

**A REGULAR MEETING OF THE PLAN COMMISSION
OF THE VILLAGE OF BOLINGBROOK
April 18, 2012**

CALL TO ORDER

Chairman Cawthon called the meeting to order at 8:00 p.m., Wednesday, April 18, 2012.

ROLL CALL

Present: Commissioners Greg Jacobs, Talat Rashid, Lon Schank, J.D. Rhoades, Libby Runge, Calvin Wright, Rick Campos (late), Vice Chair Mary Rennels

Absent: None

Staff: Director of Community Development, Dennis Kowalczyk; Planning & Zoning Administrator, Nicole Knapp; Village Engineer, Tom Pawlowicz

Press: None

APPROVAL OF MINUTES

Motion Rhoades, second Jacobs to approve Minutes of the March 21, 2012 and April 4, 2012, meetings of the Plan Commission.

Voice Vote: Unanimous

Motion carried.

PUBLIC HEARING

SPECIAL USE PERMIT TO ALLOW A FITNESS CENTER WITH EXTENDED HOURS OF OPERATION. XSPORT FITNESS, 119 S. WEBER ROAD. APPLICANT: JOE WHITESIDE, CAPITAL FITNESS, INC. PROJECT NO.: 408.12

Motion Vice Chair Rennels, second Runge to open the public hearing.

AYES: Commissioners Wright, Runge, Schank, Rhoades, Rashid, Jacobs, Vice Chair Rennels, Chairman Cawthon

NAYS: None

ABSENT: Commissioner Campos

Motion carried, public hearing opened at 8:02 p.m.

Planning and Zoning Administrator Nicole Knapp presented the request. The applicant is requesting Approval of a Special Use Permit to allow a Fitness Center with Extended Hours of Operation to allow a 24-hour fitness center at 119 S. Weber Road. The subject property comprises approximately two and nineteen hundredths (2.19) acres, is currently zoned B-2 Community Retail and consists of approximately a one hundred thirteen thousand seven hundred ninety (113,790) square foot multi-tenant shopping center. The location was previously occupied by Michael's. Access to the subject

property is from multiple points off of Weber Road and the shopping center has adequate parking for the proposed use. Per the Zoning Ordinance, non-commercial recreational uses such as, Fitness Center, Yoga, Dance or Karate Studio, as well as hours of operation before 5:00 a.m. and after 10:00 p.m., require a Special use Permit within the B-2 Zoning District. As such, the applicant is requesting a Special Use Permit to allow a 24-hour fitness center at 119 S. Weber Road seven (7) days a week. Per the applicant, they would employ one hundred (100) employees.

RECOMMENDATION

Staff recommends approval of a Special Use Permit to allow a Fitness Center commonly known as XSport Fitness at 119 S. Weber Road as a 24-hour operation seven (7) days a week.

DISCUSSION

None

Motion Rhoades, second Schank to close the public hearing.

AYES: Commissioners Jacobs, Rashid, Rhoades, Schank, Runge, Wright, Campos, Vice Chair Rennels, Chairman Cawthon

NAYS: None

ABSENT: None

Motion carried, public hearing closed 8:03 p.m.

Motion Rhoades, second Schank to accept the recommendation of Planning Staff.

AYES: Commissioners Campos, Wright, Runge, Schank, Rhoades, Rashid, Jacobs, Vice Chair Rennels, Chairman Cawthon

NAYS: None

ABSENT: None

Motion carried.

SPECIAL USE PERMIT FOR A PLANNED COMMERCIAL DEVELOPMENT WITH VARIANCES AND FINAL DEVELOPMENT PLAN TO ALLOW A DAYCARE CENTER. CHILDREN OF AMERICA, 570 W. BOUGHTON ROAD. APPLICANT: ANDRZEJ BEDNRCZYK, BARON'S HOLDINGS, INC. PROJECT NO.: 406.12

Motion Vice Chair Rennels, second Schank to open the public hearing.

AYES: Commissioners Jacobs, Rashid, Rhoades, Schank, Runge, Wright, Campos, Vice Chair Rennels, Chairman Cawthon

NAYS: None

ABSENT: None

Motion carried, public hearing opened at 8:04 p.m.

Planning and Zoning Administrator Nicole Knapp presented the request. The applicant which is also the owner is requesting Approval of an Amendment to a Special Use Permit for a Planned Commercial Development with Variances and Final Development Plan to allow a Daycare Center with an outdoor play area at Oak Square East, 570 W. Boughton Road which currently consists of two (2) commercial buildings that are currently under construction. The property was rezoned from E-R Estate Residential to

B-2 Community Retail in July 2006, and later received approval of a Special Use Permit for a Planned Commercial Development with Variances and Final Development Plan in 2009. Per the attached site plan, the applicant is proposing to occupy the eight thousand (8,000) square foot commercial building which is oriented in an east-west direction near the southwest corner of the overall site and construct an approximately four thousand six hundred seventy-two (4,672) square foot outdoor play area directly north of the subject building. The proposed construction of the outdoor play area would result in the removal of thirty-two (32) parking stalls. Access to Oak Square East is currently provided from one (1) access drive off of Boughton Road, in addition to a cross-access to the property to the west located at the west end of each drive aisle on the subject site which has not been constructed yet, but has been recorded. Adequate parking would be provided even after the parking is removed for the play area. Per the Zoning Ordinance, daycare center/nursery schools are not an allowable Permitted or Special Use in the B-2 District; however, they may be permitted on the subject site as a Planned Unit Development. As such, the applicant/owner is requesting an Amendment to the existing Special Use Permit for a Planned Unit Development in order to allow Children of America to occupy the existing eight thousand (8,000) square foot building. Per Children of America, the daycare would have the capacity for one hundred forty-five (145) children/students and would employ up to twenty-one (21) employees. The hours of operation would be from 6:30 a.m. to 6:30 p.m. each day.

RECOMMENDATION

Staff recommends approval of an Amendment to a Special Use Permit for a Planned Commercial Development to allow Children of America daycare at 570 W. Boughton Road, subject to:

1. All necessary Illinois Department of Children and Family Services (DCFS) permits and licensing being obtained prior to occupancy.
2. Approval of a Site Development Permit in order to modify the approved Final Development Plan in order to allow the outdoor play area as shown on the attached site plan.

DISCUSSION

Commissioner Wright asked what age group would be attending this academy.

Mark Daniel from Daniel Law Office, Elmhurst, IL, sworn in. Mr. Daniel stated he represents Baron Holdings, Inc. He stated he had been practicing the Land Use and Land Development field in several different aspects since 1994 in Ohio and Illinois. He said that this facility would have pre-kindergarten group, which include infants up to pre-kindergarten age. He stated the one hundred forty-five (145) students would be split from infants, to toddlers, to two (2) years old, and then pre-school age. Mr. Daniel stated that with respects to Baron Holdings, Inc. there were a couple of things he wanted to note and make sure everyone had the foundation for their request. He said Oak Square East was approved for a Planned Development and all they were seeking to do is modify within the development an area comprised of 17 parking spaces and the use of the eight thousand (8,000) square foot building. Under the Zoning Ordinance Section 4-202(D) there is an incorporation of use regulation from the B-1 District to the B-2 District. He said this proposed use would be an appropriate use as a Special Use in this zoning district which he wanted to address as one of Ms. Keating, Kiddie Academy lawyer's biggest concerns. He said that she stated that the use is not a Permitted Use or a Special Use in her correspondence which was absolutely incorrect. Mr. Daniel stated that in trying to add this

component into the development there were changes in circumstances during the pendency of the development. He said the tenant in this instance decided that they wanted to shift from the larger building which runs north-south, and instead go into the eight thousand (8,000) square foot building and give themselves the opportunity to have a playground to the north of the building. He said that around the playground area on the north of the building where the seventeen (17) spaces are shown they were proposing to use parking blocks, fence, and permanent moveable planters as a means of mechanism to protect the kids on the playground. He went on by saying that the loading would occur from the parking spaces in front of the building. One proposal that was discussed was to designate the first row of parking spaces and the first drive aisle north of the playground for employees of the center, which would further reduce traffic in that area. He said they would like this as additional precaution. He also mentioned that the parking requirement would be met and they would be leaving enough flexibility above and beyond the parking mandates of the Village of Bolingbrook for a higher intensive use that might require more spaces per square foot. He said that they were also proposing the drive aisle to the north to have one-way traffic with appropriate signage requirements from the staff to make sure public would be well informed of the circulation pattern. He said the west side drive aisle which is adjacent to this property and the subject property are tied together through a cross access and parking easement. He stated that the parking easement afforded for additional parking spaces allowed by the Village and provided by the developer of the property. He said nothing indicated the particular number of spaces, but that the Village would keep an eye on the use and the intensity of use in the parking necessities for each of the units of the property. He went on by stating that there are two (2) points of ingress and egress that the primary point of ingress and egress is on the southeast corner of the property and that at that location there are two (2) outbound lanes that would avoid congestion of the interior traffic and to avoid a frequent blockage of the drive aisle to the south of the center. He said that there is one (1) inbound turn lane, that once cars turn in they would have three (3) or four (4) locations immediately available to them, which indicates there should be no congestion in the point of ingress to the property which this would just be focusing on the southeast corner. Mr. Daniel said this facility would have a drop off operation, that there was not a planned drive aisle so that kids could be shuttled in and out of their vehicles, he said the parents would have to come into the facility to check their kids in for the day at the main door. He said one of Ms. Keating's comments on behalf of her client, which runs the daycare center directly east of this location, was that there was a possible hazard to kids imposed if the Village allowed there to be two (2) daycare centers next to each other because the kids might see someone they know and run across traffic lanes to say hello. Mr. Daniel stated that these kids would be pre-kindergarten age and that this would not happen. He said that it is an internal operation on both daycare centers. He said the entire theme of the letter submitted by Ms. Keating was that there is already a daycare center there and by reason of protecting their right under the first user in the area to gain clients, the project ought to be denied. He said as you read her letter you will see that in about three (3) or four (4) of her paragraphs that they are entitled to a denial because her facility was there first. He said that this was not how you would apply a Zoning Ordinance; he said that how the Village applies the Zoning Ordinance is by the standards. First, is it a permissible request, yes it is because it is a listed Special Use in the B-1 Zoning District incorporated into the B-2 district. He stated they were there for a request on the basis of a request for a change of use to show the daycare center with an outdoor playground. He asked if there was anything about the proposal of the daycare that caused a problem at this particular property as opposed to other properties in the B-2 Zoning District, he said that is a question that the Supreme Court asks that would be evaluated that the Village Board would evaluate over time, which is called the living word standard and there was nothing tied to this particular proposal at this location that makes it offensive when compared to other properties in the district. He said in fact right next door there is a similar use, they do not share drive aisles they do not share common yards and there is nothing tying these two (2) properties together

