

**October 1, 2019
CITY OF ORINDA
CITY COUNCIL MINUTES**

I. POLICY MATTERS

- I.1. **Receive Report from Facilitator Jim Bourgart on the Private Roads Workshop held on August 27, 2019. Council discussion may include issues related to private road and drainage ownership, maintenance, and funding. Council may direct staff to come back with cost estimates and scope for studies and analysis.**

Recommendation:

Receive report, have discussion on possible next steps and provide direction to staff.

Facilitator Jim Bourgart stated he was retained by the City to prepare and facilitate a public workshop held on August 27, 2019 on the topic of private roads in the City. The issue at hand is that a group of private road citizens have petitioned the Council to consider accepting their private roads into the public system, either outright or through some other financial arrangement. The workshop was designed to give residents and others a variety of points of view and an opportunity to address all issues in a free and open manner without time constraints typically enforced at regular City Council meetings.

Mr. Bourgart stated he interviewed a number of people to gain their perspectives, including Orinda residents in favor and opposed, relevant City staff and a Councilmember. He learned how complex these issues are, including the nexus between the road system and the storm drainage system. He shaped an agenda with presentations to provide data and viewpoints on the current status and future steps and a number of written communications were received at or near and since the date of the workshop.

The results of the 3-hour workshop are well-documented and all documents and audio recording are on the City's website and also linked in his report. His editorial comment is that this workshop was quite productive and met its objective to get all issues out on the table.

In summary, from the workshop itself and from research done leading up to it, he was able to identify a series of ideas that the Council may want to consider. They are not mutually exclusive and not recommendations from him and the Council may choose to pursue one, none or many of these avenues. The 17 items are listed at the end in the Executive Summary of his report. Broadly speaking, there are several categories of those 17 suggestions, as follows:

1. This represents the status quo: No acceptance of private roads into the City's system except for those deemed to meet the standards of current City policy under Resolution 59-18.
2. Numbers 2 through 6 represent distinct changes to the status quo from accepting all private roads unconditionally into the system to easing the requirements for acceptance to inclusion or a different financial arrangement for certain road categories to doing the necessary studies and cost estimates that would precede any of these actions.
7. Numbers 7 through 12 are about funding. Given the general agreement that Orinda will, at some point, have to address future infrastructure needs with more funding there are a number of different ways to go. They can differ with regard to what gets done, what are the funding sources, who benefits and who pays. Sales tax increments, bond measures and a solid waste impact fee have already been employed and they can be employed again. Additionally, numbers 7 and 12; a parcel tax and a real estate transfer tax are examples of what other jurisdictions have used to pay for their infrastructure. In numbers 7 and 8, the notion of exempting private road residents from some portion of the cost of a funding source is put forward. In numbers 9 through 11, there are several permutations about how sales tax and bonding could be proposed—either individually or together, and there could be a number of other combinations.
13. Numbers 13 and 14 would ease the formulation and administration of private homeowner associations to maintain private roads.
15. Numbers 15 and 16 would build upon an existing Geological Hazard Assessment District (GHAD) to help residents from catastrophic losses or at least help them find more affordable insurance.
17. This number is admittedly speculative. It would involve searching for creative ways to make private roads eligible for state and federal emergency funds in the case of a disaster.

He stated these are ideas by and large that came from members of the public and provide much food for thought for the City Council. He stated he has been pleased and honored to work on this project, to work with the public and with City staff on the matter and he was available to answer questions and looks forward to the Council's deliberations.

Mayor Miller opened the Public Forum.

Steve Cohn referred to his correspondence regarding public funding of residential streets: 1) The City needs to move the process forward; 2) the problem is solvable and not as large as some say it is; 3) The City cannot use "the added risk to the City is too great" as an excuse to do nothing; and 4) The storm drain issue may or may not be illegal but it is not right for someone to collect water on an impervious surface and then dump it on an uncontrolled fashion on a neighbor's property for them to deal with.

Kathleen Finch thanked the facilitator for his work, questioned what would be done with the data collected at the workshop, voiced frustration to the City ignoring 20% of homeowners in the City and urged the Council to move forward and include private streets in surveys.

Karen Lum-Nackley spoke about fairness and recognized the issue as complex, but she asked for good dialogue by the Council and for the Council to make a quick and fair decision.

John Nackley said he and his wife live on a fixed income and asked the Council to think carefully about raising property taxes. If they do not keep that in mind, seniors will move who are now very active in the community as volunteers.

David Dryden said he has had many problems with drainage since the 1970's on Daryl Drive near Glorietta, and spoke about Orinda's original formation. He believes private properties could be better maintained through the Council's addition of a compulsory component to the ordinance and said years of neglected maintenance has caused blockage in storm drains. Also, given streets might be blocked as a result, he asked the Council to address this.

Daniel Gutu said his property has two entrances and one serves as an entrance for three homes. He spoke about his neighbor not allowing him access to do work in his backyard to clear potential fire hazards and said police were involved even after asking for permission. He therefore asked why his tax dollars go to streets he cannot use, even when asking for permission.

