

Report: School System Concealed Seven Locks Data

Inspector general's audit faults MCPS for restricting construction options, botching architect selection, and misrepresenting community sentiment; School Board member Stephen Abrams denies IG's authority.

[By Ken Millstone/The Almanac](#)

February 14, 2006

The inspector general's draft report makes it all but official: Seven Locks Elementary School is the new Clarksburg.

A draft audit report produced by Montgomery County's Office of Inspector General, obtained by the Almanac, states that Montgomery County Public Schools misled the Board of Education and County Council in advocating that the county build a new elementary school on Kendale Road in Potomac rather than expanding Seven Locks Elementary.

According to the report, the school system delivered incomplete and faulty cost data regarding a plan to modernize and then add to Seven Locks. The costs for Seven Locks were inflated compared to comparable projects at other schools.

THE REPORT also states that MCPS presented the board and council with only two construction options in May, 2004, "even though at least two other apparently less costly options existed."

One of the excluded options was the plan recommended by the architect MCPS had hired to evaluate alternatives for adding capacity at Seven Locks. The other was the option endorsed by the Seven Locks PTA and overwhelmingly embraced by the school and surrounding community.

The report's four findings and four recommendations vindicate many of the concerns raised by citizen groups in a more than three-year row over Seven Locks and Kendale. (See timeline for a history of the issues.)

Members of the Save Seven Locks Coalition have repeatedly called for complete cost data and consideration of the excluded alternatives. They have also said that MCPS misrepresented community sentiment about building on Kendale — another finding of the report.

"We really see Seven Locks ... as a poster child for accountability in the school system just as folks see Clarksburg as a poster child with regard to land use and planning," said Save Seven Locks Coalition leader Sandy Vogelgesang. "It's the core issue of accountability that links the two."

"It turns out they were right all along," Montgomery County Councilmember Howard Denis (R-1) said Feb. 14.

Denis endorsed the report's recommendations and said he felt "misled and let down" without singling out individual culprits.

"It's an attitude problem with some people in government ... They just

Clarksburg 2.0?

The release of an Office of Inspector General report faulting Montgomery County Public Schools for faulty cost data and misrepresentations in planning to build an elementary school on Kendale Road in Potomac "could be pretty damaging for the school system," said Valerie Ervin, a school board member. "It's no different from what's happening at Clarksburg. It could be considered worse in a lot of ways because [MCPS] accounts for more than half of the county budget."

In July, the Montgomery County Planning Board issued more than 500 violations to developers of the new Clarksburg Town Center after a citizen group revealed that houses there had been built too tall and too close to the road. The revelations shook the county's planning agency, leading to resignations, investigations and redoubled council oversight.

"We really see Seven Locks ... as a poster child for accountability in the school system just as folks see

say, 'I know better,'" Denis said. Asked if he was referring to MCPS, Denis said that the inspector general's report speaks for itself. Denis said that he will introduce a measure to reverse plans to build on Kendale and instead build a new school on the current Seven Locks site, an option the inspector general's report says would save money. The proposal is an amendment to the fiscal year 2007-2012 Capital Improvements Program, that shifts construction funds from Kendale back to Seven Locks, in effect reversing the board and council's 2004 action. Denis will introduce the amendment Feb. 28, when the council next meets. It will be considered at a March 21 hearing.

The Office of Inspector General was created by legislation in 1997, with a mandate to "prevent and detect fraud, waste, and abuse in government activities" and increase accountability in county government. The inspector general, currently former federal auditor Thomas Dagley, is appointed by the County Council but is solely responsible for choosing topics for review.

The Seven Locks audit is the first report produced by the office under Dagley, who was appointed in April, 2005.

Though Dagley is identified in correspondence and official references to his office, Deputy Inspector General Jon D. Easley and Assistant Inspector General Mary W. Meier are listed as the managers of the audit.

The draft report is dated Feb. 8 and was distributed to the members of the School Board and County Council last week, School Board members and council staffers confirmed.

The official report will be released Feb. 15, according to Easley and others.

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Citizens opposing the Kendale school and the possibility of turning the Seven Locks Elementary site over to the county for affordable housing have highlighted the comparison between Seven Locks and Clarksburg, saying they are united by the core issue of government accountability (see box).

