No. 48332-7-II

SUPREME COURT
STATE OF WASHINGTON

BA & C PROPERTY MANAGEMENT, LLC, Appellant,
v.
CITY OF LAKEWOOD, Respondent

APPELLANT'S PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

BA & C Property Management, LLC asks this court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Petitioner seeks review of that portion of the decision issued on May 2, 2017 by the Court of Appeals, Division II, under Cause No. 48332-7-II affirming the trial court's dismissal of the action brought by BA & C Property Management, LLC. A copy of the decision is in the Appendix at pages A-1 through 8.

C. ISSUE PRESENTED FOR REVIEW

Whether captioning, in error, a petition for writ as one of "certiorari" is determinative when the substance of the petition makes clear that the petitioner was seeking writs of prohibition and mandamus as relief?

D. STATEMENT OF THE CASE

1. Underlying Facts

In early 2014, Respondent filed an administrative action to abate what it considered a nuisance on property owned within Respondent city's jurisdiction Petitioner, primarily due to the condition of the storage structure thereon,. At the time of the administrative action, Respondent had also instituted a criminal action alleging problems with a property

owned by William Chung (the owner of Petitioner) and other properties owned by William Chung and another company he owned. On June 12, 2014, after hearing on the administrative abatement action, the Hearings Officer—Respondent's Building Official—issued his decision. That decision required that Petitioner remove certain items from the property and either repair the structure or demolish, providing a deadline for submitting the appropriate permit application for doing so. The decision further provided that if Petitioner failed to comply by the deadline, Respondent could proceed with abatement by demolishing the structures on the property, the costs of which would be charged to Petitioner. Prior to the deadline for appealing the decision, however, the parties reached a global settlement that included all of the actions or threatened actions against properties owned by William Chung or companies he owned, including the criminal matter and the administrative abatement procedure which involved the property at issue here.

Consistent with the settlement, Petitioner continued with cleanup of the subject property as required by the settlement, and the architect and engineer Petitioner had retained finished with plans necessary the application for a building permit for remodeling structures on the property. Before the plans were completed, however, Petitioner received a letter from Respondent indicating that Respondent was not going to comply with the settlement agreement. When Petitioner contacted Respondent in

response to the correspondence, it learned that the Building Official who had commenced the abatement process originally and who issued the decision had been replaced.

Shortly thereafter, a meeting was held between Petitioner's owner and Respondent's new Building Official on the subject property. At that meeting, the existence of the settlement agreement was reaffirmed, and it was acknowledged that Petitioner was in compliance with the agreement, was planning to repair the structures and should continue with its efforts to complete the building permit application to do so. By letter of October 22, 2014, however, the new Building Official informed Petitioner that Respondent was now denying the existence of the settlement agreement, and that Respondent planned to proceed with demolition, claiming that Petitioner had failed to comply with the June, 12, 2014 decision.

Petitioner nevertheless completed the engineering and architectural plans for the structures' renovation and, in early December, 2014, presented a completed Building Permit Application to Respondent. Respondent, however, refused to accept it, and the Application was neither processed nor denied.

2. The Petition in Superior Court

Following the refusal of Respondent to accept its Building Permit Application, Petitioner commenced the present action in superior court seeking writs (1) prohibiting Respondent from proceeding with abatement

and (2) mandating Respondent to accept and process the building permit application. Supporting Petitioner's requests for relief, the petition alleged that the abatement order contained within that decision entered in the administrative nuisance abatement action was voided and rendered moot by the parties settlement of the matter prior to the period of appeal had expired and that Petitioner had complied with the terms of that settlement. Accordingly, it was alleged that, pursuant to the settlement, Respondent was required to issue a building permit for repair of the primary structure on the property. Additionally, it was alleged, proceeding with the abatement action threatened by Respondent would unlawfully violate the terms of the parties' settlement agreement and cause irreparable damage to Petitioner. Although sets forth the case for the issuance of writs of prohibition and mandamus, in the title of the petition and in the prayer for relief, the writs requested were labeled as writs of certiorari.

3. Decision of the Superior Court

The Superior Court dismissed the petition under CR 12(b)(1) finding that the period for seeking review of the administrative decision by seeking a writ of certiorari had expired prior to the filing of the petition.

