

Published September 4th, 2019

Long-sought workshop on Orinda private roads may lead to progress

By Sora O'Doherty



Photo Sora O'Doherty

At least two ideas about private roads seemed to be points of potential agreement between the city of Orinda and the residents of its private roads at a recent workshop. One is that the issue of greater city involvement, one way or another, in the maintenance of private roads should be bundled together with the future funding for repair work on the city's aging sewers and drains. The other is that the residents should conduct polling to test the appetite of the Orinda electorate for extending city responsibility for private roads.

The dispute over who should bear the responsibility for the maintenance of private roads has been appearing on the agendas of the Orinda City Council and the Citizens' Infrastructure Oversight Commission for several years, with the residents of the private streets asking repeatedly for a forum where they could enter into a deeper discussion with the city - not limited to the three

minutes allotted to speakers at city council meetings. The city provided such a forum on Aug. 27, in the shape of a private roads workshop, facilitated by Jim Bourgart, a former California's Deputy Secretary for Transportation and Infrastructure.

Private road residents were given 30 minutes to present their views. In attendance at the meeting in a listening capacity were the mayor and city council members. The Orinda Community Center Founders' Auditorium was packed to capacity for the workshop, and many residents had submitted their comments by email. Director of Public Works Larry Theis opened the workshop with a presentation about private roads in Orinda, reviewing the information that has been presented to the city council in several staff reports. Theis included some research he has collected about how other jurisdictions have dealt with the issue.

Orinda city attorney Osa Wolff also gave a short presentation addressing some of the legal issues that could arise should the city decide either to adopt private roads as public, or to maintain private roads in the same manner as public roads.

The presentation by the private roads residents was divided up between six speakers: Charles Porges, Bob de Oro, Steve Cohn, Joel Libove, Melissa Roeder, and Cathy Finch. Porges pointed out that all of the roads in Orinda were acquired from Contra Costa County in 1985 when the city incorporated. All of the roads were in poor condition at that time, but in 2012 the city passed taxes and bonds for the maintenance of the public roads only. Private road residents, who pay the same taxes, believe that wasn't fair. In addition, last year the council adopted a new fee, added to everybody's garbage bill, to provide more money to fix the damage caused to public roads by heavy garbage trucks. Again, private road residents pay the same fees, but their streets obtain no benefit from the new revenue.

Road maintenance is a public service, Porges argued, and all roads provide benefits to the public. De Oro agreed that there is no difference between public and private roads, which provide access to residents, to emergency police and fire vehicles, and to utilities such as PG&E, EBMUD, and garbage trucks. He said that there is no difference between public and private residential streets. "We're all one city," he said, "no one should be excluded." Many of the email submissions echoed the same sentiment: public and private roads should receive the same treatment from the city.

Steve Cohn addressed the financial side of the issue: "How much will it cost to repair and maintain private roads, and how are we going to do it?" The costs could be amortized over many years, he said, and added that "most liability comes from poor maintenance of sewers and drains."

Libove agreed that public and private roads are identical, but, under the current law, it is almost impossible for private roads to be accepted because they cannot meet standards that, he said, many public roads in Orinda cannot meet either. He suggested that any road currently private but accessible to the public should receive public maintenance. "We can be an exemplary city," he urged.

Roeder pointed out that before 2012, all roads were treated equally in that no roads had any maintenance. Now, she said, 80% of the roads have maintenance and 20% do not. "It can be done gradually," she said, "there are many options." But, she warned, "no option is not an option." One of the big reasons why Roeder urges the city to accept the private roads is that, in the event of a catastrophe, the city has access to county, state, federal and FEMA funds that private residents do not. "We're all the public," she said, and all

residents contribute tremendously to the city. There will be a lot more good will, she noted, if private roads are included.

Finch agreed that the city should work for 100% of its citizens, not 80%. Finch also stated that since incorporation in 1985 Orinda has accepted no public roads. She urged the city to treat private roads the same as public roads, and not to scrutinize their condition to a greater degree than public roads were scrutinized before repairs were undertaken beginning in 2012. But she warned the city that it is going to need more money to maintain the public roads and to work on public sewers and drains, and that it will be difficult for the city to pass taxes or bonds without the vote of the 20% of its citizens who reside on private roads. However, she expressed support for the idea of attaching the maintenance of private roads to a ballot measure on sewer and drain financing.

In public comments, Leslie Wagstaff noted that her street, Mira Loma, is a private street but is used heavily by PG&E to access high voltage lines adjacent to the street. She also noted that there are many pedestrian connections between Lake Cascade and the commercial center of Orinda on publicly accessible paths. Chuck Harris agreed that PG&E trucks destroy the roads. "Road maintenance is such a basic service," he added. A resident of Hilldale Road, which isn't even on the map, said that their private road is heavily used by PG&E to maintain installations behind their homes. Another person commented that it doesn't seem fair that the \$645,000 collected from the garbage fees is used only on public roads, and not private roads, and They agreed that this argument often comes up.

Nick Waranoff argued that drains are a much more important issue than streets. The retired attorney spoke about a possible prescriptive easement for drains, and city attorney Wolff spoke about several cases that deal with such issues. There was a lot of discussion about drains, and the relationship between public and private drains and streets. The city was urged to treat all drains the same.

The facilitator summed up the issues that had been addressed at the workshop. These included the maintenance of private roads, the liability for catastrophic damage, and drainage issues. The city, he said, was concerned about financial commitment and liability but private road residents seek relief from the financial burden and see it as a fairness issue.

William Abriel ended the workshop on a conciliatory note. "It was brilliant of the city to get the public roads fixed," he said. "Now we would like to join you in moving forward."

For documents from the workshop, see <https://cityoforinda.box.com/s/ugh99xbr2yi1f3b83plug7mcn9y6rzut>

Reach the reporter at: sora@lamorindaweekly.com

[back](#)

Copyright © Lamorinda Weekly, Moraga CA