

TO: TOWN COUNCIL
FROM: TOWN MANAGER 
RE: DUANE FENDER COMPLAINT ON BERG LN HOUSES

ISSUE

Council invited Mr. Duane Fender, a resident on Berg Ln, to further discuss issues he has with certain houses on Berg Ln.

RECOMMENDATION

Discuss and give direction to Staff if needed.

CEQA

There are no CEQA issues at this time however there could be depending on how the Council wishes to proceed.

MONEY

There are no money issues at this time however there could be depending on how the Council wishes to proceed.

DISCUSSION

At the November 9, 2010 meeting Mr. Duane Fender addressed the Council and outlined issues he has with various houses on Berg Ln. Prior to that Mr. Fender had talked to the Planning Department, Planning Commission and Sheriff. Council identified four issues and asked Staff to respond. Following are the issues and response.

1. **CODE COMPLIANCE:** There are no code issues presently being investigated.
2. **10% LOW INCOME HOUSING:** Unknown what Mr. Fender would like addressed for this issue. Town has agreed to participate in SACOG compact and is updating the Housing element of the General Plan as required by State law.
3. **SUBDIVISION STATUS:** Najadian subdivision for 8 lots was approved November 2008 and expires November 2012 under current State law. A Final Map has not been issued. No building plans have been submitted yet.
4. **NO GROWING OF MARIJUANA:** Growing of marijuana for medicinal use is regulated by State law. The Sheriff has been notified. Town Municipal Code addresses marijuana at Chapter 13.10.010 where it is noted that:

“Nothing herein is intended, or shall be interpreted, to allow activities or uses which are illegal under local, state or federal law.”

Last year the Sheriff looked into law enforcement contacts at the various houses on Berg Ln and Deputy Skellinger advised as follows:

I have run our call logs for Berg and we have had some home burglaries in the area, about 4 in the last year... I called our drug task force and all the agents are in the field right now, but.... The office manager checked the active log and Berg did not show up (Doesn't mean an agent is not working it, it's just not a flagged area right now).... The homicide was not a random and the people responsible are in custody.

I show Mr. Fender as having a phone number of 652-6393, is that correct? I will give him a call, but not to much we can do either. He does have the right to take the property owners to court civilly for maintaining private nuisance property.

I did notice on an assessors check that there is a new owner recorded as of Sept- Allen Adjaman.

Staff phoned Mr. Fender on two occasions at this writing and left messages. In December Mr. Fender did say that he was leaving Town shortly and would not return until February. If Mr. Fender is in attendance at tonight's meeting then he may submit additional information. If not, it is recommended that Council receive and file this report pending further word from Mr. Fender.

October 15, 2010

Matt Lopez
Town of Loomis
Planning Specialist
Code Enforcement

RECEIVED

OCT 15 2010

TOWN OF LOOMIS

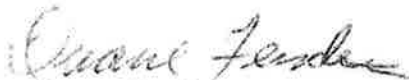
Dear Matt,

Thank you for calling me on October 14th in response to my concerns regarding the five non conforming houses on Berg Lane in Loomis.

I was wondering if you, or someone in the town management, could tag the houses and stop them from being rented again until this matter can be settled. If not, can you tell me the ordinance number that does not allow you to do this.

Could I please receive a written response, by mail or email at janefender20@sbcglobal.net.

I appreciate your time and efforts in this matter.



Duane Fender
3780 Berg Lane
Loomis, CA 95650

(916)652-6393

Town of Loomis
Planning Commission
October 11, 2010

RECEIVED
OCT 11 2010
TOWN OF LOOMIS

To Whom It May Concern:

I am writing this letter regarding the five non-conforming houses on Berg Lane in Loomis.

I have lived in Loomis for the past fifty years. I have raised my children here, and my grandchildren are being raised here. I understand that new development is a common cycle in a community, but I am concerned about these non-conforming, affordable houses and the problems they bring to our neighborhood. These five houses will devalue a new development along with existing neighborhood homes.

