Sent: Tuesday, January 24, 2006 6:48 AM
To: cindy4shoreline@yahoo.com; Ryu, Cindy
Subject: Tree Removal Moratorium

Ms. Ryu,

My name is John Hushagen and I am the owner of Seattle Tree Preservation, Inc. and a resident of the Innis Arden area of Shoreline. I recently learned that the Council has imposed a mooratorium on tree removal in Shoreline and I am writing to comment on that action.

It is my understanding that the Council was heavily influenced by a group of Innis Arden residents who have reacted to what is clearly over-reaching and bully tactics by some Innis Arden residents to remove trees and maintain views or create views they never had. This group's push-back should have been expected given the rancor currently circulating through IA. However, in imposing a total ban on tree removal, we are shooting ourselves in the foot and over-reaching in our own way. I understand that the ban is so restrictive that even trees that are clearly dangerous cannot be removed. If this is the case, then this is a serious mistake. During this extraordinarily wet period my company has been called on at least two occasions in the area to remove trees whose roots were compromised by disease and were leaning as a result of saturated soil and windy conditions. We removed these trees, that outwardly appeared healthy, before they fell and caused damage.

My guess is that most Shoreline residents are unaware of the tree removal ban. Others will ignore it and hope their neighbors don't turn them in to the "tree cops." I strongly suggest that the Shoreline City Council re-visit this issue immediately. Public policy should be made with a factual basis, not based on the agenda of whichever group hollers the loudest!!

John Hushagen
Shoreline

****

-----Original Message-----
From: john hollinrake [mailto:hollinj@comcast.net]
Sent: Sunday, February 05, 2006 8:45 PM
To: Ian Sievers
Cc: jacobsmichaell@qwest.net; Matt Torpey
Subject: Critical Area Ordinance - Hazardous Trees

Mr. Sievers:

Innis Arden and its residents need the ability to manage its privately owned properties (including critical areas) as follows:

1. Protect residents from hazardous conditions, including hazardous trees. This would include protecting residents who are hiking on the established trails and children who are playing off trail. It also includes protecting residents, especially children, playing in their yards which are on or adjacent to critical areas.

In the last 4 years, 7 trees have fallen on my property. One tree smashed the storage building on my property. Numerous other trees have fallen in the community owned property adjacent to my property. In addition, 2 of my neighbors' trees fell onto areas on my property in which my children play.

Hazardous trees pose a significant risk to the residents of Innis Arden. We need the ability to protect ourselves from these hazards.

Furthermore, the primary role of government is to protect the life and property of its citizens. Accordingly, the City needs to establish reasonable rules and procedures to protect the residents of Innis Arden from hazardous conditions. I am concerned that if the City fails to fulfill its duties regarding potential hazards, citizens may be injured and the City may be sued for failure to properly protect its citizens. In addition, if the City adopts overly restrictive rules regarding hazardous trees, they may be successfully challenged by Innis Arden residents in court.

2. The courts have ruled that Innis Arden was established as a view neighborhood. Much of the enjoyment and value of our homes comes from our views of the Puget Sound and Olympic Mountains. I believe the residents of Richmond Beach and the Highlands also highly value their views of the Puget Sound and Olympic Mountains.

The views in Innis Arden are protected by restrictive covenants. These covenants prohibit view blocking trees on both privately owned properties and on the community owned properties.

To protect our quality of life and the value of our properties, we need the ability to manage the trees in critical areas (both on residential lots and on community owned areas) in a manner that protects our views in an environmentally sensitive manner. The vegetation management plan implemented in the Grouse Reserve has been a great success and is a model for other critical areas.

To protect our quality of life and our property values, the City should adopt procedures such as the Critical Area Stewardship Plans and tree removal for views rules proposed by the City Staff last year. The City should also consider the adjustments to these rules proposed by Innis Arden representatives, including Mr. Jacobs.

If the City does not allow the residents of Innis Arden to manage its critical areas in a manner that protects their quality of life and their property values, the residents of Innis Arden will be forced to protect their property rights by bringing legal action against the City.

I am hopeful that the City will adopt reasonable rules that will protect the residents of Innis Arden from hazards and also allow us to protect our quality of life and our property values.

Please let me know if you would like to discuss the foregoing matters.

John Hollinrake
1048 NW Innis Arden Drive
Shoreline, WA 98177

-----Original Message-----
From: tee ceecee <teeceecee2003@hotmail.com>
To: Joe Tovar <jtovar@ci.shoreline.wa.us>
CC: catfordt@edmonds.wednet.edu <catfordt@edmonds.wednet.edu>
Sent: Mon Feb 06 14:18:15 2006
Subject: Public Comment--Ordinance #407

2/6/06
RE: Ordinance #407—Public Comment

My name is Teresa Catford. Because I may not be able to make the City Council Meeting's Public Hearing tonight (February 6th), I am leaving my comments via email.

My husband and I live at 1320 NW 175th Street in Innis Arden. We have a unique property that is adjacent to Coyote Reserve. We enjoy a view of the mountains and the Sound as well as the wonderful green space and trees that make up the Reserve. Both my husband and I have been very concerned with the direction the neighborhood management is going regarding the Reserves, and I am thrilled that the City of Shoreline has intervened with Ordinance #407 prohibiting the cutting of trees and land clearing for 4 months.

I would support the City of Shoreline adopting a permanent change in the Growth Management Act requiring citizens who want to clear 'hazardous trees' to retain/apply for an arborist/tree consultant chosen by the City and at the applicants cost to determine if indeed the identified trees are hazardous and warrant removal.

Here are my concerns and comments regarding the management of the Reserves in Innis Arden:

Residential versus Reserve Tracks in Innis Arden and the View Covenants: As you know Innis Arden has view covenants and we personally benefit from their enforcement on the residential properties directly west of us. Because our neighbors keep their vegetation to roof height (roughly) we still enjoy a water/mountain view. (We also keep our Birch trees trimmed to roof height in the spirit of these view covenants.) We moved into the neighborhood in the summer of 2002 because we were attracted as much to the water views as to the many territorial views of beautiful trees. I believe that the Reserves should be treated differently than residential tracks with regards to tree height, i.e. trees in the Reserves should not be topped to the level of some arbitrary roof height.

Reserves are in Critical Natural Areas and provide habitat not found elsewhere in the City of Shoreline.
As the City has determined, Innis Arden has allowed tree cutting and clearing in Reserves that are wetlands and watersheds to the detriment of the critical habitat for urban wildlife as well as the detriment of the natural areas 'downstream'--areas which include our beautiful fish-friendly beaches. I am specifically concerned for the future of the Reserve adjacent to me (Coyote Reserve) because I have seen how important a habitat the upper canopy of the trees are for our local and migratory birds. We have seen many less common and incredible birds utilizing the upper canopy of the trees in Coyote Reserve: We have

seen pairs of pileated woodpeckers, and sharp-shinned hawks fly in and out of the Reserve seeking shelter and food.
Last year we have had a pair of barred owls visit the Reserve virtually everyday—mating in the early spring and returning nightly through late fall to hunt and rest. We have also seen Osprey, fresh from successful fishing expeditions at the beach, fly over our house with fish in their talons to hang in our trees and eat. Migratory birds also rely on the shelter and food of our healthy Reserves throughout the year. The Reserves of Innis Arden (and their integrity) are critical not only to humans who love looking at trees, but are critical habitat to untold species of urban wildlife. Though privately owned, Innis Arden Reserves are important for all of the City of Shoreline and all the communities that enjoy and want to maintain the healthy watersheds and beaches of Puget Sound.

Thank you for taking my comments and for your work to help the Innis Arden neighborhood find a balance between the rights of private property owners and the importance of respecting the needs of the broader community.

Teresa Catford
1320 NW 175th Street
Shoreline WA 98177
206-546-5487

-----Original Message-----
From: Al Wagar [mailto:alwagar@verizon.net]
Sent: Tuesday, February 07, 2006 9:24 AM
To: Matt Torpey; Joe Tovar
Subject: Thoughts on code for hazard trees and managing critical areas

Matt and Joe,

Interesting hearing last night. I think it's good to include recreational trails among the targets. Otherwise, to avoid abuse of the current loophole, I'm glad to see requirement for a second opinion before trees come down. I assume you have a copy of the Innis Arden vegetation management plan negotiated with the City in 1996. If not, I can provide one.

Concerning true emergencies, where trees constitute immediate threats, I'd favor the following:

1) If trees are taken down without City involvement, require a) that they be photographed prior to removal, with features included in the photo to identify the location, b) that sufficient material be saved to allow after-the-fact evaluation of the hazard, and c) that significant fines be levied if it is found that tree was not hazardous. (There's some awkwardness here. Debris that obstructs traffic obviously has to be moved/removed and, once a tipped tree has been felled, the roots may well fall back into place. With some digging, however, root breakage and decay could be readily detected.)

2) Where tree is not obstructing traffic or threatening power lines, require that it be cordoned off and evaluated, rather than removed immediately.

3) Consider "timber trespass" charges. Mark Mead, Senior Urban Forester for Seattle Parks & Recreation Department, tells me that Seattle's code provides for triple the value of the tree, where the value is defined as the value added (primarily in enhanced view) for whoever took it down. The context here is Seattle's parks and greenbelts, i.e., publicly owned trees.

It's good to see the issue of long-term vegetation management in critical areas cited as something that needs to be addressed. It would help if we could accept that our wooded ravines can never be truly "natural" in the sense of reverting to an old growth condition where many species depend on "interior" conditions that cannot be maintained in small areas with lots of side light and inputs of heated air from outside. The point here would be to allow some non-native conifers that provide an evergreen element yet don't get so tall.

Concerning Innis Arden reserves, it might be advantageous to look at them as a single system, with "credits" for tall conifers along Boeing Creek used to offset the loss of such trees in other reserves where views are much more of an issue.

Finally, there's interest within the Innis Arden Board of integrating vegetation management with surface water management, in that our worst erosion problems are caused by water from the largely impermeable watersheds upstream from us. It seems likely that at least some of the

detention facilities needed to slow down the flows would have to be within our ravines, resulting in considerable disturbance during their construction. (Here we'd much prefer a series of weirs and ponds rather than one or two big ponds like that in Boeing Çreek Park.)

Hope the comments are useful.

Al Wagar

-----Original Message-----
From: 1bkbiery@verizon.net [mailto:1bkbiery@verizon.net]
Sent: Monday, February 13, 2006 3:08 PM
To: City Council
Subject: Web Site Contact Form

A contact form has been submitted from the web site:

Name: B
Address: Biery
City: Shoreline
State: WA
Zip: 98133
Neighborhood: Hillwood
Phone: 206.542.4722
E-Mail: 1bkbiery@verizon.net

Contact Via: Email

Message:
In Regards to:

I beg you to put a moratorium on tree cutting. We have lost far to many mature for expedience, leading to reduced quality of life (the very thing the city loves to brag about), property values and sound dampening.

Critical Area Ordinance-please vote to update

Ordinance 408-please vote for ammending
Cottage Housing
-OR- an extension of the moratorium

Please vote for the bond issue to acquire, maintain,and/or upgrade our parks.

I am in total support or authorizing funding for legal defense of Fimia, Way, Ransom and Chang

-----Original Message-----
From: Bruce Hilyer [mailto:bwhilyer@yahoo.com]
Sent: Monday, April 17, 2006 8:04 PM
To: PDS
Cc: csolle@earthlink.net
Subject: City Code revisions

Dear Commissioners: The draft ordinance before you has some good points but it will not be very useful if it is applied only to protect views that exist at the time of submission. Because we have not had a tool like this before, many views have become impaired and should have the chance to be restored. A similar limitation has been urged on the tree height covenant on private lots, but it has been rejected by every authoritative decision by the court in the Binns case, the special master and the IA Board. You should not be taking sides in the way this is drafted. Keep it flexible enought to make it workable. The key criteria should be not harming the integrity of the criticl areas. If that can be done, then there is no reason this should not be applied to restore views that have been lost. Sincerely, Bruce Hilyer, speaking as a private citizen. Thank You.

-----Original Message-----
From: Steve Gwinn [mailto:gwinnsmg1@verizon.net]
Sent: Monday, April 17, 2006 8:17 PM
To: PDS
Cc: 'Sandra Gilbert'; 'Pamela Smit'; csolle@earthlink.net; MJRLaw@aol.com
Subject: Innis Arden

It is so pathetically transparent that this is pointed at Innis Arden:

It is obvious once again that Shoreline has decided to listen to the few (ARM and the "Take a Tree to Lunch Bunch") instead of the silent majority in Innis Arden. We are REPRESENTED BY THE ELECTED BOARD who try and enforce the rules, covenants and restrictions everyone knew existed when they moved in except as changed BY MAJORITY VOTE. I grew up here and have to look at the alders and second and third growth slash in the so called Critical Areas. I have watched in horror as piece by piece & lawsuit by lawsuit the foundations and management of the neighborhood has been eroded by a few disgruntled and litigation happy people who apparently have nothing to do. Obviously their ultimate intentions are to have our covenants set aside and/or bankrupt the Club. Looks like they have "friends" @ City Hall. They have no intentions of abiding by the rules or decisions that don't go their way...Why is the City helping them out? How does the commission and the director feel it is empowered to keep tugging and pulling and screwing over our neighborhood? ARM does not speak for the majority here…Why don't you leave us to reforest and manage our property and reserves w/o BIG BROTHER chipping away at our private property rights and the expectations we had when we purchased our property in the neighborhood.

Oh ya…I'm not "rich" (whatever the hell that means). My mother helped me buy my house here and most all of the rest of the money I have went in too. I'm sure you could care less.

I can only hope that someday it is your home, your investment, your dreams and reasonable expectations that "take it in the shorts" from your so called "local government". Lastly; that your voice is not heard even though it is the clear majority represented by a dually elected Board...

Very discouraging..

Steve M. Gwinn
Gwinn Building Corporation
Construction Management
(T) 206.817.0658
(F) 425.483.9149
(F) 206.546.7902
gwinnsmg1@verizon.net

-----Original Message-----
From: Debby Howe [mailto:howeconsult@comcast.net]
Sent: Tuesday, April 18, 2006 12:19 PM
To: PDS
Subject: Proposed Hazard Tree and Critical Area Stewardship code revisions and Exemptions for permits

To the Shoreline Planning Commission,

Innis Arden is a community where we want and pay dearly for the value of our views and associated taxes. Most of us who live in Innis Arden moved here because we wanted views of the Sound and Mountains and because our covenants protect our views. There are a few residents who live in Innis Arden that do not have or want views and/or do not care if other residents want to maintain their views. These residents spend a whole lot of time and effort trying to influence the City of Shoreline into imposing rules against our covenants. Obviously and unfortunately it is clear that those few in our community (i.e. Rust, Phelps, Cottingham and Blauert) that have nothing better to do with their time have influenced the City of Shoreline. Clearly there are several proposals in the City's code revisions that are one sided.

We are very concerned about the City's proposed revision for critical areas stewardship (Section 3, 20.80.87 Critical Areas Stewardship Plan, paragraph 2). It states that an approved stewardship plan may authorize the limited cutting on non-hazardous vegetation in order to preserve private views of the Olympic Mountains and Puget Sound that existed at the time of the submittal of the plan." This provision is clearly against our covenants and court rulings stating that Innis Arden properties are entitled to the unobstructed views that were present since the 1940s.

If we can not maintain our views, our neighborhood will lose the values that make this neighborhood unique and desirable. If one objective of the Critical Areas Stewardship Plan is to restore views, how can that objective be fulfilled by limiting cutting to the views that existed at the time the plan is submitted? Many properties in Innis Arden had views that are now blocked by trees. With your proposed Stewardship Plan, we can only maintain views "that existed at the time of the submittal of the plan". Is the City going to go through a process of documenting who has and does not currently have views to determine which private views "existed at the time of submittal" and who should or should not therefore be allowed the authorizations under the Critical Areas Stewardship Plan? What about residents who had views, but now do not, yet they want to go through the process of restoring their views - are we forced to quickly restore our views in order to get included under the "existed at the time of the submittal of the plan"? What about those who have views now, but these views will be reduced by the time your new rule is adopted (some tree grow very fast)? As written, the City's proposed code revision is flawed. This provision should not be limited to only future view blockages. Please take out the "existed at the time of the submittal of the plan" clause.

We also have major concerns regarding specific provisions under the Critical Areas Stewardship Plan that appear to make it nearly impossible to meet. The costs associated with meeting the standards would be prohibited, consensus could not be reached, and nothing could ever be approved under the Stewardship Plan as written. The requirements are excessive, subjective, expensive and discriminatory of Innis Arden.

We are very confused as to why the City of Shoreline would demand a property owner to go through a laborious, if not impossible, approval process as outlined in Section 20.50.310 of the code revisions, to remove or alter hazardous trees. While we are waiting for an assessment, evaluation, authorization, approval, and/or permit exemption from the City of Shoreline, a tree(s) could damage our property or injure our children. If this were to occur, the City should be liable

for property damage and injury because their process makes it impossible for us to safely maintain our properties.

We appreciate your consideration of our concerns and all your hard work in addressing trees and views in our neighborhood.

