



EAGLE MOUNTAIN SPECIAL CITY COUNCIL MEETING MINUTES

January 22, 2018

Eagle Mountain City Council Chambers

1650 East Stagecoach Run, Eagle Mountain, Utah 84005

7:00 P.M. SPECIAL SESSION – COUNCIL CHAMBERS

1. CALL TO ORDER
2. MOTION – A Settlement Agreement with Shupe Builders.

BACKGROUND: Eagle Mountain City and Shupe Builders propose an agreement for limited removal of materials from a development site by a specified date.

3. MOTION – A Settlement Agreement with Goldsworth Real Estate.

BACKGROUND: Eagle Mountain City and Goldsworth Real Estate propose an agreement for limited removal of materials from a development site by a specified date.

Mayor Westmoreland stated this is an attempt for the City and Shupe Builders to work with one another to address a somewhat nagging situation that has created some turmoil in the City. There appears to have been some confusion about the City's Code relative to this type of matter, but the City desires to follow the intent of the Code and apply it. He asked that the City Attorney and City Administrator provide input regarding the two settlement agreements that are being presented to the Council tonight for consideration.

City Attorney Jeremy Cook stated a situation on the development site has caused some discontent among residents living nearby and the purpose of tonight's meeting is to see if it is possible to reach a settlement agreement that will provide some certainty that can be expressed to those unhappy residents. Residents currently feel they have no recourse relative to the conditions at the site that they believe have caused them damages, but the intent of this meeting or the settlement agreements is not to recoup money to pay for those damages. The City will not act in the capacity of an insurance company providing recourse for those residents, but will seek to reach an agreement that could provide some public benefits and improvements. He is hopeful that the issue can be resolved through these discussions rather than pursuing alternative legal action, which could be very costly and lengthy for all parties, with the end result possibly being more negative for all involved.

City Administrator Ifo Pili stated that he feels the parties to the settlement agreements are in agreement with the City and that now is the time to move forward and resolve the situation as quickly as possible; that is the basis for the draft versions of the agreements.

Mr. Cook then outlined the terms of the proposed settlement agreement for the Shupe Builders project. Blasting has concluded at that project site and there is a large amount of material that must be removed from the site somehow. Shupe Builders has asked for a limited period of time to process the material onsite before removing it. This should take a maximum of two months. Allowing Shupe Builders to process onsite will significantly expedite the process. The City has suggested that Shupe Builders contribute some money to park improvements to benefit residents in the area that will be impacted by the two months of ongoing onsite material processing. The main point of contention is not whether the material should be removed from the site, but, rather whether Shupe Builders should be allowed to crush and process the material before removing it. Shupe has indicated they would be willing to contribute \$10,000 for park improvements.

Mr. Cook then outlined the terms of the proposed settlement agreement for Goldsworth Real Estate, noting their project site is further to the west and they have more work to complete than Shupe Builders. Goldsworth has indicated they have approximately four days of blasting to complete in the first phase of their project. They have argued that the blasting will comply with current City Code. He emphasized that blasting is a common practice and has been done for many public and private projects throughout the history of the City, but there has never been such a negative response to blasting in the past. He stated that it is important to consider the concerns of residents who have reached out to the City, but it is also important to not have a 'knee jerk' reaction that could have negative results for property owners, including City, relative to future development or public infrastructure projects, respectively. He stated that Goldsworth has indicated that if they are not allowed to complete the blasting portion of their project, it will be necessary to use an alternative practice for removing rocks and material from the hillside to construct roads in their project and this would be costlier, but also time consuming and impactful to nearby residents. They have argued it is in the best interest of residents in the area to allow the blasting to commence. They have requested permission to process some material onsite, with the City imposing limits on timing and duration. He noted that some residents have indicated that the project has resulted in damage to their property or home, so the City has recommended that Goldsworth dedicate money to the City that can be placed in a fund administered by the City to pay for damages proven by verified inspections. Goldsworth would not admit to any liability, but would provide the money for the fund. The fund is not intended to fully compensate property owners for perceived damages and they will still have the opportunity to seek compensation through other avenues.

Councilmember Curtis inquired as to the enforcement mechanism in the settlement agreements. Mr. Cook stated that these are draft agreements, and not the final document. He noted that the City would have the ability to sue to enforce the penalties cited in the settlement agreements; stiffer penalties will be imposed in the event that either of the two parties does not comply with their respective agreement. For example, if Shupe Builders does not complete the work as outlined, the City will have the authority to access the property and complete the necessary work and then charge Shupe Builders for that work. This charge would be in addition to daily fines assessed for failure to complete the work.

