

ALICIA WHITE, ET AL.,

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-53

OPINION

INTRODUCTION

This consolidated appeal is brought by Alicia White; Khongkha Buakhum and Nutchanat Channiwet; Julie Bloss Kelsey and Mary Fenimore; Anastasia Gardner; and Stephen Nightingale and Chinthra Keembiyehetty (Appellants). The Appellants challenge the February 8, 2011, decision of the Board of Education of Montgomery County (local board) approving Agenda item 3.2.3, by which the local board authorized the appointment of an architectural firm to conduct a feasibility study for an elementary school holding facility on the Waring Station Road (Waring Station) site in Germantown, Maryland. The local board filed a Motion to Dismiss the Appeal. The Appellants responded by letter. The local board filed a Reply.

FACTUAL BACKGROUND

According to the local board, there are a number of aging elementary schools in need of modernization in the upper portion of Montgomery County. Thus, in the FY 2012 capital budget issued on October 28, 2010, the superintendent recommended that a feasibility study be conducted for a "holding center" at Waring Station to serve the upcounty elementary schools during the modernization process. (Motion, Ex. A). At a meeting held on February 8, 2011, the local board approved the appointment of an architectural firm to conduct a study to determine whether it was feasible to locate the holding facility on the Waring Station site. Apparently, the local board received many complaints about the choice of the Waring Station site for a feasibility study. On March 4, 2011, Alicia White filed an appeal with this Board challenging the selection of the Waring Station site. The other appeals followed.

On March 21, 2011, the superintendent informed the local board that, because of all the concerns raised, he had directed his staff to postpone the feasibility study "and commence a site study process to identify an upcounty holding facility site." (Motion, Ex. C). The superintendent proposed to follow the site selection process that the local board uses when it chooses a site for a

new school. That process would begin with the formation of a Site Selection Advisory Committee to include PTA members from the upcounty clusters, school facility management staff, and representatives of county government, County Council, and Montgomery County Planning Department. (*Id.*). Once a site was selected, a feasibility study would commence.

The Superintendent expected that the site selection process would be conducted during the 2011-2012 school year. It is our understanding that the Site Selection Committee continues to meet. Alicia White is a back-up representative on the committee. There are nine sites under review. (Reply, Affidavit of Wilson).

The local board asserts that its authorization of a feasibility study for Waring Station was mooted by the new site selection process. Thus, it argues that the Appellant's appeal is also moot.

STANDARD OF REVIEW

The sole issue is whether this case is moot, which is a legal issue. This Board exercises its independent judgment to decide legal issues. COMAR 13A.01.05.05(E).

LEGAL ANALYSIS

The Appellants argue that the local board has only deferred, but never rescinded, its decision to approve a feasibility study of the Waring Station site. Therefore, they assert that this appeal is not moot, but rather involves a live case or controversy.

We note that technically the Appellants are correct. Based on the record submitted, there was no formal vote to rescind the local board's February 8, 2011 feasibility study note. There appears to have been no formal vote to accept the superintendent's plan presented to the board on March 21, 2011 to implement a site selection process followed thereafter by a feasibility study. Yet, it is clear from the record that the site selection process has begun and that nine sites, not just Waring Station, are being considered. It is a fact that Waring Station is no longer the presumed site for the holding center. It was the presumptive selection of the Waring Station site for the feasibility study that formed the basis of the controversy between the parties.

As the State Board has repeatedly held, it "is well established that a question is moot when 'there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which . . . [an agency] can provide.'" *In Re Michael B.*, 345 Md. 232, 234 (1997). See also, *Zepp v. Carroll County Bd. of Educ.*, MSBE Op. No. 03-07 (2003); *White v. Baltimore City Bd. of School Commissioners*, MSBE Op. No. 04-18 (2004); *Ernie M. v. Carroll County Bd. of Educ.*, MSBE Op. No. 08-27 (2008).

The Appellants speculate on the local board's bad motives. They mistrust the local board's action, but that does not negate the fact that Waring Station is no longer the presumed site for the holding center. And, while it is possible that the process described by the superintendent in his March 21, 2011, Memorandum may result in a recommendation that the

Waring Station site be used as the upcounty holding facility, triggering a feasibility study for that location, that possibility does not create an existing case or controversy between the parties. An "actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." *Steffel v. Thompson*, 415 U.S. 452, n.10 (1974). "The possible existence of a future live controversy does not necessarily preclude the current action from being moot." *Washington County Bd. of Educ. v. Washington County Teachers Association*, MSBE Op. No. 11-05 (2011).

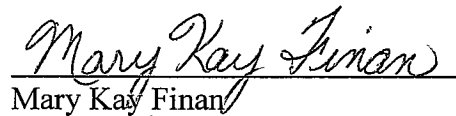
Accordingly, the possibility that the Waring Station site might be recommended in the future for the upcounty holding facility, triggering a feasibility study for the location, does not satisfy the requirement that there will be an existing live case or controversy. This appeal is moot.

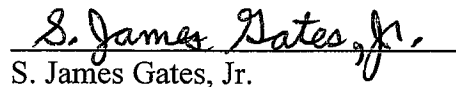
CONCLUSION

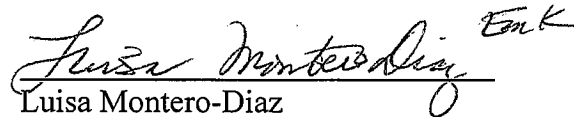
For all the aforementioned reasons, the consolidated appeals in this matter are dismissed as moot.


James H. DeGraffenreidt, Jr.
President

absent
Charlene M. Dukes
Vice President


Mary Kay Finan


S. James Gates, Jr.


Luisa Montero-Diaz

absent
Sayed M. Naved

Madhu Sidhu

Madhu Sidhu

Guffie M. Smith, Jr.

Guffie M. Smith, Jr.

Donna Hill Staton

Donna Hill Staton

Ivan C.A. Walks

Ivan C.A. Walks

Kate Walsh

Kate Walsh

December 6, 2011