Debby Howe
1515 NW 167 St.
Shoreline, WA 98177-3852
Phone: 206-542-6146
Fax: 206-546-2863
Email: howeconsult@comcast.net

-----Original Message-----
From: Larsen, Neal C [mailto:neal.c.larsen@boeing.com]
Sent: Tuesday, April 18, 2006 7:18 AM
To: PDS
Cc: howeconsult@comcast.net
Subject: Proposed Hazard Tree and Critical Area Stewardship Code Revision

To the Shoreline Planning Commission,

I have concerns regarding your proposed revisions to the Shoreline code that governs trees. In particular, Section 3, 20.80.87 Critical Areas Stewardship Plan, paragraph 2 states "... may authorize limited cutting on non-hazardous vegetation in order to preserve private views of the Olympic Mountains and Puget Sound that existed at the time of the submittal of the plan."

Let me understand the intent of this clause. There are members of our Innis Arden community that have, for various reasons, not kept their trees and shrubs in compliance with our community covenants, and therefore have blocked or restricted views. Again, these members are in violation of an existing rule. Now, if I read your proposed Critical Areas Stewardship Plan, these individuals that are in violation of existing rules will get an exemption, for they only need to maintain the view "that existed at the time of the submittal of the plan"

This is an in insult to rules and covenants enforcement! A better choice would a statement in your proposed plan for the maintenance of views "that support existing community covenants, including those individuals in said communities that have trees and vegetation that are in violation of these community covenants at the time of the submittal of the plan"

Thank you for your hard work in addressing the many situations regarding trees and views. I appreciate your attempt to tackle this divisive subject, but your proposals are clearly one sided, even in this subtle wording. And I think Shoreline is moving forward with positive steps, although this proposed tree and view proposal needs more work. Together we can make a better community.

Neal C. Larsen
Finance Analyst
Global Partners
Boeing Commercial Airplanes
425 342-6843 m/s 05-45
neal.c.larsen@boeing.com

-----Original Message-----
From: Joe Tovar
Sent: Wednesday, April 19, 2006 11:05 PM
To: 'gwinnsmg1@verizon.net'
Cc: Matt Torpey
Subject: Re: Meeting this date re: proposed ordinance

Thank you, sir. Your ideas and concerns will get further consideration by me and the Planning Commission a well. I cannot yet tell how close my final recommended text will get to your ideal preferred language, but if we have differing opinions it won't be because I was not listening with an open mind. I will be leaving town tomorrow for over a week, but back the first of the month. I will look forward to continued dialogue with you and others as this gets taken up by the Planning Commission. Again, thanks. Joe T

-----Original Message-----
From: Steve Gwinn <gwinnsmg1@verizon.net>
To: Joe Tovar <jtovar@ci.shoreline.wa.us>
CC: 'Sandra Gilbert' <s.gilbert@f5.com>; 'Pamela Smit' <p.smit@gte.net>
Sent: Wed Apr 19 22:53:09 2006
Subject: Meeting this date re: proposed ordinance

Mr. Tovar:

Thank you for your time today. I believe we were afforded a fair opportunity to present our views and listen to yours.

You have a difficult task (s) and I appreciate a forum to be heard and courteously exchange ideas.

Frankly, I left your office feeling our concerns and thoughts will be reasonably evaluated and considered.

I am willing at any time to discuss open issues. It will be done in a spirit of cooperation, compromise and open exchange of ideas. We are all looking for the best solution for all interested parties. I have no doubt you have the same goal.

Respectfully,

Steve M. Gwinn
Gwinn Building Corporation
Construction Management
(T) 206.817.0658
(F) 425.483.9149
(F) 206.546.7902
gwinnsmg1@verizon.net

-----Original Message-----
From: Matt Torpey
Sent: Wednesday, April 26, 2006 8:49 AM
To: 'MLMcFadden'
Subject: RE: Notice of application and public hearing, City of Shoreline Tree Regulations

I do not think that alternatives would be appropriate. We are operating on a “no net loss” policy that would be proposed by the applicants qualified professionals (arborist, geotech, and stream and wildlife biologist) as well as reviewed and approved by the City’s third party professionals at the applicants expense. The outcome of any proposed stewardship plan should be to leave the environment as good or better than how it was before the proposal.

-----Original Message-----
From: MLMcFadden [mailto:mlmcfadden@centurytel.net]
Sent: Wednesday, April 26, 2006 8:41 AM
To: Matt Torpey
Subject: Re: Notice of application and public hearing, City of Shoreline Tree Regulations

I will - tell me, shouldn't the management plans include proposed mitigation alternatives? Seems implied but not stated?

Michele

----- Original Message -----
From: Matt Torpey
To: MLMcFadden
Sent: Wednesday, April 26, 2006 8:15 AM
Subject: RE: Notice of application and public hearing, City of Shoreline Tree Regulations

Thank you for pointing those out. Please let me know of any other potential errors.

-----Original Message-----
From: MLMcFadden [mailto:mlmcfadden@centurytel.net]
Sent: Monday, April 24, 2006 5:00 PM
To: Matt Torpey
Subject: Re: Notice of application and public hearing, City of Shoreline Tree Regulations

Tks - there are a couple of typos - in Section 3 the code number is not complete in the actual text, and in the second sentence of paragraph 1 of that section, I think you need a "to" after City and before "make a reasonable"?

Michele
----- Original Message -----
From: Matt Torpey
To: MLMcFadden
Sent: Monday, April 24, 2006 4:34 PM
Subject: RE: Notice of application and public hearing, City of Shoreline Tree Regulations

Actually, things are going pretty good for me here, loving what I do. No two days are the same.

I have attached the checklist; please let me know if you need anything else.

Thanks,
Matt.

-----Original Message-----
From: MLMcFadden [mailto:mlmcfadden@centurytel.net]
Sent: Monday, April 24, 2006 4:31 PM
To: Matt Torpey
Subject: Re: Notice of application and public hearing, City of Shoreline Tree Regulations

Hi Matt - are you still having fun up there? I'd like to get a copy of the checklist either electronically or by fax to 253-853-7077.

Tks

Michele McFadden

----- Original Message -----
From: Matt Torpey
To: 1bkbiery@verizon.net ; acatero@comcast.net ; alcoeh@aol.com ; alwagar@verizon.net ; aryahtov@yahoo.com ; bvreeland@tenforward.com ; bwhilyer@yahoo.com ; caveman@riseup.net ; cbelster@comcast.net ; ccook@pugetsound.org ; chucklesd2@hotmail.com ; cotco@comcast.net ; csolle@earthlink.net ; csteward@stewardandassociates.com ; cvwjr@excite.com ; dbun461@ecy.wa.gov ; diorio48@comcast.net ; gini_paulsen@yahoo.com ; greglogan@inwa.net ; gwingard@earthlink.net ; gwinnsmg1@verizon.net ; hollinj@comcast.net ; howeconsult@comcast.net ; iken@cted.wa.gov ; janetway@yahoo.com ; jereeves@gmail.com ; jlombard2415@earthlink.net ; k.fullerton@comcast.net ; kohn@u.washington.edu ; lstein@earthlink.net ; maggie_taber@ml.com ; mlmcfadden@centurytel.net ; morse51@w-link.net ; neal.c.larsen@boeing.com ; p.blauert@comcast.net ; profgrisse@comcast.net ; randyfpi@aol.com ; rgarwood@ci.sammamish.wa.us ; riro461@ecy.wa.gov ; rolfeangell@aol.com ; rphelpswa@earthlink.net ; efphelps@earthlink.net ; s.kellett@comcast.net ; sgschneider@earthlink.net ; cfloit@earthlink.net ; staleyjs@msn.com ; teeceecee2003@hotmail.com ; tomm@streamkeeper.org ; vkwestberg@toast.net
Cc: Jessica Simulcik Smith ; Scott Passey
Sent: Monday, April 24, 2006 3:15 PM
Subject: Notice of application and public hearing, City of Shoreline Tree Regulations

April 24, 2006

Good Afternoon,

This email is to inform you that that the City of Shoreline has begun the process of amending our development code to address both hazardous trees as well as the establishment of a critical areas stewardship plan.

This is being sent to you because you previously commented via email during the City of Shoreline critical areas ordinance update. You may recall that both hazardous trees as well as a stewardship plan regarding cutting trees in a critical area were both issues that the Planning Commission and Shoreline City Council agreed to address after the critical areas ordinance was completed.

Attached is the State Environmental Policy Act notice of application as well as the proposed code amendment language.

The City of Shoreline Planning Commission will be holding a workshop to discuss these issues on Thursday May 4, 2006 at 7:00 p.m. in the Rainier Room of the Shoreline Center located at 18560 1st Ave. NE. This meeting is a workshop only, so no public comment regarding the proposed amendments will be taken. The meeting is open to the public

A public hearing regarding the proposed amendments will be held on Thursday May 18, 2006 at 7:00 p.m. in the Rainier Room of the Shoreline Center. The Planning Commission will be accepting oral public comment at this hearing.

Written comment may be received up to the day of the hearing, however in order for the Planning Commission to receive and consider written comment in a timely manner we recommend that written comments are delivered to the Planning and Development Services Dept. c/o Matt Torpey 17544 Midvale Ave N. Shoreline, WA 98133 no later than Wednesday May 10 at 5:00 p.m.

The City of Shoreline encourages you to comment on these issues.

If you have any questions please email or phone Matt Torpey at 206-546-3826.

Sincerely,

Matt Torpey
Planner II
City of Shoreline

<<SEPA NOA.doc>>

<<Proposed Permanent Hazard Tree and Stewardship Regs.pdf>>

-----Original Message-----
From: Larsen, Neal C [mailto:neal.c.larsen@boeing.com]
Sent: Thursday, April 27, 2006 5:01 PM
To: Jessica Simulcik Smith
Subject: RE: Shoreline Planning Commission: May 4, 2006

Jessica, please note that I am very much opposed to the proposed critical areas stewardship plan section 3 20.80.87 paragraph 2. What you are proposing would be in conflict with the Innis Arden convenants. What the proposed plan would do is take away the views that we are assessed on, that we pay taxes on, and would be a taking of our property. Therefore we would expect from the City of Shoreline is a reduction in our taxes and a monetary compensation for the taking of our property value.

Is this what you want, a one sided proposal that will lead to legal action, loss of tax base revenue for the city and more controversy? Why not work with the Innis Arden board on a proposal that is best for the view community?

Thank you.

Neal Larsen
1515 NW 167 st
Shoreline, Wa. 98177

From: Jessica Simulcik Smith [mailto:jsimulcik@ci.shoreline.wa.us]
Sent: Thursday, April 27, 2006 4:10 PM
To: Jessica Simulcik Smith
Subject: Shoreline Planning Commission: May 4, 2006

The City of Shoreline's next Planning Commission meeting is Thursday, May 4, 2006 in the Mt. Rainier Room.

Item on the Agenda:

1. Study Session: Permanent Hazardous Trees Regulations & Critical Areas Stewardship Plan

To view the meeting packet, click on this link:
http://cosweb.ci.shoreline.wa.us/uploads/attachments/pds/050406/agenda.htm

jessica simulcik smith . planning commission clerk . city of shoreline
phone: 206.546.1508 . e-mail: jsmith@ci.shoreline.wa.us
on the web: www.cityofshoreline.com | Visit the Planning Commission Online

ITEM 7.i - ATTACHMENT C

Jessica Simulcik Smith

From: Debby Howe [howeconsult@comcast.net]
Sent: Monday, May 01, 2006 2:18 PM
To: City Council; Joe Tovar; Jessica Simulcik Smith
Subject: Proposed Hazard Tree and Critical Area Stewardship code revisions and Exemptions for permits

To the Shoreline Planning Commission,

Innis Arden is a community where we want and pay dearly for the value of our views and associated taxes. Most of us who live in Innis Arden moved here because we wanted views of the Sound and Mountains and because our covenants protect our views. There are a few residents who live in Innis Arden that do not have or want views and/or do not care if other residents want to maintain their views. These residents spend a whole lot of time and effort trying to influence the City of Shoreline into imposing rules against our covenants. Obviously and unfortunately it is clear that those few in our community (i.e. Rust, Phelps, Cottingham and Blauert) that have nothing better to do with their time have influenced the City of Shoreline. Clearly there are several proposals in the City's code revisions that are one sided.

We are very concerned about the City's proposed revision for critical areas stewardship (Section 3, 20.80.87 Critical Areas Stewardship Plan, paragraph 2). It states that an approved stewardship plan may authorize the limited cutting on non-hazardous vegetation in order to preserve private views of the Olympic Mountains and Puget Sound that existed at the time of the submittal of the plan." This provision is clearly against our covenants and court rulings stating that Innis Arden properties are entitled to the unobstructed views that were present since the 1940s.

If we can not maintain our views, our neighborhood will lose the values that make this neighborhood unique and desirable. If one objective of the Critical Areas Stewardship Plan is to restore views, how can that objective be fulfilled by limiting cutting to the views that existed at the time the plan is submitted? Many properties in Innis Arden had views that are now blocked by trees. With your proposed Stewardship Plan, we can only maintain views "that existed at the time of the submittal of the plan". Is the City going to go through a process of documenting who has and does not currently have views to determine which private views "existed at the time of submittal" and who should or should not therefore be allowed the authorizations under the Critical Areas Stewardship Plan? What about residents who had views, but now do not, yet they want to go through the process of restoring their views - are we forced to quickly restore our views in order to get included under the "existed at the time of the submittal of the plan"? What about those who have views now, but these views will be reduced by the time your new rule is adopted (some tree grow very fast)? As written, the City's proposed code revision is flawed. This provision should not be limited to only future view blockages. Please take out the "existed at the time of the submittal of the plan" clause.

We also have major concerns regarding specific provisions under the Critical Areas Stewardship Plan that appear to make it nearly impossible to meet. The costs associated with meeting the standards would be prohibited, consensus could not be reached, and nothing could ever be approved under the Stewardship Plan as written. The requirements are excessive, subjective, expensive and discriminatory of Innis Arden.

We are very confused as to why the City of Shoreline would demand a property owner to go through a laborious, if not impossible, approval process as outlined in Section 20.50.310 of the code revisions, to remove or alter hazardous trees. While we are waiting for an assessment, evaluation, authorization, approval, and/or permit exemption from the City of Shoreline, a tree(s) could damage our property or injure our children. If this were to occur, the City should be liable for property damage and injury because their process makes it impossible for us to safely maintain our properties.

We appreciate your consideration of our concerns and all your hard work in addressing trees and views in our neighborhood.

Debby Howe
1515 NW 167 St.
Shoreline, WA 98177-3852

ITEM 7.i - ATTACHMENT C

Phone: 206-542-6146
Fax: 206-546-2863
Email: howeconsult@comcast.net

NANCY RUST
18747 RIDGEFIELD RD NW
SHORELINE WA 98177

May 2, 2006

Shoreline Planning Commission
1110 N. 175th St. Suite 107
Shoreline WA, 98133

Dear Members of the Planning Commission:

I am writing in regards to the proposed amendments regarding hazardous trees and adoption of a provision providing for stewardship plans in critical areas.

I support the provision dealing with hazardous trees. This provision should close the loophole which has allowed the destruction of many apparently healthy trees.

I have concerns with the proposed new section 20.80.87. Sec. 1 refers to "private view rights". I urge you to delete this reference. There are no private view rights in Innis Arden that allow for cutting trees in Innis Arden reserves whether or not they are in critical areas. The so called View Preservation Amendment does not cover trees in the Innis Arden reserves. This was confirmed by Judge Ellington in her statement. Innis Arden may have covenants, but they still have to comply with state and local law. They must comply with ordinances that the state Growth Management Act mandates the city to inact.

Further, the use of the term "private view right" could infer a right to a view through individual private properties containing critical areas.

The provisions for stewardship plans appear to be reasonable on the surface. In dealing with critical areas in the Innis Arden reserves, however, the fact that the plan must result in no net loss of the functions and values of the critical areas does not address the fact that much of the functions and values of these critical areas has already been destroyed. A stewardship plan for such an area that has already been damaged must also address a plan for restoration of the functions and values that have been destroyed. Any plan must be enforceable. I urge you to consider requiring a bond before any action is taken.

I also urge the planning commission to not allow any cutting of trees on public property to enhance private views.

Sincerely,

Nancy Rust, Innis Arden resident
cc Joe Tovar, Director

-----Original Message-----
From: Joe Tovar <jtovar@ci.shoreline.wa.us>
To: 'efphelps@earthlink.net' <efphelps@earthlink.net>
Sent: Thu May 04 10:15:16 2006
Subject: Re: CAO - tree provisions

Thank you. We have received a number of other written materials as well. All will be transmitted to the Commission prior to their May 18 public hearing. They will not be reviewing or taking any public testimony, written or oral, at tonight's study meeting.
Joe Tovar

-----Original Message-----
From: Elaine Phelps <efphelps@earthlink.net>
To: Jessica Simulcik Smith <jsimulcik@ci.shoreline.wa.us>
CC: Joe Tovar <jtovar@ci.shoreline.wa.us>
Sent: Thu May 04 09:57:59 2006
Subject: CAO - tree provisions

Attached please find my comments regarding the CAO proposals from Planning & Development Services, Sections 20.50.310 Hazardous Trees, and 20.80.87 Critical Areas Stewardship Plan. I would appreciate it if you were to forward the attached to each of the Commissioners in advance of their May 4 study session.

