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# Letters to the editor

## The facts on Orinda's Private Roads

I read John Nackley's "warning" of the danger being posed by Orinda's Private Road owners with concern. We do not need this kind of fact fabrication.

The facts are:

- Orinda voters have approved \$76 million in new taxes to repair the 64 miles of public residential streets that 4,200 families live on: \$10 million in sales tax over ten years and \$66 million to repay two road bonds over 20 years. A benefit of \$18,000 for each family on a public residential street.
- 29 miles of those streets (40%) are cul de sacs and loops used solely by the residents of those streets and their service providers. Not by the residents of private streets (or anyone else).
- The remaining 35 miles are through streets feeding the public and 50% of the private cul de sacs.
- The other 50% of private streets feed directly into Orinda's 29 miles of arterials and collectors, bypassing the residential streets. The arterials and collectors are funded separately by State gas tax revenues; County sales tax revenues; and garbage impact fees which we all pay.
- The 1,500 families living on Orinda's 30 miles of private streets will be paying about 20% of the sales tax and 25% of the road bond tax, a total of \$12,500 per family, for roads they do not live on and most of them never use
- There are more taxes coming for the public residential streets as City needs another \$1.6 million per year to maintain them; \$230 annually for each of Orinda's 7,000 homes.

What are the "private" street residents looking for? To be treated equally in return for opening up their streets to anyone who wants to travel on them; which most are anyway. This would cost about \$800,000 a year; 30 cents a day per household. We would then have one Orinda and one street system.

Steve Cohn  
Orinda

## Private Roads and the 20%

John Nackley's letter (Private roads' impact on city) states "... Their cry rings hollow as the remaining citizenry does not appreciate benefit from their 'private roads' at all." This is factually incorrect, as the remaining 80% of Orinda's citizenry, who live on "public" roads enjoy the benefits of paying lower taxes for road maintenance at the direct expense of the "private" road residents/taxpayers that make up approximately 20% of Orinda who effectively subsidize the maintenance and repairs of essentially identical "public cul-de-sacs" while receiving nothing for their equivalent "private" roads. More importantly, for decades private road residents have been paying to maintain and replace expensive drainage culverts and pipes under their roads that directly drain large amounts of water from public roads.

For example, "private" Canyon View Drive (which is longer, wider and better maintained than many "public" cul-de-sacs) receives millions of gallons of water each winter from "public" Diablo View Drive above, some gushing in through thick downhill pipes, and some by direct gutter-to-gutter flow. In 2004, residents of Canyon View had to personally pay over \$12,000 to replace an underground pipe carrying some of this water – money that "public" road residents would have never have had to worry about, and money that taxpayers never had to pay, because it was subsidized by private residents.

Residents on private roads pay the same taxes and garbage vehicle impact fees and are members of the public. They did not pay any less for their "private" houses, their roads provide identical public circulation and drainage benefits (virtually all

are fully open to, and used by, members of nearby public roads as walking cut-through routes, and dog-walking routes, etc.) and they should receive equal benefits in return – It's really that simple.

The City is depriving the "private" 20% of services, and exposing them to liabilities that "public" residents are protected from, enabling the "public" to enjoy lower taxes. And the real travesty is that many public road residents clearly do not appreciate this, and are ardently committed to continuing to receive subsidies and lower tax rates on the backs of the "private" road residents.

Joel Libove, Ph.D.  
Orinda

## Fulfilling household employer obligations

If you live in Lamorinda, chances are you're not able to maintain your home, yard and/or children by yourself. Of course you need hired help, but are you fulfilling your employer obligations?

The link [www.IRS.gov/taxtopics/tc756.html](http://www.IRS.gov/taxtopics/tc756.html) provides a comprehensive list of domestic workers who fall under the classification of employee; which means that you may or may not have employer responsibilities. If you pay an employee more than \$2100 per year (\$175 per month), you may need to withhold and pay social security and Medicare taxes, pay federal unemployment tax, or both.

At this point, you might find yourself rethinking your decision to be an employer. An unfortunate option that many homeowners choose is to pay their employees "under the table"; however, this undermines the reasons for which the protections were established.

Everyone agrees that all employees deserve a livable wage in California. Along with this wage, employees must be protected in the event of a work-related injury: medical treatment and/or disability income needs to be provided.

I don't believe that these issues are in the forefront of most household employers' minds.

In fact, in over 34 years of business in Moraga, I've heard of just two homeowners who were fulfilling their employer obligations. Someone has to take care of these employees, will it be you?

As my business provides domestic service to homes, I am occasionally asked why there is a price disparity between the cost of my service and the cost of hiring an independent worker.

Providing protection for each and every one of my employees, year after year, is a huge financial burden, but it's worth every dollar I spend.

Kimberley Winter  
Owner, Total Clean (Moraga)

## Remembering the Native Americans' plight

There is lots of news nowadays about how men and whites have badly treated women and blacks even up to today. I want to add native Americans to that list. I have 5 native American charities but see no mention about them. A quote from a Nes Perce – remember your father never sold his country – in a few years white men will be all around you. Never forget this, this country holds your fathers' body. Never sell the bones of your father and your mother.

