



# COCHISE COUNTY COMMUNITY DEVELOPMENT

"Public Programs...Personal Service"

## MEMORANDUM

**TO:** Cochise County Board of Supervisors  
Through: Michael J. Ortega, County Administrator

**FROM:** Keith Dennis, Planner II *KD*  
For: Beverly J. Wilson, Planning Director *BW*

**SUBJECT:** Docket SUA-13-13 (AIRES, LLC Appeal)

**DATE:** October 8, 2013, for the October 22, 2013 Meeting

### APPEAL OF A SPECIAL USE AUTHORIZATION

AIRES, LLC has filed an Appeal against a decision made by the Cochise County Planning and Zoning Commission on Wednesday, September 11, 2013. On an 8 – 0 vote, the Commission denied AIRES' request for Special Use authorization to legitimize an existing Day Care Establishment in unincorporated Sierra Vista. The subject Parcel (107-62-018J) is located at 4100 S. Ranch Road. Section 1716.04 of the Zoning Regulations provides that Appeals of Special Use decisions shall be heard by the Board of Supervisors at a duly noticed public hearing.

### I. NATURE OF THE APPEAL/PLANNING AND ZONING COMMISSION MEETING

Diane Logan of Arizona Integrated Residential Education Services (AIRES) has operated a Day Care Establishment on the Ranch Road property since January of 2013. Per County Zoning Regulations, the business is considered a Day Care Establishment, requiring Special Use authorization per Section 607.41. She was cited with a Zoning Violation for operating a business without a permit in May of this year, whereupon she contacted Community Development staff to remedy the violation. At the Commission hearing, several Commissioners expressed serious concerns about the establishment of this business without a permit or public process, which resulted in building and fire code safety violations which were and are on-going, off-site impacts such as traffic and sound, and the lack of public input prior to operation. The Commission voted unanimously (8 – 0) to deny the request. As a result, the business remains in place at this time with an open violation.

Ms. Logan has, on behalf of AIRES, LLC, appealed the decision of the Planning and Zoning Commission to deny her request to legitimize the daycare operation. In the Appeal documents, she cites:

- A willingness to take steps to rectify all concerns and code deficiencies, including preliminary steps to obtain bids from contractors to perform the necessary work;

- A reduced level of safety concern from the Fry Fire District following a site visit by the Fire Marshall;
- A concern that the Commission was misinformed as to the fact that the operation had cleared the requisite inspection from the Department of Economic Security, and;
- That the Appellants understanding of the process was such that she did not arrange to have adequate testimony in support of the operation.

**I. DESCRIPTION OF SUBJECT PARCEL AND SURROUNDING LAND USES**

Parcel Size: 4.15-Acres  
 Zoning: Rural (RU-4; one home per 4-acres)  
 Growth Area: Category D (Rural)  
 Comprehensive Plan Designation: Rural Residential  
 Area Plan: Sierra Vista Sub-Watershed  
 Existing Uses: Day Care Establishment

**Zoning/Use of Surrounding Properties**

Relation to Subject Parcel	Zoning District	Use of Property
North	RU-4	Vacant Land
South	RU-4	Rural Residential
East	RU-4	Rural Residential
West	RU-4	Rural Residential

