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July 12, 2011
Ann MacNeille, Esquire
Open Meeting Compliance Board
200 Saint Paul Place
Baltimore, Maryland 21202-2021

Re: Reply to the Montgomery County Board of Education's response, written by Judith Bresler, Esquire Dated July 6, 2011, regarding my original complaint filed June 4, 2011.

Dear Elizabeth Nilsson, Esquire and Ann MacNeille, Esquire

I have received a copy of the Montgomery County Board of Education's ("BOE") response to the Open Meeting Complaint I filed on behalf of the Rock Creek Hills Civic Association ("RCHCA") and offer the following clarifications.

My original complaint is based upon specific violations of the Maryland Open Meeting Act ("OMA"). I filed the complaint on behalf of RCHCA citizens because while attending the April 28th BOE meeting I recognized that violations of the OMA were occurring. I made that determination based upon my ten years of experience as a former Member and Chairman of the Montgomery County Board of Elections. I asked RCHCA to empower me to file the OMA complaint which they did.

The OMA closed meeting procedures used by the BOE are in stark contrast to those followed by Board of Elections.

The Election's Board's Business Meeting starts in Open Session. The Agenda for the meeting, posted well in advance, contains a notification that a Closed Session is schedule to occur. We announce at the beginning of the Business Session that we are going into a Closed Session and specify why, under which specific OMA article(s). We would go from Open Session into Closed Session, and back into Open Session, announcing, if applicable, the closed session result. All of our Closed Session meetings were tape recorded and a summary of the session posted by next months Business Meeting.

Does the BOE tape record its closed sessions? The Board of Elections tape recorded each closed session, and kept the tape for one year. Can OMA get a copy of the BOE'S closed session Aril 28, 2011 recording, if one exists, in determining the validity of my complaint?

2) Articles §10-508(a) (3) and §10-508(a) (14) specifically deal with the acquisition and negotiation of acquiring real property. The definition of Real Property, in the contexts of the OMA, is Property Owned by Private Individuals. Not land owned by the County, or a County Agency, which includes property held by the BOE which is subsequently transferred with or without “recall rights” to another County or State Agency, in this case the Maryland-National Capital Park and Planning Commission (M-NCPPC). I encourage all concerned parties to thoroughly read M-NCPPC Chair Francoise’s April 27, 2011 letter to BOE Board President Barclay, and not ignore it as stated by the respondent. Specifically, the Last paragraph of page two continued on page three.

“When dealing with public property, we suggest more transparency is required than when dealing with private landowners, where open deliberation might influence the price. Where public property is at issue, **secrecy**, my underlined and bolded for emphasis, does not serve the community well. Finally, we believe there should be more “Due diligence” in researching the real costs of all sites before a site selection committee takes a vote, and before MCPS undertakes an expensive feasibility study.”

Clearly, the BOE violated OMA Articles §10-508(a) (3) and §10-508(a) (14) when they met on the evening of April 28, 2011 by discussing and determining in a closed session, held before their next Open Business Meeting, the merits of selecting a School Site on land that was not privately owned.

And they agreed in their closed session to allow RCHCA members to speak at the following next Open Business Meeting without disclosing their closed meeting deliberation to allow us to speak.

In respondent’s paragraph 1, page 4, along with (Attachment G) Ms Bresler writes that the Agenda including the closed session for the April 28th meeting was posted in advance and that the proposed resolution was subsequently revised, prior to the business meeting, at the request of the Superintendent of Schools to include the Rock Creek Hills Local Park site. This certainly is the case as stated in my complaint we had no knowledge until 2 p.m. on April 28, 2011, four hours before the beginning of the business meeting. In paragraph 2 of page 4 respondent writes, “the BOE voted to conduct a closed session from 5:09 p.m. / to 6:25 p.m., including matters related to the acquisition of real property.” So, prior to the open meeting, they voted in closed session to have a closed session? Can one vote in closed session to close a session, or was the closed session in reality the beginning of the regular April 28th Open Meeting?

Paragraph 3 of page 4 begins, “The next regularly scheduled meeting of the BOE was Tuesday May 10, 2011. To me the next regularly scheduled business meeting occurred after the closed session on April 28, 2011. Webster’s dictionary defines next as “in the time, place or order nearest or immediately succeeding as in next we drove home...the next closest school.” I proffer, the operating culture of the BOE is to have a closed session prior to almost every monthly scheduled open business meeting. In effect the closed session is part of the business meeting. Hence “the next regular scheduled meeting

is May 10, 2011.” If in the OMA’s opinion, next, April 28th, means next, then the BOE has certainly violated the OMA.

The last paragraph of page 5 and most of page 6 responds to an OMA violation occurring because of a BOE sub-group. The (RCHCA) was not a part of 26 individuals on The Site Selection Advisory Committee, (“SSAC”).

No one from the BOE, or MCPS Real Estate Management Team telephoned, wrote, advised, emailed, etc. any RCHCA Officer, or the Management of the Kensington Retirement Community, which abuts the site and was approximately 1/3d of the original Kensington Junior High School property, that a site selection process was taking place., and again refers to closed meetings being held for the purpose of acquiring real property.

Most telling is Ms. Bresler’s own admission that, “based upon OMCB opinion found at 7 Compliance Board Opinion 21 (May 27, 2010) Brickyard School, MCPS implemented a practice that applies OMA procedural requirements to SSAC meetings....” The facts remain; the OMA procedural requirements were not in place when the SSAC was created in November of 2010 and The Kensington Retirement Community, and RCHCA were not notified nor asked to participate in the SSAC process.

The final paragraph of respondent’s response, along with the first page, echo’s what the BOE, and its staff has been saying to all who ask why the RCHCA is unhappy with the selection of Rock Creek Hills Local Park, and it is an unfair characterization. All of us recognize the need for a second middle school in the BCC cluster. We want a school of equal quality to the existing Westmoreland Middle School. RCHCA has set up a committee that is participating in the Local Park Feasibility Study. We have met with BOE members, and with the M-NCPPC’s Chair and Staff. Our Suggestions have been accepted and rejected as should be the case within the discourse of any transparent public open process. We are not, as told to M-NCPPC staff, and members of the County Council a bunch of nimbi’s who do not want a school in their neighborhood.

In conclusion – The Rock Creek Hills Citizens Association Members did not ask for a complaint to be filed on their behalf. I initiated the action because of my past experience with the Open Meeting Act, and because I felt that violations took place. I have clarified why, when and where the violations occurred and ask the OMA to find in our favor.

Sincerely,

Samuel L. Statland
Vice Chair, Rock Creek Hills Civic Association