

DIAMOND RIDGE, BC No. 114 Tentative Map (TM)**Citizen Concerns Q&A, Attachment 5**

Issues brought up by the public at or for the Planning Commission meeting of May 18, 2022

February 2023: Updates relative to the Final Map (FM) noted in red

DUST (see p. 4 for comments regarding asbestos)

How will dust control be addressed?

- Prior to grading activity the developer will be required to obtain a Dust Control Operating Permit from the Clark County Division of Air Quality. Contractors will be required to spray water or use other approved methods during construction activities to mitigate dust. Any violations can be reported to the County by calling the phone number that will be posted on the sign on the property (702-385-DUST). City staff will also coordinate with the County on compliance.

CONSTRUCTION TRAFFIC**How will construction traffic be addressed?**

- Per the Public Works Department, all adjacent streets are public and can accommodate truck traffic during construction. Staff recommends the developer/contractors provide their traffic control plan and route(s) for ingress/egress of construction equipment for staff review. *Condition attached to TM and FM requires the developer to provide the haul route to the City, to disseminate to area residents.*
- When asked for an estimate of construction traffic, the developer responded by email that "Material shortages and the availability of specific trades has made construction scheduling difficult this far in advance. At this time, it is impossible to make such estimates. When a tentative construction schedule is finalized, RPS will be happy to share it with the City."
- As this subdivision will have custom homes, there will be initial construction by the developer to establish the lot pads, build the retaining walls and streets, and install underground utilities; he estimated grading will take 8 to 10 months. Thereafter each lot will be developed by individual home builders.

CONSTRUCTION EQUIPMENT**Where will construction equipment be staged?**

- The developer stated at the Planning Commission meeting that most of the equipment would remain on site.

Can the City prevent the developer from staging or storing equipment or materials on other property he owns in the area?

- Per the City Attorney, this is not an issue pertinent to approval of a subdivision map per city code or NRS. It would be a code enforcement issue only if there was a code in place which prevented property owners from storing items on private property which they own. (There is no such code.)

TRAFFIC STUDY**Why isn't a traffic study required?**

- Traffic studies are only warranted for large developments. Per the applicant's engineer, the Institute of Transportation Engineers (ITE) Trip Generation Manual 10th Edition has the following information for single-family detached homes:
 - Average weekday morning peak hour trips per dwelling unit: $0.76 \times 15 \text{ homes} = 11.4$
 - Average weekday evening peak hour trips per dwelling unit: $1.00 \times 15 \text{ homes} = 15$
 - Average daily trips (weekday) per dwelling unit: $9.44 \times 15 \text{ homes} = 141.6$ average daily trips (i.e. average 70.8 trips in and out). In a 22-hour period (subtracting out the A.M. and P.M. peak hours) this averages out to 5.2 trips per hour. (A trip is one way; someone leaving their home and returning later counts as 2 trips.)

UTILITY POLES**What is happening with the utility poles and easements on the adjacent La Plata Place lots?**

- The City has already relocated electric service underground for two La Plata homes, and anticipates removing service off the poles for the remaining three homes by the end of summer ~~2022~~ 2023.
- The developer is responsible for removing other utilities (phone, cable) off the poles at his expense. He will need to remove all poles before constructing the retaining walls. **The developer has contacted Southwest Gas, Cox and CenturyLink, and will sign the agreements and move forward after the FM is approved.**
- Once all utilities are removed the City can vacate the easement at the rear of the La Plata lots, subject to owner cooperation.

RETAINING WALLS

Will the new retaining walls eventually fail?

- Retaining walls will be designed by a structural engineer and built according to building code and engineering requirements. According to the applicant's engineer, retaining walls are built to much higher standards than they used to be.

Will water drain onto the adjacent La Plata Place lots through or from the new retaining walls?

- **There** will be a waterproof membrane material applied. Weep holes are required to prevent water buildup from damaging the wall. **Double retaining walls are no longer proposed adjacent to the La Plata Place lots.**
- **Any gap remaining between the new and existing walls will primarily be on the neighboring properties; the developer could not fill the gap without permission from the neighbors.**

Can the new walls be pushed back 10' to 20' to lessen the load on the existing La Plata Place walls?

- Asking the developer to push the retaining walls back by 10' to 20' would unreasonably limit the buildable area of the new lots.

Can the developer be required to rebuild the existing retaining walls on the La Plata Place lots?

- Per an email from the developer, "RPS would like to remove any existing walls that could be replaced with the new wall. A joint agreement would need to be put in place that is acceptable to the homeowners on the North side of La Plata, RPS and the (City)."

Can the new retaining walls be lowered in height?

- The proposed retaining walls heights are based on the proposed grading plan, which is essentially the same grading plan as approved for BC No. 111 several years ago. The applicant's engineer has addressed the reasons for the proposed grading of the subdivision in his 8-24-2021 letter regarding street grades.
- **Double retaining walls are no longer proposed adjacent to the La Plata Place lots.**

WATER

Is there enough water to serve this development?

- Yes. Per Public Works, water is available and the City has capacity to serve the proposed lots.

EMERGENCY SERVICES

Will this development pose an undue burden on the Fire Department for emergency services?

- No. While the City is in the process of reviewing the feasibility of building a second fire station, per the Fire Chief the creation of 15 additional single-family lots in this area will not have a detrimental impact on fire and emergency services. New hydrants will be installed to serve the development as required by the City.

