

Resolution Opposing Sale of Lyn Ary Park Michelle Byrum Memorial Garden Property

Whereas, Lyn Ary Park has been an important neighborhood resource of the Turnagain Community since the Park was established as a private community park in 1947 and since portions of the Park were formally dedicated in February 1971 by the City of Anchorage for parks and recreational purposes;

Whereas, the Municipality of Anchorage in 1986 constructed the Tony Knowles Coastal Trail along the northern boundaries of Lyn Ary Park;

Whereas, Union Bank of Anchorage sued the Municipality in December 1987, asserting that the Bank owned the property to the west of Lyn Ary Park along which a portion of the Coastal Trail had been constructed; in order to resolve the lawsuit, the Assembly authorized and the Municipality purchased the disputed property in 1996 for \$175,000 (Attachment 1; Aerial map of property);

Whereas, in 1998 construction began on the Michelle Byrum Memorial Garden on the purchased land west of Lyn Ary Park as part of the Adopt-a-Park Program; hundreds of hours of community volunteer labor and funds have been expended constructing, improving and maintaining the Memorial Garden;

Whereas, in December 2007, Matthew Fink, Diane Wilke, David and Jacquelyn Wilder and Annalesa Anderson Thomas, owners of lots in the Marston Foraker development west of Lyn Ary Park, filed a lawsuit against the Municipality claiming ownership to the property purchased by the Municipality in 1996; the Plaintiffs argue that the boundaries of their lots should be extended beyond their actual lot lines all the way to the shoreline of Knik Arm (*Fink v. Municipality of Anchorage*, 3AN-07-12346 CI) (Attachment 2; Map from Plaintiffs' Complaint); In 2009 Robert Gillam, purchased the Wilder and Thomas lots, and has joined the lawsuit against the Municipality;

Whereas, the Municipality has defended the *Fink* lawsuit and the Superior Court has ruled in favor of the Municipality on the first of two claims for relief brought by the Plaintiffs; In 2009 the Municipality moved for summary judgment on Plaintiffs' remaining claim for relief arguing that Plaintiffs have sat on their rights and waited too long to sue;

Whereas, Plaintiffs have obtained a stay of the litigation while they seek to obtain the Assembly's approval for a private sale of these lands to Plaintiffs for their private development purposes; Plaintiffs are now obtaining appraisals of the public property in order to pursue a private purchase from the Municipality;

Whereas, given that this public property is maintained as a Memorial Garden and as a natural undeveloped buffer along the Coastal Trail, it is evident that the Plaintiffs' reason

for acquiring title to these public lands is to clear the land of vegetation and trees in order improve the views from future residences constructed on the lots;

Whereas, the Turnagain Community Council in a December 2007 Resolution called for maintaining the character of Lyn Ary Park as a neighborhood park and preserving the natural boundaries of Lyn Ary Park for recreation and as a natural buffer for neighbors of the park;

Whereas, the Turnagain Community Council has in its past Capital Improvement Project Resolutions called for maintenance of the Tony Knowles Coastal Trail and the preservation of the natural buffers along the trail that make it an important asset of the local community and for visitors;

Whereas, the Turnagain Community Council worked with the Municipality's Parks and Recreation Department and the Anchorage Park Foundation in developing a Lyn Ary Park Master Plan approved in January 2010; The Lyn Ary Park Master Plan calls for title to all of the Park's parcels within proposed Park Boundaries (including the public lands sought in the *Fink* lawsuit) be clarified and resolved and that all of these parcels be formally dedicated by the Municipality as parkland (Attachment 3; Proposed Park Boundaries from Master plan);

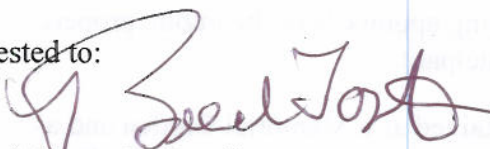
Whereas, legal disputes over ownership of these public lands should be decided by the courts and not through a Municipal or Assembly private sale of these lands, whereby private persons obtain public lands for their private use at the detriment of the general public's interest in those lands;

THEREFORE, BE IT RESOLVED, THAT THE TURNAGAIN COMMUNITY COUNCIL

- 1) calls on the Municipality of Anchorage and the Anchorage Assembly to oppose any private sale of the Memorial Garden/Coastal Trail Public Lands; and**
- 2) urges the Municipality of Anchorage to vigorously defend the public's ownership of these lands in the courts; and**
- 3) calls on the Municipality of Anchorage to fully implement the approved Lyn Ary Park Master Plan by formally dedicating this public land as parkland within Lyn Ary Park once the legal dispute over the land is resolved by the courts.**

Adopted this day, April 1, 2010, by the Turnagain Community Council at its regularly scheduled meeting.