Thank you.

Elaine Phelps

ELAINE PHELPS **ITEM 7.i - ATTACHMENT C**
17238 10th Ave. NW
Shoreline WA 98177

May 3, 2006

Shoreline Planning Commission
Shoreline City Hall
17544 Midvale Ave. N.
Shoreline, WA 98133-4921

Subject: Critical Areas Ordinance,
Staff-proposed new changes: 20.50.310 (Hazardous Trees)
20.80.080 G, 20.80.87 Stewardship Plans

Although I am a member of ARM of Innis Arden, I am at this time speaking only for myself.

The hazardous trees proposals comprise an excellent improvement over the previous language and provide unambiguous regulations to deal with several degrees of hazards that might be presented by trees in various situations. They reveal the proper concern for quick action where necessary as well as stricter standards and procedures where the situation is less urgent

On the other hand, the proposal to allow the cutting of trees for views in critical areas runs completely counter to the spirit and underlying principle of the Critical Areas Ordinance. It is also contains at least one false assumption, and it presents an entirely new category of concerns. The remainder of my comments will be addressed to these issues.

Quoting from the proposed 20.80.87 Critical Areas stewardship plan:

> 1. ". . . The stewardship plan also provides a regulatory tool for the City [to] make a reasonable accommodation of private view rights in view-covenanted communities while still meeting the over-arching statutory mandate to protect critical areas."

So far as I know, Innis Arden is the only such community within Shoreline. Whether this is correct or not, the presumed view rights do not exist so far as the 52 acres of Innis Arden Reserves are concerned. This is a major point of contention between those who want to cut trees in the Reserves for views and those who oppose such action.

This matter is one of the issues in a lawsuit that has been filed against the Innis Arden Club, Inc. by a number of Innis Arden residents. It is therefore entirely inappropriate for the City of Shoreline to presume, as it does in the document under discussion, that the relevant "private view rights" even exist in relation to the Reserves.

The only private view rights in Innis Arden that have legal basis are those pertaining to view-blocking trees on private residential property, but this most definitely does not include the Innis Arden Reserves, which are explicitly exempted from being developed as residential lots.

Only after the court has made its decision will we know what the legal status is of the Reserves so far as cutting for views is concerned.

I therefore recommend the deletion of the quoted section, since it is based on an incorrect and contentious interpretation of the current status of the view provisions in the Innis Arden covenants as they pertain to the Reserves.

Quoting again from the proposed 20.80.87 Critical Areas stewardship plan:

> 2. ". . . An approved stewardship plan may authorize the limited cutting of non-hazardous vegetation in order to preserve private views of the Olympic Mountains and Puget Sound that existed at the time of the submittal of the plan."

Once more, this steps into the area of legal dispute. Much of the cutting in the Innis Arden Reserves in recent years was done not to "preserve" but to *create* views where none existed before, or at least did not exist for the recent purchasers. It was allowed by a complicit Board for people who did not buy view property but who knew that if masses of Reserves trees were cut, they could create a view for themselves at the expense of the remainder of the residents and the integrity of the Reserves.

As above, I recommend deletion of the quoted section as being inappropriate in light of the ongoing litigation on the subject.

Other than the quoted portions above, the proposed Critical Areas Stewardship Plan has much to recommend it, and I shall be speaking to that in a later communication.

Thank you for your consideration.

Elaine Phelps
17238 10th Ave. NW
Shoreline WA 98177

Mr. Vreeland,

Thank you for you comments, I will make sure that they are forwarded on to the Planning Commission for consideration. Just a reminder that the public hearing will be Thursday May 18th at 7:00. Also, you can watch the "study session" from last night on channel 21.

Thanks,

Matt.

-----Original Message-----
From: Bob Vreeland [mailto:bvreeland@tenforward.com]
Sent: Friday, May 05, 2006 9:39 AM
To: Matt Torpey
Subject: Re: Notice of application and public hearing, City of Shoreline Tree Regulations

Mr. Torpey:

Thank you for the opportunity to review the proposed amendments to the Shoreline development code. I have a few suggested changes and additions.

Under 20.50.310 Exemptions from permit, number 1, letter e: I suggest that any exemption for active and imminent hazard be subject to letters "g" through "i." It is not clear to me under letter "e" that there would be any qualified professional physically observing the tree/s or other vegetation requested for removal prior to the Director making a verbal authorization for immediate abatement "by any means necessary." This appears to me to be an avenue for potential abuse and/or harm to adjacent vegetation that could lead to further requests for "immediate abatement." There may need to be a time line placed on the assessment by the qualified professional to ensure the vegetation poses an active and imminent hazard and the proposed abatement will not cause a future "active and imminent hazard" to adjacent vegetation. Perhaps 48 to 72 hours after the request for immediate abatement, or what ever seems reasonable under the circumstances and to the City of Shoreline. With a qualified professional personally viewing the situation, the Director will be sure that request for immediate abatement is not spurious and/or being abused.

Under letter J (20.50.310, 1) I suggest adding the words "and vegetation" after " signicant trees" so that the end of the first sentence reads: "...including replacement of any significant trees AND VEGETATION."

Under 20.80.87 Critical Areas stewardship plan, it is unclear to me if the public has the opportunity to review and comment on proposed stewardship plans. Given that these plans are for stewardship of public lands in the City of Shoreline, I suggest language in this section that ensures there is a public hearing for any proposed critical areas stewardship plan and a method for public appeal of any City approved stewardship plan. Perhaps this could be done with a reference to public review and the appeal process in another portion of the SMC.

I hope you will seriously consider my above suggestions, and again thank you for the opportunity to comment.

Robert Vreeland
Fisheries Scientest, retired

---------- Original Message ----------
From: "Matt Torpey" <mtorpey@ci.shoreline.wa.us>
Date: Mon, 24 Apr 2006 15:15:05 -0700

April 24, 2006

Good Afternoon,

This email is to inform you that that the City of Shoreline has begun the process of amending our development code to address both hazardous trees as well as the establishment of a critical areas stewardship plan.

This is being sent to you because you previously commented via email during the City of Shoreline critical areas ordinance update. You may recall that both hazardous trees as well as a stewardship plan regarding cutting trees in a critical area were both issues that the Planning Commission and Shoreline City Council agreed to address after the critical areas ordinance was completed.

Attached is the State Environmental Policy Act notice of application as well as the proposed code amendment language.

The City of Shoreline Planning Commission will be holding a workshop to discuss these issues on Thursday May 4, 2006 at 7:00 p.m. in the Rainier Room of the Shoreline Center located at 18560 1st Ave. NE. This meeting is a workshop only, so no public comment regarding the proposed amendments will be taken. The meeting is open to the public

A public hearing regarding the proposed amendments will be held on Thursday May 18, 2006 at 7:00 p.m. in the Rainier Room of the Shoreline Center. The Planning Commission will be accepting oral public comment at this hearing.

Written comment may be received up to the day of the hearing, however in order for the Planning Commission to receive and consider written comment in a timely manner we recommend that written comments are delivered to the Planning and Development Services Dept. c/o Matt Torpey 17544 Midvale Ave N. Shoreline, WA 98133 no later than Wednesday May 10 at 5:00 p.m. The City of Shoreline encourages you to comment on these issues.

If you have any questions please email or phone Matt Torpey at 206-546-3826.

Sincerely,
Matt Torpey
Planner II
City of Shoreline

Thank you for your comments Mr. Isabell. They will be forwarded to the Planning Commission. If you would like to provide oral testimony, please come to the public hearing scheduled for May 18th at 7:00 p.m.

Sincerely,

Matt Torpey
Planner II
City of Shoreline

-----Original Message-----
From: Bill Isabell [mailto:Bill@theisabellcompany.com]
Sent: Monday, May 08, 2006 3:35 PM
To: Matt Torpey
Subject: may092006

I endorse this letter to the planning commission regarding the critical areas ordinance code revisions.

TO: Shoreline Planning Commission
FROM: William Isabell, 17204 13th Ave NW, Shoreline WA 98177.
DATE: May 9, 2006

RE: Critical Areas Ordinance Code Revisions

Because a vocal minority of residents in Innis Arden has not met its objective through the neighborhood democratic process (i.e. it cannot achieve a majority on the Board of Directors and it cannot sway the majority to adopt their beliefs), it is now turning to the City of Shoreline to help them meet this objective. Its objective is to *cut no trees*.

This same minority was unable to meet its objective in the 1980's when Judge Ellington and the Court of Appeals ruled that the tree preservation amendment was valid and enforceable. As the Special Master ruled on some 600 tree disputes and many views were restored, this same minority turned to King County and (at that time) the Sensitive Areas Ordinance to stop the cutting of trees.

The minority has an established pattern of getting the government to do their work when the democratic process and the court system will not.

It is clearly obvious that these proposed code revisions are a result of the persistence of this minority. Will the Planning Commission listen to the vocal, or will it listen to reason?

The **hazardous tree exemption** is effective the way it is now. Why are these arduous procedures being proposed?

- Unnecessary expense to the property owner could be avoided if the City would provide a list of approved certified arborists to evaluate a hazardous tree.
- Does the Director have a botanical background that would supercede the recommendations of a certified arborist?
- What is a 'hand held' instrument? Cranes can effectively remove trees intact without disturbing surrounding vegetation. If a tree is leaning over a house, how is it to be removed with a 'hand held' instrument? Tree removal should not be limited to 'hand held" instruments.

The **Critical Areas stewardship plan** needs some changes.

- Why is cutting limited to preserving views that exist at the time the plan is adopted? The Courts have ruled that Innis Arden properties are entitled to the unobstructed views that were present in 1941 for IA I, 1945 for IA II, and 1949 for IA III. The only view blocking vegetation allowed are the 10 grandfathered trees that were view blocking at that time. The City process should be neutral and not pick sides in the view versus tree protection squabble. This provision should **not** be limited to only future view blockages.
- Why is the minimum area of land within a stewardship plan 10 acres? This would preclude private property owners from complying with the view preservation amendment. The 10 acre minimum should be removed.
- The Plan includes provisions that are cost prohibitive. The standards are impossible to achieve since the expenses associated with it could be in the millions of dollars. Sections a through e show requirements that are excessive, subjective, expensive and discriminatory for Innis Arden.

TO: Shoreline Planning Commission
FROM: Concerned Shoreline Residents
DATE: May 9, 2006

RE: Critical Areas Ordinance Code Revisions

Because a vocal minority of residents in Innis Arden has not met its objective through the neighborhood democratic process (i.e. it cannot achieve a majority on the Board of Directors and it cannot sway the majority to adopt their beliefs), it is now turning to the City of Shoreline to help them meet this objective. Its objective is to *cut no trees*.

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The minority has an established pattern of getting the government to do their work when the democratic process and the court system will not.

It is clearly obvious that these proposed code revisions are a result of the persistence of this minority. Will the Planning Commission listen to the vocal, or will it listen to reason?

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- Unnecessary expense to the property owner could be avoided if the City would provide a list of approved certified arborists to evaluate a hazardous tree.
- Does the Director have a botanical background that would supercede the recommendations of a certified arborist?
- What is a 'hand held' instrument? Cranes can effectively remove trees intact without disturbing surrounding vegetation. If a tree is leaning over a house, how is it to be removed with a 'hand held' instrument? Tree removal should not be limited to 'hand held" instruments.

The **Critical Areas stewardship plan** needs some changes.

- Why is cutting limited to preserving views that exist at the time the plan is adopted? The Courts have ruled that Innis Arden properties are entitled to the unobstructed views that were present in 1941 for IA I, 1945 for IA II, and 1949 for IA III. The only view blocking vegetation allowed are the 10 grandfathered trees that were view blocking at that time. The City process should be neutral and not pick sides in the view versus tree protection squabble. This provision should **not** be limited to only future view blockages.
- Why is the minimum area of land within a stewardship plan 10 acres? This would preclude private property owners from complying with the view preservation amendment. The 10 acre minimum should be removed.
- The Plan includes provisions that are cost prohibitive. The standards are impossible to achieve since the expenses associated with it could be in the millions of dollars. Sections a through e show requirements that are excessive, subjective, expensive and discriminatory for Innis Arden.

We the undersigned are residents of the City of Shoreline. We concur with the recommendations described above and are concerned about the issues raised. We hope that you will value the community's input.

Sincerely,

	Name	Address	Date
1.	Andrea Dodd	18219 13th ave NW	5.8.06
2.	Martin J Golden	18211-13th Ave NW	5-08-06
3.	Angela J Golden	18211 13th ave. N.W	5-08-06
4.	[signature]	18211 13th Ave NW	5-08-06
5.	BRAD THORESON	18230 RIDGEFIELD RD	5-8-06
6.	[signature]	18306 RIDGEFIELD RD NW	5/8/06
7.	Betty J Ward	18306 Ridgefield Rd N.W	5/8/06
8.	Robert J. Ewart	18300 Ridgefield Rd. NW	5/8/06
9.	Karen L. Town	18220 Ridgefield Rd. N.W.	5-8-06
10.	Debby Howe	1515 NW 167 st.	5-8-06
11.	James M Shea	16715 15 Ave NW	5/8/06

We the undersigned are residents of the City of Shoreline. We concur with the recommendations described above and are concerned about the issues raised. We hope that you will value the community's input.

Sincerely,

	Name	Address	Date
1.	Tracy Landboe	16741 15TH AVE NW	5-8-06
2.	JUDY H ALLEN	17235 12TH AVE NW	5-8-06
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We the undersigned are residents of the City of Shoreline. We concur with the recommendations described above and are concerned about the issues raised. We hope that you will value the community's input.

Sincerely,

Name	Address	Date
1. Elroy Burgwald	17231 12th NW	5-9-06
2. Elaine D. Burgwald	17231 12th N.W.	5-9-06
3. ROBERT D. ALLEN	17225-12th NW	5-9-06
4.	17767-14th NW	5-9-06
5. Julie K. Lamb	17767-14th NW	5-9-06
6. & Betty M. Lamb	17767-14th NW.	5-9-06
7. Kelly M Taber	18565 SPRINGDALE CT NW	5-9-06
8.	18361 8th AVE. NW	5-9-06
9.	18514 Ridgefield Rd NW	5-9-06
10. Pam Isabell	17204 13th Ave NW	
11.	1033 NW 175th St.	05-09-06

We the undersigned are residents of the City of Shoreline. We concur with the recommendations described above and are concerned about the issues raised. We hope that you will value the community's input.

Sincerely,

Name	Address	Date
1. Melinda Catalano	18247 13th Ave NW	5-9-06
2. Albert C Seefeldt	18517-8th	5-9-06
3. Karen Ness.	17269-15 AVE NW.	5-9-06.
4. Lyle Manns	18525 8th. NW	5-9-06
5. Neil R Jog	17768 13th Ave NW	5-906
6. Jane E. Howard	824 NW Innis Arden Dr.	5-9-06
7. Celia Hamman	18208 Ridgefield Rd NW	5-9-06
8. Roy L Lewis	18384 Ridgefield Rd NW	5-9-06
9. John Hollinsbe	1048 NW Innis Arden	542-4842
10. Shelley Watson	18231 14th NW	542-4369
11. Jonyn J. Hurley	18545 8th Pl NW.	546-7467

We the undersigned are residents of the City of Shoreline. We concur with the recommendations described above and are concerned about the issues raised. We hope that you will value the community's input and listen to reason which is what the majority of people in Innis Arden desire.

Sincerely,

DAVID SOLLE 1. Printed name	17061 12th Ave NW Address
Dave Solle Signature	5/9/06 Date
Marianne Stephens 2. Printed name	17777 15th Ave NW Address
Marianne D. Stephens Signature	5-9-06 Date
David Stephens 3. Printed name	17777 15th Ave N.W. Address
D Stephens Signature	5-9-2006 Date
Karen M Sands 4. Printed name	5-9-06 Address
Margaret Jorgeson Signature	5-9-06 Date
Kathryn L. Earlstrom 5. Printed name	1033 NW 175th St Address
Kathryn L Earlstrom Signature	5-9-06 Date

We the undersigned are residents of the City of Shoreline. We concur with the recommendations described above and are concerned about the issues raised. We hope that you will value the community's input.

Sincerely,

	Name	Address	Date
1.	Corinne Reeves	18321 Ridgefield Rd NW	5/8/06
2.		18321 RIDGEFIELD RD	5/6/06
3.	Peter Vincent	18335 Ridgefield RD NW	5/8/06
4.		18335 Ridgefield Rd NW	5/8/06
5	Christine J Bozich	18354 Ridgefield Rd NW	5-8-06
6.	Susie Maryatt	18373 Ridgefield NW	5-8-06
7.	Doug Maryatt	18373 Ridgefield Rd NW	5/8/06
8.	Robert L B	18365 Ridgefield Rd N.W.	5/8/06
9.	Sara B Blair	18365 Ridgefield Rd NW	5/8/06
10.	Ronald Salvino	826 NW 180th St	5/8/06
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We the undersigned are residents of the City of Shoreline. We concur with the recommendations described above and are concerned about the issues raised. We hope that you will value the community's input.