Councilmember Burnham asked for more information about what constitutes a violation of the agreement. Mr. Cook stated that would depend on the issue that the City is seeking to enforce. One of the stipulations of the agreement is adherence to clearly defined hours of operation and the City has suggested limiting traffic to avoid heavy truck traffic congestion during peak traffic hours. A trade off to that stipulation would be that the project would take longer to complete. However, he

would like to receive public input this evening to help the Council make an informed decisions regarding those types of issues. Councilmember Clark asked if the \$1,000 per day fine would be imposed for every day past the approved timeframe that Shupe Builders continues work on the site or if it would be \$1,000 for every truck leaving the site for those days past the approved time period. Mr. Cook stated that the intent would be to make the fine as impactful as possible in order to deter any type of disallowed activity. He indicated he feels that the penalty provisions in the Shupe agreement are significant enough, yet still reasonable. Councilmember Clark asked why the City cannot simply force Shupe to clean up their site at their cost without affording them the ability to further violate the City's laws. Mr. Cook stated that the City could opt to deny further permits for material processing on site, but the question would then become whether that would create a worse situation for residents as hauling unprocessed materials from the site would be more impactful. Discussion then centered on similar nuisances that have existed on other properties throughout the City and how the City has dealt with those nuisances and whether that action has set a precedent for the City to follow.

Councilmember Clark then asked if the City must grant Goldsworth the ability to continue to blast as they deem necessary, or if it would be prudent to force them to apply for blasting permits. Mr. Cook stated that Goldsworth understands they must follow the current City Code and apply for blasting permits, but the City will not specifically deny those permit applications. The regulations associated with a blasting permit will apply. These concessions give residents and City staff certainty in regard to timing and duration, as well as funding to address other issues. Mr. Cook said he is not arguing for or against the blasting, but rather giving all parties certainty to create a beneficial outcome for all involved.

Councilmember Curtis asked if the four planned blasts cover all platted areas of the development. Community Development Director Steve Mumford used the aid of an aerial map to identify the area encompassed within the Goldsworth development plats. Mr. Mumford said Goldsworth's Plats 1, 3, and 4 are covered. He explained Plat 2 has become Plats 5 and 6. They are proposing modifications for Plats 4, 5, and 6. Plats 5 and 6 will likely require significant excavation. The four blasts could cover Plat 4. He explained the Shupe property has one last cul-de-sac, which is where the pile of material is currently located. Councilmember Curtis asked if they have vested blasting rights. Mr. Mumford said they do not have vested rights for blasting, but he noted that the City Code gives the City the ability to add conditions to a blasting permit or deny a blasting permit application.

Councilmember Curtis stated that it is his understanding that both Shupe Builders and Goldsworth plan to complete additional developments in the City and he wondered if the same work practices they have already displayed will continue in the City. Mr. Cook stated that regardless of any future development plans, he feels it is necessary to try to respond to residents' concerns and resolve the current issues as quickly as possible. Councilmember Curtis referenced the regulations in the City Code relating to blasting and extraction and he inquired about the definition of the term 'extracting'; he wondered if developers are allowed to process material onsite and then take it offsite to sell to a third party. Mr. Cook stated that is not allowed according to a recent change to the City Code following a situation in the Valley View development. However, if onsite material processing is not allowed, a developer can be forced to haul away unprocessed material and haul in processed material, which can double the truck traffic associated with a project and this can be a worse situation for nearby residents. Councilmember Curtis stated that one of the parties has admitted that they are selling processed materials to a third party because that is how they make

their projects economical. Councilmember Reaves stated that should be of no concern to the Council; the Council should only be concerned whether a developer is adhering to City Code and any attention paid to whether a developer is turning a profit is inappropriate. Mr. Cook agreed that should not be the City's concern; rather, the main concern is that there is currently a bad situation for residents and the City should try to solve it in the best manner possible.

Councilmember Curtis stated he has reviewed several historical agreements to which the City is a party and he can not find any given right to blasting. He asked if either Shupe Builders or Goldsworth has a vested right to blast at their development site. Mr. Cook stated that in the past the Eagle Mountain City Fire Department issued blasting permits, but when the City became a member of the Unified Fire Authority (UFA), that responsibility shifted to UFA. UFA regulates blasting according to the International Fire Code (IFC). The blasting permits issued for these projects expired, effective January 12, and any new blasting permit application would follow the new process outlined in City Code, which includes a requirement to secure an additional permit from the City, which may be more restrictive than previously. The intent is to try to protect citizens as much as possible, but prohibiting all blasting would be detrimental to the City. Discussions are underway to further restrict blasting for certain purposes, but he, again, cautioned the Council against considering a code that would be too restrictive. He added that there have not been significant issues with this type of blasting in the past and he is unsure as to why there are so many problems with these two projects.

