IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SHELLBURNE CIVIC ASSOCIATION, INC., a Delaware corporation, LIFTWOOD ASSOCIATES, INCORPORATED, a Delaware corporation, JEFFREY CAPALDI, and TANYA LOONEY,	)	
Plaintiffs,	)	
v.	)	C.A. No. 2273-N
BRANDYWINE SCHOOL DISTRICT, a reorganized school district of the State of Delaware; BOARD OF EDUCATION OF THE BRANDYWINE SCHOOL DISTRICT, a State school board; NEW CASTLE COUNTY, a political subdivision of the State of Delaware; TALLEYVILLE GIRLS SOFTBALL LEAGUE, INCORPORATED, a Delaware non-profit corporation; and STATE OF DELAWARE,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Submitted: August 15, 2006
Decided: September 1, 2006

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LAMB, Vice Chancellor.

In 2004, the Delaware General Assembly authorized by statute the expenditure of funds to raze a long-vacant former public school building and provided that, once the demolition was complete, the ground was to be leased to a specific girls softball league for development of a softball complex. The demolition work was performed and the lease entered into. Two individuals and two civic associations now bring this action to enjoin the construction of the softball complex, claiming that the lease was entered into in violation of a statute that generally governs the actions of school districts in selling or leasing surplus land or property. They also attack the act at issue on several constitutional grounds. The defendants have all moved to dismiss the complaint for failure to state a claim upon which relief can be granted. The court concludes that the statute the plaintiffs rely upon does not apply to the lease at issue and, further, concludes that the constitutional challenges are facially defective. Thus, the action must be dismissed.

I.

A. The Parties

The plaintiffs in this case are two incorporated civic associations and two individuals residing in the area surrounding the disputed property. Shellburne Civic Association, Inc., a Delaware corporation, is a neighborhood civic association of residents located between Shipley Road and Baynard Boulevard in

Brandywine Hundred, New Castle County. Liftwood Associates, Incorporated, a Delaware corporation, is a neighboring civic association of residents in the area of Liftwood, located at Shipley Road between Weldin Road and Old Mill Lane, also located in Brandywine Hundred. The individual plaintiffs, Jeffery Capaldi and Tanya Looney, are residents of Shelburne and Liftwood, respectively. The defendants are Talleyville Girls Softball League, Inc., the ultimate lessee of the site, the Brandywine School District, the Board of Education of Brandywine School District, New Castle County, and the State of Delaware.

B. The Facts

The facts discussed in this opinion are taken from the well pleaded allegations in the complaint. When reviewing a motion to dismiss, generally only the matters referred to in the pleadings are considered.[1] The court may also take judicial notice of certain facts pursuant to Delaware Rule of Evidence 201.[2] In this case, the court, with the plaintiffs' consent, takes judicial notice of the agendas and

[1] *Bergstein v. Texas Intern. Co.*, 453 A.2d 467, 469 (Del. Ch. 1982).
[2] D.R.E. 201. The court may take judicial notice of adjudicative facts that are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned . . . if requested by a party and supplied with the necessary information." *See also In re General Motors (Hughes) S'holder Litig.,* 897 A.2d 162, 169 (Del. 2006) ("The trial court may also take judicial notice of matters that are not subject to reasonable dispute.").

minutes of several Brandywine School District Board of Education meetings at which the lease at issue was considered.[3]

The disputed lease in this case is for approximately eleven acres of land where the Old Mill Lane School was located. Once a busy public elementary school, Old Mill Lane School lay vacant for 20 years due to a declining enrollment in the school district.[4] Section 153(a) of the Bond and Capital Improvements Act of the State of Delaware for the Fiscal Year Ending June 30, 2005 (the "2005 Bond Bill") appropriated funds for the demolition of the vacant school building.[5]

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[3] *In re Wheelabrator Techs., Inc. S'holders Litig.*, 1992 WL 212595, at *12 (Del. Ch. Sept. 1, 1992) ("On a motion to dismiss the Court is free to take judicial notice of certain facts that are of public record if they are provided to the Court by the party seeking to have them considered.") (quotations and internal citations omitted); Pl.'s Answering Br. 9. The court excludes from its consideration all other material submitted by the defendants.

