

CITY OF KIRKLAND

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CITY ATTORNEY'S OFFICE
MEMORANDUM

To: David Ramsay, City Manager
From: Oskar Rey, Assistant City Attorney
Rob Jammerman, Development Engineering Manager
Date: November 9, 2006
Subject: Letter from Molly Anderson Regarding Fourth and Fifth Street West Waterfront Street Ends

RECOMMENDATION:

Staff recommends City Council review the attached draft response for the Mayor's signature.

POLICY IMPLICATIONS:

None.

BACKGROUND DISCUSSION:

The attached letter from Molly Anderson expresses concern regarding parking along the Fourth and Fifth Street West Waterfront Street Ends. The City's response outlines the Council's review of this issue in 2003 and recommends the Bellevue Mediation Program as a way for Ms. Anderson to resolve her concerns.

**Molly Anderson
415 5th Ave WEST
Kirkland, WA 98033**

October 23, 2006

**Kirkland City Council
Kirkland, Wa 98033**

I have been a homeowner in the City of Kirkland since 1968 and have lived on 5th Ave West since 1972. As a long time citizen of this community, I have, as you can imagine, witnessed extraordinary changes over the last 4 decades. I am thrilled with the magnificent growth and diversity of this community and, except for the traffic, of course, enjoy all the benefits of living in a vibrant and beautiful city.

I am especially fortunate that I live on 5th Avenue West, a private road between Marina and Waverly Parks. My husband and I walk to downtown everyday. We go shopping, to the post office, the library and the bank, or, we just enjoy the waterfront walk. We are extremely grateful for the quality of life we enjoy.

Many people walk on our road and also get to enjoy the gardens, architecture and views of the lake, city and mountains. We are happy to share this with everyone. We have never felt this was an intrusion or invasion of our property.

The City of Kirkland has owned two "unopened rights of way" on Fifth Avenue West for as long as this City has been incorporated and certainly, for as long as I have been living on this street. These have always been available to the community of Kirkland and to the neighbors on our street until a few years ago, when, the adjacent neighbors began encroaching on the waterfront and eventually on the street side, actually building fences matching those of their properties, implying that these "street ends" were extensions of their property. Only recently, did it come to the attention of the neighborhood that these street end adjacent neighbors have actually entered into City sanctioned agreements call "Street End Permits". While I think

it is selfish and self serving to hoard these properties, not paying taxes, and to have entered into these agreements without the knowledge of the other neighbors, let alone the citizens of Kirkland, I think it is appalling that the permit holders have hung signs prohibiting parking and threatening to have cars towed. Was this what the City intended when they authorized this use of this public land? Why were neighbors not given an opportunity to voice opinions about the use of this land?

I request a review of these permits by the City Council and reinstatement of the "street ends" for public use. At the very least, use by the residents of 5th Ave West and Lake Avenue West for turning around and overflow parking. After all, don't the residents of this street pay for the maintenance of the pavement at these locations? Aren't we all entitled to share the City owned easements?

I look forward to a response to my concerns.

Molly Anderson

November 21, 2006

DRAFT

Molly Anderson
415 Fifth Avenue West
Kirkland, WA 98033

Re: Fourth and Fifth Street West Waterfront Street Ends

Dear Ms. Anderson:

Thank you for your October 23, 2006, letter expressing concern about the use of the Fourth Street West and Fifth Street West waterfront street ends.

The Fourth Street West and Fifth Street West street ends are “unopened” from Waverly Way to Lake Washington. An unopened street right of way is right of way that has not been put to public use. In essence, unopened right of way is land on which the City could construct a street in the future if it decides to do so.

Unopened street right of way may be used by the adjoining property owners until such time as the City opens the right of way to public use (by installing street improvements). The rule in Washington is that each adjoining property owner may use unopened right of way out to the center line of the right of way. The adjoining property owner has the right to do so until such time as the City opens the right of way to public use. Until then, the City does not have the authority to dictate how the adjoining property owner uses the right of way so long as the property owner’s use of the right of way is lawful.

As you know, the City Council has explored the feasibility of opening the Fourth Street West and Fifth Street West street ends to public use. In 2003, the City Council asked the Kirkland Park Board to evaluate the possibility of developing the street ends for public access. At a May 21, 2003, public meeting, the Park Board considered the feasibility of opening the rights of way to public use. After considering the recommendations of City staff and public comments, the Park Board determined that the Fourth Street West and Fifth Street West street ends should not be opened for public use. Access problems present the biggest impediment to public use. Fifth Avenue West, which runs roughly parallel to Lake Washington, is the only improved access route to the street ends. However, Fifth Avenue West is a private road and is not City right of way. The City does not control or maintain Fifth Avenue West—the residents do. At least some of the residents have taken the position that the general public is not authorized to use Fifth Avenue West.

The other two possible access points were also found to be unsuitable. Both street ends run from Waverly Way down a steep slope to the waterfront. Providing access to the Lake by this method would be very expensive because of the characteristics and steepness of the bluff. Access from the water by boaters (such as kayaks and canoes) is theoretically possible but potentially dangerous and would not result in enough use to warrant opening the street end.

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Thus, the Park Board advised against public use but recommended that the adjoining property owners apply for permits in recognition of the fact that portions of their landscaping and improvements are located in the right of way. The City Council considered the Park Board recommendations at several public meetings, and ultimately decided to adopt the current permit system.

The City's purpose in establishing the permit system was to memorialize the fact that the street ends are unopened right of way and set forth the procedures by which the City may open the street ends to public use should it decide to do so in the future. Because the adjoining property owners already had the right to use the unopened right of way area, the City charges a permit fee that is limited to covering the administrative costs of managing the permit system.

In the City's view, the permits simply memorialize the adjoining property owners' pre-existing right to use the unopened rights of way. In other words, to the extent the adjoining property owners have the right to restrict parking in the unopened rights of way, they had the right to do so prior to issuance of the permits.

I understand your concern about the use of the unopened rights of way and the parking areas in particular. However, since Fifth Avenue West is a private road and the parking areas in question are in unopened right of way, the City is not in a position to intervene in this dispute on one side or another. The parking dispute on Fifth Avenue West is a private civil dispute and the City strongly suggests that the parties to the dispute pursue mediation through the Bellevue Mediation Program. My understanding is that City staff is assisting in the process of scheduling the mediation and will provide any administrative support it can.

Sincerely,

KIRKLAND CITY COUNCIL

By: Jim Lauinger, Mayor