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ERICH RUSSEK-ROBBINS and)
LISA WAX)
7126 Main Street)
Clifton, VA 20124,)

Plaintiffs,)

v.)

Case No. _____

FAIRFAX COUNTY SCHOOL BOARD)

SERVE ON:)

Pam Goddard)
Clerk of the Board)
8115 Gatehouse Road)
Suite 5400)
Falls Church, VA 22042)

Defendant.)

COMPLAINT

Plaintiffs Elsa Armendaris, Connie Campbell, James Foley and Nora Foley, Donald G. Gibson and Tina E. Gibson, Eric Hercken and Amanda Hencken, Robert Lucas and Lisa Lucas, Andrew Lawrence and Susan Lawrence, Richard Schnizer and Holly Schnizer, Thomas VanBlaricom, John Vittori and Elizabeth Vittori, Lanette Waite, Kelly Waite, Erich Russek-Robbins and Lisa Wax (collectively, the "Plaintiffs"), by and through their undersigned counsel, hereby submit their Complaint pursuant to Virginia Code § 22.1-87 to review the July 8, 2010 action of the

Fairfax County School Board (the “Board”) to close Clifton Elementary School (“CES”), and for declaratory and injunctive relief, stating as follows:

Parties & Jurisdiction

1. Plaintiffs are residents of Fairfax County and reside in the CES school district. Each of the Plaintiffs has a child or children currently attending CES and/or pre-school age children who would attend CES if CES is not closed by the Board.

2. Plaintiffs have been personally and directly aggrieved as a result of the Board’s arbitrary and capricious action in that the Board, in its haste to vote to close CES, failed to provide a plan for the schooling of Plaintiffs’ children in a Fairfax County public school, and have been further aggrieved personally and directly by the Board’s failure to abide by applicable law and its own internal rules of governance and, more specifically, by the Board’s failure to provide proper notice of its July 8, 2010 vote to Plaintiffs which was taken without adequate justification of facts and without conformity to the applicable statutes and its own internal guidelines. Certain Plaintiffs are further personally and directly aggrieved by the Board’s arbitrary and capricious decision to close CES in that they are parents of special needs children who require the continuity and smaller size of CES for health and educational purposes. Certain Plaintiffs are also personally and directly aggrieved by the Board’s arbitrary and capricious decision to close CES in that their livelihood is connected to having a school nearby their businesses.

3. Defendant Fairfax County School Board is the elected governing body of the Fairfax County Public Schools, which it supervises. The Board is responsible for, *inter alia*, the care and management of County school property, ensuring that County schools are operated efficiently and according to law, and providing notice, obtaining public comment, and holding public hearings on prior to consolidating or redistricting schools. The Fairfax County Public School system currently serves over 170,000 students. CES currently serves over 370 students in the geographically largest

elementary school attendance area in the County of Fairfax, covering nearly 40 square miles (or approximately 10% of the entire County).

4. This Court has subject matter jurisdiction pursuant to Va. Code §§ 22.1-87, 2.2-3707, and 2.2-3714, and venue is proper in this Court pursuant to Va. Code § 8.01-261.

Relevant Facts

5. Starting in July 2009, the Fairfax County School Board entertained proposals from the Fairfax County Public Schools (“FCPS”) Staff to address overcrowding in certain public schools in the southwestern part of the County. The proposals fundamentally called for either the renovation of Clifton Elementary School and additions to other schools to increase southwestern county student capacity, or for the closure of CES and the construction of a new elementary school on the grounds of Liberty Middle School (the “Liberty Site”).

6. Shortly thereafter, the Board invited public participation in the process by forming the Southwestern Regional Planning Committee (the “Committee”), comprised of residents representing over 20 elementary schools in the potentially affected areas, to examine proposals for the renovation of CES or for the closure of CES and the construction of a new elementary school.

7. Following months in which the Committee considered numerous options and plans developed itself or proposed by FCPS Staff to address overcrowding and whether to renovate CES or build a new elementary school at the Liberty Site, FCPS Staff submitted its Final Staff Report dated May 3, 2010 to the Board in a New Business session on June 10, 2010, in which it summarily ignored input provided by the Committee and submitted as its recommendation Staff’s original position from July 2009 that the Board close CES and construct a new elementary school at the Liberty Site to alleviate overcrowding. A true and correct copy of the Final Staff Report is attached hereto, and incorporated herein by reference as, **Exhibit A**. In a June 14, 2010 Work Session, Staff presented the fundamental recommendation again to the Board, but with modified alternatives and

cost numbers.

8. The Board held an impassioned public hearing on June 28, 2010 to address the FCPS Final Staff Report, which the Board presented as New Business. *See* Public Hearing No. 5 Agenda of June 28, 2010, a true and correct copy of which is attached hereto, and incorporated herein by reference as, **Exhibit B**. At the hearing, over 150 residents and other interested parties testified in favor of keeping CES open (only *one* was opposed) and addressed the FCPS Final Staff Report and related recommendations. These speakers from throughout the County presented uncontroverted evidence establishing that each and every ground that the Staff asserted against renovation of CES (as opposed to closure) omitted material facts or was factually incorrect, including, but not limited to, the facts that: (1) the existence of well water for the school did not pose prohibitive health concerns or costs to the renovation of CES; (2) the Staff's conclusion that CES was in a state of declining enrollment to under 300 students by 2015 was based upon a flawed analysis of CES's historical enrollment data and statistical methodologies that were insufficient for accurately projecting student enrollment at in a single school attendance area over a five year period; and (3) FCPS Staff miscalculated the renovation costs for CES, some of which were actually lower than the costs of constructing a new elementary school at the Liberty Site. *See* DVD recording of June 28, 2010 public hearing, a true and correct copy of which is attached hereto, and incorporated herein by reference as, **Exhibit C**.

