

KRISTA KURTH, ET AL.

Appellant

v.

MONTGOMERY COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-23

## OPINION

### INTRODUCTION

This is a consolidated appeal<sup>1</sup> of the decision of the Montgomery County Board of Education (local board) to lease an area of land known as the Brickyard Road Site to Montgomery County to be developed and used as soccer fields. The local board filed a Motion for Summary Affirmance. Appellants filed oppositions to the Motion and the local board responded. In addition, Montgomery County filed a Motion to Intervene, to which the parties responded.<sup>2</sup>

### FACTUAL BACKGROUND

The Brickyard Road Site is a possible future school site consisting of a 20-acre parcel of land located on Brickyard Road in Potomac, Maryland.

Mr. Maravell is the owner of Nick's Organic Farm, L.L.C. In 1980, Nick's Organic Farm began leasing the Brickyard Road Site from Montgomery County Public Schools (MCPS) for agricultural purposes, and began operating an organic farm on the property. Over a thirty year period, MCPS consecutively leased the property to Nick's Organic Farm. Although MCPS would periodically put the lease out for bid, Nick's Organic Farm always prevailed as the successful bidder and was granted the lease. All of the leases were structured as one year leases

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<sup>1</sup> The State Board received 41 separate appeals of this matter.

<sup>2</sup> The State Board has already issued one opinion and two orders in this case. Opinion No. 11-38 dismissed several of the Appellants for untimely filing and determined that others had standing to appeal, and also determined that the case was properly before the State Board. The two orders, OR11-12 and OR12-03, addressed issues related to what constitutes the record of proceedings in this case.

with two to four annual options to renew. The leases provided that the site was subject to recall by MCPS on 90 days notice if needed for school construction, school purposes, or if it was declared as surplus property no longer needed by MCPS in which case it would be conveyed to the County.

The most recent lease between Nick's Organic Farm and MCPS commenced on March 23, 2006. That lease was for an initial one year term, with Nick's Organic Farm having four additional one year options, all of which it exercised. The last option period expired on March 22, 2011. (Appeal, Ex. 1).

In 2004, the County Executive asked the local board to surplus the Brickyard Road Site. At that time, the local board chose not to surplus the property and deferred disposition of the site until alternative middle school sites in the nearby Churchill, Whitman, and Wooton clusters could be evaluated. (Appeal, Ex. 10, Board Meeting Minutes, 3/22/04).

In November 2009, the County Executive requested that MCPS lease the Brickyard Road Site to the County to "be minimally developed to use for ball fields with minimal structural changes so that if necessary, it [could] be quickly reclaimed by MCPS." (Appeal, Ex. 2). Thereafter, MCPS staff met several times with County staff to explore how a lease could be structured so that the site could be retrieved for school construction on short notice, if needed. MCPS staff briefed the local board on the issue in May and June of 2010. (Appeal, Ex. 4).

Meanwhile, during 2009 and 2010, Montgomery Soccer Inc. (MSI),<sup>3</sup> a private youth soccer organization, directed its efforts to secure a public private partnership agreement with Montgomery County to develop soccer fields on the Brickyard Road Site and other sites under government agency control. (Appeal, Ex. 5, MSI Executive Committee Meeting Minutes). MSI identified the Brickyard Road Site as a priority area and had positive discussions with the County Executive to "discuss possible field development opportunities in the county." (*Id.*, 4/13/10 MSIEC Meeting Minutes). Coinciding with the timing of the May and June 2010 briefings from MCPS staff to the local board, MSI determined that its task force would be "prepared to develop and submit a bid for soccer field development at GXS and [the Brickyard Road Site] when the RFPs are requested by the county." (*Id.*, 6/15/10 MSIEC Meeting Minutes).

In early March, 2011, school officials informed Mr. Maravell and Nick's Organic Farm that the property would not be rebid after the current lease expired on March 23, 2011. Instead, the local Superintendent proposed that the local board lease the property to the County to be used for ball fields. The proposal was placed on the Consent Agenda as Item 4.2.5 for the local board's meeting on March 8, 2011.

