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DIVISION ONE

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NO. 68249-1-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

VERNON L. MEYERS & VIRGINIA C. MEYERS, et al.,

Appellants,

v.

REGINALD PETER SAUNDERS & ELIZABETH SAUNDERS, et al.,

Respondents.

APPELLANTS' OPENING BRIEF

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I. INTRODUCTION

This case involves the interpretation of recorded 1962 covenants (“CCR’s”) and whether: (1) the Meyers had written notice that restricted an exception for existing trees to “Madronas and other evergreens” at the time they purchased Lot 117 and constructed their home in 1970; and (2) whether the developer’s Building Committee’s prior approval of the parties’ building plans that preserved the Meyers’ existing tree without restriction can be changed 40 years later by a successor Covenant Review Committee (“CRC”).

II. ASSIGNMENTS OF ERROR

No. 1 By not enforcing earlier final decisions of the Somerset Building Committee, predecessor to the Covenant Review Committee (“CRC”), that approved Respondents’ and Appellants’ building plans without requiring removal or alteration of the Meyers’ Maple tree.

No. 2 By not correctly applying the plain meaning of ¶10 of the Somerset covenants (“CCR’s”) that created an express exception and review process that protected the Meyers’ tree as one “...existing at the time these restrictive covenants of Somerset,...are filed,”.

No. 3 By allowing inadmissible statements of subjective intent that violated the “context rule” in determining the intent and purpose of the CCR ¶10 existing tree exception.

No. 4 By not awarding the Meyers’ declaratory and injunctive relief where: (a) no restrictions on grandfathered trees, including tree size and specific tree species, had been adopted and recorded by the plat developers or as CCR amendments before the Meyers purchased their property; (b) the only substantial evidence confirmed that the Meyers’ tree was 70 feet in height at the time of recording of the covenants in 1962; and (c) the Somerset Building Committee had already decided any view interference

issue by approving both parties' building plans without requiring the tree to be removed or trimmed under CCR ¶4 and ¶10 review procedures.

No. 5 By not applying doctrines of laches, estoppel, and unjust enrichment.

No. 6 By awarding Respondents summary judgment and their attorney fees and costs.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

No. 1 Does CCR ¶10 create an express exception for existing trees?

No. 2 Did the Meyers receive notice in 1970 at the time they purchased and constructed their home that CCR ¶10 existing trees were limited to "Madronas and other evergreens?"

No. 3 Is the Meyers' existing tree that received substantive Somerset Building Committee review in the 1960's and 1970's under CCR ¶4 and ¶10 consent to construction procedures, now subject to a new determination by the successor Somerset Covenant Review Committee ("CRC") that "...they do not unnecessarily interfere with the view of another residence?"

No. 4 Was a binding view obstruction determination already made by the Somerset Building Committee under CCR ¶4 and ¶10 procedures when building plans were approved for the O'Briens' and Meyers' residences in the 1960's and 1970's who were required to be joined as parties?

No. 5 Does the CRC, as a "mediator," possess any lawful authority to enforce CCR ¶10 covenants and revoke final decisions made by the Building Committee 40 years ago to now require alteration or removal of the tree?

No. 6 Can the CRC restrict grandfathered "existing trees" under ¶CCR 10 to "Madronas and other evergreens" only via a 1989 declaration from the developer's employee under the "context rule" of construction?

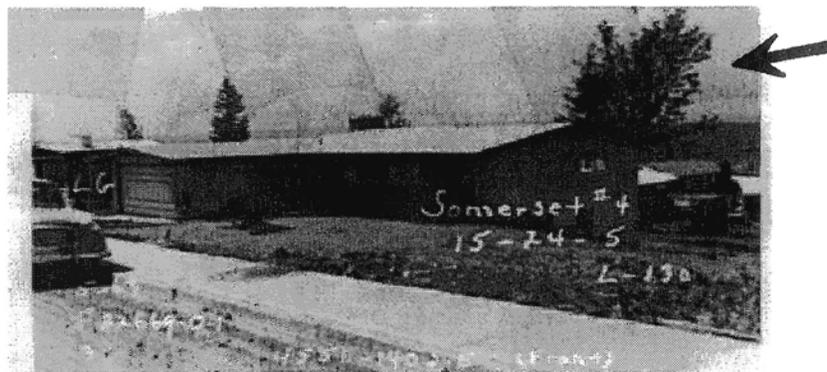
IV. STATEMENT OF THE CASE

1. CCR ¶10 recorded on Feb. 19, 1962 that is the principal subject of this appeal provides as follows:

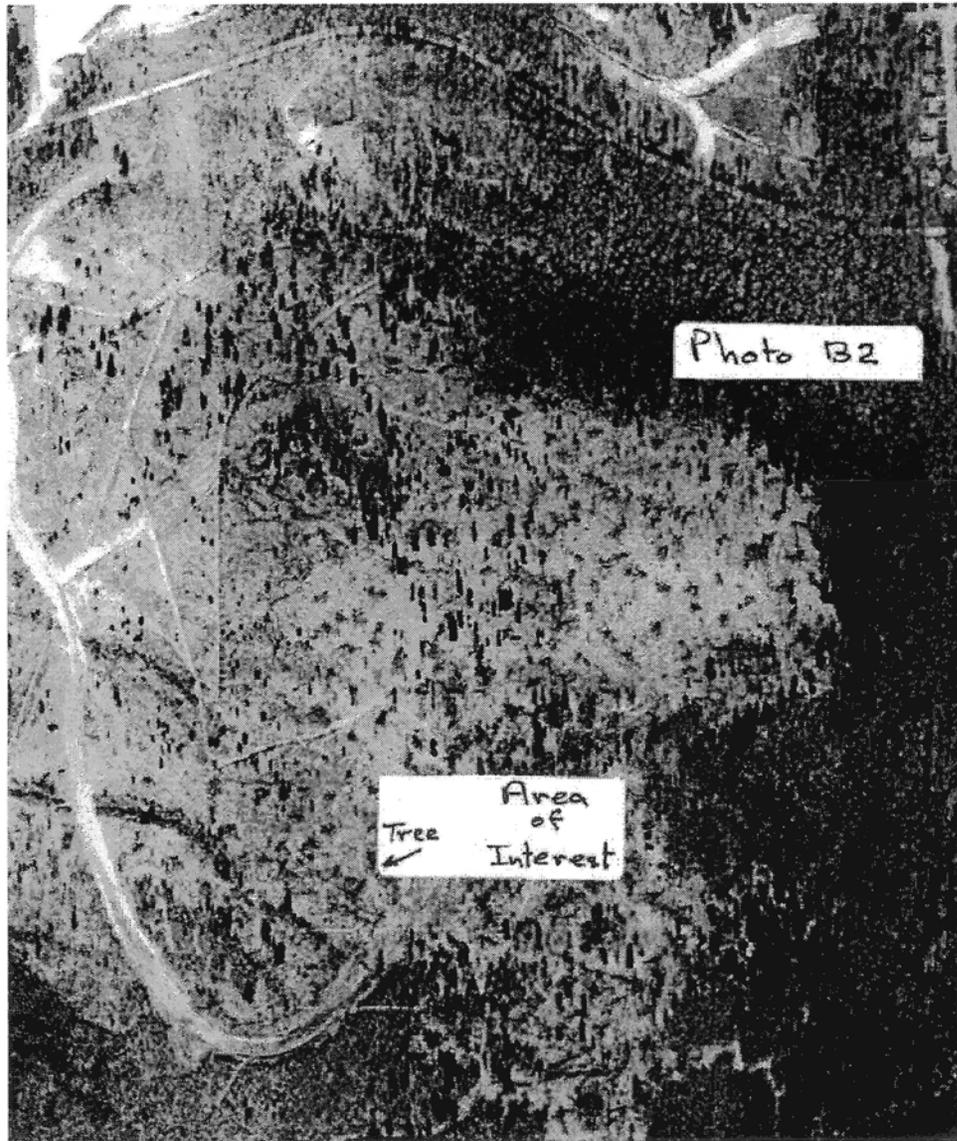
10. Fences and Hedges. All fences, hedges or boundary walls situated anywhere upon any residential lot must be approved in writing by the Building Committee as to its height and design prior to construction. No trees of any type, other than those existing at the time these restrictive covenants of Somerset, Division No. 2, Somerset, Division No. 4 and Somerset, Division No. 6 are filed, shall be allowed to grow more than twenty (20) feet in height, provided they do not necessarily interfere with a view of another residence. The Building Committee shall be the sole judge in deciding whether there has been such an interference. In case of violation, the Building Committee shall have enforcement powers as set forth in Paragraph 1 of GENERAL PROVISION. CP 802-811; Appendix (“App.”) 1; (Emphasis added).

2. The Respondents, collectively referred to as the “O’Briens,” are owners of uphill residences located within the Somerset Division (“Div.”) 4 plat in Bellevue, WA. Respondent Michael A. and Marcy L. O’Brien’s residence located on Lot 130 was constructed in 1963 following its approval by the Evergreen Development, Inc. (“Evergreen”), the original plat developer, and its Building Committee. CP 382-383.

3. A publicly available May 1963 Assessor’s photo shows a large mature Maple tree on the Meyers’ abutting Lot 117 already obstructing the O’Briens’ westerly views. CP 382-383; CP 814-816; App. 2.



4. Historical aerial photos of the Somerset plat provided by the Meyers' Photogrammetrist, Ward Carson, confirmed that numerous existing trees were left standing after plat development at the time of recording of the CCR's in 1962. CP 352; App. 3.



5. In 1970 the Meyers purchased unimproved Lot 117 from Evergreen that included an existing large Maple tree. CP 573-577, 685-685; CP 707; See App. 4. Mr. Carson measured their tree at 70 feet in height in 1962. CP 348-370; CP 385-386.



6. The Meyers' received no written notice when they bought Lot 117 and sought approval of their building plans in 1970 by the developer's Building Committee that their existing Maple tree was not grandfathered under CCR ¶10; or that "existing trees" were limited only to "Madronas or other evergreens." CP 573-574; CP 686-687; CP 707; App. 4.

7. The Building Committee's review of all Somerset Div. 4 building plans under CCR ¶4 and CCR ¶10 criteria included suitability for harmony

with the surroundings, the effect on neighboring property, and view impairment. CP 802-811; CP 804, CP 806.

8. No complaints of view obstruction were received by the Meyers during their building plan review process. They incorporated the Maple tree as a landscape amenity into their building plans where they have lived for over 42 years. CP 385; CP 685-687 ¶¶3-5.

9. Respondent Saunders' built their home in 1973 three years after the Meyers home was built. Their westerly views were already obstructed by the Meyers' Maple tree. CP 55; CP 80-86; CP 2482-2483; See App. 7.

10. Gerald Harkleroad confirmed that as the developer's Building Committee he reviewed all Somerset Div. 4 building plans for any view obstruction before allowing construction to proceed.¹ App. 11, Page 24.

11. The Saunders asked the Meyers in late 70's and 80's about trimming the Meyers' tree. CP 55. Saunders recalled that: "They liked

¹A Okay... There was a -- this was a building committee, quote, not a recorded instrument at all. It was a -- it was the developer, me, administering and trying to help administer the covenants, and mainly -- and mainly to -- to permit work with the builders in permitting their house to be built, so it wouldn't interfere with the view of somebody that's already residing on the hill. Okay.

That was my job, one of my jobs...

Q Did that cover Somerset Division No. 4?

A Yes.

Q All of the lots in Somerset Division 4?

A If there was [sic] vacant lots at that time when I was employed, yes, that would have been Somerset 4...

their tree. It was the reason they bought their house, and as far as the covenants were concerned, the tree was grandfathered.” CP 55; App. 9.

12. Following their purchase of neighboring Lot 130 in 1987, the O’Briens asked the Meyers to prune “minimal” portions of the tree’s lower limb to enhance their view. CP 400; CP 1188; App. 4.

13. The Meyers’ arborists routinely maintained the health of their Maple tree and reduced its height from 70 feet to 63 feet during the 1990’s and 2000’s. CP 55; CP 371-379; CP 575-576; CP 2514.

14. CCR amendments recorded on Dec. 12, 2001 created the CRC to “replace, perform the functions of, and have the same rights powers and authorities as the Building Committee...” CP 711-723; CP 750. They did not retroactively alter CCR ¶4 and ¶10 covenants. They authorized “non-binding” mediation procedures (“written findings and recommendations”) for homeowner disputes. CP 91-103; CP 162-182; CP 711-723; CP 1543.

15. In 2008 the Somerset Community Association (“Association”) published an internal “*View Guideline*.” CP 26-31; App. 5. The *View Guideline* was not approved by a vote of the membership or recorded as covenant amendments. It added terms not appearing in CCR ¶10 that

A But as a representative of the developer. CP 424; CP 750; App. 13, Page 24.

could not have been provided to the Meyers when they purchased Lot 117 and built their home in 1970:

The Spirit of the Guideline

To preserve the views of a homeowner, the way they were, when the house was *Built*.

The *View* that this Guideline is intended to preserve is the *View* that was observable above the *View Line* from the *Observation Zone* at the time the relevant *Main Floor Living Space* was *Built*. Because this Guideline is not intended to preserve a *View* that did not exist at the time the house was *Built*, this Guideline will not be applied in a way that would force a downhill Owner to expand or enlarge the *View* that existed when the relevant *Main Floor Living Space* was *Built*.

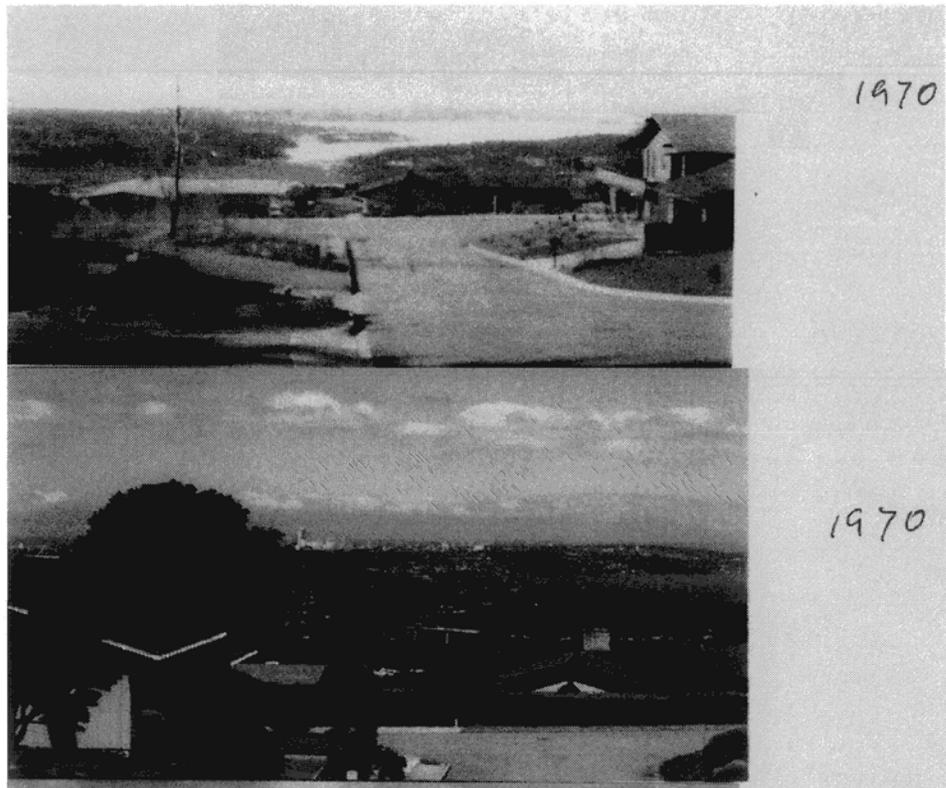
The 20' provision means two things. First, "new" trees shall not be allowed to grow more than twenty (20) feet. Second, the twenty (20) foot height restriction does not apply to *Grandfathered Trees*, provided they do not unnecessarily interfere with the view of another residence. If either tree unnecessarily interferes with the view of another residence it must be trimmed to a lower height so the resulting view restoration is sufficient to prevent the tree from "unnecessarily interfering with the view of another residence."

Grandfathered Trees – A tree that existed on the specific property at the time that the covenants sought to be enforced were first recorded. CP 26; (Emphasis added).

16. On March 23, 2009, the O'Briens and other neighbors met with the Meyers claiming that the Meyers' tree was a new "spontaneous" 2.00 foot "sapling" that had grown after the Meyers' lot was developed not entitled to grandfathered protection as an existing tree at recording of the CCR's:

"Your lot was platted and the covenant recorded on February 19, 1962 (File #5389232). Since the land was graded two years earlier removing all vegetation, there has grown numerous one, two, and three foot tall samplings [sic]. One of these was allowed to grow into a small ten foot tree by the mid sixties, when kids, living in the house directly east of you, played on your unsold lot, and had a rope swing on the tree's lowest northern branch." CP 113; (Emphasis added).

17. The Saunders' claims were based upon neighbor photos taken in 1970. These photos, however, showed that the Saunders' westerly views were already partially obstructed by the Meyers' tree in 1970 well before the Saunders built their home in 1973 (CP 331; App. 7; App. 9):



Photos provided and dated by Peter Saunders at initial meeting 3/23/2009

18. These owners, citing the *View Guideline*, asked the CRC to trim the tree "...sufficiently to restore their prime view of the Seattle Skyline, lake Washington, and the primary Olympic peaks." CP 50-56; App.9.

19. The O'Briens told the CRC they did nothing about their views because they were told by neighbors that the tree was grandfathered:

“I was advised by my neighbors that when I moved in that the tree was ‘grandfathered’ and therefore not subject to height and view restrictions, so I have not contacted the CRC regarding the matter.” CP 50; App. 9.

20. Respondent Saunders asked the CRC to remove the Meyers’ tree altogether. They confirmed the Meyers’ understanding about the tree:

“They liked their tree, it was the reason they bought their house, and as far as the covenants were concerned, the tree was grandfathered.” CP 55-56; App. 9.

21. On Mar. 24, 2009 the CRC’s Chairman, Gary Albert, emailed the Meyers’ son-in-law, Stephen B. Smolinske, confirming that the Meyers’ tree height (reduced in height from 70 feet to 63 feet) was grandfathered, and could grow higher but that its “width” may not be protected:

“To clarify the issue on trees existing at the time of the covenants (a.k.a. grandfathered):

Original trees that were already tall enough so that a neighbor did not have a particular view at the time of the covenants could continue to grow higher. There would be no taking of a view since there was no pre-existing view to be taken.

There is always a question about expanding grandfathered rights. In case of your in laws Maple tree, as the tree ages and starts spreading out in the horizontal plane, is that permissible or is that an expansion of a grandfathered right?”

I hope this helps in working through the process with the neighbors and your in laws. CP 333; (Emphasis added)

22. On Mar. 31, 2009, Saunders sent Mr. Smolinske an email stating:

“We desperately need pictures of that tree at the time of the initial lot purchases, around the mid-sixties. I need that SCA ladies [sic] name, and contact info, so I can delve deeper into her contention that she had seen really early photos of those lots. We need solid evidence to support the degree of grandfathering that the Meyers are entitled to.” CP 334; (Emphasis added).

23. On Apr. 1, 2009, concerned about bias and fairness, Mr. Smolinske asked the CRC to disclose any *ex parte* communications, and provide copies of procedural rules that the CRC would follow. He asked that CRC dispute procedures be “followed to the letter.” CP 739; CP 1546-1547.

24. On Apr. 2, 2009, the CRC explained its review process under the *View Guideline*, including mediation procedures that it would follow. The CRC confirmed that its “decision” was “non-binding.” CP 1545.

25. On Apr. 8, 2009, the Meyers’ submitted a 57 page Response to the neighbors’ filed complaints. CP 313-321; CP 329-381; App. 3 excerpts. It contained historical photos and expert reports from a certified Photogrammetrist, Ward Carson, and two arborists. Aerial photos of Somerset Div. 4, before and after recording of the CCR’s in 1962, showed existing trees that remained after plat development on the Meyers’ Lot. CP 350-352; App. 3. Mr. Carson’s aerial photos, height calculations, and opinions are the only expert evidence submitted in this case.

26. Mr. Carson calculated the tree’s height at 70.00 feet on July 27, 1964. CP 348-355. Arborists Kurt Fickeisen and Tina Cohen calculated a height of 63 feet on Apr. 6, 2009 that resulted from the Meyers’ pruning in the 1990’s. CP 371-372; App. 3. Arborist Tina Cohen warned in her report that any further topping of the tree would kill it. CP 401-411.

27. The CRC hired no independent arborist or photogrammetrist to investigate or rebut the Meyers' Apr. 8, 2009 Response, stating:

"This document you have provided includes technical information that is above the level of understanding for a normal layperson on the committee...The CRC does not have a budget to parse out your report..." CP 211.

28. On May 28, 2009, the CRC issued a "Decision" letter. It directed the Meyers to have the tree's "canopy width trimmed to 30 feet." CP 63-65; CP 64; App.7. [Note: Once it accepted the neighbors' complaints, the CRC possessed no lawful authority under CCR amendments to issue any "decision" or "ruling" when it was only authorized "mediate" individual landowner disputes and make written "recommendations" under its amended CCR's. CP 91-103; CP 162-182; CP 711-723; CP 1543; App.5.]

29. The CRC letter stated that it was "influenced" by the *View Guideline* and Declaration of Gerald Harkleroad:

...We viewed pictures provided by the affected neighbors, as well as committee generated iMAP photos from King County (copies enclosed). In addition, the CRC was influenced by the published *View Guideline for Somerset* and the *Declaration of Gerald Harkleroad*, which outlines the intent of the original covenants.

We think that it is important to note that the intent and spirit of the Somerset Covenants, and therefore the CRC View Guidelines, is to preserve the views of a homeowner...However, consideration also needs to be given to 'grandfathered' trees. The view the covenants are trying to preserve is the view in existence at the time the covenants were recorded; i.e., early 1960's.

Original large trees that were already tall enough so that a neighbor did not have a particular view over the tree at the time the covenants could continue to grow higher as long as it did not block other existing views. There would be no taking of a view since there was no existing view to be taken. However, this does not allow a tree to take away an existing view by spreading out in the horizontal

plane. This is what has happened with your tree. A tree's width can have as much impact on a neighbor's views as a tree's height.

The Declaration of Gerald Harkleroad gives us additional insight of the original intent of the covenants. To quote Mr. Harkleroad: 'Though the covenant language restricting tree height may seem to except from its coverage 'trees in existence' at the time the covenants were recorded, the understanding involved at the time, including myself, was that this language was intended to cover the full grown Madrona and other evergreen trees in the subdivision...From this statement, it is the CRC's opinion that the original intent of the covenants was not to protect the horizontal expansion of a maple tree, at the expense of another homeowner's view. CP 63-65; CP 77; App. 8; (Emphasis added).

30. On June 5, 2009, CRC Chairman Gary Albert emailed Mr. Smolinske describing the CRC's mediation findings as a formal "ruling." CP 1609. He congratulated Mr. Smolinske for protecting the Meyers' tree stating that the Meyers had received a "fair and impartial hearing:"

"If it is any consolation the neighbors are not happy with the CRC decision either, which could mean we did a good job of being fair to all concerned and ruled based on the covenants. Thank you for being a strong protector of the Meyers and insuring they received a fair and impartial hearing. They should be very proud." (Emphasis added).

31. On Aug. 30, 2009, the CRC explained how it arrived at its "decision," again misrepresenting the limited mediation authorized by CCR amendments in reviewing homeowner disputes:

We discussed your email of June 19 and agree that two dates are benchmarks. The date the covenants were recorded determines if a tree was in existence and having some 'grandfathered' rights. And the date the home was built establishes the 'view' that was observable and protected. Because most homes in a division were completed within a few years period, there would have been little observable change in the view from the date of the covenant's recording. Exceptions to this, i.e., lot purchased for investment sale at a later date, would be handled by the CRC and they would make an appropriate determination.

The CRC decision found, based on the information you provided, the Meyer's tree was a grandfathered and the CRC decision allowed that it was already in the

neighbors view in the vertical plane. However, the CRC agreed unanimously that the trees expansion in the horizontal plane was an unnecessary view interference and the Maple tree needs to be trimmed back and maintained to a 30 foot diameter from its current 60 foot diameter. This also complies with the concept found in the Harkleroad Declaration where he stated,

‘...though it was desirable to maintain some of those existing large trees, in certain cases, we negotiated thinning of those existing trees. Again, this was done in order to gain or protect the view...’ CP 322-324; (Emphasis added).

32. Dissatisfied, the O’Briens and CRC held secret meetings seeking to remove the tree altogether. CP 319-320; CP 576; App. 13, Page 21.

33. Without any notice of any ongoing “mediation” or any “fair and impartial hearing” provided to the Meyers, the CRC issued a second “decision” letter on Apr. 27, 2010. CP 63-64; CP 68; App. 8. Claiming earlier that it was unable to “parse out” the Meyers’ expert reports, historical photos, and tree size calculations, it abruptly reversed course:

“this case has been “re-opened” because “...new evidence has been provided that shows there were views of the Olympic Mountains over your Maple tree.”

34. In accepting these photos in secret meetings, the CRC ignored the Meyers’ expert scientific evidence showing all views partially obstructed before uphill homes were constructed. CP 331; CP 348-355; App. 3. Even if the CRC, as “mediator,” could decide view obstruction, its actions and later trial court decision were not reasonable or supported by substantial evidence in the record, where the only expert evidence concluded that the Meyers tree was 70 feet in 1962 that the Meyers later pruned to 63 feet. CP 329-381; Riss, supra at 627-28.

35. “Reconsideration” is not an authorized procedure under any CCR, CCR amendments, or *View Guideline*. Apps. 1, 5, 6.

36. The second letter directed the Meyers to lower the tree’s canopy (already lowered to 63 ft.) to an arbitrary “red line” shown in a 2010 photo taken by a non-party neighbor (CP 68-72; App. 7):



37. These 1970 color photos show three existing large trees (including the Meyers’) partially obstructing all uphill owners’ westerly views:



February 1970

[1970 Photo with Existing Tree Height of 70 Feet]

38. Following further mediation, the O’Briens brought suit and failed to join Evergreen or the CRC as a necessary parties. CP 89.

39. The Meyers moved to strike evidence of subjective intent that violated the “context rule” and hearsay rule. CP 457-482. The trial court denied the Meyers Motion. CP 255-264; CP 484-485.

40. The Meyers moved to strike evidence of the mediation submitted by O’Briens as violative of ER 408. CP 457-482. The trial court denied the Meyers Motion. CP 255-264; CP 484-485.

41. The O’Briens and Saunders claimed that they were entitled to an “unobstructed and protected view” independent of the Building Committee’s building plan review performed in the 1960’s and 1970’s under CCR ¶10 and CCR ¶4:

“3. Neither of us ever made any statements or indicated in any way our approval of the Maple Tree on the Defendant’s Property.

4. Neither of us were members of the Somerset Building Committee or Somerset Covenant Review Committee so neither of us had anything to do with the approval of the building plans or landscaping plans for the residence constructed on the [Meyers’] property.

5. The relief we seek...is to simply enforce Section 10...that bind both Plaintiffs and Defendants...We seek only an unobstructed and protected view, which is exactly what we were supposed to have per the recorded Covenants. It is a benefit that we already paid for when we purchased a view home in a view community.” CP 1016; CP 1018; (Emphasis added).

42. The Meyers’ summary judgment motion was denied. Judgment was entered ordering the Meyers to “comply with the CRC’s decisions dated May 28, 2009 and Apr. 27, 2010.” CP 486-492; (Emphasis added).

43. On reconsideration the trial court declined to dismiss Respondents' Complaint for failure to join the CRC as necessary parties under CR 17 and CR 19. CP 496-522; 533-539; 578-579.

44. The trial court awarded Respondents their fees and costs under "CCR ¶18, RCW 4.84.330 and RCW 64.38." CP 2353-2357; App. 10.

V. SUMMARY OF ARGUMENT

When recorded in 1962, CCR ¶10 unambiguously excepted "existing trees" that were part of a "consent to construction" process for building plan review as a common plan of development for all Somerset lots. CCR ¶10 expressly excepted trees of "any type" "existing at the time" the CCR's were recorded. The height and width of protected "existing trees" was not then, and is not now, restricted by CCR ¶10 or any CCR amendments.

If CCR ¶10 is ambiguous [which it is not], the Berg v. Hudesman "context rule" shows that the final decision on view obstruction was already made by the CRC's predecessor, the Building Committee, over 40 years ago. Indisputable evidence shows the O'Briens' and Saunders' westerly views were already obstructed by the Meyers' maple tree in 1963 and again in 1973 when their homes were constructed. When the Meyers received their building plan approval in 1970, the Building Committee did not require removal or alteration of the Maple tree. Individual lot owners are estopped or barred from collaterally attacking the final Building Committee decisions.

Neither the CRC nor trial court should substitute the judgment of the Building Committee that left the Meyers' tree in place for over 40 years.

The CRC cannot arbitrarily evade formal notice and CCR amendment requirements. It cannot, as mediators, retroactively apply a new 2008 *View Guideline* using an inadmissible employee declaration to alter the express exception for existing trees as an expression of "original intent" limiting it "Madronas and other evergreens" that the Meyers had no notice of in 1970 when they bought Lot 117 and constructed their home.

The O'Briens initiated the CRC's mediation process for reviewing view obstruction complaints. If the CRC sought to enforce CCR ¶10 covenants, it could not act as a mediator under its amended covenants. It could not conspire to hold secret "reconsideration" meetings with the O'Briens, claim that its actions were "non-binding" (CP 1545), and then issue "rulings" directing the Meyers reduce the tree's height and width. In either capacity, it could not disregard the Meyers' expert evidence showing an existing mature Maple tree on Lot 117 already obstructing uphill views at the time the CCR's were recorded in 1962. If not enforced by this court, the expressed entitlement for existing trees under CCR ¶10 is rendered meaningless.

The trial court erred by misreading CCR ¶10 and misapplying the "context rule." It accepted inadmissible unilateral evidence of subjective

intent that modified CCR ¶10 and which disregarded the only expert evidence showing a mature 70 foot Maple tree already obscuring uphill views at the time of CCR recording and later when uphill homes were constructed in the 1960's and 70's.

The court cannot jurisdictionally decide these prior actions of the developer's Somerset Building Committee and enforcement of ¶10 covenants, and their successor Covenant Review Committee, without requiring that these parties be joined under CR 17 and CR 19.

VII. ARGUMENT

A. CCR ¶10 Unambiguously Expects Existing Trees From Any Restrictions as a Specific Expression of Original Intent.

The interpretation of covenants is a question of law reviewed *de novo* on appeal. Day v. Santorsola, 118 Wn.App. 746, 756, 76 P.3d 1190 (2003). Courts determine the original drafter's intent and covenant's purpose at the time it was drafted. Principles for construing covenants are set forth in Bauman v. Turpin, 139 Wn.App. 78, 88-9, 160 P.3d 1050 (2007).² Words

² Courts are to determine the drafter's intent by examining the clear and unambiguous language of a covenant. Burton v. Douglas Cty, 65 Wn.2d 619, 621-22, 399 P.2d 68 (1965). We must consider the instrument in its entirety and, when the meaning is unclear, the surrounding circumstances that tend to reflect the intent of the drafter and the purpose of a covenant that runs with the land. Lenhoff v. Birch Bay Real Estate, Inc., 22 Wn.App. 70, 72, 587 P.2d 1087 (1978). While the interpretation of a restrictive covenant is a question of law, intent is a question of fact. Day, 118 Wn.App. at 756, 76 P.3d 1190 (citing Mariners Cove Beach Club, 93 Wn.App. 886, 890, 970 P.2d 825) (1999)) Extrinsic evidence of intent is admissible if relevant to interpreting the restrictive covenant. In Hollis v. Garwall, the Supreme Court applied the Berg v. Hudesman 115

and terms are first construed by their ordinary and common meaning. Riss v. Angel, 131 Wn.2d 612, 621, 934 P.2d 669 (1997).³

The principal covenants being review involve the original intent of CCR ¶10 together with the plan review and enforcement provisions of CCR ¶1, ¶4, and ¶18. As a common plan of development⁴ for the Somerset Div. 4 plat, a sufficient number of existing trees remained on some lots at the time the CCR's were recorded in 1962 to warrant treatment as an entitlement under CCR ¶10. CP 802-811; App. 1; CP 380-381; See App. 3 photos.

CCR ¶10 uses strategically placed commas⁵ to create a clause after the words: "No trees of any type" "...other than those existing at the time these restrictive covenants of Somerset, ...Division No. 4...are filed..." This clause represents a "specific enumeration of certain items" that expressly identifies "existing trees" as a category and exception to tree

Wn.2d 657, 663, 801 P.2d 222 (1990) context rule to interpreting restrictive covenants. Hollis v. Garwall, Inc., 137 Wn.2d 683, 695-96, 974 P.2d 836 (1999). Under this rule, evidence of the "surrounding circumstances of the original parties" is admissible "to determine the meaning of the specific words and terms used in the covenants." *Id.* at 693, 974 P.2d 836. (Emphasis added).

³ Our primary objective in interpreting a restrictive covenant is ascertaining the intent of the original parties to the covenants. Viking Props. v. Holm, 155 Wn.2d 112, 120, 118 P.3d 322 (2005). In determining intent, we give language its ordinary and common meaning. Riss, 131 Wn.2d at 621, 934 P.2d 669. We resolve any doubts in favor of the free use of land. *Id.*; (Emphasis added).

⁴ See Robert G. Natelson, *Law of Property Owners Associations*, §5.5.2, at 197 (1989).

⁵ A "comma" is defined as a "clause in a sentence; that which is cut off, ...to cut, split...a mark of punctuation to indicate a separation of sentence elements..." *Webster's New World College Dictionary (2002 Ed.)*; (Emphasis added).

height limitations of twenty (20) feet. Rush v. Miller, 21 Wn.App. 156, 159-60, 584 P.2d 960 (1978); CP 802-811; CP 512-516. “Exceptions,” as noted by Prof. Stoebuck, function as a device to exclude property from legal descriptions. Ray v. King Cty, 120 Wn.App. 564, 588, n. 70, 86 P.3d 183 (2004); Vol. 17 Stoebuck, Washington Practice: Real Estate: Property Law §7.9 at 486 (1995).

Excepting existing “trees of any type” has the “legal effect of signaling the document’s intent.” Mack v. Armstrong, 147 Wn.App. 522, 527-31, 195 P.3d 1027 (2008). The Dec. 11, 1989 Declaration of Gerald Harkleroad, later utilized by the CRC to justify its May 28, 2009 letter, also describes “trees in existence” as an “exception” “from its coverage:”

“7. Though the covenant language restricting tree height may seem to except from its coverage ‘trees in existence’ at the time the covenants were recorded, the understanding of those involved at the time, including myself, was that this language was intended to cover full grown Madrona and other evergreen trees in the subdivision.” CP 77; App. 11; (Emphasis added).

Applying the ordinary meaning rule, this court should declare that any Somerset Div. 4 lot containing “existing trees” in 1962 upon recording of the CCR’s are not subject to any size (height or width) restrictions.

B. The Trial Court Erred by Allowing the Circumvention of CCR Amendment Procedures that Are More Burdensome than CCR ¶10 Restrictions.

CCR ¶10 expresses an unambiguous exception for “existing trees.”

The only expressed restriction is a height of 20 feet for non-existing trees.

CP 802-811; CP 512-516. Yet, over the Meyers' objection, the trial court admitted Mr. Harkleroad's 1989 Declaration used in the CRC's May 28, 2009 letter that limits existing trees to "Madronas and other evergreens."

"The Declaration of Gerald Harkleroad gives us additional insight on the original intent of the covenants. To quote Mr. Harkleroad: "Though the covenant language restricting tree height may seem to except from its coverage 'trees in existence' at the time the covenants were recorded, the understanding of those involved at the time, including myself, was that this language was intended to cover the full grown Madrona and other evergreen trees in the subdivision. In addition, even though it was desirable to maintain some of those existing large trees, in certain cases, we negotiated thinning of those existing trees. Again, this was done in order to gain or protect the view from a resident's main living room." [sic] From this statement, it is the CRC opinion that the original intent of the covenants was not to protect the horizontal expansion of a maple tree, at the expense of another homeowner's view." CP 63-64; CP 76-78; CP 486-492; App. 7; App. 11; (Emphasis added).

These Harkleroad comments on "intent" added size and specie restrictions are not expressed in CCR ¶10 or any other covenant. Mack v. Armstrong, supra at 528-31 rejected arguments that the primary intent was to preserve views. It confirmed that that restrictions cannot be imposed that are more burdensome than those provided by specific objective covenants. cf. The Lakes at Mercer Island HOA v. Witrak, 61 Wn.App. 177, 180, 810 P.2d 27 (1991) citing Fairwood Greens HOA. v. Young, 26 Wn.App. 758, 762, 614 P.2d 219 (1980) (Trial courts may not construe covenants more broadly than intended.) The effect of the trial court's orders directing the Meyers to: "...comply with the CRC's decisions dated May 28, 2009 and Apr. 27, 2010..." are to increase the Meyers' covenant

burdens by retroactively extinguishing the “existing tree” exception that are disallowed allowed under The Lakes at Mercer Island, supra. CP 1016; CP 1018. Such actions are *ultra vires* under Murphy v. Seattle, 32 Wn.App. 386, 392-93, 647 P.2d 540 (1982) and a nullity.