But Steve Abrams, another school board member and chair of the

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Mark Adelman, chair of the Montgomery County Civic Federation's education committee, said he sees a "direct parallel" between Clarksburg and Seven Locks. "What it comes down to ultimately is some segment of the community identifies what it believes to be a flawed process and attempts to get proper response from officials and gets stonewalled," Adelman said, "until that group screams so much that nobody can ignore it." Adelman had not seen the inspector general's report when he was interviewed Feb. 13.

Ervin, who is also chief of staff to council President George Leventhal, said that the inspector general's report confirms a claim councilmembers have been making since July: that if the same scrutiny being applied to the department of parks and planning were applied to other agencies, "what we see we may not like."

The fact that citizen groups have acted as watchdogs is commendable, Ervin said,

board's Audit Committee, said that Office of inspector general has no authority over the school system because it is a state agency and the inspector general's mandate is limited to county agencies.

"I instructed staff to not respond to [the inspector general's] draft because I don't believe [he] has any jurisdiction over the school system," Abrams said. "We're not part of Montgomery County government. We're an agency of the state. We're a creature of the state."

"He's wrong. He couldn't be more wrong," Ervin said. "It's explicitly stated in the Montgomery County Code."

Abrams responded to the report in a scathing five-page letter to Dagley that cites two legal opinions questioning his authority, then attacks the assumptions and methodology employed in the report. Abrams argues that the relevant authority for oversight and appeal is the State Board of Education, to which Kendale opponents appealed — unsuccessfully — in August, 2004.

ABRAMS' LETTER is included in the draft report as an attachment, but the legal opinions — from MCPS general counsel Judith Bressler and Andrew Nussbaum of Knight, Manzi, Nussbaum & LaPlaca, which advises the Prince George's County Board of Education — are not, because they are marked "confidential," the report states.

Abrams provided the opinions to the Almanac and said that MCPS planned to waive the claims of confidentiality so that the opinions can be included in Dagley's report.

"I'm not concerned about the substance" of the report, Abrams said in an interview. "It clearly demonstrates he doesn't understand the process between the County Council and the school system. ... In effect what you've got is somebody that's totally out of their league."

In a written statement, Vogelgesang said that Abrams' letter "does not respond to the substantive points raised" and "distorts the record still further." She noted that community appeals to the State Board of Education were dismissed on administrative grounds. The board said it did not have jurisdiction.

The inspector general's report debunks the idea that building on Kendale would entail a roughly \$3 million savings over expanding Seven Locks, a central tenet of MCPS' defense of the project. The cost comparison was based on a five-year-old plan to build an addition at Seven Locks, then modernize the school 18 months later and neglected the saving that could come from combining the addition and modernization or demolishing Seven Locks and building a new school on the existing site.

Even using the "phased approach" at Seven Locks, which is more costly than the rejected alternatives, roughly 50 percent of the \$3 million cost

but shouldn't be necessary. "Citizens are looking around saying, 'Is anyone minding the damn store?'" Ervin said. "They're not."



Photos by Ken Millstone/The Almanac
Sandy Vogelgesang, leader of the Save Seven Locks Coalition. "We really see Seven Locks ... as a poster child for accountability in the school system just as folks see Clarksburg as a poster child with regard to land use and planning," Vogelgesang said.



Montgomery County Public Schools Superintendent Jerry Weast. An Office of Inspector General report set to be released Feb. 15 says that MCPS misrepresented cost data and foreclosed less expensive construction options in advocating for a

difference can be attributed to the fact that a revamped Seven Locks would be 5,000 square feet larger than the proposed Kendale school. The report's scheduled release Feb. 15 is one day after the council had been slated to consider a \$3.3 million special appropriation to MCPS to pay for cost increases connected to Kendale construction. That hearing was delayed until March 7.

On Jan. 10, the Board of Education voted to approve a \$16 million construction contract for the Kendale school, ignoring Dagley's recommendation in a November memo that it wait to see the report before making further contract decisions.

The audit report's fourth finding is that the board did not comply with its own public notice, application, and initial selection policies in awarding a \$900,000 architectural design contract in July, 2004.

Still, the Jan. 10 award to Henley Construction Company Inc. is contingent upon the \$3.3 million special appropriation.

Coming on the heels of Dagley's report, the special appropriation hearing could be the beginning of a complicated endgame in the Kendale affair, or just one more frustration for opponents of the current plan.

The council would likely have approved the money — as it did for several other over-budget MCPS projects — prior to the report, but it is unclear how it will respond in light of the findings.

