

RUSSELL McCLAIN, <i>et al.</i>	*	IN THE
Plaintiff	*	CIRCUIT COURT
v.	*	FOR
HOWARD COUNTY, MARYLAND, <i>et al.</i>	*	HOWARD COUNTY
Defendant	*	Case No. C13CV-20-000647

* * * * * Entered: Clerk, Circuit Court for
 * * * * * Howard County, MD
 * * * * * December 3, 2020

MEMORANDUM AND ORDER

Before the Court is Defendant Howard County Maryland’s Motion to Dismiss or, in the Alternative, for Summary Judgment, Plaintiffs’ Motion for Summary Judgment and Opposition to Defendant’s Motion to Dismiss or, in the Alternative, for Summary Judgment, Defendant’s Opposition to Plaintiffs’ Motion for Summary Judgment, and Plaintiff’s Reply to Defendant’s Opposition.

This case arises out of the Howard County Council’s passage of Council Bill No. 9-2020 (“CB-9”) amending Howard County Zoning Regulations. In 2007, Glenelg Country School (“GCS”), a private academic school in Howard County, acquired an easement over pipestem portions of fee simple lots owned by the 22 plaintiffs. The easement agreement allowed for the “non-exclusive right to use the Easement Area for the following specific purposes, to wit, to maintain: (i) an existing play area, (ii) certain existing pavement; (iii) two (2) existing pipes or conduits; (iv) an existing split rail fence; (v) and the right of ingress and egress to, from, over, and across the Easement Area.” In 2008, the language was amended to add “and all new uses and purposes, subsequent to the executive of this easement.”

In 2016, GCS submitted a conditional use plan to Howard County for approval that included construction over the Plaintiff’s pipestems. The Howard County hearing examiner

declined to approve the conditional use noting that the fee simple owners of the pipestems had not consented.

In April of 2019, GCS filed a Zoning Regulation Amendment (“ZRA-188”) seeking change of the language to amend Howard County’s zoning regulations to allow an easement to substitute for written authorization of the property owners. The Planning Board did not approve ZRA-188.

GCS then introduced ZRA-188 to the County Council as CB-9. The Council passed CB-9 adding the following language to the Howard County Zoning Regulations Section 131.0.D:

5. At a hearing to consider a variance petition or conditional use proposed for a private academic school, including a college or university within an easement area, the Hearing Authority shall proceed if the Hearing Authority determines that the proposed use or variance is consistent with the terms and conditions of any exclusive easement that the petitioner submits and relies on as part of the petition and the hearing authority is satisfied that each fee simple property owner of a property subject to the petition has been notified in writing. A determination of consistency does not bind a court in any proceeding related to the matter.

6. This paragraph applies only to private academic schools, including colleges and universities. Any setback required by Section 131.0.N or Section 131.0.O, or by the underlying zoning district, shall not apply if the property from which the setback is measured is (a) owned by the petitioner, or (b) property over which the petitioner has a recorded exclusive easement and the petitioner owns the property on the opposite side of the easement from that portion of the property where the setback would not apply. The Hearing Authority shall consider multiple adjacent exclusive pipestem easements as a single easement if the total width of the adjacent pipestem easements does not exceed a total width of 75 feet.

On August 28, 2020, Plaintiffs filed a Complaint for Declaratory Judgment in this matter asking this Court to declare CB-9 as an illegal special law. Defendant filed the instant motion to dismiss and for summary judgment, which is opposed by Plaintiffs who also seek summary judgment.

Defendant Howard County, Maryland asks that the defendant designated “County Council of Howard County, Maryland” be dismissed, since that entity does not exist separately from “Howard County, Maryland” and lacks the capacity to sue or be sued. Plaintiffs did not respond to this argument. Defendant’s Motion to Dismiss the County Council of Howard County, Maryland as a Defendant in this case will be granted.

