PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
April 26, 2016 at 6:00 p.m.

BOARD MEMBERS PRESENT:

Kirk Clifton, Chairman
Ruben Alvarado, Member
Charles Beard, Secretary
Joanne Ferrary, Member
Harvey Gordon, Vice Chair
Roger Hedrick, Member
William Stowe, Member

BOARD MEMBERS ABSENT:

STAFF PRESENT:

Sara Gonzales, Planner, CLC
Andy Hume, Downtown Planning & Development Coordinator
Mark Dubbin, CLC Fire Department
Chris Mount, CLC Fire Department
Thomas Limon, CLC Legal Staff
Becky Baum, Recording Secretary, RC Creations, LLC

I. CALL TO ORDER (6:00 p.m.)

Gordon: Good evening and welcome to the April 26th meeting of the Planning and Zoning Commission for the City of Las Cruces. I'd like to welcome everyone here this evening. Before we start I'd like to introduce a new Member of our Commission, Mr. Roger Hedrick who is a representative from District 4, replacing Mr. Crane. But first then let me introduce all of our Commissioners; then of course on Mr., on the right, on my far right, Mr. Hedrick from District 4; Mr. Stowe from District 1; Ms. Ferrary from District 5; Mr. Alvarado from District 3; Mr. Beard from District 2, who is also the secretary of the Commission. I am Mr. Gordon, I am the Mayor's Appointment. And absent this evening is Mr. Clifton, who is from District 6 and he is the Chairman, and I am the Vice Chair.

II. CONFLICT OF INTEREST

At the opening of each meeting, the chairperson shall ask if any member on the Commission or City staff has any known conflict of interest with any item on the agenda.

Gordon: Before we start is there any conflict of interest this evening that any Members of the Commission or the Community Development they feel

have any conflict of interest or any of the items on the agenda presented this evening? Seeing none.

III. APPROVAL OF MINUTES

1. March 22, 2015 - Regular Meeting

Gordon: All right, now we can move on for the Approval of the Minutes. Are there any Commissioners present at the time of these minutes that feel they have any corrections? If so, please let me know what your corrections are. Okay, seeing none. Is there a motion to adopt the minutes? All say "aye."

Stowe: So moved.

Gordon: Okay. Mr. Stowe made a motion.

Beard: Do you want a motion?

Gordon: He just made it.

Stowe: To accept the minutes.

Gordon: I need a second.

Beard: I'll second it.

Gordon: All right. Mr. Beard seconds the motion. The minutes are accepted. Okay. Okay. Oh so we need to vote on that motion. Everybody in favor say "aye."

MOTION PASSES.

Gordon: Against?

Ferrary: I abstain.

Gordon: One abstention.

Ferrary: I was not here.

Alvarado: I abstain also.

Hedrick: I abstain.

Gordon: Three abstentions. Ms. Ferrary, Mr. Alvarado abstain and Mr. Hedrick who was not here that evening abstained. Okay.

IV. POSTPONEMENTS

Gordon: Staff are there any postponements?

Gonzales: No Mr. Commissioner, there is not.

V. WITHDRAWALS

Gordon: Okay, are there any withdrawals?

Gonzales: No Mr. Commissioner there is no withdrawals as well.

Gordon: Okay.

VI. CONSENT AGENDA - NONE

VII. OLD BUSINESS - NONE

1. **Case ZCA-16-02:** A request to recommend approval of the proposed Downtown Development Code. If approved, this proposed Code would replace the existing Central Business District and Main Street Overlay. The cod area consists of parts of Council Districts 1 (Councilor Gandara) and 4 (Councilor Eakman).

Gordon: Since there is no Consent Agenda we can move on to Old Business.

Gonzales: Correct.

Gordon: I believe Mr. Hume has the discussion under Old Business. Andy.

Hume: Good afternoon Mr. Chair and Members of the Commission. My name is Andy Hume. I'm the Downtown Coordinator in the Community Development Department. Before you this evening is Case ZCA-16-02 and this is the, actually the third time that this item has been before the Commission. We had a work session in January and also had it as a discussion item in your February meeting and Mr. Chair the request before you this evening is to recommend approval to the City Council for the Downtown Development Code. And I will be happy to provide any answers to any questions or any thing that the Commission needs as far as information goes for a, a well-educated decision.

Gordon: Andy I believe that we've heard this I think this, we've heard this three times. All right if any Members of the Commission have any questions, have for Andy maybe we can just move on. Mr. Beard.

Beard: I remember that this is where we're gonna change the, the streets, Water and Church into two-way streets.

Hume: Mr. Chair, Commissioner Beard. That is part of the overall Downtown Master Plan is to, to do that project, yes.

Beard: I, I, it, it's not in the plan though is it?

Hume: This, it, it's not in the Code that's before you, it's in the overall Master Plan. Correct.

Beard: Okay. And the way they're gonna do, that, that's still, the, you're planning on doing that, is that correct? *(inaudible)*.

Hume: Yes, Mr. Chair, Commissioner. The, that subject went before the TID Board actually yesterday for, for extensive discussion.

Beard: So they're, you're gonna merge three streets, two-way streets into a single street. You're gonna do that with a roundabout?

Hume: At the north end we have the roundabout and that will stay intact. At the south end we will actually have three intersections with Amador and Lohman.

Beard: I'm not, so, that'll be all controlled, you've got four streets that are gonna be at a corner, you got Water, Church, and Main, Main eastbound and, and Main northbound, you're gonna do that with lights. You, you're not gonna do that with a, a, roundabout.

Hume: That, that's correct. A roundabout will not be used at the south end. It will be regular four-way intersections.

Beard: Okay. Is the roundabout in the other end, is it gonna be increased in size?

Hume: No sir. The plan is not to increase the current roundabout in size.

Beard: To me that's, that roundabout is very marginal the way it is and I think it's gonna be even more complicated when you add the other directions to Water and Church. So I have a big concern about ... first of all I have a concerns just making those streets two-way streets. My concern is that those streets provide people a, a way to get from one end of town to the other end of town without having to slow down too much. If we're, if we're

purposely going to slow them down I think that, then we don't have a thoroughfare going through there. So I have a concern for that. That's all.

Hume: Thank you very much for expressing your concerns sir.

Gordon: Are there any other comments from the Board, the Commission? Mr. Hedrick.

Hedrick: Andy, plans and codes generally have one of two focuses; growth management or economic development. I've seen a lot of growth management here but I don't see any economic development. Can you tell me what considerations have, have been taken into account not only in the Master Plan but in this document or that could be added in the future?

Hume: Mr. Chair, Commissioner Hedrick. Staff feels actually pretty strongly about trying to reduce the barriers to particularly, particularly for adaptive reuse of, of buildings as well as trying to create a destination for downtown through good design and good function, good form in, in the, in the development, in the development code. And so for, here's a for instance, current, in, in current portions of the code if you do minor modifications to a building such as moving a non-loadbearing wall for instance or upgrading a bathroom there's a certain dollar limit to the changes that you can make within a building before you start kicking in much larger improvements to the building to actually bring the entire building up to code. So one of the things that we have in the Downtown Development Code is a removal of that limit, that dollar limit, so as long as you are doing things that are not impacting the building structure itself and, and potentially making the structure itself unsafe or unfit for use in those, in those particular areas, as long as you're doing the, the changes, the improvements up to code, we're not going to require you to bring the entire building up to code which can be a very expensive proposition, so that's one aspect.

The other thing that I would say is that the extensive proposal to provide mixed use development where you have multiple things going on in the same building, I think there's a really, a way to help promote economic development, that way there's activity in the building virtually all hours of the day so even if people leave for work for instance, if you have some upstairs residential, in the downstairs you have activity going on at a restaurant or at a bodega or something like that. So I think there are some aspects in here that, that address that and one thing that I will say is in overall tie-in with the current Downtown Master Plan which actually we're doing an update of, as well as the charrette report which came out of the 2013 charrette back in October, all of that is tied together and there are definitely components of economic development in those plans.

Hedrick: I look forward to the, the update, cause again I don't really see a lot of economic development here or in the existing Master Plan.

Gordon: All right, thank you. Are there any additional comments or questions at this time? If not, perhaps I'd like to entertain a motion to approve Case Number ZCA-16-02.

Beard: I move to accept Case ZCA-16-02.

Gordon: Is there a second?

Ferrary: I second.

Gordon: There's a motion by Mr. Beard and a second by Ms. Ferrary to, for approval for Case Number ZCA-16-02. All in favor ... I'll poll the Commission. Mr. Hedrick.

Hedrick: Aye.

Gordon: Mr. Stowe.

Stowe: Aye.

Gordon: Ms. Ferrary.

Ferrary: Aye.

Gordon: Mr. Alvarado.

Alvarado: Aye.

Gordon: Mr. Beard.

Beard: Aye.

Gordon: And I vote aye. Vote six/zero with Commissioner Clifton absent.

Hume: Thank you very much sir.

Gordon: All right thank you Andy.

Hume: Appreciate it.

VIII. NEW BUSINESS

1. **Case 63824:** A Special Use Permit (SUP) application by Leticia Chavez, Property owner, to permit day care services for up to 12 children within a single-family home located at 2121 Via Tesora. The subject property is currently zoned R-1aC (Single-Family Medium Density-Conditional). The 0.21 +/- acre property is located on the west side of the Via Tesoro cul-de-sac, 394 +/- feet south of its intersection with Tierra Verde Drive, and is further identified by Parcel ID #02-27056. Proposed use: Group Child Care Home (7-12 children). Council District 4 (Councilor Eakman)

Gordon: All right with that we'll move on to New Business which is Case Number 63824. And let's see, let me get my paperwork here. Sara Gonzales is going to, from Community Development is to be presenting this case. Sara.

Gonzales: Yes, this is Case 63824 for a group childcare home Special Use Permit for up to 12 children. Located at 2121 Via Tesoro. This is the location as well as zoning map for the property. You can see that it is surrounded by residential area. To the north is a mobile home park, to the east are commercial properties, however some of them are condos which do belong to the same subdivision in question.

The property is located on the west side of Via Tesoro about 394 feet from its intersection with Via, with Tierra Verde Drive. It does encompass 0.21 acres and is zoned R-1a Conditional, which is single-family medium density. And it does have an existing single-family dwelling at this time. Here's the aerial map so you can see that there are several single-family dwellings within this location due to the property zoning. The code does allow per section 38-52 and 38-54 for a home occupational business registration for a family childcare service for up to one to six children by right. However, if the applicant would like to extend or increase to 12 children they are required a Special Use Permit which is approved by P&Z Council. The applicant at this time is seeking to expand the childcare service to a group childcare home. She has indicated that there will be staggering drop-off and pick-up times. The property does have the required designated off-street parking for the subject property. She has also stated that they will not, she will not be watching 12 children at one time. There is a service that is provided in the morning as well as in the evenings. The state does allow for childcare services up for 12 children as long as they do meet state regulations, fire regulations, and the zoning requirements.

This is a floor plan of the applicants' home showing that it is a large home, it is 2,000 square feet without the garage and can be used as far as the den or the living area for the children she is watching. You can kind of see as far as the location that she does have the driving area which would

be applicable. The requirements for a homebased occupation is two for the actual residents and just one for the actual homebased occupation.

Since the applicant has stated that she is only watching the 12 children and has provided the adequate parking, the primary use on the property will still be maintained as residential. So in this case it does not change the property to a commercial use, since it is a state regulated mandate, it can be 12 children within a home and still maintains primary use as a residence.

With that staff has recommended approval for the Special Use Permit. We did send out to all of the relevant reviewing parties, departments, there were no comments as far as any concerns. The findings for the approval in which staff has recommended is because of the staggering drop-off times, so that way there is not increased traffic within the location at once, that the applicant is making the, or meeting the parking requirements. It does pertain to our Comprehensive Plan of encouraging businesses within home as an entrepreneurship and being able to work from your home, and it does meet the requirements of a home occupational business.

During the process staff did receive several e-mails. We did receive a petition which was put at your chairs this evening since I did receive that this afternoon. And I did receive several phone calls inquiring about the home based with concerns as far as traffic, additional noise, and then the possibility that this would be turning into a commercial business. However, in this, in this sense that is where I indicated a commercial business would be 13 or more based on the States' requirements which we follow.

At this time you do have the option to vote "yes" to approve the request recommended by staff for Case 63824; your can vote "yes" to approve the request with additional conditions; vote "no" to deny the request; or you can postpone or table it. P&Z is the final action for this case. Here's the aerial map. I do stand for questions and we do have the applicant here as well.

Gordon: Sara I just, I have one question which I just happened to think of. Do you know whether or not this particular area of homes sits within a Homeowners' Association?

Gonzales: Mr. Chair I am not sure since we do not follow the covenants within an HOA, if there is one actually provided there.

Gordon: Would the applicant be able to tell me that?

Gonzales: I will let the applicant answer that.

Gordon: All right then if there are no other presentation by staff. Before we start though I would like to sort of set the ground rules for a discussion here

with perhaps time limits for, considering the number of people who wish to speak? Would those who wish to speak please raise your hands? One, two, three, four, five, six, seven, eight.

Beard: We can give them three minutes.

Gordon: Yeah.

Beard: If they don't repeat themselves.

Gordon: Yes. All right I count eight or nine hands. I think we can allow you a three-minute time limit. It would be appreciated if you have nothing more to say than what the present speaker has to say, would be, just to come up and say "I just wish to express the same thoughts" and limit your time so that we know how you feel. All right. Can we ...

Beard: Applicant.

Gordon: Yeah, can we hear, can we hear from the applicant please? Before you begin though I'm going to have to swear you in so when you get organized here with what you're doing. Would you please state your name and address for the record please?

L. Chavez: Leticia Chavez.

Gordon: And your address.

L. Chavez: 2121 Via Tesoro.

Gordon: All right. Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

L. Chavez: Yes.

Gordon: All right, and would make it easy if you would speak directly into the microphone so that we can hear you.

