

SOPHIA DRYER, ET AL.,

Appellant

v.

BALTIMORE COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 10-07

## OPINION

### INTRODUCTION

In this case, the Appellants<sup>1</sup> challenge the local board's refusal to consider their "appeal" of the local superintendent's failure to address questions presented by Margaret Fonshell Ward, now counsel for the Appellants, at a March 19, 2009 meeting regarding the construction of West Towson Elementary School.<sup>2</sup> The Baltimore County Board of Education (local board) has filed a Motion to Dismiss maintaining that the March 19 meeting was an informational meeting and that the local superintendent made no appealable decisions at that time. In addition, to the extent that the Appellants are attempting to appeal the local board's decision to construct West Towson Elementary, the local board maintains that the appeal to the State Board is untimely. The Appellants have filed an opposition to the Motion and the local board has filed a surreply.

### FACTUAL BACKGROUND

During the 2007-2008 school year, Baltimore County Public Schools (BCPS) explored options to alleviate overcrowding at Towson area schools. Some options included capital improvements such as renovations and additions to existing school buildings and new school construction. (Bd.R.27). The school system discussed various possibilities involving the use of the Ridge Ruxton site. On April 8, 2008, the local board approved the performance of a site assessment study to explore all possible options for the site. (Bd.R.11).

School system staff presented the site assessment study to the local board at its

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<sup>1</sup>The original Appellants included Sophia Germanides Dryer; Kurt and Cynthia Polins; Theodore and Christie Root; and Henry and Karen Vail. Only the Polins and Vails remain as Appellants in the case. All other individuals have withdrawn.

<sup>2</sup>Ms. Ward was involved in some of the events leading up to this appeal. During that time, she did not serve as legal counsel for the Appellants. Rather, she was a community representative acting in her capacity as the President of the Ruxton Ridge Community Association.

May 6, 2008 public board meeting. After reviewing the study, the local board voted to approve the construction contract for construction of a new stand alone elementary school on the Ridge Ruxton property in Towson. (Bd.R.12). The new school, expected to open in August 2010, will serve students in grades PreK – 5. The Ridge Ruxton School, a special education school serving portions of Baltimore County, will continue to operate on the shared school site. (Bd.R.5).

On May 22, 2008, Ms. Ward, then acting in her capacity as President of the Ruxton Ridge Community Association, expressed her concern to the local board president over the lack of advance communication with the community regarding the proposal adopted at the May 6 meeting. She maintained that the majority of community residents heard about the decision through the media or by word of mouth after the fact as the meeting agenda did not put the community on notice that construction of a new school on the Ridge Ruxton site was being considered. (Bd.R.32). The particular agenda item was item number 20 – a “Request to Negotiate: Consultant services – Architectural/Engineering (A/E) Services for Addressing Elementary School/Addition(s).” (*Id.*). Other community members expressed opposition to the local board’s decision during the local board’s May 20, 2008 public meeting. (Bd.R.13).

On September 23, 2008, the local board approved funding the construction of the new elementary school as set forth in the FY 2010 State capital budget. (Board Response, Exh.3).

On March 19, 2009, Ms. Ward met with Dr. Joe A. Hairston, the local superintendent, and other BCPS representatives, Dr. Nancy S. Grasmick, the State Superintendent of Schools, and Dr. David Lever, Executive Director of the Interagency Committee on School Construction, to talk about the proposed construction of West Towson Elementary School. (Bd.R.19, 35). At the meeting, Dr. Hairston explained that BCPS had considered a number of other potential construction scenarios before deciding to move forward with this one, that BCPS had followed the required process for constructing an elementary school at the site, and that the necessary approvals had been obtained from the County, the local board and the State. He also addressed community input and meetings about the construction project. (Bd. R.35).

Ms. Ward alleged at the meeting that BCPS failed to adhere to State law and various BCPS policies and rules with regard to the decision to construct the school and requested that the local superintendent respond to these issues. (Bd.R.35). Dr. Hairston did not respond to the allegations. (Bd.R.19). Thereafter, the Appellants appealed to the local board Dr. Hairston’s “failure to address the presented questions.” (*Id.*).

In response to the appeal, counsel for the local board advised the Appellants that the March 19, 2009 meeting did not produce any appealable decisions of the local superintendent and the local board’s decision to proceed with the construction of West Towson Elementary School was made well before the meeting. (Bd.R.20).

