



**PARKVIEW**  
EST. 1905

## Temporary Use Agreement – Westgate Lot Owners

August 2020

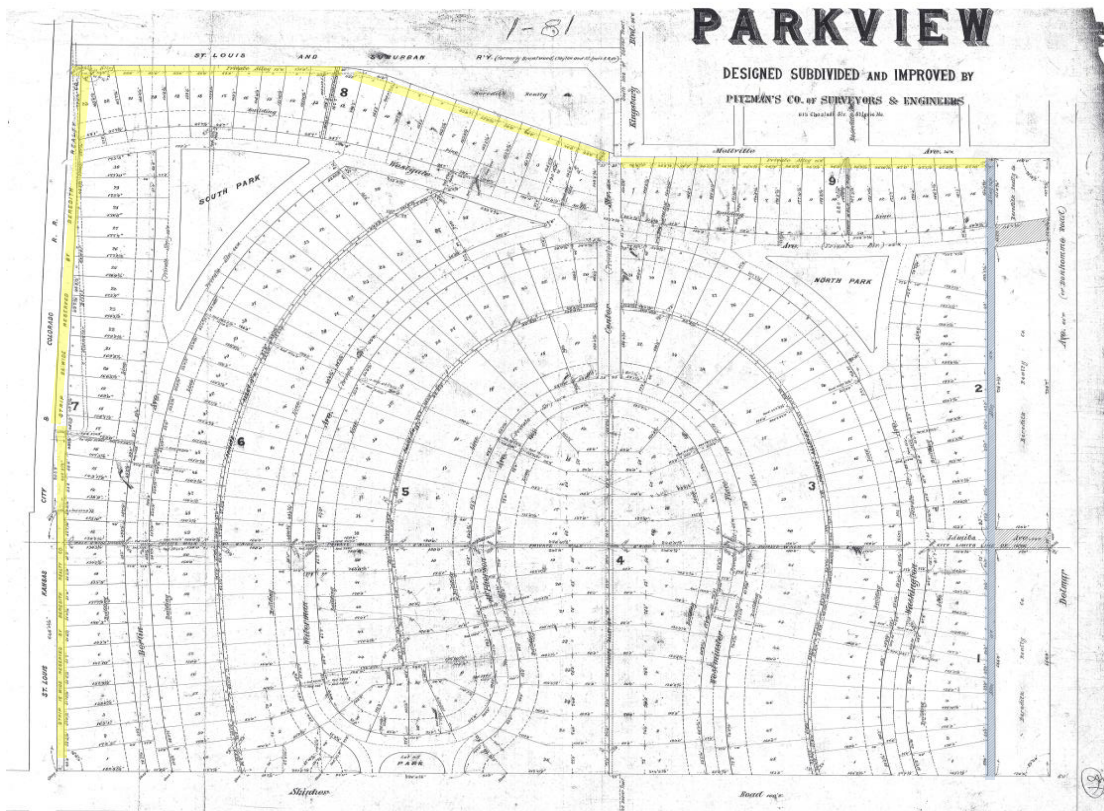
We prepared the following Questions & Answers to help answer the questions of Westgate Lot Owners about the Temporary Use Agreement. Again, let us reiterate that this agreement is a protection for homeowners who have placed their fences in the Westgate Alley. It's purpose is:

1. one simple uniform agreement that gets filed, so fences cannot be challenged by another Parkview neighbor who wants to assert their claim;
2. protects owners when they go to sell their home, and a survey turns up the encroachment onto Parkview's private alley or walkway;
3. reminds owners (probably more important for future owners) that utilities have easements in these areas and these take priority over any fence; also

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### 1. How do we know the Parkview Neighborhood owns the alley?

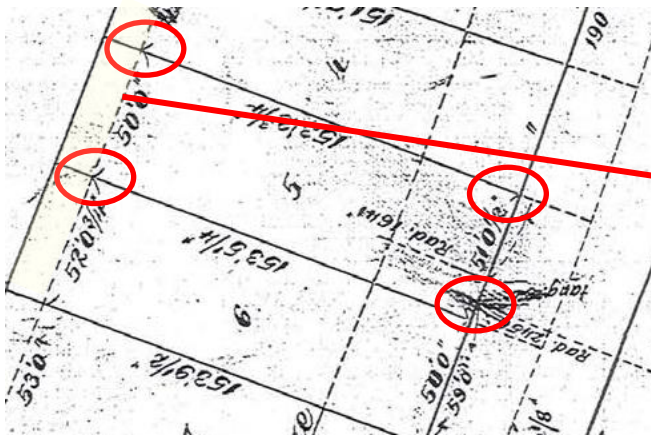
Legal boundaries and ownership are defined in the plats filed with local municipalities (St Louis City and St Louis County / The City of University City). The 1905, 1911 Amended Plat, and the St. Louis County Plats show the Westgate lots terminating at the "Private Alley 15' W, 535' L." In contrast, the same plats show Parkview's interior lots terminating in the middle of the alleys behind those houses (and as such, those homeowners are being assessed for the alley repair).