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<sup>3</sup> According to its website, "MSI is the largest youth sports organization in Montgomery County, and is the only soccer club with a mission to provide recreational opportunities for all youth in the County, regardless of age, location, income, or physical ability. Every year, MSI provides soccer participation opportunities for 15,000 Montgomery County youth, nearly 90% of whom participate in both Fall and Spring seasons of league play, and many of whom participate in additional MSI programs" and their school athletic programs. <http://msisoccer.d4sportsclub.com/PageCustom.aspx?id=9>.

Montgomery County Council member Roger Berliner sent a letter to the local board President on March 4, 2011, requesting that the local board postpone action on the proposal until greater community involvement could be obtained so that members of the community could have time to reflect on the implications and give input on the issue. In particular, he noted that the County Executive's request for the lease agreement came to the Board via a letter almost a year and a half before it was listed as an agenda item, in November 2009, and had not been shared with the County Council or vetted with the community. (Appeal, Ex. 6). The local board received many letters and emails from members of the public who wrote to express their viewpoints on the matter. The item remained on the Consent Agenda for the local board's March 8 meeting.

At the March 8 meeting, the local board met in closed session from 9:05 to 9:55 a.m., during which time one of the topics to be discussed was "matters relating to the use of real property for a public purpose." (Appeal, Ex. 7, Resolution for Closed Sessions and Ex. 8, Report of Closed Sessions). After the morning closed session, the local board heard public comments from fourteen speakers, all of whom addressed the proposed action to lease the property. Twelve spoke against the action and two spoke in favor of the action. At the conclusion of the public comment portion of the hearing, the local board met again in closed session from 1:50 until 2:50 p.m., during which time they again discussed "matters relating to the use of real property for a public purpose." (Appeal, Ex. 8).

When the local board resumed its public session, it voted to remove the resolution concerning the lease of the property from the Consent Agenda.<sup>4</sup> The local board then spent more than an hour discussing the Superintendent's proposal to lease the property to the County. Through the discussions, the local board proposed amendments to address concerns raised by several board members. The local board voted to amend the original proposal to allow Mr. Maravell to remain on the site through the 2011 growing/harvesting season. It also voted to amend the proposal to make it clear that the property could be retrieved based on the sole determination of the local board that it was needed for other school purposes. A motion to delay consideration of the Superintendent's proposal until the board's next meeting failed to pass. The board voted on the amended resolution and it passed by a vote of 6 to 2. (Local Bd. Mtn., Meeting Minutes 3/8/11).

The local board adopted the following resolution:

WHEREAS, Montgomery County is interested in constructing more ball fields to provide additional recreational facilities for Montgomery County residents and has identified the future Brickyard Middle School site, located on Brickyard Road in Potomac, Maryland, as a location for ball field construction; and

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<sup>4</sup> The Montgomery County Board of Education Handbook allows board members to defer any items on the Consent Agenda on which discussion is desired until the end of the time set aside for Consent Items. At that time, the board takes a separate vote on the deferred item. (Appeal, Ex. 12, p. 16).

WHEREAS, Montgomery County has requested a land lease of the 20-acre site that would include a term of 10 years with the option to reclaim the site should it be needed for school construction purposes; and

WHEREAS, Montgomery County will be responsible for notifying the community, obtaining all required permits, developing and maintaining the ball fields, and paying an annual rent of \$1,500; now therefore be it

Resolved, That the president of the Board of Education and the superintendent of schools be authorized to execute a Land Lease Agreement with Montgomery County for construction of ball fields at the future Brickyard Middle School site; and be it further Resolved, that Nick's Organic Farm be allowed to plant and harvest during the 2011 season through January 1, 2012, via a sublease with the county executive, and during which time the county executive will work with the community and solicit requests for proposals for grass ball fields; and be it further Resolved, That Montgomery County Public Schools must be able to reclaim the property for school needs based on the sole determination by the Board of Education by giving two years notice.