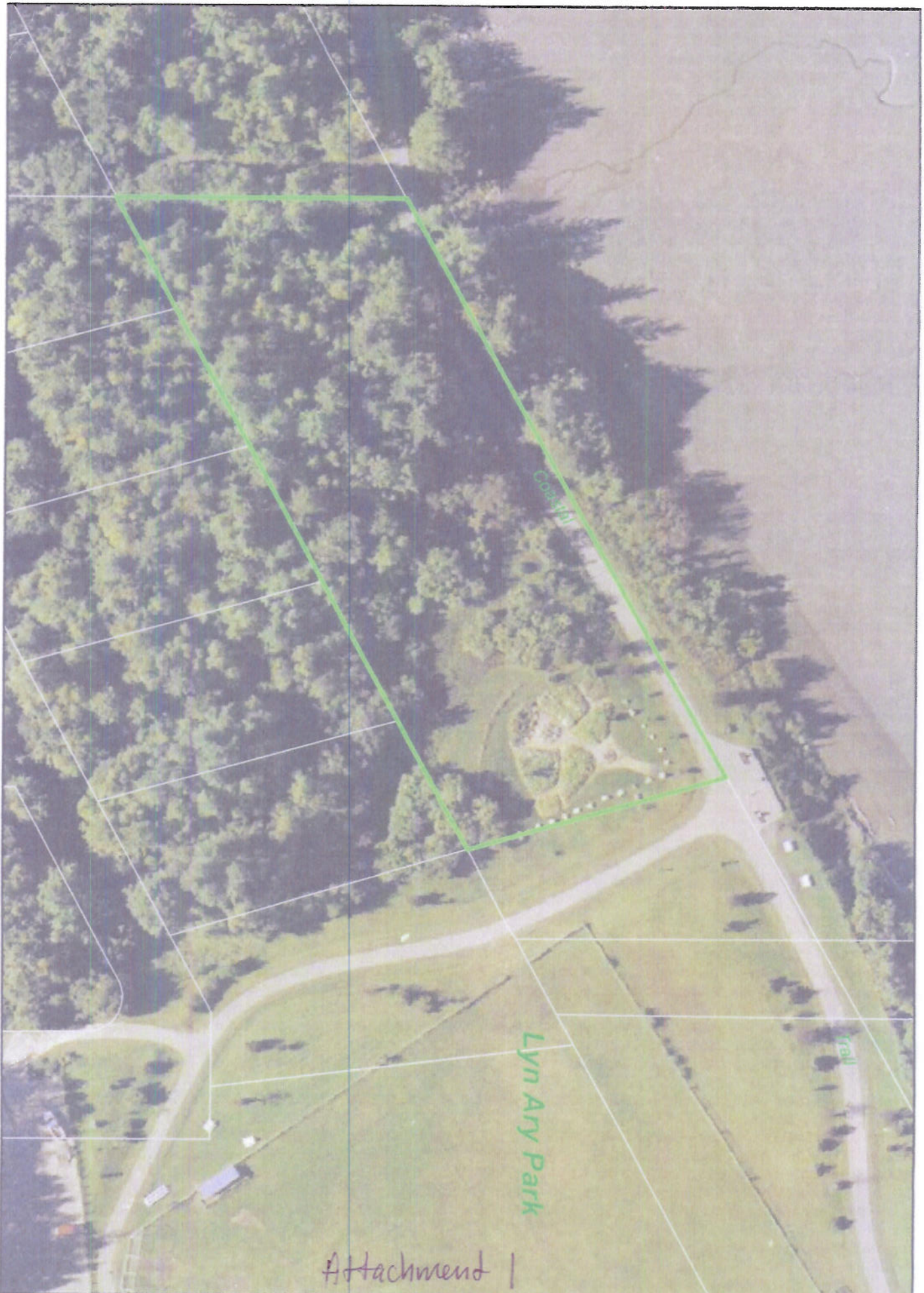
Attested to:


Breck Tostevin, President
Turnagain Community Council

Date: 4/1/2010



Lyn Ary Park Byrum Garden Area

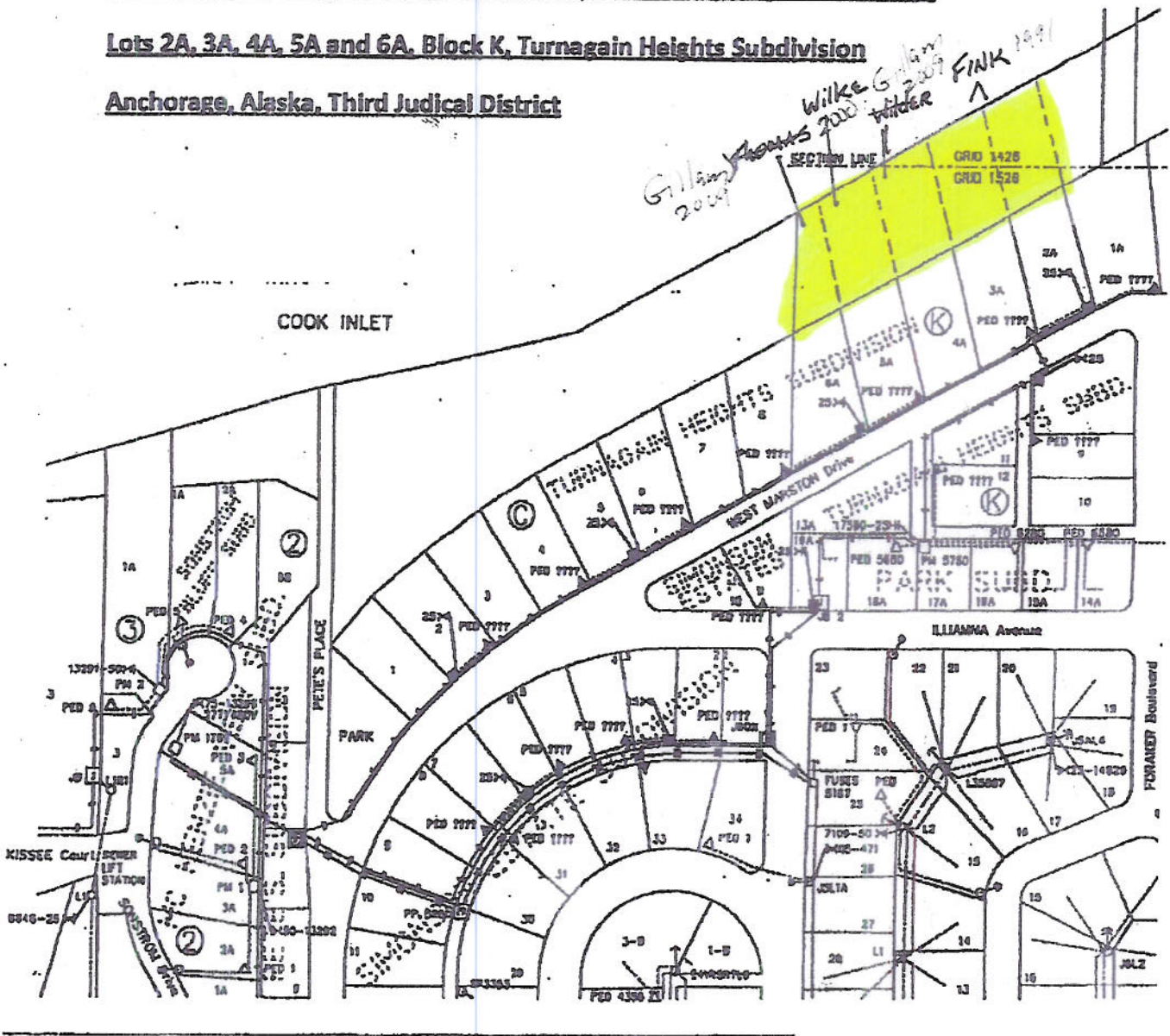


Attachment 1

Extending the lots line from south to north to meander high tide line for

Lots 2A, 3A, 4A, 5A and 6A, Block K, Turnagain Heights Subdivision

Anchorage, Alaska, Third Judicial District



Attachment 2

Lyn Ary Park Master Plan

Figure 3: Title and Dedication Graphic