Bette Michelotti urged the Council to move forward on a thorough comprehensive analysis of what it would take to bring the 20% of the roads into the City's maintenance, and believes catastrophic road failure is often caused by catastrophic drainage failure. She asked for the City to maintain drains to avoid catastrophic road failures and to move forward immediately.

Chandler Visher said most private roads are used as public roads which private road owners are paying taxes for. The garbage company pays the City for impacts from their trucks on public roads only, and private road owner taxes are being used only for public roads while the garbage trucks serve private roads and cause the same damage.

William Abriel said he lives on Mira Loma Road which is one of the 20% of privately maintained roads. He assured the Council that many people are trying to work with the City to address a complex infrastructure problem and these roads will need maintenance, infrastructure and drainage improvements, and he said the private road owners are here to help that process along. He asked the Council to consider forming a task force and inventory and obtain data for private roads and drainage.

Leslie Wagstaff stated the developer of their subdivision made perpendicular pedestrian connections to Camino Sobrante which allows their community to walk to the downtown and this reduces the number of vehicles on public streets. She also noted that PG&E owns property in their area and they need to maintain their high voltage lines, and she looks forward to a successful resolution of this issue.

Jon Supran said he grew up on a private road and, over the last 26 years, has lived on a private road in Orinda. If something happened 20 years ago a contractor could get something done but times have changed and now citizens are unable to handle things if something goes wrong. Their neighborhood also had a homeowners association and after a year of asking for things to be done they no longer have one. He attended the August workshop and asked that the City engage and achieve consensus across the board with all residents.

Steve Westfall referred to two legal documents relating to private road maintenance: 1) Appendix E of the California Civil Code Section 845 regarding private thoroughfares and responsibility for maintenance; and 2) Article 26, Section 6 of the California Constitution which has to do with the use of public funds for private benefit. He asked to what extent the Council considers either legality issues determines what the Council can and cannot do as a public body. Secondly, over the last 5 to 10 years, he asked for a dollar amount on how much the City has invested in this issue to date.

Joel Libove said if a private road is used by the public it should be funded by the City because 95% of the private roads are used every day and the public is welcome on them. They do a lot more than just for walking and driving and are identical to public roads. They often drain millions of gallons of water every winter from a public road above, yet their residents of Canyon View Drive pay for the replacement of culverts that drain public water. He asked that the Council include private and public roads in the drainage study.

Bob Daoro said they are part of a homeowners association and asked to continue the process of workshops or task force, asked to consider a study to determine the cost of bringing the private roads up to an acceptable standard, determine the cost of maintaining private roads, asked to consider an acceptable plan for the City to either provide maintenance of private roads and not take legal ownership or to provide for a process wherein the City takes legal ownership of private roads. He asked to fund a study to evaluate the legal and financial risk to the City for assuming the maintenance and/or ownership of public and private roads and fund a contingency fund, and to include all drains in a cost study regardless of whether they are public or private.

Charles Porges thanked the facilitator and asked the Council to engage residents on other topics in the future so real feedback can be given. He said the private roads are in much better condition than the public roads were when the City began repairing them. Maintenance costs have been established by interviewing HOAs, and the cost of what HOAs spend is lower than City estimates. He believes the City needs good data on the location, size, type, and how much water comes from drains in the City. Also, when current public road work is completed, the burden on staff will be far less so additional employees will not be needed.

Councilmember Kosla referred to a road in Truckee which is private and stated that the 30 neighbors on it do not allow public to access it. He asked if this is the case here or asked if there were public access easements across all private Orinda roads.

Mr. Theis replied there are various types of private roads. When people talk about 95% having public access they mean there is no physical barrier. Legally on paper from the map, about 25% of the 30 miles were dedicated to the public at some point about 60 to 70 years ago but were never accepted. The other 75% were dedicated specifically with private easements either to an HOA or to the individual property owners.

Councilmember Kosla asked if Wilder streets are private and also whether or not the parking spaces were public for Orinda Grove.

Mr. Theis said most recent subdivisions are all private streets. In Wilder, only Wilder Road is considered a road that was dedicated as public, but it has not yet been accepted because the development has not yet been finished. Some developments have special agreements for rights of access for pedestrians to utilize the trail system such as in Wilder, but not for vehicles unless they are guests of those property owners.

Councilmember Kosla said if he is not a guest of a Wilder resident but wanted to drive around Wilder, he asked and confirmed with Mr. Theis that he should not. He asked if there were development agreements for Wilder and for Orinda Grove.

Mr. Theis stated he believes there is a development agreement just for Wilder.

Councilmember Kosla asked if there was anything in the development agreement that contemplates private roads.

City Attorney Wolff stated in Wilder it is very road-specific. It contemplates private roads which are identified in significant detail in the CC&Rs, on the recorded maps, as well as in the development agreement. The agreement talks about the distinction between the main Wilder Road and the remainder of the private streets. Also, regarding driving throughout Wilder, the City does not adjudicate the public's rights to utilize or not utilize streets.

Mayor Miller stated Mr. Westfall asked about legal topics and the extent of the amount of public investment in this topic thus far.

