

**COCHISE COUNTY PLANNING & ZONING COMMISSION
MINUTES**

**Wednesday, September 11, 2013
REGULAR MEETING at 4:00 p.m.**

The regular meeting of the Cochise County Planning & Zoning Commission was called to order at 4:00 p.m. by Chairman Lynch at the Cochise County Complex, 1415 Melody Lane, Building G, Bisbee, Arizona in the Board of Supervisors' Hearing Room.

Chairman Lynch admonished the public to turn off cell phones, use the speaker request forms provided, and to address the Commission from the podium using the microphone. He explained the time allotted to speakers when at the podium. He then explained the composition of the Commission, and indicated there were four Special Use requests and a Regulation docket on the Agenda. He explained the consequences of a potential tie vote and the process for approval and appeal.

ROLL CALL

Chairman Lynch noted the presence of a quorum and called the roll, asking the Commissioners to introduce themselves and indicate the respective District they represent; eight Commissioners (Tim Cervantes, Jim Lynch, Carmen Miller, Ron Bemis, Liza Weissler, Pat Edie, Gary Brauchla, and Joe Garcia) indicated their presence. Staff members present included Beverly Wilson, Planning Director; Michael Turisk, Planning Manager; Keith Dennis, Planner II; Peter Gardner, Planner I; Rick Corley, Zoning Administrator and Britt Hanson, Chief Civil Deputy County Attorney. Chairman Lynch noted that the Commission had received a great deal of correspondence shortly before the meeting and implored the public to not wait until the last minute to submit comments to ensure that the comments were given full consideration by the Commission.

APPROVAL OF THE MINUTES

Motion: Approve the minutes of the August 14, 2013 meeting with one typographical correction.

Action: Approve **Moved by:** Mr. Bemis, **Seconded by:** Ms. Weissler

Vote: Motion passed (**Summary:** Yes = 5, No = 0, Abstain = 3)

Yes: Chairman Lynch, Mr. Cervantes, Mr. Bemis, Ms. Miller, Ms. Weissler

No: 0

Abstain: Mr. Brauchla, Ms. Edie, Mr. Garcia

OLD BUSINESS

Item 1

PUBLIC HEARING -- Docket R-13-01 (Cochise County Planning and Zoning Commission): A proposed revision of the 2008 version of the County Zoning Regulations. The revision is intended to simplify and clarify to provide a better understanding of the regulations; to provide more flexibility in the administration of the regulations; and to bring the regulations into conformance with the County Comprehensive Plan and Arizona Revised Statutes.

Chairman Lynch asked for a motion to remove the item from the Table for discussion. Mr. Bemis made a motion to remove the item from the table and Ms. Weissler seconded. Mr. Lynch called for a vote and the motion to remove the item from the Table passed unanimously (8-0). Chairman Lynch stated that at the previous meeting the Commission had entered into an “uncontrolled discussion about this docket,” that was centered on issues other than the proposed changes. He stated that he felt that the discussion should focus on the proposed changes and noted that he had requested Commissioners to submit questions to Staff in writing. Mr. Lynch stated that one Commissioner had submitted questions, and that many of the questions were not germane to the proposed changes. He suggested convening a Work Session to discuss further changes to the regulations. Ms. Weissler asked if such a Work Session would preclude the Commission from discussing or advancing the current docket. Mr. Lynch stated that the Work Session would not impact the current docket. Mr. Lynch requested Staff to schedule a Work Session to address further proposed changes to the Zoning Regulations. Ms. Wilson asked the Chair if Staff could present additional proposed changes at the Work Session. Mr. Lynch answered that it would be appropriate and noted that the water issues were still pending reintroduction to the Commission. He then asked for a motion to open discussion. Ms. Weissler made a motion to forward the docket to the Board of Supervisors with a recommendation of Approval. Mr. Brauchla seconded the motion and Mr. Lynch called for discussion. Ms. Miller asked that if by moving the docket forward it constituted moving the docket forward without “thought-out changes,” and suggested waiting until after a full review and discussion of the regulations. Mr. Lynch stated that he felt that the work session would permit readdressing the questions regarding the current docket, but that a full review of the regulations would take up a great deal of Staff time that had not been budgeted by the Board of Supervisors. He explained that Staff had used a great deal of time answering Commissioners’ questions and that the Board may not approve of more Staff time on the issue and stated that a line-by-line review should not be conducted without the Board approving the Staff time. Mr. Lynch told Ms. Miller that the typographical changes noted in her questions would be addressed by Staff and explained that the other issues were not appropriate for discussion as they had not been advertised as such. Ms. Edie stated that she felt the advertisements covered the entire document and noted that each review led her to more questions about the regulations in general. She also stated that she felt that if the Commission passed the docket to the Board of Supervisors without a line-by-line review that it would be a mistake. Ms. Weissler stated that the Commission had been working for eight months on the docket and that the process had not been rushed. She also noted that the Commission had received direction to review the proposed changes, which are primarily grammatical and typographical. She stated that she felt that any change she would consider useful had already been “gutted” and everything that remained was very minor and had been “agonized over enough.” Ms. Weissler stated that she felt it was “unacceptable” for the Commission to “keep finding new things at each meeting to drag it out.” Mr. Bemis expressed concern that if the document was forwarded to the Board of Supervisors that the Board be made aware of the pending work session so that the Commission would not “mislead the Board into thinking that we are finished.” He also asked if it was appropriate to attach Ms. Miller’s questions to the document when it was forwarded to the Board. Mr. Lynch noted that Ms. Miller’s letter and other correspondence from citizens would be attached to the minutes. Ms. Miller recognized the amount of time and effort that Staff had expended on the docket, and responded to a comment from the previous meeting regarding “we would not be doing our job if

