

RESOLUTION R- 4017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING ISSUANCE OF A RIGHT-OF-WAY USE PERMIT TO AUTHORIZE CONTINUATION OF EXISTING ENCROACHMENTS INTO THE RIGHT-OF-WAY OF SECOND AVENUE WEST BY A DOCK AND ROCKERY ASSOCIATED WITH PROPERTY HAVING THE COMMON ADDRESS OF 299 LAKE AVENUE WEST, KIRKLAND, WASHINGTON

Whereas, a dock and a rockery associated with property having the common address of 299 Lake Avenue West, Kirkland, Washington (the "Adjoining Property") encroach into the existing public right-of-way known as Second Avenue West within the City of Kirkland; and

Whereas, the owners of the Adjoining Property have requested from the City a right-of-way use permit to allow the encroachments to continue until said encroachments can be removed by the owners of the Adjoining Property; and

Whereas, the Department of Public Works has recommended to the City Council issuance of the permit on the basis that the encroachments do not interfere with the public use of the Second Avenue West right-of-way;

Now, therefore, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. A right-of-way use permit in the form attached to this resolution as Exhibit "A" is approved for signature by the City Manager and issuance to the Audrey M. Turner Trust as owners of the Adjoining Property.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 18th day of June, 1996.

Signed in authentication thereof this 18th day of June, 1996.


MAYOR

Attest:


City Clerk

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CITY OF KIRKLAND RIGHT-OF-WAY USE PERMIT

In consideration of the fees, covenants, conditions and agreements herein contained the City of Kirkland, a Washington municipal corporation (the "City") hereby grants to the Audrey Turner Trust (the Permittee), a right-of-way use permit (the "Permit") to use and occupy a portion of the unvacated Second Avenue West right-of-way (the "right-of-way") situated in the City of Kirkland, King County, Washington. The legal description of the right-of-way is attached hereto as Exhibit "A", and incorporated herein by this reference. The portion of the right-of-way subject to this Permit (the "Permit Area") is depicted on Exhibit "B" and incorporated herein by this reference. This Permit is subject to the following terms and conditions:

1. **Permit Area.** The Permit Area includes a dock, a rockery in the vicinity of the dock, and a portion of the right-of-way necessary for access to the dock. No structures or improvements shall be placed upon the Permit Area except such structure or improvements as are permitted or authorized pursuant to permits and approvals issued by the City, and then only so long as all conditions of approval of such permits and/or approvals are met and maintained. Any structure, improvement or other obstruction placed in the Permit Area shall be placed and maintained so as not to interfere with the operation, repair, installation and maintenance of utility and underground installations now existing or hereafter installed within the Permit Area by the City or pursuant to its authorization. Subject to the provisions of this paragraph, the Permittee is authorized to take reasonable steps to prevent the general public using the area from going onto the Permit Area.
2. **Purpose of Permit.** The Permit is granted to Permittee for the purpose of allowing the Permittee to obtain any necessary permits, remove the dock from the right-of-way and relocate the dock onto the Permittee's own property. Until the dock is removed, the Permittee may use the Permit Area for the purpose of maintaining, occupying, and using the dock and providing access to the dock and rockery.
3. **Term of Permit.** The term of this Permit shall be two years commencing on the date that the City signs the resolution approving the Permit. The term of this Permit shall not be extended beyond two years. In the event the dock is not removed by the end of the Permit term, the dock shall become the property of the City of Kirkland.
4. **Fees.** During the life of this Permit, Permittee shall pay to the City a permit fee of \$10.00 per year.
5. **Ratification of Permit.** The City Council shall ratify and approve issuance of this Permit.

6. Indemnification--Permit Area. To the extent permitted by law, and except to the extent caused by a negligent act by the City, its officers, agents or employees, or by omission or breach of any term or condition hereof, the City shall not be held liable for any injury (including death) to any persons or for damage to any property regardless of how such injury or damage may be caused, sustained or alleged to have been sustained by Permittee or by any other as a result of any condition whatsoever related in any way to the Permit Area or to the Permittee's use or occupancy of the Permit Area. Permittee agrees to defend, hold and save the City harmless from all liability or expense (including expense of litigation which shall include all attorney fees the City incurs in such litigation) in connection with any such items of actual or alleged injury or damage.

7. Use of Other Portions of Right-of-Way. The City and the Permittee are aware that there are other encroachments benefiting the Permittee in the Right-of-Way that are not within the Permit Area, including a lawn, landscaping and rockeries (see survey attached hereto as Exhibit "B"). The Permittee will no longer use those encroachments to the extent they encroach onto the Right-of-Way.

8. Assignment. This Permit is appurtenant to and runs with the property known as 299 Lake Avenue West, Kirkland, Washington, and legally described in Exhibit "C." The permit may be assigned only to the successors in interest of the Audrey M. Turner Trust, owners of the property described in Exhibit "C."

9. Default. Any of the following shall be an event of default: (a) Permittee shall have failed to make any payment due hereunder for a period of 60 days after receipt of notice of nonpayment; or (b) either party shall fail to perform any other obligation of this permit for a period of 30 days after notice from the other of default. In the event of default by either party, the other shall be entitled to terminate or specifically enforce the terms of this Permit.

10. Notices. All notices and payments hereunder may be delivered or mailed. If mailed they shall be sent to the following respective address or such other respective address as either party may hereafter designate in writing:

City of Kirkland
123 5th Avenue
Kirkland, Washington, 98033

Audrey Turner Trust or current owner
299 Lake Avenue West
Kirkland, Washington 98033.

Notices and payments sent by certified or registered mail shall be deemed to have been given when and if properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.

In witness whereof, the parties hereto have signed this Permit as of the day and year first above written.

CITY OF KIRKLAND

AUDREY M. TURNER TRUST

By: _____
Its: _____

By: _____
Its: _____

Approved as to form:

Oskar E. Rey
Assistant City Attorney

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EXHIBIT "A"

Legal Description

That part of Government Lot Four (4), Section Six (6), Township Twenty-Five (25) North of Range Five (5) East of Willamette Meridian, and shorelands of the second class fronting thereon, described as follows:

Beginning on the westerly line of Lake Avenue as shown on the Map of Kirkland at a point which is South 61° 30' West 80 feet, and North 28° 30' West 600 feet from the most southerly corner of Lot 20, Block 3, of said Map; thence along said westerly line of Lake Avenue North 28° 30' West 102.45 feet; thence South 69° 30' West 128.56 feet; thence south 74° 40' West to the Inner Harbor Line of Lake Washington; thence southerly along said Harbor line to a point which is South 61° 30' West of beginning; thence to beginning. Situate in King County, State of Washington.

Excepting such portion of the shorelands, if any, as lies in front of the South 280 feet of said Government Lot 4. Subject also to any question as to the proper course of the land boundary of the second class shorelands herein conveyed, lying between the upland and the Inner Harbor Line.

Subject also to the exceptions and reservations contained in the deed from the State of Washington the grantor of shorelands in front of the Town of Kirkland.

