

Rock Creek Hills Citizens Association
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Maryland State Board of Education
C/o Jackie C. La Fiandra, Assistant Attorney General
Office of the Attorney General, Maryland State Department of Education
200 St. Paul Place, 19th Floor
Baltimore, Maryland 21202

**Re: Rock Creek Hills Citizens
Association, *et al.* v. Montgomery
County Board of Education**

**Request to Supplement Complaint
By Citing Statutory Authority and
related Attorney General Decision**

Dear Ms. La Fiandra:

The Rock Creek Hills Citizens Association (RCHCA) requests permission to supplement its complaint against the Montgomery County Board of Education (the Local Board) under COMAR 13A.01.05.04.C and to amend its argument under COMAR 13A.01.05.04A. RCHCA desires to call to your attention a provision of the State Education Article that requires a local board to consult with the any local commission or planning agency with legal responsibility for county planning and land use before making a site selection. The statutory provision is §4-116 of the Education Article of the Annotated Code of Maryland, attached as Exhibit A. Also enclosed is a copy of an October 27, 1999 Maryland Attorney General Opinion (84 Opinions Attorney General 65) that explicitly refers to this obligation (Exhibit B).

I am requesting that you take administrative notice of these two official documents and include them in the record in this proceeding. The relevance of these legal documents to the instant complaint is explained below, but at bottom, it is clear that the Local Board violated the provisions of §4-116(a) in selecting the Rock Creek Hills Local

Park as a site for a new middle school because the Local Board did not consult with the Montgomery County Planning Board before making that site selection.

§4-116(a) of the State Education Article provides:

(a) Consultation with planning agencies. -

(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 the development plans for land use in the county.

The Montgomery County Planning Board has jurisdiction over Montgomery County land use planning under the Regional District Act, which is codified in Annotated Code of Maryland, Article 28. Page 66 of the enclosed Attorney General Opinion explicitly states that §7-112 of the Regional District Act provides that "the acquisition or sale of any land in the regional district by any public board, body or official shall be subject to similar submission and review." (84 Op. Att'y Gen. 65 at 66 [citing §7-112 of the Regional District Act] (emphasis added)). While the cited Attorney General's Opinion discusses the disposition of a school site, not a selection, the Opinion makes also clear that §7-112 applies to the Local Board, and therefore that the mandatory referral provisions of the Regional District Act decisions apply to the Local Board's April 28, 2011 site selection decision. That Opinion states at 84 Op. Att'y Gen. 65 at 70:

For example, in selecting a site for a new school, a county board of education is to consult with the local land use planning agency, seek its advice in choosing a site, and ensure that the selected site "conform[s] as far as practicable to development plans for land use in the county." ED §4-116 (a).

The materials previously submitted to your office make clear that the Local Board did not consult with the Montgomery County Planning Board before selecting the Rock Creek Hills Local Park as the site for a new middle school for the Bethesda-Chevy Chase cluster on April 28, 2011. In her April 27, 2011 letter to Mr. Christopher Barclay, President of the Local Board, Ms. Francoise Carrier states in her role as Chair of the Montgomery Planning Board that "[I]t has come to our attention that on April 28, the Board of Education will be considering selection of a site for the development of a new middle school to service the Bethesda-Chevy Chase area" The April 27, 2011 letter, attached as Exhibit C, makes no reference to a consultation by the Local Board under the mandatory referral provisions of the Regional District Act. Such a referral involves a Planning Board hearing and there is no record of any such hearing. It should be uncontested that the Local Board did not meet its obligation under §4-116(a) to consult

with the local land use planning agency. In this case that agency is the Montgomery County Planning Board, which is chaired by Ms. Francoise Carrier, and in which capacity she signed the April 27, 2011 letter stating the concerns of her Parks Department regarding the selection of the Rock Creek Hills Local Park site.

The Rock Creek Hills Citizens Association complaint now before your office states on the first and second page that:

Third, the Local Board's action was imprudent because it failed to anticipate and to address several serious impediments to the effective implementation of its own decision. These include a striking lack of communication with the Montgomery Parks Department, the agency with primary jurisdiction over the local park system, and the failure to address legal, social, and safety limitations to the conversion of the Rock Creek Hills Local Park site to educational purposes.

By its failure to consult with the Montgomery County Planning Board, not only was the Local Board imprudent, it acted illegally in selecting the Rock Creek Hills Local Park as the site for a new middle school for the B-CC Cluster. This is a compelling reason that the Maryland State Board of Education should grant our requested relief to vacate and remand the site decision at issue to Local Board, together with directions to comply with §4-116 of the State Education Article.

Respectfully yours,

/s/

John M. Robinson

President, Rock Creek
Hills Citizens Association