MEETING DATE: 06/18/12
ITEM NO: 5

DESK ITEM

COUNCIL AGENDA REPORT

DATE: June 18, 2012

TO: MAYOR AND TOWN COUNCIL

FROM: GREG LARSON, TOWN MANAGER

SUBJECT: ZONING CODE AMENDMENT A-12-001. APPLICANT: TOWN OF LOS GATOS.
ADOPT AN ORDINANCE AMENDING THE ZONING CODE TO ADD DIVISION 8 TO CHAPTER 29, ARTICLE 1 ENTITLED "DENSITY BONUS."

DISCUSSION:

Attached please find an email correspondence and staff response regarding this item (Attachment 2).

ATTACHMENTS:

Received Under Separate Cover

1. Zoning Ordinance Amendment

Received with this Report

2. Email Correspondence from Lee Quintana

WRR:ct

PREPARED BY: Wendie R. Rooney, Director of Community Development

Reviewed by: (SJ) Assistant Town Manager (Q) Town Attorney _____ Finance

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Wendie Rooney

From: Wendie Rooney
Sent: Monday, June 18, 2012 1:28 PM
To: 'Lee Quintana'; Judith Propp; Greg Larson; Pamela Jacobs
Cc: Diane McNutt; Steve Rice; Steve Leonardis; BSpector; Greg Larson; Joe Pirzynski
Subject: RE: State Density Bonus Ordinance and Implementing Guidelines

Lee: As I said in an earlier email to you today, we appreciate that you spent time with us on Friday to tell us your concerns. In that email, I also indicated that staff would add some additional language from the State Law to the Guidelines if that would make them clearer. We also mentioned in our meeting Friday that since State Law takes precedence over the Town's Guidelines, the Town would not need to add anymore language; however, we too are trying to make Guidelines as easy to understand as possible. Since the Guidelines were adopted, similarly to our BMP Program via a resolution, we would be making those changes to the Guidelines in August when the Council is back in session.

After reading your email, however, I don't believe that you are accurately summarizing Judith and my comments to you on Friday. Please see my responses in red font below. Thanks, Wendie

Wendie Rooney
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From: Lee Quintana [mailto:leeandpaul@earthlink.net]
Sent: Monday, June 18, 2012 11:47 AM
To: Wendie Rooney; Judith Propp
Cc: Diane McNutt; Steve Rice; Steve Leonardis; BSpector; Greg Larson; Joe Pirzynski
Subject: State Density Bonus Ordinance and Implementing Guidelines

On Friday June 15, 2012 I met with you and Judith Proff to discuss the Town's Density Bonus Ordinance and the implementing Guidelines. The following is a summary of our meeting, plus a few additional questions.

1. The following are staff"s responses to my comments that the Town's Density Bonus Ordinance and implementing Guidelines are confusing and hard to understandable, and that reorganizing the Guidelines and adding more specific references to the Guideline Sections and State law would be a significant improvement:

a) The Town is required to follow state laws so even if the Town's documents are confusing or conflict with Sate Laws. ***[Wendie Rooney]*** Town staff contends that the Guidelines are consistent with State Law. In fact, we discussed that State Law must be followed (i.e. State statutes are primary law), and that in order to provide a concise road map for staff and applicants, we tried to streamline the State Law language in the Guidelines. We did state that it is generally recognized (by Attorneys, land use staff and applicants) that the

ATTACHMENT 2

State Density Bonus Law is universally viewed as one of the more poorly drafted pieces of legislation. The Guidelines are a good attempt to streamline the language.

b) The Ordinance and Guidelines were written to inform applicants of the Town's requirements. .*[Wendie Rooney]* I believe we stated to inform the applicant and as companion information to the actual State Law language for staff.

c) An applicant would not find the Ordinance and Guidelines confusing since an applicant and their lawyers are well versed in the State Density Bonus Law *[Wendie Rooney]* . I don't believe we said that an applicant would not find the Ordinance and Guidelines confusing.... Rather I believe that we said given the complexity of this law, most applicants would have a knowledgeable team including attorneys working with them on an application.

2. During the meeting staff agreed to:

a) Check the Ordinance and Guidelines for consistency in language with current State Laws.

b)) Consider adding more references to specific sections of the Guidelines and State Law.

c) Not consider re-ordering or re-organization of the Ordinance or Guidelines. *[Wendie Rooney]* I agree with all of these comments.

3. As we were ending the meeting staff mentioned:

a) The Ordinance would come back to Council for its second reading and final adoption in August. *[Wendie Rooney]* Consistent with our existing procedures, the 2nd reading of the Ordinance would occur on June 18th, and that if Town staff recommends any changes to the Guidelines and resolution, that would occur in August after the Council break.

b) The Guidelines are final since they were approved and adopted by Resolution at the June 4th Council Meeting. *[Wendie Rooney]* This is true, unless the Town makes any changes.

4. The information in 3. above raises additional questions not discussed during our meeting:

a) How can the Guidelines, which are authorized by the Ordinance, be adopted as final when the Ordinance itself is not final until the second reading of the Ordinance? *[Wendie Rooney]* The Town is obligated to follow State law, and the Guidelines are intended to clarify the law and how Town will process applications for a density bonus under the State law requirements.

b) If the Guidelines are in fact final and not subject to modification at this time are items 1), 2), and 3 just pro forma statements? *[Wendie Rooney]* Not sure what is meant by this comment.

c) Why did staff provide misinformation regarding the date of the second reading finalizing the Ordinance since *it is Consent Item #5 on the June 15th Town Council Agenda?* **[Wendie Rooney]** State law requires an initial introduction of an Ordinance to be followed by a second reading which is scheduled as a Consent Item on the Town Council Agenda for June 18th. Staff-informed you at last Friday's meeting that the second reading of the ordinance would occur on June 18th. We further stated that if any changes were made to the Guidelines, that would occur in August.

5. Good governance, open government and transparency, which theTown Council endorses, requires that Town Ordinances and Guidelines be written to:

a) Inform an applicant, staff, the public, the Planning Commission and the Towns Council of the Town's requirements for their project ***and are also***

b) Be understandable to the public, Planning Commission and Town Council to enable informed, independent judgement whether a project is consistent with both Town Ordinances and state laws.

6. Guidelines Section IV.B.1: I just compared the original language presented to the Planning Commission on May 23rd and the modified language adopted by Council on June 4th (see a) and b) below). Please explain how the addition of "Following the Planning Commission consideration of the application " at the beginning of the 3rd sentence addresses the concerns raised by the Commission on May 23rd. *[Wendie Rooney]* The Planning

Commission was concerned that the Director could bypass their review of an application and refer it directly to the Council for review and action. This new section was, added at the request of the Planning Commission, to clarify that the Planning Commission must first hear and make a recommendation on an application before it is referred to the Council.

a) IV.B.1 3rd sentence (p13) Exhibit A of Exhibit 2 PC meeting May 23rd:
"The Community Development Director and/or the Planning Commission may refer an application for a density bonus and other entitlements to the Town Council if for final consideration and action." ***[Wendie Rooney]*** with the new section, noted above, it is clear that the Planning Commission hears the item first before the referral to Town Council.

b) IV.B.1 3rd sentence:(p.14) (Attachment 8 (Exhibit A of Attachment B.): Adopted modified language by TC on June 4th:
"Following Planning Commission Consideration of the application theDirector of Community Development and/or the Planning Commission may refer the application for a density bonus and any other entitlements to the Town Council for final consideration and action."

Sincerely
Lee Quintana

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