

**MAYOR AND COUNCIL PUBLIC MEETING NOTICE
SPECIAL MEETING PUBLIC HEARING - MAY 08, 2024 AT
4:15 PM**



MINUTES

The City of Douglas Mayor and Council met in a Special Meeting Public Hearing on Wednesday, May 8, 2024, at 4:15 p.m., at City Hall Council Chamber, 425 10th Street. The Honorable Mayor Donald Huish called the meeting to order.

1. **CALL TO ORDER.** 4:15 p.m.
2. **ROLL CALL.**

	<u>PRESENT</u>	<u>ABSENT</u>
MAYOR, DONALD C. HUISH	X	
MAYOR PRO TEMPORE, MARGARET MORALES	X	
COUNCILMEMBER, JOSE MONTANO	X	
COUNCILMEMBER, DANYA ACOSTA	X	
COUNCILMEMBER, RAY SHELTON	X	
COUNCILMEMBER, MICHAEL BALDENEGRO	X	
COUNCILMEMBER, RICHARD C. ACOSTA	X	
CITY MANAGER, ANA URQUIJO	X	
CITY ATTORNEY, DENIS FITZGIBBONS	X	
CITY TREASURER, LUIS PEDROZA	X	
CITY CLERK, ALMA ANDRADE	X	

3. **PERSONS WISHING TO ADDRESS THE COUNCIL IN WRITING OR VERBALLY ON ANY ITEM NOT ON THE AGENDA.**

Ms. Andrade stated no public participation forms were submitted.

4. **DISCUSSION on PUBLIC HEARING.**

A. The purpose of the Public Hearing is to allow public participation regarding the **LOMELI DAY CARE** in MHR Zoning District **CONDITIONAL USE PERMIT APPEAL**.

Xenia Gonzalez presented background information on a conditional use permit request. The Planning and Zoning Commission met on March 19, 2024 to consider the request by Mr. Sam Nieblas on behalf of property owners Bonifacio and Angelica Lomeli. The commission approved the permit with conditions, including the denial of a six-foot block wall that would infringe upon the 25-foot setback. Mr. Nieblas applied for the permit for Lomeli Daycare at 1240 23rd Street, a 0.43-acre mobile home residential parcel. The daycare had been operating since 2003 without the necessary permit, violating local municipal code. The permit, now approved with conditions, officially recognizes the daycare as a commercial child care center without altering the property's zoning.

Ms. Gonzalez continued with reporting the Planning and Zoning Commission met on March 19, 2024 and approved a conditional use permit for a commercial childcare facility within a mobile home residential zone, but denied the request for a six-foot block wall along the front and side setbacks. Staff provided the property owners with two approvable options for the wall, detailed in a letter delivered on April 2, 2024. The property at 1240 23rd Street, operating without a permit since 2003, is now recognized as a commercial childcare center under specific municipal code sections. Major conditional use permits like this require public hearings and address various impacts such as noise, solar exposure, and traffic safety. The permit includes conditions on maintaining safe sight distances for vehicle ingress and egress, and ensuring any unapproved construction meets regulatory standards. Two options for the block wall were provided: A graded wall no higher than three feet along the front and 18 feet along the west side, increasing to four feet after an 18-foot setback and six feet after a 25-foot setback. A six-foot block wall set back 25 feet from the front and side yards. The property is also located in a FEMA Special Flood Hazard area, requiring additional compliance. She lastly reported that the site is currently secured with a chain-link fence, and construction on the block wall has already begun.

Council Member Baldenegro expressed their opinion that, as it is a daycare, safety should be prioritized, suggesting that the property should have a six-foot wall enclosing the playground area. He emphasized the need for visibility and proposed a chain-link fence for this purpose. He clarified that the wall should extend to the property line, ensuring the safety of the children.

Council Member Montaño inquired on the reason for not allowing the six-foot wall, and if it was due to concerns about the line of sight for cars pulling out.

Ms. Gonzalez explained that the denial of the six-foot wall was due to concerns about the line of sight and violations of the regulations for the mobile home residential zone where the parcel is located.

Mayor Huish inquired if there has been feedback from the adjacent property owners.

Ms. Gonzalez commented they have not been in contact due to no requirement for conditional use.