[4] Compl. ¶ 11. The disposition of the vacant school has been at issue for some time. The 2004 Bond Bill provided as follows:

> The General Assembly directs the Budget Director, Director of Economic Development Office and the Controller General to explore the feasibility of disposition and reuse of the parcels of land occupied by the former Channin School and Old Mill Lane School. Notwithstanding any provision of the Delaware Code to the contrary and with the consent of the Co-Chairs of the Bond Bill, the Budget Director, Controller General and the Secretary of Administrative Services shall have the authority to proceed with the disposition of said properties.

Fiscal Year 2004 Bond and Capital Improvements Act, 74 Del. Laws ch. 69, § 108 (2003).

[5] Section 153. Channin and Old Mill Lane Elementary Schools.

> (a) The Section 1 Addendum to this Act appropriates $1,000,000 to the Department of Education, Brandywine School District for the Channin and Old Mill Elementary Schools. These funds shall be used for the demolition, including asbestos removal, of said schools.
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> (b) Upon completion of the demolition, the Brandywine School District shall lease said sites to New Castle County under a long term arrangement. The County will subsequently sub lease the Channin site to the Concord Soccer Association and the Old Mill Lane site to the Talleyville Girls Softball League. Each organization shall be permitted to develop their respective site at their cost. Both sites shall be made available by outside community groups when league use is not scheduled.

Fiscal Year 2005 Bond and Capital Improvements Act, 74 Del. Laws ch. 308, § 153(a-b) (2004).

Section 153(b) of that act further provided that "[u]pon completion of the demolition, the Brandywine School District shall lease said sites to New Castle County under a long term arrangement . . . . The County will subsequently sub lease . . . the Old Mill Lane site to the Talleyville Girls Softball League."[6] The complaint alleges that the plaintiffs "have undertaken extensive efforts to engage the Defendants to consider the issue of compatibility with their neighborhoods."[7] What the complaint does not allege are any facts regarding the defendants' response to those "extensive efforts." Indeed, the artfully pleaded complaint even fails to mention that Talleyville's final plan of development that contemplates a four-field softball complex reflects substantial concessions to neighborhood interests.[8]

II.

The verified complaint raises both statutory and constitutional claims. The complaint first alleges that the defendants failed to comply with 14 *Del. C.* § 1057(b)(5)[9] because the School Board did not hold a hearing and make a

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[6] *Id*. at § 153(b).

[7] Compl. ¶ 34.

[8] Although the court does not look beyond the four corners of the complaint in this regard, it is apparent from the defendants' motion papers that Talleyville initially proposed a seven-field configuration which it scaled back as the result of an extensive consultative process involving the plaintiff civic associations.

[9] 14 *Del. C.* § 1057 sets forth a detailed procedure for the disposal of school property. Section 1057(b)(5), in particular, requires the proposed use of leased property be compatible with the neighborhood.

determination as to the compatibility with the neighborhood of the proposed use of the leased site as a "softball complex."[10] The complaint next alleges a series of reasons why the special legislative directive found in section 153 of the 2005 Bond Bill did not mandate the lease to Talleyville and, thus, did not supercede the general application of section 1057(b)(5). Among other things, the complaint asserts that the 2005 Bond Bill expired at the end of the 2005 fiscal year; that it was, in any event, not mandatory on the School Board; and that it has no binding effect because it is not part of the Delaware Code.[11] Finally, the complaint levies a two-pronged constitutional attack on section 153, arguing that the 2005 Bond Bill violates both the "one subject rule" and the "revenue clause" of the Delaware Constitution.[12]

Talleyville moves to dismiss the complaint on the grounds of laches.[13] All the defendants move to dismiss on the grounds that the complaint does not state a claim on which relief can be granted. Talleyville also argues that the plaintiffs have not alleged irreparable harm necessary for this court to grant an injunction

