

DUNLOY TOWNHOME  
CONDOMINIUM, INC. ET AL

Appellant

v.

BALTIMORE COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-58

### OPINION

#### INTRODUCTION

Appellants challenge the local board's decision to authorize the construction of an elementary school on the site of the Mays Chapel Park in the Lutherville/Timonium area of Baltimore County. 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 also filed leave to amend their appeal. The local board responded.

#### FACTUAL BACKGROUND

After exploring various options to accommodate a projected increase in school enrollment in the York Road Corridor and to address overcrowding in other schools, the local board determined that a new 700 seat elementary school was the long term solution to provide the maximum seating capacity for the area. Once the local board made that determination, school staff evaluated possible school sites. Ultimately, school staff recommended the Mays Chapel site, which had been approved as a school site approximately 26 years ago.<sup>1</sup> (3/20/12 Minutes, p.5). Although no school was constructed on the site during that time, the school system considered constructing a school at that location in 1993 and in 2007, but did not move forward with the projects at those times. (Motion, Ex. 1). Meanwhile, the property has been used as a public park. (3/20/12 Minutes, p.5).

On March 6, 2012, the local board held a public meeting at which the issue of the Mays Chapel School site was on the agenda. (Local Bd. Motion, Ex.2). The number of people in attendance at the meeting was in excess of 148 individuals given the capacity of the room and the overflow areas. (*Id.*). The local board heard from school system staff as well as members of the public. During the public comment portion of the meeting, nine people spoke regarding the school site -- two in favor and seven opposed. (*Id.*).

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<sup>1</sup> The local board has owned a school site in the Mays Chapel area since 1975. In 1986, the local board completed a land swap exchange with a local developer who wanted to develop the parcel of land owned by the local board at that time in exchange for the parcel known as the Mays Chapel site that is at issue in this appeal. (Motion, Ex. 1).

At that meeting, the local board granted preliminary approval of the site. It announced that it would be scheduling a public hearing on the proposal on March 19, 2012, but it did not announce a location at that time because it needed to locate a site large enough to accommodate the anticipated crowd. (*Id.*).

On March 7, 2012, the school system issued a Press Release announcing the date, time and location of the public hearing. It sent the Press Release to all local media outlets and it was posted on the school system's website. (*Id.*). Numerous newspaper articles, online articles, and television news reports addressed the issue of the construction of the new elementary school at the Mays Chapel site. (*Id.*).

The local board held the March 19 public hearing at Loch Raven High School. Over 200 people attended the hearing and 42 people addressed the board. (*Id.*). The local board did not limit the length of the hearing or the number of individuals who were allowed to speak. Everyone who signed up to speak was permitted to do so. (*Id.*). The overwhelming majority of speakers presented views against the selection of the site. (Appeal, p.8). Brenda Stiffler, the local board's Administrative Assistant, provided each local board member present with copies of all emails submitted by the public regarding the Mays Chapel site and a packet of information submitted by Alan Zuckerberg, Appellants' legal counsel in this case. (*Id.*).

Ms. Stiffler also prepared minutes of the hearing entitled "Report of the Public Hearing Following Preliminary Approval of the Mays Chapel Site." The Report and any additional testimony received from the public was disseminated to the local board members prior to their vote on the issue at a public meeting on March 20. In addition, any board members who were not present at the hearing the night before received all documentation that was distributed to board members at that hearing.<sup>2</sup> (*Id.*).

On March 20, 2012, the local board held a public meeting at which it considered information concerning the Mays Chapel site. It had before it information supporting and opposing the school site. In a unanimous vote, the local board approved the Mays Chapel site for the construction of the new elementary school. (3/20/12 Minutes).

## STANDARD OF REVIEW

This case involves the local board's policy decision related to the site selection for the new elementary school at the Mays Chapel site. 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

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<sup>2</sup> Eight of the 12 members of the local board were present for the March 19 hearing.

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).

