

LINDI L. BAKER, Circuit Judge
MICHAEL NEWMAN, Circuit Judge



PAT WOLKE, Circuit Judge
THOMAS M. HULL, Circuit Judge

OREGON JUDICIAL DEPARTMENT
Josephine County Court

January 12, 2007

Mr. Walter L. Cauble
Attorney at Law
111 SE 6th Street
Grants Pass, Oregon 97526

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

RE: Pondelick, et al. v. Josephine County, et al.

Case # 06-CV-0622

Respondent's Motion To Strike; Motion To Quash Writ of Review; Motion To Dismiss

Petition; Motion For Additional Time

Dear Mr. Cauble and Mr. Rich:

The Court heard these motions on November 21, 2006 and allowed Petitioners additional time to respond to Respondent's Points and Authorities which had been submitted just before the hearing. Petitioners' Response was timely filed on November 29, 2006 and the Court took the matter under advisement for further review and consideration. Following such further review and consideration, the Court finds as follows:

Petitioners seek relief under various statutes, including ORS 197.352, commonly referred to as Measure 37. Their underlying claim is that they are entitled to compensation for loss of value to their land. The matter before the Court at this time, however, is limited to the issues raised in Respondent's various motions as to the pleadings. In summary, Petitioners' petition seeks a writ of review under ORS 34.010 et seq. of the decision rendered by the Josephine County Board of Commissioners; a judicial review under ORS 183.484 of the order issued by the State of Oregon, Department of Land Conservation and Development and Department of Administrative Services; compensation under ORS 197.352(6); declaratory judgment regarding the effective date of Petitioners' title acquisition; and reasonable attorney fees, expenses, costs and other disbursements pursuant to ORS 197.352 and/or ORS 183.497.

Respondent basically complains that Petitioners cannot include alternative remedies in their petition and that since Petitioners seek a writ of review, then they are limited to that relief. As such, compensation, declaratory judgment and attorney fees and costs are not authorized under such a writ of review

After carefully considering the arguments of all parties, the Court finds that Petitioners will be limited in this action to the writ of review under ORS 34.010 et seq. Respondent's arguments are well taken in that combining the various forms of relief into one proceeding would require differing standards of review and procedure to the degree that could result in incompatible relief. In conducting a writ of review, the court conducts an appellate type of review of the BCC's decision and is limited to the record in the case in conducting such review. It is not a trial on the merits and no new evidence can be considered or reviewed by the court. Further, under a writ of review, the court's authority is limited by ORS 34.040 to determine only whether the BCC has exceeded its jurisdiction, failed to follow procedure, made a finding or order not supported by substantial evidence in the record or rendered an unconstitutional decision. In a writ of review, the court has authority only to affirm, modify, reverse or annul the BCC's decision or to direct the BCC to proceed according to the court's decision. The court has no authority to impose other remedies Petitioners seek such as declaratory judgment, compensation or attorney fees.

The writ of review procedure is inconsistent with Petitioners' other claims for relief where the procedures, scope of examination and possible remedies are very different. Petitioners have provided no persuasive authority that would adequately support their contention that they should be allowed to seek all remedies in this same action. While Petitioners rely in part on AK Media Group, Inc. v. City of Portland, 192 Or App 204 (2004), the Court of Appeals, in a footnote, points out that the trial court had dismissed the writ of review as moot at the onset of trial and that it was not before that court on appeal. While generally, petitioners and plaintiffs are allowed to plead alternative theories, in the case of a writ of review, due to its unique procedural limitations, it does not seem logical to combine that particular remedy with other, procedurally different forms of relief.

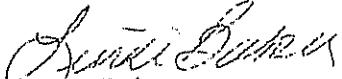
Accordingly, Petitioners will be limited to their claim for writ of relief and will not be allowed to proceed under the declaratory judgment, compensation or attorney fees and costs claims in the same action. Respondent's motions are granted in this regard.

It is further noted that Respondent withdrew its Third Motion to Strike relating to Petitioners' Third Claim (failure to state a claim upon which relief can be granted) and its Motion for Additional Time. The Return was filed with the Court in a timely manner on October 18, 2006.

Page Three
Pondelick, et al vs. Josephine County, et al 06CV0622

Respondent's Motion to Quash the Writ of Review and its Motion to Dismiss the Petition in its entirety are denied. This case will proceed as a Writ of Review in the normal course. I ask that Mr. Rich prepare the appropriate documentation of this Court's ruling in this matter.

Respectfully yours,


Lindi Baker
Circuit Court Judge

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