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SUPREME COURT
STATE OF WASHINGTON
Dec 15, 2014, 3:31 pm
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No. 90973-3

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SUPREME COURT OF THE STATE OF WASHINGTON

PORT OF OLYMPIA, a municipal corporation of the State of
Washington,

Petitioner,

v.

ARTHUR WEST and JERRY DIERKER,

Respondents.

**NOTICE OF VOLUNTARY WITHDRAWAL OF PETITION
AND
MOTION TO DISMISS REVIEW**

HEATHER L. BURGESS, WSBA #28477
KELLY T. WOOD, WSBA #40067
Phillips Burgess PLLC
724 Columbia Street NW, Suite 140
Olympia, Washington 98512
(360) 742-3500
Attorneys for Petitioner

 ORIGINAL

A. Identity of Moving Party

The Port of Olympia (the “Port”) is a municipal corporation of the State of Washington, Defendant below, Respondent at the Court of Appeals, and now Petitioner before this Court.

B. Statement of Relief Sought

Pursuant to RAP 18.2, the Port voluntarily withdraws its Petition for Review and respectfully requests that the Court dismiss review of the case.

C. Facts Relevant to Motion

On August 5, 2014, the Court of Appeals issued an unpublished decision in this case (Court of Appeals No. 43876-3-II), reversing a previous Superior Court dismissal of Respondents’ Public Records Act claims for want of prosecution and remanding the case to Superior Court for a show cause hearing on the only remaining claim: Respondent Arthur West’s Public Records Act claim. The Court of Appeals affirmed dismissal of Respondent Jerry Dierker for lack of standing because he was not a party to the Public Records Act request forming the basis of Mr. West’s claim. The Court of Appeals also summarily affirmed a prior dismissal of Mr. West’s and Mr. Dierker’s SEPA claims for lack of standing. The Court of Appeals denied all parties’ requests for attorneys’ fees.

On October 10, 2014, Petitioner, the Port of Olympia, filed a Petition for Review with this Court of the Court of Appeals’ decision regarding Mr. West’s failure to prosecute his Public Records Act claim. No other parties filed Petitions for Review regarding other issues in the case, although this Court granted Mr. Dierker’s “Motion for Extension of Time, et al.” allowing parties until January

21, 2015, to file any answers to the Port's Petition for Review.¹ Subsequent to filing its Petition, the Port and Respondent, Mr. West, reached an amicable settlement that fully and finally resolves all of Mr. West's claims, including Mr. West's requests for attorneys' fees.

D. Grounds for Relief and Argument

Under RAP 18.2, an appellate court may, in its discretion, "dismiss review of a case on the motion of a party who has filed a notice of appeal, a notice for discretionary review, or a motion for discretionary review by the Supreme Court." The Port and Mr. West in this case have reached an amicable settlement that fully resolves Mr. West's remaining claims, including his claim for attorneys' fees and costs, and that obviates all issues raised in the Port's Petition. As a result, the Port voluntarily withdraws its pending Petition for Review and requests that the Court dismiss review of the case pursuant to RAP 18.2.

E. Conclusion

Accordingly, the Port respectfully requests that this Court dismiss review of this case without an award of costs or fees to any party.

RESPECTFULLY SUBMITTED this 15th day of December, 2014.

PHILLIPS BURGESS PLLC

By: 

HEATHER L. BURGESS, WSBA #28477
KELLY T. WOOD, WSBA #40067
Attorneys for Petitioner Port of Olympia

¹ The Port inadvertently omitted Mr. Dierker from service of its Petition for Review, an error that has been remedied.

DECLARATION OF SERVICE

I, Deanna L. Gonzalez, declare as follows:

I am a resident of the State of Washington. I am over the age of 18 years and not a party to the within entitled cause. I am employed by the law firm of Phillips Burgess PLLC, whose address is 724 Columbia Street NW, Suite 140, Olympia, Washington 98501.

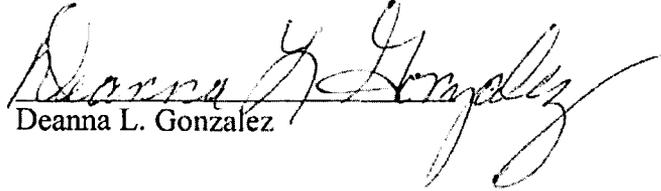
On December 15, 2014, I sent out for service upon the below-listed parties at the addresses and in the manners described below, the following document appended hereto:

- Notice of Voluntary Withdrawal of Petition and Motion to Dismiss Review

Arthur West 120 State Avenue NE, #1497 Olympia, Washington 98501 <i>Pro Se Respondent</i>	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
	<input type="checkbox"/>	Hand Delivered via Legal Messenger
	<input type="checkbox"/>	Overnight Courier
	<input type="checkbox"/>	Electronic Court Efile
	<input checked="" type="checkbox"/>	Electronically via email: <u><i>awestaa@gmail.com</i></u>
	<input type="checkbox"/>	Facsimile
Jerry L. Dierker, Jr. 2826 Cooper Point Road NW Olympia, Washington 98502	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
	<input type="checkbox"/>	Hand Delivered via Legal Messenger
	<input type="checkbox"/>	Overnight Courier
	<input type="checkbox"/>	Electronic Court Efile
	<input type="checkbox"/>	Electronically via email:
	<input type="checkbox"/>	Facsimile
Kimberly A. Hughes Senior Legal Counsel Weyerhaeuser Post Office Box 9777 Federal Way, WA 98063	<input type="checkbox"/>	U.S. Mail, postage prepaid
	<input type="checkbox"/>	Hand Delivered via Legal Messenger
	<input type="checkbox"/>	Overnight Courier
	<input type="checkbox"/>	Electronic Court Efile
	<input checked="" type="checkbox"/>	Electronically via email: <u><i>kim.hughes@weyerhaeuser.com</i></u>
	<input type="checkbox"/>	Facsimile

I declare under penalty of perjury under the laws of the State of
Washington that the forgoing is true and correct.

DATED at Olympia, Washington this 15th day of December, 2014.


Deanna L. Gonzalez

OFFICE RECEPTIONIST, CLERK

To: Deanna Gonzalez
Cc: Heather Burgess; Kelly Wood
Subject: RE: 90973-3 / Port of Olympia v Arthur West, et al

Received 12-15-14

From: Deanna Gonzalez [mailto:dgonzalez@phillipsburgesslaw.com]
Sent: Monday, December 15, 2014 3:31 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Heather Burgess; Kelly Wood
Subject: 90973-3 / Port of Olympia v Arthur West, et al

On behalf of Heather Burgess and Kelly Wood, attorneys for Petitioner, Port of Olympia, attached please find our Notice of Voluntary Withdrawal of Petition and Motion to Dismiss Review in the above-entitled matter.

Thank you,
Deanna

Deanna Gonzalez
Legal Assistant | Phillips Burgess PLLC
Olympia: 360-742-3500 | 724 Columbia St. NW Suite 140 | Olympia WA 98501
Tacoma: 253-292-6640 | 505 Broadway St. Suite 408 | Tacoma WA 98402
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