

REPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 362

September Term, 1996

ON MOTION FOR RECONSIDERATION

STEPHEN A. HOLLAND, et al.

v.

WOODHAVEN BUILDING AND
DEVELOPMENT, INC.

Murphy, C.J.,
Davis,
Eyler,
JJ.

Opinion by Eyler, J.

Filed:

Appellants have filed a motion for reconsideration based on their reading of the Court of Appeals's recent opinion in Sugarloaf Citizens' Association, et al. v. Department of Environment, et al., No. 660, Sept. Term, 1995. Sugarloaf was filed by the Court of Appeals on December 20, 1996, fifteen days after we filed our opinion in this case. Appellants argue that we erred in deferring to the Hampstead Board of Zoning Appeal's (Board) finding that appellants were not aggrieved parties, in view of the holding in Sugarloaf that a reviewing court may not give deference to an administrative finding of lack of aggrievement. Because Sugarloaf involved an administrative determination of **judicial** standing, rather than an administrative determination of **administrative** standing, Sugarloaf is inapposite.

Sugarloaf involved a challenge by certain property owners to the Maryland Department of the Environment's (MDE) decision to issue two permits that authorized construction of a solid waste incinerator. The Secretary of MDE had delegated authority to the Office of Administrative Hearings to hold a contested case hearing on the issue of whether a permit to construct should be issued to the applicants. The Secretary also requested that the Administrative Law Judge (ALJ) "entertain arguments on the issue of standing and make findings." Slip op. at 5-6. With respect to this latter request, the Court stated:

If there were a statutory provision or a regulation setting forth criteria for administrative standing, the Secretary's request would have been appropriate. Under such circumstances, the ALJ could properly make findings and conclusions concerning administrative standing. No party in the instant case, however, has called to our attention any statute or regulation prescribing criteria for administrative standing in a case like this, and we are not aware of any such statute or regulation. Consequently, under the decisions of this Court discussed above, the plaintiffs were appropriately accorded standing as parties to the administrative hearing. There was no proper issue of administrative standing to be resolved by the ALJ.

Id. at 16. In Sugarloaf, despite the lack of a statute conditioning standing to participate in the contested case hearing upon aggrievement, the ALJ made factual findings that the protestants were not aggrieved within the meaning of Bryniarski v. Montgomery Co., 247 Md. 137 (1967) and other cases. The trial court and this court, applying the substantial evidence standard, then used those findings of lack of aggrievement to hold that the protestants did not have standing to seek judicial review of the ALJ's decision.

The Court of Appeals held that the ALJ exceeded her proper role by rendering findings and conclusions regarding judicial standing, and that it was error to accord any deference to her findings and conclusions regarding judicial standing. Sugarloaf, slip op. at 17.

Under basic principles of administrative law, as well as the separation of powers

requirement set forth in Article 8 of the Maryland Declaration of Rights, [footnote omitted] it is not the proper function of an administrative official or agency in the executive branch of government to decide whether a plaintiff or potential plaintiff has standing to maintain an action *in court*. . . . [W]ith respect to the allocation of functions between administrative agencies and the judiciary, the determination of whether a person has standing to maintain an action *in court* is exclusively a judicial function.

Id. at 17-18 (emphasis added).

Unlike Sugarloaf, the instant case involved the question of whether appellants possessed standing to appeal to a board of zoning appeals under Article 66B, § 4.07(e) and § 135-157 of the Hampstead Code. Accordingly, we appropriately applied the substantial evidence test to the Board's findings on the issue of standing. See Bryniarski, 247 Md. at 144 (noting that the question of aggrievement is a fact question that must be determined on a case by case basis).

MOTION FOR RECONSIDERATION DENIED.