NORTH SALT LAKE CITY
PLANNING COMMISSION MEETING
APRIL 22, 2014

FINAL

Chairman Bruce Oblad called the meeting to order at 6:29 p.m. and welcomed those present.

PRESENT: Commissioner Chairman Bruce Oblad
Commissioner Kim Jensen
Commissioner Ted Knowlton
Commissioner Robert Drinkall
Commissioner Lisa Watts Baskin
Commissioner Stephen Garn
Council Member Ryan Mumford

STAFF PRESENT: Ken Leetham, Assistant City Manager; Ali Avery, City Planner; Andrea Bradford, Minutes Secretary.

OTHERS PRESENT: Chris Faulhaber, Granite Construction; Wilford Cannon, Sky Properties; Tom Durrant, resident.

1. PUBLIC COMMENT

Tom Durrant, 834 Parkway Drive, commented that he is building on Parkway Drive which is adjacent to the Granite Property. He just received a certified letter from Parr Brown Gee & Loveless, which is a law firm, representing Granite Construction Company. Chris Faulhaber, with Granite Construction, recently brought to Mr. Durrant's attention that there was a settlement agreement between Sky Properties and Granite back in 2011 which concerns lots 1319 and 1320 which Mr. Durrant now owns. He explained that years ago there was an encroachment upon Granite's property by Sky Properties which he was unaware of when he purchased the property from Sky Properties. When he bought the properties the elevation was quite high and the encroachment is a slope down onto Granite's property.

Mr. Durrant said that Granite is now seeking money from him for the encroachment and that when he spoke with Sky Properties he was told that this agreement should not concern him. He stated that the original agreement from 2011 was unsigned and also contained a settlement amount of $6,500 that was to be paid to Granite Construction by Sky Properties to settle any encroachment claims. Mr. Durrant asked for a continuance or a delay in the mining permit until this issue with Sky Properties, Granite Construction and himself was resolved as he is concerned

about the stability of his property if the soil encroaching on Granite's property were to be removed. He presented the original settlement letter and the certified letter he received from Granite Construction which will be included in the meeting minutes.

2. CONSIDERATION OF A CONDITIONAL USE PERMIT FOR SAND AND GRAVEL QUARRYING FOR GRANITE CONSTRUCTION LOCATED DIRECTLY SOUTH OF THE GRANITE RIDGE DEVELOPMENT. CHRIS FAULHABER-GRANITE CONSTRUCTION, APPLICANT.

Ali Avery reported that due to the Planning Commission's concerns in regards to safety of the Granite Ridge road system, the timeline of the removal of materials, and the legality of the Lakeview Rock Products entitlement which is west of this property, that the Development Review Committee (DRC) revised and added the following conditions of approval: that the 4,900' bench be reclaimed and re-vegetated during the 2nd phase of the project, that a berm and a fence be added in the north buffer zone, proof of compliance and bonds are to be held with both the State and the City, the reclamation plan must be approved by the State and City, a lapse provision will be placed on the approval with an annual site investigation, and that this approval only applies to the subject property and does not authorize or entitle any mining or quarrying on any adjacent properties.

Commissioner Baskin commented that the annual site investigation request would come from the owner of the mining operation and not the City. Ali Avery replied that would be correct and that the site investigation is conducted by the City's Public Works Department and would need to be scheduled by Granite Construction to assure that the site is in compliance with the reclamation plan. This annual report would need to be submitted to the City stating what mining activities had been performed during the year.

Ali Avery also said that in regards to the Granite Ridge road system that the road variation would be designed and approved with the Final Plat and Construction Drawings for Granite Ridge subdivision Phase 3. The other item that was requested by the Planning Commission that can be imposed on this application is the 6' berm and a 6' chain-link fence buffer that will be added to the buffer zone. Mrs. Avery commented that it is unknown how long it will take to remove all the material from the Granite Construction and Lakeview Rock Products sites. It is estimated that the first phase, including two benches on the Granite Construction site, will take approximately four years to complete and it is also estimated that phase 2 will take approximately 50 years to complete depending on the market and demand for these materials. She commented that the Planning Commission does not have the authority under City code to place a sunset on the approval. The City Council has required with the development agreement for Granite Ridge, that

the mining closest to the Granite Ridge subdivision be completed with the first phase of the mining which will be approximately four years.

Council Member Mumford asked for clarification in regards to Mr. Durrant's earlier comments and if the issue is the 100' buffer from the property line to the mining or if the property line was not finalized. Chris Faulhaber, Granite Construction, replied that there was an encroachment by Sky Properties in 2011 where some of the adjacent property lines were not staked out and have since encroached onto Granite's property and have built up about 15 to 20' worth of fill material on Granite's side of the property line. Granite is concerned that their property has been taken without approval or authority and wants to protect their rights as a landowner. There is no dispute over the location of the property line. He said that they are willing to follow through with the agreement between Sky Properties and Granite Construction which included the removal of the encroachment material from their property. The discussion between Sky Properties and Tom Durrant also includes a slope easement so that the lots could be built up and the backyards extended while maintaining a buffer area.

Commissioner Drinkall commented that Mr. Durrant had said that he was concerned that the undermining would cause his property stability to be weakened. Mr. Durrant replied that this was correct and that he is concerned that as the lot is currently flat and the slope is on Granite's property that if the fill is removed it will not meet City code and his yard will crumble away. He said it appears that an agreement could be made and that he is asking for a few days to reach a resolution.

Ken Leetham said that, in his opinion, under State law that Granite Construction has made an application to the City and is entitled to timely processing of their application and that this issue with Mr. Durrant should not delay the approval of the conditional use permit. Approval of this permit would not mean that Granite Construction would immediately start excavation near these properties as it appears all involved parties want to resolve the problem. He also pointed out that this is a civil matter between two property owners, and is not a City issue.

The Planning Commission discussed holding an emergency meeting after the attorneys for Granite Construction and Sky Properties had met, but that there didn't appear to be a safety issue having the earthen material in the buffer area, and that possible litigation between the involved parties could hold up the project. Commissioner Oblad commented that the Commission should move forward on this application.

Commissioner Baskin commented that she was concerned about the notification language, in regards to the Granite Ridge development, and whether it stated that the notification for potential homeowners would occur at closing as well. Ali Avery replied that it was addressed in condition

#4 in the motion for the Granite Ridge subdivision preliminary design plan. The development agreement language states that notifications occur at closing.

Commissioner Knowlton moved that the Planning Commission approve the conditional use permit for sand and gravel quarrying on the Granite Construction property (Davis County Serial #01-120-0033) located directly south of the Granite Ridge development in the Special Use Restricted (SR) zoning district subject to the following conditions:

1) **The portion of the 4,900 foot elevation bench included in the first phase of the project must be permanently reclaimed and re-vegetated within 4 years. The remainder of the 4,900 foot elevation bench must be permanently reclaimed with the 2nd phase of the project. The 4,800 foot elevation bench may be temporarily reclaimed and re-vegetated and remain that way until it is permanently reclaimed and re-vegetated with the 2nd phase of the project.**

2) **The north buffer zone shall contain, at a minimum, a 6' earthen berm and a 6' high fence. The earthen berm shall be closer to the mining activity than the fence. Once the earthen berm is removed, in compliance with the reclamation plan for the 30' benches, permanent vegetation shall be installed in the buffer zone to control dust.**

3) **The surety bonds for the reclamation of the property associated with the Small Mining Permit and the Large Mining Permit must be approved by the City Engineer and be written in a way to provide access to the bond funds for both the State of Utah and North Salt Lake City. The applicant must provide proof of compliance with this condition to City staff prior to the commencement of operations.**

4) **The reclamation plan approved by the State of Utah for both the Small Mining Permit and the Large Mining Permit must be the same reclamation plan approved by the North Salt Lake City Planning Commission. The applicant must provide proof of compliance with this condition to City staff prior to the commencement of operations.**

5) **Pursuant to City Code 10-17-7D, the applicant must request the annual site investigation and submit an annual report to the City on or before April 22nd of each year. If the site investigation is not requested and an annual report is not submitted to the City on or before April 22nd for two consecutive calendar years, then the conditional use permit for Sand and Gravel Quarrying is deemed as lapsed and no such activity may continue on the property.**

6) **This approval only applies to the subject property, Davis County Serial #01-120-0033, and does not authorize or entitle any mining or Sand and Gravel Quarrying on any adjacent properties not included in the subject application.**

Commissioner Drinkall seconded the motion. The motion was approved by Commissioners Oblad, Jensen, Knowlton, Drinkall, Baskin, Garn and Council Member Mumford.

Commissioner Knowlton asked if on the second motion that there is a requirement that there be a reduction to 0' between adjacent mining operations and asked if there would still need to be 100' between the former UDOT parcel, owned by Lakeview Rock Products, as it is not approved for mining. Ali Avery replied it doesn't explicitly say that it has to be existing or "approved" mining operations, just adjacent mining operations and could even be for mining that is not currently approved.

Council Member Knowlton moved that the Planning Commission approve a reduction in the requirement in North Salt Lake City Code 10-17-7.B2, which requires that a 100' horizontal distance be maintained from any other property owner. The requirement will be reduced to zero (0) feet between adjacent mining operations, but remain one hundred (100) feet from any residential property lines, excluding the roadway for Granite Ridge.

Council Member Mumford moved to amend the motion to say "The requirement will be reduced to zero (0) feet between adjacent mining operation, but will remain one hundred (100) feet from any residential property lines and 50' feet from any roadway."

Commissioner Garn seconded the motion.

Commissioner Baskin commented that the 50' buffer between the roadway and the construction is a safety concern and that she would be voting against this motion as 50' does not seem like enough distance.

The motion was approved by Commissioners Oblad, Jensen, Knowlton, Drinkall, Garn and Council Member Mumford. Commissioner Baskin voted in opposition.

3. APPROVAL OF MINUTES

The Planning Commission meeting minutes of April 8, 2014 were reviewed and amended.

Commissioner Drinkall moved to approve the minutes from the April 8, 2014 meeting as amended. Commissioner Oblad seconded the motion. The motion was approved by

Commissioners Oblad, Jensen, Knowlton, Baskin, Drinkall, Garn and Council Member Mumford.

