

**TAYLORSVILLE CITY COUNCIL  
AGENDA ITEM SUMMARY**

MEETING DATE: May 2, 2012

AGENDA ITEM: File 4H12 – Appeal of a Conditional Use Permit granting a Home Occupation Preschool at 1970 W. Farm Ridge Road

PRESENTER: MARK MCGRATH

AUTHOR: MICHAEL MELDRUM

ISSUE SUMMARY:

On April 10, 2012 the Planning Commission voted to approve a home occupation preschool at 1970 Farm Ridge Road. A letter of appeal has been received from an aggrieved party within the timeframe specified by Ordinance 13.50.120 of the Taylorsville Code of Ordinances. A draft copy of the minutes and motion from the April 10, 2012 Planning Commission meeting are attached to this report.

The appellant raises several issues in the letter of appeal. The issues included in the appeal letter are safety, additional traffic, number of people in the home, and an unfinished (landscaping) yard. A small portion of the front of the lot is not currently landscaped. City ordinances only pertain to landscaping in the front yard of a lot. One of the conditions of approval is to have the front yard landscaping completed by May 31, 2012. The applicant agreed to this condition.

The staff report for the Planning Commission meeting identifies that there are two families residing in the home. The families are related by blood and therefore not in violation of Section 13.04.210 (definition of family) of the Taylorsville Code of Ordinances.

The appellant also references the unfinished back yard and fencing at the subject property and that there are Codes, Covenants and Restrictions (CC&R's) in the subdivision that require it to be landscaped. The City of Taylorsville cannot enforce CC&R's as they are a private agreement between homeowners.

Based on Section 13.50.120 of the Taylorsville Code of Ordinances, the City Council shall take one of three actions upon receiving this appeal request: reaffirm the Planning Commission decision, remand the matter to the Planning Commission for further consideration, or set a date for a public hearing meeting.

**RECEIVED**

**APR 19 2012**

Mayor Russ Wall  
2600 Taylorsville Boulevard  
Taylorsville, UT 84129

City of Taylorsville  
Recorder's Office

April 19, 2012

Dear Mayor Wall,

I am writing to appeal the decision of the Planning Commission regarding the conditional use permit granted at the April 10<sup>th</sup> meeting for an in home preschool operating at 1970 West Farm Ridge Road. This permit was granted to renters living in the basement of the home despite the vocal opposition of neighbors directly affected by the increased traffic volume. There are several issues that must be factored in to this decision, and I hope that these issues can be fairly addressed so the needs and desires of many are accounted for, not just those of a few.

According to the Utah Department of Health Child Licensing Program, a licensed child care provider must provide 35 square feet of space for each child enrolled in the preschool, and that the same square feet should be provided for each child living at the residence. Based on the square footage of the property, in particular the basement in which this preschool intends to use, that space is not likely to meet all requirements for space. Additionally, a safe outdoor play area needs to be provided for children that is properly fenced and otherwise secured for safe play, but the only grassed location puts it next to the road.

As you may be aware, there are no sidewalks within the Farm Ridge Estates neighborhood, and despite a 25 mile per hour speed limit in residential areas traffic speeds regularly exceed this limit. As a neighborhood, we are concerned that an increase in traffic volume, in part by drivers who are not residents and very well may be rushing to drop off or pick up their child(ren), will lead to an auto pedestrian incident. The permit grants permission for up to twelve children to attend this proposed preschool, eventually with both morning and afternoon sessions. This would result in up to twelve vehicles, four times a day, driving and parking in our quiet residential neighborhood. As we are directly next door to this proposed business venture, we are very concerned about this activity. Again, no sidewalks means parents and small children walking in the street, which with cars parked along the street would result in very limited driving and walking space. Add inclement weather into this scenario and you can see why we are concerned about this safety issue. We are well aware of the changes to 6020 South and the increase to traffic flow that will occur along the Jordan Canal Road. This business is an optional situation that will unduly affect us as long time residents of the City who moved here to live in a quiet neighborhood.

