

Mayor
Willard Rodarmel
Mayor Pro Tem
John Flourde
Council Members
John Gordon
John Murray
William Siegel



**Office of the
City Manager**

119 Fox Street
Lemoore ♦ CA 93245
Phone ♦ (559) 924-6700
FAX ♦ (559) 924-9003

To: Lemoore City Council Item # 5
From: JP Prichard, Admin Analyst & Holly Smyth,
Planning Director
Date: May 11, 2012
Subject: Request For Impact Fee Reduction - Wathen Castanos
Tract 872 Sugarplum Development

Discussion:

Per the attached letter from Dirk Poeschel, representing Josh Peterson of Wathen Castanos Hybrid Homes, dated April 22, 2012, the City of Lemoore has received a request to make the Sugarplum development subject to impact fees other than those described in its original conditions of approval (See Attachment A1), challenging that the development should have been subject to earlier fee levels instead. This request lists several legal citations Mr. Poeschel believes are relevant to the imposition of impact fees as listed in the conditions of approval. The City Attorney has reviewed each point in the letter based on its merits, and disagrees with the issues cited in the letter. Additionally, as the letter addresses the current housing market in the Central Valley, staff has included a summary of residential building permits issued since 2007 (See Attachment B).

Subsequently, Mr. Peterson clarified the original proposal through an email to the City Manager on May 9, 2012 (See Attachment A2), requesting that consideration be given to all development maps that contained a condition of approval making them subject to future impact fees (hereafter "Colgan fees") rather than the fees that were in effect at the time of approval (hereafter "Pre-Colgan fees").

Please note that all of these requests are specific to City-imposed impact fees, and not to impact fees collected by the City of Lemoore on the behalf of other jurisdictions.

History of City Development Impact Fees

On June 7, 2005, the City Council approved Resolution 2005-24 (See Attachment C), which initiated a study to "update and increase City impact fees". As the Council additionally found that the impact fee level set at the time were "insufficient to pay the increasing costs of public facilities" and that "updating, establishing, and imposition of increased development impact fees is necessary and proper to defray the cost of development", the further resolution of the Council was a "finding of immediate necessity" whereby "any and all development projects approved after the adoption of this Resolution shall be subject to the new impact fees that will be set forth by Resolution following the completion of the study initiated..." From this it can be concluded that charging any new development the "Pre-Colgan fees" following the passage of Resolution 2005-24 would be in clear, direct conflict with the legally adopted policy of the City Council at the time.

The impact fee study conducted by Colgan Consulting Corporation was presented to the City Council on December 5, 2006. Due to a number of revisions to the report based on developer and Council input, the fees proposed by the study were adopted in a series of Resolutions from December 5, 2006, through February 20, 2007. As all development impact fees become effective 60 days following adoption, the "Colgan fees" became effective February 3, 2007 through March 17, 2007, respectively.

Requirements For Adjustments, Reductions, Or Waivers

Any developer may apply to the City Council for an adjustment, reduction, or waiver of City impact fees. When the current impact fees were established, and during every yearly inflationary adjustment, the Resolutions doing so have contained the following language:

“Any person subject to a fee required by this resolution may apply to the City Council for a reduction, adjustment, or waiver of that fee based on the absence of a reasonable relationship between the impact of that person’s commercial, industrial, or residential development project on demands on various infrastructure types in the City of Lemoore;”

Furthermore, several of the fees have mechanisms built into them to make these accommodations possible administratively for non-standard business types based on City Engineer or Public Works Director estimates.

Sugarplum Development – Tract 872 Impact Fees

On May 2, 2006, the City Council approved by Resolution Tentative Subdivision Map No. 2006-02 for the Sugarplum development for developer Robert Badasci to include up to 97 lots. The Conditions of Approval (See Attachment D) for the development include the following:

“21. In accordance with City Council Resolution 2005-24 adopted on June 7, 2005, the Council has authorized staff to prepare an updated impact fee study which is anticipated to be complete within one year. The project will have an impact on the need for new public facilities and improvements within the City. The costs associated with that impact and the connection between the need for new public facilities and the proposed project will be set forth in a new Resolution to be adopted by the City Council. As a result, the applicant shall be subject to and shall pay these impact fees when they are set forth; should construction commence prior to the completion of the fee schedule an interim assessment will be made. Development Impact Fees shall be collected upon issuance of building permits for the development at the rate in effect on the date of the building permit.”

The Colgan fee study included the Sugarplum development in its calculations of undeveloped land (See Attachments E & F), based on the Finding of Immediate Necessity and the Conditions of Approval for the Sugarplum development. All impact fees adopted were calculated with the intent that a proportional share of the burden for new public facilities would be borne by the Sugarplum development and other developments sharing the same Condition of Approval. Excluding the Sugarplum development (or others) from the undeveloped land calculation and subsequent fees would have resulted in higher impact fees to all other new developments as a same burden would have been shared by fewer participants.

The adoption of development impact fees requires that a nexus be established between the new development and the need for the public facilities that will be paid for by the fees. If the new development is never constructed, the public facilities are not needed. At this time, Wathen Castanos has not made a request that shows a lack of nexus: there will be a need for public facilities based on the construction of the Sugarplum development. Changing the amount of the fees collected will not automatically result in less of a need; it will only create a net funding shortfall for building improvements that are needed as a direct result of the Sugarplum development being constructed.

Should the Council grant the fee reduction originally requested by Wathen Castanos, the effects for each impact fee category will vary (See Attachment G), with the effect of a total net funding shortfall

of \$409,631 based on current estimates (See Attachment H) . It is important to note that the individual impact fee funds are not fungible: some impact fee funds will be severely impacted, while a few will benefit marginally, without any means to share between funds, as individual impact fees are required to be used exclusively for the purpose they are imposed; i.e. State law prohibits using a seeming surplus in the “Pre-Colgan” Citywide Fire Impact Fee fund to even partially shore up a drastic shortage in “Pre-Colgan” Water Supply/Storage Impact Fee fund.

Applying Impact Fee Reductions To Other Subdivisions

While it is unclear whether other developers will be challenging the same Condition of Approval that is subject in the Sugarplum development, the universal application of the “Pre-Colgan fees” to other subdivisions would have several negative effects on the City (See Attachment I). Due to the recent and broad nature of this request, and staffing time involved analyzing its implications, only a limited review of the consequences of this proposal based on estimates used for the Sugarplum development are included in the analysis in this report.

The most easily measurable effect of a universal impact fee reduction is that there are three other residential subdivisions that are subject to the same condition under Resolution 2005-24 as the Sugarplum development: Fairway Homes, Parkview Estates, and Victory Village*. The developers involved with these projects would likely expect to be treated in a similar manner as Wathen Castanos. The resulting net funding shortfalls would be \$308,279, \$380,070 and \$3,052,148* respectively. Similarly, several non-Single-Family-Residential developments are or have been subject to the same Conditions of Approval (See Attachment I). It could be reasonably argued that the City might face requests for fee reductions/refunds from those developers. Any fee reductions/refunds would, of course, create their own shortfalls that must be made up some other way.

Funding Shortfalls Must Be Covered By Other Means

The legislation governing development impact fees addresses the fact that fees are to be set to sufficiently cover the cost of the new infrastructure without a degradation of service. In the event an intentional reduction in fees results in a funding shortfall for the needed infrastructure, the governing body must identify an additional source of funding.

Budget Impact:

If the impact fees for the Sugarplum development are reduced to the levels originally requested by Wathen Castanos, the City development impact fee funds would be short by \$409,631 in total by full buildout of the development.

Choosing to accept that this proposal apply to all approved maps between the Finding of Immediate Necessity and the adoption of the “Colgan fees” could result in the City impact fee funds being short by \$4,157,888* or more. Initial calculations of the impact of applying the same concept to other developments would have a devastating effect on most categories of impact fee funds, resulting in tremendous shortfalls for funding necessary public facilities (See Attachment I). Any shortfalls would need to be made up by the City from other sources.

Recommendation:

It is recommended that the City Council maintain the Conditions of Approval for the Sugarplum development as originally adopted, at the rate of the “Colgan fees” initially effective in early 2007.

* The disparity with Victory Village highlights the original reason for the Finding of Immediate Necessity found in Resolution 2005-24. Impact fees in place on the West Side at the time were limited to what would be needed to address infill needs in Cimmaron Park, and did not consider the effects of full development of the West Side.

- A. 1. Original Fee Reduction Request
- 2. Clarification of Fee Reduction Request
- B. New Residential Building Permit History
- C. Resolution 2005-04 Impact Fee Study Initiation and Finding of Immediate Necessity
- D. Resolution 2006-15 Council Approval of Sugarplum Tentative Subdivision Map
- E. Site Maps For Colgan Consulting Impact Fee Study
- F. Maps of Sugarplum and Other Subdivisions
- G. Comparative Fee Analysis of Reduction Request
- H. Sample Building Permits Provided To Wathen Castanos
- I. Potential Effects On Impact Fees From Other Developments