we did not push this through” and took exception by stating that “careful consideration” was the job of the Commission and stated that she felt the Commission has not yet finished considering the docket. Mr. Lynch noted that Ms. Miller was free to speak to the Board about her concerns and that the work sessions would allow further consideration. He also noted that there had been a number of changes in state law since the last update of the regulations that were being incorporated into the proposed changes. Ms. Weissler then identified herself as the one who had made the comment that Ms. Miller was referring to and stated that she felt that the Commission had made zero progress on the docket in eight months and that this was a failure of the Commissioners in their duty. She clarified that she did not state that the docket had to go forward, but had to be voted upon.

Mr. Lynch opened the Public Hearing and asked if there were any members of the public wishing to speak in favor of or in opposition to the docket. There were no written requests to speak, but a member of the public asked to speak.

Mr. Mike Jackson of McNeal reminded the Commission of Mr. Martzke’s concern regarding removing specific references to State law with generic references and noted that Mr. Martzke wanted that change discussed. There being no other speakers, Mr. Lynch closed the Public Hearing.

Mr. Hanson explained the rationale for removing specific statute numbers in favor of general notes. He explained that statute numbers change and that general references were less misleading than incorrect references due to renumbering.

Mr. Bemis stated that he felt the Commission had been doing a great deal of work on the docket, and understood the drive to move the docket forward. Mr. Lynch called for a vote. The motion passed 5-3.

Motion: Motioned to remove the item from the Table for action.

Action: Remove from Table **Moved by:** Mr. Bemis **Seconded by:** Ms. Weissler

Vote: Motion passed (**Summary:** Yes = 8, No = 0, Abstain = 0)

Yes: Chairman Lynch, Mr. Cervantes, Ms. Miller, Mr. Bemis, Ms. Weissler, Ms. Edie, Mr. Brauchla, and Mr. Garcia.

No: 0

Abstain: 0

Motion: Motioned to forward to the Board of Supervisors with a recommendation of Approval.

Action: Recommend Approval **Moved by:** Ms. Weissler **Seconded by:** Mr. Brauchla

Vote: Motion passed (**Summary:** Yes = 5, No = 3, Abstain = 0)

Yes: Chairman Lynch, Mr. Cervantes, Ms. Weissler, Mr. Brauchla, and Mr. Garcia.

No: Mr. Bemis, Ms. Edie, and Ms. Miller

Abstain: 0

NEW BUSINESS

Item 1

PUBLIC HEARING -- Docket SU-11-06A (The Health Center of Cochise, Inc.): A request for a Modification of a 2011 Special Use Permit approved for a Health Clinic and state-licensed Medical Marijuana Dispensary and Cultivation Facility to allow for a larger Cultivation Facility and to add a Medical Marijuana Infusion Facility. The subject parcel is located at 1825 W. Dragoon Road in Cochise. The Applicant is Ms. Catherine R. Mead for The Health Center of Cochise, Inc.

Chairman Lynch called for the Planning Director's report. Planning Manager, Michael Turisk presented the docket, explaining the background of the request utilizing photos, maps, and other visual aids. Mr. Turisk explained that the request was to expand an existing cultivation area and permit an infusion facility at an existing, permitted Medical Marijuana Dispensary. He also explained the correspondence that Staff had received regarding the proposal including the nature of citizen support and opposition. Mr. Turisk explained that Staff considered the request an acceptable expansion of an existing use. He closed by listing factors in favor of and against approval and invited questions from the Commission.

Mr. Bemis asked if there were legal requirements from the State or County regarding lighting for the use. Mr. Turisk explained that the State has security lighting requirements, but noted that he was unable to speak to the specifics and deferred to the Applicant.

Mr. Lynch invited the Applicant to make a statement. Ms. Catherine Mead spoke, explaining the location of the property and the nature of the request. She noted that she lived adjacent to the existing facility. She addressed neighbors' concerns regarding the lighting and expressed a desire to satisfy the neighbors. She explained her efforts with her electrician to minimize light pollution. Ms. Mead explained the balance between security and aesthetics regarding the lights. Mr. Lynch asked about the lighting requirements. Ms. Mead stated that the existing lighting was based on County standards.

Mr. Lynch opened the Public Hearing and asked if there were any members of the public wishing to speak in favor of the project.

Judith Mace of Cochise spoke regarding the existing operation. She praised the facilities' compassion and efforts towards education. She explained the benefits to clients from the proposed expansion.

Delores Williamson of Cochise spoke in favor, and explained that she lived adjacent to the facility and explained that she had no concerns regarding the existing or proposed lighting.

Marcus Hinton of Willcox expressed support for the facility and encouraged the expansion noting that the infusion facility would help clients who preferred not to smoke marijuana.