### Original 1905 Plat.

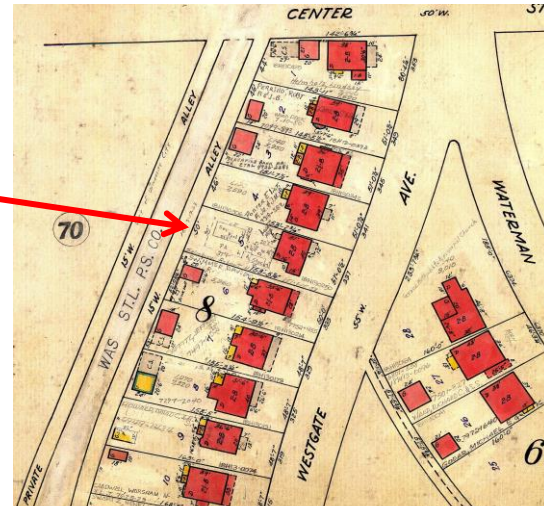
Note that the 15'-wide alleys on Parkview's Western and Southern borders were not included in lot-ownership (alleys highlighted in yellow) but labeled "Private Alley," and transferred to Parkview Trustees for use by all residents; the alley behind Washington (highlighted in blue) was dedicated to public use forever.

As an example on how to read the plats, Lot 5 in Block 8 (337 Westgate) is defined as a lot 51'1/2" wide at the front and extends back 153'1/2 inches from the inside of the sidewalk to rear of property - marked by a dashed-line and by "v" marks (circled in red) - and is 50' across at the rear. Modern surveys measure our property lines according to these notations – as you walk along Parkview sidewalks, you may notice the occasional permanent survey marker or stakes that indicate these boundaries.



LEFT: Detail from the Parkview 1905 Plat

<http://www.parkviewneighborhood.org/plats-surveys-historic-maps>



RIGHT: Detail from the St. Louis County Property Records Plat showing Parkview and Ames Place Private Alleys with the property reserved for the RR (now Greenway) between. Lots end at the alley boundary.

<http://www.parkviewneighborhood.org/plats-surveys-historic-maps>

## 2. Do Parkview Agents have the authority to grant a Temporary Use Agreement to the Westgate lot owners?

Yes – Agents are entrusted the authority as custodians of common Parkview property as established in the 1966 supplemental indentures

(<http://www.parkviewneighborhood.org/1966-supplement-to-indentures>). Agents, however, do not have authority to grant a permanent easement or ownership for the benefit of a single lot owner (see Mike Stephens' letter to Parkview in 2007 – attached).

## 3. Does the Temporary Use Agreement memorialize what has been occurring anyway-- each lot owner is already maintaining the former alley adjacent to his/her lot?

Yes. It memorializes the current encroachments and establishes a consistent process to protect homeowners and Parkview in the future. Homeowners are still required to approach the Agents for sign-off on their fence proposals (*University City requires permits for all fences, and also requires Agent approval of all new or replacement fences before a fence permit is granted*).

**4. Does the Temporary Use Agreement claim that the Agents own the fences?**

**No.** The Agreement makes no such assertion. The homeowners own and are responsible for their fences. This Agreement merely seeks to formally protect the homeowners by codifying their right to have a fence encroaching on the Parkview Alley.

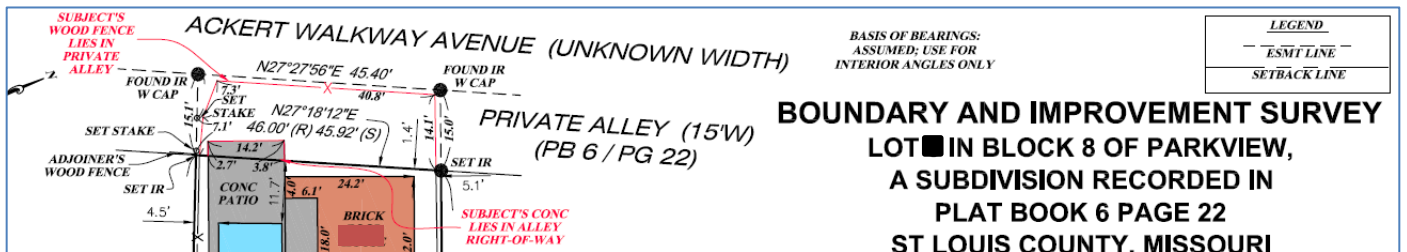
**5. Does the Agreement give the Agents the unilateral power to remove the fence as well as to terminate the lot owners' right to use the 15' of the former alleyway?**