where this existing daycare and this proposed daycare is provided. Indeed the way the Village has set up its code in this area there are different business classifications and Boughton Road has been important. He mentioned he did a lot of work by the Ikea area and that he thought that everyone was well aware that the Village had the potential to draw traffic and business into this little corridor because a lot of people drive Boughton Road toward other places of employment that may or may not be in Bolingbrook and these types of uses at these locations are convenient and in fact necessary to the public interest. He said he suggested that this would meet several of the standards from a Planning perspective that would want to be considered. Mr. Daniel then said with respects to the changes that were described earlier in changing a Final Commercial Plan Development a change of circumstances would be one of the elements that have to established, and he thought that that change in circumstance was there. He said it was not chargeable to the landlord in this instance but is chargeable to commercial preferences in a changed economy. The site plans that were provided in the packet show additional green space and he had reviewed the additional green space comments of staff, but he could not find the location where the green space is required by ordinance and as he looked at the development from a legal and planning perspective with Mr. Bednrczyk, they considered the idea of eliminating the entire drive aisle and two (2) rows of parking spaces, which is eliminating more spaces than what they had requested. In addressing the need for the green space, the primary concerns seemed to be precaution for the playground on the north side of the building. The fence, planters, parking blocks, signage for the one-way drive aisle and designated parking spaces for employees of the daycare center only should all eliminate that risk to the kids from an errant vehicle. He indicated that he did not think that green space, at the cost of parking to the overall two (2) developments which the Village wants to see move forward in, which the benefits of that parking are enormous. He said they were not trading off safety because the additional green space would not add a lot of safety when the barriers were considered. He said the concern with the green space is that it would be open in leveled green space and provide an opportunity for people to congregate as well, which could create a potential liability issue for the landlord and the tenant. He stated they would not like a situation in which they had this open passive recreation space potentially where people can gather and having their kids out in the sun relaxing where there is commercial type traffic or traffic from other parents picking up their kids. He said they would hope this would be considered for the extension of the playground, so that they could eliminate the first row of parking north of the building and they could round off the curves to show that there is a drive aisle with the designated parking spaces. The entire first row of parking to the north of the drive aisle is where they would designate for staff of the daycare center only, and then they would have the fence and within the fence they could see tree planters and also have parking blocks in the parking lot according to your parking lot design regulations. He said that would be what they were looking at the elimination of those seventeen (17) parking spaces. He stated that in this particular instance under the circumstances this would be a good change for the area. He said these uses often thrive in areas and developments such as this, in addition with the frequency of traffic coming in. He said it would add some symbiotic energy to the area, so that other businesses would see this traffic and other business will be attracted to the development and overall Bolingbrook would benefit. He said he believes the project would meet the standards of the code.

Cathleen Keating from Law offices of Martin, Craig, Chester, & Sonnenschein LLP., Oak Brook, IL, sworn. Ms. Keating stated she represented Katie Moore from Kiddie Academy. She stated she also had Land Use and Municipal Law experience and had acted as a Village Attorney since 1982 and done a variety of zoning matters throughout the western suburbs. She stated she had a couple of legal points and very few comments. The first was that on Mr. Daniels comment that the B-2 District regulations incorporate all the permitted and Special Uses of B-1; she said that was not what the section actually says, she stated that Section 4-202(d) actually

says that regulations governing conditions of use in the B-1 Local Retail District shall apply to the B-2 district, and then they have a couple of exceptions that do not pertain to this. She stated that nowhere on that Section did it say the list of Permitted and Special Uses in B-1 is specifically incorporated in B-2 and that she believed the Village Planner also agreed that daycare centers are neither a Permitted nor a Special Use in the B-2 District. Another legal point that she said was that Section 9-102 which is the Planned Development Section stated the following: Uses which are Permitted or Special Uses in the I-1 Limited Industrial District shall not be allowed as uses in Planned Residential Commercial or Office Development. She said what she believed that section meant was that Planned Developments would have a degree in flexibility. She said they are trying to use Planned Development as a tool to allow more expanded scope of uses that would otherwise be allowable under the District regulations under the District in which the property is located, in this case B-2, but specifically 9-102 states that if daycare centers are listed as a Permitted or an allowable Special Use in the Industrial District it cannot be grandfathered in under the Planned Development category in a Commercial Planned Development, a Residential Planned Development or Industrial Planned Development. Ms. Keating said she did not believe the Village had the legal authority to grant or go outside the list of listed Special and Permitted Uses in the B-2 District to allow daycare centers. She said she believed that the impact in granting this Special Use Permit or the Planned Development modification would have on adjacent owners is clearly standard for Planned Development approval in the ordinance and the burden of proof would obviously be on the applicant. She went on by saying that Section 9-103 stated that one of the standards for Planned Development approval was that the proposed development would not injure or damage the use value and enjoyment of surrounding property nor hinder the development of surrounding property. She said she did not believe it would hinder the development of the surrounding property, but that it would hinder her client's use of the property, which is only one hundred (100) feet away. Ms. Keating stated that her client had spent a lot of money and a lot of time getting up and running. She also mentioned that Section 9-103 states another standard for Planned Development approval; she said the proposed use would not have a substantial adverse economic effect upon existing businesses in the vicinity. She said childcare centers as our real estate expert would testify are not like fast food restaurants. She said restaurants benefit by collocation, childcare centers are like schools, they do not benefit by collocation they have radiuses and defined market areas and that they believed that approving two (2) daycare centers within one hundred (100) feet of each other, even if the Plan Commission did have the legal authority to approve the use, it would have a significant adverse economic impact on a surrounding property use that has already been approved. Ms. Keating said that Village Board had already approved her client's use and that she was up and running. She said she started her operation on April 2, 2012, and she asked that she is allowed to continue in her business.

