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Elizabeth L. Nilson, Esquire
Chairperson
Maryland Open Meetings Compliance Board
200 Saint Paul Place
Baltimore, Maryland 21202-2021
Attn: Ann MacNeille, Esquire

Re: Samuel L. Statland, Vice President
Rock Creek Hills Citizens Association

Dear Ms. Nilson and Members of the Board:

On behalf of the Board of Education of Montgomery County ("BOE"), I appreciate the opportunity to respond to the complaint filed by Mr. Samuel L. Statland, vice president of the Rock Creek Hills Citizens Association ("Citizens Association"). The BOE acted on April 28, 2011, to select the Rock Creek Hills Local Park ("Rock Creek Hills LP") as the site for a new middle school in the Bethesda-Chevy Chase ("B-CC") area of Montgomery County and to conduct a feasibility study for construction of this badly needed middle school on this parcel of land. The park is on the site of the former Kensington Jr. High School which was closed in 1979 and subsequently razed. The property was transferred to the County and redeveloped as the current park. The transfer agreement includes a provision for the BOE to reclaim the property in the future if it is needed for a school. Mr. John Robinson, President of the Citizens Association, filed an appeal of the BOE decision with the Maryland State Board of Education and Mr. Samuel L. Statland, Vice President of the Citizens Association, filed this complaint with the Maryland Open Meetings Compliance Board ("OMCB").

Factual Background – In the past three years, enrollment in Montgomery County Public Schools ("MCPS") has increased by over 6,000 students, despite a stagnant housing market and a weak economy, and B-CC has been one of the fastest growing clusters¹ over that time period. Bethesda-Chevy Chase is an older, well-developed, area of Montgomery County that borders the District of Columbia. The B-CC Cluster is currently served by one middle school, Westland Middle School ("Westland MS"). This school is projected to reach a utilization rate of 124% by the 2016-2017 school year. In

¹ Public schools in Montgomery County are organized by clusters that consist of several elementary schools, one or more middle schools, and a high school and students matriculate from one level to the next within the cluster. The clusters are identified by the high school name.

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addition, approximately 200 Grade 6 students are served in two elementary schools in the B-CC Cluster – Chevy Chase and North Chevy Chase elementary schools – rather than at the middle school. Overall, the total projected Grades 6 to 8 enrollment in the B-CC Cluster is over 1,500 students, but the capacity of Westland MS is only 1,063.

At the end of the 2009-2010 school year, the Superintendent received a report of a community advisory committee, the Bethesda-Chevy Chase Cluster Roundtable Discussion Group. This group was asked to consider approaches to three facility issues in the Cluster: first, overutilization of Bethesda, Chevy Chase, North Chevy Chase, and Rosemary Hills elementary schools; second, the unique articulation pattern of the Bethesda Elementary School service area; and third, the grade organization at Chevy Chase and North Chevy Chase elementary schools which are the only two elementary schools in the County that, due to lack of space at Westland MS, serve Grade 6 students in elementary schools.

On October 15, 2010, the Superintendent responded to the Roundtable Report by recommending that Grade 6 students currently served at Chevy Chase and North Chevy Chase elementary schools be reassigned to the middle school level as soon as a new middle school can be opened in the B-CC Cluster.²

The Superintendent's Recommended FY 2012 Capital Budget and Amendments to the FY 2011-2016 Capital Improvements Program, included recommendations to form a site selection committee in the winter of 2011 to identify a location for a new middle school in the B-CC Cluster and, once identified, to conduct a feasibility study for construction of the middle school on the selected site in the spring of 2011. The BOE conducted a work session on the Superintendent's recommendations on November 4, 2010, held public hearings on November 10 and 11, 2010, and took action on November 18, 2010, to authorize a site selection process and feasibility study for the new middle school. Funding for the new middle school is expected to be requested in November 2011 as part of next year's capital improvements program.

The Real Estate Management Team of the MCPS Department of Facilities Management formed a Site Selection Advisory Committee ("SSAC") composed of representatives of various governmental agencies, including the Maryland-National Capital Park and Planning Commission ("Park and Planning"), representatives of B-CC Cluster school communities through the Montgomery County Council of Parent Teacher Associations ("MCCPTA"), representatives of municipalities in the Cluster, and MCPS staff.³ The SSAC developed evaluation criteria and identified a target area for study. Ten

² An elementary school boundary study also was recommended to address the elementary school overutilization issue and the articulation issue.

³ The SSAC had a total of 26 individuals representing the different entities/constituencies.

potential sites were identified within the B-CC Cluster target area, some privately owned and some publicly owned. The SSAC evaluated these sites and submitted a report to the Superintendent on March 8, 2011, recommending the Rosemary Hills/Lyttonsville Local Park ("RM/Lyttonsville") as the site for the second B-CC middle school with the Rock Creek Hills LP as an alternative.