4. ADJOURN

Chairman Oblad adjourned the meeting at 7:24 p.m.

Chairman

Secretary

November 14, 2011

Granite Construction
Attn: Chris Faulhaber
1000 North Warm Springs Road
Salt Lake City, UT 84116

RE: Encroachment Settlement Letter Agreement

Dear Mr. Faulhaber:

This letter agreement is to confirm that Eaglepointe Development, L.C. and Granite Construction have reached an agreement to settle all issues regarding Eaglepointe Development's encroachment onto land owned by Granite Construction in North Salt Lake City, Utah. Eaglepointe Development will pay to Granite Construction the sum of $6,500.00 as compensation for any damages caused by the encroachment. Eaglepointe Development further agrees to not allow any further fill activities that will encroach onto Granite Construction's property.

The $6,500.00 payment will settle all encroachment claims against Eaglepointe Development and is compensation for damages only; no property is transferring from one party to the other and no boundary line adjustments are occurring as part of this agreement. Granite Construction may, at its own absolute discretion, choose to use the $6,500.00 payment to remediate any damages caused by Eaglepointe Development's encroachment but is not required by this agreement to perform any remediation.

Upon mutual execution of this letter agreement and payment of the $6,500.00, both parties may consider this matter settled.

If this letter agreement does not accurately reflect your understanding of our agreement please let me know. Otherwise, please execute and return a copy to:

Eaglepointe Development
C/O SKY Properties
585 West 500 South, #110
Bountiful, UT 84010

We will then promptly deliver the $6,500.00 payment.

Sincerely,

W. Scott Kjar, Manager
Eaglepointe Development, L.C.

Granite Construction

By: _____

Name: _____

Title: _____

PARR BROWN
GEE & LOVELESS

Jeffrey D. Stevens
jstevens@parrbrown.com

April 11, 2014

VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

B & E Pace Investment, LLC
Attn: Randle Earl Pace
3550 South 2175 East
Salt Lake City, UT 84109

TLC Construction, Inc.
1123 East Fairway Drive
North Salt Lake, Utah 84054

TLC Construction, Inc.
Attn: Thomas L. Durrant
1855 South Bountiful Boulevard
Bountiful, UT 84010

Re: Lot 1319-AR, Eagle Point Estates
850 South Parkway Drive, North Salt Lake City, Utah

Lot 1320-AR, Eagle Point Estates
834 South Parkway Drive, North Salt Lake City, Utah

Gentlemen:

This firm has been retained by Granite Construction Company, (Granite), which owns property (the "Granite Property") directly west and adjacent to Lot 1319-AR, Eagle Point Estates, 850 South Parkway Drive, North Salt Lake City, Utah, and Lot 1320-AR, Eagle Point Estates, 834 South Parkway Drive, North Salt Lake City, Utah (the "Lots"). We understand that the Lots are owned by B & E Pace Investment, LLC and that TLC Construction, Inc. is the general contractor for the improvements currently being constructed on the Lots. If our understanding is incorrect, or if you are represented by legal counsel, please immediately advise us.

In the course of constructing the improvements, it is apparent that you have purposely placed a significant amount of fill, soil, rock and excavation spoils on the Granite Property without prior notice or the consent of Granite. Additionally, the slope of the encroaching material has not been engineered or properly compacted, and exceeds the maximum slope required under North Salt Lake City's slope ordinances, creating unstable and potential dangerous conditions, all in further damage to Granite's Property. As a result, Granite has been deprived of the use its property without compensation and the future development of the Granite Property has been impaired.

The encroaching materials are an intentional trespass on Granite's property and you must take immediate action to remedy the situation by removing the encroaching material from the Granite Property. Specifically, within ten (10) days after the date of this letter, you must provide Granite with detailed excavation and grading plans and a removal schedule, in form and substance acceptable to Granite, for the removal of the encroaching material and stabilization of the slope to its original pre-disturbance elevation and with a slope not exceeding 2:1, as required by North Salt Lake City ordinances. The plan for and removal of the encroaching material is subject to Granite's contractor safety, access and insurance requirements, and can occur with only prior written consent of Granite.

Alternatively, for a limited time Granite is willing to discuss with you allowing the encroaching material to permanently remain on the Granite Property pursuant to a mutually acceptable slope easement and with financial remuneration acceptable to Granite. If you are interested in such an alternative resolution, please contact Chris Faulhaber of Granite Construction (801) 526-6047 to discuss the alternative. Such discussions will be in the nature of privileged settlement discussions and shall be without prejudice to Granite's rights and remedies if an agreement is not reached.

If the an acceptable plan for removal of the encroaching material or an agreement allowing the encroaching material to remain on the Granite Property is not reached within the ten (10) day period provided above, Granite intends to pursue its legal and equitable remedies.

You are not authorized to enter the Granite Property for any reason without the prior written consent of Mr. Faulhaber in each instance.

PLEASE GOVERN YOURSELF ACCORDINGLY.

Sincerely,

Jeffrey D. Stevens

JDS/jhh

4847-9201-7178.1