

MARYLAND STATE BOARD OF EDUCATION

200 West Baltimore Street
Baltimore, MD 21201

Deerfield/Weathered Oak Citizens' Association, et al. } Appeal of Montgomery
APPELLANTS } County Board of Education
v. } Decision (July 6, 2004):
} Agenda Item 4.2.8
} (Architectural Appointment -
} Seven Locks Replacement);
} Request for Hearing; Request
} for Stay of Proceedings
Montgomery County Board of Education }
RESPONDENT }

COME NOW, APPELLANTS*, with this appeal of a final decision of the Montgomery County Board of Education (County Board). The County Board's decision to contract with an architectural firm for a fee of \$817,500 to provide professional/technical services for the replacement of the Seven Locks E.S. adversely affects the students and community of and surrounding Seven Locks Elementary School (Seven Locks E.S.). The County Board's decision was made on July 6, 2004; as such, this appeal is timely filed.

I. THE PARTIES

Appellants are residential citizens' associations located in Montgomery County, Maryland. Appellant organizations are comprised of property owners residing near or within the Seven Locks E.S. boundaries. Appellant organizations include: Congressional Forest Citizens' Association, by and through its treasurer, Barbara A. Boykin; Deerfield/Weathered Oak Citizens' Association, by and through its president, Cyril W. Draffin, Jr.; Kendale Neighborhood Coalition, by and through its president, Howard Milchberg; Seven Locks Civic Association, by and through its co-chairs, Jerry Garson, and Amy Gleklen; West Bradley Citizens' Association, by and through its president, Carl Koenig; and, West Montgomery County Citizens' Association, by and through its president, George Barnes.

Respondent is the Montgomery County Board of Education.

II. JURISDICTION

* The full list of Appellants, together with addresses, telephone numbers and applicable representative capacities is set forth at the end of this pleading.

This Board has authority to hear this appeal pursuant to the Code of Maryland, §13A.01.01.03.

III. STATEMENT OF FACTS

1. Montgomery County Board of Education (County Board) approved plans for an addition and modernization process (“original upgrade plan”) at Seven Locks E.S. over three years ago and has been proceeding with that work into 2004. The plan encompassed a ten-room addition, construction of a gymnasium, and a modernization, allowing 150-200 students to be reassigned from Potomac Elementary School. Together with additional classroom and gymnasium space, the upgraded school was to provide capacity for 519 students, according to a memorandum from the County Superintendent to the County Board, dated February 23, 2004. [See Exhibit 1 with the agenda for the County Board meeting on February 23, 2004, including Item 6.2 “Brickyard Road, Kendale Road, and Edson Lane School Sites” and the attached memorandum from the Superintendent to the School Board on that subject.] Funding for this project was included in the County Superintendent of School’s FY 2005 Recommended Capital Budget and FY 2005 to FY 2010 Capital Improvements Program (CIP), dated October 29, 2003.
2. The County Board had invited input from the Seven Locks E.S. Parent Teacher Association (PTA) in the planning and design process of the original upgrade plan as mandated by Montgomery County Board of Education Policy FAA entitled *Long-Range Educational Facilities Planning*, updated November 4, 2003.
3. By letter dated October 20, 2003, Montgomery County Executive Douglas M. Duncan wrote to the Superintendent of Schools, Dr. Jerry Weast, asking that an undeveloped site on Kendale Road be recognized as no longer needed for school purposes and declared surplus. Upon this declaration, County Executive Duncan wrote that the County Board would then transfer the property to the County in order to provide a site for workforce housing. (Duncan’s request included two additional undeveloped school sites for which a surplus declaration was sought.)
4. On November 10, 2003, Dr. Weast responded to Mr. Duncan’s request, stating that he would discuss the surplus of the Kendale site and the other two sites with the County Board as part of the FY 2005-2010 CIP deliberations early in 2004.
5. In the memorandum of February 23, 2004 (cited above), Dr. Weast presented his recommendations for the three undeveloped school sites to the County Board. The memorandum described the shortfall in State supplemental funding for the CIP budget. Dr. Weast suggested that, through possible public/private partnerships involving such surplus school properties, these funding shortfalls could be mitigated. He noted further that “it does not appear that the Kendale Road site is needed for a new elementary school,” but that it might be used “to build a replacement Seven Locks Elementary School.” Dr. Weast went on to write that “the Seven Locks Elementary

School PTA proposed a plan to build a replacement Seven Locks Elementary School on the Kendale Road site.”

6. Dr. Weast’s February 23 memorandum did not cite any record, minutes or other source to support the notion that the Seven Locks E.S. PTA had proposed a plan for a replacement of the Seven Locks E.S.
7. Superintendent Weast’s February 23 memorandum to the County Board about a Seven Locks E.S. PTA plan was untrue. This proposal was never an option discussed by a meeting of the Seven Locks E.S. PTA membership before February 23 and there does not exist a PTA resolution, dated prior to February 23, proposing such a transfer.
8. Dr. Weast noted in the February 23 memorandum, with reference to the original upgrade plan, that, “given the complexity of the phased construction and the site measures planned as part of the modernization to address traffic concerns, it appears that building a new school on the Kendale site would be more cost effective.” He went on to say, “However, a feasibility study would have to be conducted to show conclusively that the new school was the best approach.”
9. In the memorandum, Dr. Weast did not make reference to any information that supported his statement that “it appears” that replacing Seven Locks at Kendale would be “more cost effective.”
10. Upon information and belief, neither the County Board nor the Superintendent of Schools has conducted any cost analysis of the full cost of replacing Seven Locks E.S. with a school at the Kendale site.
11. In the February 23 memorandum, Dr. Weast suggested that, through a public/private partnership, the necessary funding may be created to construct a replacement of Seven Locks E.S. at the Kendale site.
12. Dr. Weast did not identify any legal authority or provide any detail of the mechanism of the “public/private partnership.”
13. In the February 23 memorandum, Dr. Weast also wrote that, “If a replacement school project could be funded on a timeline that would provide needed capacity relief for Potomac Elementary School and not impact the queue of elementary school modernizations, I believe the community would support the plan to surplus the Seven Locks site.”
14. Dr. Weast did not provide the basis for his stated belief of community support to surplus the Seven Locks site.
15. In fact, contrary to Dr. Weast’s stated belief of community support, there has been an outcry of community rejection of the proposal to replace Seven Locks E.S. at the Kendale site and surplus the present Seven Locks E.S. site. The rejection of the plan by

