



PINELLAS COUNTY CONSTRUCTION LICENSING BOARD

SPECIAL PUBLIC HEARING

CONSIDERATION OF ALLEGED NON-COMPLIANCE OF THE PINELLAS GULF BEACHES COASTAL CONSTRUCTION CODE BY CITY OF ST. PETE BEACH

WEDNESDAY, APRIL 16, 2007 - 9:00 A.M.

LARGO COMMUNITY ROOM, CITY HALL

201 HIGHLAND AVENUE, CLEARWATER, FLORIDA

Members Present: Vice-Chair Thomas Tafelski, Steve Andrews, John C. Burket, Rick Dunn, Gareth Eich, Steve Gleaton, Michael Keane, Patrick Murphy, Robert Nagin, James Rosenbluth, Daniel Sandlin, John Tillinghast, Charles Spitzer

Members Absent: Paul J. Skipper, Chair; Michael Brizzi; Kevin Garriott; Ernest Hand; Jack Joyner; Edward Mullin; Peter Vasti; and Fritz Wolf

Others Present: Rodney S. Fischer; Executive Director; Jason Ester, Assistant County Attorney; Jack Tipton, Pinellas County Building Department, Caroline J. Jones, Executive Assistant, Other interested individuals

Vice-Chair Tafelski convened the special meeting with regard to the alleged violation of the Gulf Beaches Coastal Construction Code by the City of St. Pete Beach; whereupon, Assistant County Attorney Ester provided an overview of the issues before the Board stating that:

- Pinellas Gulf Beaches Coastal Construction Code (Coastal Code) is a local technical amendment to the Florida Building Code 2004, Building and an additional code for the Gulf Beaches agreed upon by an interlocal agreement between all of the local permitting authorities on the beaches, Pinellas County, and the PCCLB;
- PCCLB is to monitor the local permitting authorities and their implementation of the Coastal Code;
- Allegations of non-compliance with the Coastal Code, as in this case the City of St. Pete Beach, are investigated by the PCCLB with the assistance of the Pinellas County Building Department (PCBD). If PCBD finds substantial non-compliance with the Coastal Code, it then comes to this Board for a public hearing at which time it is the duty of the Board to uphold or reverse the finding of substantial non-compliance by the PCBD.

Note: The Local Technical Amendment adopting the Coastal Code was Florida Building Code 2001 - Building, Section 3107. Upon adoption of the Florida Building Code 2004 – Building on October 1, 2005, the section was changed to Section 3109. The language of these sections did not change.

Attorney Ester explained that the Coastal Code, Section 3107.3.1 applies to new construction of or substantial improvement to residential and non-residential structures; that substantial improvement is defined as all repairs, additions, reconstruction or improvements of a structure, the cost of which in the aggregate equal or exceed 50 percent of the permanent value assessment of the structure either (a) before the first improvement is started or (b) if the structure has been damaged and is being restored before the damaged occurred. He pointed out that the PCBD has prepared a statement indicating that the permit should not have been issued under the Coastal Code because there was substantial improvement in which the Coastal Code should have applied; and that the City of St. Pete Beach (City) issued the permit finding it was not a substantial improvement; and therefore the Coastal Code should not apply.

Mr. Ester advised that the PCCLB's duty is to determine whether or not the City was in compliance or substantial non-compliance at the time the permit was issued; whereupon, he outlined the two penalties open to the Board in the event of the finding of substantial non-compliance:

- (1) Require the local permitting authority, the City, to adopt or alter their own Coastal Code interpretations, procedures, or operative methods to correct inefficiencies as a condition of maintaining permitting, inspection and enforcing authority; and
- (2) Suspend or revoke the City of St. Pete Beach's permitting authority.

Jack Tipton, Assistant Pinellas County Building Director, presented their findings in the investigation of the property located at 1907 Gulf Way, St. Pete Beach as to the alleged violation of the Coastal Code and reported that:

- First permit issued in the amount of \$54,620.00 for the purpose of repairing damage sustained to the structure by Hurricane Jean.
- Second permit issued in the amount of \$187,000 for extensive interior remodeling and refurbishing.

