

STANMORE FAMILY LIMITED  
PARTNERSHIP, *et al.*

Appellant  
v.

MONTGOMERY COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE  
MARYLAND  
STATE BOARD  
OF EDUCATION

Opinion No. 12-41

### OPINION

#### INTRODUCTION

Appellants challenge the local board's decision to construct a modernized facility for William H. Farquhar Middle School (Farquhar) on a site adjacent to the school and adjacent to their property. They argue that it is an attempt to relocate the school under the guise of a purported modernization. The local board filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellants opposed the motion and filed a cross motion. The local board responded.

#### FACTUAL BACKGROUND

In early 2011, Montgomery County Public Schools (MCPS) initiated procedures for a feasibility study to modernize Farquhar Middle School. Farquhar is located in Olney on Batchellor's Forest Road, adjacent to an unimproved parcel of land approximately 17 acres in size known as "Parcel A". Appellants' property is adjacent to Parcel A.

On February 8, 2011, the MCPS project manager sent a memorandum to residents of the nearby community, including the Appellants,<sup>1</sup> informing them about the Feasibility Study and the Facility Advisory Committee (FAC) that would be meeting to study possible options to modernize the school. The memorandum stated the purpose of the outlined schedule of work sessions and encouraged neighbors and representatives of community associations to participate in the process. (Motion, Ex. 2).

The first FAC work session was held in March 2011. The group developed goals and reviewed various options of modernization. (Motion, Ex. 3). Parents voiced concerns about the long bus ride the children would have to and from the Tilden Holding Center during the modernization. (Motion, Ex. 4).

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<sup>1</sup> The appeal was filed by the Stanmore Family Limited Partnership and Tom and Ruth Hyde. The Appellants have not clarified the legal status of the Stanmore Family Limited Partnership.

On May 4, 2011, James Song, Director of the Department of Facilities Management, discussed a parcel of adjacent land to the north of the existing Farquhar site (Parcel A). He stated, in part:

The adjacent parcel is planned to be conveyed by a developer to [the Maryland-National Capital Park and Planning Commission] MNCPPC. Once this occurs, there is a communication channel that is open between government agencies. What this may allow is building a new school on the adjacent parcel and swapping land with MNCPPC. The existing school property has assets that might be valuable to MNCPPC (parking, fields, and existing building). This has been presented to them. Awaiting to determine if developer will convey the land. . . . MCPS does not want pressure put on the developer. The agencies are working through the process. Advantage of this option in addition to keeping students on site is it eliminates concerns with building behind the existing building.

(Motion, Ex. 4). The FAC met again on May 10, 2011 and reviewed options, including schematic drawings assuming construction of the adjacent parcel. (Motion, Exs. 5 & 6). The project manager also announced an additional FAC meeting scheduled on June 2, 2011.

Appellant Tom Hyde was present at the last FAC meeting on June 2, 2011. (Motion, Ex. 7). Mr. Song reviewed three modernization options. The first approach involved relocating students to the Tilden Holding Center for two years and constructing a new building on the existing site. The second approach involved leaving the students in the existing building while erecting a new facility behind the current one. The old building would be demolished once the new building was occupied by the students and playing fields would be built. The third approach involved leaving the students in the existing building while building the replacement facility on the new adjacent site (Parcel A). The existing site would be turned over to MNCPPC as a swap for the new site. (Motion, Exs. 7 & 8).

Mr. Song updated the group on his discussions with MNCPPC:

Mr. Song met twice with MNCPPC in addition to three phone calls with senior level staff. MNCPPC was receptive to a trade and took the idea back to MNCPPC staff to evaluate. At 2:37 today (6/2/11) Mr. Song received an answer back from Department of Parks that they are OK with MCPS developing a plan for the new school on their land. The land exchange has to be equal or greater in value and must meet all codes and regulations. The existing school site is 20 acres and the adjacent site is 17 acres, therefore the exchange would provide a larger parcel for MNCPPC. . . . At this point, it is too preliminary to take to the Planning Commission. The Planning Commission is aware of the request but is not in a position to rule on it until after the Superintendent has made a recommendation to

the Board of Education and the Board of Education has agreed to support that plan. . . . If MNCPPC agrees, the next step is a title transfer of the deed for the property. Once MNCPPC approval is received, MCPS will proceed directly into the design phase with a project completion date of August 2015.

(Motion, Ex. 7). Mr. Song also announced that he would be attending the Greater Olney Civic Association Meeting on June 14, 2011 to update that community group.