Sincerely,

	Name	Address	Date
1.	Loren A. Rankin	17058 12th. AVE. N.W. Shoreline, WA. 98177	5/9/06
2.	Florence A. Blankinship	17045 - 12th Ave N.W. Shoreline, WA 98177	5-9-06
3.	Betty Jo Ledford	17726 15th Ave NW Shoreline WA 98177	5-9-06
4.	Mount Dodge	16724 16th Ave. Shoreline 98177	5-9-06
5.	Mellwyn R Call	17040 12th NW Shoreline WA 98177	5-9-06
6.	Ruth A. Rankin	17058 - 12th Ave. N.W. Shoreline, WA 98177	5-9-06
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We the undersigned are residents of the City of Shoreline. We concur with the recommendations described above and are concerned about the issues raised. We hope that you will value the community's input.

Sincerely,

	Name	Address	Date
1.	Jon D Staley	18545 Goring Lane CT NW	5/9/06
2.	Brian McMullen	18507 15th Ave NW	5/9/06
3.	Tim Cleveland	16701 15th NW	5/9/06
4.	[illegible]	17215 12th NW	5/9/06
5.	E. Sledziewski EWA SLEDZIEWSKI	17736 15th Ave NW	5/9/06
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We the undersigned are residents of the City of Shoreline. We concur with the recommendations described above and are concerned about the issues raised. We hope that you will value the community's input.

Sincerely,

	Name	Address	Date
1.	EDWARD RENOUARD	17227 14TH NW SHORELINE	5/8/06
2.	Bernadette Renouard	17227 - 14TH NW Shoreline	5/8/06
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We the undersigned are residents of the City of Shoreline. We concur with the recommendations described above and are concerned about the issues raised. We hope that you will value the community's input.

Sincerely,

	Name	Address	Date
1.	Maggie Tar	18565 Springdale Ct NW	5/9/06
2.	D Lillegren	17730 14th Ave NW	5/8/06
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We the undersigned are residents of the City of Shoreline. We concur with the recommendations described above and are concerned about the issues raised. We hope that you will value the community's input.

Sincerely,

	Name	Address	Date
1.	John Hollinrake	1048 NW Innis Arden Dr	5/8/06
2.	Harley L O'Neil Jr	18645-17th Ave NW.	5/9/06
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We the undersigned are residents of the City of Shoreline. We concur with the recommendations described above and are concerned about the issues raised. We hope that you will value the community's input.

Sincerely,

	Name	Address	Date
1.	Robert Buchmayr	18770 Ridgefield Rd NW	5/9/06
2.	Tierna Grant Buchmayr	18770 Ridgefield Rd NW 98177	5/10/06
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We the undersigned are residents of the City of Shoreline. We concur with the recommendations described above and are concerned about the issues raised. We hope that you will value the community's input.

Sincerely,

	Name	Address	Date
1.	Thom L Thom	17123 13th NW.	5/8/2006
2.	Marian Thom	17123 - 13 1/2 NW	5/8/2006
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We the undersigned are residents of the City of Shoreline. We concur with the recommendations described above and are concerned about the issues raised. We hope that you will value the community's input.

Sincerely,

	Name	Address	Date
1.	ANDREW SEGGINS	19734 RIDGEFIELD RD NW SHORELINE, WA 98177	5/9/06
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We the undersigned are residents of the City of Shoreline. We concur with the recommendations described above and are concerned about the issues raised. We hope that you will value the community's input.

Sincerely,

	Name	Address	Date
1.	Donald R. Actor Shoreline, Wa,	17769 13th Ave. N.W.	5-9-06
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We the undersigned are residents of the City of Shoreline. We concur with the recommendations described above and are concerned about the issues raised. We hope that you will value the community's input.

Sincerely,

	Name	Address	Date
1.	Lisa Hoff	17237 - 15TH Ave. N.W.	5/9/06
2.	Hugh Hoff	17237 15th Ave NW	5/9/06
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We the undersigned are residents of the City of Shoreline. We concur with the recommendations described above and are concerned about the issues raised. We hope that you will value the community's input.

Sincerely,

Name	Address	Date
1. [illegible]	17133 13th Ave NW	May 8 2006
2. Lisa W. Johnson	1426 NW Springdale Pl	5/8/06

We the undersigned are residents of the City of Shoreline. We concur with the recommendations described above and are concerned about the issues raised. We hope that you will value the community's input.

Sincerely,

	Name	Address	Date
1.	Richard A Catalano	18247 13th Ave NW	5/9/06
2.			
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We the undersigned are residents of the City of Shoreline. We concur with the recommendations described above and are concerned about the issues raised. We hope that you will value the community's input.

Sincerely,

	Name	Address	Date
1.	[signature]	18542 Springdale Ct NW	5/11/06
2.	[signature]	1203 NE 183rd St.	5/11/06
3.	[signature]	2148 N 183rd Pl.	5-11-06
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-----Original Message-----
From: Marianne Stephens [mailto:m.stephens@verizon.net]
Sent: Tuesday, May 09, 2006 7:00 AM
To: Matt Torpey
Subject: Innis Arden Resident input

Matt,

My husband and I had a landscaping project approved last year. We appreciated the help from you and your office. We have lived here two years, and are a bit concerned about what is going on in regard to the city. Though we have been heavily involved with neighborhood activities, I know no one who is involved with the group that calls itself "ARM." Apparently, that group is trying to have the city rewrite some ordinances. That group is a very, very small minority in Innis Arden. They do not speak for the rest of us. Please know that you hear about only the bitterest of disputes, and not about the hundreds of friendly exchanges between neighbors here (yes, even in regard to trees!).

We have read carefully and will be signing the petition that objects to the new draft of the Sensitive Areas Ordinance.

Thank you for your work--

Marianne & Dave Stephens

-----Original Message-----
From: Peter J. Eglick [mailto:eglick@EKWLaw.com]
Sent: Monday, May 08, 2006 5:04 PM
To: Joe Tovar
Cc: Matt Torpey
Subject: FW: Comments by Innis Arden Club re Hazardous Tree Regulation and Stewardship Plan
Importance: High

Hi Joe,

Here is a set of the comment docs we just sent to Matt. For the Club's latest comments, scroll down in the attachments. Please note: I have added as the last attachment the comments the Club submitted to you on the earlier staff draft so that they can also be considered by the Commission. Many are still germane to the current draft. As you know, we were very disappointed that our meeting with you turned out to be about a draft very different than the one presented to the Commission – and not in a way which was anticipated. The Club would appreciate the opportunity to work with the City on this now that we know what the proposal really is.

Peter J. Eglick
Eglick Kiker Whited PLLC
Suite 450
2025 First Avenue
Seattle, WA 98121
Phone: (206)441-1069
Fax: (206) 441-1089

From: Deniece Bleha
Sent: Monday, May 08, 2006 4:51 PM
To: mtorpey@ci.shoreline.wa.us
Cc: Peter J. Eglick; Josh Whited
Subject: Comments by Innis Arden Club re Hazardous Tree Regulation and Stewardship Plan

Dear Mr. Torpey:

Attached is Innis Arden Club's comments regarding the above referenced matter and supporting documents. Please let me know if you have any difficulty opening the attached. This is also being sent to you via facsimile and U.S. mail.

Deniece Bleha
Legal Assistant
EKW Law
2025 First Avenue, Suite 450
Seattle, WA 98121
(206) 441-1069

(COPY RECEIPT) (CLERK'S DATE STAMP)

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

INNIS ARDEN CLUB, INC., et al.,

Plaintiffs,

v.

JOHN H. BINNS, JR., et ux, et al.,

Defendants,

No. 84-2-09622-9

ORDER GRANTING CLASS ACTION SUMMARY JUDGMENT

I. HEARING

1.1 Date. February 17, 1987 and March 16, 1987.

1.2 Judge. Honorable Anne Ellington

1.3 Appearance. Foster, Pepper & Riviera and G. Richard Hill and Beth A. Clark appeared for plaintiffs; Houger, Miller & Stein, P.S.C. and William L. Houger and William L. Leavell, III appeared for the Defendants; and Cook, Berst, Landeen & Butler and George S. Cook appeared for Defendant Reiten.

II. ORAL DECISION

The oral Decision of Judge Ellington, including conclusions of law, was rendered March 16, 1987. A copy of the verbatim transcript of the oral Decision is attached hereto and incorporated herein.

FOSTER, PEPPER & RIVIERA
1111 THIRD AVENUE
SEATTLE, WASHINGTON 98101
(206) 447-4400

Prior to making its Decision, the court heard argument of counsel and considered the records and files herein, including but not limited to all pleadings in this case, Plaintiffs' Memorandum in Support of Motion for Class Action Summary Judgment, Declaration of Plaintiff John Blankinship, Declaration of Plaintiff Jack Dierdorff, Declaration of Plaintiff Mary Ann McKnight, Declaration of Plaintiff Richard Wolf, Declaration of Plaintiff Henry G. Liebman, Memorandum of Law in Support of Defendants' Motion for Summary Judgment, Memorandum in Support of Defendants' Motion for Attorney Fees, Affidavit of Defendant Tate, Affidavit of Defendant Mahan, Affidavit of Defendant Binns, Affidavit of Defendant Castner, Affidavit of Defendant Rust, Affidavit of Defendant Adkins, Affidavit of Defendant Lundh, Affidavit of Defendant Flick, Affidavit of Defendant Riely, Affidavit of Defendant Kluge, Affidavit of Defendant Kohn, Affidavit of Defendant Almquist, Affidavit of Defendant Wahl, Supplemental Declaration of Plaintiff Mary Ann McKnight, Plaintiffs' Memorandum in Opposition to Defendants' Motions for Summary Judgment and for Attorney Fees, Defendants' Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment, Affidavit of Defendant John H. Binns, Jr., Plaintiffs' Reply Memorandum, Supplemental Declaration of Plaintiff Mary Ann McKnight, Memorandum of Defendant Reiten, Affidavit of George S. Cook, Plaintiffs' Reply Memorandum, Reiten's Answer to Plaintiffs' Reply.

III. CONCLUSIONS

Based upon the materials reviewed, including the arguments of counsel, the court makes the following conclusions:

1. There are no genuine issues of material fact, and Plaintiffs are entitled to a grant of summary judgment as a matter of law.

2. The view preservation amendment ("Amendment") to the Innis Arden restrictive covenants ("Covenants") was adopted in accordance with the amendment procedures set forth in the Covenants. The Amendment was executed properly by signature of the requisite super-majority of Innis Arden lot owners and was filed properly. The court rejects the Defendants' argument that the Amendment could only be amended during certain time frames.

3. The scope of the Amendment is within the original intent of the grantor of the Covenants to preserve and maintain views from building sites, as expressed in paragraphs four, ten and eleven of the Covenants. The court rejects the Defendants' argument that the Community Club's alleged failure to enforce restrictions under paragraphs four and eleven constitute a waiver or now estop the Plaintiffs.

4. Enforcement of the Amendment is not an unconstitutional taking of private property for private purposes. The treble damages statute has no application in this case.

5. The Amendment, as drafted, is reasonable in purpose, i.e., the Amendment is evenhanded, applies to all lot owners and

applies to all trees wherever and whenever planted, so long as such trees obstruct views. Overall the Amendment is reasonable in application; however, whether application of the Amendment is reasonable in particular circumstances may require a factual inquiry.

6. Appointment of a special master to conduct a factual inquiry, upon the request of any party to this proceeding opposed to application of the Amendment, and to make recommendations for disposition to this court, would be an appropriate means of determining whether application of the Amendment is reasonable in a particular circumstance; said Special Master shall also propose guidelines, for the Court's approval; to guide future enforcement of the Amendment. The court assigns the initial costs of the initial appointment of a special master to the Innis Arden Community Club. The term "initial costs" shall be the subject of determination at later proceedings.

7. There is no just reason for delay in entry of this order. The court finds that any appeal from this order should be taken at this time.

IV. ORDER AND JUDGMENT

Based on the foregoing, it is hereby ordered, adjudged and decreed, that:

1. Plaintiffs' motion for class action summary judgment is granted; and Defendants' motion for summary judgment is denied;

2. Plaintiffs are hereby awarded a declaratory judgment that the Covenants, as amended, are valid and enforceable as to all lots within Innis Arden, except in particular circumstances where application of the Amendment would not be reasonable, as determined by a factual inquiry;

3. This court retains jurisdiction to appoint and oversee a special master whose role initially will be to conduct a factual inquiry, upon the request of any party to this proceeding opposed to application of the Amendment, as to whether application of the Amendment with respect to such party is reasonable given the particular circumstance. The cost of the initial appointment of the special master shall be borne by the Community Club. The special master also shall develop guidelines for resolving disputes as to the application of the Amendment for adoption by the Court.

4. This is a final order.

DONE IN OPEN COURT this 4th day of May, 1987.

/s/
Judge Anne Ellington

Presented by:

FOSTER, PEPPER & RIVIERA

G. Richard Hill
Beth A. Clark
Attorneys for Plaintiffs

ITEM C - ATTACHMENT C

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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INNIS ARDEN CLUB, INC., a Washington nonprofit corporation; DAVID L. WELLS and MARY WELLS, husband and wife; ROBERT BLAIR and SARA BLAIR, husband and wife; BETTY WOODS; JOHN S. WARD and BETTY WARD, husband and wife; RICHARD WOLF and HELEN WOLF, husband and wife; MERLE K. EIDSVOOG and JOYCE EIDSVOOG, husband and wife; F.W. PRIESTLY and IRIS PRIESTLY, husband and wife; CORNELIUS J. JENSEN and IRENE JENSEN, husband and wife; JOHN A. MARDESICH and EUNICE MARDESICH, husband and wife; SVEIN NYHAMMER and EVA NYHAMMER, husband and wife; MARTIN GOLDEN and ANGELA GOLDEN, husband and wife; TOM DEGAN and MARILYN DEGAN, husband and wife; DAVID WIGHT and HOLLY WIGHT, husband and wife; CHARLES F. LILL and ELEONORE M. LILL, husband and wife; RONALD salvino, a single person; C.W. McKNIGHT, husband and wife; JACK L. DIERDORFF and WANDA DIERDORFF, husband and wife; THERON COMPTON and FLORENCE COMPTON, husband and wife; THOMAS W. AVERILL and LINDA AVERILL, husband and wife; ERNEST MICHAEL and ERIKA MICHAEL, husband and wife; PAMELA FOSTER and SHIRLEY MASER; and JAMES M. SHEA and CATHLEEN SHEA, husband and wife;

Respondents,

v.

MANDATE

No. 20497-1-I

KC# 842-09622-5
√84-2-09622-5

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No. 20497-1-I, Innis Arden Club v. Binns

JOHNS H. BINNS, JR. and VIRGINIA BINNS, husband and wife; HOWARD ALMQUIST and SONIA ALMQUIST, husband and wife; RUSSELL CASTNER and PATTI CASTNER, husband and wife; HARLEY WAHL and MELINDA WAHL, husband and wife; EDWARD FLICK and IRENE FLICK, husband amd wife; KEITH RIELY and MARY ANN RIELY, husband and wife; RICHARD E. RUST, husband and wife; JAN I. PRAUDINS and TONINA PRAUDINS, husband and wife; THOMAS G. MAHAN and BETTY JEAN MAHAN, husband and wife; ROBERT DRURY and DOROTHY DRURY, husband and wife; ALAN KOHN and MARION KOHN, husband and wife; JAMES TATE and JUDY TATE, husband and wife; HELEN R. SCHERWIN; ALICE POBST; WOLFGANG KLUGE and ILSE KLUGE, husband and wife; and WILLIAM LUNDH and VICKY LUNDH, husband and wife, Appellants.	)	King County No. 84-2-09622-5

The State of Washington to: The Superior Court of the State of Washington in and for King County.

No. 20497-1-I, Innis Arden Club v. Binns

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on March 14, 1988, became the decision terminating review of this court in the above entitled case on August 16, 1988. This cause is mandated to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Mandate after opinion is filed. Order denying motion for reconsideration entered on June 2, 1988.

cc: Christoper J. Mertens
L. William Houger
William A. Leavell
Richard B. Eadie
R. George Ferrer
George Richard Hill
Henry E. Kastner
George S. Cook
Thomas S. Wampold
The Honorable Gerard Shellan, Presiding Judge
Reporter of Decisions

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 16th day of August, 1988.