Vice Chair Rennels asked how Ms. Keating felt this was any different than what her client was approved for. Ms. Keating stated that she believed that Section 9-102 was not in the code when her client got her approval. She said from a practical stand point, from her application and from this application as far as the standards for Planned Development approval goes, she frankly believed just as Mr. Daniel testified that her client was there first and that the standards say that the applicant for a Planned Development and for a change in use has to prove that that particular use will not adversely impact uses of surrounding properties.

Sam Silva, Bolingbrook, IL, sworn. Mr. Silva stated he owned the property at 540 W. Boughton Road and has owned it for eight (8) years. He said he strongly objects to this tenant moving in solely that he put so much money to get a tenant. He said they have kept the property up and have invested a lot of money. He said that at the point in which they are at now and to have this tenant move in directly one hundred (100) feet away is just going to jeopardize their investment.

Katie Moore, Bolingbrook, IL, sworn. Ms. Moore stated that she and her husband own the Kiddie Academy located at 540 W. Boughton Road. She said they started looking for daycares back in 2010 and investigated a lot of different franchises, spent a lot of work looking and decided on Kiddie Academy. Then they began looking at areas. She said they started looking at Bolingbrook; she said they love the area and thought this would be the perfect location for a Kiddie Academy. She stated they found the location that Mr. Silva owns and moved forward with them. She said they signed the lease in May of 2011 right before they were approved for the Special Use Permit. She also said that they have invested over one million dollars (\$1,000,000) in this project. She said some of the money invested was in the construction, building everything, getting all the equipment in, getting all the promotion done, franchise fees etc., which was more than their life savings in which they had to get a bank loan. She said her concern was that a daycare offering the exact same thing as they offer, same ages, same services right next door would jeopardize her business and possibly put them out of business. She said she had a DCFS agent call her before they got licensed and she told her that she had driven by the site and saw the Children of America sign next door and asked her what was going on with that location. The agent stated that it really concerned her to have two (2) daycares right next to each other; she said it was not good for the children. She said that it would be very likely that neither of the daycares would survive, but that it was not good for the children either. Ms. Moore said the concerns from DCFS were also concerns to her. She went on by stating that they had just recently opened the business, that they have been opened for three (3) weeks. She said they currently have nineteen (19) students, but have the capacity for one hundred sixty-two (162). She said she expects to break even within a year to start making back the money that was spent in the project, but obviously if this project does go up next door the chances of that happening are very limited, and the chances of going out of business are very likely. She said with the inquiries that she had seen she did not think that two (2) daycare centers next to each other in this location would survive. She stated that she truly believed it would put her out of business. She said that she would like for the Plan Commission to consider that when making their decision.

Mr. Daniel asked Ms. Moore when she gave her description of going out and finding the franchise and eventually finding their way to the property in which she is currently at now; there were other properties that she looked at?

Ms. Moore said yes.

Mr. Daniel then asked if she had signed a letter of intent with Mr. Bednrczyk and Baron Holdings at one point.

Ms. Moore stated that yes they had looked at both properties.

Mr. Daniel said so as far as the site is concerned for a million dollar investment, the Baron Holdings property was appropriate for her use, at least at the time she signed the letter of intent.

Ms. Moore stated that they ultimately chose the site next door because it was a better location for a daycare center, for a playground, and everything that the daycare needed.

Mr. Daniel asked if she would have signed a letter of intent if the site was inappropriate for a daycare use.

Ms. Moore said that it was just a letter of intent that stated that they were interested in looking at the property. She said they had not determined yet if it was appropriate or inappropriate. She

stated that their concerns were the playground and what they were going to do with it. So they had not finalized their decision, but had looked at because they thought it might be appropriate.

Mr. Daniel asked her if it was correct that the day they were supposed to sign the lease with Baron Holdings that they went to the other property and worked with Mr. Silva.

Ms. Moore stated that was incorrect, she said they were in lease negotiations with Mr. Silva; she said she had wanted to move forward with that. She said she told him they wanted to wait because they were looking at the site next door and they were waiting to hear back on pricing. She said he knew very well of our negotiations next door.

Mr. Daniel asked if she had done any direct investigation on whether or not there were any Children of America sites that are adjacent to any other daycare centers.

Ms. Keating said she wanted to object to the line of questioning involving lease negotiations because it is totally irrelevant to the Land Use issue that was being discussed.

Mr. Daniel stated that he would then address that at closing and said that it was relevant that they signed a letter of intent at this location. He said no one would do that if they did not think that it was an inappropriate location for the use. He stated he would let the Plan Commission determine that by the evidence in the review.

Ms. Moore said she is not testifying whether or not the location is appropriate or not. She said if there was a daycare next door and she looked at his location, she would not have gone right next door because it would not be good business, in her opinion. She said that if there had been a daycare there she would not have chosen the location next door.

Mr. Daniel said he wanted to focus on that issue, he said she mentioned collocation and Ms. Keating also mentioned it. He said it is not like McDonald's and Burger King and that he was just trying to get in the basis of that. He said they are an operator in the field and asked if they have ever studied circumstances where two (2) daycare providers are lined up one next to the other.

Ms. Moore said that when she went through with Kiddie Academy one of the things that they said was that obviously there is competition, but that she would have to be very careful when choosing a location and not to go right next to your competition. She said that obviously there is competition around, but it is something that is looked at when they were looking for a site. She said they have to see what the surrounding things are. She said that one of the things they gave her was a marketing analysis report and that was one of the things that was in that report. She said what the surrounding locations would be something they would want to know when you are going into business.

