA SENDA RD, Los Alamos, NM. )  
The property, LSA03024A, within the La Senda )  
is zoned Residential-Agriculture (R-A). )

**FINAL ORDER APPROVING APPLICATION,  
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**THIS MATTER** came before a quorum of the Los Alamos County Planning and Zoning Commission ("Commission") for a public hearing, on Wednesday, June 10, 2020, based on an application made by property owner Denise Matthews. The application requested approval of a Special Use Permit to conduct an in-home daycare facility for up to 12 children at her property located at 113 B LA SENDA RD. The 3-acre parcel, LSA03024A, is within the La Senda Community, and is zoned Residential-Agriculture (R-A).

Upon presentation of the application and accompanying exhibits; the Commission having taken sworn testimony, considered relevant evidence of the record and arguments of the parties, considered the information outlined within the Staff Report and testimony received from the public, and the Commission being otherwise well and sufficiently advised in the premises, hereby finds as follows:

**NOW THEREFORE**, the Special Use Permit application to operate an in-home daycare facility at 113 B LA SENDA RD ("Property") in the County of Los Alamos, New Mexico, **IS HEREBY APPROVED**.

In support of this **FINAL ORDER**, the Commission issues the following:

**I. FINDINGS OF FACT:**

1. The Special Use Permit application #2020-0014 is for the operation of an in-home daycare facility for up to 12 children at 113 B LA SENDA, Los Alamos, NM.
2. The Special Use Permit application #2020-0015 is for a Home Business at 113 B LA SENDA, to employ more than one non-family member for an in-home day care facility.
3. The Special Use Permit Review Criteria, Section 16-156, has been applied.
4. Daycare requirements for a daycare facility, listed within Section 16-282, have been or will be met prior to operation, as conditions of approval.
5. 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, 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.

## II. CONCLUSIONS OF LAW

After full hearing and consideration, the Planning and Zoning Commission finds that the Applicant has met the applicable Special Use Review Criteria contained in §16-156 of the Los Alamos County Development Code and is acting under the authority granted it by §16-452(d) of the Development Code.

**APPROVED** this 14<sup>th</sup> day of July, 2020.

BY: 

TERRY PRIESTLEY, CHAIR  
PLANNING AND ZONING COMMISSION  
INCORPORATED COUNTY OF LOS ALAMOS



**LOS ALAMOS COUNTY  
PLANNING & ZONING COMMISSION**

**IN THE MATTER OF:**

Case No. SUP-2020-0015: )  
A request for approval of a Special Use Permit for a )  
Home Business to employ more than one non-family )  
member for an in-home daycare facility at )  
113 B La Senda Rd, Los Alamos, NM. The property )  
is zoned Residential-Agriculture (R-A). )

**FINAL ORDER APPROVING APPLICATION,  
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**THIS MATTER** came before a quorum of the Los Alamos County Planning and Zoning Commission ("Commission") for a public hearing, on Wednesday, June 10, 2020, based on an application made by property owner Denise Matthews. The application requested a Special Use Permit for a Home Business to employ more than one non-family member for an in-home daycare facility at 113 B LA SENDA RD. The parcel, LSA03024A, is within the La Senda Community, and is zoned Residential-Agriculture (R-A).

Upon presentation of the application and accompanying exhibits; the Commission having taken sworn testimony, considered relevant evidence of the record and arguments of the parties, considered the information outlined within the Staff Report and testimony received from the public, and the Commission being otherwise well and sufficiently advised in the premises, hereby finds as follows:

**NOW THEREFORE**, the Special Use Permit application for a Home Business at 113 B LA SENDA RD ("Property") in the County of Los Alamos, New Mexico, **IS HEREBY APPROVED**.

In support of this **FINAL ORDER**, the Commission issues the following:

**I. FINDINGS OF FACT:**

1. The Special Use Permit application #2020-0014 is for the operation of an in-home daycare facility for up to 12 children at 113 B LA SENDA, Los Alamos, NM.
2. The Special Use Permit application #2020-0015 is for a Home Business at 113 B LA SENDA, to employ more than one non-family member for an in-home day care facility.
3. The Special Use Permit Review Criteria, Section 16-156, has been applied.
4. Daycare requirements for a daycare facility, listed within Section 16-282, have been or will be met prior to operation, as conditions of approval.
5. 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, 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.

## II. CONCLUSIONS OF LAW

After full hearing and consideration, the Planning and Zoning Commission finds that the Applicant has met the applicable Special Use Review Criteria contained in §16-156 of the Los Alamos County Development Code and is acting under the authority granted it by §16-452(d) of the Development Code.

**APPROVED** this 14<sup>th</sup> day of July, 2020.

BY: Terry Priestley

TERRY PRIESTLEY, CHAIR  
PLANNING AND ZONING COMMISSION  
INCORPORATED COUNTY OF LOS ALAMOS



## APPEAL

- 6.1 [APL-2020-0018:](#)  
[APPLICATION & SUBMITTAL](#)

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

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

To process your appeal you will need to fill out this Notice of Appeal form and submit it to the Community Development Department within the required time period as described in the attached sheets.

**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-2020-0014 AND SUP-2020-0015**

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

**113B La Senda Rd., 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 live within 100 yards of the subject property at 113B La Senda Rd.**

**4. APPELLANT INFORMATION**

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

**Address:** 115 La Senda Rd., 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 Rd., 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.*



# LOS ALAMOS

Community Development

## 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.)

### Violations of Los Alamos County Code by the Planning and Zoning (P&Z) Commission

Conflict of Interest

Failure to give notice to all affected residents

Special Use Permit (SUP) application fails to meet the SUP requirements

The Effects of Noise: A Manifest Abuse of Discretion

Zoning issues

Capricious Statement in Staff Presentation

SUP application fails to meet requirements of the Los Alamos Comprehensive Plan

Plan states the character of existing subdivisions will be protected

Businesses should be in the downtown areas

### Procedural Errors

P&Z Commissioners approved an activity that will almost certainly violate county code

Affected parties were not allowed enough time to evaluate and respond to the daycare facility proposal

### Factual Errors

Incorrect distances were used in the SUP application

Appendix A

Appendix B

References

Exhibits A, B, and C

See attached pages for detailed descriptions of each issue.

## 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 A. Shamus 6/22/2020

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

END OF NOTICE OF APPEAL form.  
Thank You!



**Appeal of the Decision to Approve Special Use Permits  
SUP-2020-0014 and SUP-2020-0015 Granted June 10, 2020**

**APPELLANTS CERTIFICATIONS AND SIGNATURES**

We the undersigned affected residents (within 100 yds of 113B La Senda Rd.) 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: 6/22/2020  
Printed Name: David M. North  
Address: 111 La Senda Road

Signature: Akkana Peck Date: 6/22/2020  
Printed Name: Akkana Peck  
Address: 111 La Senda Road

DocuSigned by:  
Signature: William M. Hodgson Date: 6/22/2020  
76DB5C966E034F3...  
Printed Name: William M. Hodgson  
Address: 114 La Senda Road

DocuSigned by:  
Signature: Susan Mary Hodgson Date: 6/22/2020  
76DB5C966E034F3...  
Printed Name: Susan Mary Hodgson  
Address: 114 La Senda Road

Signature: Les DiLeva Date: 6/22/2020  
Printed Name: Les DiLeva  
Address: 115 La Senda Road

Signature: Patricia Thames Date: 6/22/2020  
Printed Name: Patricia Thames  
Address: 115 La Senda Road

Signature: Fredrick J. Berl Date: 6/22/2020  
Printed Name: Fredrick J. Berl  
Address: 117 La Senda Road

Signature: Theresa K. Berl Date: 6/22/2020  
Printed Name: Theresa K. Berl  
Address: 117 La Senda Road

DocuSigned by:  
Signature: Cynthia Murphy Date: 6/23/2020  
5E68E34C69FD483...  
Printed Name: Cynthia L. Murphy  
Address: 110 Piedra Loop

Signature: Jeanette Metzger-Thorp Date: 6/22/2020  
Printed Name: Jeanette Metzger-Thorp  
Address: 110 Piedra Loop

Signature: Phillip D. Noll Date: 6/22/2020  
Printed Name: Phillip D. Noll  
Address: 114 Piedra Loop

Signature: Monica D. Noll Date: 6-22-20  
Printed Name: Monica D. Noll  
Address: 114 Piedra Loop

Signature: Barham W. Smith Date: 6/22/2020  
Printed Name: Barham W. Smith  
Address: 116 Piedra Loop



