NO. 91886-4

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

WOODS VIEW II, LLC and DARLENE PIPER,

Appellants,

v.

KITSAP COUNTY,

Respondent,

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

Kitsap County was the Respondent in the Court of Appeals and is the Respondent with respect to the Petition for Review. Kitsap County asks this Court to deny discretionary review.

II. ISSUES PRESENTED FOR REVIEW

Kitsap County believes the issues presented for review may best be stated as follows:

A. Woods View's claims against Kitsap County have already been evaluated and rejected by four separate courts.[1] Has Woods View demonstrated that its claims must be reviewed by yet another court?

B. Whether the trial court and the Court of Appeals properly determined that Kitsap County's expressions of concern about the Woods View development did not constitute tortious interference.

C. Whether dismissal was also warranted because Kitsap County did not cause termination of Woods View's relationship with The Legacy Group or with Karcher Creek Sewer District.

D. Whether Pleas v. City of Seattle, and Westmark Development Corp. v. City of Burien are distinguishable from this case.

E. Whether Kitsap County's communications with the state and Karcher Creek were also protected by *Noerr-Pennington* immunity.

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[1] The four courts which have rejected Woods View's claims are (1) the U.S. District Court for the Western District of Washington; (2) the Ninth Circuit Court of Appeals; (3) Pierce County Superior Court; and (4) the Washington Court of Appeals, Division II. (See Procedural History, pages 6-7, infra.)

III. COUNTERSTATEMENT OF THE CASE

A. Factual Background.

This case arises from the efforts of Appellant Woods View II, LLC ("Woods View") to develop real property in Kitsap County, and Kitsap County's actions and statements in relation to that proposed development. The project failed in 2009 due to the collapsing real estate market and Woods View's concomitant inability to obtain development financing for the project.

Woods View and its former managing member, Darlene Piper ("Piper") sued Kitsap County, contending that the County should not have expressed its concern that the proposed development could be in conflict with the Growth Management Act ("GMA"), RCW 36.70A. Woods View contended that Kitsap County did not have the right to express those legal concerns to the Washington Department of Health and others.

In 2006, Woods View proposed a residential development which contemplated building 78 single family homes on the 19.8 acre Woods View site (nearly 20 times the density of the surrounding rural zone). Woods View proposed to avoid the usual lot size restrictions for on-site septic by using a Large On-Site Sewer System ("LOSS"). A LOSS does not involve a separate septic system for each residence, but rather utilizes a shared off-site waste treatment system and drainfield. (CP 3).

Woods View applied to Kitsap County for a Site Development Activity Permit ("SDAP") for the project. (CP 4). Shortly thereafter,

Woods View submitted an application for county approval under the State Environmental Policy Act ("SEPA"). (CP 4). Because Kitsap County is not the agency responsible for approving or disapproving a LOSS system, Woods View submitted an application for approval of the proposed LOSS directly to the Washington Department of Health (DOH).

DOH regulations require an applicant for a LOSS to submit a "Management Plan" which identifies an entity to act as manager of the system. In early fall 2006, Woods View proposed that Karcher Creek Sewer District act as manager of the proposed LOSS. (CP 5). Kitsap County sent a letter to the state in October 2006 expressing the County's concern that a dense development utilizing a LOSS outside of an Urban Growth Area (UGA) could run afoul of the Growth Management Act's prohibition on public sewer systems in the rural areas of the County. (RCW 36.70A.110(4); RCW 57.16.010). Kitsap County expressed similar concerns to Karcher Creek, as a part of the County's statutorily mandated role to review and approve the proposed merger of Karcher Creek and another district. (CP 151-154). Based on the evident illegality of a public entity serving as operator, Woods View made the business judgment in October 2006 that Karcher Creek would not serve as operator of the LOSS. Woods View advised both DOH and Kitsap County of its decision. (CP 1478-1479).

Kitsap County issued a Mitigated Determination of Nonsignificance under SEPA for the Woods View project on or about

January 4, 2007. (CP 4). Kitsap County issued a decision approving the SDAP on November 26, 2007. The project was strongly opposed by a neighborhood group, however, and the neighbors filed an appeal of SDAP approval. The Kitsap County Hearing Examiner heard the appeal and issued approval to Woods View on June 9, 2008. (CP 4). The neighbors appealed the Examiner's approval to the Kitsap County BOCC, and then to superior court, each of which upheld the Examiner's approval.[2] Final approval by superior court came in May, 2009. (CP 1352-54).

In the meantime, on or about March 19, 2008, Richard Benson of DOH approved Woods View's application for a LOSS, on the express condition that ownership of the property served by the LOSS remain under single ownership. (CP 10-11). Woods View consented to this condition, and recorded a "Covenant to Retain Single Ownership," in March 2008. (CP 142-144).

Much later, however, after the County's SDAP approval was upheld by superior court, Woods View concluded that it could not obtain development financing for the project if it kept ownership of the Woods View subdivision with a single entity. (CP 1406). Due to a variety of factors, including weakness in the regional housing market and bank failures, Woods View lost its original financing for the project. (CP 1413-1415; 1404). In the spring of 2009 Woods View made contact with a

[2] Woods View did not appeal any aspect or condition of the County's permit decisions.

potential private development lender, the Legacy Group ("Legacy"). Legacy told Woods View that it was unwilling to finance the project so long as the LOSS approval was conditioned on ownership of all lots in a single entity. (CP 122-23).

It was during its negotiations with Legacy that Woods View changed course and applied to DOH for a modified LOSS permit -- with individual lot ownership. On August 31, 2009, Woods View submitted the amended LOSS application, which asked DOH to waive the requirement of single ownership of the properties to be served by the LOSS. Mr. Benson of DOH asked for additional information from Woods View in November 2009, including proof of an agreement with a guarantor. The guarantor agreement was provided to DOH on November 6, 2009. (CP 78-79;1421-1422). By that time, the original loan on the property was already in default. (CP 1421).

Upon learning that Woods View was attempting to modify its septic permit proposal, Kitsap County employees sent emails to DOH in September 2009, expressing the view that the modified LOSS proposal appeared to violate the GMA's prohibition of Urban Capital Facilities in Rural areas. DOH and the Attorney General's office disagreed with Kitsap County's legal position, and the County's emails in September 2009 did not affect the timing or result of DOH's LOSS decision. (CP 94-99). DOH took Woods View's application under advisement, but did not

render a decision on the amended LOSS application until nearly a year later, on August 24, 2010. (CP 92-93). By then, the project had collapsed.

Throughout this period, Legacy continued to stress to Woods View that it would not make a development loan unless and until approval of the modified LOSS came from DOH. (CP 1447-1448). Indeed, Legacy had determined that it would not make a loan until Woods View had applied for and received building permits. (CP 1445-1451). As noted above, DOH's approval of the modified LOSS (with individual homeowners sharing in the ownership of the LOSS) did not issue until after foreclosure proceedings were underway. (CP 80-81). The property was acquired by the lender, First Citizens Bank, on or about October 1, 2010. Woods View never applied to Kitsap County for building permits.

B. Procedural History.

In December 2009 Woods View and Ms. Piper filed a lawsuit against Kitsap County and several of its officials in Pierce County Superior Court. (Case No. 09-2-16487-3). The lawsuit sought recovery based on a variety of state and federal claims. Kitsap County removed the lawsuit to federal court. On June 22, 2011, U.S. District Court Judge Benjamin Settle dismissed with prejudice all of the federal claims, including claims for violation of procedural due process, substantive due process and constitutional "takings." The Ninth Circuit Court of Appeals affirmed. (CP 1476).