City Attorney Osa Wolff stated Mr. Westfall had asked about Civil Code Section 845 and about the California Constitution prohibition on gifts of public funds. She has given advice on both of these items at the workshop and staff report and explained that Civil Code Section 845 is the California State Legislature's attempt to assist private road residents in figuring out how to allocate costs between them to deal with the statewide problem of these private roads and how to maintain them. This section helps residents of private roads adjudicate who is responsible for paying what. It includes an alternative dispute resolution process and also guidelines for how costs should be allocated, and includes the option of having a negotiated agreement among property owners. She noted there is more detail in her April 2018 staff report.

Regarding the gift of public funds doctrine, this is a doctrine that governs everything the City wants to spend money on. The public expenditures need to be for identified public benefits and it is relevant here because if one were to spend public monies on a private street, the Council would need to find there was an associated public benefit. The most obvious way to make that finding is to determine there are some public access rights. This is clearly the case in a public street that has been accepted into the City's street system. For a private street, the City would have to evaluate this on a case-by-case basis to see if there was that necessary public benefit.

Mayor Miller stated there was also a question about what the City's investment has been on this topic to date as well as for the April 2018 staff report.

Ms. Wolff stated she could not provide the number of hours she has worked on this tonight at the meeting, but it has been a substantial number and she knows staff has also spent much more time than she has on this topic.

Councilmember Fay said he would tend to agree the Council needs more fact-finding and data and answers to certain questions in order to move forward in an intelligent way. If the Council supports going to the public for a bond measure or something else, the total cost for addressing private roads will need to be identified.

Regarding drainage, he said it seems that the Council needs to know where a public facility puts water into a private facility and whether it is from a road or public drain, but does not know whether the City must know the actual size and condition of the private drain. Similarly, there are suggestions for exempting people on private roads from a future tax the City may put forth for residential roads, making the distinction between arterial and collector roads. The Council needs to know whether that is even feasible. He knows it has been done for seniors and specific items with the school district, but was not sure it was legally feasible or that there was a mechanism easily administered.

He also thinks it is important to bear in mind that the City is just about to finish repairing all public residential roads. The money they have in the current half-cent sales tax and presumably a continuation of it for the foreseeable future will go towards arterials and collectors. So, the City has made good progress on the public road side but they also need to bear in mind that more needs to be done with arterials and collectors which everybody uses. In summary, he thinks the Council needs more fact-finding to chart the course to deal with these issues.

Mayor Miller questioned why the City has not been tracking how much this is costing to provide research and work. Staff has been working on this since April 2018 and she recalled asking at that time how much the April staff report cost because there was significant legal work and research that went into it. She noted the City pays legal fees hourly, which are not insignificant.

Ms. Wolff stated she could provide that specific number to the Council if so directed, but simply did not have it with her tonight.

Councilmember Kosla voiced support for knowing this figure and future tracking of staff time to have a sense of what has been spent to date.

Vice Mayor Gee stated there has been an extraordinary amount of effort and time and this work has gone on much longer than from April 2018 regarding infrastructure topics. Everybody realizes this has been a huge amount of time and effort and did not understand the logic of going back and enumerating it as being helpful with anything moving forward.

Councilmember Kosla stated he was not on the Council during that time and did not know what had been spent. He cited discussions regarding legal costs for the issue and said it is his responsibility to understand what has been spent to date. He also did not think it would be that difficult to achieve.

Mayor Miller said her reason is that the Council talks about continuing to study things. She thinks the Council may have been remiss in not mentioning Jim Bourgart's presentation which was wonderful and at a very small cost to the City. The workshop was very useful and people were given time to talk and this gave her a lot of information about the subject. She also met with many people and did not know what else she would get out of further study on the issues. She must understand what the cost to do this would be before she could support it as it being in the public's interest and also questioned the Council's policy to undertake the issue.

Councilmember Kosla suggested that if money needed to be saved now to be able to pay for things in the future, it should be handled at the Council's priority setting budget hearings, which look at costs over a two year period.

Vice Mayor Gee thanked Jim Bourgart for his work and everybody in the community that has contributed to this topic which has gone on for some time. She said the County was quite happy to turn Orinda over to becoming its own city because the newly formed city took on a huge problem collectively, which people realized. Orinda has many things it may want or need but by far and away, their top challenge is their infrastructure issues.

The City is definitely at risk for many problems through its history which it inherited from the County, especially involving drainage and she thought many in this room could be proud of the progress made to date. But, they have not solved the entire problem and will not do that until they find ways to move forward.

Vice Mayor Gee added that she remembers talking about this 8 years ago where the City was never going to be able to get to the point of funding every stage of the proposed plans unless there were some real solutions to the overall picture by the time getting to the end, and this is where they are. She is at a point now that she thinks at some point the community will have to take a vote on whether they want to turn the community into a comprehensive public system for drainage and roads.

She fully understands there are some incredible complications to that, along with legal issues and costs. But at the end of the day, the only way they will be able to do that is if the community decides they want to pay for it or not. Many people already pay hefty taxes and surcharges, and she recognized that in most cases people use both private and public roads and access ways for the most part.