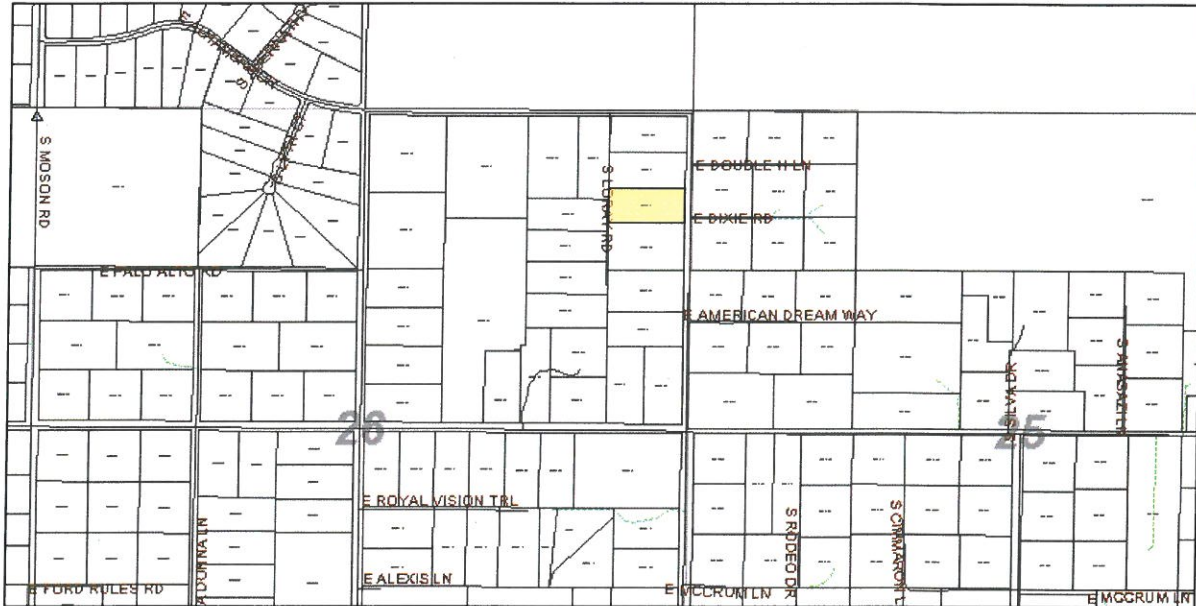
**II. PARCEL HISTORY**

2001 – Permits issued for single-family residence with well and septic system.  
 2002 – Permit issued for swimming pool (this pool has since been filled in and is no longer used).  
 2006 – Permits issued for 576-square foot garage and 288-square foot shed. At the time the Applicants purchased the property, this garage had been converted into an accessory residence.  
 2013 (January) – AIRES, LLC began operating the business on the property.  
 2013 (May) – Applicants were cited with a Zoning Violation for operating a business without a permit. The Special Use request is intended to rectify this Violation.  
 2013 (September) – The Planning Commission denied the Special Use request, resulting in this Special Use Appeal.

**III. NATURE OF REQUEST**

AIRES, LLC provides personal care for adults and children with developmental disabilities throughout the state of Arizona. As stated, in January of 2013, the company began operating a day care program for children and adults on the subject property. Day care operations such as these require certification through the Arizona Department of Economic Security’s Office of Licensing, Certification, and Registration. The Applicant has obtained the requisite certification through this agency (*See Attachment F*).

The program provides daytime care and activities for as many as 20 adults, and provides an after school program for 15 children. The Special Use Application stated that the business currently employs 12 people on site, with 15 possible in the future. Some employees that reside in other parts of the state occasionally stay in the accessory dwelling.



*The property is located on Ranch Road, East of Moson Road in unincorporated Sierra Vista*

The business utilizes an existing home on the property from the hours of 8:00 a.m. to 7:00 p.m. Adults and children are transported to and from the property in one of four company vehicles assigned to this site; adults in the program are often transported to off-site program activities in Sierra Vista. The Application also stated that a possible long term plan for the business is to provide respite care on an overnight basis for one individual at a time.



*The AIRES, LLC daycare business. The home is partially surrounded by block fencing.*

This type of overnight care would otherwise be deemed within the scope of a Residential Care Home, which is a principal permitted use in the Rural District, subject to residential building code and development standards. This potential use was not advertised as part of the Special Use application as it is an ‘as-of-right’ use. The Applicant was advised that if the Special Use was to be authorized by the Commission, the required commercial permit process should include a Residential Care Home as an authorized use on the property.

#### **IV. ANALYSIS OF IMPACTS – COMPLIANCE WITH SPECIAL USE FACTORS**

Section 1716.02 of the Zoning Regulations provides a list of 10 factors used to evaluate Special Use applications. Staff uses these factors to help determine whether to recommend approval for a Special Use Permit, as well as to determine what Conditions and/or Modifications may be needed. Eight of the 10 criteria apply to this request. The project as submitted complies with two of the eight applicable Special Use factors, as submitted. If the Conditions of Approval and development standard Modifications requested by the Applicant are applied, the project would comply with seven of the eight applicable factors.