(Local Bd. Motion, Board Meeting Minutes 3/8/11).<sup>5</sup>

The County describes the project as follows:

The Brickyard Road Soccer Fields project is proposed to consist of grading and development of existing corn fields to develop up to four soccer fields. The project will consist of private development, maintenance and operation of soccer fields and construction and maintenance of adequate onsite parking. Development of the project will include design and construction of soccer fields, parking, Stormwater Management, site improvements and other requirements. . . .

(Local Bd. Reply to Opposition, Ex. A). The fields will be natural turf fields and there will be no lighting or sound system. *Id.*

This appeal to the State Board followed.

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<sup>5</sup> The local board and Montgomery County entered into a lease of the Brickyard Road Site on April 19, 2011.

## STANDARD OF REVIEW

When the State Board explains the true intent and meaning of State education law and State Board rules and regulations, we exercise our independent judgment on the law's meaning and effect. COMAR 13A.01.05.05(E).

## LEGAL ANALYSIS

### *Motion to Intervene*

Montgomery County has filed a Motion to Intervene maintaining that it has an interest in the outcome of the appeal as a party to the lease with the local board for the Brickyard Road Site.<sup>6</sup> Although the lease itself, which the local board entered into with the County on April 18, 2011, is not at issue in this case, the validity of the lease could be called into question depending upon the outcome of this appeal.

The County's interests in the case are similar, if not essentially the same, as the local board's interests here. The County makes no claim of its own and asserts the same positions as the local board, relying solely on the local board's arguments in this case. Montgomery County has provided no reason to suggest that the local board is incapable of adequately representing its interests. For this reason, we find no basis to grant Montgomery County's Motion to Intervene.

### *Maryland Open Meetings Act Claims*

Appellants maintain that the local board committed various violations of the Maryland Open Meetings Act, Md. Code Ann., State Gov't §10-501 *et seq.*, with regard to actions at the March 8, 2011 meeting and that these violations require reversal of the local board's decision on the Brickyard Road Site resolution.

The State Board has previously held that it is not the appropriate forum for redress of issues arising under the Open Meetings Act. *Harper v. Frederick County Bd. of Educ.*, MSBE Op. No. 02-15. Appellants' avenue of redress was to raise the violations with the Open Meetings Compliance Board (OMCB) or to seek enforcement of the Act by filing a petition with the court asking it to void the action of the local board. Md. Code Ann., State Gov't 10-502.5 & 10-510(b).

Appellants have already raised the issue of the Open Meetings Act violations with the OMCB. The OMCB found that the local board violated the Open Meetings Act at its March 8, 2011 meeting by citing the wrong statutory reference for closure in its closing resolution, by discussing matters outside the scope of the exception it claimed, by failing to prepare meaningful minutes of its closed session, and by failing to include meaningful information about the session in the minutes of its subsequent open meeting. 7 OMCB Opinions 245 (2011). The Compliance

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<sup>6</sup> The State Board may allow any person to intervene in an appeal and participate as a party. COMAR 13A.01.05.01(B)(8).

Board noted, however, that there may have been a valid reason for the closure, which the local board claimed after the fact was to confer with legal counsel. *Id.* at 249.

Appellants also sought an enforcement action in the Circuit Court for Montgomery County. That case was dismissed with prejudice as part of a settlement agreement between the parties. Pursuant to that settlement agreement, the parties agreed that Appellants could proceed with their appeal to the State Board and that the Open Meetings Act litigation would have no *res judicata* effect upon the appeal. The agreement between the parties, however, cannot serve to create jurisdiction with the State Board over an issue on which it has none. The process that was available for the Appellants to have the local board's Brickyard Road resolution voided on the basis of Open Meetings Act violations was through an action in the Circuit Court. Such a remedy does not lie with the State Board.

Appellants improperly rely on *Handley v. Ocean Downs, LLC*, 151 Md. App. 615 (2003), as the basis for having the State Board review the Open Meetings Act issues as part of the appeal. In *Handley*, the Court of Special Appeals held that a petitioner filing for judicial review of an agency decision in circuit court could include Open Meetings Act violations in the petition for judicial review rather than filing a separate petition on the Open Meetings Act claims. *Id.* Whether the circuit court had jurisdiction over the Open Meetings Act issues was never at issue in *Handley* as it is in this appeal.

