

Loudoun County School Board Proposal Regarding Section 2.2-3711A.3
October 2, 2015

Proposal:

The Loudoun County School Board proposes that Section 2.2-3711A.3 be amended to add clarifying language to clearly allow a local governing body, when working collaboratively or consulting with a local school board regarding the acquisition of real property for school sites, to convene in closed session even though it is not contemplated to be a co-purchaser of the property with the school board.

Current Language:

“A. Public bodies may hold closed meetings only for the following purposes:

...

3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.”

Proposed Language:

“A. Public bodies may hold closed meetings only for the following purposes:

...

3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body. **WHEN A LOCAL SCHOOL BOARD AND ITS GOVERNING BODY COLLABORATE OR CONSULT ONE ANOTHER REGARDING THE ACQUISITION OF REAL PROPERTY FOR SCHOOL PURPOSES, EITHER MAY MEET IN CLOSED SESSION REGARDLESS OF THE BODY PURCHASING THE PROPERTY WHEN DISCUSSION IN AN OPEN MEETING WOULD ADVERSELY AFFECT THE BARGAINING POSITION OR NEGOTIATING STRATEGY OF EITHER.”**

Loudoun County School Board Proposal Regarding Section 2.2-3711A.3
October 2, 2015

Questions and Answers:

1. Why is this change needed?

ANSWER:

- a. The Loudoun County School Board and the Board of Supervisors have a very good relationship in working together and sharing information in the acquisition of school sites and have memorialized that relationship in two documents:
 - i. Loudoun County Public Schools Capital Facilities Planning Guidelines, dated March 11, 2010; and
 - ii. Joint BoS/School Board Committee Report; Shared Services Initiative: Land Acquisition Process, dated August 29, 2014.
 - b. The information that is shared with the Board of Supervisors is sensitive land acquisition information such as budgeted cost parameters, seller's asking price and other information.
 - c. A strict reading of Section 2.2-3711A.3 might lead one to conclude that the Board of Supervisors cannot meet in closed session to discuss land purchases by the School Board since the Board of Supervisors is not contemplated to be a party to the purchase/sales contract.
2. Why not just invite one (maybe 2 at most) Board of Supervisor members to the closed session of the School Board?

ANSWER:

- a. This would be contrary to the robust and full and open relationship that exists in which the views of all of members of the Board of Supervisors are provided to the joint staff working team at the same time. Not only would the synergy of multiple, contemporaneous comments and views be lost if comments were limited to one or two members of the Board of Supervisors, but the trust and rapport with all of the members would be sacrificed.
- b. Moreover, the School Board would be unable to determine the "sense" of the entire Board of Supervisors when only one or two members would be present with the School Board.
- c. While the one or two Supervisor approach might be legal, it ignores the fundamental need to build and maintain trust and rapport in these matters will all members of the Board of Supervisors even though they are not signatories to the contract. They play a critical role in funding school sites and to sideline 7 of 9 members would be counterproductive to efficient government operations.
- d. 2 BoS designees may be construed as a committee under VFOIA.

Loudoun County School Board Proposal Regarding Section 2.2-3711A.3
October 2, 2015

3. If this change was approved, would it keep more information from the public?

ANSWER:

- a. No, because the information is already kept confidential by the School Board until the contract is awarded. The only change being made here is to permit the School Board to confidentially share the information with more people—namely, the duly elected representatives of the people prior to contract award.
- b. Under no circumstances would the School Board share confidential real estate acquisition information prior to award in an open meeting of the Board of Supervisors. Consequently, disapproval of this proposal will not result in more information being made public.

4. If this change is not approved, what are the alternatives?

ANSWER:

- a. The School Board and the Board of Supervisors would comply with VFOIA in all circumstances. Therefore, an alternative would be to make the Board of Supervisors a co-purchaser along with the School Board on the purchase/sales contract.
- b. This alternative, while simple on its face, raises a whole host of contract administration problems that do not currently exist with the single-purchaser approach. In short, the two entities would have to timely agree on decisions regarding the contract, particularly during the due diligence study period when almost anything could arise that was not anticipated or go awry. The effort that would be needed to determine a course of action and then get – not one – but two public bodies to timely agree would not be insignificant.