## LEGAL ANALYSIS

### Preliminary Issues

#### *Appellants’ Request for Leave to Amend Appeal*

As a preliminary matter we will address Appellants’ Request for Leave to Amend Appeal. After the local board filed its motion for summary affirmance, the Appellants sought permission from the State Board to amend their appeal so that they might add several arguments in support of their position. The local board opposed the Appellants’ request but alternatively has responded to the new arguments. COMAR 13A.01.05.04B(2) permits a party to amend an appeal upon leave of the State Board or consent of the other party. Given the import of this case to Baltimore County and the fact that the local board has already provided rebuttal argument on the additional issues, we grant the Appellants’ request to amend their appeal.

#### *Letter from Washington Post Media*

Eric Lieberman, Vice President and Counsel to Washington Post Media, has asked the State Board to consider a two page letter he submitted on behalf of the Maryland-Delaware District of Columbia Press Association (MDDC) and The Washington Post which comments on enforcement of the notice provision contained in §4-116(b)(2) requiring legal notice of a school site selection hearing to be published in the newspaper. The letter is similar to that of an *amicus curiae* and it provides information on legal notice through newspaper publication. The local board has asked the State Board to strike the filing. Although the State Board appeal procedures do not address *amicus curiae* filings, consistent with our past practices we will exercise our discretion and accept the letter as an *amicus curiae* filing in this case.<sup>3</sup>

### Substantive Issues

#### *Jurisdiction*

Just as we did in *Stanmore Family Limited Partnership, et al. v. Montgomery County Board of Education*, MSBE Op. No. 12-41 (2012) and *Rock Creek Hills Community Association, et al. v. Montgomery County Board of Education*, MSBE Op. No. 12-49 (2012), we address jurisdiction. Two parts of the State statute establish the State Board’s jurisdiction to hear and

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<sup>3</sup> Alternatively, the MDDC and the Washington Post seek to intervene in the appeal for the limited purpose of submitting the comments. Intervention on that basis would be inappropriate given that neither entity claims to have been aggrieved by the local board’s decision.

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 to assess the State Board's jurisdiction over these matters. Some of the claims allege that the local board violated its own policies and rules in reaching its decision. They are as follows: (1) Policy and Rule 1280 - Boundary Changes; (2) Policy 3111 - Non-Instructional Services Budget: Planning and Preparation; (3) Policy and Rule 7110 - New Construction: Determining Needs; and (4) Policy and Rule 7240 - New Construction: Planning School Sites. None of these claims assert a violation of State 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).

*Alleged Violations of §4-116(a) of the Education Article*

Appellants maintain that the local board violated §4-116(a) of the Education Article by failing to consult with the Baltimore County Department of Planning. Section 4-116(a) states:

(a)(1) If there is a commission or agency with legal responsibility for county planning for land use, the county board shall:

- (i) Consult with the commission or agency; and
- (ii) Ask its advice in choosing land for a school site.

(2) The site shall conform as far as practicable to development plans for land use in the county.

The Mays Chapel site was chosen as a school site over 25 years ago, with full consultation and advice from a variety of County and State agencies involved in County planning for land use, including the County Council of Baltimore County. The necessary consents and permissions for converting the site to a school site were obtained from the Secretary of the Maryland Department of Natural Resources and the Secretary of the Maryland Department of State Planning. (Local Bd. Motion, Exhs. 4 & 5, Sines and Calder Affidavits).

As for more recent consultations, Kara Calder, Executive Director for the BCPS Department of Planning and Support Operations, asserts in her affidavit that the school system and the Department of Planning for Baltimore County have discussed the Mays Chapel site numerous times since July 1, 2010 when she took on her position. (Local Bd. Reply, Exh. 1). On January 26, 2012, Ms. Calder and Michael Sines, Executive Director of Physical Facilities, presented BCPS's Capital Improvement Program to the Baltimore County Planning Board. (*Id.*). The presentation included a review of viable school sites, including the Mays Chapel site, and a discussion of the need for a new elementary school in the area. (*Id.*). During that presentation, the Planning Board reviewed a map showing the distribution of students in proximity to the Mays Chapel site and the severe overcrowding in the region. (*Id.*). The Planning Board also had the opportunity to consult with Ms. Calder and Mr. Sines and to give advice relative to the Capital Improvement Program. (*Id.*).