Woods View refiled a lawsuit in Pierce County Superior Court on July 18, 2011, reasserting its state law claims (negligence, tortious interference and takings) against Kitsap County. On December 12, 2012 the Honorable Susan K. Serko granted Kitsap County's motion for summary judgment, dismissing all of the remaining state law claims. (CP 1990-1991). Woods View appealed to the Washington Court of Appeals, Division II. Following briefing and argument, the Court of Appeals unanimously affirmed the dismissal of the state law claims.

In its Petition for Review, Woods View does not dispute that its negligence and takings claims were properly dismissed. The Petition for Review addresses only the dismissal of the claim for tortious interference with Woods View's contracts or business expectancy.

IV. ARGUMENT

A. The County's Expressions of Concern About the Woods View Development Did Not Constitute Tortious Interference.

Woods View alleged that Kitsap County intentionally interfered with its business expectancy. But as the trial court and the Court of Appeals determined, that theory is not available to Woods View, in view of the undisputed facts of this case.

A claim for tortious interference requires: (1) a business relationship or expectancy; (2) knowledge by the defendant of the relationship; (3) intentional interference that results in termination of the relationship; (4) an improper purpose or means; (5) resultant damages. Leingang v. Pierce County Medical Bureau, 131 Wn.2d 133, 157, 930

P.2d 288 (1997). Liability will not be found unless the plaintiff shows that the defendant interfered with the relationship intentionally and for an improper purpose. Commodore v. University Mechanical Contractors, Inc., 120 Wn.2d 120, 137, 839 P.2d 314 (1992). When the defendant acts not for the purpose of interfering with the business relationship but rather interferes in an incidental manner, no liability arises. Burke & Thomas, Inc. v. International Organization of Masters, 21 Wn. App. 313, 585 P.2d 152 (1978), aff'd, 92 Wn.2d 762. In other words, interference must be "purposefully improper." Omega Environmental, Inc. v. Gilbarco, Inc., 127 F.3d 1157 (9th Cir. 1997), cert. denied, 525 U.S. 812.

As the trial court and the Court of Appeals correctly determined, there is no competent evidence that Kitsap County intentionally interfered with Woods View's potential relationship with the Legacy Group. Plaintiffs contend that the County's September 2009 telephone discussion with Legacy (which was initiated by Legacy, not the County) constituted tortious interference. Woods View alleges that County officials said that DOH would not approve the modified LOSS proposal and/or that further hearings might be necessary. Yet the Declaration of Legacy representative Brent Eley refutes the assertions of intentional interference. Eley testified that when asked by Legacy whether permits could be issued for a LOSS system involving individual lot ownership, the employees confirmed that DOH was the agency considering the modified LOSS proposal, and that the County did not know what DOH was going to do.

Mr. Eley states that the County employees were *noncommital* as to whether Woods View's modified proposal would ultimately be approved. (CP 124). Mr. Eley's declaration expressly refutes plaintiffs' allegation that the County intentionally interfered with Legacy's relationship with Woods View":

> At the same time, we did not feel as though the County actors tried to discourage our consideration of loaning to Woods View II LLC and did not perceive the County as trying to inject itself into our business relationship with Woods View II LLC or Ms. Piper. I do not recall any County actor stating that the 78 lots would never be allowed to be sold as individually owned lots.

(CP 124-125).

In short, there is simply no basis for a tortious interference claim arising from Kitsap County's single conversation with the Legacy Group. It should be remembered that it was the Legacy Group which approached Kitsap County as a part of its normal due diligence process; the County did not initiate the communication. Moreover, the comments from County employees were noncommittal, rather than the definitively negative remarks alleged in the Complaint.