My concerns are:

1. Building permits. Will permits be given on non-conforming homes?
2. Insurance. Will they pay on non-conforming houses?
3. Fire breaks in open fields. Nothing was done in 2010.
4. Road maintenance. The road is full of ruts and pot holes.
5. Garbage. One out of five homes had service.
6. Yard maintenance. Poor yard and exterior maintenance by previous renters.
7. Homicide
8. Robbery
9. Drug investigation (on-going)
10. In the past year, three out of five homes were involved in the above three issues.
11. When sold, property values lower for surrounding homes – paper attached.
12. When sold, houses should be disclosed as non-conforming.
13. Zoning – in this area zoning is one house per acre, not small lots. Now is not the time to go back and fix it. It should have been done when the rezoning was first completed.

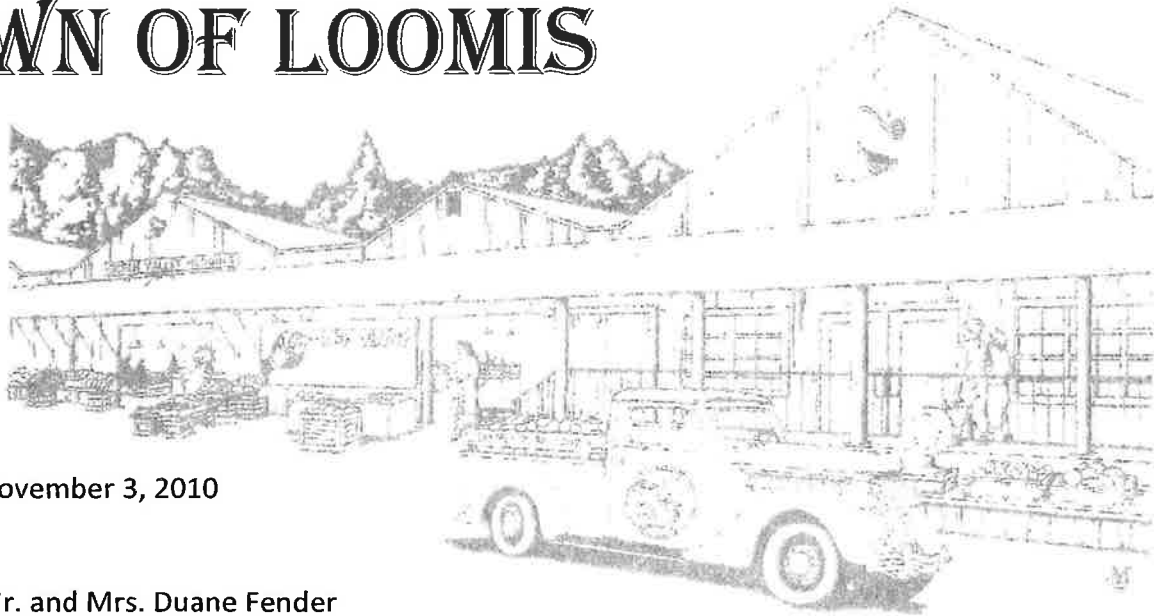
I would hope that the planning commission would consider and understand my concerns and move forward soon while these houses are not occupied. The properties have two new owners after foreclosure. The new owners are Al Adjamian 440-080-052-053 and the Bank Of America 044-080-052-052.

If you have any questions about my concerns, please contact me at 916-652-6393. I appreciate your time and efforts toward resolving this matter.

Thank You,

Quinn Fender

TOWN OF LOOMIS



November 3, 2010

Mr. and Mrs. Duane Fender
3780 Berg Lane
Loomis, CA 95650

Dear Mr. and Mrs. Fender:

Thank you for the time we spent on Thursday morning, 2 weeks ago, discussing your concerns with the five smaller homes on Berg Lane that received permits from Placer County when they were moved onto the site. I believe the following summarizes our responses, listed in the order of your October 11, 2010 letter.

1 – Building permits. The building inspector is responding with his own letter, attached, on your concerns with the non-issuance of permits on the smaller five homes.