Even if correctly admitted into evidence (which it was not), the “context rule,” discussed below, does not allow a *defacto* retroactive amendment of CCR ¶10 that adds qualifying size and specie limitations to “existing trees” that were not disclosed to the Meyers when they purchased their property in 1970.⁶ The Meyers testified that they were not shown any such limiting species specific restrictions when they purchased Lot 117 and built their home after their plans had been approved by the Somerset Building Committee. CP 685-687; CP 574-575; CP 1185-1186. Saunders’ complaint to the CRC confirmed this very point:

“They [the Meyers] liked their tree, it was the reason they bought their house, and as far as the covenants were concerned, the tree was grandfathered.” CP 50.

⁶ Washington courts have held that a purchaser without notice of restrictions on the use of land takes free of such restrictions. Murphy v. City of Seattle, 32 Wn.App. 386, 392, 647 P.2d 540 (1982) citing: Hendricks v. Lake, 12 Wn.App. 15, 528 P.2d 491 (1974); RCW 65.04.020 et seq.; and RCW 65.08.030 et seq.

See also, Natelson, supra at §5.2 citing Granby Heights Assn. v. Dean, 38 Mass.App.Ct. 266, 647 N.E.2d 75 (1995) (Association prohibition of dogs from common areas invalid where it was not included in bylaws or master deed); and Natelson, supra at §15.3.1.

CCR amendments recorded in November 2001 did not amend CCR ¶10 or revoke the earlier Building Committee decisions approving the parties' building plans. CP 91-103; CP 162-182; App. 5. Yet, O'Briens and Saunders asserted at trial that: (1) the earlier Building Committee's actions approving the Meyers' building plans leaving the tree intact did not bind them (CP 1016; CP 1018); (2) CCR ¶10 conferred "unobstructed and protected views" without regard to grandfathered trees (CP 1016; CP 1018); and (3) that the *View Guideline* was a "revised covenant" that would "...address, in more detail, the issue of those grandfathered trees that unreasonably block neighbor's views." CP 55; (Emphasis added).

In this context, Harkleroad's post-1962 Dec. 11, 1989 Declaration and *View Guideline* are a blatant device to emasculate the existing tree entitlements of CCR ¶10 and evade the formal CCR ¶1 amendment provisions that require majority Somerset Div. 4 owner approval. Absent CCR amendments that preceded their purchase, the Meyers never received required written and recorded notice⁷ that only "Madronas and other

⁷ See Leighton v. Leonard, 22 Wn.App. 136, 139, 589 P.2d 279 (1978) (written and recorded notice as a required element of covenant restrictions in William B. Stoebeck, *Running Covenants: An Analytical Primer*, 52 Wash. L.Rev. 861, 898-901, 910 (1977)); *Washington Real Property Deskbook*, 3d ed., Easement and Licenses in Land, ch. 3, §3.2 (Wash. State Bar Ass'n 1997) Statute of Frauds formation requirements for written, signed, and acknowledged instruments under RCW 64.04.010, .020.

evergreens” were existing trees. Murphy v. Seattle supra at 392-93, RCW 65.04.020, and RCW 65.08.030. CP 574-575; CP 686-687.

C. The Developer’s Building Committee Already Decided Tree Size and View Obstruction Matters 40 Years Ago.

It is undisputed that Mr. Harkleroad acting as the “Building Committee” followed the “consent to construction” provisions of CCR ¶10 described in Mack v. Armstrong supra at 530. This decision-making process was part of the drafter’s original intent to review and decide “existing tree” height and unnecessary view interference during the review and approval of each owner’s building plans in the 1960’s and 1970’s:

10. Fences and Hedges. All fences, hedges or boundary walls situated anywhere upon any residential lot must be approved in writing by the Building Committee as to its height and design prior to construction. No trees of any type, other than those existing at the time these restrictive covenants of Somerset, Division No. 2, Somerset, Division No. 4 and Somerset, Division No. 6 are filed, shall be allowed to grow more than twenty (20) feet in height, provided they do not necessarily interfere with a view of another residence. The Building Committee shall be the sole judge in deciding whether there has been such an interference. In case of violation, the Building Committee shall have enforcement powers as set forth in Paragraph 1 of GENERAL PROVISION. CP 89; (Emphasis added).

Mr. Harkleroad testified about this decision-making process in deposition testimony stating that Evergreen’s Building Committee decided these issues in the 1960’s and 1970’s. CP 424; CP 574; CP 750; App. 13. Under CCR ¶10 and CCR ¶4 review criteria he could have required the removal, relocation, or alteration the Maple tree based under any of the following building plan review criteria: “view of another residence,” and

“unnecessary” “view interference,” “harmony” “with the surroundings,” the “outlook of the adjacent or neighboring property,” and the “view of surrounding building sites.” CP 804-806. The Meyers described this process in their Apr. 8, 2009 Response to the CRC. When they purchased Lot 117 in 1970, it was only one of a few lots with any significant trees remaining that they incorporated into their building and landscape plans. CP 329-381; CP 574-577; CP 707; color photos at App. 4. Importantly, no neighboring owners complained about the Meyers’ tree, then 70 feet tall. CP 574, ¶4-¶6; App. 4.

The O’Briens’ home on Lot 130 was constructed in 1963. In their CRC complaint they stated that when they bought their home in 1987 their neighbors told them that the Meyers’ tree was “grandfathered,” and “therefore was not subject to height and view restrictions.” CP 50; App. 9. The Saunders in fact admitted that the Meyers had actually reduced the tree’s height that “improved their sky view,” but that “the trimming...encouraged the tree to grow horizontally.” CP 55; App. 9 (Emphasis added).

Following these complaints, CRC Chair Gary Albert emailed the Meyers’ son-in-law, Mr. Smolinske, on Mar. 24, 2009. He explained the history of the plat and covenants and advised Mr. Smolinske to “work through the process with the neighbors” with the information he was

providing. Mr. Albert stated that the Meyers' tree was an "original large tree" that was to be treated differently from "small trees" (CP 333):

To clarify the issue on trees existing at the time of the covenants (a.k.a. grandfathered):

1. Small existing trees that were not tall enough to impact a neighbor's view at the time of the covenants could grow to any height (not restricted to 20 ft.) as long as they do not unnecessarily interfere with a neighbors view. They could also be required to be kept to a lower height (even less than 20 ft.) if they interfered with a neighbors view. (This is essentially the same provision for new trees after the covenants, the exception is that new trees do have a maximum height of limit of 20 ft. and/or not to interfere)

2. Original large trees that were already tall enough so that a neighbor did not have a particular view at the time of the covenants could continue to grow higher. There would be no taking of a view since there was no pre-existing view to be taken.

Another CRC Albert email dated Aug. 30, 2009 explained the predecessor Building Committee's role in reviewing and approving each home's building plans:

"We discussed your email of June 10th and agree that there are two dates that are benchmarks. The date the covenants were recorded determines if a tree was in existence and having some "grandfathered" rights. And the date the home was built establishes the "view" that was observable and protected. Because most homes in a division were completed within a few years period, there would be little observable change in the view from the date of the covenant's recording. Exceptions to this, i.e. lot purchased for investment sale at a later date would be handled by the CRC and they would make the appropriate determination." CP 322; (Emphasis added).

From these email statements alone, the CRC, as the Building Committee's successor, knew that Evergreen was holding some lots and selling off others. It knew that an "appropriate determination" as to neighboring view obstruction issues had already been made by the Building Committee. CP 322. The Meyers explained these very circumstances in their Apr. 8, 2009 Response to the CRC before the CRC issued its May 28, 2009 letter noting Mr. Harkleroad's personal

involvement. CP 381; App. 3. Mr. Harkleroad confirmed his role as the Building Committee in reviewing building plans and view obstruction issues with trees in his Nov. 14, 2011 Declaration at ¶8 to the trial court:

“8. When I was employed by Evergreen, it was at a time when numerous new houses were being constructed in Somerset. So as new houses were being built, many existing trees of all types were removed or trimmed in order to ensure that the new house had an unobstructed view from the eastern shore of Lake Washington to the mountain or as close thereto as possible.” CP 74; App. 12.

Yet, when given the opportunity, neither the CRC nor Mr. Harkleroad addressed the Meyers’ Apr. 8, 2009 Response questions as to why he, as the Building Committee, chose to keep Meyers’ tree without altering its height or width when reviewing and approving all of the parties’ building plans in the 1960’s and 70’s. CP 72-78; CP 381. Even if allowed under the context rule as evidence of “surrounding circumstances,” these statements confirm that: the tree was “existing” at the time of filing of the CCR’s; that a binding final determination had already been made by the Building Committee; and that there was no view interference to any neighboring lot. These statements and omissions support a finding under Riss that the CRC actions and trial court’s

decision are not reasonable and not supported by substantial evidence in the record.⁸

Riss, supra at 627-29 holds that a court should not substitute its judgment "...where a consent-to-construction covenant permits a decision based upon standards such as aesthetics and harmony with the neighborhood." Neither the CRC nor trial court can substitute the judgment of the Building Committee made 40 years ago. Otherwise, the finality of "deciding" view obstruction and suitability that was "vested" in the Building Committee, and based upon specific CCR ¶4 and ¶10 review criteria, would be meaningless.⁹

D. The CRC's Letters Are Unreasonable and Unenforceable.

Courts are obliged to review homeowner decisions to determine if they were reasonable and in good faith,¹⁰ followed proper procedures, and were made with sufficient fact finding. Riss v. Angel, supra at 624-30. The CRC's actions are unreasonable and arbitrary under Riss where the CRC possessed no authority under CCR ¶10 and CCR ¶4 to revoke or

⁸ Substantial evidence is evidence of a substantial quantum to persuade a reasonable person that the declared premise is true. Wenatchee Sportsman v. Chelan Cty, 141 Wn.2d 169, 176, 4 P.3d 123 (2000).

⁹ Courts will not construe instruments that result in meaningless acts. Greer v. Northwestern Nat. Ins. Co., 36 Wn.App. 330, 337, 674 P.2d 1257 (1984) citing Continental Cas. Co. v. Darch, 27 Wn.App. 726, 731, 620 P.2d 1005 (1980).

repudiate the prior decisions of the Building Committee as part of the CCR's "consent-to-construction" process.¹¹

The CRC accepted the neighbors' complaints as a "mediator" under the 2001 CCR amendments. CP 711-723; CP 750. It could only make "non-binding" written recommendations to the parties and refer the parties to further private mediation. CP 1543; CP 1547. See Respondents' Summary Judgment Response, Page 2 at CP 266.¹² It could not "change hats" and pursue an adversarial enforcement action under the guise of mediation; and then issue "decision" letters and "rulings" purporting to enforce new (Madrona and other evergreen) restrictions to the existing tree exception knowing that its role as a mediator was limited in making recommendations. This mediation process did not amend the CCR ¶10 consent-to-construction process finalized in the 1960's and 1970's. Once the CRC knew from the Meyers' Response that all of the parties' building plans were previously reviewed for view obstruction and suitability review

¹⁰ Id at 624 citing Hannula v. Hacienda Homes, Inc., 34 Cal.2d 442, 211 P.2d 302, 19 A.L.R.2d 1268 (1949).

¹¹ Riss supra at 629; Mack v. Armstrong supra at 530; Riss v. Angel, supra at 624-25.

¹² See also CRC Chairman Albert's email dated Mar. 30, 2009" "As you know, any CRC decision and recommendations are non-binding." CP 1543.

criteria under CCR ¶10 and CCR ¶4 by the Building Committee,¹³ reasonableness demanded that it issue a written recommendation that rejected the owners' complaints, which it failed to do. CP 711-723.

Even if the CRC could issue any binding decision, which it admits it could not (CP 266; CP 1543), it had to act objectively, impartially, and reasonably in good faith. The second "non-binding" "mediation" letter directs the Meyers "box" the tree to 30 feet in width; and then drastically reduce its height (already at 63 feet) to an arbitrary "red line." The CRC knew that the Meyers' experts, who it refused to meet with (CP 201), measured the tree's height at 70 feet in 1962. It knew from the Meyers' arborists' reports that further topping below its already lowered 63 foot height "would kill the tree." CP 68-72; CP 401-411.

In Riss, supra at 628-29, the court held that a building committee's decision that was improperly influenced by neighbors was not reasonable. Here, there is overwhelming evidence that the CRC "played to the crowd." Tainted "lobbying," that was feared by the Meyers, violates the "reasonableness" and "fair assessment" factors under Riss supra at 620-28. Despite assurances that the Meyers were entitled to a

¹³ CCR review criteria includes: "view of another residence," "unnecessary" "view interference," "harmony" "with the surroundings," the "outlook of the adjacent or neighboring property," and the "view of surrounding building sites."

“fair and impartial hearing,” the O’Briens and CRC conspired to eliminate such a process through a secret reconsideration process. CP 68-72. The O’Briens’ attorney admitted in open court that his clients secretly met with the CRC who without notice to the Meyers abandoned its earlier ruling to issue a tailored ruling to further reduce the height of the tree. Report of Proceedings, Page 20-21; App. 14.

Even if the CRC could decide the dispute, which it cannot, CCR ¶10 and ¶4 authorize no *ex parte* “reconsideration” of Building Committee decisions. The *View Guideline* and decision matrix show no “reconsideration” process even for “non-binding” mediation. CP 26-30; CP 739; CP 1547. No authority for reconsideration is cited in the Apr. 27, 2010 Decision letter. CP 68. The actions of the CRC were not reasonable or a fair assessment where the Meyers told the CRC in their Apr. 8, 2009 Response (App. 3) that Mr. Harkleroad Declaration’s did not explain his personal actions as the Building Committee that left the Meyers’ tree standing in 1970:

4. Gerald Hackleroad [sic] Declaration, in this document he states that he was the Project Manager for Somerset from 1967-1974 employed by Evergreen Land Developers and was involved in over 300 view resolution disputes and site review meetings.

a. Gerald was performing these tasks when the uphill neighbors and the Meyers houses were built. Many of the uphill neighbor's homes were built prior to 1970 when the Meyers built their home. Gerald Hackleroad had the authority to but did not have the 70 plus foot tree thinned or removed from the Meyers unsold lot when the uphill homes were built.

The tree was 70 feet tall in 1964 in 2009 it is seven feet shorter at 63 feet. It was without a doubt substantially larger than it is now both when the covenants were recorded and when the uphill neighbors built their homes. It is only because of Ginny Meyers concern for the health of the tree and respect for the neighbors that it has been so diligently looked after, balancing the health of tree with the neighbors view concerns. The uphill homes have always had the tree in their view; Evergreen Land Developers left the tree standing when they cleared the hillside in 1960. Later when Gerald Hackleroad was the Project Manager from 1967-74 and employed by Evergreen Land Developers and had the authority to cut the tree down or prune it, he did neither. I have to assume that he and everyone else involved at that time realized that the tree was protected by the covenants. How else does one explain that during the massive development of such a substantial "view neighborhood" as Somerset represented and that demanded premium prices for premium views that the developer left a 70 foot tall tree standing 8 years after the covenants were recorded on an unsold lot that they owned?" CP 381; App. 3; (Emphasis added).

Feigning any understanding of the Meyers' Photogrammetrist' s calculations and conclusions, the CRC claimed that it had no "budget to parse out" the Meyers' Report. CP 211. It resisted any effort to examine or rebut the Meyers' experts' opinions and conclusions. CP 187-189; CP 211. Riss supra at 627-28. The Meyers even offered to pay for their arborists and Photogrammetrist to meet with and explain their expert opinions with the CRC for this express purpose. CP 210.

The CRC's actions are arbitrary, biased, unsupported, and knowingly made in bad faith where it originally stated in earlier email advisories,¹⁴ and its first decision letter, that the Meyers' "original large

¹⁴ Mar. 24, 2009 email from Albert to Smolinske; Aug. 30, 2009 email from Albert to Smolinske.

arbitrarily abandoned its own advice. It accepted new evidence from the O'Briens knowing that it had given the Meyers no opportunity to review and respond.

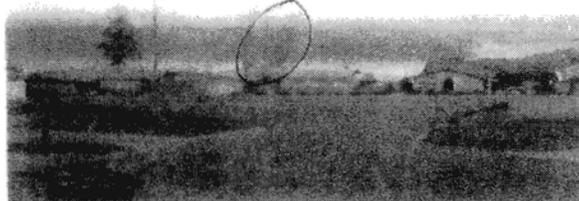
The refusal to allow Meyers to submit any "evidence on the record" smacks of unfairness. It violates the reasonableness and fair assessment tests of Riss, supra at 627-28, where the "reconsideration" of "new" evidence was in direct conflict with its earlier email advisories to the Meyers of Mar. 24, 2009 (CP 383) and Aug. 30, 2009 (CP 322) that accepted the Meyers' tree "existing large tree" 70 ft. in height. The CRC had over a year to investigate the Meyers' Response and expert reports. It did nothing for an entire calendar year. The CRC's stated its rationale:

"At the time we did not address the height of the tree because verifiable information was not availed [sic] to show that when the affected neighbors' homes were built they had a view, as defined in the *View Guideline for Somerset*, over your Maple tree." CP 396-399; (Emphasis added).

Its continuing refusal to address the Meyers' Apr. 8, 2009 Report that asked the CRC to investigate the earlier Building Committee building plan approvals would have answered questions on the views that existed when homes were built. They could have determined that views and view obstruction issues already been determined by the Building Committee and Mr. Harkleroad "when the affected neighbors' homes were built."

The CRC relied upon a manipulated and misleading photographic montage of photos taken by a non-party (the Hodgsons) at claiming a right to unobstructed views (CP 68-72; App. 8):

1970 Photo. Small Maple tree can be seen on Meyer's lot.



1970 Photo. View of Olympics and Seattle not obscured.



2001 Photo. Seattle can be seen through the bare branches.



2005 Photo. Maple obscures part of Seattle and Olympics. It has grown considerably since then!



The Riss court *supra* at 628 rejected any decision based upon inaccurate “misleading photo montage.” The absence of a record showing

that the Board made “objective comparisons with existing homes to compare size and height” was not tolerated. No “objective comparison” of these “new” uphill neighbors’ photos was made by the CRC against the historic photos and expert opinions in the Meyers’ Apr. 8, 2009 by the Meyers’ Response. The photographs, reports, and analyses from Ward Carson, and arborists, Tina Cohen, Kurt Fickeisen, and Mark Harman showing the tree’s height at 70 feet in 1962 and its reduced height at 63 feet in 2009 were completely ignored. CP 371-373, CP 401-411; CP 329-381; CP 412-414; CP 348-370; CP 372; CP 385-386.

The refusal to even invite the Meyers to rebut this “new” evidence is the hallmark of “arbitrary” “unreasonable decision-making” under the Riss reasonableness factors where: the CRC (and O’Briens) refused to conduct any expert analysis; where its view methods and comparisons were not communicated to the Meyers before the Apr. 27, 2010 “reconsideration;” and where its conclusions were based upon false, inaccurate, misleading lay information. Made without notice and any objective fair hearing, such actions lacked the *bona fides* of a thorough investigation with accurate fact finding supported on the record. See

Robert G. Natelson Treatise, the Law of Property Owners Associations.¹⁵

This court can conclude as a matter of law that the CRC's "decision" letters upon which the trial court's order is based were unreasonable and arbitrary under Riss.

E. The Trial Court's Decision Was Based Upon Inadmissible Context Rule Evidence.

The trial court's Order requiring the Meyers to "comply with the CRC's decisions dated May 28, 2009 and Apr. 27, 2010" are predicated on the inadmissible Harkleroad Declarations of original intent over the Meyers' objection. CP 72-78; CP 218-264; CP 486-492. The "context rule" articulated in Berg v. Hudesman, 115 Wn.2d 657, 801 P.2d 222 (1990) allows courts to consider "the surrounding circumstances that tend to reflect the intent of the drafter and the purpose of a covenant" "...when the meaning [of the covenant] is unclear." Id at 666-67. See also, Bauman v. Turpen, *supra* at 89. As noted in Bloome v. Haverly, 154 Wn.App. 129, 138-39, 225 P.3d 330 (2010), citing Hollis v. Garwall, *supra* at 690 the "context rule" cannot be abused:

...there are limitations on the kind of extrinsic evidence a court may consider. As

¹⁵ Robert G. Natelson, Law of Property Owners Associations, §5.2, at 173 and §10.3.2.3-§10.3.2.3 (1989) setting forth reasonableness criteria and affirmative duties in making *ad-hoc* decisions. Decisions: (1) must be made in good faith; (2) cannot be arbitrary and capricious; (3) must be consistent with governing documents and reasonable procedures followed; and (4) be supported adequate data gathering and fact finding.

our Supreme Court explained in Hollis, admissible extrinsic evidence does not include: Evidence of a party's unilateral or subjective intent as to the meaning of a covenant word or term; Evidence that would show an intention independent of the instrument; or Evidence that would vary, contradict or modify the written word. 137 Wn.2d at 695, 974 P.2d 836. 'Extrinsic evidence is to be used to illuminate what was written, not what was intended to be written.' Hollis, 137 Wn.2d at 697, 974 P.2d 836 (citing Nationwide Mut. Fire Ins. Co. v. Watson, 120 Wn.2d 178, 189, 840 P.2d 851 (1992)). (Emphasis added).

Mr. Harkleroad's Declarations are rife with inadmissible legal conclusions and statements of subjective intent. CP 72-78. He could not testify to "original intent." He was not the "drafter" of the CCR's. CP 749. He was not the plat applicant, developer, or owner of Somerset Div. 4. CP 73, ¶5; CP 424; CP 748, 751; App. 12. He was an employee only of the plat's developer, Evergreen. CP 73, ¶3; CP 746, 750. He "was responsible for reviewing building plans for new homes" in Somerset Div. 4. CP 750; App. 12. Accordingly, he was not competent to express any knowledge of the drafter's "original intent." See Bauman v. Turpen, supra at 89; Hollis v. Garwall, Inc., supra at 693; and Burton v. Douglas Cty, supra at 621-22.

Bloome v. Haverly supra at 138 is also clear in excluding: "evidence of a party's unilateral or subjective intent as to the meaning of a covenant or word;" "evidence that would show an intention independent of the instrument;" or "evidence that would vary, contradict or modify the written word." Mr. Harkleroad states in his Nov. 14, 2011 declaration that "the purpose or intent of the covenant" was limited to "protect" or "restore" views of Seattle, Bellevue, Mercer Island, Lake Washington..." CP 72-75.

These inadmissible conclusory and subjective statements of intent satisfy all context rule exceptions and should have been stricken by the trial court.

Even if admissible, no statement appears whatsoever on tree width until the CRC further expanded Mr. Harkleroad's 1989 Declaration on original intent in its May 28, 2009 letter:

"The Declaration of Gerald Harkleroad gives us additional insight of the original intent of the covenants. To quote Mr. Harkleroad" 'Though the covenant language restricting tree height may seem to except from its coverage 'trees in existence' at the time the covenants were recorded, the understanding of those involved at the time, including myself, was that this language was intended to cover the full grown Madrona and other evergreen trees in the subdivision. In addition, even though it was desirable to maintain some of those existing large trees, in certain cases, we negotiated thinning of those existing trees. Again, this was done in order to gain or protect the view from a resident's main living room.' From this statement, it is the CRC opinion that the original intent of the covenants was not to protect the horizontal expansion of a maple tree, at the expense of another homeowner's view." CP 63-65; (Emphasis added).

If the drafters intended "horizontal expansion" limits in addition to height restrictions they would have surely so stated. If they intended the existing tree entitlement to apply only to "Madronas and other evergreens," they would also have so stated.

Another Harkleroad declaration references CRC meeting minutes Apr. 25, 2006 that limited the preservation of existing trees to Madronas and evergreens, and authorized the removal of "messy" "existing and new growth maples." CP 74, ¶7; App. 12. These inadmissible statements are more surprising given his sworn testimony only 28 days earlier on Oct. 13, 2011 where he testified that he could not locate or produce any Somerset

records as they had been lost or destroyed. CP 751. The payback for exposing Mr. Harkleroad's preservation of the Maple tree and his approval of their building plans is evident in his ¶5 invective to the Meyers:

"People moved to and live in Somerset for the views not the trees. If one wanted to have trees, they could and should move elsewhere." App. 12; (Emphasis added).

The use of Mr. Harkleroad's conclusory self-serving statements reflect the CRC's institutional bias against the Meyers and view issues related to grandfathered trees. It explains the CRC's and O'Briens' refusal to investigate the approval history of the Meyers' building plans that left the Maple tree intact. The refusal to provide any fair, meaningful hearing and use of Harkleroad's selective statements of drafter's intent to circumvent CCR amendment procedures should be soundly rejected under the context rule exceptions under Bloome. This court should rule that absent expressly adopted and recorded amendments to CCR ¶10, stated restrictions on height and width of any existing trees, including the Meyers' Maple tree, cannot be retroactively applied to override earlier decisions of the Building Committee that preserved the Maple tree.

F. Respondents Are Barred from Relief Under RCW Ch. 4.16 and Equitable Doctrines of Estoppel, Laches, and Unjust Enrichment.

O'Briens' claims for damages are jurisdictionally barred under RCW 4.16.040 and RCW 4.16.080. Their action against the Meyers or

Evergreen was not filed until 40 years after the Building Committee's approval of the Meyers' building plans in 1970 that left the Meyers' Maple tree unaltered.

Trial courts have broad discretionary power to fashion equitable remedies. Niemann v. Vaughn Community Church, 154 Wn.2d 365, 385, 113 P.3d 463 (2005). Even if the Building Committee's final decisions approving the parties' building plans could be "reconsidered" 40 years later, the doctrines of collateral estoppel,¹⁶ equitable estoppel,¹⁷ estoppel by silence or acquiescence,¹⁸ laches,¹⁹ and unjust enrichment²⁰ require

¹⁶ Collateral estoppel, applies where the identical issue was decided in a prior adjudication. Nielson v. Spanaway Gen. Med. Clinic, Inc., 135 Wn.2d 255, 263, 956 P.2d 312 (1998).

¹⁷ The elements of equitable estoppel are (1) an admission, statement or act inconsistent with a claim afterwards asserted, (2) action by another in reliance upon that act, statement or admission, and (3) injury to the relying party from allowing the first party to contradict or repudiate the prior act, statement, or admission. Bd. of Regents v. City of Seattle, 108 Wn.2d 545, 551, 741 P.2d 11 (1987); Lybbert v. Grant Cty., 141 Wn.2d 29, 35, 1 P.3d 1124 (2000).

¹⁸ Estoppel by silence or acquiescence requires that "[w]here a person with actual or constructive knowledge of facts induces another, by his words or conduct, to believe that he acquiesces in or ratifies a transaction, or that he will offer no opposition thereto, and that other, in reliance on such belief, alters his position, such person is estopped from repudiating the transaction to the other's prejudice." Huff v. N. Pac. Ry. Co., 38 Wn.2d 103, 114, 228 P.2d 121 (1951).

Bd. of Regents v. Seattle, 108 Wn.2d 545, 551-53, 741 P.2d 11 (1987) hold that:

Where a person with actual or constructive knowledge of facts induces another, by his words or conduct, to believe that he acquiesces in or ratifies a transaction, or that he will offer no opposition thereto, and that other, in reliance on such belief, alters his position, such person is estopped from repudiating the transaction to the other's prejudice.

Such an estoppel may arise under certain circumstances from silence or inaction as well as from words or actions.

¹⁹ The elements of laches consist of "(1) knowledge or reasonable opportunity to discover on the part of a potential plaintiff that he has a cause of action against a defendant; (2) an unreasonable delay by the plaintiff in commencing that cause of action; (3) damage to

that the O'Briens receive no declaratory or equitable relief. See Natelson, supra at §5.5.4-§5.5.8. With their views already obstructed, the O'Briens could have objected to the Maple tree on Lot 117 before they purchased their property (Lot 130), but did not. They could have objected again when they built their home in 1963, and did not. They could have objected again in 1970 when the Meyers submitted their landscaping plans and building plans to the Building Committee, and again did not. Similarly, the Saunders submitted their building plans in 1973 with their view already obstructed. Like the O'Briens, they did not object to the Meyers' tree. The Meyers justifiably relied to their detriment on these inactions having maintained the tree for over 40 years. App. 4.

In Bauman v. Turpin, supra at 92-3, the court reviewed the equitable factors to be weighed in granting injunctive relief:

defendant resulting from the unreasonable delay.” Valley View Indus. Park v. City of Redmond, 107 Wn.2d 621, 635, 733 P.2d 182 (1987) (quoting Buell v. City of Bremerton, 80 Wn.2d 518, 522, 495 P.2d 1358 (1972)).

²⁰ See First American Title Ins. Co. v. Liberty Capital 161 Wn.App. 474, 254 P.3d 835, 844 (2011) “Unjust enrichment is the method of recovery for the value of the benefit retained absent any contractual relationship because notions of fairness and justice require it.” Young v. Young, 164 Wn.2d 477, 484, 191 P.3d 1258 (2008). A claim of unjust enrichment requires proof of three elements- ‘(1) the defendant receives a benefit, (2) the received benefit is at the plaintiff's expense, and (3) the circumstances make it unjust for the defendant to retain the benefit without payment.’ Young, 164 Wn.2d at 484-85, 191 P.3d 1258. All three elements must be established for unjust enrichment. See Young, 164 Wash.2d at 484, 191 P.3d 1258. A person is unjustly enriched when he or she profits or enriches himself or herself at the expense of another contrary to equity. Farwest Steel Corp. v. Mainline Metal Works, 48 Wn.App. 719, 731-32, 741 P.2d 58 (1987).”

“Enforcement of residential restrictive covenants is favored in Washington. Generally, servitudes may be enforced by any appropriate remedy or combination of remedies. Injunctive relief is one of these remedies. When granting injunctive relief, the trial court considers: (a) the character of the interest to be protected, (b) the adequacy of injunctive relief when compared with other remedies, (c) the plaintiff's delay in bringing suit, (d) the plaintiff's clean hands, (e) the parties' relative hardship caused by denying or granting injunctive relief, (f) the interest of the public and other third parties, and (g) the order's enforceability.” (Emphasis added).

In applying these doctrines and “balancing the equities,” the record is undisputed that the O'Briens,' Saunders,' and other uphill owners' views were already obstructed when they bought their lots and built their homes. They had four (4) decades to bring their lawsuit against Evergreen and the Meyers and they did nothing.

Cooper v. Anchor Securities, 9 Wn.2d 45, 63, 113 P.2d 845 (1941) states the rule that “...he who comes into a court of equity must come with clean hands is limited to the transaction under investigation.” These owners have unclean hands. They bought their lots, constructed their homes, and accepted this existing partial view obstruction condition without protest. Before filing suit, the Saunders, even investigated the status of the Meyers' tree. They were told by neighbors that the Meyers' tree was “grandfathered.” CP 50. In a post-it note and color photo given the Meyers Mr. O'Brien stated he only wanted some “pretty minimal pruning” of one understory branch. CP 400; CP 576; App. 11.

In their complaint to the CRC, Saunders stated that the Meyers had actually reduced the height of the tree's canopy that "improved their sky view." CP 55. In meetings with the Meyers in the 70's and 80's they confirmed that the Meyers considered their tree to be "grandfathered" and was the "reason they [the Meyers] bought their house." CP 55.

Like the O'Briens, the Saunders did nothing thereafter until 2009. Both O'Briens and Saunders asked the CRC to apply the purported "new" "revised covenants" (*viz*, the *View Guideline*) to seek enhanced "unobstructed" views improving the value of their homes to which they were not entitled. CP 55; CP 1016; CP 1018; App. 9. Query all uphill owners who also all bought their lots with the tree present on Lot 117.

The Meyers disproved every false or incorrect fact asserted by the O'Briens. Their lot was not fully graded in 1962. The tree did not grow as a spontaneous sapling. CP 113. It was in fact entitled to grandfathered status under CCR ¶10. Their building/landscape plans were reviewed and approved by Mr. Harkleroad in 1970. O'Briens and Saunders "offered no opposition" to the Building Committee's actions. CP 1015-1018.

The Meyers could not possibly have possessed Mr. Harkleroad's "Madrona or other evergreen" edict created in 1989 when they purchased their lot in 1970. They detrimentally relied upon the 1962 CCR's, the actions/inactions of the uphill neighbors, and Evergreen's Building

Committee as they explained to the trial court. CP 685-687; CP 1185-1190; App. 4. Under Bauman v. Turpin at 1059, they acted “...without knowledge or warning” that their tree “encroached upon another’s property rights.”

They have continuously defended, enjoyed, and maintained their Maple tree as a valuable landscape amenity for 40 years without interruption. CP 329-381; CP 573-577; CP 685-687. Compliance with the CRC’s decision letters would under these circumstances constitute unjust enrichment.²¹ It would enhance views already obstructed at the time all parties purchased and constructed their homes to which they are not entitled. See Storseth v. Folsom, 45 Wash. 374, 378, 88 P. 632 (1907) and Canterbury Shores Assocs. v. Lakeshore Properties, Inc., 18 Wn.App. 825, 829, 572 P.2d 742 (1977).

²¹ See First American Title Ins. Co. v. Liberty Capital Starpoint Equity for Fund, LLC, 161 Wn.App. 474, 254 P.3d 835, 844 (2011) “Unjust enrichment is the method of recovery for the value of the benefit retained absent any contractual relationship because notions of fairness and justice require it.” Young v. Young, 164 Wn.2d 477, 484, 191 P.3d 1258 (2008). A claim of unjust enrichment requires proof of three element - “(1) the defendant receives a benefit, (2) the received benefit is at the plaintiff’s expense, and (3) the circumstances make it unjust for the defendant to retain the benefit without payment.” Young, 164 Wash.2d at 484-85, 191 P.3d 1258. All three elements must be established for unjust enrichment. See Young, 164 Wn.2d at 484, 191 P.3d 1258. A person is unjustly enriched when he or she profits or enriches himself or herself at the expense of another contrary to equity. Farwest Steel Corp. v. Mainline Metal Works, Inc., 48 Wn.App. 719, 731-32, 741 P.2d 58 (1987).”

G. The Trial Court Erred in Not Dismissing Respondents' Complaint for Not Joining the CRC as Parties.

CCR ¶10 limits the enforcement of covenants related to view obstructions to the developer Evergreen and its successor, the Association:

“...In case of violation, the Building Committee shall have enforcement powers as set forth in Paragraph 1 of GENERAL PROVISION.” CP 806; (Emphasis added).

Evergreen, its Building Committee, and its successor the Somerset CRC, are not only necessary parties required to be joined to enforce CCR's related to view obstruction under CCR ¶10, they are the only entity under CCR ¶10 entitled to bring a view obstruction enforcement action against the Meyers. Absent their joinder under RCW 7.24.110, CR 17, and CR 19, the trial court erred in not dismissing the complaint where it lacked subject matter jurisdiction to consider Respondents' enforcement claims related to view obstruction. Burt v. Dep't of Corr., 168 Wn.2d 828, 833-34, 231 P.3d 191 (2010).

This jurisdictional defect is demonstrated in the O'Briens' claims advanced during trial and the trial court's decision. Notwithstanding undisputed evidence that their views were obstructed by the Meyer's tree before they constructed their homes in 1963 and 1973, the O'Briens and Saunders claimed an entitlement to “an unobstructed and protected view.” CP 1016, CP 1018. These claims are really against Evergreen, its

Building Committee (and successor CRC) who sold Lot 117 to the Meyers and approved all building plans without altering the tree. Burt, supra.

Even if the CRC had enforcement authority under CCR ¶10, it limited its role to mediation only. CP 486-492; CP 63-64; and CP 68. The judgment order erroneously direct the Meyers to “comply with the CRC’s decisions.” CP 486-489.

The trial court possesses no subject matter jurisdiction to base its decision and orders on non-binding mediation of a non-party. Admittedly, if there was a dispute as to the Meyers’ tree height in 1967 and its method of measurement purposes of the “red line” drawn by the CRC, the Meyers would be prevented from seeking judicial relief against the CRC under the court’s current Orders based upon a non-binding mediation recommendation. That the CRC is the real party in interest under CR 17 and CR 19, is demonstrated by its actions as the Building Committee that approved the Meyers’ building plans in 1970. The CRC by its actions described above is “so situated that the disposition of the action in his absence may . . . as a practical matter impair or impede” the CRC’s “... ability to protect that interest” under CR 19(a)(2)(A). Accordingly, it was error to not dismiss Plaintiffs’ action and enter orders awarding relief to O’Briens where the CRC’s joinder was mandatory. Wimberly v. Caravello, 136 Wn.App. 327, 334, 149 P.3d 402 (2006).

H. Neither CCR ¶10, CCR ¶18, RCW 4.84.330, nor RCW Ch. 64.38 Allow and Award of Attorney Fees and Costs to the O'Briens.

The trial court erred in awarding attorney fees and costs. Any decision to award attorney fees is a question of law that is reviewed *de novo*. Kitsap County Prosecuting Atty Guild v. Kitsap County, 156 Wn.App 110, 120, 231 P.3d 990 (2009). Courts may only award attorney fees if it is based upon a statute, contract, or recognized ground in equity. Cnty. Ass'n Underwriters v. Kalles, 164 Wn.App. 30, 38, 259 P.3d 1154 (2011). If Meyers' appeal is denied, the O'Briens are not entitled to attorney fees under CCR ¶18, RCW 4.84.330, or "RCW 64.38" as provided in the trial court's order. CP 486-492. The only entity entitled to enforcement of CCR ¶10 view obstruction claims entitled to attorney fees is the developer, "Evergreen Land Developers, Inc.," and its successor, the Somerset Community Assn., who have not been joined as a parties. CP 90; CP 496-522.