##### **A. Compliance with Duly Adopted Plans: Complies (See Condition #5)**

The structures on the site are already built, including water fixtures. Any new construction on the property would automatically be subject to water conservation standards per the *Sierra Vista Sub Watershed Policy Plan*.

Condition #5, recommended by staff, is a standard approval condition obliging the Applicant to fulfill all other permit and regulatory requirements as may be applicable now and in the future. This Condition would provide an additional assurance of compliance with these standards.

##### **B. Compliance with the Zoning District Purpose Statement: Complies**

Section 601.02 of the Zoning Regulations articulates the purpose of the Rural Districts as supporting “*those types of non-residential and non-agricultural activities which serve local needs or provide a service and are compatible with rural living.*”

##### **C. Development Along Major Streets: Not Applicable**

##### **D. Traffic Circulation Factors: Complies (Subject to Conditions #2 and #3)**

Compliance with this factor depends upon the ability of a proposed land use to utilize the existing transportation network in the manner in which it was designed, and upon permitting access driveways and dedication of right-of-way where applicable. The project site accesses Ranch Road, a County-owned and maintained, paved road. The traffic path to and from the site follows paved, County-maintained roads, which connect to Moson Road to the west.

To ensure compliance with this factor and to protect the paved Ranch Road surface, staff recommends, as Condition of Approval #2, that the Commission require the Applicant to obtain a right-of-way permit and install a commercial apron on the Ranch Road access constructed to County standards.

The Special Use application stated that traffic proceeds along Ranch Road south of the property, to take advantage of the maintained, paved road surface linking the property to Moson Road. However, some employee traffic utilizes the roads north of the property, connecting to Moson via Alhambra Drive.

County maintenance of Ranch Road—and the paved surface—ends just north of the property; however, the road continues for an additional 400-feet where it connects to Alhambra. County maintenance on Alhambra begins west of the Natoma Trail intersection.



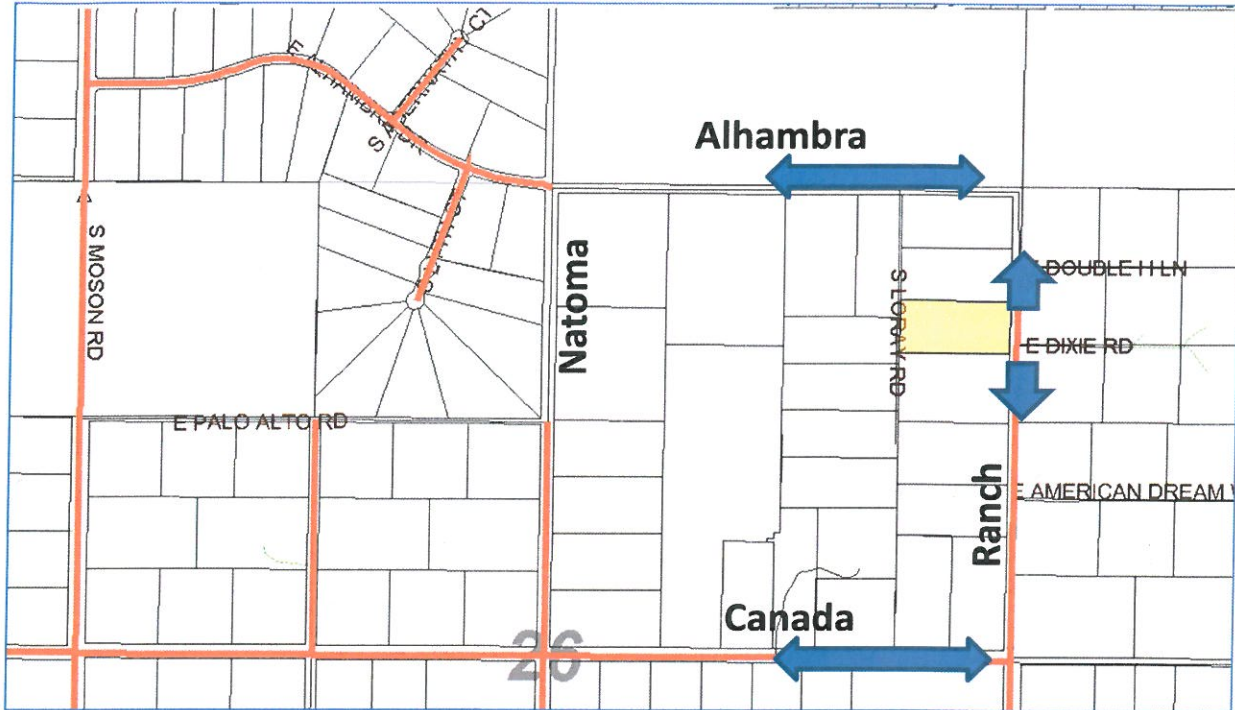
*Looking west at the paved, wheelchair accessible van loading area*