#### *Alleged Violations of Local Rules and Resolution*

This case does not stem from an individual case or controversy in which a decision was rendered first by the local superintendent, next by the local board, and then appealed to the State Board for review of the local board's decision. Rather, this case is a direct appeal of a local board decision to the State Board arising under the State Board's original jurisdiction as set forth in §2-205(e)(1) of the Education Article. Section 2-205(e)(1) allows an appellant a direct appeal route to the State Board "without the need to exhaust any lower administrative remedies." See *Board of Educ. of Dorchester County v. Hubbard*, 305 Md. 774, 789 (1986); *Board of Educ. of Garrett County v. Lendo*, 295 Md. 55, 65-66 (1982). This is unlike appeals arising under §4-205 of the Education Article which first require an appellant to exhaust administrative remedies before pursuing a State Board appeal.

For appeals arising under §2-205, "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." *Sartucci v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-31 (2010). As we explained in *Sartucci* and will explain again here in detail:

Two parts of the State statute establishing the State Board's quasi-judicial jurisdiction address the Board's authority 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 boards. 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.

But that change did not eliminate the State Board’s jurisdiction under §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.

The Court of Appeals has explained the interplay between §2-205(e) and §4-205. 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,” while §4-205 vests the State Board with “appellate jurisdiction” over decisions of local boards. *See Board of Education for Dorchester County v. Hubbard*, 305 Md. 774, 789 (1986); *Board of Education of Garrett County v. Lendo*, 295 Md. 55, 65-66 (1982). Section 4-205 requires an appellant to exhaust administrative remedies.

MSBE Op. No. 10-31 at 3.

We have reviewed the Appellants’ allegations with regard to the local rules and local board resolution to assess the State Board’s jurisdiction over these matters.

Appellants allege that the local board violated the agenda setting process set forth in Rule of Order #2 and Regular Business Meeting Rule #7 of the Board of Education Handbook (Handbook) by placing a controversial item on the Consent Agenda when the Consent Agenda is meant for items which are “matters which the Board president or superintendent of schools believes will be adopted by unanimous vote.” (Appeal, Ex. 12, pp.16, 21). Appellants also allege that the local board violated Rule of Order #4 of the Handbook which sets forth provisions regarding the timing requirements for local board voting on new business. (*Id.* at p.21). Finally, Appellants allege that the local board violated Resolution 195-04, the 2004 decision in which the local board deferred action on the County Executive’s request that the local board surplus the Brickyard Road Site to the County pending further evaluation of alternative middle school sites in the Churchill, Whitman, and Wooten clusters. None of these claims are based on alleged

violations of State education law or regulations, thus the State Board lacks jurisdiction to review them under §2-205(e).<sup>7</sup>

This does not necessarily mean that the issues raised by Appellants are immune from State Board review. As we stated in *Sartucci*:

Under Education Art. §4-205, the local superintendent “shall decide all controversies and disputes that involve the rules and regulations of the county board . . . .” Md. Code Educ. Ann. §4-205(c). In a case like the one at bar it may seem counterintuitive to require the Appellant to exhaust that administrative remedy by first asking the superintendent to determine whether an action he/she recommended to the local board violated local rules and policies. We point out, however, that every local superintendent and local board understands, better than we, the purpose and meaning of their own rules and policies. We trust they would render a thoughtful and fair decision, even when reviewing their own actions for conformance with their own rules. Their decision would be reviewable by the State Board under our §4-205 appellate jurisdiction.

MSBE Op. No. 10-31 at 5.