PERHAPS MORE telling would be how MCPS responds if the council denies the request.

“Depending on how stubborn Weast and the board of education are, they can obviously reshuffle their [Capital Improvements Program] funds and still go ahead with the construction,” said Montgomery County Civic Federation Education Committee Chair Mark Adelman.

Abrams said that after reading the report he remains convinced that building on Kendale is the best option, though he supports retaining Seven Locks for educational purposes and said it would likely remain and school and even receive an addition in the future.

“The stubbornness of the board and MCPS on this is really kind of puzzling,” said Adelman, who will testify at the March 7 hearing.

How the hearing—or the larger situation—will play out, “I can't even begin to predict, because all along this thing has not made sense,” he said.

GET INVOLVED

Next month, the Montgomery County Council will consider a MCPS' request for a \$3.3 million special appropriation to fund cost overruns for construction of the Kendale school. MCPS documents state that the approved construction contract for the Kendale school is contingent upon the council granting the appropriation.

The hearing will take place March 7 at 7:30 p.m. at the Council Office Building, 3rd Floor Hearing Room,

large elementary school to be built on Kendale Road in Potomac.



Winston Churchill cluster MCCPTA representative Lilo Mitz and Seven Locks Elementary PTA President Harlivleen Gill prepare testimony at a November, 2005 Board of Education hearing. Opponents of a one-time plan to give up the site of Seven Locks Elementary and current plans to build a new school on Kendale Road have repeatedly called on MCPS to release more complete cost data about the construction options.



100 Maryland Avenue, Rockville. All of the slots to testify have been taken.

On March 21, the council will hold a second hearing to respond to the inspector general's report and consider a Capital Improvements Program amendment introduced by Councilmember Howard Denis that would cancel the Kendale school and shift the money to building a new school on the site of Seven Locks Elementary.

To sign up to testify at the March 21 hearing, call 240-777-7931.

Written comments to the County Council can be sent to George Leventhal, president, Montgomery County Council, 100 Maryland Ave., Rockville, MD 20850, or e-mailed to county.council@montgomerycountymd.gov.

Another way to contact the County Council is to its 24-hour comment line at 240-777-7999. The comments are summarized and placed into a computer system each day where they are available on-line to Councilmembers and staff.

Written comments to the Board of Education can be sent to Charles Haughey, president, Montgomery County Board of Education, 850 Hungerford Drive, Rockville, MD 20850, or e-mailed to boe@mcpsmd.org

Correspondence mailed or e-mailed to the president is copied to all members of the respective bodies and becomes part of the public record.

The inspector general's report is expected to be posted on-line Feb. 15 on the Office of Inspector General Web site, which can be reached through www.montgomerycountymd.gov. Click "Departments" and then "Inspector General."

The report will also be available by calling 240-777-8240, e-mailing ig@montgomerycountymd.gov, or writing the Office of Inspector General, 51 Monroe Street, Suite 802, Rockville, MD 20850.

INSPECTOR GENERAL'S REPORT HIGHLIGHTS

- * "Finding 1: Cost data for the Seven Locks Elementary School project presented by MCPS to the Board and Council was limited to two construction options, even though at least two other apparently less costly options existed, including one studied by MCPS for the existing site."
- * "Finding 2: A quality control process that ensures the use of complete and reliable cost data to analyze facility construction options and present recommendations to the Board and Council is needed to improve fiscal accountability."
- * "Finding 3: Evidence does not support MCPS statements to the Board that the Seven Locks Elementary School community proposed or supported a Kendale Road replacement school option."
- * "Finding 4: Procedures used to award an \$817,500 architect contract for a Kendale Road replacement school were inadequate and may have violated Board requirements."

INSPECTOR GENERAL'S AUTHORITY

Section 2-151 of the code lists the Board of Education and school system among the independent county agencies that inspector general may audit, but MCPS general counsel Judith Bressler, citing Maryland case law, argues in one of the legal opinions that MCPS is not an independent county agency and thus "based on the well-established doctrine of preemption, those parts of the County Code that include 'the County Board of Education and the County school system' as an 'independent County agency' subject to the authority of the IG are void."

Bressler's opinion, provided in a letter to MCPS Chief Operating Officer Larry Bowers, ignores a further

provision of 2-151 that gives the inspector general authority over “any other governmental agency ... for which the County Council appropriates or approves funding.”