

Rock Creek Hills Citizens Association  
9616 Old Spring Road  
Kensington, MD 20895  
Local- 301-949-5452  
Office- 202-502-6808  
Cell -240-997-4447

[jmarkrobinson@verizon.net](mailto:jmarkrobinson@verizon.net)

May 26, 2011

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  
Revised**

Dear Ms. La Fiandra:

This is an appeal by the Rock Creek Hill Citizens Association (RCHCA) through its officers and board and other residents of Rock Creek Hills neighborhood.

## **INTRODUCTION**

On April 28, 2011, the Montgomery County Board of Education (the Local Board) voted to select Rock Creek Hills Local Park (Local Park) as the site of a second middle school for the Bethesda-Chevy Chase (BCC) cluster without adequate notice or input of the Rock Creek Hills community. First, the Local Board abused its discretion by failing to develop an adequate factual foundation upon which to base the selection of the Rock Creek Hills Local Park as the primary site for the new middle school. Second, the Local Board abused its discretion by failing to provide an adequate opportunity for the local residents to comment on the site selection, examine its impact and explain its several failings. Several members of the Local Board conceded at the April 28, 2011 meeting that notice was inadequate, but the Local Board proceeded to adopt the Local Park as the proper site despite the concession that there was inadequate opportunity for community comment. 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 County 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.

A. The Appellants

The lead appellant is the Rock Creek Hills Citizens Association (RCHCA), whose representative is Mr. Samuel Statland, who resides at 3500 Saul Road, Kensington MD 20895. RCHCA is a registered civic association with the Montgomery County Planning Commission of the Maryland National Capital Planning Commission (M-NCPPC). The Rock Creek Hills Local Park is within the civic boundaries of the RCHCA. RCHCA's address and telephones are in the caption. This pleading is signed by its President, John M. Robinson, residing at the same address, and who is a licensed lawyer in the State of Maryland.

The individual appellants are as follows, all of whom are residents of Rock Creek Hills. Ms. Shannon Hamm, 9805 E. Bexhill Drive, Kensington, Md., 20895, who attended the April 28, 2011 Local Board meeting. Additionally, the following residents who reside directly adjoining the Local Park, but were not afforded adequate notice and thus were unable to attend the hearing: Mr. James J. Pekar, 9723 Kingston Road, Kensington, Md. 20895; Mr. David Kaplan, 3615 Saul Road, Kensington, Md., 20895; Ms. Cathy Fink, 9811 Haverhill Drive, Kensington, Md., and Mr. Pat Pugliese, 9819 Haverhill Drive, Kensington, Md. 20895.

All of the individual appellants attended the April 28, 2011 meeting, or live within direct sight and sound of the Rock Creek Hills Local Park, the local park affected by the Local Board's April 28, 2011 decision. Therefore all the appellants have standing to bring this appeal.

**FACTUAL BACKGROUND**

The current middle school within the B-CC Cluster is over capacity. It is clear that the Cluster needs an additional middle school to alleviate overcrowding issues currently at Westland Middle School. To this end, the Board's Department of Facilities Management staff formed a Site Selection Advisory Committee (SSAC). It included the Town of Chevy Chase, the Town of Somerset, and the Village of Friendship Heights, all

of which are municipalities south of East-West Highway.<sup>1</sup> However, the SSAC did not include any communities north of East-West Highway or materially east of Connecticut Avenue. Rock Creek Hills community lies well north of East-West Highway and east of Connecticut Avenue. With one exception, all the sites selected for consideration were north of East-West Highway and outside the area of the three municipalities, represented on the SSAC, namely, Chevy Chase, Friendship Heights and Somerset. Thus the SSAC did not geographically represent the recommendations it reached.

The Board Staff's Site Selection Advisory Committee Recommendation for Bethesda-Chevy Chase Middle School #2 is dated March 8, 2011 (March 8 Report). The March 8 Report recommended that the site for the second middle school be the Rosemary Hills/Lyttonsville Local Park because it "...offers the best range of site characteristics including access, cost availability, location, and consistency with LEED criteria. In making its recommendation, the SSAC points out that retention of open space is very important and that every effort should be taken to preserve as much open space as possible."<sup>2</sup> The Superintendent recommended that the Local Board select the Rosemary Hills/Lyttonsville Local Park site at the Local Board's March 24, 2011 meeting, but this was postponed due to the concerns of the Rosemary Hills Community.<sup>3</sup> The March 8 Report was released to the public after the Local Board's March 24, 2011 meeting.

