

**MARYLAND STATE BOARD OF EDUCATION**

200 West Baltimore Street  
Baltimore, MD 21201

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

v.

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. GROUND 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 surplus 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,

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**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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Jerry Garson, co-chair  
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and

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**West Bradley Citizens' Association**  
By and through its president,

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

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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

(SEVENLOCKS – Final Combined Appeal)