UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2755

September Term, 2015

WILLIAM GEDDES, ET AL.

v.

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, ET AL.

Eyler, Deborah S.,
Nazarian,
Salmon, James P.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: March 31, 2017

This case arises out of a dispute over the permitted uses for a parcel of property in Baltimore County known as 11019 Gateview Road, which is the primary residence of James and Karole Riffin, appellants.

On October 15, 2013, the Riffins filed with the Office of Administrative Hearings for Baltimore County a petition for special hearing to determine: 1) whether various uses on their property were permitted under Baltimore County zoning law; and 2) when is it lawful for a county code enforcement officer to enter upon private land.[1] By agreement, Baltimore County did not participate in that action but the People's Counsel for Baltimore County did participate.[2] After a public hearing, an Administrative Law Judge ("ALJ") issued a written opinion and order dated January 7, 2014, finding that the uses proposed by the Riffins were not permitted. The ALJ dismissed the claim pertaining to the issue of whether an inspector had a right to enter upon private land. Mr. Riffin filed a motion for reconsideration, which was denied.

Pursuant to a prior agreement with Baltimore County in which the Riffins agreed not to "appeal or otherwise contest" the ALJ's decision, the Riffins did not appeal, but their

[1] For clarity, we note that since 2011, "[a]ny reference to the Zoning Commission for Baltimore County Zoning Regulations shall be deemed to be a reference to the Office of Administrative Hearings." Baltimore County Code, § 3-12-104(b). "All references in law to the board of zoning appeals shall be construed to refer to the county board of appeals." Baltimore County Charter, § 602.

[2] The People's Counsel for Baltimore County is an independent organization, separate from Baltimore County, with the "specific public interest function" of defending the comprehensive zoning maps and master plan in a variety of cases, including special hearings. *See generally* Baltimore County Charter, § 524.1(a)(3)A.

neighbor, Will Geddes, who is an appellant in the instant case, filed an appeal with the Baltimore County Board of Appeals ("the Board").[3] Despite the prior agreement with Baltimore County, Mr. Riffin participated in Mr. Geddes's appeal as a self-styled "petitioner," filed a memorandum, and gave testimony at the hearing. Mr. Riffin argued, among other things, that because the Board of Appeals was not an appellate body, he was not participating in an appeal and was therefore not in violation of his agreement with Baltimore County. The Board ultimately determined that Mr. Riffin was precluded from pursuing the appeal.

In addition to Mr. Geddes and Mr. Riffin, the People's Counsel appeared and participated in the hearing before the Board. An Assistant County Attorney for Baltimore County was seated in the courtroom gallery but did not participate in the case before the Board.

In a written order dated November 7, 2014, the Board determined that the proposed uses and storage of equipment on the Riffins' property were unlawful, denied the special hearing request, and dismissed the claim that a code inspector did not have the right to enter upon private property.

After losing before the Board of Appeals, Mr. Geddes and the Riffins filed in the Circuit Court for Baltimore County a petition for judicial review. A hearing was held on

[3] Mr. Geddes was permitted to appeal pursuant to § 32-3-401(a) of the Baltimore County Code which, provides that "[a] person aggrieved or feeling aggrieved by a decision of the Zoning Commissioner or the Director of Permits, Approvals, and Inspections may appeal the decision or order to the Board of Appeals." The Board determined that Mr. Geddes "clearly testified that he felt 'aggrieved' by [the ALJ's] decision."

December 2, 2015. The circuit court dismissed the petition for judicial review as to Ms. Riffin, determined that Baltimore County's motion to intervene was moot, denied a motion to strike Baltimore County's pleadings, and affirmed the decision of the Board. Thereafter, Mr. Geddes and the Riffins, *pro se*, filed this timely appeal.