In that regard, the March 8 Report was not available to Rock Creek Hills until April 13, 2011. The March 8 Report only informed RCHCA that the SSAC recommended Rosemary Hills/Lyttonsville Local Park and that the Local Board would proceed to vote on that recommendation. This occurred only two weeks before the next Local Board meeting on April 28, 2011. The March 8 Report contained no indication of any intention to select Rock Creek Hills Local Park at that time. Prior to the Local Board's April 28 meeting there was a meeting between Local Board Staff and residents of Rosemary Hills on April 21, 2011, only seven days before Local Board was scheduled to act on the March 8 Report's recommendation. At that time the only recommendation was for the selection of the Rosemary Hills/Lyttonsville Park site. The residents of Rock Creek Hills had no notice of the April 21 meeting and did not attend it.

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<sup>1</sup> Ex. 1, Site Selection Advisory Committee Recommendation for Bethesda-Chevy Chase Middle School #2 dated March 8, 2011 at 1-2.

<sup>2</sup> Id. 17.

<sup>3</sup> Ex. 2, Memorandum to the Board of Education from Jerry D. Weast, Superintendent of Schools, dated March 28, 2011, *passim*.

There was also no mention of the Rock Creek Hills Local Park site in the initial resolution that the Local Board posted for the April 28 meeting.<sup>4</sup> While the RCHCA was aware that the Rock Creek Hills site was an alternate, there was not need to intervene since the only notice then in effect provided no basis to contest the recommendation made by the SSAC. Indeed, until the late afternoon of the April 28 meeting the only reason for RCHCA to intervene would be to support the Superintendent's recommendation that some other community (i.e. Rosemary Hills) lose its recreational facilities. This is not a position RCHCA would have cared to take or desires to do so.

On April 27, 2011, the Montgomery County Department of Parks (Parks Department) of the Maryland-National Capital Parks and Planning Commission (M-NCPPC) filed a letter with the Local Board stating that it was unlikely that Rosemary Hills/Lyttonsville site would be available for use by the Local Board. The Parks Department strongly stated its general opposition to the use of parkland for school sites in general, including Rock Creek Hills Local Park. The Parks Department did note the Montgomery County had a right to recall Rock Creek Hills Park for school purposes. However, the Parks Department also unequivocally stated that the Rock Creek Hills Local Park site was subject to potential legal problems due to apparent use of Federal Land and Water Conservation Funds (LWCF), as well as other possible legal complications, associated transfer costs, and financial reimbursements.<sup>5</sup> The appellants have since confirmed that this is indeed the fact through follow up conversations with senior members of the Parks Department staff. Land and Water Conservation Funds were used under the Program Open Space for renovations and improvements to the Rock Creek Hills Local Park and the State of Maryland must be made whole for these funds.

On April 28, 2011, the County Executive submitted a letter recommending the Local Board to take a second look at Rock Creek Hills Local Park site, and urged "... the Board of Education to undertake an aggressive community and public input process to ensure that resident concerns are discussed and addressed before action is taken."<sup>6</sup>

On the same day, April 28, in the afternoon, the Superintendent changed the Local Board's agenda and a resolution was added to include the Rock Creek Hills Local Park as

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<sup>4</sup> Ex. 3, Memorandum to the Board of Education from Jerry D. Weast, Superintendent of Schools, dated April 28, 2011, *passim*.

<sup>5</sup> Ex. 4, Letter of Francoise M. Carrier, Chair, Montgomery County Planning Board dated April 27, 2011, to Mr. Christopher S. Barclay, President Board of Education, *passim*.