In letters dated May 2011 and May 2012, the Baltimore County Office of Planning confirmed that the Office had reviewed the school system's 2011 and 2012 Educational Facilities Master Plans, both of which identify the Mays Chapel site as a viable school site for future development. (Local Bd. Reply, Exhs. 1a, 1b, 1c & 1d). The 2012 Educational facilities Master Plan specifically highlights the fact that there were plans underway to construct a new 700 seat elementary school at the Mays Chapel site to address the needs of schools further north in the central planning region. (Local Bd. Reply, Exh. 1c). The Baltimore County Office of Planning agreed to each of the Master Plans inasmuch as they reflect the Capital Improvement Program approved by the County Executive and County Council. The Office of Planning also confirmed that the Master Plans were consistent with the adopted Baltimore

County Master Plan 2020. Further, the Office found that the Master Plans complied with the requirements of the Maryland Department of Planning with regard to the Community Analysis section for growth trends, adopted comprehensive plans, building and subdivision plans, housing and business revitalization plans, and school adequate public facilities ordinance. (Local Bd. Reply, Exhs. 1b & 1d).

Although Appellants have raised issues concerning the proper use of local open space at the site and whether use of the site is consistent with the Baltimore County Master Plan 2020, we will not delve into such land use concerns and go behind the determinations of the Baltimore County Office of Planning and the approvals of the State officials.

*Alleged Violations of §4-116(b) of the Education Article*

Appellants maintain that the local board violated §4-116(b) of the Education Article by failing to give proper notice of the March 19 hearing and by failing to provide proper minutes of the meeting.<sup>4</sup> Section 4-116(b) states:

(b)(1) If a county board gives preliminary approval of a school site, the county board shall hold a public hearing if:

- (i) It considers it desirable;
- (ii) 100 or more adult residents of the county petition in writing for a hearing; or
- (iii) The county commissioners or county council asks for a hearing.

(2) The hearing shall be held on at least 10 days' notice, published at least once in a newspaper of general circulation<sup>5</sup> in

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<sup>4</sup> Oddly, Appellants also assert that the local board failed to hold a public hearing in accordance with §4-116(b)(1). It is undisputed that the local board conducted a public hearing on the site selection after granting preliminary approval for the Mays Chapel site.

<sup>5</sup> A newspaper of general circulation:

- (1) Has at least 4 pages;
- (2) Habitually contains news items, reports of current events, editorial comments, advertising matter, and other miscellaneous information that is of public interest and is found generally in an ordinary newspaper;
- (3) At least once a week for 6 months or more before publication of the notice or advertisement, has been published and distributed, by sale, from an established place of business;
- (4) Has general circulation throughout the community where the publication is published; and
- (5) Is entitled to be entered as second-class matter in the United States mail. (Md. Ann. Code art.1, §28).

the county, to give all interested persons an opportunity to present their views.

(3) Any petition by residents of the county shall be filed at the office of the county board within 15 days after the board gives preliminary approval of the site.

(4) If a hearing is held, minutes shall be kept and, after deliberation, the county board shall send the minutes of the hearing and its recommendation to the State Superintendent for use in making a decision on his approval of the site.

(5) A request for site approval may not be made to the State Superintendent by a county board until 15 days after its action recommending the site or, if a hearing is held, until the hearing, whichever occurs last.

Notice - §4-116(b)(2)

Appellants maintain that the local board violated §4-116(b)(2) of the Education Article because it failed to publish notice of the March 19 meeting in the newspaper. Section 4-116(b)(2) states that the “hearing shall be held on at least 10 days’ notice, published at least once in a newspaper of general circulation in the county, to give all interested persons an opportunity to present their views.”