L. Chavez: Yeah, I'm just asking her because my English is not too good and I want to be sure what I'm ask, I'm answering.

Gordon: We understand. That's no problem. But when you do respond please speak into the microphone.

L. Chavez: Yes.

Gordon: You may begin.

N. Chavez: It is okay Mr. Chair, Council Members, that if I read this for her, a statement?

Gordon: Okay, would you please give us your name and address for the record please?

N. Chavez: My name is Norma Chavez. And my address is 3889 Calle de las Margaritas.

Gordon: Okay.

N. Chavez: Las Cruces.

Gordon: And then let me swear you in also. Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

N. Chavez: Yes, I do.

Gordon: Thank you.

N. Chavez: Okay. Okay, first this is, I'm reading this on behalf of Leticia Chavez. First I would like to thank everyone for taking the time to be here. Some of you may not be aware that I operate Emily's Day Care from my home located at 2121 Via Tesoro. I began operating my daycare September of 2009. It is very difficult for working families to find childcare, for childcare establishment that provides childcare services before 6:30 a.m. evening hours or overnight hours and weekends. And man, many families do not have the support of family members to assist them with the care of their children. Through the years of operation I saw the need for *(inaudible)* so I decided a long time ago to extend my hours and days of operation for the hard working families of our surrounding communities. My current license allows me to care for six children a day, but it is very rare that I have six children at my home at one time. Some families require daycare services two or three times a week, some only on the weekends. In the nine, seven years of operation I have never had any medical emergencies at my home related to any of the children I have cared for.

And the reason that Leticia is applying for a permit for up to 12 children is to accommodate some of the mothers, they're single mothers that currently she has one situation a mother has four children, she works at a restaurant, she drops off two children at Leticia's house and then has to drive several miles away to drop off the other two children to a different location for childcare services because with their, she does not, she wants to comply with the regulations that are set by the state and not you know jeopardize her license and that's mainly one of the reasons why she's

applying. Not that she will have 12 children at her home you know at one time. Maybe she has had during, when she has a party cause you know, but not while she is in business, her hours of business. And the, the children that she cares for, they are usually in the backyard and the, I've been at her home while you know at different times of the day and I have never seen six, that she's caring for six children at one time and so it's, it's not really that she wants to take care of 12 children, it's just to accommodate in situations like the one that was presented to her not to long ago and she feels bad as any human being would feel bad for a mom, single mom with four children, young children, have, you know drive one childcare place and then drive away like to another childcare place for, while she, I mean if she had an opportunity to care for those extra two children that would be you know helping out a lot. And of course, I mean there's gonna be people that you know they're in their home and they have concerns because when you mention 12 children, even for me I go "Oh that's a lot." But like I said it's not that she's gonna have 12 children at her home at one time. Thank you. And she would like to add something.

L. Chavez: I wanna explain that I went to some of the, some of my neighbors and explained that I promise them that I'm not gonna have more than six kids at one time which I, sometimes I have four, sometimes I have five, but I told them we, I'm gonna keep the same amount. The only *(inaudible)* in the, the license for more kids is what she said and then let's say that one kid leave at 2:30 and the other comes at 3:00 in the bus so they don't, they don't let me to have just half an hour apart. They, they want more time. So licensing can call me and let me, and you know tell me what's wrong with you Leticia this is, this kid is leaving at 2:30 and then another one is coming at 3:00, so that's the, that's what I want to get my license, not because I wanna have 12 kids. I can handle 12 kids at, at one time. And if I do I have to hire a person and I don't want to hire nobody. I want to do it myself and I want to help this single moms, that most of the moms are single like me and you know help people and help myself too to pay my bills, but is not that I want I make my, my business more bigger or want to have more kids, just because they require a certain amount of time when they drop some kids and pick up some kids, but I promise my neighbors that I'm not gonna have more kids, more than six kids at one time. That's all I have to say. Thank you.

Gordon: All right. Thank you. Is there anyone on the Commission who has any questions? All right, I have a couple. First of all could you, could you ask her if, if this is a Homeowners' Association, if she knows what that is?

N. Chavez: SPEAKING SPANISH FOR LETICIA CHAVEZ.

Gordon: Yeah, please talk into the microphone.

N. Chavez: She, Homeowners' Association, fees, are you?

Gordon: All right. Is, is, is there just someone in the audience who could just raise their hand and just answer my question for me, "yes" or "no?" The gentleman there with the beard and mustache perhaps.

AUDIENCE MEMBER SPEAKING - There is not a Homeowners' Association.

Gordon: All right. Thank you.

AUDIENCE MEMBER SPEAKING - But we have restricted covenants.

Gordon: There are no restrictive covenants.

MANY AUDIENCE MEMBERS SPEAKING - Yes. Yes there are. We do have covenants. Yes, we have covenants.

Gordon: All right I'll deal with that then perhaps when you come up to speak. Is there anything else? How do we know at any one time if this, this woman who has the four children are there and all of a sudden your other four children who you take care of suddenly show up and now you have eight children? I mean you can't send two children home.

N. Chavez: Excuse me. She would have to ask the mom to adjust her shift in order for only, for the six children to be there. For her four and another two because she works at Subway and she's able to adjust her shift.

Gordon: If she's able to do that why does she need this Special Use Permit to increase to 12?

N. CHAVEZ SPEAKING SPANISH FOR L. CHAVEZ.

N. Chavez: She says that she has four kids at nighttime and then four during the day. But they pick, they get picked up at different hours, some at 2:30 ...

L. Chavez: Some they come at 5:00 in the morning and they leave at 2:30 or ... Yeah some of the kids come at 5:00, 5:10 in the morning and then they leave, some leave at 2:30. Another come from school at 3:00 and I don't want to be like tied and the licenses call me and tell me that I have you know *(inaudible)* but I can't, if I can't have more than six even if I have the license for 12, if I'm by myself I can't get more than six. I can't more than six. I can get in trouble if I do that.

Gordon: All right. Thank you. If there's not, if there's nothing else from the applicant perhaps we should now hear from the public. Just remember

I've asked you to limit your time to three minutes. Could you keep track of it? All right, the, the gentleman with his hand raised. Who'd ever like to come first is fine. Please when you reach the microphone state your name and address please clearly.

Olson Mr. Chairman my name is Chuck Olson. I live at 2069 Estancia Place in Tierra Verde Subdivision. I ...

Gordon: All right before, before you begin I have to swear you in.

Olson: Oh, I'm sorry.

Gordon: I say before you begin I have to swear you in.

Olson: Okay.

Gordon: Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Olson: I do.

Gordon: Thank you. Go ahead.

Olson: Mr. Chairman we may not have a Homeowners' Association. We have a, the Friends of Tierra Verde Landscaping. It's a corporation. I'm gonna get to that in just a minute. But we have restrictive covenants in our community that do not allow this type of use and it's disappointing to me that staff didn't check to see what the covenants required or allowed before saying they would approve this because it puts us in an adverse position. I can pretty well tell you that there will be a legal action brought to re-protect our restrictive covenants.