the community is evidenced by numerous letters to the editors of local newspapers, such as the Potomac *Almanac* and *Gazette*, as well as in meetings of the local civic associations bordering on and affected by the proposal. Not one of these civic associations has voiced approval of any kind for any part of the proposal to replace Seven Locks E.S. at the Kendale site. Indeed, no residential community association bordering the Seven Locks and Kendale sites was given any notification at all by anyone from the County Board of the proposal.

16. The February 23 memorandum provided notice of a public hearing at the Board of Education on CIP items to be held nine days later, on March 3, 2004, followed by a vote on the CIP items at its meeting on March 22.
17. After the February 23 memorandum and public hearing date became known to various members of the Seven Locks E.S. PTA, an emergency meeting was held on March 2. During his testimony the next day at the public hearing, Chris Rigaux, Seven Locks PTA president, described what transpired at the emergency meeting. Mr. Rigaux noted that "many new issues were raised in the Superintendent's recommendations of February 23, and today is March 3, so we did what we could within the timeframe allotted, but you must understand we chose not to pass any resolutions last night as we did not feel we had enough time to consider all the ramifications of these new proposals nor enough consensus within the PTA at this time." He added that the Seven Locks PTA "does not appreciate the process by which these issues have come to light. It was felt that many of these initiatives have been unilaterally decided and/or agreed upon..." He stated that, while the PTA voiced a strong preference that the original upgrade plan be implemented and expedited, it felt unfairly forced to vote to accept a new replacement school at the Kendale site (the vote result was 13-10 in favor), but even then only provided that no school property was to be surplus.
18. At the March 3 hearing, there was no testimony or discussion from residential community associations on the plan to build a replacement Seven Locks School at the Kendale site, nor was there any specific discussion of or about the Kendale site itself. Residents from the affected neighborhoods were never informed by County officials about any of the relevant documents or hearings. Most learned about these plans after the meeting on March 3, at which point they proceeded to register their strong opposition to closing Seven Locks E.S., declaring that property surplus, and building a replacement school on Kendale Road. Those letters and e-mails were sent to the Superintendent, the County Board, the County Council and various State officials. This opposition was never subsequently acknowledged by the Superintendent or County Board.
19. At the March 22 County Board meeting, Dr. Weast presented a memorandum to the Board containing his final recommendations for the three undeveloped school sites. In that memorandum, he stated that there are "very compelling reasons ... to build a replacement Seven Locks Elementary School at the Kendale site," and recommends amending the FY 2005-2010 CIP budget to do so. He further suggested that there would be a cost savings of \$2 to \$3 million for the new replacement school compared

to the original upgrade project at the Seven Locks site.

20. Dr. Weast did not identify any source or support for his anticipated cost savings at the March 22 meeting. As of March 22, no feasibility study had been conducted of the Kendale site, as recommended by Dr. Weast in his own February 23 memorandum. Nor was a traffic study conducted. Writing only one month before the March 22 meeting, Dr. Weast could only state (without identifiable support) that “. . .it appears that building a new school on the Kendale site would be more cost effective.” (Emphasis added.) Dr. Weast did not explain, nor was he called on to explain by any member of the Board, how the mere appearance of greater cost effectiveness became a specified cost savings of \$2 - \$3 million without benefit of his recommended feasibility study.
21. No member of the County Board or Dr. Weast made mention or apparently considered the costs associated with flood control, infrastructure, necessary road improvements, and site work for a new school on Kendale Road.
22. Dr. Weast’s March 22 memorandum did not make mention of core capacity size for the proposed replacement school. Members of the Seven Locks PTA who read the memorandum assumed that the proposed replacement school would have the same capacity size of 519 as for the original upgrade of Seven Locks E.S.
23. Dr. Weast’s March 22 memorandum recommended that a Memorandum of Understanding (MOU) with the County be developed to leverage the value of the Seven Locks site as a target for surplus following replacement on the Kendale site.
24. The County Board voted to approve the recommendations of Dr. Weast’s March 22 memorandum.
25. At a County Council education subcommittee meeting on May 6, the plan was approved for the new Seven Locks replacement school at the Kendale site. However, the language in the Council’s project description form changed to call for a capacity for the new school of 740 students.
26. The response of the Seven Locks PTA, which had been led to expect a capacity of 519 students, and which found out about the new capacity number on May 11, was to hold an emergency meeting on May 12 in which they passed the following resolution:

WHEREAS on May 11th, 2004, Seven Locks Elementary School (SLES) PTA President, Chris Rigaux, received notification of a revised proposal for the proposed school at the Kendale site to accommodate a core of 740 students; and

WHEREAS the SLES PTA gathered an emergency meeting on May 12th to react to this new proposal; and

WHEREAS the Montgomery County Board of Education did not ask for community input, nor did they distribute the proposal for SLES review.

BE IT RESOLVED: The process with respect to the situation at SLES has not been conducted openly, with adequate notice, or in accord with due process.

AND BE IT RESOLVED: That the SLES community requests that the County Council revert the "Seven Locks Elementary School Revised Proposal" back to the Montgomery County Board of Education to follow proper procedures and an effective commitment to gather community input.

27. At the Montgomery County Council meeting on May 13, where the CIP was discussed, County Board president Sharon Cox, as well as Dr. Weast, told the Council members, in response to a question about public input, that there had been community input in public hearings on the use of the Kendale site for a school. They both asserted that there was support from the community for a Seven Locks replacement school.
28. In an article published in the *Potomac Gazette* of June 16, 2004, entitled "A Call for Hearings on Seven Locks," Ms. Cox is quoted as saying, "The school community was well aware of it (decision about Seven Locks) because they testified at hearings. Naturally, if the school community is involved, homeowners should be aware of what is happening." The same article quoted Ms. Cox indirectly to the effect that "Residents were fully involved in the decision via the Seven Locks PTA participation in hearings held in early spring." [See Exhibit 2, "A Call for Hearings on Seven Locks," *Potomac Gazette*, June 16, 2004.]
29. Contrary to the assertions of Ms. Cox and Dr. Weast, there has been no support of any kind heard from the community. No local civic association has expressed any formal or informal support for the proposal to replace Seven Locks E.S. And, the Seven Locks PTA, the very organization that Dr. Weast wrongly attributed authorship of the proposal in his February 23 memorandum, castigated the County Board for the Board's failure to communicate with and otherwise involve the PTA and community. ("[The Seven Locks PTA] does not appreciate the process by which these issues have come to light. It was felt that many of these initiatives have been unilaterally decided and/or agreed upon. . ." PTA president Rigaux's March 3 public hearing statement.)
30. At the May 13, County Board staff members repeated Dr. Weast's unsupported cost savings estimate in their communications with the Council members. As with Dr. Weast's statement, no support or basis was given or requested for the purported \$2-\$3 million in cost savings.
31. On May 14, the County Council approved the construction of the new replacement school at the Kendale site.
32. On July 6, 2004, the County Board approved the award of an \$817,500 contract for the full engineering and design process for the Seven Locks replacement school at the

Kendale site. The County Board awarded this contract to the same architectural firm that had developed the design and plans for the original upgrade work at the present Seven Locks site.

33. On information and belief, the design and engineering work required in the \$817,500 contract was not a part of the original contract awarded for the Seven Locks upgrade work.
34. On information and belief, the County Board did not conduct competitive procurement for the new scope of work provided in the \$817,500 contract.
35. The County Board awarded the \$817,500 contract without PTA or other community involvement or notice, despite the fact that it is a new project with a new scope on a new site.
36. Later on July 6, following the County Board's approval of the \$817,500 contract award, a copy of a document labeled "Feasibility Study," and dated May 2004, was provided to members of the community at a meeting with members of Dr. Weast's staff. This study does not provide a comparison of costs or identify any costs savings of the new project over the old project, as recommended in Dr. Weast's February 23 memorandum.
37. No community input had been requested in the development of the "Feasibility Study," and no community involvement or input is described in the document.
38. The 10.5 acre fully-wooded Kendale site, is approximately one eighth of one mile from a flood plain that has washed out the bridge on the one access road that would be used by school buses. The road itself is winding and narrow and would not accommodate the likely parking overflow for large school functions or peak-hour school traffic. By comparison, the original and existing 10-acre site for Seven Locks E.S. is cleared and flat and located at a major intersection appropriate for a school where over ninety percent of the students are transported by bus or car. The current site has been declared by Montgomery County Public Schools (MCPS) Board staff to be a "safe and acceptable site."
39. The "Feasibility Study" does not address any traffic impact and, to date, no traffic study has otherwise been conducted. The "Feasibility Study" does not address stormwater management, and, to date, no stormwater management study has otherwise been conducted.
40. The replacement of Seven Locks E.S. with a housing development would constitute a major change in the nature of the surrounding neighborhoods. Seven Locks E.S. has served as an award-winning school for the community for almost 40 years. It is important not only as an outstanding school, but also as a primary community center, polling place, and the only recreational/sports area within walking distance for many neighborhood children and families.

IV. GROUNDS FOR APPEAL

1. The decision by the County Board to appoint an architect for building a replacement school on Kendale Road is in violation of County Board policy and is arbitrary and capricious and contrary to established educational and procurement policies. The County Board decision made on July 6, 2004 violates prescribed County Board policies and procedures, including but not limited to, the requirements specified for community input and consultation contained in FAA Policy Document, entitled "Long-Range Educational Facilities Planning" (updated 11/4/2003).
2. The architect retained for the new Kendale project was selected to perform the redesign work for the previously approved Seven Locks E.S. expansion project. The County Board did not engage in a competitive procurement for the \$817,500 design services on the Kendale site, a project that is entirely different in size and location. The surreptitious and non-competitive acquisition violates established procurement rules and regulations. Chapter 11B-9(g)(d) *Evaluation and method of award*.
3. The nature of the award process indicates yet another example by which the County Board has circumvented its requirements to perform its activities in public with full and open consultation with the local community.
4. The decisions of the County Board were made in the absence of a required feasibility assessment. As such, these decisions are violations of Board Policy FAA E4(1)(3) and FAA E4(b)(2).
5. Further, these actions violate Policy FAA D2, which states that the process should "... consider the impact of facility changes on educational program and related budget requirements and on the community."
6. By its actions, the County Board has violated its primary responsibility -- to serve the educational needs of the students of Montgomery County. Indeed, according to statements made by the Superintendent, County Board members and Montgomery County Public Schools (MCPS) staff, the decision to close Seven Locks Elementary School and build a new school has been made to help meet a *housing* policy initiative of senior County officials. That initiative seeks to identify school properties for surplusing that could be used for affordable or workforce housing. While increasing the inventory of workforce housing may be a laudable program, it is not within the County Board's mandate to implement. Nor can the County Board, by its actions, act as a complacent and silent partner in furtherance of a political initiative in total disregard to educational and community needs.
7. County Board actions regarding site selection, feasibility studies, and architect selection are in violation of County policy requirements for the community involvement process as stated in Policy FAA section E4.

8. Concerning site selection and feasibility, Policy FAA E4 (a)(3) requires community input into site selection via a site selection committee. This committee "assesses the appropriateness of potential sites" and "makes a recommendation to the superintendent." According to Policy FAA E4 (a)(5), the County Board must consider both the "committee and superintendent's recommendations before officially adopting a site." To date, no such committee has been formed or convened for the new school on Kendale Road. Instead, without community input, or even a new committee being formed, MCPS staff has prepared, for the Kendale project, a rudimentary document labeled "feasibility study" addressing primarily placement of the new building on the property.
9. Regarding architect selection, the County Board has failed to follow its own project-specific process as set out in its Res. 271-86 and later revised by Res. 446-98, which requires community involvement in architect selection through an architect selection committee. These resolutions are consistent with Board Policy FAA E4 (b)(2). MCPS failed to convene such a committee for the new Kendale project. Instead, MCPS staff polled members of the architect selection committee from the original Seven Locks E.S. project for their agreement to transfer the architect from that project to the new Kendale project. In doing so, they did not contact any PTA members from that original committee, but proceeded by gaining the approval of a committee majority, consisting entirely of MCPS employees. In this action, MCPS has ignored this committee's role, as described in Policy, as a deliberative body rather than merely a consultative one.
10. As an example of a substantive deviation from policy, Policy FAA C6 (a) states that elementary school sites shall have twelve "usable acres," with even larger acreage "in order to accommodate environmental concerns, unusual topography, and surrounding street patterns." A proper feasibility study would have found that, in the case of the Kendale site, all of these elements are of concern. In fact, limitations on deforestation indicate that the Kendale site will actually have fewer than ten usable acres. Such substantive deviations from policy have been made possible by the failure to follow required procedural safeguards and notices to the community.
11. The community continues to request full and fair hearings by Montgomery County officials which are merited and indeed, legally required for such an important decision.
12. As detailed above, the actions of the County Board are in violation of established policies, rules and regulations. As such, its actions with regard to the Seven Locks/Kendale projects, are arbitrary, capricious and precipitous. Moreover, a reasoning mind could not have reasonably reached the conclusion of the County Board. Finally, the County Board's decision is illegal as abusive of the County Board's discretionary powers, its decision misconstrues applicable law and it results from the exercise of unlawful procedures.

III. REQUESTED RELIEF

As a consequence of the above, Appellants respectfully request that:

- A. The State Board order the County Board to suspend any and all contracts relating to the proposed building of a new school at the Kendale site, including, but not limited to contracts with architects, engineers, and construction contractors;
- B. A hearing be conducted by the State Board in accordance with COMAR §13A.01.01.03M in order to consider fully the issues raised in this appeal;
- C. The County Board be ordered to provide all documents, whether in "hard-copy" form or electronic relating to the decisions, proposals, contracts and or recommendations regarding the Seven Locks Elementary School project and/or the Kendale proposed building to Petitioners within twenty (20) days of this request.

Appellants are willing to pay the cost of transcription of the portions of the County Board hearings as well as County Council meetings relating to this issue, and for copying the documents produced in accordance with paragraph C above.

Respectfully submitted on this day,
August 2, 2004

APPELLANTS, as shown in following list of signatories

SIGNATORY LIST FOR APPEAL DATED AUGUST 2, 2004

Respectfully submitted,

APPELLANTS:

Congressional Forest Citizens' Association

By and through its treasurer,

Barbara A. Boykin
8230 Bradley Blvd.
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301.365.4342

Deerfield/Weathered Oak Citizens' Association

By and through its president,

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Kendale Neighborhood Coalition

By and through its president,

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Seven Locks Civic Association

By and through its co-chairs,

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and

Amy Gleklen, co-chair
14 Greentree Court
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West Bradley Citizens' Association
By and through its president,

Carl Koenig
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West Montgomery County Citizens' Association
By and through its president,

George Barnes
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301.762.6423

(SEVEN LOCKS – Signatory List)

LIST OF EXHIBITS FOR APPEAL DATED AUGUST 2, 2004

1. Agenda for County Board Meeting of February 23, 2004, with attached Memorandum from the County Superintendent to the County Board on Agenda Item 6.2
2. Potomac *Gazette*, June 16, 2004, article entitled "A Call for Hearings on Seven Locks"

cc: Montgomery County Superintendent Jerry Weast

(SEVEN LOCKS – Final Combined Appeal)

June 2, 2004

Council President Steve Silverman
Phil Andrews
Howard Denis
Nancy Floreen
Mike Knapp
George Leventhal
Tom Perez
Marilyn J. Praisner
Michael Subin
Montgomery County Council
100 Maryland Ave.
Rockville, MD 20850

SUBJECT: Public Participation in Kendale and Seven Locks Decisions

Dear Council President Silverman:

This letter is to register the strong concern of the citizens' associations in the area served by the Seven Locks Elementary School about the recent decision to close that school and build a new, large school on Kendale Road. We explain our concern about the substance and process of that decision, suggest meetings with School Board and County Council officials and staff, and ask that public hearings be held before further action is taken.