In the end, if the community votes “no” the Council will have to figure out which parts they can take care of, but this is where she would ultimately like to see the Council head and it will have to be a stepped process to figure out all of the components. **She thinks there is a public benefit to the City to collect data and to figure out how to create an entire package to put before the voters.** She understands there could be legal complications in how they define how money will be spent, but she was willing to try to obtain that data which would help the City lay out how they could present a package to voters on how to maintain the overall infrastructure of their community.

The Council knows they have to do something about the sales tax extension, knows they do not have the money to fix all public works without additional funding, so this is the right time to look at everything for the entire community and she recommended seeing the data to move in that direction.

Mayor Miller asked if what Vice Mayor Gee was proposing was to move forward in studying a comprehensive road and drainage review of private roads throughout Orinda as one system.

Vice Mayor Gee said the Public Works Department has already been working and collecting data on public drainage. They are already looking at the cost of maintenance in terms of the sales tax extension, are looking at updates to the road plan, and so the City is already looking at parts of it. What she is proposing is to do what Councilmember Fay suggested, which is to figure out more data on the cost of the private drainage as well as additional cost estimates of maintaining all private roads. Those are the two missing pieces of data.

Councilmember Worth thanked everyone for their participation in the process. She has also met with many residents. Having worked on Orinda's incorporation, she recognized the tremendous financial challenges. The City has limited revenues and must provide services. The reality is that they are extremely limited in terms of what can be funded. Her concern is that they have a lot of the data, but in order to take on any additional responsibility, it is clear the City would have to receive additional permanent funding sources.

When looking on the cost of private roads and drains, the cost is tremendous and is different than what homeowners would pay to maintain a road. She suggested staff bring back the costs for this and was reluctant to put time and money into more analysis and was concerned in the long-run of the City's ability to fund additional investments.

She said they have the opportunity to engage with an opinion research company to see what investments voters might be willing to do, and this information would be needed soon. The question is whether citizens are willing to pay additional dollars in perpetuity to pay for repairs and long-term maintenance.

In reality, the entire City uses arterials and collectors and there are differences between public and private roads. Her concern is that the City has a lot of the data, but in order to take on more responsibility, it is clear that the City would have to receive additional permanent funding sources. Most measures take a 2/3 vote so the City must have a good read of voters, and did not think the City had the ability to take on the additional costs and thinks it would be helpful to have information return, but did not want to put significant dollars into finding out what it would take to repair and maintain private roads. Staff could come back with suggestions of what it would cost.

Vice Mayor Gee said she appreciates Councilmember Worth's comments and wants to make it abundantly clear that she has never advocated that the City spend any existing dollars on any private facilities. She is well aware that if the City is going to do that it will be because there will have to be new sources of revenue that voters would have to support.

Right now, the Council knows they will have to poll residents to even look at potential funding sources for maintaining public facilities. She thinks it is a perfect opportunity to gage how the community would feel about a more comprehensive plan but did not think they need to spend that much more public monies at this point to 'fill in' some of these data gaps because people will say the same thing—they cannot tell whether they would vote on something unless they ultimately will know what it will cost.

Also, the other challenge the community will face is that they cannot tell the community what it will cost forever and ever. Taxes eventually go up. She just thinks the timing is right to assess whether the community has an appetite for it or not.

Councilmember Fay added that he also thinks they should use this polling opportunity to find out the general public's attitude towards the private road issue. It is one more data point in making an intelligent decision.

Regarding getting data, it would be useful for staff to return with some options of how much it would cost to survey private roads. He guessed the new HOA roads would not be surveyed as they are new, but of the 30 miles there are 22 or 23 miles of roads not in fairly new HOA areas also. So, he would like options for a survey of those roads that then fed into the Street Saver Program to estimate the cost of bringing those roads up to a reasonable state of repair, put it on the same par as they have put the public residential roads on, and use the same method so they have comparability.

He recognized there may be some issues given private road construction standards, and one might argue that the system used for public roads might not be applicable to private roads. In his own experience since moving to the City in 1994, the City paved the public road that their house was on. It was milled down and he believed it was dirt. He remembers telling his wife that the road will fail in the lower 150 feet or so after the rainy season, and it did. They had to come back in and repair it. He did not know one could argue that private roads are built to a worse standard than some of the public roads, but he thinks they would get some comparable information if using the same method of surveying the private roads as they did for the public residential roads. He was also asking staff to find out how much it would cost to do that.

Mayor Miller noted that Mr. Theis had provided that answer in the past.

Mr. Theis explained that the MTC Street Saver PTAP report which is done every two years for arterials and collectors and every four years for residential roads. In looking at something comparable, the cost is generally about \$20,000 to \$30,000. That is the entire network. However, the system has already been set up for all streets being inputted so there would be some additional cost to input private roads, somewhere he thought in the \$30,000 range. The Street Saver analysis will not know what is underneath that pavement so they will get a visual level survey done and will not actually know the true cost until the road is dug up.

Therefore, given the level of inspection the Council would like in terms of estimating is very important. They could say it is strictly the same as Street Saver or put out an RFP and request the consultants MTC uses to provide a price. One other component he would need is the Council's direction on whether these are all private roads. He would have to ask for permission to enter each one in these situations, and most private property owners are not likely to have issues.

He stated they also must determine any additional cost of how much they will integrate this into the public road system; however, he would estimate the cost to be at least \$30,000, but they would know based upon an actual RFP process and when proposals are received back from consultants. On a public road, the consultant looks at a representative area that is roughly 100 feet long, and they use that as the condition for the next thousand feet. Therefore, they are taking spot locations. They are well trained on quantitative analysis, but will not be looking for subsurface condition issues, drainage issues, and strictly the pavement. Something beyond that will require direction from the Council as to scope, especially if it is related to drainage.

Mayor Miller said over two years ago, Mr. Theis, herself and the City Manager met with some residents of one of the private roads that looked like it may be a contender to come into the public system because of some potential public benefit. As she recalled, there was a visual inspection performed. The larger question was what was underneath. She recalled that this would have cost \$10,000 to \$15,000 to understand what was less than 100 yards of road.

Mr. Theis said that cost also included looking at the drainage types and videoing drainage pipes. Residential roads tend to have small diameter pipes so they would also need to look at geotechnical issues, and this is why the cost for that particular street was a higher level survey. Therefore, they will get a different estimate based upon the level of inspection performed.

Vice Mayor Gee recognized this, but the reality is that they made every estimate in the community for the public roads off of those visual surveys and did no more than the Street Saver work. She did not think this is what she and Councilmember Fay were asking for. They are asking for the PTAP visual survey data just as they did for the public roads, or the same equivalent survey of what is the PCI right now of the existing private roads, and then looking at a scope that is comparable on the drainage side to what was done on the public roads, as well.

Mayor Miller asked Vice Mayor Gee what the purpose of the \$30,000 visual survey of private streets would be for.

Vice Mayor Gee replied that it is to estimate the cost of maintenance or to bring it up to the PCI standards the same way the public system was brought up.

Councilmember Fay added that it would be to rectify the problem they have now which is varying estimates of repairing private roads and to getting a comparable on estimates they have had for public residential roads. He asked and confirmed with Mr. Theis there is roughly 66 miles of public residential roads. It seems they have been able to demonstrate that using Street Saver to estimate the overall cost of fixing all 66 miles of public roads was on the mark. He asked that with 22 miles is enough to have that same ability to have an overall credible estimate, and not individual by each street but in aggregate.

Mr. Theis said it will be a good barometer of where they will be. The Street Saver Program was relatively close in what was needed in the City's funding sources so he thinks it is a very good tool. He would say there are known locations where there are failing culverts and slides going on, and he was not sure if the Council would want to include them into the estimate or not, but it would provide a good macro level estimate.

Councilmember Fay said if they had the macro level estimate and then staff identified the known locations of where there may be extra cost, he thinks this would be useful information.

Mr. Theis stated they could ask private road residents who would know most of the problems given their experiences with them. Overall, for staff it is important to recognize what the real costs are. When polling, certain levels of cost could be identified to see what the temperature is based upon various levels of cost. He would say when looking at this going forward the City should be utilizing a lot of consultants for this type of work, and there are consultants that can do the survey, and the cost for consultants will be out of the City's budget and less staff cost and it will vary based upon what is asked of them.

Councilmember Worth said they have heard from people living on sole private streets, those managed and repaired by HOAs and asked whether the estimates would be for all private roads or just those individually owned and maintained.

Councilmember Fay said his logic is that Wilder and Miller Court are new developments, some of which have not even been accepted into the City's system or fully paved out. Therefore, the City can save money and assume those roads are in excellent condition right now and do not need to be surveyed. He suggested surveying those that might have deteriorated like some in Orinda Woods and other places.

Councilmember Worth recognized this, and questioned what the scope of what we would be asking voters for. She questioned whether Councilmember Fay was talking about repair only or repair and maintenance.

Councilmember Fay said he thinks the 'jury is out' on that one. From his perspective, he does not know what the best thing to do is, what the City can afford to do, and what the public is willing to do.

Councilmember Fay said these are two different things—deferred maintenance and on-going maintenance. There could be a situation where the public is only willing to help out people on private roads to repair the roads as they are now. It would be a one-shot deal and that is it. The City would not take any further responsibility for them.

But, one could imagine also a scenario where the public is willing to do more than that, so he thinks the Council needs to find out what the public thinks. In order to give the Council useful information, figures are needed.

Councilmember Worth asked that maybe staff bring back a options of how and what to study

Councilmember Fay agreed and said this is where he would want to go--to have staff return with some options for next steps for the Council to consider. He stated Mr. Theis has already identified an order of magnitude cost to do a Street Saver and PTAP type of survey to get an estimate. There are other questions out there. For example, he would like to know where public water enters private drains because there may be solutions to that which they can undertake as they repave public streets going forward.

The Council talked a little about the idea of finding out if it is even legally possible to exempt private road residents from a tax, and if there is any practical nature that would allow them to do that. Additionally, there have been questions about if the road were public then FEMA money would be available in an emergency for a landslide. His experience is that it will only be major roads and it does not matter if it is public or private, but FEMA will most likely not give money for a slide on a private road with 6 people living on it.

Mayor Miller commented that the City was still awaiting money for Miner Road repairs.

Councilmember Fay stated there are a number of outstanding issues raised in the workshop that should be answered to the best of their ability to chart the right course—that being one that is fiscally responsible as stewards of the City's money.

Vice Mayor Gee concurred with Councilmember Fay and said a researched plan is needed. Long-term maintenance of the entire community infrastructure in her mind precludes the option of looking at maintaining it without transferring all of the ownership.

She noted that in the Orinda Woods' agreement the street will be maintained in exchange for public access and this is a public benefit. It is not an absolute given that all private roads someday must be public roads, and they could look at other options for that to happen. But, she supported the data to figure out costs and presenting that range of cost to the community would include the long-term maintenance.

She also emphasized this is all going to be the result of the community's appetite to support funding, as the City does not have enough funding for things on the public side. Therefore, they cannot take on anything for the private side until the community states they are willing to pay for it or indicate what they would be willing to fund. There are many options of what might be able to be done, but they need to have similar data on what was compiled on the public side to figure out what the whole package would potentially look like.

Mr. Theis referred to drainage, and he asked for a scope of work from a mapping perspective of what areas go from a publicly maintained road through a private property. This is a manageable exercise, as every public street goes to a private street eventually.

For context, when he began with the City in 2013, the City approved \$250,000 towards the storm drain master plan. It cost about \$225,000 and the focus of that study was to look at the overall system. It did not look at individual private systems, but the overall network. It was mapped out to look at capacity and then they focused funds on visual inspections of pipes within public right-of-way that were generally larger than 30" to 36" in diameter. This gives a fair idea of just looking at the condition of the pipes.

The City recently conducted an additional survey through a consultant, with visual inspection on smaller diameter pipes that are critical and this was not part of the original master plan, so there were additional costs expended there. Then, they estimated the smaller diameter pipes within the public rights-of-way to add to a total cost of what they estimate right now of public drainage facilities, to around \$27 to \$30 million.

Therefore, this provides some scale of what is in the public right-of-way. Private drainage could be the same or less, but it depends on what is defined as part of the consideration for the City to maintain it based upon the size of pipe, ditch, any runoff, etc. In summary, staff needs to know if the Council wants that included in the cost projections as to what the scope will be to include in the RFP.

Mayor Miller said the City has about \$30 million of drainage work to do in the existing drainage plan that was already taken to voters and they voted for it which has not yet been addressed.

Mr. Theis stated the CIOC will present the road and drainage plan. They are working hard on it. In the original plan there were five phases. The City has received funding for three of the phases; the original half-cent sales tax and then the \$20 million and \$25 million bond. The next phase was to be a \$22 million bond. They are now looking at remaining components needed to be able to finish what is in public right-of-way. The drainage cost has been better refined and the original plan estimated \$15 million.

There was not a comprehensive look at all facilities so that cost is higher, and there is still approximately \$11 million of deferred maintenance on arterials and collectors. So, if the City were to have all dollars today and spent it on things that need to be fixed, it would be \$37 to \$40+ million which includes public drainage.

Mayor Miller asked how much is spent on drainage.

Mr. Theis stated he was unsure because a lot of the work is in the road and paving project, so they would have to extract it out, and the City has been focusing on residential roads. A lot of the larger diameter culverts are under the arterials and collectors, so those are known costs they have not even paved over yet. There are occasional pipes under public residential roads that are very deep or are along the creek that require a lot more cost to repair than the traditional one in a neighborhood between two catch basins where there are no regulatory requirements or it is not that deep. They try to monitor these because the cost of one particular pipe may be \$1 million, so staff must make a decision as to where best to spend the dollars.

Councilmember Worth said she asked for clarification of the estimated numbers to fix the public drainage and the estimates to maintain them, recognizing that these were different pieces.

Mr. Theis replied \$27 to \$30 million to fix and he said that even though they have \$11 million of backlogged deferred maintenance on arterials and collectors, if the City is spending \$2.6 million a year going forward from today this roughly is what they are projecting they have revenue for right now if they maintain the half-cent sales tax which sunsets in 2 ½ years. The actual deferred maintenance cost of arterials and collector roads comes down to zero in roughly 8-10 years. This will ramp up to \$3.6 million because roads will be in worse shape in 10 years. He noted drainage was not part of the Street Saver Program so the other \$27 to \$30 million is a stand-alone number.

Councilmember Fay said he attended the COIC meeting last month and he got a sneak peek of the drainage information. What stuck out was there was roughly twice as many miles of private drains as there are public drains in Orinda.

Mr. Theis stated this is about correct, but he was not sure how the COIC defined how that was counted.

Councilmember Fay noted this as startling. Also, while the City has a \$27 to \$30 million number there is a number about half that amount that are critical projects. So, there may be a measure the Council ought to be thinking about if they are going to the voters for something where a failure could be very disruptive to the community, depending on the location of the road and work needed.

