

Innis Arden Club, Inc.
P.O. Box 77738
Seattle, WA 98177-0738

President:

Mike Jacobs

Vice President:

Carol Solle

Board of Directors:

Wendy Higgins

Harley O'Neil

Ewa Sledziewski

R.L. Smith

Maggie Taber

Al Wagar

Shelley Watson

Via First Class Mail

December 9, 2004

J. Thomas Richardson
Cairncross & Hempelmann, P.S.
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Seattle, WA 98104-2323
Attorney for John D. Hollinrake

Robert I. Heller
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Seattle, WA 98154-1065
Attorney for Tollett Credit Shelter Trust

Daniel L. Olason
18780 Ridgefield Road NW
Shoreline, WA 98177

Katherine Gortva
18290 Springdale Court NW
Shoreline, WA 98177

Randy Hoverson
18522 Springdale Court NW
Shoreline, WA 98177

Re: Hollinrake, et. al. and Tollett Credit Shelter Trust
Covenant Compliance Matter

Dear Counsel and Innis Arden Residents:

Enclosed please find the Decision of the Innis Arden Board which I revised on this date to reflect that the Board had received and considered Respondent's Exhibit No. 28. in this matter.

Sincerely,


MICHAEL L. JACOBS

President

Innis Arden Board of Directors

MLJ:rg

cc: **Via First Class Mail with enclosures**

John D. Hollinrake

Carol Solle

Peter Eglick

David Laskin - 18757 Ridgefield Road NW, Shoreline, WA 98177

Roger Buchmayr and Tierna Bravo - 18770 Ridgefield Road NW, Shoreline, WA 98177

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Before The Innis Arden Board

IN RE THE MATTER OF)

John Hollinrake, 1048 NW Innis Arden Drive,)
Daniel L. Olason, 18780 Ridgefield Road NW,)
Randy Hoverson, 18522 Springdale Court NW, and)
Katherine Gortva, 18290 Springdale Court NW,)

Petitioners,)

and)

Tollett Credit and Shelter Trust,)
18261 Springdale Court N.W.,)

Respondent.)

**FINDINGS FO FACT AND
DECISION OF BOARD**

(Amended December 9, 2004 to include
acknowledgment of Board consideration
of Respondent's Exhibit No. 28)

Procedural Setting

1. Petitioner John Hollinrake, 1048 Innis Arden Drive N.W., filed a Covenant Compliance Request Form dated February 2, 2004 with attachments alleging that a tree on Respondent's property at 18261 Springdale Court N.W. violates the tree height view covenants of Innis Arden.

2. Petitioner Daniel L. Olason filed a Covenant Compliance Request Form dated August 21, 2003 alleging that a tree on Respondent's property at 18261 Springdale Court N.W. violates the Tree Height Amendment and Section 11 of the Covenants relating to nuisance

**FINDINGS OF FACT AND DECISION
OF THE BOARD**

(Amended December 9, 2004 to include
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consideration of Respondent's Exhibit
No. 28) - 1

vegetation.

1 3. Petitioner Randy Hoverson filed a Covenant Compliance Request Form dated
2 March 27, 2004 alleging that a tree on Respondent's property at 18261 Springdale Court N.W.
3 violates the View Preservation Amendment for Innis Arden #2, 1st paragraph.

4 4. Petitioner Katherine Gortva, 18290 Springdale Court N.W., filed a Covenant
5 Compliance Request Form dated August 17, 2004 alleging that a tree at 18261 Springdale Court
6 N.W. violates Section 11 regarding nuisance vegetation and the Tree Height Amendment.

7 5. The Board wrote letters dated July 13, 2004 and July 15, 2004 to Sonja Vonheim-
8 Condon, trustee of the Tollett Credit Shelter Trust, requesting a response to the petitions filed by
9 Mr. Hollinrake and Mr. Hoverson. Ms. Vonheim-Condon wrote to the Board by letter dated
10 August 4, 2004 acknowledging receipt of the July 13th and July 15th letters from the Board and
11 requesting re-notification because the letters mis-identified the property as 18621 Springdale Court
12 N.W. rather than 18261 Springdale Court N.W.. The Board replied by letter dated August 11,
13 2004 that proper notice had been provided despite the typographical transpositional error in the
14 text of the July 13th and July 15th letters.

15 6. The Board received a letter dated August 16, 2004 from Robert I. Heller of Riddell
16 Williams, P.S. advising that Mr. Heller represents Sonja Vonheim-Condon, Trustee of the Credit
17 Shelter Trust, and responding to the Covenant Compliance Requests. Mr. Heller requested a
18 hearing concerning the alleged covenant violation. Mr. Heller advised that "we believe that the
19 subject tree is not in violation of either the view preservation amendment or the Section 11
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24 **FINDINGS OF FACT AND DECISION**
25 **OF THE BOARD**

26 (Amended December 9, 2004 to include
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consideration of Respondent's Exhibit
No. 29) - 2

provisions of the Covenants" and "any view impacts are 'de minimis' and the tree does not cause obstruction of view from neighboring lots."