4. Decision of the Appellate Court

The Court of Appeals, Division II, upheld the Superior Court's decision dismissing the petition, finding that it was a petition for writ of certiorari and that it was untimely filed.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The writ procedure is part of our common law and its purpose is to restrain the exercise of unauthorized judicial or quasi-judicial power. *Cty. of Spokane v. Local No. 1553, Am. Fed'n of State, Cty. & Mun. Employees, AFL-CIO*, 76 Wash. App. 765, 768 (1995). There are three types: certiorari, prohibition and mandamus. Although the common law writ procedures still exist, they have been effectively supplanted by the statutory procedures set forth under RCW chapter 7.16. The crux of a statutory writ is that a governmental entity exceeded its jurisdiction or acted illegally and there is no other avenue of review or adequate remedy at law. *City of Seattle v. Holifield*, 170 Wn.2d 230, 240 (2010).

In the present case, Petitioner's petition alleges facts supporting the prayer that the court grant relief by mandating that Respondent accept and process building permit application Petitioner presented and prohibiting Respondent from proceeding with its threatened abatement action. The petition is titled, however, "Petition for Writ of Certiorari" despite making no references to review of the underlying administrative decision superseded by the parties' settlement.

Although the petition filed by Petitioner in superior court was entitled "Petition for Writ of Certiorari," it is clear from the factual allegations contained therein that Petitioner was not seeking review of the decision rendered by Respondent's Building Official in the administrative

nuisance abatement action. The petition alleged that the decision was superseded by the parties settlement entered into prior to the time period for appeal of the administrative decision. The settlement provided that Petitioner would have additional time to submit a building permit application for the repair of the buildings on the subject property and that Respondent would not proceed with abatement so long as Petitioner was making progress on completing the application. At issue, as alleged in the petition, was Respondent's and refusal to accept Petitioner's building permit application and threat to proceed with abatement, in breach of parties' settlement agreement.

1. Mistake in the Title of the Petition as a Writ of Certiorari, in Which the Allegations Can Only Be Read as Supporting the Petition's Request for Relief in the Form of Mandamus and Prohibition, Should Not Deny Petitioner the Opportunity to Have Its Claims Decided on the Merits.

Despite the title of the petition, nowhere in the petition do the substantive allegations suggest that the pre-settlement administrative decision was subject to review as the title might suggest. A writ of certiorari is a writ of review. RCW 7.16.030. And the remedy requested in the petition is not review of the administrative decision and the allegations contained to the petition make no suggestion that review was being sought. The petition seeks mandamus and prohibition to remedy Respondent's breach of the settlement agreement. In support that requested relief, what the petition alleges is that Respondent's threat to

proceed with abatement, in violation of the settlement agreement, would be unlawful and that Respondent's refusal to accept and process Petitioner's properly presented building permit application, submitted in compliance with parties' settlement agreement, was likewise unlawful. Based upon those allegations, the petition prays for relief as follows:

A. For a writ of certiorari ***mandating*** *Defendant to accept and process the building permit application* prepared by Plaintiff with regard to the office/warehouse building on the subject property.

B. For a writ of certiorari enjoining and ***prohibiting*** *Defendant City of Lakewood from proceeding with any abatement actions* with regard to the subject property, specifically including demolition of the office/warehouse building on the subject property.

The identification of the writs requested in the prayer for relief, as in the document's tile, as those of certiorari is in direct conflict with the substance of the petition's allegations and the substance of the relief prated for in the petition.

The mistaken inclusion of the term "certiorari" in place of "mandamus" and "prohibition," in clear contradiction with the substance of the petition and the relief it requests should not be determinative. Washington's Superior Court Civil Rules provide guidance for pleading format: "All pleadings under the space under the docket number *should* contain a title indicating their purpose and party presenting them." CR 10(e)(2).(emphasis added). Under the court rules, therefore, the petition here need not have even included a title. If failing to provide a title to the

petition does not affect the validity of the petition, it does not follow that an error in the title affects the validity of the contents of the petition. The State of Georgia addressed this problem--inconsistency between title and contents--with regard to legislation. There, the caption of a statute does not "constitute part of the law and shall in no manner limit or expand on the construction of any Code section." O.C.G.A. § 1-1-7. As would be the case for legislation in Georgia, the title of the petition in this case should not be considered part as of the petition expressed in the allegations and prater for relief set forth in the body of the petition, despite the conflict between the two. The mistaken title in the petition should not deny Petitioner the opportunity to resolve its petition on the merits.

2. The Petition Properly Set Forth a Claim for the Issuance of a Writ of Mandamus.

Mandamus is appropriate to compel a government official or entity "to comply with law when the claim is clear and there is a duty to act." *In re Pers. Restraint of Dyer*, 143 Wash.2d 384, 398, (2001) (citing *Walker v. Munro*, 124 Wash.2d 402, 408 (1994)). If the petitioner's claim is clear and the government entity has a duty to act, mandamus is an appropriate remedy. See *Wash. State Labor Council v. Reed,* 149 Wash.2d 48, 55-56, (2003); *State ex rel. Heavey v. Murphy*, 138 Wash.2d 800, 804-05 (1999); *Dep't of Ecology v. State Fin. Comm.*, 116 Wash.2d 246, 252, (1991). The remedy of mandamus contemplates the necessity of indicating the precise thing to be done and cannot be used to compel a general course of official

conduct, as it is impossible for a court to oversee the performance of such duties. *Walker v. Munro*, 124 Wash. 2d at 407–08. If a duty to act is established, the question becomes whether the circumstances trigger the duty. See *Murphy,* 138 Wash.2d at 805, *Dep't of Ecology*, 116 Wash.2d at 252 (1991).

A writ of mandamus is appropriate here. The specific relief prayed for by Petitioner is for the court to mandate that Respondent City of Lakewood accept and process the building permit application Petitioner attempted to submit in December of 2014. Respondent has a duty to accept properly presented building permit applications for construction within its city limits. And the circumstances here were no exception. Petitioner had complied with the terms of the agreement reached in settlement of the nuisance abatement action, and its application was in the proper form and complete. Accordingly, Respondent cannot lawfully refuse to accept it.

3. The Petition Properly Set Forth a Claim for the Issuance of a Writ of Prohibition.

A writ of prohibition is defined by statute as follows: "It arrests the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person." RCW 7.16.290. The court has stated that:

> [u]nder the statutory writ, the actions of "any tribunal, corporation, board or person, whether they are acting in a judicial, legislative, executive, or administrative capacity, may be arrested, if acting in

> excess of their power." *Winsor v. Bridges*, 24 Wash. 540, 543 (1991). Two conditions must be met to grant the writ: (1) the party to whom the writ is directed must be acting without or in excess of its jurisdiction; and (2) there must be an absence of a plain, speedy, and adequate remedy in the ordinary course of legal procedure. *In re Jones,* 39 Wash.2d 956, 958 (1952). The writ may be issued where it appears the person to whom it is directed is about to act in excess of his or her jurisdiction. *State ex rel. Gillespie v. Kuykendall,* 117 Wash. 415, 419 (1921); *Harris v. Brooker,* 8 Wash. 138, 139 (1894).

Spokane, *supra*. Here, Respondent induced Petitioner to forego appeal of the administrative order by agreeing to extend the time period for submitting a building permit for repair of the structure, which Petitioner did. Proceeding with its threats to proceed with abatement by demolishing Petitioner's structures unlawfully violates the terms of the parties' settlement agreement, and Respondent has not adequate remedy at law.

4. Dismissal by the Trial Court Pursuant to 12(b)(1) Was Error.

For purposes of deciding a motion to dismiss under CR 12(b), all of the factual allegations in Petitioner's petition are accepted as true. *Dennis v. Heggen*, 35 Wn. App. 432, 667 P.2d 131 (1983). In considering such a motion, Washington courts have said "it must appear beyond doubt that the plaintiff can prove no set of facts consistent with the complaint which would entitle them to relief." *See, e.g., Id.* at 419; *see also* Karl B. Tegland & Douglas J. Ende, Washington Handbook on Civil Procedure, Vol. 15A, P. 292, (2011-2012) (allows a party to dismiss a claim only "when it is clear that the plaintiff will never prevail regardless of the facts proven at trial."). Accord, *Bravo v. Dolsen Co.*, 125 Wn.2d 745, 750, 888

P.2d 147 (1995).

Dismissal under CR 12(b) is a drastic remedy granted only sparingly and with care, for the effect of granting the motion is to deny the plaintiff his or her day in court. *Collins v. Lomas & Nettleton Co.*, 29 Wn. App. 415, 628 P.2d 855 (1981).Furthermore, Plaintiffs should be freely allowed to amend the complaint in lieu of a dismissal, if it appears that by doing so the plaintiffs may state a cause of action. CR 15(a); *Caruso v. Local Union No. 690*, 100 Wn.2d 343 (1983).

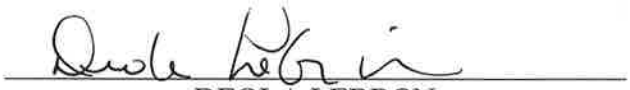
The petition properly set forth claims supporting the remedy requested: the issuance of writs prohibiting Respondent from demolishing the structures on the subject property and mandating that Respondent accept the Building Permit Application presented by Petitioner and this matter should be remanded for trial.

