

2/10/2010

FEBRUARY 13, 2010 COUNCIL MEETING
Continued from 12/8/09 & 1/12/10 & 1/16/10 & 2/9/10

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TO: TOWN COUNCIL

FROM: TOWN MANAGER

RE: OPEN SPACE COMMITTEE 2 RECOMMENDATIONS AND A CITIZEN
REQUEST REVIEW

ISSUE

Council completed more of its review of Open Space Committee 2 recommendations however there were some items that were held over for further deliberation and decision.

RECOMMENDATION

Decide on the OSC-2 recommendations and determine which, if any, to forward to the Park, Recreation and Open Space Committee for inclusion in the draft Park Master Plan.

MONEY

There are no money issues at present with these recommendations.

CEQA

Environmental issues will be addressed once projects are defined or changes, if any, are recommended in the General Plan or Zoning Code.

DISCUSSION

At the December 2009 meeting Council decided on a few of the left over Open Space 2 recommendations. There are still some recommendations remaining for Council consideration.

Council will want to conclude the review of the OSC-2 recommendations today so that the Council's input can be forwarded to the Park, Recreation and Open Space Committee and the consultant working on the master plan. There will be a community meeting on the master plan on February 27th and it would be helpful to have all the information come together by then.

Proceed to page 4 to begin consideration of recommendations that have been returned to Council.

12/8/09 Council decided the following OSC-2 recommendations

KEY RECOMMENDATION

2. **Fund Open Space Preservation on a Sustainable Basis** – The Town should revise its estimate of open space funding requirements to include all the needs detailed in this report. The Town should recognize that open space is not discretionary, but critical to the future quality of life of Loomis residents. Once a new budget is developed, the Town should determine which of the recommended funding tools should be applied to meet those needs. OSC-2 cautions the Town not to rely on development impact fees to fund open space, as that establishes a self-defeating cycle of relying on development to fund open space preservation. Grants should be used only to supplement a fully funded Open Space budget of the Town.

COUNCIL ACTION key recommend 2:	REFER TO PROSC	RETURN TO COUNCIL	TABLE
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A. General Plan (GP)

5. Increase required buffer (setback) near creeks and wetlands.

COUNCIL ACTION A5:	REFER TO PROSC	RETURN TO COUNCIL	TABLE
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6. Maintain a list of Special Properties with significant potential for preserving open space and natural resources, and provide incentives to willing property owners.

COUNCIL ACTION A6:	REFER TO PROSC	RETURN TO COUNCIL	TABLE
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2/9/10 Council decided the following OSC-2 recommendations

7. Expand the list of Specific Areas in Chapter III, Sec. G to include several areas proposed by the OSC-2.

COUNCIL ACTION A7:	REFER TO PROSC	RETURN TO COUNCIL	TABLE
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B. Zoning Ordinance

1. Establish a new policy for agricultural open space that would require environmental review of larger (> 5 acres) agricultural operations to ensure that agricultural open space doesn't lead to environmental degradation when combined with a residential subdivision.

COUNCIL ACTION B1:	REFER TO PLANNING COMMISSION	RETURN TO COUNCIL	TABLE
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3. Emphasize that clustering should only be approved where it will result in significant benefit to the community and/or significant preservation of open space and natural resources.

COUNCIL ACTION B3:	REFER TO PROSC With direction to define "significant"	RETURN TO COUNCIL	TABLE
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FOLLOWING ARE THE RECOMMENDATIONS FOR FURTHER DELIBERATION THAT COUNCIL IS ASKED TO CATEGORIZE ACCORDING TO THOSE THAT:

- SHOULD BE REFERRED TO THE PROS COMMITTEE FOR INCLUSION IN THE MASTER PLAN; OR
- REQUIRE FURTHER REVIEW BY COUNCIL BEFORE CATEGORIZING; OR
- SHOULD BE TABLED BECAUSE THE RECOMMENDATION HAS BEEN COMPLETED OR COUNCIL DETERMINES THAT THE ITEM NEED NOT BE INCLUDED IN THE MASTER PLAN.

4/20/09 Council decided to further consider the following from Section C:

C. Development Practices

1. Communicate to developers an expectation for “set asides” for park areas and open space. On larger developments, this expectation should be at least 30% of the land area.

COUNCIL ACTION C1:	REFER TO PROSC	RETURN TO COUNCIL	TABLE
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4/20/09 minutes

- Council agreed to send this back to the Town Attorney to research legal issues.
- Jean Wilson comments: 30% of land is a huge amount to ask for, can that be justified, there is no definition of “larger” development and suggested Council get staff input on State Law in regards to set asides before making a decision.

2/2/10 The Town Attorney advised as follows;

The primary question is whether the Town has to pay the developer for the land. In other words, is it a “compensable taking?”

As case law evolves, the law is tending to compartmentalize most takings issues into two main categories: (1) physical takings; and (2) regulatory takings. In addition, there are still takings issues that do not fit into either category (e.g. intrusion of one’s vested rights or non-conforming status). Finally, there is the following language which was written before any modern takings cases in the land use arena were decided, which continues to assist courts in their analysis:

“[T]his court [the United States Supreme Court] quite simply, has been unable to develop any ‘set formula’ for determining when ‘justice and fairness’ require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately

concentrated on a few people.” Penn Central Transportation v. City of New York (1978) 438 U.S. 104, 124.