The local board does not dispute that it failed to publish legal notice of the hearing in the newspaper. Rather, the local board argues that it has substantially complied with the statutory provision because many interested individuals had actual notice. The local board relies on the fact that it announced at its March 6, 2012 meeting, at which over 100 opponents of the school site were in attendance, that it would hold a public hearing on the site selection on March 19, 2012. (Appeal, Exh. 1, 3/6/12 Meeting Minutes). It publicized further details of the hearing, which were not available on March 6, on the BCPS website and the information was part of a March 7, 2012 press release. (Local Bd. Motion, Exh. 2, Stiffler Affidavit & Exh. 1 to the Stiffler Affidavit). The local board explains that the scheduling of the hearing was also the subject of various print articles, online articles, and television news reports and has included the following as attachments to its Motion:

- Baltimore Sun, March 6, 2012, online story at 9:26 p.m.. Mentions in the article that the local board announced it will hold a public hearing to further discuss the issue on March 19. Gives no further details about the hearing. (Local Bd. Motion, Exh. 3A).
- Baltimore Sun, March 7, 2012, updated its online story at 3:02 p.m. by adding that the “public hearing will begin at 6 p.m. Monday, March 19, at Loch Raven

High School, 1212 Cowpens Avenue, in Towson, and will allow residents to voice their opinion on the proposed school . . . ." (*Id.*, Exh. 3B).

- Baltimore Sun, March 7, 2012, print article entitled "No Vote on Mays Chapel School". It noted that the local board "will hold a public hearing to further discuss the issue March 19." No further references to the hearing. (*Id.*, Exh. 3C).
- Towson Times, March 7, 2012, online story announced that the public hearing would begin at "6 p.m. Monday, March 19, at Loch Raven High School . . . and will allow residents to voice their opinion on the proposed school . . . ." (*Id.*, Exh. 3D).
- Towson Patch, undated online story, reported that the public hearing would be held on March 19 at 6 p.m. and that the "location has yet to be determined." (*Id.*, Exh. 3E).
- Baltimore Sun, March 13, 2012, online story ends with announcement that the local board "will hold a public hearing on construction of a new elementary school on the Mays Chapel site on Monday, March 19, 6 p.m., at Loch Raven High School. . . ." It gives information in sign up times for testimony. (*Id.*, Exh. 3F).
- Towson Times, March 13, 2012, online story announces the date, time, place and sign up information for those who want to speak. (*Id.*, Exh. 3G).
- The Jeffersonian, March 13, 2012, print article states the time, date, place and purpose of the hearing in the body of the article. Excludes information about sign up times for testimony. (*Id.*, Exh. 3H).
- Towson Times, March 14, 2012, online article ends with announcement that the local board "will hold a public hearing on construction of a new elementary school on the Mays Chapel site on Monday, March 19, 6 p.m., at Loch Raven High School. . . ." Provides sign up procedures. (*Id.*, Exh. 3I).
- Baltimore Sun, March 16, 2012, print editorial mentions that a "meeting is scheduled at Loch Raven High School next Monday night" but has no other information about the hearing. (*Id.*, Exh. 3J).

(*Id.*; Local Bd. Motion, Exh. 3). In addition, an opposition group known as "Save Mays Chapel Park" placed at least one sign in the Mays Chapel area announcing the public hearing for a new two story elementary school on March 19, 2012 at Loch Raven High School. (Local Bd. Motion, Exh. 4).



The local board also points out that over two hundred people were in attendance at the hearing, many of whom opposed the selected site. More than half of the 42 individuals who gave in-person community input at the hearing spoke out against selection of the Mays Chapel site for the new elementary school. (Appeal, Exh. 5). The local board also received written comments opposing the Mays Chapel site. Based on all of this, the local board argues that it would have been difficult for any person interested in the matter involving construction of the school at the Mays Chapel site to have had difficulty learning about the scheduling of the public hearing.

The issue of whether substantial compliance with §4-116(b)(2) is sufficient to satisfy the notice requirements or whether strict compliance with the statute is necessary is one of first impression this Board.

The local board has cited a variety of cases to support its position that substantial compliance with the notice provision of §4-116 is sufficient. We discuss the cases below.