Members of our community have expressed serious concerns regarding the lack of public involvement in the decisions leading to the recently announced plans for a new elementary school on Kendale Road and/or the closing and likely surplus of Seven Locks Elementary School. They do not believe that suddenly reversing a process underway for several years makes sense, based on the information publicly available. Seven Locks Elementary School students, parents, and staff, the Seven Locks and Bradley Boulevard communities, and the Kendale Road neighborhood constitute thousands of citizens in Montgomery County who want, and we think deserve, to be heard. As you have seen, they are beginning to write letters, send e-mails, and take action.

We know that finding solutions to challenging situations is not easy and that there are always trade-offs. However, with the constantly evolving plans, diverse and sometimes contradictory statements made by public officials, and lack of a consistent story being told among MCPS / Board of Education / County Council, it is extremely difficult for citizens to understand what is occurring. Lack of clarity and transparency breeds discontent and rising concern.

We believe an open and comprehensive dialogue with clear and consistent information is essential for citizens, parents, the County Council, the Board of Education, the MCPS, and our students.

Was Community Input Allowed?

Members of the community at large do not think their input has been sought or considered.

On February 23, in his recommendation on the "County's Request to Surplus the Brickyard Road, Kendale Road, and Edson Lane Properties," Superintendent Weast stated "...I believe the community would support the plan to surplus the Seven Lock site." During the work session of the Education Subcommittee on May 6, in response to a query from Council Member Denis about transparency and community input, both Mrs. Cox and Superintendent Weast insisted that there had been community input regarding this issue and implied that their new plan to surplus Seven Locks Elementary and build Kendale was in response to a community request for that action. What specific community input are they referring to? There has been no effort by the Board of Education (or the MCPS) to contact the community associations. To our knowledge there is unanimity of civic associations representing over 2,000 homes as well as PTAs throughout the Churchill Cluster against surplus of Brickyard Road, Kendale Road, and Edson Lane Properties. At the only public Board of Education hearing, dealing with surplus of the three properties, the public testimony and sentiment were overwhelming against the course of action proposed by Superintendent Weast and the MCPS.

Because Dr. Weast and Mrs. Cox contend that there has been sufficient public input specifically about the Kendale School and the surplus of the Seven Locks Elementary site, it would clarify matters if they were to list the dates, times, number and type of attendees, and the nature of such discussions that they have held with the community.

We did have had a meeting with Councilmember Denis, his key education staff member, and education staff of some other council members on May 12, and appreciated that opportunity to start a dialogue with the County Council.

Basis for Decision-Making

Questions have been raised regarding the basis for decision-making of the Board of Education and the County Council. Following are some examples where there seem to be inconsistent statements by County officials.

1) Is Seven Locks Elementary School a safe site?

One County Council member said on May 13 that the current location is a horrible site for a school. Yet, the November 2003 CIP includes the Board of Education plan for a \$20 million dollar renovation and expansion of Seven Locks Elementary at its current site. Were Superintendent Weast and the Board of Education wrong in thinking Seven Locks Elementary School should be expanded? Or, is Seven Locks Elementary, which has been operating for almost 40 years, an acceptable school site? Why did a feasibility study outline plans for the SLES expansion/modernization if that site was not acceptable for a school? Why did MCPS commission a traffic study in 2004 that documented traffic relief at the Bradley/Seven Locks intersection if the site was not acceptable for a school?

2) Is there money to build a new school or for a contemporaneous addition/modernization at Seven Locks?

The Seven Locks PTA was told it was not possible to do an addition/modernization in one step at the same time, and that it had to be done in at least two steps, in part due to budget limitations. Yet, the most recent plan is to budget enough money to build a new school at Kendale in one step. If there is now money and will to construct an improved elementary school in one step (a new development), then it is important to consider formally a one-step modernization/addition at Seven Locks site— which would be less expensive than the previously proposed MCPS original multi-step plan— and get PTA *and* community input on that option. Asking parents to make decisions based on one set of ground rules (i.e., not possible for single step addition/modernization), and then changing ground rules for the next plan raises ethical concerns.

3) Will the Kendale school be built to allow over 700 students or be built for 500 or less students, and will the community input be considered?

On May 13, the President of the Board of Education and the MCPS Superintendent affirmed that the community would have meaningful input into the planning and design for this proposed new Kendale facility. Yet, on May 6, the MCPS staff who talked to the Education Subcommittee used the opposite rationale for proof that this plan was economical— promising that there would not be any need for design because they would use plans from existing schools in order to keep the costs down. How do the Board of Education and MCPS solicit community involvement in the building of new schools or in making changes to existing ones?

There are also concerns about site expenses in connection with the possible MCPS school on Kendale Road, such as environment, safety utilities, and flooding. These factors have not been seriously assessed in terms of either cost or impact. One of the main stated advantages of the Kendale School is its supposed cost savings. In light of lean budgetary times, it would be highly irresponsible to county taxpayers not to account for, all of the attendant costs of this project.

(4) What is meant by the MOU, and does the Board of Education plan to sell, or barter, or give away the Seven Locks School property (if after public input all parties agree a new school should be built on Kendale)?

We are confused as to the use of "surplus" property. We have heard that the Superintendent of Schools wanted to use the MCPS property for teacher housing. We did not realize the Superintendent or the Board of Education could decide how to use MCPS property for non-educational purposes, particularly if it were declared surplus. We have been told that members of the Board of Education have been telling diverse groups of parents that a variety of programs and school expansions could not be done unless they surplused Seven Locks/Kendale. We wonder what promises have been made and the basis for them.

We have contacted the County Council and MCPS regarding the Memorandum of Understanding, and no one claims to know who is doing it or what the scope will be. Because, in the past few months, the unknown has quickly changed to formal Board of Education and County Council action, clarity on this issue would be appreciated.

(5) Does the Board of Education plan on surplus (or establishing MOU or other mechanism to obtain value) any MCPS properties over their five- year planning horizon, and, if so, how many and where?

A year ago there was not any known public discussion on surplus MCPS property. Has there been a change in demographics in the last year showing school populations are now going down? If other non-education factors are now being considered, the community is interested in what non-education criteria have now become more important to the Board of Education than planning to assure land is available for future educational needs. Also, if the Board of Education has now taken on a financing role for MCPS, and now feels responsible for raising funds by selling (or setting up MOUs to obtain value from) its MCPS properties, the community would be interesting in knowing the basis and scope of that new charter.

(6) Will Tuckerman School be used by MCPS? Is MCPS planning to build additional schools in the western part of Potomac to handle the growth there?

The Superintendent of Schools indicated that, if needed, the Tuckerman Elementary School, which is currently being leased to a private school, could be used by MCPS. If that is true, then the overflow of students at Potomac Elementary School could be accommodated at Tuckerman School immediately, and the money saved could be used elsewhere in the County where needs are greater than in the Bethesda-Potomac area. If the Tuckerman School is not available, why does the Superintendent consider that a factor in his planning? The overflow at Potomac Elementary has been driven by growth occurring in the north and west of the Potomac area. This growth is continuing. Will it be met with school construction located in those areas?

Possible Next Steps to Allow Community Involvement

As you can see from this letter, citizens in the communities served by Seven Locks Elementary School are frustrated, confused and unclear about Board of Education, MCPS and County Council actions and policies. Stating these positions clearly and publicly and answering questions from the community would help address and reduce community concern.

In conclusion, we call upon the Board of Education to hold public hearings on all aspects of the Seven Locks/Kendale project. The issues of fairness and sound public policy mandate that all affected communities be involved in the decisions that affect all of us as parents of schoolchildren, as neighborhood residents, and as taxpayers. Until we have the opportunity to understand the rationale for the sudden change in plans by the County, we continue to oppose the closing of Seven Locks Elementary School and the building of a new school on Kendale Road as it is currently configured. We respectfully request the holding of any funds for this project until the community, together with our County representatives, can determine the best way to meet student needs – both for our neighborhood and elsewhere in the County.

We look forward to meeting with you on these issues and to the convening of public hearings.

Our addresses and home phones are provided below so that you or your staffs can contact us.

Sincerely,

Sandy Vogelgesang
Board Member
West Bradley Citizens
Association
9009 Charred Oak Drive
Bethesda, MD 20817
301.365.2347

Cyril Draffin
President
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What is Driving Kendale Plan?

By Janis Sartucci
May 19, 2004

At last week's Montgomery County Council work session a plan was introduced to the full council to "supersize" a local elementary school.

Montgomery County Board of Education's Policy on Long-Range Educational Facilities Planning says that the "preferred range of enrollment" for an elementary school is: "two to four classes per grade." In calculating school capacity, each classroom is to hold 25 students.

That would make the preferred range of enrollment for an elementary school from 294 to 544 students (these numbers include two sections of kindergarten at 22 students each). Eighty-two Montgomery County elementary schools currently operate within this preferred range of enrollment.

The plan for the new Seven Locks Elementary school is to move the facility to the vacant Kendale Elementary school site and "supersize" the facility to enable it to accommodate up to 740 students.

As part of the Council's presentation of this plan a chart detailed how the building of this "supersize" elementary school will eliminate any future overcrowding in the Churchill cluster elementary schools through the year 2020.

This was not the plan presented by Dr. Weast to the Board of Education on March 22. In that plan, Dr. Weast proposed moving the Seven Locks Elementary school to the new site at a cost of \$13.7 million in capital funds.

Those funds would build an elementary school, as was contemplated for the Seven Locks corner location, with a capacity of 550 students. The new plan by the County Council is to "supersize" the facility at a now total cost of \$14.7 million.

What does the Council get for this plan? They get to push the school system to declare the site of the current Seven Locks Elementary surplus. Land that the Council can then dispose of in a number of ways.

How does the community feel about this proposal? That is an unanswered question. There has been no opportunity for input on this proposal. On March 3, a hearing was held to discuss whether or not the Kendale site should be surplus. At that time there was no information available to the community as to the potential for moving the location of the elementary school and tripling its size.

The Seven Locks Elementary school community has been in the process of planning for a modernized facility at their present location for three years. During that time, the community was not aware of a vacant 10.54 acre parcel down the road. What was a three year process has now been condensed down to a 10 day process as community members scramble to gather information and evaluate the proposal.

Community input is something that is part of our democratic process and should not be overlooked. In this situation, community input brought down the cost of the Seven Locks Elementary school replacement project from the original \$20.1 million, three phase construction - as proposed by MCPS last year, to the cost of a new school on a vacant site at \$13.7 million.

The County Council now seeks to increase that cost in order to make the Seven Locks corner available to be declared surplus.

If a new school were built at the Kendale location would the current Seven Locks Elementary school be needed in the future? This remains an unanswered question as many housing units are being constructed in the area. Certainly if elementary schools are to stay within Board of Education guidelines the facility could be put to use. The Churchill Cluster currently has 19 classroom trailers on the ground at the elementary school level. There are enough children in the Churchill Cluster to make use of the current Seven Locks site and a new facility.

In the alternative, the Seven Locks site could be used to house MCPS offices that are now in leased commercial buildings around the county. The fields behind the school could continue to be rented out for community use. Under Board of Education Policy DNA, the Board of Education can declare a property surplus when it "is considered to have no further use for school system purposes." Possible uses for this site within the school system have only begun to be explored.

There is one component of these issues that has received very little consideration. That is the children. Where are they in these discussions? Board of Education policies speak to what is educationally sound for our children but those are only paper documents. The elected officials who are making these decisions seem to have forgotten the "end user" of these facilities. Is it in the best interest of children in Montgomery County Public Schools to be educated in facilities with over 700 students? Where is the research and the evidence that this is a "best practice" for the education of our present and future generations?