The group reviewed new schematic drawings, including drawings for the third approach, the adjacent parcel land swap option. (Motion, Ex. 8). Individuals asked questions and made comments. Appellant Thomas Hyde submitted a memorandum detailing his opposition to constructing a school on the adjacent site which was also adjacent to his property. (Motion, Ex. 7, p. 4). The consensus of those present at the meeting favored constructing a two-story building on the adjacent property. (*Id.*, p. 8).

On July 18, 2011, MCPS issued the draft Feasibility Study for public comment. (Motion, Ex. 9). Most of the comments supported what the Feasibility Study referred to as Option One or Option Two. These options retained students at the existing building as a holding facility while a new replacement facility was built on the adjacent parcel of land. (Motion, Ex, 10). Option One called for the construction of a two-story building. Option Two called for construction of a three-story building which would allow for more playing fields and sports courts to be built on the site. (Motion, Ex. 9). The FAC recommended Option One. (Motion, Ex, 10).

On September 13, 2011, the Superintendent recommended that the local board adopt Option Two which called for the construction of a three-story building. Alternatively, he recommended Option Four as a back-up plan in the event that the MNCPPC did not support the recommended land swap option. (Motion, Ex. 10). Option Four called for a new two-story building on the existing school site on the footprint of the existing building. (Motion, Ex. 9). While Option Four required students to be transported to the Tilden Holding Facility, it eliminated safety and security issues related to the construction activities while school was in operation and cost less than other options. (Motion, Ex. 10).

The Superintendent presented his recommendations to the local board on the Farquhar modernization at its September 13, 2011 meeting. Appellant Thomas Hyde addressed the local board during the public comment portion of the meeting. (Motion, Ex. 11). Mr. Hyde highlighted the fact that MNCPPC did not own Parcel A, but rather that Pulte Group owned the land. (Appeal, Attach. D).

The local board unanimously adopted the Superintendent's recommendations on the Farquhar modernization, selecting Option Two with Option Four as a back-up plan if the MNCPPC chose not support the land swap. The local board directed its staff to initiate the process to facilitate the land swap with MNCPPC. It anticipated that construction would begin in the summer of 2013, pending approval by the Montgomery County Council for construction funds. (Motion, Ex. 11). Thereafter, this appeal was filed.

## STANDARD OF REVIEW

This case involves the local board's policy decision related to a land swap option. 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)). 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).

## ANALYSIS

### *Jurisdiction*

As a preliminary matter, we address jurisdiction here in order to bring some clarity to cases challenging a quasi-legislative decision of the local board. As we explained in some depth and detail in *Sartucci v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-31 (2010), 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.

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 to assess the State Board's jurisdiction over these matters. Appellants ask the State Board to reverse the decision of the local board affirming the land swap option based on the following:

- The decision was made in a manner that violates the local board's policies and regulations, including conflict with transparency in government affairs;
- The decision is not in accordance with the FY 2012 Educational Facilities Master Plan approved with amendments by the County Council;
- The decision is contrary to the Olney Master Plan as to Parcel A and the site of the middle school facility;
- The decision is contrary to the Sectional Map Amendment by which Parcel A was classified in the Rural Neighborhood Cluster Zone;
- The decision is contrary to the approved preliminary plan of subdivision for the development of which Parcel A is a part;
- The decision is contrary to the approved site plan for the development of which Parcel A is a part;
- The decision proposes a use that is not permitted under the Montgomery County Zoning Code for Rural Open Space Area;
- The decision is not in accordance with the Washington Suburban Sanitary Commission approved water and sewer service category change;
- No public notice of the proposed land swap was given as required by law, and the required participants for a land swap and school relocation proposal were not included;
- The decision will set a bad and defective precedent for all future public school modernization studies in Montgomery County;
- The decision violates the applicable requirements for acquisition of property including, but not limited to, the required mandatory review process;
- Parcel A is not owned by MNCPPC and, therefore, the decision is based upon an assumption that violates land use approvals for the development of which Parcel A is a part.

Appellants argue that the option selected by the local board is not a modernization, but rather is the construction of a new school building on a different parcel of land. They claim that this makes the transaction subject to certain MCPS policies and procedures, and certain land use restrictions. They also argue that Parcel A is owned by Pulte Home Corporation which has dedicated the land (conveying only an easement interest) to MNCPPC as a condition for approval of a residential subdivision that is developing adjacent to the Farquhar site, and that this designation means that the land may be used only as a park which prohibits the land swap deal.

The Appellants' allegations can mostly be classified into two main categories – violations of MCPS policies and procedures and violations of land use requirements. Other than the claims we discuss below, none of the claims in these two categories asserts a violation of State education law or regulations, thus the State Board lacks jurisdiction to review them under §2-205(e).