Appellants maintain that the State Board has already determined that it has jurisdiction over these issues of local import, relying on our statement in Opinion No. 11-38 which ruled on the local board’s Motion to Dismiss this case. One of the local board’s arguments was that the State Board was not the appropriate forum to hear the case because it related to the proposed use of real property. We stated:

The local board also suggests that the State Board is not the appropriate forum to hear the concerns raised by the Appellants because the concerns relate to the proposed use of the property by the County, not to the decision to lease the land, and there are other processes available for review of land use matters. While we have found that the Appellants have standing to bring this appeal based on their status as adjoining landowners, the issues raised in the appeal are not land use matters. For example, some of the Appellants’ arguments consist of claims that the local board’s decision violated the local board’s own policies and procedures, that it violated provisions of the Education Article, and that it violated the Appellant’s due process rights. Such claims are appropriate for State Board review.

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<sup>7</sup> Because the State Board lacks jurisdiction here to review these claims, there is no reason to consider the Appellants’ arguments that the local board violated the *Accardi* doctrine.



We did not intend to convey in Opinion No. 11-38 that the State Board had jurisdiction in this case over each and every issue the Appellants raised. Rather, we intended only to quash the local board's argument that this case was about land use and that it belonged in the land use forum. That is all that we meant in the context above. We made no specific jurisdictional determinations as to each and every issue raised by the Appellants.<sup>8</sup>

### *Holding Land in Trust for Benefit of School System*

Appellants maintain that the local board violated its fiduciary duty to hold the land in trust for the benefit of the school system as required by §4-114(a) of the Education Article. Section 4-114(a) provides that “[a]ll property granted, conveyed, devised, or bequeathed for the use of a particular public school or school system . . . shall be held in trust for the benefit of the school or school system by the appropriate county board. . . .” Appellants maintain that the local board's decision to enter into a lease with Montgomery County will ultimately result in the use of the property by private entities through the public/private partnership, and that such use contravenes §4-114(a) as it is not “for the benefit of the school system.”

The Appellants rely on three Opinions of the Attorney General to support their position. In 76 Op. Atty. Gen. 147 (1991), at issue was whether a local board had the authority to enter into a long-term lease to permit a private day care provider to construct a building on public school property and to operate a day care facility there for its own purposes. The Attorney General noted that the type of arrangement at issue had not been contemplated by the General Assembly – the construction of new buildings by, and for the exclusive use of a private corporation. *Id.* at 151. The opinion expressed doubt about the school system's authority to permit construction of a building by a private corporation for its own use on public school property because that would require a long-term commitment interfering with a local board's ability to retrieve the land for future school use if needed. *Id.*

In 91 Op. Att'y. Gen. 33, the Attorney General concluded that a local board did not have the authority to enter into a 99 year lease of real property with a private corporation in return for a payment of \$500,000 because the transaction would run afoul of the local board's obligation to hold the property in trust for the benefit of the school system pursuant to §4-114. It was the fact that the lease was for a period of 99 years that caused great concern.

The scenarios at issue in those opinions are different from the scenario presented in this case. The local board's decision to lease the Brickyard Road Site to Montgomery County does not involve a long-term lease to a private corporation so that the entity can construct a building

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<sup>8</sup> Appellants also maintain that the local board violated various provisions of the Montgomery County Code that comprise the School Facilities Utilization Act set forth in Chapter 44, Article I. Although the Act contains provisions that relate to the use of school property by the community, they do not involve “State education law, regulations, or a policy that implicates State education law or regulations on a statewide basis.” As such, we decline to review these claims. *See Sartucci v. Montgomery County Bd. of Educ.* MSBE Op. No. 10-31.

on the property exclusively for the use of the private corporation. Rather, it is a decision to enter into a short-term lease with the County for the operation of natural turf athletic fields for use by the community. Further, the lease for the Brickyard Road Site allows the local board to retrieve the property for school needs at the local board's behest.

In another opinion, the Attorney General concluded that the Anne Arundel County Board of Education could enter into a long-term lease of school property with a non-public, non-profit educational institution for the construction and operation of a school building to serve special education students, including many from the Anne Arundel County Public Schools, if the local board "reasonably determin[e] that the lease would result in direct benefits to the board in the conduct of its educational responsibilities." 76 Op. Att'y. Gen. 190. The Attorney General found that such a lease would be compatible with the local board's obligation to hold the property in trust because, unlike the proposed private day care center in the prior opinion, this building was for a school which would benefit special education students in the county. Although it was a long-term lease that involved the construction of a building by a private entity, the school system directly and immediately benefitted from the long-term lease.