<sup>6</sup> Ex. 5, Letter County Executive Isiah Leggett dated April 28, 2011, to Mr. Christopher S. Barclay, President Board of Education, at 2 (emphasis added).

an alternate if the Rosemary Hills/Lyttonsville Local Park was unavailable.<sup>7</sup> After a discussion that included the issue of whether there was adequate notice, and testimony by Samuel Statland, RCHCA representative, who explicitly spoke to the lack of adequate notice and pleaded for a delay of any vote and a reasonable opportunity to comment. However, the Local Board rejected this request and the County Executive's strong recommendation to the same effect. The Local Board then voted to adopt the revised resolution with one dissent, Board Member Durso. Mr. Durso indicated his intense concern about the lack of community presence and the lack of adequate opportunity for comment.<sup>8</sup>

The Local Board is a collective body and therefore some caution is required in attributing motives to such a body in a factual statement. However, it seems fair to infer that the Local Board concluded (1) that Rosemary Hills/Lyttonsville Local Park was not available, and (2) that the loss of recreational facilities would bear more heavily on the Rosemary Hills community than it would on the Rock Creek Hills community and others that use the Rock Creek Hills Local Park.

Finally, of more than passing relevance, is the fact that the Local Board voted on May 23, 2011 to approve an architect's contract for the feasibility study of the Rock Creek Hills Local Park site.<sup>9</sup> The Local Board did so even though there was further acknowledgement that its community engagement process had been inadequate. Five residents of Rock Creek Hills appeared and made those very arguments. None the less, after stating that any defects in the March 8 Report were now irrelevant, the Local Board voted to approve the contract with Board Member Durso again dissenting.<sup>10</sup>

### **STANDARD OF REVIEW**

The State Board may substitute the judgment of the local board if it finds their decision to be arbitrary, unreasonable, or illegal pursuant to COMAR 13A.01.05.05A because (1) it finds that a reasoning mind could not have reasonably reached the conclusion of the local board (COMAR 13A.01.05.05B(2)), or (2) there was an abuse of

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<sup>7</sup> Ex. 6, Revised Memorandum to the Board of Education from Jerry D. Weast, Superintendent of Schools, dated April 28, 2011, *passim*.

<sup>8</sup> Oral Tape Minutes (Board Tape) of the April 28, 2011 Board of Education Meeting at 1:50:05 through 2:25:30. The times are the approximate time as the meeting tape runs.

<sup>9</sup> Ex. 7, Board Agenda for the May 23, 2011 meeting, at Item 3.2.2.

<sup>10</sup> The Appellants have not had time to digest the tape for the May 23 meeting. The summary is from the notes of the attending residences and will be supported by the meeting transcript, the relevant parts of which should be added to this record.

the local board's discretion (COMAR 13A.01.05.05C(5)).

## ANALYSIS

### A. The Site Selection Process Was Flawed.

From the outset the site selection process was arbitrary and unfair, as evidenced by MNPPC's April 27, 2011 letter from Chair Francois Carrier to the Local Board, stating:

Our representative has stated that he did not have the opportunity to present the cost and other data that would have made for a fairer comparison among all the sites under consideration, and that his objections to conversion of parkland were ignored. This does not seem appropriate. . . .<sup>11</sup>

Moreover, there was not a single community represented from the area north of East-West Highway or East of Connecticut Avenue, where the two sites that were ultimately given first and second ranking are located. The Rosemary Hills/Lyttonsville Local Park is north of East-West Highway and east of Connecticut Avenue and Rock Creek Hills Local Park which is even further removed, outside the Beltway. This absence of community representation was voiced by Board member Durso as he sought a logical explanation from the Local Board:

Wouldn't you think that individuals who live there[RH/L and RCHLP] ought to be there?[on the SSAC committee]<sup>12</sup>

There is one simple example of the distortion that can easily result from this imbalance. One of the sites identified by the SSAC report, the North Chevy Chase Local Park, was rejected in part from concern about an exacerbating traffic as a result from the Base Realignment and Closure process (BRAC). However, there is no indication that the Local Board even discussed this matter with the transportation experts in the M-NCPPC's Planning Department. The state chartered agency with primary jurisdiction on parkland planning and development was excluded from the discussion. Equally important, greater community involvement in the SSAC process would have given Rock Creek Hills community a chance to weigh in on the impact of increase traffic, the loss of its recreational facilities, and the relative merits of the Rock Creek Hills Local Park in comparison to the other potential sites involved. This is particularly important because the Local Board's potential sites necessarily involved conflicts between different communities, as the Local Board belatedly realized, but then failed to address in reasonable manner. For this latter reason alone the Local Board's decision was inherently

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<sup>11</sup> Ex. 4 at 2.

