

**PLANNING COMMISSION  
MEETING MINUTES – EXCERPT**

**COUNCIL CHAMBER, CITY HALL, 401 CALIFORNIA AVENUE  
BOULDER CITY, NEVADA 89005**

**Wednesday, May 18, 2022 – 5:00 PM**

**Members present:** Chairman Paul Matuska, Members Ernest Biacsi, Beth Bonnar, Matt Di Teresa, Nate Lasoff, Thomas Marvin and Steve Rudd (7)

**Members absent:** None (0)

**Also present:** Community Development Director Michael Mays, City Planner Susan Danielewicz and City Clerk Tami McKay

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**PUBLIC COMMENT** *(all comments pertained to Agenda Item 2)*

Chairman Matuska opened the initial public comment period and indicated the number to call was 702-589-9629. In person comments were provided first.

Donald McGregor, 310 La Plata Place, said his property abuts Lot 11 on the plans. He said the height of the proposed walls appeared to be 18 feet high with some type of barrier above the walls. He said he would like the Planning Commission to consider requiring lower wall heights. He said he was also concerned about the dust and possible asbestos being kicked around. He said the amount of silt in his pool from the site had been significant. He said the property had a monolithic piece of granite to be developed and asked if it would be jackhammered or if dynamite would be used to level the granite. He said the granite runs under his property's foundation and expressed concern. He said it appeared there would be a roadway at Arizona Street into the development. He said his home did not have a driveway, so he parked at the back of his home off the alley which was not designed for additional traffic. He asked that the Planning Commission require a bond be posted in the event there was damage to neighboring homes.

Andrew Ubbens, Avenue M, said he lived in Boulder City and wanted the city to be preserved. He said he was concerned about dust, noise, asbestos, and displaced pests. He said his kids played in the backyard and he did not want to worry about unwanted snakes and scorpions. He said he was concerned about his home's foundation cracking and possibly causing damage that was irreparable. He noted there was an existing water shortage and said development should stop until the shortage ends. He said there were also public safety concerns regarding fire department response time and questioned building more homes. He said Storybook had already built new homes and there was proposed development for Tract 350. He said the lots should be bigger with fewer homes.

Verne Stewart, 306 La Plata, said his home was located next to the project. He said his concern was jackhammering or using dynamite to break up the granite and possibly causing damage to the foundation, drywall, or stucco on his home. He asked who he would contact in the event damage was caused to his house. He asked that a third-party insurance bond be required for the developer; he said he preferred to deal with an insurance company instead of the developer. He also expressed concern about scorpions and snakes harming his dog.

Gerald Nelson, 304 La Plata, said he echoed Mr. Stewart's comments. He said a third-party bond would be ideal to help neighbors rest a little easier. He said rodent control was a concern and said he had a 34-year-old autistic child who spent most of his time in the backyard. He also expressed concern about dust and possible asbestos. He said he was concerned about the size of the homes. He asked that these concerns be addressed in advance of the project beginning. He said he moved to Boulder City three years ago from Chicago because of the City's slow growth policy. He said he was disappointed to lose the desert view and look at walls. He also said he was concerned about increased traffic.

Stuart Adams, 540 Avenue M, said he was opposed to the project because it did not conform to existing neighborhoods or to the terrain. He said he was also concerned about naturally occurring asbestos. He said it appeared the utilities were being brought up from Arizona Street. He said he was concerned about the time it would take to construct the project. He said the majority of traffic would travel from Arizona Street to Avenue M, and the streets were narrow and not conducive to two-way traffic. He reiterated he was opposed to the request.

Heather Ubbens, 499 Avenue M, said she was concerned about the safety of her children. She said the developer's other project at Avenue I was unsafe. She said she was concerned about the dust produced by the construction of the development. She also noted the placement was poor to develop so many lots.

Mike Morton said he lived across the street from the developer's other project on Avenue I and believed there were safety issues. He said the scope of the project impacted more homes than the 300-foot legal requirement to notice property owners. He said the interruption of services would be impactful to existing homes. He said the crews at the other project were unprofessional and the construction trucks were unmarked.

Kristina Riescher, 308 La Plata, said she was concerned about the dust, high walls and possible damage to her home's foundation. She said there were a lot of people who had access to the desert and asked if there would be trails to continue accessing the desert. She said they currently have overhead power and asked when the power would be placed underground. She expressed concern about power outages.

Blair Davenport said she was a member of the Historic Preservation Committee (HPC), and it appeared a portion of the project was located near the historic district. She said the HCP had not reviewed the project.

By phone: Camille Ariotti, Utah Street, expressed concern about the developer's existing project near her home. She said it had a lot of equipment, and she was concerned that equipment for this project would be stored near her home. She said she was also concerned about the size of the homes proposed for the development. She said it was important to preserve the history and small-town environment and embrace what Boulder City neighborhoods were all about.

No further comments were offered in person or by phone, and the public comment period was closed.

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2. For possible action: RPS Properties, LLC – Resolution No. 1211 – Diamond Ridge, BC No. 114 – North portion of Tract 6 (north of Northridge Drive, east of Arizona

Street and Avenue M): A **public hearing** and recommendation to the City Council on a Tentative Map for a proposed 15-lot subdivision in the R1-10, Single-Family Residential Zone

A staff report had been submitted by City Planner Susan Danielewicz and included in the May 18, 2022 Agenda Packet.

City Planner Danielewicz provided a brief overview of the staff report and addendum memo noting the applicant's tentative map had been approved in 2016; however, as the final map was not approved and recorded within four years, NRS required the tentative map to be reapproved. She noted the subdivision of land was a legal right when the new lots conform to the existing zoning on the property and the adopted regulations. She said the City's growth control ordinance did not apply to this request, but the future homes would comply. She said the only exception request was for right-of-way width for the streets and explained what a right-of-way (r.o.w.) consisted of. She said this property was not located within the historic district and therefore the Historic Preservation Committee would not review the project.

Chairman Matuska asked about the City's responsibility regarding dust mitigation.

Community Development Director Michael Mays stated the Clark County Dept. of Air Quality Control regulated mitigation throughout Clark County. He said dust control permits were required, as well as a mitigation plan. He said one of the ways to mitigate dust was using a water truck. He said Clark County inspectors had the ability to fine developers. He said City inspectors worked closely with Clark County staff.

Chairman Matuska asked if the City required bonds and traffic studies.

Jim Keane, City Engineer, said the City would require bonds only for the public improvements to be dedicated to the City. He noted that a 15-lot subdivision would not require a traffic study. He provided an example of requiring a traffic study for Storybook Homes with 127 lots as compared to this development with 15 lots, which would only generate 15 to 16 peak hour trips.

Member Marvin referred to the staff report and asked why the map had minor differences from the map originally proposed in 2016, specifically anything related to ADA. He also asked about street grades, when the overhead poles would be removed, and underground services installed.

City Planner Danielewicz said the staff report indicated the sidewalk ramp design now complied with ADA requirements. She also said the street grades, given the existing topography, were acceptable to the City Engineer at up to 10% for certain portions. She explained grade requirements had to be balanced because it was impracticable to get all street grades flat. She said the City Code allowed the City Engineer to approve grades higher than 6% up to 15% without Planning Commission approval.

In response to Member Marvin, City Engineer Keane said existing power poles were located on the developer's private property. He said the City still had three houses to connect. He said the City would relocate its lines, but the developer had to work with other utility companies to relocate their lines.

In response to Member Marvin, City Planner Danielewicz explained the City Code was amended decades ago to allow 51-foot rights-of-way with 4.5-foot easements behind the

sidewalk instead of additional r.o.w. She said a 60-foot r.o.w. gives the appearance of a bigger front yard but the street widths are the same.

In response to Member Rudd, City Planner Danielewicz said the City only had restrictions for retaining wall heights facing public streets; retaining walls elsewhere can be as high as needed. She also noted retaining walls had to be engineer-approved.

Ray Fredrickson, Performance Engineering, said the same map had been previously approved years ago. He said moving forward with the project was more feasible at this time. He said there were a few minor clean-ups, but the map was the same. He said no off-site grading would be performed and the street widths were standard in size. He said in response to some of the earlier comments, the soils report would have identified asbestos, and they would have been required to follow mitigation requirements. He said zoning was not an issue, and they were not asking for waivers.

Chairman Matuska asked if the soils report could be made available to the public.

City Planner Danielewicz said the soils report would be submitted to the City, and therefore it would be a public document.

Chairman Matuska asked that blasting, utility and other concerns be addressed.

Randy Schams, RPS Homes, said a ripper tooth and backhoe would be used to break down the rock. He said it doesn't cause a lot of vibration but it will cause noise, and said it breaks up the rock easily when water was used with it. He responded that all utilities would be placed underground. He said most of the construction equipment would be kept on-site. He said a stand tank with water would be placed at the project and trucks will deliver block for the walls, afterwards there wouldn't be a lot of traffic other than private vehicles coming to work. He confirmed he would develop the project, but he would not be building the homes. He explained the project had been placed on hold since the original approval because of personal reasons. He said there would be a fair amount of rock removal and the lots would be trenched properly for the future home builders. He said grading would probably take 8-10 months.

Member Marvin asked if the estimated dirt to be removed was separate from rock removal and Mr. Schams confirmed yes.

In response to Member Biacsi's questions, Mr. Schams said block will be used for the retaining walls instead of large boulders which attract snakes, and there would be 6' tall wrought-iron fences or walls above to prevent falls. He said he would be willing to hire a third-party agent to do a full inspection of the abutting homes and document it. He said they would check for tortoises as required but didn't have the ability to control where rodents and other pests will go. He also said motorcycles currently ride in the area and stir up dirt. He stated they would comply with City ordinance with respect to hours of construction.

In response to Member Bonnar, Mr. Schams said a company called GeoTek was used to perform the soils test.

Chairman Matuska noted this was the time and place scheduled to conduct a public hearing and asked for public input.

Donald McGregor, 310 La Plata Place, said Mr. Schams had agreed to a pre-inspection and third-party bond to protect the homes and asked it to be made a condition. He said

he would like to request some consideration to the height of the walls. He expressed concern about drainage of water and backing to the walls. He said seepage occurred at the retaining walls surrounding Del Prado subdivision.

Mr. Schams said he did not commit to a bond, just a third-party company to pre-inspect homes and take photos.

James Riescher, 308 La Plata Place, expressed concern about damage to the surrounding homes. He said his home was not tied to City utilities at this point. He asked if homeless people would be able to sleep in the area between the retaining walls. He also asked if it was possible to get the easement removed from his property.

Verne Stewart, 306 La Plata Place, said photographs of the properties would be great, but he wanted a third-party insurance company as the contact for concerns. He said in 2016, the City asked him to sign an easement for right-of-way so they could install underground utilities. He said Scott Hansen came up to his door to discuss moving conduit from the back to the front of his home. He said he agreed, but still does not have City power. He said he called CenturyLink, and they will not put their fiber underground because they had not been notified by the City and someone needed to pay for it. He said he wanted the easement removed from his property.

Brian Grafton, 531 Avenue M, said a traffic study was not conducted and that was concerning because of the area which is different than the Storybook property. He asked how it would impact the traffic because the alleyway had a blind spot. He said no one wanted construction trucks for the next several months. He said a plan should be developed for the construction traffic.

Mike Morton, Avenue I, said the property was not normal. He said it is a tiny neighborhood compacted into an existing neighborhood. He said the neighborhoods are small and this would be impactful to many residents and wanted further study.

Stuart Adams, 540 Avenue M, said the ingress and egress do not seem plausible at this time. He said there needed to be a better way to get to the development. He said it was bad planning. He said there should not be off-site grading. He said no vehicle should be outside of the development's footprint.

Chairman Matuska opened the public hearing to those watching virtually noting the phone line was open by calling (702) 589-9629.

Camille Ariotti said views of the lakes were protected and asked what City ordinance applied to protecting desert views.

Ray Turner reminded everyone the developer demolished the old hospital and said it was a constant complaint about the dirt lot for the past 4 years.

No further comments were offered, and the hearing was declared closed.

Chairman Matuska asked staff to respond to questions asked by the public with respect to insurance bonds, backfill behind the walls, easements, utilities, traffic study and construction traffic plan.

Community Development Director Mays responded about view protection and stated some neighborhoods have private restrictions provided by CC&Rs; the City, however, does not regulate view protection except by setback and height requirements.

City Planner Danielewicz explained people would not be able to hide between the double retaining walls as that area would be completely visible to the La Plata neighbors.

City Engineer Jim Keane said six years ago the City began relocating electric in La Plata Place and there were three homes remaining. He said an engineering technician was currently assigned to finish developing the plans.

Ray Fredrickson said the ITE transportation manual was referred to for trip generation statistics; for this it would be about 1 trip per house during the peak hours. He said traffic studies are not conducted for smaller projects of this size; typically only for projects with 100 peak hour trips and up. He said traffic studies did not address construction routes. He said retaining walls would have backing with a waterproof membrane, seepage holes, and will be designed by a structural engineer.

Community Development Director Mays said the retaining wall plans would also require approval of the City through the permitting process and be reviewed by a third-party consultant.

In response to Member Marvin, Ray Fredrickson said drainage during construction would be handled by best management practices, such as use of sand bags or hay bales, following the historic flow path.

**Motion:** Approve Resolution No. 1211, which includes findings and conditions for a recommendation in favor of the Tentative Map for BC No. 114, including the requested exception allowing the new rights-of-way to not match the existing, and an added condition that the developer will pay for a third-party pre-inspection of abutting properties.

**Moved by:** Member Lasoff

**Seconded by:** Member Rudd

**Vote:**

**AYE:** Chairman Paul Matuska, Members Ernest Biacsi, Beth Bonnar, Matt Di Teresa, Nate Lasoff, and Steve Rudd (6)

**NAY:** Thomas Marvin (1)

**Absent:** None (0)

The motion was approved.

**Moved by:** Council member Jorgensen **Seconded by:** Council member Bridges

**Vote:**

**AYE:** Mayor Kiernan McManus, Council member James Howard Adams, Council member Claudia Bridges, Council member Matt Fox, Council member Sherri Jorgensen (5)

**NAY:** None (0)

**Absent:** None (0)

The motion was approved.

7. For possible action: Matters pertaining to Diamond Ridge, BC No. 114, a proposed 15-lot subdivision in the R1-10, Single-Family Residential Zone on property north of Northridge Drive and east of Arizona Street and Avenue M:

A staff report was submitted by Community Development Director Michael Mays and included in the July 12, 2022 City Council Agenda packet.

Community Development Director Mays stated the developer, RPS Properties, sought tentative map approval. He said the property was zoned R1-10 and received prior tentative map approval in 2016 because the developer did not move forward with the project within four years to seek final map approval. He explained a public hearing was held before the Planning Commission on May 18, where several concerns were raised by area residents. He said staff had reviewed those concerns and prepared responses attached in the agenda packet. He said staff had added conditions that would address concerns about seismic activity and dual retaining walls. He noted the developer hired Geotech to test for naturally occurring asbestos. He said the results of their study showed negative findings.

City Attorney Walker noted a member of the public had provided a handout on this item that was made available at the front.

A. Public hearing on a Tentative Map

Mayor McManus noted this was the time and place scheduled to conduct a public hearing and asked for public input.

Donald McGreggor stated he attended the Planning Commission meeting, and one of the problems expressed by residents was the height of the wall. He said this would be a mammoth wall, and it would face the properties of all residents north of La Plata. He suggested adding two additional conditions. He said first, take photographs or videos of all properties prior to any excavation. He said second, to add the abutting owners on the developer's liability policy. He said the second requirement could be met at no additional cost to the developer. He said cutting into granite would cause serious vibrations. He

noted he provided a form the Council could adopt to ensure the developer complies with the two suggestions mentioned above.

Stewart Adams stated when the Planning Commission approved the resolution in May, he informed the commission members the three members were absent from the meeting when the resolution was initially approved in 2016. He said the lots had a beautiful view, but the residents on La Plata would have a view of the wall. He said many neighbors have voiced their concerns at the Planning Commission meeting regarding this new development, with an emphasis on the excavation and the naturally occurring asbestos. He said the soil report from 2016 did not test for naturally occurring asbestos. He said the report listed activities with equipment which would be extremely undesirable to neighborhoods in the area. He said one member of the Planning Commission said he had known the applicant for 20 years, and he was a man of his word. He said he talked to Public Works and was told the applicant would be running power underground for his project that the City would maintain afterward. He said the grading task for this development would involve the export of around 75,000 cubic yards of dirt at a substantial cost. He said any lowering of the roads to meet the City's 6% maximum slope requirement would involve substantial additional export and cost. He noted the project affected more than a 300 feet radius, and it would have 2,000 loads down residential streets to get to the dump.