Mr. Daniel asked if she was aware of any single circumstance where two (2) daycare providers existed, one next to the other and one of them closed.

Ms. Moore stated that she was aware of daycares that have closed in the past due to competition.

Mr. Daniel asked which ones starting in this immediate area.

Ms. Moore stated she was not aware of one in this immediate area.

Mr. Daniel asked how about in DuPage County or Cook County.

Ms. Moore said that was not her expertise so he was asking the wrong person.

Vice Chair Rennels asked Mr. Daniel if the property owner and daycare owner was the same person.

Mr. Daniel said no, the daycare owner had a representative here tonight. He said they were waiting to hear their presentation before presenting rebuttal.

Vice Chair Rennels asked if he would be leasing this from another person.

Mr. Daniel said yes.

Vice Chair Rennels said in hearing all this testimony, she was wondering why his client thought it was appropriate to choose a site so close to another daycare, than to pick a better untargeted site.

Mr. Daniel said that his client was the developer and pursuant to the lease terms, the developer proceeds with the burden of obtaining zoning for the center, so with respect to the location they would present evidence that there are successful daycare centers operating side by side at or near capacity at minimum of two (2) locations that this witness was familiar with. He said they can operate adjacent to one another, just like many businesses do.

Commissioner Campos asked Mr. Daniel if the testimony he was going to provide would be similar situations where businesses have just begun three (3) weeks ago.

Mr. Daniel stated that they are similar situation in which the businesses regardless of its age have not suffered for the other user after the second comer came into the market place.

Commissioner Campos asked if he did not feel that 3 weeks into opening a business had any effect on that.

Mr. Daniel said he would frankly say that the Village should not regulate competition through its Zoning Ordinance. He said it would be injurious to the economics of the adjacent properties and should not reach into why they have a new business here.

Commissioner Campos said he understood that, but said he was introducing testimony to rebuttal that so he was opening up the opportunity for that to be discussed.

Mr. Daniel said that it had been discussed and that this was a zoning hearing. He said he was not admitting it was relevant, but he wanted them to be comfortable with knowing that even at two (2) locations that this particular user operates, in which they share a fence line with one another and they are in a strip center with another, there had been no suffering.

Commissioner Campos said he was just asking if it was a direct parallel.

Ms. Keating said she submits first of all as a procedural matter that the applicant has the burden of proving no adverse impact on surrounding uses specifically any adverse economic impact. She said she would like him to present his case in chief before she finished with her case.

Erica Koegel, North Aurora, IL, sworn. Ms. Koegel stated she was from Children of America she said she was a Director and Trainer and has been in this field for several years. She said she has worked in different locations and with other companies. She said she understood what the client is stating regarding one business being next to one another, but that they have a center in South Elgin and they share a fence with another center. She said it is called Primrose. She stated they were both in business and it just gives both parents and the community a choice. She said they have been taking phone calls regarding the Bolingbrook location. She said the parents in the area say that it would be good that there is going to be choices. She said the centers might have different operating hours which give the parents a better choice they may open earlier and we may close later because not all parents work the same hours. She said the programs that they offer would probably be different. She said every business has different things to offer. She said their curriculum was different, their hours are different and it would be hard when you are opening a business with a clientele being right next to each other, but as far as causing strain with families it would not strain because they are going to school. She said parents were really excited when they found out that they may be opening up in the community because in this community there is not a lot. She said this location was very good for parents, with getting access to work. She said she had talked to a lady on the phone for over thirty minutes and the lady stated she takes her child to a home daycare and it is horrible because home daycares are not mandated, some are not licensed, so you have someone watching your child that is not offering educational program. She said there are not a lot of good quality daycares, there were a lot of older daycare in which their curriculum is not as cutting edge and those things are important things to consider when looking at their location. She explained that yes they were also taking care of children and educating them, but their program was different than the others. She said there is a Kiddie Academy about five (5) miles from her center. She also said her location was in one end of a strip mall and at the other end there was a Goddard location. She said they were there before them and they are still in business and they opened up shortly after and both locations are still in business. She said she has worked with other directors in the past and stated that sometimes they have to work together, sometimes they only have one bus and there are times in which they would not be able to service all the families, so by doing this they would be able to service the families.

Mr. Daniel asked if she could touch on what was mentioned by Ms. Keating earlier regarding the radius and what is commonly known as business judgment, a decision to locate somewhere, which is called business oriented geography. When it came to making the decision to work at the subject property on building a center what were the thoughts in the ability to fill her center considering the fact that there was already one next door.

Ms. Koegel said just the community's needs; if the majority of the families in the community both of them are working, that would be one thing, and how many daycare centers are in the area. She said they would not want to go somewhere where there are several because there might not be a need and also the age of the community is very important. She said she worked with other companies and when the community gets older and there are not a lot of school aged kids, pre-school kids, which would hurt the business, then communities change and more people, have children. She said that is something they look at when looking into properties. She said they would look at the location, the traffic, if there are local businesses nearby. She said they would want to go in an area that is busy and has high traffic, but safe for the children. She stated there were some communities that parents did not work and stay at home, or have nannies that come to the homes. She said something they do is try to work with families because they do understand the economy is hard, so centers take people that have subsidized care and they try to work with everyone. She said they would also work on just a pre-school program so it would not just be for working parents, but people that are just in need of pre-school for their children.

Mr. Daniel said so in the big picture it was determined first and foremost that Bolingbrook was a thriving community with a population that needed this service, the second point that was raised by Ms. Koegel was that the overall number of opportunities for daycare services in the community is what would make the difference.