<sup>12</sup> Board Tape at 1:52:47.

arbitrary and destroyed any semblance of reasoned decision making. The foundation for an arbitrary and unreasonable decision was set in motion even before the site selection decision was scheduled for its first public hearing on March 28, 2011.

B. Rock Creek Hills Could Not Have Reasonably Reached or Anticipated the Local Board Decision Given the Local Board Failed to Provide Adequate Notice.

The Board failed to afford the residents of Rock Creek Hills a realistic opportunity to comment, prior to the afternoon of April 28, 2011. This occurred because the Local Board's intention to act on the Rock Creek Hills Local Park site was not posted on its agenda until late afternoon of April 28, 2011, the date of the Board meeting.<sup>13</sup> Prior to that time, the Board had only posted the Staff's recommendation, which had selected Rosemary Hills/Lyttonsville Local Park. The Local Board's first posting said nothing about possible action on the Rock Creek Hills Local Park site.

The Parks Department notified the Local Board on April 27, 2011 of its opposition to the use of parkland for construction of schools. It further stated that although the Montgomery County School System has a recall right to Rock Creek Hills Local Park, there are potential limitations and legal considerations associated to the County's recall right, due in part to apparent use of Federal Land and Water Conservation Fund (LWCF). As noted, this letter was dated April 27, one day prior to the Local Board's meeting of April 28, 2011. Therefore Rock Creek Hills was not privy to it or to the Parks Department's opposition to the Rosemary Hills/Lyttonsville Park recommendation.

The Local Board's Staff's recommendation of the Rosemary Hills/Lyttonsville Park is dated March 8, 2011. From March 8 to the afternoon of April 28, Rock Creek Hills community had no apparent or inferred knowledge that any scheduled vote by the Local Board would select the Rock Creek Hills Local Park as the final site for a new middle school. In fact, the record is uncontested that on March 28, 2011, and on the morning of April 28, 2011, the only site scheduled for Local Board action was the Rosemary Hills/Lyttonsville site. From the mid-afternoon of April 28 appellants had a period of about 3 to 4 hours notice from the Local Board on its pending vote to select Rock Creek Hills Local Park as the new middle school site.<sup>14</sup> Thus, the appellants had no effective notice. There was a query by Local Board Member O'Neill, who asked Mr. Song (the senior planning Staff member present):

"did we publish the alternative publicly at any time?"

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<sup>13</sup> Ex. 6 *passim*.

<sup>14</sup> Board Tape at 42:28 to 46:25 - Statements of Ms. O'Keefe, Mr. East, and Mr. Statland.

Mr. Song replied “not in the green sheet” (the Local Board's method of publishing its agenda and proposed actions to the public).<sup>15</sup>

Moreover, the Local Board Staff appears to have suggested that the Staff held a meeting with the Rosemary Hills community on April 21 and that this was a sufficient opportunity for the Rock Creek Hills community to participate. The purpose of the meeting was to address concerns with the recommended site for the middle school, Rosemary Hills/Lyttonsville Local Park. One of the other communities that hosted the meeting was Rock Creek Forest, a neighboring community of Rosemary Hills.<sup>16</sup> The Rock Creek Hills community and its officers had no notice or knowledge of that meeting, which addressed a park wholly removed from their geographic area. Yet the Local Board accepted its Staff's erroneous statement as accurate and mistakenly felt an opportunity was afforded the Rock Creek Hills community even though it was a Rosemary Hills neighbor, Rock Creek Forest, that attended the April 21 meeting. Although similar in name, ROCK CREEK FOREST is not in fact the one asserting here or before the Local Board that it was adversely affected by the lack of notice. It is telling that the Local Board and its Staff had difficulty distinguishing communities with similar names.