2 – Insurance. Insurance is a private matter. Good practice would call for the insurance companies, before issuing a policy, to assure itself that it knows the non-conforming provisions of the Town's zoning ordinance. The Town of Loomis Zoning Ordinance Section 13.72.040 provides that

Dwellings, Generally. An involuntarily damaged or destroyed single- or multifamily dwelling may be reconstructed or replaced with a new structure with the same footprint, height, and number of dwelling units, in compliance with current building and fire code requirements.

3 - Fire breaks in open fields. The Town Clerk indicates that there have not been complaints recently regarding the two larger lots off of Berg Lane. She will include them in her list for next year.

4- Road maintenance. There is a recorded Road Maintenance Agreement from the 4 lot split processed by Beverly Fender - #2001-0126803 that includes Berg Lane. Thus, road maintenance a private issue. The agreement requires that "the easement be maintained in good, passable condition under all traffic and weather conditions... Repairs and maintenance on the easement are required when a majority of those owners that are bound by this

agreement (Lots 1-4) reach a decision that such repairs or maintenance are necessary.” A copy of the maintenance agreement is attached for your information. The Fire Chief indicates that the Fire Department requires “an ‘Engineered All Weather Road’ (can be gravel but, must be maintained) capable of carrying a 30 ton load”.

5 – Garbage. The owner submitted a will-serve letter from the garbage company per the required conditions of the 4-lot tentative map; however a condition requiring that the homes have garbage service was not required at that time. Residents of the Town are not required to have garbage service unless the subdivision has been so conditioned or they choose to pay for the service.

6- Yard maintenance. Attached is a copy of the Town Municipal Code nuisance provisions. To my knowledge, the town has abated properties for vegetation for fire breaks, refuse and boats and trailers visible in front yards, long term vehicles, but has not required a specific level of yard maintenance within the Town.

7. Homicide. I have contacted the Sheriff’s Department regarding your safety concerns and requested that they talk with you.

8. Robbery. Again, I have contacted the Sheriff’s Department regarding your safety concerns and requested that they talk with you.

9. Drug investigation (on-going). I have requested that the Sheriff’s Department explain the status of this situation and that a call be made to you and your wife regarding safety issues and what might be done.

10. In the past year, three out of five homes were involved in the above three issues. The Town can address any zoning, building and nuisance violations, however these three issues are outside of requirements of the municipal code.

11. When sold, property values lower for surrounding homes- paper attached. Overall, the value of property has gone down in the past few years; and not much development of existing parcels is going forward. While the Town has ordinances and conditions that set minimum standards for development of property, it cannot insure that property values are retained.

12. When sold, houses should be disclosed as non-conforming. This is a private matter. The staff reports in the files clearly indicate that the five homes with which you are concerned are non-conforming.

13. Zoning- in this area zoning is one house per acre, not small lots. Now is not the time to go back and fix it. It should have been done when the rezoning was first completed. The conditions of approval of the tentative map include the following:

- The applicant and his successors, heirs and assigns, shall be legally bound by a written instrument approved by the Town Attorney, to bring all land uses on that portion of the

subdivision designated as the "Remainder Parcel" into conformance 1 year after the adoption of the Town's General Plan update or by November 18, 2012, whichever is sooner.

- The mechanism for providing the 10% affordable units in accordance with the SACOG compact shall be finalized with the Planning Director prior to approval of the Final Map. The developer has indicated that the affordable housing requirement will be met through the provision of second units and/ or existing units onsite. The applicant shall identify the lots that will satisfy the inclusionary requirement prior to the recording of the final map. These dwelling units shall be constructed *and brought up to the Housing Code* concurrently with the market-rate units. All such units shall remain affordable to very low, low, or moderate-income households for a minimum of 20 years. Evidence which guarantees affordability shall be provided to, reviewed, and approved by the Town prior to the initiation of construction of the first dwelling unit within the project. If an inclusionary ordinance is adopted by the Town prior to approval of the Final Map, the subdivision shall comply with its requirements.

