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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

8 CITY OF SPOKANE, a municipal
corporation,

9 Plaintiff,

10 v.

11 CAWA CORP., a Delaware
corporation,

12 Defendant.
13

No. CV-10-0314-RHW

**ORDER GRANTING
PLAINTIFF'S MOTION
FOR VOLUNTARY
DISMISSAL**

14 Before the Court is the Plaintiff's Motion for Voluntary Dismissal Without
15 Prejudice Pursuant to Rule 41, Fed. R. Civ. P., ECF No. 67. The motion was
16 heard without oral argument.

17 Plaintiff asks the Court to dismiss the above-captioned action. Plaintiff
18 asserts that the March 3, 2013 Ordinance C34963 renders much of the Complaint
19 moot. Plaintiff asks the Court to dismiss this action for two reasons: (1) it is
20 uncertain as to the extent to which the Court will exercise its discretion to address
21 and resolve state law claims; and (2) it anticipates a state law land use petition act
22 claim and will seek declaratory judgment in state court. Plaintiff maintains
23 Defendant will not be prejudiced by dismissing this action.

24 In response, Defendant asks that the Court condition dismissal on the
25 payment of attorney's fees. Here, the reasons for seeking a dismissal by the City
26 do not justify the award of fees to Defendant and the Court declines to exercise its
27 discretion to award fees. Plaintiff has not acted in bad faith; neither was this action
28 a waste of time or resources. As such, the Court grants the City's request for

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1 voluntary dismissal of its claims, but denies Defendant's request to condition the
2 dismissal on the payment of fees.

3 In its Motion for Voluntary Dismissal, Plaintiff asks the Court to also
4 dismiss the counterclaims filed by Defendant. Defendant objects and argues that
5 the voluntary dismissal should be limited to Plaintiff's causes of actions only. The
6 Court agrees. The proper procedure to seek dismissal of the Defendant's
7 counterclaims is to file a separate motion and memorandum supporting its request.
8 The Court denies any request to dismiss the Counterclaims, with leave to renew.
9 As such, the only remaining claims are those of the Defendant.

10 **Accordingly, IT IS HEREBY ORDERED:**

11 1. Plaintiff's Motion for Voluntary Dismissal, ECF No. 67 is **GRANTED**,
12 in part.

13 2. Plaintiff's claims asserted against Defendant are **dismissed**, without
14 prejudice.

15 3. The parties are directed to confer and file a joint status certificate
16 regarding the remaining claims as outlined in the scheduling order within 30 days
17 of the entry of this order.

18 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
19 Order and forward copies to counsel.

20 **DATED** this 30th day of September, 2013.

21
22 *s/Robert H. Whaley*
23 **ROBERT H. WHALEY**
United States District Judge

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