Furthermore, Mr. Bowers of the Local Board staff recognized and understood the concern from citizens about the loss of a park and of not being able to provide input to the process.<sup>17</sup> There was also discussion of the difficulty of having a broad enough group for consultation, which the Local Board simply brushed over.<sup>18</sup> This was followed by explicit recognition of that there may be a fairness issue involved by two of the Board Members.<sup>19</sup> Board Member Durso explicitly stated that the Local Board needed to look at the lack of notice that was involved.<sup>20</sup>

Despite its awareness that both its community involvement protocols and notice of the Local Board April 28 meeting were inadequate, the Local Board denied the procedural objections of RCHCA, the KPRC, and the individual residents presence. The Local Board also denied their request for a one month delay to provide an opportunity by the community that would be directly impacted by the proposed site choice. The motion

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<sup>15</sup> Id. 1:29:27 and 1:30:14.

<sup>16</sup> Ex. 8, Flyer for Emergency Town Hall Meeting, *passim*.

<sup>17</sup> Board Tape 1:50:05 to 1:52:32.

<sup>18</sup> Id. 1:50:05 through 2:00:15.

<sup>19</sup> Id. 2:00 to 2:03:55; 2:07:00.

<sup>20</sup> Id. 2:07:00.

to select the Rock Creek Hills Local Park as the site was passed over the dissent of Board Member Durso, who dissented on the grounds of the inadequate opportunity to comment.<sup>21</sup> The Local Board's action was ill informed and arbitrary given the lack of notice and comment.

Based on lack of prior community involvement and adequate notice, it is a fair conclusion that the Local Board's decision was unreasonable due to that fact that a reasonable "mind could not have reasonably reached the conclusion the Local Board reached." COMAR 13A.01.05.05(B)(2). Rock Creek Hills community could not have reasonably reached the conclusion that its Local Park would in fact move from the alternate spot to the primary spot for a middle school site. All public information reported the SSAC recommendation of the Rosemary Hills/Lyttonsville Local Park as the primary site until the afternoon of April 28. As such, the Local Board failed to give Appellants reasonable notice of the Local Board's intention to consider and to select the Rock Creek Local Park as the site for the proposed middle school.

For these reasons, any reasoning mind in the Rock Creek Hills community would not have reached the conclusion that the Local Board reached to move the Local Park from an alternate site to a primary site for construction of the new middle school. Moreover, the Local Board's denial of an adequate hearing for the Rock Creek Hills community was a clear abuse of its administrative discretion.

### C. The Local Board's Decision was Arbitrary.

#### 1. The Local Board's Analysis was Inadequate to Support its Decision.

Most of the potential sites for the proposed second middle school involved significant amounts of park land owned or controlled by the Parks Department. Despite the institutional and legal complications that are necessarily involved, the Local Board pointedly ignored the concerns of the Parks Department regarding the usage, costs, and conversion limitations relevant to a fair evaluation of the merits of all sites. The Local Board thereby avoided addressing a range of public policy issues that will clearly arise after the completion of any feasibility study. Such an arbitrary evaluation, lack of due process, and action on a complex issues rises to an abuse of discretion and violates the most basic principles of reasoned decision making.

The SSAC also minimized its analysis of Rock Creek Hills Local Park site to a summary of nothing more than a difficult terrain and limited road access.<sup>22</sup> There was no

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<sup>21</sup> Id. 2:25:55.

<sup>22</sup> Ex. 1 at 17.

analysis of cost and traffic impact that would fall primarily on the one lane street, Haverhill Drive, that the March 8 Report states will have to bear all of the access to the site as indicated by the March 8 Report. Yet access limitations were enough deterrence to exclude several other sites from the March 8 Report on the basis of and impact.<sup>23</sup> Moreover, the March 8 Report ignores the fact that the surrounding area is not supported by any sidewalks necessary to assure safe walking access to the site and does not take into account a cost analysis for all of these omissions.<sup>24</sup> The March 8 Report also ignores the presence of mature trees that afford protection to the steep slopes of the site. The large trees and steep slopes alone would hinder clearance for construction due to environmental concerns. The March 8 Report brushes over these concerns despite the fact that no one from the affected area, much less the specific community Rock Creek Hills, was there to provide a counter-argument to the cursory analysis in the March 8 Report.