QUESTIONS PRESENTED

Mr. Geddes and the Riffins present numerous questions[4] for our consideration, which we have consolidated and rephrased as follows:

[4] In their Brief, Mr. and Mrs. Riffin and Mr. Geddes set forth the following questions for our consideration:

> Was it arbitrary, capricious, unreasonable, or contrary to law:
>
> A. For the Circuit Court to permit Baltimore County to Intervene?
> B. What is the nature of a *de novo* hearing?
> C. For the Board to interpret, or rely upon, the terms and conditions contained in a private contract between Riffin and Baltimore County, Maryland?
> D. For the Board to bar Riffin from fully participating at the Board hearing?
> E. For the Board to fail to consider whether Riffins' property was 'eligible for Agricultural Assessment?'
> F. For the Board to consider issues/admit evidence on issues that were not raised/argued before the ALJ, and/or were not appealed?
> G. For the Board to hold that it did not have the jurisdiction to rule on the Constitutional issue of whether Baltimore County Code Inspector Mills ("Mills" or "Inspector Mills") violated Riffin's 4th Amendment Right barring warrantless searches and seizures?
> H. Was there 'substantial evidence' in the record before the Board to support the Board's holding that none of the uses enumerated by Riffin, were permitted in a DR-1 or RC-6 zone?
> I. May the right to a *de novo* hearing be waived?
> J. Must new notice be given when having a *de novo* hearing?

(continued…)

I. Did the agreement between Baltimore County and the Riffins preclude the Riffins from participating as parties in the actions before the Board, the Circuit Court for Baltimore County, and this Court?

II. Was there substantial evidence in the record to support the Board's denial of the petition for special hearing?

III. Is Baltimore County a party to this action?

IV. Did the Board err in determining that it was without jurisdiction to rule on the constitutionality of a Baltimore County Code Inspector's warrantless entry onto private property?

V. Did the Board err in failing to address issues pertaining to *de novo* hearings?

VI. Did the Board fail to consider whether the Riffins' property was eligible for Agricultural Assessment?

For the reasons set forth below, we shall dismiss the appeals of Mr. and Mrs. Riffin and affirm the judgment of the circuit court in all other respects.

I.
FACTUAL AND PROCEDURAL BACKGROUND

The basic facts of the case are not in dispute. The Riffins' property is about 13 acres and includes the Riffins' residence and significant wooded areas. The property is split zoned RC-6 (Rural Conservation and Residential) and DR-1 (Density Residential). At issue is the legality of several land uses at the Riffins' property, particularly the storage by

(…continued)

In addition, the appellants state "[the] Joint Memorandum contains a number of additional issues, and argument thereon, none of which are waived, all of which are incorporated by reference herein. Due to the Rule's word limitation of 9,100 words, this brief will focus on the more egregious errors committed by the Board."

the Riffins of various pieces of construction equipment, trucks, buses, automobiles, railroad cars, and railroad track.

In September 2013, Baltimore County issued a code enforcement violation and correction notice to the Riffins alleging illegal use of their property (under both the Baltimore County Zoning Regulations and the Baltimore County Code) resulting from the storage of heavy industrial equipment. Before issuing the citation, the inspector visited the property twice and took photographs of items stored there. The Riffins maintained, among other things, that most of their uses of the property were permitted as accessory to farm use, that the inoperable buses were used as residential sheds, and that the railroad cars and tracks were recreational.

In early October 2013, Baltimore County and the Riffins entered into a comprehensive settlement agreement pursuant to which the Riffins agreed to file a petition for special hearing to obtain a determination of whether their uses of the property were in compliance with the zoning regulations. Baltimore County agreed to suspend its code enforcement proceeding and refrain from imposing any fines or other penalties until after the Office of Administrative Hearings ("OAH") issued a decision on the petition for special hearing. In addition, the County agreed to refrain from having an Assistant County Attorney appear at the proceedings on the petition for special hearing and the Riffins agreed that if the ALJ denied any portion of their petition and determined that any of the activities on the property violated the County's zoning regulations, or any other state or local law, they would "immediately cease any unlawful activities and … remove, without exception, any prohibited items" from the property within six months of the date of the ALJ's order.

The Riffins specifically agreed that the order of the ALJ would be "a final Order and they will forego any right to appeal or otherwise contest the Order."

The Riffins filed a petition for special hearing seeking to determine whether their proposed principal and accessory uses, which were listed in the petition, were lawful and whether, and under what circumstances, a Baltimore County code inspector and enforcement officer could enter upon their private property. Mr. Riffin and his neighbor, Mr. Geddes, attended the public hearing on the petition. It is unclear if Mrs. Riffin attended the hearing, but she did not testify.