James Keeler of Sierra Vista expressed support for the expansion on the basis of the infusion facility allowing patients who did not wish to smoke to receive the benefits of marijuana.

Richard Miller of Huachuca City spoke in favor, noting that he deals with dispensaries statewide and felt that the Applicant's facility was one of the best in the state in terms of care and compassion rather than focusing on profit. He noted that he was a cancer survivor and expressed support for marijuana edibles versus smoked marijuana.

Vanessa McIntyre of Willcox supported the proposal, noting that she had received other sorts of assistance from the Applicant's facility and expressed support for the option of non-smoked marijuana.

There being no further speakers in favor, Mr. Lynch called for speakers in opposition to the project.

Alexis Nomides of Cochise stated that she lived adjacent to the facility. She explained that she had no objection to the facility and supported the Applicant's mission. She did express concern regarding light pollution generated by the facility. She asked for conditions to mitigate light trespass. She closed by reiterating that they had no problems with the dispensary and praised the Applicant's work.

Joan Lipsam of Cochise noted that she also lived adjacent to the project site. She also stated that she had no issues with the dispensary itself but expressed concern regarding the lighting. She reiterated the request for light mitigation measures. She also asked about the height of the proposed buildings.

Mr. Lynch then invited a rebuttal from the Applicant. Ms. Mead offered to show photos of the lighting. She then explained that one of the new structures would be the same height as the existing structures, and while the other would be higher, it would be situated outside the sight lines of neighbors. Mr. Bemis asked the Applicant to expound on the light shields mentioned earlier. Ms. Mead provided more information regarding the lights, explaining the shielding on the lights. Mr. Brauchla asked if more lights would be installed. Ms. Mead stated that there would be some new lights, but the site was being designed to minimize the new lights required. She also stated that the new lights would be on the opposite side of the site from the neighbors who expressed concern regarding the lighting. Mr. Garcia asked how long the business had been open. The Applicant provided the opening date and explained how her clientele had mushroomed far beyond her expectations. She detailed the nature of some of her patients. Mr. Bemis asked about the height of the existing lighting and if the new lights could be lower. Ms. Mead expressed a willingness to do so. Mr. Turisk explained the maximum height of the lights. Mr. Bemis asked if shorter lights would meet all requirements. Mr. Turisk stated that he was unaware of any minimum height for the lighting. Mr. Hanson explained that the County had no such requirements. Ms. Mead stated that she was investigating mounting the new lights to the buildings as opposed to using pole-mounted lights. Mr. Turisk explained that the County deferred to the State on security matters. Mr. Brauchla asked for clarification regarding the location of the new lights on the buildings, which Ms. Mead explained by noting that she was minimizing the new pole mounted lights. Mr. Lynch noted that any lights would have to comply with County Light Pollution Code and with State security requirements. He asked Staff to research the security requirements for future dockets.

Mr. Lynch then closed the Public Hearing and asked for discussion from Commissioners. There being none, Mr. Lynch then called for the Planning Director's summary and recommendation. Mr. Turisk recommended Conditional Approval and explained the standard Conditions requested by Staff. Mr. Lynch called for a motion. Mr. Bemis made a motion for recommending Approval of the Special Use with the Conditions given by Staff. Ms. Weissler seconded the motion and Mr. Lynch asked for discussion. There being no discussion, Mr. Lynch called for a vote. The motion passed 8-0.

Motion: Motioned to approve the Special Use Modification with Conditions and recommended by Staff.

Action: Approve with Conditions **Moved by:** Mr. Bemis **Seconded by:** Ms. Weissler

Vote: Motion passed (**Summary:** Yes = 8, No = 0, Abstain = 0)

Yes: Chairman Lynch, Mr. Cervantes, Ms. Miller, Mr. Bemis, Ms. Weissler, Ms. Edie, Mr. Brauchla, and Mr. Garcia.

No: 0

Abstain: 0

Item 2

PUBLIC HEARING -- Docket SU-13-14 (West Edge): The Applicants intend to operate a state-licensed Medical Marijuana Cultivation and Infusion Facility in the existing 187,944 sq.-ft. Willcox Greenhouse for the purposes of Medical Marijuana Cultivation and Infusion for distribution of Medical Marijuana products to licensed dispensaries statewide. The subject parcel is located at 5900 W. Greenhouse Road in Willcox. The Applicant is Withey Morris PC, Mr. Adam Baugh Esq. for West Edge, LLC.

Chairman Lynch called for the Planning Director's report. Mr. Keith Dennis presented the docket, explaining the background of the request utilizing photos, maps, and other visual aids. Mr. Dennis explained that the request was to allow an existing agriculturally exempt greenhouse to be used as a Medical Marijuana Cultivation and Infusion facility. Mr. Dennis explained the access to the site and that the docket was transmitted to various agencies for comment and how the proposed use would not fall under the State's agricultural exemption and would require all site development standards to be complied with. He also explained the correspondence that Staff had received regarding the proposal. Mr. Dennis also explained the public response to the Special Use request. He closed by listing factors in favor of and against approval and invited questions from the Commission. Mr. Lynch thanked Staff for their efforts in attempting to accommodate late input from the public and invited questions for Staff.