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EXHIBIT B

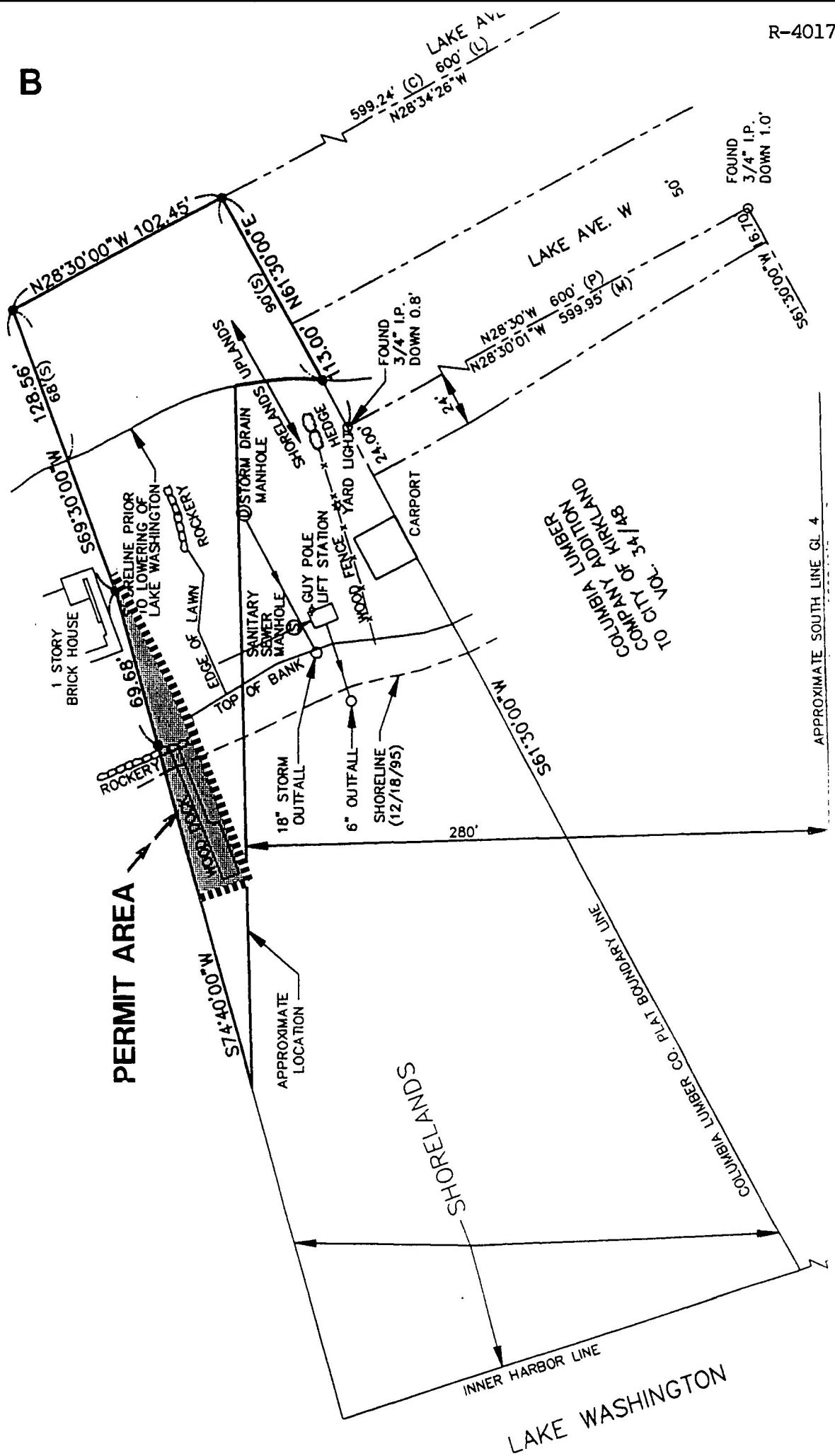


EXHIBIT "C"

Legal Description

That portion of Government Lot 4 and Shorelands adjacent described as follows:

The Southerly 60 feet of said Government Lot 4 and Shoreland adjacent lying Northerly of Second Street West and lying West of Waverly Way;

TOGETHER WITH that portion of Government Lot 4 described as follows:

Beginning at the Southwest Corner of Lot 3, Block 5, Plat of Town of Kirkland;
thence North 15°20'00" West 229.66 feet;
thence South 74°40'00" West 140 feet to the true point of beginning;
thence South 15°20'00" East 339.9 feet;
thence South 24°48'00" East 296.22 feet to a line 60 feet North of Second Street West;
thence North 69°30'00" East to the Westerly margin of Waverly Way;
thence Northerly along said Westerly margin to a point North 74°40'00" East from the true point of beginning; thence South 74°40'00" East to the true point of beginning;
EXCEPT the Northerly 608 feet thereof as measured at right angles to the North line thereof.

Situate in the City of Kirkland, County of King, State of Washington.

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