Yes, but under the specific circumstances where **Only if doing so would significantly benefit the entire Westgate block or the entire neighborhood.** No such circumstance is foreseen, but the Indentures do not allow Parkview to give up its right to this property, nor can The Agents grant fair use in perpetuity. (Agents would be happy to insert the provision for an all-neighborhood referendum, if that would reassure Westgate owners that this is unlikely to occur).

**6. How will the agreement assist in the ultimate sale of Westgate homes? Will title become clouded?**

A Temporary Use agreement should make it easier to sell your homes with a clear title. The survey required to transfer title will show that home owners have formal permission to encroach upon Parkview property.

*An example.* In the section of survey shown below from a Westgate property, you can see that the property has been cited for several encroachments. Before a sale can take place and title can be transferred to a new owner, these encroachments (noted in red) must be legally addressed. This agreement does that.



**7. If Parkview owns the alley, why have Westgate lot owners historically maintained it?**

As a private community, we are fortunate to have generous neighbors who maintain common property adjacent to their homes. We've been proudly doing this since the neighborhood was founded: We clear and trim Limits and other Walkways, generous volunteers plant and weed the gardens in our parks, clean our alleys and our neighbor's alleys, and residents mow, weed and water the tree lawns in front of our homes.

The Agents are grateful that – currently – University City and Washington University have an agreement to mow and maintain Ackert Walkway – “Greenway South” park. If Parkview had to pay to maintain all our common property, we would need to reevaluate our annual assessments – something to consider as The Agents work with residents to establish a Parkview Infrastructure Plan.

#### **8. Why cannot the easement be permanent?**

The Indenture provides the right for Agents to grant permanent easements to Utilities serving all of Parkview. Note that these easements are in force in the Westgate Alley (where water mains, sewers and electric lines run), and would supersede your rights to the property.

See Mike Stephens letter to Parkview residents in 2007:

Clause E of the Indenture (<http://www.parkviewneighborhood.org/parkview-indentures-1905>) grants a majority of the lot owners the right to dedicate for public use a street and a majority of the alley owners on a particular block the right to dedicate for public use their alley. The Indenture does not include the right to dedicate a street or alley for private use.

Given that the South Westgate Residents’ request is for private use, we conclude that the Indenture does not grant the Agents, a majority of lot owners or a majority of South Westgate Residents the right or power to abandon the South Westgate Alley Easement.

#### **9. Why is Parkview doing this now?**

The Parkview Board of Agents is seeking consistency and is establishing a standard agreement to cover all residents who have received permission to place fences or other non-permanent structures encroaching on Parkview common property or property covered by a Parkview permanent easement. As a volunteer Board, The Agents have regrettably and unknowingly, failed to be consistent - as pointed out in a recent lawsuit – this seeks to remedy our past oversights.

For background and context: In the early 2000s, because both University City and Washington University were looking to assert ownership of the entire greenway between Ames Place and Parkview, Parkview Board of Agents encouraged Westgate lot owners to move their fences out onto the Parkview-owned alley. Shortly thereafter, Parkview President Mike Stephens caveated to homeowners that this could cause them problems when they tried to sell their homes, as the fence would be shown as an encroachment on Parkview property.

#### **10. Do I need to notify my insurance company per the Agreement?**

We believe it would be in your best interest to do so, however, you may opt-not-to. Simply cross out this phrase and initial it.

**11. Do we need to remove a concrete deck that currently encroaches?**

No. Parkview will “grandfather-in” such ground covering since they can be removed if ever necessary.

**12. What happens if we choose not to sign the agreement?**

If you choose not sign, Parkview will be unable to approve future requests for fence replacement permits (as required by University City). Should you put up a fence without obtaining a permit, you will be required to remove it at your expense.

Should you sell your home, Parkview will be unable to verify for the Title Company that you (the lot owner) are in compliance with the Indentures.

**13. How can we get this notarized in these Covid times?**

Every party’s signature to the agreement must be notarized. We are happy to assist by: arranging a porch signing, a signing at the law offices, or you may choose to have your bank notarize your signature. Please contact us for assistance.