Chairman Cawthon asked if anyone had studied the market. He asked if they had facts and figures that stated the number of families with the number of children or the number of kids in the school in different grades. He asked if there was an economic impact that stated the opportunity to locate in a community would be good and then the site was chosen.

Ms. Koegel said that was something that was done, but not by her, but by upper management. She said they decide that when they are opening up a location.

Chairman Cawthon asked if that was a factor for this location.

Ms. Koegel said that it was. She said out of all the schools that Children of America had not one had closed, so when choosing a location they really look at the community.

Chairman Cawthon asked if she had that same kind of fact for Kiddie Academy. He asked her if any had opened and have ever closed.

Ms. Koegel states she did not know. She said she had only known of two (2) Kiddie Academy's but as far as Children of America goes when they look at building an additional center that was what they look for.

Chairman Cawthon asked if Children of America was part of a larger chain.

Ms. Koegel said no they were their own company.

Chairman Cawthon asked how many units they had nationally.

Ms. Koegel said that they were looking at about fifty (50), but currently only having six (6) in Illinois.

Chairman Cawthon asked where their headquarters was located.

Ms. Koegel responded by saying in Delray Beach, Florida.

Chairman Cawthon asked if this was all part of a planned expansion.

Ms. Koegel said yes.

Chairman Cawthon asked if she knew anything about Kiddie Academy, and if they were part of a chain.

Ms. Koegel said she thought they were franchise.

Chairman Cawthon asked if she knew what franchise system.

Ms. Koegel states she was not aware of what franchise system they were in.

Cawthon asked the staff is regarding item c, and Ms. Keating talked quite extensively countering some of the points as the substantial economic impact. What is the intent of that in the ordinances?

Mr. Daniel asked Ms. Koegel if she thought that adjacency being next to one another would not necessarily matter just as what Ms. Keating's opening statement was.

Ms. Koegel said no it would not.

Ms. Keating asked what her title was with Children of America.

Ms. Koegel said she was the Director and Management Trainer.

Ms. Keating asked if she was involved in site selection.

Ms. Koegel said no.

Ms. Keating asked if she knew when Children of America selected the site in Bolingbrook.

Ms. Koegel said she was not aware of the exact date.

Ms. Keating asked if they have a signed lease.

Ms. Koegel said she did not have that information.

Ms. Keating asked if she was aware that Children of America as late as six weeks ago when answering phone calls in response to the sign on this premises said that they were interested in opening a site in Bolingbrook, but were unsure of the exact location.

Ms. Koegel said that the question might have been directed to someone that was out of state, and they might not have known the exact location in Bolingbrook because they also have people from corporate taking phone calls because right now the site does not exist. She said they try to get the inquiries and phone numbers so they can keep in contact when they know they are going to be able to get into the site.

Ms. Keating asked if she was the one answering those phone calls.

Ms. Koegel said she was not always the person answering the phone. She said sometimes they get directed to her and sometimes they do not. She also said that sometimes what a parent will do when they see that a center is opening they might try calling the corporate number and if the corporate number does not go through they call the site closets to it and they will call one of the other schools to get information and know about the program. They sometimes direct them to tour certain locations until they open so they can see what the programs are about.

Ms. Keating asked if she was aware that the sign for Children of America was up several months before her client's sign was up, so the people who were calling were unaware that a childcare center was going up next to door to hers.

Ms. Koegel said she was not aware of that.

Chairman Cawthon asked if that was material in some way.

Ms. Keating said that she says that there is a high degree of interest and therefore the community needs her use because of the calls they were getting. They were getting calls because they put their sign up way before they applied for the Special Use or the Planned Development and before my client's sign went up.

Mr. Daniel said he wanted to note in partial response to one of Ms. Keating's questions, he said Children of America was looking at this site actively before the existing operator abandoned their letter of intent with Mr. Bednrczyk, and as soon as that abandonment occurred Mr. Bednrczyk re-initiated conversations with Children of America. So they have been interested in the property for a long time and they knew specifically that there was another daycare coming in because that is the reason why this site opened up.

Leslie Yurek, NAI Hiffman Commercial Real Estate, sworn. Ms. Yurek said she was the leasing agent for 540 W. Boughton which is where Kiddie Academy currently is now. She said she just wanted to address two (2) points. She said the first being that she dealt with daycare centers consistently in the suburbs of Chicago and one of the key factors was always where are the closets competition. She said there was always going to be competition in almost any area in Chicago, but what they look for would be to maximize an area that is under served. So they would look at a radius around the proposed site and a radius around the closest daycare center and see what the overlap is. She stated that if there was a tremendous amount of overlap that would make a consideration to the site selection, the less overlap the better. In this case the overlap is one hundred percent (100%) so they are competing for every family within that same radius.

Commissioner Jacobs asked how big the radius was.

Ms. Yurek said it is usually 1 to 3 and 3 to 5 miles.

Commissioner Jacobs commented that there is a Kinder Care within two (2) blocks of the current location.

Ms. Yurek said it was half ($\frac{1}{2}$) a mile away, but in one hundred percent (100%) of cases there was always some kind of competition in which they are looking to minimize the overlap to those radiuses. She said there were obviously many more considerations besides that, but she knew that it was one of their top considerations when she talked to them.

Chairman Cawthon stated that he knew this was not relevant to daycare centers, but in the retail business like Target and Wal-Mart, Home Depot and Lowe's they collocate. Daycare centers are another form of retail because they are selling a service. He said without them knowing the total market demand, how many students each grade has, or what the birth rate is. He said he was certain that in the data it would suggest that there must be a market, and understanding that Ms. Moore has just started and in two (2) weeks has nineteen (19) kids he did not know what her rate would be. He said it could be one hundred (100) at the end of sixty (60) days. He stated no one would know that, but in his mind in going back to Ms. Keating's comments in her letter item (c) of section 9-103 and the free market being what it is, he would like to have some perspective from the staff on this specific element of the Zoning Ordinance. He said he would like to know what intent is and what it meant.

Mr. Kowalczyk said if you read the beginning it has to be a determination by the Plan Commission and the Board as evidence was presented to you. In this particular case you have to make determination, base it on the testimony as to whether collectively you feel that there is an economic adverse effect by any similar or same uses in the area.

Ms. Yurek said there has not been any testimony as to whether or not two (2) daycare centers are economically feasible. But, whether they are or not, just looking at the property values and how that could be potentially affected by having two (2) daycares side by side they are going to be evaluated as investments, and as investments the lease terms would be important, but the credit worthiness of the tenant and in the case of a daycare what someone looking to purchase those properties and give a value to them would be looking at how risky the investment is, and until each property stabilizes it would not reach its maximum value. She said it may take Kiddie Academy a year or two (2) to stabilize under good conditions, but with a second daycare there it might take longer. She said with the second daycare it may take many more years to stabilize, but that her point would be that until that occurs those property values would be at a decreased value, and worst case scenario would be that either tenant is unable to meet its obligation and the properties will go back to the bank.

Chairman Cawthon said that in his opinion what Ms. Yurek said was quite speculative because just as there is a propensity to fail there is also a propensity to succeed, and a lot depends on underlying data. He said he did not see data from anybody. He said he wanted to know what the market and studies say. He said he did not know if that was specifically what the staff had presented to them as part of this Plan Commission hearing, and commented that he was personally uncomfortable with item (c).

Vice Chair Rennels said she is also uncomfortable with item (c). She said as a long time Plan Commissioner they have always been open to free enterprise. She said they have had this argument a lot, for example on a subdivision. One gets built then they do not want another one to come in on the adjoining property because it will drive their property values down, but the reason that she was uncomfortable with this was because it was a Special Use and she was really not clear if it was different because it was a Special Use. She said ordinarily they do not vote no on something because of competition, or because of the adverse economic intent that they were looking at this differently.

Commissioner Wright said if Kiddie Academy was at its full capacity turning students away, would this be an issue.

Ms. Moore said if they open within the next couple of months it will obviously take them a lot longer to get to where they need to be which would put them out of business because they have invested everything they have. She said they have enough to sustain their business for ten (10) months to a year where they could break even and then they would not have enough. She stated to go along with the fact that it would affect the nearby businesses that is where it would affect her. She said they are opening up so close to the time that she was opening up her business and while it could affect her at any other time as well it would without a doubt affect her at the time they are looking to open.

Ms. Keating asked if she had done market studies before she signed the lease, and what was the projection on how long it would take to get to full capacity or break even capacity.

Ms. Moore stated she did do the market studies and that the break even capacity would be to be half full which is about ten (10) months to a year. She said to get full capacity it would take two (2) to three (3) years. She also said it would take a lot of time and with adding this daycare right next door it would take twice as long.

Chairman Cawthon said it might and it might not. He said all things being equal that is just speculative because there is a tendency when you have two (2) businesses from a convenience

stand point that area would create a little bit of a magnate. He said that the magnate affect could be very positive for them.

Commissioner Campos asked if it would have been beneficial to her to have opened up two (2) different academies next to each other.

Chairman Cawthon said that is not what he meant he is saying that would be more of a personal investment decision and that is something that they cannot speculate about.

Vice Chair Rennels stated they understand both points of view and that in any other circumstance they would not vote against competition.

Chairman Cawthon said they have typically been very supportive of the market and the way the market works. He said there were two (2) things that he needed and he did not see them. He said one of them was the data. He asked if someone could show him at a corporate level or at an analytic level what the data says. He said the second thing he wanted was the intent of item (c) in Ms. Keating's letter. He said that Mr. Daniel very adequately talked about the codes and how the ordinances work.

Commissioner Schank stated that they also have the legal issue that Ms. Keating raised.

Ms. Keating said section 9-102, states that if it is not in a numerated Permitted or Special Use in B-2, a Planned Development can bring it in, but not if it is listed as a Permitted or Special Use in the I-1 or I-2 District which daycare centers are. She asked how a Special Use was different from a regular Zoning Application. She said in the code the preamble to the Special Use section says that Special Uses are uses that present unique challenges because of the type of use and there are also uses for which there is a public need. She said that was their point. She said they do not believe that at this point in time there was a public need for two (2) daycare centers side by side. She stated that that was how a Special Use was different than other categories. She said she agreed with Chairman Cawthon, that normally market conditions do not enter into what they were deliberating and what the Village Board deliberates, but that a Special Use was supposed to be a public need generated, also that the collocation issue would be different with daycare centers because as they knew, just like in a regular school setting, children form a bond with their daycare provider. The teachers, the type of school, the surroundings, the play yard, their friends so it would not be like Macy's or like a hardware store. She said people do not decide to go to this daycare center one week and that daycare center the next week. She said they grow a clientele very slowly and methodically, so to say that two (2) would help the competition would not hold true when it comes to children forming a bond with daycare providers.

Mr. Daniel said if they were going to try to limit anything down the road to the legal questions and market questions he supposed that the data that was mentioned would like to be looked at and provided.

