



CIRCUIT COURT OF OREGON
THIRD JUDICIAL DISTRICT
MARION COUNTY COURTS
P.O. Box 12869
SALEM, OREGON 97309-0869

JAMESE RHOADES
Circuit Court Judge
(503) 588-7950

October 12, 2006

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Re: Gardener, et al v. Land Conservation and Development, et al
Case No. 06C14217

Dear Counsel:

This matter came before the Court on September 15, 2006, for oral argument on Respondents' motion to dismiss. Intervenor Defendant joined in the motion. Plaintiff appeared in person and through attorney, Jeffrey Kleinman, and Respondent appeared by and through attorney, Darsee Staley, and Intervenor appeared by and through attorney, Hunter Emerick. The matter, being fully submitted, was taken under advisement.

Issues

Whether this court should grant Respondents' and Intervenor's motions to dismiss Petitioners' petition for review because it was not timely filed?

Discussion

Intervenor applied for compensation pursuant to Ballot Measure 37 (2004), which is codified at ORS 197.352. In lieu of compensation, Respondents decided not to apply certain land use regulations to Intervenor's property. The final order granting such relief was mailed to Intervenor and Petitioners on October 18, 2005. Petitioners filed the petition for review in this case on May 3, 2006, over six months after the order was mailed.

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ORS 183.480 provides that judicial review of a final agency order “shall be solely as provided by ORS 183.482, 183.484, 183.490 and 183.500.” The statute relevant to this case, ORS 183.484, gives this court jurisdiction for judicial review, *if* the petition for review is filed within 60 days of the date the agency mailed the order. *See* ORS 183.484(2). If Petitioners failed to timely file the petition, this court lacks jurisdiction over the action, for no other provision for judicial review exists in this case. *See G.A.S.P. v. Environmental Quality Commission*, 201 Or App 362, 366, 118 P3d 831(2005) (“The timely filing of a petition for judicial review of agency action is a jurisdictional requirement”); *1000 Friends of Oregon v. LCDC*, 301 Or 622, 632, 724 P2d 805 (1986) (estoppel “cannot serve to confer jurisdiction on a court where jurisdiction does not otherwise exist. * * * The Court of Appeals’ jurisdiction to review LCDC orders is purely statutory and depends for its existence on the timely filing of a request for review from a final order”); *Oregon Administrative Law* § 8.15, 8-18 (Oregon CLE 2001) (“For agencies that are subject to the APA, the APA provides the exclusive means for obtaining judicial review of final orders. No other judicial review is allowed unless it is authorized or required by the specific statutes governing the agency”).

Petitioners assert that the orders, issued by Judge James of this court in *MacPherson v. DAS*, No. 05C10444, suspended the 60-day period in which they were required to file their petition. Those orders declared Measure 37 unconstitutional and indefinitely suspended all time lines “under Measure 37.” Petitioners therefore contend that their petition was timely because it was filed within 60 days of when Respondents mailed the final order, excepting the time during which the Measure 37 time lines were suspended. Petitioners are mistaken.

Even assuming for the sake of argument that a judge could suspend the 60-day period under ORS 183.484,¹ Judge James’ suspension of the Measure 37 timelines did not also suspend the ORS 183.484 time line. Judge James’ order very specifically applied only to time lines “under Measure 37.” The time line at issue here arises under the APA, not Measure 37. There is no way to interpret Judge James’ order as suspending APA time lines related to petitions for review from final agency orders, particularly in light of the fact that *MacPherson* was not brought pursuant to the APA.

¹It is unlikely that a judge could suspend the 60-day filing requirement of ORS 183.484. *See G.A.S.P.*, 201 Or App at 366 (“the trial court granted petitioners an additional 60 days from the statutory deadline [under ORS 183.484] for filing the petition. It is doubtful that the court possessed authority to do that”).

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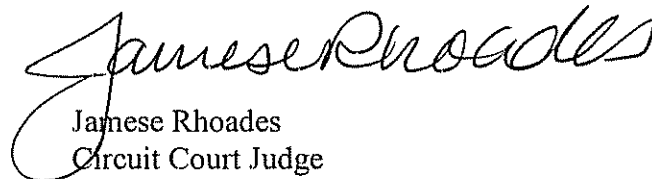
While the issue of whether Measure 37 was constitutional does, as Petitioners assert, impact the arguments Petitioners attempt to assert in their petition for review, that does not affect the operation of ORS 183.484. Instead, Petitioners were required to file their petition for review as set forth in ORS 183.484. Once this court had obtained jurisdiction, Petitioners could have sought to hold the action in abeyance, pending the outcome of the *MacPherson* case. However, because Petitioners did not file their petition for review within 60 days of the date of the agency's final order, this court failed to obtain jurisdiction over the matter.

Conclusion

This court grants Respondents' and Intervenor's motions to dismiss the petition for review.

The Court finds Respondents' arguments persuasive and grants the motion. Ms. Staley will kindly prepare the appropriate form of general judgment of dismissal.

Very truly yours,



Jamese Rhoades
Circuit Court Judge

JLR:nl