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[10] Compl. ¶¶ 30-32, 35.
[11] Compl. ¶¶ 16-18.
[12] Compl. ¶¶ 26-29.
[13] Since the court finds the plaintiffs' complaint fails to state any claim upon which relief can be granted it does not reach the defendants' laches argument. The extent to which the equitable principle of laches can apply to constitutional claims is an open issue in Delaware. See generally *Stilp v. Hafer*, 718 A.2d 290 (Pa. 1998) for a discussion of the issue and a survey of other states' decisions.

and that the balance of hardships favors Talleyville.[14] Furthermore, the defendants' briefs seek to demonstrate that the plaintiffs' statutory claims have no basis in Delaware law because the application of 14 *Del. C.* § 1057 was superseded by the 2005 Bond Bill and subsection 1057(b)(5) does not require the Board of Education to conduct a hearing on compatibility. The defendants also move to dismiss the plaintiffs' claims that the 2005 Bond Bill expired at the end of the fiscal year and was not mandatory on the Board of Education, as being inconsistent with the language and intent of the General Assembly. Finally, with regard to the plaintiffs' constitutional arguments, the defendants contend that the plaintiffs' claim that the 2005 Bond Bill violates the one subject rule of Article II, § 16 the Delaware Constitution is controlled by the Delaware Supreme Court's opinion in *Turnbull v. Fink*[15] and is clearly contrary to recent Chancery case law. The defendants further contend the plaintiffs' claim that the 2005 Bond Bill violates the revenue clause, Article VIII, § 2, is untenable under long standing Delaware Supreme Court precedent.

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[14] Since the court finds the plaintiffs' complaint fails to state any claim upon which relief can be granted it does not need to address the issues of irreparable harm and balance of hardships for injunctive relief.
[15] 668 A.2d 1370 (Del. 1995).

III.

In order to dismiss a claim under Court of Chancery Rule 12(b)(6), a court "must determine with reasonable certainty that, under any set of facts that could be proven to support the claims asserted, the plaintiffs would not be entitled to relief."[16] A court must accept as true all well pleaded factual allegations in the complaint and all reasonable inferences to be drawn from those facts.[17] But a court need not "blindly accept as true all allegations, nor must it draw all inferences from them in the plaintiffs' favor unless they are reasonable inferences."[18] All well pleaded facts are assumed true and all allegations are viewed in a light favoring the adequacy of the complaint.[19] It is manifestly clear that mere conclusions of law or fact are not enough. The allegations must be supplemented by specific factual allegations that tend to support the conclusions that are pleaded.[20]

IV.

A. Statutory Claims

The crux of the plaintiffs' statutory claims is their contention that the 2005 Bond Bill did not supercede the general application of 14 *Del. C.* § 1057(b)(5), which requires that, when surplus school property is leased, "the proposed use of

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[16] *Grobow v. Perot*, 539 A.2d 180, 187 n.6 (Del. 1988).
[17] *Kohls v. Kenetech Corp.*, 791 A.2d 763, 767 (Del. Ch. 2000).
[18] *Grobow*, 539 A.2d at 187 n.6.
[19] *Del. State Troopers Lodge v. O'Rourke*, 403 A.2d 1109, 1110 (Del. Ch. 1979).
[20] *Bergstein*, 453 A.2d at 469.

the property is compatible with the characteristics of the neighborhood." On this slender statutory basis, the plaintiffs construct an elaborate argument that, before leasing the property to the County for sublease to Talleyville, the School Board was required to conduct a hearing and to make a specific determination that the proposed use of the property as a softball complex was compatible with the neighborhood. This argument fails for two principal reasons. To begin with, subsection 1057(b)(5) should only be read in the context of the overall provisions of section 1057(a-b), viewed as a whole. As they pertain to the lease of surplus real property owned by school districts, the other provisions of that statute specifically include the need for a public hearing, among other things.[21] Thus, if section 1057 generally applied to the Talleyville lease, there would be no need to imply a hearing requirement in subparagraph (b)(5) of that statute. Instead, the directive found in subparagraph (b)(5) would easily be construed as operating in the context of the process prescribed in the other parts of that act. Yet, the plaintiffs fail to argue that section 1057(a-b) applies generally to the lease of the Old Mill Lane School, conceding that the 2005 Bond Bill superceded the general requirements of that law. In the circumstances, the court will not read into section 1057(b)(5) a hearing requirement not found in it.

