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## Beware the Right-of-Way

By Sophie Braccini



The wall that started it all Photo Sophie Braccini

It can become pretty costly to ignore how far the town's right-of-way goes onto your property. Residents on Camino Pablo in Moraga experienced it firsthand when the Town Council voted to declare the wall they had built along the street, to protect their front yard, a nuisance. Now they may have to demolish the new construction at their own cost.

"I don't want to be bitter," said Sydney Thomas after the vote. "I love Moraga, my husband and I are very involved in the town, the schools and the sports, but we just think the whole thing is unfair."

The Thomas' live on Camino Pablo on a one acre lot and all they wanted to do was to protect their children from traffic when they play in front of the house. But regulations can be complicated.

The right-of-way (ROW) is the portion of the land that is under the control of the local agency. It may be used for streets, sidewalks, utilities, etc. It may be much wider than the existing roadway if, when the property lines were made, there was some anticipated need for a wider ROW than at that original time.

Most properties have ROW that extends into what many assume is their property. Since Camino Pablo was originally expected to become a major route, the ROW on the Thomas property reaches in to nine feet. In Moraga, no permanent structure can be erected in the ROW.

Finding out where the ROW is a whole process. "Each property description explains the property boundaries in complicated surveying terms," clarifies Jill Mercurio, Public Works Director. "The exact location of the ROW vs. private property line can only be determined by a surveyor."

The Thomas' had many good reasons to want that extra front lawn protection. There is a permanent lane divider situated in front of their property that restricts

space that could be utilized for evasive action, should a deer cross or other emergency. The wall they constructed is esthetically pleasing, reaches only to 31 inches and is not different from other such structures along Camino Pablo.

Non-compliant structures exist all over town. "We cannot be everywhere," said Public Works Director Jill Mercurio, "we try to catch violations before they happen but have not asked owners of existing infringing structures to remove them."

That's one of the reasons the Thomas' feel the treatment they've received was unfair; they got the "order to stop work" after all of the structural work was completed. They argue as well that they complied with the rule that says that no fence or wall be erected higher than three feet without approval.

For all the sympathy the Thomas' immediately gained with the Council, the vote against their wall was unanimous (Council Member Bird recused herself from the decision on the grounds that she knows the Thomas'), due primarily to legal concerns.

Council Member Mike Metcalf said he had learned while sitting on the Planning Commission that the Town would be liable if damage resulted from a wall located on the Town's ROW. He was supported by Vice-Mayor Dave Trotter and the Town's legal counsel who was present at the meeting.

Now Sydney and Taylor Thomas are waiting to see what the town will do after the Council voted to declare their wall a nuisance. The nuisance abatement process gives them 30 days after they receive the official notice to remove the object. The Thomas' will consider their options, when and if they receive the notification.

"The best advice to homeowners is to come in and talk to the Town staff before beginning ANY project," says Mercurio, "It is virtually impossible for every person to keep up on all building code/municipal code/general plan restriction or any other issues that may provide guidance throughout their project. It is so much better to realize BEFORE starting a project that there may be some restriction of which they are not aware. Town staff will be happy to help answer their questions."

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