

NEHEMIAH’S VISION, INC, ET AL.,

Appellant

v.

BOARD OF EDUCATION
OF PRINCE GEORGE’S COUNTY,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-30

OPINION

INTRODUCTION

The lead Appellant, Nehemiah’s Vision, whose “representative” is Tonya Wingfield, along with 22 other Appellant residents of Prince George’s County, appealed the decision of the Board of Education of Prince George’s County (local board) to declare Thomas Addison Elementary School as surplus and transfer that property to the county. The local board filed a Motion to Dismiss or for Summary Affirmance to which the Appellants filed a Response. The local board filed a Reply.

FACTUAL BACKGROUND

Thomas Addison Elementary School (“Thomas Addison”) is a small school which has been vacant for 5 years. The prospects for this school have been under review by the local board for a number of years. Specifically, as the local board explains in its Motion:

- At a public meeting on May 8, 2008, the local board received an executive summary that included a report assessing the general conditions of Prince George’s County Public Schools’ (PGCPS) facilities. The assessment was conducted by contractors retained by the school system. Thomas Addison, a school deemed to be between 31-50 years old in 2009, was included in the category of “Second Priority Projects” and designated within the “Other Facilities” category. This report indicated that the Board would need up to \$5-6 million dollars to repair all deficiencies of the school site or replace the building. (Ex. 1, attached to Motion).
- On September 16, 2009, during a public meeting, the former Superintendent of Schools provided the local board with highlights from the Capital Improvement Program and the “Thomas Addison Building” was listed with a priority of 46th with no state funding available. Included in this report was reference to the fact that the local board had entered into a

Memorandum of Understanding with Prince George's County and Maryland National Capital Park & Planning Commission to establish a "School Construction Project Team" (SCPT). The SCPT was established so that monthly meetings could take place during which the school construction program could be discussed and monitored by representatives of these three entities. (Ex. 2, attached to Motion).

- On June 17, 2010, at another public meeting, the local board was presented with the Educational Facilities Master Plan. The Plan included a section on Facility Needs Analysis. Thomas Addison was again noted as a future project, with its status to be determined. (Ex. 3, attached to Motion).

On October 23, 2012, the same contractors who conducted the facilities assessment in 2008 provided an updated facility assessment to the local board during a public meeting. At this point in time, Thomas Addison was ranked as the third worst facility in the school district and, although the system made overall advancements in improving its facilities, this school continued to be rated as "poor." (Ex. 4, attached to Motion).

On December 2, 2013, the Deputy Director for the County's Office of Central Services sent a letter to Dr. Kevin Maxwell, Chief Executive Officer (CEO) for PGCPs, requesting that the school system declare the Thomas Addison property as surplus. Given that the property had not been used by PGCPs for 5 years, there was no anticipated funding for PGCPs to improve the facility so that it could be used for school purposes, and that the proposed use by the County was aligned with the County's plans for economic development, the CEO considered the request and prepared an agenda item for the Board recommending the requested action to declare the property surplus at a regular Board meeting. The CEO included the letter from the County's Deputy Director as part of the agenda item.

The proposed action item was scheduled to be presented at the Board's meeting on January 23, 2014. It was listed on the consent agenda as Item 8.2 and posted for the public to review the item on January 17, 2014. No person signed up in advance or appeared at the meeting to address this proposed action. While the item was initially proposed as a consent agenda item, it was pulled for discussion by a Board Member. During the discussion, the administration advised the Board that the school could only accommodate 175 students and that was too low of a State Rated Capacity for use by PGCPs; that over the years of vacancy, the school building and grounds had been vandalized and staff had to continuously remove trash and other debris from the property; and, that the site had become even less desirable for use as a school due to the recent opening of an outlet mall nearby. After discussion, the Board approved the proposed action. (*See* Composite Ex. 5 and Ex. 6, attached to the Motion).

This appeal was filed on February 23, 2014.

STANDARD OF REVIEW

This appeal involves a challenge to a quasi-legislative decision of the local board. The jurisdiction to hear the appeal is provided under Education Article §2-205. In an appeal under §2-205, challenging a quasi-legislative decision of a local board, we decide only whether the local board's decision violated State education law, regulation or a statewide education policy. *Rock Creek Hills Association, et al. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-49 (2012). *See also, Stanmore Family Limited Partnership, et al v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-41 (2012).

LEGAL ANALYSIS

Standing to Appeal

The local board argues that the Appellants lack standing to bring this appeal. The general rule on standing is that “for an individual to have standing, even before an administrative agency, he must show some direct interest or ‘injury in fact, economic or otherwise’.” *Clarksburg Civic Ass’n v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-34 (2007)(citation omitted). “This showing of a direct interest or injury in fact requires that the individual be personally and specifically affected in a way different from the public generally and is, therefore, aggrieved by the final decision of the administrative agency.” *Id.* In the *Clarksburg Civic Ass’n* opinion, we noted that an association may have standing to file an appeal concerning a school closing or redistricting when it affects the interest of association parents who have children enrolled in the affected schools. *See also, Stratford Woods Home Owner’s Ass’n, Inc. v. Montgomery County Bd. of Educ.*, 6 Op. MSBE 238 (1992). Because this school has been closed for five years, standing cannot be based on that provision.

