

LYNN NASH, ET AL,

Appellant,

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 21-06

OPINION

INTRODUCTION

Lynn Nash and various individuals¹ (“Appellants”) request that the State Board reconsider its opinion upholding the decision by the Montgomery County Board of Education (“local board”) to authorize execution of a property transfer agreement with the City of Gaithersburg to convey ownership to Montgomery County Public Schools (“MCPS”) a portion of land for construction of a new elementary school. The local board replied to the request.

FACTUAL BACKGROUND

The original decision in this case recites the full factual and procedural history of this case. *See Nash*, MSBE Op. No. 20-41. The property transfer agreement at issue conveyed title to a portion of land in Kelley Park to MCPS without charge and obligated MCPS to provide certain shared amenities. The local board had previously approved the Kelly Park site. *Id.*

The State Board held, in part, that the local board decision did not violate Article VIII, §3 of the Maryland Constitution, which reads, “The School Fund of the State shall be kept inviolate, and appropriated only to the purposes of Education.” The State Board found that the amenities included in the agreement served to benefit MCPS and to establish a school at the Kelley Park site. Therefore, any funds used to meet the requirements of the land agreement serve an educational purpose, consistent with the State Constitution. *Id.*

The State Board also held that the Superintendent had not exceeded his authority by signing the transfer agreement with the City of Gaithersburg. Appellants relied on Education Art. §4-205(d), which reads, “[a] contract made by a county board is not valid without the approval of the county superintendent.” As the applicability of this provision to the Superintendent’s execution of the land agreement was unclear, and the agreement did not explicitly involve the exchange of funds; the State Board found the Appellants’ argument was without merit. *Id.*

¹ Appellants also include David Andersen, Beth F. Junium, Stephen Kaufman, Christine Rumney, Dena Saunders, Jeannie Shenk, and Rhonda Thiessen.

STANDARD OF REVIEW

The State Board exercises its discretion in deciding whether to grant a request for reconsideration. COMAR 13A.01.05.10. The State Board may, in its discretion, abrogate, change, or modify its original decision. COMAR 13A.01.05.10G. A decision may not be disturbed unless (1) the decision resulted from a mistake or error of law; or (2) new facts material to the issues have been discovered or have occurred subsequent to the decision. COMAR 13A.01.05.10D.

LEGAL ANALYSIS

It is the Appellants' position that the State Board erred in its decision because it did not fully understand the terms of the land agreement and mistakenly believed the transfer to be free of charge. Appellants argue that the shared amenities, which MCPS is committed to provide under the land agreement, constitute an expenditure of funds. Appellants claim that these amenities are to benefit the City of Gaithersburg and do not serve an educational purpose. Appellants also contend that the Superintendent did not have the authority from the local board to sign an agreement that included amenities.

These arguments are mere recitations of the allegations made by the Appellants in their initial appeal. The State Board does not overturn its decisions unless there is a mistake or error of law, or new material facts discovered subsequent to the decision. COMAR 13A.01.05.10D. Appellants do not assert an error of law; they simply disagree with this Board's application of the law to these facts. This Board has already carefully considered the terms of the land agreement, the materials submitted by both parties, and each party's arguments. We see no error of law that would require us to reverse our prior decision.

Appellants also seek reconsideration on the basis that the new elementary school is no longer needed due to a decline in MCPS enrollment. As evidence, Appellants introduce a November 19, 2020 memorandum from the Superintendent to the local board revising the action date for a boundary study that was to be released in January 2021. Due to the impact of the COVID-19 pandemic, including enrollment anomalies, the release date is now set for October 2021. Appellants fail to demonstrate how the revised release date of the boundary study impacts this Board's decision to uphold the execution of the land agreement. Therefore, we do not find there are any new material facts that would require us to reverse our prior decision.

CONCLUSION

We deny the request for reconsideration because there was no mistake or error of law, nor have facts material to the issues been discovered subsequent to the decision.

Signatures on File:

Jean C. Halle
Vice-President

Shawn D. Bartley

Gail H. Bates

Charles R. Dashiell, Jr.

Susan J. Getty

Vermelle D. Greene

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

Absent:
Clarence C. Crawford, President

Abstain:
Rose Maria Li

February 23, 2021