The drafters of CCR ¶18 carefully distinguished enforcement actions brought by the developer Evergreen against individual lot owner actions. CCR ¶10 expressly limits enforcement actions to the "Building Committee" for view interference claims who was not joined as a party in this action. CCR ¶18 allows attorney fees only for the "successors" of the plat developers. The O'Briens as a matter of law cannot, as individual lot

owners, appear in this case on behalf of the developer, Evergreen, or the CRC. CCR ¶1 allows lot owners only: “All costs incurred in the enforcement shall be at the expense of the violator or violators.” CP 802; App. 1.

The 1962 CCR’s do not qualify as instruments created after September 21, 1977 under RCW 4.84.330. This statute as cited in the Court’s Order (CP 486-492) to award fees does not change this result. RCW 4.84.330 does not forgive the requirement that the CCR’s expressly provide for attorney fees and costs in individual owner cases:

“In any action on a contract or lease entered into after September 21, 1977, where such contract or lease specifically provides that attorneys’ fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether he or she is the party specified in the contract or lease or not, shall be entitled to reasonable attorneys’ fees in addition to costs and necessary disbursements.” (Emphasis added).

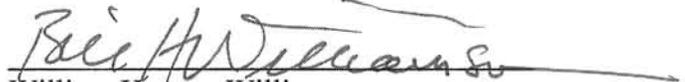
Similarly, the generic citation to an entire Code Chapter “RCW 64.38” at CP 486-492 comprised of twenty one (21) Sections cannot support an award of attorney fees. RCW 64.38.050, which is not specifically cited in the Order, allows a homeowners association to adopt amendments to CCR ¶¶1 and 18 to recover attorney fees in enforcement actions. However, no such amendments were ever adopted and recorded. Similarly, no citation to equitable grounds appears anywhere in the Court’s Order to serve as a legal basis for an award attorney fees under Cnty. Ass’n Underwriters v. Kalles, supra.

CONCLUSION

The Meyers appeal should be granted. The trial court's decision should be reversed and remanded to the trial court for entry of judgment in favor of the Meyers dismissing the O'Briens' complaint with prejudice. The Court should declare that the *View Guideline* and Harkleroad Declarations are ultra vires and a nullity to excepted existing trees.

RESPECTFULLY SUBMITTED this 25th day of May, 2012.

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Attorneys for Appellant Meyers

CERTIFICATE OF SERVICE

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

That on May 25, 2012 I deposited in the mails of the United States of America, postage prepaid, an envelope containing a true and correct copy of Appellants' Opening Brief addressed to:

Allen R. Sakai
Jeppesen Gray Sakai, PS
10655 NE 4th Street
Bellevue, WA 98004

DATED this 25th day of May 2012, at Seattle, Washington.


Bill H. Williamson
Attorney for Appellants

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 MAY 24 AM 11:03

APPENDIX 1

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DECLARATION OF PROTECTIVE COVENANTS,
RESTRICTIONS, LIMITATIONS, CONDITIONS AND
AGREEMENTS WITH RESPECT TO THE PLAT OF
SOMERSET NO. 2, THE PLAT OF SOMERSET NO. 4,
AND THE PLAT OF SOMERSET NO. 6, ALL LOCATED
IN SECTION 15, TOWNSHIP 24 NORTH, RANGE 5 E.W.H.

IT IS HEREBY MADE KNOWN that EVERGREEN LAND DEVELOPERS, INC., a Washington corporation, does by these presents make, establish, confirm and impress upon Lots 1 through 12, 24 through 27, and 150 through 168 Somerset No. 2, according to the Plat thereof, recorded in Volume 68 of Plats, page 44, records of King County, Washington, Lots 49 through 61, 75 through 99, 101 through 117, and 128 through 157, Somerset No. 4, according to the Plat thereof, recorded in Volume 68, of Plats, pages 24 and 30, records of King County, Washington, Lots 1 through 37 of Block 1, lots 1 through 10 of Block 2, lots 1 through 15 of Block 3, and lots 1 through 11 of Block 4, Somerset No. 6, according to the Plat thereof, recorded in Volume 67 of Plats, pages 11 and 12, records of King County, Washington, the following restrictive covenants to run with the land and do hereby bind said corporation and all the future grantees, assignees and successors to said covenants for the term hereinafter stated and as follows:

1. GENERAL PROVISIONS. These restrictive covenants of Somerset, Division No. 2, Somerset, Division No. 4 and Somerset, Division No. 6 shall run with the land and shall be binding upon all parties thereto and all persons claiming under them, until January 1, 1992, at which time said restrictive covenants of Somerset, Division No. 2, Somerset, Division No. 4 and Somerset, Division No. 6 shall be automatically extended for successive periods of ten (10) years unless a majority of the owners, by an instrument or instruments in writing, duly signed and acknowledged by them, terminate or amend said restrictive covenants insofar as they pertain to residential lots, and termination or amendments shall become effective upon the filing of such instrument or instruments for record in the office of the Auditor of King County, Washington. Such instrument or instruments shall contain proper references to the records of said office by volume and page number of both the recording of the Plat of Somerset, Division No. 2, Somerset, Division No. 4, and Somerset, Division No. 6, and the recording of this instrument in which these restrictive covenants of Somerset, Division No. 2, Somerset, Division No. 4, and Somerset, Division No. 6 are set forth, and to the recording of all amendments hereof.

If the parties hereto or any of them or their heirs or assigns shall violate or attempt to violate any of the covenants herein, it shall be lawful for any person or persons owning any real property situate in Somerset, Division No. 2, Somerset, Division No. 4, and Somerset, Division No. 6 to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from so doing or to recover damages or other dues for such violation. All costs incurred in enforcement shall be at the expense of the violator or violators.

Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

2. BUILDING RESTRICTIONS: All lots as recorded in the plat, and all succeeding plats of Somerset, Division No. 2, Somerset, Division No. 4 and Somerset, Division No. 6 shall be known and described as "residential

7 - additional sheets

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lots. A building site shall consist of at least (A) one or more residential lots as shown on said plot, or (B) a parcel composed of only a portion of such residential lots, the depth and frontage of which parcel shall equal or exceed the depth and frontage of full residential lots in the immediate vicinity in the same block.

No building or structure shall be erected, constructed, or maintained or permitted upon such residential lot, except upon a building site as hereinabove defined. No building or structure shall be erected, constructed, maintained or permitted upon a building site except a single detached dwelling house to be occupied by no more than one family and attendants or domestic servants of that family.

The cost of all dwelling houses (including land and improvements) shall be at least four (4) times the original purchase price of the lot upon which the dwelling house is constructed; provided, however, that in the case of a dwelling house situated upon two or more residential lots, the cost thereof shall be submitted to the Building Committee, as hereinafter set forth, for its approval, and the Building Committee shall have the right to consider the cost of the residential lot upon which the proposed dwelling house shall be constructed, the value of adjacent or neighboring property, and any and all other factors which, in the Building Committee's opinion, shall affect the desirability or suitability of such proposed construction costs.

The ground floor area of the main structure, exclusive of one story open porches and garages, shall not be less than eleven hundred (1100) square feet for a one story dwelling, nor less than eight hundred (800) square feet for a completely finished dwelling of more than one story, and a minimum of 1100 square feet for a dwelling with more than one story with an unfinished basement.

3. BUILDING LIMITS. No dwelling house or garage or any part thereof, or any other structure (exclusive of fences and similar structures) shall be placed nearer to the front lot line or nearer to the side lot line or nearer to the rear lot line than the minimum building setback lines, if any, shown on the recorded plat of Somerset, Division No. 2, Somerset, Division No. 4 and Somerset, Division 6. In any event, no such building or structure shall be placed on any lot nearer than twenty (20) feet to the front lot line, nor nearer than five (5) feet to any side lot line, except for corner lots which shall have a minimum side lot line setback of fifteen (15) feet, nor nearer than fifteen (15) feet to any rear lot line except upon the approval of the building committee as set forth in these covenants. No dwelling shall be erected or placed on any lot having a width of less than sixty (60) feet at the minimum building setback line, nor shall any dwelling be erected or placed on any lot having an area of less than eight, four hundred (8400) square feet. Where it is architecturally feasible, it is recommended that all garages, carports, storage areas, tool cabinets, garden houses and similar structures be attached to, or incorporated in and made a part of the dwelling house.

No lines or wires for the transmission of current or for telephone use shall be unattached, placed or permitted to be placed, upon any residential lot outside the building thereon unless the same shall be underground or in conduit attached to a building. No television or radio aerial shall be erected or placed on any residential site which is more than six (6) feet in height above the highest point (exclusive of chimneys) on the building or structure upon which it is erected. No utility beams or other similar devices shall be constructed on any residential lot.

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4. APPROVAL OF PLANS BY BUILDING COMMITTEE. The Building Committee shall meet at the Somerset Sales Office at 7:00 P.M., the first and third Wednesdays to consider and approve house plans. To have plans considered, complete plans and specifications must be submitted one week prior to the scheduled meetings. All plans and specifications must be submitted in duplicate, allowing ten days for approval. The maximum height of any residence shall be established by the Building Committee prior to starting construction. An inspection by the Building Committee and their written approval is required of the Foundation Forms before they are filled with concrete. One set of plans with signed approvals as required above, must be on the job site at all times.

All buildings and structures, including walls, fences, and swimming pools, to be erected in Somerset, Division No. 2, Somerset, Division No. 4, and Somerset, Division No. 6 shall be approved by the Building Committee. Complete plans and specifications of all proposed buildings, structures and exterior alterations, together with detailed plans showing proposed location of the same on the particular building site, shall be submitted to the Building Committee before construction or alteration is started, and such construction or alterations shall not be started until written approval thereof is given by the Building Committee.

Said plans or specifications shall be prepared by an architect or a competent house-designer approved by the Building Committee. Two complete sets of said plans and specifications shall in each case be delivered to and permanently left with the Building Committee. All buildings or structures shall be erected or constructed by a contractor or housebuilder approved by the Building Committee.

As to all improvements, construction and alterations in Somerset, Division No. 2, Somerset, Division No. 4, and Somerset, Division No. 6, the Building Committee shall have the right to refuse to approve any design, plan or color for such improvements, construction or alterations which is not suitable or desirable, in the Building Committee's opinion, for any reason, aesthetic or otherwise, and in so passing upon such design, the Building Committee shall have the right to take into consideration the suitability of the proposed building or other structure, and the material of which it is to be built, and the exterior color scheme, to the site upon which it is proposed to erect the same, the harmony thereof with the surrounding, and the effect of the building or other structure or alterations thereon as planned on the outlook of the adjacent or neighboring property, and the effect or impairment that said structures will have on the view of surrounding building sites, and any and all other factors which, in the Building Committee's opinion, shall affect the desirability or suitability of such proposed structure, improvements or alterations.

5. WAIVER OF RESTRICTIONS AND LIMITATIONS. Evergreen Land Developers, Inc. reserves the right to enter into agreement with the grantee of any lot or lots (without the consent of the grantee of other lots or adjoining or adjacent property), to deviate from the conditions, restrictions, limitations, and agreements contained in this Declaration in certain particulars in a specific case, and any such deviation, which shall be manifested in an agreement in writing, shall not constitute a waiver of any such conditions, restriction, limitation or agreement as to the remaining lots in the subdivision and the same shall remain fully enforceable as to all other lots located in the subdivision.

6. THE BUILDING COMMITTEE. The Building Committee shall be composed of at least three (3) members, including the union manager of the

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sales agency representing Evergreen Land Developers, Inc., the chief engineer of the engineering and architectural firm representing Evergreen Land Developers, Inc., and the development manager of the development company representing Evergreen Land Developers, Inc., and/or any other person or persons designated, from time to time, by Evergreen Land Developers, Inc.

7. PROSECUTION OF CONSTRUCTION WORK. Any dwelling or structure erected or placed on any residential lot in this subdivision shall be completed as to external appearance, including finished painting, within eight (8) months after date of commencement of construction and shall be connected to an acceptable sewage disposal facility.

All front yards and landscaping must be completed within sixty (60) days from the date of completion of the building or structure constructed thereon, except that buildings or structures which are built for purposes of immediate sale must have their front yards and landscaping completed within fifteen (15) days following the completion of construction. In the event of undue hardship due to weather conditions, this provision may be waived upon written approval of the Building Committee.

8. EASEMENTS. Evergreen Land Developers, Inc., hereby expressly reserves an easement under, over and upon any residential lot in a strip of land five (5) feet wide along the rear and side lines of said residential lot and ten (10) feet wide across any other portion of said residential lot not adaptable or previously used as a building site for the construction and replacement and maintenance of water pipe lines, sewage pipe lines, power and telephone cables and drainage facilities; provided, that upon any entry for installation, replacement or maintenance, the entity furnishing the utility shall restore the surface of the ground substantially to its original condition with reasonable expedition. Evergreen Land Developers, Inc., does hereby further reserve easements over and upon any residential lot for the construction and replacement and maintenance of guy wires and guy poles and utility pole lines. Easements, other than guy wires and guy poles, that are not in use by a utility within five (5) years from the date of record hereof, shall automatically terminate. After installation of any underground utility within the easement, the ground grade within the easement shall not be altered without the approval of the utility company and/or governmental agency having jurisdiction over the facility. Any and all drainage collected or sufficiently concentrated to create erosion problems in the opinion of the Building Committee shall be piped at the purchaser's expense, to the nearest underground public storm sewer line or street gutter. Plans and specifications for such underground piping must be approved by the Building Committee at the time the house plans are approved for construction purposes.

9. NOXIOUS USE OF PROPERTY. No noxious, illegal or offensive use of property shall be carried on upon any lot, nor shall any thing be done thereon which may be, or become, an annoyance or nuisance to the neighborhood. No grantee or grantee, under any conveyance, shall at any time conduct, or permit to be conducted, on any residential lot, any trade or business of any description, either commercial or religious, including day schools, nurseries, or church schools, nor shall said premises be used for any other purpose whatsoever except for the purpose of a private dwelling or residence.

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No trash, garbage, ashes, or other refuse, junk vehicles, underbrush, or other unsightly growths or objects, shall be thrown, dumped or allowed to accumulate on any lot. In the event any such condition shall exist upon any lot, any person or persons owning any real property situated in Somerset, Division No. 2, Somerset, Division No. 4 and Somerset, Division No. 6, may use the legal powers as set forth in paragraph one (1) of General Provisions.

No trailer, awning, tent, shack, garage, barn, or other out-building or temporary structure erected or situated in Somerset, Division No. 2, Somerset, Division No. 4, and Somerset, Division No. 6, shall, at any time, be used as a residence, temporarily or permanently, nor shall any permanent building or structure be used as a residence until it is completed as to external appearance, including finished painting. The permission hereby granted to erect a permanent garage or other building prior to construction of the main dwelling house shall not be construed to permit the construction, erection or maintenance of any building of any nature whatsoever at any time, without the approval required by the Building Committee. The parkways in front of lots shall not be used for the overnight parking of any vehicle other than private family automobiles. No boat, boat trailer, house trailer, automobile, truck or other vehicle or any part thereof shall be stored or permitted to remain on any residential lot unless the same is stored or placed in a garage or other fully enclosed space.

10. **FENCES AND HEDGES.** All fence, hedges or boundary walls situated anywhere upon any residential lot must be approved in writing by the Building Committee as to its height and design prior to construction. No trees of any type, other than those existing at the time these restrictive covenants of Somerset, Division No. 2, Somerset, Division No. 4 and Somerset, Division No. 6 are filed, shall be allowed to grow more than twenty (20) feet in height, provided they do not unnecessarily interfere with the view of another residence. The Building Committee shall be the sole judge in deciding whether there has been such an interference. In case of violation, the Building Committee shall have enforcement powers as set forth in Paragraph 1 of GENERAL PROVISION.

11. **ANIMALS.** No animals, all stock or poultry of any kind, shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes.

12. **MAIL BOXES.** All mail boxes must be of a standard accepted by the U. S. P. M. Authorities, and must be located in those areas as designated by the U. S. Postal Department. Structures containing such mail boxes must be approved by the Building Committee as herein set forth.

13. **TRASH AND WASTE DISPOSAL.** Trash, garbage, or other waste shall not be kept except in sanitary containers. All machinery or other equipment shall be kept in a clean and sanitary condition. All containers must be buried or screened so as not to be visible from any street or adjacent properties or residences.

14. **SIGNS.** No sign of any kind shall be displayed unless written approval is received from the Building Committee.

15. **CLOTHES LINES.** No exterior clothes lines shall be used that can be seen from any street or adjacent properties or residences.

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Contracting party will see to it that each home created in Somerset, Division No. 2, Somerset, Division No. 4 and Somerset, Division No. 6 qualifies, prior to connection for permanent service, as a Gold Medallion Home, qualifications of which are attached hereto, as a part hereof, and marked "Exhibit C", and will so provide in the building restrictions applicable to each lot in Somerset, Division No. 2, Somerset, Division No. 4 and Somerset, Division No. 6 except where the purchaser of a lot pays in addition to the purchase price of the lot, the installation costs of the underground electric power system.

16. DRIVEWAY APP. JACHES. All driveway approach will consist of a four (4) foot concrete apron measured in towards the garage from the curb line.

17. EVERGREEN LAND DEVELOPERS, INC.'S OPTION. In the event that lots previously sold not built on are offered for resale or assignment, the unbuilt on lot must first offer the lot for sale or assignment to Evergreen Land Developers, Inc., at the same price and upon the same terms as which such property is offered for sale or assignment to a third party. Evergreen Land Developers, Inc. has fifteen (15) days to accept or reject this option from date of written offering. Each offer of sale made to Evergreen Land Developers, Inc. pursuant to this paragraph, shall set forth the name and address of the prospective purchaser to whom such grantor or other grantor desires to sell the same in the event Evergreen Land Developers, Inc. fails to exercise its first refusal option hereunder.

18. LITIGATION SUCCESSORS OF GRANTOR. In the event of litigation arising out of enforcement of these restrictive covenants of Somerset, Division No. 2, Somerset, Division No. 4 and Somerset, Division No. 6, the grantor or grantee as involved, shall be liable for the payment of all attorney fees, court costs and/or other expenses or loss incurred by Evergreen Land Developers, Inc., in enforcing these restrictive covenants of Somerset, Division No. 2, Somerset, Division No. 4, and Somerset, Division No. 6.

The terms "Evergreen Land Developers, Inc.", as used in the restrictive covenants of Somerset, Division No. 2, Somerset, Division No. 4 and Somerset, Division No. 6 shall refer to Evergreen Land Developers, Inc. or to any successor of said corporation, whether by change of name, consolidation, merger, transfer of business, resignation or otherwise, or to any grantee of said corporation's entire remaining interest in Somerset, Division No. 2, Somerset, Division No. 4 and Somerset, Division No. 6, provided that said grantee is designated by said corporation in the deed of transfer or written documents attached thereto, as "successor" of Evergreen Land Developers, Inc.

IN WITNESS WHEREOF, The undersigned have on the 16th day of June 1964, affixed their signatures:

Charles T. Johnston Grace B. Johnston, his wife
Charles T. Johnston GRACE B. JOHNSTON, his wife
Melvin D. Packard Melvin D. Packard, his wife
MELVIN D. PACKARD MELVIN D. PACKARD, his wife

Response

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IN WITNESS WHEREOF, the undersigned have on the 16th day of February, 1967, affixed their signatures.

Jesse D. Casady
JESSE D. CASADY

Mary E. Casady
MARY E. CASADY, his wife

Charles R. Nelson
CHARLES R. NELSON

Ladonna Nelson
LADONNA NELSON, his wife

Florida A. A. Roberts
FLORIDA A. A. ROBERTS

Flrida A. A. Roberts
FLORIDA A. A. ROBERTS, his wife

Continental Ind.
CONTINENTAL INCORPORATED
Ryan Construction Co.
RYAN CONSTRUCTION CO.

Burwell & Burford
BURWELL & BURFORD

STATE OF WASHINGTON)
COUNTY OF KING) ss.

On this 16 day of February, 1967, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared JESSE D. CASADY and MARY E. CASADY, his wife, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged to me that they signed and sealed the said instrument as their free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Signature
Notary Public in and for the State of Washington, residing at Seattle

STATE OF WASHINGTON)
COUNTY OF KING) ss.

On this 16 day of February, 1967, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared CHARLES R. NELSON and LADONNA NELSON, his wife, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged to me that they signed and sealed the said instrument as their free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Signature
Notary Public in and for the State of Washington, residing at Seattle

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Ernest Hoffmann
ERNEST HOFFMANN

Ann Hoffmann
ANN HOFFMANN, his wife

Wesley M. Lennox
WESLEY M. LENNOX

Emma Burns Lennox
EMMA BURNS LENNOX, his wife

W. J. [unclear]

[unclear]

GLANVIEW BUILDERS, INC.

SECURITIES MORTGAGE COMPANY

[unclear]

WASHINGTON CAPITAL CORPORATION

PACIFIC FINANCE
Seattle, Washington

[unclear]

[unclear]
EVERGREEN LAND DEVELOPERS
INC.

[unclear]

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STATE OF WASHINGTON
COUNTY OF KING

On this 15 day of DEC, 1961, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared CHARLES J. JOHNSTON and GRACE B. JOHNSTON, his wife, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged to me that they signed and sealed the said instrument as their free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

James H. Evans
Notary Public in and for the State of Washington, residing at Seattle, Wash.

STATE OF WASHINGTON
COUNTY OF KING

On this 15 day of Dec, 1961, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared MARVIN D. PACKARD and PHYLLIS D. PACKARD, his wife, to me known to be the individuals described

Response

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SOMERSET NO. 4

SECTION 15, TWP. 24 N, R 5 E, W. M.

KING COUNTY, WASHINGTON

ENGINEER'S CERTIFICATE

I hereby certify that the plat of SOMERSET NO. 4 is based upon an actual survey and subdivision of Section 15, Twp. 24 N, R 5 E, W. M., that the courses and distances are shown correctly thereon, that the monuments have been set and the lot and block corners stated correctly on the ground and that I have fully complied with the provisions of the statutes and platting regulations.

Harstad Associates, Inc.
Consulting Engineers
Harstad T. Harstad
Professional Engineer & Land Surveyor
Certificate No. 6081



DEDICATION

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned owners in fee simple of the land hereby platted hereby declare this plat and dedicate to the use of the public forever, all streets and avenues and easements shown thereon and the use thereof for all public purposes, not inconsistent with the use thereof for public highway purposes, also the right to make all necessary slopes for cuts and fills upon the lots and blocks shown on this plat in the original reasonable grading of the streets and avenues shown hereon.

IN WITNESS WHEREOF we have hereunto set our hands and seals

<p>Harstad Associates, Inc. Professional Engineer & Land Surveyor Certificate No. 6081</p>	<p>FOREST HILLS ASSOCIATES SECURITIES MORTGAGE CO. W.R. Jennings G. Peterson</p>
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ACKNOWLEDGMENTS

STATE OF WASHINGTON) S.S.
COUNTY OF KING)

THIS IS TO CERTIFY that on this 7 day of July 1961 before me, the undersigned, a NOTARY PUBLIC, personally appeared Delia F. Whitmore, as her separate estate, and H.R. Whitmore and Stella Whitmore, his wife, in me, known to be the individuals who executed the within dedication and acknowledged to me that they signed and sealed the same as their voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year first above written.
John P. Spence residing at Seattle
NOTARY PUBLIC, King County, State of Washington

STATE OF WASHINGTON) S.S.
COUNTY OF KING)

THIS IS TO CERTIFY that on this 7 day of July 1961 before me, the undersigned, a NOTARY PUBLIC, personally appeared M.R. Whitmore, known to be the State General Partner of FOREST HILLS ASSOCIATES, a Washington Limited Partnership, the partnership that executed the within dedication and acknowledged the said instrument to be the free and voluntary act and deed of said partnership.

WITNESS my hand and official seal the day and year first above written.
John P. Spence residing at Seattle
NOTARY PUBLIC, King County, State of Washington

STATE OF WASHINGTON) S.S.
COUNTY OF KING)

THIS IS TO CERTIFY that on this 23 day of August 1961 before me, the undersigned, a NOTARY PUBLIC, personally appeared Wesley L. Gispert and George A. Logan, his wife, known to be the individuals who executed the within dedication and acknowledged to me that they signed and sealed the same as their voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year first above written.
Walter D. Schaefer residing at Seattle
NOTARY PUBLIC, King County, State of Washington

STATE OF WASHINGTON) S.S.
COUNTY OF KING)

THIS IS TO CERTIFY that on this 30 day of September 1961 before me, the undersigned, a NOTARY PUBLIC, personally appeared W.R. Jennings, Vice President and G. Peterson, Asst. Secretary of SECURITIES MORTGAGE COMPANY, known to be the Corporation that executed the within dedication and acknowledged the said instrument to be the free and voluntary act and deed of said Corporation for the uses and purposes therein mentioned and on oath stated that they were authorized to execute the said instrument and that the seal is the corporate seal of said Corporation.

WITNESS my hand and official seal the day and year first above written.
John P. Spence residing at Seattle
NOTARY PUBLIC, King County, State of Washington

SIGNATURES ILLEGIBLE DUE TO USE OF COLORED INKS

APPENDIX 2

PLAINTIFF O'BRIEN'S PROPERTY - 4551 140th AVE. SE - LOT 130 SOMERSET DIV. 4



Somerset 24

15-24-5

2-130

F22649-01

4551-140 S.E. (Front)

EXHIBIT 11



HOME NEWS SERVICES DIRECTORY CONTACT
King County Department of Assessments
 Fair, Equitable, and Understandable Property Valuations

You're In: Assessments >> Online Services >> eReal Property

- [New Search](#) |
 [Property Tax Bill](#) |
 [Map This Property](#) |
 [Glossary of Terms](#) |
 [Area Report](#) |
 [Print Property Detail](#)

Reference Links:

- [King County Tax Links](#)
- [Property Tax Advisor](#)
- [Washington State Department of Revenue](#) (External link)
- [Washington State Board of Tax Appeals](#) (External link)
- [Board of Appeals/Equalization](#)
- [Districts Report](#)
- [iMap](#)
- [Recorder's Office](#)
- [Scanned images of surveys and other map documents](#)
- [Scanned images of plats](#)

PARCEL DATA

Parcel	785540-0580	Jurisdiction	BELLEVUE
Name	O'BRIEN MICHAEL A	Levy Code	0330
Site Address	4551 140TH AVE SE 98006	Property Type	R
Residential Area	031-008 (SE Appraisal District)	Plat Block / Building Number	
Property Name		Plat Lot / Unit Number	130
		Quarter-Section-Township-Range	SW-14-26-5

Legal Description

SOMERSET # 4

LAND DATA

Highest & Best Use As If Vacant	SINGLE FAMILY	Percentage Unusable	0
Highest & Best Use As Improved	PRESENT USE	Unbuildable	NO
Present Use	Single Family(Res Use/Zone)	Restrictive Size Shape	NO
Base Land Value SqFt	0	Zoning	R-3.5
Base Land Value	475,000	Water	WATER DISTRICT
% Base Land Value Impacted	100	Sewer/Sepic	PUBLIC
Base Land Valued Date	3/21/2006	Road Access	PUBLIC
Base Land Value Tax Year	2007	Parking	
Land SqFt	8,897	Street Surface	PAVED
Acres	0.20		

Views

Rainier	
Temtonal	EXCELLENT
Olympics	EXCELLENT
Cascades	
Seattle Skyline	EXCELLENT
Puget Sound	
Lake Washington	EXCELLENT
Lake Sammamish	
Lake/River/Creek	
Other View	GOOD

Waterfront

Waterfront Location	
Waterfront Footage	
Lot Depth Factor	
Waterfront Bank	
Tide/Shore	
Waterfront Restricted Access	
Waterfront Access Rights	NO
Poor Quality	
Proximity Influence	NO

Designations

Historic Site	
Current Use	
Nbr Bldg Sites	
Adjacent to Golf Fairway	NO
Adjacent to Greenbelt	NO
Other Designation	NO
Deed Restrictions	NO
Development Rights Purchased	NO
Easements	NO
Native Growth Protection Easement	NO
CHR Lease	NO

Nuisances

Topography	NO
Traffic Noise	
Airport Noise	
Power Lines	NO
Other Nuisances	NO

Problems

Water Problems	NO
Transportation Concurrency	NO
Other Problems	NO

Environmental

Environmental	NO
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BUILDING

Building Number	1
Year Built	1962
Year Renovated	0
Stories	1
Living Units	1
Grade	B Good
Grade Variant	0
Condition	Good

Click the camera to see more pictures.
 Picture of Building 1

EXHIBIT 11

APPENDIX 3

April 8, 2009

Vern and Ginny Meyers
13911 SE 45th Place
Bellevue, WA 98006

This document addresses the neighbor's complaint of March 5, 2009 as it pertains to the large maple tree located on the Meyers property and the Somerset covenants recorded on February 2, 1962.



No portion of this document in whole or part is to be duplicated, discussed, shared or communicated outside of the five (5) SCA committee members reviewing the March 5, 2009 complaint.

This information is confidential and is only being provided for review by the Somerset Covenant Association's Covenant Review Committee.

Any contact with any individual or firm contracted by the Meyers for the purpose of this report and referenced inside and/or included within must first be authorized in writing or email by Vern or Ginny Meyers or Steve Smolinske.

Under no circumstances shall any of this report be shared with anyone outside of the five reviewing members or Somerset's legal counsel.

EXHIBIT 15

Summary

The proceeding information clearly documents through professional opinion, photographic evidence, legal declarations and the actions of Evergreen Land Developers employees that the tree on the Meyers property located at 13911 SE 45th Place was a substantial existing tree at the time the Somerset covenants were recorded in 1962 and specifically intended to be protected by those covenants.

Working through the neighbor's complaint letter of March 5, 2009 and their unsubstantiated claims:

1. "Numerous requests for trimming of the tree to restore "their prime view" has resulted in the Meyers declining to make any modifications."
 - a. According to Gary Albert "Original large trees that were already tall enough so that a neighbor did not have a particular view at the time of the covenants could continue to grow higher. There would be no taking of a view since there was no pre-existing view to be taken."(email) (The uphill neighbors have always had the tree as part of their "prime view" compare neighbors 1970 photos with Steve Smolinske's 2009 photos)
 - b. Letter from Mark Harmon a certified arborist from Stonehedge Tree Experts, Inc and photographic evidence along with check numbers and amounts from Ginny Meyers show the substantial pruning work that has been done in the last decade. Mark also estimates the trees age at 75 years old.
2. "The lot was cleared of all vegetation in 1960 and numerous one, two and three foot saplings were allowed to grow, one of these to ten feet tall in the mid sixties."
 - a. Photographic evidence and analysis by Ward Carson of the 1960 and 1964 aerial photos of the tree document its existence and height in 1964 at 70 feet tall.
 - b. Photos provided by the neighbors taken in 1970 show a substantially mature tree something that could not possibly have grown from a ten foot tall tree five years earlier. (See Tina Cohen's email about tree growth)
3. "By 1972 the tree had grown to about one third of the current height and one sixth of the width. Pictures taken from our cul-de-sac show this to be the case."
 - a. Kurt Fickeisen of Symbiosis Tree Care laser measured the height of the tree on April 4, 2009 at 63 feet. If this assertion were true the tree would have been 21 feet tall in 1972. (Refer to the neighbors photos and Ward Carson's analysis of the 1964 aerial photo along with Tina Cohen's email regarding tree growth rates.)

4. Gerald Hackleroad Declaration, In this document he states that he was the Project Manager for Somerset from 1967-1974 employed by Evergreen Land Developers and was involved in over 300 view resolution disputes and site review meetings.
 - a. Gerald was performing these tasks when the uphill neighbors and the Meyers houses were built. Many of the uphill neighbor's homes were built prior to 1970 when the Meyers built their home. Gerald Hackleroad had the authority to but did not have the 70 plus foot tree thinned or removed from the Meyers unsold lot when the uphill homes were built.
5. Even the neighbors realize that the tree is grandfathered and protected.
 - a. Peter Saunders March 31, 2009 email to Jim Bloomfield and cc to Steve Smolinske states: "We desperately need pictures of that tree at the time of initial lot purchases, around the mid sixties. I need that SCA ladies name, and contact info, so I can delve deeper into her contention that she had seen really early photos of those lots. We need solid evidence to support the degree of grandfathering that the Meyers are entitled to."

The tree was 70 feet tall in 1964 in 2009 it is seven feet shorter at 63 feet. It was without a doubt substantially larger than it is now both when the covenants were recorded and when the uphill neighbors built their homes. It is only because of Ginny Meyers concern for the health of the tree and respect for the neighbors that it has been so diligently looked after, balancing the health of tree with the neighbors view concerns. The uphill homes have always had the tree in their view; Evergreen Land Developers left the tree standing when they cleared the hillside in 1960. Later when Gerald Hackleroad was the Project Manager from 1967-74 and employed by Evergreen Land Developers and had the authority to cut the tree down or prune it, he did neither. I have to assume that he and everyone else involved at that time realized that the tree was protected by the covenants. How else does one explain that during the massive development of such a substantial "view neighborhood" as Somerset represented and that demanded premium prices for premium views that the developer left a 70 foot tall tree standing 8 years after the covenants were recorded on an unsold lot that they owned?

The neighbors story of a small sapling starting off in 1960, growing to a ten foot tall tree in the mid sixties when their homes were built and the covenants recorded then continuing to encroach on their "prime view" over the last four decades works well to weave a sympathetic story consistent with that portion of the covenant requiring that existing trees under 20 feet be trimmed back or cut down so as not to unnecessarily interfere with another's view. However the facts do not support this as being the case with respect to the Meyers's tree. It was a substantial existing tree in 1962, larger than it is now and is protected by the covenants.

Report Concerning Early Facts about a large tree on the Meyers property at 13911 Se 45th PI, Bellevue, WA 98006

Submitted by Ward W. Carson, Certified Photogrammetrist

Date: April 7, 2009

Submitted to Steve Smolinske.

I have been provided over the last few weeks with photographic enlargements extracted from segments of two areal photographs, one exposed on April 7th, 1960 and the other taken on July 27th, 1964. Both of these photographs were taken from the archives of the Aero-Metric company, 12652 Interurban Avenue South, Seattle, WA 98168 and the origin of each were certified by Aero-Metric.

The enlargements are attached and labelled here as Photo A1, A2 and B2.

Steve Smolinske initially presented me with the photographs, identified a particular tree of interest to him and requested my opinion as to the size of the tree as it appeared in the 1964 photograph. I requested that Mr. Smolinske provide also the dimensions on a nearby house--the elevation of roof features above ground levels and the horizontal width of a driveway feature. These were provided and are attached to this report.

The data provided by Me. Smolinske is attached and labelled as Datasheet D1

Mr. Smolinske requested also that I relate the features that appear on the 1960 photograph with those on the 1964 photograph. I've accomplished this through a common method of georeferencing that I've describe more thoroughly in the appendix of this report.

The graphic results of the 1964 features projected upon the 1960 photograph are attached and labelled as Enlargement E1.

Primary Conclusions:

Having become familiar with the evidence presented in these photographs and the data provided, I have concluded the following:

i.) On July 27th, 1964 there was a large deciduous tree with a height of approximately 70 feet (+/- 10') in the location made clear by the adjacent features--house and fence--apparent in the attached exhibit "Photo A1"

ii.) Given the size of the tree in July of 1964, one would expect that it existed in the same location in April of 1960, however, the tree is not clearly visible in the exhibit "Photo B2" nor is it in the enlargement "E1". However, I do not find it surprising that the tree is not readily apparent in this 1960 photograph since the leaves were most likely not fully developed on the tree at that time (April 7th).

Appendix I:

My estimate of the height of the tree was based upon the shadows cast by both the tree and by the roof features of a house nearby the tree. The sun angle and any vertical feature would cause a shadow of length proportional to height to be cast upon any adjacent ground. We have assumed that the adjacent ground, in both the case of the tree and the roof feature was level with respect to the tree and the house respectively. We were provided the house height-dimensions by Mr. Smolinske and assured that the ground was in fact level. My calculations are shown on an accompanied sheet. The uncertainties-- +/- 10 feet for height--are based upon the uncertainties in shadow measurements and the ambiguity associated with identifying the top of the tree.

Appendix II:

There was considerable effort expended to facilitate a relationship between the location of features on the 1960 and the 1964 photographs. We followed a common procedure as described here:

1.) The Photo A2 and the Photo B2 images were each scanned with a desktop scanner at a resolution of 600 dots per inch. This provided a digital file of each image.

2.) The ArcInfo GIS program was used (with the assistance of Luke Rogers of the Northwest Geospatial Company) to determine an affine transformation between the 2 images. Eleven well-distributed points were used in the affine fit. The residuals in this fit ranged from 0.0045 to a maximum of 0.07336 inches. At the scales being used, this would suggest that all features were located to an accuracy better than 30 feet.

3.) After the fit, features were digitized from the 1964 image and these were then transferred to the 1960 image. Enlargement E1 is the product of this process.

Note: The tacit assumption in the above process is that the elevation differences across the landscape are not large enough to affect the fit process and erode the accuracy beyond that required by this project. The table of residuals suggest that accuracies of +/- 30 feet in the location of transformed features was attained. Certainly, a better product could have been produced through a more rigorous stereoscopic mapping procedure, however, such accuracy did not seem necessary in this project.