Official selection of the site by the BOE, and authorization of a feasibility study for construction of the middle school on the selected site, was scheduled originally for the evening business meeting on Monday, March 28, 2011. Draft agendas, including notice of closed sessions, are posted on the BOE home page in advance of meetings and updated as new information becomes available.⁴ A final agenda is posted two or three days in advance. A press release containing the agenda is emailed to the media no later than the day before the BOE meeting. Paper copies of the agenda and draft resolutions are placed in the BOE meeting room at 4 p.m. the day before the meeting. A memorandum from the Superintendent to the BOE recommending the RM/Lyttonsville site for the second B-CC middle school and a draft resolution were posted on the BOE website on or about March 24, 2011. Shortly after these materials were posted, community members began contacting the BOE office about the recommendation for the RM/Lyttonsville site. Board members expressed the desire to discuss the recommendation and so it was removed from the "Consent Items" agenda for the March 28, 2011, meeting and rescheduled for the next month's evening business meeting on Thursday, April 28, 2011. (Attachment A)

On Wednesday, April 13, 2011, immediately after release of the SSAC report, Mr. John Robinson, President of the Rock Creek Hills Citizens Association, was notified that the Rock Creek Hills LP was among the sites reviewed by that committee, and that, although not the preferred site, it was one of the two sites that were not eliminated as a potential school site.⁵ (Attachment B)

The Montgomery County Planning Board ("MC Planning Board") did not take a position on the Superintendent's recommendation until the week before the April 28 BOE meeting and did not convey its position to the BOE until the day before the meeting. The chairman of the MC Planning Board argued passionately for preservation of local parks,⁶ particularly in the more densely populated, urbanized areas such as the B-CC area. (Attachment C)

⁴ The schedule of meetings is published a year in advance. The BOE, in consultation with the Superintendent, schedules specific matters well in advance of each meeting as the year progresses.

⁵ The allegation that the Citizens Association was "not officially notified" until 2 p.m. on April 28, 2011, is untrue.

⁶ RM/Lyttonsville LP and Rock Creek Hills LP.

The agenda for the April 28 meeting, including notice of a closed session from 5 p.m. to 6 p.m. was posted in advance of the meeting. The closed session resolution, item 1.1 on the agenda, and the resolution selecting the RM/Lyttonsville LP site for the second B-CC middle school, item 5.0, also were available from the BOE website in advance of the meeting. Subsequently, the Superintendent revised the proposed resolution to include Rock Creek Hills LP as an alternative school site if the RM/Lyttonsville LP site was unavailable and to authorize a feasibility study on both potential sites. (Attachment D)

On April 28, 2011, the BOE voted to conduct a closed session and met in closed session from 5:09 p.m. to 6:25 p.m., including matters related to the acquisition of real property. (Attachments E, F, and H) At the open session that followed, there was extensive discussion among members of the BOE, ending with adoption of a resolution selecting the Rock Creek Hills LP as the site for the second B-CC middle school and authorizing a feasibility study for construction of the school in this site. (Attachment F)

The next regularly scheduled meeting of the BOE was on Tuesday, May 10, 2011. (Attachment G) The minutes of that meeting report on the closed session of April 28, 2011. (Attachment H)

Complaint – Mr. Statland’s June 4, 2011, letter to the OMCB consists mostly of general complaints about the school system’s site selection process and lack of notice directed specifically to the Citizens Association and arguments against inclusion of the Rock Creek Hills LP as one of ten sites considered for acquisition in order to build a badly needed second middle school in the B-CC Cluster. It is difficult to discern which Open Meetings Act (“OMA”) requirement is alleged to have been violated and how it was violated. As I can best determine, Mr. Statland appears to allege that the Open Meetings Act was violated in the following ways:

- (1) the BOE improperly cited §10-508(a)(3), permitting closed session discussion “to consider the acquisition of real property for a public purpose and matters directly related thereto,” to close a portion of the April 28 meeting;
- (2) the BOE did not provide “proper advanced notice” to the Citizens Association board members and others;
- (3) the BOE also violated the “open meeting” requirement since a “Board sub-group met, researched, and voted upon issues” related to selection of the school site;
- (4) the 5 p.m. April 28 closed session was unannounced;

(5) the “closed session was not disclosed in the Open Session that immediately followed” the April 28 closed session, and

(6) “[o]ther violations of the Open Meeting Act ‘violating open process’ [which] occurred as evidenced by a letter . . . sent by the Maryland-National Park and Planning Commission”

Only one of the six issues has any merit. Each of the six issues is addressed below.