In any event, as the Court of Appeals correctly noted, a comment regarding the potential outcome of a pending legal matter does not constitute tortious interference. In Schmerer v. Darcy, 80 Wn. App. 499, 910 P.2d 498 (1996), the Washington Court of Appeals held that a statement by a party asserting his ownership of disputed property and

expressing uncertainty as to what he was going to do with it, did not constitute tortious interference, as a matter of law:

> The exchange of correspondence is nothing more than inquiries by an interested party in the outcome of the suit by the Darcys v. Ms. Schmerer. . . . Finally, the affidavit of the Darcys' lawyers merely references a statement by Mr. Schmerer that he believed the house was his and he had not decided what he was going to do with it. **Simply put, that is not interference with a contract**. Restatement 2nd Torts § 773 (exercising in good faith one's legal interest is not improper interference).

80 Wn. App. at 506. (Emphasis added).

The comments by Kitsap County officials were non-committal. But even if they had opined that the modified LOSS application was unlikely to be approved, that would not be actionable. As noted earlier, when one is "merely asserting an arguable interpretation of existing law," there is no tortious interference. Leingang, supra, 131 Wn.2d at 157.

Moreover, the tortious interference claim is barred by "privilege." Exercising in good faith one's own legal interests cannot constitute improper interference. Id.; See, Second Restatement of Torts § 773. A local government's exercise of its land use authority ordinarily cannot be a basis for a claim of tortious interference with a business expectancy. Bakay v. Yarnes and Clallam County, 431 F. Supp.2d 1103, 1113 (W.D. WA 2006); Kane v. City of Bainbridge Island, 2011 U.S. Dist. LEXIS 138848 (W.D. WA 2011).

As Woods View acknowledged in its Opening Brief in the Court of Appeals, Kitsap County had legitimate concerns that permitting the dense

development and urban facilities proposed by Woods View could violate the GMA and the County's Comprehensive Plan. (Brief, p. 19). The County had previously been sanctioned by the Growth Board for allowing urban density in rural areas. (CP 150-151). In expressing its concerns that the GMA prohibited the kind of LOSS system proposed by Woods View, Kitsap County was protected from liability for tortious interference. The County was entitled to express its opinion as a part of exercising its own legal interest in ensuring lawful land development in the County. Communicating such a position is not tortious interference.

The Court of Appeals properly held that Kitsap County's actions did not demonstrate "improper means" or "improper purpose." As the Court correctly noted, to prove that the County interfered to further an improper purpose or by virtue of an improper means, Woods View needed to demonstrate not only that the County interfered but that it had a "duty not to interfere." Court of Appeals Opinion, p. 28; Libera v. City of Port Angeles, 178 Wn. App. 669, 676, 316 P.3d 1064 (2013). The Court noted that it is possible to show an improper means arising from an "extraordinary delay." But the cases in which tortious interference has been found arising from a permitting delay involved delays without justification for as long as a decade or more. (Pleas v. City of Seattle, 112 Wn.2d 794, 774 P.2d 1158 (1989); Westmark v. City of Burien, 140 Wn. App. 540, 166 P.3d 813 (2007), rev. denied, 163 Wn.2d 1055).

The Court of Appeals in this case held that tortious interference was not appropriate because the delay was much shorter, and because it was justified by Kitsap County's reasonable concern about violating the Growth Management Act.[3]

Woods View argued that the County had improperly "suspended" review of its application while it sought clarification from the Governor's office. But as the Court of Appeals properly noted, the alleged "suspension" lasted only three weeks, from October 13 to November 3, 2006. (Opinion, pp. 10-11). Moreover, the Court properly held that requesting guidance from the State of Washington regarding the applicability of the Growth Management Act did not constitute an improper means or improper purpose:

> The record demonstrates that the County did temporarily suspend the application process, but the County did so only because it anticipated guidance from the state and then Governor Gregoire regarding what the County felt was an untenable position.

Court of Appeals Opinion, p. 29.