AGENDA ITEM #3
May 13, 2004

MEMORANDUM

May 11, 2004

TO: County Council

FROM: *KL* Keith Levchenko, Legislative Analyst

SUBJECT: **Montgomery County Public Schools (MCPS) FY05-10 Capital Improvements Program Follow-up**

- **Update on FY05 State Aid for School Construction**
- **New State Aid for HVAC Electrical/FACE Replacement: MCPS and Planned Lifecycle Asset Replacement: MCPS**
- **Seven Locks Elementary School Revised Proposal**

Education Committee Recommendations from May 6 Meeting:

- **Discussed Board of Public Works final actions on State aid for School Construction (\$9.036 million for Montgomery County projects).**
- **Recommended approval of new appropriation and expenditures in the HVAC and PLAR projects based on recently awarded State "QZAB" dollars.**
- **Recommended approval of the Board of Education's revised proposal for a replacement school for Seven Locks Elementary School instead of an addition and modernization of at the existing school.**

Update on State Aid for School Construction

On March 23 the Council reviewed the FY05-10 MCPS CIP. As part of this review, the Council agreed to assume \$20 million in State aid for school construction for FY05. On May 5, the Board of Public Works finalized its statewide allocation of school construction dollars (see memorandum on ©13-17. The Montgomery County request and final allocation is attached on ©18.

Statewide, \$125.9 million was allocated, of which Montgomery County projects received a total of \$9.036 million. The Montgomery County amount is \$2.7 million more than approved in January, but far less than the \$59.7 million requested and \$11 million less than currently assumed in the FY05-10 CIP.

As a result of the Board of Public Works action, the Council's State aid assumption will need to be lowered. For CIP reconciliation, the Board of Education provided a priority list of proposed project changes that would be needed to meet both County Executive funding recommendations and potentially lower State aid amounts. **No action by the Council is required at this time. The Council will be working to reconcile the entire CIP over the next two weeks.**

New State Aid for HVAC Electrical/FACE Replacement: MCPS and Planned Lifecycle Asset Replacement: MCPS

MCPS recently received notification from the State of Maryland of an award of Qualified Zone Academy Bonds (QZAB) dollars of nearly \$1.2 million. There is no County match requirement for these dollars. However, the school communities are required to provide cash and/or in kind support to the schools in the future.

The work will be done out of the PLAR and HVAC Replacement projects and is summarized on the charts attached on ©9-10.

Because of the timing of this award, the Board's requested CIP needs to be adjusted to reflect these additional dollars and additional appropriation in both projects is required. The following chart shows the dollar changes by fiscal year for each project. The total amount (\$1.173 million) needs to be appropriated in FY05, although some of the dollars will not be spent until FY06.

| Qualified Zone Academy Bond (QZAB) Project Dollars (in \$000s) | | | |
|--|--------------|------|------|
| Project | Total | FY05 | FY06 |
| HVAC Replacement/FACE Program: MCPS | 745 | 570 | 175 |
| Planned Lifecycle Asset Replacement: MCPS | 428 | 428 | |
| Total | 1,173 | | |

The Qualified Zone Academy Bond (QZAB) Program, authorized by the Federal government, enables the State of Maryland to sell bonds and allocate the proceeds to public school systems for capital improvements at eligible public school buildings. These funds can be used for capital improvements, repairs, and deferred maintenance work for existing public school buildings. These funds may not be used to construct new public schools or to build additions to existing public schools. For a project to be eligible under the QZAB Program, the school must be located in either an Empowerment or Enterprise Zone, or have 35% or more of the student body eligible for free and/or reduced meals (FARMS).

The work to be done with QZAB dollars were not already assumed to be done as part of these CIP projects. Therefore, there is no automatic reduction in local dollars as there would be with regular State aid for school construction. Both projects are still subject to final reconciliation by the Council. Reductions in these projects would have to be in non-QZAB work.

The Committee recommends revising the two projects to reflect additional funding and expenditures related to the awarded QZAB dollars. As noted earlier, both projects are still subject to final reconciliation by the Council.

Seven Locks Elementary School Revised Proposal

Original Proposal

The Board's Original Proposed CIP included a proposed 10 classroom addition at Seven Locks Elementary School to open in September 2006. The addition would help relieve overcrowding at Potomac Elementary School. A gymnasium is assumed to be built in conjunction with the addition. A modernization of Seven Locks Elementary School is proposed to be completed by September 2010.

Revised Proposal

On March 25, MCPS transmitted a revised request (see ©1-8) that proposes building a new school on a nearby property (the Kendale property) instead of adding on and modernizing Seven Locks Elementary School.

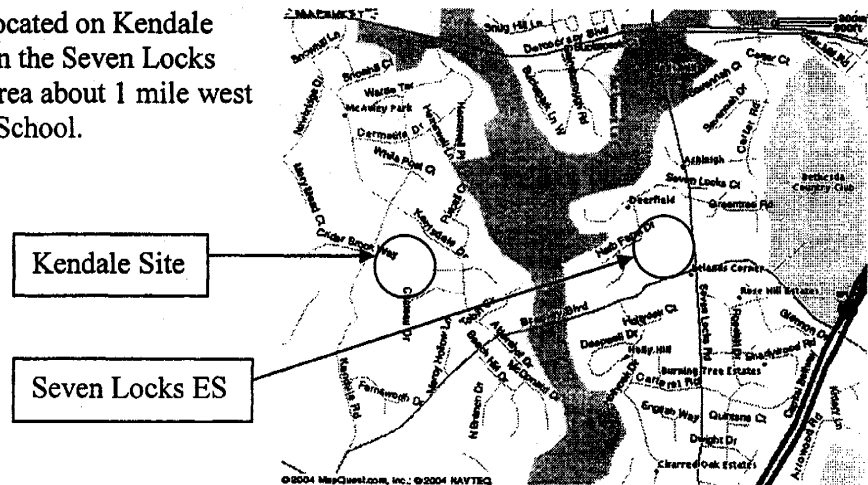
MCPS believes the revised request is cost-effective. The total cost to build the new school (with a gymnasium) is estimated to be \$14.7 million while the addition, modernization, and gymnasium at the current site are estimated to cost \$17.7 million. In addition, building on the Kendale site would be less disruptive than doing the addition and gymnasium at Seven Locks Elementary School with the students on site. MCPS staff has also noted that the location of the Kendale site in a residential community provides some site access advantages over the existing Seven Locks ES which is located at the intersection of two major roads.