Mr. Tipton indicated that the first permit was submitted with a cost breakdown but no plans; that the value of the structure had been reported as \$477,477; that the total of both permits

exceeded the 50 percent threshold; and that based on the paperwork provided to PCBD, the improvements to the building should be considered substantial improvement.

Responding to queries by the members, Mr. Tipton stated that the first permit was issued September 2005 for a total of \$54,620; that there had been no final inspection; that tax records had been used to formulate the value of the building; that the second permit had been issued in July 2007 and is still open; and that an appraisal had been submitted with the second permit.

At this time, Rob Nagin, recuses himself from the vote

St. Pete Beach Building Director Bruce Cooper indicated that it would not be fair to automatically take the \$54,000 and add it to the \$187,000 since obviously the items were not completed; that based on testimony given by the owner of the building at a City Commission meeting in 2006 the only work that had been completed was the demolition of the interior and possibly a temporary repair to the roof after the storm. Mr. Cooper noted that it would not be fair to add the \$54,000 onto the \$187,000 because he calculated that almost \$38,000 of the \$54,000 was not completed based on the activity at that time. In conclusion he opined that the previous building official had lacked proper documentation for the first permit.

In response to queries by the Board members, Mr. Cooper indicated that the value of the completed work to date, based on the contractor's figures, is \$237,011; that there is work on a door and minor guardrails that need to be completed; that all required inspections have been done for the permit issued July 9, 2007; and that no code violations were discovered during the walk through he had performed. Discussion ensued with regard to the value estimated to restore the structure to its original condition, the outstanding repairs, and the cost of patching the storm-damaged roof. Referring to the issue of the roof, Mr. Cooper read a portion of a letter sent by Mr. Holehouse to City Planning Director Karl Holley dated January 9, 2006 in which he states "as you are aware, my property suffered a severe loss in Hurricane Jean. The entire roof was blown off leaving the property subject to three days of rain." Mr. Cooper further stated that Mr. Holley had told him during a phone conversation that the owner did have a complete roof replacement and that a permit was issued which PCBD had never been able to find any record of in the paperwork supplied by the City.

St. Pete Beach City Attorney Ralph Brooks advised that the City Manager and City Planning Director are available to answer questions; and in response to query by Vice-Chair Tafelski, Mr. Brooks demurred to voice an opinion on the issue.

In response to the Vice-Chair's call for persons wishing to be heard, the following individuals appeared and addressed the issue:

1. Ron Holehouse, St. Pete Beach, property owner
2. Barry Flaherty, Contractor
3. John Thomas, Esquire, representing complainant
4. Walter Sowa, St. Pete Beach, complainant
5. Ralph Lickton, St. Pete Beach
6. Milton Massanet, Consultant

During rebuttal, Mr. Tipton affirmed his finding stating that it was based upon the paperwork and records supplied to him from the City of St. Pete Beach; that a permit had been issued not only for demolition work but for restoration of water damage, replacing cabinets, and replacing ductwork. Mr. Tipton added that had the former building official, Mr. Nazario, stated that the damage caused by the storm is not counted against the 50 percent, then that statement had been incorrect.

Mr. Cooper interjected that a different opinion could be formed after hearing testimony today as opposed to a review of the files.

Responding to a query by Member Dunn as to the issue of whether or not the roof replacement involved more than 25 percent of the roof's square footage and therefore would require an entire new roof, Mr. Holehouse stated that he considered that about 60 percent of the roof had been repaired.

During rebuttal, Mr. Cooper stated that he is not aware of code violations but that he would review the allegations to ensure they are recorded in the file; and that he has not seen the photographs taken of the roof.

Responding to query by the Vice-Chair, Mr. Tipton stated that the testimony had not altered his decision and that his findings are based on the evidence that was presented to him; whereupon, Vice-Chair Tafelski closed the public hearing and opened the floor for Board discussion.