Richard Smith  
Lafayette

## Deep Green goes down

Last night at the Moraga Town Council, 10 people,

including three students, spoke to the Council asking them to move their electricity to a program called Deep Green that would mean we operate our Town from clean, renewable energy. The funds were there according to the Town Manager. The cost was low, around \$5,000 a year, but its impact would have been far reaching. Walnut Creek, El Cerrito, San Pablo Richmond and Lafayette have already voted to support clean energy in their towns. We are facing a climate crisis whose impacts are beginning to be seen as we break records for hottest year ever, as we face extreme wildfire risks and as we face rising, unhealthy air. Local physicians are banding together to help the public understand that our climate crisis is a public health emergency. Last night we asked our Town Council for leadership on this issue, to take a stand that was forward looking, perhaps a bit out of character for this fiscally conservative community. Leadership is the ability to see when an issue calls for action because the values embedded in the action are more important than competing values. The way we act defines who we are. Last night, our Council proclaimed they stand for business as usual as we face an existential crisis that is asking all people and all towns to do their part.

Marti Roach  
Moraga

## How Dare You Moraga

How Dare You. The words of 16-year-old climate activist and Nobel Peace Prize Nominee Greta Thunberg to the leaders of the world at the United Nations. How dare Moraga's elected officials sit at the dais at the end of a clear climate crisis day and vote against an easy \$5k contribution to be part of the solution? Moraga residents suffered through the toll of our climate crisis with a day of rolling blackouts and evacuations from a 60-acre wildfire: while our elected officials refused to spend 55 cents per Moraga household to slow this impact of fossil fuel burning by choosing 100% renewable energy for our town operations. Some electeds tried arguing for just changing out street lights and light bulbs that should have been replaced in the 1980s and upgraded in 2008 when the then sitting mayor insisted on Energy Efficiency during review of the lighting district upgrades. Now as we suffer through the hottest September in the world's history, every elected official should rise to combat this challenge and not look for an excuse or start choosing one or the other. In fact, a choice for one or the other was not even on the Agenda for public input. The room was packed with residents, experts, scientists and the youth from nationally recognized local EarthGuardians, who all spoke in favor of the small but important and impactful expenditure. Thirteen-year-old Rio even offered to raise the \$5k money for us—for his future and future generations. How dare our leaders refuse this offer and this cry for help? Yes Moraga needs to do both. Change those damn light bulbs, and get off of old technology. Some electeds tried arguing that they are followers and not leaders and rather than join the other 8 Contra Costa cities who have already voted for this 100% and now advocate and inform their community; Moraga would prefer to just see residents do the work. Yes, every Lamorinda resident can do their part by calling and converting their own homes to 100% renewable energy for just a few pennies more; [mcecleanenergy.org](http://mcecleanenergy.org) and be sure to let Moraga know how you feel [manager@moraga.ca.us](mailto:manager@moraga.ca.us) and [townclerk@moraga.ca.us](mailto:townclerk@moraga.ca.us)

Lynda Deschambault  
Moraga

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# Public Forum

## Lafayette Councilmember Candell can vote on Deer Hill Apartments Project

Lafayette voters have watched in recent months as lawyers for Deer Hill developer O'Brien Land challenged the right of Lafayette Councilmember Susan Candell to deliberate and vote on the controversial 315 apartments project O'Brien resubmitted last year after defeat of Measure L. The project proposes 315 apartments at the gridlocked Pleasant Hill and Deer Hill intersection by Acalanes High School.

Councilmember Candell took public positions on traffic and air quality issues on the application in 2012, and during the Measure L and City Council campaigns. She received the most votes in the November 2018 election.

O'Brien Land claims that the Councilmember's positions impact the developer's right to a fair and impartial hearing before the city. To be sure, all applicants and opponents of land use projects have a Due Process right to fair and impartial decision-makers. But do positions taken by elected officials prior to or during campaigns disqualify them from

voting on the very issues the voters chose them to decide?

The California Supreme Court resolved this issue in a 1975 case involving the City of Fairfield and councilmembers elected after campaigning against a commercial development with traffic and pollution issues. The developer filed suit charging bias and denial of a fair hearing after the new councilmembers declined to disqualify themselves.

Dealing with a discovery issue, the California Supreme Court rejected the challenge. Agreeing with the high courts of other states, the Court ruled:

"A councilman has not only a right but an obligation to discuss issues of vital concern with his constituents and to state his views on matters of public importance.... Campaign statements, however, do not disqualify the candidate from voting on matters which come before him after his election...[I]t would be contrary to the basic principles of a free society to disqualify from service in the popular assembly those who had made pre-election commitments of policy on issues involved in the performance of their sworn...duties. Such is not the bias or prejudice on which the law looks askance."

The Supreme Court stated further: "No member of the city council was disqualified because he had expressed an opinion or taken sides on the merits

of the [development] whether during an election campaign or at any other time...the voters were entitled to know the views of the candidates, who had a right, and perhaps a duty, to state their positions."

The Court disapproved a lower court's contrary ruling which "effectively thwarted representative government by depriving the voters of the power to elect councilmen whose views on this important issue of civic policy corresponded to those of the electorate."

In 2018, the First Appellate District ruled "The City Improperly Interfered with the Referendum Process" involving Deer Hill, a position the 2016 city council took with O'Brien Land's support. Now O'Brien Land is attempting to silence any Councilmember that disagrees with it, even challenging Councilmember Candell's right to speak as a private citizen.

City Council should support Councilmember Candell's right to vote. The California Supreme Court has decided the issue.

*Scott Sommer is a Lafayette citizen, environmental attorney, and former member and president of the Lafayette School Board. The City of Fairfield decision can be found at 14 Cal.3d 768, quotes from pp. 780-782.*