

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JEANNE McCARTHY

V.

CUMBERLAND SCHOOL COMMITTEE

DECISION

Held: School Committee acted within its authority and in a reasonable manner in adjusting elementary school attendance areas.

Date: May 21, 2001

Introduction

This is an appeal from the decision of the Cumberland School Committee to adjust elementary school attendance area boundary lines, thereby moving Appellant's property from the Cumberland Hill Elementary School attendance area to that of the Ashton Elementary School.¹

For the reasons set forth below, we deny the appeal.

Background

Appellant has owned her home in Cumberland since 1975. Her decision to purchase the property was based in part on its location in the attendance area for Cumberland Hill Elementary School. Appellant's children are grown and no longer attend the Cumberland school system.

On May 28, 1998, the School Committee conducted a meeting that included an agenda item entitled "Transportation/Out of District Placement." [Joint Exhibit 1].² The superintendent of schools reported to the Committee that, due to space shortages in particular school buildings, there were more than 70 elementary students currently being forced to attend school outside of their attendance areas.³ The superintendent stated that the space problem was the most severe at Cumberland Hill Elementary.

The assistant superintendent described the results of a study he had commenced in late 1997 regarding out-of-district placement trends and related transportation concerns. He reported that the out-of-district placements deprived students of the ability to attend the same school as their neighborhood peers and imposed substantial additional transportation costs on the district. Opening additional classrooms at the Garvin and Community elementary schools could reduce out-of-district placements, but it would not affect Cumberland Hill or be a long-term solution. Only by reassigning some streets to different attendance areas could the School Committee totally eliminate out-of-district placements. Using maps of the town, the assistant superintendent reviewed geographical

¹ The Commissioner of Education designated the undersigned hearing officer to hear and decide the appeal. Hearings were conducted on February 9, 1999, August 24, 1999, and May 16, 2000. Appellant and the School Committee submitted memoranda on August 15 and October 24, 2000, respectively.

² Agendas for School Committee meetings are published in the newspaper.

³ The School Committee's teacher collective-bargaining agreement contains class-size limitations for the elementary grades.

areas near existing boundaries that could be shifted into different attendance areas. Appellant's plat, located at the southern end of the Cumberland Hill Elementary attendance area, was identified by the assistant superintendent.⁴

The School Committee voted unanimously to continue to review this matter. The Committee asked the assistant superintendent to verify student enrollment data with the district's transportation company,⁵ notify the families that might be affected by boundary line adjustments, and report further at the June 11, 1998 meeting. A newspaper article, entitled "Plan Would Return Pupils to Neighborhood Schools," was published the day after the May 28th meeting.⁶

Appellant was not aware of the School Committee's May 28th meeting. She learned from a neighbor that the Committee was reviewing elementary school attendance areas. On June 10, 1998, Appellant spoke to the chairman of the School Committee and registered her opposition to the changing of the attendance area boundaries.

The agenda for the Committee's June 11th meeting again listed "Transportation/ Out of District Placement." [Joint Exhibit 1]. The superintendent informed the Committee that notification letters had been sent to parents of schoolchildren who might be subject to a boundary change. He discussed the need to accommodate the growing numbers of students and he noted that town officials had informed him that additional school building expansion could not be considered until 2005. The superintendent mentioned that many classrooms at Cumberland Hill Elementary School were at maximum capacity and that most of the student expansion was occurring in the Cumberland Hill area. Growth trends indicated that the space problem at Cumberland Hill Elementary would worsen over time.

The assistant superintendent confirmed that the number of students in the Cumberland Hill Elementary attendance area exceeded the school's capacity. Recognizing the scarcity of homes near the Community Elementary boundary line, he suggested that the southern boundary of the Cumberland Hill Elementary attendance area

⁴ The boundaries of the Cumberland Hill Elementary attendance area consisted of the city of Woonsocket to the north, the town of Lincoln to the west, sparsely developed land near the Community Elementary School attendance area to the east, and more developed land in the Ashton Elementary School attendance area to the south.

⁵ The transportation contractor has computer software that can identify the residences of all students and provide information regarding the transportation of each student.

be adjusted. The assistant superintendent also stressed the need to modify boundaries in such a way that the projected growth could be absorbed without further boundary adjustments in the near future. Eleven individuals then addressed the Committee, each detailing his or her opposition to the shifting of boundaries. The School Committee voted unanimously to continue the matter to the June 25th meeting, with the superintendent to consider the comments and suggestions made at the meeting.