A Court may grant a motion for summary judgment only if the Court finds that there is no genuine dispute as to any material fact and that moving party is entitled to judgment as a matter of law. Md. Rule 2-501(f). For the purposes of summary judgment, a material fact is one that will alter or affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Once the movant demonstrates the absence of a dispute concerning material facts, the burden shifts to the non-moving party to identify “with particularity the material facts that are disputed.” Md. Rules 2-501(b). “[T]he mere existence of a scintilla of evidence...is insufficient to preclude the grant of summary judgment...[r]ather, the party opposing summary judgment must present admissible evidence that is sufficiently detailed and precise to illuminate its nature.” *Beatty v. Trailmaster Products, Inc.*, 330 Md. 726, 737-738 (1993). The trial judge has discretion (1) to deny or (2) simply to defer summary judgment even when there is no genuine dispute of material fact and even when all of technical requirements for entry of such judgment

have been met. *Commercial Union Ins. Co. v. Porter Hayden Co.*, 116 Md. App. 605, 623 (1997). Furthermore, the trial Court is authorized to rule on part of the claim not in dispute, which permits the parties and trial court to focus attention on matters actually in dispute. *Brock v. Am. Mfrs. Mut. Ins. Co., a Div. of Kemper Ins. Co.*, 94 Md. App. 194 (1992).

In this matter, there are no disputes of material fact. The sole issue for the Court to resolve is whether CB-9 is a special law prohibited by Article III, § 33 of the Maryland Constitution, which reads:

The General Assembly shall not pass local, or special Laws, in any of the following enumerated cases, viz.: For extending the time for the collection of taxes; granting divorces; changing the name of any person; providing for the sale of real estate, belonging to minors, or other persons laboring under legal disabilities, by executors, administrators, guardians or trustees; giving effect to informal, or invalid deeds or wills; refunding money paid into the State Treasury, or releasing persons from their debts, or obligations to the State, unless recommended by the Governor, or officers of the Treasury Department. 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, at its first Session after the adoption of this 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.

“A special law is one that relates to particular persons or things of a class, as distinguished from a general law which applies to all persons or things of a class.” *State v. Baltimore & O.R. Co.*, 113 Md. 179, 183 (1910). The purpose of § 33 is “to prevent one who has sufficient influence to secure legislation from getting an undue advantage over others as well as to prevent the dispensation or grants of special privileges to special interests, through the instrumentality of special legislation, in conflict with previously enacted general legislation covering the same subject matter.” *Maryland Dep’t of Env’t v. Days Cove Reclamation Co.*, 200 Md. App. 256, 265 (2011).

Legislative enactments carry a presumption of validity. *Cade v. Montgomery Cty.*, 83 Md. App. 419, 425 (1990). Plaintiff bears the burden of proving the invalidity of CB-9. Howard County cites to *CCI Entm't, LLC v. State*, 215 Md. App. 359, 400 (2013) which states, “The [Maryland] Constitution does not prohibit special laws inflexibly and always. It permits them when there are special evils with which existing general laws are incompetent to cope. The special public purpose will then sustain the special form. The problem is last analysis is one of legislative policy, with a wide margin of discretion conceded to the lawmakers. Only in cases of plain abuse will there be revision by the courts.”

In making the determination if a law is “special” and therefore prohibited by the Constitution, the Court considers following six factors:

1. Whether the legislation was actually intended to benefit or burden a particular member of members of a class instead of an entire class;
2. Whether the legislation identifies particular individuals or entities;
3. Whether a particular individual or business sought and received special advantages from the Legislature, or if other similar individuals or businesses were discriminated against by the legislation;
4. Whether the legislation’s substantive and practical effect, and not merely its form, show that it singles out individual or entity, from a general category, for special treatment;
5. Whether the legislatively drawn distinctions are arbitrary and without any reasonable basis;
6. The public interest underlying the enactment, and the inadequacy of the general law to serve that interest is also a pertinent consideration.

See Cities Serv. Co. v. Governor, 290 Md. 533, 569-70 (1981); *MDE v. Days Cove Reclamation Co., Inc.*, 200 Md. App. 255-56 (2011).