At the request of Member Burket, Attorney Ester outlined the question before the Board and stated that the PCCLB is charged with determining whether the subject property was substantially improved so as to require that the improvements comply with the Coastal Code; and responding to additional queries by Member Burket, Attorney Ester agreed that if the City relied on information provided to it, they may have not known there was a possibility of the

improvement being in excess of 50 percent at the time the permit was issued; and therefore would have been in compliance.

Referring to the testimony given today, Member Nagin expressed concern with the inference that the first permit was deemed to be interim noting the extended time period involved; and indicated that the original permit had not been well defined nor did it included drawings; and that if the permit had been submitted to the PCBD, it would not have been issued.

In response to Vice-Chair Tafelski's request, Attorney Ester affirmed the two alternatives should the Board find the City in non-compliance:

- (1) Advise the City to modify its procedures to prevent further actions causing non-compliance and if not done, notify that its permitting authority may be revoked; or
- (2) Suspend the City's permitting authority immediately and require it to come into compliance before its privileges are returned.

Attorney Ester advised that both alternatives are dependent upon a finding of non-compliance.

Following extensive deliberation by the Board, Member Burket moved that the City of St. Pete Beach be found in compliance with the Coastal Code; and that the City be reprimanded and strongly recommended that the City follow up on the issue of the scope of work and the roof permit, whereupon, Member Andrews seconded the motion.

Discussion ensued wherein Member Dunn voiced concern with the City's lack of procedural follow-up and Vice-Chair Tafelski interjected that there was negligence exhibited on the part of the City with bookkeeping and follow up by the St. Pete Beach Building Department.

Attorney Thomas voiced an objection for the record with regard to the PCCLB not upholding the PCBD's finding; whereupon, Vice-Chair Tafelski reminded Attorney Thomas that the public hearing had been closed.

Upon call for the vote, the motion carried 10 to 2, with Members Dunn and Murphy dissenting and Member Nagin abstaining.

At this time, 12:02 PM, there being no objection, Vice-Chair Tafelski adjourned the meeting.

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IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION

COUNTY ATTORNEY

WALTER SOWA,

Petitioner,

Appeal No.: 08-23-AP-88A

v.

UCN: 522008AP000023XXXXCV

PINELLAS COUNTY CONSTRUCTION
LICENSING BOARD,
a Local Government Regulatory Agency,

Respondent.

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

THIS CAUSE came before the Court on Petitioner's, Walter Sowa, Petition for Writ of Certiorari filed on June 12, 2008 and oral arguments on May 19, 2009. Respondent, Pinellas County Construction Licensing Board, filed its response on September 11, 2008. Petitioner filed a reply on September 30, 2008. Upon consideration, this Court finds that the Petition for Writ of Certiorari must be denied as set forth below.

Petitioner, Walter Sowa, lives on property adjacent to the property in question. That property was damaged by Hurricane Jeanne in 2004. Between 2005 and 2006, the City of St. Pete Beach (City) granted various permits to the property's owner to rebuild and renovate the grandfathered nonconforming structure that was destroyed. On November 13, 2007, Mr. Sowa sought the review of the Respondent, Pinellas County Construction Licensing Board (PCCLB), an autonomous policy-making body responsible for enforcing the Pinellas Gulf Beaches Coastal Construction Code (Code). Mr. Sowa argued that the City was in

noncompliance with the Code. He was concerned that another hurricane might blow through and his property would be damaged by debris emanating from the construction on his neighbor's property. The PCCLB asked the Pinellas County Building Department to investigate on its behalf. On February 27, 2008, the Department made a preliminary determination that the subject property involved "substantial improvement", making it subject to the Code. The PCCLB held a hearing on April 16, 2008 to determine if the City was in substantial compliance with the Code. On May 13, 2008, the PCCLB found that the city was compliant. Mr. Sowa now appeals that final order.

