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No. 90612-2

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SUPREME COURT  
OF THE STATE OF WASHINGTON

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KEITH L. HOLMQUIST and KAY BURDINE HOLMQUIST, f/k/a  
KAY BURDINE, husband and wife; and FREDERICK A.  
KASEBURG, a single man,

Respondents,

v.

KING COUNTY, a political subdivision of the State of Washington;  
and CITY OF SEATTLE, a municipal corporation,

Petitioners.

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RESPONDENTS' ANSWER TO AMICUS CURIAE  
MEMORANDUM OF FRIENDS OF CEDAR PARK  
NEIGHBORHOOD AND SEATTLE SEA KAYAK CLUB

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SMITH GOODFRIEND, P.S.

ROBERT E. ORDAL, PLLC

By: Howard M. Goodfriend  
WSBA No. 14355

By: Robert E. Ordal  
WSBA No. 2842

1619 8<sup>th</sup> Avenue North  
Seattle, WA 98109  
(206) 624-0974

1000 Second Avenue, Suite 1750  
Seattle, WA 98104-3620  
(206) 624-4225

Attorneys for Respondents

 ORIGINAL

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**A. Introduction.**

Respondents Keith and Kay Holmquist and Fred Kaseburg submit the instant answer to the amicus memorandum submitted by the Cedar Park Community and Seattle Kayak Club. The Court of Appeals properly held that neither King County nor the City of Seattle acquired title to the street end adjacent to the lots purchased by respondents' predecessors under real estate contracts in 1926. Amici's memorandum, which is devoid of legal authority or citation to the record, is more akin to a press release than legal argument and adds nothing to the petition.

**B. Argument.**

Amici's memorandum fails to take issue with any of the settled principles of real property law applied by the Court of Appeals. Amici do not argue that the Court of Appeals decision conflicts with any decision of this Court, the Court of Appeals, or that it impacts a constitutional right. RAP 13.4(b)(1)-(3). Amici fail to cite a single case, statute or constitutional provision that gives them a right "to launch their kayaks" or obtain other waterfront amenities from the respondents' property. (Mem. 3)

Amici's factual statements are entirely unsupported by citations to the record. For instance, nothing in the record supports

their contention that members of the public or agents of the City of Seattle “have long cleared trash from the area,” (Mem. 4), that respondents’ predecessors “intended a public use of the Street End,” (Mem. 5), that “no one questioned Seattle’s ownership of the Street End,” (Mem. 5), or that respondents’ purchase price “did not include any . . . interest in the Street End . . .” (Mem. 6).

To the contrary, the County conceded that a nascent idea for a private “Cedar Park Community Club community beach proposal came to naught,” and that neither the County, the City, respondents’ predecessors or a Club created a “community beach” on the vacated street right of way. (King County App. Br. 11) The only evidence in the record establishes that the respondent Holmquist, and not unnamed “members of the public,” the City’s park department, or any other public agency, maintained the property on a regular basis. (CP 90-92)<sup>1</sup> The City’s published maps

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<sup>1</sup> Amici dismiss the undisputed evidence before the trial court on summary judgment as “self serving” because it comes from respondents. (Mem. 4) But Holmquist’s declaration was based on his personal knowledge, did not rely on hearsay, and did not contradict any prior sworn statement. (CP 90-91) The court does not weigh the veracity of a declaration or otherwise make credibility determinations on summary judgment. 14A Teglund, Wash. Pract.: Civ. Proc. §25.16. See also 5B Wash. Pract.: Evidence at § 801.16, citing *State v. Pavlik*, 165 Wn. App. 645, 653-54, ¶ 21, 268 P.3d 986 (2011) (statement that is otherwise admissible may not be excluded solely because it is “self-serving”), *rev. denied*, 174 Wn.2d 1009 (2012).

and directories referred to this property as a vacated street end (CP 283-84, 292-93), not a “Street End park,” an appellation adopted solely by amici for purposes of this litigation. The City took no action on the vacated street end until it posted a sign in November 2012 that, for the first time, invited members of the public to use respondents’ private property. (CP 338, 480-86)