Chairman Cawthon said they have a recommendation from the planning staff and that was to approve this matter, so what he was asking for was because there were legitimate points raised and that he would suggest they have a little more time. He said he did not want to rush into judgment.

Mr. Daniel said he wanted to flush out the testimony from Ms. Yurek primarily before the next session so that maybe it is just Ms. Keating that had to come in and they would not have to bring in experts and they would not have to have someone come back either.

Chairman Cawthon stated that Ms. Yurek did not present any expert testimony; he said it was expert opinions which are part of the testimony. He said they have been through real estate opinions a lot and that this was a growing village and there were other factors that drive some of the things that she brought up. He said they accept what she said and would leave it at that.

Mr. Daniel asked Ms. Yurek if there was a report that she prepared or notes obtaining data about the effect of daycare centers located next to each other.

Ms. Yurek said no there were no reports only what she had heard from the daycare centers contacting her.

Mr. Daniel asked, so if daycare centers were telling her that they would rather not be next door to somebody that was what led to her opinions.

Ms. Yurek said yes.

Mr. Daniel asked if she did any independent investigation with the resources that NAI Hiffman had at its disposal.

Ms. Yurek said not at all.

Mr. Daniel asked when she was retained.

Ms. Keating said she objected to that question. She said Ms. Yurek is a realtor and has not been retained.

Mr. Daniel then asked when and who asked her to appear before the Plan Commission.

Ms. Yurek said the landlord Sam Silva.

Mr. Daniel said when Mr. Silva called her did he ask her to come testify in opposition to the application.

Ms. Yurek said no, he just asked her to appear.

Mr. Daniel asked if she knew what the topic was.

Ms. Yurek said absolutely.

Mr. Daniel asked if she knew what his position was on it.

Ms. Yurek said yes.

Mr. Daniel asked when Mr. Silva called her.

Ms. Yurek said she did not recall, it was right after the sign was posted.

Mr. Daniel asked if she was referring to the zoning sign.

Ms. Yurek said yes.

Mr. Daniel said so within approximately thirty (30) days. Then asked what research she had done that would relate to any of the opinions that she gave the Plan Commission.

Ms. Yurek said she did not do any research specific to it.

Mr. Daniel asked if she knew the length of the lease that they had with Mr. Silva.

Ms. Yurek stated fifteen (15) years.

Mr. Daniel asked when she took a look at a center a half ($\frac{1}{2}$) mile away from her client's property, did she have any idea what the impact of that proximate of a location for a competing daycare center would be on Mr. Silva's tenant use.

Ms. Yurek said that she did not have data for that.

Mr. Daniel asked how many daycare centers there were in Bolingbrook.

Ms. Yurek said she did not know the answer to that.

Mr. Daniel asked if she knew the population of Bolingbrook.

Ms. Yurek said no she did not.

Mr. Daniel asked how many properties she had actively been involved in as a leasing agent in Bolingbrook.

Ms. Yurek said six (6) plus and some of it was land.

Mr. Daniel asked how many of those were daycare centers or hold daycare centers.

Ms. Yurek said only one (1).

Mr. Daniel said that she had mentioned that daycare centers were an area of your expertise.

Ms. Yurek said she did not say they were an area of expertise, she said they were actually a tenant that called her quite frequently on properties that she represents.

Mr. Daniel stated that he must have misunderstood. But, went on by saying if there was anything in the design proposed for the site and as she could see in the exhibit that imposed a physical or environmental circumstance that would cause adverse economic harm to a neighbor to the east which was her client Mr. Silva.

Ms. Yurek said she cannot see anything with the design of the site, but that she did not know.

Mr. Daniel asked if she would consider it to be a traditional parking lot configuration for this type of a use.

Ms. Yurek said it was a little untraditional in that typically a daycare center would want a playground area that was not surrounded by parking lot.

Mr. Daniel said as far as the entrance and exit.

Ms. Yurek said typically they are looking for a stand-alone building where the play area is at the edge of the site and cannot possibly be surrounded by moving vehicles.

Mr. Daniel asked if she was ever involved with Montessori schools or leases involving Montessori schools.

Ms. Yurek said no.

Mr. Daniel asked if she had ever been involved in the design of a lease hold area for a daycare center.

Ms. Yurek said no.

Motion Vice Chair Rennels, second Campos to continue the public hearing to May 16, 2012.

AYES: Commissioners Jacobs, Rashid, Rhoades, Schank, Runge, Wright, Campos, Vice Chair Rennels, Chairman Cawthon

NAYS: None

ABSENT: None

Motion carried, public hearing closed 9:23 p.m.

NEW BUSINESS

None

OLD BUSINESS

None

APPROVAL OF PLAN COMMISSION REPORTS

Motion Rhoades, second Schank to accept Plan Commission reports:

PC 12.12 Approval of a Special Use Permit for a Planned Unit Development with Sign Variances. Digital Community Identification Display Sign, NEC of Boughton Road and Janes Avenue. Applicant: Rod Hursh, Impact Outdoor LLC. Project No.: 407.12

Voice Vote: Unanimous.

Motion carried.

CITIZENS TO BE HEARD

None

CHAIR'S REPORT

None

COMMISSIONER'S REPORT

None

PLANNING DEPARTMENT REPORT

None

ADJOURNMENT

Motion Vice Chair Rennels, second Runge to adjourn.

Voice Vote: Unanimous
Motion carried.

Chairman Cawthon adjourned the meeting at 9:24 p.m.

CHAIRMAN

APPROVED

SECRETARY