

**SEPTEMBER 27, 2016 MINUTES  
REGULAR WHEATLAND CITY COUNCIL MEETING  
WHEATLAND COMMUNITY CENTER  
101 C STREET, WHEATLAND, CA  
6:30 – 6:55 P.M.**

**COUNCIL MEMBERS PRESENT:** R. Coe, J. Henderson, L. McIntosh, J. Pendergraph, R. West

**OTHERS PRESENT**

G. Greeson, City Manager  
D. Schilling, City Engineer  
A. Wightman, Police Chief  
J. Waggershauser, Fire Chief

**PLEDGE OF ALLEGIANCE:**

Council member L. McIntosh led the pledge of allegiance.

**PUBLIC COMMENT**

None.

**CONSENT CALENDAR**

It was moved by council member R. Coe, seconded by R. West to **approve the minutes from the regular City Council meeting on September 13, 2016; Proclamation Honoring October 2016 as Domestic Violence Awareness Month and declaring three city-owned police vehicles as surplus property and authorize the City Manager to have the vehicles sold at auction.** Vote called – AYES: All. Motion carried.

**PUBLIC HEARING**

1) G. Greeson presented discussion of the request for reduction of Development Impact Fees made by Applicant AKT Investment, Inc. for a new Walnut Huller at 2493 Spenceville Road, Wheatland. In October of 2015, AKT submitted plans to the City for a 9,000 square foot walnut hulling facility to be constructed on its property located at 2493 Spenceville Road. Pursuant to Chapter 3.26 of the City's Municipal Code (Ordinance 400, adopted in April 2007), development impact fees of \$178,812 were assessed. In mid-October of 2015, staff met with representatives from AKT regarding the assessment of those fees and discussed what appeared to both staff and AKT to be inordinately high fees for a project of such as theirs, which contemplates an agricultural operation and a limited time of use. Unfortunately, the City's 2007 nexus study, which is the basis for the setting of development impact fees for the construction of new or additional square footage for retail and employment uses within the City and which predates the annexation of AKT's property upon which the walnut hulling facility is proposed to be constructed, does not contemplate agricultural uses within the City. We discussed how AKT's hulling operation would function with the new facility and the process available to them to appeal the assessment of the current applicable development impact fees. We explained that staff did not have the authority to adjust fees that have been established by ordinance and that only Council could consider a waiver, reduction, or deferral of development impact fees based on an appeal request by AKT. On October 27, 2015, AKT submitted the attached Request for Reduction of Fees, along with its analysis of what AKT representatives believed to be an equitable assessment of fees. Section 3.26.070 of the City's Municipal Code

details how deferrals, waivers and reductions in the payment of development impact fees can be requested, to whom, and the criteria by which the City Council must use to grant those requests. It provides, in relevant part:

*Upon written request filed by a property owner prior to the due date for payment of any development impact fee, the city council may grant deferral, waiver or reduction of any development impact fee. A deferral, waiver or reduction may be granted only after notice and hearing if, in the opinion of the city council, properly supported by specific findings and evidence, deferral would provide for a more fair and equitable financing arrangement to be developed and imposed, or a waiver or reduction is necessary or appropriate because imposition of the fee or fee in full would be unlawful or would result in substantial inequities. Findings must be based on written and other evidence submitted by the property owner substantiating the owner's contention that the fee should be deferred, waived or reduced. The owner shall bear the burden of proof to demonstrate that a deferral, waiver or reduction is necessary or appropriate. For a deferral, findings must include facts supporting the deferral including, without limitation, findings that: (1) alternative financing methods involving more than one owner will be implemented and justify the fee deferral; or (2) deferral of the fee will result in a more fair and equitable funding arrangement. In the case of waiver or reduction, findings must include facts supporting the waiver or reduction including, without limitation, findings that: (1) the owner will receive insufficient or no benefit from the fee imposed and would therefore be required, if the fee were imposed in full, to pay more than its fair share for the benefit received; or (2) imposition of the fee or full fee would be unlawful in the particular circumstances. The city by resolution of the city council may adopt a fee for the processing of an owner request for a fee deferral, waiver or reduction. (Ord. 400 § 5, 2007).*

Staff conducted an analysis on the impacts of AKT's project to City services and facilities, taking into consideration the following factors; the nexus study upon which the City's development impact fee program is based did not consider agricultural uses within City limits. Consequently, proposed agricultural uses such as the walnut hulling operation proposed by AKT were not analyzed for the purpose of establishing the appropriate fees to account for their public service impacts; AKT plans to provide some of the services for which the City normally collects development impact fees pursuant to the City's development impact fee program. These services include storm drainage, water distribution, sewer collection and wastewater treatment. Because the City will not be providing these services to the proposed walnut hulling facility, there will be no impacts to City infrastructure for said services; the season for walnut hulling is limited each year to about 60 days, leaving the facility non-operational 10 months out of the year. The development impact fees established by the City's ordinances do not take into account such limitations in time of use; AKT's operation is an internal operation; the facility will be used only to hull walnuts that are grown on its property. To expand beyond AKT's own hulling would require additions and/or revisions to its physical plant. As it is for AKT operations alone, all of which already take place on that property, the new facility will not result in additional truck traffic on City streets than currently exists.

In consideration of these factors, staff re-calculated the development impact fees that would be applicable to AKT to adjust for AKT providing its own storm drainage, water distribution, sewer collection and wastewater treatment and account for AKT's limited annual operation of the facility of 60 days. Based on staff's review and analysis, and keeping in mind the Council's obligation to make a finding, as required by Section 3.26.070 of the Municipal Code that AKT will receive insufficient or no benefit from the fee imposed and would therefore be required, if a fee of \$178,812 were imposed in full, to pay more than its fair share for the benefits received from the City, staff recommends a reduction in the development impact fees on AKT's project from \$178,812 to \$15,622.81. Staff met with AKT representatives on July 13, 2016, and discussed staff's analysis and recommended reduction. AKT was agreeable to staff's recommendation and submitted a letter dated August 11, 2016 to that effect. Staff thereafter was made aware of some concerns from the community regarding the propriety of reducing the development impact fees to be paid by AKT in light of the possibility that AKT could, in the future, expand its hulling operations or otherwise change the uses on its property such that there could be more public service and facility impacts than what was accounted for in the reduced fee amount recommended

by the City. To address this concern, and as previously discussed with AKT, staff has included language in the proposed resolution adopting the recommended reduction stating that any proposed change in use of the existing uses of the new facility on AKT's property beyond the annual 60-day walnut harvest season that would give rise to greater public service and facility impacts would require AKT to inform City staff and, if deemed necessary, pay additional development impact fees in the amount of the differential between the agricultural use fees calculated by staff and the fees attributable to the new land use. This language closely tracks the language in Section 3.26.020(D) of the Municipal Code. AKT has provided the City with assurances to this effect.

As an alternative to staff's recommendation that the development impact fees for the walnut huller be reduced, Council could choose to deny AKT's reduction request and impose the full fee amount of \$178,812. In addition, it also could decide to grant a deferral (instead of a reduction) of the imposition and payment of such fees until a new development impact fee report and nexus study is completed to provide a more comprehensive analysis of the appropriate fees to be charged for agricultural and other uses not addressed in the 2007 nexus study upon which the City's current development impact fee program is based. Staff anticipates that such a study can be completed sometime next year. Staff believes that such a deferral also could be appropriate because it will result in a more fair and equitable funding arrangement than imposing the full fee amount of \$178,812 would. Staff provided an alternative resolution supporting such a deferral for Council's consideration.

## **PUBLIC COMMENT**

None.

It was moved by Council member R. Coe, seconded by J. Henderson to approve **Resolution No. 24-16 for Reduction of Development Impact Fee Amount for AKT Investments, Inc.'s Walnut Huller Facility at 2493 Spenceville Road**. Vote called – AYES: All. Motion carried.

2) G. Greeson presented discussion of the request for reduction of Development Impact Fees made by Applicant Bear River Walnut Ranch, LLC for a new Walnut Huller at 2301 Spenceville Road, Wheatland. On June 22, 2016, Bear River submitted plans to the City for an 18,480 square foot walnut hulling facility to be constructed on its property located at 2301 Spenceville Road. Pursuant to Chapter 3.26 of the City's Municipal Code (Ordinance 400, adopted in April 2007), development impact fees of \$372,298.08 were assessed.

On July 13, 2016, staff met with Bear River representatives regarding the assessment of those fees and discussed what appeared to both staff and Bear River to be inordinately high fees for a project of such as theirs, which contemplates an agricultural operation and a limited time of use. Unfortunately, the City's 2007 nexus study, which is the basis for the setting of development impact fees for the construction of new or additional square footage for retail and employment uses within the City, does not contemplate agricultural uses within the City. We discussed how Bear River's hulling operation would function with the new facility and the process available to them to appeal the assessment of the current applicable development impact fees. We explained that staff did not have the authority to adjust fees that have been established by ordinance and that only Council could consider a waiver, reduction, or deferral of development impact fees based on an appeal request by Bear River. On or around July 18, 2016, Bear River submitted the attached Request for Reduction of Fees. Section 3.26.070 of the City's Municipal Code details how deferrals, waivers and reductions in the payment of development impact fees can be requested, to whom, and the criteria by which the City Council must use to grant those requests. It provides, in relevant part:

*Upon written request filed by a property owner prior to the due date for payment of any development impact fee, the city council may grant deferral, waiver or reduction of any development impact fee. A deferral, waiver or reduction may be granted only after notice and hearing if, in the opinion of the city council, properly*