In *Heath v. Mayor and City Council of Baltimore*, 187 Md. 296 (1946), opponents of a permit issued by the City to build a garage complained that the sign posted on the premises notifying the public of the appeal before the Zoning Board of Appeals had not been properly posted pursuant to the rules adopted by the City. The crux of the argument was that the sign was pale green instead of required white and that it was not clearly visible and legible to the public. The Court found that substantial compliance with the requirements the administrative regulation in making an application for permit was sufficient. *Id.* at 299. The Court did not consider the "slight departure from the strict letter of the rule to be a jurisdictional defect invalidating the permit." *Id.* In this case, the local board failed to publish notice of any kind in any newspaper. Rather, it announced the hearing date at a public meeting, it posted the public hearing notice on its website, and it sent out a press release. This is far from the slight defect of the wrong sign color in *Heath*.

*Dutton v. Tawes*, 225 Md. 484 (1961), dealt with the violation of State statute, Art. 33, Section 170, that required the General Assembly to provide the voters in the State the text of all measures to be voted upon by publishing them before the election in at least two or more newspapers in each county and all the daily newspapers published in Baltimore City. Instead of complying with the law as it existed at the time, the Secretary of State's office published the proposed act according to the 1941 law, which required one publication in one newspaper, the Baltimore Sun, a paper that had general circulation throughout the State. *Id.* at 489-500. The Court looked to the cases on election law which recognize a difference given to the mode and manner provisions of the election laws before and after the election. Before an election, a court will require the election officials to strictly comply with the law. *Id.* at 691. After an election is held, however, courts will not disturb the expressed choice of the voters unless it can be shown that the failure of the officials to follow the law has interfered with the full and fair expression of the will of the voters, or if the statute expressly states that the failure to follow it renders the election void. *Id.*

We do not think that the analysis of the election cases is easily applied to this case because of the unique nature of election cases. The State Board is not deciding whether to overturn a decision made by the State electorate and whether deviation from the mode of notice prevented a full and free expression of the popular will at the voting booth. The State Board is deciding whether the local board's decision should be reversed. Although such a decision is not to be taken lightly, it is not on the same level as nullifying a vote in a Statewide election.

In *Montgomery County v. Waters Landing Limited Partnership*, 99 Md. App. 1 (1994), the County conceded that it had failed to comply with the notice requirements set forth in State statute when it attempted to enact an impact tax. The statute required the County to advertise for three consecutive weeks in two newspapers having general circulation in the County and that a public hearing would be held. *Id.* at 30-31. The County contended that it had substantially complied with the statutory requirements because it advertised the bill once a week for two successive weeks in two newspapers, and advertised two companion bills once a week for five weeks in three newspapers. *Id.* Although the Court recognized in dicta that substantial compliance with the notice provisions would have been sufficient, it did not determine the issue in the case because the notice requirement had been amended. *Id.* at 31.

*Rogers v. Eastport Yachting Center*, 408 Md. 722, 737 (2009), involved the failure of the Port Warden to give proper notice of a hearing on a building permit application. The Annapolis Municipal Code required the Port Warden to publish notice once a week for two consecutive weeks in a newspaper of general circulation in the City, and required the party seeking the permit to send notice by certified mail to adjoining property owners. *Id.* at 735. The Court noted:

The law, in its majesty, is not designed to require futile action or idle gestures. It is well settled that notification purposed to inform may be replaced by actual knowledge. And this is especially so when the knowledge has been acted upon without reliance upon the notification's absence or its defects.

The Court upheld the administrative decision at issue noting that the petitioner, an adjoining landowner, had actual notice and, therefore, lost nothing from the technical notice failures. *Id.* at 737. The petitioner had constructive notice by a newspaper publication and actual notice by certified mail. In this case, however, we have no way of knowing "whether all interested persons" had actual notice of the local board's site selection hearing.

The local board also cites *Trotter Road Citizen's Association v. Howard County Board of Education*, 6 Op. MSBE 358 (1992), and *Citizens Opposed to Hunt Club Location v. Howard County Board of Education*, 7 Op. MSBE 513 (1997). While both are school site selection cases, there is no material factual dispute in either case regarding compliance with the notice requirements of §4-116(b)(2).