GCS introduced and lobbied in support of CB-9 in order to address its desired objective to be able to engage in construction on the easement across Plaintiffs' pipestems. The language of CB-9 on its face makes the legislation applicable to all private academic schools currently approved as a conditional use or to be approved in the future. However, the legislation is so specific and particularized that only GCS will actually receive any benefits from this law.¹ There was no discussion in the record showing that the Council considered any evidence of the benefit that CB-9 would have to existing or future private academic schools. There was no evidence that the Council had identified a problem common to all private academic schools that would be remedied by this legislation, or that any other private academic school would ever have the very specific circumstances described in CB-9 that would fall within the narrowly drawn confines of that bill.

When only one entity receives a benefit from a law at the time of the enactment, the court's analysis is more stringent than in the case where only one entity receives a detriment as the detriment may act as a means to curtail certain behavior. While CB-9 may not specifically identify the entity of GCS, it is easily implied considering it is the only school subject to the factual circumstances required for applicability of the bill and the only one benefitting from the bill. Additionally, as seen in *Beauchamp v. Somerset County*, the Court of Appeals found that a law that provided a tax exemption to only one entity was a special law even though the entity was not explicitly mentioned in the statute. 256 Md. 541 (1970).

GCS tried and failed to gain approval of a conditional use plan before the hearing examiner and sought a ZRA before the Howard County planning board. When those attempts failed, GCS went to the County Council to circumvent unfavorable rulings from the Hearing Examiner and the Planning Board.

The substantive and practical effect of CB-9 is to single out GCS for special treatment. As Plaintiffs explain in their Memorandum, of all the private academic schools identified by Howard County, it is only GCS that "(A) has an easement agreement with nearby landowners (which CB-9 would now use as written authorization per Section

¹ CB-9 applies only to private academic schools. It applies only for a variance or conditional use within an easement area. The easement must be an exclusive easement. Setback requirements are waived if the petitioner (school) owns the property on the other side of the easement. Multiple adjacent pipestem easements will be considered a single easement, but only if they are no wider than 75 feet.

131.0.D.5); (B) the easement agreement concerns land intersecting the property (which is the narrow circumstance in which setback requirements would no longer apply to specifically private academic schools per Section 131.0.D.6); (C) the easement in question is a series of pipestem easements (conveniently interpreted as singular easements if not exceeding 75 feet in width, also per 131.0.DD.6); and (D) that school is seeking a variance petition or conditional use before a Hearing Authority (per Section 131.0.D.5). The factual circumstances required are so narrow that only one school could feasibly be covered by the language: the school that introduced the bill to begin with.”²

As discussed above, there was no evidence that there was a problem common to private academic schools in Howard County that would be remedied by this legislation. This was a problem only for GCS. The Howard County Zoning Regulations already provided a mechanism for schools, and other entities, to apply for conditional use and zoning variances. There is no reasonable basis for the very specific instances in which CB-9 would apply other than to accomplish the objectives of one specific entity.

There is no public interest addressed by CB-9 that would not have been adequately addressed by the previous legislation. CB-9 carves out a very specific process for a specific class to bypass the existing procedure only under very specific circumstances that are unlikely to arise in the future. In sum, CB-9 is an illegal special law.

It is therefore

ORDERED, that Plaintiffs’ Motion for Summary Judgment is GRANTED. Howard County CB-9 is declared to be an illegal special law; and it is further

ORDERED, that Defendant’s Motion to Dismiss is GRANTED as to Defendant Howard County Council; and it is further

ORDERED, that in all other respects Defendant’s Motion to Dismiss is DENIED; and it is further

ORDERED, that Defendant’s Motion for Summary Judgment is DENIED.

12/03/2020 10:56:18 AM

DATE

JUDGE 
Mary M. Kramer, Judge

² Plaintiff’s Memorandum in Support of Motion for Summary Judgment and Opposition to Defendants’ Motion to Dismiss or in the Alternative for Summary Judgment, page 15.