This tentative map is still valid (per State law) and runs with the land; however no action has been taken regarding this or further development of the property.

With respect to the thought that this should have been rezoned under the 2001 General Plan, I cannot find the parcels listed as requested by the property owner for a General Plan change- so it was not discussed by the Council at that time.

You have verbally requested that the houses be demolished because of the issues you have stated. A decision regarding having staff move forward in this direction needs to be given by the Town Council to staff. Without the further development of the property progressing, and/or the Town of Loomis catching up with the zoning for affordable housing required by the State, and that these are privately owned single-family homes, may make it difficult for the Council to give this direction to staff. Finally, if the Town Council were to consider directing staff toward abatement of the homes, the Fifth Amendment requires compensation for such action. Even if you were to offer to pay the town for their removal costs, there are significant costs (including legal) and regulations that most probably prohibit the Town from doing this- such as whether it is a legitimate public purpose on which public funds can be expended.

If you have any questions, please do not hesitate to call me at (916) 652-1840)

Sincerely,



Kathy Kerdus
Planning Director

TOWN OF LOOMIS
6140 HORSESHOE BAR ROAD, SUITE K
Loomis, CA 95650
(916) 652-1840 / Fax (916) 652-1847

Owner: Mr. Fender

Date: October 29, 2010

APN:

Address: Berg Lane, Loomis, CA 95650

Ref: Work Without Permit

Mr. Fender,

Per your request at our meeting at our home, I have included here-in the write-up forwarded to the office in regard to your complaint regarding work done without permits on a home located on Berg Lane. As noted at the meeting, it is not my assignment to do a "code compliance" review of the buildings in question. What I was responding to was a complaint of on-going work to determine if a permit was required. Based upon that complaint I visited the site and met with a licensed contractor who was doing repair work on the building. My write-up was as follows:

I drove by yesterday as directed and found one of the smaller homes (4th one) with repair work underway. I identified myself to the contractor, Mike Holmes who was doing the repair with a co-worker. He showed me the extent of the work which was repairing dryrot within the home by opening up the floor in three locations and doing the repair and replacing the subfloor. Also a small area of stucco repair on the outside had been performed. The landing and steps at the rear door from the laundry area had been replaced due to the deterioration of the existing.

I believe that this work would comply with the definition in the California Building Code of "repair work" which is exempted from the requirement of obtaining a permit. The contractor indicated that the owner of the property at the end of Berg Road had stopped by and complained that all those small homes should be demolished. The contractor was going next to the home on the north side of the one he was working at and do similar repair work on it. Both homes were owned by the person he had a contract with.

If you have any questions, please contact me by phone at 916-652-1840 or by email at m-langford@loomis.ca.gov.

Respectfully Yours,

Michael R. Langford, owner
Mike Langford Consulting

Loomis Municipal Code**Up Previous Next Main Search Print No Frames**[Title 7 HEALTH AND SAFETY](#)[Chapter 7.04 NUISANCES](#)[ARTICLE I. NUISANCES](#)**7.04.010 Nuisances declared.**

It shall be unlawful for any person owning, leasing, renting, occupying or having charge or possession of any property in the town to maintain or to allow to be maintained such property in such manner that any of the following conditions are found to exist thereon, except as may be allowed by this code.