Signature: Marilyn K. Smith Date: June 22, 2020  
Printed Name: Marilyn K. Smith  
Address: 116 Piedra Loop

Signature: Mikkel B. Johnson Date: 6/22/20  
Printed Name: Mikkel B. Johnson  
Address: 118 Piedra Loop

Signature: Lynne M. Johnson Date: 6.22.2020  
Printed Name: Lynne M. Johnson  
Address: 118 Piedra Loop

Signature: David L. Paulson Date: 6-22-20  
Printed Name: David L. Paulson  
Address: 122 Piedra Loop

Signature: Anne M. Paulson Date: 6-22-20  
Printed Name: Anne M. Paulson  
Address: 122 Piedra Loop

# **Reasons for Appeal of Special Use Permits SUP-2020-0014 and SUP-2020-0015 Granted on June 10, 2020**

Submitted by the Undersigned to the Los Alamos County Community Development Department  
June 23, 2020

## **1.0 Violations of Los Alamos County Code by the Planning and Zoning Commission**

### **(P&Z)**

#### **1.1 Major Conflict of Interest Between a P&Z Commissioner and the Special Use Permit (SUP) Applicant**

##### **1.1.1 Violation of **Los Alamos County Municipal Code Sec. 16-493 (c) (1)** and **Los Alamos County Municipal Code Sec. 30-7 (b) (2)**.**

Commissioner April Wade declines to recuse herself though employed by an organization whose president is the applicant, then enters multiple prejudicial errors of fact into the record, then both seconds the motion and votes in favor of the SUP.

Early in the proceedings, Commissioner April Wade explains that the applicant Denise Matthews is the Board President at her place of employment, Little Forest Playschool (subsequent minute 59 in the video record) where she is the Executive Director. It accepts children between the ages of 1-5.

This obviously appears to be a tainting relationship, prompting her admission, but she assures the proceedings she can be fair.

Later she states:

*"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"*

(subsequent 3:27 in the video record).

We contacted CYFD (the New Mexico Children, Youth & Families Department) to confirm Ms. Wade's claims only to find that CYFD has no record of any such statement and offered no support for it. An extensive search of public records both by ourselves and Barb Ricci at Records Information Management for the county turned up only one application for a Special Use Permit for in-home daycare in Los Alamos County. Ever. Even more troubling, the SUP was approved and is still in business in the residence at 3463 Urban Street.

There are two, perhaps three, factual errors here:

1. There is one licensed home daycare.
2. Los Alamos had granted 100% of such applications at the time of her statement.
3. There is no corroboration that CYFD ever asserted any statement regarding the notoriety of Los Alamos for turning down home day care applications.

We assert her statements constitute a compound error of fact, prejudicial in favor of the applicant, and indicates she should have been recused from the hearing and certainly not allowed to vote on the matter.

There is considerable procedure regarding recusal in the **Los Alamos Municipal Code Sec. 30-7**, but we could find nothing in the county municipal code pertaining to penalties for failure to recuse. However, there appears to be considerable New Mexico state law regarding this situation. We assume state law need not be cited until this appeal reaches that jurisdiction.

## **1.2 Failure of the P&Z Commission to Notify All Affected Parties**

- ### **1.2.1**
- Due to negligence, Los Alamos County failed to give notice to the closest affected residents at 115 La Senda Rd, pursuant to **Los Alamos County Municipal Code Sec. 16-192 (a) (2)** which states:

*"When the public hearing is on a matter affecting a specific parcel or parcels of property, notice shall be given by U.S.*

*mail to the owners of real property within 100 yards of the exterior lot lines of the property or properties affected at least 15 days prior to the public hearing. Said notice shall be in substantially the same form as the notice required in subsection (a)(1) of this section."*

The record shows a letter was mailed to:

BAKER GEORGE A JR  
115 LA SENDA RD  
LOS ALAMOS, NM 87547

George is deceased and the property was sold in September 2019 to DI LEVA LESLIE V & THAMES PATRICIA A

When Mr. Baker's widow Carol Thomas moved away, she filed a change of address to have their mail forwarded, and all mail addressed to George Baker at that address has been so handled.

Note that the Municipal Code does not say notice shall be mailed to a particular property, but rather to the owners of that property. Clearly, that was never done.

The agency handling the mailing had not updated their records for at least seven months, and did not check the accuracy of their mailing. Consequently, the actual owners did not know at any time before or during the public hearing that such an action was taking place.

Upon learning of the proposed daycare facility from a neighbor, and that the application had already been approved, their immediate and sustained reaction was extremely negative toward the proposed outdoor daycare operation, but they never had the opportunity let the P&Z Commission know.

Considering the proximity of 115 La Senda Rd to the proposed outdoor daycare (51'4"), through no fault of either the applicant or affected parties, or the P&Z Commission, a fair hearing was not possible due to the county's error.

## **2.0 Special Use Permit (SUP) Application Fails to Meet SUP Requirements**

### **2.1 The Effects of Noise: A Manifest Abuse of Discretion**

#### **2.1.1 There was strong objection to the proposed daycare based on Sec. 16-156 (1) of the Los Alamos County Municipal Code** which states the request will not:

*"...be detrimental to the health, safety, peace, comfort or general welfare of persons residing or working in the vicinity of such proposed use..."*

The noise generated by the daycare facility will be detrimental to the peace and comfort of nearby residents. This is a major issue that the county has failed to address. The county representative even stated that it had no knowledge, evidence, or statement to present regarding noise levels, and therefore the county has no standing for consideration in this matter.

The applicant asserted that 12 children would emit nothing more than a conversational level of sound except for an occasional squeal, that sound attenuates 6 dBA over doubled distance (more on this below), and native vegetation plus recently planted fruit trees will dampen noise (see Exhibit A: photo taken from the corner of the residence at 115 La Senda looking towards the proposed daycare facility area). There may be fruit trees but they are saplings and not easily seen. Piñon and Juniper trees are small and sparse and will do little to attenuate noise. There is still plenty of direct exposure to adjoining properties and it appears this will be true for quite some time.

Opposing this, eight of the affected parties asserted experience that 12 children can, and will, not only exceed conversational levels, but that noise levels will reach the point of being detrimental to peace and comfort.



One affected party, Marilyn Smith (116 Piedra Loop), testifies:

*"I'm a retired early childhood educator after 31 years and I know that young children can really make a lot of noise and especially up to twelve. The Matthews right now only have one son and he's four, and when he's outside we can hear him even inside our house"* (subsequent 2:39 in the video record).

By any reasonable metric, 31 years of experience carries significant weight. The fact that one child is clearly audible inside a neighbor's house also carries significant weight.

Another affected party, David Paulson (122 Piedra Loop), explains that he currently has a neighbor with five children, and that is already at the limit of tolerance, establishing he has direct experience with the kind of additional noise to be expected, albeit at a lower level (subsequent 2:55 in the video record).

Two of the affected parties, David North and Akkana Peck (111 La Senda) state they lived across from a similar outdoor operation (subsequent 2:44 in video record, also letter in record) and that the noise from the children was so loud they made it a high priority to never again own a house situated close to a daycare or school facility. The facility in question had approximately twelve children and was located about 120 feet from their porch to the closest edge of the fence (see Exhibit B).

Further, two of the P&Z Commissioners make statements that illustrate their own anticipation of noise that will breach the peace and comfort of the area. Commissioner Beverly Neal-Clinton states:

*"I understand that this will be an interrupt for those who have retired, for those who have that peace and quiet that they worked towards ..."* (subsequent 3:24 in the video record).

Commissioner Stephanie V Nakhleh relates her experience some 30 years or so earlier while growing up at 128 Piedra Loop (very near the properties in question):

*"I grew up in that neighborhood and we had twelve children between us and our two neighbors playing constantly, 70s and 80s, in that exact same area. It was loud..."* (subsequent 3:25 in the video record).

Background sound levels in the White Rock community range from 38-51 dBA and at the entrance to Bandelier National Monument from 31-35 dBA (Burns, 1995; Vigil, 1995). Sound levels in various canyons in Los Alamos county seem to average around 45 dBA (Huchton, et. al, 1997).