Response

(1) The BOE properly cited §10-508(a)(3), permitting closed session discussion “to consider the acquisition of real property for a public purpose and matters directly related thereto,” to close a portion of the April 28 meeting.

Although the first paragraph of the June 4 letter of complaint states that the reference to §10-508(a)(3) was improper,⁷ the complainant does not explain why he believes it was not proper. It is impossible to respond to such a conclusory statement without some explanation as to the basis for the conclusion when it appears that §10-508(a)(3) *is* the applicable provision to discuss matters directly related to the acquisition of a site for construction of a second B-CC middle school.

(2) The BOE did provide “proper advanced notice” to the public as required by the OMA.

The last sentence of paragraph one of the June 4 letter of complaint alleges a failure to provide “proper advanced notice” to the Citizens Association board members and others. The complainant, however, does not cite any provision of the OMA that requires that notice be given to the Citizens Association or any other specific member or members of the public. The OMA requires that notice be given to the public at large and such notice was provided.

(3) The BOE complied with substantive, but not the procedural, “open meeting” requirements when a “Board sub-group met, researched, and voted upon issues” related to selection of the school site.

The second paragraph of the June 4 letter of complaint states that the OMA was “also violated” by a “Board sub-group.” The Board sub-group is not identified. Presumably, the “Board sub-group” to which complainant refers is the SSAC. A school site advisory committee is intended to be one of

⁷ The complainant states it was used “to deliberately and systematically avoid [the] responsibility to conduct [BOE] business in an open and public manner”

the ways for “parent organizations (such as the PTA) and other community groups” to be involved in different facilities planning activities, under BOE Policy FAA. (Attachment I) Although neither the number nor composition of the SSAC is determined by the BOE or the Superintendent, creation of an advisory committee as part of the site selection process is required by BOE policy (FAA).

Based on the OMCB opinion found at *7 Compliance Board Opinions* 21 (May 27, 2010), MCPS has implemented a practice that applies OMA procedural requirements to SSAC meetings, including, for example, posting notice of the meetings, taking formal votes to close sessions in accordance with the OMA, producing minutes, etc. (Attachment K) These procedures were not in place when the SSAC for the B-CC middle school site met on December 14, 2010, and January 25, 2011. However, substantively, closure of the SSAC meetings were and are permitted under §10-508(a)(3) of the OMA since they involved matters directly related to the acquisition of real property.

(4) The 5 p.m. April 28 closed session was announced.

The third paragraph of the June 4 letter of complaint states that the 5 p.m. closed session on April 28, 2011, was unannounced. The scheduling of the 5 p.m. closed session was on the BOE agenda, together with a copy of the resolution closing the meeting, posted on the BOE website. It was announced.

(5) The closed session was disclosed in accordance with the requirements of the OMA.

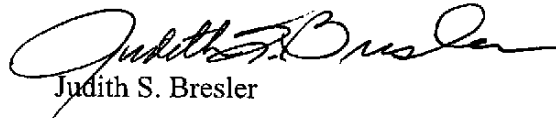
The third paragraph of the June 4 letter of complaint alleges that the closed session was not “disclosed in the Open Session that immediately followed.” Section 10-509(a)(2) states: “If a public body meets in closed session, the minutes for its next open session shall include” (Emphasis supplied) The BOE’s next scheduled meeting was May 10, 2011, and the minutes of that meeting contain a report of the April 28 closed session.

(6) No “[o]ther violations of the Open Meeting Act” are specified or contained in the letter sent by the Maryland-National Capital Park and Planning Commission.

(6) The fourth full paragraph on page 2 of the June 4 letter of complaint states that there were other violations of the OMA, but the complainant does not state what they are, except to say, cryptically, that the April 27, 2011, letter from the MC Planning Board is “evidence” of these unidentified violations. The BOE cannot respond to, and the OMCB should not entertain, unidentified “violations.”

Conclusion – It is clear that the Rock Creek Hills Citizens Association was unhappy with the selection of Rock Creek Hills LP as the site on which a feasibility study would be conducted for construction of a second middle school in the B-CC area. As a result the Citizens Association has attacked the process that led to selection of the site by alleging violations of the OMA and it has attacked the result by lodging an appeal to the Maryland State Board of Education. Selection of a school site in a fast growing, densely developed area is not an easy task; however, the selection of this school site by the Board of Education of Montgomery County was conducted in accordance with the legal requirements of the Open Meetings Act and changes already have been implemented to procedures used to operate site selection advisory committees whose input is considered by the Superintendent of Schools prior to making his recommendation to the Board of Education.

Very truly yours,



Judith S. Bresler

Copy to:

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