Councilmember Clark referenced the Goldsworth project and asked City Engineer Chris Trusty for information about the specific blast locations, the approximate size of the blasts, whether the blasts will last four days, whether a mining permit has been sought, and whether any of the past blast measurements were significant enough to cause damage to other properties. Mr. Trusty stated that, according to Goldsworth's application, they would perform four blasts that would be completed over four separate days and they have not submitted for a mining permit. He stated that he received a report from the geotechnical surveyor for the site and their report indicated that two previous blast events on November 2 and November 8 reached or exceeded limits set by the Office of Surface Mining Reclamation and Enforcement (OSMRE) and based on these measurements, cosmetic damage to buildings in the area is possible. Councilmember Clark stated that she has noticed holes in the ground for blast charges that are located across from the Davies property, which is at the intersection of Eagle Top Court and Golden Eagle. She wondered if the developer truly intends to blast directly across the street from an existing home. Mr. Trusty answered yes. Councilmember Clark stated that the City is not required to grant a permit if it is determined that the blast site is too close to an existing home and there is a possibility for damage to result. Mr. Trusty stated that the ordinance indicates that a pre- and post-blast inspection is required for all homes within 500 feet of the blast site and he would expect those inspections to take place. He stated he does not believe he has the ability to make a judgement call on the issuance of a permit unless he has evidence to base his decision on. Any proposed blast would need to comply with specified blast size and proximity requirements. Councilmember Clark wondered why the City is obligated to issue a new blast permit with the knowledge that the terms of previous blasting permits were violated. Mr. Cook stated that the City must simply follow its permitting process and City officials will discuss previous violations with UFA before proceeding with issuance of future permits; at a minimum it should be possible to set more restrictive blast criteria based on the knowledge of past blast outcomes. Mr. Pili clarified that the report noted the blasts met or exceeded the threshold for cosmetic damage, rather than structural damage. Councilmember Clark stated she is very cognizant of the City's responsibility to protect a resident's life, liberty, and

property and that should apply to restricting any blasting that could cause damage – cosmetic or structural – to other properties. She added that she would like to make the geotechnical report publicly available via the Government Records Access and Management Act (GRAMA) so that impacted property owners can resubmit claims for damages. Mr. Cook stated that the report is available for public access and he would advise residents to read the report in its entirety to gain a clear understanding of the impacts of the blasts.

Councilmember Reaves stated that he also has many concerns about the current situations. He asked Mr. Cook about the intent of tonight's meeting and asked him to clarify his statement regarding litigation for damages totaling \$400. He asked if Mr. Cook said that litigation would not be worth the residents' efforts in that situation. Mr. Cook said that was correct; it is hard to sue an entity for \$400. Councilmember Reaves stated he is more concerned about principle and whether a resident has a right to be compensated for damages rather than whether a case can be litigated successfully. He stated that the City Code regulating blasting includes a requirement for a developer to comply with all laws, ordinances, and applicable safety code requirements and regulations relative to handling, storage, and use of explosives, and protection of life and property; and shall be fully responsible for all damage caused by the blasting operation. He noted another section of the Code requires the developer to submit proof of liability insurance specifically listing the coverage for the use of blasting operations and providing at least \$1 million in personal property and personal injury insurance. He asked if Shupe Builders and Goldsworth had insurance certificates in place, to which Mr. Cook answered yes, noting the blasting sub-contractor for the developers had provided that proof of insurance. Mr. Cook said proof of insurance is also a requirement of the ATF license, UFA permit, and State permit. Councilmember Reaves stated that developers using blasting practices should go into a project knowing that it could result in damages to other properties and they should be prepared to be responsible for covering those damages. He stated it is his understanding that no claims have been acknowledged by the developers and residents who have suffered damages are not being compensated. He stated he believes that appropriate compensation should be part of the discussions among the Council this evening. He asked if the amount of money sought from Goldsworth for holding in an account managed by the City directly correlates with the total dollar amount for all claims submitted. Mr. Cook stated that many share the same frustrations about the lack of attention to claims that have been submitted; however, the City is not always able to solve problems that arise between private parties. He stated that City Administration has been working to draft new enforcement language that would provide greater protection to property owners impacted by blasting; this would include securing a \$25,000 bond that could be held by the City in the event of claims that arise associated with the project. This bond is not necessarily used to compensate property owners, but offers an incentive to settle the smaller claims in order to get the bond money back. He then added that the amount of money to be collected from Goldsworth, to be held by the City, is an amount that the developer may be more willing and able to provide, but will also be significant enough to cover administrative costs and satisfy the claims of impacted residents. He stated he does not see any other avenues for the City to pursue that will allow for claimants to benefit and receive some monetary assistance.

High level discussion centered on hypothetical situations that could arise upon the developers securing additional blasting permits, as Mr. Cook sought feedback from the Council regarding their comfort level relative to the options before them this evening.

Mayor Westmoreland invited input from a representative of Shupe Builders.

Jared Shupe, Shupe Builders, stated that he is not seeking approval for continued blasting at the development site; rather, he is seeking approval to process the materials on the site that has accumulated through the four phases of development that have been completed. He stated that his original plat was approved before City Code amendments in 2014, but he reiterated he is not seeking approval to do additional blasting. He stated that he has tried to get rid of the material on his site in its current condition, but no one will take it because it has too much rock in it. He stated that he has approached residents to see if they would be comfortable with his company processing the material before removing it and he believes this could be done in a short amount of time. He stated he believes the residents look favorably on that idea because they want the project to be completed and the site cleared. He stated he is currently working on the final cul-de-sac in the last phase of his development and he wants to finish it in the most responsible manner, which includes removing the materials and leaving the area in a manner that will result in increased property values for existing and future property owners.

Councilmember Curtis asked Mr. Shupe to confirm whether he plans to pursue additional phases of this development. Mr. Shupe stated he has no plans to pursue additional phases of this development.

Councilmember Clark asked Mr. Shupe to detail the measures he is taking, in response to resident's concerns, relative to storm water protection and dust mitigation. Mr. Shupe stated he has two onsite water sources to water the materials to keep dust under control. He also has fire hoses on site to water down materials coming off the processing belt. He stated that wind is a problem in the area and can exacerbate dust problems so he has committed to stop processing any time wind speeds exceed 25 miles per hour; additionally, his hours of operation will be 8:00 a.m. to 5:00 p.m. There will be a sweeper on site to remove any material tracked onto the road. He is in a unique position because he cannot get larger trucks onto his site, so the trucks he will use can only haul up to 28 tons, which is much less than larger trucks that haul up to 45 tons. He has provided his contact information to all neighboring property owners so that they may contact him if they see dangerous or negligent activity, such as a speeding truck driver. Councilmember Clark asked if loads will be covered. Mr. Shupe stated that if the material is kept moist enough and trucks are not filled above the top of the dump bed, he does not feel that load covering is necessary. He noted, however, that he will cover loads, if required. Councilmember Clark inquired as to the amount of water the Shupe site will use on a daily basis. Mr. Shupe answered 1,500 gallons per day. His water is being measured on a nearby home water meter and the water is being paid for. Mayor Westmoreland asked Mr. Shupe his opinion on the proposed agreements. Mr. Shupe stated that he believes the proposed agreement is fair to him, the City, and residents. Councilmember Clark asked Mr. Shupe if he is selling the material that is processed on his site. Mr. Shupe stated that another company is paying for their own trucking service and paying him to load the material, but they are not truly paying for the material. He stated he is simply trying to get rid of the material and he is not interested in pursuing a mining operation.

Mayor Westmoreland invited input from a representative of Goldsworth Real Estate.

Neil Jacobson, Goldsworth Real Estate, stated that for the next phase of the development project, Goldsworth is not asking permission to crush materials to be removed from the site; rather, the plan is to crush some materials and use a balance of materials on site in the project. He stated that for phases that have been completed, Goldsworth is asking to be able to crush the materials that are present and remove them from the site. He stated there has been mention of needing four blasts to

complete the work, but he has spoken with a representative of the company performing the blasting and it may take two blasts per day for four or five days. The blasts will be smaller than in the past, so the same amount of material will be created as if just one blast were being performed a day. He noted that an attempt will be made to limit the number of trucks coming in and out of the site to eight or ten per day, with a maximum of 80 loads leaving the site per day. This will include double loaded trucks.

Councilmember Clark inquired as to the amount of material that needs to be removed from the site. Mr. Jacobson stated that there is approximately 250,000 tons of material to be removed, or 10 times what Shupe Builders is dealing with. Councilmember Clark asked Mr. Jacobson to detail the measures he is taking, in response resident's concerns, relative to storm water protection and dust mitigation. Mr. Jacobson stated that Goldsworth is taking basically the same measures as Shupe relative to the use of water in their crushing process and the amount of water used per day depends on the amount of material that can be crushed, which is largely dependent upon weather conditions. He stated that most of the trucks used to haul the material are side dump trucks and the loads are tarped before they leave the site. Councilmember Clark asked why blasting is necessary and why it is the method chosen over drilling. She referenced another development – Eagle Top Court – which was developed without the use of blasting. Mr. Jacobson stated that he is unsure of the conditions present at the Eagle Top Court location so he cannot answer that question. Councilmember Clark stated it is on the same mountain as the Goldsworth project so the same rock material is present. Mr. Jacobson stated that may be, but the volume, cuts, and grades could be very different depending upon the location of the project. He stated that it would not be cost effective to use a different method, though there is a chance that the phase, currently underway in the Goldsworth project, could be completed using methods other than blasting if the concern about blasting impacts is too great. Councilmember Clark inquired as to the purpose of the blasting being performed on site; she asked if it is necessary in order to install infrastructure lines or to be able to build homes with basements. Mr. Jacobson stated that blasting for sewer and water lines is not yet completed and that is the only portion of work that is not done. Councilmember Clark asked if there is a possibility that blasting will be needed in future phases five and six of the project. Mr. Jacobson answered yes, but there is an attempt to raise the grade of the project to utilize more onsite material and reduce the amount that needs to be hauled away. Councilmember Clark inquired as to the timeframe for completing the phases currently underway. Mr. Jacobson stated that if limits are placed on the hours of operation and the number of trucks allowed to enter the site each day, it will likely take until October to complete the work. Councilmember Clark asked if Goldsworth is selling the product. Mr. Jacobson stated that Goldsworth is paid to process the material, but there are no retail sales of the product. He stated he has contracts with other developer's businesses in the area to provide the materials. Councilmember Reaves asked if Goldsworth enters into contracts to process the materials on site and sells those materials to other entities without first informing the City. Mr. Jacobson stated that he was told by City officials that he did not need to gain permission for that type of operation; the first time he heard that the City may be concerned about the operation was in June of 2017.

