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City Council pauses to consider action on trail easement and closure

By Sora O'Doherty

It was a packed house at the Sept. 17 Orinda City Council meeting, due to a controversy regarding a 10-foot-wide trail easement that runs across the parcel that is now 53 Rheem Blvd., providing a trail connection from Rheem Boulevard to Parkway Court. Letters received by neighbors in the area described the trail as having been used by children to walk to Glorietta Elementary School, as well as by neighbors and the general public, for more than 25 years.

A public trail easement was offered to the city in 2010 by the prior property owner, but on the recorded subdivision map, the city formally accepted the parcel map but rejected the offer of dedication of the trail easement. According to the current owner of 53 Rheem, this, in effect, made the easement property private. Kent DeSpain purchased the Rheem property in June 2015 and he stated at a Jan. 12, 2016 design review hearing, prior to building their home, that he had no intention of closing the trail. In a Sept. 13 letter to the council, DeSpain said he remembered four people who spoke about the trail at the January meeting. DeSpain, from San Francisco, said it was the first he had heard of a formal trail. "I recall being a little taken aback, but I quickly understood that as a new person in town and wanting to be a good neighbor, I said I had no intention of closing off the trail," DeSpain wrote.

After moving into their home last May, the family experienced several incidents where people using the trail easement "have wandered into my backyard, and in one instance a man was talking to our two boys while we were inside the house," DeSpain wrote, adding that he began a conversation with the city in mid-August, but nothing happened.

Other issues arose, and the family erected a locked gate across the pathway on Sept. 1, preventing any public access.

At the Sept. 17 council meeting, DeSpain told the city council that he apologized for "this colossal mess." He said that he had been told many times that the easement and property was private. DeSpain submitted a 2016 email from former Orinda Assistant Planner Daisy Allen in which she told him, "Your concerns are valid. You cannot legally be required to keep the trail open to the public. . . ." DeSpain said, "It's not the fault of this council or the current staff, and it's not our fault either."

According to the staff report from the Sept. 17 meeting, "The owner of Parcel 'A' (53 Rheem Blvd.) at the time did not challenge longstanding public access." Under state law, the report stated, the offer to dedicate the trail easement remained open and can be accepted by the city council by resolution at any time.

DeSpain did not want the city to accept the trail easement, expressing concerns about public safety as well as privacy issues.

Of the 25 residents who spoke at the Sept. 17 council meeting, all but three supported the easement. Aaran Schultz, who served on the Parks and Rec Commission, supported the easement, and Randy Miller stressed that the planning commission had promised to keep the easement open and suggested that a privacy fence would solve the DeSpain's desire for privacy in their backyard. This idea was seconded by Connie Miller, who pointed to the easement from Martha Road to Overhill, which has fences on either side.

Many talked about how important the trail was to them, and how it had influenced the purchase of their homes. Several speakers said that they lived adjacent to the trail and found it to be an integral part of the neighborhood and talked about how they enjoyed interacting with their neighbors walking to the path.

Of the three speakers who were against the trail, Sally Kahn said she has lived at 51 Rheem since 1989. There was not a path until 2010, she said, adding that she had never been in favor of the path, although her children did use the path before 53 Rheem was built, "but we were right there, she said. "It wasn't like we had to walk across anybody else's property." She complained that the path is used at night, by bicycles, even motorized scooters. Her husband, Stuart Kahn, also opposes the trail.

Don Weston enjoyed walking his two daughters to school on the trail. "I've used it for 25 years," he said, "and as far as I know there have been no incidents." Several parents in their letters to the council cited concerns about safe routes to and from Glorietta with the path closed, and how Rheem Boulevard has no sidewalks and heavy traffic. Leeann Brady, who has multiple sclerosis and gait and balance issues and has been walking the easement path for 15 years, wrote "with the trail gone I have to get in my car to drive somewhere to walk."

Naomi Greenstone asked the council to accept the easement, noting that its use can be limited by regulations prohibiting use at night, or by motorized vehicles. Dave Simon, who lives on Parkway Court on the other end of the trail, said that he supports the easement for public safety and convenience. "Easements have a place in our community," he said.

Terry Murphy, who was the chair of the planning commission when it dealt with this in 2010, said, "The city council rejected the easement 10 years ago. Now here we are trying to get a public easement. To take the easement 10 years later," he added, would be a taking without compensation. He also suggested that the easement could be used by "the people we hear about on the 6 o'clock news."

According to a letter submitted to council from DeSpain's attorney, DeSpain has entered into discussions with his neighbors as well as with City Manager Steve Salomon and was working toward a mutually agreeable solution to this matter.

Citing the need to take more time and work through legal issues, the council asked staff to continue to work on the issue. The city is also weighing the fiscal concern with the trail, including preparing the trail for public access and long-term maintenance, and also the liability associated with it. Mayor Amy Worth said that she

wants to resolve the issue as soon as possible. She talked about Orinda's Bike and Pedestrian Plan and said that she wished Orinda had more pedestrian paths. Planning Director Drummond Buckley said that staff would work on the issue and bring it back to the council at its Oct. 2 meeting. The meeting occurred after this publication went to press. At that time, the gate remained closed.

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