Although the Anne Arundel County scenario is not directly on point given the facts of this case, there are several relevant points. The Attorney General pointed out the broad authority of local boards of education to operate a school system, including the management of school property. *Id.* at 191. With regard to the local board's duty as a trustee of school property, the Attorney General stated that "a trustee may lease trust property if the lease is reasonable, considering, among other factors, 'the purposes of the trust' and 'the nature of the property and the uses to which it may advantageously be put.'" *Id.* at 192. The assessment of the pertinent factors is for the local board to determine. *Id.* The Attorney General also cautioned that a local board remain able to terminate the lease at any time that the private institution's use of the school property ceases to be compatible with the needs of the school system, and that the lease should not result in the complete disposition of the public school property. *Id.* at 193.

It is our view that these opinions do not stand for the proposition that a local board is prohibited from leasing a presently unused future school site for something other than school purposes unless public school students benefit directly, as Appellants claim.

The issue here is whether the decision to lease the property held in trust is reasonable. We think it is. As already stated, this is a short-term lease to the County for the creation and operation of ball fields to be used by community soccer groups. It involves property that was not

being used for school purposes.<sup>9</sup> In addition, the school system will receive rental income from the lease and the potential benefit of lessening the wear and tear on some of the school system's athletic fields by current community use of its school fields.<sup>10</sup> The local board retains the ability to reclaim the site should it be needed for school purposes.

Although the Appellants argue that the lease to the County is essentially a lease to a private entity because the County will be entering into a partnership with a private entity that will construct and operate the fields,<sup>11</sup> we do not believe such a use violates §4-114(a). Under the agreement, the local board will still hold the land in trust for the benefit of the school system, and it is preserved for school use if such a need arises.

Appellants argue that there is no assurance that the lease to the County will result in use of the soccer fields by the "general public" because in actuality it will be a private contractor that partners with the County to construct and operate the ball fields. Yet there is no evidence in the record that the fields will not be available for use by the general public. The Director of the County Department of General Services specifically stated:

. . . the degree to which we want to have open access for general public use . . . are issues that come up in that dialogue [between the County and the contractor] and how we work this. And frankly, [these] will probably be issues that we would negotiate with the contractor and may be determining factors in which contractor we select as to the degree to which they're willing to negotiate on those things.

(T.83).

#### *Applicability of §7-108*

There is a great deal of discussion by the parties in this appeal regarding the applicability of §7-108 of the Education Article. Section 7-108(a) encourages local boards to use "public school facilities for community purposes." The provision allows use of public school facilities for, among other things, civic, educational, social or recreational purposes. Md. Code Ann., Educ. §7-108(a)(iv). The local board cited this provision to show that its decision to enter into

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<sup>9</sup> Although the legality of the lease between the local board, Nick's Organic Farm and Mr. Maravell is not at issue in this case, we note that the argument set forth by those Appellants regarding the alleged violation of §4-114 seems disingenuous. If their argument were to prevail it would mean that the lease of the Brickyard Road Site between those Appellants and the local board for approximately 30 years was in violation of the law.

<sup>10</sup> There is no requirement that the local board advertise and lease the property to the highest bidder to get the maximum return as Appellants suggest.

<sup>11</sup> Appellants have focused on MSI as the private partner, but at the time the local board made its decision to enter into a lease with the County there was no indication who Montgomery County would select as a partner through the RFP process.

the lease with Montgomery County was for a community purpose consistent with §7-108, adding further legitimacy to its claim that it did not violate its duty to hold school property in trust under §4-114(a).

Appellants argue that §7-108 is not applicable here and lends no support to the local board's argument because §7-108 speaks of public school facilities which do not include raw land. Alternatively, the Appellants argue that the proposed use is not for a community purpose as contemplated by §7-108(a).

