

January 24, 2023

Received on 1/26/23
- Peter Lange

RE: CUPD-22-0015 (50 Mikado Drive)

Ms. Warren is requesting a Conditional Use Permit from the City of Colorado Springs for a Large In-Home Daycare Business. Based on the following legal and practical arguments, we believe this application should NOT be considered.

1. In your email of January 10, you clarified that Ms. Warren's request is now to be considered a "Proposal for Conditional Use" in lieu of the original "Request to Rezone". This clarification notwithstanding, our strong objections outlined in our reply letter of December 9, 2022 (Attachment #1) remain.
2. Ms. Warren's "Response to Public Comments" dated January 5 (Attachment #2) is just narrative with NO supporting data. Like her initial application, her response contains no documentation to support the points she is trying to make, other than for her to "say so" (IE: Traffic, ADA Compliance, Noise, Safety, Property Value). Many of the neighbors have submitted their concerns and actual evidence of the current daycare (up to 6 children) affecting the neighborhood negatively.
3. Some of Ms. Warren's comments in her "Response" are INCORRECT and others are non-essential to the application. Within Attachment #2, we have made comments. Please refer to that attachment.
4. Ms. Warren is relying on Senate Bill 20-126 (Attachment #3) which amended the Colorado Common Interest Ownership Act (CCIOA) to push this "Proposal for Conditional Use" through the approval process. In fact, in Bullet point #1 of her Response letter, she states "The CCIOA determines the legal parameters of all Colorado HOA's". It is within this legislation that Raven Hills HOA finds our supporting argument against the Conditional Use Permit for Large Home Daycare: The "CCIOA Exemption for 'Small' Associations or 'Limited Expense' Associations" as amended (Attachments #4, 4a, and 4b) explains that Section 116 of the CCIOA exempts Limited Expense Associations from ALL but three of the provisions of the CCIOA.

The current annual expense liability for each homeowner within the Raven Hills HOA is \$120, which, by definition, makes it a Limited Expense Association. Included in Attachment #4 are Colorado Revised Statutes 38-33.3-116 (Attachment #4a) and 38-33.3-119 (Attachment #4b) clearly establish the exempt status of our Association.

Even if SB20-126 applied to our Association, it would not prevent individual homeowners from suing for covenant violations. Nor would it prevent the City from denying Ms. Warren's request. The violation of the Covenants is relevant to the City's review because it shows neighborhood opposition and incompatibility.

5. Ms. Warren makes the argument that a Large Child Care Home is not considered a commercial business, "per city and state descriptions". However, in Bullet Point #1 of her Response dated January 5, she states "...notwithstanding their declarations regarding home businesses.", which tacitly acknowledges that she is operating a business in a residential dwelling in the Raven Hills HOA. Raven Hills Association covenants (Attachment #5) do not permit commercial interests

within the community. The enclosed decision, Rodriguez v. Safeco Ins. Co., Court of Appeals of Colorado, Division Five, No. 90CA37 (Attachment #6) clearly makes the point that licensed home daycare is a "business pursuit".

The following cases also have ruled that daycares are indeed businesses/commercial enterprises (copies available upon request) :

- Martellini v. Little Angels Day Care, Inc., Supreme Court of Rhode Island, March 18, 2004, Opinion Filed, No. 2002-597-Appeal
- Southwind Homeowners Ass'n v. Burden, Supreme Court of Nebraska, March 16, 2012, Filed, No. S-11-373
- Terrien v. Zwit, Supreme Court of Michigan, November 6, 2001, Argued ; July 25, 2002, Decided ; July 25, 2002, Filed, No. 115924

6. Again, the applicant is relying upon Senate Bill 20-126 argue that the City must approve her Conditional Use Permit. That is incorrect. She has the burden to submit and prove the requirements of a Conditional Use Permit have been met. She has not done that and so the Permit does not meet the legal requirements and so must be denied.

7. As to the City's requirements, we request the following be provided to us:

a. Written confirmation that the Applicant has complied with all requirements per Code of Colorado Regulations - Social Services Rules, 7.707.22 (Attachment #7), both for the current daycare business - Family Child Care Home (FCCH) and proposed Large Child Care Home.

b. Written confirmation that the Applicant has complied with all requirements per Colorado Springs' Development Plan, Use Variance, & Conditional Use Application Requirements & Checklist (Attachment #8).

c. Proof of Liability insurance for the daycare business that is currently being run from 50 Mikado Dr. E., and that the Raven Hills HOA and Board members are listed indemnified parties.

d. All supporting data submitted to the City of Colorado Springs in regard to this Application for Conditional Use, including the "lovely letters" of support she claims to have received from neighbors or other members of our Association.

8. We reserve the right for this "Conditional Use" to NOT be grandfathered into the Raven Hills Community if this Conditional Use Permit should be approved.

9. Please advise as to whether the Conditional Use permit is attached to the property or the Applicant.

Thank you for your consideration.

The Anderson's
7005 Raven Hills Place
Colorado Springs Co 80919



Enclosures -

Attachment #1 - Anderson Reply Letter dated Dec.9, 2022

Attachment #2 - Ms. Warren's "Response to Public Comments" dated January 5

Attachment #3 - Senate Bill 20-126

Attachment #4 - Colorado Revised Statutes 38-33.3-116 and 38-33.3-119

Attachment #5 - Raven Hills HOA Declaration (Excerpt) - Article X - Section 1. Land Use, Building Type and Occupancy; Article X - Section 13. Commercial Enterprises, Nuisances Attachment

Attachment #6 - Rodriguez v. Safeco Ins. Co., Court of Appeals of Colorado, Division Five, No. 90CA37

Attachment #7 - Code of Colorado Regulations - Social Services Rules, 7.707.22

Attachment #8 - Colorado Springs Development Plan, Use Variance, & Conditional Use Application Requirements & Checklist

December 9, 2022

Peter Lange
The Planning & Community Development Department
Land Use Division
Colorado Springs, Colorado

RE: CUDP-22-0015
50 Mikado Drive E, Large Day Care
Childcare License #1757045
File #11885083
Colorado Springs, Colorado

POSITION: STRONG OPPOSITION to REZONE for Proposed Development

Mr. Lange:

As homeowners within the Raven Hills Community and a Member of the Raven Hills Homeowners Association, my husband and I are STRONGLY opposed to the Proposed Development referenced above.

It is our understanding that this proposal must comply with Colorado Springs City Code – Part 7 – Conditional Uses, and the following:

7.5.701: PURPOSE

7.5.702: APPLICATION AND REVIEW PROCEDURE

- A. Preapplication Conference. Please provide all data that the Applicant submitted to conform with this statute.
- B. Process.
 - o Development Plan INADEQUATE DATA PROVIDED
 - Traffic Impact NO STUDY/DATA PROVIDED
 - ADA Compliance (Federally Mandated) Applicant has made a general comment that the “privatized home business” she intends to operate is exempt from ADA requirements. NO DATA was provided to support this claim.
 - Zone R1 Compliance This Proposal does not conform with Zone R1

7.5.704: AUTHORIZATION AND FINDINGS - Requires the Applicant to provide proof of the following, and The Planning Commission may approve and/or modify a Conditional Use Application ONLY if all three (3) of the following findings are made:

- A. Surrounding Neighborhood: That the Value and Qualities of the neighborhood surrounding the Conditional Use are not substantially injured.

PROPERTY VALUE: It is the findings of real estate professionals and individual homeowners that the property value of real estate in proximity to, and within HOA communities, is ADVERSELY affected by the presence of home-based daycares, especially Large Home Childcare. The comment made by the Applicant that home values will not be adversely affected is FALSE.

QUALITIES OF THE NEIGHBORHOOD: Raven Hills is a community of single family homes which have a strong connection to the natural surroundings. Many homeowners are retired, work from home, or simply appreciate living in a community where they are removed from noise, traffic, and a strong sense of pride in our homes.

NOISE: Having up to 12 young children playing outside in close proximity to other homes and yards can only adversely affect the serenity of those neighbors. Additionally, we have encountered noise levels exceeding 55 db in violation of the Colorado Noise Statute 25-12-103 - Maximum permissible noise levels with the permitted six persons. It is quite obvious that the noise levels will substantially increase with additional persons.

TRAFFIC: This Proposal has made the claim that there would be no impact to traffic; however, this business would likely draw all clientele from outside the immediate neighborhood, thereby DEFINITELY affecting traffic adversely. Parking in front of driveways and sidewalks will directly be problematic for neighbors who live on the adjoining cul de sac. The streets in this area were not constructed to carry the traffic loads associated with a commercial enterprise. Further, The City of Colorado Springs requires a Traffic Impact Analyses be submitted with the Application as per the Development Plan, Use Variance, & Conditional Use Application Requirements an Checklist.

SAFETY: The elementary school uses Mikado Drive for parents to drop of and pick up students. Many local students walk to school as well. The traffic flow to the school is already a safety concern to the neighborhood, and the addition of the Proposed Development is an additional safety concern. The statement the Applicant made that traffic and safety will not be affected is FALSE.

ADA Compliance: Even though the Colorado Springs Development Plan Checklist states that the City's approval may not assure compliance per DOJ or any other Federal or State accessibility laws, the Property Owner is responsible for compliance with Federal and State accessibility laws.

- B. Intent of Zoning Code

Conditional Use is in conflict with Zone R1, and we STRONGLY OPPOSE rezoning for the Proposed Development as requested by the Applicant. Further, any rezoning would forever change the character of the affected community and set a precedence for future projects.

- C. Comprehensive Plan

The Conditional Use of this Proposed Development is NOT consistent with the Comprehensive Plan of the City.



FOR YOUR CONSIDERATION:

Raven Hills is a Covenant Controlled Community. Raven Hills was established in 1969 and has enjoyed consistent and continued contributions to the community, school district and neighbors for 54 years. It is a residential community consisting of 225 single family homes. It has operated exclusively as a residential neighborhood with NO commercial enterprises.

- Our covenants state that all Lots shall be used for residential purposes only. (See Article X – SECTION 1. Land use, Building Type and Occupancy, attached herein.)

- Our Covenants prevent Commercial Enterprises, Nuisances, nor any activity which may be or may become an annoyance or a nuisance to the Neighborhood. (See Article X – SECTION 13 Commercial Enterprises, Nuisances, attached herein.)

We are aware of Senate Bill 20-126 which amended the Colorado Common Interest Ownership Act (CCIOA) to include protections for licensed operators of family child care homes. Raven Hills HOA is exempted from the constraints of this legislation because our Association Assessments are below the minimum annual requirements and we were formed prior to July 1, 1992 (CCIOA's stipulations). The Applicant is relying on this legislation to push this Proposed Development in to our community, under inaccurate data and assumptions.

Additionally, we are aware of House Bill 21-1222 which was enacted to provide standardized home child care without regard to the individual HOA Covenants. However, no provision is made in that Bill that requires rezoning to be mandatory.

However, the Colorado Springs development Plan, Use Variance, & Conditional Use Application Requirements and Checklist (Edited 8/22) does have requirements that are to be considered/addressed as part of the application process.

We are looking forward to tracking the progress of this Development Project, and would like to be notified when it goes to Public Hearing.

Thank you,
Kristina and Charles Anderson
7005 Raven Hills Place
Colorado Springs, CO 80919
303-517-1217

Applicant Response
Attachment #2

January 5, 2022

Public Notice Portion of Project CUPD-22-0015

Response to Public Comment Regarding: Conditional Use Permit for Large Family Child Care Home at 50 Mikado Drive East, Colorado Springs, CO 80919, Stacie Warren

In response to the public comments and concerns raised by my neighbors and the HOA, I would like to assure they have been heard and understood. I have lived in neighborhoods where dogs barked incessantly and people parked in my driveway without consideration, so I completely understand everyone's desire to maintain a peaceful, enjoyable neighborhood. My family loves living in this area and seeks to preserve the same home experience as do others living here.

} These are easily resolved with a call.

I would like to expound upon my previous letter of intent to help my neighbors better understand who I am as a member of our Raven Hills community as well as an individual, to hopefully help assuage mentioned concerns. As a mother of three daughters, I fully know the impact family and community have on rearing healthy, happy, successful children. My oldest daughter is a non-profit contract specialist, my middle daughter is a labor and delivery RN, and my youngest is still in high school and has a passion for volunteering at a local animal rescue center.

} Not essential to the Proposal

I became an educator many years ago after becoming a mother because of my passion for supporting growth and development in young children. At that time, we lived in a neighborhood much like this one where we walked our children to school and enjoyed the dedication our community had in providing a healthy network of neighbors in which to grow families.

} Not essential to the Proposal

As our children become adults and move on in the world, it can be easy to forget how incredibly important it is to continue supporting young families who are in desperate need of healthy, safe, enriching spaces for their children to grow while parents are working hard to support their families and communities. Our community is currently experiencing a childcare crisis and live in an area that is considered a "childcare desert." As a community, we hold responsibility to support one another in being able to care for our most vulnerable population, just as we needed when we were young parents or as we need in our older age.

} Not necessary to put in to a neighborhood

- Rental space in a commercial area would suffice.

Now I would like to address my neighbor's specific concerns:

1. **No covenants have been broken, nor can an in-home childcare create a precedence of commercial business in our HOA:**

In 2020, Governor Polis signed Senate Bill 10-126 of the Colorado Common Interest Ownership Act (CCIOA) that implements legal protections for in-home childcare entities, declaring them an important part of HOA communities. The CCIOA determines the legal parameters of all Colorado HOAs.

} See Attachment which specifically exclude Raven Hills from CCIOA oversight.

→ see attached EXEMPTIONS

I am unsure where the breakdown in communication of this changed law occurred within our own community, but Raven Hills HOA has not yet incorporated this law into their covenants; therefore, the members of the HOA were not informed about how this law impacts them as a community. With this amendment, no HOA can prohibit in-home state licensed childcare programs within their community, notwithstanding their

} RH is not required to include state regulations or legislation in to covenants.

declarations regarding home businesses. Nor can they prohibit increased traffic due to the childcare facility, nor can they refuse reasonable fences that are required per state regulations. Our HOA has not properly informed our community to these legal changes.
<https://dre.colorado.gov/blog-post/new-bill-allows-home-child-care-homeowners-association-communities>

All regulations are public information, Not necessary to rewrite covenants

Daycare as a business. Not allowed per covenants.

Because this is a protected service, the covenants should have reflected it as such as soon as it became law. In-home childcare is not considered a commercial business per city and state descriptions, but rather an ancillary extension of a residence that provides necessary support to the community. Therefore, no precedent can be set for allowing commercial business within our HOA: This protection only applies to in-home childcare.

Per Colorado Court of Appeals Rodriguez v. Safeco Ins. Co. Daycare is Business

I would never purposely set out to break our HOA covenants or my neighbors' trust. I have followed the guidelines set by the Colorado Office of Early Childhood and by the requirements set forth by city planning, step by step. In fact, I contacted the Community Manager at Diversified Properties March 17th, 2022, when I first moved in, describing my program and intended expansion, giving them proof of additional liability insurance that extends protections for the HOA. At that time, I thought I had contacted the proper person of our Homeowners Association based on the contact list in my HOA welcome packet. The board did not receive that communication, which explains their message that they had only been recently notified.

Refer to Legislation regarding CCIOA Exclusion

I apologize for that misunderstanding and miscommunication. There was no intent whatsoever to move forward without the board's awareness. I naively assumed they chose not to respond because in-home childcare is a protected service, so I was equally surprised as everyone else when the email blast came out asking HOA members to write their opposition of my request for rezoning to city planning.

DO NOT ASSUME.

2. **Licensing and Zoning:** See attached 'Code of Colorado Regulations' - none of these issues have been addressed herein.
- To address licensing questions raised by public comments, Colorado Office of Early Childhood is the licensing entity for all preschool and childcare facilities (school districts, Head Start, private preschool establishments), and small or large childcare programs, residential or non-residential. As a private child-care provider, I can teach a curriculum of my choosing, which is Waldorf pedagogy. So, whether I refer to my program as a childcare or a preschool, the licensing is the same within a residential space. Once I move to a non-residential space, I will pursue a specific preschool license which requires explicit educational qualifications.

My current qualifications include an active Colorado State Teachers License, master's level education and experience in Early Childhood Special Education, a master's degree in Professional Writing (I write educational, parenting, and childhood development articles), and I am currently enrolled in a Doctoral program for Developmental Psychology. I am also a certified Early Childhood Waldorf Teacher and a certified Simplicity Parenting educator.

I say these things to express my personal and professional experience and capacity to easily manage the allowable number of children in a manner that is respectful and considerate of every person impacted by our in-home childcare service. In the past I have taught teachers how to manage their classrooms and positively respond to

behavior so that chaos doesn't ensue, and children can be actively engaged in learning. It would be wonderful if every one of my concerned neighbors could see how beautiful and purposeful our program is before assuming it is a detriment to our community, but I also understand that members of the HOA were responding to only a partially explained situation.

As soon as the zoning process is completed, and if it is approved, I will send all pertinent licensing and zoning information to the board. At that time, all licensing and zoning information becomes public records, searchable on relative databases.

Is this a "Zoning" issue?

3. **Increased Noise and Traffic:** We have procedures in place to prevent further congestion and potential noise. Our children are outside from 10:50am to 11:40am and sometimes in the afternoon between 3:00pm to 3:30pm. While a 5 feet buffer between play space and the fence does not eliminate noise, it does mitigate noise along the fence line. I do not allow my children to yell for the sake of yelling or to make incessant noise. That is overstimulating for most children and annoying to most people, including myself. We play constructively, learning to build, create, share, and participate in skills such as balance, climbing, jumping, hopscotch, etc.

* Neighbor have provide documentat. that the decible rating is in excess of safety regulations

Although work schedules largely vary for people and some are retired or work from home, my program is over well before a traditional workday ends. It is closed during holidays and typical school breaks, when more neighbors are likely to be home and enjoying time outside. These are breaks where I also enjoy working in the yard and being in our lovely neighborhood, so I chose to be closed during these times.

Neighborhood character and serenity have been negatively affected, and that's before increasing to 12.

As far as traffic is concerned, currently, two families have multiple children enrolled, one family walks, and another two families carpool with each other, although I realize that can change year to year. In addition, I stagger drop off and pick up times to ensure there are rarely ever more than a couple families briefly in my driveway or in front of my home at one time. To further reduce traffic at pick up times, several children leave at half day each day after our daily skills class ends, which further staggers the pick-up time and decreases the number of children in attendance for the full day.

I am in close contact with my immediate next-door neighbors who say they have not been negatively impacted at all by the traffic or noise. Three of those neighbors wrote lovely letters of support, which demonstrates the lack of negative impact on the immediate surrounding area.

} There are "immediate" neighbors who have already been negatively impacted

Causing distress among my neighbors is the farthest thing from my intention, in fact, that is the opposite of my hope in adding to a community that supports all ages of life. I appreciate the energy invested in protecting our neighborhood and promise to exert equally as much energy in doing the same.

Respectfully,

Stacie Warren

Attachment #3

New Bill Allows Home Child Care In Homeowners' Association Communities

Thursday, September 3, 2020

Submitted by [user:field_first_name]

On July 8th, 2020, Governor Polis signed into law Senate Bill 20-126. SB20-126 amended the Colorado Common Interest Ownership Act ("CCIOA") to include protections for licensed operators of family child care homes.

SB20-126 amended §38-33.3-106.5 of the CCIOA. This section now includes §38-33.3-106.5(k), which states that despite any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not prohibit the operation of a licensed family child care home, as defined in section 26-6-102(13).

A "family child care home" is defined by §26-6-102(13) as a facility for child care in a place of residence of a family or person for the purpose of providing less than twenty-four-hour care for children under the age of eighteen years who are not related to the head of such home. "Family child care home" may include infant-toddler child care homes, large child care homes, experienced provider child care homes, and such other types of family child care homes designated by rules of the state board pursuant to section 26-6-106 (2)(p), as the state board deems necessary and appropriate.

In addition to the above, §38-33.3-106.5(k) also:

- Permits an association to require operators of family child care homes to carry liability insurance;
- Requires an association to make reasonable accommodations for fencing requirements applicable to licensed family child care homes;
- Specifically states that subsection (k) does not supersede any of the association's regulations concerning architectural control, parking, landscaping, noise, or other matters not specific to the operation of a business per se.

* Child Care protections amended CCIOA.
* RAVEN HILLS HOMEOWNERS ASSOCIATION and Community is exempt from CCIOA as per Section 116 which identifies R.H. as a "Limited Expense" Association.

Edited C.R.S. 38-33.3-116

Statutes current through all legislation from the 2022 Regular Session.

Colorado Revised Statutes Annotated > Title 38. Property - Real and Personal (§§ 38-1-101 — 38-53-110) > Real Property (§§ 38-30-101 — 38-46-104) > Interests in Land (Arts. 30 — 34) > Article 33.3. Colorado Common Interest Ownership Act (Pts. 1 — 4) > Part 1. General Provisions (§§ 38-33.3-101 — 38-33.3-124)

38-33.3-116. Exception for new small cooperatives and small and limited expense planned communities.

(1) If a planned community created in this state on or after July 1, 1992, but prior to July 1, 1998, contains no more than ten units and is not subject to any development rights or if a planned community provides, in its declaration, that the annual average common expense liability of each unit restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed four hundred dollars, as adjusted pursuant to subsection (3) of this section, it is subject only to sections 38-33.3-105 to 38-33.3-107, unless the declaration provides that this entire article is applicable.

(2) If a planned community created in this state after July 1, 1998, provides, in its declaration, that the annual average common expense liability of each unit restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed four hundred dollars, as adjusted pursuant to subsection (3) of this section, it is subject only to sections 38-33.3-105 to 38-33.3-107, unless the declaration provides that this entire article is applicable.

(3) The dollar limitation set forth in subsections (1) and (2) of this section shall be increased annually on July 1, 1999, and on July 1 of each succeeding year in accordance with any increase in the United States department of labor bureau of labor statistics final consumer price index for the Denver-Boulder consolidated metropolitan statistical area for the preceding calendar year. The limitation shall not be increased if the final consumer price index for the preceding calendar year did not increase and shall not be decreased if the final consumer price index for the preceding calendar year decreased.

History

Source: L. 91:Entire article added, p. 1710, § 1, effective July 1, 1992. L. 93:Entire section amended, p. 644, § 5, effective April 30. L. 98:Entire section amended, p. 477, § 2, effective July 1. L. 2009:(1) and (2) amended,(SB 09-249), ch. 248, p. 1119, § 1, effective May 14. L. 2016:(1) and (3) amended,(HB 16-1149), ch. 104, p. 300, § 2, effective July 1, 2018.

Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 38, Art. 33.3

State Notes

Notes

Editor's note:

Section 4(2) of chapter 104 (HB 16-1149), Session Laws of Colorado 2016, provides that changes to this section by the act apply to budgets adopted by a common interest community's executive board on or after July 1, 2018.

ANNOTATION

Having opted for an exemption from the Colorado Common Interest Ownership Act (CCIOA) by limiting the amount of homeowners' dues assessed, a homeowners' association cannot refuse to be bound by such limitation

and therefore cannot impose a special assessment in an amount above such limit. *Quinn v. Castle Park Ranch Prop. Owners Ass'n*, 77 P.3d 823 (Colo. App. 2003).

Colorado Revised Statutes Annotated
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EDITED C.R.S. 38-33.3-119

Statutes current through all legislation from the 2022 Regular Session.

Colorado Revised Statutes Annotated > Title 38. Property - Real and Personal (§§ 38-1-101 — 38-53-110) > Real Property (§§ 38-30-101 — 38-46-104) > Interests in Land (Arts. 30 — 34) > Article 33.3. Colorado Common Interest Ownership Act (Pts. 1 — 4) > Part 1. General Provisions (§§ 38-33.3-101 — 38-33.3-124)

38-33.3-119. Exception for small preexisting cooperatives and planned communities.

If a planned community created within this state before July 1, 1992, if its declaration limits its annual common expense liability to the amount specified in section 38-33.3-116 (1), then it is subject only to sections 38-33.3-105 to 38-33.3-107 unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of the provisions of section 38-33.3-120, in which case all the sections enumerated in section 38-33.3-117 apply to that planned community.

History

Source: L. 91:Entire article added, p. 1713, § 1, effective July 1, 1992. L. 2009:Entire section amended, (SB 09-249), ch. 248, p. 1120, § 2, effective May 14. L. 2015:Entire section amended, (HB 15-1095), ch. 114, p. 344, § 1, effective August 5.

Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 38, Art. 33.3

Colorado Revised Statutes Annotated
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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ROCKRIMMON SUBDIVISION, RAVEN HILLS THIS DECLARATION, made this Second day of May AD, 1969 by ROCKRIMMON LAND COMPANY, W I T N E S S E T H: WHEREAS, Rockrimmon Land Company is the owner of certain real property in the County of El Paso, State of Colorado, which is more particularly described in Exhibit A which is attached hereto and made a part of this declaration; and WHEREAS, Rockrimmon Land Company desires to protect and enhance the value, desirability and attractiveness of said property for all parties having or acquiring any right, title or interest in the property described in said Exhibit A; and to this end, will convey the real property described in Article II subject to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and WHEREAS, Rockrimmon Land Company, in order to insure that the purposes of this declaration are carried out, has caused the incorporation under the laws of Colorado of Raven Hills Homeowners Association, a non-profit corporation with the power of administering and enforcing the covenants, conditions and restrictions and collecting hereinafter set forth; NOW THEREFORE, Rockrimmon Land Company hereby declares that the real property described in Exhibit A is and shall be held, transferred, sold, conveyed and occupies subject to the following covenants, conditions, restrictions, easements, charges, and liens, hereinafter sometimes referred to collectively as "covenants and restrictions", all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said property. These covenants and restrictions, shall run with said real property and shall be binding on all persons having or acquiring any right, title or interest in said property or any part thereof, and shall inure to the benefit of each owner thereof.

(EXCERPT)

ARTICLE X - USE RESTRICTIONS, COVENANTS AND EASEMENTS The following restrictions, covenants and easements are imposed uniformly upon the Properties and the use thereof as a common scheme for the benefit of each Lot and the Common Area may be enforced by the Association or any Lot Owner.

SECTION I. Land Use, Building Type and Occupancy. All Lots unless otherwise designated in the recorded plot, shall be used for residential purposes only. With respect to those Lots to be used for residential purposes, no building shall be erected, altered, placed or permitted to remain on any Lot other than, one detached single family dwelling not to exceed 35 feet or two stories in height. No building shall be permitted on any Lot unless such building has been duly constructed thereon and the removal of dwellings or structures for other locations to any Lot shall not be permitted. A private garage for not less than two cars shall be provided with each single family dwelling and in accordance with the set back requirements herein contained.

SECTION 13. Commercial Enterprises, Nuisances. No manufacturing or commercial enterprises shall be conducted or maintained upon, in front of or in connection with any Lot or Lots. No noxious or offensive activity shall be carried on upon any Lot, street, road or Common Area, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the neighborhood.

Rodriguez v. Safeco Ins. Co.

Court of Appeals of Colorado, Division Five

May 23, 1991

No. 90CA37

Reporter

821 P.2d 849 *; 1991 Colo. App. LEXIS 147 **; 15 BTR 688

Peter S. Rodriguez, a minor, by and through his mother, conservator, natural parent and next friend, Tracey Rodriguez; Sean Rodriguez and Tracey Rodriguez, individually, as assignees of Laura Brimmer, Plaintiffs-Appellants, v. Safeco Insurance Company of America, a Washington corporation, Defendant-Appellee

Subsequent History: [**1] Rehearing Denied July 25, 1991. Certiorari Denied December 23, 1991. Released for Publication January 15, 1992.

Prior History: Appeal from the District Court of the City and County of Denver; Honorable Leslie M. Lawson, Judge; No. 88CV15566.

Disposition: JUDGMENT AFFIRMED

LexisNexis® Headnotes

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of Law > Genuine Disputes

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of Law > General Overview

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of Law > Materiality of Facts

HN1[↓] Entitlement as Matter of Law, Genuine Disputes

Summary judgment is proper only if the pleadings, affidavits, and other materials presented establish that there is no genuine issue of material fact and that the

moving party is entitled to judgment as a matter of law.

Insurance Law > Claim, Contract & Practice Issues > Policy Interpretation > Ordinary & Usual Meanings

Insurance Law > Claim, Contract & Practice Issues > Policy Interpretation > General Overview

Insurance Law > ... > Policy Interpretation > Ambiguous Terms > Unambiguous Terms

HN2[↓] Policy Interpretation, Ordinary & Usual Meanings

An insurance policy is a contract which must be interpreted consistently with settled principles, and absent the manifestation of a contrary intention within the four corners of the contract, the words used in the policy must be accorded their plain and ordinary meaning. If a contract is clear and unambiguous, a court should not rewrite it so as to arrive at a strained construction.

Business & Corporate Compliance > ... > Negotiable Instruments > Types of Parties > Assignees & Assignors

Contracts Law > Standards of Performance > Assignments > General Overview

HN3[↓] Types of Parties, Assignees & Assignors

An assignee of rights under a contract has no greater rights than those of his or her assignor.

Insurance Law > ... > Property

Insurance > Homeowners Insurance > Business Pursuits

HN4[↓] Homeowners Insurance, Business Pursuits

Authorities adopting a "particular activities" test to determine liability first analyze the facts to determine whether the injury arose within the context of the insured's business or commercial pursuits and, if so, then proceed to a careful scrutiny of the particular activity causing the injury to determine whether that activity was ordinarily incident to non-business pursuits.

Insurance Law > ... > Property
Insurance > Homeowners Insurance > Business Pursuits

HN5[↓] Homeowners Insurance, Business Pursuits

Plaintiffs, as assignees of an insured, have the initial burden to prove their entitlement to recover under the general provisions of a policy, and the insurer has the burden to prove the applicability of the "business pursuits exclusion" to exempt it from liability.

Evidence > Burdens of Proof > Ultimate Burden of Persuasion

Insurance Law > ... > Property
Insurance > Homeowners Insurance > Business Pursuits

HN6[↓] Burdens of Proof, Ultimate Burden of Persuasion

Plaintiffs have the burden of proving an insurer's ultimate liability and, in particular, the applicability of the exception to the exclusion upon which they may posit a claim after the insurer has made a prima facie showing that the injury resulted from "business pursuits."

Insurance Law > Claim, Contract & Practice Issues > Policy Interpretation > Plain Language

Insurance Law > ... > Policy
Interpretation > Ambiguous Terms > Unambiguous Terms

HN7[↓] Policy Interpretation, Plain Language

If the meaning of an insurance policy is expressed in plain, certain, and readily understandable language, it must be enforced as written.

Insurance Law > ... > Policy
Interpretation > Ambiguous Terms > General Overview

HN8[↓] Policy Interpretation, Ambiguous Terms

The mere fact that the parties differ in their interpretation of an instrument does not, of itself, create an ambiguity.

Contracts Law > Defenses > Ambiguities & Mistakes > General Overview

Insurance Law > ... > Policy
Interpretation > Ambiguous Terms > General Overview

HN9[↓] Defenses, Ambiguities & Mistakes

A contractual clause may have different legal effects in various jurisdictions. The existence of such different legal effects does not render the clause ambiguous for the purpose of a court interpreting it.

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Judges: Opinion by Judge Hume. Jones and Reed, JJ., concur.

Opinion by: HUME

Opinion

[*850] Plaintiffs, Sean, Tracey, and Peter S. Rodriguez, appeal a summary judgment entered in favor of defendant, Safeco Insurance Company of America. We affirm.

In 1987, Peter, then a three-month-old infant, suffered a traumatic head injury that resulted in severe brain damage while he was being cared for by Laura Brimmer, who operated a licensed child day care business in her home. Brimmer had in effect liability insurance for her day

care business under a \$ 500,000 policy issued by Scottsdale Insurance Company and homeowner's insurance under a policy issued by Safeco.

Brimmer notified both insurance companies of the injury and of plaintiffs' subsequent damage claim in which plaintiffs alleged that she had negligently failed to provide **[**2]** proper care and supervision for Peter. Scottsdale undertook Brimmer's defense of plaintiffs' claims, but Safeco denied coverage under the homeowner's policy.

Plaintiffs' claim against Brimmer was settled without trial by entry of a stipulated judgment in favor of plaintiffs in the amount of \$ 875,000. The judgment also provided for assignment of Brimmer's rights under the Safeco homeowner's policy to plaintiffs.

After Scottsdale paid the \$ 500,000 limits of the business insurance policy in partial **[*851]** satisfaction of the judgment, plaintiffs, as Brimmer's assignees, brought this action against Safeco, asserting claims for breach of the homeowner's insurance contract and bad faith denial of coverage. Both sides moved for summary judgment, and the trial court granted Safeco's motion, thereby dismissing plaintiffs' claims.

I.

Plaintiffs contend that the trial court erred as a matter of law in concluding that the language of the Safeco homeowner's policy did not provide coverage for Peter's injuries. We disagree.

HN1**[↑]** Summary judgment is proper only if the pleadings, affidavits, and other materials presented establish that there is no genuine issue of material fact and that the moving party is **[**3]** entitled to judgment as a matter of law. *Continental Air Lines, Inc. v. Keenan*, 731 P.2d 708 (Colo. 1987).

HN2**[↑]** An insurance policy is a contract which must be interpreted consistently with settled principles, and absent the manifestation of a contrary intention within the four corners of the contract, the words used in the policy must be accorded their plain and ordinary meaning. If a contract is clear and unambiguous, a court should not rewrite it so as to arrive at a strained construction. *Chacon v. American Family Mutual Insurance Co.*, 788 P.2d 748 (Colo. 1990).

The pertinent facts underlying this action are not in dispute. Brimmer publicly advertised and regularly conducted a state-licensed commercial business providing day care services for children in her home. She

reported her earnings from that activity as business income on state and federal tax returns and purchased liability coverage for the business from Scottsdale. As part of her established business activities, she had provided care for Peter in exchange for compensation on a regular basis for some time prior to the date of his injury.

On the morning of Peter's injury, the child's **[**4]** mother left him, apparently in good health, in Brimmer's care. Brimmer fed the child without incident, and placed him alone in a crib in a bedroom of her residence for a nap while she conducted routine household activities and generally watched and cared for other day care children inside the house. About two hours after putting the child down for his nap, she returned to the bedroom where she found him still in his crib but pale, limp, lethargic, and experiencing difficulty breathing.

After some delay, Brimmer contacted the child's mother, who then arranged for a medical examination that revealed his head injury. There is no evidence indicating how the trauma was inflicted or that anyone other than Brimmer had contact with the child or was inside the bedroom during the two-hour period of his nap.

The Safeco homeowner's policy provides personal liability and medical payments coverage for injuries to persons who are in Brimmer's home with her permission. However, the policy expressly excludes coverage for injuries "arising out of business pursuits of any insured" except for "activities which are ordinarily incident to non-business pursuits."

It is undisputed that the injury occurred **[**5]** on the insured premises while Peter was there with the permission of the insured. It is also undisputed that the injury occurred while Peter was under Brimmer's care in the course and within the scope of her business pursuits.

Initially, we note that **HN3****[↑]** an assignee of rights under a contract has no greater rights than those of his or her assignor. *Matson & Mulhausen Construction Co. v. Boulevard National Bank*, 28 Colo. App. 427, 475 P.2d 356 (1970). Accordingly, plaintiffs are entitled to no greater rights against Safeco than those provided to Brimmer under the homeowner's policy.

Thus, the sole issue is whether, under these undisputed facts, any basis exists to support an inference that Peter's injury was caused by "an activity ordinarily incident to a non-business pursuit" as provided by the exception to the exclusion of coverage under the Safeco policy.

[*852] Policies containing language similar or identical

to that of the Safeco policy have been interpreted by courts in other jurisdictions, but the issue presented is one of first impression in Colorado.

One line of authority relied upon by plaintiffs is represented by *Crane v. State Farm Fire & Casualty Co.*, 5 Cal. 3d 112, 485 P.2d 1129, 95 Cal. Rptr. 513 (Cal. 1971). [**6] In that case the court analyzed the exception to the exclusion, using the following language:

"Indeed, it is difficult to conceive of an activity more ordinarily incident to a noncommercial pursuit than home care of children."

That interpretation, however, gives no effect to the policy language providing a "business pursuits" exclusion from coverage in the event of a bona fide business providing home care for children. Its effect is to accord coverage for activities related to child care whether they are performed as a part of a "business pursuit" or not. Under that rationale the "non-business pursuits activities" exception swallows up the "business pursuits" exclusion so as to render it ineffectual and meaningless with respect to child care activities.

A second line of cases, represented by *Republic Insurance Co. v. Piper*, 517 F. Supp. 1103 (D. Colo. 1981), appears to focus narrowly on the language of the "business pursuits" exclusion clause while giving little or no effect to the language stating that "activities which are ordinarily incident to non-business pursuits" are not excluded, as is apparent from the following language:

"It seems to me and I find [**7] that nothing could be more a part of the business of operating a day care home than supervision of the children under the licensee's care, and it was while supervising the child that the tort occurred."

That rationale presents the obverse of the *Crane, supra*, analysis, in that it proceeds from the premise that any and all activities employed during the care and supervision of children in a commercial day care operation must necessarily fall within the "business exception" to coverage, without regard to whether such activities are "ordinarily incident to non-business pursuits." Thus, under that interpretation, any act or omission by a day care operator that causes an injury to a child while under day care supervision is excluded from coverage.

In our view, both the *Crane, supra*, and *Piper, supra*, analyses fail to give rational meaning to the entirety of the language of the insurance contract clause in question.

See *Gandy v. Park National Bank*, 200 Colo. 298, 615 P.2d 20 (1980).

We believe a better approach is provided by those *HN4* [↑] authorities adopting a "particular activities" test to determine [**8] liability in these kinds of cases. See *Gulf Insurance Co. v. Tilley*, 280 F. Supp. 60 (N.D. Ind. 1967); *Nationwide Mutual Fire Insurance Co. v. Collins*, 136 Ga. App. 671, 222 S.E.2d 828 (Ga. App. 1975); *State Farm Fire & Casualty Co. v. Moore*, 103 Ill. App. 3d 250, 430 N.E.2d 641, 58 Ill. Dec. 609 (Ill. App. 1981); *Robinson v. Utica Mutual Insurance Co.*, 585 S.W.2d 593 (Tenn. 1979). In those cases, the courts first analyzed the facts to determine whether the injury arose within the context of the insured's business or commercial pursuits and, if so, then proceeded to a careful scrutiny of the particular activity causing the injury to determine whether that activity was ordinarily incident to non-business pursuits.

No specific non-business activities attributable to Brimmer have been alleged or demonstrated as the causative force of Peter's injury. Hence, we conclude that even if the trial court erred by applying the *Piper, supra*, standard in analyzing the undisputed evidence, the decision would not be altered by application of the "particular activity" standard which we now adopt.

II.

Plaintiffs next contend that the trial court erred in determining [**9] that they bore the burden of proving facts bringing them within the exception to the policy exclusion. We disagree.

[*853] The trial court properly held that *HN5* [↑] plaintiffs, as assignees of the insured, had the initial burden to prove their entitlement to recover under the general provisions of the policy and that the insurer had the burden to prove the applicability of the "business pursuits exclusion" to exempt it from liability. See *Rex v. Continental Casualty Co.*, 96 Colo. 467, 44 P.2d 911 (1935); *Surdyka v. DeWitt*, 784 P.2d 819 (Colo. App. 1989). The court also correctly concluded that the *HN6* [↑] plaintiffs had the burden of proving Safeco's ultimate liability and, in particular, the applicability of the exception to the exclusion upon which they posited their claim after Safeco had made a *prima facie* showing that the injury resulted from "business pursuits." See *Watkins v. Security Benefit Ass'n*, 81 Colo. 66, 255 P. 452 (1927). See also *Weger v. United Fire & Casualty Co.*, 796 P.2d 72 (Colo. App. 1990).

Here, as in *Watkins, supra*, because the undisputed facts [**10] demonstrate the applicability of the exclusion

to coverage, it was incumbent upon the insured, or her assignees, to demonstrate the existence of facts supporting an exception to the exclusion.

III.

Plaintiffs finally contend that the trial court erred in concluding that the policy in question was unambiguous. We disagree.

HN7 [↑] If the meaning of an insurance policy is expressed in plain, certain, and readily understandable language, it must be enforced as written. *Northern Insurance Co. v. Ekstrom*, 784 P.2d 320 (Colo. 1989).

HN8 [↑] The mere fact that the parties differ in their interpretation of an instrument does not, of itself, create an ambiguity. *Radiology Professional Corp. v. Trinidad Area Health Ass'n*, 195 Colo. 253, 577 P.2d 748 (Colo. 1978). Also, although **HN9** [↑] a contractual clause may have different legal effects in various jurisdictions, the existence of such different legal [***11] effects does not render the clause ambiguous for the purpose of our interpreting it. *Fibreglas Fabricators, Inc. v. Kylberg*, 799 P.2d 371 (Colo. 1990).

The judgment is affirmed.

"Written medication order" means a document for a specific medication for a specific child signed by the child's health care provider. This must be a person with prescriptive authority. The order shall include the child's name, medication, dose, time, route, and for how long the medicine is to be given. Orders for children over two years of age can only be valid for a period of up to one year, but may only be for a very brief duration of time as well. Children over two may need written medication orders more frequently since the dosage of the medication will change with the child's weight. Written orders may also include information on the reason the medication is being given, potential side effects and any special instructions for administration.

7.707.22 Types of Family Child Care Homes

All Family Child Care Home licenses, except infant/toddler, are issued with an age range for children from birth to eighteen (18) years of age. This allows for the care of older children with special needs. Each individual provider will determine the age range of children that he/she will enroll in the provider's child care home. The providers own birth, adopted, step or foster children twelve (12) years of age and older do not count in the provider's license capacity.

The capacity for a Family Child Care Home (generally referred to within these rules as "the home") is determined by the amount of indoor and outdoor space designated for child care, as well as the following factors.

- A. A "Family Child Care Home" (FCCH) is a type of family care home that provides less than twenty-four (24) hour care at any time for two (2) or more children that are unrelated to each other or the provider, and are cared for in the provider's place of residence.
 1. Licensed family child care homes enrolling children five (5) years of age or younger are required to participate in Colorado Shines, the state quality rating and improvement system.
- B. In a regular (FCCH) home, care may be provided for six (6) children from birth to eighteen (18) years of age with no more than two (2) children under two (2) years of age.
 1. Care also may be provided for no more than two (2) additional children of school age attending full-day school. School-age children include children six (6) years of age and older who are enrolled in the first grade or above. A child enrolled in a kindergarten program is not considered a school-age child until the child begins attending kindergarten a year before they enter first grade.
 2. Residents of the home under twelve (12) years of age who are on the premises and all children on the premises for supervision are counted against the approved capacity, except where specifically indicated otherwise. Residents of the home include, but are not limited to, birth, adopted, step or foster children of the provider.
- C. A three (3) under two (2) license is a type of license that allows a provider to care for six (6) children from birth to eighteen (18) years of age with no more than three (3) children under two (2) years of age, with no more than two (2) of the three (3) children under twelve (12) months; the capacity includes the provider's own children under twelve (12) years of age. This license type may be approved with the following conditions:
 1. The licensee has held a permanent license to operate a family child care home for at least two (2) years in Colorado immediately prior to the issuance of the license that would authorize the care of three (3) children under two (2) years of age;

2. The licensee has completed the State Department approved Expanding Quality Infant/Toddler course of training;
 3. In the past two years, the licensee has had no substantiated complaints with a severity level of one (1) to three (3), consistent or willful substantiated rule violations of ratio, supervision, safety, or injury to a child observed during any licensing visit, or adverse licensing action;
 4. Care of additional children of school age is not authorized;
 5. Licensees issued a three (3) children under two (2) years of age license are approved for both the three (3) under two (2) and the regular license capacities and may switch between the two (2) capacities without notifying the State Department as long as they are in compliance with all licensing rules.
- D. An infant/toddler license is a type of family care home that provides less than twenty-four (24) hour care only for children who are between birth and three (3) years old. This license type may be approved with the following conditions:
1. If there is one (1) provider, there may be a maximum of four (4) children, with no more than two (2) of the four (4) children under twelve (12) months of age, including the provider's own children. The provider's own children, under the age of twelve (12), count in the capacity of four (4).
 2. If there are two (2) equally qualified providers, as specified in Section 7.707.31, B, 3, caring for children at all times when children are present, there may be a maximum of eight (8) children between birth and three (3) years old, and no more than four (4) of those children can be between birth and one (1) year old, including both providers' own children.
 3. The provider has completed the State Department approved Expanding Quality Infant/Toddler (EQ I/T) course of training; and
 4. A provider that has also been licensed as a regular and three (3) under two (2) provider in the past, and is approved for an infant/toddler license, has the flexibility to provide care on any given day for the ages and capacities of a regular or three under two license without written approval of the State Department, as long as the provider is in compliance with all applicable rules at all times.
- E. A large child care home is a family child care home that provides care for seven (7) to twelve (12) children.
1. Child care may be provided to children from birth to eighteen (18) years of age. The provider needs an assistant when the ninth child arrives at the facility.
 2. Care may be provided to no more than two (2) children under two (2) years of age.
- F. The Experienced Child Care Provider
1. An Experienced Child Care Provider (ECCP) home is a licensed child care home where care is approved for no more than nine (9) children of different age combinations depending upon which option the home is operating.
 2. The requirements for an Experienced Child Care Provider are:

- a. Have been a licensed family child care home provider in Colorado for at least the last six (6) consecutive years; equal experience operating as a licensed military family child care home is acceptable;
- b. Have completed ninety (90) clock hours of training within the preceding six (6) years, including the State Department approved infant/toddler course. The ninety (90) hours of training does not include licensing training universal precautions, First Aid and CPR, and medication administration training;
- c. Have had no adverse licensing action;
- d. Have had no adverse action taken against the provider's license in the preceding two (2) years; and,
- e. Comply with local zoning restrictions.

3. Applying for the Experienced Provider License

At least sixty (60) calendar days prior to the proposed date of operation as an experienced provider, the applicant must submit to the State Department a completed and signed experienced provider application form, which:

- a. Affirms compliance with all the rules for family child care home providers and experienced providers;
- b. Affirms that the 90 clock hours of training have been completed;
- c. Includes an agreement to waive the right to appeal rules related to capacity and space requirements; and,
- d. Affirms the provider understands that the experienced provider's license will immediately revert to a regular license if capacities are exceeded at any time.

4. ECCP Options Table

The following chart describes the various options available to the experienced family child care home. Providers may change options without notifying the State Department, as long as the home is in compliance with one option at any one time and all licensing rules.

Experienced Child Care Provider License

All options include provider's own children under twelve (12) years of age.

Number of Children	Total Children in Care at a Given Time	Birth Up to School-Age	Additional School-Age	Number of Children Under 2 Allowed	(Of Those Under 2) Number Under 12 Months Allowed
Option 1	9	7	2	2	2
Option 2	9	8	1	2	2
Option 3	9	5	4	2	2
Option 4	9	6	3	3	2
Option 5	4	4	0	4	2

7.707.3 PERSONNEL

All infant/toddler family child care homes and large family child care homes must meet all of the personnel requirements in Section 7.707.31, except where rules specific to infant/toddler homes and large family homes replace other rules.

7.707.31 Requirements for Personnel

A. General Requirements

1. Primary providers must physically reside at the family child care home and must provide the child care.
2. Primary providers and/or substitutes must be at least eighteen (18) years of age. Aides must be at least sixteen (16) years of age. Aides and volunteers shall work under the direct supervision of a primary provider at all times.
3. Providers, employees, substitutes, and volunteers must demonstrate an interest in and knowledge of children and a concern for their proper care and well-being.
4. Children for whom the provider has custody and responsibility must not have been placed in foster care or residential care because the provider or other resident of the home was abusive, neglectful, or a danger to the health, safety, or well-being of those children.
5. Providers must not be under the influence of any substance that impairs their ability to care for children.
6. The primary provider is responsible for ensuring that all employees, substitutes and volunteers are familiar with the children in care, the Rules Regulating Family Child Care Homes rules, the home's policies, and the location of children's files and emergency numbers.
7. The primary provider must plan for the selection, orientation, training and/or staff development of any employee, volunteer, or substitute.
8. The primary provider must plan for and supervise the care and activities of children.
9. All providers and all persons residing in the home must submit to the State Department at time of original application on the form required by the State Department, a health evaluation signed and dated by a licensed physician or other health professional.
10. Subsequent health evaluations for the provider and children residing in the home who are less than twelve (12) years of age must be submitted every two (2) years or as required in a written plan signed by a physician or other health professional. A new family member and/or a new resident of the home must submit to the State Department, within thirty (30) days from the date the individual began living in the home, a State Department approved health evaluation form signed and dated by a licensed physician or other health professional.
11. If, in the opinion of a physician or mental health practitioner, a physical, medical (including side effects of medication), emotional, or psychological condition exists at any time that may jeopardize the health of children or adversely affect the ability of a provider to care for children, an equally qualified substitute provider must be employed, or child care services must cease until the physician or mental health practitioner states in writing that the health risk has been eliminated.

B. Infant/Toddler Home Provider Requirements

1. For an infant/toddler home with one (1) provider, that provider must be at least twenty-one (21) years of age.
2. For an infant/toddler home with two (2) providers, one (1) provider must be at least twenty-one (21) years of age and the second equally qualified provider must be at least eighteen (18) years of age.
3. Each provider must have completed one (1) year of supervised experience caring for children who are younger than three (3) years old. The provider must be able to submit to the State Department official written verification of the required experience. The experience may have been obtained as:
 - a. A Colorado licensed family child care home;
 - b. A military licensed child care home;
 - c. A provider, in a family foster home certified for children younger than three (3) years of age; or,
 - d. An employee in a licensed child care center in an infant and/or toddler program.

C. Large Home Provider Requirements

1. The licensee must be at least eighteen (18) years of age, the primary provider, and must reside in the large child care home.
2. The primary provider at a large child care home must meet one of the following:
 - a. A minimum of two (2) years of documented satisfactory experience in the group care of children under the age of six (6) years or as a licensed home provider in Colorado. Equal experience operating as an approved military child care home is accepted; or,
 - b. A minimum of two (2) years of college education from a regionally accredited college or university, with at least one (1) college course in early childhood education, plus one (1) year of documented satisfactory experience in the group care of children as:
 - 1) A licensed home provider in Colorado;
 - 2) A military licensed child care home;
 - 3) A Colorado certified family foster home; or,
 - 4) A staff member in a licensed child care center.
 - c. Current certification as a Child Development Associate (CDA); or,
 - d. Completion prior to licensing of the State Department approved Expanding Quality Infant/Toddler course; and,

- 1) A minimum of two (2) years of experience as a licensed child care provider holding a permanent license in Colorado immediately before becoming a licensee of a large child care home; or,
 - 2) A minimum of two (2) years of full-time experience in a licensed program. The group care shall have been with children who are under the age of six (6) years.
3. If the provider was previously licensed to operate a family child care home, there must have been no:
- a. In the past two years, the licensee has had no substantiated complaints with a severity level of one (1) to three (3), consistent or willful substantiated rule violations of ratio, supervision, safety, or injury to a child observed during any licensing visit, or adverse licensing action; and,
 - b. Adverse action on the license within the last two (2) years; and
 - c. Substantiated specific rule violations of ratios, supervision, safety, or injury to a child observed during any licensing visit in the past two (2) years.
4. Staff aides must be at least sixteen (16) years of age and must work directly under the supervision of the primary provider in charge and responsible for the care of the children. If left alone with children, the staff aide or assistant provider must meet all same age and training requirements as the provider.

7.707.32 Training

- A. Prior to issuance of the license, the licensee and primary provider must complete:
1. A State Department approved fifteen (15) clock hour pre-licensing course of training that includes nine (9) core knowledge standards. The content of one of the standards must specifically address appropriate guidance with children and that corporal discipline is never allowed. The clock hours of pre-licensing training do not include certification in First Aid, CPR, and medication administration training;
 2. A monitored written test or approved alternate method to verify knowledge and comprehension of the content of the training materials must be administered by the trainer to the trainee at the end of the pre-licensing training course. The trainee must have a passing score of no less than 80%. Part of approval of pre-licensing is that the provider must be able to access and understand the Rules Regulating Family Child Care Homes. The provider must take pre-licensing training for any original application except for change of address; or,
 3. Individuals who are currently director qualified or have a two (2) or four (4) year degree in early childhood education from a regionally accredited college or university are exempt from pre-licensing training, except for the one and one-half (1½) hours of universal precautions training, and the section of the pre-licensing training that covers the business requirements for operation of a home; and,

4. A state department approved training in standard precautions that meets current occupational safety and health administration (OSHA) requirements prior to working with children. This training must be renewed annually and may be counted towards ongoing training requirements. This standard precautions training can be included as part of the pre-licensing training, in which case the total number of hours for pre-licensing training required in 7.707.a1 is increased to sixteen (16) clock hours, and standard precautions training may count as no more than one (1) hour of the sixteen (16) clock hours; and,
 5. Documentation of this training must include the number of hours of training, completion date, and expiration date. Renewal of standard precautions training can be taken as a part of the first aid training, but must be in addition to the renewal First Aid training;
 6. First Aid and CPR training, for all ages of children from infant to twenty-one (21) years of age; and,
 7. The State Department approved course of training for medication administration.
 8. Effective December 31, 2016 all providers and staff must complete a building and physical premises training prior to working with children. The training must include:
 - a. Identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and
 - b. Handling and storage of hazardous materials and the appropriate disposal of bio contaminants.
 9. Effective December 31, 2016 each provider or staff member responsible for the collection, review, and maintenance of the child immunization records must complete the Colorado department of public health and environment (CDPHE) immunization course within thirty (30) calendar days of employment. This training must be renewed annually and may count towards ongoing training requirements.
 10. Effective December 31, 2016 each provider, staff member or regular volunteer working with children less than three (3) years of age must complete a department approved prevention of shaken baby/abusive head trauma training prior to working with children less than three (3) years of age. This training must be renewed annually and may count towards ongoing training requirements.
 11. Effective 12/31/2016 each provider, staff member or regular volunteer must complete a department approved training about child abuse prevention, including common symptoms and signs of child abuse within thirty (30) calendar days of employment. This training must be renewed annually and may count towards ongoing training requirements.
- B. Licensees requesting continuation of a permanent license shall:**
1. Complete fifteen (15) clock hours of training each year. At least three (3) of the fifteen (15) clock hours must be in social emotional development; and,
 2. Ongoing training and courses shall demonstrate a direct connection to one or more of the following competency areas:
 - a. Child growth and development and learning courses that align with the competency domains of child growth and development;
 - b. Child observation and assessment;

- c. Family and community partnership;
- d. Guidance;
- e. Health, safety, and nutrition;
- f. Professional development and leadership;
- g. Program planning and development; and
- h. Teaching practices:
 - 1) Each one (1) semester hour course with a direct connection to the competency area listed in section 7.707.33, b, 2, a-g, taken at a regionally accredited college or university shall count as fifteen (15) clock hours of ongoing training.
 - 2) Training hours completed can only be counted during the year taken and cannot be carried over.
 - 3) The fifteen (15) clock hours of training do not include recertification in First Aid and CPR.
 - 4) To be counted for ongoing training, a provider must receive for each training, a training certificate that includes:
 - a) The title of the training; and,
 - b) The competency area; and,
 - c) The clock hours of the training; and,
 - d) The name and signature of the trainer or another approved method of verifying the name and qualifications of the trainer.
 - e) The trainer must have documentation of the qualifications for each topic of training conducted, which must be available for review by representatives of the State Department.

7.707.33 Substitutes

All infant/toddler family child care homes and large family child care homes must meet all of the substitute requirements, except where rules specific to infant/toddler homes and large family homes replace other rules.

7.707.331 General Substitute Information

- A. The provider must have a plan for an urgent, emergency, personal or family situation that requires the provider to leave the family child care home immediately.
- B. Any substitute must be at least eighteen (18) years old and capable of providing care and supervision of children, and handling emergencies in the absence of the provider.
- C. Prior to caring for children, any substitute, except a substitute used in an urgent, emergency, personal or family situation, shall become familiar with:

1. The Rules Regulating Family Child Care Homes;
 2. The home and provider's policies and procedures;
 3. The names, ages and any special needs or health concerns of the children; and,
 4. The location of emergency information.
- D. Parents or guardians must be notified each time a substitute is used to provide supervision of all children in care in the absence of the primary provider.
- E. Substitutes used in an urgent, emergency, personal or family situation must:
1. Be given the names, ages of the children, and any special needs or health concerns;
 2. Immediately call each parent(s) or guardian(s) to notify them that the provider has been called away from the family child care home for a personal or family emergency; and,
 3. If the substitute does not meet all the requirements for the position, must notify parent(s) or guardian(s) immediately to pick up their children.
- F. In the infant/toddler family child care home, the substitute for the provider(s) must meet the same age requirements as the provider as specified in Section 7.707.31. C.
- G. In the large family child care home, the substitute for the:
1. Primary provider must be equally qualified, as specified in Section 7.707.31, C, to provide care and supervision of children in the absence of the primary provider; and,
 2. Staff aide must be equally qualified, as specified in Section 7.707.31, A, 2, to substitute for the staff aide when necessary.

7.707.34 Employees

- A. Any employee whose activities involve the care or supervision of children; or who has unsupervised access to children must complete:
1. A fingerprint based criminal background record check as required at section 7.701.33 and,
 2. The State Department mandated automated system background check for child abuse and neglect as required at Section 7.701.32.
- B. Additionally, employees and substitutes for the primary provider, who provide care to children for fourteen (14) days (112 hours) or more per calendar year must complete:
1. Verification of current certification of First Aid and CPR for all ages of children;
 2. A statement of a current health evaluation, signed by an approved health care professional, that was completed within the last twenty-four (24) months;
 3. Verification of current State Department approved medication administration training; and
 4. Verification of current State Department approved universal precaution training.

7.707.35 Volunteers

- A. Volunteers cannot be used to meet staff to child ratio.
- B. Volunteers must be directly supervised by the child care provider, with no unsupervised access to children, and have clearly established written duties.
- C. Volunteers must be made familiar with the Rules Regulating Family Child Care Homes and the provider's written policies and procedures prior to assisting with the care of children.
- D. Any volunteer whose activities involve the care or supervision of children, who have unsupervised access to children; or who works more than fourteen (14) days (112 hours) a calendar year must complete:
 - 1. A fingerprint based criminal background record check as required at Section 7.701.33; and,
 - 2. The State Department required automated system background check for child abuse and neglect, as required at Section 7.701.32.

7.707.36 Employee, Volunteer, and Substitute Records

- A. Personnel files for each employee, substitute, and volunteer must contain all required information within thirty (30) calendar days of the first day of employment, volunteering, or functioning as a substitute.
- B. The personnel files for each employee, substitute, and volunteer shall be available for review by any representative of the State Department and must include:
 - 1. The name, address, telephone number, and birth date of the individual;
 - 2. Information received from the state automated systems check on child abuse;
 - 3. Information received from the fingerprint based criminal record background check as required at Section 7.701.33;
 - 4. A record of the dates and hours of employment, volunteering, or functioning as a substitute, including the first date and the final date;
 - 5. Names, addresses, and telephone numbers of persons to be notified in the event of an emergency; and,
 - 6. A signed statement:
 - a. Clearly defining child abuse and neglect pursuant to state law and outlining the employee, substitute, or volunteer's personal responsibility to report all incidents of suspected child abuse or neglect according to state law; and,
 - b. Verifying that the employee, substitute, or volunteer has read and understands the home's policies and procedures.
 - 7. Official written verification of training, completion and expiration dates as required for the position including:
 - a. Current First Aid and CPR for all ages of children;

- b. Universal precautions; and,
 - c. Medication administration training.
8. Official written verification of education, work experience, and previous employment, as applicable for the position; and,
9. If obtained, a copy of a current Colorado Early Childhood Professional Credential.

7.707.37 Administrative Records and Reports

- A. The provider must report in writing to the State Department any critical incident as defined at Section 7.701.52 and any fire that occurs at the home to which a local fire department has responded.
- B. The provider must immediately telephone and also submit to the State Department within twenty-four (24) hours, excluding weekends and holidays, a written report about any child who has been lost from the provider's care and whether authorities have been contacted or not. Such report must indicate:
- 1. The name, birth date, address, and telephone number of the child;
 - 2. The names of the parents or guardians and their address and telephone number if different from those of the child;
 - 3. The date, location, time, and circumstances when the child was last seen;
 - 4. All actions taken to locate the child, including whether local authorities were notified; and,
 - 5. The name of the provider and/or person supervising the child at the time the child was last seen.
- C. The home must have a written plan and emergency response procedures that explain, at a minimum, the life saving procedures that will be followed, and how the home will function during a fire, severe weather, lockdown, reverse evacuation, or shelter-in-place emergency situation. The plan must include, but not be limited to:
- 1. Prompt notification of parents or guardians;
 - 2. When local authorities will be notified; and
 - 3. How emergency transportation will be provided.
- D. The following records must be kept and maintained in the files at the home for three (3) years after termination of care or employment:
- 1. A daily attendance sign in/sign out sheet for each child, including the time the child arrives at and departs from the home;
 - 2. Children's records per Section 7.707.51.
 - 3. A list of current employees, volunteers, and substitutes work schedules;
 - 4. Employee, substitute, and volunteer records per Section 7.707.36; and

5. A record of visitors and volunteers in the home during scheduled business hours.

E. Confidentiality and Retention

1. Information and records concerning all employees, substitutes, volunteers, children and their families must be maintained confidential and all required records must be stored in a secure location.
2. Employee and children's records must be available, upon request, to authorized representatives of the State Department.

7.707.4 POLICIES AND PROCEDURES

7.707.41 Statement of Policies

- A. At the time of enrollment, the provider must give the parent(s) or guardian(s) a written statement of the home's policies and procedures, and provide the opportunity to ask questions. Written copies must be available either electronically or in hard copy. The provider must obtain a signed document stating that the parent(s)/guardian(s) have received the policies and procedures and by signing the policies and procedures document, the parent(s)/guardian(s) agree to follow, accept the conditions of, and give authorization and approval for the activities described in the policies and procedures.
- B. The written policies and procedures must be developed, implemented and followed, which include all updates, changes, and must include at a minimum the following information:
 1. Admission and registration procedures;
 2. Authorization of parents or other designees to pick up children, including the policy for how the provider will respond to individuals not authorized by parents/guardians to pick up a child and if a parent arrives under the influence of a controlled substance;
 3. An itemized fee schedule or individual fee agreement; fee expectations when fees may be reimbursed, when child does not attend program; when child is requested to leave the program; and, authorization for field trips;
 4. Procedure, including fees, when a child arrives or departs other than expected agreed upon care hours;
 5. Parent and provider responsibilities for special activities or programs outside of the licensed facility, such as inclusion and/or exclusion of children and the payment of additional fees;
 6. Hours of operation or individual hours agreement to include regularly closed days and applicable special program hours; policy on closure due to provider illness or family emergency and unscheduled closures;
 7. Procedure for managing a situation where children remain after the scheduled closure of the facility and the parent, guardian or other emergency contacts cannot be reached. This may include notification of the local county department of social services or police, if necessary. In the event that the provider has not been approved for overnight care, the provider cannot keep the children in care beyond midnight;
 8. Activities and snacks for children who remain at the home after closing;

9. Services offered for children with special needs in compliance with the Americans with Disabilities Act;
10. Acceptance of non-immunized children and notification if the provider's own birth, adopted, or step children have not been immunized;
11. Substitute care, and the clarification of responsibility for obtaining back-up care;
12. How and by whom children are supplied with appropriate clothing and equipment necessary to participate in indoor and outdoor activities, including helmets, wrist protection, and knee and elbow pads when riding a scooter, bicycle, skateboard or rollerblades;
13. Storage, loss, damage or theft of provider's or child's personal belongings;
14. Scheduled and unscheduled trips away from the family child care home; the requirement of notification of the excursion prior to the event and need for signed permission from the parent(s) or guardian(s) for the excursion and a phone number where the provider can be reached during a field trip;
15. Transportation availability, vehicle restraint requirements, and seating capacities;
16. Written authorization or denial for media use including, but not limited to, television shows, video, music, software used at the facility and time limits for all media use;
17. Meals, snacks, and parental notification of menus, and how children with food allergies are accommodated;
18. Policy on transitioning a child from either breast feeding to a bottle and/or cup, or from a bottle to a cup;
19. Behavior guidance and discipline appropriate to the age and development the child, including positive instruction, supporting positive behavior, discipline and consequences. Policies shall include how the provider will:
 - A. Cultivate positive child, provider, staff (if applicable) and family relationships;
 - b. Create and maintain a socially and emotionally respectful early learning and care environment;
 - c. Implement strategies supporting positive behavior, pro-social peer interaction, and overall social and emotional competence in young children;
 - d. Provide individualized social emotional intervention supports for children who need them, including methods for understanding child behavior; and developing, adopting and implementing a team-based positive behavior support plan with the intent to reduce challenging behavior and prevent suspensions and expulsions; and,
 - e. Access an early childhood mental health consultant or other specialist as needed.
20. Rest time and equipment;

21. Diapering and toilet training, including, but not limited to, process, communication, time frames, supplies, and expectation;
22. Provision of daily outside play time;
23. Use of and how often sunscreen is applied, including authorization for use of sunscreen, and how infants are protected from sun exposure without the use of sunscreen;
24. Protection of children from exposure to second hand smoke;
25. Notification of parents or guardians for handling children's illnesses, accidents, injuries, or other emergencies;
26. Specific circumstances and symptoms for not admitting ill children and conditions for re-admittance;
27. Storing, administering, recording and disposing children's medicines in compliance with the State Department approved medication administration course;
28. Adverse weather precautions to include temperature extremes; inclement weather expectations and procedures, and fee expectations if home is closed during inclement weather and notification of how to find out;
29. Emergency response procedures that explain, at a minimum, the life saving procedure that will be followed and how the home will function during a fire, severe weather, lockdown, reverse evacuation, or shelter-in-place emergency situation;
30. Reporting of child abuse, including the name of the county department of social/human services and phone number of where a child abuse report should be made;
31. Filing a complaint about a family child care home, including the name, address and telephone number of the Colorado Department of Human Services, Division of Child Care, where a complaint may be filed;
32. Where a parent may obtain the official Rules Regulating Family Child Care Homes, including the Secretary of State's website;
33. What steps are taken prior to the suspension, expulsion or request to parents or guardians to withdraw a child from care due to concerns about the child's behavioral issues, these procedures must be consistent with the policy on guidance, positive instruction, discipline and consequences, and include documentation of the steps taken to understand and respond to challenging behavior; and
34. Regularly identifying on a routine basis recalled toys, equipment, and furnishings and developing a plan to remove the recalled items from the home.

7.707.5 ADMISSION PROCEDURE

- A. An admission process must be completed prior to the child's attendance at the home and must include:
 1. A pre-admission interview, by telephone or in person, with the child's parent(s) or guardian(s) to determine whether the services offered by the home will meet the needs of the child and the parent(s) or guardian(s);

2. An explanation of the provider's written policies and procedures. The child's parent(s) or guardian(s) must sign a statement indicating that they have read, received, and understand the provider's current policies and procedures;
 3. A plan for payment of fees;
 4. Completion of the registration information and authorizations required for inclusion in the child's record.
- B. At the time of admission, the provider must obtain:
1. Contact information for parents or guardians;
 2. Contact information for other responsible adults;
 3. Where the parent or guardian and can be reached in the event of an accident, illness or other emergency; and,
 4. The telephone number of the child's health care provider;
 5. Written authority to arrange for medical care in the event of an emergency; and
 6. Names of individuals authorized to take the child from the home.