Appellants, thereafter, filed this appeal to the State Board.<sup>3</sup> With regard to the local board's decision to construct West Towson Elementary, the Appellants request the State Board to direct the local board to comply with the following:

1. BCPS Policy 1280 (Boundary Changes), Policy 7110 (New Construction: Planning - Determining Needs), Policy and Rule 7130 (New Construction: Planning - Relationships with the Public), Policy 7240 (New Construction: Planning - School Sites) and Rule 7240 (New Construction: Designing - School Sites);
2. The requirements of the Public School Construction Program Administrative Procedures Guide, §104; and
3. Md. Ann. Code Art. 66B §3.08 (Communication of Decision to Local legislative Body; Overruling Decision; Failure to Act; Adoption), Md. Code Ann., Educ. §4-116 (Selection of School Sites; Public Hearing), Md. Code Ann., Nat. Res. I §1-303 (Responsibilities and Duties of State Agencies) and §1-304 (Environmental Effects Reports). (Letter of Appeal).

#### ANALYSIS

The Appellants maintain that they are appealing Dr. Hairston's March 19, 2009 refusal to respond to Ms. Ward's request that he and the local board comply with the laws, policies and rules stated above. In essence, Appellants believe that Dr. Hairston's lack of response on these matters constitutes a decision of the local superintendent that was appealable to the local board. The local board declined to consider the appeal because there was no decision to review.

As the local board explains in its Motion to Dismiss, the March 19 meeting was merely an informational meeting arranged as a courtesy at the request of the Governor and Dr. Grasmick to discuss the West Towson Elementary School construction project with concerned community members. (Motion to Dismiss).

We agree with the local board that there was no decision to appeal. The Appellants have presented no evidence that Dr. Hairston rendered a new decision on anything related to the West Towson Elementary School construction project at the March 19 meeting. Dr. Hairston's refusal to engage in a discussion over allegations of non-compliance with laws, policies, and rules at an informational meeting does not

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<sup>3</sup>While this appeal was pending, the Appellants pursued other avenues of litigation against the local board. We held the case in abeyance to determine the status of those matters before proceeding with this case. Although a judge denied the Appellants' Motion for a Temporary Restraining Order and Preliminary Injunction to halt the construction of the school, the Appellants have an active case against the school system regarding the construction project in the Circuit Court for Baltimore County.

amount to a substantive decision by the local superintendent that is appealable to the local board or this Board.

The Appellants also asked us to look backward from the March 19, 2009 meeting and rule on whether there were procedural and substantive errors in the local board's decision-making process. One of the alleged errors central to the Appellants' argument is the lack of notice to them that the local board would vote on May 6, 2008 to award a contract for the design of a new school at Ridge Ruxton. They say that the lack of notice deprived them of "the opportunity to request the Board to follow the rules that should have preceded that vote." (Appellants Opposition at 5). Before we deal with the substance of the Appellant's arguments, we must determine whether the Appellants have timely filed an appeal on the issues they present here.

In every appeal from a local board decision that comes before this Board we require the Appellants to file their appeal timely - - within 30 days of the date the local board made its decision. COMAR 13A.01.05.02(B). In this case, the local board's decision to go forward with its vote, purportedly without notice to the Appellants or the public, occurred on May 6, 2008. The Appellants waited a full year after that date to file their appeal asserting numerous errors in the local board's decision, as well as the lack of notice. Of course, if a local board does not provide any notice that it has made a decision and that lack of notice precludes any Appellant from filing an appeal within the 30 day time period, we would consider that fact and we would allow an untimely filed appeal to go forward.

Therefore, we have reviewed the record to determine when the Appellants knew that the local board had acted purportedly without notice to them in violation of "the rules that should have preceded that vote."

On May 22, 2008, in her role as President of the Ruxton Ridge Community Association, Ms. Fonshell Ward, counsel to the Appellants here, wrote a six page letter to the President of the Baltimore County Board of Education, outlining the problem surrounding the May 6, 2008 vote. (Bd. R. 32). It is clear from that letter that counsel to the Appellants knew on or about May 22, 2008 that the local board had acted and had done so, in her view, in violation of rules, procedures, and against community concerns.

It also is clear from that letter that the Ruxton Ridge Community Association members, some of the Appellants here, knew on or before May 20 of the May 6, 2008 vote. The letter states that Ms. Fonshell Ward was present at the May 20, 2008 board meeting and two of the community members spoke at that meeting during the public comment period about the Ridge Ruxton project. Finally, it is clear from that letter that the Community Association not only had serious concerns about the project, could articulate them in some detail, but also believed that they had no notice of the board's intent to vote on May 6, 2008.

The May 22, 2008 letter states, in pertinent part:

RRCA has been following with interest the various proposals that have been discussed for solving the problem of overcrowding at Towson area elementary schools. Our attention was focused in March 2008, when we learned that the parents of the high needs children at Ridge Ruxton were opposed to and likely filing litigation to prevent the construction of an addition at Ridge Ruxton so that two separate populations could attend that facility. The Board has not previously heard from RRCA because, up until the May 6, 2008 Board meeting, the various proposal being considered were acceptable to our community. All of these proposals concerned sites on which a new special education facility could be built to accommodate the current Ridge Ruxton population, allowing Ridge Ruxton to be converted back to a conventional elementary school, or sites for potential construction of an addition or new school to accommodate Towson families. The situation drastically changed at the May 6 meeting, when we first heard about the Board's decision to proceed with the design and construction of an entirely new elementary school on the portion of the Ridge Ruxton site closest to our neighborhood.

Regardless of the merits or feasibility of the proposal, we take issue with the Board's decision to take an action that would have a major impact on a specific community, without any advance notice, communication or contact with the community. The vast majority of neighborhood residents heard about the Board's proposed project from the news media or by word of mouth after the fact. RRCA did not hear from the Board or BCPS, either before or after this decision was reached. There was never any information provided that would lead us to believe or suspect that the contention over whether high needs children could be in close proximity to the general elementary population would transform into a proposal to build a completely separate school at the Ridge Ruxton site.

(Bd. R. 32 at 1-2).

It is our view that the May 22, 2008 letter demonstrates that the Appellants not only knew of the decision of the local board to which the Appellants objected but also of the purported failure of the board to provide notice to the community of the upcoming May 6, 2008 vote. We believe there remained sufficient time in the 30 day timely filing period, ending June 6, 2008, to have filed an appeal to the State Board. The Appellants

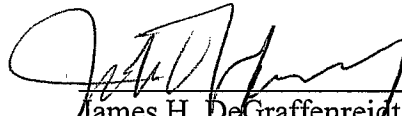
did not do so until May 5, 2009.

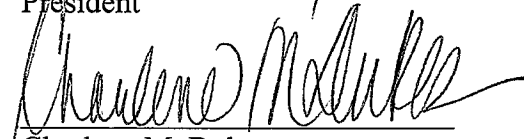
The courts of Maryland consistently state that the requirement to file an appeal in 30 days in jurisdictional. Failure to timely file requires dismissal absent a showing of lack of notice of the decision or fraud. *Brewster v. Woodhaven Bldg. and Dev. Inc.*, 360 Md. 602, 622 (2000); *Houghton v. County Comm'rs. of Kent County*, 305 Md. 407, 413 (1986); *Peabody Heights Co. v. Sadtle*, 62 Md. 145 (1884). A review of cases shows that delay in filing an appeal is fatal to the appeal, no matter what the substance of the appeal, whether it is property loss, loss of life, or deprivation of a civil right. This Board has been no less strict in requiring adherence to our timely filing rules.

Closing the door to Appellants' case before this Board does not mean that they have no legal re-dress. The Appellants have a case pending in the Baltimore County Circuit Court on the very issues they bring before us.

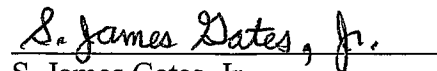
### CONCLUSION

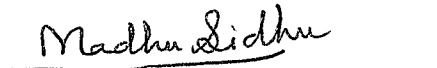
For these reasons, we dismiss the appeal.

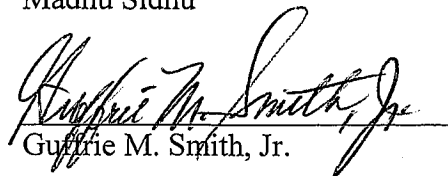
  
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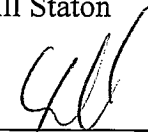
  
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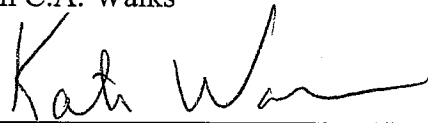
  
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Donna Hill Staton

  
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Ivan C.A. Walks

  
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February 23, 2010