*supported by specific findings and evidence, deferral would provide for a more fair and equitable financing arrangement to be developed and imposed, or a waiver or reduction is necessary or appropriate because imposition of the fee or fee in full would be unlawful or would result in substantial inequities. Findings must be based on written and other evidence submitted by the property owner substantiating the owner's contention that the fee should be deferred, waived or reduced. The owner shall bear the burden of proof to demonstrate that a deferral, waiver or reduction is necessary or appropriate. For a deferral, findings must include facts supporting the deferral including, without limitation, findings that: (1) alternative financing methods involving more than one owner will be implemented and justify the fee deferral; or (2) deferral of the fee will result in a more fair and equitable funding arrangement. In the case of waiver or reduction, findings must include facts supporting the waiver or reduction including, without limitation, findings that: (1) the owner will receive insufficient or no benefit from the fee imposed and would therefore be required, if the fee were imposed in full, to pay more than its fair share for the benefit received; or (2) imposition of the fee or full fee would be unlawful in the particular circumstances. The city by resolution of the city council may adopt a fee for the processing of an owner request for a fee deferral, waiver or reduction. (Ord. 400 § 5, 2007).*

Staff conducted an analysis on the impacts of Bear River's project to City services and facilities, taking into consideration the following factors; as mentioned, the nexus study upon which the City's development impact fee program is based did not consider agricultural uses within City limits. Consequently, proposed agricultural uses such as the walnut hulling operation proposed by Bear River were not analyzed for the purpose of establishing the appropriate fees to account for their public service impacts; Bear River plans to provide some of the services for which the City normally collects development impact fees pursuant to the City's development impact fee program. These services include storm drainage, water distribution, sewer collection and wastewater treatment. Because the City will not be providing these services to the proposed walnut hulling facility, there will be no impacts to City infrastructure for said services; The season for walnut hulling is limited each year to about 60 days, leaving the facility non-operational 10 months out of the year. The development impact fees established by the City's ordinances do not take into account such limitations in time of use; Bear River's operation is an internal operation; the facility will be used only to hull walnuts that are grown on its property. To expand beyond Bear River's own hulling would require additions and/or revisions to its physical plant. As it is for Bear River operations alone, all of which already take place on that property, the new facility will not result in additional truck traffic on City streets than currently exists.

In consideration of these factors and utilizing the same rationale that was used to calculate staff's recommended reduction for AKT's proposed walnut hulling facility, staff re-calculated the development impact fees that would be applicable to Bear River to adjust for Bear River providing its own storm drainage, water distribution, sewer collection and wastewater treatment and account for Bear River's limited annual operation of the facility of 60 days. Based on staff's review and analysis, and keeping in mind the Council's obligation to make a finding, as required by Section 3.26.070 of the Municipal Code that Bear River will receive insufficient or no benefit from the fee imposed and would therefore be required, if a fee of \$372,298.08 were imposed in full, to pay more than its fair share for the benefits received from the City, staff recommends a reduction in the development impact fees on Bear River's proposed project from \$372,298 to \$32,857.80. On July 13, 2016, staff met with Bear River representatives to discuss staff's recommended reduction. Bear River was agreeable to staff's recommendation and submitted a letter dated August 5, 2016 to that effect. Staff thereafter was made aware of some concerns from the community regarding the propriety of reducing the development impact fees to be paid by Bear River in light of the possibility that Bear River could, in the future, expand its hulling operations or otherwise change the uses on its property such that there could be more public service and facility impacts than what was accounted for in the reduced fee amount recommended by the City. To address this concern, staff has included language in the proposed resolution adopting the recommended reduction stating that any proposed change in use of the existing uses of the new facility on Bear River's property beyond the annual 60-day walnut harvest season that would give rise to greater public service and facility impacts would require Bear River to inform City staff and, if deemed necessary, pay additional development impact fees in the

amount of the differential between the agricultural use fees calculated by staff and the fees attributable to the new land use. This language closely tracks the language in Section 3.26.020(D) of the Municipal Code. Bear River has provided the City with assurances to this effect.

As an alternative to staff's recommendation that the development impact fees for the walnut huller be reduced, Council could choose to deny Bear River's reduction request and impose the full fee amount of \$372,298.08. In addition, it also could decide to grant a deferral (instead of a reduction) of the imposition and payment of such fees until a new development impact fee report and nexus study is completed to provide a more comprehensive analysis of the appropriate fees to be charged for agricultural and other uses not addressed in the 2007 nexus study upon which the City's current development impact fee program is based. Staff anticipates that such a study can be completed sometime next year [or provide a more specific date]. Staff believes that such a deferral also could be appropriate because it will result in a more fair and equitable funding arrangement than imposing the full fee amount of \$372,298.08 would. Staff has provided an alternative resolution supporting such a deferral for Council's consideration.

## **PUBLIC COMMENT**

None.

It was moved by Council member R. Coe, seconded by J. Henderson to approve **Resolution No. 25-16 for Reduction of Development Impact Fee Amount for Bear River Walnut Ranch, LLC's Walnut Huller Facility at 2301 Spenceville Road**. Vote called – AYES: All. Motion carried.

## **REPORTS**

A brief informational presentation was given by PG&E representative, John Costa. G. Greeson reported that the City is aware that the dirt patch from McDevitt Drive to Hooper Street is being utilized by parent drivers for school purposes and the AT&T boxes are being driven over.

## **ADJOURN**

There being no further business, Mayor Jay Pendergraph adjourned the meeting at 6:55 p.m.

Minutes approved and adopted this 25<sup>th</sup> day of October, 2016.

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Jay Pendergraph, *Mayor*

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Lisa J. Thomason, *City Clerk*