Ward W. Carson
Certified Photogrammetrist

Date:

Photo A1

Tree

Fence

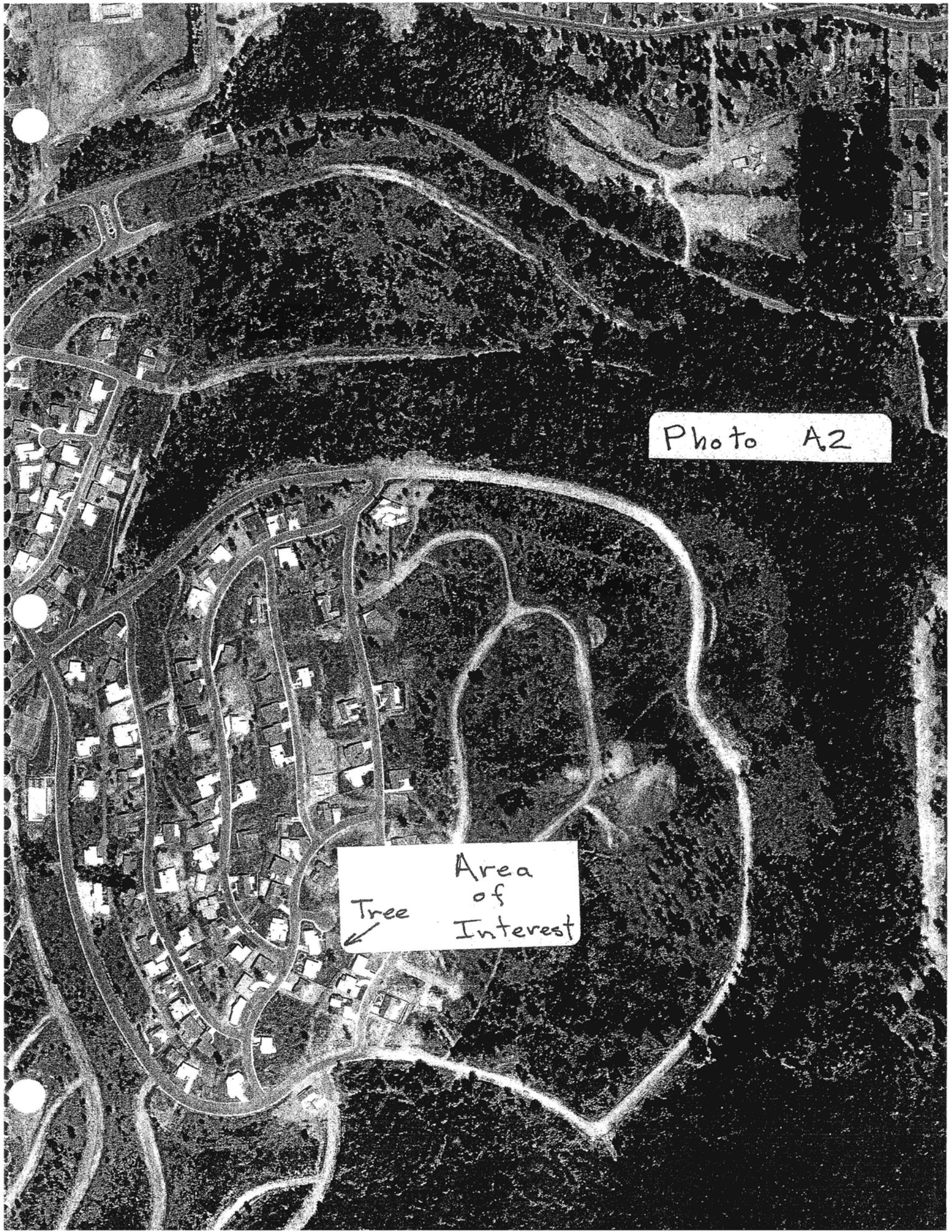
House

Driveway

Photo A2

Area
of
Interest

Tree
↙



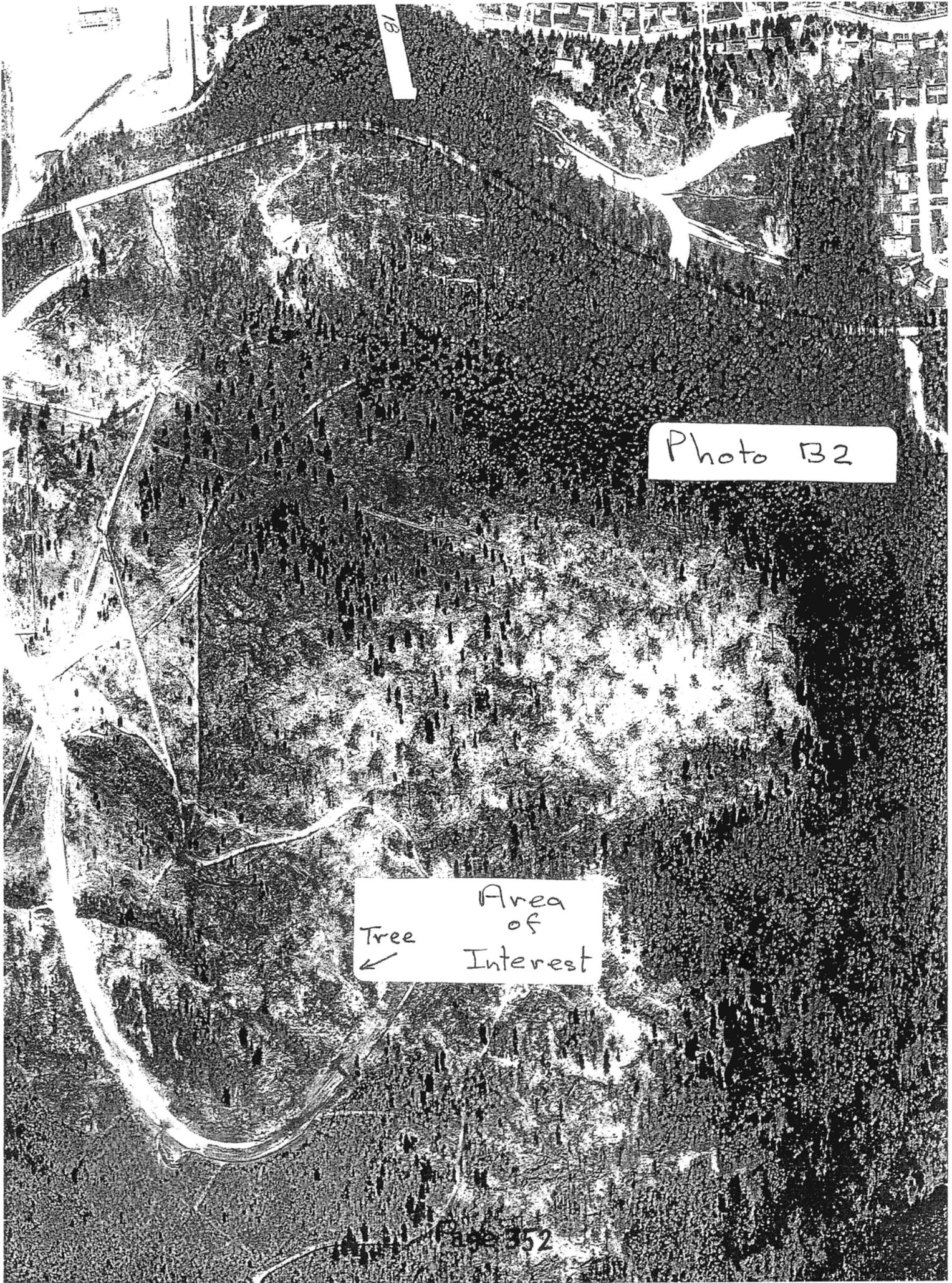
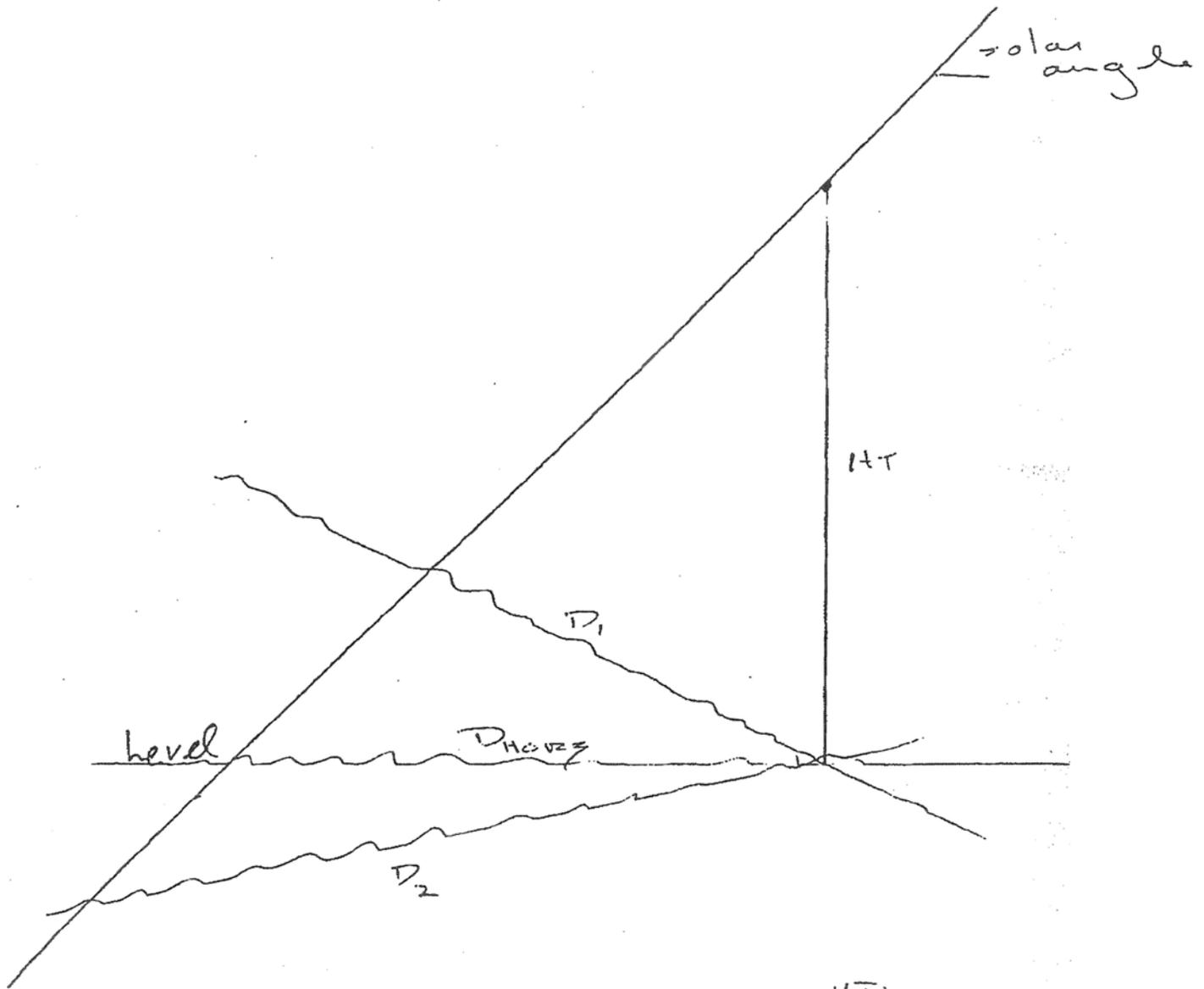


Photo B2

Area
of
Tree
← Interest



$$\frac{HT}{D_1} = \frac{HT}{D_2}$$

$$HT_{tree} = D_{tree} \frac{HT_{house}}{D_{house}}$$

$$HT_{tree} = (D_{tree \text{ on photo}}) \left(\frac{HT_{house}}{D_{house \text{ on photo}}} \right)$$

$$HT = 16mm \left(\frac{188''}{3.5mm} \right) = 71.6'$$

$$CROWN = \frac{13}{25.4} \cdot 60 = 30.7'$$

Residuals from Smolinske photo registration

Link	X Source	Y Source	X Map	Y Map	Residual
1	1.280907	11.179484	1.244077	11.194216	0.00931
2	8.255272	8.809175	8.312475	8.702518	0.05426
3	8.020697	10.800720	8.096145	10.736520	0.01684
4	4.985990	11.152878	4.999745	11.130904	0.01158
5	6.860285	5.337200	6.708426	5.292414	0.07336
6	4.466037	5.268822	4.306896	5.192749	0.02116
7	4.018311	4.991882	3.846696	4.929778	0.02346
8	3.847283	4.024286	3.662676	3.942135	0.00450
9	3.410108	2.195543	3.186058	2.079755	0.02220
10	1.829284	4.156240	1.644003	4.092049	0.02191
11	2.307075	1.937437	2.072232	1.833378	0.02787

Coordinates:

Distances in mm on photo, not in mm at "scale 1"

Scale 1 = 1" = 433'

25" = 17.1'

1mm = 16.7'

1 and 11 233.0 → 3889'
 1 and 2 193.5 → 3230'
 4 and 5 155.0 → 2587'
 4 and 9 231.0 → 3856'

Distances in scanner units: $\sqrt{(x_j - x_i)^2 + (y_j - y_i)^2}$

11-1 ⇒ $\sqrt{1.0262^2 + 9.2421^2} = 9.2989 \text{ su} \Rightarrow 418.2'/\text{su}$

2-1 ⇒ $\sqrt{\dots} = 7.365 \text{ su} \Rightarrow 438.5'/\text{su}$

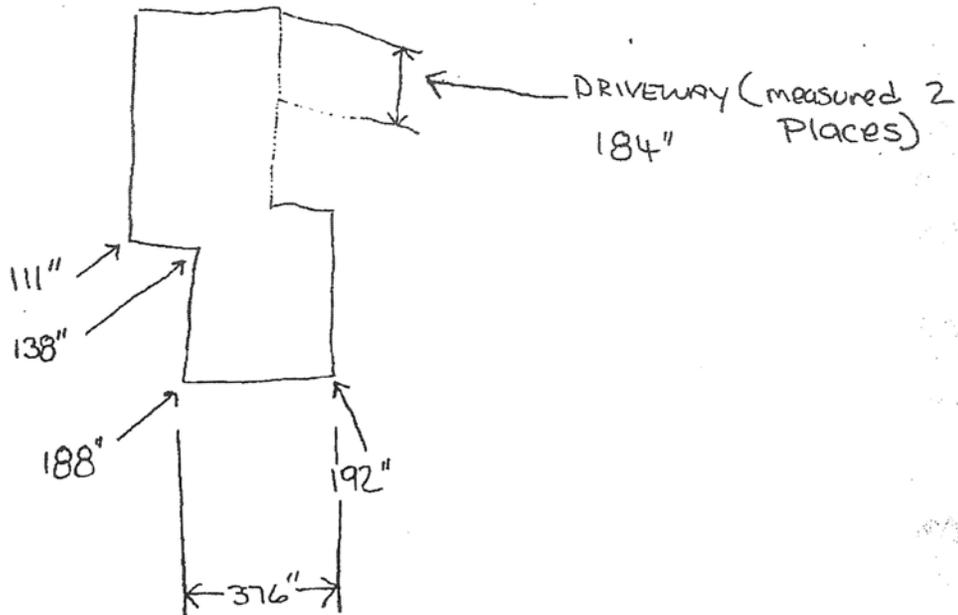
5-4 ⇒ $\sqrt{\dots} = 6.1103 \text{ su} \Rightarrow 423.4'/\text{su}$

9-4 ⇒ $\sqrt{\dots} = 9.0949 \text{ su} \Rightarrow 423.97'/\text{su}$

average 426.02'/su

Typical vertical 0.02 su to 0.07 ⇒ 8.5' to 29.8'

mm/su = $426.02'/\text{su} / 16.7'/\text{mm} = 25.5 \text{ mm/su}$ (probably 1'/su)



Ward, those are the measurements I
took from the neighbors house shown
in the 1964 photo.



The 111", 138", 188" & 192"
measurements are from ground
to top of fascia

$$0.2756'' = 184'' \Rightarrow 0.2756'' : 15.33' \Rightarrow 1'' = 55.63$$

Steve Smolinske

From: Kurt Fickeisen [kurtfick@gmail.com]
To: Steve Smolinske
Cc:
Subject: Meyers tree
Attachments:

Sent: Mon 4/6/2009 7:59 PM

Steve Smolinski,

As you requested I came out on Monday April 6, 2009 to property at 13911 SE 45th Pl. in Bellevue, Washington at 10 AM. The purpose of my visit was to measure the height of a large big leaf maple (*Acer macrophyllum*). I measured the big leaf maple height with a TruPulse 200. The device uses laser readings to measure height and distance.

<http://www.lasertech.com/TruPulse-200-RangeFinder.aspx>

I measured the tree from a location adjacent to a hedge and close to a birdhouse mounted on the hedge. The location allows clear sightings on the trunk and foliage of the tree from a point above a rhododendron to the top of the canopy. The height is 57 feet. I stood next to the tree and observed the rhododendron is 6 feet tall by eyesight.

$57' + 6' = 63'$

The tree is 63 feet tall.

--
Kurt Fickeisen
Symbiosis Tree Care
Seattle, WA

206.841.3158

International Society of Arboriculture Certified Arborist #RM-451A
PNW ISA Certified Tree Risk Assessor #264
Member American Society of Consulting Arborists
Registered Consulting Arborist #472

Steve Smolinske

From: Tina Cohen [tina@tinacohen.com]
To: Steve Smolinske
Cc:
Subject: Re: Meyers maple laser measurement
Attachments:

Sent: Tue 4/7/2009 5:56 PM

Hi Steve,

That's very interesting. I estimated the tree in my field notes at 60 feet and Mark Harmon said 50 so I split the difference for the report.

The maple would have been taller than 20 feet in 1961. The tree was 70 feet in 1964. Prior to that point it probably grew at a rate of about 1 foot per year or less. So from 1962 to 1964 it would grow about 2 feet. In 1961 it would have been about 67 feet OR it could have been already 70 feet - once they're that tall they don't increase very much.

Bigleaf maple grow very fast when they're young, and then the rate slows in maturity. The largest are about 100 feet.

USDA Forest Service Handbook 654, *Silvics of North America Volume 2, Hardwoods* cites growth rates: Open grown seedlings (meaning small juvenile trees) with adequate moisture and nutrients can grow 3.3 to 6.6 feet in one growing season. At 0 to 4 years they're 0 to 10 inches tall. Then at 20-30 years, seedlings can be 16.4 feet tall.

These figures seem conservative to me.

It seems obvious that a tree that's 70 feet in 1964 (or in 1970) was taller than 20 feet in 1961. Trees cannot grow 50 feet in three years! Please let me know if there's anything else I can provide that will demonstrate this to the review board.
 Tina

Tina Cohen, Certified Arborist #PN0245A
 Northwest Arborvitae

On Apr 7, 2009, at 8:49 AM, Steve Smolinske wrote:

Tina,

Kurt measured it at 63 feet, Going back to 1964 when it was 70 +/- 5, what would it have grown a year from 62 to 64?

From: Tina Cohen [mailto:tina@tinacohen.com]
Sent: Tuesday, April 07, 2009 8:32 AM
To: Steve Smolinske
Subject: Re: Meyers maple laser measurement

Hi Steve,
 Did you get in touch with Kurt? What were his findings?

Do you still need my comments on growth rate?
 Tina

On Apr 3, 2009, at 2:52 PM, Steve Smolinske wrote:

Yes I would, could he do it next week?

From: Tina Cohen [mailto:tina@tinacohen.com]
Sent: Friday, April 03, 2009 9:56 AM
To: Steve Smolinske
Cc: Kurt Fickeisen

Stonehedge Tree Experts, Inc.



4000 SW Myrtle St. Seattle, WA 98136

Tel: 206.937.7428 Fax: 206.937.4939

Email: info@StonehedgeTree.com

3/19/2009

Jenny Meyers
13911 SE 45th Pl
Bellevue, WA 98006-2240
Tel. 425.641.4555
Fax 425.957.4555

Re: Large Maple

To Whom this may concern,

My crew of Certified Arborists and I have been working in Ms. Meyers Maple tree since 2005. We have been professionally maintaining the health of the tree every two years; November of 2005, December of 2007 and November of 2008. Prior to our tree work, Jenny has had regular maintenance since 2000.

The tree is a large mature Big Leaf Maple and in good health. Each year we work in the tree there is very little to do but to make small thinning cuts and remove small deadwood. I should stress that very little deadwood has ever been removed from the tree. This is an indication of the excellent health of the tree. During winter storms no damage has occurred to the tree since we have maintained it.

Structurally the tree is sound with good vigor. Callus formation on old wounds is excellent. There are some cavities from old pruning wounds but they are of little concern. A healthy tree compartmentalizes wounds to prevent the spread of decay. This tree does just that.

I would guess the expected life of this tree could be another 50 years or longer if maintained as it is. The age of the tree could easily be 75 years old. It probably wont get much taller as its' growing relatively slowly in height but may be putting more growth into wood and trunk girth.

If this tree was to be topped it would start it on a spiral of decline, costing more money to maintain and increase its hazard potential for the long term. Again the tree is a good candidate for preservation as long as Ms Meyers maintains it as she has.

Respectfully yours,

Mark Harman
PNWISA Certified Arborist #0147
Stonehedge Tree Experts, Inc.

APPENDIX 4

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**SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY**

REGINALD PETER SAUNDERS and
ELIZABETH SAUNDERS, et al.,

Plaintiffs,

v.

VERNON L. MEYERS and VIRGINIA
C. MEYERS, et al.,

Defendants.

NO. 11-2-1407-4 SEA

DECLARATION OF VERNON L.
MEYERS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

I, the undersigned, declare under the pains and penalties of the laws of perjury of the State of Washington:

1. I am over the age of 18 years and competent to testify to the facts hereinafter stated.
2. I am married to Virginia C. Meyers. I reside with my wife at 13911 SE 45th Place, Bellevue, WA, and am a named Defendant in the above entitled cause.
3. The Maple tree that is the subject of the litigation brought by our neighbors was present on our Somerset subdivision lot that we purchased in 1970.

DECLARATION OF VERNON L. MEYERS - 1

WILLIAMSON LAW OFFICE

COLUMBIA CENTER TOWER
701 5th Avenue - Suite 5500
P.O. BOX 99821
Seattle - WA - 98139-0821
TEL. 206.292.0411 / FAX 206.292.0313

1 4. We bought our homesite with the existing tree believing that it was a valuable landscape
2 amenity that we could incorporate into our building plans. Ex. 1 is a true and correct copy of
3 the covenants.

4 5. The Maple tree was fairly mature when we began construction as can be seen in the
5 color photos that we took in 1970 and that I have attached at Ex. 2B. I estimate the tree
6 height then to be 70 feet, and the width about 40 feet.

7 6. We raised our family in our home and landscaped our back yard around the Maple tree.
8 We used it for patio events over the years, and it is an important shade tree in the summer
9 months. The photo at Ex. 3 that I also took shows the tree as it exists today with essentially
10 the same canopy height and approximate width as existed in 1970.

11 7. The Maple tree did grow some as Maple trees do after 1970. We paid arborists to
12 maintain the Maple tree for well over this 40 year period to keep it cropped and healthy.

13 8. I asked the assistance of my son-in-law Steve Smolinske to help us when the Plaintiffs
14 complained to the CRC in 2009 and this past year as my health (I suffer from MS and am
15 restricted to a wheel chair) simply would not allow me to challenge their assertions that the
16 Maple tree violated the CCR's under which we purchased our property.

17 9. This has been very upsetting to me and my wife. We built our home on a lot with an
18 existing large Maple tree with building plans that we incorporated into our patio area. We
19 have enjoyed and maintained this tree for over 40 years. Given the size of this mature Maple
20 tree when we purchased the lot and built our home in 1970, it was readily evident this tree
21 was in existence when the Plaintiffs built their homes.

22 10. The May 28, 2009 email that I have read from CRC Chairman Gary Albert stating that
23 the original intent of the covenants was limited to "full grown Madrona and evergreen trees"
24

25
26 DECLARATION OF VERNON L. MEYERS - 2

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Seattle - WA - 98139-0821

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1 is a complete surprise to myself and my wife. This statement was never presented to us in
2 writing by anyone at any time, and certainly not when we built our house in 1969 and 1970.

3 11. I have reviewed the building plans of the O'Briens residence located at Ex. 11. This
4 home located at 4551 140th Avenue SE, was formerly owned by our neighbors, the Sanstroms,
5 before it was sold to the O'Briens. The photograph taken by the King County Assessor's
6 Office in 1963 in its assessment for Lot 130 of Somerset Division 4 shows a prominent large
7 mature Maple tree in the background just above the northwest corner of the O'Briens' pitched
8 roofline. This picture was taken from a vantage point on 140th Avenue SE facing the
9 O'Briens' residence in a southwest direction as I have shown in another King County
10 photograph (colored Imap) attached at Ex. 11.

12 12. Having lived in this neighborhood well over 40 years, and living next door to the
13 O'Briens who have complained about our Maple tree, I immediately recognize this Maple tree
14 shown on the Assessor's photograph at Ex. 11 as the same Maple tree located on our property
15 when we bought Lot 117 and then built our home in 1969 and 1970.

17 13. I request that the Judge hearing this matter dismiss Plaintiffs' case, and award us our
18 attorney fees and costs for what we believe to be a spiteful lawsuit that was filed by the
19 Plaintiffs for no legitimate reason other than to get rid of our Maple trees to enhance their
20 views.

21 Dated this 11th day of August 2011 at Bellevue, WA.

23 
24 Vernon L. Meyers

25 Meyers Declaration-Summary Judgment-080811.doc

26 DECLARATION OF VERNON L. MEYERS - 3

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Seattle - WA - 98139-0821
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SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

REGINALD PETER SAUNDERS and
ELIZABETH SAUNDERS, et al.,

Plaintiffs,

v.

VERNON L. MEYERS and VIRGINIA
C. MEYERS, et al.,

Defendants.

NO. 11-2-1407-4 SEA

DECLARATION OF VIRGINIA C.
MEYERS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

I, the undersigned, declare under the pains and penalties of the laws of perjury of the State of Washington:

1. I am over the age of 18 years and competent to testify to the facts hereinafter stated.
2. I married to my husband Vernon L. Meyers and am identified as a co-defendant in this case.
3. I reside with my husband at 13911 SE 45th Place, Bellevue, WA 98006. We have lived in our residence located at this address since it was constructed in 1970 as can be seen in the color family photos at Ex. 2. When we purchased Lot 117 from the developer of this

DECLARATION OF VIRGINIA C. MEYERS - 1

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1 property, there was a very large and fully mature Maple tree on this Lot. The O'Briens' home
2 (owned by the Sanstroms) can be seen in the background with their deck, living room, and
3 bedrooms facing this tree to the west in the color photo dated "Dec. 1969."

4 4. As I can best recall, when we bought this lot in 1970, this part of Somerset was partially
5 developed, and had been cleared of just about all natural and native vegetation. This was one
6 of the few undeveloped lots with any significant trees remaining. Both Vern and I viewed this
7 tree as unusual because of its mature size and canopy, and as a landscape feature that
8 enhanced the value of our property that we could incorporate into our patio and lawn area.
9

10 5. Our building plans were reviewed and approved by the Building Committee for the
11 Somerset plat. There was no issue then with the tree being required to be cut down by the
12 Building Committee. We never thought that the tree was an obstruction to anyone's views as
13 the Plaintiffs have charged in their complaint. If this were the case, the tree would have
14 simply been removed before we purchased Lot 117 by the developer who sold us the lot or it
15 would have been addressed when we went through the building permit process and the
16 Building Committee's review of our house plans.
17

18 6. It was not until after the Sanstroms sold their property located at 4551 140th Avenue SE,
19 Bellevue, WA 98006 to the O'Briens predecessor who in turn sold it to the O'briens
20 sometime in the mid-1990's, some 40 years later, that our Maple tree suddenly became an
21 issue. The Sanstroms, who were the prior owners for well over 25 years, never asked us to
22 remove the tree nor did the O'Briens predecessor. They filed no complaints with the
23 Somerset Building Committee where they stated that it was obstructing their views.
24

25 7. Anyone familiar at all with the neighborhood could easily see from the photos that when
26 we bought and built our house in 1970, that the tree was fully grown. Over time, we actually

DECLARATION OF VIRGINA C. MEYERS -2

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Seattle - WA - 98139-0821
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1 shortened the height and width of tree. A portion of the tree was destroyed in a wind storm in
2 the mid-1980's that reduced its overall width. The Sanstroms would have seen the damage to
3 our tree caused by this storm and the reduced size, but not the O'Briens who purchased the
4 house in the mid-1990's.

5 8. My husband Vern could no longer do any trimming or work on the tree after his health
6 failed and I as his primary care giver certainly can't either. Due to his advanced Multiple
7 Sclerosis my husband Vern is no longer able to move without assistance. The tree has been
8 especially comforting to Vern in the warm summer months where he can enjoy the outdoors
9 in the shade of the tree while in his wheel chair. Even though I consider myself an
10 experienced gardener, we had to hire professional arborists to maintain the health of this tree
11 over the years. These included the Urban Tree Service, Action Tree Service, and Stonehedge.
12 The most recent has been Mark Harman of Stonehedge Tree Experts.

13
14 9. Statements made by the O'Briens and Saunders in their Declarations that we never
15 trimmed our tree are simply untrue. To help the CRC Members better understand the
16 complaints filed by the O'Briens and Saunders, I had our son-in-law Steve Smolinske
17 provide to the Somerset Covenant Review Committee ("CRC") as much detail about the
18 history of our tree after the O'Briens filed their complaint. We attached a handwritten cost
19 summary that I prepared along with photographs of the pruning and trimming on alternating
20 years beginning on 1-24-00 for \$1,216.32; 11-5-02 for \$1,007.76; 9-29-04 for \$580; 11-29-
21 05 for \$522.24; 12-17-07 for \$882.09; and 11-25-08 for \$810.25. These appear in Ex. 15 to
22 my son-in-law's Declaration.
23

24 9. I have again attached this same handwritten summary of tree pruning and trimming,
25 along with photos to my declaration showing some of the routine pruning and trimming work
26

DECLARATION OF VIRGINA C. MEYERS - 3

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Seattle - WA - 98139-0821
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1 done on our tree. This pruning and trimming included removal of the storm damaged portion
2 of the tree that reduced its width in the mid-1980's and periodic trimming of the tree height
3 and width from that period forward.

4 10. With this history of maintaining our Maple tree, I have taken time to read the
5 declaration of our neighbor, Michael O'Brien dated November 17, 2011, along with photos he
6 has attached in asking that our Maple tree be removed. When we had our initial meetings
7 with the neighbors on March 23, 2009, then later with the CRC Committee we were never
8 given any historic photos showing what view they had when they constructed their homes or
9 when the original covenants were recorded in 1962. It was clear to me and Vern that these
10 neighbors wanted the tree removed regardless of whether our tree was grandfathered or not so
11 that their views and property values could be enhanced at the expense of our tree.

12
13 11. Mr. O'Brien at one point several years ago left a color photo and a handwritten note
14 asking that a very small lower portion of our tree be trimmed to enhance his the O'Briens'
15 views, this was after a phone conversation. Ex. 17. I then compared his photo to the CRC's
16 second decision letter of April 27, 2010 at Ex. 14 a year later. It is remarkable that the
17 O'Briens after telling and showing us that they desired to have only the a few select branches
18 of our tree trimmed would morph into a "haircut" of the upper 1/3rd of the tree's canopy that
19 our arborist, Tina Cohen, told the CRC at Ex. 15 would kill our tree.

20
21 12. We (Vern, me, and our son-in-law) were never told by the Plaintiffs in this lawsuit
22 against us, or the CRC, about any "reconsideration" of the CRC's first decision letter that
23 appears at Ex. 9. This was all done behind our backs in secret. We were never allowed to
24 participate in the "reconsideration" by the CRC that abandoned their first "decision" from
25 merely trimming the width of our Maple tree to 30 feet, to now requiring that the upper 1/3rd
26

DECLARATION OF VIRGINA C. MEYERS -4

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701 5th Avenue - Suite 5500
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Seattle - WA - 98139-0821
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1 of our tree that they know will kill the tree. It is obvious to us that the CRC is not following
2 its own procedures, has never known what standards apply to grandfathered trees, and is
3 simply playing favorites with the bulk of complaining neighbors who simply want their views
4 enhanced.

5
6 Dated this 6th day of December 2011 at Seattle, WA.
7

8
9 Virginia C. Meyers

10 Virginia C. Meyers Declaration-120611.doc
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DECLARATION OF VIRGINIA C. MEYERS - 5

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P.O. BOX 99821
Seattle - WA - 98139-0821
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of our tree that they know will kill the tree. It is obvious to us that the CRC is not following its own procedures, has never known what standards apply to grandfathered trees, and is simply playing favorites with the bulk of complaining neighbors who simply want their views enhanced.

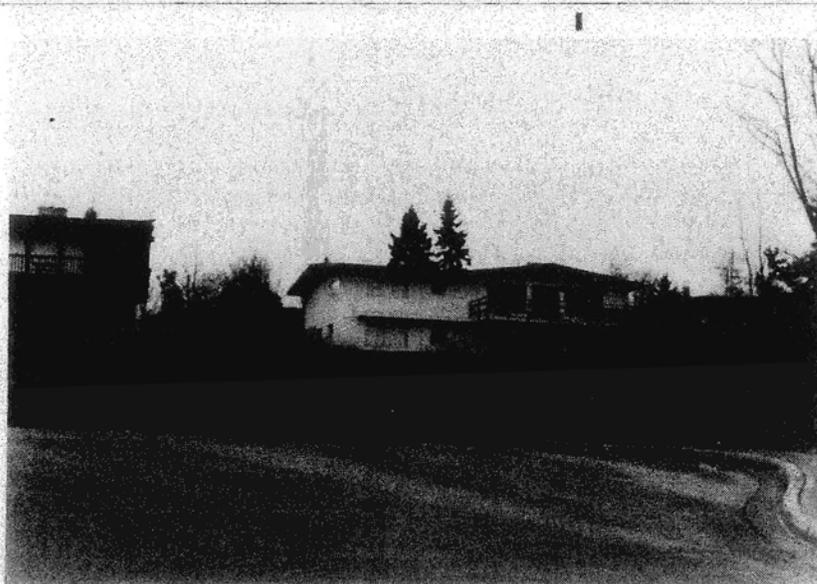
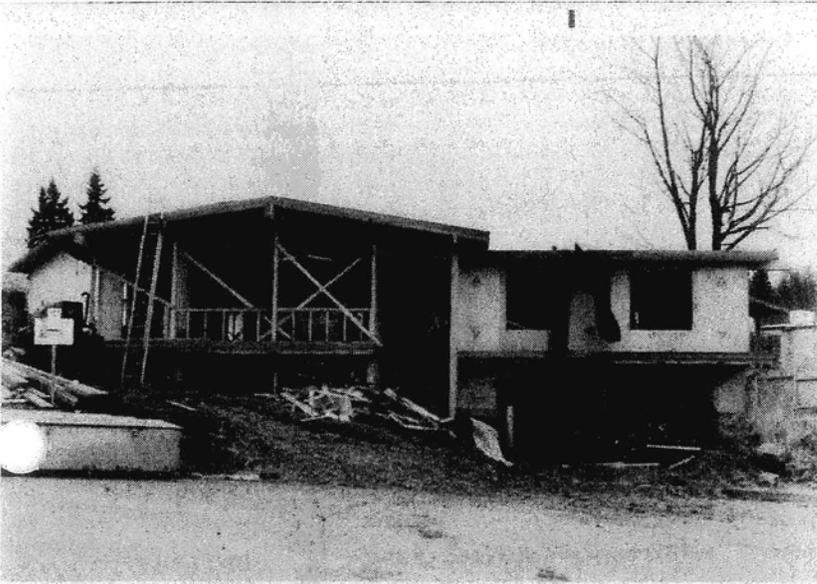
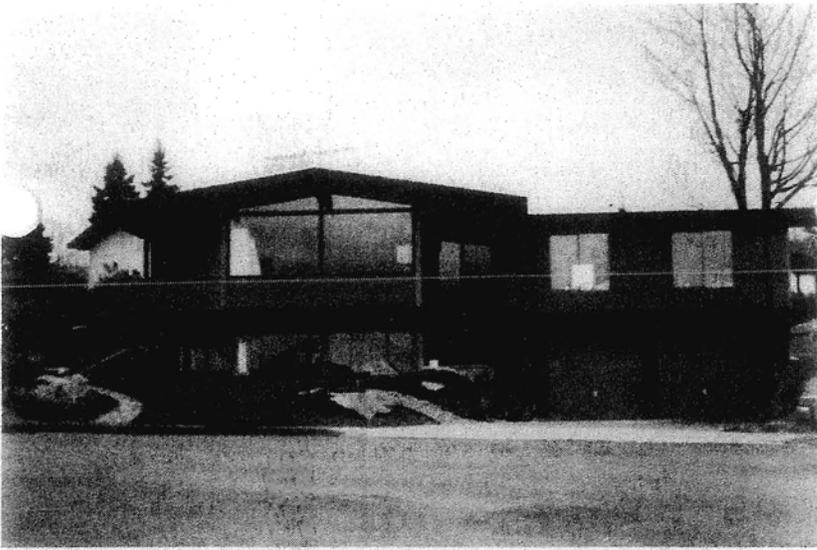
Dated this 6th day of December 2011 at Seattle, WA.

Virginia C. Meyers, (206) 430-1100

Virginia C. Meyers
Virginia C. Meyers

EXHIBIT

2
B



APPENDIX 5

AFTER RECORDING RETURN TO
Somerset Community Association
Long Range Planning Committee
P.O. Box 5733
Bellevue, WA 98006



**FIRST AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE PLATS OF SOMERSET NO. 2, SOMERSET NO. 4 AND SOMERSET NO. 6**

Fidelity National Title Co.

Grantors: The Somerset Community Association 6-SOMERSET 13/#20

Grantees: Owners of Lots in Somerset No. 2, Somerset No. 4 and Somerset No. 6.