NOISE AND CONSTRUCTION HOURS

- Per ordinance 1675, construction work is exempt from noise restrictions as long as the work has a permit from the City and occurs during the following hours: 5 a.m. to 8 p.m. during May through September, and 6 a.m. and 7 p.m. during October through April.

WILDLIFE, PESTS

How will moving rodents/wildlife/pests be addressed during construction?

- There is no effective way to address this issue; it will be a temporary nuisance during construction.

GROWTH CONTROL

Does this project violate the City's growth control ordinance?

- No; Ch. 11-41 of the City Code applies to the issuance of building permits, not the subdivision of land. Compliance with the ordinance will occur as building permits are applied for the homes.

HISTORIC DISTRICT

Does the Historic Preservation Committee need to provide a recommendation for this map?

- No. The subject property is not within the historic district, and the City Code does not provide authority to the HPC to review properties outside the district.

VIEW PROTECTION

Do existing properties have a right to a protected view of the desert?

- No. The City Code regulates setbacks and building height but does not provide view protection to any property. Individual neighborhoods may have CCRs and/or an HOA which might govern views, but those are private covenants that the City is not involved with. The developer is not proposing CC&Rs for this subdivision.
- Sec. 11-39-7.U.2 of the City Code states: "The layout and design of the subdivision will not unreasonably impair scenic views. Scenic views shall be determined on a case-by-case basis by the Planning Commission and City Council during the tentative map review. Cross section drawings of the site may be required." While views can be considered during the tentative map process relative to proposed grading, the code does not guarantee view protection. The applicant's engineer has addressed the reasons for the proposed grading of the subdivision in his 8-24-2021 letter regarding street grades.

LOT AND HOUSE SIZE

Concerns/questions were raised about the size of the proposed lots and future homes.

- The minimum lot size in the R1-10 zone is 10,000 s.f. and the average lot size in Diamond Ridge is 12,982 s.f. The lot size is in keeping with the lots to the south which are also zoned R1-10 as well as the abutting R1-7 lots to the west which are a similar size. The minimum house size for the R1-10 zone is 1,500 s.f., not including any garage.

REQUESTED CONDITIONS OF APPROVAL

Residents at the Planning Commission meeting for the Tentative Map requested that several conditions be applied to this development. The City has reviewed these requests and has the following response.

Local Government is permitted to impose conditions on the development of land, subject to constitutional limitations. The Takings Clause¹ of both the United States and Nevada Constitution allows these conditions to be imposed without having to provide compensation if there is a nexus to the burden that the government seeks to avoid,² and a rough proportionality between the condition imposed and the burden placed on the government.³ Additionally, conditions that are not imposed by regulations must be imposed as a result of custom and practice of the municipality.

¹U.S. Const. amend. V ("No person shall be ... deprived of life, liberty or property, without due process of law, nor shall private property be taken for public use, without just compensation.") Nev. Const. art. I, § 22.

² *Nollan v. California Coastal Commission*, 483 U.S. 825, 107 S. Ct. 3141 (1987).

³ *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309 (1994).

Can the City require the developer to test for naturally occurring asbestos?

- It has not been the custom and practice for the City to impose this type of condition. However, after the Planning Commission meeting, the developer voluntarily hired a third party professional geotechnical engineering firm to test for asbestos (samples taken from 27 locations), and none was detected.

Can the City require the developer to wash the neighbors' windows and walls?

- Per the City Attorney, the key analysis in the nexus and rough proportionality tests is whether the condition is imposed to address a burden to the government, not the neighboring property owners. Additionally, such has not been required as a part of custom and practice in the past. Accordingly, this would not likely be considered a reasonable condition.

Can the City require the developer to post a bond to pay for a third-party insurance company to resolve damage claims to neighboring homes/properties?

- Per the City Attorney, the key analysis in the nexus and rough proportionality tests is whether the condition is imposed to address a burden to the government, not the neighboring property owners. Additionally, such a bond has not been required as a part of custom and practice in the past. Accordingly, this would not likely be considered a reasonable condition.
- The applicant instead volunteered to pay for a third-party inspection of the abutting homes prior to construction. The Planning Commission recommended that the pre-inspection be a condition of approval. Per the City Attorney, the key analysis in the nexus and rough proportionality tests is whether the condition is imposed to address a burden to the government, not the neighboring property owners. Additionally, such has not been required as a part of custom and practice in the past. Accordingly, this would not likely be considered a reasonable condition.
- The applicant responded by email that "Its contractor has a general liability insurance policy of \$2 million. RPS also has a general liability insurance policy of \$2 million. RPS has constructed millions of dollars of projects in Boulder City with no issues with damage to neighboring properties. . . . there is no evidence that RPS's construction would damage any neighboring homes."

Can the City prohibit blasting?

- The Fire Chief recommends against the use of explosives, and blasting will be prohibited. **This was expanded and attached as a condition to the TM and FM.**

Can the City require the developer to hire a licensed exterminator to spray weekly?

- Per the City Attorney, the key analysis in the nexus and rough proportionality tests is whether the condition is imposed to address a burden to the government, not the neighboring property owners. Additionally, such has not been required as a part of custom and practice in the past. Accordingly, this would not likely be considered a reasonable condition.