- A. The accumulation of dirt, litter, or debris on the property which is visible from a street or roadway;
- B. Clotheslines or clothes hanging in front yards, side yards, porches or balconies and visible from a street or roadway;
- C. Trash, garbage or refuse cans, bins, boxes or other such containers stored in front or side yards and visible from a street or roadway;
- D. Packing boxes, lumber, junk, trash, salvage materials, or other debris kept on the property for an unreasonable period and visible from a street or roadway;
- E. Attractive nuisances dangerous to children and visible from a street or roadway, including abandoned, broken or neglected equipment, machinery, refrigerators and freezers, hazardous pools, ponds and excavations;
- F. Broken or discarded furniture, household equipment and furnishings or shopping carts stored on the property for unreasonable periods and visible from a street or roadway;
- G. Overgrown vegetation likely to harbor rats, vermin and other nuisances causing detriment to neighboring properties or property values or obstructing necessary views of drivers on streets or roadways or private driveways and visible from a street or roadway;
- H. Dead, decayed, diseased or hazardous trees, weeds, overgrowth or other vegetation constituting an unsightly appearance, a danger to public safety and welfare, fire hazard or a detriment to neighboring properties or property value and visible from a street or roadway;
- I. Graffiti or other words, letters or drawings which remain on the exterior of any building or fence for an unreasonable period and are visible from a street or roadway;
- J. Boats, trailers, vehicle parts or other articles of personal property which are abandoned or left in a state of partial construction or repair for an unreasonable period of time in front yards, side yards, driveways, sidewalks or walkways and are visible from a street or roadway;
- K. Camper shells which are left for an unreasonable length of time in front yards, driveways, side yards, sidewalks, or walkways and are visible from a street or roadway; and
- L. Buildings which are abandoned, boarded up, partially destroyed, or left in a state of partial construction for an unreasonable length of time and such buildings which are unpainted or where the paint on the building exterior is mostly worn off. (Ord. 203 §§ 1, 2, 3, 2003; Ord. 59 Art. 1 § 1, 1988)

PLACER COUNTY RECEIPT

No. 304415

DATE 10-29-01

RECEIVED FROM

THE BERG FAMILY TRUST

ADDRESS

DOLLARS \$ 25⁰⁰

FOR TAX ESTIMATE FOR PMAP NO. 01-01

304134 APN 044-080-042

ACCOUNT		HOW PAID	
AMT. OF ACCOUNT		CASH	
AMT PAID		<u>CHECK</u>	<u>1960</u>
BAI ANCE DUE		MONEY ORDER	

DEPARTMENT ASSESSOR

BY MMG

E
□

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENT TO:

Name **Billy K. Lawler**
Address **3749 Berg Lane**
City & **Loomis**
State **Ca.,**
Zip **95650**

Title Order No. _____ Escrow No. _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Grant of Easement

THE UNDERSIGNED GRANTOR (s) DECLARE (s)

DOCUMENTARY TRANSFER TAX IS \$ _____

unincorporated area Town of Loomis

Parcel No. APN No. 044-080-042

computed on full value of interest or property conveyed, or

computed on full value less value of liens or encumbrances remaining at time of sale, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Beverly J. Fender, as trustee of the Berg Family Trust dated January 12, 1990

hereby GRANT(s) to **Billy J. Lawler and Karen A. Lawler, husband and wife, as joint tenants**

the following described real property in the Town of Loomis
county of Placer, State of California

A temporary easement for the encroachment and use of an accessory building within Area "J" as shown on Parcel Map 01-01 recorded concurrently herewith in Book _____ of Parcel Maps, at Page _____, Placer County Records. When the use has terminated; the building shall be removed and this easement shall cease to exist.

BY: *Beverly J. Fender*
Beverly J. Fender,

Successor Trustee of the Berg Family Trust dated January 12, 1990

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE

Name

Address

State of California)
County of Placer)

On October 29, 2001 before me, Monica M. Fletcher
personally appeared Beverly J. Fender**

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person (s) whose name (s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies). And that by his/her/their signature (s) on the instrument the person (s) or the entity upon behalf of which the person (s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Monica M. Fletcher



DECLARATION OF ROAD MAINTENANCE AGREEMENT

The undersigned hereby declare that they are owners of two easements for Public ingress and egress and public utilities shown as Area "L" and Area "K" on Parcel Map No. 01-01, recorded concurrently in Book_____ of Parcels Maps, at Page_____, Placer County Records and incorporated herein by this reference.