7. The Board set a hearing date of November 10, 2004 at the Innis Arden Clubhouse. The hearing commenced at 7:15 p.m. Mr. Hollinrake and Mr. Hooverson attended. Ms. Gortva and Mr. Olason did not attend. Ms. Vonheim-Condon attended and was represented by Michael Pierson of Riddell Williams, P.S. Mr. Heller was present.

8. The Tollett Credit Shelter Trust (hereinafter "Tollett") filed a Motion for Recusal of certain Board Members dated October 27, 2004, alleging that certain Board Members had visited the Hollinrakes' property in May of 2004 to view the tree at issue without notice to Tollett. Tollett argued that the site visit raised issues relating to "fairness questions" including its ability to "get a fair hearing" and "compliance with the appearance of fairness doctrine."

9. Mr. Hollinrake requested that board member Al Wagar recuse himself relating to Mr. Wagar having taken a coring plug from the tree.

10. At the onset of the hearing, the Board considered Tollett's Recusal Motion. After hearing argument from Mr. Pierson and Mr. Hollinrake, the Board denied Tollett's motion on the basis that there was no evidence of bias or unfairness in support of Tollett's position. The site visit to the Hollinrakes' residence in May by certain Board Members (which was for the purpose of viewing certain trees in Running Water Reserve that Mr. Hollinrake wished to prune) who incidentally viewed the Tollett tree did not warrant recusal. Mr. Hollinrake withdrew his request that Mr. Wagar recuse himself.

**FINDINGS OF FACT AND DECISION
OF THE BOARD**

(Amended December 9, 2004 to include
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consideration of Respondent's Exhibit
No. 28) - 3

11. The Board received and considered the following:

- 1 A. Statement of the Hollinrakes' Regarding The View Covenant Violation By
2 The Tollett Tree including Exhibits 1 through 10;
3 B. Submission of Respondent Tollett Credit Shelter Trust including Exhibits
4 1 through 28;
5 C. Hollinrake's Response to Tollett Trust Submission including Exhibits 1
6 through 10;
7 D. Reply Submission of Respondent Tollett Credit Shelter Trust to
8 Hollinrakes' Response Delivered Sunday Afternoon, November 7, 2004
9 including Exhibits 29 through 33;
10 E. Photographs taken by Board members Carol Solle and Al Wager on
11 Sunday, November 7, 2004 at the site visit to the parties' residences with
12 respect to which notice was provided to all parties; and
13 F. November 7, 2004 Declaration of Russell Castner.

16 12. The Board heard testimony from the following witnesses:

- 17 A. Russell Castner
18 B. Randy Hoverson
19 C. Scott Chapple
20 D. Christopher Earle
21 E. James Longmuir
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24 **FINDINGS OF FACT AND DECISION
OF THE BOARD**

25 (Amended December 9, 2004 to include
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consideration of Respondent's Exhibit
No. 28) - 4

F. Beverly Malgren

G. Sonja Vonheim-Condon

H. Dan Douglas

13. The Board heard and considered the arguments of Mr. Hollinrake, Mr. Hoverson, and Mr. Pierson. The hearing concluded at approximately 10:50 p.m.

14. The Board reconvened on November 18, 2004 at the Innis Arden Clubhouse at 7:15 p.m. to deliberate. Notice was provided to the parties.

Findings of Fact

15. The Tollett tree exceeds the height of the Tollett residence roofline and materially blocks the Puget Sound and Olympic Mountain views of Petitioners Hollinrake, Olason, Gortva, and Hoverson.

16. The Tollett tree is a nuisance tree as specified in Covenant No. 11.

Decision of Board

The Board finds that the Tollett tree violates the Tree Height Amendment and Covenant 11 of the Mutual Restrictive Easements of Innis Arden. The Board lacks the authority to declare the Tollett tree a "grandfathered" tree as defined in the Special Master Guidelines promulgated by Judge Ann Ellington on April 3, 1989 in the *Innis Arden Club, Inc., et al vs. Binns* lawsuit.

The Board requests that Respondent prune the tree to a height no higher than the roofline and maintain the tree at a height no higher than the roofline. Respondent has 30 days from date hereof to comply with the Board's ruling. In the event that Respondent fails to comply with the

Board's request, Respondent's identity and property address will be published in the Innis Arden
Bulletin as having failed to be compliant.

Dated: 12/9/04

Signed: 

Michael L. Jacobs
President - Innis Arden Club, Inc.

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**FINDINGS OF FACT AND DECISION
OF THE BOARD**
(Amended December 9, 2004 to include
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consideration of Respondent's Exhibit
No. 28) - 6