The meeting recessed briefly at 8:53 p.m. and reconvened at 9:03 p.m.

Mayor Westmoreland invited public input.

Keith Searcy stated he lives on the corner lot across from the area where Shupe Builders is working. He asked Mr. Cook if the City has greater exposure to liability if additional blasting

permits are granted with the knowledge that laws and codes have been broken and violated in the past. Mr. Cook stated he has not seen the report regarding measurements associated with the blasts and he cannot comment on that matter; that information would be taken into consideration when the City is considering whether to issue a new blasting permit. Mr. Searcy then asked if the Shupe Builders agreement is independent of the Goldsworth agreement, to which Mr. Cook answered yes and noted that either of the agreements can be amended to more specifically apply to each situation. Mr. Searcy then stated that most of the homes built in his neighborhood have been built by the same builder; Jared Shupe, his builder, has been very responsible in the way he has dealt with comments raised by residents and he feels good about the agreement the City Council is considering for Mr. Shupe's business.

Mark Sheffer stated that he lives in close proximity to the site where Goldsworth is planning to continue blasting. He stated that his house had a monitor placed in it for the past and the monitor indicated that blast measurements exceeded allowed limits. He stated that his builder repaired cracks in his foundation and stucco prior to the most recent blasts, but those recent blasts reopened those cracks and his home is no longer under warranty and he is solely responsible for the repairs. He stated he is asking for protection for his home and neighborhood and the manner in which the developer has pursued earlier blasts and then responded to residents concerns is lacking. He stated that his home is closer to the Davies property, which was referenced by Councilmember Clark, and he feels there must be a more responsible way to carry out blasting and ensure safety for residents. He stated he has directly seen the damages caused by the blasting as well as the noise impact it has on the neighborhood.

Mayor Westmoreland asked Mr. Sheffer to comment on the request for permission to perform material processing onsite. Mr. Sheffer stated he feels that Shupe's request is reasonable and they simply desire to complete their project and be done working in the area. He stated, relative to Goldsworth's request, if the City allows additional blasting and the creation of additional materials, it seems counterintuitive for the City to be considering that request. The City has the opportunity to stop 'making a bigger mess' than what has already been created and he asked that the City handle the situation timely and responsibly.

Brandon Waters stated he recently purchased lot 122 in the easternmost cul-de-sac of the subdivision; aside from the blasting, he is literally surrounded on all four sides by mountains of materials that seem to be going nowhere and he is now concerned about safety for his children and others living in the area. Last Sunday, during a rainstorm, he witnessed large slides of materials. He agreed with Mr. Sheffer's comments that it seems irresponsible to be considering allowing blasting, which will result in more piles of dirt to add to the existing piles of dirt that are not being moved. He stated that lot 118 in his cul-de-sac was excavated for the construction of a home, and all of the material from that excavation is now sitting on the edge of the street in the cul-de-sac and during the next rainstorm, that material will run down the hill and into his neighbors' yards. He reiterated that he does not see any responsible management of the materials and it is creating an unsafe situation for people and property. He stated the only dirt that he has seen moved is from the Shupe property and he feels the proposal that has been discussed tonight is reasonable so long as he follows the proposed dust mitigation plans. Relative to the Goldsworth proposal, he is concerned about the lack of movement to remove the materials that are presently onsite.

Councilmember Clark asked Mr. Waters if the piles of material were in place when he initially took occupancy of his home. Mr. Waters stated the pile immediately to the east of his home was in

place, but other piles have been created since he moved in. He stated that it is difficult to get a responsible party to claim ownership of the materials.

Jennifer Hackett stated that while she wants the materials removed from the site, she would prefer efficiency over speed. She stated that the work needs to be done right as it has not been done right up until this point. In February of last year there was a very large blast at the development site and two chairs slid across her kitchen floor and pictures fell off of her walls; luckily, everyone in her home was unharmed, but it could have been worse. Additionally, she now has a giant crack in her foundation and she later found water pouring into the cold storage area of her basement. She has had to fix that problem on her own with no financial assistance from the entity that caused it because they told her she had no way of proving the crack was a result of the blasting. She stated she is supportive of the proposed settlement agreement with Shupe Builders as she believes Mr. Shupe's proposals for mitigating the problems are responsible, but when Mr. Jacobsen spoke on behalf of Goldworth, he did not give any indication of specific measures that will be put in place to ensure things will 'go smoothly' in the future. She stated that it is her understanding that the code that has been in place since 2014 prohibits blasting and onsite material processing for the purpose of moving the material offsite, but Goldworth has admitted to breaking that code and the City is indicating they will allow that to continue. She stated that is irresponsible. The City should not continue to issue permits without understanding all potential consequences. She emphasized that she does not feel the situation is being handled responsibly, but the City has a chance to stop it at this point. The statement was made earlier that damages are only cosmetic in nature, but she has suffered structural damages to her home.

Mr. Cook clarified that he never said that damages are only cosmetic in nature; rather, he communicated that the City does not have enough money to compensate for structural damage. Ms. Hackett stated that in that case, the City should not continue to issue permits unless they have the ability to compensate residents for negative impacts. She added that the comment was also made that it would be too expensive for Goldworth to proceed with their project without the ability to blast and if that is the case, development should simply not be allowed in that area. It is not the City's job to make sure that developers are profitable in their endeavors.

Tawny Smith stated she lives on Hollow Crest Drive. She stated she recently learned that it is against City Code to build on a grade steeper than 25 percent. She asked why the City is allowing blasting to reduce the grade to less than 25 percent so that it can be built upon. The result is elimination of the mountain and she does not believe the City should be issuing permits for that purpose.

Duane Woods stated that he lives near Ms. Smith and close to the blasting site. He asked why the City allowed these projects to go forward in the first place. He indicated the problems that have arisen are causing major delays; he has been in his home for nine months and he wants the work done as quickly as possible. He emphasized he wants it done right, but as quickly as possible. He is worried that placing too many restrictions on the developers will drag out the process. He indicated he is supportive of the desire to process the materials onsite because that results in far less traffic to and from the site. He referenced future blasting and indicated that as long as it is done responsibly, he has no objections. He noted he cannot tell that any past blasting has caused issues on his property. He stated that he feels the City can restrict future similar developments, but the current developments are already underway and at this point he just wants them done so that he does not need to look at the unattractive site for the next three years.

Mayor Westmoreland asked Community Development Director Steve Mumford to speak to the concerns raised about building on a slope steeper than a 25 percent grade and also the process for approving a subdivision plat in the City. Mr. Mumford indicated the preliminary plat for the projects were approved in 2006 or 2007; there are a few different sections of City Code that address slopes and grades and the one staff has consistently relied upon during the development review process states that if the average slope of a lot is 25 percent or greater, it is unbuildable. He stated he cannot speak to the reviews that were done in 2007, but he has reviewed the plat to try to discern the average slope of lots in phase four of the Goldsworth project specifically to determine if the plats would have received approval under the City's current standards. He stated that a majority of the lots that he reviewed have a slope less than 25 percent, even though that may not be apparent to the naked eye. He stated that some of the lots in plat four did exceed 25 percent grade and that is why staff has tried to work with Goldsworth to encourage them to not build on some of those lots, which led to their proposal to proceed with plats five and six.

Mayor Westmoreland addressed the audience and stated that the current staff and Governing Body are trying to address a situation that they have been handed and that they did not create; the fact that they are participating in discussions regarding these projects should be evidence that they are concerned about correcting the problems that have occurred in the past.

Riley Jenkins stated that he does not have any problem with the Shupe plan, but he has many concerns with the Goldsworth plan. Essentially, he is concerned about the solidity of the plan and the timeline for completion. He stated there is an end in site for the Shupe project, but the same is not true for the Goldsworth project and he is concerned about the uncertainty relative to the number of additional blasts that will be needed at the site. The project seems to be in constant flux and he would like the project to have a completion date and for safety to be of utmost importance. That does not include additional blasts or further flattening of an otherwise hilly area. He stated that he does not see a plan that is solid enough to approve the Goldsworth settlement agreement.

Dave Upwall referenced the safety concerns associated with the blasting component of the project. The statement has been made that homeowners cannot prove that blasting caused damage to their homes, but he believes the opposite is true and it is not possible to prove that the blasting did not cause the damage. On November 2 his son was in their bathroom and called for his mother to help him and she found him holding the mirror that had popped off the wall; he is not sure how he was able to hold the mirror and the result could have been much different. He stated he wants to make sure that safety measures are taken to protect the homes that are in close proximity to the blasting sites. He stated that there is now a very tall wall on the hillside and there is nothing to keep that wall from coming down in the event of a slide or weather event following a fire. He recommended that a fire break or fire access be included in future plans for continued development of the site. He stated that many people built in the area because of its natural beauty and he would like to minimize further damage to that beauty. He then wondered if the money being sought from Goldsworth will be dedicated in its entirety to park improvements and if the homeowners in the area will have any input regarding those improvements.

Matt Lasure stated he is concerned about the claim that the money collected from the developers will be used for park improvements when the amount referenced earlier in the meeting was just \$10,000, which would only be enough to pay for one slide. He stated he does not think it is the City's job to make sure a developer is profitable; the City Codes should not be bent or violated to

allow someone to make a few extra dollars on their job. He stated he finds it ironic that the City has indicated that some of the money retained from the developers will be used to cover costs to repair damage associated with blasting, but no one is willing to declare that the damage was, in fact, caused by blasting. He stated that City Codes need to be clear so that it is not commonplace for a member of staff to try to interpret the intent of a regulation. He stated that the City has had ample time to develop and improve its blasting regulations and those changes should have been put in place before this issue arose.

Jeffery Blanding stated that when the blasting regulations became an issue he asked that the Council make the decision to keep the final action, regarding blasting, with them, but that decision has been ceded to City staff. He stated he hopes that decision will be rethought in the future. He asked that the Council stand behind its City Codes, even if that means going to court to fight this issue.

Austin Smith stated he is also upset that the developers have violated codes in the past, yet the City is willing to issue additional blasting permits. He inquired as to the regulation regarding the required distance between a blasting site and a home. Mr. Trusty stated the current code does not include such a regulation. Councilmember Reaves asked if staff has considered that regulation, to which Mr. Mumford stated that staff was awaiting the outcome of extensive research regarding similar regulations in other communities. Distances are largely dependent upon other conditions, such as soil moisture. Mr. Smith stated that he has seen projectiles travel a significant distance from a blast site and he would hate for a child playing in their front yard or in a nearby park to be injured as a result. It seems very unsafe to allow blasts without a required distance from nearby homes. Also, it is concerning that someone who has violated a regulation in the past is being issued another permit for the same type of work. If there are no consequences for violating an ordinance, people will continue to do it. Mr. Cook stated that the City just received the independent study results that showed a blast met or exceeded limits. Mr. Smith asked why the permits were issued, and Mr. Cook clarified that prior to January 12, 2018, the permits were granted through UFA, not the City.

Mayor Westmoreland reiterated that the UFA was previously the entity responsible for issuing blasting permits and the City only recently adopted an ordinance requiring an additional permit be obtained from the City; that is how the City is ensuring accountability to its residents. The Council is trying to process information as quickly as possible for situations such as this one, which was inherited – not created – by the current Council. They are moving as quickly as they can to make adaptations to the City Code to prevent similar situations in the future. Mr. Cook added that he has had conversations with UFA representatives and they were confident that the developers were adhering to the terms of their blasting permits.

Mr. Smith then inquired as to the responsibility home owners have to prove that any damage to their home was caused by the blast. Mr. Pili stated that the reason the City commissioned an independent study relating to seismic readings and measurements was to determine whether any of the blasts could have caused damage to homes; the City only received the study report one hour before tonight's meeting and staff is working to digest the information in the report. The claim has been made that the City continues to issue permits with the knowledge that past permits have been violated or that previous blasts have exceeded seismic thresholds; however, the City has never issued such a permit and the intent of the study was to provide evidence that would support denial of future permits. The City was looking for support of the claims of cosmetic or structural damage

to homes as a result of blasting. The intent of tonight's meeting was to present the Council with options for addressing the two situations and he briefly reviewed those options that were summarized earlier tonight by Mr. Cook. It is time to make a decision regarding whether to move quickly to get the work completed or to consider litigating the matter.

Mr. Smith stated that at the very least, he feels the developers need to clean up the mess they have made before the City considers giving them any approvals for further work or development in the area.

Ms. Hackett reapproached and stated that when the residents are referencing the repeated issuance of permits after developers have violated City Codes, they are not only referring to blasting permits. She stated that many are concerned that the developers continued to be issued building permits for their projects.

Mr. Woods stated that he does not believe one of the options the Council should be considering is a complete shut down of work in the area as that will result in the material being left in its current location and the residents will be forced to deal with it for the next several years.

Mayor Westmoreland stated he believes now is the appropriate time to convene in a closed executive session.

MOTION: *Councilmember Burnham moved to adjourn into a Closed Executive Session for the purpose of discussing reasonably imminent litigation pursuant to Section 52-4-205(1) of the Utah Code, Annotated. Councilmember Curtis seconded the motion. Those voting aye: Donna Burnham, Melissa Clark, Colby Curtis and Benjamin Reaves. The motion passed with a unanimous vote.*

The meeting was adjourned at 9:47 p.m.

Mayor Westmoreland reconvened the meeting at 10:46 p.m.

Mayor Westmoreland stated that the Council has decided to consider agreements that will provide for the materials currently on the two respective sites, but that no blasting will be approved at this time; however, that does not restrict the City from considering blasting permit applications in the future. The Council simply feels that more work is necessary to determine if additional blasting is warranted or can be safely regulated.

MOTION: *Councilmember Curtis moved to approve an agreement with Shupe Builders based on the following general terms and authorize the City Attorney and City Administrator to negotiate any reasonable changes: material processing be allowed until March 31, the contribution be changed to \$12,000, operations be allowed from 8:00 a.m. to 5:00 p.m. Monday through Saturday, and this agreement does not commit the City to any further blasting and/or materials processing. Councilmember Burnham seconded the motion.*

Councilmember Clark stated one resident asked whether the funds would be used for administrative purposes or for park improvements. Mr. Cook indicated all funds should go directly

to park improvements and staff will do their best to allow residents to have input on the use of the funds.

Mayor Westmoreland called for a vote on the motion.

Those voting aye: Donna Burnham, Melissa Clark, Colby Curtis and Benjamin Reaves. The motion passed with a unanimous vote.

MOTION: *Councilmember Curtis moved to approve an agreement with Goldsworth Real Estate based on the following general terms and authorize the City Attorney and City Administrator to negotiate any reasonable changes: Plats 1 through 4 are named in the agreement, the water meter is returned within 24 hours, materials processing is allowed until October 30, the contribution is \$60,000, operations are allowed from 8:00 a.m. to 5:00 p.m. Monday through Saturday, and this agreement does not commit the City to any further blasting and/or material processing. Councilmember Burnham seconded the motion.*

Councilmember Reaves stated that the motion did not include a provision in the agreement to provide for a reasonable extension of the contract time frame to allow for 'snow days' or other inclement weather, which would make material transport unsafe. Mr. Cook stated that a provision allowing extension period of three to five days for inclement weather should be sufficient to accommodate snow days.

Austin Smith asked if there will be a limit on the number of trucks allowed per day. Councilmember Curtis stated that trucks are measured by axle and limiting truck traffic to single-axle will only increase the number of trips needed. Mr. Smith stated that the comment was made earlier that there could be up to 80 trucks traveling to the site per day and based on the capacity of those trucks and the hours of operation listed in the agreement, the work should be completed by June. He wondered why the motion to approve the agreement includes a completion date of October 30.

Discussion among staff and residents ensued to allow public input relative to the appropriate deadline for completion of the materials removal. A consensus was reached to maintain the October 30 deadline as previously mentioned in the motion given that the average number of trucks per day will likely be half of 80.

Discussion then shifted to including a requirement in the agreement that Goldsworth comply with storm water protection regulations and provide a dust mitigation plan. Failure to comply with the terms of the agreement will result in penalties and fines.

Councilmember Curtis agreed to amend the motion to add that Goldsworth must comply with SWPPP, dust mitigation and any other codes, and other fines and penalties may be assessed. Councilmember Burnham accepted the amendment.

Councilmember Clark requested that the motion be restated.

AMENDED MOTION: *Councilmember Curtis moved to approve an agreement with Goldsworth Real Estate based on the following general terms and authorize the City Attorney*

and City Administrator to negotiate any reasonable changes: Plats 1 through 4 are named in the agreement, the water meter is returned within 24 hours, material processing is allowed until October 30, the contribution is \$60,000, operations are allowed from 8:00 a.m. to 5:00 p.m. Monday through Saturday, this agreement does not commit the City to any further blasting and/or material processing, Goldsworth must comply with SWPPP and dust mitigation measures and any other pertinent codes, and other fines and penalties may be assessed. Councilmember Burnham seconded the motion. Those voting aye: Donna Burnham, Melissa Clark, Colby Curtis and Benjamin Reaves. The motion passed with a unanimous vote.

4. ADJOURNMENT

MOTION: *Councilmember Burnham moved to adjourn the meeting at 11:09 p.m. Councilmember Curtis seconded the motion. Those voting aye: Donna Burnham, Melissa Clark, Colby Curtis and Benjamin Reaves. The motion passed with a unanimous vote.*

Approved by the City Council on November 20, 2018.

Fionnuala B. Kofoed, MMC
City Recorder