F. CONCLUSION

Petitioner seeks a decision overruling the Court of Appeals and that the matter be remanded for trial.

June 1, 2017

Respectfully submitted,



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Filed
Washington State
Court of Appeals
Division Two

May 2, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

BA & C PROPERTY MANAGEMENT, LLC, a Washington Limited Liability Company, Appellant, v. CITY OF LAKEWOOD, a Washington Municipal Corporation, Respondent.	No. 48332-7-II UNPUBLISHED OPINION

WORSWICK, J. — BA & C Property Management LLC appeals the superior court's order dismissing its petition for a writ of certiorari for lack of jurisdiction. BA & C contends that its petition sufficiently established jurisdiction because its petition actually sought writs of prohibition and mandamus. Because BA & C petitioned the trial court only for a writ of certiorari, and its petition failed to establish jurisdiction, we affirm.

FACTS

BA & C owns property located in Lakewood. Following inspections of the property, the City of Lakewood's building official made a preliminary determination that the property was unfit for human habitation or other uses and constituted a public nuisance. On May 21, 2014, Lakewood's hearing examiner conducted a hearing regarding the property. At the hearing, William Chung, representing BA & C, acknowledged the poor condition of the property and did not contest that many of the structures thereon violated codes. Lakewood and Chung agreed that

Chung would have until 5:00 p.m. June 4 to submit his plan to correct the violations, clean up the property, and submit a detailed written work plan.

On June 16, having never received any such plan from Chung, Lakewood entered a formal order before the building official in accordance with the chapter 15A.34 Lakewood Municipal Code (LMC) and chapter 35.80 RCW directing abatement of the property. The order directed BA & C to submit complete applications for permits to demolish and/or repair the building no later than July 16 (30 days from the date of the order). The order also directed BA & C to demolish the building on the property no later than August 15, or to complete repairs no later than 60 days after repair permits were issued. The order contained a notice that BA & C could appeal the order within 30 days as allowed by RCW 35.80.

On August 5, having never received any applications for permits to demolish or repair the property, Lakewood sent a letter to BA & C requesting access to the property to proceed with abatement. In response, BA & C arranged a meeting for August 14 to discuss the abatement. According to BA & C, at that meeting, Lakewood granted BA & C additional time to submit an application for a building permit. Lakewood contends that no additional time was granted.

In early December, BA & C attempted to submit a building permit application for repairs to the property. Because the property was in abatement, Lakewood refused to accept the application and indicated its intention to proceed with the abatement procedures.

BA & C then petitioned the superior court for a writ of certiorari under chapter 7.16 RCW. In its petition, BA & C claimed that Lakewood and BA & C had reached a settlement suspending the abatement process and permitting BA & C an unspecified length of additional time to submit a building permit application. The petition sought a writ of certiorari enjoining

and prohibiting Lakewood from proceeding with the abatement and mandating Lakewood to accept and process BA & C's building permit application, and also sought a judgment for attorney fees and costs.

On Lakewood's CR 12(b)(1)[1] motion, the superior court dismissed the petition for lack of jurisdiction.

ANALYSIS

BA & C contends that its petition for a writ was sufficient to establish the superior court's jurisdiction, and therefore the superior court erred by dismissing the claim under CR 12(b)(1).[2] BA & C specifically argues that although its petition was entitled "Petition for Writ of Certiorari," the petition actually sought a writ of prohibition and a writ of mandamus. We disagree.

To resolve BA & C's arguments, we must first determine the type of writ it sought in superior court. For the first time on appeal, BA & C contends that "[a]lthough Appellant's Petition was entitled one 'for a writ of certiorari' the allegations set forth and remedies requested therein clearly establish that the petition was for writs of prohibition and mandamus." Reply Br. of Appellant 2. But the record does not support BA & C's attempt to characterize the petition's title as a simple scrivener's error.

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[1] CR12(b)(1) establishes a defense for "lack of jurisdiction over the subject matter." "Without subject matter jurisdiction, a court or administrative tribunal may do nothing other than enter an order of dismissal." *Inland Foundry Co., Inc. v. Spokane Cty. Air Pollution Control Auth.*, 98 Wn. App. 121, 123-34, 989 P.2d 102 (1999).