It is critical to note that while we have referred to the safety of the children would could be attending, our children within the neighborhood will be most affected by the increased traffic and the accompanying safety risks. It is our children we are focused on keeping safe and have strived to protect by moving to this neighborhood. It is our homes we are trying to protect from the encroachment of commercial interests into our residential environment and the associated traffic.

This property is not well maintained, and as such would not be a safe environment for children, particularly of such a young age, to be exposed. The owner's dog is enclosed in a chain link fence, and its waste often sits out for weeks without being cleaned up, providing a malodorous stench that we are fortunate to experience on warm days. This very fence surrounds the entrance to the basement which is the site of the proposed business. Outside of the fenced area is an unfinished side yard and backyard which contains an unfinished garage that was constructed without a building permit and has remained unfinished for several months. Pipes for an unfinished sprinkler system are exposed throughout the yard, and there is a drop off at the back side of the property. Even if children were restricted somehow to the finished front yard, there is nothing keeping them from running out from behind bushes directly into the street. Unsupervised children would find it considerably more inviting to cross onto our property where the property is much better maintained, placing us at risk for liability if an injury were to occur.

This neighborhood has CCRs requiring a number of items including completion of the front and back yards within a specific time frame which has long since passed, restrictions of chain link fencing such as that used to contain the owner's dog, and several other covenants that have not been followed. As a neighborhood, we recognize that it is our responsibility to enforce those CCRs, but have granted leniency due to the owner's disabilities. However, we were not aware that renting would be happening for a long term, such as is demonstrated by opening of a business such as this. We were also unaware that renters would be dramatically changing the traffic volume of our streets.

During the Planning Commission meeting, several changes were made to the conditional use permit to make this business possible in our neighborhood, and the permit was approved without any of those changes actually being made. We are appalled that such a decision would be made as this violates the very purpose of a planning commission to hold property owners to the standards set by the community. We strongly request that this permit be denied on the basis of the safety of the children, the impact upon the neighborhood and its residents, and the precedent that this sets in changing our residential neighborhood into a business setting. I am happy to answer any questions you may have regarding this matter.

Respectfully,



Dr. and Mrs. McIff  
1948 Farm Ridge Road  
Taylorsville, UT 84129

## HOME OCCUPATION

3. 4H12 – **Brittany Hawkins** – 1970 West Farm Ridge Road – Home Occupation – Preschool. (Dan Udall/City Planner)

19:06:26

- 3.1 **Mr. Udall** presented this item. The applicant is proposing a preschool to be operational from 9:00 a.m. to 11:30 a.m. and from 12 noon to 2:30 p.m., Monday – Friday. A total of 8-12 children will be coming to the home each classroom session. Two children will be attending the preschool session who currently live in the home and are under the age of six. There is a four-car driveway on the site. The applicant is providing an additional caregiver as required by the City of Taylorsville and the State of Utah for tending over eight children. Approximately eight or more vehicles will be coming at one time to the home before and after each class session. There are actually two families living in the home presently. The applicant is the first cousin of the home owner; therefore, the families are related by blood and meet the definition of family as outlined in the zoning ordinance. Preschool home occupations with two classes are typically more intense than family day care home occupations due to the generation of additional traffic. Currently there is only a chain link fence along the rear of the property. Class D Home Occupations which include preschools, require that the outdoor play area be secured by the appropriate, well-maintained fence, not less than 4' in height. However, the Planning Commission may require a fence that exceeds 4' in height if determined to be necessary. The property measures 23,522 square feet. Staff recommends approval with the following conditions:

**Findings of Fact:** Staff finds the following findings of facts or reasons regarding **File #4H12**

1. The applicant is proposing a conditional use for a preschool home occupation.
2. That a maximum of 8-12- children are coming to the home each classroom session.
3. That the applicant is proposing two classroom sessions that are in operation from 9:00 a.m. to 11:30 a.m. and noon to 2:30 p.m., Monday-Friday.
4. That the applicant meets the City of Taylorsville family definition.

