



CITY OF KIRKLAND

City Attorney's Office

123 Fifth Avenue, Kirkland, WA 98033 425.587.3030

www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Oskar Rey, Assistant City Attorney

Date: August 20, 2009

Subject: Draft Response Letter to Randy Altig Regarding Waterfront Street Ends

RECOMMENDATION:

Staff recommends that the Council authorize Mayor Lauinger to sign the attached letter to Randy Altig.

BACKGROUND:

Mr. Altig wrote a letter to the Council dated August 3, 2009, expressing concern about the waterfront street end permits issued by the City for Fourth Street West and Fifth Street West. Mr. Altig also requests that the street ends be opened for public use.

The City Council has previously determined that opening the street ends to public use would not be feasible under the current circumstances. The waterfront street end permits set forth a process by which the street ends could be opened to public use in the future.

There have been disputes over parking in recent years in the area where Fifth Street West intersects Fifth Avenue West. Fifth Avenue West is the existing private road that residents use to access their properties. Fifth Avenue West is not City right of way and Fifth Street West is unopened right of way. As a result, the City is not in a position to regulate parking in that area. The City has encouraged the residents with concerns over parking to resolve their differences through the Bellevue Mediation Program.

Kirkland City Council
123 5th Avenue
Kirkland, WA 98033

Date 8-3-09

Randy Altig
1852 1st Street
Kirkland, WA 98033
425-941-8478

[RECEIVED]

AUG 0 5 2009

Dear Council Members:

[CITY OF KIRKLAND
CITY MANAGER'S OFFICE]

Many problems have arisen regarding use of the public waterfront street ends on 5th Avenue West because of the decision the City made several years ago to lease the street end properties to private property owners. Unfortunately, the lease decisions have resulted in the loss of unique waterfront access for all Citizens of Kirkland. These city waterfront properties represent one of the most valuable assets that the citizens of Kirkland own. To continue to lease these multi-million dollar properties for \$100.00 a month for the private use of just a few citizens is no longer acceptable.

Over the past 2 years, homeowners on 5th Avenue West have met with Council members and staff to talk about issues facing the street. Council members encouraged neighbors to go to mediation to try and resolve the issues. The result of mediation was that public access and public view access to these waterfront properties was denied by the lessees to the Kirkland Public.

The most disruptive issues are the lessees, who have been allowed to lease the waterfront street end properties for \$100 per month, do not allow residents of the street to park along the properties as has been the custom since the property was developed in the 1900's. In addition they have erected tall fences with 14 foot hedges to block all view and access to the waterfront.

Once both of the 5th Avenue West street ends were leased, the lessees began issuing verbal assaults, along with threatening letters and notes, to anyone parking in the spaces which were once public parking spaces owned and controlled by the City of Kirkland.

The street end properties, which are lake front properties, are rightfully owned by the citizens of Kirkland. This is property which should have been kept open by the City for overflow parking on 5th Avenue West, to be used as turnaround areas for oversized and commercial vehicles, and as waterfront parks for all Kirkland citizens.

The public has been using 5th Avenue West for decades as a pedestrian

pathway to access the two 60 foot lake front street ends and Waverly Park. This history of use has given the public a prescriptive easement of this private street to access these properties. Now these lovely waterfront properties are no longer open to the public.

This issue affects all Kirkland citizens. Citizens should be able to enjoy the beauty of these water front properties. All residents of 5th Avenue West should be able to enjoy the properties and to use the public parking again.

The City of Seattle has required that all city owned waterfront street end properties be open to the public.

My request to the Kirkland City Council is to terminate the leases and make these two properties public again by opening them up as two natural, nature parks. These nature parks should be for the enjoyment of all who walk, run, drive, or bike down 5th Avenue West. This should be able to be done with very little money or time commitment on the part of the City as there are many volunteers that are willing to help beautify and maintain these valuable lands. Please consider turning these two waterfront properties into street end parks available for use by all Kirkland citizens, including the residents of 5th Avenue West.

Thank you for listening and I look forward to your reply.

Sincerely,


Randy Altig

September 1, 2009

D R A F T

Randy Altig
1852 First Street
Kirkland, WA 98033

Re: Waterfront Street Ends—Fourth Street West and Fifth Street West

Dear Mr. Altig:

Thank you for your letter to the Kirkland City Council dated August 3, 2009, in which you express concern about the use of the above-referenced waterfront street ends. Several years ago, the City reviewed its unopened waterfront street ends to determine which ones were suitable for opening to public use. The issuance of Right of Way Use Permits for Fourth Street West and Fifth Street West was the result of extensive consideration and deliberation by the City. A summary of process will be helpful in explaining the reasons for issuance of the permits by the City.

In 2003, the City Council asked the Kirkland Park Board to evaluate the possibility of developing unopened waterfront street ends for public access. At that time, Second Street West, Fourth Street West and Fifth Street West were the three remaining unopened waterfront street ends in Kirkland.

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 recommended to the City Council that the Second Street West be opened to public use, and that recommendation has since been implemented.

With respect to Fourth Street West and Fifth Street West, it was recommended that the 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 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 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.

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

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landscaping and improvements are located in the unopened 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 permits memorialize the fact that the street ends are City right of way and that the right of way is currently being used by the adjoining property owners. It also sets forth procedures by which the City may open the street ends to public use should it decide to do so in the future.

It is important to note that Fourth Street West and Fifth Street West are "unopened" rights of way. "Unopened" means that the right of way is reserved for public use, but has not been put to use as a street. From a legal standpoint, unopened rights of way may be used by the adjoining property owners until such time as the City opens the right of way to public use. In the City's view, the permits entered into confirm what was already the case: the adjoining property owners have the right to use the unopened street ends until such time as the City decides to open them. The City has decided not to open the street ends as a result of feasibility and cost concerns.

The City realizes that you are concerned about the loss of parking on Fifth Avenue West. The fact that Fifth Avenue West is privately owned is the reason why the City does not regulate parking on Fifth Avenue West. Since Fifth Avenue West is not City right of way and since Fifth Street West is unopened right of way, the City is not in a position to intervene with respect to any disputes over parking. As a result, the City has, in the past, suggested mediation between the affected property owners to resolve the dispute. The City continues to encourage mediation as a possible solution to the parking dispute and will provide whatever support or assistance it can in getting a mediation session set up if the affected property owners are interested in pursuing this option.

The City Council appreciates your concern, and if you would like additional information regarding the mediation program please contact Oskar Rey at (425)587-3030.

Sincerely,
Kirkland City Council

By: James L. Lauinger, Mayor

cc: Daryl Grigsby, Public Works Director
Oskar Rey, Assistant City Attorney