Legal Description (abbreviated): Plat of Somerset No. 2, Vol. 68 of Plats, Pg. 44, King County; Plat of Somerset No. 4, Vol. 68 of Plats, Pgs. 29-30, King County Plat of Somerset No. 6, Vol. 67 of Plats, Pgs. 11-12, King County.

Assessor's Tax Parcel IDs #: Somerset No. 2: 7855200020 through 7855200270
Somerset No. 4: 7855400010 through 7855400850
Somerset No. 6: 7855600010 through 7855600820

Reference Nos. Of Documents Released or Assigned: This amends the Declaration of Covenants recorded under King County Auditor No 5389232

EXHIBIT B

A Declaration of Protective Covenants, Restrictions and Limitations (the "Declaration") was recorded in the records of King County, Washington, under Auditor's File No 5389232 The Declaration affects the Plats of Somerset No. 2, Somerset No 4 and Somerset No 6 The Plat of Somerset No. 2 is recorded at Volume 68 of Plats, page 44, in the records of King County The Plat of Somerset No 4 is recorded at Volume 68 of Plats, pages 29 and 30, in the records of King County The Plat of Somerset No 6 is recorded at Volume 67 of Plats, pages 11 and 12, in the records of King County

The Declaration provides that it shall continue in force until January 1, 1992, and shall be automatically continued for ten years, and thereafter for successive periods of ten years, unless a written instrument amending the Declaration is properly executed by a majority of the owners of lots in Somerset No 2, Somerset No 4 and Somerset No. 6 and is recorded in the records of King County, Washington

This First Amendment to the Declaration ("the Amendment") has been properly executed by a majority of the owners of lots in Somerset No. 2, Somerset No 4 and Somerset No. 6. Exhibit A to the Amendment, incorporated here by this reference, is the First Amendment To Declaration Of Restrictive Covenants For The Plats Of Somerset No. 2, Somerset No 4 and Somerset No 6 ("the First Amendment") Exhibit A authorizes counterpart execution of the First Amendment and authorizes the President of the Somerset Community Association to execute and record the Amendment in its present form once the First Amendment had been duly adopted by the necessary number of affirmative counterpart original and acknowledged signatures of owners of lots in Somerset No 2, Somerset No. 4 and Somerset No 6. Exhibit B to the Amendment identifies which owners of which lots in which divisions of Somerset signed and acknowledged the First Amendment The documents containing the original signature and acknowledgment of each identified owner are in the possession of the Secretary of the Somerset Community Association. The First Amendment, through its inclusion as Exhibit A to the Amendment and its incorporation in the Amendment by this reference, is being placed of record, as contemplated in the amending provision of the Declaration.

NOW, THEREFORE, the President of the Somerset Community Association certifies the Declaration to have been amended in the following particulars

2001 120 3002549

A. The language of Section 1 ("GENERAL PROVISIONS"), is amended to read:

After December 1, 2001, the Declaration, as amended, may be subsequently amended at any time by an instrument or instruments in writing, duly signed and acknowledged by a simply majority of all owners of lots in the Plats of Somerset No 2, Somerset No 4, and Somerset No 6, which amendments shall become effective upon the recording of the instrument(s), or a duly authorized memorandum thereof in the office Records and Elections for King County, Washington

B. The following language replaces Section 6 in its entirety ("THE BUILDING COMMITTEE"):

THE COVENANTS REVIEW COMMITTEE. A Covenants Review Committee ("CRC") shall be created and shall replace, perform the functions of, and have the same rights, powers and authorities as the Building Committee identified in this Declaration. The CRC shall be composed of five (5) members, nominated by the Somerset Community Association and elected by a plurality vote of owners of real property in Somerset plats that have adopted this amendment and who have cast votes at the Somerset Community Association annual meeting. At least three (3) members of the CRC shall be resident owners of real property in Somerset plats that have adopted this amendment. Each member of the CRC shall serve a minimum one-year term. In its discretion, the CRC may assess a Lot owner a reasonable fee for services performed as required under the Declaration, not to exceed \$100

It is the obligation of the Somerset Community Association, a Washington nonprofit corporation whose members are owners of residential lots in all of the divisions of Somerset, to maintain, oversee and administer the Covenants Review Committee for the life of this Declaration

C. The following language replaces the words "shall meet at the Somerset Sales Office at 7:00 P.M., the first and third Wednesdays to consider and review house plans" in the first sentence of Section 4 ("APPROVAL OF PLANS BY BUILDING COMMITTEE"):

"shall meet as demand requires, and in no event less than once per month, in Somerset to conduct its business, which includes the consideration and review of house plans"

2001 120 3002549

D. *The following new section shall be added to the Declaration:*

NON-BINDING MEDIATION PROCEDURE

Request for Mediation In the event a dispute between two or more Lot Owners arises out of the Declaration as amended, either the Lot Owner(s) asserting a violation of the Declaration, as amended, (the "Complainant") or the Lot Owner(s) alleged to be in violation (the "Respondent") may request a mediation by first notifying the CRC and the other affected parties in writing describing the nature of the complaint

Time and Place Within ten (10) days of receiving a written request for mediation, the CRC shall notify all affected parties of a mediation conference which shall be held at a reasonable time and place, not later than thirty (30) days from the date the written complaint is received, unless the time is extended for good cause

Selection of Mediators The Complainant and Respondent shall have the right to agree to the mediator of their choice. If the Complainant and Respondent cannot agree, then at least one member of the CRC shall serve as a mediator, in which event the Complainant and the Respondent shall be allowed to strike one CRC member each from the list of prospective mediators

Mediation Conference At the mediation conference, all affected parties shall have an opportunity to be heard

Findings & Recommendations Within ten (10) days after the mediation conference, the mediators shall issue written findings and recommendations to both the Complainant and Respondent

Costs The party requesting the mediation shall bear the cost of a reasonable fee assessed in the discretion of the CRC for a completed mediation, not to exceed \$100.

E. *The following new section shall be added to the Declaration:*

CONSTRUCTION In the event of any inconsistency or ambiguity between the terms of this Amendment and the original Declaration, this Amendment shall control

2001 120 3002540

This Amendment to the Declaration shall take effect upon recording. Except as modified herein, all terms, provisions and conditions of the Declaration remain in full force and effect.

Dated this 19th day of November, 2001

SOMERSET COMMUNITY ASSOCIATION

By

Janet L. Cordell

President

2001 120 39P2549

STATE OF WASHINGTON)

: ss.

COUNTY OF KING)

On this 19th day of NOVEMBER, 2001, personally appeared before me JANE L. CARDELL, who furnished satisfactory evidence that he/she is President of the Somerset Community Association, the non-profit corporation that executed the instrument above, and who acknowledged it to be the free and voluntary act of the Association for the uses and purposes mentioned within it, and who on oath stated that they were authorized to execute the instrument

Dated 11/19, 2001.

[Signature]
Notary Public in and for the
State of Washington.

My Appointment Expires 12/3/03

Print/type name ANTONE L. SCHULER

Notary Public
State of Washington
ANTONE L. SCHULER
My Commission Expires Dec 2, 2003

2001 120 3902545

**FIRST AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS
FOR
THE PLATS OF SOMERSET NO. 2, SOMERSET NO. 4, AND SOMERSET NO. 6**

The undersigned, being the owner(s) of real property described below ("Lot Owner"), subject to the Declaration of Protective Covenants, for all Lots in the Plat of Somerset No. 2, recorded in Volume 68 of Plats, page 44, records of King County, Washington, all Lots in the Plat of Somerset No. 4, recorded in Volume 68 of Plats, page 29 and 30, records of King County, Washington, and all Lots in the Plat of Somerset No. 6, recorded in volume 67 of Plats, pages 11 and 12, records of King County, Washington, under the King County Auditor's File No. 5389232, hereby votes for, enters into and executes this First Amendment to the Declaration (the "Amendment") effective the first day of December, 2001

This document is intended to be a single instrument, signed in multiple identical counterpart originals by lot owners in the Plats of Somerset No. 2, Somerset No. 4, and Somerset No. 6. If the necessary number of affirmative counterpart originals are signed by lot owners, and this Amendment measure passes, the execution of this document shall authorize the president of the Somerset Community Association to execute a memorandum entitled First Amendment to the Declaration of Restrictive Covenants for the Plats of Somerset No. 2, Somerset No. 4, and Somerset No. 6, in a form to be recorded with the King County Department of Records and Elections, which First Amendment shall contain the complete text of the amendments set forth below

The Declaration is hereby amended as follows

A The language of Section 1 ("GENERAL PROVISIONS"), is amended to read

After December 1, 2001, the Declaration, as amended, may be subsequently amended at any time by an instrument or instruments in writing, duly signed and acknowledged by a simple majority of all owners of lots in the Plats of Somerset No. 2, Somerset No. 4, and Somerset No. 6, which amendments shall become effective upon the recording of the instrument(s), or a duly authorized memorandum thereof in the office Records and Elections for King County, Washington

B The following language replaces Section 6 in its entirety ("THE BUILDING COMMITTEE")

THE COVENANTS REVIEW COMMITTEE A Covenants Review Committee ("CRC") shall be created and shall replace, perform the functions of, and have the same rights, powers and authorities as the Building Committee identified in this Declaration. The CRC shall be composed of five (5) members, nominated by the

2001 120 3082549

Somerset Community Association and elected by a plurality vote of owners of real property in Somerset plats that have adopted this amendment and who have cast votes at the Somerset Community Association annual meeting. At least three (3) members of the CRC shall be resident owners of real property in Somerset plats that have adopted this amendment. Each member of the CRC shall serve a minimum one-year term. In its discretion, the CRC may assess a Lot owner a reasonable fee for services performed as required under the Declaration, not to exceed \$100.

It is the obligation of the Somerset Community Association, a Washington nonprofit corporation whose members are owners of residential lots in all of the divisions of Somerset, to maintain, oversee and administer the Covenants Review Committee for the life of this Declaration.

- C. The following language replaces the words "shall meet at the Somerset Sales Office at 7.00 P M , the first and third Wednesdays to consider and review house plans" in the first sentence of Section 4 ("APPROVAL OF PLANS BY BUILDING COMMITTEE")

"shall meet as demand requires, and in no event less than once per month, in Somerset to conduct its business, which includes the consideration and review of house plans"

- D. The following new section shall be added to the Declaration

NON-BINDING MEDIATION PROCEDURE

Request for Mediation In the event a dispute between two or more Lot Owners arises out of the Declaration as amended, either the Lot Owner(s) asserting a violation of the Declaration, as amended, (the "Complainant") or the Lot Owner(s) alleged to be in violation (the "Respondent") may request a mediation by first notifying the CRC and the other affected parties in writing describing the nature of the complaint

Time and Place Within ten (10) days of receiving a written request for mediation, the CRC shall notify all affected parties of a mediation conference which shall be held at a reasonable time and place, not later than thirty (30) days from the date the written complaint is received, unless the time is extended for good cause

Selection of Mediators The Complainant and Respondent shall have the right to agree to the mediator of their choice. If the Complainant and Respondent cannot agree, then at least one member of the CRC shall serve as a mediator, in which

2001 120 3902549

Exhibit A

event the Complainant and the Respondent shall be allowed to strike one CRC member each from the list of prospective mediators

Mediation Conference. At the mediation conference, all affected parties shall have an opportunity to be heard

Findings & Recommendations. Within ten (10) days after the mediation conference, the mediators shall issue written findings and recommendations to both the Complainant and Respondent

Costs. The party requesting the mediation shall bear the cost of a reasonable fee assessed in the discretion of the CRC for a completed mediation, not to exceed \$100.

E The following new section shall be added to the Declaration

CONSTRUCTION. In the event of any inconsistency or ambiguity between the terms of this Amendment and the original Declaration, this Amendment shall control.

Except as modified herein, all terms, provisions and conditions of the Declaration remain in full force and effect

This amendment may be executed in counterparts and any number of counterparts signed in the aggregate by the Lot Owners shall constitute a single legal amendment

Lot Owner(s)	Signature _____	Date _____
	Signature _____	Date _____

2001 120 3002545

Exhibit A

Description of Lot Owner's Real Property Lot ___ Block ___ Plat of
Somerset No __, located in Section 15, Township 24 North, Range 5
E W M, at street address _____
Bellevue, Washington 98006

Executed on the _____ day of _____, 2001

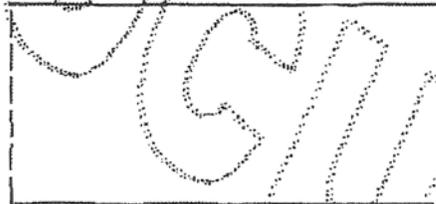
Lot Owner(s) Signature _____
Print name _____
Signature _____
Print name _____

STATE OF WASHINGTON } ss
COUNTY OF KING }

I certify that I know or have satisfactory evidence that (print names here) _____ are the
persons who appear before me, and said persons acknowledged that they
signed this instrument and acknowledged it to be their free and voluntary
act for the uses and purposes mentioned in the instrument.

Signature _____ Date _____
Print name _____

Notary Public in and for the State of Washington
My commission expires _____



apply
notary
stamp
here

AFTER RECORDING, RETURN TO
Somerset Community Association
Long Range Planning Committee
P O Box 5733
Bellevue, WA 98006

2001 120 3002540

Exhibit B
Homeowners who have submitted Notarized approval

#	Div	Num	Street	Block	Lot	Parcel#	First Name	Last Name
1	2	4526	Somerset Blvd SE	3		7855200030	Jerry & Mary Jo	Ruhl
2	2	4546	Somerset Blvd SE	4		7855200040	Janel	Larson
3	2	4550	Somerset Blvd SE	6		7855200050	Dean	Drago
4	2	4556	Somerset Blvd SE	6		7855200060	T S & Margaret	Chow
5	2	4584	Somerset Blvd SE	7		7855200070	Steven	Farrar
6	2	4566	Somerset Blvd SE	8		7855200080	Leo Nicholas	Schowengerdt, Jr
7	2	4570	Somerset Blvd SE	9		7855200090	Kenneth & Nayna Lee	McLennan
8	2	13720	Somerset Blvd SE	12		7855200120	Michael & Catherine	Mahon
9	2	13800	Somerset Blvd SE	124		7855200130	Wilfred & Patricia	Loeken
10	2	13810	Somerset Blvd SE	126		7855200140	Douglas	Lieberg
11	2	13910	Somerset Blvd SE	127		7855200151	Walter & Margaret	Freitag
12	2	14000	Somerset Blvd SE	157&158		7855200170	Linda Hill & David	Leonard
13	2	13817	Somerset Blvd SE	162		7855200210	Vichas & Grace	Lim
14	2	13809	Somerset Blvd SE	163		7855200220	Patricia	Gatlke
15	2	13801	Somerset Blvd SE	164		7855200230	James & Carline	Farrell
16	2	13725	Somerset Blvd SE	165		7855200240	John & Joanne	Mallet
17	4	4419	138th Ave SE	49		7855400016	John H & Eva	Hagemeyer
18	4	4473	138th Ave SE	50		7855400020	Roland & Geraldine	Unbi
19	4	4409	138th Ave SE	51		7855400030	Conrad & Winnae Y TM	Lee
20	4	4401	138th Ave SE	53		7855400050	Deepak & Sinciar	Sawhney
21	4	13900	SE 44th Pl	64		7855400060	Suzanne	Cutting
22	4	13910	SE 44th Pl	65		7855400070	Lawrence & Beverly	Vijter
23	4	13928	SE 44th Pl	67		7855400090	Frank & Chrste	Doolittle
24	4	14000	SE 44th Pl	68		7855400100	Arnold George & Wilkentr	Langgraff
25	4	4401	139th Ave SE	69		7855400110	J Ed & Carolyn L	Bray
26	4	4416	139th Ave SE	61		7855400130	Emilio & Josephine	Canfu
27	4	13810	Somerset Ln SE	75		7855400140	Brenda Blodgett & John	Purcell
28	4	13830	Somerset Ln SE	77		7855400160	Philip	Bernstein
29	4	4479	139th Ave SE	78		7855400170	Robert J	Schroers
30	4	4471	139th Ave SE	79		7855400180	Edgar & Virginia	Johnson
31	4	4465	139th Ave SE	80		7855400190	Howard & LaVonne	Nye
32	4	4459	139th Ave SE	81		7855400200	Craigton & Lenor	Trapp
33	4	4451	139th Ave SE	82		7855400210	Larry & Gretchen	Shaw
34	4	4437	139th Ave SE	84		7855400230	Shuzo & Alice	Takeuchi
35	4	4409	139th Ave SE	87		7855400260	Jacquelyn	Budbaum
36	4	4474	139th Ave SE	88		7855400276	Nobuko	Peterson
37	4	4464	139th Ave SE	89&90		7855400280	Albart	Young
38	4	4456	139th Ave SE	91		7855400290	Terrance & Margaret	Felton
39	4	4432	139th Ave SE	94		7855400330	Celio & Euzvirinda	Del Carmen
40	4	4415	140th Ave SE	99&101		7855400380	Monty	Lennox
41	4	4449	140th Ave SE	106		7855400440	Stewart & Elaine	Hiecher
42	4	4457	140th Ave SE	107		7855400450	Tagay & L Renee	Kang
43	4	4465	140th Ave SE	108		7855400460	Tjelma	Fahar
44	4	4473	140th Ave SE	109		7855400470	Jean & Hon-ching	Lee

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Exhibit B
Homeowners who have submitted Notarized approval

#	Div	Num Street	Block	Lot	Parcel#	First Name	Last Name
45	4	13920 Somerset Ln SE	110		7855400480	Bruce	Holliday
46	4	13900 Somerset Ln SE	111		7855400490	Thomas & Susan	Christian
47	4	13901 Somerset Ln SE	112		7855400500	B Don & Bonnie	Taylor
48	4	13825 Somerset Ln SE	113		7855400510	William & Selma	Hering
49	4	13815 SE 45th Pl	114		7855400520	B Jeannine	Howe
50	4	13910 SE 45th Pl	115		7855400530	Carol	Turner
51	4	13911 SE 45th Pl	117		7855400550	Vern L & Ginny	Meyers
52	4	4559 140th Ave SE	129		7855400570	Ronald Berensten & Rachel	Black
53	4	4545 140th Ave SE	131		7855400590	Harold & Dorothy	Stanley
54	4	4537 140th Ave SE	132		7855400600	Cheron Gelber & James	Grimes
55	4	4527 140th Ave SE	133		7855400610	Ian & Sheila	McIntosh
56	4	4509 140th Ave SE	135		7855400630	Ralph & Selma	Simonzi
57	4	4501 140th Ave SE	136		7855400640	Jeffrey & Deborah	England
58	4	4408 140th Ave SE	138		7855400660	Jaimy & Kunglin	Gwo
59	4	4414 140th Ave SE	139		7855400670	Sang Kyu & Sun Ok	Sim
60	4	4422 140th Ave SE	140		7855400680	Edward K M & Sanna	Chan
61	4	4456 140th Ave SE	145		7855400730	Thea J	Pettit
62	4	4464 140th Ave SE	146		7855400740	Ping Lin & Ping	Jiang
63	4	4472 140th Ave SE	147		7855400750	Alwyn & Beverly	Allott
64	4	4484 140th Ave SE	148		7855400760	Jack & Virginia	Roper
65	4	4502 140th Ave SE	149		7855400770	Bruce	Hildebrand
66	4	4510 140th Ave SE	150		7855400780	Arthur & Helga	Hahnemann
67	4	4511 141st Ave SE	151		7855400790	Ronald & Beverley	Alberts
68	4	4510 141st Ave SE	152		7855400800	Robert E & James M	Long
69	4	14000 SE 45th Ct	155		7855400830	James & Edith	Bloomfield
70	4	14001 SE 45th Ct	156		7855400840	Reginald Peter & Elizabeth	Saunders
71	4	4560 140th Ave SE	157		7855400850	Robert S Y & Judith	Yoseph
72	6	4238 135th Ave SE	2		7855800020	Mary	Farnham
73	6	4228 135th Ave SE	1	3	7855800030	Kwok Hai Wong & Philip F L	Yu
74	6	13516 SE 42nd Pl	1	8	7855800080	Bob C & Jackie	Pappas
75	6	13500 SE 42nd Pl	1	10	7855800100	Betty H	Gray
76	6	13414 SE 42nd Pl	1	12	7855800120	Conne Sandifer & John J	Langford
77	6	13410 SE 42nd Pl	1	13	7855800130	Michele	O'Hara
78	6	13400 SE 42nd Pl	1	14	7855800140	Michael & Tracy	Herbet
79	6	4201 134th Ave SE	1	15	7855800150	Larry & Christine	Silves
80	6	4225 134th Ave SE	1	18	7855800180	Beverly Jean	Tharp
81	6	4231 134th Ave SE	1	19	7855800190	James & Betty	Daves
82	6	4237 134th Ave SE	1	20	7855800200	Philip & Sandra	Lynch
83	6	4251 134th Ave SE	1	22	7855800220	Jeffrey & Lauren	Packman
84	6	4267 134th Ave SE	1	25	7855800250	George & Carolyn	Murch
85	6	13320 SE 43rd St	1	26	7855800260	Rudy A & Mary H	Rubesch
86	6	13250 SE 43rd St	1	29	7855800290	Melvin & Patricia	Thompson
87	6	13240 SE 43rd St	1	30	7855800300	Graham John	Hughes
88	6	13231 SE 43rd St	1	31	7855800310	Roger	Barben

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Exhibit B
Homeowners who have submitted Notarized approval

#	Div	Num	Street	Block	Lot	Parcel#	First Name	Last Name
88	6	13251	SE 43rd St	1	33	7855600330	James & Dorothy	Hearn
89	6	13313	SE 43rd St	1	35	7855600350	Alfred & Bertha	Brunas
91	6	4303	133rd PI SE	1	37	7855600370	Patrick	Paustain
92	6	13400	SE 43rd St	2	1	7855600380	Edgar LeRoy & Jane	Ross
93	6	4244	134th Ave SE	2	4	7855600410	Sandra A	Lyon
94	6	4238	134th Ave SE	2	5	7855600420	Loren A	Schultz
95	6	4232	134th Ave SE	2	6	7855600430	Wayne & Carol	Milton
96	6	4220	134th Ave SE	2	8	7855600450	Molly Ann	Norme
97	6	4215	135th Ave SE	2	12	7855600490	Lee & Shirley	Fisher
98	6	4235	134th Ave SE	2	14	7855600510	George & Betsy	Hoke
99	6	13434	SE 43rd St	2	16	7855600530	Paul & Therese	Brogan
100	6	13430	SE 43rd St	2	17	7855600540	Bruce & Bridg	Lang
101	6	13422	SE 43rd St	2	18	7855600550	Matt & Jill	Deasy
102	6	13414	SE 43rd St	2	19	7855600560	Robert & Mary Ellen	Woronowicz
103	6	13430	SE 43rd PI	3	1	7855600570	Patricia	Sprague
104	6	13420	SE 43rd PI	3	2	7855600580	Roger & Dorothy	Olson
105	6	13410	SE 43rd PI	3	3	7855600590	Berti & Brita	Dillner
106	6	13360	SE 43rd PI	3	6	7855600620	John & Myrtle	Belton
107	6	4316	133rd PI SE	3	7	7855600630	Lei Zhao & Ray	Liu
108	6	13353	SE 43rd St	3	8	7855600640	Elizabeth Ann	Riley
109	6	13413	SE 43rd St	3	10	7855600660	Harold T	Alford Jr
110	6	13429	SE 43rd St	3	12	7855600680	Charles & Jean	Vep Court
111	6	4320	134th PI SE	4	4	7855600750	Jerry & Sandra	Wood
112	6	4325	134th PI SE	4	8	7855600790	John & Janet	Nicholson
113	6	4315	134th PI SE	4	9	7855600800	James & Doris	Roelker
114	6	13365	SE 43rd PI	4	11	7855600820	Cynthia Fry	Mabus

TOTAL 114 of 189 Homeowners in Somersets 2, 4 & 8

2001 120 3002549

APPENDIX 6

View Guideline for Somerset

The Spirit of the Guideline

To preserve the views of a homeowner, the way they were, when the house was *Built*.¹

Note - *Italic text* indicates a reserved word with a specific definition. Please see Definitions section below.

Language of the Guideline

The *View* that this Guideline is intended to preserve is the *View* that was observable above the *View Line* from the *Observation Zone* at the time the relevant *Main Floor Living Space* was *Built*. Because this Guideline is not intended to preserve a *View* that did not exist at the time the house was *Built*, this Guideline will not be applied in a way that would force a downhill Owner to expand or enlarge the *View* that existed when the relevant *Main Floor Living Space* was *Built*.

Remodeling

A newly created *View* that is achieved via lawful remodeling of the relevant *Main Floor Living Space* that is approved by CRC or reorganization of the interior of the house in such a way that relocates/modifies the *Living Space* may create a new *View* that is NOT protected under this guideline. Only the home's original *View* is protected.²

Trees

Somerset is a community where views add value to homes. Many Divisions have covenants that read:

No trees of any type, other than those existing at the time these restrictive covenants [...] are filed, shall be allowed to grow more than twenty (20) feet in height provided they do not unnecessarily interfere with the view of another residence . . . The [CRC] shall be the sole judge in deciding whether there has been such an interference.

See, e.g., Protective Covenants of Somerset Highlands 1, as Amended January 1, 1998, Auditors File No. 9712311347, ¶9.

The 20' provision means two things. First, "new" trees shall not be allowed to grow more than twenty (20) feet. Second, the twenty (20) foot height restriction does not apply to *Grandfathered Trees*, provided they do not unnecessarily interfere with the view of another residence. If either tree unnecessarily interferes with the view of another residence it must be trimmed to a lower height so the resulting view restoration is sufficient to prevent the tree from "unnecessarily interfering with the view of another residence."

¹ The intent here is to protect the view with respect to existing structures, not vegetation. Therefore, for example, if a new home owner finds that an existing bush in a neighboring lot has been allowed to grow above the *View Line*, he/she can ask for the restoration of the *View*.

² Example: addition of a window to a living room.

EXHIBIT B

Rev. 11/1/2008 G/A

To the extent that a CRC decision in a particular matter is based in part upon the consent of *Affected Neighbors* whose *View* will be impaired by action that the CRC decision permits, current and future Owners are put on notice that such consent(s) may later be considered by a court that is asked to order an Owner to take action to restore a *View*. In other words, if you consent to a CRC decision that causes impairment of your *View*, and a future owner of your property asks a court to order the *View* be restored, the court may refuse to order the *View* be restored based on the consent you gave back when the CRC made its decision.

Final authority

In case the language of the covenant, together with the definition of the terms, does not provide clear guidance in a specific case, the CRC will evaluate the specific case in terms of covenant intent and benefit for the overall community interests. The CRC has the final authority for clarification in such cases.

Definitions:

Affected Neighbors – houses whose *Views* would be adversely impacted by the alteration.

Built – A *Main Floor Living Space* is considered “built” at the completion of the work that created the specific opening(s) through which the *View* is observed. A specific opening(s) that was part of a home’s original construction is deemed “built” as of the completion of the original construction. A specific opening(s) that was created pursuant to a CRC reviewed and approved remodel proposal is deemed “built” as of the date upon which that remodel is completed.

Main floor - the floor on which the living room is located. If no living room exists, then the floor on which the family room is located.

Living Space³ – Living room, dining room, family room, kitchen. Intention: interior public areas of a home where entertaining is done. Therefore, bedrooms, laundry room, bathrooms, closets and hallways are not included in the definition of *Living Space*.

Grandfathered Trees – A tree that existed on the specific property at the time that the covenants sought to be enforced were first recorded.

Observation Zone⁴ - a line that is 4' 7" from the floor and 2' from the inside glass surface of the window in the *Living Space* of the *Main Floor*. See Figure 1 for an example of an *Observation Zone*.

View – Elements that comprise *View* in this definition are Lake Washington, Lake Sammamish, Puget Sound, *City*, *Mountain*, and *Horizon*.

City – Greater Seattle urban areas.

³ See Declarations of Harkelroad, King County Superior Court, Case No. 89-2-19252-7, 11 Dec. 1989.

⁴ The observation zone is defined with the intention to specifically describe the view that at least 95% of the adult population of the United States would be able to see from a standing position at a comfortable distance from the windows of the main living space of the home.

Mountain – Cascades, Olympics, Mt. Rainier, and Mt. Baker.

Horizon – the line delineating earth from sky that is at least ¼ mile away from *Observation Zone*.

View Line – An imaginary line created by following the roof-lines of the homes visible from the *Observation Zone* in an image that is projected on a two dimensional vertical plane in front of the *Observation Zone*, e.g. window glass.

The *View Line* follows projections that are part of the house, e.g., chimneys, but not satellite dishes. When two/more homes overlap in the 2-D image, the *View Line* follows the highest points of the roof-lines of the overlapping homes. When adjacent homes' images do not overlap, the *View Line* connects the lowest points of the roof-lines of the adjacent homes and drops to the Covenant approved fence line between the homes. If a real fence exists, the top of the fence will be the view line. Otherwise, the top of an imaginary fence will be referenced. The *View Line* does not follow any vegetation (although vegetation is subject to other covenant restrictions that are view preserving in nature).

See Figure through Figure for examples of *View Lines*.

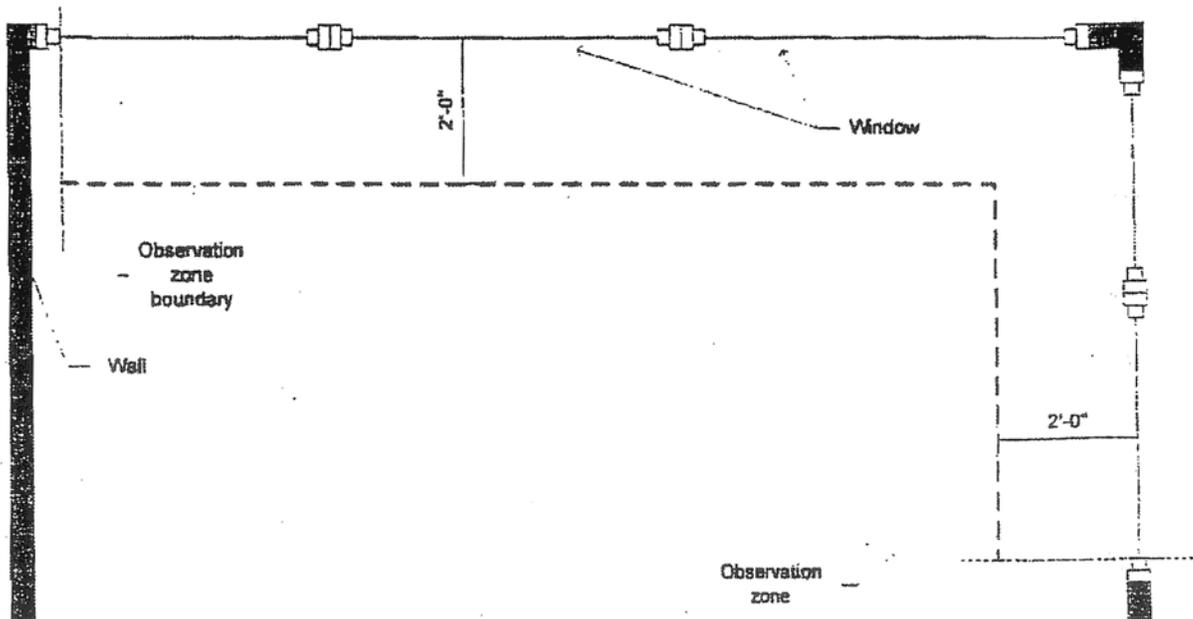


Figure 1 - Example of an Observation Zone

See Appendix A for the scientific rationale for the choice of *Observation Zone*.



Figure 5 - Example of a View Line

Appendix A

Rationale for selection of *Observation Zone*.

The goal of this analysis was to ensure the views in Somerset Association would be visible to at least 95% of the adult population of the United States from a standing position at a comfortable distance from the window glass of the main living areas of the home.

This required knowing the height of a plane parallel to the floor, above which the eyeballs of at least 95% of adult population of the United States would be, if they were standing.

According to the National Health and Nutrition Examination Survey - NHANES III, conducted in America during 1988 to 1994, 95.3% of women, and 99.9% of men are taller than 4' 11". This means 95.2% of all adults are taller than 4' 11".

Taking an empirical average distance from the top of the head to pupil of the eyes of 4", the *Observation Zone* height is 4' 7" from the floor. A 2' distance from the window was chosen as a comfortable viewing distance as approximately an arm's length.

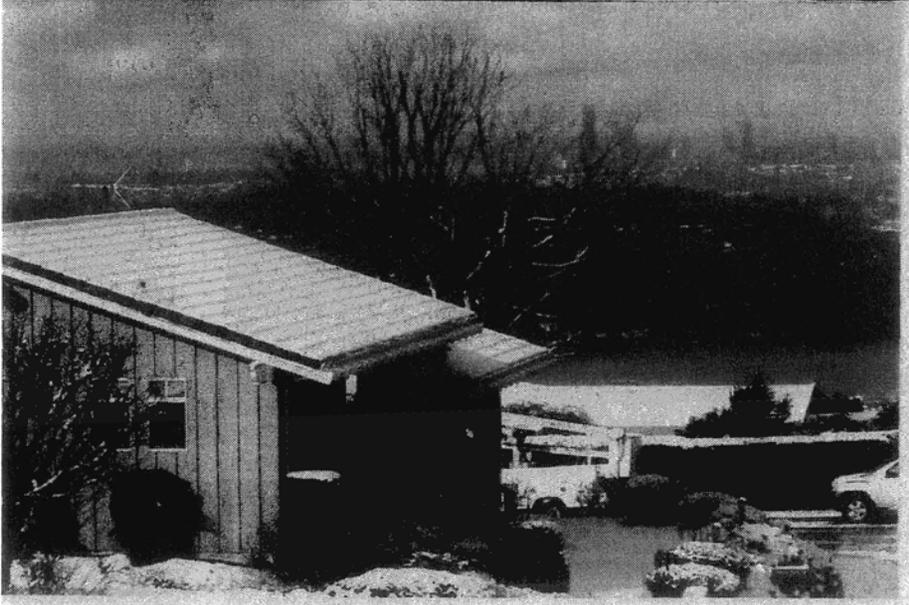
APPENDIX 7



1970



1970



2009

Photos provided and dated by Peter Saunders at initial meeting 3/23/2009

CP 331

APPENDIX 8

SOMERSET COMMUNITY

Somerset Community Association, P.O. Box 5733, Bellevue, WA 98006

May 28, 2009

Vern and Ginny Meyers
13911 S.E. 45th Place
Bellevue, WA 98006

RE: Meyers Tree Case

Dear Mr. and Mrs. Meyers:

The Somerset Community Covenant Review Committee (CRC) has had several discussions regarding your large maple tree and the submitted complaints from your neighbors. We have met with all affected parties, including yourselves with your son-in-law present. We have also carefully reviewed the document that your son-in-law prepared, which included opinions from a Certified Photogrammetrist and a Certified Arborist. We viewed pictures provided by the affected neighbors, as well as committee generated iMAP photos from King County (copies enclosed). In addition, the CRC was influenced by the published *View Guideline for Somerset* and the *Declaration of Gerald Harkleroad*, which outlines the intent of the original covenants.

We think it is important to note that the intent and spirit of the Somerset Covenants, and therefore the CRC View Guidelines, is to preserve the views of a homeowner. According to our attorney, Terry Leahy, who specializes in view covenants, the value of the view trumps the value of the tree. However, consideration also needs to be given to "grandfathered" trees. The view the covenants are trying to preserve is the view in existence at the time the covenants were recorded; i.e. early 1960's.

Original large trees that were already tall enough so that a neighbor did not have a particular view over the tree at the time of the covenants could continue to grow higher as long as it did not block other existing views. There would be no taking of a view since there was no pre-existing view to be taken. However, this does not allow a tree to take away an existing view by spreading out in the horizontal plane. This is what has happened with your tree. A tree's width can have as much an impact on a neighbor's view as the tree's height.

The document your son-in-law provided, which included an opinion from a Certified Photogrammetrist, addressed the height of your maple tree in 1964. The conclusion was that it had a height of approximately 70 feet (+/- 10'). There was no conclusion regarding the width of the canopy, which also affects the neighbor's view. We can estimate the width of your tree in 1964 by using the data contained in the document your son-in-law provided. The width of the neighbor's driveway (Datashet D1), as measured by your son-in-law, was 184". If you compare the width of the tree in 1964 (Photo A1) with the known width of the neighbor's driveway (15'4") in that same photo, the tree's width is approximately 30 feet. The enclosed iMap photos

EXHIBIT G

from King County show the current width of the tree to be over 60 feet. While the tree today may be no taller than it was in 1964, the canopy is twice as wide. The much larger width is also verified when you compare old photos of the tree with current photos of the tree.

The Declaration of Gerald Harkleroad gives us additional insight on the original intent of the covenants. To quote Mr. Harkleroad: "Though the covenant language restricting tree height may seem to except from its coverage 'trees in existence' at the time the covenants were recorded, the understanding of those involved at the time, including myself, was that this language was intended to cover the full grown Madrona and other evergreen trees in the subdivision. In addition, even though it was desirable to maintain some of those existing large trees, in certain cases, we negotiated thinning of those existing trees. Again, this was done in order to gain or protect the view from a resident's main living room." From this statement, it is the CRC opinion that the original intent of the covenants was not to protect the horizontal expansion of a maple tree, at the expense of another homeowner's view.

→ Based on the above, it is the CRC's decision that the Meyer's tree needs to have its canopy width trimmed to 30 feet. This is approximately half its current width. If, in the opinion of a Certified Arborist, this reduction in canopy width would adversely affect the health of the tree, then the decision is that the tree should be removed.

While the CRC feels strongly about their ruling, the ideal scenario would be for the Meyers and their neighbors to work together and share the cost of removing the maple tree and replacing it with another tree acceptable to all parties. The Bellevue Mediation Program could help facilitate this.

Sincerely,



Gary Albert, Chairman
Covenant Review Committee

Cc:
CRC File
Steve Smolinske
James & Edith Bloomfield
Peter & Elizabeth Saunders
Michael and Marcy O'Brien
Jack & Marjorie Ballas
Ron Barensten & Rachael Black
Harold Stanley
Paul & Karen King
Robin & Sally Hodgson
Amy & Stephen Strader
Robert & Judy Yoseph
Alice McIntyre

SOMERSET COMMUNITY

Somerset Community Association P.O. Box 5733, Bellevue, WA 98006

April 27, 2010

Vern and Ginny Meyers
13911 S.E. 45th Place
Bellevue, WA 98006

RE: Meyers Tree Case

Dear Mr. and Mrs. Meyers:

Last May, the Somerset Community Covenant Review Committee (CRC) issued a ruling in regards to your large Maple tree. It was the CRC's decision that the tree needed to have its canopy trimmed to 30 feet in width and, if in the opinion of a Certified Arborist, this reduction in canopy width would adversely affect the health of the tree the decision was that the tree should be removed. At the time we did not address the height of the tree because verifiable information was not available to show that when the affected neighbors' homes were built they had a view, as defined in the *View Guideline for Somerset*, over your Maple tree.

Now, this case has been re-opened because new evidence has been provided that shows there were views of the Olympic Mountains over your Maple tree. Enclosed are pictures from one of the complainants' homes located at 14012 SE 45th Ct. showing the actual height of the tree in 1970 and in 1973. These photos reveal the view of the Olympic Mountain range was unobstructed, a protected view in the *View Guideline for Somerset*. Also enclosed is a current photo taken last month from the same location in that home. Therefore, the CRC is amending our decision as follows:

In addition to the previous CRC decision, the height of your Maple tree needs to be lowered to where it was at the time the affected neighbor's home was built in 1967. A red line on the 2010 photo shows the reduction in canopy elevation required to restore affected neighbor's view of the Olympic Mountains.

Please comply with the amended CRC decision as soon as possible but not later than May 31, 2010 unless acceptable justification for a later date is approved by the CRC.

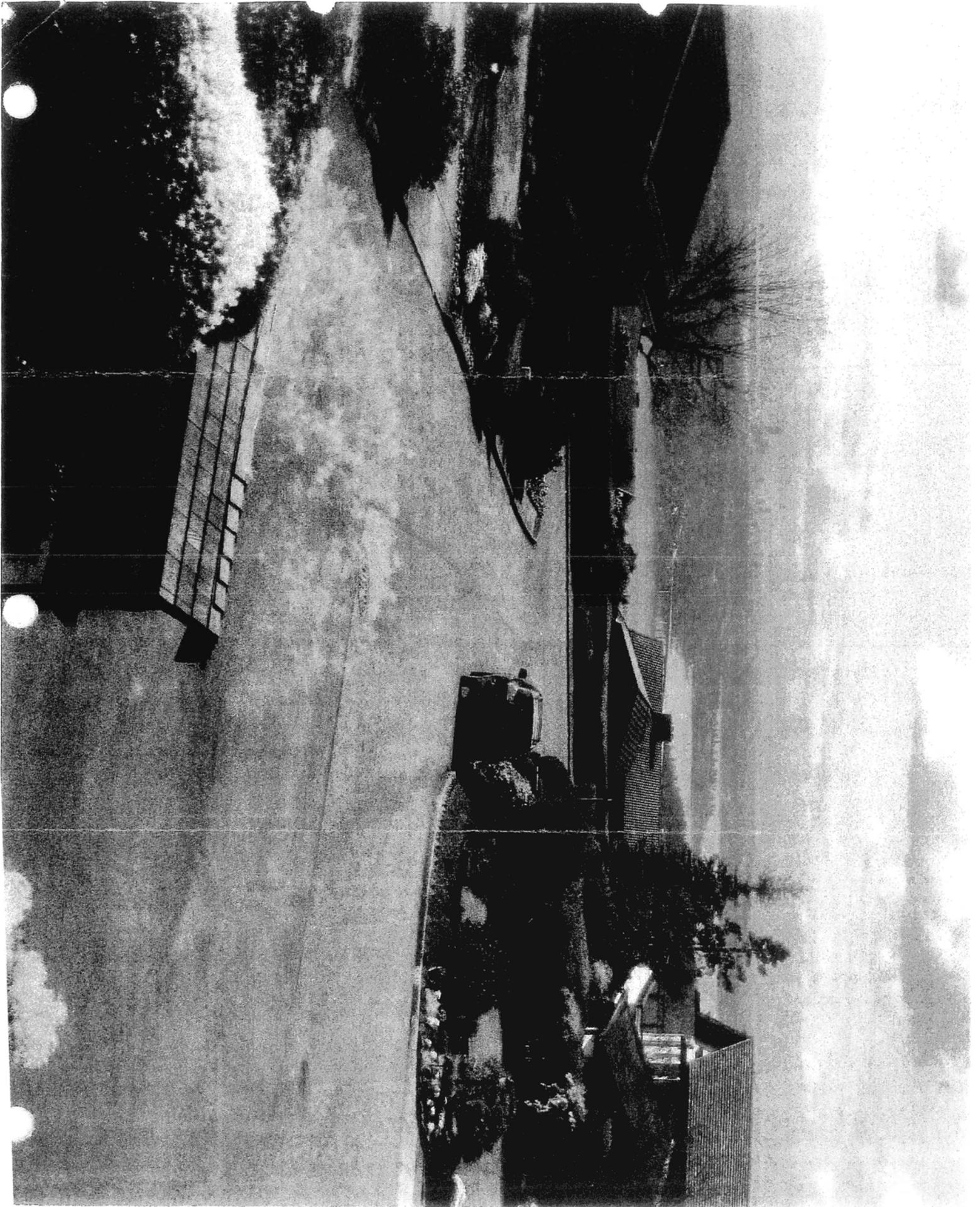
Sincerely,

Gary Albert, Chairman
Covenant Review Committee

Cc: CRC File
Steve Smolinske
Jack & Marjorie Ballas
James & Edith Bloomfield
Harold Stanley
Amy & Stephen Strader
Robert & Judy Yoseph

Ron Barensten & Rachael Black
Michael and Marcy O'Brien
Peter & Elizabeth Saunders
Robin & Sally Hodgson
Paul & Karen King
Alice McIntyre

EXHIBIT H



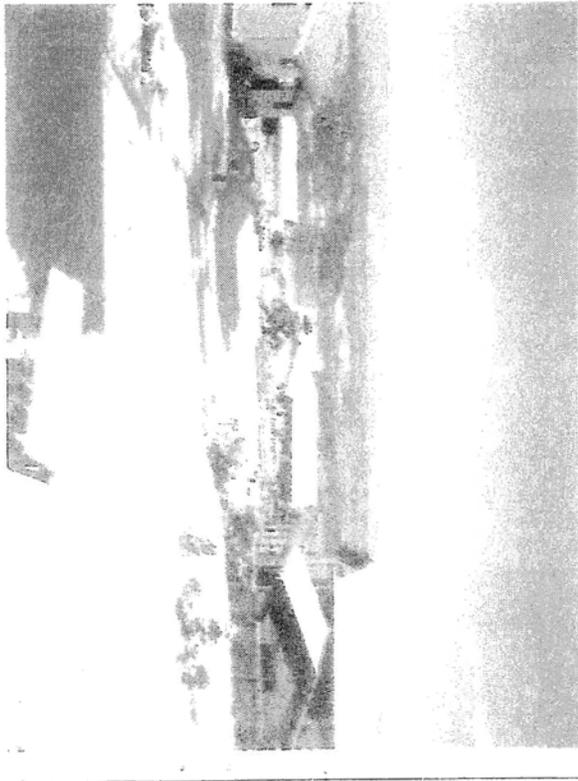


February 1970

D. 7A



January 1973



January 1973

APPENDIX 9

Case Number _____

COVENANT REVIEW COMMITTEE (CRC) Neighbor Complaint Form

Complete this form (Items 1 thru 10) and return to:

Somerset Community Association ATTN: CRC PO Box 5733 Bellevue, WA 98006
--

1. Name(s) of person(s) filing this complaint

Michael & Marcy O'Brien

2. Phone numbers: Day 425-753-7537

Evening 425-644-7170

3. Your address

4551 - 140th Ave SE

4. Name(s) of neighbor(s) you are complaining about

Vernon & Virginia Meyers

5. Their address(es)

13911 SE 45th Place

6. Please describe in detail the basis of your complaint (*attach additional information if needed*)

My property abuts to the Meyers lot on the East (uphill) side. A very large maple located in the Meyers' backyard is situated approximately 64 feet West of my balcony. The tree's position is in direct sight line of the Seattle skyline from my Living Room and Dining Room and effectively blocks this primary view.

I have lived in this home since 1987 and the tree has grown substantially larger over the years (+/- 40%). It now exceeds 60 feet in height and has a massive foliage canopy exceeding 45 feet in diameter.

 I was advised by my neighbors when I moved in that the tree was "grandfathered" and therefore not subject to the height and view restrictions, so I have not contacted the CRC regarding this matter.

Upon reviewing the Somerset Association's View Guidelines recently, I believe the tree should be removed as it has grown to a point where it "unnecessarily interferes with the view of another residence". I know that my residence is only one of about a dozen homes that has had their views adversely impacted by this tree.

The tree is also so large that it now poses a safety hazard to about five adjacent homes should the tree blow down during a wind storm.

I am attaching a photograph taken from my Living Room showing the tree and the obstructed view. I am also attaching two aerial views (one notated) to assist in identifying the existing conditions.

EXHIBIT F-7

COVENANT REVIEW COMMITTEE (CRC) Neighbor Complaint Form

Complete this form (items 1 thru 10) and return to:

Somerset Community Association
ATTN: CRC
PO Box 5733
Bellevue, WA 98006

1. Name(s) of person(s) filing this complaint

Peter & Elizabeth Saunders

2. Phone numbers: Day Day & Evening (425) 747-3665

Evening email <<r.peter.saunders@gmail.com>>

3. Your address

14001 SE 45th Court, Bellevue, WA, 98006-2341

4. Name(s) of neighbor(s) you are complaining about

Vern & Ginny Meyers

5. Their address(es)

13911 SE 45th Place, Bellevue, WA, 98006

6. Please describe in detail the basis of your complaint (attach additional information if needed)

A large deciduous maple tree on the above neighbor's property has reached a point where all our prime views of the Seattle downtown area, from the south flank of Capitol Hill on the tree's north side, to the north flank of Beacon Hill on the tree's south side, is hidden from view, especially during the summer foliage season. This large swath of lost horizon also hides a third of the main Olympic range, and quite a lot of Lake Washington and Mercer Island.

We have witnessed the tree being trimmed on three or four occasions over the years. However, this has involved damaged branches and the height of tree limbs. This has improved our sky view, but the trimming has certainly encouraged the tree to grow horizontally. When we built our current house in 1973 the tree size was a good 40 percent smaller in width than it is today.

My wife and I personally met with Vern and Ginny Meyers in their house on two occasions in the late seventies and early eighties, and discussed the tree view problem. At that time we offered to have them select their own arborist, and we would agree to cover their costs, by placing the amount of their estimate in escrow before work commenced. Their answer was categorically no. They liked their tree, it was the reason they bought their house, and as far as the covenants were concerned, the tree was grandfathered.

Twice again in the late nineties we made attempts to mitigate this problem. On one occasion my wife called Ginny while the tree was being trimmed, to explain our loss of view, and to ask for more trimming on the sides. Ginny said she would not interfere with the trimming being done, which only involved the tree's height. At that point she abruptly ended the conversation. On the second occasion we agreed to join Kent McCormack, who was our up-hill col-de-sac neighbor at the time, in an effort to find a satisfactory solution. He was a Lawyer by profession, would draw up an agreement free of charge, and asked them to discuss the monetary compensation acceptable to them. They refused point blank to even discuss it, stating it was not a matter of money. They liked their tree and they intended to keep their tree the way it was.

My wife and I would appreciate the CRC's help and support in a renewed effort to recover a reasonable amount of our prime view, now that the revised covenants address, in more detail, the issue of those grandfathered trees that unreasonably block neighbor's views.

7. Have you communicated with the neighbor(s) in question about these specific concerns?

Yes No

8. If so, when did the communications occur (month/year) and what was the response?
(attach additional information if needed)

‡ The exact dates are not known. Only the general time period noted above is available. No recent efforts have been made because of the earlier negative reactions and rebuffs.

9. What do you want the CRC to do regarding your concerns?

(Please refer to the limitations of the authority of the CRC in your covenants)

We would like you to (1) visit our house and assess the severity of our lost view due to the tree in question, and (2) establish if the tree is indeed eligible to be grandfathered.

Then if, based on your findings, you agree we do have a view problem, we would (1) like you to assess the amount of trimming that you would recommend to reach an acceptable view, and (2) arbitrate the necessary discussions with the Meyers to resolve the issue.

Unfortunately the tree has grown to such proportions over the years, that trimming the tree to the extent necessary to restore our Seattle City Skyline view would render the tree an ugly hulk of massive tree limbs, and might even kill the tree. I would rather see it removed, and if the loss of the tree is so important to the Meyers, then an evergreen tree replacement might be an acceptable alternative to them, and it would not create such an unacceptable barrier to the views of their up-hill neighbors, of which there are several.

10. Would you be willing to go to Bellevue Mediation Program to resolve this situation?

Yes No

Case Number: _____

COVENANT REVIEW COMMITTEE (CRC) Neighbor Complaint Form

2-13-09

Complete this form (items 1 thru 10) and return to:

Somerset Community Association
ATTN: CRC
PO Box 5733
Bellevue, WA 98006

1. Name(s) of person(s) filing this complaint

Robin & Sally Hodgson

2. Phone numbers: Day 425-746-6863

Evening Same

F2MPL HODGSONR15@AOL.COM

3. Your address

14012 SE 45th Court

4. Name(s) of neighbor(s) you are complaining about

Vern & Ginny Meyers

5. Their address(es)

13911 SE 45th Place

6. Please describe in detail the basis of your complaint (*attach additional information if needed*)

In 1968 we bought a view lot and our present house was built on it. From our house we enjoyed an approximately 120 degree uninterrupted skyline view from our living room starting in the southwest well south of the Olympics to almost the west end of the 520 bridge in the northwest. We could see the whole of Seattle, a slice of Elliott Bay, and the whole Olympic range. Our future neighbors at the end of our cul-de-sac, Betty and Peter Saunders, had not started to build and I attach a rather faded photo taken in 1970 from our house looking to the west across their empty lot. A small wispy tree can just be seen apparently growing in the Meyer's lot but it did not obscure much of our view to the west at that time. Since then the tree has increased enormously and presently blocks out approximately 30 percent of our view including almost all of Seattle and a large proportion of the Olympics. Apart from denying us the view we paid for it will adversely affect the value of our house should we wish to sell.

We were advised by a neighbor that the offending tree might be grandfathered and it was not until we received the 11/12/08 version of the Somerset Association's View Guidelines that we were aware that even grandfathered trees are subject to restrictions on unnecessary intrusion of the views of another residence. We feel that the offending tree should be reduced in size to minimise the interference.

EXHIBIT F-4

7. Have you communicated with the neighbor(s) in question about these specific concerns?

Yes No

8. If so, when did the communications occur (month/year) and what was the response?
(attach additional information if needed)

† We understand that the Meyers have been approached on at least two occasions to discuss the matter and apparently were adamant that they had no intent to do anything.

9. What do you want the CRC to do regarding your concerns?
(Please refer to the limitations of the authority of the CRC in your covenants)

The CRC is requested to ascertain whether in fact the intruding tree is indeed a grandfathered tree. The CRC is welcome to come to our home and judge the situation for itself.

10. Would you be willing to go to Bellevue Mediation Program to resolve this situation?

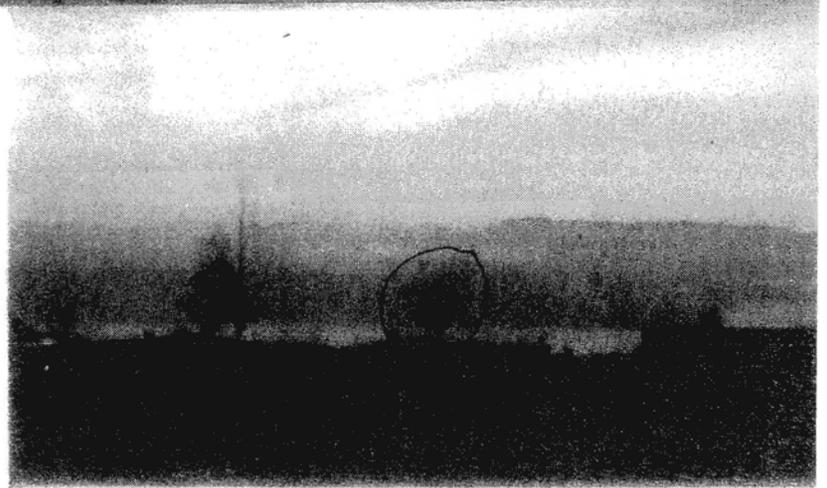
Yes No

ALL VIEWS TAKEN FROM 14012 SE 45TH COURT

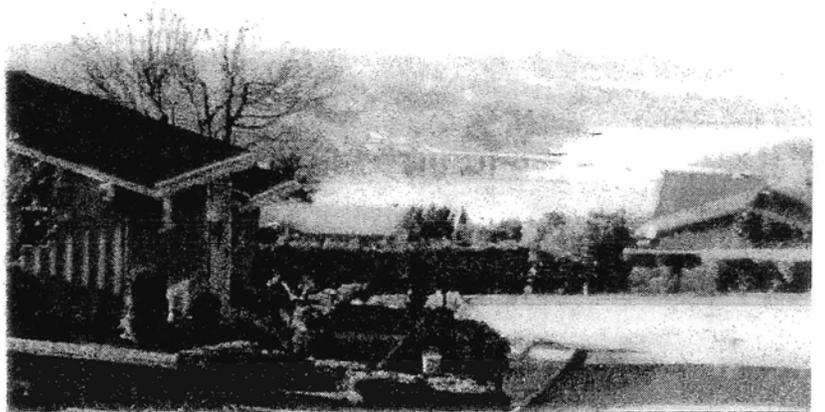
1970 Photo. Small Maple tree can be seen on Meyer's lot.



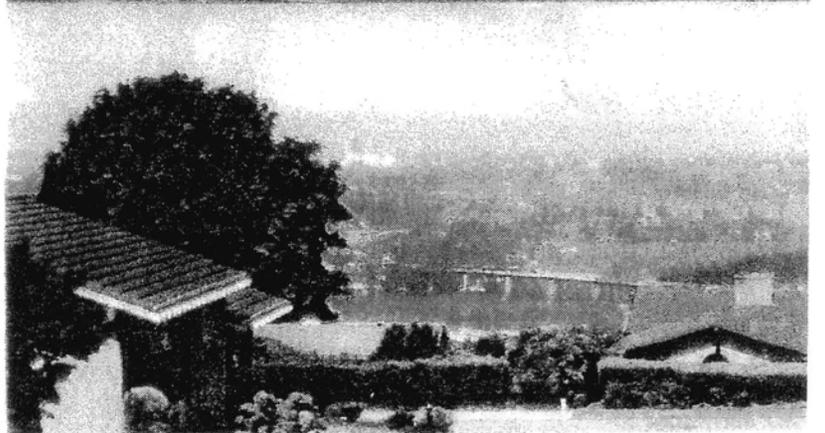
1970 Photo. View of Olympics and Seattle not obscured.



2001 Photo. Seattle can be seen through the bare branches.



2005 Photo. Maple obscures part of Seattle and Olympics. It has grown considerably since then!



APPENDIX 10

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

REGINALD PETER SAUNDERS and
ELIZABETH SAUNDERS, husband and
wife; and MICHAEL A. O'BRIEN and
MARCY L. O'BRIEN, husband and wife,

Plaintiffs,

vs.

VERNON L. MEYERS and VIRGINIA
C. MEYERS, husband and wife; MEYERS
REVOCABLE LIVING TRUST; JOHN
DOE and JANE DOE, TRUSTEES OF
THE MEYERS REVOCABLE LIVING
TRUST; and JOHN DOE and JANE
DOE, BENEFICIARIES OF THE
MEYERS REVOCABLE LIVING
TRUST,

Defendants.

NO. 11-2-14047-4 SEA

ORDER DENYING
DEFENDANTS' MOTION
FOR SUMMARY
JUDGMENT

THIS MATTER having come on regularly for hearing before Judge Gregory
Canova of the King County Superior Court, upon Defendants' Motion for Summary
Judgment; attorney Allen R. Sakai of Jeppesen Gray Sakai P.S. appearing for the
Plaintiffs upon Plaintiffs Reginald Peter Saunders, Elizabeth Saunders, Michael A.
O'Brien and Marcy L. O'Brien (the "Plaintiffs") and attorney Bill H. Williamson

ORDER DENYING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT - 1

PL16104.ARS

JEPPESSEN GRAY SAKAI P.S.
Attorneys at Law
10655 NE 4th Street, Suite 801
Bellevue, Washington 98004
(425) 454-2344

ORIGINAL

1 appearing for the Defendants Vernon L. Meyers, Virginia C. Meyers and The
2 Meyers Revocable Living Trust (the "Defendants"); and the court having heard
3 arguments of all counsel and having examined the records and files herein, and
4 considered all pleadings and documents relevant to this matter including:
5

- 6 1. Defendants Meyers' Motion for Summary Judgment *and exhibits thereto;*
- 7 2. Declaration of Stephen B. Smolinske in support of Motion for
Summary Judgment *and attachments;*
- 8 3. Declaration of Bill H. Williamson in support of Motion for Summary
Judgment *and attachments;*
- 9 4. Declaration of Ward W. Carson in support of Motion for Summary
Judgment *and attachments;*
- 10 5. Declaration of Vernon L. Meyers in support of Motion for Summary
Judgment *and attachments;*
- 11 6. Plaintiff's Motion for Summary Judgment;
- 12 7. Declaration of Allen R. Sakai (filed in support of Plaintiffs' Cross
Motion for Summary Judgment);
- 13 8. Declaration of Gary Albert (filed in support of Plaintiffs' Cross Motion
for Summary Judgment);
- 14 9. Declaration of Gerald Harkelroad (filed in support of Plaintiffs' Cross
Motion for Summary Judgment);
- 15 10. Declaration of Reginald Peter Saunders (filed in support of Plaintiffs'
Cross Motion for Summary Judgment);
- 16 11. Declaration of Michael A. O'Brien (filed in support of Plaintiffs' Cross
Motion for Summary Judgment);
- 17 12. Plaintiffs' Memorandum in Opposition to Defendants' Motion for
Summary Judgment;
- 18 13. Second Declaration of Reginald Peter Saunders;
- 19 14. Second Declaration of Michael A. O'Brien;
- 20 15. Second Declaration of Gary Albert;
- 21 16. *Defendants' Reply and exhibits thereto;*
- 22 17. *Declaration of Mark Harman and attachments;*
- 23 18. *Declaration of Tina Cohen and attachments;*
- 19 19. *Declaration of Virginia Meyers; and*
- 20 20. *Second Declaration by Stephen Smolinske and exhibits thereto.*

Based on the argument of counsel and the evidence presented, IT IS

24 HEREBY ORDERED, ADJUDGED AND DECREED that the Defendants'
25 Motion for Summary Judgment is denied.

ORDER DENYING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT - 2

PL16184.ARS

JEPPESEN GRAY SAKAI P.S.
Attorneys at Law
10655 NE 4th Street, Suite 801
Bellevue, Washington 98004
(425) 454-2344

DONE IN OPEN COURT this 5th day of January, 2012
~~December, 2011.~~

Greg P. Canova
HONORABLE GREGORY CANOVA

Presented by:

JEPPESEN GRAY SAKAI P.S.

Allen R. Sakai
ALLEN R. SAKAI, WSBA #11953
Attorney for Plaintiffs

Approved for Entry; Notice of
Presentation Waived:

Bill H. Williamson
BILL H. WILLIAMSON, WSBA #4304
Attorney for Defendants

ORDER DENYING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT - 3
PL16184.AMS

JEPPESEN GRAY SAKAI P.S.
Attorneys at Law
10655 NE 4th Street, Suite 801
Bellevue, Washington 98004
(425) 454-2344

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

REGINALD PETER SAUNDERS and
ELIZABETH SAUNDERS, husband and
wife; and MICHAEL A. O'BRIEN and
MARCY L. O'BRIEN, husband and wife,

Plaintiffs,

vs.

VERNON L. MEYERS and VIRGINIA
C. MEYERS, husband and wife; MEYERS
REVOCABLE LIVING TRUST; JOHN
DOE and JANE DOE, TRUSTEES OF
THE MEYERS REVOCABLE LIVING
TRUST; and JOHN DOE and JANE
DOE, BENEFICIARIES OF THE
MEYERS REVOCABLE LIVING
TRUST,

Defendants.

NO. 11-2-14047-4 SEA

JUDGMENT AND ORDER
GRANTING PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT

(Clerk's Action Required)

I. JUDGMENT SUMMARY

- A. Abbreviated legal description: Lot 117, Somerset No. 4, Vol. 68 of Plats, Pages 29 and 30
- B. Full legal description: is on page 4
- C. Assessor's Property Tax Parcel/Account Number 7855400550
- D. Judgment Creditors: Reginald Peter Saunders, Elizabeth Saunders, Michael A. O'Brien and Marcy L. O'Brien.
- E. Judgment Debtors: Vernon and Virginia Meyers; Meyers Revocable Living Trust; Vernon L. Meyers and Virginia Meyers,

JUDGMENT AND ORDER
GRANTING PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT - 1

PL16178a-013

JEPPESSEN GRAY SAKAI P.S.
Attorneys at Law
10655 NE 4th Street, Suite 801
Bellevue, Washington 98004
(425) 454-2344

ORIGINAL

trustees of the Meyers Revocable Living Trust; and Vernon L. Meyers and Virginia C. Meyers, beneficiaries of the Meyers Revocable Living Trust

F. Principal judgment amount \$N/A

G. Interest to date of Judgment \$N/A

H. Attorney's fees \$ _____

I. Costs \$ _____

J. Other recovery amounts \$ _____

K. Principal judgment shall bear interest at 12% per annum.

L. Attorney's fees, costs and other recovery amounts shall bear interest at 12% per annum.

M. Attorney for Judgment Creditor: Allen R. Sakai

N. Attorney for Judgment Debtor: Bill H. Williamson

File

to be determined by the court

THIS MATTER having come on regularly for hearing before Judge Gregory Canova of the King County Superior Court, upon Plaintiffs Reginald Peter Saunders, Elizabeth Saunders, Michael A. O'Brien and Marcy L. O'Brien (the "Plaintiffs") motion for summary judgment; attorney Allen R. Sakai of Jeppesen Gray Sakai P.S. appearing for the Plaintiffs and attorney Bill H. Williamson appearing for the Defendants Vernon L. Meyers and Virginia C. Meyers, the Meyers Revocable Living Trust, Vernon L. Meyers and Virginia C. Meyers as trustees of the Meyers Revocable Living Trust, and Vernon L. Meyers and Virginia C. Meyers as beneficiaries of the Meyers Revocable Living Trust (the "Defendants"); and the court having heard arguments of all counsel and having examined the records and files herein, and considered all pleadings and documents relevant to this matter including:

1. Plaintiffs Motion for Summary Judgment;
2. Declaration of Reginald Peter Saunders and the exhibits thereto;
3. Declaration of Michael A. O'Brien and the exhibits thereto;
4. Declaration of Gary Albert and the exhibits thereto;

JUDGMENT AND ORDER
GRANTING PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT - 2
PL161780.078

JEPPESSEN GRAY SAKAI P.S.
Attorneys at Law
10655 NE 4th Street, Suite 801
Bellevue, Washington 98004
(425) 454-2344

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- 5. Declaration of Gerald Harkleroad and the exhibits thereto;
- 6. Declaration of Allen R. Sakai and the exhibits thereto;
- 7. Defendants' Response;
- 8. Plaintiffs Reply; and

9. All pleadings filed in support of and in opposition to
 10. Defendants Motion for Summary Judgment as set
 forth in the Order ~~and~~ ~~Denying~~ Defendants Motion for
 11. Summary Judgment, entered this date
 12. *JAC* The Court finds there are no genuine issues of material fact and that
 Based on the foregoing, the Defendants are entitled to judgment as a matter

of law and now, therefore, it is hereby:

ORDERED, ADJUDGED AND DECREED that the Plaintiffs' Motion for Summary Judgment be, and hereby is granted;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiffs shall be granted injunctive relief against the Defendants; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that on or before January 31, 2012:

the Defendants must completely remove the Maple Tree that is in violation of the Covenants and otherwise comply with this court order at the Defendants' sole cost and expense; or

JAC the Defendants must comply with the CRC's decisions dated May 28, 2009 and April 27, 2010 and otherwise comply with this court order at the Defendants' sole cost and expense;

JUDGMENT AND ORDER
GRANTING PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT - 3
PL16178a.ors

JEPPESEN GRAY SAKAI P.S.
Attorneys at Law
10655 NE 4th Street, Suite 801
Bellevue, Washington 98004
(425) 454-2344

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
2 Defendants and any successors in title to the Meyers Property shall, during the
3 month of March of each calendar year, take such action as is necessary to insure that
4 the Maple Tree is not in violation of this court order at the Defendants' sole cost
5 and expense or at the sole expense of the then owners of the Meyers Property.

6
7 DONE IN OPEN COURT this 5th day of January, 2012 December, 2011.

8
9
10 
11 HONORABLE GREGORY CANOVA

12 Presented by:

13 JEPPESEN GRAY SAKAI P.S.

14
15
16 ALLEN R. SAKAI, WSBA #11953
17 Attorney for Plaintiffs

18 Approved for Entry; Notice of
19 Presentation Waived:

20
21
22 BILL H. WILLIAMSON, WSBA #4304
23 Attorney for Defendants

24
25
JUDGMENT AND ORDER
GRANTING PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT - 4

PLJ 6178a.doc

JEPPESEN GRAY SAKAI P.S.
Attorneys at Law
10655 NE 4th Street, Suite 801
Bellevue, Washington 98004
(425) 454-2344

COPY RECEIVED
4/9/12
BILL H. WILLIAMSON
LAW OFFICE

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

REGINALD PETER SAUNDERS and
ELIZABETH SAUNDERS, husband and
wife; and MICHAEL A. O'BRIEN and
MARCY L. O'BRIEN, husband and wife,

Plaintiffs,

vs.

VERNON L. MEYERS and VIRGINIA
C. MEYERS, husband and wife; MEYERS
REVOCABLE LIVING TRUST; JOHN
DOE and JANE DOE, TRUSTEES OF
THE MEYERS REVOCABLE LIVING
TRUST; and JOHN DOE and JANE
DOE, BENEFICIARIES OF THE
MEYERS REVOCABLE LIVING
TRUST,

Defendants.

NO. 11-2-14047-4 SEA

ORDER AND JUDGMENT
AWARDING ATTORNEYS
FEES AND COSTS TO
THE PLAINTIFFS

(Clerk's Action Required)

I. JUDGMENT SUMMARY

- A. Judgment Creditors: Judgment Creditors: Reginald Peter Saunders, Elizabeth Saunders, Michael A. O'Brien and Marcy L. O'Brien.
- B. Judgment Debtors: Vernon L. Meyers and Virginia C. Meyers; Meyers Revocable Living Trust; Vernon L. Meyers and Virginia C. Meyers, trustees of the Meyers Revocable Living Trust; and Vernon L. Meyers and Virginia C. Meyers, beneficiaries of the Meyers Revocable Living Trust
- C. Principal judgment amount \$ _____
- D. Interest to date of Judgment \$N/A

ORDER AND JUDGMENT
AWARDING ATTORNEYS
FEES AND COSTS - 1

JEPPESEN GRAY SAKAI P.S.
Attorneys at Law
10655 NE 4th Street, Suite 801
Bellevue, Washington 98004
(425) 454-2344

1	E.	Attorney's fees	\$ 65,149.47
2	F.	Costs	\$ 7118.04
3	G.	Other recovery amounts	\$ _____
4	H.	Principal judgment shall bear interest at 12% per annum.	
5	I.	Attorney's fees, costs and other recovery amounts shall bear interest at 12% per annum.	
6	J.	Attorney for Judgment Creditor:	Allen R. Sakai
7	K.	Attorney for Judgment Debtor:	Bill H. Williamson

II. ORDER

8 THIS MATTER having come on before the undersigned Judge of the above-
 9 entitled court upon the motion of the Plaintiffs Reginald Peter Saunders and
 10 Elizabeth Saunders and Michael A. O'Brien and Marcy L. O'Brien (the "Plaintiffs")
 11 for an order awarding the Plaintiffs their attorneys fees and costs incurred in
 12 prosecuting and defending this action, and the court having reviewed the records and
 13 files herein including the following:

- 14 1. Plaintiffs' Motion for Attorney Fees;
- 15 2. Declaration of Allen R. Sakai in Support of Motion for Attorney Fees
 16 and Costs;
- 17 3. Relevant Summary Judgment Pleadings previously filed with the court,
 18 including but not limited to the Declaration of Gary Albert, the
 19 Declaration of Reginald Peter Saunders, the Declaration of Michael
 20 A. O'Brien, and the Second Declaration of Gary Albert;
- 21 4. Second Declaration of Allen R. Sakai in Support of Motion for
 22 Attorney Fees and Costs;
- 23 5. Defendant Meyers' Response to Plaintiffs' Cross Motion for Attorneys
 24 Fees;
- 25 6. Declaration of Bill H. Williamson - Attorney Fees;
7. Second Declaration of Bill H. Williamson - Attorney Fees;

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- 8. Second Declaration of Stephen B. Smolinske in Summary of Motion for Summary Judgment;
- 9. Supplemental Declaration of Stephen B. Smolinske in Support of Response to Motion for Attorney Fees;
- 10. Plaintiffs' Reply to Defendants' Response to the Motion for Attorneys Fees and Costs; and
- 11. Third Declaration of Allen R. Sakai in Support of Motion for Attorneys Fees and Costs.

12. Defendants' reply to Plaintiff's motion for attorney fees.
 and being otherwise fully advised in the premises, and the court having found the following:

- 1. That pursuant to Section 18 of the Covenants, RCW 4.84.330 and RCW 64.38, the Plaintiffs are entitled to recovery of their attorneys fees and costs because the Plaintiffs are the prevailing parties.
- 2. That the hourly rates charged by the Plaintiffs' attorney (\$300) and paralegal (\$150) are reasonable for an attorney with over 30 years of experience in the King County area and a paralegal with over 20 years of experience in the King County area;
- 3. That the billable hour rate charged by the Plaintiffs' attorney and paralegal are the same as that charged by the Plaintiffs' attorney and paralegal to all other clients of their law firm;
- 4. That there was but one law firm and one attorney and one paralegal within that law firm working on this matter on behalf of the Plaintiffs so there was no duplication of effort;

ORDER AND JUDGMENT
 AWARDING ATTORNEYS
 FEES AND COSTS - 3

JEPPESEN GRAY SAKAI P.S.
 Attorneys at Law
 10655 NE 4th Street, Suite 801
 Bellevue, Washington 98004
 (425) 454-2344

1 5. That the records provided by the Plaintiffs' attorney adequately prove
2 the number of hours worked and the type of worked performed by the Plaintiffs'
3 attorney over the two and one-half year period that the Plaintiffs' counsel
4 represented the Plaintiffs in pursuing the Defendants' offending Maple Tree;
5

6 6. That the pre-litigation work performed by the Plaintiffs' counsel
7 including but not limited to engaging in a pre-litigation formal mediation with JDR
8 in an attempt to resolve the dispute before litigation was reasonable;

9 7. That the tasks performed by Plaintiffs' counsel beginning with the filing
10 of the lawsuit were reasonable and necessary to successfully prosecute and defend
11 this lawsuit;
12

13 8. That none of the task performed by the Plaintiffs' counsel were
14 unnecessary or unwarranted; and

15 9. That of the three motions brought before the court on December 16,
16 2011, the Plaintiffs prevailed on all three motions with the Defendants' motions to
17 strike evidence and for summary judgment being denied and the Plaintiffs' motion
18 for summary judgment being granted;
19

20 That based upon the foregoing findings and the records and pleadings filed
21 in support of this motion for attorney fees and costs, this court finds that the
22 Plaintiffs are entitled to recover their attorney fees and costs and that the reasonable
23 amount of those attorney fees and costs awarded are set forth below; therefore, it
24 is hereby:
25

**ORDER AND JUDGMENT
AWARDING ATTORNEYS
FEES AND COSTS - 4**

PL16292 - ARB

JEPPESEN GRAY SAKAI P.S.
Attorneys at Law
10655 NE 4th Street, Suite 801
Bellevue, Washington 98004
(425) 454-2344

1 ORDERED, ADJUDGED and DECREED that Plaintiffs are awarded a
2 judgment against the Defendants in the amount of \$ 65,149.47 for the
3 Plaintiffs' attorneys fees and ^{and Para legal fees} \$ 718.04 for their costs for a total judgment of
4 \$ 72,267.51 [?] (X)

5 DATED this 3 day of April, 2012.

6
7
8 
9 HONORABLE HARRY McCARTHY

10 Presented by:

11 JEPPESEN GRAY SAKAI P.S.

12
13 
14 ALLEN R. SAKAI, WSBA #11953
15 Attorney for Plaintiffs

16
17 Approved for Entry; Notice of
18 Presentation Waived:

19
20 BILL H. WILLIAMSON, WSBA #4304
21 Attorney for Defendants

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(X) Plaintiff has claimed
567,148. in attorneys
fees and paralegal fees.
The Court has deducted
51,998.53 in apparent
duplicative work as
per Bowes v.
Transamerica and a
related identical amount.
The net attorneys fees
amount is \$65,149.47

26 ORDER AND JUDGMENT
27 AWARDING ATTORNEYS
28 FEES AND COSTS - 5

29 PL16292.ars

30 Page 2357

31 JEPPESEN GRAY SAKAI P.S.
32 Attorneys at Law
33 10655 NE 4th Street, Suite 801
34 Bellevue, Washington 98004
35 (425) 454-2344

APPENDIX 11



GUNNY,
A PICTURE IS
WORTH A THOUSAND
WORDS.
JUST WANTED TO
SHOW YOU IT'S
PRETTY MINIMAL
FRUINING MIKER

EXHIBIT 17

APPENDIX 12

FILED

11 NOV 18 AM 11:04

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 11-2-14047-4 SEA

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

REGINALD PETER SAUNDERS and
ELIZABETH SAUNDERS, husband and
wife; and MICHAEL A. O'BRIEN and
MARCY L. O'BRIEN, husband and wife,

Plaintiffs,

vs.