I'd like to go on and explain a little bit about parking in that area. You had a picture up there of the front of the house where there was a red sports utility vehicle parked at an angle at the end of the cul-de-sac. When that happens it makes it difficult to make the circum., you know to make the turn around at the end of the cul-de-sac with a car parked that way. They should park along the curb but they park out there like that and it makes it difficult.

The other thing that we're concerned about is property values. I'm a retired realtor and I can tell you that this can have an adverse impact on our property values. I think you're all aware that property values the last several years have gone down and I've not yet recovered in Las Cruces and we don't want to see that deteriorate any further than it has.

In so far as the Friends of Tierra Verde Landscaping committee, we are, if not the only one, I, I don't know of any others so I'm gonna say we are the only one community in the, in the incorporated limits of Las Cruces

that actually has made a, an arrangement with the City of Las Cruces to do the landscaping on your property and the ponding areas in that area are maintained by the Friends of Tierra Verde. The medians are maintained by the Friends of Tierra Verde. We've spent $95,000 in just the last few years to maintain and upgrade the landscaping, the medians, and also the, the ponding areas. We have just, we've had to redo the ponding areas because we made a, we elected to do this because when we talked to the City about the City maintaining them their idea was to bring in a heavy equipment, remove the stair-step ponding area benches, and then pour slab of concrete and we felt that like that was detrimental to the ambiance of our community.

In addition to that, you know we do things like luminarias at Christmas, decorations at that time, and Fourth of July we put out a, a little U.S. Flags. Yes sir, Mr. Beard.

Beard: Your time's up.

Olson: Thank you. Does anybody out here want to cede any more time to me?

AUDIENCE MEMBERS SPEAKING, NOT AT THE MICROPHONE.

Olson: You'll cede your time to me?

AUDIENCE MEMBERS SPEAKING, NOT AT THE MICROPHONE.

Olson: Is that all right, is that permissible Mr., Mr. Beard?

Beard: Yes.

Olson: Thank you. We feel like we have taken a lot of ownership and pride of ownership at our community to, to spend the money and we do it all through donations to a corporation. We formed a corporation in request by the City of Las Cruces to do these things so that we would have a, a legal thing to do business with you guys on. So you know I'm just, I'm just saying that we love our neighborhood. We don't want to see it change and when you let one particular location change the use the second one is not gonna be far behind. And I will say again that our restrictive covenants do not allow for this type of use. With that thank you Mr. Chairman and ladies and gentlemen of the Commission. Thank you for your consideration.

Gordon: Thank you.

AUDIENCE MEMBER SPEAKING, NOT AT THE MICROPHONE.

Olson: I'm sorry. That is the type of work that we do to keep our community livable so to speak. If you any of you have any questions I've got other people here that'd be glad to speak to it as well.

Gordon: Thank you, but I do have a question before you leave the microphone. You say you have restrictive covenants. In a Homeowners' Association the restrictive coverments, covenants, I'm sorry, is usually part of your obligation when you buy into a Homeowners' Association, such as bylaws.

Olson: No sir, as a realtor the covenants are applied to the property by the developer and filed with the County and are there in perpetuity. They run with the land.

Gordon: And does someone who buys into this particular community, uh, is given this a covenants.

Olson: The, the local realtors and the title association when you buy your home, you get a, a, a title insurance policy, the, the covenants are attached to there.

Gordon: All right. Thank you.

Olson: Yes sir.

Gordon: Next speaker.

Tokarczuk: Yes. Hi. My name's Ray Tokarczuk. I live at 1999, excuse me, Via Tesoro. *(Inaudible)*.

Gordon: All right let me swear you in please. Do you swear, do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Tokarczuk: Yes, yes I do. My question is to the Board, I'm new to this. I just found out about this last week. My question is, has she filed any type of plan in case there's a fire? Evacuation, say there is an emergency in the, the neighborhood has to get evacuated. Has she filed a plan with the City as to what to do?

Gordon: Are you asking?

Tokarczuk: *(inaudible)*

Gordon: Are you asking in particular ...

Tokarczuk: If the Board has this been filed?

Gordon: Are you asking a particular somebody in regard to the fire hazard?

Tokarczuk: Well yeah fire, does she have enough exits?

Gordon: We, we can ask a member, our representative in the Fire Department.

Tokarczuk: And by the way there is a 104 houses in that development, not a few private residences. It's a whole, whole community.

AUDIENCE MEMBER SPEAKING, NOT AT THE MICROPHONE.

Beard: I can answer this.

Tokarczuk: A 145 private homes. And my question ... I don't mind anyone making a living

Beard: If we approve *(inaudible)*.

Tokarczuk: But has this been filed. We have had lawsuits against this City ...

Beard: City to ...

Tokarczuk: And as a taxpayer I'm tired of paying out money for crazy things. Has this, has, has this been filed for example.

Gordon: *(inaudible)*

Tokarczuk: An evacuation plan.

Dubbin: Mr. Chairman.

Tokarczuk: Fire. Is the Commission fire?

Dubbin: Over here, with the, over here.

Tokarczuk: What happens if there's a fire *(inaudible)*?

Dubbin: Mark Dubbin with the Las Cruces Fire Department.

Tokarczuk: *(inaudible)*

Dubbin: Mr. Chairman, Members of the Commission ...

Beard: Once ...

Dubbin: As a, as a home daycare there is no requirement for a, an evacuation plan.

Tokarczuk: Okay.

Dubbin: And uh, currently we review the plans to make sure that the children are kept in a room that has an outside door.

Tokarczuk: Okay.

Dubbin: And this one, this one is and that's really the extent of the Fire Code as it applies to a home daycare.

Beard: Is ...

Tokarczuk: I don't know if that's up to code or ...

Beard: If, if ...

Tokarczuk: Agree with you.

Beard: If we, if we do approve a the petition then the, the applicant will have to go through all of the City codes to meet those standards.

Tokarczuk: Cooking, as, as far as appliances ...

Beard: This is not a, a, if we say yes it's not a done deal until they have met all of the conditions of the codes.

Tokarczuk: Okay. Okay. I'm, I'm just asking. I have great feelings about this neighborhood and I'd like to just keep it intact, but I also don't want to be subject, excuse me, to a lawsuit.

Beard: Okay.

Tokarczuk: And you guys, we, we pay enough money.

Gordon: Can I, can I ask how long, how long have you ...

Tokarczuk: What?

Gordon: Lived there?

Tokarczuk: Uh, 10 years.

Gordon: Okay.

Tokarczuk: I'm, I'm from Boston originally.

Gordon: Okay. Were you aware of the fact that in 2009 this person originally filed for a business license and has been operating such ...

Tokarczuk: No

Gordon: Since then?

Tokarczuk: No.

Gordon: So there's been no complaints, no problems.

Tokarczuk: I just found out about this last week when this young woman ...

Gordon: I under, I understand ...

Tokarczuk: *(inaudible)*

Gordon: What's happening now but I'm asking for the last seven years apparently nobody seems to have cared whether or not she did this and seemed to be no problems. She ran this and, and everybody seemed quite happy, there was no objections, no body came to Codes Enforcement to complain.