As the Court of Appeals noted, the County was understandably hesitant to proceed with permitting the Woods View project because it believed doing so made it susceptible to liability for violating the GMA and because the County reasonably felt that the controlling statutes and regulations did not permit the type of LOSS system which Woods View

[3] As explained in Section C, *infra*, the "delay" in this case amounted to only a matter of months, in contrast to Pleas and Westmark, which involved delays of more than a decade.

was seeking to utilize in a rural area. Merely expressing such concerns could not rise to the level of an improper purpose or improper means:

> Furthermore, the County's position that the LOSS did not comply with the GMA was accurate. The GMA endeavors to prohibit the extension of urban services to rural areas. RCW 36.70A.110(4).

Court of Appeals Opinion, pp. 30-31.

The Court of Appeals also noted that the County's statements could not constitute improper means because the County was "merely asserting an arguable interpretation of existing law." Leingang v. Pierce County Medical Bureau, Inc., supra, 131 Wn.2d at 157.

B. The Tortious Interference Claim Was Also Subject to Dismissal Because the County Did Not Cause the Termination of Woods View's Relationships With Karcher Creek or Legacy.

The tortious interference claim was also subject to dismissal based on the absence of competent evidence that the County's communications caused the termination of Woods View's relationships with Karcher Creek or Legacy Group. As the Court of Appeals noted, Woods View's prospective relationship with Karcher Creek was ended because Woods View decided on its own to abandon its relationship with Karcher Creek and "move forward with using a DOH approved private management entity." (CP 135; CP 139).

Similarly, there was no competent evidence that Woods View's relationship with the Legacy Group was terminated based on actions by Kitsap County. As the Court of Appeals noted, in the short telephone

conversation with Legacy, County officials did not express any opinion about whether the Woods View project would be approved. (CP 124-25). See, Court of Appeals Opinion, pp. 26-27. Further, Legacy had insisted from the outset that it would not finance the project unless and until DOH approval of the modified LOSS approval was assured, and building permits were in hand. (CP 1445-51). Legacy's refusal to finance was the result of Woods View's failure to timely accomplish those conditions.

One of the essential elements of a tortious interference action is proof that the defendant's statements proximately caused the termination of a business relationship. Absent this element, the tortious interference claim cannot survive. Shooting Park Ass'n v. City of Sequim, 158 Wn.2d 342, 352-53, 144 P.3d 276 (2006); Hudson v. City of Wenatchee, 94 Wn. App. 990, 998, 974 P.2d 342 (1999). The Court of Appeals properly found that there was no credible evidence that the County had caused the termination of Woods View's business relationships.

C. The *Pleas* and *Westmark* Cases Are Easily Distinguishable.

To support its Petition for Discretionary Review, Woods View argues that the Court of Appeals' decision is inconsistent with two decisions where liability was found on the part of a local government based on an extraordinary delay and obstruction of a proposed development. Pleas v. City of Seattle, supra; Westmark v. City of Burien, supra.

But the Pleas and the Westmark cases are easily distinguishable from the circumstances of this case, as the Court of Appeals noted. In Pleas, a developer applied for a demolition permit in 1973. The chair of the City's Planning Commission lobbied for neighbors to apply for a rezone that would invalidate the proposed development. The rezone was approved by the City Council but in 1975 the trial court ruled that the rezone was unlawful and void, a determination that was affirmed by this Court. In open defiance of the court order, the City continued to refuse to issue the permit for many years for political reasons, until it was finally forced to do so in 1983, some ten (10) years after the permit application was filed. 112 Wn.2d at 796-98.

Similarly, Westmark Development Corp. v. City of Burien, supra, is a case which is easily distinguishable. In Westmark, the City of Burien delayed taking action on Westmark's permit application which was pending before the city for many years, and then breached a binding settlement agreement with Westmark. It took more than six (6) years for Burien to issue a decision on Westmark's SEPA application (from 1990 to 1996). 140 Wn. App. at 543-45. Further delays followed, and the city then breached a settlement agreement with Westmark in 2004, some fourteen (14) years after the permit application was submitted. (Id. at 546). Further, the evidence showed that the extensive delays and city obstruction were undertaken to please a powerful politician who lived nearby. Id. at 545.