RICHARD D. TAYLOR
Clerk of the Court of Appeals, State of Washington, Division I.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

INNIS ARDEN CLUB, INC., a Washington nonprofit corporation; DAVID L. WELLS and MARY WELLS, husband and wife; ROBERT BLAIR and SARA BLAIR, husband and wife; BETTY WOODS; JOHN S. WARD and BETTY WARD, husband and wife; RICHARD WOLF and HELEN WOLF, husband and wife; MERLE K. EIDSVOOG and JOYCE EIDSVOOG, husband and wife; F. W. PRIESTLY and IRIS PRIESTLY, husband and wife; CORNELIUS J. JENSEN and IRENE JENSEN, husband and wife; JOHN A. MARDESICH and EUNICE MARDESICH, husband and wife; SVEIN NYHAMMER and EVA NYHAMMER, husband and wife; MARTIN GOLDEN and ANGELA GOLDEN, husband and wife; TOM DEGAN and MARILYN DEGAN, husband and wife; DAVID WIGHT and HOLLY WIGHT, husband and wife; CHARLES F. LILL and ELEONORE M. LILL, husband and wife; RONALD SALVINO, a single person; C. W. McKNIGHT and MARY ANN McKNIGHT, husband and wife; JACK L. DIERDORFF and WANDA DIERDORFF, husband and wife; THERON COMPTON and FLORENCE COMPTON, husband and wife; THOMAS W. AVERILL and LINDA AVERILL, husband and wife; ERNEST MICHAEL and ERIKA MICHAEL, husband and wife; PAMELA FOSTER and SHIRLEY MASER; and JAMES M. SHEA and CATHLEEN SHEA, husband and wife, Respondents, v. JOHN H. BINNS, JR. and VIRGINIA BINNS, husband and wife; HOWARD ALMQUIST and SONIA ALMQUIST, husband and wife; RUSSELL CASTNER and PATTI CASTNER, husband and wife; HARLEY WAHL and MELINDA WAHL, husband and wife; EDWARD FLICK and IRENE FLICK, husband and wife; KEITH RIELY	NO. 20497-1-I

and MARY ANN RIELY, husband and wife; RICHARD E. RUST and NANCY RUST, husband and wife; JAN I. PRAUDINS and TONINA PRAUDINS, husband and wife; THOMAS G. MAHAN and BETTY JEAN MAHAN, husband and wife; ROBERT DRURY and DOROTHY DRURY, husband and wife; ALAN KOHN and MARION KOHN, husband and wife; JAMES TATE and JUDY TATE, husband and wife; GEORGE E. ADKINS and DORIS ADKINS, husband and wife; HELEN R. SCHERWIN; ALICE POBST; WOLFGANG KLUGE and ILSE KLUGE, husband and wife; and WILLIAM LUNDH and VICKY LUNDH, husband and wife,

Appellants.

FILED MAR 14 1988

The Innis Arden Club and a number of homeowners in the Innis Arden residential subdivision brought a class action suit to compel other homeowners in the subdivision to comply with amendments to the restrictive mutual easements on their properties which limit the height of view-obscuring trees, shrubs, brush and landscaping to roof level. On cross motions for summary judgment, the trial court ruled the amendments were properly adopted, within the original intent of the grantors, and generally reasonable, and that the club had not waived and was not estopped from asserting its right to amend, and that enforcement of the amendments would not be an unconstitutional taking. The court also authorized the appointment of a special master to oversee the application of the amendments. Defendant homeowners appeal.

The first and principal contention is that the amendments were not adopted in compliance with the provisions of the restrictive mutual easements. For the Innis Arden No. 1 development, the paragraph in the easements entitled "Terms of Restrictions" reads:

> These Restrictive Mutual Easements of Innis Arden shall run with the land and shall be binding upon all parties hereto and all persons claiming under them, until August 1, 1966, at which time said Restrictive Mutual Easements of Innis Arden shall be automatically extended for successive periods of ten years unless the owner or owners of the legal title to not less than sixty residence (not business) tracts, by an instrument or instruments in writing, duly signed and acknowledged by them, terminate or amend said Mutual Easements in so far as they pertain to residence tracts, and such termination or amendment shall become effective upon the filing of such instrument or instruments for record in the office of the Auditor of King County, Washington.

The easements for Innis Arden No. 2 and No. 3 are similar.

Appellants argue that an amendment only becomes effective at the end of the 10 year renewal period in which it was adopted. The clear and unambiguous language of the easements is that amendments become effective "upon the filing of such instrument or instruments for record in the office of the Auditor of King County, Washington." See Gwinn v. Cleaver, 56 Wn.2d 612, 615, 354 P.2d 913 (1960).

Appellants next contend the amendments are invalid because some lots in the development are excluded from the height restriction. The excluded lots are located in outlying areas where vegetation, no matter how high, can not obstruct the views of Admiralty Inlet and the Olympic Mountains beyond. Restrictive covenants must be reasonable and reasonably applied, Thayer v.

Thompson, 36 Wn. App. 794, 797, 677 P.2d 787 (1984); the amendments in this case reasonably apply only to those lots upon which view-obscuring growth could exist.

Appellants also contend respondents waived any right to control landscaping because they did not timely exercise their authority under the restrictive easements to approve or disapprove building site plans. Waiver is the voluntary and intentional relinquishment of a known right. Wagner v. Wagner, 95 Wn.2d 94, 102, 621 P.2d 1279 (1980). Prior to the amendments, nothing in the easements indicated respondents had the power to control landscaping, and thus no such right could have been waived. Moreover, there is no proof respondents relinquished their right to amend the original restrictions.

Appellants next contend the amendments constitute an attempt to take their property without compensation in violation of U.S. Const. amend. 5 and amend. 14, and Wash. Const. art. 1, § 16. In this connection, appellants argue that the trial court's authorization of a special master to review requests for relief from application of the restrictions constitutes sufficient state action to invoke the constitutional guarantees. The court's retention of jurisdiction through a special master in order to forestall further controversy is an appropriate solution, and does not amount to significant, active state involvement. See Kennebec, Inc. v. Bank of the West, 88 Wn.2d 718, 565 P.2d 812 (1977). Accordingly, the constitutional provisions do not apply.

No. 20497-1-I/5

Finally, appellants contend the amendments are unreasonable and not within the original grantor's intent. Protection of the area's marine and mountain view is eminently reasonable, and such views very obviously are and always have been one of the principal attractions of the Innis Arden development. The grantor's intent, as evidenced by the easements, was to protect homeowner views, and these amendments are clearly within that intent.

The judgment is affirmed.

Ellington, J.

WE CONCUR:

Winsor, J.

Webster, J.

A majority of the panel having determined that this opinion will not be

ITEM 7.i - ATTACHMENT C

(Clerk's Date Stamp)

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

INNIS ARDEN CLUB, INC., et al.,

Plaintiffs,

v.

JOHN H. BINNS, JR., et ux, et al.,

Defendants.

84-2-09022-5

No. ~~84-2-09022-9~~

ORDER REGARDING CROSS ENFORCEABILITY OF VIEW PRESERVATION AMENDMENT

I. HEARING

1.1 Date. November 2, 1990.

1.2 Judge. Honorable Anne Ellington.

1.3 Appearance. Foster, Pepper & Shefelman and G. Richard Hill appeared for Plaintiffs; John F. Hall appeared for Respondents John F. and Emily R. Hall; Cook, Berst, Landeen & Butler and George S. Cook appeared for Defendant Reiten; and Richard Eadie appeared for Richard Eadie.

II. ORAL DECISION

The oral decision of Judge Ellington, including conclusions of law, was rendered November 2, 1990. A copy of the verbatim transcript of the oral decision is attached hereto and incorporated herein.

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FOSTER PEPPER & SHEFELMAN
1111 THIRD AVENUE
SEATTLE, WASHINGTON 98101
(206) 447-4400

ITEM 7.i - ATTACHMENT C

Prior to making its Decision, the court heard argument of counsel and considered the records and files herein, including but not limited to all pleadings in this case, all documents identified in the court's Order Granting Class Action Summary Judgment dated May 4, 1987, Motion of Respondents John F. and Emily Hall for Summary Judgment and Memorandum and Affidavit in Support thereof, Declaration of Ronald Salvino, Declaration of Craig Runions, Declaration of John D. Blankinship, Memorandum of Plaintiffs Regarding Enforcement of View Covenant filed May 22, 1990, Howard T. Almquist joinder with John Hall in Motion for Summary Judgment on Enforcement of View Covenant Across Subdivision Boundaries, Declaration of Paul F. Blauert dated June 14, 1990, Response of R. George Ferrer to Court's Request for Comment Regarding Enforceability of Tree Covenants Across Subdivision Boundaries, Richard D. Eadie Memorandum Regarding Cross Subdivision Enforceability of View Covenants dated June 15, 1990, Addendum to Reply Brief of Respondents to John F. and Emily Hall dated June 20, 1990, Declaration of Jack L. Dierdorff dated June 20, 1990, Declaration of Albert O. Prince dated June 20, 1990, Memorandum of Plaintiffs Regarding Enforcement of View Covenant and Motion to Vacate Order dated June 21, 1990, Reply of Respondents John F. and Emily R. Hall to June 9, 1990 Letter of Innis Arden Club, Inc., Cook Response to Plaintiffs June 21, 1990 Memorandum, Reply Declaration of Paul F. Blauert dated June

ITEM 7.i - ATTACHMENT C

26, 1990, Authenticating Affidavit of R. George Ferrer dated June 27, 1990, Response of R. George Ferrer to Plaintiffs Memorandum Regarding Enforcement of View Covenant dated June 27, 1990, Affidavit of R. George Ferrer Regarding Cross Subdivision Enforcement and Alleged Laches, Waiver or Estoppel dated August 17, 1990, Affidavit of Anton and Pamela Ness on Enforcement of View Covenant dated August 17, 1990, Notice to Owners of All Lots in Innis Arden 1, Innis Arden 2, Innis Arden 3, and John Hall Reply Brief of June 14, 1990.

III. CONCLUSIONS

Based upon the materials reviewed, including the arguments of counsel, the court makes the following conclusions:

1. There are no geniune issues of material fact regarding the cross enforceability of the view preservation amendments to the Innis Arden restrictive covenants ("View Preservation Amendments"), and Plaintiff Class is entitled to a grant of summary judgment as a matter of law, and John Hall's motion for summary judgment must be denied as a matter of law.

2. The View Preservation Amendments are enforceable across Innis Arden subdivision boundaries.

3. The conclusion stated in paragraph 2 is implicit in the court's initial Order Granting Class Action Summary Judgment dated May 4, 1987, the issue of cross enforceability was raised before the court in that initial proceeding, and the doctrine of

ITEM 7.i - ATTACHMENT C

collateral estoppel bars raising the issue of cross enforceability in this second phase of the proceeding. The time to raise the issue of cross enforceability was in the initial phase, as that issue relates directly to the facial validity of the View Preservation Amendments.

4. The doctrine of laches is not applicable to bar Respondents Halls' Motion for Summary Judgment.

5. The court explicitly reaffirms its earlier ruling regarding the enforceability of the View Preservation Amendments across subdivision boundaries. The intent of the View Preservation Amendments, in light of the surrounding circumstances made clear by undisputed facts in the record, requires the court to reach the conclusion that the View Preservation Amendments are enforceable across Innis Arden subdivision boundaries.

IV. ORDER AND JUDGMENT

Based on the foregoing, it is hereby, ordered, adjudged and decreed, that:

1. Plaintiff Class' motion for class action partial summary judgment that the View Preservation Amendments are enforceable across Innis Arden subdivision boundaries is granted, and Respondent Halls' motion for partial summary judgment is denied.

2. Plaintiff Class is hereby awarded a declaratory

ITEM 7.i - ATTACHMENT C

judgment that the View Preservation Amendments are enforceable across Innis Arden subdivision boundaries within the three Innis Arden subdivisions.

DONE IN OPEN COURT this 5 day of December, 1990.

Judge Anne Ellington

Presented by:

FOSTER, PEPPER & SHEFELMAN

G. Richard Hill
WSBA No. 8806
Attorneys for Plaintiff Class

Approved as to form; notice of presentation waived:

John F. Hall
Attorney for Respondents
John F. and Emily Hall

COOK, BERST, LANDEEN & BUTLER

George S. Cook
Attorneys for Defendant Reiten

Richard Eadie

R. George Ferrer

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

INNIS ARDEN CLUB, INC., a Washington nonprofit corp., et al, Plaintiffs, v. JOHN H. BINNS, JR. and VIRGINIA BINNS, husband and wife, Defendants.	No. 84-2-09622-5 ORDER ON REVIEW OF SPECIAL MASTER'S FINDINGS

This matter having come before the Court pursuant to the Special Master procedures adopted herein, and the Court having reviewed briefs and letters objecting to and supporting the Special Master's Findings and Conclusions filed herein on December 14, 1989, the Court now makes the following

ORDER ON REVIEW

1. GENERAL FINDINGS. The general findings of the Special Master are approved and affirmed with the exception of Paragraph Two thereof, which is hereby modified to read as follows:

> Neighboring Lot. The reference to "neighboring lot or lots" in the Restrictive Mutual Easements was not intended by its drafters, nor by the adopting community members, to be restricted to contiguous or adjacent lots. Due to the geography of Innis Arden, including platlayout and slope, trees several lots distant may entirely block views. The intent of the covenants is to restore such views. However, "neighboring" lots must be such as to have an actual - and not de minimus - view obstruction. Distance from the viewing lot and degree of view blocked are criteria for consideration as to whether a blockage is de minimus.

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2. SPECIFIC FINDING. The findings of the Special Master regarding Respondents Tolfree, Scudder, Sheehy, Glicksberg and Gulick are affirmed.

3. COMPLIANCE COSTS. The finding of the Special Master regarding compliance costs is affirmed.

4. COSTS OF SPECIAL MASTER PROCEEDINGS. The finding of the Special Master assessing start-up costs to be borne by the Community Club is affirmed. (The costs were greater than anticipated but are reasonable and were necessary and the assessment appropriately spreads the financial burden among the Community members.) The other findings of the Special Master regarding costs of hearings also are affirmed.

5. CONCLUSIONS OF LAW. The Special Master's Conclusions of Law are affirmed and adopted by the Court.

6. ADDITIONAL CONCLUSION: "GRANDFATHER" TREES. Trees which were view-blocking trees before the subdivision of Innis Arden are exempt where trimming or topping would have a significan adverse effect. See Guidelines for Special Master, 8(a). Petitioners alleging this ground for variance must establish that the tree was view-blocking at the time of subdivision.

Order on Review signed this 8 day of March, 1990.

JUDGE ANNE L. ELLINGTON

CITY OF SHORELINE, WASHINGTON
ORDINANCE NO. _____

With Annotations Submitted On Behalf of Innis Arden Club May 8, 2006 [comments are in brackets and proposed text changes are shown in strike out and underline format].
Note: not all suggested revisions are shown on this document. It must be read together with the comment letter submitted on behalf of the Club also dated May 8, 2006.

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AN ORDINANCE amending the Shoreline Municipal Code to

update regulations relating to tree cutting, amending SMC

20.50.310 regarding exemptions from permit requirements for hazardous trees, amending SMC 20.80.080 to adopt by reference the provisions of SMC 20.50.310.A.1 as amended, adding a new section SMC 20.80.085 providing for City review and approval of Critical Areas Stewardship Plans, considering the goals and requirements of the Growth Management Act, Chapter 36.70A RCW, including the provisions that pertain to the designation and protection of critical areas, and establishing an effective date.

WHEREAS, the City of Shoreline is a jurisdiction planning under the Growth Management Act and is therefore subject to the goals and requirements of Chapter 36.70A. RCW during the preparation and adoption of development regulations, including those that pertain to the cutting of trees, whether or not those trees are in a critical area designated pursuant to RCW 36.70A.170; and

WHEREAS, the Shoreline City Council adopted Ordinance No. 407 on January 3, 2006 which placed a moratorium on the use and application of SMC

20.50.310.A.1 (hazardous vegetation exemption for clearing and grading permits on private property) and adopted interim regulations to govern hazardous tree abatement; and

WHEREAS, the Shoreline City Council conducted a public hearing on February 6, 2006 to hear comment on Ordinance No. 407, after which hearing the City Council adopted Ordinance No. 411, amending Ordinance No. 407 by adding “recreational trails” to the list of potential targets to be considered when evaluating requests to cut hazardous trees; and

WHEREAS, by its terms, Ordinance 407, as amended, would have expired on May 3, 2006; and

WHEREAS, the Shoreline City Council has directed the Director of the Department of Planning and Development Services (the Director) to work with various stakeholders and interested citizens in the preparation of proposed permanent regulations to deal not only with the subject of hazardous trees, but to

create a regulatory mechanism for the City to consider and potentially authorize the limited cutting of trees for the purpose of view preservation; and

WHEREAS, the Director did communicate with and meet several times with individual citizens as well as stakeholder groups in order to hear their suggestions and concerns regarding the City's tree regulations; and

WHEREAS, in preparing the proposed permanent tree regulations, it became apparent to the Director that additional time would be necessary to circulate the proposal for public review and comment prior to a public hearing before the Shoreline Planning Commission; and

WHEREAS, the Shoreline City Council conducted a public hearing on April 10, 2006 on the subject of whether to extend for an additional two months the moratorium adopted by Ordinance 407, as amended, after which the City Council adopted Ordinance 422 to extend the effective date of the moratorium to July 3, 2006; and

WHEREAS, the Director broadly disseminated public notice of the availability for public review the proposed permanent tree regulations at City Hall and on the City's website, and likewise gave public notice of scheduled review and public hearings before the Shoreline Planning Commission; and

WHEREAS, the Shoreline Planning Commission conducted a study session workshop on the proposed permanent regulations on May 4, 2006 and conducted a public hearing on May 18, 2006; after which the Commission forwarded a recommendation to the City Council;

NOW, THEREFORE, the City Council of the City of Shoreline adopts Ordinance No. ___ which amends the Shoreline Municipal Code as follows:

Section 1. Repealer. SMC 20.50.310.A.1 (hazardous vegetation exemption for clearing and grading permits for private property) is hereby repealed, and replaced with the following:

20.50.310 Exemptions from permit
1. Emergency situations on private property involving danger to life or property or substantial fire hazards.
a. Statement of Purpose – Retention of significant trees and vegetation is necessary in order to utilize natural systems to control surface water runoff, reduce erosion and associated water quality impacts, reduce the risk of floods and landslides, maintain fish and wildlife habitat and preserve the City's natural, wooded character. Nevertheless, when certain trees become unstable or damaged, they may constitute a hazard requiring cutting in whole or part. Therefore, it is the purpose of this section to provide a reasonable and effective mechanism to minimize the risk to human health and property while preventing needless loss of healthy, significant trees and vegetation. [These recitals are premised on concern about loss of "significant trees," with the apparent assumption that all trees are "significant." No scientific study or basis has been offered for this assumption. Further, it is generally accepted that, depending on such factors as species, type, and growth

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characteristics, some trees are less non-native and/or less desirable. These questions have not been addressed in the draft amendments.]

b. For purposes of this section, “Director” means the Director of the Department of Planning and Development Services and his or her designee.

c. For purposes of this section, “peer review” means an evaluation performed by a qualified professional retained by and reporting to the Director. The Director may require that the cost of “peer review” be paid by the individual or organization requesting either an exemption or critical areas stewardship plan approval under this section. However, when the original plan, report, or assessment has been prepared by a professional included on an approved list which shall be maintained by the Department, then any “peer review” requested by the Department shall be at its expense. The Department shall regularly publicize the existence of said list, facilitate applications for inclusion on it, and work with professionals in the field as well as property owners for timely inclusion of qualified professionals.

d. In addition to other exemptions of Subchapter 5 of the Development Code, SMC 20.50.290-.370,

For trees or vegetation that pose an active hazard to life or property, such as tree limbs or trunks that display generally recognized hazardous conditions, no permit shall be required for abatement of said conditions so long as said abatement has been prescribed in a risk assessment form or equivalent that documents the hazard and which must be signed by a certified arborist, registered landscape architect, or professional forester. Said report shall be submitted to the City for informational purposes no later than 14 days prior to commencement of the abatement activity.

Notwithstanding the foregoing, no such advance assessment is necessary in the case of an imminent hazard to life or property. However, in any case where abatement occurs in the absence of such a prior assessment, the property owner shall not dispose of the abated material until after such an assessment has been prepared and submitted to the City, which shall occur within seven days of the action in question.

[Note: if an active hazard is identified, that should be sufficient. That concept can depend on, e.g., wind and weather conditions which are unpredictable. Property owners should not be required to prove imminence or obtain advance permission for -- as opposed to provide advance notice of -- active hazard abatement. Property owners who consult with a reputable expert should not be required to go through a City permit process to abate hazards. Public policy should facilitate and encourage such abatement.]

e. conditions

[This language is unnecessary in any event. Hazards are hazards by definition if they present a threat to life or property. If it happened that a hazard site were left out of this definition, would anyone seriously suggest that it should not be abated ?]j. Abatement pursuant to this exemption shall be limited to such alteration as may be necessary to eliminate the hazard and shall be carried out using means and methods of removal necessary to minimize environmental impacts. Page 3

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Deleted: any tree or clearing vegetation that is an active and imminent hazard

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it is evaluated and authorized by the Director under the procedures ¶
and criteria set forth in this section.

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or property, such as tree limbs or trunks that

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cracked, leaning toward overheard utility lines, or are uprooted by ¶
flooding, heavy winds or storm events, the Director may verbally ¶
authorize immediate abatement by any means necessary. ¶
f. For hazardous circumstances that are not active and imminent, such ¶
as suspected tree rot or diseased trees or less obvious structural wind ¶
damage to limbs or trunks, a permit exemption request form must be ¶
submitted by the property owner together with a risk assessment form. ¶
Both the permit exemption request form and risk assessment form ¶
shall be provided by the Director.

Deleted: g. The permit exemption request form shall include a grant of permission ¶
for the Director and/or his qualified professionals to enter the subject ¶
property to evaluate the circumstances. Attached to the permit ¶ ... [1]

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All work shall be done utilizing practices which minimize harm to the site. [The specification of hand-held implements is too vague and could be construed as preventing use of mechanized equipment even where it has not been shown that such equipment is per se harmful and may in fact be beneficial and/or efficient. Banning unspecified tools on an unscientific basis is a far cry from specifying reasonable performance standards for such work and carries with it a Luddite connotation. It might be instructive in this regard for the Commission to peruse an inventory of equipment utilized by local Parks Department or their contractors for similar work.]

In the event that it is subsequently determined that abatement was undertaken improperly, the Director may, subject to the property owner's right of appeal, require mitigation in the form of replanting based on a professional assessment.

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only, unless the property owner requests and the Director approves ¶
otherwise in writing. The Director may require that all or a portion of ¶
cut materials be left on-site.

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(The remainder of this section is not proposed to change.)

Section 2. SMC 20.80.080 is amended by the addition of a new subsection as follows:

20.80.080 Alteration or development of critical areas – Standards and criteria.
G. The provisions for emergency situations regarding hazardous trees and other vegetation at SMC 20.50.310.A.1 is adopted by reference. In addition, the removal, restoration and management of vegetation within a critical area may be permitted by the City as provided in SMC 20.80.085.
Section 3. New Section, SMC 20.80.087 is adopted as follows:

20.80.87 Critical Areas stewardship plan.
1. Statement of Purpose – the purpose of a critical areas stewardship plan is to provide a mechanism for the City to comprehensively review and approve, deny, or approve with conditions, private proposals to manage, maintain, cut and/or restore trees, other vegetation, natural features and trails in large critical areas of the city. The stewardship plan also provides a regulatory tool for the City to make a reasonable accommodation of private view rights in view-covenanted communities while still meeting the over-arching statutory mandate to protect critical areas.
2. In addition to the provisions of SMC 20.80.080.G, the removal, restoration, and management of vegetation in critical areas and their buffers may be reviewed and authorized by the City if approved under a critical areas stewardship plan. An approved stewardship plan may authorize the limited cutting of non-hazardous vegetation in order to restore and preserve private views of the Olympic Mountains and Puget Sound. [As the attached comment letter indicates, the proposed limitation to views existing at the time of plan submission would wipe out 50 years of view property rights in Innis Arden, rather than "accommodate" them. The draft which the Director discussed with Innis Arden **prior** to publication for comment did **not** include such a limitation, nor was it ever suggested to Innis Arden that

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of the submittal of the plan.

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such a limitation was under consideration. Its inclusion would set the City on a collision course with the Club and the courts.]

3. A critical areas stewardship plan must be processed through Process C, SMC 20.30.060 and satisfy all of the following criteria:

a. The minimum area of land within a stewardship plan is 10 acres. [What is the scientific basis for this minimum size?] None has been suggested which would pass scrutiny as scientifically legitimate.]

b. A stewardship plan may include non-contiguous parcels. [There is no basis for a common ownership requirement in either law or science.]

c. The implementation of the Plan's provisions shall result in no net loss of important functions and values of the subject critical area(s). [Without modification, this language suggested an unreachable and scientifically/environmentally unnecessary standard.]

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d. [How is this different than the previous criterion? It appears redundant and therefore confusing. Hence its deletion.]

e. The provisions of the stewardship plan provide sufficient legal and practical means for the City to assure compliance with its provisions subject to the protections of the federal and state constitutions. [This is a backward way of saying that the City wants as a quid pro quo a right of entry onto property subject to such a plan. It should therefore be qualified to assure that the entry is subject to constitutional protections and not used as carte blanche for fishing expeditions on subject property.]

f. [This is too vague to guide any property owner as to what is required. It appears to be a catch-all to facilitate any decision which might be made.]

4. A critical areas stewardship plan must be initiated by the applicant property owner(s) of the parcel(s) proposed to be included within the scope of the Plan. The applicant may have the plan prepared by a qualified professional included on an approved list maintained by the Department. If the proposed plan is not prepared by such a "listed" professional, then the Director may require that the cost of "peer review" be paid by the applicant.
However, when the original plan has been prepared by a professional included on the list maintained by the Department, then any "peer review" requested by the Department shall be at its expense.

5. An application for a critical areas stewardship plan shall include at least the following:

a. A dated inventory of known watercourses, significant vegetation, and physical improvements (including but not limited to trails and underground and overhead utilities lines), identification of soils conditions, identification of areas with slopes in excess of 15%, identification of areas with slopes in excess of 40%, and fish or wildlife habitat associated with species that are present on site or immediately adjacent. Said inventory may be based in whole or in part on publicly available reports, delineations, or documents.

b. A scaled topographic map on which named or numbered proposed "management zones" will be displayed.

c. A narrative describing applicable objectives, policies, principles, methodologies and vegetation management practices that will be employed to achieve the stated objectives in the delineated management zones.

d. A scientific assessment performed by qualified professionals of all important ecological functions and values of the site and how the identified functions and values would be affected by the provisions of the proposed stewardship plan.

e. Other graphic or narrative information specifically identified by the City at the start of the process that will assist the City in evaluating whether the proposed stewardship plan satisfies the stated private objectives while also enabling the City to provide reasonable assurance that the "values and functions" of the critical area in

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question will be maintained.
f. A legal instrument in a form approved by the City Attorney to assure that the Director, city staff or consultants may enter the property in order to evaluate the physical and scientific circumstances that exist on site, including peer review, and to assure compliance with the provisions and conditions of any approved stewardship plan. The City shall not propose any form which would impinge upon or require waiver of constitutional rights in return for plan approval. [See comment above].
Page 5

Page 5: [1] Deleted **Peter Eglick** **5/8/2006 2:30:00 PM**

g. The permit exemption request form shall include a grant of permission for the Director and/or his qualified professionals to enter the subject property to evaluate the circumstances. Attached to the permit exemption request form shall be a risk assessment form that documents the hazard and which must be signed by a certified arborist, registered landscape architect, or professional forester.

Page 5: [2] Deleted **Peter Eglick** **5/8/2006 2:35:00 PM**

h. No permit exemption request shall be approved until the Director reviews the submitted forms and conducts a site visit. The Director may direct that a peer review of the request be performed at the applicant's cost, and may require that the subject tree(s) vegetation be cordoned off with yellow warning tape during the review of the request for exemption.

i. Approval to cut or clear vegetation may only be given if the Director concludes that the condition constitutes an actual threat to life or property in homes, private yards, buildings, public or private streets and driveways, recreational trails, improved utility corridors, or access for emergency vehicles.

EKW LAW
EGLICK KIKER WHITED PLLC

Peter J. Eglick
eglick@ekwlaw.com

VIA E-MAIL, FACSIMILE AND U.S. MAIL

May 8, 2006

City of Shoreline
Attention: Planning Commission
Attention: Planning and Development Services
Joe Tovar, Director
Matt Torpey, Staff
17544 Midvale Avenue N.
Shoreline, WA 98133-4921

RE: Comments by Innis Arden Club Inc. on City of Shoreline Notice of Application and Notice of Public Hearing on Proposed "Permanent Hazardous Tree Regulation and Stewardship Plan".

Dear Planning Commission, Director Tovar, and Mr. Torpey:

This letter is submitted on behalf of the Innis Arden Club, Inc., which owns and manages approximately 50 acres of "Reserve Tracts" in the Innis Arden Community of the City of Shoreline and which also functions as the homeowner's association for Innis Arden under the terms of the Innis Arden Restrictive Mutual Easements, as amended. These comments are submitted in response to the City's notice soliciting comments both under SEPA and, apparently, under the Growth Management Act "GMA") for the proposed revisions.

As discussed further below, the proposed amendments in their current form would not be an acceptable outcome either procedurally or substantively under the GMA or in light of Innis Arden's property rights and legal status. Even apart from the concerns of the Innis Arden Community, the proposed amendments would

unnecessarily impose a cumbersome and expensive bureaucratic regime on abatement of hazard trees and stewardship of open-space tracts. They are therefore neither in Innis Arden's interests, nor in the interests of other communities in the City of Shoreline, nor in the interests of the City as a whole. Innis Arden has therefore suggested in this letter and in the attached document proposed changes, with explanatory comments, to assist the City in reaching a reasonable outcome. We urge the Department and the Commission to consider these comments and proposed changes carefully. They represent a substantial effort on the part of Innis Arden to identify concerns and propose constructive solutions. In the absence of these changes in the proposal, an Environmental Impact Statement will be necessary to assess the impact on protected and scenic views (aesthetics), as well as on environmental health, and on public services related to hazards.

I. LEGAL BACKGROUND CONCERNING INNIS ARDEN

The Innis Arden Community was conceived by Bill and Bertha Boeing over half a century ago. They platted the community in three divisions, making them all subject to virtually identical Innis Arden Restrictive Mutual Easements, what are called today in short-hand form the Innis Arden "Covenants". Again over half a century ago, the Boeings, as the original "Grantors," transferred their governance authority under the Covenants to the Innis Arden Club. That authority included the right to approve or reject proposed construction or alterations of any kind (Covenant 4); to grant or deny permission for maintenance of fences or hedges "greater than six feet or such lesser height as the Grantor may specify" (Covenant 10); and the power to make a conclusive determination ("such determination shall be conclusive on all parties") that a lot owner was maintaining a prohibited "spite or nuisance wall, hedge, fence, or tree" (Covenant 11).

As these Covenants suggest, the Innis Arden community was developed from its start as one which offered sweeping Sound and mountain views. Protection of those views resulted in several years of protracted class action litigation commencing in the 1980s and extending into the next decade, consuming a huge amount of then-Superior Court Judge Anne Ellington's time. (Judge Ellington now sits on the Court of Appeals). Judge Ellington upheld the right to view protection in Innis Arden as within the original intent of the Grantors and binding on the entire community, rejecting a plethora of objections. An appeal was taken to the Court of Appeals which upheld Judge Ellington's judgment, admonishing that:

> "Protection of the area's marine and mountain view is eminently reasonable, and such views very obviously are and always have been one of the principal attractions of the Innis Arden development. The grantor's intent, as evidenced by the easements, was to protect homeowner views, and these amendments are clearly within that intent."

In implementing her Judgment, Judge Ellington ruled conclusively on whether the tree height restrictions were subject to some artificial barrier which would protect a lot owner in, for example, Innis Arden 2 from being required to provide relief when his or her trees blocked views on lots located in another Innis Arden division. Judge Ellington explicitly and firmly rejected such an approach, entering an Order and Judgment holding that "the View Preservation Amendments are enforceable across Innis Arden subdivision boundaries within the three Innis Arden subdivisions." (Order Regarding Cross Enforceability of View Preservation Amendment, *Innis Arden Club, Inc. et al. v. John H. Binns, Jr.*, King County Cause No. 84-2-09622-5, December 5, 1990). In a subsequent Order, Judge Ellington confirmed that a lot need not be "contiguous or adjacent" to be entitled to relief from another lot's violation of the tree height covenant.

Anyone familiar with the real estate market in the City of Shoreline, with real estate valuations and assessments in the City of Shoreline, and with those in particular applicable to Innis Arden, knows that views in the Innis Arden Community carry with them a substantial economic value and came to those who own them at a substantial price. Innis Arden homes have been purchased in reliance not only on the present existence of such views, but on the fact that the plat covenants approved by King County over half a century ago protect them, as upheld by Judge Ellington and the Washington Court of Appeals.[1]

It is not the City's place – or in the City's interest – to ignore or challenge the legal right to preserve and "restore such views". It is well settled that view

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[1] Attached are the following supporting documents:
1) Order Granting Class Action Summary Judgment, *Innis Arden Club, Inc. et al. v. John H. Binns, Jr.*, King County Cause No. 84-2-09622-5, dated May 4, 1987.
2) Mandate and decision from Division I of the Court of Appeals in *Innis Arden Club, Inc. et al., v. Binns et al.*, Division I Case No. 20497-1-I, dated August 16, 1988.
3) Order Regarding Cross Enforceability of View Preservation Amendment, *Innis Arden Club, Inc. et al. v. John H. Binns, Jr.*, King County Cause No. 84-2-09622-5, signed on December 5, 1990.
4) Order on Review of Special Master's Findings, dated March 8, 1990, in *Innis Arden Club, et al. v. Binns, et al.*, King County Superior Court Cause No. 84-2-09622-9.

rights such as those which the Washington courts have confirmed have inhered in Innis Arden since its inception half a century ago. They are property rights established by covenant which a government may not take or diminish with impunity. See, e.g., *Pierce vs. Sewer and Water District*, 123 Wn.2d 550, 561, 565, 870 P.2d 305 (1994).[2]

When the Innis Arden plats were approved by King County half a century ago, they included unmistakable reliance on views as an integral part of the community, as the Washington courts have already ruled. Having called out that intent, that reliance, and that use of Innis Arden properties as view residences, the City (as successor to the County) is not free to take or unreasonably interfere with that right in the guise of such development regulations as those proposed here. *See e.g., Noble Manor Company vs. Pierce County*, 133 Wn.2d 269, 954 P.2d 1378 (1997). While the result might be different for other plats where view was not specifically called out and relied upon as an integral part of the use, the facts concerning Innis Arden are definitive. The use of the plat property for view preservation was an integral part of that which the County originally approved.