We hereby agree and declare that we shall bear equal shares of any and all costs required for maintenance and repairs of said easement under the terms and conditions set forth herein:

1. Said easement described herein shall be used in common with other owners of said easement or lands to which such easement is attached.
2. Said easement shall be maintained in good, passable condition under all traffic and weather conditions.
3. Repairs and maintenance on said easement shall be required when a majority of those owners bound by this agreement who use said easement for ingress and egress reach a decision that such repairs or maintenance are necessary. Pursuant to that decision, such owners shall then initiate the repairs or maintenance within sixty (60) days, with each of those owners bound by this agreement bearing equal shares of the cost and expense thereof, regardless of whether such owners shall have concurred in the decision to initiate repairs or not, provided however, that such costs and expenses shall be shared only with and by those owners who use said easement for ingress or egress.
4. Nothing herein shall be interpreted as requiring contribution for major improvements in the traveled portion in said easement, however, if such improvements are constructed, this agreement shall apply to the repair or maintenance of such improved facilities.
5. Each of the undersigned owners agree that if they cause or allow said easement to be used in any manner which results in unusual wear or damage to the surface of said easement, they shall bear the costs and expenses of restoring said surface as their sole and separate cost expense.

Declaration of Road Maintenance Agreement (cont'd)

6. If any one of the owners of said easement or lands to which said easement is attached fails, after demand in writing, to pay their proportion of the expense, action may be brought against them in a court of competent jurisdiction by the other owners, either jointly or severally, for contribution and cost of such legal action, including legal fees.
7. In the event that any owner bound by this agreement desires repairs or maintenance be performed on said easement and cannot obtain the concurrence of a majority of those owners bound by this agreement within six months after written request for such concurrence, said owner shall have the right to apply for such relief as may be available under the provisions of Civil Code Section 845 or amendments thereof as if this agreement were not in effect.
8. This agreement and declaration shall be deemed and is intended to run with the land and to be a restriction upon the said property and shall be binding upon the undersigned, their heirs, personal representatives, successors and assigns until such time as the said easement shall be dedicated to and accepted for use as a public street by a governmental entity. It is the intent hereto that this instrument shall be recorded and that any subsequent transferee of the property or any part thereof, by acceptance of delivery of a deed or conveyance of the said property shall be deemed to have consented to and become bound by these terms.
9. Nothing herein shall be interpreted as limiting or restricting the rights of the undersigned or their successors in interest from pursuing such remedies as may be available under Civil Code Section 845 or other provisions of law against owners of said easement or lands to which said easement is attached who are not bound by this agreement.
10. Any owner of said easement, or lands to which said easement is attached, not bound by this agreement, may elect to be so bound by executing and recording a copy of this declaration, at which times such owner shall be subject to all the benefits and duties herein.

IN WITNESS WHEREOF, we have executed this declaration on this

29 day of OCTOBER, 2001, at Auburn, CA
City, State

Beverly J. Fender, as Successor Trustee of the Berg Family Trust
dated January 12, 1990

By: Beverly J. Fender
Beverly J. Fender

State of California)
County of Placer)

On October 29, 2001 before me, Monica M. Fletcher
personally appeared Beverly J. Fender**

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person (s) whose name (s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies). And that by his/her/their signature (s) on the instrument the person (s) or the entity upon behalf of which the person (s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature *Monica Fletcher*



RECEIVED
NOV 08 2010
TOWN OF LOOMIS

November 8, 2010

Town of Loomis
Office of the Commissioner
3665 Taylor Rd.
Loomis, CA 95650

Re: Low Income Housing - Berg Lane

Dear Commissioner,

I would like you to consider the following information regarding the low-income rental housing situated on Berg Lane in Loomis. As a property owner living near these low-income rentals, my concern is that they be maintained in a safe, healthy and lawful manner.

I feel that it is important to monitor low-income housing. The owners and/or property managers should be held responsible for the upkeep of these properties. Proper maintenance is imperative to the neighboring community. Failure to maintain these properties in a responsible manner would adversely affect property values and the safety of our neighborhood.

Thank you for your consideration in this matter.

Sincerely,



Beverly Fender
5630 Saunders Ave.
Loomis, CA 95650