

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1282

September Term, 2014

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

v.

JANIE M. DENN, ET AL.

Eyler, Deborah S.,
Graeff,
Berger,

JJ.

Opinion by Eyler, Deborah S., J.

Filed: June 4, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland court as either precedent within the rule of *stare decisis* or as persuasive authority. Md. Rule 1-104.

The Frederick County Board of County Commissioners (“the County”), the appellant, noted this appeal from an order of the Circuit Court for Frederick County dismissing its action for judicial review.¹ The Zoning Board of Appeals for The City of Frederick (“the Board”), Janie M. Denn, and Charles F. Trunk, III, the appellees, have filed a motion to dismiss the appeal as moot. The County opposes the motion.

In January of 2013, the County filed an application with the Planning Commission for the City of Frederick (“Planning Commission”) in which it sought to subdivide a County owned property. On April 8, 2013, the Planning Commission held a hearing and approved the subdivision application (“the first Planning Commission approval”). Ms. Denn and Mr. Trunk filed a timely administrative appeal of that decision to the Board.

The Board held a hearing on October 22, 2013. On December 6, 2013, it issued a decision vacating the Planning Commission’s approval of the subdivision application and remanding the matter to the Planning Commission (“the first Board decision”). It found, contrary to the argument advanced by the County, that Ms. Denn and Mr. Trunk had standing to pursue an administrative appeal of the Planning Commission’s approval of the subdivision application. It further found that the Planning Commission had approved the subdivision application on an incomplete application and without deciding whether the subdivision plat conformed to the Comprehensive Plan.

¹The appeal was noted by the Board of County Commissioners of Frederick County. During the pendency of the appeal, Frederick County, by referendum, became a charter county, specifically, “Frederick County, Maryland,” so that the Board of County Commissioners no longer exists. We refer to the appellant, therefore, as “the County.”

Within 30 days of the Board’s decision, the County filed an action for judicial review of that decision in the Circuit Court for Frederick County (“first judicial review action”). The Board, Ms. Denn, and Mr. Trunk participated. The Board filed a motion to dismiss on the ground that due to its remand, its decision was not yet final, and therefore was not subject to challenge in an action for judicial review. On July 24, 2014, the circuit court entered an order granting the motion to dismiss. The County filed a timely notice of appeal from that order.

In the meantime, proceedings went forward on remand before the Planning Commission. The Planning Commission conducted additional hearings, at which time it received documents to make the subdivision application complete and considered whether granting the application would conform to the Comprehensive Plan. On May 12, 2014, the Planning Commission approved the County’s subdivision application (“the second Planning Commission approval”).

Ms. Denn and Mr. Trunk took an administrative appeal of the second Planning Commission approval to the Board. On February 27, 2015, the Board issued a decision finding that Ms. Denn and Mr. Trunk had standing to challenge the second Planning Commission approval before the Board and that the Planning Commission had properly approved the County’s subdivision application (“the second Board decision”).

On March 25, 2015, in the Circuit Court for Frederick County, Ms. Denn and Mr. Trunk filed an action for judicial review of the second Board decision (“the second judicial review action”). The second judicial review action remains pending in the circuit court.

This appeal, of course, is from the first judicial review action, which concerned the first Board decision, in which it vacated the Planning Commission's first approval and remanded the matter to the Planning Commission. The County advances two issues on appeal. First, it maintains that Ms. Denn and Mr. Trunk did not have administrative standing to challenge the first Planning Commission approval to the Board, and that the Board erred in ruling that they did. It asserts that, if the Board properly had ruled that Ms. Denn and Mr. Trunk lacked standing, it would have dismissed their appeal, and the Planning Commission's first approval would have stood.

Alternatively, the County argues that the Board did not have the power to remand the matter to the Planning Commission, and therefore the circuit court erred in dismissing the first action for judicial review. The alternate relief it seeks is reversal of the circuit court's order dismissing the first judicial review action and continuation of the judicial review action of the Board's first decision, with the expectation that the circuit court will reverse the Board's first decision and direct it to affirm the Planning Commission's first approval.

Although the County's route to relief is much longer in its second argument than in its first, the relief it seeks to obtain is the same: approval of the subdivision application by reinstatement of the first Planning Commission approval. In its motion to dismiss this appeal, the appellees contend that the issues the County raises are moot because in the remand proceeding before the Planning Commission, the County obtained the relief it was seeking, *i.e.*, approval of the subdivision application, although by means of a second approval of the Planning Commission instead of by reinstatement of the first Planning Commission

approval. Moreover, the Planning Commission’s second approval has been affirmed by the Board on administrative appeal. That decision now is pending in a judicial review action in the circuit court.²

The County responds that the issues raised are not moot because it seeks “a final subdivision plat recorded in the land record *and an end to litigation.*” (Emphasis added.) It contends that it should not have to await the results of the second judicial review action in order to be afforded this relief.

A question on appeal is moot if, when it is before the appellate court, “there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide.” *Attorney Gen. v. Anne Arundel Cnty. Sch. Bus Contractors Ass’n*, 286 Md. 324, 327 (1979). We agree with the appellees that the questions presented in this appeal are moot because the essential remedy the County seeks to obtain -- approval of its subdivision application by the Planning Commission and the Board -- it already has obtained. The County’s primary argument on the standing issue is that Mr. Trunk did not have administrative standing because he did not own nearby property and Mrs. Denn did not have administrative standing because she did not participate in the first Planning Commission proceeding and because there was no evidence in the record to show that she owned property nearby. There has been a second proceeding before the Planning Commission, however, and the approval that was granted and that was upheld by the Board

²The County has a right to participate in that action. We do not know whether it has elected to do so.

was given based on whatever evidence is in the record of that second proceeding. Any inadequacy in the record of the first proceeding before the Planning Commission is of no consequence at this point.³

Likewise as to the County's remand argument. Ultimately, the County seeks in this appeal to obtain a decision that results in its obtaining approval of its subdivision application. The County already has obtained approval of that application, however, in the second proceeding (on remand) before the Planning Commission, and the Board has upheld the subdivision approval. Any deficiency in the Board's decision is subject to judicial review based on the record before the Planning Commission and the Board in their second proceedings on this application -- which is not part of the record in this appeal. For the obvious reason that they were decided in its favor, the County did not challenge the second Planning Commission approval or the second Board decision. What was decided in the first Planning Commission approval and the first Board decision no longer will affect whether the

³We note that, if this issue were not moot, we would find no merit in it. The controlling ordinance did not require Ms. Denn to have participated in the Planning Commission proceeding to have administrative standing to challenge it, *see* City of Frederick, Land Management Code, § 315(a) (an appeal of a decision of the Planning Commission may be “made by any person aggrieved or by any officer, department, or board within the jurisdiction affected by the decision.”); and the evidence before the Planning Commission included a plat showing that Ms. Denn owns property adjacent to the property that was the subject of the subdivision application. So long as one person who took the appeal had standing, then the standing requirement was satisfied. *Cnty. Council of Prince George's Cnty. v. Billings*, 420 Md. 84, 97 n.12 (2011).

County obtains approval of its subdivision application. Therefore, the question whether the Board had authority to remand the matter to the Planning Commission is moot.⁴

As this case is not one in which it is advisable to render a decision on questions that have become moot, we shall dismiss the appeal.

**APPEAL DISMISSED. COSTS TO BE
PAID BY THE APPELLANT.**

⁴On this issue as well, the County's argument had no merit. This Court's decision in *Bd. of Cnty. Comm'rs for St. Mary's Cnty. v. Res. Mgmt., Inc.*, 154 Md. App. 10, 39 (2003), supports the conclusion that the Board had the power to remand this matter to the Planning Commission.