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STATE OF WASHINGTON

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No. 48332-7-II

SUPREME COURT  
STATE OF WASHINGTON

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

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APPELLANT'S REPLY TO RESPONDENT'S ANSWER

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## I. ARGUMENT

### A. The Court of Appeals Below Erred in Affirming the Superior Court's Order Dismissing the Petition for Writ for Lack of Jurisdiction.

Despite Respondent's argument to the contrary, the Petition for Review asks the Court to overturn the decision of the Court of Appeals, Division II, alleged to have been made in error, affirming the trial court's order dismissing the Petition for Writ under CR 12(b). Moreover, the Appellate Court erred in its conclusion that the Petitioner's argument that the pleadings properly set forth its claim that the writs it was seeking were those of mandamus and prohibition and not certiorari as the petition's title suggested.

### B. The Petition Involves an Issue of Substantial Public Interest that Should be Determined by the Supreme Court

The Rules for Appellate Procedure provide that: "A petition for review will be accepted by the Supreme Court ...[i]f the petition involves an issue of substantial public interest that should be determined by the Supreme Court.: RAP 13.4(b)(4). In the making that determination, it should be kept in mind that the RAPs are intended to "be liberally interpreted to promote justice and facilitate the decision of cases on the merits." RAP 1.2(a). "Moreover, the Court may choose to disregard the RAPs if the interests of justice require. RAP 1.2(c)." *State v. Watson*, 155 Wn.2d 574, 577-78 (2005) (cited with approval in *In re the Personal Restraint Petition*

of *Flippo*, 185 Wn.2d 1032 (2016)).

[E]ven traditional standing to bring a lawsuit is not an absolute bar to a court's review where an important issue is at stake. *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 803 (2004) (holding that when an issue "is of substantial public importance, immediately affects significant segments of the population, and has a direct bearing on commerce, finance, labor, industry, or agriculture," we will "take a 'less rigid and more liberal' approach to standing." (quoting *Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish County*, 77 Wn.2d 94, 96 (1969))). Likewise, courts may hear cases that have been rendered completely moot if an issue is of substantial public interest. *Cathcart-Maltby-Clearview Cmty. Council v. Snohomish County*, 96 Wn.2d 201, 208 (1981) ("A moot case will be reviewed if its issue is a matter of continuing and substantial interest, it presents a question of a public nature which is likely to recur, and it is desirable to provide an authoritative determination for the future guidance of public officials."); see also *State v. Ross*, 152 Wn.2d 220, 228 (2004).

*Watson*, 155 Wn.2d at 578.

The legal effect of conflict between the title to pleadings and the substance of those pleadings factual allegations and request for relief, at issue here, is one of first impression. Accordingly, as in *Watson*, guidance on that issue is one of substantial public interest.

C. The Issues Raised on Appeal in by Petitioner in the Court of Appeals, Division II, and in Its Petition for Review Here Are the Same Issues Raised in Its Memoranda Filed in Response to Respondent's Motion to Dismiss.

Respondent suggests that the issues set forth in this Petition and in the appeal below by Petitioner were not raised in the trial court. However, that is simply not true. The trial court's decision

appealed in this matter was the granting of Respondent's motion to dismiss pursuant to CR 12(b)(1).<sup>1</sup>

In its response to Respondent's motion, filed in the trial court on September 23, 2015, Petitioner argued that the issue raised in the petition for writ was not, as Respondent characterized, the validity of the administrative order entered by the Respondent's Building Official, but Respondent's actions in violation of the settlement agreement reached by the parties after entry of the order and before the period for appealing that order had expired. "The Petition ... has nothing to do with RCW 35.80. It has to do with Respondent's illegal refusal to accept and process Petitioner's Building Permit Application and its threat to illegally tear down Petitioner's structures under claim of law." Petitioner's Memorandum in Opposition to Respondent's Motion to Dismiss filed September 23, 2015, p. 4. Petition further stated in that memorandum:

Respondent claims that the petition filed herein is in derogation of the appeals procedures set forth in RCW Chapter 35.80, which govern the abatement procedures commenced by Respondent against Petitioner's property. However, as the Petition clearly alleges, on July 10, 2014, before the thirty day appeal period applicable to the Building Examiner's decision had expired, the parties reached settlement of the abatement action, rendering the issue of appeal moot. The Building Official's decision was thus supplanted by the settlement, and there was nothing to

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<sup>1</sup> In that a motion to dismiss under CR 12(b)(1) is on the pleadings, there is no factual record.

appeal under RCW Chapter 35.80. Consequently, Respondent cannot argue that the Petition was untimely.

More importantly, the triggering action of Respondent was not the Building Official's decision, which had been settled, but Respondent's failure to abide by the settlement the parties had reached by: (1) refusing to accept and process the Building Permit Application and (2) threatening to demolish Petitioner's structures on the subject property. These points are clearly alleged and set forth in the Petition, and Respondent fails to argue any basis within the parameters of Petitioner's pleadings from which it could be concluded that RCW Chapter 35.80 applies and the Petition was filed late.

*Id.*

Petitioner has consistently argued that point in its appeal to the Court of Appeals, Division II, and in the Petition for Review herein, and the issue is properly before the Court here.

## II. CONCLUSION

For the reasons set forth above and in the Petition for Review, the Court should overturn the decision of the Court of Appeals, Division II, affirming the decision of the trial court dismissing this matter and remand the case to the trial court for trial on the merits.

July 11, 2017.

Respectfully submitted,



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