On June 18, 1998, Appellant wrote to the chairman of the School Committee. She stated that she had been unable to attend the June 11th meeting, and she asked for a response to two questions about the School Committee's action: (1) what legal authority did the Committee have to change attendance area boundaries and (2) did the agenda item description fulfill the Committee's duty to give public notice of its action.

The agenda item for the School Committee's June 25th meeting was described as "Out of District Placement/Transportation." The superintendent again discussed the need to reduce the attendance area for Cumberland Hill Elementary. He explained that the Community Elementary boundary line had been moved as far west as possible and, therefore, the southern boundary line with Ashton Elementary had to be adjusted. The superintendent presented the Committee with three options, recommending that it approve option three, which provided for a two-year phase-in of the new Cumberland Hill-Ashton boundary line.

Ten individuals spoke at this meeting, including Appellant, her husband and some of their neighbors. Appellant and her husband pursued the questions posed in Appellant's June 18th letter, with Appellant commenting that if she had seen the newspaper agenda notice for the May 28th meeting, she would not have known that the Committee was considering changes in the attendance area boundaries.⁷

After a prolonged discussion and several failed motions, the School Committee voted 4-2 to adopt a variation of option three. Appellant's plat, along with the Rocky Crest neighborhood, was moved from the Cumberland Hill attendance area to that of Ashton.

⁶ School Committee meetings are recorded for later broadcast on the Cumberland cable television system.

⁷ No individualized notice was sent to Appellant as an owner of property affected by the School Committee's action.

The School Committee met again on July 9, 1998. Its agenda for the meeting included an item entitled “Out-of-District Placement/Boundaries.” A School Committee member explained that he had asked that the item be placed on the agenda because residents in the Rocky Crest area had been under the belief that they would not be affected by the adjustment of the Cumberland Hill-Ashton attendance area boundary line.

The superintendent reviewed the options previously presented to the Committee and he explained the need to adjust the boundary line. Thirteen individuals addressed the Committee, including Appellant and her husband. Other individuals from Appellant’s plat spoke to the Committee. During the comment period, the superintendent indicated that he had contacted Department of Education legal counsel and the Committee’s own attorney and was assured that the School Committee had the legal authority to establish school attendance areas. Following the comments from the public, the Committee chairman inquired as to whether any member wished to make a motion to reconsider the Committee’s decision at the previous meeting. No such motion was made.

At the hearing, Appellant presented a real estate expert who testified that, according to his analysis, the change in the attendance area boundary line reduced the market value of Appellant’s property by \$16,400.

Positions of the Parties

Appellant contends that the School Committee’s decision should be reversed and the Cumberland Hill-Ashton school attendance boundary lines returned to their former placement because:

- the decision amounts to an unconstitutional taking of Appellant’s property for public use because it arbitrarily reduces the value of her property for a purpose other than the protection of public health and safety
- the boundary line adjustment does not conform to the town’s comprehensive plan, which is governed by the town planning board
- Appellant was deprived of her civil rights without being afforded due process
- the boundary line change is in excess of the School Committee’s statutory authority
- the Committee’s notice of its action violated the Open Meetings Law, did not satisfy procedural due process, and failed to inform residents in a meaningful manner

- the Committee’s hearing process did not comply with due process requirements
- the decision was erroneous in light of the evidentiary record
- the decision was arbitrary and an abuse of discretion because it did not serve to protect public health and safety and it was determined by a private entity with a financial stake in the outcome, i.e., the district’s transportation contractor.

The School Committee contends that the Commissioner of Education lacks jurisdiction over Appellant’s constitutional and Open Meetings Law claims. Alternatively, it argues that:

- the Committee’s decision to provide personal notice only to parents of schoolchildren who might be affected by a boundary change was rational
- the analysis of Appellant’s real estate expert was flawed and his conclusion regarding the reduced value of Appellant’s property therefore is not credible
- a 15% reduction in the value of Appellant’s property, if established, does not constitute a taking under federal or state law
- Appellant was afforded numerous opportunities to speak to the School Committee about her concerns and the Committee reached a decision only after considering the public’s concerns
- the Committee acted in good faith in providing notice of its action and it delayed making a final decision until the public had adequate opportunities to express its concerns
- the Commissioner of Education has previously decided that school committees have the authority to redraw attendance area lines
- the Committee did not act arbitrarily, and only acted after engaging in extensive fact-finding and weighing available alternatives
- Appellant’s recourse following this difficult decision is the electoral, not the judicial, process.

Discussion

In the 1975 case of Mr. and Mrs. Robert M. Grant, Jr. vs. Scituate School Committee, the Commissioner stated as follows:

School committees in this state are vested with “. . . the entire care, control, and management of all the public school interests . . .” (R.I.G.L. 16-2-18). It is our opinion that, under this broad grant of authority, school committees may designate the specific geographic areas from which children will attend the schools within their communities provided that such determination is not inconsistent with

law or regulations established pursuant to law and is not arbitrary, capricious, or unreasonable.⁸

In William E. Wolf vs. Cranston School Committee, (February 1, 1989),⁹ the Commissioner cited §16-2-18 as well as §§16-2-2 and 16-2-16 in finding that school committees are obligated to establish attendance areas for schools.¹⁰ In Robin Muggle et al. vs. Pawtucket School Committee, (August 25, 1989),¹¹ the Commissioner held that the school committee acted arbitrarily in adopting a redistricting plan that moved 64 children from one elementary school to another. In so finding, the Commissioner examined the applicability of the school committee's contractual class-size limits, the opportunity provided to parents to offer input prior to the decision, the stated purpose and the effect of the school committee's action, and the ability of the school committee to make an informed decision based upon the factual information it obtained during its consideration of the matter.

The evidence in this case shows that most of the classes at the Cumberland Hill Elementary School were at the contractual class-size limit. The rising number of out-of-district placements systemwide, which prompted the School Committee's review of this matter, was directly attributable to the class-size limit. Contrary to the facts in Muggle, the School Committee needed to take some action in order to comply with its class-size contractual obligations.

The record further shows that parents and other individuals affected by the boundary adjustment were given the opportunity to relate their concerns to the School Committee prior to a vote. Appellant and her husband spoke to the Committee as did some of their neighbors. In fact, the Committee entertained comments from any member of the community who wanted to speak about the subject. At the conclusion of the June 11th meeting, the Committee expressly directed the superintendent and assistant superintendent to consider the comments and suggestions made by the public at the

⁸ See also Donald J. Hanks vs. Cranston School Committee (March 27, 1978).

⁹ Affirmed by the Board of Regents, August 24, 1989.

¹⁰ R.I.G.L. 16-2-2 states that school committees must "establish and maintain . . . a sufficient number of schools in convenient places . . ." and §16-2-16 states that school committees shall make "rules and regulations for the attendance and classification of the pupils . . ." In Sabra A. Massey vs. East Greenwich School Committee (September 4, 1990), the Commissioner upheld the district's decision to reconfigure its four elementary schools, which assigned certain grades to different school buildings.

¹¹ Affirmed by the Board of Regents, May 10, 1990.

meeting. Such consideration was evident in the three options presented to the School Committee at its June 25th meeting. The Committee then solicited additional public comment, which factored in the various motions that the Committee voted on that evening. We find that the School Committee's ultimate decision was the result of meetings that were conducted in an open and receptive manner.

The School Committee elected to adjust attendance area boundaries in order to completely eliminate involuntary out-of-district placements and to accommodate projected student growth for the next several years. As part of this effort, the shift in the Cumberland Hill-Ashton boundary line helped the Committee achieve these objectives.

We are also satisfied that the School Committee conducted sufficient fact-finding, examined various alternatives, and tailored its action to meet the specific issues that were presented by the problem at hand. The Committee considered this matter over the course of three meetings before it voted to adjust the boundary lines. It revisited the matter in depth at a fourth meeting before it decided not to disturb its prior vote. The Committee heard from many individuals who were affected by this matter in different ways. It solicited and considered options to remedy the problem. It then modified and combined elements of the options as it attempted to craft a better solution. In short, it engaged in a deliberative process that produced an informed decision.

The School Committee correctly asserts that we do not have jurisdiction to consider alleged violations of the Open Meetings Law.¹² Nonetheless, notice of the School Committee's action is still relevant in an appeal of this nature for purposes of reviewing the opportunity for a party's input and the information gathered by the Committee.

The School Committee's advertisement of its May 28th, June 11th and June 25th meetings included an agenda item referring to "out-of-district placement" and "transportation." While this description may have sufficed for the May 28th meeting, it did not fully convey the substance of the matter being discussed at the latter two meetings. Clearly, the adjustment of attendance area boundary lines was an integral part of the business being discussed by the Committee at its June 11th and June 25th meetings.

¹² See R.I.G.L. 42-46-8, which directs aggrieved parties to file complaints with the Attorney General.

For purposes of this case, however, Appellant had actual notice of the business being considered by the School Committee. Appellant did not see the newspaper notice for the May 28th meeting. She was unable to attend the June 11th meeting, but she expressed her opposition to boundary line adjustments in a conversation with the School Committee chairman on June 10th. Appellant further explained her opposition in a June 18th letter and in comments to the Committee at its June 25th and July 9th meetings. Appellant's husband also attended the last two meetings and spoke to the Committee. Consequently, we find that Appellant was aware of the actual business before the School Committee, she had ample opportunity to fully express her concerns and opinions, and the Committee had the benefit of her comments in considering this matter.

Assuming *arguendo* that we have jurisdiction over Appellant's claim that the School Committee's action represents an unconstitutional taking of her property, we find the claim to be without merit. In E & J Inc. v. Redevelopment Agency of Woonsocket,¹³ the Rhode Island Supreme Court stated that “[d]iminution in value alone is simply not sufficient to present a cognizable claim for taking of an interest in property under the Fifth and Fourteenth Amendments [citations omitted],”¹⁴ and that “[d]epreciation of property values alone . . . is not a taking of property within the meaning of section 16” of article I of the Rhode Island Constitution.¹⁵ The Court further noted that

The complaint before us simply alleges a taking of property because its value has been lessened, and does not make any claim of interference with plaintiff's possession, use or enjoyment of the subject property. It therefore fails to set forth any specific property interest which has been seriously impaired by the agency.¹⁶

In view of the E & J Inc. case, we do not find that there was a taking of Appellant's property by the School Committee.

Appellant also asserts that the town planning board has statutory responsibility for the “economic growth of schools,” that “any proposed plan” must conform to the

¹³ 405 A.2d 1187 (1979).

¹⁴ Id. at 1189.

¹⁵ Id. at 1191.

¹⁶ Id. at 1189.

comprehensive plan, and that the School Committee has no authority to effectuate changes to the economic growth of the school district.¹⁷

Under R.I.G.L. 45-22-7(a), a town planning board is authorized to “make studies and prepare plans and reports on the needs and resources of the community with reference to its physical, economic, and social growth and development as affecting the health, safety, morals, and general welfare of the people.” Public facilities, including schools, are among the planning board’s areas of concern. The planning board also is authorized to prepare a comprehensive land use plan, which is to be adopted by the municipal legislative body.¹⁸ The comprehensive plan is a statement that is

designed to provide a basis for rational decision making regarding the long-term physical development of the municipality. The definition of goals and policies relative to the distribution of future land uses, both public and private, forms the basis for land use decisions to guide the overall physical, economic, and social development of the municipality.¹⁹

Obviously, the planning board plays an important role in monitoring the growth and development of the town. We are not reviewing a land use decision in this case, however. Furthermore, the School Committee’s decision does not expand or enlarge the public school system. To the contrary, the Committee was attempting to determine the most prudent way of assigning students to the elementary schools that presently exist in the town. While we recognize the planning board’s responsibility with regard to growth and development, we have long recognized the School Committee’s legal authority under Title 16 to determine attendance areas. We believe that the duties of the two bodies in this regard are compatible. In the circumstances of this case, we therefore find that the School Committee acted within the scope of its authority and did not usurp the role of the planning board.

Finally, based on the facts discussed above, we find that the School Committee’s process in reaching its decision was fair and regular, that its decision is supported by facts

¹⁷ Appellant’s memorandum, p. 10.

¹⁸ R.I.G.L. 45-22.2-8.

¹⁹ R.I.G.L. 45-22.2-6.

gathered by the Committee, and that the Committee did not abuse its discretion in reaching its decision.²⁰

Conclusion

The appeal is denied.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: May 21, 2001

²⁰ Questioning the transportation contractor's role in this matter, Appellant contends that the Committee's action is arbitrary because it was taken to benefit a private party. The evidence shows that the contractor merely provided logistical data to school administrators to assist in the evaluation of possible boundary locations. Moreover, a major impetus for the Committee's review of out-of-district placements and adjustment of attendance area boundary lines was the reduction of transportation costs, hardly a benefit to the party contracted to provide this service.