Moreover, Park Department's specific observations on the utility of this facility were ignored. The Local Board has described Rock Creek Hills Local Park as a "vacant" park, when in fact it is a living, thriving center of the Rock Creek Hills community and the Bethesda-Chevy Chase Cluster.<sup>25</sup> It houses two regulation size soccer fields that have been home to the Maryland State Champions, The B-CC Girls Soccer League, three years in a row.<sup>26</sup> The lack of analysis in all regards comes from the March 8 Report's singular focus on the Rosemary Hills/Lyttonsville Local Park analysis, as lacking in detail as that was. When the preferred option disappeared, the March 8 Report had no meaningful analysis to support the Board's action. The Local Board just dropped down to the number two on the list without any meaningful consideration of the issues involved. Unlike its review of the Rosemary Hills site, the Local Board effectively froze out efforts to inform it about the likely traffic, environmental, and visual impacts that would result from its decision. Moreover, the selection of the Rock Creek Hills Local Park would have a severe impact on scarce local recreational resources, which is completely inconsistent with March 8 Report's emphasis on their preservation.<sup>27</sup>

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<sup>23</sup> E.g. the former Lynnbrook Elementary School and Lynnbrook Local Park and Norwood Local Park. Ex. 1 at 16-17.

<sup>24</sup> *Id.*

<sup>25</sup> Ex. 4 at 3.

<sup>26</sup> In fact, Mr. Song stated that the loss of recreational facilities would be greater at Rock Creek Hills Local Park than Rosemary Hills/Lyttonsville Local Park because Rock Creek Hills was a smaller site and would result in the loss of two regulation soccer fields. Board Tape at 1:43.

<sup>27</sup> Ex. 1 at 17.

The Local Board therefore failed to use reasoned decision-making process with a reasonably supported conclusion and outcome, as required by Paragraph .05.B (2) and its selection of the Rock Creek Hills Local Park also abused of its discretion under Paragraph .05.C (5).

## 2. The Local Board's Action was Imprudent

The Local Board failed to have any meaningful engagement with the Parks Department. If it had done so, it would have promptly learned that the Rosemary Hills site was improbable given the Park Department's concern about the transfer of park land in general and the potential impact on the highly urbanized Rosemary Hills community in particular. The Parks Department stated:

To include this park as a strong candidate for a school – let alone as the number one choice – when there is little likelihood of acquiring it seems at best unproductive, and at worst unfair...<sup>28</sup>

Thus, the Local Board was wholly unprepared to effectively pursue a reasoned set of alternatives. It then had to turn to the Rock Creek Hills Local Park as its sole option.

There are two consequences of this remarkable lack of communication with the agency having primary jurisdiction over the park system. The first was to expose the Local Board to complex legal and financial issues involving the Rock Creek Hills Local Park site. That site was renovated and expanded using funds under the Program Open Space (POS), which limits parkland conversion for development. Under this program any parkland used has to be replaced with same acreage, utility and improvements, within the vicinity of the converted parkland.<sup>29</sup> These may severely increase the costs of any new middle school, or may block its construction completely, because the Local Board will have to acquire the same amount of acreage and build elsewhere at current prices.

The second is that the Local Board must obtain the consent of the County Executive to have the site transferred to the Local Board. The Executive has to request in writing the conversion of the parkland from the Maryland Departments of Natural Resources, Budget and Management, and Planning of Outdoor Recreation. In this regard, Executive Leggett's April 28, 2011 letter may be encouraging in that he only said the Rock Creek Hills site "appears to be a reasonable option."<sup>30</sup> However this was

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<sup>28</sup> Ex. 4 at 3.

<sup>29</sup> Id.

<sup>30</sup> Ex. 5 at 1.

scarcely a firm commitment. In fact, the Local Board's inept analysis of the sites available and its handling of the notice matter have engendered intense opposition. Through its negligent approach and refusal to ameliorate the same, the Local Board has greatly increased the risk that the proposed site transfer will not be approved or that the County Council will not fund the project. Prudence requires risk minimization, not risk maximization, particularly given Montgomery County's constrained financial resources.

Moreover, by failing to adequately engage with the Rosemary Hills or the Rock Creek Hills communities prior to preparing the March 8 Report, the Local Board narrowed its options without regard to the social, as opposed to educational, implications of its decisions for either community.<sup>31</sup> Rather than identifying these broader social issues at the outset, the Local Board boxed itself into a high risk course of action by its remarkable failure to contact stakeholders that had the most to lose if its recreational facilities were converted to school use.<sup>32</sup> As a result it was forced to the Rock Creek Hills Local Park option without adequate information on the consequences of its actions.