Vice Mayor Gee stated assuming the money was available to do it, she asked how, hypothetically, Mr. Theis would assess the opportunity to improve the system from a public standpoint. Personally, she thought there are many places where private drainage is getting entangled in a way that if it could be re-engineered they could correct some of those situations. She asked if Mr. Theis would agree.

Mr. Theis said with money being taken out of the equation, possibly one-third or one-half could be addressed of the drainage systems by re-engineering and keeping the storm drain system within the road right-of-way. The reason it was constructed the way it was is due to the hilly nature of the community and it is hard to take water from one valley to go to the next valley. So, some can be addressed through re-engineering and others will have to remain in its location to avoid physical barriers and easements that would also have to be acquired in order to access the pipes.

Also, whenever something is changed there is a reaction and these could also play into this. He thinks easiest would be to maintain its location, receive easements from property owners and enforce the fact that people cannot build upon the easements.

Vice Mayor Gee commented that the Council, staff and the public realize that the combined public and private drainage system is costing the City a lot of money, even when going out and inspecting something. The City deals endlessly with instances of private drainage issues and people suing the City. This is why she would like to test whether the community would support the idea of funding and taking care of the entire system.

Mr. Theis agreed there are costs involved with responding and sometimes litigation issues. There will definitely need to be more maintenance staff to manage additional roads and drainage areas and this should be factored into the overall cost estimate, as well.

Councilmember Kosla asked if people are suggesting there would be some sort of “taking”, noting each individual property owner or HOA would have to be offering this to the public to take over. He spoke about a project of his own working with 16 neighbors and it has taken him 6 months to get half of them on board with something that is a huge benefit to them, and there are 2 or 3 hold-outs that stall the whole process. So, his point is that one person could hold up or stop the entire process while staff has allocated staff time and money.

He was curious to see the survey, thought there would definitely not be enough money to cover all work, and asked staff if there were any letters written to every private property owner to ask them conceptually whether they would be willing to convert from a private to a public road or not.

Mayor Miller said it raises the question as to how this would work. She does not think people who live on HOA streets are informed about that at all. She finds it highly unlikely and thinks it would be a shock to those living, for example, on Dalewood Drive, as they would be inviting development in the Briones area to come and use their private street as a collector for Martinez and Lafayette.

Councilmember Kosla said there are pros and cons with the entire process, but looking at drainage and the roads is something he would want to study and also the survey to place a measure on the ballot, and what the appetite would be for that.

Councilmember Worth said that in addition to the financial aspects there would be ramifications such as wireless companies being able to put infrastructure on public streets, but not private streets.

Councilmember Kosla said he agrees with that because, again, the City cannot do everything all at once. He said he ran on four particular items and private roads were not a high priority. At the same time, he recognizes it is an important issue and said he will continue to study it. At the same time, he would like City staff to be focused on the downtown plan, fire safety and other items.

Councilmember Fay said in following up on the notion of “taking”, he had always assumed that if any private roads were going to be brought into the system it would have to be offered to the City. Frankly, he has looked at what it costs to maintain the roads in his development through their HOA budget, and he deduced that he is paying \$20 a month to pay for the roads, which is nothing in his view. If asked by the Board of the HOA, he would probably recommend not making the roads become public.

Vice Mayor Gee said this is the point. She does not think the Council can solve all of those questions and was not advocating any particular solution. She was advocating looking at having the opportunity to ask the community what they would like to do and this can ultimately turn into all kinds of combinations. It does not mean it must all be settled here. She thinks what the community is getting frustrated about and what a lot of people would like to see happen is how to move forward.

She thinks they should move forward asking the community more questions in polling, figure out what the real costs are, and look to a continued effort about how that might be done. They can list pages and pages of why this will not work and it has been said over and over. All they are trying to say is to find the elements that allow them to look at options to go forward.

Mayor Miller said they asked the community if they wanted to pay for public drains and she understands the idea of fixing everything. Her concern is that it is becoming clearer that the City has not yet finished what it said it was doing the first time. They have millions of dollars of work left on the existing plan. Drainage is a much harder piece and very expensive to fix, and the money did not go as far as they hoped it would for public drainage projects.

Vice Mayor Gee clarified that the City has delivered on what they promised the public and what they voted for. They put together a draft plan that had multiple phases and some of those phases have been funded and other phases have not been. For the phases funded, the City has expended the money in probably one of the most responsible and effective manners she has ever seen. The City has always told the public that the whole plan required additional money to complete Phase 4 or 5 depending on what iteration of the plan it was.

Councilmember Worth said she thinks what the Mayor is saying is that the City put forward a plan to our community but we still have a box still left to complete that we don't have funding for. She addressed those commitments and those responsibilities from a legal stand point and how when considering a measure looking at the capacity of the community in terms of funds.

Councilmember Fay said it is his understanding that what was submitted to the voters was funding to accomplish phases of the plan. The plan itself was never presented to the voters for approval. It was approved by the Council on the recommendation of the COIC, which is an important distinction.

Mayor Miller said she feels a duty to accomplish the work and all phases of the plan and sked if this should be a question in the polling or not--that they have \$30 million of drainage work to do and how people feel about it regardless of what was written in the ballot measure.

