

7-16-07 146
FOR YOUR INFORMATION
JORDAN SCHRADER

IN THE COURT OF APPEALS OF THE STATE OF OREGON

HELEN KAPPLER, as Trustee of the Kappler Living Trust,
Petitioner,

v.

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, DEPARTMENT OF
ADMINISTRATIVE SERVICES and LAND CONSERVATION AND DEVELOPMENT
COMMISSION,
Respondents.

Department of Land Conservation and Development No. M129590

Court of Appeals No. A134825

ORDER DETERMINING JURISDICTION AND ORDER OF DISMISSAL

Respondents move to determine jurisdiction in this matter, a Measure 37 dispute, and argue that the appropriate venue is the circuit court. Petitioner opposes this motion, asserting that the Court of Appeals is the appropriate venue for this matter.

Petitioner filed a Measure 37 claim seeking compensation or waiver of regulations that petitioner believes have negatively affected her property's value. Respondents denied the claim, finding that petitioner did not qualify for compensation or waiver.

The motion to determine jurisdiction is granted. Because petitioner's claim was denied, she was not entitled to a contested case hearing and jurisdiction lies in the circuit court. *Emmel v. DLCD*, 213 Or App __ (July 5, 2007) (where state agency determines that claimant is not entitled to compensation or waiver, no property interest is created, claimant is not entitled to contested case hearing, agency order is an order in other than contested case, and jurisdiction to review order lies in circuit court). Cf. *Corey v. Department of Land Conservation and Development*, 210 Or App 542, 152 P3d 933 (2007), *adhered to on reconsideration*, 212 Or App 536, 159 P3d 327 (2007) (where claimant shows entitlement to some form of compensation or waiver, property interest is created, claimant is entitled to a contested hearing, and this court has jurisdiction to review order).

This court lacks jurisdiction and, on that ground, the court on its own motion dismisses the judicial review.

Judicial review dismissed.

JUL 13 2007

DATE



DAVID V. BREWER, CHIEF JUDGE

c: Denise G. Fjordbeck
Edward H. Trompke

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DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondents

No costs allowed: