

JANIS SARTUCCI, et al.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-33

OPINION

INTRODUCTION

Janis Sartucci, eight other Montgomery County residents, and a community homeowners association (“Appellants”) challenge the decision of the Montgomery County Board of Education (“local board”) to award a contract for the installation of artificial turf fields at Julius West Middle School and Albert Einstein High School. The local board filed a Motion to Dismiss for Lack of Standing and/or Motion for Summary Affirmance. Appellants responded and the local board replied.

FACTUAL BACKGROUND

In 2007, Montgomery County Public Schools (MCPS) began a pilot program to install artificial turf in a new stadium at Richard Montgomery High School. A private soccer club offered to contribute \$300,000 towards the total \$900,000 cost of the turf in exchange for preferred scheduling and use of the stadium field for five years. The local board, following approval by the Montgomery County Council and Interagency Coordinating Board for the Community Use of Public Facilities, approved a use agreement with the soccer club. We upheld the local board’s decision, concluding that it did not violate the law. *See Thomas Hearn v. Montgomery County Bd. of Educ.*, MSBE Op. No. 09-20 (2009).

MCPS used this pilot program as a model for other artificial turf projects at its schools, entering into partnerships with multiple soccer clubs and receiving funds in exchange for preferential use of school fields. In July 2014, Montgomery Soccer, Inc. (MSI), which had been awarded a long-term lease at one high school, but not others, filed suit against MCPS over its partnerships with other soccer clubs. We stayed an appeal of the local board’s actions, pending the resolution of the case in circuit court. *See Montgomery Soccer Inc. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 15-14 (2015). In June 2016, the local board entered into a settlement agreement with MSI. MCPS announced the settlement on its website, explaining that MSI would provide \$1.2 million for artificial turf at Walt Whitman High School (Whitman HS)¹; as much as \$2.4 million for turf at Julius West Middle School (Julius West MS); and \$1.2 million to upgrade the field at Einstein High School (Einstein HS) to artificial turf. (Motion, Ex. 1). In exchange, when the fields are not being used for school activities, MSI would be given

¹ The artificial turf project at Whitman HS is not part of the current appeal.

preferred access for a set number of hours per year for 10 years. The settlement allowed the other soccer clubs to continue to have preferred access to other fields at other schools.

In January and February 2017, the MCPS Department of Facilities Management held community meetings at Whitman HS, Einstein HS, and Julius West MS to present the proposed artificial turf projects. On February 14, 2017, the local board adopted a resolution to amend its FY 2017 Capital Improvements Project to allocate \$4.9 million from MSI for the “design and installation” of artificial turf fields at the three schools. The resolution explained that MSI would fund \$1.8 million for the design and installation of 1.5 soccer fields at Julius West MS and approximately \$400,000 for a field lighting system there (approximately \$2.2 million total). MSI would spend \$1.2 million for the artificial turf at Einstein HS. (Motion, Ex. 4). On April 28, 2017, the Montgomery County Council approved the funding request. On June 13, 2017, the local board hired a firm to provide professional civil engineering services. (Motion, Ex. 8).

On January 23, 2018, the MCPS Department of Facilities Management held a community meeting in which it reviewed the construction plans. Several of the Appellants attended the meeting. MCPS staff also met with the board of the Rose Hill Homeowners Association. (Motion, Ex. 10, 11). MCPS informed local residents in March 2018 that the City of Rockville planned to consider the installation of two artificial turf fields and field lighting. (Motion, Ex. 12). On April 4, 2018, the Rockville Planning Commission considered the proposal and ultimately approved the plans, subject to certain conditions. (Motion, Ex. 13, 14, 15).

On June 12, 2018, the local board approved a construction contract for the artificial turf fields at Julius West MS and Einstein HS. This appeal of that contract award followed.

STANDARD OF REVIEW

Because this appeal involves a direct challenge to a quasi-legislative decision of a local board, our jurisdiction to hear the appeal is limited. Section 2-205 grants the State Board the power to determine the true intent and meaning of State education law and to decide all cases and controversies that arise under the State education statute and State Board rules and regulations. Under §2-205, we apply a standard of review that focuses solely on whether the local board’s quasi-legislative decision violates the law. *See Milstein v. Montgomery County Bd. of Educ.*, MSBE Op. No. 15-35 (2015); *Stanmore Family Limited Partnership v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-41 (2012). We do not substitute our judgment for that of the local board “as to the wisdom” of its action. *Stanmore*, MSBE Op. No. 12-41 (quoting *Weiner v. Maryland Insurance Admin.*, 337 Md. 181, 190 (1995)).

LEGAL ANALYSIS

As a preliminary matter, the local board questions whether the Appellants have standing to bring this appeal. In order to have standing, an individual “must show some direct interest or ‘injury in fact, economic or otherwise.’” *Milstein v. Montgomery County Bd. of Educ.*, MSBE Op. No. 15-25 (2015)(quoting *Nehemiah’s Vision, Inc. v. Bd. of Educ. of Prince George’s County*, MSBE Op. No. 14-30 (2014)). In other words, a person must “be personally and specifically affected in a way different from the public generally.” *Id.* An individual’s status as a member of a community is insufficient to convey standing by itself. *Id.* (citing *Marshall v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 03-38 (2003)).

In the context of challenging zoning actions, the Court of Appeals observed that “proximity is the most important factor to be considered” and properties must be “adjoining, confronting or nearby” in order for their owners to be specially aggrieved by a change to a property. *See Ray v. Mayor & City Council of Baltimore*, 430 Md. 74, 82-83 (2013). Courts have conferred standing on owners when they lived anywhere from 200 to 1,000 feet away from the affected property and could articulate prejudice they would suffer from a construction project. *Id.* at 83 (citing cases). Owners who live more than a half mile away from a project generally cannot demonstrate standing as their interests are more aligned to the public generally than to someone who is personally and specially affected by a project. *Id.* (citing cases).

None of the Appellants live near Einstein HS and none of their arguments on appeal address the high school or any of the Appellants’ connections to it. Accordingly, we conclude that all Appellants lack standing to challenge the local board’s award of a contract to install artificial turf at Einstein HS.

As to Julius West MS, the Appellants primarily challenge the light, noise, and traffic that will come with the soccer field renovations. The soccer fields themselves back up to two highways and are not adjacent to any homes. None of the Appellants claim to have children at Julius West MS or any other special interest beyond living in the neighborhood near the school. Three of the Appellants live a significant distance from the school: Janis Sartucci lives 6 miles away from Julius West MS, Roseanne Hurwitz lives 2 miles away, and Noreen Brown² lives one mile away. Given those distances, we conclude they are not “adjoining, confronting, or nearby” the affected property and, therefore, lack standing. Appellants argue that they all have standing because they all drive on local highways, and glare from the soccer lights could shine on the road and harm their driving. This claim, even if true, would affect the general public in the same manner and does not confer individual standing.

Appellants Bonnie Clausen, Carol Starr and Douglas Dull live approximately 1,300 to 1,500 feet away from the school. Although it is a close question given those distances, we conclude that they are sufficiently “nearby” to the affected property in order to maintain standing. The final group of individual Appellants – Eileen Sherr, Jason Mitchell, and Peter Lovell – live approximately 550 to 650 feet away from Julius West MS. Based on prior court precedent, they have demonstrated sufficient proximity to the project in order to have standing.

Finally, many of the Appellants also serve as board members of the Rose Hill Falls Homeowners Association Board. Although they did not initially appeal on behalf of the association, they later amended the appeal to indicate that they are representing both themselves and the 217 homes in their association. In *Dorchester Neighborhood Association, Inc. v. Charles County Bd. of Educ.*, MSBE Op. No. 99-10 (1999), we concluded that a homeowners association had standing to challenge a school redistricting because it represented owners who either had children in the school, anticipated having children in the school, or anticipated a negative impact on their property values. Under this rationale, we conclude that the Rose Hill Falls Homeowners Association Board has standing because at least a portion of its members (those nearest to Julius West MS) could be impacted by the soccer field renovations.

² Ms. Brown identifies herself as the West End Citizens Association president, but does not claim to be representing that group on appeal, nor does she present any information about the organization.

Legality of local board's action

We turn to the local board's award of a contract for the installation of artificial turf and lights at Julius West MS. Appellants argue that the contract award was illegal for a variety of reasons and request that the State Board declare the contract award "null and void" and immediately halt construction of the soccer fields at Julius West MS. The reasons asserted are addressed below.

(1) The memorandum accompanying the contract referenced, but failed to include, the prior settlement agreement with MSI

Much of the Appellants' argument focuses on whether the local board legally entered into a settlement agreement in 2016 with the soccer club MSI.³ Even assuming the local board somehow erred in handling the settlement agreement, the time to appeal such an action has long expired. We are aware of no legal requirement, and the Appellants have not directed us to none, that would mandate that the local board include the text of a settlement agreement as part of its award of a construction contract.

(2) The memorandum failed to provide additional information about the scope of the project at Julius West MS

We are similarly unaware of any legal requirement that renders a local board resolution to award a contract null and void if it does not contain the full details of the project within the board resolution. As the record demonstrates, the local board was aware of the project because it had previously approved it as part of its FY 2017 Capital Improvements Project and hired a firm to provide civil engineering services in connection with the project.

(3) The local board turned public school land over to a private entity

The record shows that MCPS entered into an agreement with MSI for preferred use of the soccer fields when not otherwise being used by the schools. This arrangement, as we have previously opined, is not illegal. *See Hearn v. Montgomery County Bd. of Educ.*, MSBE Op. No. 09-20 (2009). MCPS has similar agreements in place with multiple soccer clubs in the area. The use of public fields by a private entity is not the same as transferring ownership to those organizations.

(4) The Maryland State Department of Transportation has not approved lights at the soccer fields, there has been no sound mitigation or consideration of traffic problems, and the local board has not followed requirements of the City of Rockville

Appellants argue that the local board did not properly inform the Maryland State Department of Transportation about the installation of lights at the fields, that the local board never reviewed plans for lights, that lights will negatively impact properties near Julius West MS, and that the lights do not meet State procurement standards. They also argue that the local board has not properly considered sound mitigation or traffic problems that could be caused by

³ Related to this argument is a claim that the local board violated the Open Meetings Act in connection with the settlement agreement. The Open Meetings Compliance Board has jurisdiction over such claims and we will not address them here. *See Beverly G. Kelley v. Queen Anne's County Bd. of Educ.*, MSBE Op. No. 18-24 (2018).

the project. Finally, they argue that the local board has not complied with requirements set by the City of Rockville for the project.

All of these issues concern the approval of the project itself, not the awarding of a construction contract. In addition, many of these issues raised by Appellants fall under the jurisdiction of the Maryland State Department of Transportation (which has jurisdiction to address whether its regulations were violated by the plan for lights) or the City of Rockville (which has jurisdiction to enforce its own planning decisions, regulations, or policies). Our review is limited to whether the contract award was illegal. Appellants have pointed to no illegalities in the contract award itself.

CONCLUSION

We dismiss the appeal as to the soccer fields at Einstein HS because Appellants lack standing to challenge the decision. We also dismiss Janis Sartucci, Roseanne Hurwitz, and Noreen Brown as parties because they lack standing to challenge the Julius West MS contract. We affirm the local board's contract award for artificial turf and lights at Julius West MS because it was not illegal.

Signatures on File:

Justin M. Hartings
President

Stephanie R. Iszard
Vice-President

Chester E. Finn, Jr.

Vermelle D. Greene

Michele Jenkins Guyton

Jean C. Halle

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

Warner I. Sumpter

October 23, 2018