9. Specifically, the Board was made aware that the FCPS Staff had failed to take into consideration in its estimation of the costs of constructing a new elementary school that the proposed Liberty Site was contaminated with naturally-occurring asbestos. Asbestos is a known carcinogen.

10. The Board held a Work Session the following day, June 29, for which it published an agenda stating that the decision to close or renovate CES "should be based on the issues of the

reliability of the water supply, declining enrollment and renovation costs and not by the potential impact on future boundary studies.” *See* June 29, 2010 Agenda, a true and correct copy of which is attached hereto, and incorporated herein by reference as, **Exhibit D**. Importantly, the Board made no revision to its published June 10, 2010 Regular Meeting Recommendation to close CES only upon the completion of a new elementary school at the Liberty Site. *See* Agenda of June 10, 2010, a true and correct copy of which is attached hereto, and incorporated herein by reference as, **Exhibit E**.

11. However, at the Board’s Regular Meeting closed to public comment on July 8, 2010, for the first time the Board considered a Motion to close CES without tying closure to the completion of a new elementary school, or for that matter providing any plan to ensure schooling for the current and future students of CES at another Fairfax County public school. *See* DVD of July 8, 2010 Meeting, a true and correct copy of which is attached hereto, and incorporated herein by reference as, **Exhibit F**.

12. The Motion therefore constituted “new business” that, pursuant to the Board’s own Strategic Governance guidelines, required prior public notice. *See* Board’s Strategic Governance Manual at 52, **Exhibit G**.

13. Moreover, supporting documents and information for the July 8 meeting were not published prior to the meeting, including, but not limited to, a report disclosed twelve minutes into the meeting by FCPS Chief Operating Officer Dean Tistadt establishing that CES’s well water did not, in fact, (and contrary to previously stated grounds for closure by the Board and Staff) pose a health risk. *See* Tistadt email to Board, a true and correct copy of which is attached hereto, and incorporated herein by reference as, **Exhibit H**.

14. On July 8, 2010, the Board voted nine to two in favor of the Motion.

15. On July 9, 2010, the Board issued a press release confirming that it had voted to close CES

“with the specific closure date to be determined by the School Board” absent any deadline keyed to the completion of a new elementary school or any other plan to ensure the schooling of current and future CES students at another Fairfax County public school. *See* July 9, 2010 Press Release, a true and correct copy of which is attached hereto, and incorporated herein by reference as, **Exhibit I**.

16. The press release further alleged that “[t]he School Board carefully considered this issue over the past few months” and had “weigh[ed] all the issues related to closing versus renovating Clifton Elementary.” Ex. I.

17. The press release further cited three grounds allegedly justifying closure, as opposed to renovation of, CES—(1) topographical features allegedly resulting in “higher than normal renovation costs,” (2) declining enrollment in CES, and (3) higher renovation costs per student at CES than “a similar sized school”—each of which had been refuted as a matter of fact by the uncontroverted testimony and evidence offered by residents at the June 28, 2010 public hearing.

Claim

18. Plaintiffs repeat and incorporate by reference the allegations set forth in paragraphs 1 through 17.

19. The Board, in bringing and voting on the Motion to close CES on July 8, 2010, failed to comply with statutory notice requirements, failed to comply with the requirements of the Board’s own Strategic Governance guidelines, and as such exceeded its authority and acted arbitrarily, capriciously, abused its discretion, and deprived Plaintiffs of their right to due process.

20. The Board’s action on July 8, 2010, violated Va. Code § 22.1-79(8) because it failed to post a notice of public hearing on the consolidation of schools based upon the Motion in a public newspaper of general circulation at least ten (10) days prior to the July 8 hearing.

21. The Board’s action on July 8, 2010 violated the Open Meetings Act, Va. Code § 2.2-3707, because it failed to provide notice and public comment of the Board’s Motion and its vote taken on

July 8, 2010.

22. The Board also violated its own Strategic Governance guidelines, which provides that “[t]he agenda and all supporting documents and information shall be made available to the School Board and the public and posted to the web at least five days in advance of the meeting.” Ex. G at 52.

23. The Board’s action on July 8, 2010 was also arbitrary and capricious, an abuse of its discretion, and in excess of its authority, because it summarily ignored the unrefuted evidence presented at the June 28, 2010 public hearing and otherwise establishing that each and every factual basis underpinning the FCPS Staff’s Final Report and Recommendation to close CES and construct a new elementary school at the Liberty Site omitted material facts and/or was factually incorrect.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

(1) Enter judgment in Plaintiffs’ favor, and against the Defendant, the Fairfax County School Board;

(2) pursuant to Va. Code § 22.1-87, review the Board’s action to close Clifton Elementary School; and, upon review,

(3) enter an Order declaring the Board’s action to close Clifton Elementary School arbitrary and capricious, an abuse of the Board’s discretion, and in excess of the Board’s authority, and therefore null and void and of no legal effect; and further

(4) enter an Order permanently enjoining the Board from closing Clifton Elementary School based upon the Board’s improper and unlawful action taken on July 8, 2010; and

(5) award such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Dated: August 6, 2010