Nothing in the GMA authorizes the City to ignore such vested rights or overturn a previously established longstanding development plan approved by the City's successor, King County. *See e.g. Viking Properties Inc. v. Holm*, 155 Wn.2d 112, 125, 127, 118 P.3d 322 (2005). As the Washington Supreme Court held in *Viking*, one of the goals of the GMA is "protecting private property rights." *Id.* at 125, citing RCW 36.70A.020. In analyzing the contentions in *Viking*, the Washington Supreme Court rejected Viking's assertion "that the GMA, enacted in 1990, overrides a contractual property right executed over 60 years ago." *Id.* at 127. Further, the *Viking* court noted that the City in that case (which was, coincidentally, the City of Shoreline) "has correctly conceded that it 'has no authority' to enforce or invalidate restrictive covenants...". *Id.* at 130.

The proposal published by the City for comment, if adopted, would set the City and Innis Arden Club (as well potentially as other communities in the City) on an unnecessary legal collision course. While those who are chafing under the

[2] In *Pierce, supra*, no taking or interference with a property right was found because there was not a covenant or easement establishing a view right and because the offending government action consisted of constructing a water tank on nearby government-owned property. However, the analysis in *Pierce* makes it clear that in a circumstance where view rights have been established by easement or covenant (as is the case with Innis Arden) and where the government action interferes with those rights (as is the case with proposals which would prevent Innis Arden from preserving and restoring protected views) then takings and substantive due process violations will be found.

Washington Supreme Court's unanimous pronouncements in *Viking* might welcome the opportunity to re-litigate such issues, no useful purpose would be served for the public in doing so. It is therefore in the best interests of all concerned to agree on revisions of the current proposal which will accomplish legitimate City goals while avoiding frustration of property rights which have long inhered in Innis Arden. The comments below are intended to assist the City in reaching that goal.

II. HAZARD TREE ABATEMENT

Cities such as Shoreline are required pursuant to the Washington Growth Management Act (GMA) to identify and adopt regulations for the protection of critical areas and their buffers. The City of Shoreline has had such provisions in place since its inception. These provisions evolved from earlier ones enacted by King County. The City's existing provisions require permits for alteration of vegetation in critical areas, but exempt out from the permit requirement removal of "any tree or vegetation which is an immediate threat to public health, safety, or welfare, or property." These, under the existing code "may be removed without first obtaining a permit:"

> Emergency situations involving danger to life or property or substantial fire hazards. Any tree or vegetation which is an immediate threat to public health, safety, or welfare, or property may be removed without first obtaining a permit regardless of any other provision contained in this subchapter. If possible, trees should be evaluated prior to removal using the International Society of Arboriculture method, Hazard Tree Analysis for Urban Areas, in its most recent adopted form. The party removing the tree will contact the City regarding the emergency, if practicable, prior to removing the tree.

SMC 20.50.310 A.1.

This straightforward exemption has been converted into a regulatory and bureaucratic thicket in the Staff's proposed amendments. The overall effect of these amendments will be to encourage property owners to ignore rather than address hazardous conditions. Staff proposes that hazard trees may <u>not</u> be abated without individual case by case authorization from the Director of the Shoreline Department of Planning and Development Services. While there is a provision

allowing requests for verbal authorization in emergencies, it is not realistic to expect that the Planning Department will be regularly available by telephone to grant authorizations in such circumstances. Further, designation by the Director of substitute designees ("Customer Response Team" members or the like) to take such calls for him is no solution. The Director himself is not an arborist, professional forester, or landscape architect. Nor are the staff to whom hand-off may occur. The result will be a natural inclination to say "no" --if someone can be found to give any response at all. Nor is it realistic to expect that authorizations will be granted in any event when abatement of any tree conditions has become a political football within the City.

The cumbersome nature of the process is well illustrated by the functional oxymoron built into the proposed amendments. They require applying for a permit to obtain a "permit exemption." "For hazardous circumstances that are not active and imminent, such as suspected tree rot or diseased trees or less obvious structural wind damage to limbs or trunks", citizens must fill out a "permit exemption request form" and a "risk assessment form." The risk assessment form is supposed to be completed by a "certified arborist, registered landscape architect, or professional forester." However, certification by such a qualified professional that hazardous circumstances exist requiring abatement is still not enough. The proposed amendment then states that the Director – who is neither an arborist, forester, nor landscape architect – must conduct a site visit before the request to abate a hazardous condition may be approved. And, the Director can even require that yet another professional perform yet another review -- all "at the applicant's cost."

Meanwhile, the proposed solution to the continuing presence of the hazard is that the "subject tree(s)" may be "cordoned off with yellow warning tape during the review of the request for exemption." The proposed amendment does not explain how the presence of yellow warning tape will prevent conditions which will result in failure of an infirm limb or tree. Nor does it suggest how presence of yellow warning tape will shield persons and property from damage.

This proposal for eviscerating the current common-sense exemption for hazard trees also requires that any alteration "shall be done utilizing hand-held implements only." While the term "hand-held" is undefined, it would appear to inhibit necessary work from being performed in the most efficient manner possible. If the concern here is to avoid damage this could be addressed by a performance standard requiring that such damage be avoided and calling for site restoration if damage

unavoidably occurred. Instead, the proposal assumes that tree work can only be performed by hand tools, regardless.

It is apparent that these amendments respond to political pressure and unwarranted accusations concerning Innis Arden Club's management of its Reserves. Such motivations are never an appropriate basis for formulating policy. The regulations will necessarily affect every citizen of the City of Shoreline and enmesh them unreasonably in an expensive and bureaucratic process when they seek to eliminate hazards on their property. Any legitimate City concerns about such actions could readily be addressed by requiring certification of such work by an ISA-certified arborist or similar professional. If the City were concerned that, in some cases, such certifications of a hazard condition justifying abatement would be issued in error, the City could include a requirement for re-planting or mitigation if inappropriate abatement was subsequently demonstrated. If the City has a concern that property owners would retain untrustworthy or unqualified professionals, the City could itself invite such professionals to apply for placement on a City-approved list and then screen and approve them for inclusion. The attached Innis Arden "redline" version of the staff proposal reflects these concepts and includes additional comments.

Again, the proposed hazard tree amendments staff has placed before the Planning Commission have not adopted such constructive approaches, but instead opt for measures which appear designed to discourage abatement of hazards regardless of whether there are less onerous means of protecting legitimate environmental values.

When Staff first proposed a moratorium and stated that it would be proposing code amendments, it indicated that one of the "prompts" for doing so was alleged illegal abatement actions in the Innis Arden Reserve Tracts. These actions were taken in reliance on anecdotal, inexpert, and inaccurate information -- and Innis Arden Club was never given a comparable chance to respond. The actual record in the City's own file is clear that the Innis Arden Club has never violated the City code and has only abated hazard trees based on evaluation and approval by a qualified ISA-certified arborist. On the one occasion that the City attempted to prove otherwise, the City subsequently dropped each and every one of the charges when it became clear that the City would not be able to prove them to its own Hearing Examiner. (In one instance, Staff even claimed that the Innis Arden Club had illegally "abated" a tree which later turned out to be very much alive, well, and unabated.)

We therefore urge the Planning Commission to send the proposed amendments back to the drawing board. Working together, all interested parties can craft a streamlined, efficient, and fair process. Such a process would center on permitting a property owner to abate a hazard when it has been acknowledged in a written report by an ISA-certified arborist, landscape architect, or equivalent professional whose expertise has been acknowledged by the City.

III. STEWARDSHIP PLANS

The proposed amendments also include a provision for Critical Area Stewardship Plans. Such a provision is advisable in light of the City's obligation not only to adopt regulations for the protection of critical areas, but also to do so in a manner which respects private property rights and established community plans, is not unduly oppressive, and does not work a taking. Unfortunately, the current proposal does not meet these criteria.

One key flaw is in the proviso that, "An approved stewardship plan may authorize the limited cutting of non-hazardous vegetation in order to preserve private views of the Olympic Mountains and Puget Sound that existed at the time of the submittal of the plan." Proposed § 20.80.87.2. (Emphasis added.) With the underlying language just noted, the City would in effect wipe out 50 years of private property rights in the Innis Arden community. As noted above, under decisions of the King County Superior Court and the Washington Court of Appeals, which have been provided to the City repeatedly, it is well-recognized that a right inheres in lot owners in Innis Arden to views of the Olympic Mountains and the Sound. It is also well-established in Washington that private views established by a covenant represent property rights. As such, they cannot be done away with or dealt with oppressively by regulatory agencies.

Therefore, the staff proposal should be amended to delete the language purporting to limit private view rights to those which existed at the time that a stewardship plan happened to be submitted.

The City should consider in doing so that, even if the current proposed approach were otherwise legally acceptable, it is completely impractical. It would embroil the City in controversy over the temporal status of "private views" in various communities such as Innis Arden. There is no basis for doing so when the City can instead look to established covenants and judicial decisions to determine the historic existence of a right to private views.

While the Critical Area Stewardship Plan concept is appropriate, the staff proposal for its implementation requires further attention even apart from the fundamental flaw identified above. For example, proposed § 20.80.87.e should be clarified to confirm that the provisions for assurance of compliance required by the City will be consistent with the state and federal constitutions. A similar confirmation should be included in § 20.80.87.5.f. Otherwise, these provisions could be interpreted as impermissible demands for surrender of Constitutional rights.

Proposed § 20.80.87.4 should also be revised to adopt a system similar to that used in various jurisdictions for preparation of Environmental Impact Statements. Under such a system, a list is maintained by the City of approved experts in various fields. Applicants may then engage such City-approved experts to prepare all or part of an EIS (or in this case, a stewardship plan) at the applicant's expense. There is no requirement or need for a redundant second set of experts to review the work of the first, as there would be under the staff proposal, with the applicants footing the bill for both.

Proposed section 20.80.87.5.e should be deleted as too vague. If there are particular items of information which an applicant for a stewardship plan must provide to the City, they should be specified in the Code. This open-ended requirement for additional information could otherwise be subject to later abuse and controversy. In the alternative, language should be added requiring an initial meeting among the applicant, City staff, and any expert preparers retained by the applicant, in which they will agree in written form on what additional information beyond that already required in subsection (5) will be necessary for completion of the stewardship plan. Otherwise, applicants could commence the process without knowledge of significant data requirements and cost increments which the City would impose later, once a substantial investment had already been made in the process.

Finally, new language should be added to proposed § 20.80.87.3 as follows (the proposed new language is underlined):

> A. A critical areas stewardship plan must be processed through Process C, SMC 20.30.060 and satisfy all of the following criteria. <u>In applying these criteria, the city must make reasonable accommodation for private view rights in view-covenanted communities and shall not</u>

apply the criteria in such a manner as to interfere with such rights.

The City has an opportunity with the critical area amendments to refine its current processes for alteration of trees and other vegetation in critical areas in a manner which will encourage partnerships between effected communities and City government. Several aspects of the Staff proposal would frustrate such cooperation, place the City at odds with its constituent communities, and embroil it in legal controversies which will be a drain on its resources. While there is an understandable concern for protection of critical areas, which Innis Arden Club shares, the current amended proposal requires considerable work if that concern is to be vindicated in a manner both consistent with the law and acceptable to the community at large.

Sincerely,

EGLICK KIKER WHITED PLLC

Peter J. Eglick

PJE/kl

Attachments

Draft Code Amendments: Changes to Provisions governing Hazardous Trees and adding Provisions to establish a Process and criteria for a Critical Areas Stewardship Plan

Section 1. Repealer. SMC 20.50.310.A.1 (hazardous vegetation exemption for clearing and grading permits for private property) is hereby repealed, and replaced with the following:

20.50.310 Exemptions from permit

1. Hazardous situations on private or public property involving substantial risk of injury, damage to property, or substantial fire hazards.

a.In addition to other exemptions of Subchapter 5 of the Development Code, SMC 20.50.290-.370, no permit is required for removal of vegetation that presents a substantial risk of injury to life or property or fire hazard. Where possible, notice of corrective action shall be given to the City and such risk shall be substantiated in advance by contemporaneous documentation by an International Society of Arboriculture ("ISA") certified arborist based on the ISA method, Hazard Tree Analysis for Urban Areas, in its most recent adopted form; by a licensed professional engineer; or similarly qualified person.
)

a. [Note: what follows is deleted because it is based on a faulty premise: when a tree is identified as having rot, for example, and the arborist determines there is a hazard, that cannot be the occasion for a lengthy iterative process with the City while the hazard remains. Such a process increases actual risk – and risk of liability , neither of which are acceptable "Imminence of risk " once a hazard is identified is a flawed concept: "imminence" depends for example on weather, wind, etc. none of which are put on hold while the City cogitates. In addition, the concept of "less obvious structural wind damage to limbs or trunks" begs the question. The test is not obviousness or aesthetics: it is what an ISA arborist or other expert (except in extreme exigent circumstances) determines is a hazard – obvious or not. A "widowmaker" branch may not be "obvious", but it is a hazard nonetheless. Injecting the City into a property owner's basic right (obligation, under tort law) to maintain property in a safe condition is inappropriately intrusive (oppressive, really), and has the potential for abuse] [The preceding sentence has been deleted. If this is not the standard, then the Code must spell out clearly what is, as a matter of due process.] [Note: the preceding is impractical: for example, a tree threatening an adjoining property or structure or tree can still cause injury even if it is cordoned off by yellow tape. Will the City have adjoining structures cordoned off by yellow tape or evacuated ?]
b. Authorization to cut or clear vegetation under subparagraphs A or B may only be given if the City concludes that the condition constitutes an actual threat to life or property in homes, private yards, buildings, public or private streets and driveways, recreational trails, improved utility corridors, or access for emergency

vehicles. [The preceding is deleted because it is either with redundant with the "substantial risk of injury to life or property or fire hazard." standard set out above or limits it inappropriately .] [The preceding sentence was deleted because the City cannot condition maintenance of property in a safe condition on surrender of the constitutional right to require that the City have a warrant before entering private property.]

c. Where a property owner has not provided substantiation for the need for removal as specified in subsection a , the City may retain, at the property owner's cost, an arborist/tree consultant to evaluate the need for removal and determine whether it was appropriate.[The preceding has been modified so that the property owner does not have to pay twice: once for his own expert and then again for the City's.]. After public notice and opportunity for comment, the City may establish standards consistent with this section for removal of hazard trees and vegetation including means and methods of removal necessary to minimize environmental impacts, including replanting. Unless the Director approves otherwise, all work shall be done utilizing hand implements only [hand implements must be defined]and the City may require that all or a portion of cut materials be left on-site.

(The remainder of this section is not proposed to change.)

Section 2. SMC 20.80.080 is amended by the addition of a new subsection as follows:

20.80.080 Alteration or development of critical areas – Standards and criteria.

G. The provisions for situations regarding hazardous trees and other vegetation at SMC 20.50.310.A.1 are adopted by reference. In addition, the removal, restoration and management of vegetation within a critical area may be permitted by the City as provided in SMC 20.80.085.

Section 3. New Section A new section, SMC 20.80.085, is adopted as follows:

20.80.85 Critical Areas stewardship plan.

In addition to the provisions of SMC 20.80.080.G, the removal, restoration, and management of vegetation in critical areas and their buffers may be reviewed and authorized by the City provided that a Critical Areas Stewardship Plan has been approved through Process C, SMC 20.30.060.

Limited cutting and removal of vegetation may be permitted under the authority of a Critical Areas Stewardship Plan in order to: (1) maintain passive recreational access trails and (2) enable the preservation or restoration of views of Puget Sound or the

Olympic Mountains in view-covenanted communities, provided that the following criteria are met:

A. Any proposed Critical Areas Stewardship Plan must be initiated by the applicant property owner(s) of the parcel(s) proposed to be included within the scope of the Plan.
B. After receiving from an applicant property owner(s) a Statement of Intent to initiate a Critical Areas Stewardship Plan, the Department shall assign a staff person to act as liaison with the property owner in development of its plan.
C. [This provision appears to have been drafted so that those who have consistently and inaccurately attacked the Innis Arden Club will get their chance to govern the Club's private property even though they cannot get elected within the Club to do so . However, the City is not entitled to saddle any property owner with an "ad hoc" committee to determine how a property owner's rights will be addressed. Would the City dare tell a large developer that the disposition of its property and its rights under the CAO would be subject to review by an "ad hoc committee"? And, if it did, would that be upheld on review? No.]
D. The cost to the City to retain qualified professionals to assist the staff in review of the applicant's proposed Plan shall be borne by the applicant for the Critical Areas Stewardship Plan. Upon request of the applicant/property owner, the Director shall approve the Plan and order its publication if it meets the standard for approval in this section. If the Director fails to approve the Plan within ten days of a property owner's request, the Plan shall be deemed approved unless within that time the Director has issued a written decision setting out bases under this section for failing to do so. A Director's decision denying plan approval shall be subject to appeal to the Hearing Examiner who may affirm, reverse, or remand the Director's decision or order the Plan approved based on additional conditions. The Director may not assert before the Hearing Examiner bases for disapproval which were not specified in his written denial decision.
E. .[This was deleted as completely invasive of a private property owner's rights. Under this provision a property owner could not submit an application – for better or worse – unless it was given leave by an inchoate third party "ad hoc committee". Again this is unduly oppressive: would the City adopt such a provision prohibiting a developer from being able to submit an application until an inchoate third party ad hoc committee approved submission ? That is very unlikely. As much as the City is being pressured by various interest groups, it must stay within constitutional limits AND approach this question with an eye toward whether a proposal makes sense across-the-board rather than as a means to satisfy a particular vocal "constituency".]
F. The implementation of the Plan's provisions shall result in reasonable preservation of the functions and values of the subject critical area, taking into account the mitigations and restorations proposed in connection with any tree or vegetation removal as well as the established use for the subject critical area . [This was reworded to avoid a circumstance precluding adoption of any reasonable plan .]
G. [This appears to be a repetition of the previous standard with some twist. One or the other standard should be developed – not both]

H. . [Again, this appears to be an attempt to force the property owner to cede its private property rights : the City has a legally circumscribed means of gaining access if enforcement/compliance becomes an issue and cannot require that the applicant essentially allow unlimited access forever as a condition of approval. At best, some access might be allowed for purposes of evaluating a proposed plan.]

-----Original Message-----
From: john hollinrake [mailto:hollinj@comcast.net]
Sent: Monday, May 08, 2006 8:34 PM
To: Ian Sievers
Cc: Matt Torpey
Subject: Proposed Hazardous Trees Rules

Mr. Sievers:

I am concerned that the proposed procedures regarding hazardous trees create unnecessary risks to life, limb and property and will expose the City to significant legal liability. I have had 7 trees fall on my property and 2 trees from the neighbors' property fall on my property in the last 4 years. Fortunately, the only damage was the complete destruction of a storage shed.

I believe these proposed procedures create unnecessary risk to life, limb and property and significant legal liability exposure to the City. For example:

1. The procedures will cause significant delays in the removal of hazardous trees and prolong hazardous situations. If a tree falls while a resident is trying to comply with these onerous procedures or while the resident is waiting for the City to issue a permit or take other action, will the City be held responsible??

2. In the case of conflicting arborist reports, the City will have to chose which arborist is correct. If one arborist opines that a tree is hazardous and should be removed and the arborist selected by the City takes a contrary position and the City refuses to permit the tree to be removed, will the City be held responsible if the tree falls and hurts someone or damages someone's house?

I have 4 children who frequently play in my yard. My approach has been to remove/snag any tree an arborist determines to be hazardous. My children are too precious to take a risk that a questionable tree may fall on them. The City should take a similar approach with its citizens. Each and every citizen is important and must be protected by the City.

The procedures that were in place last fall should be continued by the City. These rules facilitate safety by allowing hazards to citizens and their homes to be promptly removed.

Finally, I have discussed these types of procedures with my attorney. His view is that a court would never uphold procedures such as the proposed procedures which place an undue burden on the removal of a hazard to life, limb and property.

John Hollinrake
1048 NW Innis Arden Drive
Shoreline, WA 98177

206-542-4842

NANCY RUST
18747 RIDGEFIELD RD NW
SHORELINE WA 98177

May 8, 2006

Planning Commission
% Matt Torpey
Planning and Development Services
17544 Midvale Ave. N
Shoreline WA 98133

Dear Planning Commission Members:

This letter is a supplement to the letter I sent to you earlier concerning the proposed amendments dealing with trees in critical areas.

First, I want to make sure that the amendments refer to critical areas and their buffers.

Next I want to address the question referring to native plants. It has been suggested in earlier testimony that non native plants that wouldn't grow tall could be substituted for native plants. The idea being that habitat could still be preserved without planting native trees that grow tall. This is not true. Studies have shown that the single most important factor in attracting song birds is the presence of tall trees. The Douglas Fir is of course the predominant native tree in our forests. They do grow tall and they grow quickly. They can be planted carefully, however, so as not to be view blocking. Unfortunately there are some people who do not want to see a tree, although others believe as I do that trees can improve a view.

I urge you to stick with native trees. They are adapted to our climate and usually do not need extra water after the first year. It is important to have some tall trees.

The other issue that I want to address is the loophole that has allowed cutting in critical areas of 25% of a tree. This loophole has been abused. The wording in the statute is vague and needs to be explicit. A King County ordinance passed in 1995 has wording that could be used.

Thank you for considering these additional comments.

Sincerely,

Nancy Rust

Nancy Rust

-----Original Message-----
From: jeh.cpa [mailto:jeh.cpa@verizon.net]
Sent: Tuesday, May 09, 2006 10:58 PM
To: PDS
Subject: Proposed Ordinances Regarding Trees

May 9, 2006

City of Shoreline
Planning Commission of Shoreline
Joe Tovar, Planning Director
Matt Torpey, Staff
17544 Midvale Avenue N.
Shoreline, WA 98133-4921

Dear Planning Commission, Director Tovar, and Mr. Torpey:

First I wish to thank the Planning Commission for volunteering so much of their time to our fair City and to say I appreciate the staff efforts as well. I also appreciate that views of the Sound and mountains are actually being mentioned in the proposed codes before you.

However, as a thirty year resident of Shoreline including the last six and half years in Innis Arden, I can't begin to tell you how disappointed I am in what is in these two code proposals contain concerning trees in our fair City.

The Hazardous Tree proposal is unreasonable and does not rely on trained Arborists who should provide the standard for removable of hazardous trees. Instead the Director of Planning and/or his appointees including the Customer Response Team would be making decisions that a certified arborist should be making. I believe that this code can be worded much more succinctly and effectively.

The Critical Areas Stewardship Plan is designed to fail. Ten acres is a totally unreasonable area of land. Most properties in Innis Arden, while large, are usually one acre or less. Furthermore, while the parcels can be non-contiguous, very few people in Innis Arden or even the City of Shoreline own more than one lot, let alone ten acres.

In addition, while the code says a stewardship plan may include non-contiguous parcels, the proposal also states that these parcels must be under the same ownership. My husband and I own a one-half acre parcel in Innis Arden and therefore could not qualify for a Stewardship plan. When I made this point to Mr. Tovar following the May 4, 2006 Planning Commission Meeting, he said that if the Innis Arden Board was to apply to put one of its reserves under the Stewardship Plan, the Board could ask me to add my property to that of the Board for consideration. I then pointed out that the proposed code says that I couldn't because the parcels are not under the same ownership. Mr. Tovar looked at the copy I showed him of the proposed ordinance and said, "You are correct. You could not be part of such a plan." He then said, "I have no problem at all with

deleting that phrase (under the same ownership)." Of course, it is obvious that even he could see that this requirement is unworkable.

The proposed codes delineate processes that are cumbersome, unworkable, and not needed. They are prohibitive in cost and go far beyond any reasonable care of the Critical Areas. Following the procedures in Process C, SMC 20.30.060 should be entirely adequate to care for the critical areas when removing trees to restore views.

I could also point out how these proposed ordinances violate property rights in Innis Arden. However, I will refer you to the letter written by the Attorney for Innis Arden, Mr. Peter Eglick dated May 8. He has laid out the risk for the Planning Commission and the City of Shoreline for not allowing owners Innis Arden to cut trees in their community under a reasonable plan to restore their views.

Again, I thank you in advance for reading my letter and giving my viewpoint your every consideration.

Sincerely,

June E. Howard
824 NW Innis Arden Drive
Shoreline, WA 98177-3215
Telephone 206-542-8177
E-mail: jeh.cpa@verizon.net

-----Original Message-----
From: Michael Brown [mailto:mike@chromios.com]
Sent: Wednesday, May 10, 2006 2:58 PM
To: Matt Torpey
Cc: Carol Solle
Subject: RE: Critical Areas Ordinance Code Revisions

Dear Mr. Torpey,

As residents of Innis Arden we have been following the continuing discussions concerning critical areas. We are appalled and distressed by the apparent attention paid by the City to a vocal minority of citizens. In order for the City to regain some measure of credibility, there is a need for the proposed ordinance revisions to be withdrawn and redrafted in a more sensible form. The document prepared by Mr. Eglick on behalf of the Innis Arden Club and the petition prepared by our neighbors under the banner of "Concerned Shoreline Residents" both are in accord with our perspectives.

If the new ordinance revisions were enacted the city would face a determined litigation process in order to protect our existing and court supported rights. The proposed revisions neither stand up to a reasonable test of fairness nor do they provide any significant improvement in critical area management. They appear as an onerous and cantankerous response to inaccurate impressions and incorrect information.

Sincerely

J. Michael Brown
Anastasia Chopelas
16945 14th NW
Shoreline, WA 98177

May 10, 2006

Dear Planning Commissioners,

Thank you for volunteering your time and talent in behalf of the citizens of Shoreline. Your efforts are appreciated.

This letter concerns 1) changes to the Hazardous Tree Exemption code and 2) the addition of the Critical Areas Stewardship Plan.

There is a small but vocal group in Innis Arden who has brought their narrow point of view to staff and prompted these proposals. It is my hope that both staff and the Planning Commission will step back and gain a fresh and balanced perspective on these issues.

First of all, Hazardous Tree Exemption changes are unnecessarily complicated, unreasonable, and cause excessive expense to citizens. The existing code is clear, reasonable, and useful. It is troubling that the entire City of Shoreline may be subjected to these burdensome requirements, simply to remove a hazardous tree.

Does the Director of Planning have more expertise than a certified arborist? Why must trees be removed with 'hand held' tools only? What is a 'hand held' tool? Why must a citizen first perform the complicated steps to obtain a 'permit exemption request' prior to removing a hazard? I fail to understand the rationale.

Secondly, the proposed Critical Areas Stewardship Plan violates our property rights. If implemented, it would result in the destruction of views in Innis Arden that have been enjoyed for over a half century. These views have been protected by our covenants, King County Superior Court, and the Court of Appeals. The King County Assessor's Office also recognizes the value of views and adds up to $240,000 to the property value of view lots.

A property does not qualify for the stewardship plan unless it is 10 acres. This disqualifies all lots in Innis Arden and most lots in Shoreline. Under the plan, Shoreline residents in critical areas would be prohibited from managing their own vegetation for whatever reason, be it views, sunlight or landscaping preferences. This would be considered a taking by the City.

Although Innis Arden's 50+ acres of reserves would qualify for the stewardship plan, the phrase "An approved stewardship plan may authorize the limited cutting of non-hazardous vegetation in order to preserve private views of the Olympic Mountains and Puget Sound that existed at the time of the submittal of the plan " would prevent view *restoration.* This requirement is arbitrary and yet another taking by the City.

There is only one view-covenanted community in the City of Shoreline. I don't understand why reasonable accommodations cannot be made to preserve our property rights. My fear is that the small vocal group has presented unbalanced misinformation and that the staff is not hearing what others have offered. I urge you to keep an open mind and make reasonable decisions.

Sincerely,
Carol Solle
17061 12th Avenue NW
Shoreline, WA 98177
(206) 542-4978
csolle@earthlink.net

May 8, 2006

Dear Mr. Tovar and Other Planning Commission Members:

After reading the code proposals, we believe there are some necessary changes that need to be made. Hopefully the planning commission will agree with the comments and suggestions.

A. Regarding the Stewardship Plan

1. INCLUDE THE WORD " RESTORE"

Language in the provision of SMC 20.80.080.G the approved stewardship plan should include the word **restore**. "An approved stewardship plan may authorize the limited cutting of non-hazardous vegetation in order to **restore and preserve private** views of the Olympic Mountains and Puget Sound." We have a right to restore lost views on private properties.

2. A PLACE TO START

Some residents have private property rights which include Sound and Olympic Mountain Views. **Judge Ellington's ruling of the tree height covenant in the 1980's and the documentation of the grandfather trees helps to** establish 'a place to start' in regard to maintaining the views in Innis Arden. The city should not interfere or try to override past judgments delivered by the courts in private matters. (Some Innis Arden residents are discussing whether we need to ask the courts to help us protect our property rights from the city's attempt at voiding them)

The issue of cutting trees in Innis Arden is to restore and/or maintain views of the Sound and/or Olympic Mountains, not to add more impermeable surfaces or build on the land. Understanding this, why can't the city allow smaller trees/vegetation to be substituted for the larger trees? It is the large trees that blow over and pull the hillsides down with their large roots.

Innis Arden is being imposed upon by the city to change its culture and values. Innis Arden was clear cut at one time, and not one house or chunk of land has ever been lost to any slide or other disaster. Where is the science that supports the necessity for changes in the codes?

3. ELIMINATE MINIMUM ACREAGE

The critical area stewardship plan should **not require a minimum area of land**. None of the private home parcels have 10 acres; therefore, homeowners have no means to manage their critical areas and to restore and/or maintain views. Not requiring a minimum size of land gives flexibility to private home parcels to apply for stewardship plans.

It also allows for small portions in a reserve to be addressed without having to include other reserves at that time.

4. REMOVE 'ONE' OWNERSHIP (re: #3, part b)
How can 538 homeowners and our reserves be managed under "1" ownership?

5. GIVE PRIOR NOTICE OF VISITS
When city staff or consultants may need to enter private property as the visit relates to the stewardship plan notice should be given to the property owners. Also written documentation should be left by city staff and/or consultants at the property indicating a visit was made if owners are unable to meet with staff.

B. Regarding the Hazardous Tree Issue:
Do we really need to adopt a new code for handling hazardous trees? "NO!"
This proposal is being made because under the old city code, a few council members were incorrectly told that Innis Arden has 'taken advantage' of the present/old code in removing hazardous trees. Those hazardous trees were identified by certified arborists on private property and a second party of arborists removed them (all documented) in a legal manner. We believe that some council members are driving this issue from misinformation. It is totally absurd to create hurdles for the public to jump over, ask the city to expend its resources (people and money) all because someone feels that those 'hazardous trees' were not really hazardous.

Also in the Innis Arden Reserves, many trees do fall on the trails. We use the trails every week and in the month of December we encountered approximately 4 large trees that actually fell on the trail in one of the Reserves.

Surely Shoreline's liability will also be increased due to the process they are asking of its citizens. Most people use common sense in making decisions regarding a hazardous tree. Do we really need the government to mandate a process of how to do it? The present proposal is not user friendly for the public. The *city should serve its citizens by promoting safety* first not asking its citizens to prove that a tree is indeed hazardous.

C. If the code must be adopted then here are some recommendations:
1. PROPOSED PROCESS IS TOO CUMBERSOME
The city expects citizens to go through a lot of hoops for a hazardous tree, i.e., figuring out which category a tree falls within (is it leaning too far, is it active danger, inactive, imminent…), possibly cordoning off with yellow warning tape during the review of a request for exemption, phoning city staff, contacting an arborist…

Citizens should not have to 'wait' for an 'ok' from the city to remove a hazardous tree. Could the city be setting itself up for liability suits?

2. MAKE THE LANGUAGE CLEARER AND SIMPLER
The language is too confusing for laymen, i.e., "An active and imminent hazard" verses "not active and imminent hazard" (terminology is not familiar to most).

3. CITY SHOULD HAVE A REFERRAL LIST OF PROFESSIONALS THAT THEY REFER.
This list should be *exempted from employment by the city to prevent any conflicts of interest and pressure to manipulate outcomes from the city.* The city should show good faith in professionals who hold best standing and practices within their domain.

4. OMIT "HAND TOOLS"
We had a very large tree removed via a crane. This crane prevented damage that might have occurred to other surrounding vegetation/trees, a driveway and a city light post. How a tree is best dropped should depend on the circumstances not the tool. The city must allow for the surrounding environment to be protected.

5. THIS PROPOSAL IS COSTING MORE TO THE TAXPAYERS UNNECESSARILY!
Taxpayers will be paying for the city staff to monitor and/or over see 'hazardous tree removals'. As taxpayers we resent having to allocate money to be spent for a process that affects individual's personal property. The city should be keeping its watch over the projects that are costing us thousands/millions of dollars (i.e., Aurora Corridor).

We hope that you will consider the rights and wishes of the residents that will be affected by these code proposals. The **majority in our community (of 538 homes) do support our covenants** as indicated in our annual share holder meetings, elections and community survey.

Respectfully,

Pamela & Alan Smit

-----Original Message-----
From: seattlesheas@verizon.net [mailto:seattlesheas@verizon.net]
Sent: Wednesday, May 10, 2006 6:41 PM
To: Matt Torpey
Subject: Proposed Tree Cutting Regulations

Dear Mr. Torpey:
As a Shoreline and Innis Arden resident I wish to advise the Shoreline Planning Commision and City Council via this response to your request for comments on this subject. I support our Innis Arden elected representatives comments and legislative background sent to you by letter of May 8,2006 by Peter J. Eglick. This complicated matter deserves additional high quality insight of the type provided in the letter. James M. Shea