[2] Lakewood argues that we should not consider the merits of BA & C's claims because it failed to comply with the Rules of Appellate Procedure. We may address an improperly briefed legal or factual issue if the basis for the claim is apparent. *State v. Young*, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978). We exercise our discretion to consider this argument.

BA & C's petition refers only to a writ of certiorari. Moreover, at no point during the hearing on Lakewood's motion to dismiss, or in any of the briefing to the superior court, did BA & C state that it was seeking a writ of prohibition or a writ of mandamus. In fact, at a hearing on BA & C's motion for reconsideration of the dismissal order, when the superior court asked BA & C what its original pleading was, BA & C replied, "It was a petition to review."[3] Verbatim Transcript of Proceedings (Oct. 30, 2015) at 7.

A petitioner seeking a statutory writ must satisfy different conditions for each type of writ: certiorari, prohibition, or mandamus. The only type of writ BA & C requested at any point prior to this appeal was a writ of certiorari. The parties argued under a theory of writ of certiorari, thus the superior court made its decision based on the petition for a writ of certiorari. By now changing its theory of relief, BA & C asks us to consider issues raised for the first time on appeal. Under RAP 2.5(a), we decline to consider these issues.

Although BA & C appears to abandon its argument that it was entitled to a writ of certiorari, we nonetheless address whether the superior court properly denied BA & C's petition for a writ of certiorari because it was the only theory of relief considered by the superior court.

RCW 7.16.040 authorizes the superior court to grant a writ of review when an inferior board, exercising judicial functions, has exceeded its jurisdiction or acted illegally, and there is no appeal, nor any plain, speedy and adequate remedy at law. The absence of a right of appeal or plain, speedy, and adequate remedy at law is recognized as an essential element of the superior court's jurisdiction to grant a statutory writ of review. *City of Seattle v. Holifield*, 170 Wn.2d

[3] The statutory writ of certiorari is also known as the statutory writ of review. RCW 7.16.030.

230, 240, 240 P.3d 1162 (2010); *see Bridle Trails Cmty. Club v. City of Bellevue*, 45 Wn. App. 248, 250-51, 724 P.2d 1110 (1986) (it was "apparent" that review under chapter 7.16 RCW was unavailable because direct appeal to superior court was provided for by the city code). "If any of the factors is absent, then there is no jurisdiction for superior court review." *Newman v. Veterinary Bd. of Governors*, 156 Wn. App. 132, 140, 231 P.3d 840 (2010). "Where a party fails to pursue a statutory right to a direct appeal, a petition for writ of review is properly denied on that basis alone." *Coballes v. Spokane Cty.*, 167 Wn. App. 857, 867, 274 P.3d 1102 (2012). We review an order of dismissal of a petition for a writ based on lack of jurisdiction under CR 12(b)(1) de novo. *Int'l Longshore and Warehouse Union, Local 23 v. Port of Tacoma*, 154 Wn. App. 373, 378, 225 P.3d 433 (2010); *Newman*, 156 Wn. App. at 140.

Here, the hearings examiner entered a formal order on June 16, 2014 directing abatement of the property. BA & C failed to show an absence of a right of appeal or plain, speedy, and adequate remedy at law. BA & C merely failed to timely appeal the June 16, 2014, order from the hearings examiner.[4] Because BA & C failed to show an absence of a right to a direct appeal, the superior court did not have jurisdiction to consider the writ, and the superior court properly dismissed BA & C's petition for writ of certiorari.

BA & C also seems to base its petition on Lakewood's refusal to accept its building permit application in December 2014. See Clerk's Papers at 6 ("Defendant's refusal to accept Plaintiff's building permit application is unlawful and violates the terms of its settlement."[5]).

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[4] RCW 35.80.030 permits an aggrieved person to appeal the hearing examiner's decision to the superior court within 30 days.

[5] The parties strongly disagree as to whether any such "settlement" was ever reached between BA & C and Lakewood. The overwhelming evidence in the record suggests that no settlement

However, BA & C's claim is no more meritorious on this basis. The city clerk refused to accept BA & C's permit application because the property in question was in abatement due to BA & C's failure to appeal the June 16 order. Moreover, BA & C cannot show that the clerk was exercising any judicial or quasi-judicial functions when she rejected the application. RCW 7.16.040; *see Hood Canal Sand and Gravel, LLC v. Goldmark*, 195 Wn. App. 284, 305, 381 P.3d 95 (2016) (holding that the superior court properly dismissed a request for statutory writ of certiorari where the petitioner failed to show that the Department of Natural Resources exercised any judicial or quasi-judicial functions when it granted an easement over the petitioner's property).