Once a court determines which category the 30% set aside falls into (which will depend on such things as whether the property is be used only by subdivision lot owners or by the public at large, who will ultimately own the property, whether an easement or the entire fee simple is being conveyed, whether the number of dwellings that can be built remains the same, etc.) then it will apply the applicable rules , and subsets of rules, accordingly.

If the court were to determine that the set-aside requirements fell into the physical taking category, the Town would automatically be required to reimburse the developer the amount of the set-aside valued at its ‘highest and best use.’ If was determined that the requirement was a regulatory taking, the court would choose from among several possible sub-sets of rules.

Assuming the requirement was to give the Town the 30% set-aside in easement or fee to be used for parks or open space for the general public, the court would likely ask whether there is a sufficient ‘nexus’ between the impacts cause by the proposed development and the requirement that 30% of the property be given away. (There is also a subordinate ‘rough proportionality’ requirement that would be applied.)

Given our historical propensity for holding private property in such high esteem, it is likely that a 30% set-aside requirement would not withstand judicial muster.

In order to determine what would be realistic, and to improve the chances of justifying that requirement, some towns and cities have conducted a nexus study. The Town Attorney can elaborate on these responses at the meeting.

- 3. Clarify and formalize the review / approval process for Final Maps, including the approval of Building Envelopes, Notebooks and CC&Rs prior to Final Map approval. Ensure that Final Map is not a substantial change from Approved Tentative Map.

COUNCIL ACTION C3:	REFER TO PROSC	RETURN TO COUNCIL	TABLE
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4/20/09 minutes

- Council agreed to refer this to the Town Attorney for clarification. Discussed was the wording “substantial change.”
- Jean Wilson comments: this section isn’t needed but suggested adding the words “where appropriate”.
- Roger Smith comments: staff should have formal guidelines on where to include building envelopes; there needs to be a process/guidelines to insure that the final map will not be any different than the approved tentative map.

2/2/10 The Town Attorney advises as follows;

State Law requires that the town engineer or town surveyor determine whether the final map is in substantial conformity with the tentative map. "Substantial conformity" is not defined anywhere, but the fact that the statute requires the engineer or surveyor to make the call, suggests that this is intended to be an engineering rather than a planning (or political) exercise. Council is not allowed to designate someone other than the town engineer or surveyor to make this determination. Nor can Council do so itself.

7. In the RR, RE & RA zoning areas, limit the clearing and grading of parcels to well defined Building Envelopes, documented via Notebooking on all parcels.

COUNCIL ACTION C6:	REFER TO PROSC	RETURN TO COUNCIL	TABLE
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4/20/09 minutes

- Council agreed to have this item return to Council for further discussion and clarification.
- Jean Wilson comments: regarding clearing, grading, notebooking, building, envelopes on all parcels we already have setback ordinances, tree ordinances, grading ordinances and various other controls to handle these issues without creating a new burdensome and unnecessary ordinance.
- Roger Smith comments: "they recommended that clearing and grading be limited just to the building envelopes and not allowed before it is sold."

8. Require developments to be designed to respect and maintain wildlife corridors. Any fencing used should not unnecessarily restrict wildlife movement.

COUNCIL ACTION C8:	REFER TO PROSC	RETURN TO COUNCIL right to farm issues	TABLE
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4/20/09 minutes

- Council agreed to bring this item back for further clarification and to include "the right to farm."
- Jean Wilson comments: regarding wildlife corridors we need to strike a balance on property rights and wildlife rights, request rejection of fence aspect and table corridors for further study. This would prevent us from using any type of plastic deer mesh, electric fencing, barbed wire, and any type of smaller cell fencing to keep small animals from our yards, gardens, orchards or crops and would be unfair to the landowner.
- Roger Smith comments: fencing should not necessarily be use to block, there should be guidelines.

8/24/09 Council decided to further consider the following from Section E:

E. Other Policies

5. Re-create a Design Review Board, as existed prior to formation of the Town.

COUNCIL ACTION E5:	REFER TO PROSC	RETURN TO COUNCIL	TABLE
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8/24/09 minutes

- Council moved to return this item to Council.
- Jean Wilson comments: a design review board is not needed, it will only create another level of bureaucracy, forms, delays and expenses' we already have Planning Commission design review for industrial and commercial areas; we do not need or want to become a community of cookie cutter homes; asks Council not to reinstate it.
- Pat Miller comments: was in favor of re-creating a design review board.
- Vic Markey comments: [referring to Parks, Recreation and Open Space Committee] they are dealing with these issues already; they look at what the value is that Loomis is looking for (design review) when they do the green sheets (project review sheet).

8/24/09 Council decided to further consider the following in the section having to do with the section dealing with Review of Proposed Projects:

3. Town should clearly define the staff responsibility for review and approval of project CC&Rs and Development Notebooks (for individual lots).

COUNCIL ACTION RP3:	REFER TO PROSC	RETURN TO COUNCIL	TABLE
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8/24/09 minutes

- Council moved to have this item come back to the Council.
- Pat Miller comments: when she was on the OSC 2 they were frequently confused, they had a hard time finding out where a decision came from; confusion also came from different departments on where a direction comes from or approval and what backs up that approval; questioned why it is okay to take out a lot of trees in one area when she can't take out a lot of trees on her property.

8/24/09 Council decided to further review the following in the section on Education and Outreach:

2. Make public aware of specific projects even before the Planning Commission reviews them; organize educational programs & events to keep public informed.

COUNCIL ACTION EO2:	REFER TO PROSC	RETURN TO COUNCIL	TABLE
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8/24/09 minutes

- Council moved to return this item to Council
- No public comments