The Appellants base their standing argument, in part, on the allegation that the local board violated local board policy and State law. Thus, they assert that they have a direct interest in righting those wrongs. They find that right set forth in the local board's Ethics Regulations. The regulations state:

BASIC COMMITMENTS

Ethics Regulations

Statement of Purpose

1. The Board of Education of Prince George's County, recognizing that our system of representative government is dependent in part upon the people maintaining the highest trust in their public officials and employees finds and declares that the people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained.

2. It is evident that this confidence and trust is eroded when the conduct of public business is subject to improper influence and even the appearance of improper influence.
3. For the purpose of guarding against improper influence, the Board of Education of Prince George's County adopts these Ethics Regulations to require Board Members, candidates to be Members of the Board of Education, school officials and employees to disclose their financial affairs and to set minimum standards for their conduct of school system business.
4. It is the intention of the Board that this Policy be liberally construed to accomplish this purpose.

There is nothing in that Statement of Purpose that would grant generalized standing to these Appellants to challenge a local board's quasi-legislative action here. Indeed, the Appellants misquoted the Statement of Purpose in their appeal and ignored the clear stated purpose of the regulations - - to address undue, improper financial influence. The Ethics Regulations are patterned after the Maryland State Ethics laws. The enforcement body is the Prince George's County School System Ethics Panel, not the Appellants. Appellants cannot derive standing from the Ethics Regulations.

Appellants also argue that they have standing as taxpayers to ensure that the local board's "action promotes the public's trust in our local school system...." (Response at 6-7). "Taxpayer" standing also must be based on more than a generalized interest. *See, e.g., Daimler Chrysler Corp. v. Cuno*, 547 U.S. 332 (2006). In that case, the Supreme Court stated that the taxpayer had no standing unless the alleged injury was "concrete and particularized", not suffered "in some indefinite ways in common with people generally." This Board has consistently applied that standard in the cases before it. *See, e.g. Clarksburg Civic Ass'n v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-34 (2007); *Janis Zink Sartucci v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-31 (2010). We apply that standard here.

The Appellants cast themselves as education stakeholders, residents of the county and as taxpayers for the school system. In none of those roles have the Appellants shown that they suffer an injury in fact or demonstrate a direct personal and specific interest that differs from any other member of the public. Therefore, the Appellants lack standing to pursue this appeal.

Merits

Even if the Appellants had standing, they could not prevail on the merits. Under Education Article §2-205, our jurisdiction when reviewing a local board's quasi-legislative decision limits our focus only to violations of State education law or policy. *See, e.g., Rock Creek Hills Ass'n v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-49 (2012). In this case, the Appellants allege several violations of local board policy and procedure. We have no jurisdiction to address those alleged violations.

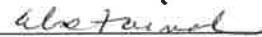
The Appellants allege a violation of Md. Educ. Art. §4-115(c)(1)(i) which states:

Except as provided in this paragraph, if, with the approval of the State Superintendent, a county board finds that any land, school site, or building no longer is needed for school purposes, it shall be transferred by the county board to the county commissioners or county council and may be used, sold, leased, or otherwise disposed of, except by gift, by the county commissioners or county council.

The Appellants assert that the local board failed to seek the State Superintendent's approval of the transfer. The local board, however, points out that the actual Resolution passed by the Board declares the property as surplus and "directs the Administration to request approval of the State Superintendent for this declaration of surplus and for the transfer and deed of the subject property to the County Council." (Ex. 5, attached to Motion). The Resolution properly establishes the local board as the initiator of the action, subject to State Superintendent approval. In our view, that Resolution conforms to the law.

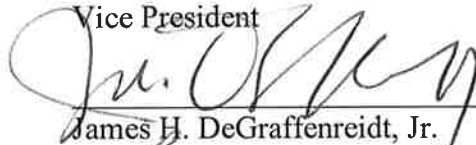
CONCLUSION

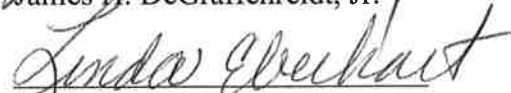
For the reasons stated herein, the appeal is dismissed.


Charlene M. Dukes
President

Absent

Mary Kay Finan
Vice President


James H. DeGraffenreidt, Jr.

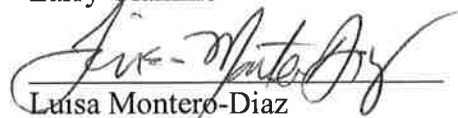

Linda Eberhart

Absent

S. James Gates, Jr.

Absent

Larry Giammo


Luisa Montero-Diaz


Sayed M. Naved

Madhu Sidhu

Madhu Sidhu

Donna Hill Staton

Donna Hill Staton

Guffie M. Smith, Jr.

Guffie M. Smith, Jr.

May 20, 2014