VERNON L. MEYERS and VIRGINIA
C. MEYERS, husband and wife; MEYERS
REVOCABLE LIVING TRUST; JOHN
DOE and JANE DOE, TRUSTEES OF
THE MEYERS REVOCABLE LIVING
TRUST; and JOHN DOE and JANE
DOE, BENEFICIARIES OF THE
MEYERS REVOCABLE LIVING
TRUST,

Defendants.

NO. 11-2-14047-4 SEA

DECLARATION OF
GERALD HARKLEROAD

I, Gerald Harkleroad, declare that:

1. I am over the age of eighteen years and am competent to testify in court.
2. Attached hereto as Exhibit A is a true and correct copy of a declaration I signed on December 11, 1989 in the case of Granville v. Devaney, King

DECLARATION OF GERALD
HARKLEROAD - 1

PL16204a.ARS

JEPPESEN GRAY SAKAI P.S.

Attorneys at Law
10655 NE 4th Street, Suite 801
Bellevue, Washington 98004
(425) 454-2344

1 County Superior Court Cause No. 89-2-19252-7. The statements I made then were
2 true and they remain true and correct today. I reiterate what I stated in that 1989
3 declaration. In addition, I make the following statements.
4

5 3. As stated in the attached 1989 declaration, I was the project manager
6 of the Somerset development and chairman of the Architectural Review Committee
7 for Somerset ("ARC"). The ARC was the predecessor to the current Somerset
8 Covenant Review Committee ("CRC"). Evergreen Land Developers was the
9 developer of all of the Somerset area in Bellevue, Washington including Somerset
10 No. 4.
11

12 4. The purpose or intent of the covenant restricting tree height was very
13 simple: to protect the views of the residents of Somerset. It was really not so much
14 a tree covenant but a view covenant. The views we were trying to protect or restore
15 were the views of Seattle, Bellevue, Mercer Island, Lake Washington and the
16 Olympic Mountains generally westward from the eastern shore of Lake Washington.
17

18 5. Somerset is a hillside community with sweeping views of Seattle,
19 Bellevue, Lake Washington, Mercer Island and the Mountains. People moved to and
20 live in Somerset for the views not the trees. If one wanted to have trees, they could
21 and should move elsewhere. The main focus for Evergreen as it developed Somerset
22 was to preserve views. Since Somerset is a view community, whenever views and
23 trees clashed, views would (and should) win. While I did not draft the Somerset
24 covenants, I did interpret them and enforce them for about 7 years while I acted on
25

DECLARATION OF GERALD
HARKLEROAD - 2

PL16204a.ARS

JEPPESEN GRAY SAKAI P.S.

Attorneys at Law
10635 NE 4th Street, Suite 801
Bellevue, Washington 98004
(425) 454-2344

1 behalf of the homeowners's association as chairman of the Architectural Review
2 Committee.

3
4 6. In 2006, I was asked by the CRC to meet with them to provide them
5 with assistance when they were trying to clarify ambiguities in the view covenants.
6 The results of that meeting are set forth in the April 25, 2006 Meeting Minutes, a
7 true and correct copy of which are attached hereto as Exhibit B.

8 7. As stated in the April 25, 2006 Meeting Minutes, there were very few
9 Madrona and evergreen trees that were meant to be preserved. Existing and new
10 growth maples and other deciduous trees were routinely required to be removed.
11 Not only were they messy in terms of leaves falling in the fall and winter but the tree
12 canopy of these trees was wider and their leaves were broader and thus they more
13 severely impacted views, especially in the summer time when they were in full bloom.
14 This is one of the reasons only full grown Madrona trees and other evergreen trees
15 were deemed sacred and covered as existing trees and even they were subject to
16 being trimmed or removed if they unnecessarily impacted views.
17

18  8. When I was employed by Evergreen, it was at a time when numerous
19 new houses were being constructed in Somerset. So as new houses were being built,
20 many existing trees of all types were removed or trimmed in order to ensure that the
21 new house had an unobstructed view from the eastern shore of Lake Washington to
22 the mountains or as close thereto as possible.
23
24
25

DECLARATION OF GERALD
HARKLEROAD - 3

FL16204A.ARS

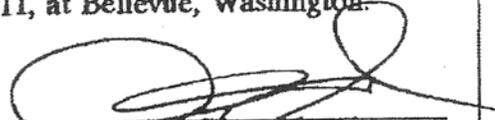
JEPPESEN GRAY SAKAI P.S.

Attorneys at Law
10655 NE 4th Street, Suite 801
Bellevue, Washington 98004
(425) 454-2344

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I certify (or declare) under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 14 day of November, 2011, at Bellevue, Washington.



Gerald Harkleroad

DECLARATION OF GERALD
HARKLEROAD - 4
PL16204a.ARS

JEPPESEN GRAY SAKAI P.S.
Attorneys at Law
10655 NE 4th Street, Suite 801
Bellevue, Washington 98004
(425) 454-2344

T156 14
9567.001

1 administered the activities of the homeowners' association inasmuch as
2 Evergreen still owned the majority of the lots. As Evergreen's project
3 manager, I acted as a mediator to resolve disputes relating to the
4 subdivision's written covenants, including the covenant restricting the
5 height of trees.

6 4. Because of my close involvement with Somerset No. 8 and the
7 use of the covenants between 1967 and 1974 when administration of the
8 community homeowner's club was turned over to the homeowners, I became
9 very well acquainted with the covenants document and the intent behind
10 the various covenants.

11 5. The purpose or intent of the covenant restricting tree height
12 was simple: to protect the view of the residents of Somerset No. 8.
13 The standard we used to evaluate view obstruction was whether the view
14 of the lake was impeded for a person in a standing position in the main
15 living room.

16 6. I was involved in at least 300 instances of house plans and
17 siting review in which view obstruction was at issue. Most of these
18 instances were resolved amicably between the involved homeowners.

19 7. Though the covenant language restricting tree height may seem
20 to except from its coverage "trees in existence" at the time the
21 covenants were recorded, the understanding of those involved at the
22 time, including myself, was that this language was intended to cover
23 the full grown Madrona and other evergreen trees in the subdivision.
24 In addition, even though it was desirable to maintain some of those
25 existing large trees, in certain cases, we negotiated thinning of those
26

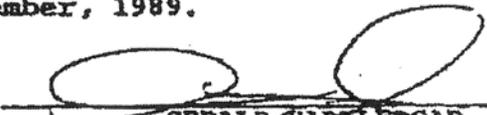
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9567.001

1 existing trees. Again, this was done in order to gain or protect the
2 view from a resident's main living room.

3 8. It was the understanding of those involved with the sub-
4 division, including myself, that any trees which were small or insig-
5 nificant in size in 1962 and which over the years would grow beyond 20
6 feet in height and unnecessarily interfere with the view from another
7 resident's living room, would be required by the covenants to be
8 trimmed so as to open that view.

9 I certify under penalty of perjury under the laws of the State of
10 Washington that the foregoing is true and correct.

11 DATED this 11th day of December, 1989.


GERALD HARKLEROAD

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DECLARATION OF GERALD HARKLEROAD - 3

BERESFORD, GOOTH, BARONSKY & TROMPETER
2241 FIRST INTERNATIONAL CENTER
890 THIRD AVE.
SEATTLE, WASHINGTON 98101

APPENDIX 13

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

REGINALD PETER SAUNDERS and)
ELIZABETH SAUNDERS, et al,)
Plaintiffs,)
vs.)
VERNON L. MEYERS and VIRGINIA C.)
MEYERS, et al.,)
Defendants.)

No. 11-2-14047-4SEA

COPY

DEPOSITION UPON ORAL EXAMINATION OF
GERALD HARKLEROAD

Thursday, October 13, 2011
1:50 p.m.
Williamson Law Office
701 5th Avenue
Suite 5500
Seattle, Washington

Laurie E. Heckel, CCR, RPR
Court Reporter
CCR License No. 2616

EXHIBIT 10

Marlis DeJongh & Associates
(206) 583-8711

1 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

2 REGINALD PETER SAUNDERS and)
 3 ELIZABETH SAUNDERS, et al,)
 4)
 5 Plaintiffs,) No. 11-2-14047-4SEA
 6 vs.)
 7 VERNON L. MEYERS and VIRGINIA C.)
 8 MEYERS, et al.,)
 9 Defendants.)

10 DEPOSITION UPON ORAL EXAMINATION OF
 11 GERALD HARKLEROAD

12
 13 Thursday, October 13, 2011
 14 1:50 p.m.
 15 Williamson Law Office
 16 701 5th Avenue
 17 Suite 5500
 18 Seattle, Washington

19
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 23
 24 Laurie E. Heckel, CCR, RPR
 25 Court Reporter
 CCR License No. 2616

1 Thursday, October 13, 2011
 2 Seattle, Washington

3 APPEARANCES

4 For the Plaintiffs: BILL H. WILLIAMSON
 5 Attorney at Law
 6 Williamson Law Office
 701 Fifth Avenue, Suite 5500
 P. O. Box 99821
 Seattle, Washington 98139-0821

7 For the Defendants: ALLEN R. SAKAI
 8 Attorney at Law
 9 Jeppesen Gray Sakai, PS
 10655 NE 4th Street, Suite 801
 Bellevue, Washington 98004-5044

11 Also present: STEVE SMOLINSKE

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 3 INDEX

4	Witness: GERALD HARKLEROAD	Page
5	Examination by Mr. Williamson	4/35
6	Examination by Mr. Sakai	31

7
 8 EXHIBITS

9	No. Description	Marked/ID'd
10	D-1 Subpoena Duces Tecum	*/6
11	Notice of Records Deposition	
12	D-2 Summons and Complaint	*/9
13	D-3 Declaration of Gerald Harkleroad	*/10
14	D-4 RCW 58.17.100	*/13
15	D-5 King County Planning Department letters, 3/25/60 and 4/6/62	*/19
16	D-6 Somerset Community Association Covenants & Map	*/15
17	D-7 King County Archives	*/
18	D-8A Declaration of Protective Covenants	*/24
19	D-8B Declaration of Protective Covenants	*/24
20	D-9 Somerset No. 4	*/
21	D-10 Somerset Community Association Covenants Review Committee	*/11

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 24
 25 * Exhibits 1 through 10 premarked for identification.

1 GERALD HARKLEROAD

2 having been called as a witness, was duly sworn and testified
 3 as follows:

4 EXAMINATION

5 BY MR. WILLIAMSON:

6 Q Do you want to state your full name and address for the
 7 record, Mr. Harkleroad.

8 A It's Gerald William Harkleroad, and my address is 2104 -- it
 9 will be different now from -- this is my home address I'm
 10 giving.

11 Q Uh-huh.

12 A 2104 98th Avenue Northeast, Bellevue, 98004.

13 Q And are you currently employed?

14 A No.

15 Q Have you done business before in Washington State?

16 A Yes.

17 Q Okay. And what have those businesses consisted of?

18 A I've had my own company since '70 -- I believe it's 3, M&H
 19 Development Company. It was a residential land developm
 20 company.

21 Q Okay.

22 A With a partner.

23 Q With a partner?

24 A Yeah.

25 Q And is that in Bellevue, was it?

1 A Yes.

2 Q And so it sound like you've been around plats and
3 subdivisions for quite awhile.

4 A Right.

5 Q And just backing up here, have you been deposed in any cases
6 resulting or arising out of the Plat of Somerset?

7 A Yes.

8 Q And when would that have occurred?

9 A In the '70s.

10 Q 1970s?

11 A In the '70s, yeah.

12 Q Okay. And more recently than that have you been deposed?

13 A No, not that I recall.

14 Q And do you recall what the issues were that were involved in
15 those lawsuits with the -- with the plat -- Somerset Plats
16 rather?

17 A Yes. One was over the height of a home that exceeded the
18 height that was given to the builder, so he built in excess
19 of the height that was given.

20 Q All right. And --

21 A And the other one -- there's one that I -- I still can't
22 recollect it. Okay. I know there's another one I was
23 called, you know, on to testify.

24 Q Okay.

25 A But I can't -- I don't -- I have no records of it. I don't

1 occurred involving the Plat of Somerset.

2 And so did you bring or did you produce any records,
3 files, documents, recorded instruments, application
4 submittals, whether written or electronic, in your possession
5 or the possession of others, which are identified in those
6 paragraphs 1 through 5?

7 A No.

8 Q And can state under oath why you were unable to produce th
9 records?

10 A As far as I know, the records were in the hands of Evergreer
11 Land Development Corporation, which I was an employee of
12 that company was dissolved or absorbed by -- or taken over
13 Federation Development Corporation of Detroit, who made
14 the -- a couple of loans, I think development loans to the
15 company, and Evergreen Land failed to fulfill the obligation
16 of that loan, so they shut the company down and I believe al
17 the records went with them to Detroit, and my employment w
18 terminated I think in '70 -- I think it was in '72, 1973,
19 1973.

20 Q And you say employment, would that have been as a project
21 manager?

22 A Yes, urban planning director and eventually project manager
23 yes.

24 MR. SAKAI: I'm sorry. What year was that, that you
25 were terminated?

1 know what -- what date that was.

2 Q All right. So other than that you don't have recall of any
3 other --

4 A No.

5 Q -- case in which you have appeared?

6 A No.

7 Q Okay. I'd like to have you identify what's been marked as
8 Exhibits 1 and 2 in front of you.

9 A Okay.

10 Q And I think you discussed this with me over the telephone
11 actually, and it's a subpoena duces tecum and a notice of
12 records deposition.

13 A Yes.

14 Q And you recognize that? What I'd like you to do to save time
15 is just to flip to page 2 of the subpoena duces tecum.

16 A Okay.

17 Q And you see some items listed there. Items in paragraphs 1
18 through 5 --

19 And, Allen, let me know if I'm going too fast here.

20 MR. SAKAI: No, that's fine. That's fine.

21 Q (By Mr. Williamson) -- is -- they relate to the Plat of
22 Somerset, and that is preliminary plats that the Defendants
23 Meyers have requested in this case. And so the purpose of
24 this deposition is to review the records and ask you
25 questions concerning the records and the platting, which

1 THE WITNESS: I think it was '72, '72 or '73. 8

2 MR. SAKAI: Thank you.

3 Q (By Mr. Williamson) All right. And -- okay. And so are
4 there any agents that are registered in Washington State for
5 either Evergreen Land Development or this other entity which
6 you described, Federated Development of Detroit, to your
7 knowledge?

8 A Agents, by, "agents," meaning --

9 Q Any registered agents, and that is are they still doing
10 business or any -- any successor entity for which they would
11 be doing business in Washington State?

12 A Not that I know of, no.

13 Q Okay. And then prior to your deposition today, have you met
14 with Mr. Sakai or any attorney representing --

15 A No.

16 Q -- the plaintiffs in this case?

17 A No.

18 Q Okay. Have you met with any attorney representing the
19 Somerset Homeowners Association --

20 A No.

21 Q -- prior to your deposition?

22 A No.

23 Q And have you been contacted by plaintiffs in this case?

24 A No.

25 Q All right. What I'd like to do then is you've identified

1 Exhibit 1, and you may have already answered Exhibit 2. I'd
 2 like to have you look at that, and that's the complaint
 3 that's been filed in this case against my clients, the
 4 Meyers.
 5 A Okay.
 6 Q And are you familiar at all with Exhibit 2?
 7 A No, I'm not.
 8 Q You're not?
 9 A No.
 10 Q Did you assist in the preparation of the complaint?
 11 A No.
 12 Q Okay. Were you consulted for the preparation of the
 13 complaint?
 14 A No.
 15 Q And, specifically, as to paragraphs -- if you look at 3.9 and
 16 3.10, which appear at pages 4 and 5, did you have any contact
 17 with the -- I believe it's the Somerset Community Covenant
 18 Review Committee, known as the CRC. Did they contact you at
 19 any time concerning paragraphs 3.9 or 3.10?
 20 A Not to my knowledge.
 21 Q Okay. And plaintiffs did not contact you, did they,
 22 concerning paragraph -- the allegations contained in
 23 paragraph 3.9 and 3.10?
 24 A No.
 25 Q All right. So -- and I just -- I think I've already asked

1 or what's been labeled as Exhibit 10. 11
 2 (Pause in proceedings.)
 3 Specifically, the last paragraph at the very bottom of page
 4 1. It might save you some time.
 5 A Okay. So I don't recognize this particular document.
 6 Q Uh-huh.
 7 A But, obviously, it's referring to my deposition earlier.
 8 Q All right.
 9 A Okay.
 10 Q So then this Exhibit 10, which references a Declaration of
 11 Gerald Harkleroad is what you believe has been identified in
 12 Exhibit No. 3?
 13 A Yes.
 14 Q Okay. And did the Somerset Community Association's Cov
 15 Review Committee contact you before they wrote this letter?
 16 A Yes. I had to have -- I'm trying to remember the time
 17 sequence of this, but a broker for Caldwell Banker, who was
 18 on the committee, contacted me regarding my -- very much
 19 I said in this declaration here of my -- how I had dealt with
 20 tree situations and view blockage, and what I would have do
 21 during my term as one that administered the covenants. So
 22 guess the answer is, yes, I believe there is a contact by one
 23 of the committee business members of me prior to this letter
 24 being written.
 25 Q Okay. But was that a telephonic contact?

1 this, but you have no records or files from Evergreen Land
 2 Development, Inc. in your possession --
 3 A No.
 4 Q -- or control?
 5 A No.
 6 Q And I'd like to then direct you to what's been marked as
 7 Exhibit No. 3, Mr. Harkleroad. Just flip that over and go to
 8 the next --
 9 A Exhibit 3?
 10 Q Yes. Exhibit 3 --
 11 A Okay.
 12 Q -- and ask you if you recognize that.
 13 A No. Declaration, wait a minute. Let me just read it. I
 14 guess I do. This is a deposition I must have given, 1989.
 15 Q Right. So you do recognize your signature that appears on
 16 page 3?
 17 A Yes, uh-huh.
 18 Q Okay. And you signed that knowing that was a statement that
 19 could be used in that litigation?
 20 A Yes.
 21 Q Now, to the prior question I asked you, what I'd like to have
 22 you do is if you would to flip ahead. I apologize for
 23 jumping ahead in exhibits. What I'd like to have you next
 24 look at what's been marked as Exhibit 10, very bottom. And
 25 I'd like to ask you if you recognize what's been identified

1 A Yes. 17
 2 Q And did you appear in front of the CRC Committee and advise
 3 them as a group?
 4 A Yes, I think I did. Yeah. There was one group, one meeting
 5 was held in somebody's home, and they asked me to appear
 6 kind of give a general discussion of my methods of
 7 administering the covenants, trying to give them some insight
 8 on how the first few years were done.
 9 Q And then when you provided this information at that meeting
 10 did you rely upon any of the preliminary plats or any of the
 11 Somerset plats?
 12 A Well, I would have relied on the covenants for those
 13 particular plats that they were applied to. You know, if a
 14 situation applied to a certain lot in the covenants for that
 15 particular division, I would have probably referred to in
 16 some way, shape or form.
 17 Q What about any -- did you present any preliminary plat
 18 documents or files to the committee at that time?
 19 A I may have in terms of getting records from a title company
 20 or something like that, but I don't recall having copies of
 21 subdivisions in my hand at that time.
 22 Q Uh-huh. Do you recall what exact documents you did give to
 23 the committee?
 24 A No.
 25 Q All right. Let's just jump to another question here then if

1 I may. How many plats have you developed over your lifetime
 2 of working in land development?
 3 A Oh, probably, a dozen.
 4 Q A dozen?
 5 A Yeah.
 6 Q Okay.
 7 A Ten to 12 - ten to 12 plats.
 8 Q Okay. And have these been principally in King County,
 9 Washington?
 10 A Yes, yes.
 11 Q And they've been in suburban and unincorporated King County?
 12 A Yes, yes.
 13 Q Both?
 14 A Yes.
 15 Q And so -- and I'm sure you've been to plat hearings then.
 16 A Yes.
 17 Q And as part of the platting process, I'd like to have you
 18 look at what's been marked as Exhibit 4, which should be
 19 right in front of you.
 20 A Is that here?
 21 Q Yes. That's -- yes, those statutes, and that is during the
 22 platting process there are almost always hearings, are there
 23 not?
 24 A Correct.
 25 Q And were these long plats or short plats?

1 Q -- which will find their way into plat conditions as well?
 2 A Uh-huh.
 3 Q Okay. And how long have you been kind of engaged in that
 4 process where you would have been going to these types of
 5 plat hearings?
 6 A Well, with my company, which I'm looking at the records now
 7 was probably formed in '74, maybe even '75.
 8 Q Okay. Approximately, '75?
 9 A Yeah. With Somerset, I think only one subdivision I was
 10 involved in --
 11 Q Okay.
 12 A -- in the platting process.
 13 Q All right. So I'd like to have you look at Exhibit 6 if you
 14 would.
 15 A Okay.
 16 Q It's just a copy of the plat map.
 17 A Okay.
 18 Q And, Allen, if you want to look at it.
 19 And by the Somerset Divisions, I'd like to have you
 20 identify that if you could.
 21 A Somerset Ridge?
 22 Q Uh-huh.
 23 A That was my own company.
 24 Q Okay.
 25 A That was not with Evergreen Land at the time. That would

1 A They could have been both.
 2 Q Okay.
 3 A Yeah. We did -- I think I did in my career, did about two or
 4 three short plats, mostly were long plats though.
 5 Q Okay. So long plats, meaning that there would have been a
 6 hearings examiner or --
 7 A Yes.
 8 Q -- planning commission who would have reviewed a plat
 9 application?
 10 A Exactly.
 11 Q And then are you familiar with the process whereby either a
 12 planning commission or hearings examiner makes findings of
 13 fact and conclusions of law?
 14 A Yes.
 15 Q He receives evidence to make those findings and conclusions?
 16 A Yes.
 17 Q And then there is a -- what's called a preliminary plat
 18 decision that's made by the hearings examiner?
 19 A Correct.
 20 Q Okay. And did -- do you typically see conditions that are
 21 attached to plat approvals?
 22 A Yes.
 23 Q Okay. And there might be state environmental policy act
 24 mitigation conditions and those kinds of things --
 25 A Yes.

1 have been my own company, did Somerset Ridge. 16
 2 Q Okay.
 3 A Okay.
 4 Q Do you want to mark where that would be with just a red X,
 5 and put, "Somerset Ridge," next to it.
 6 A It's SR. It's marked SR on the map.
 7 Q Okay. And then the subject lots that we're involved with, I
 8 believe they're lots 117, it looks like.
 9 A Which plat?
 10 Q 130 -- well, that would be --
 11 A Which plat?
 12 Q That would be No. 4, Somerset Division No. 4.
 13 A Okay.
 14 Q I know that those are really compressed and very teeny tiny
 15 lots displayed.
 16 A Well, I can understand. I know what you're talking about.
 17 Go ahead.
 18 Q But were you involved in the platting of lots 130, 117 -- I
 19 think we're missing one more for the --
 20 A No.
 21 Q -- Saunders. No?
 22 A No.
 23 Q Now, in the one plat which you were involved in that was pe
 24 of this -- this looks like a master plan?
 25 A Yes.

17

1 Q Okay. Of the Somerset master plan. Were there findings of
 2 fact and conclusions of law made by a planning commissioner
 3 or by a hearings examiner, if you can recall?
 4 A I think that was the City of Bellevue, and I believe that was
 5 planning commission.
 6 Q Somerset No. 4?
 7 A Somer -- no, I don't know about Somerset. I didn't -- was
 8 not involved in Somerset 4 platting.
 9 Q Oh, I see for the Somerset Ridge.
 10 A Somerset Ridge.
 11 Q I see. Okay.
 12 A I think Somerset 4 went under King County, but I was not part
 13 of the platting process.
 14 Q Okay.
 15 A It had been done prior to my employment at Evergreen Land.
 16 Q To your knowledge, were there written conditions of approval
 17 for any of the plats?
 18 A I assume so, yes.
 19 Q Okay. And as a part of those conditions, would -- well, did
 20 you review any of those plat conditions or the like before
 21 you made your declaration in this Granville vs. Devaney case,
 22 which appears on Exhibit 3?
 23 A From my recollection, there was not -- I don't know the
 24 answer to that question, but I do tell you that my -- my --
 25 in running the building committee, we would be -- the

18

1 principal document we would go by would be the covenants.
 2 Q I see.
 3 A Okay.
 4 Q All right. That was not my question.
 5 A I know.
 6 Q The question was, were you aware of any conditions of a
 7 approval that you would have relied upon in providing that
 8 information back in 1989 when you --
 9 A Well, I was in the building regulations. I would normally go
 10 with the lot development. I mean, I would be aware of
 11 that -- those regulations. That would be part of the process
 12 of approval of a subdivision, which would be pretty much
 13 boilerplate from King County.
 14 Q Okay. But other than the King County code, you can't recall
 15 providing any information on the plat approval conditions or
 16 any findings of when you inked your John Henry here in 1989?
 17 A No.
 18 Q Okay. To your knowledge, were there findings of fact and
 19 conclusions of law and final -- or not final, strike that --
 20 preliminary plat actions that were taken by a hearings
 21 examiner or planning commission for Somerset 4?
 22 A I'm not aware of it. Okay.
 23 Q More likely than not, because there was a plat hearing, there
 24 would have been such findings of fact and conclusions of law,
 25 would there not have been?

19

1 A That's true, yes.
 2 Q And would there not have been a preliminary plat decision,
 3 which the statutes I gave you would have required at that
 4 time?
 5 A Yes, sir, yes.
 6 Q Okay. Just moving right along --
 7 A Uh-huh.
 8 Q -- if I would, as part of that platting process, I'd like to
 9 have you identify what's been marked as Exhibit No. 5 --
 10 A Okay.
 11 Q -- and ask you if you can identify any of these two letters
 12 for the preliminary plat of Somerset. It doesn't identify
 13 which one, but there are two letters. One is dated March
 14 25th, 1960 and April 6th, 1962.
 15 A I'm not aware of either one.
 16 Q Were you employed at that time --
 17 A No.
 18 Q -- by Evergreen Land Development?
 19 A No.
 20 Q No. Okay. On the first letter where it has -- and I'm
 21 looking at March 25th, 1960, and it's -- I apologize for the
 22 poor copy, but it has -- I believe at the very bottom
 23 sentence it says, Motion Carried. It looks like, Defer any
 24 action on this plat until the developer has prepared and
 25 submitted a comprehensive plan for the area of this plat.

20

1 Do you see that language?
 2 A Yes, uh-huh.
 3 Q Are you aware of what is meant by, comprehensive plan for
 4 this plat?
 5 A Well, I would guess it would have to do with a greater --
 6 with the greater -- a greater area of -- of the developer's
 7 intention. In other words, he has submitted a plat for
 8 approval without a master plan for the entire holdings, real
 9 estate holdings on this particular piece of property. So let
 10 me answer that question maybe more clearer. It looks like
 11 Sand, who was the planning director at the time for King
 12 County, is deferring action on this -- on the approval of the
 13 preliminary plat until he comes back with a plan for the
 14 remaining portion of the holdings by the development comp
 15 basically, a master plan, all right, showing additional
 16 divisions that would be how they would be interconnected in
 17 an overall road and street plan.
 18 Q All right.
 19 A Okay?
 20 Q Makes eminent sense, doesn't it?
 21 A Yeah, I hope it does.
 22 Q And then on this following letter, April 6, 1962, where I
 23 have an arrow pointing, or I hope there's an arrow pointing
 24 in your copy, it says, "The standard conditions of
 25 preliminary plat approval which are enclosed are further

21

1 conditions of the approval of this plat."
 2 A Yes.
 3 Q Do you see that?
 4 A Yes.
 5 Q Do you know if there were any issued for Somerset Division 4
 6 that were recorded as part of the process or prior to the
 7 final plat being recorded?
 8 A Well, this was approved in 1962. I came along in 1968.
 9 Q I see.
 10 A So I would have been aware of the conditions of -- that would
 11 have been on the face of the plat when I became an employee
 12 of the company --
 13 Q All right.
 14 A -- and I administered the covenants.
 15 Q What about the conditions of preliminary plat approval?
 16 A Probably not. Been the final plat we'd been working off,
 17 because that's what would be the final direction issued by
 18 the King -- or by King County.
 19 Q Okay. So --
 20 A Preliminary would not -- preliminary -- this would override
 21 the preliminary approval, final -- final approval.
 22 Q Okay. And can you -- what -- what law are you citing or case
 23 are you citing that says that a final plat proceeds
 24 preliminary plat conditions?
 25 A Just experience.

22

1 Q Okay.
 2 A Yeah.
 3 Q All right. You're not aware of a statute that says that.
 4 A No. All I know is that you can't move ahead and develop a
 5 plat until you have final plat approval, and you can't
 6 develop from a preliminary plat.
 7 Q Okay.
 8 A Okay.
 9 Q And do you know which statutes or codes you're referring to?
 10 A No, I don't know that. I don't, no.
 11 Q Okay. All right. So the point is, the point I'm trying to
 12 get at here, are you aware of any documents that would
 13 disclose what the conditions of the preliminary plat approval
 14 are, where we would find those documents?
 15 A Well, King County would have records of those filed
 16 somewhere, and it's in the archives at this -- you know, this
 17 is 50 years ago now. So if we had to go back and look at
 18 preliminary plat records today, you'd have to go to the
 19 archives of King County to resurrect those. Okay.
 20 Q So do you think that the applicant also had copies, your
 21 predecessor, Evergreen --
 22 A Oh, I'm sure they did.
 23 Q -- Development?
 24 A Oh, sure, yes. I would guess that they would have it, yeah.
 25 Q And just how these records would have been transmitted to the

21

1 homeowners association, would the homeowners association
 2 have had these records?
 3 A There was never a homeowners association in Somerset.
 4 Q Somerset Division 4?
 5 A No, there was never a homeowners association in Somerset.
 6 Okay.
 7 Q Okay. What is the --
 8 A There's a Somerset Community -- what they call -- they call
 9 it community association, but not --
 10 Q Referring to Exhibit No. 10?
 11 A But never recorded and never recorded Somerset Homeowne
 12 Association. This is sort of a volunteer group that -- that
 13 tries to administer the covenants or look at the covenants or
 14 at least work in trying and -- and continue the development
 15 of the organization. So recognize that there was never a
 16 homeowners association. There should have been one, but
 17 there was never one there, never one ever developed or
 18 recorded.
 19 Q Okay.
 20 A Okay.
 21 Q So this is a voluntary organization?
 22 A I believe it is, yeah. It may be an association. They have
 23 dues or pay dues and everything else, but it's not -- I
 24 don't -- I don't know the official status of that
 25 association. We never had an association when I was workin

22

1 with Evergreen Land Developers. Okay. There was a -- this
 2 was a building committee, quote, not a recorded instrument a
 3 all. It was a -- it was the developer, me, administering and
 4 trying to help administer the covenants, and mainly -- and
 5 mainly to -- to permit work with the builders in permitting
 6 their house to be built, so it wouldn't interfere with the
 7 view of somebody that's already residing on the hill. Okay.
 8 That was my job, one of my jobs.
 9 Q Okay.
 10 A Okay.
 11 Q Did that cover Somerset Division No. 4?
 12 A Yes.
 13 Q All of the lots in Somerset Division 4?
 14 A If there was vacant lots at that time when I was employed,
 15 yes, that would have been Somerset 4.
 16 Q Okay.
 17 A But as a representative of the developer.
 18 Q And then let's talk about that status. You -- you were
 19 employed as the project manager as I recall?
 20 A I started out as the planner. Okay. Gradually, it evolved
 21 into a project manager position.
 22 Q And then if you would not mind looking at Exhibits -- it
 23 should be 8A and 8B.
 24 A Okay.
 25 Q These are the covenants I think you just testified about?

25

1 A Yes.

2 Q Okay. What I want to do is just flip to the very back of

3 those covenants, and on 8A, Mr. Harkleroad, you'll see some

4 signature blocks.

5 A Let's see, 8A?

6 Q Yes, 8A, and I'm looking at -- this looks like Volume 4110

7 page 572 of King County plats, I believe. This is auditor

8 file 5237074?

9 A Yeah.

10 Q And I hope you have the right page number. It looks like you

11 have a little different version. I think you have 8B, as in

12 boy. But -- but that's all right.

13 A Okay.

14 Q Just stay with that document.

15 A Thank you.

16 Q Stay with that document. Your -- you do not appear, do you,

17 as a signatory to these covenants, do you?

18 A No.

19 Q And you were never the actual owner of the property being

20 platted, were you?

21 A No.

22 Q And you were not the applicants for the properties being

23 platted, correct?

24 A Division 4.

25 Q Okay. You were the applicant for Division 4.

26

1 A No, no.

2 Q No?

3 A Ask that question again.

4 Q Were -- were you the -- did you have any ownership status --

5 A No.

6 Q -- with Somerset Division 4?

7 A No.

8 Q And the signatures that appear with the signature blocks that

9 appear on Exhibit 8B, your name does not appear as a person

10 having any right, title, or interest in the property, right?

11 A Correct.

12 Q I'm going to ask the same question on 8A.

13 MR. SAKAI: Could you stop just for a minute. Could we

14 go off the record for just a minute? I have a question.

15 MR. WILLIAMSON: Sure.

16 (Off the record.)

17 Q (By Mr. Williamson) So the other one is 8A, Mr. Harkleroad.

18 I'd like to direct your attention to next.

19 A Okay.

20 Q And that is the same question on the last pages. This is a

21 different volume, Volume 4110 beginning at page 568, and at

22 the back it has -- on page 572 it has some signature blocks

23 and some signatures and the question again is, is your --

24 your signature does not appear --

25 A No.

1 Q -- or name appear thereon, does it?

2 A No.

3 Q And you did not hold any right, title, or interest in the

4 property, the subject to these covenants at that time?

5 A No.

6 Q All right. Almost done. And then just so I understand

7 this. At the time when you made your declaration, which is

8 identified as Exhibit No. 3 in 1989, you were an employee

9 only then, were you not, of --

10 A No, this is 1989.

11 Q Uh-huh.

12 A Long gone.

13 Q Okay. You're long gone.

14 A After '74.

15 Q So you were not even an employee at that time --

16 A No.

17 Q -- of --

18 A No.

19 Q -- both Evergreen Land Developers, Inc. were you?

20 A No.

21 Q And the same thing, you were not an employee of the

22 Detroit --

23 A No.

24 Q -- Federated Development of Detroit, were you?

25 A No.

1 Q You may have already answered this, but you didn't -- you did

2 not produce any plat records that you reference in your

3 declaration; is that correct?

4 A I don't believe I did, no, because I didn't have any. I

5 would not have had any records.

6 Q By the way --

7 A The only records I have of Somerset, and I think those have

8 been destroyed now, was Somerset Ridge, which was a

9 development that my company did on Somerset, okay, later

10 years, and that would have been 1970 -- I want to say '77,

11 '76, '77, '78, '79, somewhere in that time frame.

12 Q Okay. So you say the records were destroyed. Do you know

13 who should be contacted on the location, the whereabouts of

14 these -- these old platting files, preliminary plat files?

15 A Well, I think having no knowledge of where Federated is even

16 an organization today, Federated Development, I would guess

17 that the best approach would be King County. The archives c

18 King County would have records of the hearing, the platting,

19 the preliminary platting, the final plat. Okay.

20 MR. WILLIAMSON: We could go off the record for just a

21 minute, Laurie.

22 (Off the record.)

