

No. 20497-1-I/1

FILE
 IN CLERKS OFFICE
 COURT OF APPEALS
 STATE OF WASHINGTON-DIVISION I
 DATE MAR 14 1988
Solomon, J.
 CHIEF JUDGE

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
 DIVISION I

INNIS ARDEN CLUB, INC., a) NO. 20497-1-I
 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)
 CATHELEEN 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 RIEBLY)

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and MARY ANN RYDLY, husband)
 and wife; RICHARD E. RUST and)
 NANCY RUST, husband and wife;)
 JAN I. FRAUDINS and TOMINA)
 FRAUDINS, 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)
 LUNDE and VICKY LUNDE, 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.

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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.

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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.

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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.

Phillip D.

WE CONCUR:

W. Moore, Jr.

Shelton

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