Finally, in addition to the lack of any meaningful evaluation of the transportation, environmental, conservation and aesthetic concerns that always arise in these situations, the Local Board failed to address two important matters unique to the site. The first is the potential impact on a retirement community that was funded in part by the Housing Opportunities Commission on public land, and particularly on its residents. The Local Board never even advised the Kensington Park Retirement Community that the March 8 Report had been released. In fact, given the Local Board's proclivity for secrecy, it never contacted the retirement facility to determine whether there were matters of mutual social or legal concern, including the possible impact on the safety of the residents.

Second, any middle school located in the Rock Creek Hills community will be a walking school for that community. Rock Creek Hills has no sidewalks and there is a substantial amount of local and cut through traffic on the streets involved. Because the Local Board was in a one day rush to judgment, it did not even touch on the potential danger to its own students. The social sensitivity of such omissions aside, they are further indicia of imprudence by the Local Board and sound grounds for its reversal.

## **CONCLUSION**

First, as discussed above, the Local Board evaluation of the issues involved in the site selection was so deficient as to call its reasoning into question under Paragraph

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<sup>31</sup> Board Tape at 6:46-42:00 containing numerous such remarks by representatives of the Rosemary Hills and adjoining communities.

<sup>32</sup> Ex. 4 at 3.

.05.B(2). This is not to say the Local Board could not have reached the conclusion if it had used a reasoned process and analysis to a relatively complex decision, but it did not.

Second, RCHCA recognizes that the Local Board, like any agency, is vested with discretion (a) to determine where to locate a school, subject to appropriations by the County Council, and (b) to determine its agenda. But this discretion must be exercised reasonably; here it was not even exercised sensibly. In fact, the Local Board's action was imprudent and presents a strong probability it will prove both futile and wasteful.

Third, it is important to note that the appellants do not contest the decision to reject the Rosemary Hills site, but only contest the Local Board's second site, the Rock Creek Hills Local Park, on the substantive grounds that the evaluation of the second site was wholly inadequate under the circumstances. This was compounded by the Local Board's failure to provide an adequate opportunity for the Rock Creek Hills to comment and perhaps ameliorate the Local Board's substantive errors.

As such, the Local Board failed the standards of review at paragraphs .05.B (2) by concluding that RCHCA and KPRC and the individual residents would have reasonably reached the same decision, to pick its Local Park as the primary site without prior community knowledge or involvement. The Local Board also failed the standards of review under paragraphs 05.C (5) since the decision was an arbitrary and an abuse of its discretionary powers to make the site selection based on a flawed process and to materially alter its agenda.

Therefore the appellants request that the site selection decision at issue be vacated and remanded to the Local Board for further consideration of the merits and for effective involvement of the local communities and the Parks Department. The appellants urge the State Board to act expeditiously as the Local Board clearly intends to proceed full bore ahead without regard to its errors. All correspondence should be sent to the undersigned.

Sincerely yours,

/s/

John M. Robinson

President, Rock Creek  
Hills Citizens Association

Counsel to the Appellants.

Phone: 240-997-4447  
301-949-5452

I hereby certify that I have served the foregoing complaint, affidavit, and numbered exhibits on Mr. Christopher S. Barclay, President of the Montgomery County Board of Education, this 26 day of May, 2011 by first class postage prepaid.

John M. Robinson  
/s/  
Counsel to the Appellants

Affidavit of Counsel

My name is John M. Robinson and I am the counsel who signed the aforesaid appeal to the Maryland State Board of Education on the behalf of the parties stated in the portion of this document captioned "The Appellants". I hereby certify and affirm to the best of my knowledge, information, and belief that the facts regarding standing stated therein are true and correct.

\_\_\_\_\_/s/\_\_\_\_\_  
John M. Robinson

This day of May \_\_\_\_, 2011, there appeared before me, a notary public for Montgomery County of the State of Maryland, John M. Robinson, who hereby stated and affirmed that the facts attested to in this affidavit are true and correct to his knowledge, information, and belief.

By \_\_\_\_\_

Notary Public

My Commission expires: