IN THE CIRCUIT COURT FOR CALVERT COUNTY, MARYLAND

ACCOKEEK, MATTAWOMAN, PISCATAWAY CREEKS COMMUNITIES COUNCIL, INC., et al. **Petitioners**	:	
vs.	:	Case No. 04-C-13-006199
CALVERT COUNTY BOARD OF COUNTY COMMISSIONERS **Respondents**	:	

ORDER OF COURT

For the reasons set forth in an Opinion filed today, it is this 6th day of August, 2014, by the Circuit Court for Calvert County, Maryland,

ORDERED, that Ordinance No. 46-13 is deemed to be invalid, having been passed by the Board of County Commissioners outside the bounds of the Board's authority.

James P. Salmon
JUDGE

Copies mailed by the Court to:

Kevin J. Finto, Esquire

J. Carroll Holzer, Esquire

John B. Norris, III, Esquire

this 6th day of August, 2014.

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v.	:	Case No. 04-C-13-006199
CALVERT COUNTY BOARD OF COUNTY COMMISSIONERS **Respondents**	:	

OPINION

The Board of Commissioners for Calvert County (the "County Commissioners") (in April of 1964), first adopted a code of zoning regulations. Presently, a number of zoning districts are designated on the Official Zoning Maps of the County and the Zoning Ordinance contains tables describing various land uses and restricts where and under what circumstances those uses may be allowed.[1]

In 2006, the County Commissioners voted to amend a section of the Zoning Ordinance titled "Applicability." The Zoning Ordinance was amended so that, after the amendment, the Zoning Ordinance would not apply to "a qualified commercial power generating facility."

In Calvert County, there presently exists a large liquid natural gas ("LNG") terminal located on Cove Point Road in Lusby, Maryland. The facility is owned by Dominion Cove Point LNG, L.P. (hereinafter "Dominion'). At the LNG terminal, Dominion's land is used to liquify natural gas and transport it for domestic uses. Since 2011, however, Dominion has been developing plans to expand its facility (at a cost of 3.8 billion dollars) so that it can export LNG to Japan and other countries.

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[1]The primary objections of zoning "is the immediate regulation of property use through the use of classifications . . . ." *Rockville* v. *Rylyns*, 372 Md. 514, 530 (2002).

In order to export LNG a total of about fifty State or Federal permits will be needed. Some of those permits have already been obtained, and others are still under consideration by various State and Federal agencies.

The Cove Point facility is "split zoned," which means that part of the property is Zoned Industrial ("I-1") and part is in a Farm and Forest ("FFD") district.

In 2013, the County Commissioners opened case no. 13-09. The case concerned Ordinance No. 46-13, which was a proposed text amendment to the Zoning Ordinance. The text amendment was recommended to the County Commissioners by the Calvert County Department of Community Planning and Building. The proposed amendment exempted Liquid Natural Gas Import or Export facilities from the zoning regulations. Another proposed amendment recommended that article 12 of the Zoning Code, which concerns definitions, be changed. Under the proposed amendment, the term "Liquid Natural Gas Import or Export Facility" was to be defined as a "Liquid Natural Gas Terminal as defined by the Code of Federal Regulations, 18 CFR § 153.2(d), as amended from time to time, that is subject to regulation by the Federal Energy Regulatory Commission (FERC)."

On October 29, 2013, a joint public hearing on Text Amendment case no. 13-09 was held by the Calvert County Planning Commission and the Calvert County Commissioners.[2] Numerous members of the public were in attendance as were members of the staff of the Calvert County Department of Community Planning and Building. In addition, staff members of the Department of Community Planning and Building submitted written comments in advance of the public hearing.

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[2]Along with Ordinance No. 46-13, the Commissioners also considered, and passed, an amendment to the building code that provided that Liquid Natural Gas Export or Import Facilities were exempted from the International Building Code. The Calvert County Building Code, after the amendment, still applied to occupied buildings at Cove Point, but not to unoccupied ones. The validity of that amendment is not at issue in this case.

The reason for the text amendment was explained by Mary Beth Cook, Calvert County Deputy Director of Community Planning and Building as follows:

> We feel that the county staff does not have the expertise to inspect those . . . facilities (at Cove Point); and as such, we're proposing to provide the exemption. We believe that inspections of these types of facilities should be left to the relevant Federal and State regulations, and after the facility is built there will be a variety of continuous oversight by those regulators."

Many citizens spoke in opposition to the text amendment, including Shawn Canovan, a spokesmen for the Chesapeake Climate Action Committee. Among other things, Mr. Canovan said:

> [O]ne of the most important functions of local zoning is to allow local people to have a voice in how their communities are shaped. A proposed LNG facility in Sparrows Point, Baltimore, that had received FERC (Federal Energy Regulatory Commission) approval was stopped because local communities refused to surrender their rights, as Council (sic) is trying to do tonight.
>
> Local and State Regulations are what prevented the Sparrows Point LNG facility from going forward. It may be that the citizens of Calvert County want an LNG export facility here, but by exempting this facility from the same disclosure and application requirements that any other industrial facility must satisfy, the county is denying its own citizens an opportunity to make that choice pursuant to laws established to ensure community input.
>
> The Calvert County Environmental Commission has strongly urged the Council (sic) not to act until it receives a full environmental impact statement, so the people of Calvert County and the State of Maryland can decide for themselves if this project is good for us.

At the conclusion of the hearing, the Calvert County Planning Commission voted to recommend approval of the text amendment. Immediately following the Planning Commission's vote, the County Commissioners voted 4-1 to close the records and accept the recommendation of the Planning Commission. Ordinance No. 46-13 describes the Commissioners' actions as follows:

> NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Calvert County, Maryland Article 1, Scope of Regulations, Sections 1-2.03 Exemption, 1-2.04 Statutory Authorization, 1-6.01 Procedures for

Ordinance Amendments and Article 12 Definitions of the Calvert County Zoning Ordinance BE, and hereby IS, amended by Adopting the text amendments as shown in attached Exhibit A hereto and made a part hereof (Exhibit B depicts the amendments as they will actually appear in the Zoning Ordinance).

* * *

BE IT FURTHER ORDAINED, by the Board of County Commissioners of Calvert County, Maryland that this amendatory Ordinance shall be effective upon recordation.

DONE, this 8th day of November 2013 by the Board of County Commissioners of Calvert County, Maryland.

The Ordinance was recorded on November 26, 2013. The next day, November 27, 2013, the Accokeek, Mattawoman, Piscataway Community Creeks Council and others, (hereinafter "Petitioners") filed a pleading entitled "PETITION FOR JUDICIAL REVIEW AND/OR ADMINISTRATIVE MANDAMUS" in the Circuit Court for Calvert County. The Petition was accompanied by a seventeen page supporting memorandum in which Petitioners set forth eight reasons why they contended that Ordinance No. 46-13 was invalid. The Commission filed a response on December 12. 2013. On January 9, 2014, Dominion joined in the response filed by the County Commissioners. The Petitioners filed a reply to the County Commissioners' memorandum on April 18, 2014.

On June 6, 2014, I considered oral arguments of counsel for the Petitioners, Dominion and the County Commissioners concerning the validity of Ordinance No. 46-13. Afterwards, the matter was taken under advisement.

I. Standard of Review

Petitioners contend that when Ordinance No. 46-13 was passed by the County Commissioners, the Commissioners engaged in a "zoning action" and therefore, an appeal to the

circuit court is authorized by Maryland Code (2012), Land Use article ["LU"], section 4-401.[3] They also contend the County Commissioners' adoption of the Ordinance constituted a quasi-judicial action. If the enactment of the text amendment was a zoning action [i.e., quasi-judicial], then the appeal would be governed by Title 7, Chapter 200, of the Maryland Rules and the substantial evidence test would be applied. *See Armstrong v. Baltimore*, 169 Md. App. 655, 667 (2006).

The County Commissioners contend that when it passed Ordinance No. 46-13, its action was not a quasi-judicial "zoning action" within the meaning of LU, section 4-401; instead, the action was "legislative." The County Commissioners concede, however, that its legislative action in adopting Ordinance No. 46-13 is still subject to judicial review by me; the scope of that review, however, is much more narrow than if the action was to review a zoning action because it is limited "to ascertaining whether the agency was acting within its legal boundaries" when the Ordinance was enacted. *See Department of Natural Resources v. Linchester Sand & Gravel Corp.*, 274 Md. 211, 221-24 (1975); *see also Armstrong v. Baltimore*, *supra*, 169 Md. App. at 656.

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[3]LU, section 4-401(a) reads:

Procedure.

(a) *Who may file*. – Any of the following persons may file a request for judicial review of a decision of a board of appeals or a zoning action of a legislative body by the circuit court of the county:

(1) a person aggrieved by the decision or action;

(2) a taxpayer, or

(3) an officer or unit of the local jurisdiction.

(b) *Manner*. – The judicial review shall be in accordance with Title 7, Chapter 200 of the Maryland Rules.

(c) *Review standard unaffected*. – This section does not change the existing standards for judicial review of a zoning action.

(Emphasis added).

Very recently in *Mayor and City Council of Rockville v. Pumphrey*, ____ Md. App. ____, No.599, September Term, 2013, (decided July 31, 2014), Judge Deborah S. Eyler, speaking for the Court of Special Appeals, set forth a thorough and scholarly analysis concerning the test to be used in deciding whether an action of a municipality or a Board of County Commissioners constituted a "zoning action" as opposed to a legislative action. *See slip op.* at 20-35. No useful purpose would be served by reiterating that analysis. Suffice it to say, using the test set forth in *Pumphrey, supra,* it is clear to me that the enactment of Ordinance No. 46-13 constituted legislative action – not a "zoning action." Nevertheless, the circuit court for Calvert County does have, under common law, the right to review the narrow issue raised by the Petitioners as to whether the Board of County Commissioners was acting within its "legal boundaries" when Ordinance No. 46-13 was enacted.

II. Did The County Commissioners Exceed Its Legal Boundaries?

Before examining the contentions of the parties, it is important to bear in mind that the County Commissioners' action in excluding electric generating and LNG Import and Export facilities from coverage of the zoning regulations presents a very unusual situation. To my knowledge no other municipality or county in Maryland has attempted to do what the Calvert County Board of County Commissioners has attempted to do, i.e., completely exempt two uses (LNG Export and Import facilities and qualified commercial power generating facilities) from being covered by the zoning regulations while requiring everyone else in the County to abide by those regulations. The effect of Ordinance No. 46-13 was to make the Cove Point property "akin to a 'stateless person' for zoning purposes." *Rockville v. Rylyns*, 372 Md. 514, 581 (2002).

Of the eight reasons Petitioners set forth in their memorandum as to why Ordinance No. 46-13 should be held invalid, only two directly addressed the issue of whether the County

Commssioners exceeded its "legal boundaries." First, Petitioners contend that the Ordinance constituted an "illegal exemption" from the Zoning Ordinance that was not authorized by Title 4 of the Land Use article because it violated the uniformity provision set forth in LU, section 4-201(b)(2)(i). Petitioners also contend that the Ordinance violated Article III, section 33 of the Maryland Constitution, which forbids the General Assembly from enacting any "special law[s]."

There are very few LNG facilities in the United States, and even fewer LNG export facilities. The only land in Calvert County that is presently used as an LNG import facility is that owned by Dominion at Cove Point. And, other than Dominion, no one else has announced an intention to build a LNG export or import facility in Calvert County. Moreover, it was clear at the hearing held on October 29, 2013 that Ordinance No. 46-13 was designed to exclusively apply to the Cove Point property where, if all approvals can be obtained, Dominion intends to build an export facility. Thus, in "practical effect," Ordinance No. 46-13 applies only to Dominion's land.[4] *See Beauchamp v. Somerset Co.*, 256 Md. 541, 549 (1970).

LU, section 4-201, provides:

> (a) *In general.* – A legislative body may divide the local jurisdiction into districts and zones of any number, shape, and area that the legislative body considers best suited to carry out the purposes of this division.
> (b) *Authorized action within districts and zones.* – (1) Within the districts and

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[4]From comments made by members of the staff of the Calvert County Department of Community Planning and Building, as well as comments made by the Commissioners and citizens in the audience at the October 29, 2013 hearing, there could be no doubt that the Ordinance was directed at the facility owned by Dominion. Likewise, a companion matter enacted by the County Commissioners at the same hearing was exclusively for Dominion's benefit. As mentioned, the Building Code was amended so that the Cove Point facility would not be bound by Building Code provisions concerning non-occupied buildings. At the hearing, it was explained that the amendment to the building code was proposed by the County Commissioners because "Dominion realized that there may be conflicts between the requirements" of the Federal Energy Regulatory Commission and the International Building Code.

zones, the legislative body may regulate the construction, alteration, repair, or use of buildings, structures, or land.

(2) Except as otherwise provided in this division or authorized by law:

(i) zoning regulations shall be uniform for each class or kind of development throughout each district or zone; but

(ii) zoning regulations in one district or zone may differ from those in other districts or zones.

(Emphasis added).

The language in section 4-201(b)(2)(i) that "zoning regulations shall be uniform for each class or kind of development throughout each district or zone" had its origin in Md. Code, Article 66B, § 4.02(b)(2). In *Anderson House v. Rockville*, 402 Md. 689, 713-14, Judge Glenn Harrell, speaking for the Court of Appeals, explained the origin and purpose of the uniformity requirement, viz:

> This requirement, commonly referred to as the "uniformity requirement" of Euclidean zoning, has its roots in the Standard State Zoning Enabling Art," which states, at § 2, that applicable zoning "regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts." 1 ROBERT M. ANDERSON, AMERICAN LAW OF ZONING 2D § 5.25, AT 417 (1986). This or a similar limitation appears in the state zoning enabling acts of nearly every state. *Id.* Indeed, Maryland employed the language verbatim, with the exception of the substitution of the word "development" for the word "building." Maryland Code, Article 66B, § 4.02(b)(2). The apparent motive for including the uniformity requirement in the early days of the introduction of zoning controls was appeasement of potentially hostile landowners. 1 ANDERSON, *supra*, at 418. With the requirement, property owners were assured that similarly situated properties would be subject to similar regulation. *Id.* In other words, the uniformity requirement springs less from pure legal necessity, but more from a policy desire to give notice to property owners that ad hoc zoning discriminations will not be tolerated by the law. *Id.* (citing EDWARD M. BASSETT, ZONING, THE LAWS, ADMINISTRATION, AND COURT DECISIONS DURING THE FIRST TWENTY YEARS 50 (1940)).
>
> It has been observed that courts appear to have been somewhat reluctant to elaborate on or supply judicial gloss to the meaning of the uniformity requirement, perhaps due to the original policy purpose for its inclusion. 1 ANDERSON *supra*, at 288. Trends as to its application, however, appear in a number of states. Many jurisdictions agree that the kind of discrimination violative of the uniformity

> requirement occurs when a Zoning Ordinance singles out a property or properties for different treatment than others similarly situated. At the same time, those jurisdictions tend to find no violation of the uniformity requirement when zoning regulations are equally applicable, although their application produces varying restrictions and results across properties in the same zoning category. Decisions from New Jersey and Connecticut provide a useful "side by side" illustration of the application of the uniformity requirement.

(Emphasis added).

In *Anderson House*, the Court analyzed several New Jersey cases dealing with allegations of a violation of the uniformity requirement and concluded that under New Jersey law the "crux of the requirement is only that similar situated properties are treated the same under the zoning regulations." *Id.* at 715, citing *Rumson Estates, Inc. v. Mayor and Council Borough of Fair Haven*, 828 A.2d 317, 329-30 (New Jersey 2003). *Id.* at 714-15. Connecticut recognized the general rule espoused by the New Jersey courts and held that an Ordinance requiring a buffer strip for one specific land plot, while failing to compel the requirement in all other similar instances within the zone, was discriminatory and in violation of the uniformity requirement. *Id.* at 715, citing *Veseskis v. Bristol Zoning Commission,* 362 A.2d 538 (Conn., 1975).

The *Anderson House* Court then stated:

> Maryland's common law conforms to the trend. Our discussion in [*Rockville v.*] *Rylyns*[, 372 Md. 514 (2002)] demonstrates a recognition and understanding of the origins and history of the uniformity requirement. We said there that
>
> > the requirement that there be uniformity within each zone throughout the district is an important safeguard of the right to fair and equal treatment of the landowners at the hands of the local zoning authority. Frankly put, the requirement of uniformity serves to protect the landowner from favoritism towards certain landowners within a zone by the grant of less onerous restrictions than are applied to others within the same zone elsewhere in the district, and also serves to prevent the use of zoning as a form of leverage by the local government seeking land concession, transfers, or other consideration in return for more favorable zoning treatment.

372 Md. at 536, 814 A.2d at 482.

> Indeed, Maryland recognizes that the uniformity requirement is an important tool for the achievement of stability in land use and planning as effected through Euclidean zoning, but also recognizes that "[p]erfect uniformity in zoning . . . is a baseless dream." *Rylyns*, 372 Md. at 534, 814 A.2d at 481; *Mayor and City Council of Balt. v. Byrd*, 191 Md. 632, 642, 62 A.2d 588, 593 (1948). As with other states, Maryland's limited case law on the uniformity requirement demonstrates that it is discrimination in favor of, or against, particular properties that will not be tolerated. In contrast, uniformly applicable regulations that produce disparate results in application do not violate the uniformity requirement.

402 Md. at 716-717. (Emphasis added).

The Court in *Anderson House* gave several examples of cases where the uniformity requirements were violated. One of those was *Washington County v. H. Manny Holtz, Inc.*, 65 Md. App. 574 (1985). In that case, H. Manny Holtz, Inc.("Holtz") asked to have its property reclassified from residential-urban to business-local. *Id.* Holtz wanted to have his property rezoned so that it could operate a convenience store on the property. *Id.* at 577. The property was rezoned to business-local but the Washington County Board of County Commissioners limited the use of the property to four of the eight uses authorized under the Zoning Ordinance for business-local districts, none of which would allow for a convenience store on the property. *Id.* The action of the County Commissioners was ultimately appealed to the Court of Special Appeals. That Court held that the action by the County Commissioners was illegal zoning because it created a "mini-district" within the relevant business zoning district. *Id.* at 583. In *Anderson House*, the Court of Appeals approved the holding in the *H. Manny Holtz* case, saying:

> Thus, although the Board of County Commissioners had predetermined legislatively acceptable uses for the business zone by its enactment of a list of permitted uses, it sought to limit in a piecemeal fashion the *Holtz* property to only some of those uses. . . . . Thus, the property at issue was singled-out and treated differently by the terms of the act of reclassification. The Court aptly found that such a limitation would

> create a 'mini-district' within the relevant business zoning district. The [*Holtz*] Court said, '[i]f we were to authorize the Board of County Commissioners through rezoning to limit or restrict permitted uses of certain tracts within a zone, it would have the power to destroy the uniformity of the district' - to 'emasculate' the requirement.

Id. at 717. (Citations omitted).

In my view, Ordinance No. 46-13 creates a mini-no-regulation district within the primary districts, which would violate the uniformity requirement set forth in LU, section 4-201. Under the Ordinance, all properties in the I-1 district or in the FFD district would be bound by the zoning regulations governing, for instance, height, number of stories and size of buildings and other structures; the percentage of a lot that may be occupied; and the location and use of buildings, signs, structures and land, but the Cove Point property would not be subject to any zoning regulations. As the court stressed in the *Anderson House* case, the purpose of the uniformity requirement would be circumvented if certain landowners within a zone were granted less onerous restraints than other landowners in the same zoning district. *Anderson House*, 402 Md. at 716. *See also Rockville v. Rylyns*, 372 Md. at 536. For the Cove Point property to be subjected to no zoning regulation while the other property owners in the same primary zones are required to abide by all of the regulations governing those zones, amounts to a violation of the uniformity requirement.

In response to the argument that the Zoning Ordinance violates the uniformity requirement, the County Commissioners argue "[c]ounties and the municipalities in Maryland are not required to implement the power to zone property. The power to zone is delegated authority from the State, not a mandatory obligation, as is set forth in . . . LU, section 4-102[5], which reads as follows:

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[5]In the County Commissioner's memorandum, it inadvertently refer to this section as LU, section 4-101.

General Powers.

To promote the health, safety, and general welfare of the community, a legislative body may regulate:

(1) the height, number of stories, and size of buildings and other structures;
(2) the percentage of a lot that may be occupied;
(3) off-street parking;
(4) the size of yards, courts, and other open spaces;
(5) population density; and
(6) the location and use of buildings, signs, structures, and land.

(Emphasis added).

It is true, as the County Commissioners point out, that section 4-102 is permissive, not mandatory. Therefore, if the County Commissioners elected to do so, they theoretically would have had the right not to enact any zoning regulations for any property in the County. But, once the County Commissioners elected to divide the County into districts and zones, it was required by LU, section 4-102 to make the zoning regulations uniform throughout each district or zone. And, as previously stated, by exempting the Cove Point property from all regulations, the uniformity requirement was not met.

The County Commissioners also argue:

> The Board of County Commissioners of Calvert County has used that authority [set forth in LU, section 4-102] to adopt zoning regulations within the county, the first being adopted April 1, 1964. Historically, as now, a number of zoning districts are mapped upon the Official Zoning Maps of the county. (The Official Zoning Maps were not modified by Ordinance 46-13.) The Zoning Ordinance contains tables describing various land uses and where and under what circumstances those uses may be allowed in the Zoning Districts set forth on the Official Zoning Maps, Section 1-203 of the Zoning Ordinance excludes two highly-regulated uses from local zoning regulation, Qualified Commercial Power Generating Facility and Liquid Natural Gas Import or Export Facility. This is within the discretion of the County Commissioners in exercising the authority vested in them.

This argument is not persuasive. While it is technically true that the Official Zoning Maps

of Calvert County were not required to be modified by Ordinance No. 46-13, the maps, insofar as they concern LNG facilities, are misleading because they do not show no-regulation zones within the primary [I-1 and FFD] zones where Dominion's property is located. In other words, in regard to property used for an LNG facility, the various land uses and regulations (as to where and under what circumstances those uses may be allowed) are modified, although not shown on the maps.

The County Commissioners also takes issue with the Petitioners' argument that the Ordinance is effective only as against a single property. The Commissioners maintain that the exemption is applicable to "every zoning category in which a . . . Liquid Natural Gas Import or Export Facility is located in Calvert County." Literally, this is true because, in the unlikely event that someday there might be someone else who is granted permission to operate an LNG import or export facilitiy in Calvert County, the second LNG facility would enjoy the same exemption as does Dominion. That fact, however, does not answer the Petitioners' objection, which is that there must be uniformity within the various zoning districts and uniformity does not exist when there are no regulations governing certain uses in a zoning district but extensive regulations as to others in that same district.

The Petitioners also argue, separately, that the Zoning Ordinance Violates Article III, § 33, of the Maryland Constitution. Article III, § 33, of the Maryland Constitution provides, in relevant part, that "the General Assembly shall pass no special law for any case, for which provision has been made by an existing general law." Petitioners contend that this provision was violated by the "special law" passed for the benefit of Dominion.

The case of *Beauchamp v. Somerset Co., supra*, provides a good example of a special law that violated Art. III, section 33. In *Beauchamp*, American Legion Post No. 94 was located in the

Princess Anne Sanitary Commission sub-district. *Id.* at 549. The General Assembly passed a law that stated, in pertinent part:

> Notwithstanding any requirements of this subtitle to the contrary, in *Somerset County*, any incorporated American Legion Post is exempted from payment of any taxes, charges or assessments of whatever kind levied against the property of any such Post by the *Somerset County Sanitary District, Inc.* under the provisions of this subtitle.

Id at 546.

The Sanitary Commission, on appeal, contended that the law was violative of Article III, section 33. *Id.* The Court of Appeals agreed, saying:

In *Montague v. State,* 54 Md. 481, 489 (1880), one of the earlier cases, it is said:

> The provision immediately following in the same section, that `the General Assembly shall pass no special law for any case for which provision has been made by an existing general law,' has been construed as intended to prevent *549 special legislation in special cases, (*McGrath v. State,* 46 Md. 631,) and we think it very clear from the enumeration made that the object of the preceding provisions was to prevent or restrict the passage of special, or what are more commonly called private Acts, for the relief of particular named parties, or *providing for individual cases.*

(Emphasis supplied.).

> The Act, in the light of these definitions, is a "special act" – a special law for a special case and an Act providing for an individual case – in a statutory plan which is already covered by a public general law. The facts in this case, already stated, indicate that although the Sanitary Commission has county-wide authority, it has established only one sub-district known as the Princess Anne sub-district in which the lands of American Legion Post No. 94 are located and *it is the only American Legion Post* in the sub-district. There are two other incorporated American Legion Posts located elsewhere in Somerset County *beyond the territorial-limits of the Princess Anne sub-district*, but these other two Posts are neither served by the Sanitary Commission nor assessed by it. It is thus seen that the practical effect and the effect intended by the sponsors of the Act was to exempt American Legion Post No. 94 from any assessment or charge by the Sanitary Commission. The Act thus, in effect, applies to one taxpayer only and to the lands of that one taxpayer. In our opinion, it is a "special" act which is unconstitutional under the provisions of Article III, Section 33 of the Maryland Constitution.

(Emphasis added). 256 Md. at 549.

The County Commissionerss' sole response to that argument is that Article III, § 33, by its terms, only governs what the General Assembly may do. According to the County Commissioners, it does not govern their conduct.

In their reply brief, Petitioners point out that in *Mears v. Town of Oxford*, 52 Md. App. 407, 420, n.11 (1982), the Court of Special Appeals stated:

> Article III, § 33, Constitution of Maryland (1981 Repl. Vol.), reads in pertinent part:
>
> > And the General Assembly shall pass no special Law for any case, for which provision has been made, by an existing General Law. The General Assembly, as its first Session after the adoption of the Constitution, shall pass General Laws, providing for the cases enumerated in this section, which are not already adequately provided for, and for all other cases, where a General Law can be made applicable.
>
> While the constitutional provision speaks to the power of the General Assembly, it logically applies to the legislative bodies of municipalities to which the General Assembly had delegated power. *See* Vermont Fed. Sav. & Loan Ass'n v. Wicomico County, 263 Md. 178, 182-3, 283 A.2d 384 (1971); Potomac Sand and Gravel Co. v. Governor, 266 Md. 358, 378-9, 293 A.2d 241 (1972), *cert. denied,* 409 U.S. 1040 (1972).

(Emphasis added).

Despite the fact that the Petitioners, in their reply memorandum, relied on the language (just quoted) from *Mears*, *supra*, counsel for the County Commissioners, in oral argument, made no attempt to distinguish *Mears* or to argue that the *Mears's* analysis of Article III, § 33 was erroneous.

The policy reason for the provision forbidding a special law appears to be the same as the policy reason behind LU, section 4-201(b)(2) requiring uniformity within zoning districts. And, based on the language from *Mears*, I think that Article III, section 33, applies so as to forbid the enactment of an Ordinance like the one here at issue because the general law for Calvert County set

forth in the Zoning Ordinance is modified by a special law applicable to one land owner.

III. Conclusion

In Calvert County, the issue of whether Dominion should be able to build a LNG export facility, is, to say the least, quite controversial. This was shown clearly by the testimony of the witnesses who appeared at the public hearing on October 29, 2013. It must be emphasized, however, that my ruling in this case has no direct bearing on whether the facility will be built or not. I simply have concluded that Ordinance No. 46-13 is invalid for two independent reasons. First, the Ordinance violates the uniformity provision set forth in section 4-201(b)(2)(i) of the Land Use article. Secondly, the Ordinance constitutes a "special law" that violates the provisions of Article III, § 33 of the Maryland Constitution.

In view of this holding, it is unnecessary for me to discuss the other arguments raised by Petitioners in their memorandum.

James P. Salmon
JUDGE

Date: 8/6/14

Certificate of Service

I hereby certify that this Opinion was mailed on the 6th day of August, 2014, to Kevin J. Finto, Esquire, Hunton Williams, LLP, Riverfront Plaza, East Tower, 951 E. Byrd Street, #200, Richmond, Virginia, 23219-4074; J. Carroll Holzer, Esquire, 508 Fairmont Avenue, Towson, MD 21286, and to John B. Norris, III, Esquire, 175 Main Street, Prince Frederick, MD 20678.

R. A. Dague, Judicial Admin. Aide