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[21] 14 *Del. C.* § 1057(a)(1-15).

The plaintiffs' claim also fails because, even if the court could read a requirement into subsection 1057(b)(5) of some sort of a formal hearing process to determine neighborhood compatibility, it is clear that the General Assembly negated any such requirement when it directed the School Board and the County to lease the property to Talleyville. It is the law of this state that specific statutes trump general statutes.[22] The General Assembly, by way of the specific provisions of the 2005 Bond Bill, replaced the generally applicable requirements of 14 *Del. C.* § 1057(a-b). This was a proper exercise of the General Assembly's inherent plenary power. As the plaintiffs concede, the reason there was no detailed hearing consistent with the process delineated in section 1057(a-b) is that the General Assembly made the judgment itself to demolish the building and lease the land to Talleyville when it enacted the 2005 Bond Bill.[23]

By conceding the general inapplicability of section 1057(a-b), the plaintiffs expose the weakness of arguing, nonetheless, that subsection (b)(5) of that statute still applies. It would defy reasonable interpretation to hold that one small

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[22] *See Turnbull v. Fink*, 668 A.2d 1370, 1377 (Del. 1995) ("Where possible, a court will attempt to harmonize two potentially conflicting statutes dealing with the same subject. If they cannot be reconciled, however, the specific statute must prevail over the general." (*citing Hamilton v. State*, 285 A.2d 807, 809 (Del. 1971))).

[23] *See Sierra Club v. DNREC*, 2006 WL 1716913, at *4 (Del. Ch. June 19, 2006) ("Those cases likewise suggest, in my view, that Section 81 is a permissible exercise of legislative authority–notwithstanding its application to an ongoing administrative proceeding, its specificity mooting a particular administrative appeal, and its impact upon a third party.").

fragment of a statute somehow survives when the plaintiffs readily concede the rest was superseded. The required public hearing, offer of sale to the state, public sale, and other detailed formalities of section 1057(a) became moot by the legislative directive that the site be leased to Talleyville. In issuing this directive, the General Assembly also implicitly satisfied the neighborhood compatibility provision of subsection 1057(b)(5).

This conclusion is in line with the text of the 2005 Bond Bill which mandates that it controls over "inconsistent" laws.[24] This is not to say the School Board had no discretion in leasing the property. The School Board could, and did, impose certain conditions on Talleyville in approving the lease.[25] But to require the School Board to make a determination that softball was a compatible use for the site when the General Assembly had already made that determination would be inconsistent with the legislative enactment.

The court need not resolve whether the language in the 2005 Bond Bill that "the Brandywine School District *shall* lease" and the "County *will* sublease" is mandatory, as the defendants maintain, or permissive, as the plaintiffs claim.[26] This is because the Brandywine Board of Education met and voted to approve the

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[24] Fiscal Year 2005 Bond and Capital Improvements Act, 74 Del. Laws ch. 308, § 157 (2004).
[25] The School Board imposed an insurance requirement on Talleyville in the lease and also mandated signage and enforcement of the district's anti-tobacco policy. Compl. ¶ 19.
[26] Fiscal Year 2005 Bond and Capital Improvements Act, 74 Del. Laws ch. 308, § 153 (2004).

lease arrangement with the County and Talleyville.[27] Independent of whether or not they were mandatorily required to do so by the 2005 Bond Bill, the School Board found the leasing arrangement proper and approved it. What the School Board was not free to do was to make a determination about neighborhood compatibility that was inconsistent with the one made by the General Assembly.

Next, the plaintiffs argue that the 2005 Bond Bill is ineffective and of no permanent effect because it was not codified in the Delaware Code. This argument is clearly controlled by statute. The relevant statute, 1 *Del. C.* § 109(a), provides that all laws "of a public and general nature, but not local, private or temporary laws, shall be enacted as amendments to the titles of this Code." The Bond Bill is a temporary law that addresses predominantly local issues, and is, thus, wholly outside the scope of section 109(a). Moreover, even if section 109(a) was somehow applicable to the 2005 Bond Bill, or more specifically section 153 of that law, the savings clause found in section 109(h) provides that "[n]o law shall be invalid because it was not enacted in conformity with this section."