**Staff recommends approval of File #4H12 with the following conditions:**

1. Receive approval from and remain compliant with all applicable reviewing agencies.
2. That the use is reviewed upon substantiated and unresolved complaint.
3. That no more than 12 children can attend the preschool per class session, including those that reside in the home.
4. A maximum of one nameplate sign is allowed to be attached to the single-family home. The sign is allowed to be 3 square feet.
5. That adequate parking is provided on site to accommodate the homeowner's vehicles and customer vehicles coming to the home.
6. **[Changed by Motion]** Hours and day of operation can be allowed from 6:00 a.m. to 8:00 p.m., Monday-Sunday. That a maximum of **two one** preschool classes are **is** allowed to be operated each day, **either in the morning or afternoon.**
7. That the home occupation is clearly incidental and secondary to the use of the dwelling and does not change the character of the neighborhood.
8. Provide adequate outdoor lighting.
9. That no other Class "D" home occupation is allowed while the preschool home occupation is under operation.
10. **[Changed by Motion]** That an **6 foot high** outdoor perimeter fence **be installed** is required around the rear yard prior to operation.
11. That the front yard is completely landscaped by May 31, 2012.
12. That an additional caregiver is provided for the preschool home occupation when nine or more children per session are being taught by the applicant.
13. **[Added by Motion]** **That the applicant receives written permission from the property owner prior to approval.**

3.2 **APPLICANT ADDRESS:** **Brittany Hawkins** was present **19:09:48**. She advised they are working on putting in a perimeter fence. **Commissioner Kehl** asked if she were the property owner, to which she replied that she was not but had her own area within the home. That there were four adults and two children presently living in the home. **19:11:05 Commissioner Kehl** wondered what kind of fence was in place. **Mrs. Hawkins** advised it was the fence around the property line, which the property owners will be taking care of properly fencing the property. **Commissioner Kehl** said that apparently now there is a 6' high chain link fence in place on the north property line, which means that there are plans to put a 6' high fence along the east and west boundaries, to which she replied that she was not sure what type of fence the property owner was going to put in there. **Commissioner Kehl** asked how many individuals live in the home and she replied that there are four adults and two children. He then asked if she had received a copy of the staff report and she said that she had. **Commissioner Jensen** asked if the home owner was okay with her operating this type of home occupation in his home and she said he was. He then wanted to know if she had approached him about installing the 6' high fence around the property. She said that they were planning on doing that anyway. Also that they are going to finish the yard as soon as the weather allows in the spring. **Commissioner Jensen** asked if she were planning to have 8 to 10 children in the morning and in the afternoon also. She replied that her present plans were to just have one afternoon session to start with and adjust that later on to include two sessions. **Commissioner Jensen** expressed concern that should she eventually have the two sessions, that the turn around time between classes is only a half hour, which he did not feel was sufficient time. **Mrs. Hawkins** said that she was willing to move the time to accommodate a longer break in between sessions. **Commissioner Faurschau** commented that with two families living in the home, what percentage of the home is dedicated to this home occupation and **Mrs. Hawkins** replied that it would involve two rooms in the lower portion of the home where she resides, one of which will be a gathering room and the other room for arts and crafts and snacks. **19:13:46 Commissioner Fazzini** asked if there were an open ditch along the sound wall in the rear of the property and she said that

she did not know for sure but did not think there was. **Commissioner Fazzini** expressed concern that the present fenced in play area was probably going to be too small and wanted to know if she planned on expanding that area, to which she replied that she was.

3.3 **DISCUSSION:** **Commissioner Fink** opened up the meeting for Planning Commission discussion.

3.4 **SPEAKING:**

- **Rhetta Mccliff** 19:15:09. **Mrs. Mccliff** advised that she lives directly east of this home. That her main concern is safety – the Canal Road is narrow and winding, with no sidewalks. The positive side of that is it slows down the vehicular traffic but also offers no protection for pedestrians. Most people who drive along with road are aware that there are always pedestrians walking along the road and adjust their driving accordingly. There is no room for anyone to park a car and let out or pick up children, which creates a very dangerous situation. She is not in favor of allowing this home occupation. It was her assumption that the people who moved into the basement of this home were only going to be there temporarily but this application definitely changes that. [19:18:37](#)

- **Jake Curtis.** **Mr. Curtis** lives next door to Mrs. Mccliff. He too did not feel this preschool was a good fit for this particular neighborhood. Adding this amount of traffic would negatively impact the people presently living there. He did not want the character of his neighborhood to change to accommodate this.