From these data ambient sound levels in the La Senda area can be reasonably inferred to be similar; namely in the 30-50dBA range. **Los Alamos County Code Sec. 18-73** limits sound levels in residential areas to no more than 65 dBA at the property line. Sound levels at playgrounds have been measured at up to 115 dBA (<https://chchearing.org/noise/children/>); in nursery school rooms at 80 dBA (<https://pubmed.ncbi.nlm.nih.gov/20480127/>); and at child care facilities up to 84 dBA (<https://www.who.int/ceh/capacity/noise.pdf?ua=1> and <http://www.ci.pleasant-hill.ca.us/DocumentCenter/View/16065/12-19-16-environmental-noise-assessment?bidId=>). Therefore it is highly unlikely that the noise levels coming from the daycare facility at 113B La Senda Rd. would be less than 65dBA. Additionally, the claim that sound attenuates 6 dBA over doubled distance only applies to an ideal laboratory environment and is not applicable to open ground. Section 4.1.1 paragraph 5 further develops the problems with applying an engineering ideal of sound attenuation in this situation.

Considering the full weight of testimony from all parties offering experience with the likely noise level, it is extremely clear that the weight of evidence presented at the hearing is overwhelmingly in support of the daycare facility being detrimental to peace and

comfort. Thus, the proposed activity does not meet the first requirement of the SUP application.

This being a Special Use Permit, with some emphasis on the word Special, it is incumbent on the applicant to establish 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.

Considering these points, we assert that the preponderance of evidence that the daycare facility will be a detriment to the peace and comfort of our subdivision is so great that by ignoring it the P&Z Commission committed manifest abuse of discretion.

## **2.2 Zoning Issues**

### **2.2.1 Los Alamos County Code, CHAPTER 16, ARTICLE XIII, SEC. 16-533 (1)** states:

*"The R-A residential agricultural district is intended to accommodate single-family dwellings and accessory structures and uses and is further intended to maintain and protect a residential character of development characterized by large lots having a rural atmosphere, where agricultural, horticultural and animal husbandry activities may be pursued by the residents of the R-A district."*

The fact that a Special Use Permit is required for a daycare facility (as well as further review by P&Z Commissioners) demonstrates that a daycare facility does not, in any way,

*“maintain and protect a residential character”* of the La Senda subdivision. A daycare facility is, by its very nature, a noisy commercial business and as such is wholly inappropriate for an area that is zoned as Residential-Agricultural. As noted above by Los Alamos County: *“The R-A residential-agricultural district is intended to accommodate **single-family dwellings**...”* not noisy businesses.

There are currently no existing in-home daycare facilities in all of White Rock and no commercial daycare facilities in R-A zoned areas. There is currently only one in-home daycare facility in all of Los Alamos County (at 3463 Urban Street) that required a SUP. That property is also not in an R-A zoned area.

An in-home daycare facility at 113B La Senda will set a dangerous precedent for the La Senda neighborhood (and all areas zoned R-A) by opening the door for the introduction of other noise-generating businesses that would further compromise the rural-residential character of the subdivision.

Additionally a daycare facility goes against the wishes of the majority of the affected residents (those within a 100 yd radius of 113B La Senda Rd. as defined by LAC; See Exhibit C) who moved here for the “country feel” and the peace and quiet. Many of the residents retired to the La Senda subdivision specifically for the peace and quiet and the country atmosphere.

## **2.3 Capricious statement in staff presentation**

### **2.3.1 Los Alamos County Municipal Code Sect Sec. 16-493 (c) (1):**

Arbitrary, capricious statement in the EXHIBITS SUBMITTED DURING HEARING Case #SUP-2020-0014 and SUP 2020-0015

In the section titled “Special Use Permit Review Criteria”, in the Staff Response to SUP-2020-0014 the following appears:

*“Peace and comfort of persons residing and working in the vicinity is subjective, and cannot be proven either way.”*

The current, past, or future peace and comfort of the residents in the vicinity is not, and never has been, at issue in the hearing. What is under discussion is the likelihood of detriment to the peace and comfort of those residents.

The likelihood of detriment to peace and comfort actually can be proven, at least to the degree necessary to countermand evidence offered by the applicant, who is charged with the burden of proof according to **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."*

Because the statement is irrelevant to the proceedings, it is both arbitrary for appearing at all, and capricious in its obvious prejudice in favor of the daycare application.

We further point out that if "peace and comfort" cannot be proven or disproven, it logically follows that "detriment to peace and comfort" also cannot be proven or disproven, placing an impossible burden on the daycare applicant if absolute proof is required on that aspect of the applicant's requirements.

### **3.0 SUP Application Fails to Meet Requirements of the Los Alamos Comprehensive Plan**

**3.1** The Comprehensive Plan states that the character of existing subdivisions will be protected

**3.1.1** The Los Alamos Comprehensive Plan repeatedly states that the character of existing subdivisions will be protected (**pg. 57, pg. 62 Goal 1., pg. 65, and pg. 66 Goal 1**). The character of the La Senda subdivision is, and has always been, one of quiet country living. No SUP has ever been granted for a daycare facility in an R-A zone. Allowing such a new and disruptive Special Use does not meet the requirements of the Comprehensive Plan.



**3.2** The Comprehensive Plan strongly implies that businesses should be located in the downtown areas

**3.2.1** The Comprehensive Plan repeatedly puts forth the idea that Los Alamos County should have business districts (primarily in the downtown areas) separate from residential areas (**pgs. 34, 70 Goal 9, 70 Goal 10, 71 Policy 3, 73, and 84 Policy 2**). The reasoning for this goal is to reduce urban blight, make better use of county-owned land, infill vacant areas, make use of long vacant commercial structures, revitalize the downtown areas, and to protect the character of existing neighborhoods. Allowing a noisy daycare facility in a quiet residential area is in direct opposition to this goal.

#### **4.0 Procedural Errors**

**4.1** P&Z commissioners approved an activity that is almost certain to violate county code requirements

**4.1.1** The P&Z Commission approved a Special Use Permit for an activity that will violate county ordinance and therefore prove detrimental to the welfare of the county.

Several times during the hearing, various parties referred to the limits imposed in **Los Alamos County Code Sec. 18-73**, the relevant portions being

*"It shall be a violation of this article for any person to cause or permit the production of sound in such a manner as to let escape more than 65 dBA across any residential property line" and "Between the hours of 7:00 a.m. and 9:00 p.m., the noise levels permitted in subsection (a) of this section may be increased by ten dBA for a period not to exceed ten minutes in any one hour."*

Six relevant passages were entered into evidence during the hearing. Two were supplied by the applicant: first, that 12 children outside are the equivalent of a normal conversation of 60 dBA, and second that sound attenuates at the rate of

6 dBA at each doubling of distance (both subsequent 1:17 in the video record).

Three were supplied by the affected parties: first, that the 6 dBA attenuation of sound over distance only applies to an ideal environment and not over solid ground (Barry Smith subsequent 2:56 in the video record), that attenuation is largely irrelevant because the daycare facility extends to the border of the property (subsequent 2:45 in the video record), and that references have been seen that indicate daycare sound levels reach 90 dBA (subsequent 2:47 in the video record).

In the last relevant passage, Commissioner Williams establishes that without a reference distance, the applicant's statement regarding attenuation of sound cannot be derived in any useful way from the evidence supplied (subsequent 1:50 in the video record).

In total the record indicates that distance from the sound source is probably not useful evidence, that one party argues a group of 12 children generates sound at a normal conversational level of 60 dBA, and another has seen published evidence that the sound level can be as high as 90 dBA. It is left to the Commissioners to guess which of those two numbers is closest to the truth. Subsequent statements indicate at least a suspicion on the part of everyone that 60 dBA is not correct.

When asked by Commissioner Williams if it is appropriate for the P&Z Commission to discuss the legality of the daycare facility under **Sec. 18**, the county attorney present, Mr. Kevin Powers, replies *"It really isn't"* (subsequent 3:15 in the video record). Hopefully the Commissioners did not tune out at that point, because shortly after that he says they *"have some leeway"* and *"I don't know if noise is one of those health and safety issues"* (subsequent 3:17 in the video record). There is much more said, and well worth attending, but in the end it appears to us that the P&Z Commission could have, and therefore probably should have, considered the likely illegality of the operation, in particular because irritating or excessive noise is well known to cause health problems. The US

National Institutes of Health, for one example states: "*As a general rule, sounds louder than 80 decibels are hazardous.*" (see Appendix A "Noise Pollution")

Other than that, county staff stated they had no research or information about noise as regards this application. If they had researched observed sound levels, they would have found substantial evidence that a group of a dozen young children will easily generate noise at 90 dBA, rather than 60 dBA.

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/>)

One set of readings from an outdoor daycare facility showed a measured level average level of 66 dB with a peak of up to 84 dB, measured at a distance up to 50 feet (See Appendix B Pleasant Hill Child Care Environmental Noise Assessment)

Even cursory research would indicate that when sound meters are placed at the fence line, they will record noise in excess of that allowed by **Los Alamos County Code Sec. 18-73 (a) and (b)**.

We feel this should have been considered seriously by the Commission to protect all parties involved -- the applicant from future legal problems, the affected parties from noise incursion, and the county itself from culpability, particularly after hearing of a high probability that noise would exceed legal limits. Ensuing actions are almost certain to be damaging to all parties, but especially to the reputation and even financial loss to the county both in time spent and other possible costs.

**4.2** Affected parties were not allowed enough time to evaluate and respond to the daycare facility proposal

**4.2.1 Los Alamos County Code Sec. (a) (1) of the code states:**

*"Notice of public hearing shall be deemed to have been given when a notice setting forth the nature of the request..."*

However, the primarily outdoor nature of the operation was never communicated, which we contend is a major and critical aspect of the proposed daycare business nature.

The application for a Special Use Permit described a daycare operation that *"is proposed to take place within the existing 523 ft<sup>2</sup> accessory building and will operate from the hours of 8:30 am to 5 pm. ... It will be landscaped and includes play areas and a garden, where the children will have the opportunity to learn agriculture hands-on."* The application further states *"The age range will be from 3-6 years."*

However, when the presentation was made to the P&Z Commission at the hearing on June 10th, the proposal was for a daycare operation that started at 8:00 am rather than 8:30, and was *"primarily outdoors"* rather than *"within the existing 523 sq. ft. accessory building."* Upon further questioning, the age range grew from 3-6 to 3-7 or perhaps more, and no new construction turned into a play area that includes *"maybe a slide."*

The most surprising revelation during the hearing was the applicant's intention to run the operation outdoors, with the applicant indicating that the building was actually just there as a backstop for inclement weather. A change from "within the ...

building" to "outdoors" makes an enormous difference to the duration of irritation to be expected from the noise. While the application does say there will be outdoor areas where *"the children will have the opportunity to learn agriculture hands-on"* this does not clearly explain that they will be outdoors for any significant part of the day, and the entire phrasing taken as a whole implies quite the opposite.

Given that many of the affected residents are retired or work from home, the change of hours is significant. While 8:30 is sometimes an issue, 8:00 am is an encroachment. Currently, there are usually no noises above background at that time in this area.

The change in ages of the children from 3-6 to 3-7 in age and addition of some equipment may be trivial, or may end up being highly significant. But these items further add to the impression that nothing in the application was considered binding, and even statements made during the presentation may not be honored rigorously.

Given the numerous discrepancies and changes listed above, the affected parties were actually given exactly zero time to consider the actual daycare business under consideration.

Further, **Los Alamos County Code Sec. 16-192 (a) (2)** states:

*"When the public hearing is on a matter affecting a specific parcel or parcels of property, notice shall be given by U.S. mail to the owners of real property within 100 yards of the exterior lot lines of the property or properties affected at least 15 days prior to the public hearing."*

The letter sent out was dated May 26, but the earliest it was received was May 28, which is only 13 days prior to



the hearing. This clause does not appear to refer to when the letter is typed, but rather to when notice is "given." It was not "at least" 15 days. Considering the application is dated March 4, 2020, it's probable the county had adequate time to handle this matter.

## **5.0 Factual Errors**

### **5.1 Incorrect distances were used in the SUP application**

#### **5.1.1 Applicant significantly in error about distance to nearest property**

Subsequent 1:57 in the video record of the June 10th hearing a confusing discussion ensues after the applicant is asked how far it is to the nearest neighbor's house.

The applicant attempts to answer the question with an estimate of 100 feet. At this point it is unclear exactly what property is being described, but 115 La Senda is slightly under 52 feet from the play area and 116 Piedra Loop is slightly further.

While we think this was an honest effort and acknowledge that this kind of estimate is difficult at best, the incorrect statement could easily prejudice the Commission as to the actual proximity of the daycare operation to the nearest neighbors.

## Appendix A

### Noise Pollution

<https://toxtown.nlm.nih.gov/sources-of-exposure/noise-pollution>

Who is at risk of the health effects of Noise Pollution?

People differ in their sensitivity to noise. As a general rule, sounds louder than 80 decibels are hazardous. Noise may damage your hearing if you are at arm's length and have to shout to make yourself heard. If noise is hurting your ears, your ears may ring, or you may have difficulty hearing for several hours after exposure to the noise.

Children often participate in recreational activities that can harm their hearing.

## Appendix B

### 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. The average sound level for the 37-minute interval measured was 69 dB, and maximum sound levels ranged up to 84 dB."*

It is immediately obvious that 25 children will be louder than 12. However, 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))

So we can expect something on the order of 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)).

## **References**

Burns 1995 M.J. Burns, "White Rock Noise Measurements during PHERMEX Tests, 11 March 1995," Los Alamos National Laboratory memorandum DX-DO:DARHT-95-31 (March 13, 1995).

Huchton, K, Koch, S.W., and Robinson, R, 1997, "An Analysis of Background Noise in Selected Canyons of Los Alamos County," LA-13372-MS.

Vigil 1995 E.A. Vigil, "Noise Measurement at State Road 4 and Bandelier Turn-Off at State Road 4 during PHERMEX Test on March 11, 1995," Los Alamos National Laboratory memorandum no. ESH-5:95-11825 (March 17, 1995).

Exhibit A. View of 113B La Senda Rd. from the corner of the residence at 115 La Senda Road. 115 La Senda Rd. is slightly less than 52 ft. from the proposed daycare play area.





Exhibit B. Daycare facility 120 feet from the former residence of David North and Akkana Peck.