If the Appeal is granted, Condition #3 would require the Applicant to enter into a modified private maintenance agreement prior to permit issuance. In addition to agreeing to maintain the roadway in a safe, drivable condition, the Applicant would also be required to contribute a share of costs to any property-owner led effort to maintain and/or upgrade this section of road, should any such effort be undertaken in the future.

**E. Adequate Services and Infrastructure: Does Not Comply (See Conditions #1 and #4)**

This factor concerns the ability of the Applicant to provide for necessary street, water, sewer and utility services on the property. There are a number of existing conditions on the site that are inadequate for the use currently taking place on the property. The septic system, for example, was designed with a capacity to serve a single-household dwelling rather than a daycare operation with up to 50 users. The second dwelling, which was permitted as a garage but appears to have been converted into a second dwelling by a previous owner, is closer than the 15-foot required per building code fire separation requirements. Principal structures such as dwellings and daycare establishments are required to be fitted with additional fire protection measures if closer than 15-feet. Building and fire codes both require that uses with this level of occupancy (Institutional I-4) include a sprinkler system on the interior.

Furthermore, the site lies within the Fry Fire District, which has expressed “concern regarding the fire and building code life/safety violations currently occurring at this facility” (*See Attachment D*). Because this area is not served by fire hydrants, the Fire District may require an on-site water storage tank for use by fire engines, in addition to the tank that would be required to serve the sprinkler system. Condition #4 would obligate the Applicant to abide by any requirements of the Fry Fire District during the commercial permit process.



Circulation to and from the site (yellow). Orange lines represent the extent of County maintenance.

In order to facilitate compliance with local life-safety codes as soon as possible, staff would recommend a modified Condition #1, which would require the Applicant to begin the permitting process for this land use within 30 days of Board action, and that a permit be issued within 90 days of approval.



Employee parking area along the north side of the developed area of the site

**F. Significant Site Development Standards: Complies (Subject to Condition #1 and Requested Modifications)**

As submitted, the project site complies with most applicable site development standards. The site plan is deficient with regard to the standard requiring a 24-foot wide, two-way driveway on the property. Staff has no issue with allowing driveways of less than 24-feet, or with the request to allow a native surface. From an internal circulation standpoint, the site is in good condition.



*The garage was converted into living quarters by a previous owner. It is separated from the main house by eight feet (15-feet required).*

The Applicant has requested four Modifications to development standards as part of this request (See Attachment G). These are supported by staff:

1. To allow the existing driveways to remain at their current width, which varies from 12-feet to 20-feet throughout the site (24-feet required);
2. To allow the existing native surface on these driveways to remain (2-inch deep gravel surface required);
3. To allow two small identification signs at the property entrance (only one such sign is allowed per street frontage); and
4. To allow the accessory dwelling on the property to remain eight-feet from the main house. Note that the standard here, provided in Section 604.05, requires 15-feet of separation for *principal structures*. The dwelling having originally been permitted as a garage meant that a lesser distance was applied when these structures were built. The conversion of the garage into a principal structure (dwelling) triggers the 15-foot separation standard—as well as additional building code requirements (Condition #4).