Vice Mayor Gee said the only way this can be accomplished is to get the voters to vote for it, and right now the community is saying they will not vote for it unless the Council looks at a bigger picture of private roads and drainage.

Mayor Miller pointed out there are many residents not in this room and she questioned whether the Council was hearing from all voices in the community. She stated she received comments after the last workshop that people did not feel welcome in stating their position and feelings and then presented something she found in her mailbox which speaks from those who do not feel it was an appropriate subject for the Council to be discussing and spending money on.

She said that bullet point 3 states, "The estimated cost for private road improvements is \$25 to \$30 million if the lobby gets its way." It then talks about costs and about what the Council was doing on public roads.

Councilmember Fay stated the Council did not hear from everybody interested in this topic at that workshop. Those having a burning desire for a particular issue are the ones who showed up. They got a perspective based on that particular point of view. It does not make the other people's views any less relevant but it means the Council would have to seek out those in another way, and polling is one example to get a better understanding of the broader community's sentiments. He said it also does not change the fact that the five Councilmembers were voted in to represent all Orinda residents, including those on private roads.

Mayor Miller said if the Council is going to ask a ballot question they ought to ask whether voters would prioritize this over finishing the phases for roads and drains, or in addition to that work. She also gets calls from people asking for senior discounts for garbage and other things, and truly feels people are pressed by ballot measures that burden them with additional costs. They talk about the one relief they now get from the school district.

Therefore, she thinks it is important not to forget where Proposition 13 came from which is from a time when seniors could not afford their homes any longer in the 1970's. There is a segment of the population that is unwilling to fund private investment before the City finishes the phased plan they voted for.

Mr. Theis offered that he thinks there is a mutual agreement among everybody that additional money is needed if the City were to take over maintenance and repair of private roads and drainage. He thinks polling would be important and also to recognize that people are very good at developing polling.

There is the question of whether the Council wants a more accurate number to be able to put in that poll or look at different levels of funding. This might garner a different result, but the other consideration is that in order to do the Street Saver program, they would have to solicit the work, award the contract, do the work, and they are talking about 3-4 months before getting a bid number. So, there are also timing issues in terms of polling, and the City may run out of time depending on what date they place a measure on the ballot.

In looking at drainage, Mr. Theis said he was not clear of that scope and cost, as it will take many more months than the Street Saver program. He suggested setting a threshold to make it very clear to people that this is not a fixed number, but if it was at a certain number, to ask residents how they would respond. Both questions could be done, but timing will need to be considered by the Council.

Councilmember Fay agreed and said Mr. Theis makes a good point. There may be value in terms of when the polling will start. He agreed to hold off on Street Saver survey because they may come back from the poll and people would support the \$5 million, but he asked if this really does anything, as the City might not have spent money wisely.

Vice Mayor Gee agreed, and said this was her initial thought but the argument always comes back around about not knowing the real number. She thinks they are not going to know in time for the polling to plan a measure for the November 2020 ballot. She thinks they must test thresholds or even just the concept and see how it polls, and results could vary.

Councilmember Fay asked when the two members on the committee are looking at polling.

Mr. Salomon said the subcommittee is meeting next week. He also said that a year from today, if the Council will have something on the November 2020 ballot, it will have made all of the decisions. The ballot language will be done and the City Attorney will have approved whatever it is, and people will have finished writing their arguments for and against it. So, there is not a tremendous amount of time. Also, he thinks the subcommittee may struggle with the types of questions asked, how much money to ask for; however, this is why Vice Mayor Gee and Councilmember Worth have volunteered.

If the Council wished, staff could return with a clear report from Mr. Theis on the survey information and thoughts on the scope of a survey on the drainage and get more input because it seems like it is just not clear as to the scope on the drainage, and more discussion is needed. After receiving polling results, the Council might then be ready to make a decision on how much money they want to include for the survey.

Councilmember Fay asked when polling results would be ready.

Mr. Salomon guessed that they will not survey around the holidays, so it depends on the subcommittee's discussion and how clear they can be on what they want, as well as the consultant's understanding of it. For this year, they would want to do it in late October/early November to stay away from the holidays. If not, it would then go into January.

Vice Mayor Gee said originally the subcommittee was looking at extending their sales tax or considering that. She does not think she would envision they would have everything for an entire plan by November 2020. She thinks what they have to do is figure out what they want to ask overall and what they want to ask as to how the sales tax might get extended.

Ultimately, they have to tell the community that if the sales tax is a part of it, it is a part of something. People have believed it has gone towards the road maintenance, but the polling could answer questions about the bigger picture of the overall program, as well. But, even if the sales tax is extended it does not pay for \$27 to \$30 million of drainage work.

Mr. Salomon said the current sales tax was for 10 years. To the extent the City is going to use something for maintenance that cost will never go away. So, he questioned whether to ask for an extension that has a sunset, a longer sunset, or no sunset. There was also some discussion about trying to poll to see if people in the community would support another half-cent, but they would have to identify what that would be used for and then the one time capital items would have to be later.

Mayor Miller confirmed staff had sufficient direction and she and Councilmembers thanked everybody for their comments and input.