The facts in this case could hardly be more different. Whereas the Pleas and Westmark cases involved delays of more than a decade, this case at most involved a delay of months. Indeed, the suggestion by West View that there was a "19 month delay," is patently untrue. As Woods View successfully argued, because Woods View had not provided all of the necessary documentation in support of the SDAP application, the County did not have an obligation to issue its permit decision until December of 2006. See Court of Appeals Decision, pp. 13-14, 15-16. And it is undisputed that the County did in fact issue SEPA approval in January of 2007 (CP 313-14), and issued SDAP approval in November of that same year. In short, the suggestion of an "extraordinary delay" is refuted by the undisputed record.[4]

Moreover, as the Court of Appeals properly noted, the concerns expressed by Kitsap County with respect to the Woods View development were not asserted for improper "political" purposes, but rather were genuine concerns arising from the nature of the Woods View project, which proposed to construct dense urban development in the middle of a rural residential neighborhood. The record showed that the County had been sanctioned by the state in the recent past for allowing urban development in rural areas. Thus, it had a legitimate fear that approval of

[4] The Court may also take notice that Woods View's application was made during the "go-go" boom times for real estate development applications in 2006 and 2007 (prior to the great crash of 2008). It is hardly surprising that counties were having trouble keeping up with the huge volume of development applications.

the Woods View project would result in further sanctions imposed by the state. (CP 150-51).

In short, the Court of Appeals' decision in this case is not inconsistent with Pleas and Westmark. This Court should deny review.

D. The Tortious Interference Claim Was Also Barred by Application of the *Noerr-Pennington* Immunity Doctrine.

Woods View's tortious interference claim is primarily based on its contention that Kitsap County did not have the right to express concerns to the State or Karcher Creek regarding potential noncompliance with the GMA. But Kitsap County is immune from liability for its communications with DOH and other governmental entities under the *Noerr-Pennington* doctrine, a common law principle which affords immunity from liability to parties that petition a government agency in an administrative context. Kottle v. Northwest Kidney Centers, 146 F.3d 1056, 1059 (9th Cir. 1998). Although the doctrine originally rose in the context of antitrust claims, the courts have held that it provides immunity against both federal and state liability claims, including claims for tortious interference. Oregon Natural Resources Council v. Mohla, 944 F.2d 531, 533 (9th Cir. 1991); Pacific Gas & Electric v. Bear Stearns & Co., 270 Cal. Rptr. 1, 12, 791 P.2d 587, 598 (Cal. 1990); Sierra Club v. Butz, 349 F. Supp. 934, 938-939 (N.D. CA 1972).

Although the Court of Appeals concluded that it did not need to reach the *Noerr-Pennington* immunity defense, that doctrine provides yet

a further reason why the tortious interference claim was subject to dismissal. Washington courts have adopted the *Noerr-Pennington* immunity doctrine. Thus, in Lange v. The Nature Conservancy, 24 Wn. App. 416, 601 P.2d 963 (1979), rev. den., 93 Wn.2d 1013 the Court of Appeals held that the conservancy was immune from liability for petitioning San Juan County to include the plaintiff's property in an "inventory of natural areas on private lands." In support of its ruling, the Court relied on and cited the Noerr Motor Freight decision out of which the *Noerr-Pennington* immunity rule arose. Other Washington courts have similarly applied *Noerr-Pennington* immunity as a bar to liability. De La O v. Town of Mattawa, 2009 U.S. Dist. LEXIS 7978, p. 15 (E.D. WA. 2009); Kottle v. Northwest Kidney Center, supra, 146 F.3d at 1059.