We have also considered the amount of media coverage the March 19 site selection hearing received through the various print and online articles that addressed the issue, as set

forth in the local board's Motion. There are three print articles that mention the public hearing and the remainder are online articles. Only one of the print articles, the March 7 Baltimore Sun article, was published at least ten days prior to the hearing. That article mentions only the date of the hearing and gives no other details. Only the March 13 print article in The Jeffersonian provides information about the date, place, and time of the public hearing and that the public will be given the opportunity to speak, although it does not state the sign up procedures. Individuals monitoring for legal notices would not necessarily have seen these print articles.

The local board argues that the intent of the hearing notice provision was met because many individuals were aware of the public hearing. The language of §4-116(b)(2) states that the purpose of the hearing notice requirement is "to give all interested persons an opportunity to present their views." There is no dispute that over 200 individuals were present at the public hearing on March 19 and 42 individuals addressed the local board in-person that night. But at what point does the number of people who attend at a hearing, by whatever means they learned about it, mean that the publicity was sufficient to assure notice to all interested persons? We have no way to gauge how many more people may have attended the hearing to present their views had the requisite notice been given. Indeed, at least one of the individual Appellants in this case, Howard J. Schulman, stated in his Affidavit that he "never saw notice in [The Daily Record] or any other publication of a public hearing to take place before the Baltimore County Board of Education on March 19, 2012" and that "[h]ad he seen such a notice [he] would have attended the hearing to exercise [his] right to present testimony against the use of the Park as a site for the school." (Appeal, Exh. 6).

We recognize that substantial compliance is an existing legal concept that may be worthy of application to certain circumstances. There is no legal requirement, however, that we apply it here. Based on our review of all of the arguments presented by the parties in this case, it is our view that no less than strict compliance with the notice provisions of §4-116(b)(2) is acceptable.

The Maryland legislature enacted §4-116(b)(2) through a legitimate process and set forth a clear requirement for how a local board would satisfy its obligation for public participation in the school site selection process. The notice requirement is minimal and easy to satisfy. All the statute requires is that the local board publish notice of the site selection hearing in one newspaper of general circulation at least ten days in advance of the hearing date.

The notice requirement serves several purposes. Not only does it inform the public of the date, time and place of the hearing, but it also informs the public that the issue is before the local board for its consideration and ensures that citizens will have the opportunity to meaningfully participate in the government process. As the provision itself states, it gives "all interested persons an opportunity to present their views." §4-116(b)(2). All of this is consistent with the notions of fairness and transparency in government actions which we believe are of vital importance, especially in the context of controversial governmental decisions as school site decisions often are.

Requiring strict compliance with the statutory notice provision accomplishes all of this in an effective and fair way because the statute assures all members of the public that legal notice of the hearing will be published in the prescribed manner. This puts the members of the public on a level playing field. They know where they need to look for notice that the government might act on something that matters to them. News coverage, internet traffic, emails, and the like fail to provide this same finality because they exist for a different reason and the public has not been told to look to these sources for notice. Indeed, as already stated, at least one individual submitted an affidavit in the case stating that he would have attended the hearing if he had seen notice of it in a publication.

The local board had an obligation to follow the established notice requirement. There is no dispute that it failed to comply with that obligation because it did not publish notice of the hearing in any newspaper of general circulation.

Meeting Minutes - §4-116(b)(4)

Appellants maintain that the local board violated §4-116(b)(4) of the Education Article because it failed to accurately set forth the minutes of the March 19, 2012 meeting. The minutes of the March 19 meeting are contained in the document entitled "Report of the Public Hearing Following the Preliminary Approval of the Mays Chapel Site". (Appeal, Exh. 5). Appellants argue that the Report "omits a true sense of what actually occurred at this meeting", particularly in light of the lengthy testimony, and fails to give the board members who were absent on that date an accurate picture of what occurred. Appellants are specifically concerned about the import of testimony concerning alternatives to building the school at the Mays Chapel site and information about the existence of certain utilities (water, electricity, storm drains, and sewer) at the Dulaney Springs site. Appellants also claim that a document that their attorney asked to have incorporated into the minutes was not attached to the Report or placed on the school system website. (Appeal, pp.8-9).