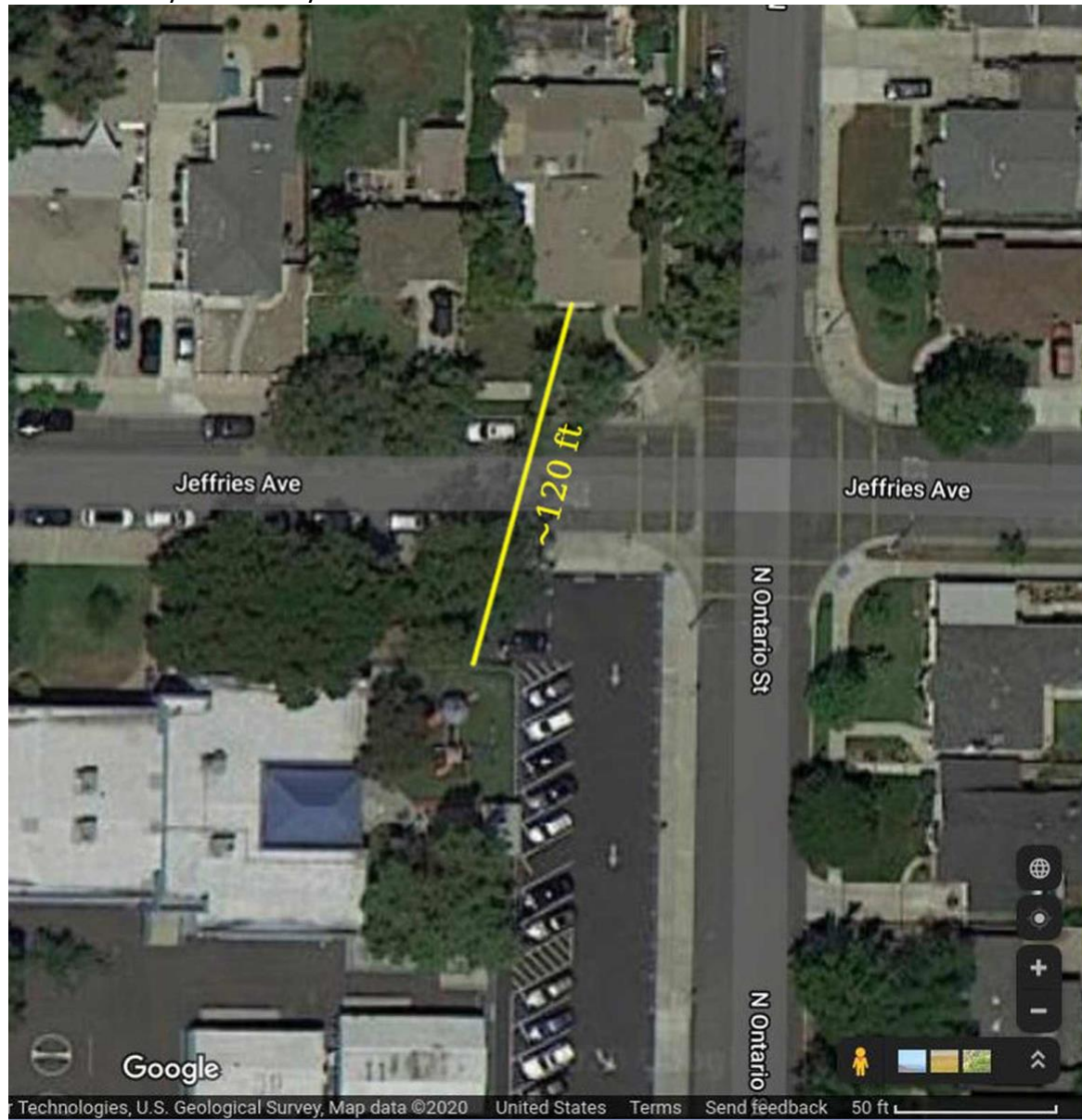
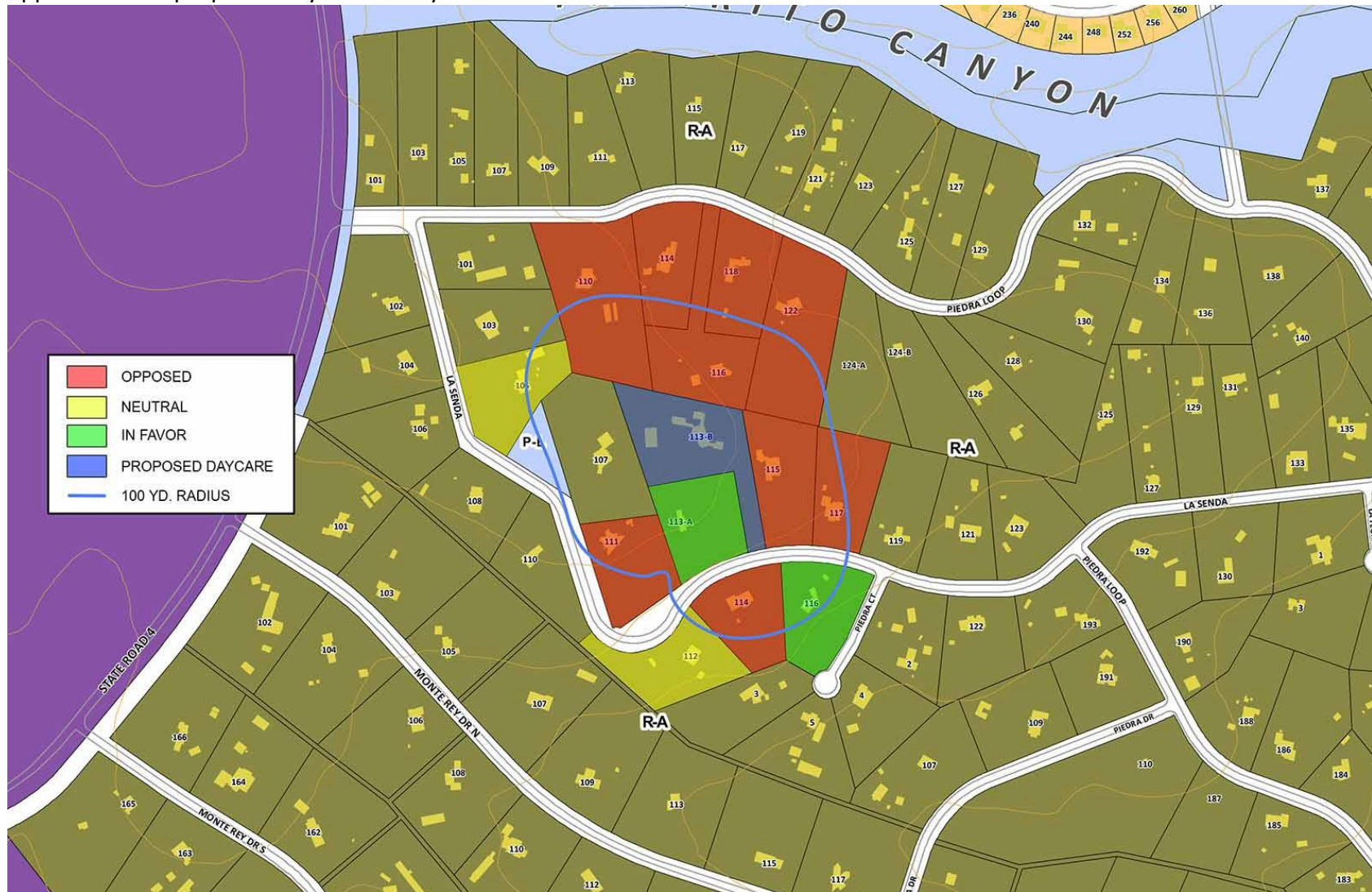




Exhibit C. Map of the location of 113B La Senda Rd. and affected parties (within 100yds.). The majority of affected residents are opposed to the proposed daycare facility.



## **BRIEF AND RESPONSES**

- 7.1 BRIEFS RECEIVED
- 7.2 RESPONSE(S) TO BRIEFS

Appellants Patricia Thames and Barham and Marilyn Smith, through their attorney, Joseph M. Karnes, hereby submit Appellants' Appeal Brief challenging the legality of the Planning & Zoning Commission's (P&Z) approval of SUP 2020-0014/15 (the "Decision") for an "in-home daycare for up to 12 children" and an in-home business (the "Project" or "Application") at 113B La Senda Road, White Rock (the "Property").

Within a long-established 100% residential neighborhood, Applicant Denise Matthews applied to operate a primarily outdoor daycare business for up to 12 children aged 3-6 from 8:30 AM to 5:00 PM. To be approved via a Special Use Permit, the County requires that the proposed use "will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort or general welfare of the persons residing or working in the vicinity of such proposed use." (County Development Code §16-156, the "Requirement")

Initially, County staff failed to analyze the "circumstances of the particular case" by assessing whether imposition of an outdoor-based commercial daycare use on a quiet residential neighborhood would detrimentally affect the peace, comfort and general welfare of the existing residential neighbors. Instead, the case planner testified to the P&Z that the "peace and comfort of the persons residing or working in the vicinity is subjective and cannot be proven either way." (P&Z Transcript, p. 33) Staff intentionally *ignored* the relevant provision of the Requirement and the fundamental issue and controversy presented by the Application; that its approval would create a daily outdoor disturbance within a long-established residential neighborhood, thereby forever altering its peaceful character and desirability as a place to live and negatively affecting property values (another part of the Requirement that staff ignored).

The P&Z staff report also ignored relevant portion of the Requirement. The staff report includes the empty and misdirected assurance that "the use will not be detrimental to the general welfare of the community but will provide a needed community resource to the county's large workforce." (p. 9) Addressing only the welfare of the *community*, the staff report ignored the Requirement's express requirement that "persons residing or working in the vicinity of such proposed use" be protected from detrimental impacts. While 9 of the 13 residential property

owners within 300 feet expressed their opposition based on the fundamental incompatibility of the proposed use, the staff report includes no evidence of compliance with the Requirement.

Near the end of the P&Z hearing, the Chair addressed the pertinent Requirement clause, stating “I think this application will be detrimental to the health, safety, peace, comfort, and general welfare of the people residing or working in the vicinity. Talk about decibel levels and laws of physical and, yeah, it’s all there. I don’t see how we meet that criteria. ... I think the significant change to the vicinity and that significant change would be a detriment.” (P&Z Hearing Transcript, p. 49) No other P&Z member addressed the question of how, based on substantial evidence in the record, the Application met the Requirement by ensuring no detrimental effect on the peace, comfort or general welfare of the adjacent and nearby residents.

The purpose of findings is to set forth the relevant facts on which the decision-makers base their assessment of whether an application meets required Code requirements and enables readers and appellate reviewers to understand how the decision-makers bridged the conceptual gap between facts and decision. Legally adequate findings explain the basis on which the decision-makers came to their conclusion, enabling reviewers to assess whether the decision was made in a manner consistent with applicable law or whether the decision is legally defective because it is arbitrary and capricious. NMSA 1978 §39-3-1.1

The P&Z findings are entirely useless in this regard because they provide no information as to how or why a majority of the P&Z members approved the Decision. The findings merely state that “the Special Use Permit Review Criteria, section 16-156, has been applied” and do not even include the necessary conclusion that the Requirement was satisfied, let alone explain why and how the decision-makers believed that was the case. (Findings pp. 1-2)

In sum, County staff and a majority of the P&Z failed to address, let alone explain the basis on which the P&Z concluded that the central issue to this Application was answered in the affirmative – that “under the circumstances of the particular case” the proposed use would NOT “be detrimental to the health, safety, peace, comfort or general welfare of the persons residing or working in the vicinity of such proposed use.” As addressed below, the Decision is defective on

its face and contrary to law. The Council should reverse the Decision and deny the Application based on the fundamental incompatibility of the proposed commercial use with the existing neighborhood and an absence of evidence demonstrating compliance with the Requirement.