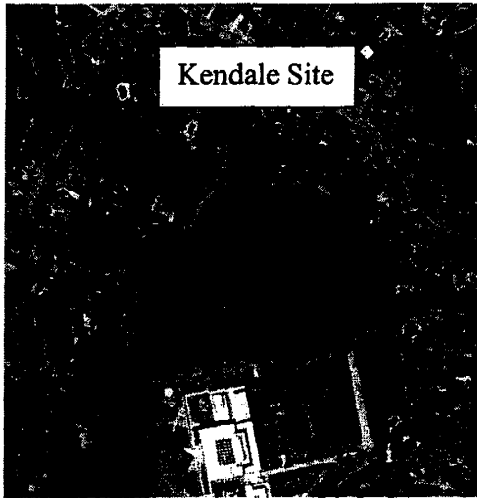
The new school (and gymnasium) would open in September 2007 (a year later than the addition and gymnasium would be completed under the original proposal, but three years before the modernization would be finished).

Analysis

The Kendale site and the Existing Seven Locks site

The Kendale site is located on Kendale Road near Kentsdale Drive in the Seven Locks Elementary School service area about 1 mile west of Seven Locks Elementary School.

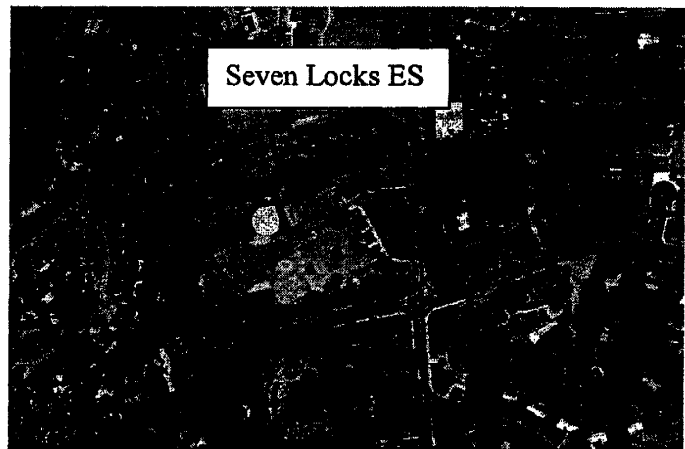




The Kendale site is a wooded site approximately 10.0 acres in size in a residential community.

As with any site, MCPS will have to address reforestation as well as storm water quality and quantity requirements. However, MCPS staff does not believe there are any exceptional environmental issues on the site (such as floodplain or stream valley issues). A more detailed environmental assessment of the site will be required as the project progresses.

Seven Locks Elementary School is located at the northwest corner of the intersection of Seven Locks Road and Bradley Boulevard on 10.0 acres.



Costs

The costs for the new school versus the original proposal to add and modernize on the current Seven Locks site are displayed on the following chart. It should be noted that the original MCPS request included some double counted costs that have to be removed before comparing the original and latest proposals. These changes are noted on the chart.

Costs for the Original and Latest Request

| | Total | 6 Year | FY05 | FY06 | FY07 | FY08 | FY09 | FY10 | B6Y |
|--|---------|--------|------|---------|-------|-------|-------|---------|---------|
| 1 Original Request* | 20,155 | 15,713 | 452 | 4,383 | 1,858 | 493 | 1,727 | 6,800 | 4,442 |
| 2 - 10 Room Addition (open 9/06) | 5,743 | 5,743 | 372 | 4,133 | 1,238 | | | | |
| 3 - Modernization (open 9/10) | 13,462 | 9,020 | | | | 493 | 1,727 | 6,800 | 4,442 |
| 4 - Gymnasium | 950 | 950 | 80 | 250 | 620 | | | | |
| 5 Corrected Original Request* | 17,695 | 14,853 | 452 | 4,383 | 1,858 | 493 | 867 | 6,800 | 2,842 |
| 6 - 10 Room Addition (open 9/06) | 5,743 | 5,743 | 372 | 4,133 | 1,238 | | | | |
| 7 - Modernization (open 9/10) | 11,002 | 8,160 | | | | 493 | 867 | 6,800 | 2,842 |
| 8 - Gymnasium | 950 | 950 | 80 | 250 | 620 | | | | |
| 9 Latest Request | 14,724 | 14,724 | 576 | 1,997 | 9,001 | 3,150 | - | - | - |
| 10 - New School (open 9/07) | 13,774 | 13,774 | 496 | 1,747 | 8,381 | 3,150 | | | |
| 11 - Gymnasium | 950 | 950 | 80 | 250 | 620 | | | | |
| 12 Difference in Cost (Row 9-Row 5) | (2,971) | (129) | 124 | (2,386) | 7,143 | 2,657 | (867) | (6,800) | (2,842) |

*Original request included some costs in the modernization that were already included in the addition.