



Published October 31st, 2018

## Orinda accepts 53 Rheem Blvd. easement; homeowners threaten suit

By Sora O'Doherty

Despite an emotional plea from homeowner Dawnell DeSpain of 53 Rheem Blvd., the Orinda City Council on Oct. 16 voted unanimously to rescind its previous refusal to accept the offer of an easement path across the property and to accept the easement. A few days later, attorney Nathan L. Scheg wrote to the council and demanded that they immediately rescind that action. The basis for the demand is that, according to Scheg, the subdivision that includes the DeSpain parcel fronts upon a public stream, San Pablo Creek. Scheg argues that this fact brings into play California Government Code section 66477.2 which, Scheg says, means that the city had only five years in which to accept the easement, and, having failed to do so, the easement was extinguished.

Following a special meeting of the city council on Oct. 23 to consider, in closed session, the threat of litigation by the DeSpains, city attorney Osa Wolff responded to the DeSpain's attorney on Oct. 24. She disagreed with Scheg's arguments. She pointed out that the creek is private, not public, and that the trail easement's purpose is not to provide access to the creek or its banks but to connect to Parkway Court. Also, while, in Wolff's opinion, the trail easement does not legally depend on there being direct benefit to the residents of Subdivision MSO 05-951, she found that such benefit does exist. However, she added, city staff identified technical issues relating to recording the resolution and have therefore calendared a consent item for Oct. 30 to rescind and replace the resolution adopted on Oct. 16. The city, she said, remains committed to continued good-faith settlement discussions.

A public hearing had been scheduled for Oct. 26 on the DeSpain's application for an exception permit to construct a fence that exceeds the six-foot maximum height limit of the Orinda Municipal Code. The DeSpains wished to build a seven-foot fence. However the hearing was canceled, because, according to Associate Planner Adam Foster, the zoning administrator lacked sufficient information to rule on the application.

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