## **ARGUMENT**

### **A. The P&Z Findings are Wholly Conclusory and are Legally Defective**

“Upon issuing a final decision, an agency shall prepare a written decision that includes an order granting or denying relief and a statement of the factual and legal basis for the order.”

NMSA 1978 §39-3-1.1 In this case, the adopted findings are wholly without substance.

The standard of review applied on appeals of P&Z decisions is three-fold: 1) whether the decision is in accordance with adopted county plans, policies and ordinances; 2) whether the facts on which the decision is based are supported by the record; and 3) whether the decision was arbitrary, capricious or a manifest abuse of discretion. (Code §16-493(c)(1)) The latter two standards are consistent with the State statute applicable to judicial review of administrative decisions, including the one that the Council will render in this matter. §39-3-1.1.D NMSA 1978.

An “arbitrary and capricious action” consists of a ruling or conduct which, when viewed in light of the whole record, is unreasonable or does not have a rational basis and is the result of an unconsidered, willful and irrational choice of conduct and not the result of the ‘winnowing and sifting process.’” *Perkins v. Department of Human Services*, 106 NM 651, 655 (Ct. App. 1987). An action is considered an “abuse of discretion” if the “order or decision is not supported by the findings, or the findings are not supported by the evidence. (Ibid.)

Here, the P&Z Findings are entirely conclusory and are bereft of any substantive statements of fact or explanation of the conceptual link between the factual findings and the conclusions of law reached by the P&Z. As such, the Findings are defective on their face and the decision is an abuse of discretion due to a complete absence of a basis on which to determine whether the decision is supported by the findings or the findings are supported by the evidence. *Perkins*, 106 N.M. 651, 655. For this reason alone, the Council should reverse the Decision.



**B. The Decision is Not Supported by Any Substantial Evidence with Respect to the Requirement as it Relates to the Surrounding Residential Neighborhood**

Apart from the defective P&Z Findings, the Record contains no substantial evidence supporting the required finding that the Application meets Requirement with respect to the peace, comfort or general welfare of the surrounding residents.

In addressing the Requirement, the staff report provides a wholly conclusory statement that “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.” (Staff Report, p. 9) This conclusory claim addresses *only* the “general welfare of the community” and fails to address the portion of the Requirement that, under the circumstances of the particular case, that the use will not be detrimental to the health, safety, peace, comfort or general welfare of persons **residing in the vicinity of such proposed use**. The staff report entirely ignores the primary basis of neighborhood opposition to the Application – that the noise and disturbance generated by the Project will be detrimental to their peace, comfort and general welfare.

At the P&Z hearing, the planner reiterated the conclusory statement that “a daycare facility is not harmful, it will not be detrimental, injurious to the general welfare of the community.” Tellingly, the planner dismissed the portion of the Requirement relating to the surrounding residential neighborhood, stating “**Peace and comfort of the persons residing or working in the vicinity is subjective and cannot be proven either way.**” (P&Z Transcript, p. 33) It is not for the planner or P&Z to *reject* this element of the Requirement. Likewise, the Applicant offered no evidence regarding the Requirement, testifying “it is the right of the property owner to use the property in the way that they would like to use it.” (Transcript p. 24)

The “circumstances of the particular case” are that the Application proposes a new daycare facility within a long-established residential neighborhood zoned Residential Agriculture where 9 of the 13 owners within 300 feet of the Property registered their opposition to the Project based on the Requirement’s protection of their peace, comfort and general welfare. Note

that the 20-page Appeal addresses several other defects of the Decision. The Appeal is incorporated herein and those issues are also ripe for consideration by the Council.

Appellant Marilyn Smith, a retired early childhood educator, testified to the P&Z that her house is 60 feet from the common property line with the Applicant's Property and that she knows "that young children can really make a lot of noise." (P&Z Transcript pp. 39-40) Rather than dismiss the concerns of Ms. Smith and the many other residents who testified and submitted letters to the County, on the basis that the Code's protection of their peace, comfort and general welfare is "subjective," staff could have carried out a reasoned analysis of the circumstances of the particular case. Staff could have considered the locations of the outdoor play areas in relation to the location of surrounding residences and researched the amount of noise and disturbance created by daycare facilities of the size and ages proposed that are focused on "trying to really gets kids outside and have the nature experience on a daily basis" which outdoor activities are "really the passion behind the project." (Applicant's testimony, P&Z transcript, pp. 17-18)

Outdoor-oriented daycare facilities exist throughout the country. Staff's excuse that it couldn't "go out and measure sound because the facility is not in operation" entirely misses the point and reference to the County noise ordinance, which applies to *enforcement actions*, rather than land use decisions is a red herring. (P&Z Transcript, p. 35) The Requirement protects against land use incompatibility, of which noise is one element. Reliance on an enforcement ordinance in an effort to address a fundamental land use incompatibility is inappropriate and bad planning. An outdoor-oriented daycare business with up to 12 young children will by its nature disrupt the peace, comfort and general welfare of the adjacent and nearby residents in violation of the Requirement. The Residents are entitled to a reasoned analysis of the Requirement and other County requirements addressed in the Appeal, which was not provided by either staff or the Findings. The Record includes no substantial evidence supporting the P&Z's necessary conclusion that the Application meets the Requirement. The Appellants respectfully request that the Council reverse the Decision and deny the Application, based on the fundamental incompatibility of the proposed use with the existing residential character of the neighborhood.

**COUNTY OF LOS ALAMOS  
BEFORE THE LOS ALAMOS COUNTY COUNCIL**

**IN THE MATTER OF AN APPEAL OF        )  
PLANNING AND ZONING                        )  
COMMISSION APPROVAL OF                    )  
SPECIAL USE PERMITS SUP-2020-0014        )  
AND SUP-2020-0015, 113B LA SENDA,        )  
LOS ALAMOS COUNTY, NEW  
MEXICO**

**CDD BRIEF IN SUPPORT OF COMMISSION DECISION**

The Incorporated County of Los Alamos (“County”), Community Development Department (“CDD”), through the undersigned attorney, provides the following brief in support of the Planning and Zoning Commission’s (“Commission”) decision in cases SUP-2020-0014 and SUP-2020-0015 (“Applications”), as decided on June 10, 2020. As provided below, the Commission’s decision was in accordance with Chapter 16, the County’s Development Code, was supported by the record, and is not arbitrary, capricious, or a manifest abuse of discretion. Council must therefore uphold the Commission’s decision.

**I. STANDARD OF REVIEW**

Pursuant to Section 16-492(c) of the Development Code, the Council “...shall hold a hearing on the entire record sent to it and reverse, affirm, or modify the decision appealed.” Further, “[t]he [Council] shall 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.” Los Alamos County Code of Ordinances (“Code”), § 16-493(c)(1). When reviewing a decision for arbitrary and capricious conduct, a review of the record must be conducted "to ascertain whether there has been unreasoned action without proper consideration or disregard of the facts and circumstances." *Pickett Ranch, LLC v. Curry*, 2006-NMCA-082, ¶ 37.

**II. ARGUMENT**

Nine<sup>1</sup> adjacent property owners, the Appellants, allege five errors in the Commission's decision. Each of these are discussed below. CDD contends that the Commission's decision was proper because Appellants were provided notice of the hearing and attended and provided testimony and evidence for the Commission's consideration.

### **1. The Commission's Decision Was In Accordance With County Code**

Appellants first allege that a “[m]ajor Conflict of Interest Between a P&Z Commissioner and the Special Use Permit (SUP) Applicant.” **[RP, §6.1, page 7]**. The County Code defines a “conflict of interest” as a conflict between “a public official's private interests and a public official's duty to act impartially in the public interest.” Development Code, § 30-1. Commissioners must disclose a conflict before the public hearing. Development Code, §30-7 (a). If there is a direct or real conflict of interest, the Commissioner shall not participate. *See Siesta Hills Neighborhood Ass'n v. City of Albuquerque*, 1998-NMCA-028, ¶ 20 (City officials must avoid acting or voting on matters where they have a conflict of interest.). For potential or alleged conflicts of interest, a Commissioner may choose not to recuse themselves, but the other Commissioners may vote to disqualify the conflicted Commissioner. Development Code, § 30-7(d). However, Commissioners are not to “be so insulated from their community as to require them to be detached from all issues coming before them.” *Siesta Hills Neighborhood Ass'n v. City of Albuquerque*, 1998-NMCA-028, ¶ 20. Before the hearing, Commissioner Griffith disclosed she had a direct conflict and recused herself from the proceedings. Commissioner Wade then disclosed that the Appellee sat on a board of directors of her current employer. Commissioner Wade then stated she could be fair and impartial and had not prejudged the matter. **[RP §4.4, 14:505-512]**.

---

<sup>1</sup> Although the Appeal Application contains 18 signatures, there are actually only 9 contesting affected property owners as provided in Code § 16-454(b)(2)b.

Appellants point to only one statement by Commissioner Wade they allege as being improper.

This was Commissioner Wade's statement that CYFD was aware that the County had a history of not approving in-home daycare facilities and there were currently none. [RP §6.1, page 7]. This statement alone does not constitute a conflict of interest and is in no way improper. *See Las Cruces Prof'l Fire Fighters v. City of Las Cruces*, 1997-NMCA-031, ¶ 29 ("Members of [administrative] tribunals are entitled to hold views on policy, even strong views, and even views that are pertinent to the case before the tribunal."). Even considering *arguendo* that Commissioner Wade's comment demonstrated some bias for or against one of the parties, her vote was only one of the total seven votes cast. Without Commissioner Wade's participation the matter would have still been approved.

Appellants also allege that the decision was in error because one letter was not addressed to the current owner of 115 La Senda. [RP §6.1, page 8]. CDD asserts that notice was properly issued pursuant to the County Charter, County Code, and State law. The New Mexico Supreme Court has made clear that nothing under State law requires that personal notice is required, only notices reasonable contemplated to reach the affected persons is required. *Rayellen Res., Inc. v. N.M. Cultural Props. Review Comm.*, 2014-NMSC-006, ¶ 20. Here, CDD provided three methods of notice: direct mailing, publication in newspaper, and posting outside the Municipal Building.<sup>2</sup> The Council must therefore uphold the Commission's decision because reasonable notice was given.

## **2. The Commission Considered All Special Use Permit Criteria**

Appellants next argue that the Commission erred because it failed to consider the impact of noise from the daycare and that a daycare is not aligned with the "character" of La Senda. [RP §6.1, pages 10-14]. CDD asserts that the Commission fully considered the testimony and evidence presented by Appellee and Appellant at hearing and came to its own conclusions based on the facts

---

<sup>2</sup> Notices also complied with the State's Open Meetings Act. NMSA 1978, §§ 10-15-1 to 10-15-4.



presented. Development Code, § 16-452(d)(1)(a) (“If the...commission, after hearing and deliberation, determines that...[t]he special use permit request is in conformity...with the review criteria within section 16-156, the request shall be approved.”) The Council must therefore presume that the Commission weighed such evidence and testimony and reached a conclusion based on the stated criteria. *Albuquerque Bernalillo Cty. Water Util. Auth. v. N.M. Pub. Regulation Comm’n*, 2010-NMSC-013, ¶ 35 (In the absence of a clear and substantial evidence the Commission failed to...consider relevant evidence the decision must stand.). For the foregoing, the Commission’s decision must be upheld.

### **3. The Commission Considered the Comprehensive Plan**

Appellants next argue that the approval of the Applications was inconsistent with the Comprehensive Plan. [RP §6.1, page 15]. Important to clarify here is that the County’s Comprehensive Plan is a guiding document and cannot be considered in isolation from other Council actions and ordinances. *See Bennett v. City Council for the City of Las Cruces*, 1999-NMCA-015, ¶ 32. Council has by ordinance authorized daycare facilities in the R-A zone. *See* Development Code, §§ 16-156 and 16-282. Simply alleging that the use may not be consistent with a landowner’s expectation is simply insufficient to overturn the Commission’s decision<sup>3</sup>. Therefore, Appellants’ allegation must be ignored.

### **4. The Commission Fully Considered the Impact of Noise**

Appellants next allege that by the Commission approving the daycare, it was approving a violation of the County’s noise ordinance, § 18-73. [RP §6.1, pages 16-18]. Similar to above, Appellants’ presented testimony, evidence, and cross-examined Appellee on this specific issue.

---

<sup>3</sup> Appellant’s are also incorrect to assert that the Comprehensive Plan “implies” that such daycare facilities, as a business, must be located in the downtown areas as they provide no law, case, ordinance, or Council policy which supports Appellants’ position.

CDD again asserts that the Commission fully heard and considered the testimony and evidence of both parties and came to its own conclusions based on the facts. As such, Council should defer to the Commission's decision. *See e.g., DeWitt v. Rent-A-Center, Inc.*, 2009-NMSC-032, ¶ 12 (Deference must be given to the fact finder.).

Appellants also allege the decision was in error because the notice failed to clearly state that the daycare was primarily to be outdoors. [RP §6.1, page 19]. As provided above, Appellants again miss the mark in understanding the purpose of notice is to inform the recipient of the chance to be present at the hearing and present their case. Here, CDD provided sufficient notice on the matter to be heard and also provided instructions on how to review case documents. Appellants' allegation must therefore fail.

#### **5. Failure to Object to Evidence Presented At Hearing Cannot be Raised on Appeal**

Appellants' final argument is the decision was in error because testimony by Appellee on cross-examination incorrectly stated the distance to 115 La Senda was 100 feet. [RP §6.1, page 21]. CDD asserts that the Commission's decision was proper because the Appellants had full opportunity at the public hearing to question the Appellee on the actual distance and to correct any misunderstanding. Failure of the Appellants to do so is insufficient to now claim error.

### **III. CONCLUSION**

For the foregoing, Council must affirm the Commission's decisions in Case Numbers SUP-2020-0014 and SUP-2020-0015. Submitted this the 6<sup>th</sup> day of October, 2020.

/s/ Kevin Powers  
Kevin J. Powers, Esq.  
1000 Central Avenue, Suite 340  
Los Alamos, New Mexico 87544  
Telephone: (505) 662-8020  
Facsimile: (505) 662-8019  
Email: [kevin.powers@lacnm.us](mailto:kevin.powers@lacnm.us)

**Certification of Service of Parties**

I, Kevin J. Powers, attorney for the Incorporated County of Los Alamos, Community Development Department, hereby certify that I have, this the 6<sup>th</sup> day of October, 2020 served the following individuals, via U.S. Mail, a copy of the foregoing document.

**For Appellants:**

Joseph Karnes, Esq.  
Attorney for P. Thames and B. Smith  
Post Office Box 2476  
Santa Fe, New Mexico 87504-2476

David North & Akkana Peck  
111 La Senda Road  
White Rock, NM 87547

William & Susan Hodgson  
114 La Senda Road  
White Rock, NM 87547

Les DiLeva & Patricia Thames  
115 La Senda Road  
White Rock, NM 87547

Fredrick & Theresa Berl  
117 La Senda Road  
White Rock, NM 87547

Cynthia Murphy & Jeanette Metzger-Thorp  
110 Piedra Loop  
White Rock, NM 87547

Phillip & Monica Noll  
114 Piedra Loop  
White Rock, NM 87547

Barham & Marylin Smith  
116 Piedra Loop  
White Rock, NM 87547

Mikkel & Lynne Johnson  
118 Piedra Loop  
White Rock, NM 87547

David & Anne Paulson  
122 Piedra Loop  
White Rock, NM 87547

**For Appellee:**

Denise Matthews  
113 B La Senda Road  
White Rock, NM 87547

**/s/ Kevin Powers**

Kevin J. Powers, Esq.  
Associate County Attorney  
1000 Central Avenue, Suite 340  
Los Alamos, New Mexico 87544  
Telephone: (505) 662-8020  
Facsimile: (505) 662-8019  
Email: kevin.powers@lacnm.us

**Response To County Brief In Support Of Commission Decision  
Regarding The Appeal Of Special Use Permits SUP-2020-0014 And SUP-2020-0015**

In the first paragraph under II. ARGUMENT the Brief offers the unexplained theory that there are only nine adjacent property owners out of the eighteen Appellants, and further states the Appellants "attended and provided testimony and evidence". Even allowing for the disappearance of nine owners, this is not possible since there were only eight Appellants in attendance from five properties. This statement is particularly odd in that the two appellants in the closest property were not in attendance because they did not receive notice from the county.