Mr. Riffin testified that on July 26 and September 16, 2013, Baltimore County Code Enforcement Officer Phillip Mills entered onto his property and took photographs, without his permission, and in violation of no trespassing signs that were posted on the property. Mr. Riffin further testified that he once owned a railroad and hoped to acquire another one. He kept on his property railroad equipment, tracks, a caboose, and other items, including a crane, two highboy trailers, one low trailer, a bobcat, two extendable semi-trailers, a man lift, an air compressor, and water storage tanks. Mr. Riffin kept the caboose for recreational purposes and used some of the other items to maintain trees that he claimed to be cultivating for future sale as ship masts. Mr. Riffin also testified that "[e]verything that I have is used in connection with my farming activities, one way or another[.]"

Mr. Geddes, a neighbor who owns property abutting the Riffins' property, had been on the Riffins' property and seen some of the items kept there. He testified that he did not have any objection to the items being kept on the Riffins' property.

The ALJ concluded that the principal use of the property was for residential dwelling purposes, that "it is plausible (though not free from doubt) that the [Riffins] utilize the property for residential agricultural purposes, as an accessory use," and that such a use was permitted. The ALJ further concluded that the railroad cars, tracks, ties, and related equipment could not lawfully be kept on property zoned DR-1 and RC-5.[5] Nor could the Riffins keep untagged motor vehicles or commercial vehicles stored outside on the property. With respect to certain other equipment, the ALJ said:

> Mr. Riffin also testified that he has a large crane, man lift, 70' tractor trailer and trucks. He indicated that these items are "very handy" and that he uses them "a lot" to pull pipes out of wells, assist in harvesting trees or to help his neighbors. Again, such heavy equipment and materials are not customarily used for residential or even agricultural purposes. No evidence was presented that any of the vehicles or equipment were registered as "farm vehicles" with the State of Maryland. These items, as alleged by Baltimore County, are items that must be stored in a "contractor's equipment storage yard," and not on residential property. That term is defined as follows in the [Baltimore County Zoning Regulations ("BCZR")]:
>
> > "The use of any space, whether inside or outside a building, for the storage or keeping of contractor's equipment or machinery, including building materials storage, construction equipment storage or landscaping equipment and associated materials."
>
> I find that Petitioners are in fact using the property for such a purpose, which is permitted by special exception only in commercial zones. As such, I do not believe these items can be lawfully kept on the premises.

After making these findings, the ALJ denied the request for special hearing. Mr. Riffin filed a motion for reconsideration, which was denied. Mr. Geddes filed a notice of appeal.

[5] In addressing Mr. Riffin's motion for reconsideration, the ALJ acknowledged that he mistakenly referred to the property as being zoned RC-5 rather than RC-6.

At the hearing before the Board of Appeals, Mr. Geddes was identified as the appellant and Mr. Riffin identified himself as one of the "petitioners." The Board recognized that the Riffins had agreed not to file an appeal or otherwise contest the ALJ's decision and therefore precluded Riffin from pursuing the appeal.

Mr. Geddes was not a signatory to the agreement between the Riffins and Baltimore County. He testified that he felt aggrieved by the ALJ's decision. Although the Board described Mr. Geddes's appeal as "contrary to the spirit of the Agreement between the Riffins and the County," it permitted him to proceed with the appeal of the ALJ's decision pursuant to §32-3-401(a) of the Baltimore County Code, which provided:

> *In general*. A person aggrieved or feeling aggrieved by a decision of the Zoning Commissioner or the Director of Permits, Approvals, and Inspections may appeal the decision or order to the Board of Appeals.

Mr. Geddes acknowledged that Mr. Riffin asked him to file the appeal but testified that it was in his interest to do so as Mr. Riffin plows his driveway when it snows.

Mr. Geddes called Mr. Riffin as a witness, and the latter testified that he obtained signed affidavits from many of his neighbors who claimed not to have any problem with the equipment being kept on his property. Mr. Riffin acknowledged that he kept a significant amount of equipment on his property including, but not limited to, a rough terrain crane that weighed over 80,000 pounds, had a boom length of 92 feet, and could pick up 60,000 pounds. In addition to the crane, Mr. Riffin kept other equipment on his property including, but not limited to: a bobcat, a dump truck, an excavator, two 70 to 80 foot semi-trailers, a man lift, a boom truck, air compressors, jack hammers, generators, light towers, a chipping machine, and numerous trucks and trailers, all of which he claimed

were used in conjunction with his tree farming operations and forestry activities. Mr. Riffin also kept a "large quantity of railroad equipment," all of which was functional, and railroad tracks, which he used for the trains to ride upon. Mr. Riffin testified that, on occasion, he invited children to play on the railroad equipment.

Mr. Riffin admitted that some of the vehicles were not tagged, but claimed he used them as utility sheds. He also acknowledged that he previously had three storage buildings and "a large quantity of that material that I used to store in those buildings is now sitting on my property because I don't have any other place to put it."

The People's Counsel called Baltimore County Code Enforcement Officer Phillip Mills as a witness. Mr. Mills went to the Riffins' property on July 26 and September 16, 2013, and took photographs on both occasions. He walked off the Riffins' driveway and saw what he described as an "open dump and junk yard conditions." He observed, among other things: cranes, trains, bobcats, large cylinders, tires, buckets, inoperable vehicles, untagged cars, front end loaders, school buses, compressors, lots of ladders, concrete, trailers, junk, trash, and debris.

Ultimately, the Board rejected Mr. Riffin's argument that the items on his property were either accessory to farming or recreational. The Board noted that there was no evidence of any current sales or active agricultural activities on the property; that it would be years before Mr. Riffin's trees would be ready to sell; and that there was no specific evidence about how the equipment was being used to trim trees on the property. The Board also rejected the idea that Mr. Riffin's equipment constituted an accessory use or structure, and concluded that the uses of the property were "more in line with" a contractor's

equipment storage yard and a junkyard. The Board determined that the proposed uses and storage of equipment on the Riffins' property were unlawful, and denied the special hearing request. The Board determined that it did not have jurisdiction to address the issue of whether a county code inspector can enter onto private land.

Following the Board's decision, Mr. Geddes and the Riffins filed a petition for judicial review. At a hearing on December 2, 2015, Mr. Geddes and Mr. Riffin each appeared without counsel. The People's Counsel also appeared, and Baltimore County moved to intervene in the proceeding. Mr. Riffin opposed the County's motion to intervene on the ground that it had not participated in the underlying proceedings.

In a written memorandum opinion and order, the circuit court dismissed the petition for judicial review as to Mrs. Riffin, who did not appear at the December 2nd hearing. The court affirmed the decision of the Board and determined that there was substantial evidence to support the Board's conclusion that the Riffins' uses of the property were not permitted in RC-6 or DR-1 zoned land. With respect to the issue of whether a county code inspector may enter onto private property, the court recognized that the Baltimore County Code permits inspectors to enter upon private land in the performance of their duties, which included enforcing the county's zoning regulations and inspecting property for enforcement purposes. Nevertheless, the court held that that issue was "beyond the jurisdictional scope of the Board." The court also held that the exclusionary rule does not apply to civil proceedings and that the photographs taken by Inspector Mills were properly admitted. Finally, the court declined to address the conditions under which a county code inspector may enter upon private land, on the ground that it sought an advisory legal

opinion. In a separate order, the court denied Baltimore County's motion to intervene on the ground that it was moot and denied Geddes's motion to strike Baltimore County's pleadings.

STANDARD OF REVIEW

We review the decision of an administrative agency under the same statutory standards as the circuit court, meaning we evaluate the decision of the agency directly, not the decision of the lower court. *People's Counsel for Baltimore County v. Surina*, 400 Md. 662, 681 (2007); *Gigeous v. Eastern Correctional Inst.*, 363 Md. 481, 495-96 (2001). Our role is "'limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.'" *Grasslands Plantation, Inc. v. Frizz-King Enterprises, LLC*, 410 Md. 191, 203 (2009)(quoting *United Parcel Service, Inc. v. People's Counsel for Baltimore County*, 336 Md. 569, 577 (1994)). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Md. State Police v. Warwick Supply & Equip. Co., Inc.*, 330 Md. 474, 494 (1993)(citations omitted). We may not substitute our judgment for that of the Board of Appeals unless the agency's conclusions were not supported by substantial evidence or were premised on an error of law. *Stansbury v. Jones*, 372 Md. 172, 182-83 (2002).

DISCUSSION

I.

The first issue to be resolved is whether Mr. and Mrs. Riffin and Mr. Geddes are properly before this Court as appellants. The petition for judicial review in the circuit court and the notice of appeal to this Court were filed by Mr. and Mrs. Riffin and Mr. Geddes. On October 2, 2013, however, Mr. and Mrs. Riffin entered into a "Complete and Comprehensive Settlement Agreement" with Baltimore County, pursuant to which they agreed that if any portion of their petition for special hearing was denied and the ALJ determined that any of the activities on their property violated the Baltimore County Code, zoning regulations, or other state or local law, they would "immediately cease any unlawful activities," "remove, without exception, any prohibited items from the [p]roperty within six (6) months" of the date of the ALJ's order, and "forego any right to appeal or otherwise contest" the ALJ's order.

There is no dispute that the Riffins' petition for special hearing was denied and that the ALJ concluded that "neither the principal [n]or accessory use of the property entitles the Petitioners to keep on the property those items described in the petition." The ALJ held that the railroad cars, tracks, ties and related equipment could not "be lawfully kept on DR 1 and RC 5 [sic] zoned property," and that the Riffins "large crane, man lift, 70' tractor trailer and trucks" must be stored in a 'contractor's equipment storage yard,' and cannot be kept on the Riffins' property. The ALJ also rejected the Riffins' contention that untagged motor vehicles on their property were being used as utility sheds. The ALJ held that the outside storage of untagged motor vehicles and commercial vehicles on the property was

unlawful and rejected the idea that any of the vehicles or equipment at issue fell within an exception for farm equipment. In light of these rulings, Mr. and Mrs. Riffin were required by their agreement with Baltimore County to "immediately cease any unlawful activities" and "remove, without exception, any prohibited items from the [p]roperty within six (6) months."

Mr. Geddes contends that it was "arbitrary, capricious, unreasonable, or contrary to law" for the Board to interpret, or rely upon, the terms and conditions contained in the private contract between the Riffins and Baltimore County and to bar the Riffins from fully participating in the hearing before the Board. We disagree. At the hearing before the Board, Mr. Riffin acknowledged that he was bound by the agreement. By accepting the terms of their agreement with Baltimore County, and in light of the ALJ's decision, the Riffins waived their right to appeal. Waiver "includes the intentional relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right, and may result from an express agreement or be inferred from circumstances." *Gould v. Transamerican Assocs.*, 224 Md. 285, 294 (1961)(footnote omitted). "The doctrine of acquiescence – or waiver – is that 'a *voluntary* act of a party which is inconsistent with the assignment of errors on appeal normally precludes that party from obtaining appellate review.'" *Board of Physician Quality Assurance v. Levitsky*, 353 Md. 188, 199 (1999)(quoting *Franzen v. Dubinok*, 290 Md. 65, 69 (1981))(emphasis in original); *accord Downtown Brewing Co., Inc. v. Mayor of Ocean City*, 370 Md. 145, 149-51 (2002). Here, by the terms of their agreement with Baltimore County, both Mr. and Mrs. Riffin consented to the ALJ's decision and waived their right to challenge that decision on appeal or to

"otherwise" contest" the ALJ's decision. Accordingly, we shall dismiss this appeal with respect to both Mr. and Mrs. Riffin.

Mr. Geddes, who availed himself of the language contained in § 32-3-401(a) of the Baltimore County Code, proffered to the Board that he felt aggrieved by the ALJ's decision because Mr. Riffin's ability to keep on his property at least some of the equipment at issue was very helpful to him. Mr. Riffin had used his bobcat to remove ice and snow from Mr. Geddes's driveway. In addition, if necessary, Mr. Riffin could use his crane to move trees that fall on Mr. Geddes's property. Assuming, without deciding, that Mr. Geddes's feelings of being aggrieved were sufficient to permit him to appeal, he was the sole appellant before the Board and is the only person who has a right to file this appeal.

II.

Having determined that Mr. Geddes was the sole appellant appropriately before the Board, and accepting for purposes of this appeal that Mr. Geddes was aggrieved by the administrative decision regarding the uses on the Riffins' property, we must determine whether there was substantial evidence in the record to support the Board's denial of the Riffins' petition for special hearing. Our review of the record convinces us that there was.

With regard to the contention that the Riffins' equipment was used in farming or agricultural activities on their property, we recognize that farms are permitted in RC-6 and DR-1 zones. *See* Baltimore County Zoning Regulations ("BCZR") §§ 1A07.3A(2) and 1B01.1A(7). The term "farm" is defined, in relevant part, as "[t]hree acres or more of land, and any improvements thereon, used primarily for commercial agriculture, as defined in these regulations, or for residential and associated agricultural uses." BCZR §101.1.

Although Mr. Riffin testified that he used all of his equipment in the cultivation and culling of trees he is growing on his property, and that he hopes one day to sell the trees to be used as ship masts, there was no evidence of any current agricultural activities, sales, or other commercial activities relating to agricultural uses on the property. In fact, Mr. Riffin acknowledged that he last sold wood from his trees three years before the hearing and that he was "not in the market of selling right now[.]" In addition, Inspector Mills's testimony about the equipment and materials on the Riffins' property supported the Board's conclusion that those items were not farm equipment, but were consistent with equipment found in a junkyard or contractor's storage yard. A "junkyard" is defined as:

> Any land used commercially or industrially for storage or for sale of scrap metal, wastepaper, rags or other junk, and any land, except as provided for by Section 428, used for the storage of unlicensed or inoperative motor vehicles, dismantling or storage of such vehicles or parts thereof, or used machinery, regardless of whether repair or any other type of commercial operation occurs, but excluding scrap for use in manufacturing processes on the premises or waste materials resulting from such processes or resulting from the construction or elimination of facilities for such processes. The term does not include unlicensed motor vehicles located at automotive service stations, service garages or new or used motor vehicle outdoor sales areas, or any vehicle stored pursuant to Section 405A.

BCZR § 101.1. A contractor's equipment storage yard is defined as "[t]he use of any space, whether inside or outside a building, for the storage or keeping of contractor's equipment or machinery, including building materials storage, construction equipment storage or landscaping equipment and associated materials." BCZR § 101.1. In light of these zoning regulations and the evidence presented, a reasonable mind could reasonably have concluded that the Riffins' equipment did not meet the definition of farm equipment.

As for the railroad equipment, Mr. Riffin testified that it was used for recreational purposes, but that is not a permitted use on the property by right or special exception. BCZR §§ 1A07.3 and 1B01.1. Nor were the Riffins' uses permissible as accessory uses or structures under BCZR §§ 1A07.3A(7) or 1B01.1A(18). An "accessory use or structure" is defined, in relevant part, as one that:

> (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served[.]

BCZR § 101.1. There was substantial evidence to support the Board's conclusion that the Riffins' uses did not meet that definition. The evidence presented to the Board established the presence of an enormous quantity of heavy equipment and vehicles on the property, including, but not limited to: trains, trucks, a crane, a bobcat, a front-end loader, buses, untagged and inoperable motor vehicles, and trailers. The Board properly concluded that the untagged and unlicensed vehicles on the property could not be converted into utility sheds, which are permitted on DR zoned property, simply by filling them with personal belongings or household items, as such a use would be contrary to the purpose of the Baltimore County Zoning Regulations.

III.

Mr. Geddes argues that Baltimore County "does not have the right, nor standing, to intervene" in this matter. Baltimore County did not participate in the proceedings before the OAH or the Board, although an Assistant County Attorney observed the proceedings before the Board. The circuit court concluded that the presence of the Assistant County Attorney at the hearing before the Board was sufficient to establish the county as a party in the petition for judicial review, but denied the county's motion to intervene on the ground that it was moot. We need not resolve the issue of whether Baltimore County had the right to intervene. Baltimore County did not attempt to intervene in the proceeding before the Board. Our task in this appeal is limited to determining if there was substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision was premised upon an erroneous conclusion of law. *Grasslands Plantation, Inc.*, 410 Md. at 203. We have already determined that there was substantial evidence to support the Board's findings and conclusions, and that determination would not be affected in any way by a determination of the county's right to intervene. As the issue is moot, we shall not address it.

IV.

Mr. Geddes contends that the Board erred in determining that it was without jurisdiction to determine the conditions under which a code inspection and enforcement officer may enter upon private property. We need not reach this issue. Given the unusual procedural history of this case, the question before us is raised by Mr. Geddes, who does not own the property upon which the county inspection and enforcement officer entered.

As a general rule, in a civil case, in order to demonstrate reversible error, the appellant must not only establish error, but also that the error was prejudicial. *Flores v. Bell*, 398 Md. 27, 33 (2007). Mr. Geddes did not establish that he suffered any prejudicial effect from the Board's determination that it was without jurisdiction to address the conditions under which a code inspection and enforcement officer could enter upon the Riffins' property.

Moreover, in their petition for special hearing, the Riffins raised this issue generally, asking under what conditions a county code inspector may enter upon private land. Any decision on that particular issue would be advisory in nature. The role of an appellate court is not to render advisory opinions. *Alston v. State*, 433 Md. 275, 285 (2013)(ordinarily, courts will not decide moot or abstract questions, or render advisory opinions); *Montgomery County Career Fire Fighters Ass'n v. Montgomery County*, 210 Md. App. 200, 209 (2013)(role of appellate court is not to render advisory opinions).

Even if Mr. Geddes had standing to challenge the specific issue of Inspector Mills's entry onto the Riffins' property, reversal would not be warranted. The Baltimore County Code permits open land inspections. *See* Baltimore County Code, § 32-3-602(b)(2). The inspections of the uses in question did not involve any protected curtilage and the few photographs taken close to the Riffins' residence did not pertain to any of the uses in controversy and were not considered by the Board. As to the evidence that was presented, we note that contrary to the appellants' argument, the Exclusionary Rule, which is based upon the Fourth Amendment to the United States Constitution, does not apply to civil proceedings. *See, e.g.*, *Coleman v. Anne Arundel County Police Dept.*, 136 Md. App. 419,

444 (2001)("exclusionary rule applies only to criminal proceedings and forfeiture cases")(citing *Sheetz v. Mayor and City Council of Baltimore*, 315 Md. 208, 212 (1989)).

V.

Mr. Geddes presents the following three questions pertaining to *de novo* hearings: (1) "[w]hat is the nature of a *de novo* hearing," (2) "[m]ay the right to a *de novo* hearing be waived," and (3) whether new notice must be given "when having a *de novo* hearing." Preliminarily, we note that Mr. Geddes did not raise before the Board any issue pertaining to *de novo* hearings. Those issues were raised only by Mr. Riffin, who was a witness, not a party, in the action before the Board. To the extent Mr. Geddes contends that proper notice was not provided for the hearing before the Board, the docket entries reveal that notice was provided. No additional public posting was required.

Finally, the questions presented concerning generally the nature of *de novo* hearings, the right to waive them, and whether new notice must be given, all seek advisory opinions. As we have already noted, our role is not to render advisory opinions, and we decline to do so. *See Alston*, 433 Md. at 285; *Montgomery County Career Fire Fighters Ass'n*, 210 Md. App. at 209.

VI.

Lastly, Mr. Geddes contends that the Board failed to consider whether the Riffins' property was eligible for an agricultural assessment. This contention is without merit. The Riffins did not include in their petition for special hearing, a request for a determination as to their eligibility for an agricultural assessment. Moreover, in the Board of Appeals

proceeding, Mr. Geddes did not raise any issue pertaining to the eligibility of the Riffins' property for agricultural assessment, nor would he have had standing to do so.

APPEAL DISMISSED AS TO KAROLE AND JAMES RIFFIN; CASE AFFIRMED IN ALL OTHER RESPECTS. COSTS TO BE PAID BY JAMES RIFFIN, KAROLE RIFFIN AND WILLIAM GEDDES, JOINTLY AND SEVERALLY.