Mr. Bemis asked if the State or County had any regulations regarding the maximum volume that a Marijuana Cultivation Facility could produce. Mr. Dennis noted that no such limitation existed under State or County regulations, though some other local jurisdictions had imposed such limits. Mr. Bemis also asked regarding interstate transportation of Medical Marijuana. Mr. Hanson explained that federal law prohibited such interstate transportation and that other states still prohibited marijuana in general. Mr. Bemis asked about transporting through other states that did not permit medical marijuana. Mr. Hanson reiterated that anything outside Arizona fell

under those out-of-state local laws. Mr. Brauchla asked if the State had already permitted the facility. Mr. Dennis explained that a requirement for the State license was local zoning approval.

Mr. Lynch invited the Applicant to make a statement. Mr. Adam Baugh spoke, explaining the location of the site and the nature of the request. He explained the existing use and how the proposed use would change the conditions on the site. He noted that the proposed site was located in an existing agricultural area and the proposal did not change this. He also explained that the site met all the site development requirements under the zoning regulations. Mr. Baugh noted that the Applicant had met individually with each of the citizens on the notification list and had met with no opposition. He noted that there was no legal cap on the output of the facility, but the facility would be demand driven and that the Applicant planned to supply several dispensaries. Mr. Baugh also clarified the ban on interstate transfer and explained the requirements on transferring the marijuana. He also explained the process of acquiring the State license as it applies to the County's requirements. He closed by inviting questions from the Commission.

Mr. Lynch asked about lighting requirements. Mr. Baugh explained that the State deferred to the local jurisdictions on the specifics of lighting.

Mr. Lynch opened the Public Hearing and asked if there were any members of the public wishing to speak in favor of or in opposition to the project.

Ralph Thompson of Willcox noted that he lived near the facility and that he had no opposition to the project. He stated that he felt it would create jobs for the County.

James Martin of Willcox explained his background in the greenhouse industry in Cochise County. He explained the economic factors driving the change in crops from tomatoes to marijuana. He stated that he supported the project and hoped it would create jobs.

Julia Patten of Douglas and Maricopa County noted that she had applied twice for similar permits. She asked if the facility was affiliated with a dispensary and if federal monies were involved in the facility. She expressed a desire to receive similar approval from the Commission.

Bill Brothers of Scottsdale introduced himself as the president of a consulting group that analyzes medical marijuana use in Arizona. He urged the Commission to limit the maximum amount of cultivation. He went into detail regarding the ability of a dispensary to cultivate marijuana and questioned the need for a dispensary. Mr. Brothers claimed that the Applicant on the previous docket stated that she had "39 patients in her district and over 600 people visiting her dispensary." He questioned "how does that add up" and implied that the previous Applicant was selling illegally. He stated that if approved it would be the largest dispensary in the State and asked what dispensary the facility was affiliated with. Mr. Brothers stated that the facility would grow more than the entire State would need and implied that the Applicant would sell the surplus illegally, noting that the product could not be legally transported across state lines. He spoke about the illegal drug trade and the value of the product being grown in the greenhouse.

Jacqueline Latham of Saint David spoke against marijuana in general and professed worry about children and pushing. Mr. Lynch interrupted to ask if Ms. Latham would address this facility. Ms. Latham replied that she would and spoke about an experience with an “ex-con” whom she claimed bragged about selling marijuana to children.

Mr. Lynch invited the Applicant to rebut. Mr. Baugh expressed appreciation for the concerns of neighbors, and then asked why an individual from Scottsdale would have an interest in this docket. He also noted that the neighbors had not expressed any concern regarding the project. He emphasized that the Applicant would be required to comply with all State laws. Mr. Baugh addressed the concerns regarding the number of patients, noting that the facility would produce according to demand from one or more dispensaries. He noted that there was no requirement to combine cultivation and dispensary facilities. Mr. Baugh claimed that Mr. Brothers had approached the landowner to purchase the facility for the same purpose and was unable to come to an agreement. He recognized the stigma attached to marijuana and expounded on the County and State regulations and noted that they were more stringent than any other state. He also reiterated that Arizona did not cap the volume of cultivation and left it to the market to drive. He rebutted Mr. Brothers’ claims that the facility would grow more than the entire State would use, claiming that the facility would produce roughly five percent of the current demand. Mr. Baugh reiterated that none of the speakers in opposition were directly impacted by the request. Mr. Lynch asked about the Applicant’s status. Mr. Selvey of West Edge spoke, explaining where the corporation was incorporated and who the representative was. Mr. Lynch asked if the company was privately held, and Mr. Selvey confirmed that it was. Audience members interjected with questions, which Mr. Lynch rejected as out of order. Mr. Brothers asked to rebut the Applicant on the basis that the Applicant had been permitted to rebut. Mr. Lynch denied the request as out of order.

Mr. Lynch then closed the Public Hearing and then called for the Planning Director’s summary and recommendation. Mr. Dennis summed-up the analysis and recommended Conditional Approval and explained the Conditions requested by Staff. Mr. Bemis noted that the issue at hand was complex, and noted that the Commission’s purview was limited to the land use issues and stated that he felt the project complied with planning and zoning regulations as any other agricultural use. He stated that he felt that the issues of quantity and end use were not within the scope of the Commission’s mission. Ms. Weissler also stated that she felt that the request complied with all land use factors and expressed support for the request. Mr. Lynch expressed mixed feelings, wondered about the investment involved, and wondered if the request was based on speculation that marijuana would be decriminalized. He also expressed concern that the scope of the request mandated input from the Board of Supervisors and expressed doubts. He closed by indicating that he would vote against it under the rationale that the docket would be appealed to the Board of Supervisors for their consideration. Mr. Cervantes also expressed concern regarding the scale of the request and worried about the Applicant’s ability to secure the product on this scale. Mr. Garcia stated that he was concerned about the amount being cultivated and the location, stating that he felt the remoteness could lead to misuse. He stated he would vote against the proposal. Mr. Hanson interjected to verify that the regulations did not place a size cap, but that the Commission did have the authority to place a Condition limiting the size due to the land use impacts. Mr. Bemis asked how the Commission would determine a cap and expressed an understanding for Mr. Lynch’s suggestion to send the request to the Board.

Ms. Weissler stated that she felt the actual production would be governed by the legal market. Mr. Lynch stated that he felt the Commission must operate under the assumption that the business would be conducted legally. Mr. Brauchla noted that the State permitted legal medical marijuana and reminded the Commission to focus on the land use issues. He also supported the belief that the market would drive the amount of product grown and suggested that the Commission not drive the amount produced. Mr. Bemis noted that the State did not permit medical marijuana to be exempt as agriculture and expressed a belief that the Applicant would respond to the market. Ms. Weissler reiterated that the issue before the Commission was if the land use was permissible and stated that she feels it is. Mr. Lynch called for a motion. He clarified that a motion could limit the scale of the project. Ms. Weissler made a motion for recommending Approval of the Special Use with the Conditions given by Staff. Mr. Bemis seconded the motion and Mr. Lynch called for a vote. The motion passed 5-3, with Mr. Lynch, Mr. Cervantes, and Mr. Garcia opposed.

Motion: Motioned to approve the Special Use request with Conditions recommended by Staff.

Action: Approve with Conditions **Moved by:** Ms. Weissler **Seconded by:** Mr. Bemis

Vote: Motion passed (**Summary:** Yes = 5, No = 3, Abstain = 0)

Yes: Ms. Miller, Mr. Bemis, Ms. Weissler, Ms. Edie, and Mr. Brauchla.

No: Chairman Lynch, Mr. Cervantes, and Mr. Garcia

Abstain: 0

Item 3

PUBLIC HEARING -- Docket SU-13-13 (AIRES, LLC): The Applicant seeks to legitimize an existing Day Care Establishment operating within an existing 3,300-sq.-ft. home. The facility includes provisions for up to 20 adults and up to 15 children and as many as 15 employees. The subject parcel is located at 4100 S. Ranch Road in Sierra Vista. The Applicant is Ms. Diane Logan for Aires, LLC.

Chairman Lynch called for the Planning Director's report. Mr. Keith Dennis presented the docket, explaining the background of the request utilizing photos, maps, and other visual aids. Mr. Dennis explained that the request was to allow existing structures to be used as a day care facility for developmentally disabled persons. He went into the background of the structures on site and noted that all construction occurred under a previous owner. Mr. Dennis explained the access to the site and that the docket was transmitted to various agencies for comment. He also explained the correspondence that Staff had received regarding the proposal. He explained requirements stemming from building and fire codes. Mr. Dennis also explained the Modifications requested by the Applicants, as well as the public response to the Special Use request. He closed by listing factors in favor of and against approval and invited questions from the Commission.

Ms. Weissler asked about State certification, wanting clarification that the certification was a general certification rather than a certification specifically for this site. Mr. Dennis explained the blanket certification and how it applied to the site in question. Mr. Dennis deferred further explanation to the Applicant. Mr. Bemis asked if denial would result in the facility shutting down or would it force compliance with fire code.

Mr. Dennis noted that the facility was currently in violation for operating without a permit, but the violation was on hold pending the outcome of the Special Use and Commercial Permitting. Mr. Bemis asked what the timeframe for compliance was if the docket was approved. Mr. Dennis explained that Staff had recommended shortening the usual deadlines, granting 30 days for permit submittal and 90 days for permit issuance. He also noted that once the permit was issued, the timeframes were less specific, and added that the Applicant understood the sense of urgency.

Mr. Lynch invited the Applicant to make a statement. Ms. Diane Logan spoke, explaining the location of the property and the nature of the request. She apologized for “not realizing what the requirements were from the County.” She stated that they had received all required State certifications and had been inspected by the State in January. Ms. Logan detailed the background of AIRES, noting that they had been in operation throughout Arizona since 1978, and stating that they support roughly 500 people statewide and have roughly 700 employees. She noted that AIRES had been operating in the Sierra Vista area since 1983, serving almost 100 people primarily as group homes rather than day care provided by this facility. She explained the project and existing structures and how they would be used. She noted that there were 127 employees in Sierra Vista and explained how much they paid in wages and spent in the local community. Ms. Logan further explained how AIRES came to purchase the site, explaining that they had taken over the program from the City of Sierra Vista and purchased the site in question. She explained that the site allowed them to separate adults and children as required by law. She stated again that she “thought she was doing everything correctly” and noted that “this was all new to me, and I am really good at providing services to people with disabilities.” Ms. Logan explained the dates and times that the facility operated which was based upon the desires of the parents of the clients. She acknowledged the Fry Fire Marshall’s concerns and explained their safety procedures. She also noted that the process of getting bids for the required upgrades was underway. She closed by apologizing for not knowing the process and invited questions from the Commission.