This Court should reject amici’s one and only contention – that the Court of Appeals’ fact-specific decision affects the public interest. Amici purport to represent “the interest of the entire Seattle community,” (Mem. 3) and complain that they lacked “an opportunity to present evidence in the Superior Court” (Mem. 8), but fail to explain how their elected representatives, including the City and County prosecuting attorneys, refused to advance their allegedly long-standing and notorious use of the respondents’ property. Lacking such evidence, they instead rely on the press that they have themselves generated to satisfy the criteria of RAP 13.4(b)(4).

Amici ignore that this Court is a court of review and that summary judgments are reviewed on the record. RAP 9.12. This Court has recently refused to rely on news articles to determine the public interest. *See Frias v. Asset Foreclosure Servs., Inc.*, —

Wn.2d \_\_\_ ¶15, 334 P.3d 529, 533 (2014). That rule applies no less to amicus curiae. See *Northwest Steelhead & Salmon Council of Trout Unlimited v. Washington State Dep't of Fisheries*, 78 Wn. App. 778, 786, n.2, 896 P.2d 1292 (1995) (rejecting amici's attempt to supplement record). It should do so here, as well.

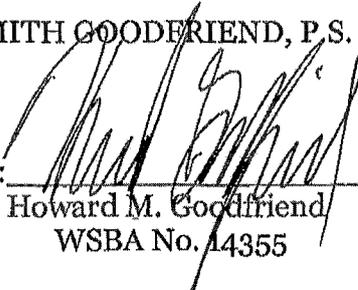
**C. Conclusion.**

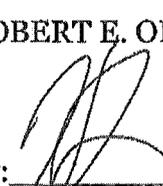
The Court of Appeals correctly held that upon vacation of the street end, the property became that of the owners of the adjoining lots, and not the County, not the City, and not a community club. This Court should deny review.

Dated this 14th day of November, 2014.

SMITH GOODFRIEND, P.S.

ROBERT E. ORDAL, PLLC

By:   
Howard M. Goodfriend  
WSBA No. 14355

By:   
Robert E. Ordal  
WSBA No. 2842

Attorneys for Respondents

**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on November 14, 2014, I arranged for service of the foregoing Respondents' Answer to Amicus Curiae Memorandum of Friends of Cedar Park Neighborhood and Seattle Sea Kayak Club, to the court and to the parties to this action as follows:

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Kelly N. Stone Seattle City Attorney's Office 600 4th Avenue, 4th Floor PO Box 94769 Seattle, WA 98124-4769	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
John Briggs Office of the Prosecuting Attorney 516 3rd Avenue, Room W400 Seattle, WA 98104	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
David A. Bricklin Bricklin & Newman, LLP 1001 4th Ave Ste 3303 Seattle, WA 98154-1167	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Randall H. Brook Attorney at Law 10 Waxwing Lane Twisp, WA 98856	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

**DATED** at Seattle, Washington this 14<sup>th</sup> day of November, 2014.

  
\_\_\_\_\_  
Victoria K. Vigoren

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**To:** Victoria Vigoren  
**Cc:** Howard Goodfriend; kelly.stone@seattle.gov; Williams, Susan E;  
john.briggs@kingcounty.gov; bricklin@bnd-law.com; randy1b@comcast.net  
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Attached for filing is Respondents' Answer to Amicus Curiae Memorandum of Friends of Cedar Park Neighborhood and Seattle Sea Kayak Club, in *King County v. Holmquist, et al.*, Cause No. 90612-2. The attorney filing this document is Howard M. Goodfriend, WSBA No. 14355, e-mail address: [howard@washingtonappeals.com](mailto:howard@washingtonappeals.com).

Victoria Vigoren  
Paralegal  
Smith Goodfriend, P.S.  
1619 8th Avenue North  
Seattle, WA 98109  
(206) 624-0974