Tokarczuk: I have, I have no problems with anyone make a living. I just want to make sure that we are not open to lawsuits. That's all. And if there's nothing filed I would, personally I came here cause I'd like to see if the, excuse me, if there plans submitted to you folks, that's all.

Gordon: All right thank you.

Tokarczuk: Thank you.

Gordon: Next person please.

Tokarczuk: Good. Thank you folks.

Gordon: Please state your name and address.

Phelan: My name is John Phelan. I live at 2103 Vista Lejano.

Gordon: All right, let me swear you in please. Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Phelan: I do so swear.

Gordon: Thank you.

Phelan: I have a statement.

Gordon: Go ahead.

Phelan: My name is John Phelan. And my wife Mary and I have lived in Tierra Verde Estates for almost 17 years, just a block from 2121 Via Tesoro, the home of the applicant. For many years I have walked down Via Tesoro or visited a friend who lives across the street from Ms. Chavez. I remember quite often noticing several different vehicles parked in front of 2121 coming and going, plus children playing in front of the house. Some of these children have been seen riding their bikes on neighboring streets in the past. I always assumed that these children were grandchildren or relatives of the resident. Never did I realize nor did it dawn on me that this was a site of an actual daycare center. This scenario raises many issues or points of concern. What kind of supervision is there? How many employees? How many play areas in and around the house? Are there safety and health inspections in regards to meal preparations, restrooms, clotheslines, plastic bag use, noise levels? How about a possible devaluation of nearby property values? Section H2 of Tierra Verde Neighborhood Covenants under new essence, nuisances state "No manufacturing or commercial enterprise of any kind shall be maintained on, in front of, or in connection with lots in the subdivision, except home occupations may be permitted in accordance with the codes of the City of Las Cruces." Was a permit originally granted by the City and with the permission of surrounding neighbors? Not that I know of. If not, basically this would tell us that this daycare center or service should not have existed in the first place. If we let this one rezone use to pass, how many others could possible apply in the future? We would not be able to discriminate against others wanting to start up another daycare or bar-b-que business or even a mechanics garage and so forth. It's difficult enough to try to enforce our neighborhood covenants and keep the peace and quite of Tierra Verde. But now we have to fight rezoning. By the way, a new childcare center plans to open at the old Lorenzo restaurant in six months, half a mile from our house. In conclusion we ask the Members of the Commission, would you want a similar business next to your home? If not, please reject the applicant's proposal and protect our quality of life. Thank you.

Gordon: All right. Thank you. Is, is there someone else? All right, please come forward. Please state your name and address please.

Von Ende: My name is Kathy Von Ende and I live at 2110 Via Tesoro.

Gordon: All right let me swear you in please. Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Von Ende: Yes I do.

Gordon: Thank you. Go ahead.

Von Ende: I live at 2110 which is across the street and a couple of houses north of Leticia. She's a good neighbor and a good woman and she told us she was taking care of her grandchildren and that's why you've had no complaints. I had no idea that she had a business there. Um, I felt that she had, she was doing what she needed to do. She told me her, her children had issues and that it was very important for her to take care of her grandchildren. So I, that's, that's really important and I've, I agreed with her and I've told her on several occasions how much I admired her energy and her efforts for her family. I was very surprised to find out on Friday that it isn't, she has a couple of her grandchildren, but it's not all family and that it's more than six. And um, one of the things we have not done in our neighborhood is complain. The traffic is very fast going to her house and leaving her house. It stacks up two and three in the cul-de-sac. It's, it's something we, we thought, "Okay she, she has some problems with her kids." And we're not going to interfere and we're not going to cause more problems for her. So that, that's why we haven't said anything. I went to the effort of getting names on petitions. There are more than 80 names on this petition. We have 13 homes in our block, nine of those homes signed the petition asking you to please reject this application. We have three of those homes have children in them. We're not asking to um, not have care for children. We want to have good care for children but we feel this is going too far and um that we have been quiet long enough. There are, there's one house that is up for sale out of those 13. There were two families that did say they would not oppose her application. I don't want this to be a personal thing, this is something where we want to protect our neighborhood and you've heard the other reasons, but um, this is in addition to that. These are our neighbors in her block and then I have all of these other names too. I, I don't know if you saw the petition. Did you? Okay. So these are, these are people that are, are saying no, please we do not want this in our neighborhood.

Beard: Thank you.

Gordon: Thank you. Next person please. All right, and thank you. Please state your name and address.

Kiefer: 2049 Estancia Place in the Tierra Verde Subdivision.

Gordon: I'm sorry but I spoke over you, would you please repeat your name and address again.

Kiefer: My name is Jackie Kiefer. I live at 2049 Estancia Place in the sub, Tierra Verde Subdivision.

Gordon: All right. If you let me swear you in please.

Kiefer: Yes.

Gordon: Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Kiefer: I do.

Gordon: All right, thank you. Go ahead.

Kiefer: I would like to speak to the safety issues of this matter. I live on the opposite end of this individual, I live closer to, to Motel Boulevard. But I would walk my dog every morning at about six o'clock in the morning. In the wintertime it's dark at six o'clock. And um, on many occasions the cars that were coming to that residence would come down, flying down Tierra Verde at probably 40 miles an hour and I, my thought was "Oh somebody's late for work." And yes indeed, these people were late for work. One time I saw a lady park her car, right in front, leave the car running, doors open, ran in with the children, the child, ran out, and I was on the sidewalk and I thought she was going to hit me. This is not a safe thing. These people are not concerned about the residents of Tierra Verde and I don't mean to be a hard nose about it, but safety is a concern. I've a right to walk my dog and be, and feel safe. Thank you very much for letting me comment on this.

Gordon: All right. Thank you. Is there someone else? Again please state your name and address.

Saltzman: Ron Saltzman. I live at 2123 Estancia Place.

Gordon: All right, let me swear you in please. Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Saltzman: I do.

Gordon: Go ahead please.

Saltzman: Um, on the visual on this their house is right here which is on the end of a cul-de-sac in the middle of the subdivision. So traffic from Motel Boulevard or from Tierra Verde both come in so there's traffic going in both directions. It impacts the whole neighborhood. The subdivision is built with all cul-de-sacs. My house and most houses you cannot park more than one car parallel to the curb. If nobody's complaining, somebody, you could park perpendicular to it, but that is like was stated before, impacts the whole cul-de-sac on making a U-turn. I'm not sure I was trying to listen to what staff found on, for the home you have to have two parking lot, parking spaces and I think I heard just one for the people coming in and dropping off. If she increases this to 12 and as much as she can say "I don't take 12," if all of a sudden everybody's coming in and throwing money at you saying "Take care of my children" and she has the ability to go to 12, I see no reason if she's an entrepreneur, that she would not take on, hire somebody to help and get up to 12 people going on. You cannot just say "I promise." You cannot just say "There will never be." It will happen. Murphy's Law kicks in all the time, you want six, there's gonna be, they're gonna tell people that she's doing such a good job, it will increase. It will impact the whole neighborhood from both directions is my thoughts. Thank you for listening.

Gordon: All right. Thank you. Is there someone else who wishes to speak? Gentleman please come forward.

Yaich: Mr. Chairman. I'm James Yaich.

Gordon: Your address.

Yaich: I live at, I live at 2114 Via Tesoro, right across the street from the individual.

Gordon: All, all right. Let me swear you in please. Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Yaich: Yes sir.

Gordon: All right, you go ahead.

Yaich: Okay. I'm definitely opposed to increasing from six to 12 because what some other people have said just the increase in traffic and other problems with additional people, additional children. That's all I have to say.

Gordon: Well thank you.

Yaich: May, one correction.

Gordon: Go ahead.

Yaich: I've lived there, I've lived there since February the 7th, 2001 and I was never aware of any application of childcare.

Gordon: All right. Thank you. Anyone else care to speak? Please state your name and address.

Castillo: It's Jeanette Castillo, 2122 Via Tesoro.

Gordon: All right. Let me swear you in please. Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Castillo: I do.

Gordon: Thank you. Go ahead.

Castillo: Ms. Chavez did come and talk to me which I greatly appreciate it about, about this issue. I do live three houses down in the middle of the cul-de-sac with her. And my main concerns are the traffic. There's traffic all hours cause she does have staggered times and so it impacts, even in the evening, early in the morning, I run at six a.m. and have a consistent person that's always speeding through the subdivision. In fact one of the neighbors told me he was even hit by this vehicle while he was walking on the sidewalk early in the morning approximately a year ago. And so, and so I did tell her that and she, and she's gonna to address it with them which I appreciate but it's still a traffic concern at all different hours; after school when there is different people switching. My kids have, aren't able to even ride their bikes in the cul-de-sac very well because they have to constantly be pulling over to the side because there's constant traffic. Even on the weekends she's also watching them too so, we, there's never really a break in that, in that traffic pattern then on our cul-de-sac. And as you know, you know cul-de-sac people are constantly turning around in that cul-de-sac so an additional traffic with the parking, and I know that her family is large and so there's her family parking in addition to the, the customer parking as well. Ms. Chavez did promise me also that there wouldn't be up to 12 which again I appreciate but there, if this passes there's nothing to say that she couldn't after this and so that's my concern also.

Gordon: All right. Thank you.

Castillo: Thank you.

Gordon: Anyone else? Will you please come to the microphone?

Kinnerup: My name is Jim Kinnerup. I live at 2116 Sorrento Place.

Gordon: All right, let me swear you in please.

Kinnerup: All right.

Gordon: Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Kinnerup: I do.

Gordon: Go ahead place.

Kinnerup: My property, my wife and I own it at 2116 Sorrento Place. We share a, what would be the east wall with the applicant. The entire east wall. I have owned this property, my wife and I, since 2001. We built on 2003. We were in the dark completely that there was a business going on next door. We had always believed it was family as there is on a, on the, what would be the west, southwest corner of our property where grandparents have their grandchildren over frequently. I was not notified as she indicated she notified her neighbors. I being pretty close neighbor there, that she was putting in this application. My wife and I do not support it for we believe the additional activity in what we think is a very small yard would be a problem for us. Thank you.

Gordon: All right. Thank you. Is there anyone else? Well then come forward please. You have to talk into the microphone.

Williams: My name is Susan Williams and I live at 2122 Estancia Place in Tierra Verde.

Gordon: All right let me swear you in please. Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Williams: Yes I do.

Gordon: Thank you. You can go ahead.

Williams: Mr. Chairman when a request is given for a change in zoning as this first one was that you mentioned, how are people notified?

Gordon: Actually this is what, what originally happened, this was not a change in zoning. Are you asking about this request for a Special Use Permit?

Williams: Uh, the first Special Use Permit for six children.

Gordon: There was, there was never a Special Use Permit. She was, she had the right under law to, to get a business license which was issued by the City and she had the right to do that cause it was a homecare business for children up to six. There was no need to, as far as I understand it, I've read the law and been informed, there was no need at all to tell the neighbors. You could, you could go ahead and, and have a home business as long as it's, it's under the statute that you could've done the same thing and you would've had to tell no one. But because she wants to exceed what she's entitled to have by law, she has to ask for a Special Use Permit which she is doing now. That, that is the question here before the Commission, this request for a Special Use Permit.

Williams: Yes sir I understand. But you, one of you expressed surprise that we didn't know about it, so many of us didn't ...

Beard: But ...

Williams: Already know about it.

Beard: *(inaudible)*

Gordon: My, my surprise was that nobody knew that she had a childcare business, not the fact that she applied for one. She had been doing this since 2009 and, and nobody knew that she was running a childcare business. That was my question not the fact that you weren't notified.

Williams: Okay. Thank you very much.

Beard: The, if I may.

Williams: Yes.

Beard: When you, when she goes for a business registration license she is going to meet the City Code in order to obtain that. She doesn't come to us for that, that license. It's only when you go above the six people, children, that you get the Special Permit license and it comes to us. So we have no say so in the initial license that she received. Now she has to cert, meet certain codes though. She has to, the wall in her backyard has to be at least four feet high. She has to have certain space allocated for the kids. She has to me meet all of those conditions. If she meets those conditions then that, then she doesn't need to do anything else, especially before this

code, before this Commission, is when you want that Special Permit. Now she has additional codes she has to meet and, if we do approve it. And so that, that initial license does not get, they don't have to notify anybody in the neighborhood about that one. When you get the Special Permit then they have to notify certain people within a certain distance of that establishment.

Williams: Yes. I understand that. And thank you for clarifying that for me.

Gordon: All right. Well thank you for your comments. Now is there anyone else? I will close public discussion and I will turn to the Board, to the Commission for any comments. Mr. Alvarado.

Alvarado: I have a question of Ms. Chavez. Do you, do you have a City business license?

L. Chavez: Yes sir, I do.

Alvarado: You do have one. And, and you've met all the requirements that the state ...

L. Chavez: Yeah the state ...

Alvarado: Asks you to comply with.

L. Chavez: Yeah the state goes four times a year and CAA Codes four times a year. And every year they go and check everything they have to check on us and even the fire department when the first time that I moved there, cause I used to have my license in my old house. When I moved that they ...

Alvarado: They changed.

L. Chavez: They went and checked there that I have everything you know secure for the kids.

Alvarado: Okay.

L. Chavez: And never, never happen, I'm so glad that never happen, nothing to the kids, nothing to nobody. I don't know about, did she say that somebody hit a year ago some of the neighbors? The, the car she told me that she, I told her you know tell me if somebody comes fast, I can talk to the mom and, and they can, they can respect that they have to go slow there. But she said that it was a, a red car, but I don't have a year taking care of those kids that a red car is going now to my house, I have only three months taking care of those kids, so it wasn't her at that time when somebody have an accident, I don't know the people that were walking so

I wanna clear that, that it wasn't that girl. But I already, I already talked to her and she is respecting and she's going at five in the morning. She's not going at six, so I don't know who was it.

Alvarado: Okay. Thank you.

L. Chavez: Thank you.

N. Chavez: And may I add something, sir?

Gordon: Yeah go ahead.

N. Chavez: Okay also the neighbors are, well they have great concern but there's, they say there's a 140 houses in that area, so let's just say two cars to each house so not all the traffic that comes through the Motel or Avenida de Mesilla go, are going to her house. The landscaping what, she does not take the kids to the areas where they have all the nice trees cause I've been there several times. I mean she's my aunt, so I've been there several times and she keeps a very clean home inside and out. And maybe that's why there's, hasn't been any complaints because she keeps up with the house and I have never seen her, whenever I go to her, even when she broke her leg I went in there, she had her leg in a cast and she was still washing dishes, like holding on you know, leaning and taking care of everything. She is very, very clean person. And like I said her home inside and outside, I mean it always very clean. The neighbors, the surrounding neighbors can probably attest to this, that her yard's always clean and during holidays she has out her decorations and you know she has all this energy. I, you know I am so proud of her because I do not have the same energy as her and to have this kind of job it's, to me would be very stressful, but she keeps up with it and whatever she, any letter that she gets in the mail she complies, the people come, the people from the state come and check, you know they do visits when the kids are there and they check everything, they have to. She has to have everything in order and you know so that's what I wanted to add. Thank you very much. Appreciate it, your time.

Gordon: Mr. Beard.

Beard: Uh, this is one of the, this Special Use Permit is often item that comes before this Commission, comes here all the time. And generally we pass them. Uh, the Commission is usually very favorable for people that want to do a business, a small business and encourages them to do it. Uh, on the other hand a neighborhood has the right to, to regulate what goes on within the, in their own community. I've never seen a Special Use Permit have such large rejection as this one right here. And we usually abide by what the people want when, when something is, comes before this Board,

even though we think it might be a good thing to do, typically we do say If the people in that community want it this way then that's the way we usually go. I'm in favor of, of doing what the neighborhood wants to be done in that neighborhood. I hate to say something against a young lady that wants to, to increase her business, uh, I, I want people to, to make money. I want people to do what they want to do, but in this case it's infringing on the neighborhood and so I would have to say that I'm not really a, for approving this particular case.

Gordon: Thank you. Any other, Ms. Ferrary.

Ferrary: I'd just like to clarify that her permit to have the six children is still allowed, we just are not increasing the traffic and, that might occur if she even were able to go to 12, but the business can still exist as is. Is that right?

Gordon: I have one, I just have one question. Just to clarify something in my own mind. What is the earliest time in the morning that someone can drop a child off and what is the latest time at night that they can do the same thing?

Gonzales: Mr. Chair, Commissioner. There is not a timeframe as far as a requirement for state regulations for times in the morning or the evenings.

Gordon: So it could possibly happen that if a parent gets stuck at work and a child is there they could come pick a child up at one o'clock in the morning.

Gonzales: That would be correct. Mr. Chair. Correct.

Gordon: All right. Does the applicant never take a vacation?

L. Chavez: Yes sir I do. I, I do one week at a, at a year.

Gordon: And, and does someone cover for you or you, just there no children.

L. Chavez: Yeah I talk to the mom's that I'm gonna get, like last year I got my vacation on October and I told them that, I went two months ahead you know this week I'm not gonna be here, I'm gonna get my vacation. And you know they, they look for somebody to maybe a neighbor, I don't know who but they, they agree with me. We have the rights to get vacations too.

Gordon: All right. Thank you.

L. Chavez: Thank you.

Gordon: Does the Commission have any further comments or discussion? Mr. Stowe.

Stowe: Mr. Chair is there a, is there a possibly that there is some negotiation in the total quantity of kids being served that is less than the, the regulatory number of children, less than 12? If there were say two, two more children and the applicant would, would agree to a, a limiting statement, limiting the business. Would that meet requirements, give us a, some leeway?

Gordon: I do believe that we can add a condition to the, to the request where we could limit the number of children that she could have, less than 12, more than 6 less than 12, and we also if we wanted to could put a condition on the time of this Special Use Permit so that the applicant might have to come back say in a period of time for the neighborhood to assess what has happened under these new conditions. I believe we can do that. Am I correct counsel or Sara?

Gonzales: Mr. Chair. That is correct. You can add additional conditions. You can reduce the number of children and increase, or between seven and 12 you can. And you can also put a timeframe at which the applicant would have to come back and reapply for the Special Use Permit once again once it has expired.

Gordon: Does that answer your question?

Beard: Uh, uh ...

Gordon: But Mr. Stowe still has his light on. Does that answer your question?

Stowe: Yes, yes it does. Thank you.

Beard: I think that if we were to put a condition like that on here then I think the community still needs to respond to it so I would rather table it with a new condition than to pass the condition tonight so that the community can think about it and come back before us uh, uh saying yes or no. That would be my thinking on it.

Stowe: That, that meets most of the concerns that I had. There was some give and take that would adapt to this particular business to the neighborhood.

Gordon: I think that the neighborhood has already, has already spoken in terms of a request to get a Special Use Permit for a maximum of 12 children. If we do table this can, do we table, Sara do we table this with the conditions that we suggest and how long does it take before this will come back to the Commission for discussion again perhaps with comments from the neighborhood? Do you understand my question?

Gonzales: Chairman, Commissioner. There, the timeframe would be based on however long you would like to postpone it until. As far as the requirements that you table it with, normally it is due to staff getting more information so you can provide tabling with staff providing more information from the neighborhood as far as a condition that is proposed by the Commission. Would that be ... but it would be the timeframe in which you would like to see public information coming forward.

Beard: Yes, I would do that if any.

Gordon: I have no, I have no objection to that either.

AUDIENCE MEMBER, NOT AT THE MICROPHONE.

Gordon: Excuse me but just hold on for a second please. I have already closed this to public discussion but I, it's not saying I won't let you speak. Just hold on for a second. Let us discuss this amongst ourselves. Um, we have any objection to let this gentleman issue his opinion? Go ahead. Would you mind coming forward then again and remember that you're under oath and please restate your name.

Saltzman: Yes sir and thank you for giving me the opportunity. We have the community here. It's not gonna change. We understand now that she has the allowance up to six, even if you ask for one more, seven, the community is not gonna change. Postponing it only causes problems for us on coming back here. We are right now the voice of the neighborhood and if you want to ask if adding one person would change our mind we could save us all coming back here and that would answer yes or no. There's, for you to postpone and come back to the neighborhood you're gonna find the same results. This has been discussed in the neighborhood at meetings, we had 46 people at a meeting Sunday afternoon. This was discussed. It's not gonna change. It'll save us all a lot of time if you even ask if there is gonna be one more child allowed.

Gordon: All right.

Saltzman: Thank you.

Gordon: Thank you. I ...

MR. GORDON AND MR. BEARD SPEAKING, MICROPHONES OFF.

Gordon: All right, two things then. Would you please just have a, just let me have a show of hands of those people who would be in favor of us doing this? How many, how many would be against it?

AUDIENCE MEMBERS SPEAKING, NOT AT THE MICROPHONE.

Gordon: Of, of postponing this item with those conditions against.

AUDIENCE MEMBERS SPEAKING, NOT AT THE MICROPHONE.

Gordon: Okay. All right, thank you. In that case then my second thought is let me have Mr. Stowe if you wish to, you can still make this motion. The Commission would still have a right to do that and see how we feel.