We need not decide whether §7-108 allows the lease or does not allow the lease because we have already determined that the local board has the authority to enter into the lease under §4-114.

### *Due Process Arguments*

Appellants maintain that they had a property right at stake in the local board's decision and that the local board violated their due process rights to notice and an opportunity to be heard as set forth in Article 24 of the Maryland Constitution and the Fourteenth Amendment. *See Davidson v. Koerber*, 454 F. Supp. 1256, 1260 (D.Md. 1978) (Article 24 and Fourteenth Amendment protect the same interests.).

In order to assess whether there is a due process requirement, we look to whether the Appellants had a property interest at stake. *Board of Regents v. Roth*, 408 U.S. 564 (1972). To have a property interest subject to due process, "a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Id.* at 577.

Appellants Mr. Maravell and Nick's Organic Farm cannot base their due process claim on a property right that existed by virtue of their lease with the local board for the Brickyard Road Site. That lease expired on March 23, 2011. Appellants had no entitlement to a new lease or to continued rental of the land. Nor can any of the other Appellants claim a property interest on this basis.

Appellants Maravell and Cowles (Maravell's wife) further claim a property right as adjacent landowners, maintaining that the local board's decision is intended to effectuate a change in the use of the adjacent land which in turn affects their property rights. They do not explain in what way, if any, the local board's decision impacts any supposed property rights as an adjacent landowner.

If Appellants had some sort of property right here entitling them to due process, they had notice of the pendency of the local board's action and the opportunity to be heard and present their objections prior to the local board's vote. As is its practice, the local board posted its advance agenda on the home page of its website on the Thursday before the meeting. Appellants and other members of the public had notice and appeared before the local board at its March 8, 2011 meeting. In fact, both Mr. Maravell and Ms. Cowles testified before the local board during

the public comment portion of the March 8, 2011 meeting, as did some of the other Appellants in this case. In addition, Appellants have been full participants in this appeal.


*Miscellaneous*


Appellants claim that the local board violated Article 28, §7-112, Maryland Annotated Code, by failing to submit the proposed decision to change the use of the Brickyard Road Site to soccer fields for approval to the Montgomery County Planning Board via a mandatory referral process prior to passing the resolution to lease the property to the County. The Chairman for the Montgomery County Department of General Services addressed the issue before the local board voted on March 8, 2011. He acknowledged that it was the County who would have to go through the Park and Planning Board approval process after the development of a plan for the property. (T.68). Moreover, Article 28 contains the statutes governing the Maryland Park and Planning Commission, and §7-112 of that Article relates to mandatory referrals and approval procedures after adoption of master plan of highways. Such land use matters are better left to the governmental entities that administer the rules and regulations applicable to such decisions. In this case, we have jurisdiction over only those issues that are “based on alleged violations of State education law or regulations.” See *Sartucci v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-31.

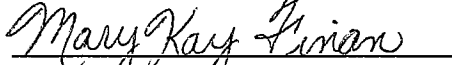
Appellants also maintain that the local board violated its duty under §4-115(c) to dispose of surplus school property. Section 4-115(c) states that if “a county board finds that any land, school site, or building no longer is needed for school purposes, it shall inform the . . . county council of the county board’s determination . . . .” This provision is irrelevant here in that there was no vote by the local board that the Brickyard Road Site was no longer needed for school purposes. The local board did not surplus the property to the County. It retained it for possible future use for school purposes.

CONCLUSION

For all of these reasons, we affirm the local board’s decision.

  
James H. DeGraffenreidt, Jr.  
President

  
Charlene M. Dukes  
Vice President

  
Mary Kay Finan

*absent*  
S. James Gates, Jr.

*Luisa Montero-Diaz*  
Luisa Montero-Diaz

*absent*  
Sayed M. Naved

*absent*  
Madhu Sidhu

*Donna Hill Staton*  
Donna Hill Staton

*Ivan C.A. Walks*  
Ivan C.A. Walks

*Guffie M. Smith, Jr.*  
Guffie M. Smith, Jr.

*Kate Walsh*  
Kate Walsh

July 24, 2012