

## Council Meeting Staff Report

November 10, 2020

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**Agenda No.:** 2)  
**Indexes (Council Goals):** \* 2020 Council Goal - N/A  
**Presenters:** Ryan Foster  
**Legislative File:** 13489-20

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### Title

Appeal of the Planning and Zoning Commission's Case SUP-2020-0014; A Request for Special Use Permit to conduct an in-home day care facility; and Case SUP-2020-0015; A request for Special Use Permit for home business to employ more than one non-family member at 113B La Senda Road.

### Recommended Action

**I move that Council find that the decision of the Planning and Zoning Commission was in accordance with adopted County plans, policies and ordinances and that the facts on which the decision was based are supported by the record and that the decision was not arbitrary, capricious, or a manifest abuse of discretion. I further move that Council affirm the decision of the Planning and Zoning Commission in Case No SUP-2020-0014 and Case SUP-2020-0015.**

*Or*

**I move that Council find that the decision of the Planning and Zoning Commission was not in accordance with adopted County plans, policies and ordinances and that the facts upon which the decision was based are not supported by the record and that the decision was arbitrary or capricious or a manifest abuse of discretion. I further move that Council overturn the decision of the Planning and Zoning Commission and deny the application in Case No. SUP-2020-0014 and Case SUP-2020-0015.**

*Or*

**I move that Council find that the decision of the Planning and Zoning Commission was not based upon sufficient evidence that the decision was in accordance with adopted County plans, policies and ordinances nor was the decision supported by sufficient evidence in the record that the decision was not arbitrary, capricious, or a manifest abuse of discretion. I further move that Council remand Case No. SUP-2020-0014 and Case SUP-2020-0015 to the Planning and Zoning Commission for further development of the facts [specify which matters are to be reconsidered and the reasons for remand] and for Planning and Zoning to reconsider its decision.**

*And*

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

### Body

Copies of the complete record for Appeal Case APL-2020-0018 have been provided to Council and the parties. A copy of the complete record is available for public review within the county's website: [https://www.losalamosnm.us/UserFiles/Servers/Server\\_6435726/File/Appeal%20Portfolio\\_SUP-2020-0014%20&%200015.pdf](https://www.losalamosnm.us/UserFiles/Servers/Server_6435726/File/Appeal%20Portfolio_SUP-2020-0014%20&%200015.pdf) and attached hereto as Attachment "E."

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

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

#### **..Alternatives**

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

#### **Attachments**

- A - Special Use Permit Review Criteria
- B - Development Code Appeals 2008
- C - Legal Notice
- D - Owner Notification, 100 yds
- E - 2nd Amended Record, APL-2020-0018