Stowe: See if I can phrase them in the, in the form of a, of a um motion. The motion is to allow the Special Use Permit to be adopted, that, that allows for an addition of … do we know the number?

Beard: Nine.

Stowe: Three, three more than presently approved to …

AUDIENCE MEMBER SPEAKING, NOT AT THE MICROPHONE.

Stowe: The subject …

Gordon: Excuse me, this is for our discussion.

Stowe: Right, this was to try to find a, mid, midway point. Mr. Chairman it seems to be expressed by the people here this evening that there is no agreeable solution to approve this and, by the part of the neighborhood. That's what I heard.

Gordon: I, I, I think Mr. Stowe what we're asking you is if you wish to make a motion to add two conditions to this request for a Special Use Permit; one limiting the number of children, and two, setting a time limit for the community to come back with their responses at the end of the time period of which we allow this, the Special Use Permit to expire. Is that what you want to do?

Stowe: That's what …

Gordon: That your motion?

Stowe: I had something in mind along those lines exactly when I first spoke. Having heard now from the audience members this evening, I'm questioning whether that activity will be fruitful or not and I have to say I doubt it will.

Beard: You, would you like if we did a, a, a just a preliminary vote among ourselves as to whether we would go with that and if we don't go with it then we'll go ahead and put the case before the Commission?

Stowe: Say that again. Say that again please.

Beard: Uh, well, uh, we know that the, the community doesn't want it, okay.

Stowe: Correct.

Beard: Okay, do we want to make a compromise? Should we vote among ourselves to see if we want to do a compromise, if we do then we'll make a, we'll make a motion to, to approve this with conditions. If we don't agree to adding people to it, then we'll move to a, approve the case without conditions.

Stowe: Yes.

Beard: Okay.

Dubbin: Mr. Chairman. Mr. Chairman.

Gordon: Hold, yeah, yes.

Dubbin: Pardon my interruption. I'd like to request that, that we add a condition. Based on the discussion we can't really allow a 24-hour overnight care as part of a daycare. I'd like to request the condition be added that no overnight boarding is allowed.

Beard: I didn't follow that.

Gordon: If you just, make, make sure we understand what you're saying. What you're saying is that you, we also would have to add a condition that no overnight boarding is allowed?

Dubbin: Yes Mr., Mr. Chairman. It was mentioned during the discussion that the applicant offers overnight care. By definition a, a daycare, I, I don't know about state law but I know that the Fire Code doesn't allow that. My request is that we add that as part of the condition of any vote. It's, it's not allowed for six kids. It's not allowed for 10, for 12 and it was something that we noticed during the discussion.

Gordon: Is, is there some comment by legal?

Limon: Yes, um … thank you. That's correct. Um if it's a, a daycare by definition it's kind of a categorical error to say that they could overnight them and I

would pay deference to the representative from the Fire Department um as to what the Fire Code says specifically and um again pay deference to what his opinion was that he rendered.

Touching upon the preliminary vote to vote upon a motion for a compromise it's a, it's a two step process and it's kinda curious cause I think that's an abstraction away from what the issue is for us today which is namely whether or not it should pass or pass with conditions, be a no vote or table or postpone. Those were kind of the options that are before us. I think a preliminary vote in order to come to another vote which does address the issue would be ill advised. So I, I think a motion um by one of the representatives and then voted upon would probably be the way to go, keeping in mind that other conditions also could be added, that could change, be it different motion should the, should the panel want to, to vote upon that instead. I hope that I'm making myself clear in that respect. Thank you.

Gordon: So then is there any further discussion from the Commission? If not then I will entertain a motion on Case Number 63824. Sara will you just please repeat the options so that there'll be no confusions amongst the members, and I'll poll the Commission.

Gonzales: You can vote to, you can vote "yes" to approve the request recommended by staff for Case 63824; you can vote "yes" to approve the request with additional conditions; or you can vote "no" to deny the request; or you can vote to table or postpone it. If you do vote "yes" with conditions you will, everything must be within the positive and you will add the conditions and then it would be a second or a motion. Okay.

Gordon: All right. Thank you. All right in that case I will entertain a motion. Mr. Beard.

Beard: I move to approve Case 63824 as it reads, no conditions.

Gordon: Is there a second?

Stowe: Second.

Gordon: Mr. Stowe. All right then the vote is to approve the request for a Special Use Permit. I will poll the Commission starting on my right to Mr. Beard.

Beard: I vote no based on input and discussion.

Gordon: Mr. Alvarez.

Alvarado: I vote yes based on findings, discussion, and the fact that I, I think that we need to facilitate people who want to go out and work as much as we can.

I'm sorry that other people have to be impacted but sometimes that has to happen. Thank you.

Gordon: Ms. Ferrary.

Ferrary: I vote no according to input and discussion.

Gordon: Mr. Stowe.

Stowe: I vote no based on discussions, site visits, and findings.

Gordon: Mr. Hedrick.

Hedrick: I, I vote no for the following reasons: the applicant, first the applicant has not made the, the case to increase the number of children requiring the Special Use Permit. Two, on such a narrow street and a cul-de-sac I, I believe that the, unreasonably increases the traffic in, in public places. Next, I also believe it'll have a, well impair established property values within the surrounding neighborhood and I don't really think it's in harmony with the purpose intent of the zoning and, and design standards of the City.

Gordon: Thank you. And um based on findings, site visit, and although staff recommendation is to approve, I also vote no, therefore the vote is five to one to deny. Thank you.

IX. OTHER BUSINESS

Gordon: Then we'll move on. Is there any other business Commission?

Hedrick: I, I have a question.

Gordon: Go ahead Mr. Hedrick.

Hedrick: I believe I heard that the Commission is the final authority on this matter?

Gordon: Yes.

Hedrick: Is there not an appeal process as well?

Beard: Yes there is appeal process.

Hedrick: What is the appeal process?

Beard: The appeal would be to go before the, the Council.

Gordon: All right Sara, you will advise the applicant of that.

Gonzales: Correct Chairman, Commissioners. The applicant does have 15 days to request an appeal to City Council. Notifications will be re-sent out as to knowing when the Council will take place and they will provide packets as well.

Gordon: So without this appeal then she is just limited to the business license that she has now, limiting her children to six.

Gonzales: Chairman and Commissioner, Board. Yes, this is limited to the six children, yes.

Gordon: Okay, thank you. Thank you everyone for coming. Any other business Commission?

X. PUBLIC PARTICIPATION

XI. STAFF ANNOUNCEMENTS

Gordon: Staff. Public. Are there any staff announcements?

Gonzales: Chair, Commission. No we do not have any announcements.

Gordon: Okay.

XII. ADJOURNMENT (7:30 p.m.)

Gordon: Then I'd like to entertain a motion to adjourn.

Ferrary: I move we adjourn.

Gordon: Ms. Ferrary. Do I have a second?

Alvarado: Second.

Gordon: All right, Mr. Stowe I guess.

Stowe: Second.

Gordon: In that case it is now 7:30 and we are adjourned.

Chairperson