Brian Crafton stated he understood the project would probably move forward, but the Council should adopt a working schedule so residents know when the semi-trucks would be on the roads. He said it would be helpful to know traffic direction and work schedules.

Verne Stewart stated Mr. Schams agreed to provide a photographer to take pictures before the excavation took place and asked how to schedule it. He asked how to proceed and if the City could facilitate it.

Alina Shell, an attorney speaking on behalf of the applicant, stated RPS Properties received approval for the same tentative map that expired. She said her understanding was Staff had recommended approval. She asked the Council to approve the resolution.

Mike Morton stated the project's scope impacted more than the neighboring homes. He said it affected several Avenues and Northridge. He said the project could take months for lots only and then years for individual construction projects on those lots. He said Mr. Schams already had an ongoing project at Avenue I, and these types of projects did not benefit the community but the individual. He said the Planning Commission had not addressed many logistic items, and people needed to do more due diligence. He said RPS's track record should require accountability.

There being no further comments offered, the hearing was declared closed.

B. Consideration of Resolution No. 7478, a resolution of the City Council of Boulder City, Nevada approving a Tentative Map

Mayor McManus asked if there was a height requirement for walls.



Community Development Director Mays replied there was not a maximum height requirement, but a separation was required for walls over six feet high.

Ray Fredrickson stated there was no height requirement for the back wall. He said having one 15 feet high wall or doing terraces were two options. He said the easement was required, but the power poles would be going away.

Acting Public Works Director Keane stated power poles were being removed and installed underground. He said he would look at 515 Northridge to confirm Connie Ferraro's concern.

City Attorney Walker stated the City could not add a condition requiring the developer remove the existing retaining wall on private property. She said if the actions of the developer harm a private party, that would be a civil matter between the developer and a private party. She said for example, if the private person's wall were harmed due to the new wall being installed, there would be a civil remedy.

Community Development Director Mays stated the developer would be willing to work with property owners.

Mayor McManus stated the applicant had made offers to replace the property owner's retaining walls, but none of it was enforceable. He said the existing property owners did not have recourse.

City Attorney Walker stated the City could not require a separate private party to agree to have their wall replaced. She said the developer and the neighbors could resolve any civil issues between the private parties. She said if the developer's actions caused damage to a private person, that person would have a claim against the developer. She said these types of things were usually resolved through general liability policies that developers and landowners usually carry.

Mayor McManus asked if there was a requirement for liability insurance by the applicant.

Community Development Director Mays replied liability insurance was required as it related to any business within the community and for public improvements. He said, additionally retaining walls required building permits that included structural engineer calculations to ensure the retaining wall was structurally sound, and it would not negatively impact adjacent structures.

Mayor McManus asked if the applicant would have to build a wall some distance from the wall the property owner did not want to be touched.

Community Development Director Mays replied affirmatively, adding the new wall could not undermine the existing structure.

City Manager Tedder read the City Code related to retaining walls. He said if a retaining wall faced a public street, the maximum requirement was six feet, but other than that, there was no restriction.

Mayor McManus stated he was concerned the soil report was never presented to the Planning Commission. He said the proposed resolution contained a prohibition against using some techniques the engineering report said would likely be needed. He said the requirements were in place because the City was trying to protect adjoining properties from damage, and it was detrimental not to include a soil report. He recommended including the soil report requirement in the resolution. He said naturally occurring asbestos became a known issue during the construction of the I-11 bypass. He said the type of granite in the area where the applicant wanted to build had formed various asbestos fibers. He stated a geologist had shown the type of study done was unlikely to detect the type of asbestos that may be present at the building site. He said when new information was available, it was essential to take the proper steps to ensure a bigger problem was not being created. He said having this material dumped at a City owned facility could become a liability. He noted the applicant should notify residents by certified letter and give them a period to take advantage in case any damage has been done.

Council member Adams acknowledged the concerned residents. He asked about the developer providing plans for truck traffic. He said the anticipated time and routes would be helpful.

Ray Fredrickson replied the applicant could work with the City to determine haul routes. He added the applicant agreed to work only within the City's hours of operation.

Council member Adams asked if it could be required of the developer to provide work schedules.

City Attorney Walker replied there had to be a nexus to government burden and a proportionality between the condition imposed and the burden being placed on the government. She said where a condition was not imposed by ordinance or regulation, it typically had to be imposed as a result of the custom and practice of the City. She said this requirement had not been imposed in the past. She said having a haul route on the public streets had a government burden. She said it would be up to the Council to determine if the requirement was needed. She said, however, if the City requires this of this developer, it should be required of every developer going forward.

In response to Council member Adams, Community Development Director Mays replied every grading activity in the county required a grading permit from Clark County. He said the dust mitigation plan was submitted for compliance with county regulations. He said Geotechnical said the most effective way to mitigate potential asbestos was through watering and dust mitigation practices.

Mayor McManus stated the material might be mitigated while wet, but it also might get transported. He said the other part of the mitigation of naturally occurring asbestos would be to have some type of cap applied with a material that did not contain asbestos.

Community Development Director Mays said material must be contained while transported to a different location. He said developers looked at dust palliatives to keep it from becoming airborne. He said the standard practice method Polarized Light Microscopy (PLM) utilized by Nevada Department of Transportation (NDOT) was the industry standard. He said it would be hard to apply alternative methods until the industry developed a new standard for regulatory use.

Mayor McManus stated new scientific information had been accumulated and documented.

Community Development Director Mays said there had not been an industry standard to revise current standards.

Mayor McManus stated he hoped past practices and customs could be evaluated with the additional information.

Council member Adams asked if the applicant was willing to agree to the conditions of the neighboring residents.

City Attorney Walker reiterated there had to be a nexus to a government burden. She said establishing a haul route was a reasonable requirement.

Ms. Shelly stated that the applicant was willing to work with the City to establish hauling routes.

Mayor McManus asked Ms. Shelly if the applicant would be willing to have additional testing for naturally occurring asbestos done.

Ms. Shelly replied Geotech took numerous samples, and none returned detectable asbestos. She stated this was not a condition that was required of any other applicant.

Mayor McManus stated it was important to look at the materials that were specific to the region.

Ms. Shelly stated the testing was not required, but the applicant did the testing and used the same standards used by Bureau of Land Management and Nevada Department of Transportation.

Council member Bridges stated it appeared a lot of conditions were being requested to approve the tentative map. She said if damage occurred, it was between the private parties.

City Attorney Walker stated prohibiting blasting and other conditions that cause seismic activity and establishing a haul route on City streets were a nexus burden to the government. She said if the developer breached and caused damage, property owners could file a claim with the liability insurance carrier.

Council member Bridges noted one of the residents talked about a bond that the applicant rejected.

Community Development Director Mays explained what bonds were required by the City. He said the bond was used to guarantee improvements would be dedicated to the City, such as infrastructure and streets.

Council member Jorgensen asked about the exception for which the applicant asked.

Community Development Director Mays replied the applicant was asking for an exception since the standard road width had changed from 60 feet to 51 feet. He said the exception would be beneficial.

Council member Jorgensen stated the PLM method, which was commonly used for asbestos testing, was done in organizations such as California Air Resource Board, OSHA, and EPA. She asked if the applicant was complying with everything.

Community Development Director Mays stated the applicant had met all the requirements of the City.

Mayor McManus stated the City should require new customs for future developments.

City Attorney Walker suggested the discussion of new customs should be agenized for a future meeting.

Mayor McManus said he disagreed. He said he believed the requirement for testing against naturally occurring asbestos should be included.

Council member Adams stated he did not believe this was a great location for development. He said it seemed to him the applicant agreed with the prohibition of blasting and ball tamping. He noted the applicant agreed to develop a haul route with the City.

**Motion:** Approve Resolution No. 7478 with added conditions: applicant provide a haul route for dissemination to area residents and asbestos testing report be submitted to City

**Moved by:** Mayor McManus

**Seconded by:** Council member Bridges

**Vote:**

**AYE:** Mayor Kiernan McManus, Council member James Howard Adams, Council member Claudia Bridges, Council member Matt Fox (4)

**NAY:** Council Member Sherri Jorgensen (1)

**Absent:** None (0)