ATTORNEY FEES

Lakewood also argues it is entitled to attorney fees on appeal. Specifically, Lakewood contends that LMC 15A.05.090(M) authorizes an attorney fee award because it permits recovery of the costs of staff time in vacating and closing a nuisance. We disagree.

Reasonable attorney fees are recoverable on appeal if authorized by statute, rule, or contract. RAP 18.1(a); *Pierce County v. State*, 159 Wn.2d 16, 50, 148 P.3d 1002 (2006). To determine whether LMC 15A.05.090(M) authorizes an award of attorney fees, we interpret the ordinance. The rules of statutory interpretation apply equally to ordinances. *World Wide Video, Inc. v. City of Tukwila*, 117 Wn.2d 382, 392, 816 P.2d 18 (1991). Thus, when construing an ordinance, our fundamental objective is to carry out the legislative body's intent. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002).

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agreement was ever reached. However, even assuming the settlement did occur, BA & C cannot satisfy the conditions for a statutory writ of certiorari.

In determining the legislative body's intent, we first examine the plain language and meaning of the ordinance. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). When an ordinance has a plain meaning, we give the plain meaning effect. *Campbell & Gwinn*, 146 Wn.2d at 11. We do not add words to the plain meaning of an ordinance because it assumes the legislative body intended to use the words it used and intended not to use words it did not use. *See State v. Nelson*, 195 Wn. App. 261, 266, 381 P.3d 84 (2016).

LMC 15A.05.090(M) provides: "[T]he cost of vacating and closing shall include . . . (iii) all other reasonable expenses, including but not limited to, the costs of staff time, materials, incidentals, mailing, publishing, and recording notices." RCW 35.80.030(1)(h) permits municipalities to adopt an ordinance, like LMC 15A.05.090(M), providing for recovery of "the amount of the cost of such repairs, alterations or improvements; or vacating and closing; or removal or demolition [of a nuisance] by the board or officer." RCW 35.80.030(1)(h) does not explicitly permit municipalities to adopt an ordinance providing for attorney fees as the result of vacating and closing a property.

LMC 15A.05.090(M) permits Lakewood to recover costs of staff time in vacating and closing a nuisance. However, the ordinance's inclusion of the costs of materials, mailing, and recording notices in its definition of reasonable expenses incurred in the cost of vacating and closing suggests that reasonable expenses are limited to those expenses actually incurred during nuisance abatement. Because the ordinance makes no mention of attorney fees or the costs of defending nuisance abatement, we presume the legislative body did not intend to include attorney fees in its definition of reasonable expenses. Accordingly, LMC 15A.05.090(M) does

not permit an award of attorney fees for defending the vacating and closing of a nuisance. Therefore, Lakewood is not entitled to an award of reasonable attorney fees under RAP 18.1(a).

In conclusion, we affirm the superior court's order dismissing BA & C's petition for a statutory writ for lack of jurisdiction, and deny Lakewood's request for attorney fees.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Worswick, J.

We concur:

Maxa, A.C.J.

Sutton, J.

Supreme Court of the State of Washington

In re:	No.
BA & C PROPERTY MANAGEMENT, Petitioner,	**Return of Service**
and	
CITY OF LAKEWOOD, Respondent.	

I Declare:

1. I am over the age of 18 years, and I am not a party to this action.

2. I served the following documents to the Respondent: City of Lakewood

   [X] Appellant's Petition for Review

3. The date, time and place of service were:

   Date: June 1, 2017 @ 3:44 p.m.

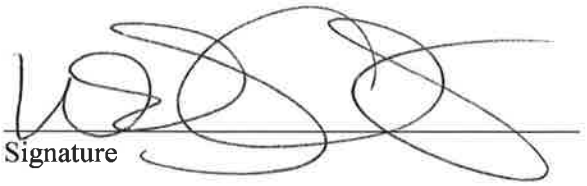
   Address: Service was effected at City Attorney for City of Lakewood.
   City Hall address: 6000 Main Street SW Lakewood, WA 98499-5027

4. Service was made:

   [X] By delivery in person to the Lakewood City Attorney Office.

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

Signed at (city) Olympia, WA on (date) June 1, 2017



Signature

Wendy Chenoweth
Print or Type Name

Fees:

Service	N/A
Mileage	N/A
Total	N/A

(Tape Return Receipt here/, if service was by mail.)

File the original Return of Service with the clerk. Provide a copy to the law enforcement agency where protected person resides if the documents served include a restraining order signed by the court.