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Private roads workshop facilitator reports back to Council, where now?

By Sora O'Doherty

At the Oct. 1 Orinda City Council meeting Jim Bourgart, a former California assistant secretary of transportation, listed 17 "ideas for possible exploration" suggested to him during a workshop on private roads. After many public comments and a wide-ranging city council discussion, the council decided to await further information from its subcommittee and the Citizens Infrastructure Oversight Committee before moving on to polling public opinion and conducting further studies of private roads as well as both public and private sewers and drains.

The Aug. 27 workshop explored the issue of Orinda taking over responsibility for upgrading and maintaining private roads, Bourgart said. The workshop provided substantial time for the residents to make their case and explore the issues in depth, plus time for city staff to present information on the subject. The workshop included formal presentations by a private road residents group and by members of city staff, including the public works director, city attorney and finance director. The residents' presentation was made by six spokespersons.

Bourgart summarized the key points from the workshop. The public works director presented data regarding public and private roads and outlined the different categories of private roads. He described the funding of public roads and the work that has been done in the past several years. He also explained the additional risk and extra cost incurred when road maintenance is deferred for too long. The city attorney explained the legal complexity involved in acceptance of private roads by the city, possible city maintenance of private roads and possible city funding toward private road maintenance and assumption of liability. All would involve substantial legal work. She cited the "public benefit" test that would be applied.

Drainage law is related and is also complicated. The finance director explained the options for securing additional funding through a variety of potential ballot measures, such as a general tax versus a special tax and their different voting requirements. The private road residents group made the case that the treatment of maintenance of their roads is unfair, in that they are paying taxes and fees without deriving the same benefit as public road residents. Private roads and public roads have similar physical characteristics. There is a need for condition surveys of private roads and drainage.

Bourgart suggested that the council may choose to give direction to staff to pursue research and/or undertake additional analysis of any of these ideas and options identified at the workshop, including maintaining the status quo, with the city remaining responsible only for roads formally accepted into the public system; modifying Resolution 59-18 to ease standards for consideration for private road acceptance; conducting condition assessment surveys of private roads and/or private drainage, to at least the level of specificity used for the public roads and drainage, and estimate costs to do the condition assessment; or accepting all private roads unconditionally. (See link below for a full list of discussion points.)

Questions from the workshop included: Could the City, through its buying power, cover-or obtain a better rate-for insurance paid for by private individuals or associations? And, could the city assist with making private road residents eligible for federal or state emergency funds?

The council is expected to have further deliberations about how to frame future funding measures, according to Bourgart, and what to include in them. The citizens of Orinda will likely be asked to provide more resources to address infrastructure needs.

The presentation by the facilitator was followed by public comments and council discussion. A few members of the public expressed negative views about the city taking any further action concerning private roads, but more speakers reiterated their concerns about the burden of private roads on the residents.

The main argument from the private road advocates was presented by Steve Cohn, who has been

at the forefront of the private roads movement. He made four points, which he considers essential for the city to resolve before it can move ahead. His first point was that the private road advocates will continue to push for some resolution of the problem, and that Resolution 59-18 did not solve the problem. But he argues that the problem is not as large as some say, and can be solved. And, he said, the risk that might be associated with accepting liability for the private roads needs to be quantified. His last point was regarding the storm drain issue, which involves private property and private drains having to deal with water coming off public lands. Kathleen Finch agreed with Cohn, saying it was so important to get some relief from the burden.

Karen Lum-Nackley and her husband John Nackley, 20-year Orinda residents, spoke against the private roads issue. Karen said, "the issue of fairness doesn't quite fit; to demand, blackmail, badger seems not right." She urged the council to take the issue of fairness off the table, while her husband expressed concerns about rising property taxes. Daniel Gutu spoke of the problem he had accessing his property from the rear entrance, which was on a private road. Steve Westfall raised two questions: the legality of gift of public funds, and the amount of money spent to date on this issue.

Other speakers in favor of doing something about the private roads and drains pointed out that if a street is impassible, it doesn't help the community, that some private roads provide access to pedestrians who wish to walk to downtown or to PG&E for essential maintenance of their facilities. The council discussion was wide-ranging, including questions from newer Council Member Nick Kosla about the private roads, with explanations being provided by city attorney Osa Wolff and Director of Public Works Larry Theis. It was generally agreed that the situation regarding private drains may be significantly affected by public streets and drains and should be studied. All council members acknowledged that further funding is required to complete even the task of maintaining public roads, the repair the public arterials and collectors, and to fix and maintain public sewers and drains, and that that funding will need to be raised by some form of tax or bond that will need to be approved at an election.

There was general agreement to some form of polling of public opinion to see what ballot measure should be pursued in the future, as well as a further survey of private roads to evaluate the costs of fixing them and maintaining them. Theis suggested that this would best be done by a contractor, and pointed out that time will be needed to produce a request for proposals and hire a contractor. Theis also made note of the fact that, should the city accept more responsibility for private roads, the city would require additional staff. Theis also agreed that Streetsaver had been a pretty good barometer of the public roads and the predictions were relatively close to final costs.

To view all the "ideas for possible exploration" in the facilitator's report, see <https://www.cityoforinda.org/DocumentCenter/View/2603/Orinda-Workshop-Report---by-Facilitator-Jim-Bourgart>

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