



OREGON JUDICIAL DEPARTMENT
Josephine County Court

May 11, 2007

RECEIVED

Mr. Walter L. Cauble
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Grants Pass, Oregon 97526

MAY 16 2007
Trial Division, Dept. of Justice
Salem, Oregon

✓ Ms. Erika Hadlock
Attorney at Law
1162 Court Street NE
Salem, Oregon 97301

Mr. Steven E. Rich
County Legal Counsel
500 NW 6th Street
Grants Pass, Oregon 97526

RE: Roy A. Pondelick and Tana Pondelick, Trustees of the Roy A. Pondelick and Tan Pondelick Revocable Living Trust, et al. v. Josephine County and State of Oregon, Department of Land Conservation and Development, Department of Administrative Services
Case # 06-CV-0622
Respondent State of Oregon's Motions to Strike
Petitioner's Objection to Respondent Josephine County's Proposed Order

Dear Mr. Cauble, Ms. Hadlock and Mr. Rich:

The Court heard these matters on April 9, 2007 and took them under advisement for further review and consideration. Following such further review and consideration, the Court finds as follows:

1. State of Oregon's Motions to Strike Petitioners' Third and Fourth Claims-

The State argues that Petitioners' exclusive remedy in this matter is under the Administrative Procedures Act, ORS 183.484. Accordingly, the State argues that Petitioners' claims under Measure 37 and the Declaratory Judgment Act should be stricken or dismissed. A similar motion was filed by Josephine County. This Court heard that motion and ruled that

Petitioners' exclusive remedy against the County would be through their writ of review. See Court's letter opinion of January 12, 2007. The Court hereby takes judicial notice of such letter opinion and incorporates it in its entirety, including the record and pleadings, into this letter opinion.

For reasons stated in the above referenced letter opinion, but on separate and distinct findings, the Court grants the State's motions to strike. With respect to its claims against the State, Petitioners will be limited to relief under the Administrative Procedures Act.

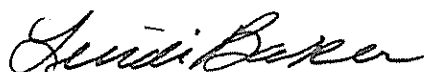
2. Objection to Respondent Josephine County's Proposed Order-

Petitioner has objected to the County's proposed order. This issue was discussed during the above hearing under the larger context that the Court needs to determine what procedure our local court should be following on this and similar cases in view of the recent Court of Appeals case, Corey, et al. v. Department of Land Conservation and Development, 210 Or App 542 (January 31, 2007). In this case, the Court of Appeals ruled that jurisdiction for judicial review of the state matter under ORS 183.482 lies with the Court of Appeals, not the trial court. Ms. Hadlock represented to the Court that the State has moved for reconsideration in the Corey case and that the Corey petitioners have not responded to the State's motion. As such, there has been no appellate judgment entered at this time. In its motion for reconsideration, the State maintains that the review should remain with the trial court.

Given the logistical difficulties involved in the Court transferring the state case to the Court of Appeals and then perhaps learning that the Corey case may require transfer back to the trial court, this Court has determined that this particular issue should be placed on hold until the Corey case is resolved. Then, whether the state issue is addressed at the Court of Appeals or the trial court, proper jurisdiction can be certain and less time and resources will be expended.

In view of this ruling, the Court requests that the attorneys collaborate to fashion an appropriate and mutually acceptable revised order consistent with the Court's rulings and present the proposed order to the Court for review and execution.

Respectfully yours,



Lindi Baker
Circuit Court Judge

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