**G. Public Input: Complies**

During the Special Use process, the Applicant completed the required Citizen Review and received no response (*See Attachment E*).

**H. Hazardous Materials: Not Applicable****I. Off-Site Impacts: Does Not Comply (Subject to Conditions #2 and #3)**

Off-site impacts associated with this project were initially reported to be primarily traffic-related. However, at the Commission hearing, neighbors reported ongoing off-site impacts due to noise, traffic, degradation of the paved Ranch Road surface, and erosion of the Alhambra Drive surface. The neighbor immediately south reported that the “low frequency sound generated by the current number of idling vehicles is most annoying.”

Compliance with this factor concerns the ability of an Applicant to effectively mitigate these impacts. Conditions #2 and #3 would help protect the Ranch Road travelway at the property entrance, and Alhambra Drive. At the Commission hearing, Commissioners discussed the possibility of requiring noise mitigation conditions. Staff notes that much of the developed area of the property is surrounded by a block fence, particularly the South and East sides. The Board may impose what conditions it deems necessary to further mitigate off-site impacts, beyond what staff has recommended.

**J. Water Conservation: Complies (Subject to Condition #5)**

As a business utilizing an existing site, the Applicants intend to use existing water fixtures. In the event that any new water fixtures are constructed, Condition #5 would require that any new construction conform to the policies of the *Sierra Vista Sub-Watershed Policy Plan*.

**V. PUBLIC COMMENT**

Prior to the Commission hearing on September 11, the Department mailed notices to neighboring property owners within 1,500-feet of the subject property. Staff posted the property on August 15, 2013 and published a legal notice in the *Bisbee Observer* on August 22, 2013. In response to the initial mailing, the Department received correspondence from one neighbor, who offered qualified support for the request, provided that business hours are adhered to and that traffic in the area does not increase beyond its current level. Staff also received one letter from a neighbor opposed to the business, citing traffic concerns.

As the date of the hearing approached, staff began to receive more phone calls from neighbors, with concerns questions about process and outcomes. Although staff had received a minimum level of response to the mailing, at the hearing one citizen appeared to speak in favor of the operation, while six neighboring property owners spoke in opposition to the project. Neighbors voiced concerns regarding sound impacts, noticeable degradation of paved and dirt road surfaces due to increased traffic, and concerns about not having been informed of the proposal prior to its operation. One neighbor stated in writing and at the hearing that an individual receiving care on the property had wandered onto his property without AIRES staff knowledge, resulting in contact with law enforcement.

On October 15, staff received a petition opposing the business, signed by 26 persons, representing 20 properties in the neighborhood. To date, 20 neighboring property owners oppose the use, while one neighbor supports it.

**VI. SUMMARY AND CONCLUSION**

The Special Use request came before the Commission as a result of a Zoning Violation for operating a business without a permit. The business is one that serves a vulnerable population. Although, as part of the certification process, the facility was inspected and cleared by state

officials, the absence of a local land use permit prior to operation means that important life-safety requirements were not put in place.

Special Uses applications are analyzed primarily from the standpoint of mitigating off-site impacts. In this case, the position of the Community Development Department is that off-site impacts, particularly as they relate to traffic and circulation, can be effectively mitigated. Special Use authorization by the Planning Commission is the first step in a process that usually results in a non-residential permit, in which life-safety considerations as required under building and fire codes are addressed. Staff's position going into the Commission hearing was that this request should proceed to the non-residential permit phase as soon as possible, so that requirements relative to the health safety and welfare of those served by the business can be met.

However, the substance of the neighbors' testimony at the hearing was indicative of off-site impacts that were not apparent to staff prior to the hearing. Erosion of road surfaces, noise, and even trespassing of individuals under care onto neighboring properties were unknown to the staff and Commission before receiving this testimony. Addressing these impacts, when added to the interior and exterior improvements necessary to achieve a safe and permitted business, may mean that mitigation of off-site impacts may be prohibitive and beyond the scope of the business as it currently exists.

Finally, the Planning and Zoning Commission denied the request on a unanimous 8-0 vote. The Commission undertook this action out of concern for a vulnerable population undergoing care at the facility. The comments from the building and fire code officials consulted as part of the Special Use process noted on-going violations related to fire-fighting capabilities, the need for building code compliance for what is classified as an institutional (I-4) land use, and sanitary concerns related to a septic system built for a single-family residence. These problems could all have been avoided if the Applicant had first consulted with County staff and obtained Special Use authorization, and a building permit, prior to operation. The testimony of neighbors was also a significant factor in the Commission's decision.

The unanimous vote of the Commission to deny the request sends a strong message, and constitutes a significant factor against the Appeal.

#### **Factors in Favor of Granting the Appeal**

1. With the recommended Conditions of Approval and requested Modification, the proposed use would comply with six of the eight applicable Special Use factors used by staff to analyze such requests;
2. Per Section 601.02 of the Zoning Regulations, the proposed use is appropriate in the Rural Districts;
3. The proposed use would use existing structures; and
4. One neighbor offered qualified support for the project provided that it stays within its current operational scope.

#### **Factors Against Granting the Appeal**

1. The Planning Commission voted unanimously (8–0) to deny the Special Use request at their September 11 hearing;
2. The Special Use request is intended to rectify a Violation for operating a business without a permit;
3. There are ongoing life/safety fire code violations as a result of establishing the business prior to obtaining a permit;
4. There are significant issues associated with providing adequate services and infrastructure on the property; and
5. A total of 20 property owners in the neighborhood oppose the project.

## **VII. RECOMMENDATION**

Based on the factors in favor of denial, Staff recommends **denial** of the Special Use Appeal. However, should the Board of Supervisors decide to grant the Appeal, thereby granting Special Use approval for this business, staff recommends the following approval Conditions:

1. Within 30-days of approval of the Special Use, the Applicant shall provide the County a signed Acceptance of Conditions form and a Waiver of Claims form arising from ARS Section 12-1134. Prior to operation of the Special Use, the Applicant shall apply for a building/use permit for the project within 30 days of approval. The building/use permit shall include a site plan in conformance with all applicable site development standards (except as modified) and with Section 1705 of the Zoning Regulations, the completed Special Use permit questionnaire and application, and appropriate fees. A permit must be issued within 90 days of the Special Use approval, otherwise the Special Use may be deemed void upon 15-day notification to the Applicant;
2. As part of the commercial permit process, the Applicant shall obtain a right-of-way permit from County staff, and install a commercial-grade access apron at the Ranch Road access in accordance with County Highway Department standards;
3. Prior to permit issuance, the Applicant shall enter into a private maintenance agreement with County staff to ensure that those portions of Ranch Road and Alhambra Drive which are outside the County maintenance system are maintained in a safe, drivable condition. This agreement shall also require that the Applicant contribute a share of costs to any property owner-led effort to maintain and/or upgrade this section of road;
4. As part of the commercial permit process, the Applicant shall bring the use into compliance with all life-safety standards and codes as required under County building codes, and satisfy all requirements of the Fry Fire District;
5. It is the Applicant's responsibility to obtain any additional permits, or meet any additional conditions, that may be applicable to the proposed use pursuant to other federal, state, or local laws or regulations; and
6. Any changes to the approved Special Use shall be subject to review by the Planning Department and may require additional Modification and approval by the Planning and Zoning Commission.

Staff would also recommend that the following Modifications to development standards be applied to the land use as part of such approval:

1. To allow the existing driveways to remain at their current width, which varies from 12-feet to 20-feet throughout the site (24-feet required);
2. To allow the existing native surface on these driveways to remain (2-inch deep gravel surface required);
3. To allow two small identification signs at the property entrance (only one such sign is allowed per street frontage); and
4. To allow the accessory dwelling on the property to remain eight-feet from the main house.

### **VIII. ATTACHMENTS**

- A. Appeal Documents and Special Use Questionnaire
- B. Location Map
- C. Concept Plan
- D. Agency Comments
- E. Citizen Review and Public Comment
- F. Arizona Department of Economic Security Certification and Inspection Report
- G. Request for Modifications
- H. Legal Notice