

ROCK CREEK HILLS
ASSOCIATION, *ET AL.*

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-49

OPINION

INTRODUCTION

The State Board received an appeal from the Rock Creek Hills Citizens Association (“RCHCA”) and various individual Appellants¹ challenging the April 17, 2012 decision of the Montgomery County Board of Education (local board) identifying Rock Creek Hills Local Park as the site of a new middle school for the Bethesda-Chevy Chase (B-CC) Cluster. The Montgomery County Board of Education (“local board”) filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. It also argued that the RCHCA should be dismissed from the appeal for lack of standing. Appellants responded to the local board’s Motion and the local board replied.

FACTUAL BACKGROUND

In November 2010, the local board approved a plan to construct a new middle school in the Bethesda-Chevy Chase Cluster² of Montgomery County in order to address growth in student enrollment in Grades 6 – 8. (Motion, Ex. A). The local board determined that Grade 6 students from Chevy Chase and North Chevy Chase Elementary Schools³ will be assigned to the middle school level when the new middle school opens. *Id.*

On April 28, 2011, after reviewing recommendations from the Site Selection Advisory Committee (“SSAC”) and the local Superintendent, and information from the Vice Chair of the Maryland-National Capital Park and Planning Commission (“M-NCPPC”), the local board identified Rock Creek Hills Local Park as the site of the new middle school and authorized a feasibility study for construction of the school there. (Motion, Ex. C). On November 17, 2011,

¹ The individual Appellants are Cathy Fink, David Kaplan, Maren R. Laughlin, James Pekar, Hill Carter, Jill Gallagher, and Sandra van Bochove.

² The B-CC Cluster consists of seven elementary schools, one middle school and one high school. (Motion, Ex. A).

³ These are the only two elementary schools in Montgomery County that house Grade 6 students.

the local board rescinded its decision.⁴ (Motion, Ex. E). Although Appellants had filed an appeal with the State Board of the local board's April 28 site selection decision, we dismissed the case as moot given the local board's rescission of that action. (Motion, Ex. F, *Rock Creek Hills Citizens Association, et al. v. Montgomery County Bd. of Educ.*, MSBE Order No. OR-12-01).

On November 17, 2011, the local board also adopted a new site selection process recommended by the local Superintendent, which was an expansion of the process described in MCPS Regulation FAA-RA on Long-Range Educational facilities Planning. (Motion, Ex. E). The new process included:

- Use of an external facilitator to lead the SSAC meetings;
- Inclusion on the SSAC of homeowner association representatives for communities surrounding candidate sites;
- Solicitation of candidate sites in advance of the first meeting of the SSAC;
- The ability of SSAC members to submit minority reports as part of the SSAC report at the conclusion of the process; and
- A period of public review of public sites recommended by the SSAC prior to local board action.

(Motion, Ex. D).

The school system formed a new SSAC with an expanded membership. The 47 member committee included representatives of homeowner associations, including the Rock Creek Hills Citizens Association; parent-teacher associations; municipalities; and County agencies, including the M-NCPPC, the County Executive and the County Council. (Motion, Ex. M). The SSAC had a series of meetings during January and February 2012 in which the Committee members reviewed 38 sites (25 Public and 13 private), 10 of which were reviewed by the original SSAC during the prior site selection process. (Motion, Ex. G). After a detailed and exhaustive selection process, the decision was between the Rock Creek Hills Local Park and the North Chevy Chase Local Park. Committee members scored the two sites on each of the eight site selection criteria set forth in the local board process: location, size, topography, access, utilities, physical condition, availability and timing, and cost. Rock Creek Hills Local Park received the more favorable rating of 130 points versus North Chevy Chase at 28 points. The SSAC recommended Rock Creek Hills Local Park as the preferred site for the new middle school. (Motion, Ex. K).

On March 12, 2012, the school system released the Report of the SSAC and posted it for public comment. The Report described the site selection process, explained the evaluation criteria, listed the sites considered in public session, described what occurred at each meeting, explained the scoring, and gave the results of the Committee's deliberations and final rating of the two remaining sites. It also contained several appendices, including the minority reports of various County entities and community groups. (Motion, Ex. M).

⁴ The local board noted that the rescission of the selected site did not mean that the site was no longer a candidate for the new middle school. (Motion, Ex. E).

On March 30, 2012, the local Superintendent released his recommendation supporting the SSAC's preference of the Rock Creek Hills Local Park as the preferred site for the B-CC Cluster middle school. He detailed the basis of his recommendation in a 17 page memorandum, which included his consideration of minority reports. In his concluding summary he stated as follows:

In most parts of the country, the locating, constructing, and opening of new schools is welcomed. It is difficult to recall a school site selection process that has raised more community concerns than this process for a new middle school in the Bethesda-Chevy Chase Cluster. The school system exercised due diligence by repeating the site selection process for the new Bethesda-Chevy Chase Cluster middle school. This process has been highly inclusive and exhaustive in its review of 38 candidate sites. I believe that we now can move forward with confidence that the best site for the new middle school has been determined.

Montgomery County, M-NCPPC, and MCPS are operating in an era of diminishing land resources. Opportunities for identifying sites for new schools in built-out areas of the county will continue to be challenging. In some areas, MCPS is fortunate to have former school properties that have been retained in Board of Education ownership or are in county ownership but can be reclaimed. However, most of these properties are former elementary schools. Secondary school sites will be more challenging to find. While I respect community concerns over the selection of Rock Creek Hills Local Park for the new middle school, there can be no doubt that MCPS must reclaim this property at this time for public school use.

(Motion, Ex. P).

On April 17, 2012, the local board heard from community members and discussed the recommendation of the local Superintendent. (Motion, Ex. S). In a unanimous vote, the local board selected the Rock Creek Hills Local Park as the site for the new Bethesda-Chevy Chase middle school. *Id.*

This appeal ensued.

STANDARD OF REVIEW

This case involves the local board's policy decision related to the site selection for the new Bethesda-Chevy Chase middle school. That decision occurred after a long quasi-legislative review process involving much input from the public. As we explained in some depth and detail in *Citizens for a Responsible Curriculum v. Montgomery County Board of Education*, MSBE Op.

No. 07-30 (2007), when this Board reviews quasi-legislative decisions of local boards, we will decide only whether the local board acted within the legal boundaries of State or federal law, and will not substitute our judgment for that of the local board “as to the wisdom of the administrative action.” (citing *Weiner v. Maryland Insurance Administration*, 337 Md. 181, 190 (1995)).

ANALYSIS

State Board Jurisdiction

Just as we did in *Stanmore Family Limited Partnership, et al. v. Montgomery County Board of Education*, MSBE Op. No. 12-41 (2012), we address jurisdiction. Two parts of the State statute establish the State Board’s jurisdiction to hear and decide cases. They are §4-205 and §2-205. Section 4-205 establishes the State Board’s authority to hear and decide appeals from decisions of local superintendents which were appealed to and decided by the local board. That authority arose by statute in 1969. Prior to that date, there was “no appeal . . . to the State Board from the action of a County Board. . . .” *Robinson v. Board of Education of St. Mary’s County*, 143 F. Supp. 481 (D.Md. 1956) (citing Art. 77 §143, the predecessor to §4-205). Likewise, there was no appeal to the county board from a local superintendent’s decision. An appeal would lie from the local superintendent’s decision only to the State Board. *Id.* In 1969, an appeal to the county board and a subsequent appeal to the State Board was added to the statute. An appeal based on §4-205 jurisdiction is usually an appeal of a quasi-judicial decision of a local board. See *Sartucci v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-31 (2010).

When a quasi-legislative decision is appealed, however, the jurisdiction to hear the case usually will rest on §2-205. Under §2-205(e), the State Board is given the power to determine the true intent and meaning of State education law and to decide all cases and controversies that arise under the State education statute and State Board rules and regulations. That authority has existed in statute since 1870.

Section 2-205 was intended by the General Assembly as a grant of “original jurisdiction” to the State Board allowing an appellant a direct appeal to the Board “without the need to exhaust any lower administrative remedies.” See *Board of Educ. for Dorchester County v. Hubbard*, 305 Md. 774, 789 (1986); *Board of Educ. of Garrett County v. Lendo*, 295 Md. 55, 65-66 (1982). As the Court of Appeals has explained in *dicta*, the category of cases heard under §2-205 “deal primarily with statewide issues (*i.e.* statutes or bylaws applicable to *all* county boards of education)” *Id.* at 65; see also, *Strother v. Board of Educ. of Howard County*, 96 Md. App. 99, 113-114 (1993). That statute defines the contours of our authority. Specifically, the law confines matters subject to review under §2-205 to those involving State education law, regulations, or a policy that implicates State education law or regulations on a statewide basis.

Thus, in an appeal challenging a quasi-legislative decision of a local board our jurisdiction is limited to deciding only whether the local board’s decision violated State education law, regulation or a statewide education policy. In addition, consistent with our

jurisdiction, we apply a standard of review that focuses solely on whether the local board's decision violates education law.

We have reviewed the Appellants' allegations in this appeal. They are as follows: (1) the local board lacked sufficient information to make an informed decision in selecting the Rock Creek Hills Local Park site over the North Chevy Chase Local Park site; (2) the local board made no meaningful comparative analysis of the two sites despite the impact of such an analysis on important educational and fiscal issues; and (3) the local board unreasonably refused to negotiate with the Planning Board regarding the North Chevy Chase Local Park Site. None of these claims assert a violation of education law or regulations, or a policy that implicates State education law or regulations on a statewide basis. Thus, the State Board lacks jurisdiction to review them under §2-205(e).

Standing

The local board maintains that the Rock Creek Hills Citizens Association lacks standing to appeal the local board's decision to the State Board because the Association has not articulated any interest in the local board's action that is separate and distinct from its members. We need not reach the issue of standing because we are dismissing the case for lack of jurisdiction. We note, however, that the State Board eliminated the requirement that homeowner associations and civic organizations are required to show a direct interest of their own which is separate and distinct from that of their individual members. *See Clarksburg Civic Assn v. Montgomery County Bd. of Educ.*, MSBE op. No. 07-34 (2007); *Dorchester Neighborhood Assn, Inc. v. Charles County Bd. of Educ.*, MSBE Op. No. 99-10 (1999); *Stratford Woods Home Owners' Assn, Inc. v. Montgomery County Bd. of Educ.*, 6 Op. MSBE 238 (1992). Such organizations can establish standing by demonstrating a direct interest or injury in fact in their own right or on behalf of their members. *Id.*

CONCLUSION

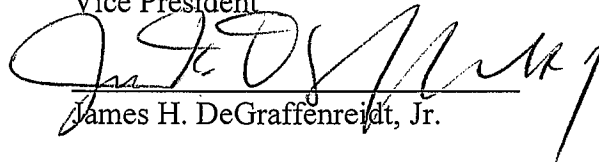
For the reasons stated above, we dismiss the appeal.



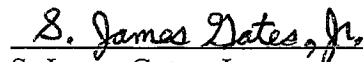
Charlene M. Dukes
President



Mary Kay Finan
Vice President




James H. DeGraffenreid, Jr.



S. James Gates, Jr.

Absent

Luisa Montero-Diaz



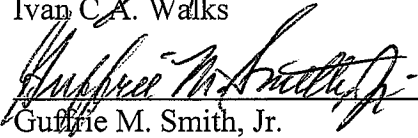
Sayed M. Nayed

Madhu Sidhu



Donna Hill Staton

Ivan C.A. Walks



Guffie M. Smith, Jr.

Absent

Kate Walsh

October 31, 2012