Ms. Urquijo clarified that Mr. Nieblas had communication with the neighbor.

Council Member Richard Acosta questioned the necessity of a six-foot block wall in front of the property, suggesting that a chain-link fence might be a better alternative. He noted that block walls are not commonly used in schools and might not be aesthetically pleasing for a childcare center. Lastly, he emphasized that while security is important, a chain-link fence could also provide sufficient protection.

Ms. Gonzalez clarified that even a six-foot chain-link fence would violate the code requirements, and its approval would also need a conditional use permit for the height, but if it is Mayor and Council's decision to allow a six-foot chain-link fence, then it would dictate what happens beyond then.

Mr. Fitzgibbons stated that the council has the discretion to modify the conditional use permit, allowing for a six-foot chain-link fence instead of a six-foot block wall if they believe it improves the sight pattern.

Council Member Acosta inquired of parcel or zoning within the city that allows a six-foot wall.

Ms. Gonzalez explained that for parcels zoned as general commercial, a six-foot wall is the minimum height allowed, and it can be higher. However, this requirement applies only to parcels with general commercial zoning.

Mayor Huish invited Louie Garcia, Chairperson for the Planning and Zoning Commission for his input.

Mr. Garcia provided background information on wall regulations, noting that frontage and side setbacks typically allow for a three-foot height, with allowances for higher walls at greater setbacks. Safety, especially concerning visibility and potential accidents involving children, was a significant concern. The Board of Adjustments historically adhered to three-foot front walls for safety and uniformity in residential areas. He continued with reporting while the Planning and Zoning Commission had concerns about safety, they recognized the improvements made by the property owners and were open to compromise. He suggested alternatives such as a chain-link fence or a three-foot block wall with wrought iron on top for visibility. Lastly, he emphasized the importance of ensuring that any solution prioritizes safety and avoids potential liabilities for the city.

Council Member Baldenegro raised a question about the property's zoning change from commercial, noting its previous use as a venue for dances, a bar, and a restaurant. He suggested that when the current owners purchased the property, it should have remained zoned as commercial.

Mr. Garcia stated property was annexed from the county and zoned Mobile Home Residential. He also clarified that the purpose of the Planning and Zoning meeting was to bring the childcare center into compliance and recognize it as a commercial business despite being in a mobile home residential zone, which is essentially residential. He mentioned that this part of the application passed without issue. However, there were concerns about the safety implications of the block wall, and other stipulations were also discussed during the meeting.

Council Member Montaño expressed support for the idea of a three-foot wall with wrought iron, noting its effectiveness at Loretto school in providing visibility while still providing a barrier. He suggested considering this option for the childcare center.

Mayor Huish invited Mr. Nieblas to speak.

Mr. Nieblas a local general contractor, provided background on the project and the issues encountered with the permit application. He noted that the initial request was to replace a chain-link fence with a six-foot block wall due to safety concerns, as a vehicle had previously driven into the fence. He expressed disappointment at not being informed about the Planning and Zoning Committee meeting where the decision was made. He highlighted the reasons for the decision,

including concerns about line of sight and setback regulations. Additionally, he referenced city ordinances regarding sight triangles and corner lots, emphasizing that their proposal was based on existing regulations.

Mr. Nieblas reiterated the purpose behind the proposal for a block wall, emphasizing its importance for the safety and well-being of the children at the daycare center. He highlighted the need for special consideration in residential areas to ensure the safety of children, especially in today's world. The wall would provide privacy, security, and a safer environment for the children to play and develop social skills. He emphasized the responsibility of the council in ensuring the safety of the community's children and stated that neighbors were supportive of the proposal. Mr. Nieblas concluded by urging the council to consider the well-being of the children and support the wall construction.

Council Member Shelton proposed two ideas to address the concerns. Firstly, suggested obtaining grant money to install a sidewalk, improving accessibility for parents entering from 23rd Street or Division Avenue. Secondly, he proposed constructing a three-foot wall and adding chain-link fencing above it to address safety concerns while maintaining visibility and professionalism.

Council Member Baldenegro advocated for treating the childcare center like a school, emphasizing the importance of safety for the children. He suggested enclosing the center with six-foot walls along the neighboring side, the avenue side, and the front, similar to how schools similar to Ray Borane Middle School, Huber Middle School, Joe Carlson, Clawson, and Loretto operate.

