

SOUTHPOINTE ARUNDEL LLC,

Appellant

v.

ANNE ARUNDEL COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 06-22

OPINION

This is an appeal by Southpointe Arundel, LLC, a development company, of the local board of education's adoption of a school utilization chart on January 18, 2006, which the county Office of Planning and Zoning allegedly used as a basis for denying the Appellant's proposed subdivision development. Appellant argues that the local board misinterpreted and misapplied State law in concluding that Central Elementary school was "closed" to new development. The local board has submitted a motion to dismiss, asserting that the State Board lacks procedural and subject matter jurisdiction over the appeal. Appellant filed a response to the motion to dismiss. The local board also filed a reply to the Appellant's response.

FACTUAL BACKGROUND

In 2001, the Appellant, Southpointe, proposed to develop a subdivision by the same name in Anne Arundel County. The county is divided into twelve "feeder systems," and the Southpointe subdivision would be located in the South River feeder system. In 2001, the local school system evaluated local schools and indicated which existing schools in the South River feeder system, including Central Elementary School, were adequate to serve potential students from the proposed Southpointe subdivision. After the evaluation, the local school system recorded the proposed Southpointe subdivision in its Subdivision Tracking reports used for school planning and enrollment projections.

In October 2003, the Anne Arundel County Council adopted Bill No. 43-03, an ordinance which, among other things, revised the standards and procedures for determining the adequacy of public facilities for schools ("APF law"). The APF law requires the county Planning and Zoning Officer to request the local board of education to adopt a school utilization chart that indicates which schools are "open" or "closed" for new residential development, based on official September 30th enrollments. Upon adoption by the local board of education, the school utilization chart is forwarded to the county council for adoption by resolution. The chart is then used by the county Office of Zoning and Planning to include in its consideration of proposed developments.

On December 1, 2004, the local board adopted a school utilization chart that indicated Central Elementary school was “closed” to new development. Central Elementary is located in the South River feeder system where the Appellant proposes its subdivision.

The Appellant apparently presented its concerns regarding the Southpointe school adequacy determination by letter to the county Office of Planning and Zoning in April of 2005.¹ In the Planning and Zoning Officer’s response, among other things, he advises the Appellant to bring its concerns before the local board:

The remainder of your letter argues that the Board of Education made errors in determining capacity at Central Elementary school. Those arguments would need to be made to the Board and if you are correct, the Board would need to amend the school utilization chart and forward it to [the Office of Planning and Zoning]. [The Office of Planning and Zoning] would then forward it to the County Council for adoption by resolution.

See May 11, 2005 letter from Joseph Rutter, Planning and Zoning Officer. Southpointe did not present any of its concerns to the local superintendent or local board.

On January 18, 2006, the local board adopted the most recent school utilization chart. The chart again lists Central Elementary School as “closed” to further development. Presumably because of this determination, the county Office of Planning and Zoning rejected proposed subdivisions, including the Appellant’s, whose school-aged residents would attend Central Elementary.²

The Appellant now appeals to the State Board presenting the following issues for consideration:

1. Whether the board’s actions in developing the school utilization chart are inconsistent with the processes and authority provided to local school boards of education under Maryland education law, regulation and policies?
2. Whether the Board’s actions in adopting the school utilization chart are inconsistent with the processes and authority provided to local school boards of education under Maryland education law, regulation and policies?

¹ A copy of this letter was not included among the Appellant’s submissions.

² The Appellant did not submit a copy of the denial letter from the Office of Planning and Zoning, so it is unclear what the actual reasons for denial were.

3. Whether the Board has exceeded its authority in adopting the School Utilization Chart by effectively controlling local land use and development which it is not authorized to do under State and County laws?
4. Whether the Board has acted arbitrarily or capriciously in its treatment of the Southpointe subdivision?
5. Whether Southpointe development should be provided an adequate public school designation in the South River Feeder System?

Further, the Appellant seeks the following relief from the State Board:

- rescind the Board's adoption of current school utilization chart with declaration that the Chart was not developed consistent with State laws and policies;
- develop and adopt a uniform report and evaluation methodology for local boards of education consistent with State law to respond to and address local matters regarding Adequate Public Facilities;
- declare that schools are adequate to serve students from Southpointe subdivision as to capacity and planned enrollments;
- direct the local board of education, consistent with State law, to plan and provide service for Southpointe students now and in the future.

The local board has filed a motion to dismiss on jurisdictional grounds. The local board maintains that the State Board lacks jurisdiction to hear this case because there is no local superintendent or local board decision to review. The local board further contends that the State Board lacks subject matter jurisdiction because the real issue on appeal is whether the county properly denied Appellant's proposed subdivision, which is a land use or zoning issue, not one involving education.

ANALYSIS

In this appeal, there is no local superintendent or local board decision for the State Board to review. The Appellant attempts to convert the local board's adoption of the school utilization chart into an appealable decision to the State Board. However, the Appellant's challenge to the legality of the conclusion reached by the local board has not been properly presented to and decided by the local board.

It is well settled under the procedures of the State Board that a matter must first be decided by the local superintendent and local board of education before it is submitted to the State Board on appeal. *See* Md. Code Ann., Educ. §4-205(c). Accordingly, the State Board has consistently held that an appellant must first pursue and exhaust statutorily prescribed administrative remedies in the appropriate manner. *See Kemp v. Montgomery County Board of Education*, MSBE Opinion No. 01-14 (Apr. 24, 2001); *Stewart v. Prince George's County Board of Education*, 7 Op. MSBE 1358 (1998); *Jackson-Nesmith v. Charles County Board of Education*, 7 Op. MSBE 1320 (1998).

CONCLUSION

For these reasons, the local board's motion to dismiss is granted.

Edward L. Root
President

Dunbar Brooks
Vice President

Lelia T. Allen

JoAnn T. Bell

J. Henry Butta

Beverly A. Cooper

Calvin D. Disney

Richard L. Goodall

Karabelle Pizzigati

Maria C. Torres-Queral

David F. Tufaro

June 20, 2006