Section 4-116(b)(4) of the Education Article states that "if a hearing is held, minutes shall be kept and after deliberation, the county board shall send the minutes of the hearing and its recommendation to the State Superintendent for use in making a decision on his approval of the site." The statute does not prescribe the level of detail that must be captured in the local board's meeting minutes. In our view, the minutes should offer sufficient detail to serve as a record of what took place at the meeting, but they need not be a transcript or delve into every detail of the statements made.

The Report identifies the 42 speakers offering community input at the meeting, indicates whether they were in favor of or opposed to the issue, and gives a brief summary of the comments to give a sense of the speaker's position. (Appeal, Exh. 5). The local board has submitted an affidavit of the individual recording the minutes stating that it is an accurate description of what transpired at the meeting. (Local Bd. Motion, Exh. 2, Stiffler Affidavit). We find this sufficient.

As for the Appellants' claim that certain documents were not attached to the minutes, there is no such requirement in the statute. Ms. Stiffler has explained that it is not the practice of the local board to attach extrinsic documents to its minutes. (*Id.*) Moreover, prior to the final vote on March 20, each local board member received all of the information and documents provided from members of the public in support of and opposed to the site. (*Id.*)

#### *Maryland Public Information Act Claims*

Appellants maintain that the local board violated the Maryland Public Information Act (PIA), Md. Code Ann., State Gov't §10-611 *et seq.*, by failing to produce certain requested documents. The PIA sets forth the procedures to be followed by those aggrieved by a public body's failure to comply with the provisions of the Act. Section 10-623 provides that an individual who is adversely affected by a public body's failure to comply with the PIA may file a petition in the circuit court. Thus, the State Board of Education is not the appropriate forum for redress of issues arising under the PIA. See *James v. Talbot County Bd. of Educ.*, MSBE Op. No. 02-40 (2002).

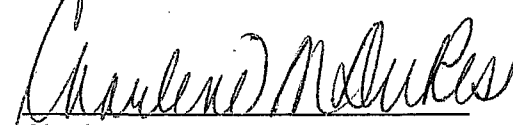
#### *Additional Substantive Issues*

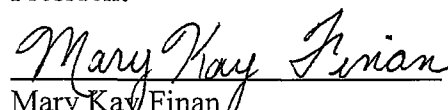
Appellant raises additional substantive concerns regarding the local board's decision to select the Mays Chapel site. For example, they claim that use of the Mays Chapel site for an elementary school is not in the best interests of the children it will serve and that it will have an irreparably damaging effect on the lives of the seniors and the senior housing in the area. Such issues are not within the purview of our jurisdiction in this case.

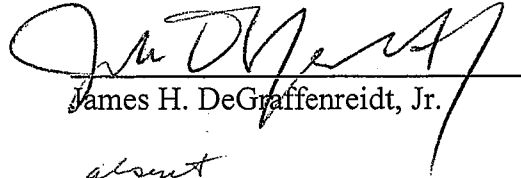
#### CONCLUSION

For the reasons stated above, we find that the local board violated the notice requirements of §4-116(b)(2) because it failed to publish notice of the March 19, 2012 site selection hearing at least once in a newspaper of general circulation in Baltimore County. We reverse the local board's March 20, 2012 decision approving the Mays Chapel site and remand the case to the local board so that it may publish legally sufficient notice and conduct a new site selection hearing to cure the defect.

As to the other claims raised by Appellants, as stated in the Opinion, we find that we either lack jurisdiction to entertain them or that the local board did not violate the law.

  
Charlene M. Dukes  
President

  
Mary Kay Finan  
Vice President

  
James H. DeGraffenreidt, Jr.

*absent*  
S. James Gates, Jr.

*absent*  
Luisa Montero-Diaz

*absent*  
Sayed M. Naved

*Madhu Sidhu*  
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

December 17, 2012