A party must have standing to make a legal claim. The fact that an individual has standing as a party in an administrative hearing does not necessarily mean that they have standing to seek judicial review of the resulting final agency action. See Legal Environmental Assistance Foundation, Inc. v. Clark, 668 So.2d 982 (Fla. 1996); Florida Chapter of the Sierra Club v. Suwannee American Cement Co., Inc., 802 So.2d 520 (Fla.1st DCA 2001); Fox v. Smith, 508 So.2d 1280 (Fla. 3d DCA 1987). The standard for judicial review is more limited in scope. While standing to participate in administrative proceedings is open to all whose "substantial interests" will be affected, standing for judicial review is reserved for parties who are "adversely affected by final agency action." Administrative Procedure Act § 120.68 (West's F.S.A. 2009); Board of Com'rs of Jupiter Inlet Dist. v. Thibadeau, 956 So.2d 529, 534 (Fla. 4th DCA 2007).

Mere interest in an issue does not rise to the level of adverse affect within the meaning of the Administrative Procedure Act. A party must prove "injury in fact of sufficient immediacy" to demonstrate standing. North Ridge General Hospital, Inc. v. NME Hospitals, Inc. 478 So.2d 1138, 1139 (Fla. 1st DCA 1985). Third party appeals from administrative hearings often turn on the element of

adverse affect. In Peterson v. Florida Dept. of Community Affairs, the Court found that the petitioners, who owned property adjacent to a proposed development, lacked standing to appeal the Department of Community Affairs' determination because "they failed to show any injury and merely raised the possibility of some future speculative injury resulting from construction." 386 So.2d 879, 881 (Fla. 1st DCA 1980). Similarly, in Grove Isle, LTD. v. Bayshore Homeowners Association, Inc., the Court found petitioner adjacent property owners lacked standing to appeal the actions of both the Department of Natural Resources and the Department of Environmental Regulation. The property owners could not show how the agencies' disposition of the developer's questions of leases and permits affected them "any more than the general public." 418 So.2d 1046 (Fla. 1st DCA 1982).

The question of standing in this case hinges upon the subject of the hearing. In Peterson and Grove Isle, the petitioning neighbors claimed that they had standing based on the proximity of their property to the property under construction. They believed the subject of the administrative hearings they appealed to be on the matter of the construction itself, but the court disagreed. Like those petitioners who came before him, Mr. Sowa insists that the subject of the PCCLB's hearing was the permit and argues that he has standing to appeal the decision because his property will be adversely affected by the construction in the event of another hurricane. Respondent, the PCCLB, disagrees, stating that its hearing was a licensure proceeding to determine the City's compliance with the Code. The Court agrees with the PCCLB that its review was disciplinary in nature, seeking to determine if the City was abusing its permitting authority. That subject has no bearing on any issue particular to Mr. Sowa. The first round of the fight may have been between Mr. Sowa and the City, but this second round was between

the City and the PCCLB. It was the City of St. Pete Beach whose rights were at stake here. Had the PCCLB found that the City violated the Code, the City would have been sanctioned for its deviation.

The determination before this Court is whether Mr. Sowa has standing to appeal the final order of the PCCLB. The fact that he was a party to the PCCLB's administrative hearing does not grant him standing before this Court. Mr. Sowa has failed to show that the PCCLB's determination had any adverse affect on him; he merely alleges the possibility of future harm to his property. The Court finds that this is too indirect to support his standing as a party to this controversy.

Therefore, it is,

ORDERED that the Petition for Writ of Certiorari is hereby **DENIED**.

DONE AND ORDERED in Chambers, at Clearwater, Pinellas County, Florida this 20 day of July, 2009.

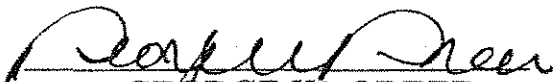


PAMELA A.M. CAMPBELL
Circuit Judge, Appellate Division

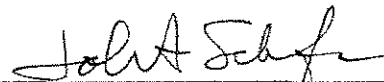
Original Signed

JUL 20 2009

Pamela A.M. Campbell
Circuit Judge



GEORGE W. GREER
Circuit Judge, Appellate Division



JOHN A. SCHAEFER
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