- **Ralph Vigil, 1965 Farm Ridge Road.** **Mr. Vigil** lives across the street. He did not feel this preschool was a good fit for the neighborhood. It would add too many cars and create a safety issue for the children in the neighborhood. He also questioned whether it was correct for a renter to make this type of request. [19:22:09](#)

- **Mary Garcia, 1993 Farm Ridge Road.** **Mrs. Garcia** lives across the street and one lot to the west. Her concern was also the increase in traffic and for that reason was opposed to allowing it. [19:23:52](#)

3.5 **DISCUSSION:**

- **Commissioner Jensen** asked Mrs. Mccliff if there were a Home Owner's Association in place and she replied that there presently was not an official one. [19:24:03](#)

- **Commissioner Fazzini** wondered if Staff had previewed the area of the home that is to be used for the preschool and **Mr. Udall** replied that he had not. Commissioner Fazzini then wanted to know if there is a separate entrance, full kitchen, etc., in the basement. **Mr. Udall** replied that he did not know the answer to that and suggested asking the applicant. **Commissioner Fazzini** then asked if there were traffic counts available for Canal Road and **Mr. Udall** answered that there none that he was aware of.

- **Commissioner Jensen** commented that people are being encouraged to car pool and hoped that would happen here. That the applicant said that she would start out with just one afternoon session and see how it works out and address the possibility of adding one in the morning at a later time. **Commissioner Jensen** added that he would like to see an item added that requires written permission from the owner and that the time in between the morning and afternoon sessions be expanded to at least an hour. [19:26:35](#)

- **Commissioner Faurshou** expressed real concerns about safety issues which would result in adding more traffic to the area. He felt it was a beautiful area with a wonderful road but that more traffic would create a very dangerous hazard for the children.

- **Mr. Meldrum** interjected that he did not know if there had been a building permit pulled to finish the basement to include this unit. [19:28:26](#) If not, he was concerned about the lack of inspections with regard to safety issues involving such things as proper wiring, smoke detectors being installed appropriately, etc., which fall under the building code.

- **Commissioner Jensen** wondered if Staff Recommendation #1 covered that. **Mr. Meldrum** indicated that it would and that Staff will need to receive a recommendation from the building official on that. **Commissioner Jensen** wanted to know if the day care was going to be in the basement and if so, was there a separate outside entrance. **Mr. Meldrum** could not answer that question. There are specific regulations regarding day care but home occupation preschools are exempted from many of those conditions found in a commercial location. **Mr. Meldrum** said that he would like to confirm all these issues with the Health Dept, Building Dept and Fire Dept before any final approval can be granted in this matter. [19:29:00](#)

- **Commissioner Fazzini** asked if those conditions for approval are statutory or if the Commission needs to add them. **Mr. Meldrum** advised that they are statutory. [19:29:45](#)

- **Commissioner Fink** suggested the possibility of limiting the number of children in order to reduce the amount of traffic.

- **Commissioner Jensen** suggested approving only the afternoon session.

3.6 **APPLICANT READDRESS:** **Commissioner Fink** called the applicant back up to answer some of the questions. **Mrs.**

**Hawkins** said that she too is concerned about the children's safety and would be willing to meet the cars when the children arrive and make sure they are escorted into the home safely. That she has been teaching Kindergarten for four years previously and before that worked in day care for seven years. **Commissioner Fink** then asked if she had a separate entrance into the basement and she replied that she did. He wanted to know how she intended to clean up the area which previously was a dog kennel. **Mrs. Hawkins** advised that would stay there and she would provide the play area back behind that. He felt it may help to reduce the number of children. [19:32:59](#) **Commissioner Jensen** asked if she would be amenable to doing just the afternoon session. She replied that was her plan and that she already has interested clients. He asked how many she thought would be coming by carpool and she felt it would be at least three of the clients or almost half the class. Also that she would highly suggest that to the other clients as well. **Commissioner Cochran** asked her how many cars would fit on her driveway at a time side by side and her answer was four. That the owner is planning to add another 10' concrete space. **Commissioner Fazzini** advised that they must be careful in doing that because by Code, driveways can only be 35' wide. **Mr. Meldrum** said that the only way they could make it work is by adding a landscape break up. **Commissioner Fazzini** continued on to say that the concerns everyone has for safety is not only for the children but for other residents, their children and pedestrians along Canal Road. Impact on the roadway because of this preschool