**1. Factual Errors Are Grounds For Reversal On Appeal**

At the top of page 3, the brief states "Appellants point to only one statement by Commissioner Wade they allege as being improper ... Commissioner Wade's statement that CYFD was aware that the County had a history of not approving in-home daycare facilities and there were currently none. [RP §6.1, page 7]. This statement alone does not constitute a conflict of interest and is in no way improper." The brief fails to note the most important aspect of Commissioner Wade's statement: according in part to the county's own records, the statement was factually incorrect (see Appeal Page 2), in itself grounds for reversal on appeal (see *Los Alamos County Municipal Code Sec. 16-493(c)(1)*). The brief argues that introducing factual errors is "in no way improper."

Next appears a citation "See *Las Cruces Profl Fire Fighters v. City of Las Cruces*, 1997-NMCA-031, ¶ 29 ("Members of [administrative] tribunals are entitled to hold views on policy, even strong views, and even views that are pertinent to the case before the tribunal.") Nothing in that case addresses the matter of introducing a fallacy into evidence, and therefore has no bearing. That the conviction was strongly held is obvious in the video record (subsequent 3:27. Note her actual words were "Los Alamos is notorious for not granting these exceptions."

See line 1913-4 in transcript. In fact there has been only one prior application and it was granted). A willingness to believe this fiction without corroboration clearly indicates Commissioner Wade's claim to fairness was mistaken and she should have recused.

Brief continues "her vote was only one of the total seven votes cast. Without Commissioner Wade's participation the matter would have still been approved." This ignores the obvious; that had she recused she would never have made the statement, and that such an error of fact could have swayed the votes of the other Commissioners.

## **2. The County Is Required To Give Notice To Current Owners**

The Brief argues that failing to address notice to the owners of 115 La Senda was "properly issued according to the County Charter, County Code and State Law." The Brief then cites *Rayellen Res., Inc. v. N.M. Cultural Props. Review Comm.*, 2014-NMSC-006, ¶ 20 to bolster its interpretation of the state view on the matter. However, note in the previous paragraph of *Rayellen*, "Due process does not require the same form of notice in all contexts; instead, the notice should be 'appropriate to the nature of the case.'" *Id.* (quoting *Mullane*, 339 U.S. at 313, 70 S.Ct. 652); see also *Mullane*, 339 U.S. at 314, 70 S.Ct. 652 ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."). *Rayellen* is a complex review, and understanding it requires a full reading. But it is specific to a particular problem and particular laws, in which the Review concluded personal notice was not necessary at all (paragraph 27) and requiring further effort would be "unduly burdensome." In short, *Rayellen* does not dismiss the issue in this appeal at all. What it does say is decisions can and should be reversed on appeal when efforts were not "appropriate to the nature of the case" and were not



"reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action" and not "unduly burdensome."

115 La Senda Rd. was transferred to the current owners September 25, 2019. (See Document Number 240628 Book 186 pg. 513 Los Alamos County Recorder). Notice mailed to the previous owners (who had filed a change of address) was dated May 26, 2020 -- over nine months later. So the actual questions are: First, is using a list at least nine months out of date "reasonably calculated, under all the circumstances"? Should the county realize that properties change hands, and those leaving usually file a change of address with USPS, as was the case? Second, would requiring use of the County's own up-to-date records be "too burdensome"? And third, is addressing to the wrong party "appropriate to the nature of the case"? Note that *Rayellen* has no specific referent laws requiring notice, but the County has a very specific law regarding notice in cases of Special Use Permits: *Sec. 16-192(b)(2)* "When the public hearing is on a matter affecting a specific parcel or parcels of property, notice shall be given by U.S. mail to the owners of real property within 100 yards ..." which very explicitly says the notice should be given to "the owners of real property," not just sent to an address with previous owner's names on it.

Upon review, *Rayellen* neatly supports the contention that failure to notify the owners of 115 La Senda Rd. *does* constitute grounds for reversal on appeal.

### **3. Hearing Evidence Is Not The Same As Fairly Evaluating It**

In point 2, on page 4, the brief cites "*Albuquerque Bernalillo Cty. Water Util. Auth. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-013, ¶ 35 (In the absence of a clear and substantial evidence the Commission failed to...consider relevant evidence the decision must stand.)." The issue in the cited case was not whether the Commissioners failed to reasonably evaluate the evidence, but whether they had in fact seen it at all. Quoting from the same paragraph:

"Commissioners ... failed to review the evidentiary record prior to rendering a decision. See § 62-11-4. "[M]ere allegation that the commissioners did not consider the entire record [is] insufficient." Nobody disputes that the Commissioners present heard the evidence and therefore the citation is irrelevant.

What is at issue is whether the Commissioners fairly considered the weight of evidence in light of *LA Municipal Code Sec. 16(b)(3)* "The applicant ... shall bear the burden of demonstrating that the application should be granted." The Brief attempts to wish away the presence of manifest abuse of discretion regarding the peace and comfort of the nearby residents by equating exposure to evidence with fair evaluation. The same problem appears in the opening of section 4, as noted in the brief "Similar to above..."

#### **4. There Is Nothing Special About The R-A Zone**

The Brief states "Council has by ordinance authorized daycare facilities in the R-A zone. See Development Code, §§ 16-156 and 16-282." Unmentioned is the need for a Special Use Permit. The same ordinance applies to virtually all residential zones, including the R-3-H Zone, such as the Timber Ridge Rd. condominiums. An outdoor day care facility is potentially made legal by this ordinance, but that does not mean it makes sense in any residential setting, much less one where sound or visual blocking of any sort is rare to nonexistent, as in La Senda.

#### **5. No Prior Indication Of The Primarily Outdoor Nature Of The Planned Operation**

Notice referenced access to materials describing the proposal, including "A. The daycare will take place within an existing 523 ft<sup>2</sup> building." (Staff Report Page 6). The Brief argues the purpose of the actual notification is "to inform the recipient of the chance to be present at the hearing and present their case." This fails to address the problem created when referenced descriptions of the action are wrong and misleading. Parties may choose to attend or not based on this information.

## **6. The Incorrect Distance Was Corrected At The Hearing And Should Be Allowed**

In Page 5, Section 5 the Brief states the incorrect distance to nearby properties given by the Appellant cannot be raised as an issue because "Appellants had full opportunity at the public hearing to question the Appellee on the actual distance and to correct any misunderstanding." Note that on line 1490 of the transcript of the appeal, Marilyn Smith states during her next legal opportunity to speak, "Our house is 60 feet from the property line where this daycare is proposed to take place," clearly objection by correction, which should certainly allow this issue to be addressed on appeal. More important, a property even closer had no opportunity to object at the hearing because the residents did not receive notice from the county.

## **7. Conclusion**

At least to the layman, the County's brief does little to support the Commission's decision in Case Numbers SUP- 2020-0014 and SUP-2020-0015. Some of the cited cases strongly contribute to the legal basis for reversal on appeal. Submitted this the 12th day of October, 2020.

/s/ David M. North  
David Mark North  
111 La Senda Road  
White Rock, New Mexico 87547  
Telephone: (505) 695-5808  
Email: [north@znet.com](mailto:north@znet.com)

**Certification of Service of Parties**

I, David M. North, hereby certify that I have, this the 13<sup>th</sup> day of October, 2020 served the following individuals, via U.S. Mail and email, a copy of the foregoing document.

*For Appellants:*

Joseph Karnes, Esq.  
Attorney for P. Thames and B. Smith  
Post Office Box 2476  
Santa Fe, New Mexico 87504-2476

Cynthia Murphy & Jeanette Metzger-Thorp  
110 Piedra Loop  
White Rock, NM 87547

David North & Akkana Peck  
111 La Senda Road  
White Rock, NM 87547

Phillip & Monica Noll  
114 Piedra Loop  
White Rock, NM 87547

William & Susan Hodgson  
114 La Senda Road  
White Rock, NM 87547

Barham & Marylin Smith  
116 Piedra Loop  
White Rock, NM 87547

Les DiLeva & Patricia Thames  
115 La Senda Road  
White Rock, NM 87547

Mikkel & Lynne Johnson  
118 Piedra Loop  
White Rock, NM 87547

Fredrick & Theresa Berl  
117 La Senda Road  
White Rock, NM 87547

David & Anne Paulson  
122 Piedra Loop  
White Rock, NM 87547

*For Appellee:*

Denise Matthews  
113 B La Senda Road  
White Rock, NM 87547

*For County:*

Desirae J. Lujan  
Associate Planner, CDC  
1000 Central Avenue, Suite 150  
Los Alamos, NM 87544

/s/ David M. North  
David Mark North  
111 La Senda Road  
White Rock, New Mexico 87547  
Telephone: (505) 695-5808  
Email: north@znet.com