23 Q I do have a question, and that is following your testimony is

24 that do you agree that the covenants, conditions,

25 restrictions which you identified just in your last

1 testimony, Exhibits 8A and B, that they were intended to
 2 implement the plat restrictions?
 3 A Yes.
 4 Q And then what I'd like to have you do is to look at the
 5 complaint, which is at Exhibit No. 2, and there is an
 6 attachment that Counsel Allen Sakai, who is present, attached
 7 to the complaint.
 8 A Okay. Got it.
 9 Q Okay. And you see where it says, Plat Restrictions (Somerset
 10 No. 4).
 11 A Right. Where are you?
 12 Q It's the second to last -- oh, I'm sorry.
 13 A Yeah.
 14 Q It's the -- right there.
 15 A Okay.
 16 Q It says, Plat Restrictions (Somerset No. 4), and it says, "No
 17 lot or portion of a lot in this plat shall be divided and
 18 sold or resold or ownership changed or transferred whereby
 19 the ownership of any portion of this plat shall be less than
 20 the area required for the use district in which located.
 21 Subject to Restrictive Covenants filed under Auditor's File
 22 No. 5237074." Do you see that?
 23 A Yes.
 24 Q And the question is, is then were there any other plat
 25 restrictions other than, to your knowledge, what would have

1 minute break.
 2 A Can I ask a question?
 3 Q Sure.
 4 A The lawsuit is over a tree?
 5 Q Yes.
 6 A Period.
 7 MR. WILLIAMSON: We're off the record.
 8 (Off the record.)
 9 MR. WILLIAMSON: We have no further questions.
 10 EXAMINATION
 11 BY MR. SAKAI:
 12 Q Let me have -- my name is Allen Sakai, and I've got at least
 13 a -- just a couple just from following up. If you could take
 14 a look at Exhibit No. 10, which is the May 28th, 2009
 15 letter. I just wasn't quite sure I understood your answers
 16 to Mr. Williamson's question. Did you say that the CRC did
 17 contact you before this letter went out? Is that what you
 18 had answered? I just can't remember what you said.
 19 (Pause in proceedings.)
 20 Maybe I can go forward.
 21 A I was thinking that --
 22 Q You mentioned something about a broker for Caldwell Banke
 23 contacting you?
 24 A Yes, yes.
 25 Q And was that in relation to this Exhibit 10?

1 appeared in that file that was identified, the Auditor's File
 2 5237074?
 3 A Not that I would have any -- no, I wouldn't -- I couldn't
 4 imagine any other restrictions.
 5 Q So let's jump to -- I think we're almost done. Just are you
 6 aware if there were any other plat restrictions other than
 7 what was included and is the subject to the restrictive
 8 covenants, were you aware of other plat restrictions?
 9 A No.
 10 Q And it's these plat restrictions that you've identified then
 11 and which have been marked Exhibits 8A and 8B --
 12 A Yeah.
 13 Q -- these guys --
 14 A Yeah.
 15 Q -- that you just identified that -- did you rely upon those
 16 when you signed your earlier declaration in December of 1989?
 17 A The answer would be yes, because that's -- that's what I was
 18 essentially trying to base my decisions upon, would be the
 19 covenants.
 20 Q Okay.
 21 A And whatever particular subdivision they applied to.
 22 Q I'm going to take a little two-minute break with client's
 23 representative here.
 24 A Okay.
 25 Q And why don't we take a five -- well, let's make it a seven-

1 A I don't know. I don't remember.
 2 Q Okay.
 3 A I don't remember the Meyers' name.
 4 Q Okay.
 5 A Okay. Sometime before this period, I was contacted by -- I
 6 can't recollect the name. But any ways, and he was -- lived
 7 in Somerset -- lives in Somerset, and was on the committee :
 8 one time, and I think he was still trying to help resolve
 9 this issue. Whether this is the issue or it was another one,
 10 I don't recall, but the conversation I had with him was
 11 before this letter was written, and it could have been -- so
 12 that's two years ago now. It's -- it's been two or three
 13 years ago when -- when they contacted -- asked me my opini
 14 and -- and we've known each other for 30 years, so it was a
 15 friendly conversation that just, you know, how did you go
 16 about administering the covenants and what would you do in
 17 this situation, and how would you resolve it if you could
 18 resolve it, and that was -- that was the conversation.
 19 Q But, again -- and I'm just trying to be very clear.
 20 A Yeah, yeah.
 21 Q You're not sure if that particular contact was in relation to
 22 the Meyers' --
 23 A No.
 24 Q -- tree. Okay. And then you said you appeared before the
 25 CRC at one someone's home?

1 A Yeah. But that would have been -- wasn't there another
 2 letter in here, or are we only talking about this one?
 3 Q That was the only one that's --
 4 A Okay.
 5 Q -- that's here.
 6 A Somehow I was thinking there was another letter. That would
 7 have been way before this time period, that meeting. I don't
 8 know what I said, Bill, before, but I think I was a bit
 9 confused on the time element. But that -- when I met with
 10 that group, that had to be seven, eight, nine years ago when
 11 I got together with that group, because they were sort of
 12 reforming a architect -- what they call an architectural
 13 control committee or the building committee or the government
 14 review committee, whatever you want to call it. They're all
 15 sort of one in the same. Okay. So it would have been --
 16 when I sat down with that group it would have been seven,
 17 eight, nine years ago.
 18 Q So, again, not in relation --
 19 A But not in relation --
 20 Q -- to the Meyers' --
 21 A I don't remember.
 22 Q -- free.
 23 A I do not remember any names being mentioned.
 24 Q Okay.
 25 A There may have been, but I don't recall it.

1 Q -- other than having met him here at the deposition?
 2 A No.
 3 Q And other than speaking to Mr. Williamson about the
 4 scheduling of this deposition, do you know Mr. Williamson --
 5 A No.
 6 Q -- or have never worked with him? Did you talk to anybody
 7 else to prepare for this deposition?
 8 A No.
 9 MR. SAKAI: I don't have any other questions.
 10 EXAMINATION
 11 BY MR. WILLIAMSON:
 12 Q I just have a follow on in strict reply I guess so I'm not
 13 exceeding the scope of Mr. Sakai's questions. I believe you
 14 testified you were aware of findings of fact and conclusions
 15 of law for Somerset No. 4, but you didn't participate in the
 16 hearings for that. Did I understand that correctly?
 17 A That's correct.
 18 Q Okay. And that the only --
 19 A But let me just -- aware, but years later --
 20 Q Yes.
 21 A -- when I got employed. All right.
 22 Q Okay. So you were aware years later. And I think you ahead
 23 testified to this, but you didn't -- you're -- you're not --
 24 you don't know where the records of the preliminary plat --
 25 A I can only assume --

1 Q Well, that's okay. I just wanted to make sure I understood
 2 the timing also.
 3 A Okay, yeah.
 4 Q Maybe I'll just kind of summarize this. Mr. Williamson asked
 5 you a number of questions regarding your knowledge of the
 6 preliminary plat documents related to Somerset in -- in
 7 response to them, you've made I think some certain statements
 8 saying you assumed this, assumed that. Did you actually --
 9 do you recall actually reviewing the preliminary plat
 10 documents for Somerset?
 11 A Which division?
 12 Q Division 4.
 13 A No.
 14 Q And were you aware of the actual findings of fact and
 15 conclusions of law if there were any with respect to Somerset
 16 No. 4?
 17 A Well, the answer would be yes, but recognize that I came to
 18 the organization many years after this -- the final plat was
 19 created, so it was just having the document in front of me --
 20 Q Okay.
 21 A -- to enforce that particular covenant that applied to that
 22 division.
 23 Q Just a couple of general questions again. Do you know
 24 Mr. Smolinske, or have you ever spoken to him --
 25 A No.

1 Q -- are for --
 2 A -- in the archives of King County.
 3 MR. WILLIAMSON: Okay. That's all I have.
 4 THE WITNESS: Okay.
 5 MR. WILLIAMSON: All right. You are free to go. That
 6 concludes the records deposition.
 7 (Whereupon, at 2:49 p.m. the deposition was concluded.
 8 (Signature was reserved.)
 9
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CERTIFICATE

STATE OF WASHINGTON)
COUNTY OF KING)

I, the undersigned Court Reporter in and for the State of Washington, do hereby certify:

That the annexed transcript of Thursday, October 13, 2011 deposition of GERALD HARKLEROAD was taken stenographically by me and reduced to typewriting under my direction;

I further certify that I am not a relative or employee or attorney or counsel of any of the parties to said action, and that I am not financially interested in the said action or the outcome thereof;

I further certify that the annexed Thursday, October 13, 2011 deposition of GERALD HARKLEROAD is a full, true and correct transcript, including all objections, motions and exceptions of counsel, made and taken at the time of the foregoing proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my signature this 17th day of October, 2011.

Laurie E. Heckel

Laurie E. Heckel, CCR, RPR
Court Reporter in and for the State of Washington, residing at Seatac.
CCR License No. 2616

CORRECTIONS

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SAUNDERS V. MEYERS, NO. 11-2-14047-4 SEA

GERALD HARKLEROAD

APPENDIX 14

SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

VERNON L. MEYERS and)	FTR GOLD TRANSCRIPTION
VIRGINIA C. MEYERS,)	W817
Husband and wife,)	CAUSE NO. 11-2-14047-4SEA
et.al.,)	COA NO. 68249-1-I
PLAINTIFFS,)	
VERSUS)	
REGINALD PETER)	
SAUNDERS & ELIZABETH)	
et.al,)	
DEFENDANTS.)	

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 KING COUNTY
 SUPERIOR COURT
 SEATTLE, WA

TRANSCRIPT

OF THE PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE BEFORE
 THE HONORABLE GREG CANOVA, SUPERIOR COURT JUDGE, ON THE
 16TH DAY OF DECEMBER, 2011, TRANSCRIBED BY KIMBERLY
 GIRGUS, CERTIFIED TRANSCRIPTIONIST.

APPEARANCES:

FOR THE PLAINTIFF: ALLEN SAKAI
 ATTORNEY AT LAW

FOR THE DEFENDANT: WILLIAM H. WILLIAMSON
 ATTORNEY AT LAW

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PROCEEDINGS

DECEMBER 16, 2011

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2
3
4 UNIDENTIFIED SPEAKER: Please rise. Court is in
5 session. The Honorable Gregory Canova presiding.

6 UNIDENTIFIED SPEAKER: Good morning, your Honor.

7 UNIDENTIFIED SPEAKER: Good morning.

8 THE COURT: Good morning. We are here in the matter
9 of Saunders and O'Brien versus Meyers, and the Meyers'
10 Revokable Living Trust, et. al.

11 First matter before the Court is a preliminary matter
12 motion made by the defendants to strike specifically
13 noted portions of declarations supplied by and in support
14 of either plaintiff's motion for summary judgment or
15 plaintiff's opposition to the defendant's motion for
16 summary judgment together with certain exhibits attached
17 to those declarations, and the related portions of the
18 plaintiff's brief, which reference and base arguments
19 upon those declarations and/or exhibits.

20 Having reviewed the briefing and authority cited by
21 the parties in support of and in opposition of the
22 motions to strike, the Court is persuaded by the
23 arguments and authorities offered by the plaintiffs, and
24 is denying in its entirety the defendant's motion to
25 strike. Sign the order, and the form proposed by the

1 Finally, the plaintiff will be allowed the final
2 opportunity in oral argument to reply to the opposition
3 to the plaintiff's motion for summary judgment.

4 That's the structure. I don't expect that either
5 counsel will be able to follow it to the letter, and the
6 Court will not hold you to that. That's simply a set of
7 guidelines that you can utilize, if you wish. The
8 information between those four sessions will be presented
9 in its entirety, I am sure. I'll hear first from counsel
10 for the defendants.

11 MR. WILLIAMSON: Yes, your Honor. Good morning,
12 your Honor. Good morning, your Honor. Bill H.
13 Williamson, attorney for the defendant Meyers who are
14 present in the courtroom today. And if I may approach,
15 your Honor?

16 THE COURT: You may.

17 MR. WILLIAMSON: Thank you. If it pleases the Court
18 and counsel, this is about historic facts, your Honor,
19 involving the plat of Somerset, as the Court is aware of,
20 for reference purpose this is -- it appears as Exhibit 2
21 in the cross-motion filed by defendant Meyers, and it's
22 the King County I-map, and it shows an orientation to the
23 north, and here are the westerly views that are -- that
24 are the subject of this case. You will see that the
25 Meyers' property is to the far west and -- and I have

1 noted on that 1970, that's the date that they constructed
2 their residence. You see plaintiff O'Brien. They are
3 prior owners. They constructed of course in 1963. And
4 the Saunders, you will see, they constructed in their
5 residence in 1973 after the defendant Meyers. And the
6 tree is prominently shown in the photograph.

7 Your Honor, I believe as part of the facts, which the
8 Court has reviewed, and what I'd like to focus on is what
9 the building committee would have reviewed in 1963 when
10 the O'Brien's property was first constructed. And
11 counsel, this appears as part of the Ward Carson
12 declaration. Your Honor, these I'm handing out to again
13 show that -- that you can see what a plat is, your Honor,
14 and I deal with clients who develop plats, and of course
15 this is nothing unusual. The property has been nuked.
16 It's been graded. The Court sees roadways, and of course
17 left on this 1960 photograph that the Court has, that the
18 photogrammetrist, Ward Carson obtained from Aerometrics,
19 which used to be Walker Aerial Survey is what's left of
20 all of the vegetation on the Somerset plat, and this is
21 the Somerset master plan photograph.

22 And then if the Court flips over the Court will see
23 what happens as part of this plat gets filled in, and as
24 part of Somerset Division Four you will see the red M and
25 the O. M is for the Meyers, and O is for the O'Briens,

1 and S is for Saunders, and the photogrammetrist has
2 written tree area of TR. And then on the back page of
3 that you see a blowup showing the same photograph, but
4 it's showing the same tree located on lot 117, that is
5 the Meyers' property.

6 Your Honor, what followed thereafter is, and these are
7 publicly available photographs that appears as Exhibit 11
8 in the Meyers' cross-motion, and if you would be kind
9 enough to hand that to the Judge. This is the King
10 County assessor's photograph, your Honor, of the
11 O'Brien's predecessor's home who is the plaintiff in this
12 case, and I see a 1959 Nash Rambler that my dad used to
13 own, and that as children we tried to hide from our
14 friends because we were embarrassed of my dad's 1959 Nash
15 Rambler, but that's showing the date of this photograph,
16 and if the Court would -- would also see, not only do we
17 see the Meyers' Maple tree in the immediate background,
18 which is adjacent to the O'Brien property, what we see
19 are other large trees on the horizon that were left as
20 part of this development in 1963.

21 And the importance of that, your Honor, is as we get
22 into the covenants, conditions, and restrictions we -- we
23 get to the point of -- of showing the Court when these
24 covenants were recorded this was -- this was -- these are
25 the facts showing what trees were left as part of the

1 tree line, and these are large, fully mature trees that
2 were present on the site, and that this is -- this is
3 what happened thereafter when the predecessor to the
4 covenant, covenant review committee, namely, the building
5 committee, Forever Green started reviewing building
6 permit applications and building plans.

7 And I think the Court has seen where -- where we have
8 argued that the building committee would have approved
9 these plans in 1963 for the O'Briens, and thereafter for
10 the Meyers knowing that this tree was on lot 117, and, in
11 fact, plaintiffs do not dispute any of the facts
12 contained in the Meyers' declaration, your Honor, as we
13 show again this is part of the Meyers' declaration, but
14 it appears as Exhibit 2B.

15 Counsel. And the photographs historically,
16 your Honor, show at the very bottom vacant lot 117, which
17 is the building site of the Meyers were looking at it.
18 Behind at the very bottom photograph just that the house
19 that appears in the background is the O'Brien's
20 residence, your Honor.

21 So in 1969 you can see at the right-hand corner there
22 was a tall unleafed tree which appears, this had to be
23 taken sometime in the late fall or winter, and, in fact,
24 it is December 1969, and then you can see that
25 immediately thereafter in January of 1970 the Meyers'

1 home is well under construction, and of course in
2 November of 1970 it's about complete. The Meyers'
3 predecessors were the O'Brien predecessors. Could have
4 objected at any time, your Honor, under paragraph four of
5 the covenants, conditions, and restrictions and did not.
6 They could have -- they could have -- they could have
7 objected themselves in 1963 when they were purchasing the
8 O'Brien lot and constructing the O'Brien residence, and
9 they did not do that.

10 And so what we think the case about is is the, if the
11 Court allows evidence on surrounding circumstances, which
12 the Court is doing, then the Court would have to throw
13 out 40 years of conduct by the prior building committee,
14 your Honor, where none of the plaintiff's predecessors
15 came forward. Just didn't do anything. They sat on
16 their hands for 40 years until recently, and then we had
17 this secret reconsideration.

18 The Court has seen all these facts, and which --
19 which -- which really begs the question as why was this
20 lawsuit filed? And we contend that -- that as -- as has
21 been stated at in Exhibit 6 when we started getting into
22 this point, your Honor, two years ago my clients received
23 this at their doorstep from, I believe, plaintiff Mike
24 O'Brien saying he just wanted bits and pieces of this
25 house or of this -- this -- this tree limbed. There

1 wasn't anything about removing the tree or doing the Jay
2 Buhner buzz cut, and I failed to mention, your Honor,
3 that this tree in 1964 was measured by the -- by the
4 photogrammetrist at 70 feet. And that has not been
5 challenged.

6 You've -- you've seen declarations from my clients,
7 the Meyers, saying that they -- that they did trim the
8 top of the tree. They did reduce the height to 63 feet,
9 and they have -- they have maintained it every other year
10 for the last 40 years. They have been doing this
11 bi-annually. And so this is not the case for where this
12 tree has been growing wild.

13 The result of this second CRC decision, your Honor,
14 would be, this is what I have drawn based upon a
15 facsimile of my attempt to show the Court of what will
16 happen here, and I'm referring to Plaintiff's Exhibit C5.
17 They would essentially box the guts or box this tree into
18 a very small, how would I call it, configuration or what
19 they have asked here is -- is to have the tree entirely
20 removed.

21 The point of these historical facts, your Honor, is to
22 show that there was not a total -- well, that there was
23 not any right, there was no covenant for any totally
24 unobstructed views. That was not in the covenants,
25 conditions, and restrictions. Otherwise the language

1 that appears in section ten would -- would have not
2 appeared. All the -- all the -- well, I will step back
3 here. All the plat developer had to do, your Honor, was
4 -- was just simply says there would be no trees, and that
5 any plantings are going to be -- be seriously controlled,
6 and that just did not happen, your Honor.

7 And, in fact, as we get into how the parties conducted
8 themselves, and how they looked at the covenants even as
9 late as one week prior to the first letter that came out
10 of the CRC committee, your Honor, handing out Exhibit 6.
11 Counsel. What we have, your Honor, is we have Gary
12 Albert sending an e-mail to Steve, Steve Molinski, who is
13 the son-in-law of the Meyers, saying to clarify the issue
14 on existing trees at the time of the covenants, aka
15 grandfathered, he notes in paragraph two, original large
16 trees that were already tall enough so that the neighbor
17 did not have a particular view at the time of the
18 covenants could continue to grow higher. There would be
19 no taking of view, since there was no existing view to be
20 taken.

21 And one year after this letter, and after the first
22 decision this -- this secret meeting apparently took
23 place by residents who I'm sure are, in fact, seated in
24 -- in the audience today with the -- the CRC, your Honor,
25 that my clients were not even aware of. This was not

1 brought to their attention. That was done in secret.
2 And the interesting part of this is that even in the
3 letter dated April 27th, 2010, which asks for this
4 boxing, as I've described to the Court, I'm going to hand
5 Exhibit 14 to your Honor. If the Court looks at these
6 photographs you'll see the arbitrary line that has been
7 drawn which Tina Cohen, who is the arborist, says will
8 kill the tree. And we look at the second photograph, all
9 this is getting washed out, but the Court will see
10 multiple trees in the skyline that were taken in February
11 of 1975 by the Hodgsons.

12 So, your Honor, there has never been a pristine,
13 uncluttered view. There's been a panoramic view, but
14 it's never been unobstructed with a view porter that is
15 treeless. And that's what the plaintiffs want in this
16 case that they are not entitled to.

17 THE COURT: Counsel, for your information, you have
18 seven minutes remaining in your total argument time.

19 MR. WILLIAMSON: Okay. Your Honor, if I may
20 reserve -- well, let's see. You are not going to let me
21 reserve anything because of these -- the way the Court's
22 structured argument today.

23 THE COURT: Well, you will have an opportunity after
24 the plaintiff argues.

25 MR. WILLIAMSON: Right. So it's 20 minutes overall?

1 THE COURT: 20 minutes total.

2 MR. WILLIAMSON: Okay. Then I will close here very
3 quickly, your Honor. Your Honor, we have equitable
4 defenses as the Court has read in the cross-motion, and
5 there are good reasons for that. We have -- we have
6 plans relying solely on the statements of Gerald
7 Harkelroad, a former employee, not an original creator of
8 the plat. He was not even the applicant. He was -- he
9 was a manager for them, and what they have attempted to
10 do is to avoid having to do the covenant amendments under
11 paragraph ten to -- to basically take out all of the
12 trees, and they have tried to use Gerald Harkelroad's
13 declaration in an entirely separate case to overcome
14 having to amend these CC & R's to allow the new CRC to
15 come in and supplant and change what the old building
16 committee did 40 years ago. And that is an absolute
17 travesty, your Honor.

18 This is a shameful case that should never have been
19 filed, and for -- for this to be done in secret where the
20 facts are not disputed, this Court should apply these
21 equitable remedies firmly against the plaintiffs, and I
22 think with that I will reserve any remaining time,
23 your Honor.

24 THE COURT: All right. Thank you, counsel. I will
25 hear from counsel for the plaintiffs.

1 MR. SAKAI: Thank you, your Honor. Just one quick
2 thing. I at least object to the, not to the photograph
3 C5 that was presented by Mr. Williamson, but he admits he
4 drew the red line, the square on that C5, and I don't
5 think that's accurate or appropriate. The photograph is
6 in, but not the red line squares.

7 THE COURT: I'm considering the photograph for
8 illustrative purposes only. It's not substantive
9 evidence.

10 MR. SAKAI: All right. Thank you, your Honor.

11 THE COURT: In support of or in opposition to the
12 motions.

13 MR. SAKAI: I guess from the plaintiff's perspective
14 we have got -- Somerset is a hillside community above
15 Factoria and Bellevue. Sweeping views of Mount Rainier,
16 Bellevue, Seattle, the Olympics, Lake Washington, Lake
17 Sammamish. Defendant's argument didn't even focus on the
18 covenants themselves. It's a two sentence provision in
19 section ten. You have read it. I believe that it
20 creates two categories of trees. The existing trees, and
21 the new trees, and the proviso, the conditional maximum
22 height of each of those sets of trees is based upon
23 whether or not those trees unreasonably interfere with
24 the view from another residence. If an existing tree
25 does, then it needs to be cut down. If a new tree does,

1 it can't go to 20 feet. The proviso, the they part has
2 to apply to all trees. If you don't read it that way,
3 then you just get to, in my opinion, the if it's not read
4 that way you have got that ridiculous situation of any
5 tree of any height, two feet tall, whatever it is, it can
6 just keep growing, and that's clearly not what the
7 covenants were intended to do. The height restrict or
8 the view interference has to apply to all the trees.

9 The second sentence of, and it's a two sentence
10 provision in section ten, the second sentence is simply
11 just states who is supposed to determine whether or not
12 there is view interference, and that's the building
13 committee which, of course, now is a CRC. We believe
14 that the determination by the CRC, both in 2009 and 2010
15 is that, in fact, it has -- the tree has interfered with
16 the view, and therefore it needs to come down, and
17 Mr. Williamson points out in one of the decisions, I
18 believe in both perhaps, it states that if the
19 restriction or the cut down that was ordered by the CRC
20 is going to result in the tree dying, then the tree needs
21 to be removed.

22 THE COURT: Well, counsel, if paragraph ten of the
23 covenants is so crystal clear why did the CRC need
24 Mr. Harkelroad's interpretation and clarification that
25 they sought of what it meant?

1 MR. SAKAI: In my opinion, I don't think that they
2 needed to go there. I think that the covenants do say
3 that, and Mr. Harkelroad's declaration simply emphasizes
4 or says exactly, it tracks right along with the fact that
5 the -- that the building committee's provisions -- the
6 building committee's interpretation and the guidelines
7 goes right along with what I'm saying. If you look at
8 the view guidelines they say the provision, the 20 feet
9 provision means two things.

10 First, new trees should not be allowed to grow more
11 than 20 feet. Second, the 20 foot height restriction
12 does not apply to grandfathered trees, provided they do
13 not unnecessarily interfere with the view of another
14 residence. If either tree unnecessarily interferes with
15 the view of another residence it must be trimmed to a
16 lower height so the resulting view restoration is
17 sufficient to prevent the tree from unnecessarily
18 interfering with the view of another resident.

19 That's what I'm saying the covenants say, and that's
20 what the view guidelines are saying based upon what
21 Mr. Harkelroad said. He further, Mr. Harkelroad does go
22 further to say, that the trees we're talking about are
23 the full grown Madronas and the Evergreens, but you
24 still -- that provision of the view covenants is the
25 same. It's the same as what I'm saying it is. And that

1 is the view interference provision does apply to all
2 trees. Whether they are existing or not.

3 THE COURT: Well, where did Mr. Harkelroad come up
4 with his conclusion that only Evergreen trees and fully
5 grown Madronas were referred to as the grandfathered
6 trees?

7 MR. SAKAI: That was -- yes, that was his
8 interpretation of it, and according to his declaration it
9 was because of what was left there, and what he, as he
10 applied it, based upon his -- his time on the building
11 committee --

12 THE COURT: Well, it's clear that paragraph ten
13 doesn't say that. Wouldn't you agree?

14 MR. SAKAI: -- words -- the words Madrona and
15 Evergreen are not in there?

16 THE COURT: It says no trees of any type, any type,
17 other than those existing at the time these restricted
18 covenants were filed should be allowed to grow more than
19 20 feet in height provided they do not unnecessarily
20 interfere with the view of another residence.

21 MR. SAKAI: Correct.

22 THE COURT: Would you also agree with the Court that
23 is perhaps not the most clearly written covenant
24 provision you have seen?

25 MR. SAKAI: If I were drafting it it wouldn't look

1 like that, your Honor. So I would agree with you.

2 THE COURT: You may proceed.

3 MR. SAKAI: If you -- if you look at -- I still
4 believe that if you look at the covenants, and you look
5 at the view guidelines you get to the result that the
6 plaintiffs seek, but if you look at the covenants,
7 especially section ten, in light of the covenants
8 themselves as a whole, you have to remember that there is
9 two things that can block views for the most part in
10 residential neighborhoods. One is trees and one is
11 buildings in the set of covenants that you have before
12 you, section four addresses the buildings. So there it
13 says the building committee, CRC shall have the right to
14 take in consideration, the harmony thereof with the
15 surrounding, the effect of the building or other
16 structures or alterations therein as planned on the
17 outlook of the adjacent neighboring properties and the
18 effect or impairment that said structures will have on
19 the view of the surrounding building sites.

20 So there again you have got these two provisions. One
21 involving trees. One involving buildings. Both said
22 views are critical, and if you don't -- if you let the
23 existing trees go to an unlimited height, no matter what,
24 then you again reach the sort of odd situation where you
25 are going to be protecting views from buildings. You are

1 protecting views from new trees, but you are not
2 protecting them from the existing trees.

3 You also, it seems to me, could end up in an odd
4 situation where a buyer or a builder could say look, I'm
5 going to build a house. It's going to be tall, but you
6 can't stop me because I got this little tree that was
7 here for a little while, and it's going to continue to
8 grow, and it's going to dwarf my house anyway. It just
9 doesn't make any sense to me that you would look at those
10 covenants and restrict new trees, buildings, but not
11 existing trees. I think that the view covenants are
12 intended to protect the views. The view guidelines state
13 that over and over. Mr. Harkelroad says that in his
14 declaration as well. I think that you have to read these
15 things in the covenants, especially section ten, to
16 protect views.

17 I cited to the case of Bloom versus Haverly. I think
18 that's kind of instructive because that's a case where
19 there was a view covenant that where the downhill owner
20 was restricted in terms of the view that was to be
21 preserved was a particular view from 1995. The
22 downhill -- the uphill owner bought the house, bought a
23 property, and he was benefited by it. The covenants
24 actually didn't say anything about building. It did say
25 view port -- it was a view covenant and did restrict and

1 talked about pruning the trees. The downhill owner filed
2 suit asking the court to confirm that he could build
3 whatever he wanted, and that the view covenant that he
4 actually put on the thing would only affect trees, and
5 the court there says, no, we are not going to do that.
6 Even though the view covenant down below doesn't say
7 anything about buildings we are not going to look at it
8 that way. Because again taken with logical conclusion,
9 Bloom's interpretation would allow for the construction
10 of a building that could completely eliminate the view of
11 Puget Sound from the uphill parcel. That interpretation
12 directly conflicts with the expressed intent of the
13 covenant. Although the covenant does not expressly
14 address construction on the downhill parcel we are not
15 persuaded that it affords the owner of the estate of the
16 uphill parcel no protection against construction that
17 interferes with the view. So there you have got a
18 situation where there is a view covenant. There was
19 nothing about buildings, and yet the court said, you
20 know, we are going to -- we are going to say it does
21 affect it.

22 So again you look at the context, look at all the
23 covenants, you see that there is a building restriction,
24 and a view restriction, and both of those things
25 together, at least in my opinion, you have got to come up

1 with and look at it as if all of these, as if the tree
2 has to come down in order to protect the view, and it's
3 an exist -- and that view interference provision does
4 apply to both new trees and existing trees.

5 A couple of points involving the CRC decision. It's
6 interesting that Mr. Williamson has said a couple of
7 times that the 2010 decision by the CRC was somehow
8 secret, secret hearing or secret meeting. I don't really
9 understand why that's an issue. The 2009 decision was
10 made by the CRC. They considered a number of the items
11 that are presented to you by the defendants that the
12 defendants didn't comply with that decision anyway. The
13 e-mail that was cited to you, which I believe it was
14 May 4, 2009, e-mail from Mr. Smolinski to the building
15 committee basically said that they weren't going to
16 comply with the decision anyway. That same e-mail talks
17 about the fact that the evidence presented to the CRC in
18 advance of the 2009 decision that they made was, in fact,
19 an eyes only set of documents. We didn't get them until
20 discovery but the -- but the documents were all presented
21 to the CRC in a secret manner and -- and they were, the
22 CRC, was told not to disclose them to any of the
23 plaintiffs. So it's interesting of the pot calling the
24 kettle black there is this -- the 2009 decision was made
25 against the defendants. They didn't comply with it

1 anyways, but it was based upon information that was
2 provided in secret to the CRC, and not -- we didn't have
3 the benefit of it. And the other documents that were
4 presented in this, the 2010, in light of the 2010
5 decision. Again their photographs attached to the
6 decision. Their photographs have been seen by the
7 parties, and so we don't think that there was anything
8 secret at all.

9 I know that in their brief they talk about the facts
10 that there was this -- that the second decision was
11 somehow unauthorized. There really aren't any specific
12 procedures set out. There is that voluntary mediation
13 procedure, but there really is no procedure set up for
14 either, you know, how many days, who can submit what with
15 respect to the CRC's decision. So I don't disagree that
16 there is nothing in any rules that I can find that talks
17 about reconsideration, but there's nothing that says that
18 they can't consider it again, based upon additional
19 evidence presented to the CRC.

20 Mr. Williamson also makes -- made a claim and has in
21 his briefing also about throwing out 40 years of history.
22 Just so the Court knows, we don't object to the house.
23 The house was built. The house was permitted by the CRC.
24 We get that. The covenants were in place when the Meyers
25 built their house. When the Meyers bought their lot.

1 They knew that the tree was there. They had to know the
2 tree could be the subject of a claim later on. The fact
3 is that they built their house, and we don't have any
4 problem with it. The house itself. That's not been part
5 of it. There's nothing about 40 years of history that
6 needs to be thrown out.

7 This particular, the CRC looks at it, looks at the
8 view interference, makes their decision. I believe that
9 their decision was reasonable that there was a view
10 interference, and I also think that the, as we put in our
11 briefing, I think that they didn't go quite far enough.
12 That they stopped and put their two decisions resulted in
13 the height and the width of the tree being required to be
14 reduced 30 feet to 30 feet in width, and that red line on
15 that 1970 photograph, which is attached to the 2010
16 decision, that's the box, if you will, that the CRC came
17 to the decision, CRC, came to. I believe that at the
18 very least that's where they should go. That's where
19 this Court should go, but I think that it should actually
20 be reduction in height should be more significant than
21 that. Back to the removal of that tree.

22 THE COURT: Thank you, counsel. You have six minutes
23 remaining.

24 MR. WILLIAMSON: Thank you, your Honor. You know, to
25 the point. We are asking this Court to read paragraph

1 ten with paragraph four of the CC & R's. Counsel. This
2 is what I have copied, your Honor. It's not to ask the
3 Court to, of course, accept my argument. But these are
4 the terms and conditions of paragraph four and ten, and
5 that's why we have rules of construction, your Honor.
6 But what plaintiffs want the Court to do is to forget
7 about what the building committee did 40 years ago and
8 then -- and then this last statement, which says that the
9 Meyers, when they bought their house in 1970, should have
10 been aware that the CRC's later to come in and change its
11 mind or change the building committee's mind? That's
12 just -- that's just unbelievable.

13 That's why we have the doctrine of estoppel, and that
14 is what my clients relied upon, the actions of the
15 building committee. The tree was part of their landscape
16 plans. The developer sold them the property with the
17 tree on the lot. The lot was there in 1962. It was
18 there in 1963 when the O'Brien's, predecessors, built
19 their house. It was there later in 1973 when the
20 Saunders built their home.

21 This was a partially obstructed landscape, your Honor.
22 And to -- they are asking the Court to now bring in the
23 view guidelines that the CRC adopted. These were never
24 recorded as covenant amendments. These are just inhouse
25 rules, and even -- even these terms identify a

1 grandfathered tree. A tree that existed on specific
2 property at the time the covenants sought to be enforced
3 were first recorded.

4 So even these view guidelines recognize grandfathered
5 trees, but it's still Exhibit 6, your Honor, we come back
6 to, and that is the CRC chair is showing that, that the
7 CRC was going to distinguish between original large
8 trees, and the Court's focus on the historic facts that
9 plaintiffs have not given. Plaintiffs haven't given the
10 Court anything, other than what we have presented in 1962
11 and 1963. They have -- they have essentially not come in
12 with -- with any of the old plat records. Here we have
13 Gerald Harkelroad not being able to produce anything from
14 that original plat, your Honor, and that is -- that is
15 not acceptable.

16 So getting back to paragraph four and paragraph ten,
17 your Honor, this is what the building committee had
18 before it in -- in those dates. They have open-ended
19 full discretion to do anything on any of these building
20 plans, then they did it. Their decision was binding. It
21 should be enforced. Court should not allow a second
22 guess quarterback, Monday night quarterback appearing 40
23 years later to come in and change it. And so that's
24 where the damage occurs, your Honor. So that's why we
25 have the -- the equitable remedies, and we would ask that

1 the Court grant the defendant Meyers' relief in this
2 case. This case should not have been filed. This case
3 does not need to go to trial, your Honor.

4 THE COURT: Thank you, counsel. Hear from counsel on
5 the plaintiffs. You have six minutes remaining in your
6 allotted time.

7 MR. SAKAI: Your Honor, their -- the historical photos
8 that the plaintiffs have submitted include the
9 photographs that were attached to the 2010 decision by
10 the CRC. They were also attached to the declarations
11 of -- the declaration of Robin Hodgson, which shows what
12 it looked like in 1970. So that's what we have done, and
13 that's what the CRC relied upon when they made their
14 decision.

15 With respect to the view guidelines, it's interesting
16 to note that the defendants seem to distance themselves,
17 at least in oral argument, from the view guidelines, but
18 in their own brief on summary judgment at page three they
19 do say the view guideline was not adopted and recorded by
20 the lot owners as an amendment to the original CC & R's.
21 It nevertheless expresses the intent to preserve the
22 grandfathered trees, and to preserve views observable
23 from a view line at the time the house was built. That's
24 from their brief. So they can't pick and choose which
25 parts of the view guidelines they feel are -- express the

1 intent of the covenants. They are saying that it
2 apparently does, and they -- actually, I'm not even sure
3 that the view guidelines say that, but they -- they are
4 the ones that accept also the view guidelines as an
5 indication of the intent of the covenants themselves.

6 With respect to the notion about the equitable
7 remedies, again, the problem here is that the plaintiffs
8 were not a part of anything related to the approval of
9 the house plans, approval of landscape plans. The
10 covenants apply equally to the Meyers as they do to the
11 plaintiffs. It doesn't make sense for them to complain
12 about the plaintiffs having done something. The
13 plaintiffs haven't. They just weren't involved in it.
14 We are not objecting to the building plans. That's what
15 the building committee approved way back when. There was
16 nothing related to approval of that particular tree. It
17 was there. And that was it. Thank you.

18 THE COURT: Thank you, counsel. Counsel, I will be
19 reviewing again the most important material, in the
20 Court's view, that's been submitted. I will have my
21 decision for you within two weeks from today's date.

22 MR. WILLIAMSON: Thank you, your Honor.

23 THE COURT: Thank you for the quality, if not
24 necessarily the quantity, of the briefing.

25 MR. WILLIAMSON: Apologize, your Honor.

C E R T I F I C A T E

STATE OF WASHINGTON)

) SS.

COUNTY OF KING)

I, Kimberly H. Girgus, Certified Court
Transcriptionist; in and for the State of Washington, do
hereby certify:

That to the best of my ability, the foregoing is a
true and correct transcription of FTR W817 as taken in
the cause of VERNON L. MEYERS and VIRGINIA C. MEYERS,
VERSUS REGINALD PETER SAUNDERS & ELIZABETH, et.al, on the
date and at the time and place as shown on page one
hereto;

That I am not a relative or employee or attorney or
counsel of any of the parties to said action, or a
relative or employee of any such attorney of counsel, and
that I am not financially interested in said action or
the outcome thereof;

Dated this 1st day of March, 2012.

Kimberly H. Girgus

Certified Court Reporter