

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

WALTER SOWA,

Petitioner,

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

v.

UCN: 522008AP000023XXXXCV

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

Respondent.

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**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.1<sup>st</sup> 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. 4<sup>th</sup> 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. 1<sup>st</sup> 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. 1<sup>st</sup> 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. 1<sup>st</sup> 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.

Original opinion entered by Circuit Judges Pamela A.M. Campbell, George W. Greer, & John A.

Copies furnished to:

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