7.707.51 Children's Records

- A. An admission record must be completed for each child prior to or at the time of the child's admission and updated annually, unless otherwise specified in these rules. The admission record must include:
1. The child's full name, date of birth, current address, and date of enrollment;
 2. Family member names;
 3. Parent(s) and guardian(s) home and e-mail addresses; telephone numbers, including home, work, cell and pager numbers, if the parent chooses to provide those numbers; employer name and work address; and, any special instructions as to how the parent(s) or guardian(s) may be reached during the hours that the child is in care at the child care home;
 4. Names and telephone numbers of persons other than parent(s) or guardians(s) who are authorized to take the child from the family child care home;
 5. Names, addresses, and telephone numbers of persons who can assume responsibility for the child in the event of an emergency if the parent(s) or guardian(s) cannot be reached immediately;
 6. Names, addresses, and telephone numbers of the child's health care provider, dentist, pedadontist, and hospital of choice, if applicable;
 7. Health admission information, including a health care plan, chronic medical conditions, allergies, and immunization history, shall be provided to the child care provider the first day the child attends the family child care home;

8. A dated, written authorization for emergency medical care signed and updated annually by the parent(s) or guardian(s);
 9. A written record of any serious accident, illness, or injury occurring during care must be retained in each child's record, with a copy provided to the parent or guardian;
 10. Written authorization, obtained in advance of the event from a parent or guardian, for a child to participate in field trips or excursions, whether walking or riding in an approved vehicle;
 11. Written authorization for media use including, but not limited to, television and video viewing, music, video games, and computer use. The authorization must include approved time limits. The authorization form only needs to be on file if media use is not addressed in the home policies and procedures statement; and
 12. Written authorization for special activities (see Section 7.714.1).
- B. All forms contained in the admission record must be current and accessible to providers, substitutes, and representatives of the State Department.
- C. The complete file for each child in care must be retained by the home for at least three years after the child leaves the home. It must be available without restriction to the licensing agency and to the child protective services worker, police, child's parent(s) or guardian(s).
- D. Except for the licensing authority, child protective services worker, police, and the child's parent(s) or guardian(s), children's reports and records and facts learned about children and their families must be kept confidential.

7.707.6 COMMUNICATION, EMERGENCY AND SECURITY PROCEDURES

- A. The home must have a working unblocked telephone that has the capacity to receive all incoming and Reverse 911 calls, and record messages during child care hours.
1. The telephone must be on the premises in the general area of the primary provider.
 2. The telephone number must be made available to each parent and the licensing authority.
 3. The following emergency telephone numbers must be posted near the telephone:
 - a. 911 or the alternate emergency number for local fire or police;
 - b. Name and phone number of at least one (1) designated emergency substitute for the provider;
 - c. Name and physical address of the family child care home;
 - d. Hospital or emergency medical clinic;
 - e. Local health department;
 - f. Rocky Mountain Poison Center number at 1-800-222-1222; and,
 - g. Location of children's personal emergency numbers.

4. The telephone and alternative emergency telephone numbers for parent(s) or guardian(s) and other authorized emergency contacts of each child in care must be accessible in one designated place.
5. If 911 is not available, the provider must have a plan for accessing emergency transportation at all times.
6. The provider or substitute must notify parent(s) or guardian(s) when accidents, injuries, or illnesses occur.
7. Emergency health care providers' numbers must be accessible in one designated place.

B. Release of Children

The provider must release the child only to the person(s) to whom the parent or guardian has given written authorization. Written authorization must be maintained in the child's record. In an urgent and/or emergency situation, the child may be released to a person twelve (12) years of age or older for whom the child's parent or guardian has given verbal authorization. If the provider who releases the child does not know the person, picture identification must be required to assure that the person is authorized to pick-up the child.

C. Sign In/Out Procedure

The provider must maintain a daily sign in/out method containing the date, the child's name, the time that the child arrived at and left the home, and the parent, guardian, or authorized person's signature. A full signature is required by the parent or guardian every time the child arrives at or leaves the home. The provider may sign in or out children who arrive directly from school or an activity as needed on a daily basis. The provider must use their full signature. The parent/guardian must provide a signature on a weekly basis to verify the record.

D. Visitors

Visits from all non-family members to the home must be on the sign in/out log, including the name, date, and arrival/departure times.

7.707.7 CHILD CARE SERVICES

7.707.71 Health Care, Medication, Communicable Disease, Sun Protection, Second Hand Smoke, and First Aid Supplies [Rev. eff. 6/1/12]

A. Statements of Health Status and Immunization

1. At the time of admission, the parent or guardian must provide the following information to the provider for each child entering the home:
 - a. Health information, including any known allergies, medication being taken and possible side effects, special diets required, and chronic health conditions;
 - b. Information and health care plan on the care of each child who has an identified health condition or developmental concerns, including, but not limited to seizures, asthma, diabetes, allergies, heart or respiratory conditions, and physical or emotional disabilities; and,



Development Plan, Use Variance, & Conditional Use Application Requirements & Checklist

Submittal Checklist

General Requirements

- General Applicant and Owner Acknowledgement form
- Project Statement to include the following information:
 1. Description: Describe the project and/or land uses proposed
 2. Justification: Justify the approval of the project and address the review criteria
 3. Issues: Explain how the issues identified during the pre-application process have been addressed or mitigated
- Development Plan showing all the "Plan Contents" below
- Mineral Estates Owner Notification Certification Affidavit (Public Hearing Items ONLY)
- Pre-application summary

Reports and Studies – Requirement for each report is determined prior to submittal.

- Geologic Hazard Report
(See item 3 Subdivision Policy Manual - <https://coloradosprings.gov/public-works/page/subdivision-policy-manual>)
- Drainage Reports
(see item 4 Subdivision Policy Manual - <https://coloradosprings.gov/public-works/page/subdivision-policy-manual>)
- Traffic Impact Analysis
- Submittal of the Hydraulic Grade Line (HGL) Request Form to Colorado Springs Utilities (CSU)
Email completed form and map to waterplanning@csu.org or fax to 719-668-5651 prior to application submittal.
- Submittal of the Wastewater Facilities Master Report to Colorado Springs Utilities (CSU)
Email completed form and map to wwmasterplansubmit@csu.org prior to application submittal.

**This checklist is intended to assist in preparing a complete plan that will address all City development standards, requirements, and review criteria. The following information must be included with the plan submittal. If justified, the City may exempt any requirement. *The Land Use Review Division may require additional information in accordance with City Code section 7.5.202.E.*

Plan Contents

All plans should be neat, clear, legible and drawn to a standard Engineer's scale. Inaccurate, incomplete, and poorly drawn plans may be rejected. Plans must not exceed 24 in. x 36 in. and should be folded no larger than 9 in. x 14 in. with the lower right-hand corner exposed.

Overall Page Layout

A complete development plan will include the pages listed in the order listed below.

- Cover Page
- Site Plan
- Preliminary Grading Plan (see item 5 under the Subdivision Policy Manual)
- Preliminary Utility Plan (click on Preliminary Plan checklist under the General section, this section also includes the general notes)
- Landscape (Label the plan as Preliminary or Final)
- Elevations Plan
- Lighting Plan



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If applicable:

- Land Suitability Analysis
- Streamside Plan
- Coordinated Sign Plan

Include the information listed below on all plan sheets.

- Project name
- File number in the lower right hand corner
- Sheet (X of X) in the lower right hand corner
- North arrow
- Scale (both written and graphic)

Cover Page

- Vicinity map
- Sheet index
- Owner/developer/applicant name
- Date of preparation
- Include a site data section that includes the following:
 - Use = _____ (Include use as defined by City Code)
 - Total square footage of each use
 - Total development size in acres or square feet
- Legal description chose one of the following:
 1. Development Plan on an already platted lot - include the subdivision legal description only.
 2. Development Plan on an unplatted single lot (also in for final plat) - include the metes and bounds description AND a "to be platted as insert subdivision legal"
 3. Development Plan submitted for an overall development with several filings (only one filing being platted at time of development plan) - include the overall metes and bounds description for the development plan area AND a 'phase 1 to be platted as insert subdivision legal' for the current portion being platted as well as the note "Further phases to be platted in future".
- Site address
- Building height
- Zone district allowances for height, setbacks, and lot coverage
- Tax Schedule Number(s)
- Master Plan file number (if applicable)
- Concept Plan file number (If applicable)
- Existing zone district
- Proposed zone district – include Ordinance numbers and conditions of record
- Schedule of development
- Parking table

Use	Parking Ratio	SF or units	Parking required	Parking provided
Retail	1/300	1200 sf	4	6
Multi-family	1.5/1 bed	6 units – 1 bed	9	10
Total			13	16



Development Plan, Use Variance, & Conditional Use Application Requirements & Checklist

Accessible (included in total count)	2	2
<i>** if possible, consider commercial center parking (1 space per 250 square feet) for developments containing three or more tenants</i>		
<ul style="list-style-type: none"> ▪ PUD Projects ▪ For commercial projects include use, maximum height, lot coverage. ▪ For residential projects include <ul style="list-style-type: none"> ○ height, type and density ○ front, side and rear setbacks (include a lot typical) ○ If any lots are next to tracts or second street frontages, specify setback ○ Lot coverage (if appropriate specify building heights for specific lot coverages) ○ building envelopes ○ for any nonstandard lots show the setbacks on the plan ○ driveway lot coverage (for unique lots, this can be specified per lot) ○ driveway length ○ lot width ○ lot size ○ for smaller lots, consider limitation on decks, out buildings, etc. ○ for new developments include a note that no variances will be allowed 		

Include a general notes section that includes the following notes:

- FEMA floodplain statement:
Include community map numbers and date, indicate whether the site is or is not located within a designated floodplain.
- Geologic-hazard statement disclosure statement (if applicable):
"This property is subject to the findings summary and conclusions of a Geologic Hazard Report prepared by _____ dated _____. which identified the following specific geologic hazard on the property: _____ . A copy of said report has been placed within file # _____ or within the subdivision file _____ of the City of Colorado Springs Planning and Development Team. Contact the Planning and Development Team, 30 South Nevada Avenue, Suite 105, Colorado Springs, CO, if you would like to review said report."
- For nonuse variances associated with the site, include the file number and explain what the variance approved.
- Include any private easement notes and reception numbers for the easements.
- Include any notes related to special districts.
- If there are any tracts or common areas, include ownership and maintenance details.
- If needed, include notes pertaining to street improvements, drainage requirements, utilities, etc.
- If the site is to be phased, include a phasing table that includes the phase numbers and a description of each phase to include public utilities, drainage, and site improvements.
- Include the ADA Design Professional Standards statement:
The parties responsible for this plan have familiarized themselves with all current accessibility criteria and specifications and the proposed plan reflects all site elements required by the applicable ADA design standards and guidelines as published by the United States Department of Justice. Approval of this plan by the City of Colorado Springs does not assure compliance with the ADA or any other Federal or State accessibility laws or any regulations or guidelines enacted or promulgated under or with respect to such laws. Sole responsibility for compliance with Federal and State accessibility laws lies with the property owner.



Development Plan, Use Variance, & Conditional Use Application Requirements & Checklist

- If a use variance or conditional use is being requested, include a statement that explains what the use variance or conditional use would grant.
- If there is any signage on the site include the statement:
Signage is not approved with this plan, a sign permit is required prior to construction.
- "All improvements depicted within this plan are required by City Code and/or are a condition of approval to ensure compliance with the City's review criteria. Any private improvements provided as extra, will be labeled as "EX" and will not be included in the calculated amount required for a financial assurance."
- "Accessible routes, including ramps and sidewalks, within the public right-of-way shall be per the City's Standard drawings and Specifications. City's Inspector will have the final authority on accepting the public improvements."
- Include an amendment History Box for any amendments to the plans.

File number

description/ special note

Insert file number

Insert note

- Avigation easement note, select the correct option:
 - If a development plan is submitted concurrent with a subdivision plat include the note:
An avigation easement effecting the subject property and development is therein established by the "Subdivision Plat Name" subdivision plat. This easement is subject to the terms and conditions as specified in the instrument recorded under reception no. 217069667 of the records of El Paso County, Colorado.
 - If a development plan has been submitted on an existing platted lot without an existing avigation easement:
An avigation easement will need to be prepared and recorded going through the process adopted by Colorado Springs Real Estate Services. Please contact Barbara Reinardy at (719) 385-5601 or breinardy@springsgov.com for the forms and procedure.

SITE PLAN COMPONENTS

Land Use

- If at all possible, DO NOT use numbered callouts for items.
- Graphically show the following:
 - All easements (utilities, public improvement easements, drainage, preservation and access) and reception numbers
 - Include the area and dimension of each lot and tract. Label the lots and tracts, Ex Lot 1 or Tract A.
 - City/County boundaries
 - Property boundaries and dimensions
 - Proposed zone district boundaries
 - Proposed public or private open space and common areas include size and dimension.
 - Existing historic sites and resources
 - Preservation easements and no build lines.
 - Show the location of all freestanding site exterior light fixtures on the site plan and landscape page.

Streets/Alleys

- Illustrate and label all streets and intersections with street name, acceleration and deceleration lanes, classification, public or private and ROW width.
- Include pavement, curb type and other improvements.
- Show and label all access points to the property from adjacent streets and alleys
- Show and label all speed line of sight visibility area at all street intersections



Development Plan, Use Variance, & Conditional Use Application Requirements & Checklist

- If constructing new road ways, show all existing and proposed medians, new acceleration and deceleration lanes, traffic islands, traffic control devices, roundabouts, and typical cross sections. Provide dimensions and size and identify maintenance responsibilities.
- Show any existing or proposed encroachments into the public ROW that require a revocable permit. Submit the revocable permit application as part of the submittal package. Include approved permit number on the plan.

Sidewalks/Trails

- Show all existing and proposed locations, dimensions and surface materials of all sidewalks.
- Show pedestrian ramps at all pedestrian crossings and intersections with reference to City standard type. Also show stripping by pavement marking or different pavement material at pedestrian crossings.
- Show all sidewalks connecting building entries to public sidewalks or internal sidewalks.
- To meet ADA requirements:
 - Indicate accessible route from public ROW to each building. (Note 60% of all public entrances must meet the ADA Standards 206.4.1.)
 - Provide ADA accessible ramps along all ADA accessible corridors.
- Show and label existing and proposed public improvement easements for sidewalks and pedestrian ramps outside of dedicated ROW areas.
- For detached sidewalks, show the distance from the back of curb to the edge of sidewalk.
- Indicate the location and include a detail for bicycle parking. Ensure the location does not conflict with the ADA accessible route or pedestrian routes.
- Show all existing and proposed trails, and include dimensions and surface materials of all trails. Include a note on construction of the trail and maintenance of the trail.
- If there is a City Parks Plan that affects the property, include the name of the Parks Plan.

Internal Parking lots

- Show the location and dimension of parking lots/maneuvering areas and drive aisles. Indicate pavement material
- Show the location and dimensions of all loading areas and bays.
- For drive thru lanes include stacking distances and widths to meet code requirements.
- Indicate how fire lanes are to be identified and mark location on plans.
- For residential projects, when adjacent to a principal arterial roadway, indicate sound barrier walls and show a minimum of 40' spacing from roadway or provide alternative sound mitigation methods (sound studies).
- For residential project driveways, show less than 8' or more than 18' to sidewalk and travel-way.
- Show the location and number of all regular, compact and accessible spaces. For ADA accessible parking stalls include adjacent aisles and signage. Include clear identification of ADA route from stalls to designated AA building entry.
- Provide a typical or detail for all regular, compact and ADA parking spaces.
- Show the location of loading docks.

Buildings and Structures

- Graphically show the following:
 - The existing land use, square footage, dimensions and location for any existing buildings to remain.
 - The use, square footage, dimensions and location of each proposed building.
 - Show location and type of signage (free-standing and low profile).
 - *Note: Sign design is being reviewed for compatibility with surrounding uses. Additional notes may be required on the plan to ensure compatibility.*



Development Plan, Use Variance, & Conditional Use Application Requirements & Checklist

Review Criteria

DEVELOPMENT PLAN REVIEW CRITERIA:

The City will review the development plan using the following criteria. A development plan shall be approved when the plan complies with all of the requirements of the zone district in which it is located, is consistent with the intent and purpose of the Zoning Code and is compatible with the land uses surrounding the site.

1. The details of the use, site design, building location, orientation and exterior building materials are compatible and harmonious with the surrounding, neighborhood, buildings and uses, including not-yet-developed uses identified in approved development plans.
2. The development plan substantially complies with any City- adopted plans that are applicable to the site, such as master plans, neighborhood plans, corridor plans, facilities plans, urban renewal plans, or design manuals.
3. The project meets dimensional standards, such as but not limited to, building setbacks, building height and building area set forth in this chapter, or any applicable FBZ or PUD requirement.
4. The project grading, drainage, flood protection, storm water quality and storm water mitigation comply with the City's drainage criteria manual and the drainage report prepared for the project on file with the City Engineering Department.
5. The project provides off-street parking as required by this chapter, or a combination of off-street or on-street parking as permitted by this chapter.
6. All parking stalls, drive aisles, loading/unloading areas, and waste removal areas meet the location and dimension standards set forth by this chapter.
7. The project provides landscaped areas, landscape buffers, and landscape materials as set forth in this chapter and the landscape design manual.
8. The project preserves, protects, integrates or mitigates impacts to any identified sensitive or hazardous natural features associated with the site.
9. The building location and site design provide for safe, convenient and ADA-accessible pedestrian, vehicular, bicycle, and applicable transit facilities and circulation.
10. The number, location, dimension and design of driveways to the site substantially comply with the City's traffic criteria manual. To the extent practicable, the project shares driveways and connect to drive aisles of adjoining developments.
11. The project connects to or extends adequate public utilities to the site. As required by Colorado Springs Utilities, the project will extend the utilities to connect to surrounding properties.
12. If necessary to address increased impacts on existing roadways and intersections, the project includes roadway and intersection improvements to provide for safe and efficient movement of multi-modal traffic, pedestrians and emergency vehicles in accordance with the City's traffic criteria manual, public safety needs for ingress and egress and a City accepted traffic impact study, if required, prepared for the project.
13. Significant off-site impacts reasonably anticipated as a result of the project are mitigated or offset to the extent proportional and practicable. Impacts may include, but are not limited to light, odor and noise.

CONDITIONAL USE REVIEW CRITERIA:

The Planning Commission may approve and/or modify a conditional use application in whole or in part, with or without conditions, only if all three (3) of the following findings are made:

- A. Surrounding Neighborhood: That the value and qualities of the neighborhood surrounding the conditional use are not substantially injured.
- B. Intent of Zoning Code: That the conditional use is consistent with the intent and purpose of this Zoning Code to promote public health, safety and general welfare.



**Development Plan,
Use Variance, &
Conditional Use
Application Requirements & Checklist**

- C. Comprehensive Plan: That the conditional use is consistent with the Comprehensive Plan of the City.

USE VARIANCE REVIEW CRITERIA:

The following criteria must be met in order for a Use Variance to be granted:

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to the property or class of uses in the same zone so that a denial of the petition would result in undue property loss; and
2. That such variance is necessary for the preservation and enjoyment of a property right of the petitioner; and also,
3. That such variance will not be detrimental to the public welfare or convenience nor injurious to the property or improvements of other owners of property.

Lange, Peter C

From: Kristina Anderson <andersonland99@gmail.com>
Sent: Monday, November 28, 2022 5:22 PM
To: Lange, Peter C
Subject: Fwd: CUPD-22-0015

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Further, the postcard we received states this location currently carries a license for "no more than six (6) children". A review of Colorado Springs licensed daycares does NOT list this address as a licensed daycare, Your reply would be appreciated.

----- Forwarded message -----

From: Kristina Anderson <andersonland99@gmail.com>
Date: Sun, Nov 27, 2022 at 3:46 PM
Subject: CUPD-22-0015
To: <Peter.Lange@coloradosprings.gov>

We received a postcard regarding the above referenced project you are managing. I made an initial search on the referenced website and I found no information regarding this project. I will be filing my formal reply shortly, but I would like to know why the details are not available on your site.

--
Thank you
The Andersons
303-517-1217

Lange, Peter C

From: Kristina Anderson <andersonland99@gmail.com>
Sent: Thursday, December 1, 2022 11:35 AM
To: Lange, Peter C
Subject: CUDP-22-0015 - Follow-up for Mailing Notification List

CAUTION! - External Email. Malware is most commonly spread through unknown email attachments and links. DO NOT open attachments or click links from unknown senders or unexpected email!

Good Morning, Peter.

Per our conversation, you said you would provide the mailing list for the notifications of the above referenced Development Proposal.

I have not received it yet. Time is of the essence so we may reply to your notification.

Kris Anderson
303-517-1217

Lange, Peter C

From: Kristina Anderson <andersonland99@gmail.com>
Sent: Thursday, December 1, 2022 2:41 PM
To: Lange, Peter C
Subject: Re: CUDP-22-0015 - Follow-up for Mailing Notification List

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Thank you very much!
Kris

On Thu, Dec 1, 2022 at 1:39 PM Lange, Peter C <Peter.Lange@coloradosprings.gov> wrote:

Attached is that mailer list and the applicants exhibits.

From: Kristina Anderson <andersonland99@gmail.com>
Sent: Thursday, December 1, 2022 11:35 AM
To: Lange, Peter C <Peter.Lange@coloradosprings.gov>
Subject: CUDP-22-0015 - Follow-up for Mailing Notification List

CAUTION! - External Email. Malware is most commonly spread through unknown email attachments and links. DO NOT open attachments or click links from unknown senders or unexpected email!

Good Morning, Peter.

Per our conversation, you said you would provide the mailing list for the notifications of the above referenced Development Proposal.

I have not received it yet. Time is of the essence so we may reply to your notification.

Kris Anderson
303-517-1217

--
Thank you,
Anderson Land Associates, LLC

Lange, Peter C

From: Kristina Anderson <andersonland99@gmail.com>
Sent: Sunday, December 4, 2022 10:14 AM
To: Lange, Peter C
Subject: CUPD-22-0015 - Proposed Daycare - 50 Mikado E - Raven Hills
Attachments: Postcard Mailer Map - Raven Hills Boundary.jpg

CAUTION! - External Email. Malware is most commonly spread through unknown email attachments and links. DO NOT open attachments or click links from unknown senders or unexpected email!

Peter -

I want to share some information with you. Last week you forwarded the Mailing List to me for the above Proposed Project.

This Project address is part of Raven Hills Home Owners Association. Accordingly, all properties in the association SHOULD have received your Proposal Postcard because the proposed project affects all of the members.

I took all the addresses relative to Raven Hills and highlighted them on our map - this map is attached. The boundary of our association is outlined in RED. I highlighted all addresses that received your postcard in GREEN. As you can see, almost half of our HOA properties did not receive your Postcard.

I'm sure all affected Raven Hills community Members have an interest in this Proposal given its attempt to rezone to a commercial enterprise within a purely residential community.

Thank you for your attention to this matter.

Kris Anderson
7005 Raven Hills Place
303-517-1217

Lange, Peter C

From: Kristina Anderson <andersonland99@gmail.com>
Sent: Wednesday, December 7, 2022 10:07 AM
To: Lange, Peter C
Subject: Public Meeting for CUPD-22-0015 - Proposed Daycare - 50 Mikado E -

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Good morning Peter,

The deadline for public comment is December 9, 2022. Can you please provide me with the subsequent schedule for review of feedback and Public Hearing.

Thanks.

Also, I noticed as of today that the "Public Notice" posted at this property has been removed. In fact, it was posted on the garage door which was often obscured by vehicles parked on the driveway. It was not posted on the corner of the property facing the street. I feel this is an insufficient notification.

Again, I appreciate your replies to my inquiries.

Kris Anderson
303-517-1217

December 9, 2022

Peter Lange
The Planning & Community Development Department
Land Use Division
Colorado Springs, Colorado

RE: CUDP-22-0015
50 Mikado Drive E, Large Day Care
Childcare License #1757045
File #11885083
Colorado Springs, Colorado

POSITION: STRONG OPPOSITION to REZONE for Proposed Development

Mr. Lange:

As homeowners within the Raven Hills Community and a Member of the Raven Hills Homeowners Association, my husband and I are STRONGLY opposed to the Proposed Development referenced above.

It is our understanding that this proposal must comply with Colorado Springs City Code – Part 7 – Conditional Uses, and the following:

7.5.701: PURPOSE

7.5.702: APPLICATION AND REVIEW PROCEDURE

- A. Preapplication Conference. Please provide all data that the Applicant submitted to conform with this statute.
- B. Process.
 - o Development Plan **INADEQUATE DATA PROVIDED**
 - Traffic Impact **NO STUDY/DATA PROVIDED**
 - ADA Compliance (Federally Mandated) Applicant has made a general comment that the “privatized home business” she intends to operate is exempt from ADA requirements. **NO DATA** was provided to support this claim.
 - Zone R1 Compliance This Proposal does not conform with **Zone R1**

7.5.704: AUTHORIZATION AND FINDINGS - Requires the Applicant to provide proof of the following, and The Planning Commission may approve and/or modify a Conditional Use Application ONLY if all three (3) of the following findings are made:

- A. Surrounding Neighborhood: That the Value and Qualities of the neighborhood surrounding the Conditional Use are not substantially injured.

PROPERTY VALUE: It is the findings of real estate professionals and individual homeowners that the property value of real estate in proximity to, and within HOA communities, is ADVERSELY affected by the presence of home-based daycares, especially Large Home Childcare. The comment made by the Applicant that home values will not be adversely affected is FALSE.

QUALITIES OF THE NEIGHBORHOOD: Raven Hills is a community of single family homes which have a strong connection to the natural surroundings. Many homeowners are retired, work from home, or simply appreciate living in a community where they are removed from noise, traffic, and a strong sense of pride in our homes.

NOISE: Having up to 12 young children playing outside in close proximity to other homes and yards can only adversely affect the serenity of those neighbors. Additionally, we have encountered noise levels exceeding 55 db in violation of the Colorado Noise Statute 25-12-103 - Maximum permissible noise levels with the permitted six persons. It is quite obvious that the noise levels will substantially increase with additional persons.

TRAFFIC: This Proposal has made the claim that there would be no impact to traffic; however, this business would likely draw all clientele from outside the immediate neighborhood, thereby DEFINITELY affecting traffic adversely. Parking in front of driveways and sidewalks will directly be problematic for neighbors who live on the adjoining cul de sac. The streets in this area were not constructed to carry the traffic loads associated with a commercial enterprise. Further, The City of Colorado Springs requires a Traffic Impact Analyses be submitted with the Application as per the Development Plan, Use Variance, & Conditional Use Application Requirements and Checklist.

SAFETY: The elementary school uses Mikado Drive for parents to drop off and pick up students. Many local students walk to school as well. The traffic flow to the school is already a safety concern to the neighborhood, and the addition of the Proposed Development is an additional safety concern. The statement the Applicant made that traffic and safety will not be affected is FALSE.

ADA Compliance: Even though the Colorado Springs Development Plan Checklist states that the City's approval may not assure compliance per DOJ or any other Federal or State accessibility laws, the Property Owner is responsible for compliance with Federal and State accessibility laws.

- B. Intent of Zoning Code

Conditional Use is in conflict with Zone R1, and we STRONGLY OPPOSE rezoning for the Proposed Development as requested by the Applicant. Further, any rezoning would forever change the character of the affected community and set a precedence for future projects.

- C. Comprehensive Plan

The Conditional Use of this Proposed Development is NOT consistent with the Comprehensive Plan of the City.

FOR YOUR CONSIDERATION:

Raven Hills is a Covenant Controlled Community. Raven Hills was established in 1969 and has enjoyed consistent and continued contributions to the community, school district and neighbors for 54 years. It is a residential community consisting of 225 single family homes. It has operated exclusively as a residential neighborhood with NO commercial enterprises.

- Our covenants state that all Lots shall be used for residential purposes only. (See Article X – SECTION 1. Land use, Building Type and Occupancy, attached herein.)
- Our Covenants prevent Commercial Enterprises, Nuisances, nor any activity which may be or may become an annoyance or a nuisance to the Neighborhood. (See Article X – SECTION 13 Commercial Enterprises, Nuisances, attached herein.)

We are aware of Senate Bill 20-126 which amended the Colorado Common Interest Ownership Act (CCIOA) to include protections for licensed operators of family child care homes. Raven Hills HOA is exempted from the constraints of this legislation because our Association Assessments are below the minimum annual requirements and we were formed prior to July 1, 1992 (CCIOA's stipulations). The Applicant is relying on this legislation to push this Proposed Development in to our community, under inaccurate data and assumptions.

Additionally, we are aware of House Bill 21-1222 which was enacted to provide standardized home child care without regard to the individual HOA Covenants. However, no provision is made in that Bill that requires rezoning to be mandatory.

However, the Colorado Springs development Plan, Use Variance, & Conditional Use Application Requirements and Checklist (Edited 8/22) does have requirements that are to be considered/addressed as part of the application process.

We are looking forward to tracking the progress of this Development Project, and would like to be notified when it goes to Public Hearing.

Thank you,
Kristina and Charles Anderson
7005 Raven Hills Place
Colorado Springs, CO 80919
303-517-1217

Lange, Peter C

From: Greg & Barb Anthony <gregnbarb@icloud.com>
Sent: Friday, December 9, 2022 3:50 PM
To: Lange, Peter C
Cc: Kristina Anderson; Diversified Association Management
Subject: CUPD File Number CUPD-22-0015
Attachments: Letter_Peter Lange_COS Planning_20221209.pages

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Good afternoon Mr Lange,

In accordance with the Development Proposal Postcard mailed to owners affected by Mrs Stacie Warren's proposal to your department regarding 50 Mikado East, Colorado Springs, CO, please find attached a .pdf file which contains our objections to her proposed rezoning/variance.

Please include our comments in your considerations and respond to our questions at your earliest convenience.

Sincerely,

Greg Anthony

From: Gregory & Barbara Anthony
7030 Ravens Hills Place
Colorado Springs, CO 80919

To: Peter Lange, Colorado Springs Planning & Development

Subject: Application for rezoning at 50 Mikado East, Colorado Springs, CO 80919
CUPD-22-0015

Ref: (a) Project Statement for Conditional Use Permit Application; Stacie Warren, 50
Mikado Drive East, Colorado Springs 80919
(b) CO Revised Statute 38-33.3-119
(c) Senate Bill 20-126 as amended 8 July 2020

1) As resident homeowners within the Raven Hills Home Owners Association, my wife and I are vehemently opposed to changing any R1 zoning or variances to allow business enterprises within the boundaries of the Raven Hills HOA. The Bylaws and Covenants of our Association clearly prohibit business zoning with the HOA boundaries.

2) Mrs Stacie E Warren has submitted ref (a) for your department's consideration and requested that the R1- 6HS zoning of her residential property located at 50 Mikado East be changed. Her proposal does not meet the requirements in City Code 7.5.702.B as there are no supporting documents which address vehicular traffic, present zoning, or the Federal ADA.

Mrs Warren has based her proposal on the provisions of the Colorado Common Interest Ownership Act (CCIOA). Ref (b) clearly exempts the Raven Hills HOA as the Association was formed prior to 1 July 1992. She states that a Family Child Care Home is being operated at that address presently, in accordance with the provisions of ref (c). Expansion to a Large FCCH facility requires approval from the Colorado Department of Early Childhood. According to officials in that department, her license is pending approval and the purported license number she states in ref (a) is pending, not approved.

As noted above, Mrs Warren does not include any supporting documents in her application for rezoning except for a Site Development Plan and a Context Map. Notably, while Mrs Warren, in paragraph 2 of ref (a) claims to be located within "a child care dessert (sic)", the "Discovery Kids Child Care at Rockrimmon" is located with ¼ mile of her residence. Also, there are three child care facilities located with one (1) mile of her residence. Of interest, Mrs Warren's child care program does not come up in a search for approved programs with the 1 mile search radius on the "ColoradoShines.com" website as required for programs caring for children under the age of two (2) years.

In paragraph six of ref (a), Mrs Warren clearly states that she wants to operate a business; "I reinvest business profits into landscaping...", an enterprise clearly prohibited in the Raven Hills HOA Bylaws and Covenants,

3) Within the "Justification" paragraphs of ref (a), Mrs Warren makes numerous assumptions which are presented as "fact" about the possible impact of her proposed business on vehicular traffic and parking, public safety, noise not addicting the value and qualities of the neighborhood, none of which are supported by any documentation. There are no impact statements from adjoining neighbors on Mikado, the CSPD or CSFD.

4) Arguably, while Mrs Warren may be allowed to operate a Family Child Care Home in accordance with reference (c), an expansion of the basic FCCH to accommodate twelve (12) children from birth up to the age of 18 years does not conform to the intent of the zoning code

or the Bylaws and Covenants of the Raven Hills HOA. We believe that her request should be denied without a detailed amendment including supporting documents from Mrs Warren showing the need for such a facility, impact statements from the adjacent neighbors, CSPD and CSFD traffic analysis, and impact statements from the homeowners within the Raven Hills HOA.

5) Please respond to this by clarifying what change in zoning and/or variance Mrs Warren is requesting and how a business zoning within a residential HOA might be in compliance with the city of Colorado Springs City Codes.

6) Please advise us of the date, time, and location of any hearings at which Mrs Warren's proposal might be presented to the City Council or if the final determination will be made by your office.

We look forward to your response.

Sincerely,

Greg & Barb Anthony

Lange, Peter C

From: April Hussey <apriltumey@gmail.com>
Sent: Thursday, December 8, 2022 11:20 PM
To: Lange, Peter C
Subject: Proposed daycare expansion at 50 Mikado Dr E. (File CUPD-22-2015)

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Dear Mr. Lange,

Thanks for your efforts in reviewing comments on the proposed large daycare at 50 Mikado Dr E (file CUPD-22-0015). As a working mom in the neighborhood I'm literally overjoyed to see this development come into the community.

Finding quality childcare has become tremendously difficult over the past 3 years. Our family has multiple live job postings for a child care provider on both paid subscription child care sites and community based child care groups yet we have been unable to find providers (despite increasing hourly pay by over 50%).

Receiving the city development flyer about the proposed daycare expansion prompted me to visit the daycare and meet with the owner. I was so impressed with the quality, professionalism, and genuine care provided to the children that I put my child on the waitlist. Increasing high quality childcare capacity is so important for families in our northern Colorado Springs community (especially here in Rockrimmon), and is a critical part of a well functioning society.

I have the privilege of being able to work as a Professional Engineer here in the Springs, in a leadership position within my company. I wouldn't be able to contribute technical solutions to improve our community, be an example to young women of a successful woman in a STEM field, or provide services to our clients which in turn increases jobs here in our community, without childcare.

This specific facility and location are well paired. There are many children living nearby, including my own, and the sounds of resident children playing outside is a natural and healthy part of the community. Children at the daycare do not add appreciable noise. Drop-off / pick-up times are offset slightly (by 20 minutes) from the nearby elementary school and as such no negative traffic impacts occur. Pedestrian access to the facility (from parked cars) is from a small side street/cul de sac serving only a handful of houses, thus access for parents and their kids going to the facility is safe.

Please do all you can to aid in shepherding approval of this facility.

Sincerely,
April Hussey

Lange, Peter C

From: ap_blanchard@hotmail.com
Sent: Thursday, December 8, 2022 7:12 PM
To: Lange, Peter C
Subject: Day Care

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We are fiercely opposed to any enterprise taking place within our HOA and hope you will respond in kind and deny any expansion of an already illegal business taking place within our borders. Our charter explicitly prohibits the use of a property to conduct any such business and will be pursuing sanctions to shut down this business in its current form much less the expansion that your letter details. If this is not enough, I am sure we can include the mayor and applicable board members to get your attention towards denying such action.

Thank you,
Alan Blanchard
55 Gold Coin Ct.
Colorado Springs, CO 80919
719-963-9796

Lange, Peter C

From: Theresa Boulter <theresaboulter@gmail.com>
Sent: Wednesday, November 30, 2022 3:59 PM
To: Lange, Peter C
Subject: Day Care at 50 Mikado Drive

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Dear Mr. Lange,

Please consider the extreme amount of traffic on Mikado from 8am until 8:45 am and from 3:30 to 4pm. The line for pickup in the afternoon stretches almost to the entrance of Mikado and then to add day care traffic on top of that would/could be dangerous.

This morning a daycare parent pulled out in front of me going west and a school parent going east instead of waiting for a clear opening. As I live on this street I am asking for safety.

Thank you for your consideration.

Sincerely,

Theresa Boulter

5 Mikado Drive East

Colorado Springs, CO 80919

719-339-2066

Lange, Peter C

From: Tom Browne <Tom.Browne@lcumed.com>
Sent: Tuesday, November 29, 2022 3:36 PM
To: Lange, Peter C
Subject: 50 Mikado Dr. Daycare

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Hi Peter,

I am following up on the green project card that I received in the mail.

This is a complete surprise to me and my neighbors that there will be a 12-person daycare in our residential neighborhood.

We already are overwhelmed with all the school traffic on the same road. It is very difficult to get out of the neighborhood during student drop off and pickup, with all the cars lining the roads.

If the city chooses to allow a 12-person daycare on the same street of the school (School is on a dead end) only one way in and one way out, then the city should move the student drop off and pick up to

Discovery Park used by the school.

My surrounding neighbors and I are trying to locate the file CUPD-22-0015 on the city's website and it says, "no record available".

Please help us understand what is going on!

Thanks,

Tom Browne

Lange, Peter C

From: Dr. Charles Browning <drbrowning@prov423.com>
Sent: Thursday, December 8, 2022 6:15 PM
To: Lange, Peter C; Faith Csikesz
Subject: Strongly oppose day care license in this community

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Peter:

As a long-time resident of Rockrimmon, at 150 Buckeye Drive, 80919, I was just informed by our HOA of the application for daycare at 50 Mikado Drive.

We have many elderly and children who regularly walk in this neighborhood and this promises to cause a major increase in traffic with up to 12 children being possibly brought here.

I fully understand their desire to earn extra income with this plan, but the safety and peace and quiet of hundreds of homes here trumps that need.

I hope you agree.

Dr. Charles Browning
562-972-6000

Charles H. Browning, Ph.D.
Browning Therapy Group, Inc.
562-596-2142 • 714-662-1212
DrBrowning@Prov423.com
www.BrowningTherapy.com
Foundation for Applied Biblical Counseling
562-799-7710
www.HisVictory.com

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distribute, disclose, discuss or use any information contained herein. And again, thank you for letting us know by e-mail that you received this by mistake. God's smile on your day!

Lange, Peter C

From: Stephen Burn <stephen.f.burn@gmail.com>
Sent: Thursday, December 8, 2022 4:55 PM
To: Lange, Peter C
Subject: 50 Mikado Dr Day Care req

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Support the subject request due to challenges of finding day care

Traffic impact would be minimal with Raven Hills Elementary school at the end of the street

Stephen Burn
320 e Rockrimmon Blvd, Colorado Springs, CO 80919
7197998979

Lange, Peter C

From: BYRON CHITTENDEN <ABCHITTENDEN@msn.com>
Sent: Friday, December 9, 2022 11:58 AM
To: Lange, Peter C
Subject: RE: Site Address: 50 Mikado Drive E., Colorado Springs, CO 80919 Property Owners: Stacie Warren and Robert Warren Parcel No: 6307302051 File Number: 11885083 Zoning: R1-6 HS Plat No: 3394 Legal Description: Lot 174 Rockrimmon Sub, Raven Hills Fil No 3

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December 09, 2022

Dear Mr. Peter Lange:

We are opposed to the proposed plan to approve the property at 50 Mikado Drive E to become a large daycare for the following reasons, in no particular order:

It violates the Raven Hills HOA covenants keeping all the properties residential and not permitting them to become commercial. Everyone agreed to all the covenants when they purchased their lots. The residents of this HOA feel protected by these covenants.

We don't want to set a precedent that the city can step in and override a covenant just for an individual when it is a reasonable covenant and protects all homeowners in the group.

This will not improve property values in the immediate area that Mikado Drive serves and may lower them.

Traffic is a definite factor. Our driveway is less than 30 feet from the intersection of Mikado Drive and Rockrimmon Blvd. and there are times in the day when it is very difficult to get into and out of our driveway. Those times of each workday are normally between 7:45 and 8:45 A.M. and again between 3:30 and 4:30 P.M. We do witness too many traffic violations in and around this intersection on a daily basis. My family has only been involved in two minor incidents in the last 5 years. Both involved getting out of our driveway. Every traffic volume increase raises the risk.

Thank you for your consideration to the opposition of this rezoning variance.

Sincerely,

Byron and Nadine Chittenden
196 Mikado Drive E
Colorado Springs, CO 80919

Sent from [Mail](#) for Windows

Lange, Peter C

From: Dee M <skipndee@gmail.com>
Sent: Wednesday, December 7, 2022 4:25 PM
To: Lange, Peter C
Subject: 50 Mikado Drive Large Daycare
Attachments: 20221207_160642.jpg; 20221207_160659.jpg

CAUTION! - External Email. Malware is most commonly spread through unknown email attachments and links. DO NOT open attachments or click links from unknown senders or unexpected email!

Dear Mr. Lange,

As a resident at 166 Mikado Dr. E, I have to respond in a firm negative to this proposed "business" in Raven Hills.

Covenants, delivered to those purchasing a residence in our development, are pretty clear, regarding businesses being operated from a residence, resulting in undo burden upon surrounding residents.

We already have hundreds of vehicles daily going up and down Mikado, as parents drop off and retrieve their children at the school, located at the end of our street.

The speeding of these aforementioned vehicles has been an issue, discussed at HOA meetings, at various times, over the years. (See this evening's traffic jam photo attached).

Congestion as they park and wait for children in the afternoons is an issue, especially for emergency vehicles trying to reach residents' homes.

Adding a minimum of 12 more vehicles, and the resulting traffic burden is unwelcome. Add to that, the noise from the activities related to caring for and entertaining children.

This is a residential development.

It is not a commercial area.

Please deny this request.

Regards,

Diana Mellinger
166 Mikado Dr. E
Colorado Springs, CO 80919
717-572-8286

Lange, Peter C

From: glenndrasner@aol.com
Sent: Thursday, December 8, 2022 5:36 PM
To: Lange, Peter C
Subject: proposal for daycare center of 12 children at 50 Mikado Drive

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12/8/22

Mr. Lange:

We have lived at 6910 Mikado Lane since 1999.

This is a quiet residential neighborhood.

We want to keep it that way.

We are concerned about having our property value diminished by the establishment of a commercial business nearby, as well as the increase of traffic and noise.

We are totally opposed to allowing this daycare center to be established.

Contact us if there are any questions.

Sincerely,

Glenn and Janet Drasner
719-466-9001
glenndrasner@aol.com

Lange, Peter C

From: pge_101 <pge_101@comcast.net>
Sent: Thursday, December 8, 2022 9:52 PM
To: Lange, Peter C
Subject: Daycare Application

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We oppose allowing a daycare operation within Raven Hills HOA as it would establish a precedent. We believe businesses should not be integrated into our residential neighborhood.

Phil and Carol Ehemann
101 Raven Hills Ct.

Sent from Samsung Galaxy smartphone.

Lange, Peter C

From: Tony Farnelli <tfarnelli@live.com>
Sent: Friday, December 9, 2022 9:51 AM
To: Lange, Peter C
Cc: Diversified Association Management
Subject: 50 Mikado Dr E HOA Restrictions

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Dear Sir,

The business at 50 Mikado Dr E is being operated contrary to HOA restrictions. I live at 125 Mikado Dr W. I am already greatly impacted by the traffic. It is not in the best interest of the residents here to allow this unauthorized business (to the HOA) to expand.

I hope the HOA won't have to take legal action over this matter.

Thank you.

Antonio Farnelli

Sent from [Mail](#) for Windows

Lange, Peter C

From: Deborah <honeybee1250@aol.com>
Sent: Friday, December 9, 2022 6:50 AM
To: Lange, Peter C
Subject: OPPOSITION TO HOA BOARD ON Waldorf Sunflower House at 50 Mikado Drive East

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Dear Peter,

My name is Deborah Foster. I live directly across the street from Stacie Warren at 85 Mikado Drive East. In the past year the Waldorf Sunflower House has operated very quietly in our neighborhood with no disturbances that I have seen. The people coming into our neighborhood are very respectful. I have spoken with Stacie and know she is concerned about being a respectful, responsible, and considerate resident in this neighborhood. In over a year I have seen NOTHING that would indicate otherwise. I am in favor of Stacie Warren increasing her student number to 12 and opposed to the HOA Board's opposition to her increasing.

Thank you for your attention to this situation.

Deborah Foster

Sent from my iPhone

Lange, Peter C

From: dfruh@defcpa.com
Sent: Wednesday, November 30, 2022 1:31 PM
To: Lange, Peter C
Subject: 50 Mikado Dr 80919 Daycare

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Hello Peter,
I'm writing you in regards to the request by 50 Mikado Dr 80919 to increase their daycare license.

My wife and I are strongly opposed to this request for the following reasons.

1. Having a commercial enterprise that large in our or any neighborhood decreases our home values!
2. Our neighborhood is old and has narrow streets. So any additional cars parked on Mikado creates a hazard.
3. Mikado is a dead-end street that dead-ends at Rockrimmon Elementary. This creates lots of traffic on Mikado Drive because of the school and additional cars going to the daycare will only increase this traffic. Additionally, this traffic is always a concern for children walking on Mikado Drive and I would worry about the daycare kids safety if the were to ever walk down to the park next to the school.
4. Lot size is not adequate for this increase in number of kids. Their backyard is too small to handle this increase.

I ask that you and the city do not grant their request.

I appreciate your consideration in this matter.

Best regards, David

David E. Fruh, CPA
5555 Erindale Dr Ste 103
Colorado Springs, CO 80918
719.578.9100 Fax 719.623.0300



Lange, Peter C

From: diana@dianafruh.com
Sent: Thursday, December 8, 2022 6:06 PM
To: Lange, Peter C
Subject: Opposition to File Number CUPD-22-0015 - 50 Mikado Drive Colorado Springs 80919

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Hello Mr. Lange,

I'm writing you to express my opposition to:

File Number CUPD-22-0015
Development Proposal for 50 Mikado Drive Colorado Springs 80919
Large family day care business within a residentially zoned area

Our HOA, Raven Hills, contains no other commercial enterprises within our community. The approval of the above referenced property would set a precedence for other commercial enterprises within our residentially zoned neighborhood. I have owned my home here in Raven Hills for over 25 years. I want to maintain my home value. A commercial enterprise half a block away would decrease my home value.

The residence in question is located within a cul de sac that branches off from a dead end street, Mikado Drive. This street is the main entrance route for Rockrimmon Elementary School. Added traffic in this area would create additional noise and congestion to our peaceful community.

Please deny this Development Proposal.

Sincerely,

Diana Fruh
20 Gold Coin Court
719-592-0911

Lange, Peter C

From: melissa.gray416 <melissa.gray416@gmail.com>
Sent: Friday, December 9, 2022 8:35 AM
To: Lange, Peter C
Subject: Day Care

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My husband and I oppose the licensing of a day care on Mikado. Melissa and Monty Gray,
56 Raven Hills Ct

Sent from my T-Mobile 4G LTE Device

Lange, Peter C

From: Marjorie <marj.incharge@gmail.com>
Sent: Thursday, December 8, 2022 8:23 PM
To: Lange, Peter C
Subject: 50 Mikado Drive

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Dear Mr. Lange,

I live nearby and oppose this home being turned into a commercial large day care. It would ruin many aspects of what make this neighborhood enjoyable.

Mikado Drive is definitely not a suitable place for this business. The rush of traffic at the beginning of the day and end of the day from the elementary school at the end of Mikado is enough. To add parents dropping off and picking up kids at a daycare would be intolerable. There is no space for a parking lot or suitable turn around area.

Please do not approve this.

Thanks,
Marjorie Greenway

Sent from my iPhone

Lange, Peter C

From: RHonda Grimes <rhonda@mistycastle.com>
Sent: Friday, December 9, 2022 7:49 AM
To: Lange, Peter C
Subject: 50 Mikado Drive East

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Peter, it has come to my attention 50 Mikado Drive East has filed for an application to run a 12 child daycare at the above address. My husband and I are very concerned about safety and noise in our neighborhood. Already with Mikado, being the most common route to Rockrimmon elementary School, experiences traffic congestion, speeding/rude drivers making traffic difficult at best. The increased traffic especially on a corner lot, affecting two streets would pose an additional danger to our large demographic of elderly walkers as well as kiddos getting to and from school. One of our reasons for buying in this neighborhood was the HOA rule there would be no commercial businesses in the residential area.

We would urge you to vote NO on this proposal.

Thank you, Ronda and Matt Grimes

Lange, Peter C

From: steve gubser <sgubser4422@gmail.com>
Sent: Friday, December 9, 2022 9:37 PM
To: Lange, Peter C
Subject: 50 Mikado Drive

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Mr. Lange,

Please consider that Raven Hills HOA prohibits commercial ventures, such as the requested daycare facility. Approval of this request may/could set a precedent to reduce the covenants protections and lead to even more intrusive home operated businesses within the community.

Please do not approve this request.

Sincerely,

Steve Gubser
Raven Hills resident
713-805-5071
134 Buckeye Dr, Colorado Springs, CO 80919

Lange, Peter C

From: Jeff Hanson <staciandjeff2001@gmail.com>
Sent: Thursday, December 8, 2022 11:36 PM
To: Lange, Peter C
Subject: 50 Mikado Drive East

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I'm a homeowner in the Raven Hills subdivision, and I oppose the re-zoning for a large daycare facility at 50 Mikado Drive East.

Having a large daycare facility in our subdivision is against the Raven Hills HOA bylaws.

Best regards,
Staci Hanson
Homeowner at 70 Gold Coin Ct
(719)437-9112

December 8, 2022

Michael Hockett
60 Raven Hills Ct.
Colorado Springs, CO 80919

Peter Lange
Colorado Springs Planning & Community
Development Land Use Review Division
30 S. Nevada, Suite 701
Colorado Springs, CO 80901-1575

Ref: Development Proposal 50 Mikado Drive Large Day Care, File Number CUPD-22-0015

Dear Peter Lange,

My wife and I own and live in the house at the above address. As the homeowners at this address, we are members of the Raven Hills Homeowners Association (RHHOA). Our home is just one of 225 homes in the jurisdiction and under the authority of the RHHOA. When we bought our house in 1996, we were presented with a copy of the Raven Hills Covenants, with the understanding that when buying our house we agreed to abide by the provisions of the Covenants, which are intended to preserve the character of Raven Hills as residential property to protect and enhance its value.

ARTICLE X, SECTION 1 and SECTION 13, cite Covenants enforceability by the Association, allow the use of all Raven Hills Lots for residential purposes only, and state that no commercial enterprise shall be conducted or maintained upon, in front of, or in connection with any Lot or Lots.

The current, licensed daycare operating at 50 Mikado Drive, Colorado Springs, 80919 “for no more than (6) children” violates both the spirit and letter of the RHHOA Covenants. I recommend your Land Use Review Division postpones any recommendation or decision to approve this Development Proposal to expand the daycare operation “for up to 12 children,” until the RHHOA Board and its employed Diversified Association Management, LL, decide on their action, if any, to resolve the current breach of the RHHOA Covenants at 50 Mikado Drive.

Sincerely,


MICHAEL C. HOCKETT

Lange, Peter C

From: LUR Planning Info - SMB
Sent: Tuesday, December 6, 2022 2:59 PM
To: Lange, Peter C
Subject: FW: Raven Hills HOA - Daycare at 50 Mikado Drive East

From: nchcolorado@comcast.net <nchcolorado@comcast.net>
Sent: Tuesday, December 6, 2022 2:40 PM
To: LUR Planning Info - SMB <LURPlanningInfo@coloradosprings.gov>
Subject: FW: Raven Hills HOA - Daycare at 50 Mikado Drive East

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City Planner:

I recently replied to your postcard requesting input on the daycare facility at 50 Mikado Drive East. I stated that my husband and I had no objections, but would want assurance that it would pass all HOA and state regulations and license requirements. We have since visited with other homeowners in our HOA and have lodged concerns with Kris Anderson of the HOA. Our note to her is shown below. We have researched some of the requirements and exemptions for home child care and feel that the applicant's facility does not meet the exemption. As stated below, the facility appears to be a full-day, five-days-a-week preschool program, not a daycare or single skills class.

I believe Kris is compiling responses she has received from homeowners and will be forwarding those to you.

At the present time, the preschool at 50 Mikado Drive East, directly across from our house, is not a nuisance. However, several homeowners have expressed objections to the expansion of the preschool, as stated in the letter to Kris below.

Nancy and Tom Hord
65 Mikado Drive East

From: nchcolorado@comcast.net <nchcolorado@comcast.net>
Sent: Friday, December 2, 2022 12:51 PM
To: 'kris.ravenhills@gmail.com' <kris.ravenhills@gmail.com>
Subject: Raven Hills HOA - Daycare at 50 Mikado Drive East

Dear Kris,

We live at 65 Mikado Drive E, directly across the street from 50 Mikado Drive E. We received the green postcard from the City Planner and sent a short email reply. We stated that we have no complaints with the current facility and, if no new construction was involved and the traffic flow remained the same, we did not object to the increase in the size of the facility. We stated that this would be OK with us but **only if** it complied with all HOA and city licenses and regulations.

We have had a visit from Steve and Holly Zeien, to further discuss the matter. We now have some objections to the larger day care facility. One, if an exemption is made by the HOA to allow this business, it sets a precedent for other homeowners to ask for exemptions for their businesses. Two,

if the day care grew to 12 children, the owner might later apply for 16, which would, no doubt, have a negative effect on traffic flow, and may necessitate building an extension to the home. These are concerns we did not think about initially.

There is another aspect of this matter that you may not be aware of. We think the current facility, Sunflower House, is not a true day care, but rather a preschool. If you google Sunflower House, Colorado Springs, you can see the website. The Waldorf curriculum is the basis of the lessons. As a retired teacher, I recognize this as a preschool curriculum. We have no concerns in having a small preschool in the neighborhood. However, if the owner has misrepresented her business in order to take advantage of a state exemption (which Steve discussed with us), then this needs to be looked into further. We researched Child Care Definitions and Exemptions for Colorado and found that Child Care Centers include seven types of centers, of which Preschools are one. We do not know if the regulations and licensing are different for each type of Child Care Center. If regulations and licensing are different for day care centers and preschools, shouldn't this be pointed out to the City Planner?

We have never met the neighbor at number 50. She is obviously busy with her school and keeps to herself on the weekends. Please keep our comments confidential. We hope all turns out for the best for our neighbor and her business.

Nancy and Tom Hord

Lange, Peter C

From: jdwhussey@gmail.com
Sent: Monday, December 5, 2022 11:54 AM
To: Lange, Peter C
Subject: Support for Development Proposal File Number CUPD-22-0015

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Hi Mr Lange,

My name is John Hussey and my wife and I own 30 Mikado Dr E Colorado Springs, CO 80919. I am the direct neighbor to the west of 50 Mikado Dr Colorado Springs, CO 80919, and our properties share a large fence-line. In fact the yard where the existing daycare children play is directly across the fence-line from our back patio. I fully support the proposal of a large daycare on the neighboring property, file number CUPD-22-0015. We have 3 children of our own and we spend a large portion of our day outside. The noise from the existing daycare is very minimal. So minimal in fact that we often comment on how incredibly well behaved the kids there are. I am certain that my 3 children playing ball and riding bikes in our backyard generate more noise than the current daycare especially considering the daycare closes at 3pm. The noise of children playing games and laughing outdoors during school hours and during the school calendar is far less overall than dogs barking at all hours of the day or night all year round. I am not complaining about dogs barking outside because that's what dogs do. I am also not complaining about children laughing and playing because that's what children should be doing outside in my opinion. Dropping off children adds no significant traffic to the community because the school drop off line from the elementary school moves very quickly and the street is wide enough to accommodate the car line and bi-directional vehicle traffic. Furthermore, extra overflow street parking approved and provided by Raven Hills HOA is located in the culdesac directly in front of the proposed property in case cars can't fit in the driveway. Therefore, cars at the daycare do not affect cars in the elementary school drop off line or general vehicle traffic. As the direct neighbor who shares the second largest physical boundary with the proposed daycare and the largest sound exposure based on the location of our back yards, I fully support the proposal of a Large daycare at 50 Mikado Dr E. I support the rights of individuals to live in their homes and run small businesses. Thank you and please contact me if you have any further questions.

John Hussey
(303) 868-4087

Sent from my iPhone

Lange, Peter C

From: Barbara Jagrowski <jandbjagrowski@earthlink.net>
Sent: Saturday, December 10, 2022 3:29 AM
To: Lange, Peter C
Subject: daycare application

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Dear Mr. Lange;

I realize this is a couple of days past the date we should contact you, but I hope a decision has not yet been made. I own a home, it's rented, on Raven Hills Rd. and live in a retirement community in Georgia. My apartment here is 700 sq. feet and I can imagine 12 little ones plus 2 adults in here. Having raised 4 children, that age they are squirmy and need room to move around. If you have something comfy for each to sit in, there is hardly any room to move around and I do not see how she could handle it in 800 sq. ft.

My advice to her is to rent a larger facility than she has in her home to handle 12 children plus 2 adults but in a business area that has the zoning in place. I am surprised that her business, as is, is already permitted. In and out daily traffic alone would be cumbersome in her neighborhood.

Good luck on your making a decision.

Barbara Jagrowski

Barbara Jagrowski

Lange, Peter C

From: Tia Joy <galway910@gmail.com>
Sent: Friday, November 25, 2022 8:12 PM
To: Lange, Peter C
Subject: File #CUPD-22-0015
Attachments: daycare proposal.docx

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Mr. Lange,
Please review our attached letter regarding the proposed large day care on 50 Mikado Dr E.
Thank You,
Alethea and Bryon Hoewisch

Lange, Peter C

From: Richard Lemp <rwcel@comcast.net>
Sent: Friday, December 9, 2022 9:22 AM
To: Lange, Peter C
Subject: Application for Daycare Facility at 50 Mikado Drive East

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Dear Mr. Lange:

Our HOA has recently informed us that the homeowner of 50 Mikado Drive East has applied to run a daycare with up to 12 children. Our Board has filed its opposition to this request and we agree with their opposition. We believe, as does the Board, that this proposed business would violate Raven Hills Covenants that prohibit commercial enterprises and would harm property values of all Raven Hills homeowners. Also noted is that approval would set a precedent for other commercial enterprises and would generate traffic and noise problems for surrounding homes. Raven Hills is a residential community and we believe it should remain so. Thank you for your attention.

Very sincerely yours,

Richard and Carolyn Lemp
92 Raven Hills Court
Colorado Springs, CO 80919

Lange, Peter C

From: Sue Malone <malonecic@comcast.net>
Sent: Friday, December 9, 2022 4:39 PM
To: Lange, Peter C
Cc: 'Diversified Association Management'
Subject: Project at 50 Mikado Drive East, Colorado Springs CO

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I am writing in opposition to the application for rezoning variance proposed by the homeowners at 50 East Mikado Drive in our homeowners association.

The writers of the proposal are feeding you false information on the application. They are either disingenuous or purposefully misleading.

First, the writers neglected or deliberately failed to tell you that our homeowners association does not allow commercial enterprises and that properties are to be used for residential purposes only. We have lived in this homeowners association for over 40 years. Residents in any such association put up with a lot of sometimes nettlesome restrictions, and in return we expect to reap the flip-coin benefits of assuring that we can expect some reasonable continuity of the residential neighborhood to remain unsullied by neglectful, thoughtless neighbors who might ruin the neighborhood from everything from weeds run wild, derelict cars on the front lawns to – yes – commercial enterprises in the middle of the neighborhood. If this one property is allowed to convert their home to a commercial day care center, then others will follow and cry foul if they are not allowed the same variance. Then if there are other daycare centers, what is to stop someone else from insisting on setting up a commercial bicycle repair shop out of their garage or a commercial bakery business out of their kitchen with storefront (homefront) sales or setting up a car mechanic's training school out of their garage?

Second, the applicants are naïve or lying about the traffic situation on this street. We are already inundated by school traffic to the Rockrimmon Elementary School, twice a day on school days plus for every parent night, Halloween party, Christmas parties, spring festival, not to mention all the heavy construction trucks and delivery vehicles that regularly travel to the school and tear up this street. This street is the ONLY access road to the elementary school, and I have complained about this multiple times in the past. The school traffic does not magically start and stop exactly at 3:45 PM when school gets out. The cars start lining up in front of my house about 3:20 P.M. and the traffic does not dissipate until about 4:10 P.M. I have seen the line of parked cars extend all the way from the school almost to Rockrimmon Boulevard, way beyond where the proposed day care center is located. School parents whiz down this street like the Indianapolis 500, laser-focused on dropping off and picking up their children, and most seemingly ignoring that they are in a residential area, treating all of us who live here as a bothersome impediment to their beeline to deliver and pick up their children. In the mornings, it is the Indianapolis 500; in the afternoons, it is a 50-minute traffic jam. In the afternoons, we are essentially prisoners in our own homes for almost an hour, and on those occasions when we try to get in or out during that time period, it is extremely hazardous. Parent cars often block my driveway, visibility is nil, and other cars whiz down what is left of the narrowed street. I often ask a family member to please stand in the street in order to see traffic coming and going and to direct/stop traffic so I can get out.

There is not a doubt in my mind that an accident of some sort will happen at the junction of this street and the applicants' house between whizzing school parents and the drivers going to and from the day care center, as it is a significant alteration of traffic patterns. If you say, well, it's just 12 sets of parents (24 trips at a minimum) plus a non-resident employee (2 more trips at a minimum, not to mention a parked car on site for all day), then what if you gave a similar variance to 3 other houses on this street to set up their own day care centers? If you give a variance for this one

residence, then you have no grounds to disallow everyone else on the street to set up their own businesses. This street is a narrow residential street, already ill-equipped for the wholly inappropriate usages for the elementary school and certainly unable to handle any more non-residential traffic increases.

I have no problem whatsoever with residents making a living doing remote work on their computers in the privacy of their own homes, or baking bread in their own kitchens to take down and sell at another vending site. This does not have any impact on neighbors whatsoever. But the proposal now on the table will most definitely have an impact outside of the house itself.

Third, the applicants are obnoxiously nonchalant about the impact of their outdoor playground in the middle of a residential area. The writers airily assume that the neighborhood is empty of residents during working hours, with everyone gone to work. This neighborhood is full of retirees, ourselves included. 12 children between the ages of 3 and 7 are going to make a lot of noise during “recess”. They will be shrieking, calling out to each other, running, chanting, making bang-bang noises, bouncing balls, clacking sticks together, clattering spoons up and down the fence slats, and otherwise generating a lot noise. We are in our 70s and sit in our backyard when weather permits. If my next-door neighbor were to create a “playground” for 12 children in her backyard, then we would be unable to use our own backyard due to the noise. The author of the application outrageously asserts that having “play structures” five feet from the fence would constitute a noise buffer. Who are you kidding? The applicants assert that they teach “respect” for neighbors. You cannot reasonably require young children to remain quiet while they are on the playground during recess – the whole purpose of recess for children is to play and let off steam. You will have one of two things: children will either make the normally expected noise of youngsters out to play and thereby harming the tranquility of their neighbors or you put a muzzle on the children when they are outside requiring silence which is not fair to the children. This alone highlights why there should not be a day care center in the middle of a residential neighborhood. The applicants’ complete denialism about playground/recess noise is truly offensive. Yes, I live down the street and not in earshot of this particular daycare center. But this application must be considered in light of the near-certainty that an approval of this one variance will result in additional similar applications. If it isn’t OK for my immediate next-door neighbor to do it, then it isn’t OK for anyone to do it within the confines of this homeowners’ association.

As an aside, I am noting that the applicants are proposing keeping 12 children (plus presumably 2 or 3 adults) in an indoor space of 800 square feet for 7½ hours. I assume this conforms to licensure requirements, but in my book, that sounds like a warehouse/prison. I would never want my child to be cooped up like this. Which also highlights why when they are let out of this cage and into the backyard “playground” for “recess”, children would have all the more need to whoop and holler and let off steam.

Please reject this application.

Sue M. Malone

148 West Mikado Drive
Colorado Springs CO 80919
719-598-4310
smalone@alum.vassar.edu

Lange, Peter C

From: Kathy McBride <mcbrik43@gmail.com>
Sent: Tuesday, December 6, 2022 6:12 AM
To: Lange, Peter C
Subject: CUPD-22-0015

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I am writing in response to the large day care that is proposed for 50 Mikado Dr. I have lived in Raven Hills for 50 years. In that time I have seen families come and go and certainly neighborhood changes. But none of these changes transformed the character of the neighborhood that I have loved. This proposed day care would open a quiet neighborhood to one that could offer a commercial business in every home. Please do not change Raven Hills.

Kathleen McBride
mcbrik43@gmail.com
719-641-4043

Lange, Peter C

From: monty gray <grayarea714@yahoo.com>
Sent: Friday, December 9, 2022 11:18 AM
To: Lange, Peter C
Subject: Raven Hills Day Care Covenant Violation Request

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I am a Raven Hills resident who was not notified of the 50 Mikado address request to open a day care. Because this is a violation of our community's covenants I wish to state I am adamantly against this HOA approving this commercial request.

Also I would like to know why it took a neighbor to notify me of this situation.

Regards,
Monty Gray
832-984-8412
56 Raven Hills Ct

[Sent from Yahoo Mail for iPhone](#)

Lange, Peter C

From: Lindsey Moore <linzmoore81@gmail.com>
Sent: Thursday, December 8, 2022 4:58 PM
To: Lange, Peter C
Subject: 50 Mikado Dr Daycare Application Opposition

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Good afternoon,

I am writing in opposition to the proposed large daycare at 50 Mikado Dr East. I am a homeowners who lives at 6970 Mikado Lane. The proposed hours for the daycare will coincide with the start and release of Rockrimmon Elementary School. The traffic on Mikado Drive is already heavy and blocks residences and entry to/from side streets during those times. Allowing a private business is going to cause further congestion. Increasing traffic will also be an increase in risk for the many children and families who walk through the neighborhood after school.

Additionally, the HOA covenants would be violated by this business. Specifically Article X, section 1 states that all lots shall be used for residential purposes only. Article x section 14 prohibits commercial enterprises from operating out of the residences. Both of those covenants would be violated by allowing this business to operate. A large daycare is also likely to cause increased noise for the surrounding homes which is prohibited in the covenants as well if it becomes disruptive or a nuisance.

In summary, as a homeowner within the section of the neighborhood that is likely to be affected by the proposed business, I oppose the approval of this application.

Sincerely,

Lindsey A Moore, DVM
6970 Mikado Lane
(406)750-9936

--

Lindsey Moore, DVM
(406) 750-9936

Lange, Peter C

From: Haley Kline Murphy <haley.kline@gmail.com>
Sent: Tuesday, January 24, 2023 2:23 PM
To: Lange, Peter C
Subject: Fwd: Message from Raven Hills Homeowners Association - URGENT RESPONSE NEEDED
- Day Care Proposal with the City - [#XN1384437]
Attachments: RH daycare Documents.pdf

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Hi there,

I'm admittedly quite late in sending you my thoughts about this, and I recognize the formal period to provide public comment has closed, however I recently became aware of some behavior of our community's board members that made me feel I should contact you and vocalize my support for the day care at 50 Mikado Drive (reference CUPD-22-0015).

We live 0.3 miles away from 50 Mikado Drive, at 6950 Mikado Lane, and had absolutely no idea there was a daycare in our area at all - because **the daycare causes zero detectable disruptions or issues for the neighborhood**. Any traffic or noise that could possibly be generated by the daycare is undetectable and certainly indistinguishable from the far more substantial noise and traffic caused by the daily operations at Rockrimmon Elementary School.

As you can see in the email below, members of our Board and of our larger community were not even aware of the daycare until the City drew attention to it with the rezoning notice. I suspect they would likely still today be oblivious to it had the notices not been sent. I've been told the Board provided multiple complaints to the City about this daycare, but I find myself questioning the legitimacy of complaints about a daycare they *admittedly* did not know existed.

Further, it appears Amanda Funke, a community manager for Diversified Association Management (which provides professional management services for the Raven Hills HOA) even attempted to make members of the Board aware of the daycare in writing - but the Board members did not review information closely enough to open or review what was contained within it. **The consequences of the incompetencies of the Raven Hills HOA Board cannot be allowed to become burdens for those at 50 Mikado Drive**, especially considering the owners of 50 Mikado Drive reached out to the HOA (via Diversified) to get permission for this daycare in the first place.

Ultimately, I find it disgraceful that the Raven Hills HOA Board is now jeopardizing Stacie and Robert Warren's source of income, and the valuable child care services they are providing to our community. The Board's position on this matter absolutely does not represent the position of my household; further, the Raven Hills HOA Board members have not bothered to ask the community at large for feedback about this matter at all, and therefore cannot fully or accurately represent the thoughts and feelings of our neighborhood. I suspect a small minority of those in opposition to this daycare were much louder than those in support, which is why I felt the need to write you a letter of my support now.

I would be happy to speak with you further if it might be in any way helpful.

With gratitude for your time,
Haley Murphy
6950 Mikado Lane
Colorado Springs, CO 80919
(720)361-9656
haley.kline@gmail.com

----- Forwarded message -----

From: **Diversified Association Management** <customerservice@diversifiedprop.com>

Date: Thu, Dec 8, 2022 at 4:35 PM

Subject: Message from Raven Hills Homeowners Association - URGENT RESPONSE NEEDED - Day Care Proposal with the City - [#XN1384437]

To: <haley.kline@gmail.com>, <darren.murphy4@gmail.com>

-

The Board has become aware very recently that the owner of 50 Mikado Drive East has filed an application with the City to run a daycare with up to 12 children. The Board believes that this use will violate the RH Covenants which prohibit commercial enterprises and will harm the property values of all RH owners. It would set a precedent for other commercial uses and generate traffic and noise for surrounding homes. The Board has filed its opposition with the City but if you oppose this application, please contact the Planner Peter Lange at peter.lange@coloradosprings.gov **no later than tomorrow December 9**. If you have any questions please contact **Kris Anderson at 303-517-1217**.

Remember that this HOA represents 225 homeowners; however, only 101 of the 225 homeowners were notified of this request. To date there are no other commercial enterprises within the Raven Hills Community. Should this daycare be approved by the City of Colorado Springs it is the Boards concern that it will pose a safety concern, generate additional traffic and noise which will adversely effect this peaceful community. We would like to protect the character of our residential community by prohibiting this and future commercial enterprises. Your reply, to Peter Lange, is greatly appreciated.

Sincerely,

Diversified Association Management on behalf of Raven Hills Homeowners Association
(719) 314-4506 | <http://www.ravenhillshoa.org/>

Lange, Peter C

From: Haley Kline Murphy <haley.kline@gmail.com>
Sent: Thursday, January 26, 2023 10:12 PM
To: Lange, Peter C
Subject: Fwd: Question regarding SB20-126

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Hi Peter,

I have a feeling you and your colleagues already know this, but I reached out to some of our State's representatives and senators to confirm the Raven Hills HOA has no authority to prohibit, and is legally prevented from prohibiting, a home child care in our community.

I'm fairly certain this confirmation from Senator Roberts negates the entirety of the Board's opposition to the Conditional Use Permit request submitted by Stacie Warren for the Waldorf Sunflower preschool. I'll be sure to forward you any additional information provided to me by DHS and/or DORA.

If it's still allowed, would you please add this information to the items that will be available for the Planning meeting in March?

Truly appreciate you and your work, and I apologize on behalf of my Association for any unpleasant/unnecessary tasks members of our Board may have demanded of you.

Thanks,
Haley

Begin forwarded message:

From: Dylan Roberts <senatordylanroberts@gmail.com>
Date: January 26, 2023 at 21:27:08 MST
To: Haley Kline Murphy <haley.kline@gmail.com>
Cc: tammy.story.house@coleg.gov, SenatorSmallwood@gmail.com, kevin.vanwinkle.senate@coleg.gov, Michael.Nicoletti@state.co.us, "Hanson - CDHS, Emily" <emily.hanson@state.co.us>
Subject: Re: Question regarding SB20-126

Hi Haley,

Thank you for reaching out and sorry to hear about these difficulties. Yes, it does seem that your HOA would still need to follow this law against restricting home child care businesses.

I am cc'ing my legislative contacts at the Department of Human Services and the Department of Regulatory Agencies as they have jurisdiction over these matters and seeing if they can look into this for you.

Please keep me in the loop if I can be of further assistance. We appreciate your commitment to finding more child care spots in our state.

-Dylan

On Thu, Jan 26, 2023 at 1:32 PM Haley Kline Murphy <haley.kline@gmail.com> wrote:

Hi there,

I have what is hopefully a quick question about SB20-126, pertaining to allowing a homeowner in a community organized under CCIOA to operate a licensed family child care home, and I am hoping your offices might be able to provide guidance as you were prime sponsors of the bill.

My HOA insists this act doesn't apply to them because of an exemption for small and limited expense communities built into the Colorado Common Interest Ownership Act (CCIOA). In fact, they went as far in 2016 as to amend our Bylaws to read (I believe inaccurately) that, "the Association, the members and the Properties shall not be subjected to the CCIOA," at all.

My understanding is that my HOA would be exempt from *most* of CCIOA but still subject to CRS 38-33.3-105, 38-33.3-106, and 38-33.3-107. Even with the exemptions for small and limited expense communities, it appears certain parts of CCIOA still apply; specifically - to paraphrase CRS 38-33.3-116 and 38-33.3-119: if the cooperative or community declaration limits its annual common expense liability to less than \$400 - which does in fact include my HOA - then it is subject only to sections 38-33.3-105 to 38-33.3-107.

Since SB20-126 added to 38-33.3-106.5, and 106.5 falls within sections 105 to 107, wouldn't it apply to my HOA regardless of the CCIOA exemptions for small and limited expense communities?

I'm truly not sure who else to reach out to for the purpose of confirming my understanding - if your inboxes are the wrong place, would you please provide suggestions for where else I might ask?

Thanks so much,
Haley Murphy
(720)361-9656



Reply Reply all Forward

Lange, Peter C

From: Haley Kline Murphy <haley.kline@gmail.com>
Sent: Friday, January 27, 2023 4:50 PM
To: Lange, Peter C
Subject: Fwd: Question regarding SB20-126

CAUTION! - External Email. Malware is most commonly spread through unknown email attachments and links. DO NOT open attachments or click links from unknown senders or unexpected email!

Hi Peter,

If it's not too late, would you please add the contents of the email below, from a legal advisor at the Colorado Department of Early Childhood (CDEC), to the public record pertaining to the Waldorf Sunflower House Large Home Childcare Licence project (File Number 11885083) for the Planning Commission's public hearing? I'm hoping it will help put to rest the ill-informed position of opposition coming from the Raven Hills Association's Board.

I know this is a rather long email chain, so I've quoted what I believe is the most relevant content here:

As pointed out, it appears on the surface that for the multiple exemption pathways provided under sections 116 and 119, a regulated entity would still be "subject [] to sections 38-33.3-105 to 38-33.3-107." Furthermore, exceptions to this on the surface appear to revolve around the addition of further, not fewer, applicable provisions of statute. As also pointed out, 106.5 appears to lie squarely within the bounds of 105 to 107.

Furthermore, we would encourage a deeper reading of the provisions of 106.5, and in particular, the usage and effect of the term "notwithstanding." The specific usage of the word "notwithstanding" could bring clarity to your issue at hand and the interplay of statute versus bylaw in this instance.

Specifically regarding CDEC-related duties and obligations, 106.5(k) speaks directly to "family child care homes" as defined at 26.5-5-303 and licensed pursuant to that Part 3. Such facilities are defined at 303(7) as "a facility for child care operated with or without compensation or educational purposes in a place of residence of a family or person for the purpose of providing less than twenty-four-hour care for children under the age of eighteen years who are not related to the head of such home. 'Family child care home' may include infant-toddler child care homes, large child care homes, experienced provider child care homes, and such other types of family child care homes designated by department rules pursuant to section 26.5-5-314(2)(n), as the executive director deems necessary and appropriate."

I hope you have an excellent weekend -

Thanks so much!
Haley

----- Forwarded message -----

From: Stillwell Parvensky - CDEC, Michele <michele.stillwellparvensky@state.co.us>

Date: Fri, Jan 27, 2023 at 3:13 PM

Subject: Re: Question regarding SB20-126

To: Hanson - CDHS, Emily <emily.hanson@state.co.us>

Cc: Tammy Story <rep.tammy.story@gmail.com>, Haley Kline Murphy <haley.kline@gmail.com>, Dylan Roberts <senatordylanroberts@gmail.com>, <tammy.story.house@coleg.gov>, <SenatorSmallwood@gmail.com>, <kevin.vanwinkle.senate@coleg.gov>, <Michael.Nicoletti@state.co.us>

Hello Haley,

Our legal advisor at the Colorado Department of Early Childhood (CDEC), which includes early childhood licensing, has provided the following response to your concern - I hope it is helpful.

To begin with, it should be noted that the operation and enforcement of the provisions of Title 38 Article 33.3 lie outside the expertise and knowledge of the Department. Nothing within this response should be construed as legal advice or opinions, but merely an informational statement of how the statute appears to interact with potential CDEC duties or obligations in our limited expertise and capacity regarding this issue and subject matter. We would encourage you to seek outside counsel regarding this specific issue given the complexities associated with the Colorado Common Interest Ownership Act (CCIOA) and the potential legal obligations incurred for private and third parties.

As pointed out, it appears on the surface that for the multiple exemption pathways provided under sections 116 and 119, a regulated entity would still be "subject [] to sections 38-33.3-105 to 38-33.3-107." Furthermore, exceptions to this on the surface appear to revolve around the addition of further, not fewer, applicable provisions of statute. As also pointed out, 106.5 appears to lie squarely within the bounds of 105 to 107.

Furthermore, we would encourage a deeper reading of the provisions of 106.5, and in particular, the usage and effect of the term "notwithstanding." The specific usage of the word "notwithstanding" could bring clarity to your issue at hand and the interplay of statute versus bylaw in this instance.

Specifically regarding CDEC-related duties and obligations, 106.5(k) speaks directly to "family child care homes" as defined at 26.5-5-303 and licensed pursuant to that Part 3. Such facilities are defined at 303(7) as "a facility for child care operated with or without compensation or educational purposes in a place of residence of a family or person for the purpose of providing less than twenty-four-hour care for children under the age of eighteen years who are not related to the head of such home. 'Family child care home' may include infant-toddler child care homes, large child care homes, experienced provider child care homes, and such other types of family child care homes designated by department rules pursuant to section 26.5-5-314(2)(n), as the executive director deems necessary and appropriate."

Lastly, as exhibited well within this 106.5(k) provision, the CCIOA contains numerous superseding and conflicting provisions that require legal prioritization and interpretation that CDEC cannot provide. Again, we would encourage you to reach out to counsel regarding these issues as they apply specifically to any interested private or third parties."

Best,
Michele

Michele Stillwell-Parvensky

Legislative Liaison

Pronouns: she/her



Cell: (720) 584-1166

michele.stillwellparvensky@state.co.us | cdec.colorado.gov

On Fri, Jan 27, 2023 at 8:56 AM Stillwell Parvensky - CDEC, Michele <michele.stillwellparvensky@state.co.us> wrote:
Good morning -

I will look into this question with our licensing team and legal advisor and get back to you.

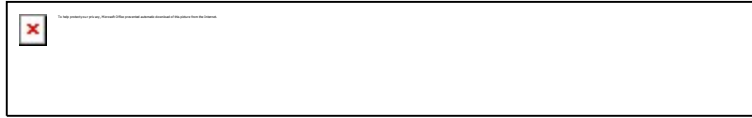
Thanks,

Michele

Michele Stillwell-Parvensky

Legislative Liaison

Pronouns: she/her



Cell: (720) 584-1166

michele.stillwellparvensky@state.co.us | cdec.colorado.gov

On Fri, Jan 27, 2023 at 8:14 AM Hanson - CDHS, Emily <emily.hanson@state.co.us> wrote:

Thanks for sharing this with us,

I'm also including the Department of Early Childhood Liaison, Michele, to weigh in specifically on the child care piece. Unfortunately I don't know if there is anything Human Services is able to do to assist but I will do little digging.

Emily

Thank you,

Emily Hanson, MPS

Legislative Liaison

Legislative Affairs



P 303.866.3019 | C 720-660-8408

1575 Sherman St., Denver, CO 80203

emily.hanson@state.co.us | www.colorado.gov/cdhs

On Thu, Jan 26, 2023 at 11:23 PM Tammy Story <rep.tammy.story@gmail.com> wrote:

Dear Haley,

I'm sorry you are running into challenges with interpretation of the law. Rep Roberts is off to a good start. I'll let you know if I turn up any response that might be helpful in checking with our legislative legal team.

Thank you for reaching out!

Best regards,

Tammy Story

Representative Tammy Story

House District 25

she/her/hers

Chair, Capital Development Committee

**Agriculture, Water and Natural Resources Committee
Public & Behavioral Health and Human Services Committee**

Colorado State Capitol

200 E. Colfax Avenue

Denver, CO 80203

tammy.story.house@coleg.gov

rep.tammy.story@gmail.com

Serving the mountains of Jeffco & southwest Littleton

On Thu, Jan 26, 2023 at 9:57 PM Haley Kline Murphy <haley.kline@gmail.com> wrote:
Thank you so much! I appreciate you and your work immensely.

Truly grateful,
Haley

On Jan 26, 2023, at 21:27, Dylan Roberts <senatordylanroberts@gmail.com> wrote:

Hi Haley,

Thank you for reaching out and sorry to hear about these difficulties. Yes, it does seem that your HOA would still need to follow this law against restricting home child care businesses.

I am cc'ing my legislative contacts at the Department of Human Services and the Department of Regulatory Agencies as they have jurisdiction over these matters and seeing if they can look into this for you.

Please keep me in the loop if I can be of further assistance. We appreciate your commitment to finding more child care spots in our state.

-Dylan

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Thanks so much,
Haley Murphy
(720)361-9656



ReplyReply allForward

Lange, Peter C

From: Sandy Ohle <sohle9@yahoo.com>
Sent: Thursday, December 8, 2022 7:58 PM
To: Lange, Peter C
Subject: #XN13844671 - 50 Mikado Drive East

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Dear Sir,

I was just recently made aware that the owner of 50 Mikado Drive East has filed an application with the City to run a daycare with up to 12 children. I, as a resident of this neighborhood, believe that this use will violate the Ravenhills Covenants which prohibit commercial enterprises and will harm the property values and peaceful use of all RH owners. It would set a precedent for other commercial uses and generate traffic and noise for surrounding homes. I would like to take this opportunity to voice my opposition to this request and beg that you do not allow this to occur. The residents of this community have all mutually agreed by accepting our covenants that we shall not operate commercial enterprises out of our homes and this homeowner should not be allowed to violate the peaceful community we all share with mutual respect.

I appreciate your consideration of my concerns and hope that this weighs in on your decision on this matter.

Sincerely,
Sandra Ohle
Concerned Homeowner
6960 Mikado Lane

Sent from my iPhone

Lange, Peter C

From: Amy Personius <jjasks@hotmail.com>
Sent: Friday, December 2, 2022 11:07 AM
To: Lange, Peter C
Subject: File number CUPD-22-0015- please deny

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Dear Mr. Lange,

I am writing in reference to file number CUPD-22-0015, parcel number 6307302051, in which Stacie Warren has applied to rezone her residential property in our neighborhood to a regular sized State Licensed Family Home Daycare.

I request that you would please deny this application. We are a well-established neighborhood on the west side of town. Ms. Warren bought this house in March, 2022, fully aware of our communities' Declarations of Covenants, Conditions and Restrictions: "Article X - SECTION 13. Commercial Enterprises, Nuisances. No manufacturing or commercial enterprises shall be conducted or maintained upon, in front of or in connection with any Lot or Lots. No noxious or offensive activity shall be carried on upon any Lot, street, road or Common Area, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the neighborhood."

Many of the residents, including my husband, works from home offices in our quiet neighborhood. Having an office next to a childcare would be a hinderance to anyone on phone calls or concentrating on tasks.

Mikado Drive is already a traffic bottleneck because of Rockrimmon Elementary located at the end of the residential road with 65 homes. The exact hours of the proposed open and closing of the daycare operations are the same hours that there are many cars parked on the street to pick up students from the elementary school. Residents already have a very difficult time traveling to and from their homes.

Safety is of great concern. With more cars on this residential street, there is more chance of accidents and people getting hurt. I can testify that four weeks ago as I was crossing the street with my dog at the Mikado and Rockrimmon light, a mom in a van sped up to turn left onto the street without looking and nearly ran me over. I had to run to get out of the way.

It is proven that property values go down when there is a business allowed to operate in a private, established neighborhood. None of us would have purchased our home knowing the possibility of a large daycare would be allowed to operate next door.

Approving this application would set a precedent that would affect the character of our neighborhood, the peacefulness of the community, the value of our property, and the safety of ourselves and our families. Please reject this.

Thank you for your consideration,

Amy Personius

6825 Dauntless Ct.

Colorado Springs, CO 80919

Lange, Peter C

From: Kirsten Peterson <kirsten@kirstenpetersonconsulting.com>
Sent: Sunday, December 11, 2022 10:02 PM
To: Lange, Peter C
Subject: Raven Hills area Daycare application

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Hi,

Our HOA sent out this message:

The Board has become aware very recently that the owner of 50 Mikado Drive East has filed an application with the City to run a daycare with up to 12 children. The Board believes that this use will violate the RH Covenants which prohibit commercial enterprises and will harm the property values of all RH owners. It would set a precedent for other commercial uses and generate traffic and noise for surrounding homes. The Board has filed its opposition with the City but if you oppose this application, please contact the Planner Peter Lange at peter.lange@coloradosprings.gov **no later than tomorrow December 9**. If you have any questions please contact **Kris Anderson at 303-517-1217**.

Remember that this HOA represents 225 homeowners; however, only 101 of the 225 homeowners were notified of this request. To date there are no other commercial enterprises within the Raven Hills Community. Should this daycare be approved by the City of Colorado Springs it is the Boards concern that it will pose a safety concern, generate additional traffic and noise which will adversely effect this peaceful community. We would like to protect the character of our residential community by prohibiting this and future commercial enterprises. Your reply, to Peter Lange, is greatly appreciated.

Sincerely,

Diversified Association Management on behalf of Raven Hills Homeowners Association
(719) 314-4506 | <http://www.ravenhillshoa.org/>

I am a homeowner in this HOA (110 Raven Hills Road) and wish to express my support for this application. I think the owner makes a good case for how this business will not impact the quality of life in our community and wish to see her application approved.

Sincerely, Kirsten Peterson

Lange, Peter C

From: Kelly Raffaelli <kelly@springshomes.com>
Sent: Thursday, February 2, 2023 10:24 AM
To: Lange, Peter C
Subject: Letter in response to proposed daycare at 50 Mikado in Raven Hills
Attachments: Daycare Reply to Response - with attachments.docx

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Hello Peter,

Please see attached response.



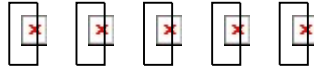
[SpringsHomes.com](https://www.springshomes.com)

Kelly Raffaelli

Broker Associate
Springs Homes

C: [719-238-4496](tel:719-238-4496)
O: [719-388-4000](tel:719-388-4000)
E: kelly@springshomes.com

703 N. Tejon St Suite E
Colorado Springs, CO 80903



December 9, 2022

Peter Lange
The Planning & Community Development Department
Land Use Division
Colorado Springs, Colorado

RE: CUDP-22-0015
50 Mikado Drive E, Large Day Care
Childcare License #1757045
File #11885083
Colorado Springs, Colorado

POSITION: STRONG OPPOSITION to REZONE for Proposed Development

This reply is sent on behalf of all 225 members of the Raven Hills Homeowners Association, Colorado Springs, Colorado.

It is the understanding of Raven Hills Homeowners Association that this proposal must comply with Colorado Springs City Code – Part 7 – Conditional Uses, and the following:

7.5.701: PURPOSE

7.5.702: APPLICATION AND REVIEW PROCEDURE

- **A. Preapplication Conference. Please provide all data that the Applicant submitted to conform with this statute.**
- **B. Process.**
 - o **Development Plan INADEQUATE DATA PROVIDED**
 - **Traffic Impact NO STUDY/DATA PROVIDED**
 - **ADA Compliance (Federally Mandated) Applicant has made a general comment that the “privatized home business” she intends to operate is exempt from ADA requirements. NO DATA was provided to support this claim.**
 - **Zone R1 Compliance This Proposal does not conform with Zone R1, and we request the variance of this Proposed Development be denied.**

7.5.704: AUTHORIZATION AND FINDINGS - Requires the Applicant to provide proof of the following, and The Planning Commission may approve and/or modify a Conditional Use Application ONLY if all three (3) of the following findings are made:

- **A. Surrounding Neighborhood:** That the Value and Qualities of the neighborhood surrounding the Conditional Use are not substantially injured.

PROPERTY VALUE: It is the findings of real estate professionals and individual homeowners that the property value of real estate in proximity to, and within HOA communities, is ADVERSELY affected by the presence of home-based daycares, especially Large Home Childcare. The comment made by the Applicant that home values will not be adversely affected is FALSE.

QUALITIES OF THE NEIGHBORHOOD: Raven Hills is a community of single family homes which have a strong connection to the natural surroundings. Many homeowners are retired, work from home, or simply appreciate living in a community where they are removed from noise, traffic, and a strong sense of pride in our homes.

NOISE: Having up to 12 young children playing outside in close proximity to other homes and yards can only adversely affect the serenity of those neighbors. Additionally, we have encountered noise levels exceeding 55 db in violation of the Colorado Noise Statute 25-12-103 - Maximum permissible noise levels with the permitted six persons. It is quite obvious that the noise levels will substantially increase with additional persons.

TRAFFIC: This Proposal has made the claim that there would be no impact to traffic; however, this business would likely draw all clientele from outside the immediate neighborhood, thereby DEFINITELY affecting traffic adversely. Parking in front of driveways and sidewalks will directly be problematic for neighbors who live on the adjoining cul de sac. The streets in this area were not constructed to carry the traffic loads associated with a commercial enterprise. Further, The City of Colorado Springs requires a Traffic Impact Analyses be submitted with the Application as per the Development Plan, Use Variance, & Conditional Use Application Requirements an Checklist.

SAFETY: The elementary school uses Mikado Drive for parents to drop of and pick up students. Many local students walk to school as well. The traffic flow to the school is already a safety concern to the neighborhood, and the addition of the Proposed Development is an additional safety concern. The statement the Applicant made that traffic and safety will not be affected is FALSE.

ADA Compliance: Even though the Colorado Springs Development Plan Checklist states that the City's approval may not assure compliance per DOJ or any other Federal or State accessibility laws, the Property Owner is responsible for compliance with Federal and State accessibility laws.

- B. Intent of Zoning Code
Conditional Use is in conflict with Zone R1, and we STRONGLY OPPOSE rezoning for the Proposed Development as requested by the Applicant. Further, any rezoning would forever change the character of the affected community and set a precedence for future projects.

- C. Comprehensive Plan
The Conditional Use of this Proposed Development is NOT consistent with the Comprehensive Plan of the City.

Finally, the Applicant has declared that the Proposed Development is necessary because the project is “located within a childcare dessert (sic)”. Her statement is false. The “Discovery Kids Child Care at Rockrimmon” is ¼ mile of this address, and there are three (3) child care facilities located within one (1) mile of this address. In fact, as of this date, there are vacancies at these child care facilities.

It is the opinion of the Board of the Raven Hills Homeowners that for the above reasons, the Conditional Use Application for the Proposed Development should be denied. This opinion is submitted on behalf of 225 homeowners who have a vested interest in maintaining all properties as Residential Zone R1.

Thank you for considering our reply. This is a very important issue within the Raven Hills community.

Sincerely,

Board of Directors

Raven Hills Homeowners Association

Colorado Springs, Colorado

Received on 1/26/23
- Peter Lange

January 25, 2023

Thank you for the opportunity to reply to CUPD-22-0015 (50 Mikado Drive).

The applicant is requesting a Conditional Use Permit from the City of Colorado Springs for a Large In-Home Daycare Business. Based on the following legal arguments, we believe this application should NOT be considered.

1. In your email of January 10, you clarified that Ms. Warren's request is now to be considered a "Proposal for Conditional Use" in lieu of the original "Request to Rezone". This clarification notwithstanding, Raven Hills HOA's objections outlined in their reply letter of December 9, 2022 (Attachment #1) remain.
2. Ms. Warren's "Response to Public Comments" dated January 5 (Attachment #2) is just narrative with NO supporting data. Like her initial application, her response contains no documentation to support the points she is trying to make, other than for her to "say so" (IE: Traffic, ADA Compliance, Noise, Safety, Property Value). Many of the neighbors have submitted their concerns and actual evidence of the current daycare (up to 6 children) affecting the neighborhood negatively.
3. Some of Ms. Warren's comments in her "Response" are INCORRECT and others are non-essential to the application. Within Attachment #2, we have made comments. Please refer to that attachment.
4. Ms. Warren is relying on Senate Bill 20-126 (Attachment #3) which amended the Colorado Common Interest Ownership Act (CCIOA) to push this "Proposal for Conditional Use" through the approval process. In fact, in Bullet point #1 of her Response letter, she states "The CCIOA determines the legal parameters of all Colorado HOA's". It is within this legislation that Raven Hills HOA finds our supporting argument against the Conditional Use Permit for Large Home Daycare: The "CCIOA Exemption for 'Small' Associations or 'Limited Expense' Associations" as amended (Attachments #4, 4a, and 4b) explains that Section 116 of the CCIOA exempts Limited Expense Associations from ALL but three of the provisions of the CCIOA.

The current annual expense liability for each homeowner within the Raven Hills HOA is \$120, which, by definition, makes it a Limited Expense Association. Included in Attachment #4 are Colorado Revised Statutes 38-33.3-116 (Attachment #4a) and 38-33.3-119 (Attachment #4b) clearly establish the exempt status of our Association.

Even if SB20-126 applied to our Association, it would not prevent individual homeowners from suing for covenant violations. Nor would it prevent the City from denying Ms. Warren's request. The violation of the Covenants is relevant to the City's review because it shows neighborhood opposition and incompatibility.

5. Ms. Warren makes the argument that a Large Child Care Home is not considered a commercial business, "per city and state descriptions". However, in Bullet Point #1 of her Response dated January 5, she states "...notwithstanding their declarations regarding home businesses.", which tacitly acknowledges that she is operating a business in a residential dwelling in the Raven Hills HOA. Raven Hills Association covenants (Attachment #5) do not permit commercial interests within the community. The enclosed decision, Rodriguez v. Safeco Ins. Co., Court of Appeals of Colorado, Division Five, No. 90CA37 (Attachment #6) clearly makes the point that licensed home daycare is a "business pursuit".

The following cases also have ruled that daycares are indeed businesses/commercial enterprises (copies available upon request) :

- Martellini v. Little Angels Day Care, Inc., Supreme Court of Rhode Island, March 18, 2004, Opinion Filed, No. 2002-597-Appeal
- Southwind Homeowners Ass'n v. Burden, Supreme Court of Nebraska, March 16, 2012, Filed, No. S-11-373
- Terrien v. Zwit, Supreme Court of Michigan, November 6, 2001, Argued ; July 25, 2002, Decided ; July 25, 2002, Filed, No. 115924

6. Again, the applicant is relying upon Senate Bill 20-126 argue that the City must approve her Conditional Use Permit. That is incorrect. She has the burden to submit and prove the requirements of a Conditional Use Permit have been met. She has not done that and so the Permit does not meet the legal requirements and so must be denied.

7. As to the City's requirements, we request the following be provided to us:

a. Written confirmation that the Applicant has complied with all requirements per Code of Colorado Regulations - Social Services Rules, 7.707.22 (Attachment #7), both for the current daycare business - Family Child Care Home (FCCH) and proposed Large Child Care Home.

b. Written confirmation that the Applicant has complied with all requirements per Colorado Springs' Development Plan, Use Variance, & Conditional Use Application Requirements & Checklist (Attachment #8).

c. Proof of Liability insurance for the daycare business that is currently being run from 50 Mikado Dr. E., and that the Raven Hills HOA and Board members are listed indemnified parties.

d. All supporting data submitted to the City of Colorado Springs in regard to this Application for Conditional Use, including the "lovely letters" of support she claims to have received from neighbors or other members of our Association.

8. We reserve the right for this "Conditional Use" to NOT be grandfathered into the Raven Hills Community if this Conditional Use Permit should be approved.

9. We request that you schedule an appeal to the Planning Commission and City Council should the Conditional Use be approved.

Board of Directors
Raven Hills Homeowners Association
Colorado Springs, CO

Enclosures -

Attachment #1 – Raven Hills HOA Reply Letter dated Dec.9, 2022

Attachment #2 - Ms. Warren's "Response to Public Comments" dated January 5

Attachment #3 - Senate Bill 20-126

Attachment #4 - Colorado Revised Statutes 38-33.3-116 and 38-33.3-119

Attachment #5 - Raven Hills HOA Declaration (Excerpt) - Article X - Section 1. Land Use, Building Type and Occupancy; Article X - Section 13. Commercial Enterprises, Nuisances Attachment

Attachment #6 - Rodriguez v. Safeco Ins. Co., Court of Appeals of Colorado, Division Five, No. 90CA37

Attachment #7 - Code of Colorado Regulations - Social Services Rules, 7.707.22

Attachment #8 – Colorado Springs Development Plan, Use Variance, & Conditional Use Application Requirements & Checklist

December 9, 2022

Peter Lange
The Planning & Community Development Department
Land Use Division
Colorado Springs, Colorado

RE: CUDP-22-0015
50 Mikado Drive E, Large Day Care
Childcare License #1757045
File #11885083
Colorado Springs, Colorado

POSITION: STRONG OPPOSITION to REZONE for Proposed Development

This reply is sent on behalf of ^{almost} all 225 members of the Raven Hills Homeowners Association, Colorado Springs, Colorado.

It is the understanding of Raven Hills Homeowners Association that this proposal must comply with Colorado Springs City Code – Part 7 – Conditional Uses, and the following:

7.5.701: PURPOSE

7.5.702: APPLICATION AND REVIEW PROCEDURE

- **A. Preapplication Conference.** Please provide all data that the Applicant submitted to conform with this statute.
- **B. Process.**
 - o **Development Plan INADEQUATE DATA PROVIDED**
 - **Traffic Impact** NO STUDY/DATA PROVIDED
 - **ADA Compliance (Federally Mandated)** Applicant has made a general comment that the “privatized home business” she intends to operate is exempt from ADA requirements. NO DATA was provided to support this claim.
 - **Zone R1 Compliance** This Proposal does not conform with Zone R1, and we request the variance of this Proposed Development be denied.

7.5.704: AUTHORIZATION AND FINDINGS - Requires the Applicant to provide proof of the following, and The Planning Commission may approve and/or modify a Conditional Use Application ONLY if all three (3) of the following findings are made:

- **A. Surrounding Neighborhood:** That the Value and Qualities of the neighborhood surrounding the Conditional Use are not substantially injured.

PROPERTY VALUE: It is the findings of real estate professionals and individual homeowners that the property value of real estate in proximity to, and within HOA communities, is ADVERSELY affected by the presence of home-based daycares, especially Large Home Childcare. The comment made by the Applicant that home values will not be adversely affected is FALSE.

QUALITIES OF THE NEIGHBORHOOD: Raven Hills is a community of single family homes which have a strong connection to the natural surroundings. Many homeowners are retired, work from home, or simply appreciate living in a community where they are removed from noise, traffic, and a strong sense of pride in our homes.

NOISE: Having up to 12 young children playing outside in close proximity to other homes and yards can only adversely affect the serenity of those neighbors. Additionally, we have encountered noise levels exceeding 55 db in violation of the Colorado Noise Statute 25-12-103 - Maximum permissible noise levels with the permitted six persons. It is quite obvious that the noise levels will substantially increase with additional persons.

TRAFFIC: This Proposal has made the claim that there would be no impact to traffic; however, this business would likely draw all clientele from outside the immediate neighborhood, thereby DEFINITELY affecting traffic adversely. Parking in front of driveways and sidewalks will directly be problematic for neighbors who live on the adjoining cul de sac. The streets in this area were not constructed to carry the traffic loads associated with a commercial enterprise. Further, The City of Colorado Springs requires a Traffic Impact Analyses be submitted with the Application as per the Development Plan, Use Variance, & Conditional Use Application Requirements an Checklist.

SAFETY: The elementary school uses Mikado Drive for parents to drop of and pick up students. Many local students walk to school as well. The traffic flow to the school is already a safety concern to the neighborhood, and the addition of the Proposed Development is an additional safety concern. The statement the Applicant made that traffic and safety will not be affected is FALSE.

ADA Compliance: Even though the Colorado Springs Development Plan Checklist states that the City's approval may not assure compliance per DOJ or any other Federal or State accessibility laws, the Property Owner is responsible for compliance with Federal and State accessibility laws.

- **B. Intent of Zoning Code**

Conditional Use is in conflict with Zone R1, and we **STRONGLY OPPOSE** rezoning for the Proposed Development as requested by the Applicant. Further, any rezoning would forever change the character of the affected community and set a precedence for future projects.

- **C. Comprehensive Plan**

The Conditional Use of this Proposed Development is **NOT** consistent with the Comprehensive Plan of the City.

Finally, the Applicant has declared that the Proposed Development is necessary because the project is "located within a childcare dessert (sic)". Her statement is false. The "Discovery Kids Child Care at Rockrimmon" is ¼ mile of this address, and there are three (3) child care facilities located within one (1) mile of this address. In fact, as of this date, there are vacancies at these child care facilities.

It is the opinion of the Board of the Raven Hills Homeowners that for the above reasons, the Conditional Use Application for the Proposed Development should be denied. This opinion is submitted on behalf of 225 homeowners who have a vested interest in maintaining all properties as Residential Zone R1.

Thank you for considering our reply. This is a very important issue within the Raven Hills community.

Sincerely,

Board of Directors

Raven Hills Homeowners Association

Colorado Springs, Colorado

Applicant Response
Attachment #2

January 5, 2022

Public Notice Portion of Project CUPD-22-0015

Response to Public Comment Regarding: Conditional Use Permit for Large Family Child Care Home at 50 Mikado Drive East, Colorado Springs, CO 80919, Stacie Warren

In response to the public comments and concerns raised by my neighbors and the HOA, I would like to assure they have been heard and understood. I have lived in neighborhoods where dogs barked incessantly and people parked in my driveway without consideration, so I completely understand everyone's desire to maintain a peaceful, enjoyable neighborhood. My family loves living in this area and seeks to preserve the same home experience as do others living here.

These are easily resolved with a call.

I would like to expound upon my previous letter of intent to help my neighbors better understand who I am as a member of our Raven Hills community as well as an individual, to hopefully help assuage mentioned concerns. As a mother of three daughters, I fully know the impact family and community have on rearing healthy, happy, successful children. My oldest daughter is a non-profit contract specialist, my middle daughter is a labor and delivery RN, and my youngest is still in high school and has a passion for volunteering at a local animal rescue center.

Not essential to the Proposal

I became an educator many years ago after becoming a mother because of my passion for supporting growth and development in young children. At that time, we lived in a neighborhood much like this one where we walked our children to school and enjoyed the dedication our community had in providing a healthy network of neighbors in which to grow families.

Not essential to the proposal

As our children become adults and move on in the world, it can be easy to forget how incredibly important it is to continue supporting young families who are in desperate need of healthy, safe, enriching spaces for their children to grow while parents are working hard to support their families and communities. Our community is currently experiencing a childcare crisis and live in an area that is considered a "childcare desert." As a community, we hold responsibility to support one another in being able to care for our most vulnerable population, just as we needed when we were young parents or as we need in our older age.

Not necessary to put in to a neighborhood - Rental space in a commercial area would suffice.

Now I would like to address my neighbor's specific concerns:

1. **No covenants have been broken, nor can an in-home childcare create a precedence of commercial business in our HOA:**

In 2020, Governor Polis signed Senate Bill 10-126 of the Colorado Common Interest Ownership Act (CCIOA) that implements legal protections for in-home childcare entities, declaring them an important part of HOA communities. The CCIOA determines the legal parameters of all Colorado HOAs.

See Attachment which specifically exclude Raven Hills from CCIOA oversight.

→ see attached EXEMPTIONS

I am unsure where the breakdown in communication of this changed law occurred within our own community, but Raven Hills HOA has not yet incorporated this law into their covenants; therefore, the members of the HOA were not informed about how this law impacts them as a community. With this amendment, no HOA can prohibit in-home state licensed childcare programs within their community, notwithstanding their

PH is not required to include state regulations or legislation in to covenants.

declarations regarding home businesses. Nor can they prohibit increased traffic due to the childcare facility, nor can they refuse reasonable fences that are required per state regulations. Our HOA has not properly informed our community to these legal changes.
<https://dre.colorado.gov/blog-post/new-bill-allows-home-child-care-homeowners-association-communities>

All regulations are public information, Not necessary to rewrite covenants

Daycare as a business. Not allowed per covenants.

Because this is a protected service, the covenants should have reflected it as such as soon as it became law. In-home childcare is not considered a commercial business per city and state descriptions, but rather an ancillary extension of a residence that provides necessary support to the community. Therefore, no precedent can be set for allowing commercial business within our HOA: This protection only applies to in-home childcare.

Per Colorado Court of Appeal: Rodriguez V. Safeco Ins. Co Daycare is Business

I would never purposely set out to break our HOA covenants or my neighbors' trust. I have followed the guidelines set by the Colorado Office of Early Childhood and by the requirements set forth by city planning, step by step. In fact, I contacted the Community Manager at Diversified Properties March 17th, 2022, when I first moved in, describing my program and intended expansion, giving them proof of additional liability insurance that extends protections for the HOA. At that time, I thought I had contacted the proper person of our Homeowners Association based on the contact list in my HOA welcome packet. The board did not receive that communication, which explains their message that they had only been recently notified.

Refer to Legislation regarding CCIOA EXCLUSION:

I apologize for that misunderstanding and miscommunication. There was no intent whatsoever to move forward without the board's awareness. I naively assumed they chose not to respond because in-home childcare is a protected service, so I was equally surprised as everyone else when the email blast came out asking HOA members to write their opposition of my request for rezoning to city planning.

DO NOT ASSUME.

2. **Licensing and Zoning:** See attached 'Code of Colorado Regulations' - none of these issues have been addressed herein.
- To address licensing questions raised by public comments, Colorado Office of Early Childhood is the licensing entity for all preschool and childcare facilities (school districts, Head Start, private preschool establishments), and small or large childcare programs, residential or non-residential. As a private child-care provider, I can teach a curriculum of my choosing, which is Waldorf pedagogy. So, whether I refer to my program as a childcare or a preschool, the licensing is the same within a residential space. Once I move to a non-residential space, I will pursue a specific preschool license which requires explicit educational qualifications.

My current qualifications include an active Colorado State Teachers License, master's level education and experience in Early Childhood Special Education, a master's degree in Professional Writing (I write educational, parenting, and childhood development articles), and I am currently enrolled in a Doctoral program for Developmental Psychology. I am also a certified Early Childhood Waldorf Teacher and a certified Simplicity Parenting educator.

I say these things to express my personal and professional experience and capacity to easily manage the allowable number of children in a manner that is respectful and considerate of every person impacted by our in-home childcare service. In the past I have taught teachers how to manage their classrooms and positively respond to

behavior so that chaos doesn't ensue, and children can be actively engaged in learning. It would be wonderful if every one of my concerned neighbors could see how beautiful and purposeful our program is before assuming it is a detriment to our community, but I also understand that members of the HOA were responding to only a partially explained situation.

As soon as the zoning process is completed, and if it is approved, I will send all pertinent licensing and zoning information to the board. At that time, all licensing and zoning information becomes public records, searchable on relative databases.

Is this a "Zoning" issue?

3. **Increased Noise and Traffic:** We have procedures in place to prevent further congestion and potential noise. Our children are outside from 10:50am to 11:40am and sometimes in the afternoon between 3:00pm to 3:30pm. While a 5 feet buffer between play space and the fence does not eliminate noise, it does mitigate noise along the fence line. I do not allow my children to yell for the sake of yelling or to make incessant noise. That is overstimulating for most children and annoying to most people, including myself. We play constructively, learning to build, create, share, and participate in skills such as balance, climbing, jumping, hopscotch, etc.

* Neighbors have provided documentation that the decibel rating is in excess of safety regulations

Although work schedules largely vary for people and some are retired or work from home, my program is over well before a traditional workday ends. It is closed during holidays and typical school breaks, when more neighbors are likely to be home and enjoying time outside. These are breaks where I also enjoy working in the yard and being in our lovely neighborhood, so I chose to be closed during these times.

Neighborhood character and serenity have been negatively affected, and that's before increasing to 12.

As far as traffic is concerned, currently, two families have multiple children enrolled, one family walks, and another two families carpool with each other, although I realize that can change year to year. In addition, I stagger drop off and pick up times to ensure there are rarely ever more than a couple families briefly in my driveway or in front of my home at one time. To further reduce traffic at pick up times, several children leave at half day each day after our daily skills class ends, which further staggers the pick-up time and decreases the number of children in attendance for the full day.

I am in close contact with my immediate next-door neighbors who say they have not been negatively impacted at all by the traffic or noise. Three of those neighbors wrote lovely letters of support, which demonstrates the lack of negative impact on the immediate surrounding area.

There are "immediate" neighbors who have already been negatively impacted.

Causing distress among my neighbors is the farthest thing from my intention, in fact, that is the opposite of my hope in adding to a community that supports all ages of life. I appreciate the energy invested in protecting our neighborhood and promise to exert equally as much energy in doing the same.

Respectfully,

Stacie Warren

Attachment #3

New Bill Allows Home Child Care In Homeowners' Association Communities

Thursday, September 3, 2020

Submitted by [user:field_first_name]

On July 8th, 2020, Governor Polis signed into law Senate Bill 20-126. SB20-126 amended the Colorado Common Interest Ownership Act ("CCIOA") to include protections for licensed operators of family child care homes.

SB20-126 amended §38-33.3-106.5 of the CCIOA. This section now includes §38-33.3-106.5(k), which states that despite any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not prohibit the operation of a licensed family child care home, as defined in section 26-6-102(13).

A "family child care home" is defined by §26-6-102(13) as a facility for child care in a place of residence of a family or person for the purpose of providing less than twenty-four-hour care for children under the age of eighteen years who are not related to the head of such home. "Family child care home" may include infant-toddler child care homes, large child care homes, experienced provider child care homes, and such other types of family child care homes designated by rules of the state board pursuant to section 26-6-106 (2)(p), as the state board deems necessary and appropriate.

In addition to the above, §38-33.3-106.5(k) also:

- Permits an association to require operators of family child care homes to carry liability insurance;
- Requires an association to make reasonable accommodations for fencing requirements applicable to licensed family child care homes;
- Specifically states that subsection (k) does not supersede any of the association's regulations concerning architectural control, parking, landscaping, noise, or other matters not specific to the operation of a business per se.

* Child Care protections amended CCIOA.
* RAVEN HILLS HOMEOWNERS ASSOCIATION and Community is exempt from CCIOA as per Section 116 which identifies R.H. as a "Limited Expense" Association.

Edited C.R.S. 38-33.3-116

Statutes current through all legislation from the 2022 Regular Session.

Colorado Revised Statutes Annotated > *Title 38. Property - Real and Personal (§§ 38-1-101 — 38-53-110)* > *Real Property (§§ 38-30-101 — 38-46-104)* > *Interests in Land (Arts. 30 — 34)* > *Article 33.3. Colorado Common Interest Ownership Act (Pts. 1 — 4)* > *Part 1. General Provisions (§§ 38-33.3-101 — 38-33.3-124)*

38-33.3-116. Exception for new small cooperatives and small and limited expense planned communities.

- (1) If a planned community created in this state on or after July 1, 1992, but prior to July 1, 1998, contains no more than ten units and is not subject to any development rights or if a planned community provides, in its declaration, that the annual average common expense liability of each unit restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed four hundred dollars, as adjusted pursuant to subsection (3) of this section, it is subject only to sections 38-33.3-105 to 38-33.3-107, unless the declaration provides that this entire article is applicable.
- (2) If a planned community created in this state after July 1, 1998, provides, in its declaration, that the annual average common expense liability of each unit restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed four hundred dollars, as adjusted pursuant to subsection (3) of this section, it is subject only to sections 38-33.3-105 to 38-33.3-107, unless the declaration provides that this entire article is applicable.
- (3) The dollar limitation set forth in subsections (1) and (2) of this section shall be increased annually on July 1, 1999, and on July 1 of each succeeding year in accordance with any increase in the United States department of labor bureau of labor statistics final consumer price index for the Denver-Boulder consolidated metropolitan statistical area for the preceding calendar year. The limitation shall not be increased if the final consumer price index for the preceding calendar year did not increase and shall not be decreased if the final consumer price index for the preceding calendar year decreased.

History

Source: L. 91:Entire article added, p. 1710, § 1, effective July 1, 1992. L. 93:Entire section amended, p. 644, § 5, effective April 30. L. 98:Entire section amended, p. 477, § 2, effective July 1. L. 2009:(1) and (2) amended,(SB 09-249), ch. 248, p. 1119, § 1, effective May 14. L. 2016:(1) and (3) amended,(HB 16-1149), ch. 104, p. 300, § 2, effective July 1, 2018.

Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 38, Art. 33.3

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ROCKRIMMON SUBDIVISION, RAVEN HILLS THIS DECLARATION, made this Second day of May AD, 1969 by ROCKRIMMON LAND COMPANY, W I T N E S S E T H: WHEREAS, Rockrimmon Land Company is the owner of certain real property in the County of El Paso, State of Colorado, which is more particularly described in Exhibit A which is attached hereto and made a part of this declaration; and WHEREAS, Rockrimmon Land Company desires to protect and enhance the value, desirability and attractiveness of said property for all parties having or acquiring any right, title or interest in the property described in said Exhibit A; and to this end, will convey the real property described in Article II subject to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and WHEREAS, Rockrimmon Land Company, in order to insure that the purposes of this declaration are carried out, has caused the incorporation under the laws of Colorado of Raven Hills Homeowners Association, a non-profit corporation with the power of administering and enforcing the covenants, conditions and restrictions and collecting hereinafter set forth; NOW THEREFORE, Rockrimmon Land Company hereby declares that the real property described in Exhibit A is and shall be held, transferred, sold, conveyed and occupies subject to the following covenants, conditions, restrictions, easements, charges, and liens, hereinafter sometimes referred to collectively as "covenants and restrictions", all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said property. These covenants and restrictions, shall run with said real property and shall be binding on all persons having or acquiring any right, title or interest in said property or any part thereof, and shall inure to the benefit of each owner thereof.

(EXCERPT)

ARTICLE X - USE RESTRICTIONS, COVENANTS AND EASEMENTS The following restrictions, covenants and easements are imposed uniformly upon the Properties and the use thereof as a common scheme for the benefit of each Lot and the Common Area may be enforced by the Association or any Lot Owner.

SECTION I. Land Use, Building Type and Occupancy. All Lots unless otherwise designated in the recorded plot, shall be used for residential purposes only. With respect to those Lots to be used for residential purposes, no building shall be erected, altered, placed or permitted to remain on any Lot other than, one detached single family dwelling not to exceed 35 feet or two stories in height. No building shall be permitted on any Lot unless such building has been duly constructed thereon and the removal of dwellings or structures for other locations to any Lot shall not be permitted. A private garage for not less than two cars shall be provided with each single family dwelling and in accordance with the set back requirements herein contained.

SECTION 13. Commercial Enterprises, Nuisances. No manufacturing or commercial enterprises shall be conducted or maintained upon, in front of or in connection with any Lot or Lots. No noxious or offensive activity shall be carried on upon any Lot, street, road or Common Area, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the neighborhood.

EDITED C.R.S. 38-33.3-119

Statutes current through all legislation from the 2022 Regular Session.

Colorado Revised Statutes Annotated > *Title 38. Property - Real and Personal (§§ 38-1-101 — 38-53-110)* > *Real Property (§§ 38-30-101 — 38-46-104)* > *Interests in Land (Arts. 30 — 34)* > *Article 33.3. Colorado Common Interest Ownership Act (Pts. 1 — 4)* > *Part 1. General Provisions (§§ 38-33.3-101 — 38-33.3-124)*

38-33.3-119. Exception for small preexisting cooperatives and planned communities.

If a planned community created within this state before July 1, 1992, if its declaration limits its annual common expense liability to the amount specified in section 38-33.3-116 (1), then it is subject only to sections 38-33.3-105 to 38-33.3-107 unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of the provisions of section 38-33.3-120, in which case all the sections enumerated in section 38-33.3-117 apply to that planned community.

History

Source: L. 91:Entire article added, p. 1713, § 1, effective July 1, 1992. L. 2009:Entire section amended, (SB 09-249), ch. 248, p. 1120, § 2, effective May 14. L. 2015:Entire section amended, (HB 15-1095), ch. 114, p. 344, § 1, effective August 5.

Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 38, Art. 33.3

Colorado Revised Statutes Annotated
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State Notes

Notes

Editor's note:

Section 4(2) of chapter 104 (HB 16-1149), Session Laws of Colorado 2016, provides that changes to this section by the act apply to budgets adopted by a common interest community's executive board on or after July 1, 2018.

ANNOTATION

Having opted for an exemption from the Colorado Common Interest Ownership Act (CCIOA) by limiting the amount of homeowners' dues assessed, a homeowners' association cannot refuse to be bound by such limitation

and therefore cannot impose a special assessment in an amount above such limit. *Quinn v. Castle Park Ranch Prop. Owners Ass'n*, 77 P.3d 823 (Colo. App. 2003).

Colorado Revised Statutes Annotated
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Rodriguez v. Safeco Ins. Co.

Court of Appeals of Colorado, Division Five

May 23, 1991

No. 90CA37

Reporter

821 P.2d 849 *; 1991 Colo. App. LEXIS 147 **; 15 BTR 688

Peter S. Rodriguez, a minor, by and through his mother, conservator, natural parent and next friend, Tracey Rodriguez; Sean Rodriguez and Tracey Rodriguez, individually, as assignees of Laura Brimmer, Plaintiffs-Appellants, v. Safeco Insurance Company of America, a Washington corporation, Defendant-Appellee

Subsequent History: [**1] Rehearing Denied July 25, 1991. Certiorari Denied December 23, 1991. Released for Publication January 15, 1992.

Prior History: Appeal from the District Court of the City and County of Denver; Honorable Leslie M. Lawson, Judge; No. 88CV15566.

Disposition: JUDGMENT AFFIRMED

LexisNexis® Headnotes

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of Law > Genuine Disputes

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of Law > General Overview

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of Law > Materiality of Facts

HN1[] Entitlement as Matter of Law, Genuine Disputes

Summary judgment is proper only if the pleadings, affidavits, and other materials presented establish that there is no genuine issue of material fact and that the

moving party is entitled to judgment as a matter of law.

Insurance Law > Claim, Contract & Practice Issues > Policy Interpretation > Ordinary & Usual Meanings

Insurance Law > Claim, Contract & Practice Issues > Policy Interpretation > General Overview

Insurance Law > ... > Policy Interpretation > Ambiguous Terms > Unambiguous Terms

HN2[] Policy Interpretation, Ordinary & Usual Meanings

An insurance policy is a contract which must be interpreted consistently with settled principles, and absent the manifestation of a contrary intention within the four corners of the contract, the words used in the policy must be accorded their plain and ordinary meaning. If a contract is clear and unambiguous, a court should not rewrite it so as to arrive at a strained construction.

Business & Corporate Compliance > ... > Negotiable Instruments > Types of Parties > Assignees & Assignors

Contracts Law > Standards of Performance > Assignments > General Overview

HN3[] Types of Parties, Assignees & Assignors

An assignee of rights under a contract has no greater rights than those of his or her assignor.

Insurance Law > ... > Property

Rodriguez v. Safeco Ins. Co.

Insurance > Homeowners Insurance > Business Pursuits

HN4  **Homeowners Insurance, Business Pursuits**

Authorities adopting a "particular activities" test to determine liability first analyze the facts to determine whether the injury arose within the context of the insured's business or commercial pursuits and, if so, then proceed to a careful scrutiny of the particular activity causing the injury to determine whether that activity was ordinarily incident to non-business pursuits.

Insurance Law > ... > Property
Insurance > Homeowners Insurance > Business Pursuits

HN5  **Homeowners Insurance, Business Pursuits**

Plaintiffs, as assignees of an insured, have the initial burden to prove their entitlement to recover under the general provisions of a policy, and the insurer has the burden to prove the applicability of the "business pursuits exclusion" to exempt it from liability.

Evidence > Burdens of Proof > Ultimate Burden of Persuasion

Insurance Law > ... > Property
Insurance > Homeowners Insurance > Business Pursuits

HN6  **Burdens of Proof, Ultimate Burden of Persuasion**

Plaintiffs have the burden of proving an insurer's ultimate liability and, in particular, the applicability of the exception to the exclusion upon which they may posit a claim after the insurer has made a prima facie showing that the injury resulted from "business pursuits."

Insurance Law > Claim, Contract & Practice Issues > Policy Interpretation > Plain Language

Insurance Law > ... > Policy Interpretation > Ambiguous Terms > Unambiguous Terms

HN7  **Policy Interpretation, Plain Language**

If the meaning of an insurance policy is expressed in plain, certain, and readily understandable language, it must be enforced as written.

Insurance Law > ... > Policy Interpretation > Ambiguous Terms > General Overview

HN8  **Policy Interpretation, Ambiguous Terms**

The mere fact that the parties differ in their interpretation of an instrument does not, of itself, create an ambiguity.

Contracts Law > Defenses > Ambiguities & Mistakes > General Overview

Insurance Law > ... > Policy Interpretation > Ambiguous Terms > General Overview

HN9  **Defenses, Ambiguities & Mistakes**

A contractual clause may have different legal effects in various jurisdictions. The existence of such different legal effects does not render the clause ambiguous for the purpose of a court interpreting it.

Counsel: Roger T. Castle, P.C., Roger T. Castle, Denver, Colorado, for Plaintiffs-Appellants.

Long & Jaudon, P.C., Joseph C. Jaudon, Robert M. Baldwin, Denver, Colorado, for Defendant-Appellee.

Judges: Opinion by Judge Hume. Jones and Reed, JJ., concur.

Opinion by: HUME

Opinion

[*850] Plaintiffs, Sean, Tracey, and Peter S. Rodriguez, appeal a summary judgment entered in favor of defendant, Safeco Insurance Company of America. We affirm.

In 1987, Peter, then a three-month-old infant, suffered a traumatic head injury that resulted in severe brain damage while he was being cared for by Laura Brimmer, who operated a licensed child day care business in her home. Brimmer had in effect liability insurance for her day

Rodriguez v. Safeco Ins. Co.

care business under a \$ 500,000 policy issued by Scottsdale Insurance Company and homeowner's insurance under a policy issued by Safeco.


Brimmer notified both insurance companies of the injury and of plaintiffs' subsequent damage claim in which plaintiffs alleged that she had negligently failed to provide **[**2]** proper care and supervision for Peter. Scottsdale undertook Brimmer's defense of plaintiffs' claims, but Safeco denied coverage under the homeowner's policy.


Plaintiffs' claim against Brimmer was settled without trial by entry of a stipulated judgment in favor of plaintiffs in the amount of \$ 875,000. The judgment also provided for assignment of Brimmer's rights under the Safeco homeowner's policy to plaintiffs.

After Scottsdale paid the \$ 500,000 limits of the business insurance policy in partial **[*851]** satisfaction of the judgment, plaintiffs, as Brimmer's assignees, brought this action against Safeco, asserting claims for breach of the homeowner's insurance contract and bad faith denial of coverage. Both sides moved for summary judgment, and the trial court granted Safeco's motion, thereby dismissing plaintiffs' claims.

I.

Plaintiffs contend that the trial court erred as a matter of law in concluding that the language of the Safeco homeowner's policy did not provide coverage for Peter's injuries. We disagree.

HN1 Summary judgment is proper only if the pleadings, affidavits, and other materials presented establish that there is no genuine issue of material fact and that the moving party is **[**3]** entitled to judgment as a matter of law. *Continental Air Lines, Inc. v. Keenan*, 731 P.2d 708 (Colo. 1987).

HN2 An insurance policy is a contract which must be interpreted consistently with settled principles, and absent the manifestation of a contrary intention within the four corners of the contract, the words used in the policy must be accorded their plain and ordinary meaning. If a contract is clear and unambiguous, a court should not rewrite it so as to arrive at a strained construction. *Chacon v. American Family Mutual Insurance Co.*, 788 P.2d 748 (Colo. 1990).

The pertinent facts underlying this action are not in dispute. Brimmer publicly advertised and regularly conducted a state-licensed commercial business providing day care services for children in her home. She


reported her earnings from that activity as business income on state and federal tax returns and purchased liability coverage for the business from Scottsdale. As part of her established business activities, she had provided care for Peter in exchange for compensation on a regular basis for some time prior to the date of his injury.

On the morning of Peter's injury, the child's **[**4]** mother left him, apparently in good health, in Brimmer's care. Brimmer fed the child without incident, and placed him alone in a crib in a bedroom of her residence for a nap while she conducted routine household activities and generally watched and cared for other day care children inside the house. About two hours after putting the child down for his nap, she returned to the bedroom where she found him still in his crib but pale, limp, lethargic, and experiencing difficulty breathing.

After some delay, Brimmer contacted the child's mother, who then arranged for a medical examination that revealed his head injury. There is no evidence indicating how the trauma was inflicted or that anyone other than Brimmer had contact with the child or was inside the bedroom during the two-hour period of his nap.

The Safeco homeowner's policy provides personal liability and medical payments coverage for injuries to persons who are in Brimmer's home with her permission. However, the policy expressly excludes coverage for injuries "arising out of business pursuits of any insured" except for "activities which are ordinarily incident to non-business pursuits."

It is undisputed that the injury occurred **[**5]** on the insured premises while Peter was there with the permission of the insured. It is also undisputed that the injury occurred while Peter was under Brimmer's care in the course and within the scope of her business pursuits.

Initially, we note that **HN3** an assignee of rights under a contract has no greater rights than those of his or her assignor. *Matson & Mulhausen Construction Co. v. Boulevard National Bank*, 28 Colo. App. 427, 475 P.2d 356 (1970). Accordingly, plaintiffs are entitled to no greater rights against Safeco than those provided to Brimmer under the homeowner's policy.

Thus, the sole issue is whether, under these undisputed facts, any basis exists to support an inference that Peter's injury was caused by "an activity ordinarily incident to a non-business pursuit" as provided by the exception to the exclusion of coverage under the Safeco policy.

[*852] Policies containing language similar or identical

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to that of the Safeco policy have been interpreted by courts in other jurisdictions, but the issue presented is one of first impression in Colorado.

One line of authority relied upon by plaintiffs is represented by *Crane v. State Farm Fire & Casualty Co.*, 5 Cal. 3d 112, 485 P.2d 1129, 95 Cal. Rptr. 513 (Cal. 1971). [**6] In that case the court analyzed the exception to the exclusion, using the following language:

"Indeed, it is difficult to conceive of an activity more ordinarily incident to a noncommercial pursuit than home care of children."

That interpretation, however, gives no effect to the policy language providing a "business pursuits" exclusion from coverage in the event of a bona fide business providing home care for children. Its effect is to accord coverage for activities related to child care whether they are performed as a part of a "business pursuit" or not. Under that rationale the "non-business pursuits activities" exception swallows up the "business pursuits" exclusion so as to render it ineffectual and meaningless with respect to child care activities.

A second line of cases, represented by *Republic Insurance Co. v. Piper*, 517 F. Supp. 1103 (D. Colo. 1981), appears to focus narrowly on the language of the "business pursuits" exclusion clause while giving little or no effect to the language stating that "activities which are ordinarily incident to non-business pursuits" are not excluded, as is apparent from the following language:

"It seems to me and I find [**7] that nothing could be more a part of the business of operating a day care home than supervision of the children under the licensee's care, and it was while supervising the child that the tort occurred."

That rationale presents the obverse of the *Crane, supra*, analysis, in that it proceeds from the premise that any and all activities employed during the care and supervision of children in a commercial day care operation must necessarily fall within the "business exception" to coverage, without regard to whether such activities are "ordinarily incident to non-business pursuits." Thus, under that interpretation, any act or omission by a day care operator that causes an injury to a child while under day care supervision is excluded from coverage.

In our view, both the *Crane, supra*, and *Piper, supra*, analyses fail to give rational meaning to the entirety of the language of the insurance contract clause in question.

See *Gandy v. Park National Bank*, 200 Colo. 298, 615 P.2d 20 (1980).

We believe a better approach is provided by those **HN4** [↑] authorities adopting a "particular activities" test to determine [**8] liability in these kinds of cases. See *Gulf Insurance Co. v. Tilley*, 280 F. Supp. 60 (N.D. Ind. 1967); *Nationwide Mutual Fire Insurance Co. v. Collins*, 136 Ga. App. 671, 222 S.E.2d 828 (Ga. App. 1975); *State Farm Fire & Casualty Co. v. Moore*, 103 Ill. App. 3d 250, 430 N.E.2d 641, 58 Ill. Dec. 609 (Ill. App. 1981); *Robinson v. Utica Mutual Insurance Co.*, 585 S.W.2d 593 (Tenn. 1979). In those cases, the courts first analyzed the facts to determine whether the injury arose within the context of the insured's business or commercial pursuits and, if so, then proceeded to a careful scrutiny of the particular activity causing the injury to determine whether that activity was ordinarily incident to non-business pursuits.

No specific non-business activities attributable to Brimmer have been alleged or demonstrated as the causative force of Peter's injury. Hence, we conclude that even if the trial court erred by applying the *Piper, supra*, standard in analyzing the undisputed evidence, the decision would not be altered by application of the "particular activity" standard which we now adopt.

II.

Plaintiffs next contend that the trial court erred in determining [**9] that they bore the burden of proving facts bringing them within the exception to the policy exclusion. We disagree.

[*853] The trial court properly held that **HN5** [↑] plaintiffs, as assignees of the insured, had the initial burden to prove their entitlement to recover under the general provisions of the policy and that the insurer had the burden to prove the applicability of the "business pursuits exclusion" to exempt it from liability. See *Rex v. Continental Casualty Co.*, 96 Colo. 467, 44 P.2d 911 (1935); *Surdyka v. DeWitt*, 784 P.2d 819 (Colo. App. 1989). The court also correctly concluded that the **HN6** [↑] plaintiffs had the burden of proving Safeco's ultimate liability and, in particular, the applicability of the exception to the exclusion upon which they posited their claim after Safeco had made a *prima facie* showing that the injury resulted from "business pursuits." See *Watkins v. Security Benefit Ass'n*, 81 Colo. 66, 255 P. 452 (1927). See also *Weger v. United Fire & Casualty Co.*, 796 P.2d 72 (Colo. App. 1990).

Here, as in *Watkins, supra*, because the undisputed facts [**10] demonstrate the applicability of the exclusion

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to coverage, it was incumbent upon the insured, or her assignees, to demonstrate the existence of facts supporting an exception to the exclusion.

III.

Plaintiffs finally contend that the trial court erred in concluding that the policy in question was unambiguous. We disagree.

HN7 [↑] If the meaning of an insurance policy is expressed in plain, certain, and readily understandable language, it must be enforced as written. *Northern Insurance Co. v. Ekstrom*, 784 P.2d 320 (Colo. 1989).

HN8 [↑] The mere fact that the parties differ in their interpretation of an instrument does not, of itself, create an ambiguity. *Radiology Professional Corp. v. Trinidad Area Health Ass'n*, 195 Colo. 253, 577 P.2d 748 (Colo. 1978). Also, although **HN9** [↑] a contractual clause may have different legal effects in various jurisdictions, the existence of such different legal [**11] effects does not render the clause ambiguous for the purpose of our interpreting it. *Fibreglas Fabricators, Inc. v. Kylberg*, 799 P.2d 371 (Colo. 1990).

The judgment is affirmed.

“Written medication order” means a document for a specific medication for a specific child signed by the child’s health care provider. This must be a person with prescriptive authority. The order shall include the child’s name, medication, dose, time, route, and for how long the medicine is to be given. Orders for children over two years of age can only be valid for a period of up to one year, but may only be for a very brief duration of time as well. Children over two may need written medication orders more frequently since the dosage of the medication will change with the child’s weight. Written orders may also include information on the reason the medication is being given, potential side effects and any special instructions for administration.

7.707.22 Types of Family Child Care Homes

All Family Child Care Home licenses, except infant/toddler, are issued with an age range for children from birth to eighteen (18) years of age. This allows for the care of older children with special needs. Each individual provider will determine the age range of children that he/she will enroll in the provider’s child care home. The providers own birth, adopted, step or foster children twelve (12) years of age and older do not count in the provider’s license capacity.

The capacity for a Family Child Care Home (generally referred to within these rules as “the home”) is determined by the amount of indoor and outdoor space designated for child care, as well as the following factors.

A. A “Family Child Care Home” (FCCH) is a type of family care home that provides less than twenty-four (24) hour care at any time for two (2) or more children that are unrelated to each other or the provider, and are cared for in the provider’s place of residence.

- 1. Licensed family child care homes enrolling children five (5) years of age or younger are required to participate in Colorado Shines, the state quality rating and improvement system.

B. In a regular (FCCH) home, care may be provided for six (6) children from birth to eighteen (18) years of age with no more than two (2) children under two (2) years of age.

- 1. Care also may be provided for no more than two (2) additional children of school age attending full-day school. School-age children include children six (6) years of age and older who are enrolled in the first grade or above. A child enrolled in a kindergarten program is not considered a school-age child until the child begins attending kindergarten a year before they enter first grade.
- 2. Residents of the home under twelve (12) years of age who are on the premises and all children on the premises for supervision are counted against the approved capacity, except where specifically indicated otherwise. Residents of the home include, but are not limited to, birth, adopted, step or foster children of the provider.

C. A three (3) under two (2) license is a type of license that allows a provider to care for six (6) children from birth to eighteen (18) years of age with no more than three (3) children under two (2) years of age, with no more than two (2) of the three (3) children under twelve (12) months; the capacity includes the provider’s own children under twelve (12) years of age. This license type may be approved with the following conditions:

- 1. The licensee has held a permanent license to operate a family child care home for at least two (2) years in Colorado immediately prior to the issuance of the license that would authorize the care of three (3) children under two (2) years of age;

2. The licensee has completed the State Department approved Expanding Quality Infant/Toddler course of training;
 3. In the past two years, the licensee has had no substantiated complaints with a severity level of one (1) to three (3), consistent or willful substantiated rule violations of ratio, supervision, safety, or injury to a child observed during any licensing visit, or adverse licensing action;
 4. Care of additional children of school age is not authorized;
 5. Licensees issued a three (3) children under two (2) years of age license are approved for both the three (3) under two (2) and the regular license capacities and may switch between the two (2) capacities without notifying the State Department as long as they are in compliance with all licensing rules.
- D. An infant/toddler license is a type of family care home that provides less than twenty-four (24) hour care only for children who are between birth and three (3) years old. This license type may be approved with the following conditions:
1. If there is one (1) provider, there may be a maximum of four (4) children, with no more than two (2) of the four (4) children under twelve (12) months of age, including the provider's own children. The provider's own children, under the age of twelve (12), count in the capacity of four (4).
 2. If there are two (2) equally qualified providers, as specified in Section 7.707.31, B, 3, caring for children at all times when children are present, there may be a maximum of eight (8) children between birth and three (3) years old, and no more than four (4) of those children can be between birth and one (1) year old, including both providers' own children.
 3. The provider has completed the State Department approved Expanding Quality Infant/Toddler (EQ I/T) course of training; and
 4. A provider that has also been licensed as a regular and three (3) under two (2) provider in the past, and is approved for an infant/toddler license, has the flexibility to provide care on any given day for the ages and capacities of a regular or three under two license without written approval of the State Department, as long as the provider is in compliance with all applicable rules at all times.
- E. A large child care home is a family child care home that provides care for seven (7) to twelve (12) children.
1. Child care may be provided to children from birth to eighteen (18) years of age. The provider needs an assistant when the ninth child arrives at the facility.
 2. Care may be provided to no more than two (2) children under two (2) years of age.
- F. The Experienced Child Care Provider
1. An Experienced Child Care Provider (ECCP) home is a licensed child care home where care is approved for no more than nine (9) children of different age combinations depending upon which option the home is operating.
 2. The requirements for an Experienced Child Care Provider are:

- a. Have been a licensed family child care home provider in Colorado for at least the last six (6) consecutive years; equal experience operating as a licensed military family child care home is acceptable;
 - b. Have completed ninety (90) clock hours of training within the preceding six (6) years, including the State Department approved infant/toddler course. The ninety (90) hours of training does not include licensing training universal precautions, First Aid and CPR, and medication administration training;
 - c. Have had no adverse licensing action;
 - d. Have had no adverse action taken against the provider's license in the preceding two (2) years; and,
 - e. Comply with local zoning restrictions.
3. Applying for the Experienced Provider License

At least sixty (60) calendar days prior to the proposed date of operation as an experienced provider, the applicant must submit to the State Department a completed and signed experienced provider application form, which:

- a. Affirms compliance with all the rules for family child care home providers and experienced providers;
 - b. Affirms that the 90 clock hours of training have been completed;
 - c. Includes an agreement to waive the right to appeal rules related to capacity and space requirements; and,
 - d. Affirms the provider understands that the experienced provider's license will immediately revert to a regular license if capacities are exceeded at any time.
4. ECCP Options Table

The following chart describes the various options available to the experienced family child care home. Providers may change options without notifying the State Department, as long as the home is in compliance with one option at any one time and all licensing rules.

Experienced Child Care Provider License

All options include provider's own children under twelve (12) years of age.

Number of Children	Total Children in Care at a Given Time	Birth Up to School-Age	Additional School-Age	Number of Children Under 2 Allowed	(Of Those Under 2) Number Under 12 Months Allowed
Option 1	9	7	2	2	2
Option 2	9	8	1	2	2
Option 3	9	5	4	2	2
Option 4	9	6	3	3	2
Option 5	4	4	0	4	2

7.707.3 PERSONNEL

All infant/toddler family child care homes and large family child care homes must meet all of the personnel requirements in Section 7.707.31, except where rules specific to infant/toddler homes and large family homes replace other rules.

7.707.31 Requirements for Personnel

A. General Requirements

1. Primary providers must physically reside at the family child care home and must provide the child care.
2. Primary providers and/or substitutes must be at least eighteen (18) years of age. Aides must be at least sixteen (16) years of age. Aides and volunteers shall work under the direct supervision of a primary provider at all times.
3. Providers, employees, substitutes, and volunteers must demonstrate an interest in and knowledge of children and a concern for their proper care and well-being.
4. Children for whom the provider has custody and responsibility must not have been placed in foster care or residential care because the provider or other resident of the home was abusive, neglectful, or a danger to the health, safety, or well-being of those children.
5. Providers must not be under the influence of any substance that impairs their ability to care for children.
6. The primary provider is responsible for ensuring that all employees, substitutes and volunteers are familiar with the children in care, the Rules Regulating Family Child Care Homes rules, the home's policies, and the location of children's files and emergency numbers.
7. The primary provider must plan for the selection, orientation, training and/or staff development of any employee, volunteer, or substitute.
8. The primary provider must plan for and supervise the care and activities of children.
9. All providers and all persons residing in the home must submit to the State Department at time of original application on the form required by the State Department, a health evaluation signed and dated by a licensed physician or other health professional.
10. Subsequent health evaluations for the provider and children residing in the home who are less than twelve (12) years of age must be submitted every two (2) years or as required in a written plan signed by a physician or other health professional. A new family member and/or a new resident of the home must submit to the State Department, within thirty (30) days from the date the individual began living in the home, a State Department approved health evaluation form signed and dated by a licensed physician or other health professional.
11. If, in the opinion of a physician or mental health practitioner, a physical, medical (including side effects of medication), emotional, or psychological condition exists at any time that may jeopardize the health of children or adversely affect the ability of a provider to care for children, an equally qualified substitute provider must be employed, or child care services must cease until the physician or mental health practitioner states in writing that the health risk has been eliminated.

B. Infant/Toddler Home Provider Requirements

1. For an infant/toddler home with one (1) provider, that provider must be at least twenty-one (21) years of age.
2. For an infant/toddler home with two (2) providers, one (1) provider must be at least twenty-one (21) years of age and the second equally qualified provider must be at least eighteen (18) years of age.
3. Each provider must have completed one (1) year of supervised experience caring for children who are younger than three (3) years old. The provider must be able to submit to the State Department official written verification of the required experience. The experience may have been obtained as:
 - a. A Colorado licensed family child care home;
 - b. A military licensed child care home;
 - c. A provider, in a family foster home certified for children younger than three (3) years of age; or,
 - d. An employee in a licensed child care center in an infant and/or toddler program.

C. Large Home Provider Requirements

1. The licensee must be at least eighteen (18) years of age, the primary provider, and must reside in the large child care home.
2. The primary provider at a large child care home must meet one of the following:
 - a. A minimum of two (2) years of documented satisfactory experience in the group care of children under the age of six (6) years or as a licensed home provider in Colorado. Equal experience operating as an approved military child care home is accepted; or,
 - b. A minimum of two (2) years of college education from a regionally accredited college or university, with at least one (1) college course in early childhood education, plus one (1) year of documented satisfactory experience in the group care of children as:
 - 1) A licensed home provider in Colorado;
 - 2) A military licensed child care home;
 - 3) A Colorado certified family foster home; or,
 - 4) A staff member in a licensed child care center.
 - c. Current certification as a Child Development Associate (CDA); or,
 - d. Completion prior to licensing of the State Department approved Expanding Quality Infant/Toddler course; and,

- 1) A minimum of two (2) years of experience as a licensed child care provider holding a permanent license in Colorado immediately before becoming a licensee of a large child care home; or,
 - 2) A minimum of two (2) years of full-time experience in a licensed program. The group care shall have been with children who are under the age of six (6) years.
3. If the provider was previously licensed to operate a family child care home, there must have been no:
- a. In the past two years, the licensee has had no substantiated complaints with a severity level of one (1) to three (3), consistent or willful substantiated rule violations of ratio, supervision, safety, or injury to a child observed during any licensing visit, or adverse licensing action; and,
 - b. Adverse action on the license within the last two (2) years; and
 - c. Substantiated specific rule violations of ratios, supervision, safety, or injury to a child observed during any licensing visit in the past two (2) years.
4. Staff aides must be at least sixteen (16) years of age and must work directly under the supervision of the primary provider in charge and responsible for the care of the children. If left alone with children, the staff aide or assistant provider must meet all same age and training requirements as the provider.

7.707.32 Training

- A. Prior to issuance of the license, the licensee and primary provider must complete:
1. A State Department approved fifteen (15) clock hour pre-licensing course of training that includes nine (9) core knowledge standards. The content of one of the standards must specifically address appropriate guidance with children and that corporal discipline is never allowed. The clock hours of pre-licensing training do not include certification in First Aid, CPR, and medication administration training;
 2. A monitored written test or approved alternate method to verify knowledge and comprehension of the content of the training materials must be administered by the trainer to the trainee at the end of the pre-licensing training course. The trainee must have a passing score of no less than 80%. Part of approval of pre-licensing is that the provider must be able to access and understand the Rules Regulating Family Child Care Homes. The provider must take pre-licensing training for any original application except for change of address; or,
 3. Individuals who are currently director qualified or have a two (2) or four (4) year degree in early childhood education from a regionally accredited college or university are exempt from pre-licensing training, except for the one and one-half (1½) hours of universal precautions training, and the section of the pre-licensing training that covers the business requirements for operation of a home; and,

4. A state department approved training in standard precautions that meets current occupational safety and health administration (OSHA) requirements prior to working with children. This training must be renewed annually and may be counted towards ongoing training requirements. This standard precautions training can be included as part of the pre-licensing training, in which case the total number of hours for pre-licensing training required in 7.707.a1 is increased to sixteen (16) clock hours, and standard precautions training may count as no more than one (1) hour of the sixteen (16) clock hours; and,
 5. Documentation of this training must include the number of hours of training, completion date, and expiration date. Renewal of standard precautions training can be taken as a part of the first aid training, but must be in addition to the renewal First Aid training;
 6. First Aid and CPR training, for all ages of children from infant to twenty-one (21) years of age; and,
 7. The State Department approved course of training for medication administration.
 8. Effective December 31, 2016 all providers and staff must complete a building and physical premises training prior to working with children. The training must include:
 - a. Identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and
 - b. Handling and storage of hazardous materials and the appropriate disposal of bio contaminants.
 9. Effective December 31, 2016 each provider or staff member responsible for the collection, review, and maintenance of the child immunization records must complete the Colorado department of public health and environment (CDPHE) immunization course within thirty (30) calendar days of employment. This training must be renewed annually and may count towards ongoing training requirements.
 10. Effective December 31, 2016 each provider, staff member or regular volunteer working with children less than three (3) years of age must complete a department approved prevention of shaken baby/abusive head trauma training prior to working with children less than three (3) years of age. This training must be renewed annually and may count towards ongoing training requirements.
 11. Effective 12/31/2016 each provider, staff member or regular volunteer must complete a department approved training about child abuse prevention, including common symptoms and signs of child abuse within thirty (30) calendar days of employment. This training must be renewed annually and may count towards ongoing training requirements.
- B. Licensees requesting continuation of a permanent license shall:
1. Complete fifteen (15) clock hours of training each year. At least three (3) of the fifteen (15) clock hours must be in social emotional development; and,
 2. Ongoing training and courses shall demonstrate a direct connection to one or more of the following competency areas:
 - a. Child growth and development and learning courses that align with the competency domains of child growth and development;
 - b. Child observation and assessment;

- c. Family and community partnership;
- d. Guidance;
- e. Health, safety, and nutrition;
- f. Professional development and leadership;
- g. Program planning and development; and
- h. Teaching practices:
 - 1) Each one (1) semester hour course with a direct connection to the competency area listed in section 7.707.33, b, 2, a-g, taken at a regionally accredited college or university shall count as fifteen (15) clock hours of ongoing training.
 - 2) Training hours completed can only be counted during the year taken and cannot be carried over.
 - 3) The fifteen (15) clock hours of training do not include recertification in First Aid and CPR.
 - 4) To be counted for ongoing training, a provider must receive for each training, a training certificate that includes:
 - a) The title of the training; and,
 - b) The competency area; and,
 - c) The clock hours of the training; and,
 - d) The name and signature of the trainer or another approved method of verifying the name and qualifications of the trainer.
 - e) The trainer must have documentation of the qualifications for each topic of training conducted, which must be available for review by representatives of the State Department.

7.707.33 Substitutes

All infant/toddler family child care homes and large family child care homes must meet all of the substitute requirements, except where rules specific to infant/toddler homes and large family homes replace other rules.

7.707.331 General Substitute Information

- A. The provider must have a plan for an urgent, emergency, personal or family situation that requires the provider to leave the family child care home immediately.
- B. Any substitute must be at least eighteen (18) years old and capable of providing care and supervision of children, and handling emergencies in the absence of the provider.
- C. Prior to caring for children, any substitute, except a substitute used in an urgent, emergency, personal or family situation, shall become familiar with:

1. The Rules Regulating Family Child Care Homes;
 2. The home and provider's policies and procedures;
 3. The names, ages and any special needs or health concerns of the children; and,
 4. The location of emergency information.
- D. Parents or guardians must be notified each time a substitute is used to provide supervision of all children in care in the absence of the primary provider.
- E. Substitutes used in an urgent, emergency, personal or family situation must:
1. Be given the names, ages of the children, and any special needs or health concerns;
 2. Immediately call each parent(s) or guardian(s) to notify them that the provider has been called away from the family child care home for a personal or family emergency; and,
 3. If the substitute does not meet all the requirements for the position, must notify parent(s) or guardian(s) immediately to pick up their children.
- F. In the infant/toddler family child care home, the substitute for the provider(s) must meet the same age requirements as the provider as specified in Section 7.707.31. C.
- G. In the large family child care home, the substitute for the:
1. Primary provider must be equally qualified, as specified in Section 7.707.31, C, to provide care and supervision of children in the absence of the primary provider; and,
 2. Staff aide must be equally qualified, as specified in Section 7.707.31, A, 2, to substitute for the staff aide when necessary.

7.707.34 Employees

- A. Any employee whose activities involve the care or supervision of children; or who has unsupervised access to children must complete:
1. A fingerprint based criminal background record check as required at section 7.701.33 and,
 2. The State Department mandated automated system background check for child abuse and neglect as required at Section 7.701.32.
- B. Additionally, employees and substitutes for the primary provider, who provide care to children for fourteen (14) days (112 hours) or more per calendar year must complete:
1. Verification of current certification of First Aid and CPR for all ages of children;
 2. A statement of a current health evaluation, signed by an approved health care professional, that was completed within the last twenty-four (24) months;
 3. Verification of current State Department approved medication administration training; and
 4. Verification of current State Department approved universal precaution training.

7.707.35 Volunteers

- A. Volunteers cannot be used to meet staff to child ratio.
- B. Volunteers must be directly supervised by the child care provider, with no unsupervised access to children, and have clearly established written duties.
- C. Volunteers must be made familiar with the Rules Regulating Family Child Care Homes and the provider's written policies and procedures prior to assisting with the care of children.
- D. Any volunteer whose activities involve the care or supervision of children, who have unsupervised access to children; or who works more than fourteen (14) days (112 hours) a calendar year must complete:
 - 1. A fingerprint based criminal background record check as required at Section 7.701.33; and,
 - 2. The State Department required automated system background check for child abuse and neglect, as required at Section 7.701.32.

7.707.36 Employee, Volunteer, and Substitute Records

- A. Personnel files for each employee, substitute, and volunteer must contain all required information within thirty (30) calendar days of the first day of employment, volunteering, or functioning as a substitute.
- B. The personnel files for each employee, substitute, and volunteer shall be available for review by any representative of the State Department and must include:
 - 1. The name, address, telephone number, and birth date of the individual;
 - 2. Information received from the state automated systems check on child abuse;
 - 3. Information received from the fingerprint based criminal record background check as required at Section 7.701.33;
 - 4. A record of the dates and hours of employment, volunteering, or functioning as a substitute, including the first date and the final date;
 - 5. Names, addresses, and telephone numbers of persons to be notified in the event of an emergency; and,
 - 6. A signed statement:
 - a. Clearly defining child abuse and neglect pursuant to state law and outlining the employee, substitute, or volunteer's personal responsibility to report all incidents of suspected child abuse or neglect according to state law; and,
 - b. Verifying that the employee, substitute, or volunteer has read and understands the home's policies and procedures.
 - 7. Official written verification of training, completion and expiration dates as required for the position including:
 - a. Current First Aid and CPR for all ages of children;

- b. Universal precautions; and,
 - c. Medication administration training.
8. Official written verification of education, work experience, and previous employment, as applicable for the position; and,
9. If obtained, a copy of a current Colorado Early Childhood Professional Credential.

7.707.37 Administrative Records and Reports

- A. The provider must report in writing to the State Department any critical incident as defined at Section 7.701.52 and any fire that occurs at the home to which a local fire department has responded.
- B. The provider must immediately telephone and also submit to the State Department within twenty-four (24) hours, excluding weekends and holidays, a written report about any child who has been lost from the provider's care and whether authorities have been contacted or not. Such report must indicate:
- 1. The name, birth date, address, and telephone number of the child;
 - 2. The names of the parents or guardians and their address and telephone number if different from those of the child;
 - 3. The date, location, time, and circumstances when the child was last seen;
 - 4. All actions taken to locate the child, including whether local authorities were notified; and,
 - 5. The name of the provider and/or person supervising the child at the time the child was last seen.
- C. The home must have a written plan and emergency response procedures that explain, at a minimum, the life saving procedures that will be followed, and how the home will function during a fire, severe weather, lockdown, reverse evacuation, or shelter-in-place emergency situation. The plan must include, but not be limited to:
- 1. Prompt notification of parents or guardians;
 - 2. When local authorities will be notified; and
 - 3. How emergency transportation will be provided.
- D. The following records must be kept and maintained in the files at the home for three (3) years after termination of care or employment:
- 1. A daily attendance sign in/sign out sheet for each child, including the time the child arrives at and departs from the home;
 - 2. Children's records per Section 7.707.51.
 - 3. A list of current employees, volunteers, and substitutes work schedules;
 - 4. Employee, substitute, and volunteer records per Section 7.707.36; and

5. A record of visitors and volunteers in the home during scheduled business hours.

E. Confidentiality and Retention

1. Information and records concerning all employees, substitutes, volunteers, children and their families must be maintained confidential and all required records must be stored in a secure location.
2. Employee and children's records must be available, upon request, to authorized representatives of the State Department.

7.707.4 POLICIES AND PROCEDURES

7.707.41 Statement of Policies

- A. At the time of enrollment, the provider must give the parent(s) or guardian(s) a written statement of the home's policies and procedures, and provide the opportunity to ask questions. Written copies must be available either electronically or in hard copy. The provider must obtain a signed document stating that the parent(s)/guardian(s) have received the policies and procedures and by signing the policies and procedures document, the parent(s)/guardian(s) agree to follow, accept the conditions of, and give authorization and approval for the activities described in the policies and procedures.
- B. The written policies and procedures must be developed, implemented and followed, which include all updates, changes, and must include at a minimum the following information:
 1. Admission and registration procedures;
 2. Authorization of parents or other designees to pick up children, including the policy for how the provider will respond to individuals not authorized by parents/guardians to pick up a child and if a parent arrives under the influence of a controlled substance;
 3. An itemized fee schedule or individual fee agreement; fee expectations when fees may be reimbursed, when child does not attend program; when child is requested to leave the program; and, authorization for field trips;
 4. Procedure, including fees, when a child arrives or departs other than expected agreed upon care hours;
 5. Parent and provider responsibilities for special activities or programs outside of the licensed facility, such as inclusion and/or exclusion of children and the payment of additional fees;
 6. Hours of operation or individual hours agreement to include regularly closed days and applicable special program hours; policy on closure due to provider illness or family emergency and unscheduled closures;
 7. Procedure for managing a situation where children remain after the scheduled closure of the facility and the parent, guardian or other emergency contacts cannot be reached. This may include notification of the local county department of social services or police, if necessary. In the event that the provider has not been approved for overnight care, the provider cannot keep the children in care beyond midnight;
 8. Activities and snacks for children who remain at the home after closing;

9. Services offered for children with special needs in compliance with the Americans with Disabilities Act;
10. Acceptance of non-immunized children and notification if the provider's own birth, adopted, or step children have not been immunized;
11. Substitute care, and the clarification of responsibility for obtaining back-up care;
12. How and by whom children are supplied with appropriate clothing and equipment necessary to participate in indoor and outdoor activities, including helmets, wrist protection, and knee and elbow pads when riding a scooter, bicycle, skateboard or rollerblades;
13. Storage, loss, damage or theft of provider's or child's personal belongings;
14. Scheduled and unscheduled trips away from the family child care home; the requirement of notification of the excursion prior to the event and need for signed permission from the parent(s) or guardian(s) for the excursion and a phone number where the provider can be reached during a field trip;
15. Transportation availability, vehicle restraint requirements, and seating capacities;
16. Written authorization or denial for media use including, but not limited to, television shows, video, music, software used at the facility and time limits for all media use;
17. Meals, snacks, and parental notification of menus, and how children with food allergies are accommodated;
18. Policy on transitioning a child from either breast feeding to a bottle and/or cup, or from a bottle to a cup;
19. Behavior guidance and discipline appropriate to the age and development the child, including positive instruction, supporting positive behavior, discipline and consequences. Policies shall include how the provider will:
 - A. Cultivate positive child, provider, staff (if applicable) and family relationships;
 - b. Create and maintain a socially and emotionally respectful early learning and care environment;
 - c. Implement strategies supporting positive behavior, pro-social peer interaction, and overall social and emotional competence in young children;
 - d. Provide individualized social emotional intervention supports for children who need them, including methods for understanding child behavior; and developing, adopting and implementing a team-based positive behavior support plan with the intent to reduce challenging behavior and prevent suspensions and expulsions; and,
 - e. Access an early childhood mental health consultant or other specialist as needed.
20. Rest time and equipment;

21. Diapering and toilet training, including, but not limited to, process, communication, time frames, supplies, and expectation;
22. Provision of daily outside play time;
23. Use of and how often sunscreen is applied, including authorization for use of sunscreen, and how infants are protected from sun exposure without the use of sunscreen;
24. Protection of children from exposure to second hand smoke;
25. Notification of parents or guardians for handling children's illnesses, accidents, injuries, or other emergencies;
26. Specific circumstances and symptoms for not admitting ill children and conditions for re-admittance;
27. Storing, administering, recording and disposing children's medicines in compliance with the State Department approved medication administration course;
28. Adverse weather precautions to include temperature extremes; inclement weather expectations and procedures, and fee expectations if home is closed during inclement weather and notification of how to find out;
29. Emergency response procedures that explain, at a minimum, the life saving procedure that will be followed and how the home will function during a fire, severe weather, lockdown, reverse evacuation, or shelter-in-place emergency situation;
30. Reporting of child abuse, including the name of the county department of social/human services and phone number of where a child abuse report should be made;
31. Filing a complaint about a family child care home, including the name, address and telephone number of the Colorado Department of Human Services, Division of Child Care, where a complaint may be filed;
32. Where a parent may obtain the official Rules Regulating Family Child Care Homes, including the Secretary of State's website;
33. What steps are taken prior to the suspension, expulsion or request to parents or guardians to withdraw a child from care due to concerns about the child's behavioral issues, these procedures must be consistent with the policy on guidance, positive instruction, discipline and consequences, and include documentation of the steps taken to understand and respond to challenging behavior; and
34. Regularly identifying on a routine basis recalled toys, equipment, and furnishings and developing a plan to remove the recalled items from the home.

7.707.5 ADMISSION PROCEDURE

- A. An admission process must be completed prior to the child's attendance at the home and must include:
 1. A pre-admission interview, by telephone or in person, with the child's parent(s) or guardian(s) to determine whether the services offered by the home will meet the needs of the child and the parent(s) or guardian(s);

2. An explanation of the provider's written policies and procedures. The child's parent(s) or guardian(s) must sign a statement indicating that they have read, received, and understand the provider's current policies and procedures;
3. A plan for payment of fees;
4. Completion of the registration information and authorizations required for inclusion in the child's record.

B. At the time of admission, the provider must obtain:

1. Contact information for parents or guardians;
2. Contact information for other responsible adults;
3. Where the parent or guardian and can be reached in the event of an accident, illness or other emergency; and,
4. The telephone number of the child's health care provider;
5. Written authority to arrange for medical care in the event of an emergency; and
6. Names of individuals authorized to take the child from the home.

7.707.51 Children's Records

A. An admission record must be completed for each child prior to or at the time of the child's admission and updated annually, unless otherwise specified in these rules. The admission record must include:

1. The child's full name, date of birth, current address, and date of enrollment;
2. Family member names;
3. Parent(s) and guardian(s) home and e-mail addresses; telephone numbers, including home, work, cell and pager numbers, if the parent chooses to provide those numbers; employer name and work address; and, any special instructions as to how the parent(s) or guardian(s) may be reached during the hours that the child is in care at the child care home;
4. Names and telephone numbers of persons other than parent(s) or guardians(s) who are authorized to take the child from the family child care home;
5. Names, addresses, and telephone numbers of persons who can assume responsibility for the child in the event of an emergency if the parent(s) or guardian(s) cannot be reached immediately;
6. Names, addresses, and telephone numbers of the child's health care provider, dentist, pedadontist, and hospital of choice, if applicable;
7. Health admission information, including a health care plan, chronic medical conditions, allergies, and immunization history, shall be provided to the child care provider the first day the child attends the family child care home;

8. A dated, written authorization for emergency medical care signed and updated annually by the parent(s) or guardian(s);
 9. A written record of any serious accident, illness, or injury occurring during care must be retained in each child's record, with a copy provided to the parent or guardian;
 10. Written authorization, obtained in advance of the event from a parent or guardian, for a child to participate in field trips or excursions, whether walking or riding in an approved vehicle;
 11. Written authorization for media use including, but not limited to, television and video viewing, music, video games, and computer use. The authorization must include approved time limits. The authorization form only needs to be on file if media use is not addressed in the home policies and procedures statement; and
 12. Written authorization for special activities (see Section 7.714.1).
- B. All forms contained in the admission record must be current and accessible to providers, substitutes, and representatives of the State Department.
- C. The complete file for each child in care must be retained by the home for at least three years after the child leaves the home. It must be available without restriction to the licensing agency and to the child protective services worker, police, child's parent(s) or guardian(s).
- D. Except for the licensing authority, child protective services worker, police, and the child's parent(s) or guardian(s), children's reports and records and facts learned about children and their families must be kept confidential.

7.707.6 COMMUNICATION, EMERGENCY AND SECURITY PROCEDURES

- A. The home must have a working unblocked telephone that has the capacity to receive all incoming and Reverse 911 calls, and record messages during child care hours.
1. The telephone must be on the premises in the general area of the primary provider.
 2. The telephone number must be made available to each parent and the licensing authority.
 3. The following emergency telephone numbers must be posted near the telephone:
 - a. 911 or the alternate emergency number for local fire or police;
 - b. Name and phone number of at least one (1) designated emergency substitute for the provider;
 - c. Name and physical address of the family child care home;
 - d. Hospital or emergency medical clinic;
 - e. Local health department;
 - f. Rocky Mountain Poison Center number at 1-800-222-1222; and,
 - g. Location of children's personal emergency numbers.

4. The telephone and alternative emergency telephone numbers for parent(s) or guardian(s) and other authorized emergency contacts of each child in care must be accessible in one designated place.
5. If 911 is not available, the provider must have a plan for accessing emergency transportation at all times.
6. The provider or substitute must notify parent(s) or guardian(s) when accidents, injuries, or illnesses occur.
7. Emergency health care providers' numbers must be accessible in one designated place.

B. Release of Children

The provider must release the child only to the person(s) to whom the parent or guardian has given written authorization. Written authorization must be maintained in the child's record. In an urgent and/or emergency situation, the child may be released to a person twelve (12) years of age or older for whom the child's parent or guardian has given verbal authorization. If the provider who releases the child does not know the person, picture identification must be required to assure that the person is authorized to pick-up the child.

C. Sign In/Out Procedure

The provider must maintain a daily sign in/out method containing the date, the child's name, the time that the child arrived at and left the home, and the parent, guardian, or authorized person's signature. A full signature is required by the parent or guardian every time the child arrives at or leaves the home. The provider may sign in or out children who arrive directly from school or an activity as needed on a daily basis. The provider must use their full signature. The parent/guardian must provide a signature on a weekly basis to verify the record.

D. Visitors

Visits from all non-family members to the home must be on the sign in/out log, including the name, date, and arrival/departure times.

7.707.7 CHILD CARE SERVICES

7.707.71 Health Care, Medication, Communicable Disease, Sun Protection, Second Hand Smoke, and First Aid Supplies [Rev. eff. 6/1/12]

A. Statements of Health Status and Immunization

1. At the time of admission, the parent or guardian must provide the following information to the provider for each child entering the home:
 - a. Health information, including any known allergies, medication being taken and possible side effects, special diets required, and chronic health conditions;
 - b. Information and health care plan on the care of each child who has an identified health condition or developmental concerns, including, but not limited to seizures, asthma, diabetes, allergies, heart or respiratory conditions, and physical or emotional disabilities; and,



Development Plan, Use Variance, & Conditional Use Application Requirements & Checklist

Submittal Checklist

General Requirements

- General Applicant and Owner Acknowledgement form
- Project Statement to include the following information:
 1. Description: Describe the project and/or land uses proposed
 2. Justification: Justify the approval of the project and address the review criteria
 3. Issues: Explain how the issues identified during the pre-application process have been addressed or mitigated
- Development Plan showing all the "Plan Contents" below
- Mineral Estates Owner Notification Certification Affidavit (Public Hearing Items ONLY)
- Pre-application summary

Reports and Studies – Requirement for each report is determined prior to submittal.

- Geologic Hazard Report
(See item 3 Subdivision Policy Manual - <https://coloradosprings.gov/public-works/page/subdivision-policy-manual>)
- Drainage Reports
(see item 4 Subdivision Policy Manual - <https://coloradosprings.gov/public-works/page/subdivision-policy-manual>)
- Traffic Impact Analysis
- Submittal of the Hydraulic Grade Line (HGL) Request Form to Colorado Springs Utilities (CSU)
Email completed form and map to waterplanning@csu.org or fax to 719-668-5651 prior to application submittal.
- Submittal of the Wastewater Facilities Master Report to Colorado Springs Utilities (CSU)
Email completed form and map to wwmasterplansubmit@csu.org prior to application submittal.

**This checklist is intended to assist in preparing a complete plan that will address all City development standards, requirements, and review criteria. The following information must be included with the plan submittal. If justified, the City may exempt any requirement. *The Land Use Review Division may require additional information in accordance with City Code section 7.5.202.E.*

Plan Contents

All plans should be neat, clear, legible and drawn to a standard Engineer's scale. Inaccurate, incomplete, and poorly drawn plans may be rejected. Plans must not exceed 24 in. x 36 in. and should be foiled no larger than 9 in. x 14 in. with the lower right-hand corner exposed.

Overall Page Layout

A complete development plan will include the pages listed in the order listed below.

- Cover Page
- Site Plan
- Preliminary Grading Plan (see item 5 under the Subdivision Policy Manual)
- Preliminary Utility Plan (click on Preliminary Plan checklist under the General section, this section also includes the general notes)
- Landscape (Label the plan as Preliminary or Final)
- Elevations Plan
- Lighting Plan



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If applicable:

- Land Suitability Analysis
- Streamside Plan
- Coordinated Sign Plan

Include the information listed below on all plan sheets.

- Project name
- File number in the lower right hand corner
- Sheet (X of X) in the lower right hand corner
- North arrow
- Scale (both written and graphic)

Cover Page

- Vicinity map
- Sheet index
- Owner/developer/applicant name
- Date of preparation
- Include a site data section that includes the following:
 - Use = _____ (Include use as defined by City Code)
 - Total square footage of each use
 - Total development size in acres or square feet
- Legal description chose one of the following:
 1. Development Plan on an already platted lot - include the subdivision legal description only.
 2. Development Plan on an unplatted single lot (also in for final plat) - include the metes and bounds description AND a "to be platted as insert subdivision legal"
 3. Development Plan submitted for an overall development with several filings (only one filing being platted at time of development plan) - include the overall metes and bounds description for the development plan area AND a 'phase 1 to be platted as insert subdivision legal' for the current portion being platted as well as the note "Further phases to be platted in future".
- Site address
- Building height
- Zone district allowances for height, setbacks, and lot coverage
- Tax Schedule Number(s)
- Master Plan file number (if applicable)
- Concept Plan file number (If applicable)
- Existing zone district
- Proposed zone district – include Ordinance numbers and conditions of record
- Schedule of development
- Parking table

Use	Parking Ratio	SF or units	Parking required	Parking provided
Retail	1/300	1200 sf	4	6
Multi-family	1.5/1 bed	6 units – 1 bed	9	10
Total			13	16



Development Plan, Use Variance, & Conditional Use Application Requirements & Checklist

Accessible (included in total count)	2	2
<i>** if possible, consider commercial center parking (1 space per 250 square feet) for developments containing three or more tenants</i>		
<ul style="list-style-type: none"> ▪ PUD Projects ▪ For commercial projects include use, maximum height, lot coverage. ▪ For residential projects include <ul style="list-style-type: none"> ○ height, type and density ○ front, side and rear setbacks (include a lot typical) ○ If any lots are next to tracts or second street frontages, specify setback ○ Lot coverage (if appropriate specify building heights for specific lot coverages) ○ building envelopes ○ for any nonstandard lots show the setbacks on the plan ○ driveway lot coverage (for unique lots, this can be specified per lot) ○ driveway length ○ lot width ○ lot size ○ for smaller lots, consider limitation on decks, out buildings, etc. ○ for new developments include a note that no variances will be allowed 		

Include a general notes section that includes the following notes:

- FEMA floodplain statement:
Include community map numbers and date, indicate whether the site is or is not located within a designated floodplain.
- Geologic-hazard statement disclosure statement (if applicable):
"This property is subject to the findings summary and conclusions of a Geologic Hazard Report prepared by _____ dated _____, which identified the following specific geologic hazard on the property: _____ . A copy of said report has been placed within file # _____ or within the subdivision file _____ of the City of Colorado Springs Planning and Development Team. Contact the Planning and Development Team, 30 South Nevada Avenue, Suite 105, Colorado Springs, CO, if you would like to review said report."
- For nonuse variances associated with the site, include the file number and explain what the variance approved.
- Include any private easement notes and reception numbers for the easements.
- Include any notes related to special districts.
- If there are any tracts or common areas, include ownership and maintenance details.
- If needed, include notes pertaining to street improvements, drainage requirements, utilities, etc.
- If the site is to be phased, include a phasing table that includes the phase numbers and a description of each phase to include public utilities, drainage, and site improvements.
- Include the ADA Design Professional Standards statement:
The parties responsible for this plan have familiarized themselves with all current accessibility criteria and specifications and the proposed plan reflects all site elements required by the applicable ADA design standards and guidelines as published by the United States Department of Justice. Approval of this plan by the City of Colorado Springs does not assure compliance with the ADA or any other Federal or State accessibility laws or any regulations or guidelines enacted or promulgated under or with respect to such laws. Sole responsibility for compliance with Federal and State accessibility laws lies with the property owner.



Development Plan, Use Variance, & Conditional Use Application Requirements & Checklist

- If a use variance or conditional use is being requested, include a statement that explains what the use variance or conditional use would grant.
 - If there is any signage on the site include the statement:
Signage is not approved with this plan, a sign permit is required prior to construction.
 - "All improvements depicted within this plan are required by City Code and/or are a condition of approval to ensure compliance with the City's review criteria. Any private improvements provided as extra, will be labeled as "EX" and will not be included in the calculated amount required for a financial assurance."
 - "Accessible routes, including ramps and sidewalks, within the public right-of-way shall be per the City's Standard drawings and Specifications. City's Inspector will have the final authority on accepting the public improvements."
 - Include an amendment History Box for any amendments to the plans.
- | <u>File number</u> | <u>description/ special note</u> |
|---------------------------|----------------------------------|
| <i>Insert file number</i> | <i>Insert note</i> |
- Avigation easement note, select the correct option:
 - If a development plan is submitted concurrent with a subdivision plat include the note:
An avigation easement effecting the subject property and development is therein established by the "Subdivision Plat Name" subdivision plat. This easement is subject to the terms and conditions as specified in the instrument recorded under reception no. 217069667 of the records of El Paso County, Colorado.
 - If a development plan has been submitted on an existing platted lot without an existing avigation easement:
An avigation easement will need to be prepared and recorded going through the process adopted by Colorado Springs Real Estate Services. Please contact Barbara Reinardy at (719) 385-5601 or breinardy@springsgov.com for the forms and procedure.

SITE PLAN COMPONENTS

- | <u>Land Use</u> |
|--|
| <ul style="list-style-type: none"> ▪ If at all possible, DO NOT use numbered callouts for items. ▪ Graphically show the following: <ul style="list-style-type: none"> ○ All easements (utilities, public improvement easements, drainage, preservation and access) and reception numbers ○ Include the area and dimension of each lot and tract. Label the lots and tracts, Ex Lot 1 or Tract A. ○ City/County boundaries ○ Property boundaries and dimensions ○ Proposed zone district boundaries ○ Proposed public or private open space and common areas include size and dimension. ○ Existing historic sites and resources ○ Preservation easements and no build lines. ○ Show the location of all freestanding site exterior light fixtures on the site plan and landscape page. |
| <u>Streets/Alleys</u> |
| <ul style="list-style-type: none"> ▪ Illustrate and label all streets and intersections with street name, acceleration and deceleration lanes, classification, public or private and ROW width. ▪ Include pavement, curb type and other improvements. ▪ Show and label all access points to the property from adjacent streets and alleys ▪ Show and label all speed line of sight visibility area at all street intersections |



Development Plan, Use Variance, & Conditional Use Application Requirements & Checklist

- If constructing new road ways, show all existing and proposed medians, new acceleration and deceleration lanes, traffic islands, traffic control devices, roundabouts, and typical cross sections. Provide dimensions and size and identify maintenance responsibilities.
- Show any existing or proposed encroachments into the public ROW that require a revocable permit. Submit the revocable permit application as part of the submittal package. Include approved permit number on the plan.

Sidewalks/Trails

- Show all existing and proposed locations, dimensions and surface materials of all sidewalks.
- Show pedestrian ramps at all pedestrian crossings and intersections with reference to City standard type. Also show stripping by pavement marking or different pavement material at pedestrian crossings.
- Show all sidewalks connecting building entries to public sidewalks or internal sidewalks.
- To meet ADA requirements:
 - Indicate accessible route from public ROW to each building. (Note 60% of all public entrances must meet the ADA Standards 206.4.1.)
 - Provide ADA accessible ramps along all ADA accessible corridors.
- Show and label existing and proposed public improvement easements for sidewalks and pedestrian ramps outside of dedicated ROW areas.
- For detached sidewalks, show the distance from the back of curb to the edge of sidewalk.
- Indicate the location and include a detail for bicycle parking. Ensure the location does not conflict with the ADA accessible route or pedestrian routes.
- Show all existing and proposed trails, and include dimensions and surface materials of all trails. Include a note on construction of the trail and maintenance of the trail.
- If there is a City Parks Plan that affects the property, include the name of the Parks Plan.

Internal Parking lots

- Show the location and dimension of parking lots/maneuvering areas and drive aisles. Indicate pavement material
- Show the location and dimensions of all loading areas and bays.
- For drive thru lanes include stacking distances and widths to meet code requirements.
- Indicate how fire lanes are to be identified and mark location on plans.
- For residential projects, when adjacent to a principal arterial roadway, indicate sound barrier walls and show a minimum of 40' spacing from roadway or provide alternative sound mitigation methods (sound studies).
- For residential project driveways, show less than 8' or more than 18' to sidewalk and travel-way.
- Show the location and number of all regular, compact and accessible spaces. For ADA accessible parking stalls include adjacent aisles and signage. Include clear identification of ADA route from stalls to designated AA building entry.
- Provide a typical or detail for all regular, compact and ADA parking spaces.
- Show the location of loading docks.

Buildings and Structures

- Graphically show the following:
 - The existing land use, square footage, dimensions and location for any existing buildings to remain.
 - The use, square footage, dimensions and location of each proposed building.
 - Show location and type of signage (free-standing and low profile).
 - *Note: Sign design is being reviewed for compatibility with surrounding uses. Additional notes may be required on the plan to ensure compatibility.*



Development Plan, Use Variance, & Conditional Use Application Requirements & Checklist

Review Criteria

DEVELOPMENT PLAN REVIEW CRITERIA:

The City will review the development plan using the following criteria. A development plan shall be approved when the plan complies with all of the requirements of the zone district in which it is located, is consistent with the intent and purpose of the Zoning Code and is compatible with the land uses surrounding the site.

1. The details of the use, site design, building location, orientation and exterior building materials are compatible and harmonious with the surrounding, neighborhood, buildings and uses, including not-yet-developed uses identified in approved development plans.
2. The development plan substantially complies with any City- adopted plans that are applicable to the site, such as master plans, neighborhood plans, corridor plans, facilities plans, urban renewal plans, or design manuals.
3. The project meets dimensional standards, such as but not limited to, building setbacks, building height and building area set forth in this chapter, or any applicable FBZ or PUD requirement.
4. The project grading, drainage, flood protection, storm water quality and storm water mitigation comply with the City's drainage criteria manual and the drainage report prepared for the project on file with the City Engineering Department.
5. The project provides off-street parking as required by this chapter, or a combination of off-street or on-street parking as permitted by this chapter.
6. All parking stalls, drive aisles, loading/unloading areas, and waste removal areas meet the location and dimension standards set forth by this chapter.
7. The project provides landscaped areas, landscape buffers, and landscape materials as set forth in this chapter and the landscape design manual.
8. The project preserves, protects, integrates or mitigates impacts to any identified sensitive or hazardous natural features associated with the site.
9. The building location and site design provide for safe, convenient and ADA-accessible pedestrian, vehicular, bicycle, and applicable transit facilities and circulation.
10. The number, location, dimension and design of driveways to the site substantially comply with the City's traffic criteria manual. To the extent practicable, the project shares driveways and connect to drive aisles of adjoining developments.
11. The project connects to or extends adequate public utilities to the site. As required by Colorado Springs Utilities, the project will extend the utilities to connect to surrounding properties.
12. If necessary to address increased impacts on existing roadways and intersections, the project includes roadway and intersection improvements to provide for safe and efficient movement of multi-modal traffic, pedestrians and emergency vehicles in accordance with the City's traffic criteria manual, public safety needs for ingress and egress and a City accepted traffic impact study, if required, prepared for the project.
13. Significant off-site impacts reasonably anticipated as a result of the project are mitigated or offset to the extent proportional and practicable. Impacts may include, but are not limited to light, odor and noise.

CONDITIONAL USE REVIEW CRITERIA:

The Planning Commission may approve and/or modify a conditional use application in whole or in part, with or without conditions, only if all three (3) of the following findings are made:

- A. Surrounding Neighborhood: That the value and qualities of the neighborhood surrounding the conditional use are not substantially injured.
- B. Intent of Zoning Code: That the conditional use is consistent with the intent and purpose of this Zoning Code to promote public health, safety and general welfare.



Edited 8/22

**Development Plan,
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- C. Comprehensive Plan: That the conditional use is consistent with the Comprehensive Plan of the City.

USE VARIANCE REVIEW CRITERIA:

The following criteria must be met in order for a Use Variance to be granted:

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to the property or class of uses in the same zone so that a denial of the petition would result in undue property loss; and
2. That such variance is necessary for the preservation and enjoyment of a property right of the petitioner; and also,
3. That such variance will not be detrimental to the public welfare or convenience nor injurious to the property or improvements of other owners of property.

Lange, Peter C

From: Sandra Browne <brownesandra279@gmail.com>
Sent: Thursday, December 8, 2022 5:08 PM
To: Lange, Peter C
Subject: 50 Mikado Dr Daycare

CAUTION! - External Email. Malware is most commonly spread through unknown email attachments and links. DO NOT open attachments or click links from unknown senders or unexpected email!

Mr Lange

As a 30 year resident of the Ravenhills community I am strongly opposed to the proposed large scale day care center at 50 Mikado Drive 80919 We are a small association of approx 225 homes our neighborhood has maintained its value partly because we do not have commercial business operating out of homes. This proposal would cause more traffic , increased use of our private trails parks and open space that WE homeowners pay for. Additionally we do not allow street parking.

I have not remained in this neighborhood so I could one day live next door to a business !

Thank you
Sandra Browne

Sent from my iPhone

Lange, Peter C

From: Jim-Mary SCHAFFNER <j-mschaffner@msn.com>
Sent: Wednesday, November 30, 2022 2:53 PM
To: Lange, Peter C
Cc: Diversified Prop Management; kelly@springshomes.com; Amy Personius; directoratlarge@ravenhillshoa.org; kris.ravenhills@gmail.com; crhptic@yahoo.com; scott.bormanis@gmail.com; susiecoop@msn.com
Subject: Potential Development Proposal File Number CUPD-22-0015
Attachments: Development Proposal-compressed.pdf

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Peter,

Thank you for the chance to comment on this project.

I am against approving this project. Mikado Dr. is the only ingress/egress for 65 homes and the Rockrimmon Elementary School. Traffic is already heavily congested during early morning and midafternoon. On school days, vehicles, picking up students, form a waiting line that starts at the school and extends past the opening to the cul-de-sac where 50 Mikado Dr. is located (See red line on map below). This project will only add to a growing area of concern for the community.

James Schaffner

120 Mikado Dr. E

719-528-5235

Lange, Peter C

From: Conrad SWmith <punrad53@gmail.com>
Sent: Friday, December 9, 2022 7:51 AM
To: Lange, Peter C
Subject: Day Care Proposal with the City - [#XN1384438]

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Peter,

We are members of the Raven Hills Homeowners and we have no objection to the daycare permit.

We disagree with the board's position.

Thank you

Conrad Smith
175 Mikado Dr East
Colorado Springs, CO 80919
719+-590-9270

Lange, Peter C

From: Sally Sunkara <sally.sunkara@gmail.com>
Sent: Thursday, December 8, 2022 8:20 PM
To: Lange, Peter C
Subject: Daycare

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Mr Lange,

We are new residents in the Raven Hills Community and wish to express our objections to the proposed daycare in our community. We agree that a daycare could set a precedent for other commercial enterprises that we don't want. Also traffic increases and safety concerns are issues as well. Thank You

Sally and Swamy Sunkara
161 Anchoria Way

Lange, Peter C

From: meg thompson <makth@hotmail.com>
Sent: Thursday, December 8, 2022 12:08 PM
To: Lange, Peter C
Subject: File Number:CUPD-22-0015 /Day-care proposal to increase from 6 children to 12 children at 50 Mikado Drive

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Sir: My wife and I are not in favor of this proposed increase in the size of a day care. There is already an almost daily problem with traffic jams to the elementary school at the end of the street. Adding any additional traffic would only further compound the issue. There are many days when it is extremely difficult to get to our own driveway. There is also a problem with cars speeding both ways on the street with traffic to the school and adding more cars would make this worse.

V/R

Michael/ Margaret Thompson
35 Mikado Drive West
Colorado Springs, Colorado 80919
Sent from [Mail](#) for Windows

Lange, Peter C

From: Allan Todd, Pagecafe <allan@pagecafe.com>
Sent: Friday, December 9, 2022 9:55 AM
To: Lange, Peter C
Cc: Diversified Association Management
Subject: Raven Hills Day Care Proposal
Attachments: RH daycare Documents.pdf

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Dear Mr Lange,

I strongly oppose the approval of a rezoning request submitted by Stacie Warren (info below and attached). I own my home and live in Raven Hills. I believe the creation of large child care business in my neighborhood violates the Raven Hills Covenants which prohibit commercial enterprises and will harm the property values of all Raven Hills owners. Approval of this business would set a precedent for other commercial uses and generate traffic and noise for surrounding homes.

Please disapprove this conditional use rezoning request.

Stacie Warren
Parcel Number: 6307302051
Project Title: Waldorf Sunflower House Large Home Childcare Licence
File Number: 11885083
Childcare License Number: 1757045

Thank you.

Make it a great day!
AI

Allan Todd
37 Raven Hills Ct, Colorado Springs, CO 80919
Cell & Text: (719) 200-6360
Email: al@pagecafe.com
[LinkedIn](#) | [Instagram](#) | [Facebook](#)



Project Statement for Conditional Use Permit Application

50 Mikado Drive East, Colorado Springs, CO 80919

November 15, 2022

Stacie Warren

Parcel Number: 6307302051

Project Title: Waldorf Sunflower House Large Home Childcare Licence

File Number: 11885083

Childcare License Number: 1757045

Description: I am applying for a rezoning variance for my property, where I am currently zoned for a regular-sized State Licensed Family Childcare Home. Instead of the six full-time children with two part-time children with the regular license, I would like to expand the capacity and rezone for a Large Family Childcare License, which allows up to twelve children ages 30 months to seven years old. With this licensed capacity increase, we would be able to care for up to twelve children with one full-time, non-resident assistant.

My business hours are 8:00 am to 3:30 pm., which is during regular work weekdays and closed for weekends, week nights, and holidays. Colorado is currently experiencing a licensed childcare shortage, and I am located within a childcare dessert, meaning there are not enough licensed early childhood childcare facilities in this area to meet the number of children ages newborn to five years old in need of care. All of my Large Family Childcare Licensing criteria has been met with the exception of zoning.

Justification: There would be no changes made to the size of my home nor any new structure or building erected to increase capacity, as my home is already large enough to accommodate additional children. The classroom is on the main level of our house in the front living room and formal dining room area, as well as in the kitchen and sunroom. All included, there is approximately 800 square feet of indoor space designated for the children that has been approved by the Colorado Department of Early Childhood licensing agency. The children's indoor space has multiple emergency evacuation routes.

I have a six-foot privacy cedar privacy fence surrounding the entire outdoor play area, which is 2,290 square feet of space. There is no need to do anything that requires grading, setbacks, or addressing building heights or areas. There is also no need to add additional landscape areas or buffers. This is a privatized home business within a residential area which does not cause any necessity to add ADA features, additional bike or pedestrian paths, nor additional transit facilities or circulation. This rezoning will not require any additional utilities installed to the home nor need to connect to any surrounding properties. There will be no increased impact on the existing roads and intersections, so no improvements should need to be made to assist with pedestrian and vehicle or emergency traffic. Nor will there be any burden placed on public safety. We will continue to reside at this home as well as use it for the home-based childcare.

We play outside at recess, however, the privacy fence and having permanent play structures at least five feet from the neighboring fence line, buffers any extra noise from play. In addition, learning to be respectful towards our neighbors is a constant in our early childhood curriculum. We are open only during a typical workday and are closed during evenings and holidays when families are typically off from work. In addition, Rockrimmon Elementary School, down the street from my property, starts later than we do and gets out later than we do so our incoming and outgoing traffic do not coincide.

There will be no additional lights or outdoor odors projecting from our home due to the childcare. We currently use umbrellas for shade to protect the children and my family from UV rays, closing them when not in use. We may install one or two shade sails at a later time but have no such current plans at this time. Other than that, there will be no play structure that is taller than our privacy fence.

I do not anticipate having any negative impact on the value of surrounding properties or the quality of life of my neighbors, most of whom are at work while my childcare program is operating. This childcare should help improve public safety and general welfare as this provides a desperately needed service to families in our area. In addition, childcare regulations require the premises to be kept in clean, safe condition. I reinvest business profits into landscaping to keep our property attractive and well-kept.

All of my adjoining property owners are aware of my childcare program and have no complaints of noise or traffic and parking issues, etc. It is a major goal to maintain healthy, respectful relationships with my neighbors and not to detract from anyone's peace or enjoyment of their own property. I have checked in with my neighbors on multiple occasions to ensure the children pose no interference with the quality of their daily life.

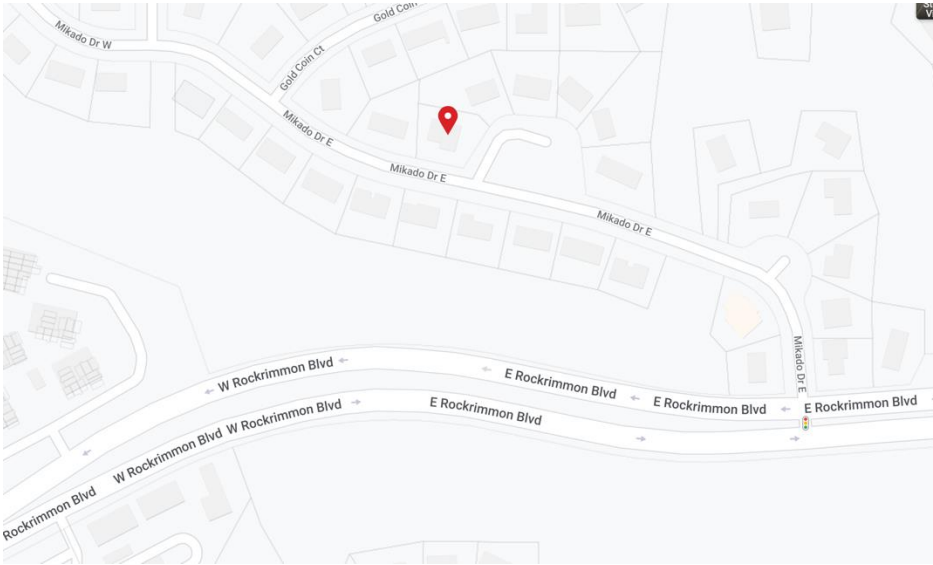
As far as parking and traffic is concerned, I have a wide driveway and live on a cul-de-sac that has seven open, non-dedicated parking spaces for any overflow parking. Additionally, my parents stagger drop-off and pick-up times, so there are rarely more than two or three cars at one time, with each vehicle staying between three to five minutes per visit.

Issues: None brought up during the pre-application process.

Waldorf Sunflower House Development Plan for Conditional Use Permit

50 Mikado Drive East, Colorado Springs, CO 80919

Page 1 of 1



Vicinity Area Map with cross streets

Site Address: 50 Mikado Drive E., Colorado Springs, CO 80919

Property Owners: Stacie Warren and Robert Warren

Parcel No: 6307302051

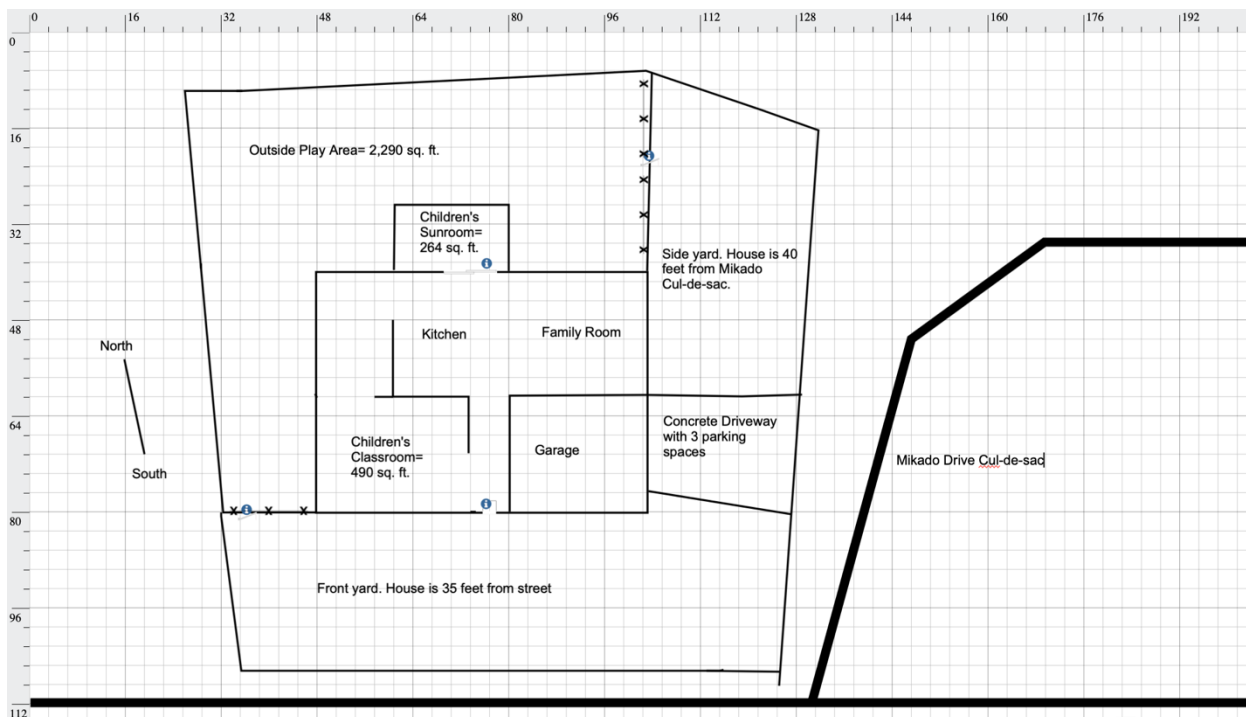
File Number: 11885083

Zoning: R1-6 HS

Plat No: 3394

Legal Description: Lot 174 Rockrimmon Sub, Raven Hills Fil No 3

Lot size: 12,000 sq. ft.



DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ROCKRIMMON SUBDIVISION, RAVEN HILLS THIS DECLARATION, made this Second day of May AD, 1969 by ROCKRIMMON LAND COMPANY, WITNESSETH: WHEREAS, Rockrimmon Land Company is the owner of certain real property in the County of El Paso, State of Colorado, which is more particularly described in Exhibit A which is attached hereto and made a part of this declaration; and WHEREAS, Rockrimmon Land Company desires to protect and enhance the value, desirability and attractiveness of said property for all parties having or acquiring any right, title or interest in the property described in said Exhibit A; and to this end, will convey the real property described in Article II subject to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and WHEREAS, Rockrimmon Land Company, in order to insure that the purposes of this declaration are carried out, has caused the incorporation under the laws of Colorado of Raven Hills Homeowners Association, a non-profit corporation with the power of administering and enforcing the covenants, conditions and restrictions and collecting hereinafter set forth; NOW THEREFORE, Rockrimmon Land Company hereby declares that the real property described in Exhibit A is and shall be held, transferred, sold, conveyed and occupies subject to the following covenants, conditions, restrictions, easements, charges, and liens, hereinafter sometimes referred to collectively as "covenants and restrictions", all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said property. These covenants and restrictions, shall run with said real property and shall be binding on all persons having or acquiring any right, title or interest in said property or any part thereof, and shall inure to the benefit of each owner thereof.

(EXCERPT)

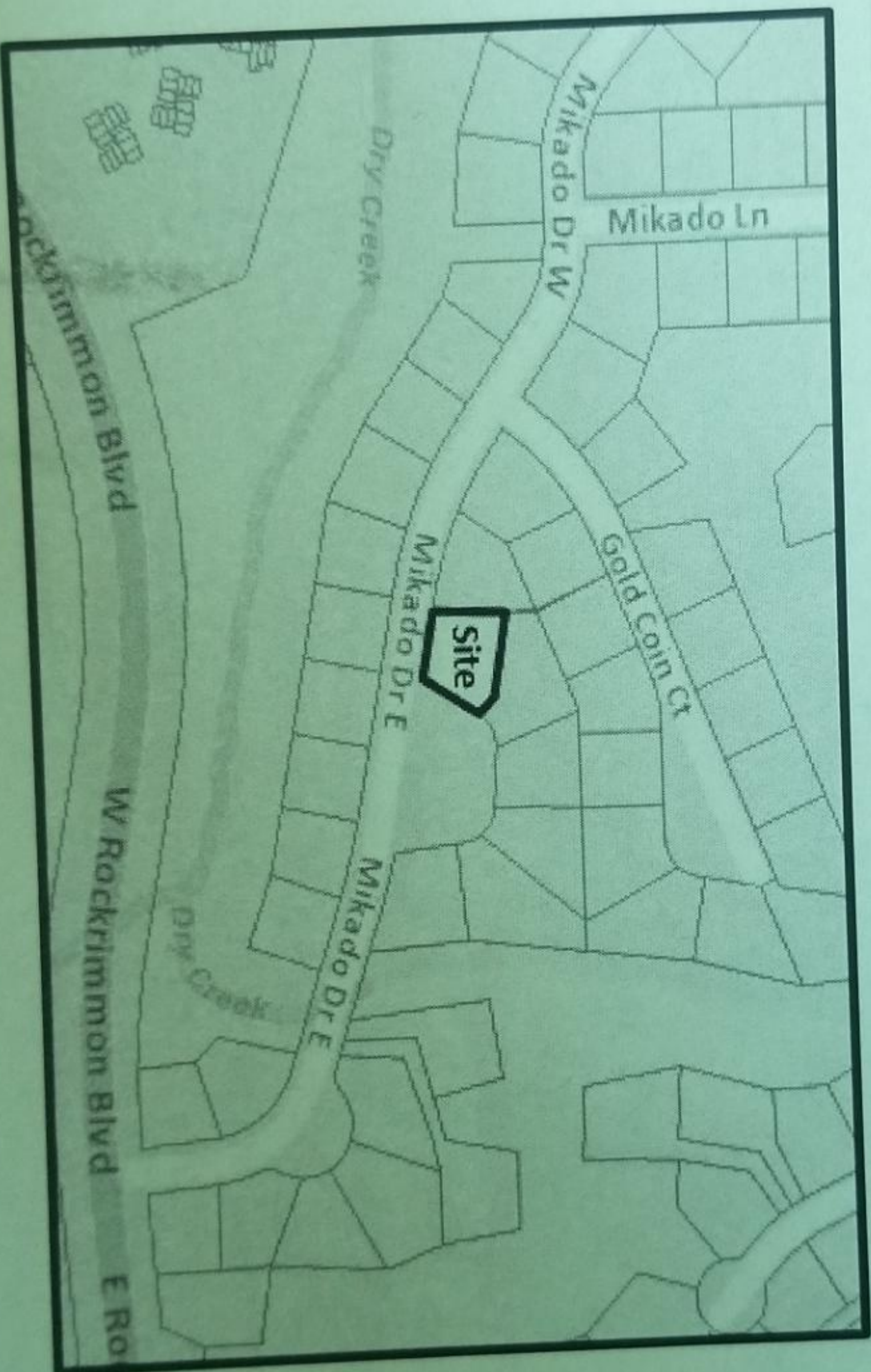
ARTICLE X - USE RESTRICTIONS, COVENANTS AND EASEMENTS The following restrictions, covenants and easements are imposed uniformly upon the Properties and the use thereof as a common scheme for the benefit of each Lot and the Common Area may be enforced by the Association or any Lot Owner.

SECTION I. Land Use, Building Type and Occupancy. **All Lots unless otherwise designated in the recorded plot, shall be used for residential purposes only.** With respect to those Lots to be used for residential purposes, no building shall be erected, altered, placed or permitted to remain on any Lot other than, one detached single family dwelling not to exceed 35 feet or two stories in height. No building shall be permitted on any Lot unless such building has been duly constructed thereon and the removal of dwellings or structures for other locations to any Lot shall not be permitted. A private garage for not less than two cars shall be provided with each single family dwelling and in accordance with the set back requirements herein contained.

SECTION 13. Commercial Enterprises, Nuisances. **No manufacturing or commercial enterprises shall be conducted or maintained upon, in front of or in connection with any Lot or Lots. No noxious or offensive activity shall be carried on upon any Lot, street, road or Common Area, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the neighborhood.**

PROJECT MAP FOR: 50 Mikado Drive Large Day Care

CITY PLANNER: Peter Lange



THE PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT

LAND USE REVIEW DIVISION



Dear Property Owner,

WHY YOU RECEIVED THIS POSTCARD

You received this postcard to let you know about a potential development project near property you own. More information can be found to the right and on the back of showing the approximate location for the proposed development. Contact us by email or mail with your thoughts, concerns, or ideas about this proposed project. All written comments are included as part of the public record and forwarded to the applicant as their project moves forward.

HOW WE NOTIFY CITIZENS

The El Paso County Assessor's Office helps us identify property owners near the proposed development site. Due to outdated records, vicinity to the project site, or rental situations, some may not receive this postcard. Please talk to your neighbors and/or tenants regarding this potential project and have them submit their feedback to the City Planner shown on the right.

ADDITIONAL INFORMATION FOR THIS PROJECT

For more information about the project please use this web address: www.ColoradoSprings.gov/ldrs. Use the file number(s) on the right of this page to search for this project. You can also review the application and plans in our office at 30 S. Nevada, Suite 701, Colorado Springs, CO 80903. We are open Monday-Friday from 8am to 5pm. If you have any questions, please contact the planner listed on the right.

We look forward to hearing from you,

A handwritten signature in black ink, appearing to read "Peter Wysocki".

Peter Wysocki, AICP - Director of Planning & Community Development

A DECISION HAS NOT BEEN MADE ON THIS DEVELOPMENT. ANY PERSON HAS THE RIGHT TO APPEAL A DECISION that is made administratively, by the City Planning Commission, the Downtown Review Board, or the Historic Preservation Board. A \$176 fee, an appeal statement, and a completed appeal application must be filed no later than ten days after the decision from which the appeal is taken. Refer to chapter 7 article 5 of the City Code for further information (www.coloradosprings.gov/citycode). Questions regarding appeals can be answered through our website, by coming into our office, or by contacting the planner for the project.

DEVELOPMENT PROPOSAL

50 Mikado Drive
Large Day Care
50 Mikado Dr.
Colorado Springs, CO 80919
Please see the back of this letter for a project location map.

PROJECT DESCRIPTION

- The Project proposes a large family day care for up to twelve children.
- A current licensed daycare for no more than six (6) children exists at the project site.
- Hours of operation will be from 8:00 AM to 3:30 PM, Monday through Friday and the daycare will not be open on the weekends.

FILE NUMBER(S)

CUPD-22-0015

CITY PLANNER

Peter Lange
Peter.Lange@coloradosprings.gov
(719) 385-2229

WE NEED YOUR COMMENTS BY

December 9, 2022

Please submit your comments in written format, either by email or mail.

Lange, Peter C

From: Vanessa Van Wingerden <vanessaamazon@yahoo.com>
Sent: Monday, November 28, 2022 1:13 PM
To: Lange, Peter C
Subject: 50 Mikado Drive(Large Day Care)

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To: Peter Lange

Development proposal:
50 Mikado drive large daycare

File number:
c u p d-2 2-0015

Issues with the development proposal:

1. We do not want traffic in our cul-de-sac.
2. Our house value will go down.
3. Noises
4. This is a quiet neighborhood not a business.
5. We do not want a Daycare in our cul-de-sac, it will cause our house value to go down.

Please take our concerns and issues into consideration. Thank you for your time.

Vanessa Ransom

90 Mikado Drive East
Colorado Springs, CO. 80919
719-648-2757

[Sent from Yahoo Mail on Android](#)

Lange, Peter C

From: Xfinity <johnwalton@comcast.net>
Sent: Thursday, December 8, 2022 10:02 PM
To: Lange, Peter C
Subject: 50 Mikado Dr

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Mr Lange,

Please do not allow the owners of 50 Mikado Dr establish and operate a day care out of their home. There is no place in our community where that would benefit anyone except the owners. Too many negative aspects of allowing them to operate a daycare far outweigh any of the positives. It's just not the right thing to do.

Thank you for your consideration.

John Walton
901-412-0407
154 Buckeye Dr.

Lange, Peter C

From: Stephen Zeien <stevezeien@yahoo.com>
Sent: Friday, December 9, 2022 4:57 PM
To: Lange, Peter C
Cc: Holly Zeien
Subject: Re: Development Proposal, 50 Mikado Drive, Large Daycare

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Hello Peter,

We've gathered more information on this and are against the proposal for several reasons:

- The proposed business is contrary to the zoning and typical use of the property and neighborhood. We moved in so as to be in a residential neighborhood without businesses 15 years ago. We do not want it to change. If we wanted to live next to a daycare, we could have chosen that before. The new business would change a long-standing expectation we had.
- The proposed business is not primarily for use by the neighborhood residents. This will bring in traffic from outside neighborhoods which we do not want. Our street already has enough traffic because of the school, we do not want any more. We are on a dead-end residential street for a reason.
- The proposed business could only make future businesses more likely. This is a first step in more businesses starting up in this quiet neighborhood. It has been without businesses for 50 years and we wish it to stay that way.

Kind regards,

Stephen and Holly Zeien
15 Mikado Drive West
719-203-0552 (Holly)
719-428-9057 (Steve)

On Tuesday, November 29, 2022 at 07:36:19 PM MST, Stephen Zeien <stevezeien@yahoo.com> wrote:

Hello Peter,

I tried to leave a message, but was unable to reach your voicemail through the automated system. Apparently I'm unable to spell your name in a fashion that the system will accept.

Anyways, we are alarmed at the Development Proposal, 50 Mikado Drive, Large Daycare, not necessarily because of what was on the letter written by the city, but because of what details we have heard that are not listed in the proposal. If true, the letter we received is a bit deceptive. If what we heard is true, we are completely against the proposal for a number of reasons.

Could you please call to clear up the details?

Kind regards,

Stephen & Holly Zeien
719-203-0552 (Holly)
719-428-9057 (Steve)

Lange, Peter C

From: Stephen Zeien <stevezeien@yahoo.com>
Sent: Tuesday, November 29, 2022 7:36 PM
To: Lange, Peter C
Cc: Holly Zeien
Subject: Development Proposal, 50 Mikado Drive, Large Daycare

CAUTION! - External Email. Malware is most commonly spread through unknown email attachments and links. DO NOT open attachments or click links from unknown senders or unexpected email!

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Kind regards,

Stephen & Holly Zeien
719-203-0552 (Holly)
719-428-9057 (Steve)