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[27] Board of Education and Brandywine School District's Opening Br., Ex. 9.

Moreover, while the 2005 Bond Bill is a temporary law for purposes of 1 *Del. C.* § 109(a), section 153 of that bill did not expire at the end of the fiscal year as the plaintiffs claim. Section 153 includes specific time language that is counter to the general expiration language contained in the 2005 Bond Bill. It states "[u]pon completion of the demolition" the leasing arrangement will occur.[28] The appropriation for the demolition is governed by section 1, that funds "remaining unexpended or unencumbered by June 30, 2007, shall be subject to reversion or reauthorization."[29] It is an often cited canon of interpretation that in construing statutes, specific provisions should prevail over general provisions.[30] The goal of statutory interpretation is to ascertain and give effect to the intent of the General Assembly expressed in the language of the statute.[31] In ascertaining legislative intent, it is said that, where the statute as a whole is unambiguous, the court's role is limited to giving effect to the literal meaning of the words used.[32] Here, the statute is unambiguous. It would be nonsensical to impose the general fiscal year time limit on the subsequent "long-term" lease of the site, when the condition

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[28] Fiscal Year 2005 Bond and Capital Improvements Act, 74 Del. Laws ch. 308, § 153 (2004).
[29] *Id.* § 1.
[30] *See Oceanport Indus., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 901 (Del. 1994) (citing "a rule of statutory construction that specific provisions should prevail over general provisions").
[31] *Giuricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del. 1982) ("It is fundamental that the Courts ascertain and give effect to the intent of the General Assembly as clearly expressed in the language of a statute.").
[32] *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1246 (Del. 1985) (describing legislative interpretation under Delaware Law).

precedent for that lease, the demolition of the building, is limited only by a possibility of reversion of the funds after three years.[33] In short, the specific term "[u]pon completion of the demolition" trumps, and is not limited by, the general expiration of the 2005 Bond Bill at the end of the fiscal year.[34] To construe the statute otherwise would frustrate the legislative intent and ignore the plain nexus between the demolition and subsequent lease.

B. Delaware Constitution Claims

The plaintiffs claim that the Bond Bill violates the "one subject rule"[35] and "revenue clause"[36] of the Delaware Constitution.[37] With regard to the plaintiffs' "one subject rule" claim, this case is strikingly similar to a recent case where the Chancellor rejected a nearly identical constitutional challenge to the fiscal year

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[33] Fiscal Year 2005 Bond and Capital Improvements Act, 74 Del. Laws ch. 308, § 153 (2004).
[34] *Cf. Lazard Debt Recovery GP, LLC. v. Weinstock*, 864 A.2d 955, 974 (Del. Ch. 2004) ("The specific provision of the Subscription Agreement indicating that signatories are agreeing to join and be bound to the Limited Partnership Agreement as limited partners trumps any more general language to the contrary.").
[35] Del. Const. art. II, § 16 ("No bill or joint resolution, except bills appropriating money for public purposes, shall embrace more than one subject, which shall be expressed in its title.").
[36] Del. Const. art. VIII, § 2 ("All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose alterations as on other bills; and no bill from the operation of which, when passed into a law, revenue may incidentally arise shall be accounted a bill for raising revenue; nor shall any matter or cause whatever not immediately relating to and necessary for raising revenue be in any manner blended with or annexed to a bill for raising revenue.").
[37] The Delaware General Assembly's power is plenary. *See* RANDY J. HOLLAND, THE DELAWARE CONSTITUTION: A REFERENCE GUIDE 69 (2002) ("In the American States, as distinguished from the Federal Government, the legislative power is as broad and ample in its omnipotence as sovereignty itself, except in so far as it may be curtailed by constitutional restrictions express or necessarily implied." (*quoting Collison v. State*, 2 A.2d 97, 100 (Del. 1938))).