Ms. Weissler asked for clarification regarding the Life-Safety Inspection in January, wondering how it was passed with all the code violations. Ms. Logan stated that the facility met all the requirements of the inspection. She stated that she “met all the requirements I knew of.” Ms. Weissler then noted that AIRES began operating business but did not apply for the Special Use Permit until they were cited for operating without a permit. Ms. Logan reiterated that she was unaware of the requirement for a permit. Ms. Weissler asked Ms. Logan if she was involved with starting any other facilities in AIRES’ other service areas. Ms. Logan stated that she had never relocated a day program into a facility like this and stated that she dealt primarily with group homes as opposed to day care facilities and that this was new to her. Ms. Weissler stated that she found “it rather astounding” that a business of this scope would start up without being aware that there were permitting requirements and being sure they were legal. Ms. Logan again stated that she believed that by going through the State process she was legal and apologized again. Mr. Lynch agreed with Ms. Weissler, emphasizing that a “large corporation would enter into business with children with fundamental fire and sewer issues is incomprehensible to me”.

Mr. Lynch opened the Public Hearing and asked if there were any members of the public wishing to speak in favor of or in opposition to the project.

Jacqueline Latham of Saint David spoke in support of the docket. She stated that she had a hobby of studying the Constitution and claimed that people had under the First Amendment a “right to work, and life, liberty and the pursuit of happiness.” She stated she did not understand why anyone needed a license to work, claiming there was no authority to do so under the Constitution, and called it “repugnant to the Constitution.” Mr. Lynch interrupted to ask if she was going to speak about the docket at hand. Ms. Latham stated that this regarded the docket and asked “Why are we making this woman go through so much to go to work? Why don’t we have everyone go on welfare?” She stated she felt it was between her and the clients to decide if the facility was unsafe. She referenced the previous docket and stated she “was tired to see her tax dollars going to welfare recipients.”

Howard Meyers of Sierra Vista spoke in opposition to the project. He stated that he was unaware of the project for several months and noted that the facility had not gotten permits. He disputed the size of the home, stating that he had been in home under the previous owner. He questioned the number of people in the home and asked how the bathroom and kitchen accommodated people. Mr. Meyers also questioned how waste was being disposed of and asked if there was a full-time nurse on site. He also disputed the Applicant’s characterization of the clientele as kids. He stated he felt the Applicant was trying to “take a cheap place and put a lot of people in there and make as much money as she possibly can.” He noted “How do I know that it’s not little children there? Because I almost shot one of them.” Mr. Meyers explained that one of the clients had left the facility and wandered onto his property and scared his wife by trying to enter the house. He stated that he had confronted the individual with a pistol, noting that the man had an item in his hand. He explained that he discovered it was a client of AIRES, approximately 20 years old, and carrying an eyeglasses case. Mr. Meyers stated that he then called the police who discovered that AIRES was unaware that the young man was gone. He questioned the staff of the facility and stated again that he felt the operation was just trying to make money. He also stated that someone had come to his house to discuss the facility. Mr. Meyers stated that he asked if the facility had any “violent, mentally ill people there”, and stated that he was told that was the case, and that there were two employees for each client. He noted that a client had already left without staff knowing, and expressed concern regarding future incidents. Mr. Meyers also questioned placing the facility in a location with poor ambulance coverage. He stated that he felt the Applicant had chosen this site over a commercial building in town entirely as a cost saving measure.

Steven Nanatovich of Sierra Vista spoke in opposition. He noted that despite the violations the facility was in operation that day. He stated that he felt the facility was located in a residential area as opposed to “out in the sticks” and that the homes were fairly close together. He commended the organization for their mission, but stated that he felt that the home and area were not safe for disabled individuals. He expressed concern about who was living there, and stated he was nervous regarding the individuals as there was no fencing on the property. Mr. Nanatovich stated that the site no longer looked like a home with the addition of parking lots, lighting, and wire. He noted a major increase in traffic and expressed concern about the rough roads and transporting buses of children down them. He also expressed concern about buses speeding. He stated that he had received a letter from the Applicant and expressed concern about seeing a parking lot for 50 people in his neighborhood.

Damon and Marlene Everist of Sierra Vista spoke in opposition, adding support to prior concerns. They were uncomfortable that the business was established without correct permits and licenses. He stated that “The gal stated they had been in business for 20 years in Cochise County. You can’t tell me that they had no inclination what was necessary to open the business after 20 years.” He stated that this failure destroyed any trust they had in the Applicant. Mr. Everist also expressed concern about property values, claiming that the facility would limit potential buyers for their own property. He also expressed concern about the road and stated that there was already directional wear from six-months of use at this facility. He also stated that the vehicles speed and generate excess noise and dust. Mr. Everist also stated that he felt the septic system would not support the facility and was worried that the system had already failed. He asked the Commission to shut down the facility today and then require the Applicant to proceed with proper permitting. He also complained about “distressful noises” coming from the facility. He again commended the organization for their mission, but worried about the noise and expressed disruption of his lifestyle. Mr. Everist also asked about expansion and worried that the site would grow. He closed by expressing a lack of trust in the Applicant to follow Conditions if “after 20 years of business they’re not able to follow protocol set up right now.” He noted that none of the governing agencies seemed to be on the same page. He asked if the facility would be allowed to continue to operate or would they be shut down.

Raymond Nanatovich of Sierra Vista spoke in opposition. He supported the previous speakers in opposition and expressed concern for the disregard for process by operating prior to applying for permits.

Jim Bryant of Sierra Vista spoke in opposition. He noted that he lived across the street from the facility and had moved there for the peace and quiet. He stated that the additional traffic had required the homeowners to perform several times more maintenance than normal on the non-County maintained roadway. He also expressed concern for the noise coming from the facility, stating that when the facility opened he compared the noise to “a petting zoo” or “parrots.” He stated that until he received the letter from the Applicant he believed that it was a homeowner with an aviary. He stated that it made the neighborhood uncomfortable. Mr. Bryant also stated that he had been inside the home under the previous Applicant and questioned how 50 people would fit in the home. He expressed disbelief that the facility was operating without permits.

Mr. Lynch invited the Applicant to rebut the speakers in opposition. Ms. Logan expressed appreciation for the neighbors’ concern. She stated that she hoped that her staff had invited the neighbors over to see the program. She noted that there was an incident where a client had left the property after “getting away from staff supervision.” She stated that they had filed the appropriate reports with the State and that changes had been made to prevent a recurrence. She defended the square footage quoted as being from public records. Ms. Logan stated that she could not speak for the Fire Marshall, but claimed that he was satisfied with the space. She explained that the individuals served had developmental disabilities and clarified what that meant, stating that they did not have folks who were extremely violent or aggressive, but conceded that there was some aggression and violence, comparing it to small children. She stated she would be happy to have anyone come in and view the program, and that she felt there was a misimpression of what they were doing. She took personal accountability for not getting

the permit, stating again that she had gotten the permits from the State. She explained that she had read Arizona Revised Statutes regarding group homes in a residential area, and admitted that she did not understand that there was a difference between group homes and day care facilities. Ms. Logan stated again that she thought she had done what she had to do and had not intentionally violated the regulations. She emphasized that her focus was on the kids and adults with disabilities within the community. She stated that they felt that the site was a great setting for the facility and expressed support for the program. She asked the Commission to approve the project, but if they did not, asked to not have to stop providing services and asked for time to relocate.

A member of the public asked to speak again, but was ruled out of order by Mr. Lynch. There being no further speakers, Mr. Lynch closed the public hearing and asked for Commission Discussion.

Mr. Bemis expressed issues with fire safety and the “backdoor” permitting, stating a major corporation should know better. He stated he did not have the knowledge to judge the square footage, but was concerned about the possibility of overcrowding. He also expressed empathy for the neighbors and stated he would vote against the project. Ms. Weissler also expressed concern for an Applicant “asking for forgiveness rather than permission.” She stated that in some such cases it was understandable to some extent, but could not see it in this case. She also stated that she was “feeling manipulated because of the nature of the business and the vulnerability of the persons involved.” Ms. Weissler stated that while Ms. Logan may not have known, she was surprised that the company did not know and did not question Ms. Logan in regards to permitting. She closed by stating that the request was too egregious for her to support. Mr. Cervantes concurred that the vulnerability of the clients and the safety issues made it difficult for him to support the docket. Ms. Edie asked Staff if there was a size limit to the facility. Mr. Dennis explained that the regulations did not have a size limit on the proposed use, but that the Commission could impose a limit. Mr. Cervantes asked about the timeframe for correcting the shortcomings if the Commission were to approve the docket. Mr. Dennis explained the timeframe for permit application and issuance recommended by Staff. Mr. Cervantes asked if the business would continue to operate during this process. Mr. Dennis explained that the Commission could impose Conditions. Ms. Weissler clarified that the docket was only in front of the Commission because the Applicant had been cited and may not have otherwise come forward, and Mr. Dennis concurred. Ms. Miller wondered if there were other mitigating factors that the Commission may consider to ease neighbors’ concerns with Conditions. Mr. Dennis reiterated that the Commission could impose Conditions as it saw fit. Mr. Lynch asked Ms. Miller for specific Conditions she would recommend. No specific Conditions were suggested by the Commission. Mr. Bemis expressed appreciation for Ms. Miller’s suggestion, but expressed a desire for the Applicant to reapply and propose the mitigation measures themselves, and suggested issuing a violation noting again that a major corporation should be aware of the required paperwork before opening a business. He also stated that he felt the neighbors had a right to look at the project prior to opening rather than having to fix it after the fact. Mr. Brauchla asked how long the Applicant would have to comply with the terms of a Commercial Permit. Staff explained how long the permit was valid and how long it could take for the Certificate of Occupancy to be issued, noting that the process could possibly be drawn out for three years.

Mr. Garcia asked if Staff would inspect the site prior to issuing the permit. Mr. Dennis explained that inspections would occur after permit issuance and work was completed. He explained that the Fire Marshall had been out already and explained how the building code requirements were determined.

Mr. Lynch then called for the Planning Director's summary and recommendation. Mr. Dennis recommended Conditional Approval and explained the Conditions and Modification requested by Staff. Mr. Lynch called for a motion. Mr. Bemis made a motion for recommending Approval of the Special Use with the Conditions and Modification given by Staff. Ms. Weissler seconded the motion and Mr. Lynch asked for discussion or Conditions to be added. Ms. Miller asked about the result of a denial. Mr. Dennis explained the project would return to the violation process, and Mr. Lynch noted that an appeal could be filed. Ms. Miller suggested that the Applicant could meet with neighbors prior to appeal to create Conditions that would remove the neighbors' objections. Mr. Lynch called for a vote. The motion failed 0-8.

Motion: Motioned to approve the Special Use request with Conditions and Modification recommended by Staff.

Action: Approve with Conditions and Modification **Moved by:** Mr. Bemis **Seconded by:** Ms. Weissler

Vote: Motion failed (**Summary:** Yes = 0, No = 8, Abstain = 0)

Yes: 0.

No: Chairman Lynch, Mr. Cervantes, Ms. Miller, Mr. Bemis, Ms. Weissler, Ms. Edie, Mr. Brauchla, and Mr. Garcia.

Abstain: 0

Item 4

PUBLIC HEARING -- Docket SU-13-15 (Ramirez): A Special Use request to use an existing 1,603 sq.-ft. manufactured home with addition for a Day Care Establishment. The subject parcel is located at 37 N. McRae Lane in Saint David. The Applicant is Ms. Manuela Ramirez.

Chairman Lynch called for the Planning Director's report. Mr. Peter Gardner presented the docket, explaining the background of the request utilizing photos, maps, and other visual aids. Mr. Gardner explained that the request was to allow existing structures to be used as a day care facility. He explained that the Applicant was currently caring for family members, which is exempt from the zoning regulations, and that the request was to allow the Applicant to accept non-family members and receive DES funding. Mr. Gardner explained the access to the site and that the docket was transmitted to various agencies for comment. He also explained the correspondence that Staff had received regarding the proposal. Mr. Gardner also explained the Modification requested by the Applicants, as well as the public response to the Special Use request. He closed by listing factors in favor of and against approval, noting compliance with the Saint David area plan, and invited questions from the Commission.

Mr. Lynch invited the Applicant to make a statement. Ms. Manuela Ramirez spoke to explain the project, noting that there were no day care facilities in the area. She closed by inviting questions from the Commission.

There being no questions, Mr. Lynch opened the Public Hearing and asked if there were any members of the public wishing to speak in favor of or in opposition to the project.

Mary Mortensen of Saint David spoke in support of the project. She expressed personal support for the Applicant, her facility, and how she treats the children she cares for.

Jacqueline Latham of Saint David spoke in support. She expressed appreciation for the Applicant contacting neighbors prior to applying and opening. She concurred that there was no similar business in the area, and asked the Commission to support the request.

There being no further speakers, Mr. Lynch then called for the Planning Director's summary and recommendation. Mr. Gardner recommended Conditional Approval and explained the Conditions and Modification requested by Staff. Mr. Lynch called for a motion. Mr. Bemis made a motion for recommending Approval of the Special Use with the Conditions and Modification given by Staff. Ms. Weissler seconded the motion and Mr. Lynch asked for discussion and a vote. The motion passed 8-0.

Motion: Motion to approve the Special Use request with Conditions and Modifications recommended by Staff.

Action: Approve with Conditions and Modifications **Moved by:** Mr. Bemis **Seconded by:** Ms. Weissler

Vote: Motion passed (**Summary:** Yes = 8, No = 0, Abstain = 0)

Yes: Chairman Lynch, Mr. Cervantes, Ms. Miller, Mr. Bemis, Ms. Weissler, Ms. Edie, Mr. Brauchla, and Mr. Garcia.

No: 0

Abstain: 0

CALL TO THE PUBLIC

Chairman Lynch opened the "Call to the Public."

Jack Cook spoke about various matters.

Chairman Lynch closed the "Call to the Public."

PLANNING DIRECTOR'S REPORT

Chairman Lynch then called for the Planning Director's report. Director Beverly Wilson informed the Commission that there were two Special Use dockets, one Rezoning docket, and a Tentative Plat Extension for the next meeting. She also noted the proposed Work Session regarding the Zoning Regulation update and asked the Commission for written suggestions regarding topics for discussion. She noted that the Zoning Regulation update would be heard by the Board of Supervisors on October 8.

CALL TO COMMISSIONERS

Mr. Lynch asked about absences for the next meeting. Mr. Brauchla indicated he would not be present. Mr. Lynch then read a letter resigning his position as Chairman of the Commission as of the end of the meeting. (*The letter is attached*). Mr. Lynch explained the bylaws regarding the absence of both the Chair and Vice-Chair at a meeting.

ADJOURNMENT

Ms. Weissler moved to adjourn, Mr. Bemis seconded and the meeting was adjourned at 7:46p.m.