could be up to 48 cars per day. Commissioner Fazzini then asked if there was a sink and stove included in the basement and she replied in the affirmative. He then asked if her living space can be separated from the rest of the house. Mrs. Hawkins said that there is a door that separates the upper floor from the basement. Mr. Meldrum stipulated that does make it an accessory apartment by definition and which is not allowed in the R-1-21 zone or A-1 zone. Commissioner Fazzini wanted to know if the applicant were to come in for a building permit and wants to put in a sink and stove .... Mr. Meldrum interjected that the sink could be installed but the stove is what creates the issue of creating a duplex. And also shutting the door and having the capability to lock it off and have two separate distinct living areas is also problematic. Commissioner Barbieri asked if the home occupation goes with the person and not the property and was informed that was correct by Mr. Meldrum. She wondered if a home occupation can go with a renter rather than the home owner. Mr. Meldrum said that either can do so provided that if they are in a rental type situation, they must have permission from the property owner.

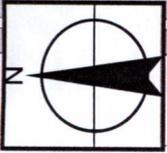
3.7 **DISCUSSION:** Commissioner Jensen 19:39:18 Based on the discussion tonight and the Findings of Fact, #1 on the recommendations takes care of questions like building permits for the basement, etc., #2 is something that the neighbors need to be aware of which is that this conditional use can be reviewed upon substantiated and unresolved complaint. So if there are traffic hazards directly related to this, there is recourse. #3 mentions that there is one child in the home that would be part of the day care, so that reduces the number of people attending. (Mr. Meldrum – Commissioner Jensen, there are actually two children in the home) Commissioner Jensen – Okay, that is even better because that reduces the number of people coming and number of cars coming to the preschool. On #6, the applicant agreed that just approving an afternoon session would be amenable to her and then on #10, a 6' perimeter fence to be installed. That it would be good to have written permission from the owner and if the owner is going to commit to this, it means that he has got to have had some kind of input from his neighbors. That is why I recommend adding something of this nature, so that the owner gets out and talks with the neighbors himself before he signs his name to a paper saying he agrees to give permission to the applicant for the preschool.

**MOTION:** Commissioner Jensen - With all of that in mind, based on the Findings of Fact and Staff's recommended approval, I would like to move for approval of File #4H12 with 12 conditions, changing #6 that she be limited to one preschool class in the afternoon, that can be amended later on if she desires to have two sessions depending upon the success of the business. #10 that a 6' high perimeter fence be installed around the entire back yard and add #13 that written permission from the owner be obtained prior to approval. Based on that, it is interesting to note again that if you remove two children from the total of 12, that is 10, so there would be anywhere from 3 to maybe 5 cars coming twice a day and that is significantly reduced from what we originally were given. 19:42:15 Commissioner Kehl asked that #13 be repeated. Commissioner Jensen - #13 is that the applicant receives written permission from the owner.

**SECOND:** Commissioner Fazzini

**DISCUSSION:** Commissioner Barbieri - On #6, I suggest allowing allow her to have morning or afternoon, so that if she can fill up a morning class then she can do that or one in the afternoon. Both Commissioners Jensen and Fazzini were agreeable to that change. 19:43:05

VOTE (File 4H12)					
Commissioner	Vote	Commissioner	Vote	Commissioner	Vote
Faurschou	NAY	Grossman	AYE	Fink	CHAIR
Kehl	AYE	Barbieri	AYE	Cochran	ALT
Jensen	AYE	Fazzini	AYE		
Motion to approve passes 5 to 1.					



Subject Property  
1970 W. Farm Ridge Road