#### *Additional Claims*

Appellants claim that the local board violated various Administrative Procedures of the Interagency Commission on School Construction (IAC). The IAC, which is responsible for the State funding of public school construction, is a branch of the Board of Public Works, not the Maryland State Department of Education. The State Board does not have jurisdiction to rule on such claims requiring the interpretation of the IAC's Administrative Procedures.

Appellants also claim that the local board's decision violates COMAR 23.03.02.13A(1) which requires the local board to submit a proposed site to the MNCPPC through the Public School Construction Program for the acquisition of a new site for a new or replacement school. COMAR 23.03.02.13A contains the regulations governing the Board of Public Works. Because this is not an alleged violation of State education regulations, the State Board lacks jurisdiction to entertain it through a §2-205 appeal.

Appellants also maintain that the local board's decision is inconsistent or prevented by various land use and zoning provisions. The State Board does not have jurisdiction over land use and zoning issues.

#### *Alleged Violations of Education Article*

Appellants maintain that the local board's decision violated §4-115(b)(1) of the Education Article, which allows a local board to buy or otherwise acquire land for a public school site with the approval of the State Superintendent. They claim that the land swap is an acquisition without the necessary approval. The land swap, however, has not yet occurred. It has not yet been approved by the MNCPPC. The local board directed MCPS staff to initiate the process for the land swap. It is anticipated that part of that process will be getting the necessary approvals. In our view, the local board's decision to pursue the land swap process does not violate §4-115(b)(1).

Appellants also maintain that the local board violated §4-116 of the Education Article which provides a process for the selection of school sites. Specifically it requires consultation with the local planning agency and conformity with the development plan for the County. The school system has consulted with the MNCPPC, which is the local planning agency here. The school system anticipates that the land swap process will result in formal action by the MNCPPC, including consideration of land development plans. In addition, the Superintendent's September 13, 2011 memorandum stated that, according to MNCPPC staff, the land swap is compliant with the intent of the Master Plan to provide an active recreational park adjacent to the school. (Motion, Ex. 10). Further, §4-116 does not require a public hearing as the Appellants claim. It merely states that the local board may hold one if it considers it desirable, if 100 or more adult residents of the county petition in writing for a hearing, or if the county commissioners or county council asks for a hearing. Md. Code Ann., Educ. Art. §4-116(b). Appellants have not shown that any of these contingencies have been met. We find no violation of §4-116.

*Miscellaneous*

Appellants allege that they have been prejudiced by the local board's failure to file the full record in this case, including a transcript of the proceedings at which the resolution was adopted by the local board and other documents they claim should be part of the record.

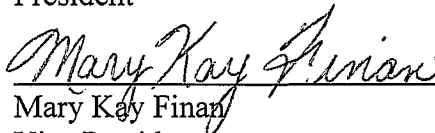
In a State Board appeal, the local board must transmit to the State Board "the record of the local proceedings." COMAR 13A.01.05.03E(1). It appears that all of the documents in the record have been included as attachments to the appeal filings. With regard to the transcript, the State Board appeal procedures do not require the local board to provide a transcript of the meeting in a case such as this. Rather, COMAR 13A.01.05.03E(2)(a) requires the local board to provide a transcript of a stenographic record of an evidentiary hearing before the local board or its designee. There was no evidentiary hearing in this case. Accordingly, we find no violation of the regulation.

CONCLUSION

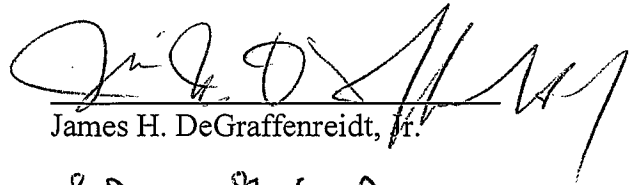
For all of these reasons we dismiss those claims over which the State Board lacks jurisdiction and affirm the decision of the local board.




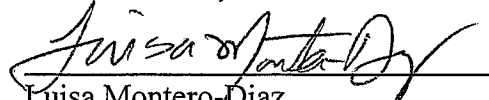
Charlene M. Dukes  
President

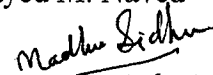


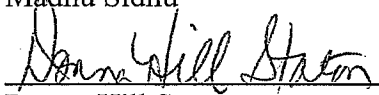
Mary Kay Finan  
Vice President

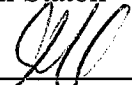
  
James H. DeGraffenreidt, Jr.

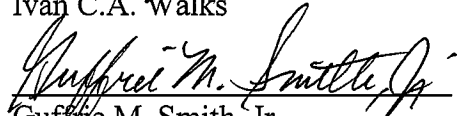
  
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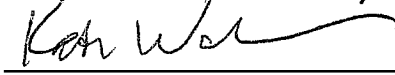
  
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September 25, 2012