In response to the County's summary judgment motion, Woods View argued that *Noerr-Pennington* immunity may not be asserted by a local government. The argument is unsupportable. Recent decisions of the Ninth Circuit Court of Appeals refute the assertion that local governments may not avail themselves of *Noerr-Pennington* immunity. See, Manistee Town Center v. City of Glendale, 227 F.3d 1090, 1093-94 (9th Cir. 2000); Sanghvi v. City of Claremont, 328 F.3d 532, 542-43 (9th Cir. 2003), cert. denied, 540 U.S. 1125.

Indeed, *Noerr-Pennington* immunity has been applied to immunize local governments even where their lobbying efforts relative to land use permits were much more aggressive and expansive than anything Kitsap

County undertook in this case. For example, in Manistee Town Center, supra, a developer (Manistee) purchased a shopping mall and sought to lease it to Maricopa County. The City of Glendale wanted Manistee Town Center to be a "power center," occupied by private businesses. Thus, the City actively opposed Manistee's efforts to lease space to Maricopa County. This opposition took the form of council members writing letters to residents, urging them to oppose any noncommercial use of the mall, as well as directly lobbying government officials at Maricopa County. Notwithstanding this aggressive action opposing the developer's project, the lawsuit against the City of Glendale was dismissed based on *Noerr-Pennington* immunity. The Ninth Circuit Court of Appeals affirmed. 227 F.3d at 1095.

Noerr-Pennington immunity applies not only to Kitsap County's communications with DOH, but also to its communications with Karcher Creek Sewer District, with whom Woods View was in discussions in 2006 to act as the public entity manager of the proposed LOSS system. In Sanghvi v. City of Claremont, supra, the city and its officials openly opposed the expansion of Sanghvi's development project and denied Sanghvi a connection to public sewers. The officials actively lobbied other public officials, including state legislators and members of the County Board of Supervisors. Furthermore, the city actually filed a lawsuit against the Sanghvis *and against the Los Angeles Regional Water Quality Control Board*, which had allowed the Sanghvi's facility to

operate with a septic tank during the initial years of its expansion. 328 F.3d at 543. Notwithstanding these extreme facts, the Ninth Circuit not only affirmed the application of *Noerr-Pennington* immunity, but rejected any suggestion that the City's active lobbying efforts fell within the narrow "sham litigation" exception to the general rule of immunity.

Needless to say, Kitsap County's discussions with DOH and Karcher Creek were not nearly as far reaching as those of government officials in Manistee or in Sanghvi. Kitsap County never commenced litigation against anyone, but merely expressed its concern about the potential illegality of a dense development utilizing an urban sewer system in the rural areas of the County (outside of an Urban Growth Area). Kitsap County's communications are certainly protected by *Noerr-Pennington* immunity. This was yet a further reason why dismissal of Woods View's tort claims was appropriate.

V. CONCLUSION

For all of the above reasons, the Court of Appeals' unanimous decision was correct. This Court should deny discretionary review.

DATED this 30th day of July, 2015.

KARR TUTTLE CAMPBELL

By: _____

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AFFIDAVIT OF SERVICE

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

The undersigned, being first duly sworn upon oath, deposes and says:

I am a citizen of the United States of America; State of Washington, employed at Karr Tuttle Campbell, 701 Fifth Avenue, Suite 3300, Seattle, WA 98104. I am over the age of 18 years and am not a party to this action. I certify under penalty of perjury under the laws of the State of Washington that on July 30, 2015, a true copy of Brief of Respondents was served to the following by Legal Messenger:

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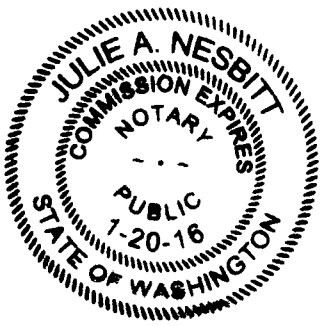

SUBSCRIBED TO AND SWORN before me this 30th day of July, 2015

Julie A Nesbitt
JULIE A. NESBITT
NOTARY PUBLIC in and for the State of Washington, residing in Mukilteo
My Commission Expires: 1-20-16