Council Member Montaña acknowledged the unique situation of having a business in a mobile home residential area. He suggested a compromise by allowing a three-foot wall with wrought iron or a similar material on top, similar to the setup at Loretto school. He emphasized the importance of compromise to ensure safety and minimize the risk of accidents involving children.

Mayor Huish inquired if discussion should carry on due to another public hearing scheduled at 5:00 p.m.

Mr. Fitzgibbons suggested continuing the discussion, assuring that if anyone arrived for the 5:00 public hearing, they would be informed of the delay and the discussion would resume as soon as possible.

Ms. Lomeli expressed gratitude for the effort to find a solution, emphasizing the safety concerns for the children at the daycare, who range in age from 0 to 2 and a half years old. She highlighted the current inability for the children to play outside comfortably due to ongoing construction. Lastly, she urged for a prompt decision to improve their business conditions and requested a solution be reached as soon as possible.

Mayor Huish proposed an option for a three-foot block wall supplemented with wrought iron or chain link fencing to address the concerns raised during the discussion.

Ms. Lomeli expressed her reasons for wanting a six-foot wall on the property line, citing concerns about odors and potential hazards from neighboring properties. She expressed frustration with the situation, having been at the location for 18.5 years and now facing issues with a new neighbor moving in without considering the impact on them.

Council Member Morales expressed concerns about children's safety and suggested a compromise of building a three-foot wall with wrought iron on top, similar to Loretto School. She noted that most daycare centers in Douglas, Tucson, and Sierra Vista use chain link fences rather than six-foot walls. She also highlighted the importance of visibility for safety, mentioning that a solid six-foot wall might obscure harmful activities from public view.

Mr. Garcia advocated for a compromise and proposed two options: using either a chain link fence or a block wall with wrought iron on top. He noted that the block wall with wrought iron would be more aesthetically pleasing, while chain link is a lesser quality material.

Council Member Acosta raised a point of clarification, asking if any walls exceeding the three-foot code had ever been built within Douglas city limits, specifically in non-commercial areas. She inquired whether such constructions were done through permitting and conditional use.

Mr. Nieblas stated he has built walls exceeding three feet through permitting.

Council Member Acosta inquired if there was a building permit submitted before construction began.

Mr. Nieblas explained that he began the demolition phase by removing the chain link fence and preparing for equipment access before they actually received the permit.

Council Member Acosta asked if when the building permit was received, it specified that the wall was going to be six feet.

Mr. Nieblas clarified that he did not receive the building permit. The response from the city stated that the permit could not be issued because the plans indicated a six-foot wall on the street side, intended to replace an existing six-foot chain link fence with a six-foot block wall.

Council Member Acosta suggested that it seemed the permit application was submitted after the construction of the six-foot wall had already begun.

Mr. Nieblas explained that due to safety concerns, they poured the concrete footer and fenced in the area temporarily to maintain the playground's usability while awaiting permit approval. This was done to prevent accidents and ensure the children's safety.

Council Member Acosta pointed out that at the time Mr. Nieblas poured the concrete footer, he was not sure if the permit for the six-foot wall would be approved, as it was outside the municipal code.

Mr. Nieblas clarified that the work they did was on the back part, the north side of the property, not the front portion being discussed. This work occurred before he filled out the planning and zoning application, which is the current focus of the discussion.

Council Member Acosta questioned if it is standard practice for contractors to begin work before securing finalized building permits.

Mr. Nieblas explained that in certain situations, it's common practice to start work before finalizing building permits. In their case, they did so because of the urgent need to ensure the safety of the children at the daycare center.

Ms. Gonzalez emphasized that regardless of the approval status for a six-foot wall, a permit is necessary for any construction, and currently, no permit has been authorized for any part of the wall. She also highlighted that the city code specifies that no construction work can commence without a building permit.

Mayor Huish expected addressing the matter with a formal vote during the upcoming regular meeting

5. ADJOURNMENT.

Motion by Council Member Morales, second by Council Member D. Acosta to adjourn the meeting at 5:07 p.m.


Prepared by: Cynthia Acuña Robles, Deputy City Clerk