2006 Bond Bill. In *Sierra Club v. DNREC*, the Sierra Club levied a multifaceted constitutional attack on section 81 of the 2006 Bond Bill, a provision that called for the dredging of the Assawoman Canal.[38] The Chancellor held that the case was controlled by a decision of the Delaware Supreme Court, holding that a bill that appropriates money for public purposes is free of the restraint that it be limited to a single subject.[39] Thus, as it is firmly established under Delaware law that a Bond Bill is an appropriations bill, the constitutional requirement that only a single subject is expressed in its title is inapplicable.

The plaintiffs also claim that the 2005 Bond Bill violates Article VIII, § 2, the "revenue clause" of the Delaware Constitution because the Bond Bill includes matters "not immediately relating to and necessary for raising revenue" and, thus, precluded from being "blended with or annexed to a bill for raising revenue."[40] The plaintiffs argue that the Bond Bill is a revenue bill because the bond issuances authorized by the Bond Bill raise "revenue" within the meaning of Article VIII,

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[38] 2006 WL 1716913, at *2.
[39] *Id. citing Turnbull*, 668 A.2d at 1378 (upholding a substantive amendment to a statute providing for a limited waiver of sovereign immunity, even though it appeared in the 1989 Bond Bill).
[40] Del. Const. art. VIII, § 2.

§ 2.[41] However, as the plaintiffs fail to acknowledge, for the purpose of interpreting Article VIII, § 2, revenue bills are confined strictly to bills levying taxes for the general government use.[42] The provision is also limited to bills raising revenues for defraying the expenses of the general government.[43] The annual Bond Bill is a bill for spending government funds on specific government projects, which draws funds from non-tax sources. Such a bill, in contrast to a revenue bill, is an appropriations bill that allocates expenditures on individual projects, rather than a bill that raises revenue for general government expenditures. Simply put, issuing a bond does not raise revenue within the meaning of Article VIII, § 2,[44] and is, therefore, outside the scope of the "revenue clause."

C. Due Process Claim

The plaintiffs make a last ditch argument that the process by which the site was leased violated the due process clause of the United States Constitution.

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[41] The plaintiffs misapply the term "general obligation bond" to mean a bond to pay for general obligations of the state. A general obligation bond is called such because it is a bond that is repaid as a general obligation of the state. *See* Jerome J. Shestack, *The Public Authority*, 105 U. PA. L. REV. 553, 555 (1957) ("In general, revenue bonds are obligations whose interest and principal are to be paid solely from the revenues earned by the facilities constructed from the proceeds of the bond sales, as distinguished from the tax-supported general obligation of regular governmental units.").

[42] *Yourison v. State*, 140 A. 691, 692 (Del. Super. 1928) ("Revenue bills are those which have for their object the levying of taxes in the strict sense of the term.").

[43] *Opinion of the Justices*, 233 A.2d 59, 62 (Del. 1967) ("To qualify as a revenue-raising bill, within the purview of this constitutional provision, the money derived from the tax imposed must be available for the general governmental uses and purposes of the taxing sovereignty.").

[44] *See Sierra Club*, 2006 WL 1716913, at *5 (holding "the Bond Bill was an appropriations bill").

Assuming there was some requirement of a hearing or formal determination to comply with subsection 1057(b)(5), the plaintiffs, in fact, had the opportunity to be heard with regard to the lease of the property. The agendas of the Board of Education meetings clearly show that the lease was up for discussion and that anyone wishing to comment on any aspect of the arrangement could do so.[45] Indeed, the minutes reflect that at least one person did object and there was "lengthy discussion" after which the decision was delayed for a month.[46] The plaintiffs fail to explain how, even if some hearing was required, the hearing afforded to them was inadequate. Thus, their so-called due process claim must fail.

V.

For the foregoing reasons, the defendants' motions to dismiss are GRANTED. IT IS SO ORDERED.

[45] Board of Education and Brandywine School District's Opening Br., Exs. 7 and 9.
[46] *Id*. at Ex. 7.