

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

BUNKER HILL VOLUNTEER FIRE  
AND RESCUE COMPANY, INC.

*Plaintiff*

v.

PRINCE GEORGE'S COUNTY,  
MARYLAND, *et al.*

*Defendants.*

Case No.: CAE17-12023

\*\*\*\*\*

**OPINION AND ORDER OF COURT**

THIS MATTER CAME BEFORE THE COURT on Plaintiff's First Amended Complaint (Docket No. 9) asserting various equitable claims against Defendants, Prince George's County, Maryland and Brentwood Volunteer Fire Department. Plaintiff's claims arise from the administration of the Length of Service Program ("LOSAP") by the Prince George's County Fire Commission.

Plaintiff filed a Complaint (Docket No. 1), First Amended Complaint (Docket No. 9) and Second Amended Complaint (Docket No. 66). Prior to filing the First Amended Complaint, this Court dismissed Defendants Prince George's County Fire Commission and Prince George's County Fire/EMS Department (Docket No. 26). After filing the First Amended Complaint but prior to filing the Second Amended Complaint, this Court dismissed Defendants Rushern Baker (County Executive) and Benjamin Barksdale (Fire Chief) (Docket No. 75 and 76). This Court Struck the Second Amended Complaint (Docket No. 96).

Previously, this Court dismissed Counts I, II, III, IV, IX, and X of the First Amended

Complaint. This Court will now address Plaintiff's requested relief in the form of Injunctive Relief (Count V), Declaratory Relief (Count VI), Writ of Mandamus (Count VII) and Writ of Prohibition (Count VIII) against the County and Brentwood Volunteer Fire Department (Docket No. 9).

## **I. FACTUAL FINDINGS**

The Court has considered the evidence presented at trial and makes the following findings.

1. There are 37 Volunteer Fire Companies in Prince George's County, Maryland (Testimony of Mr. Mutchler and Mr. King).
2. Brentwood Volunteer Fire Company (See Defendants Exhibit 8 and 9) and Bunker Hill Volunteer Fire and Rescue Company (formerly The Volunteer Fire Department of Mt. Rainier, Maryland<sup>1</sup>) are non-profit corporations.
3. Prince George's County Code § 11-324(a) states that, "all existing nonprofit incorporated volunteer fire companies and/or rescue squads operating in Prince George's County are declared to be an instrumentality of Prince George's County and/or the municipality in which they operate for the protection of life and property from the hazards of fires, explosions, and related perils."
4. As non-profit volunteer fire companies operating in Prince George's County, Maryland, Brentwood Volunteer Fire Department (hereinafter "Brentwood") and Bunker Hill Volunteer Fire and Rescue Company (hereinafter "Bunker Hill") are instrumentalities of Prince George's County, Maryland as defined by Prince George's County Code § 11-324(a).

---

<sup>1</sup> On or about August 27, 2003, Mt. Rainier Volunteer Fire Department changed its name to Bunker Hill Volunteer Fire and Rescue Company, Inc. At trial, the Defendants acknowledged Bunker Hill's non-profit status.



5. In 2004, Prince George's County, Maryland (hereinafter "County") opened the County owned Bunker Hill Fire Station ("Station 55") and three separate volunteer fire companies relocated from their separate, privately owned fire stations to Station 55 (Testimony of Mr. Mutchler).

6. The three separate fire companies that relocated to Station 55 were Brentwood, Bunker Hill and Cottage City.

7. Brentwood, Bunker Hill, and Cottage City formed the Bunker Hill Volunteer Fire Association (hereinafter "Association") as an umbrella organization to represent all three corporations, facilitate the operations of Station 55, and communicate with the County. The Association filed Articles of Incorporation with Maryland Department of Assessment and Taxation. (See Plaintiff Exhibit 3).

8. Brentwood, Bunker Hill and Cottage City maintained their separate legal entity status.

9. On January 8, 2013, the County, the Fire Commission, and the Association executed a Volunteer Station Management Agreement (the "Agreement") that outlined the duties and responsibilities of the County, the Fire Commission and the Association. (See Plaintiff Exhibit 4).

10. The Agreement stated its term of duration from July 1, 2012 to June 30, 2015. The Association was required to "provide fire, emergency medical and related services to the requirements set by the County." The Agreement does not address the administration of LOSAP.

11. In October 2014, Cottage City dissolved.

12. On October 10, 2014, Bunker Hill Fire & Rescue Association filed

Articles of Dissolution with the Maryland Department of Assessment and Taxation and was deemed no longer active and in good standing. (See Defendant Exhibit 6 and Plaintiff Exhibit 7).

13. Neither party presented evidence as to the impact of the dissolution on the operation of Station 55 or the Agreement itself.

14. Without additional evidence, this Court concludes that there is not a current written agreement between the County, the Fire Commission, Bunker Hill, or Brentwood as to the operation of Station 55.

15. Prince George's County Code §11-302 states that "the Fire Commission shall review the financial needs and requests for public funds of each volunteer fire company. It shall formulate annually one capital budget, one capital improvement program, and one current expense budget for all volunteer fire companies with respect to the expenditure of public funds, and shall submit said budgets and program, with appropriate justification, to the County Executive in accordance with the provisions of the Charter."

16. Prince George's County Code § 11-328(e) states "the Prince George's County Fire Commission may establish policies and procedures for the administration of LOSAP for active volunteer members of the Prince George's County Fire/Emergency Medical Services Department."

17. In accordance with the Prince George's County Code §11-302, the Fire Commission adopted the July 2017 Prince George's County LOSAP Manual (Plaintiff Exhibit 17) which outlines the procedures for volunteer fire companies' submissions of LOSAP reports. The Manual states at Section 2.3.1 "Each company is responsible for



assigning responsibility for performing various LOSAP administrative tasks.”

18. Pursuant to the LOSAP Manual Section 2.3.4, each volunteer fire company submitted its LOSAP reports to the Fire Commission. The President and Secretary of each volunteer corporation must verify and execute the report. Supporting documentation was to be maintained by the volunteer corporation for inspection upon request.

19. At a December 17, 2014 Fire Commission meeting, the Fire Commission voted to recognize Brentwood as the sole volunteer fire company located at Station 55 for the purposes of LOSAP submission, station management funds, officer’s certifications and funding (See Defendant Exhibit 5, Plaintiff Exhibit 1). This Court finds the Fire Commission does not have the authority to identify Brentwood as the sole volunteer fire company at Station 55.

20. Thereafter, the Fire Commission Committee on LOSAP demanded that Bunker Hill submit all request for LOSAP credits to Brentwood for verification and approval before submitting to the Fire Commission. Sometime thereafter the Commission expanded Brentwood’s approval authority to include training and recruitment (Testimony of Mr. Mutchler and Mr. Fisher).

21. Brentwood and Bunker Hill are the only volunteer fire companies that share a fire station in Prince George’s County.

22. Initially Bunker Hill filed its LOSAP reports for FY 2014 and FY 2015 directly with the Commission and the requests were rejected. Bunker Hill filed an appeal of Brentwood’s rejection of Bunker Hill’s LOSAP reports for FY 2014 and FY 2015.

23. As a result of the appeal, the Fire Commission approved Bunker Hill’s

LOSAP Reports for FY 2014 and FY 2015 and informed Bunker Hill that future submission must be submitted to Brentwood for verification and signature.

24. The Fire Commission rejected Bunker Hill's LOSAP reports for FY 2016, FY 2017, and FY 2018 due to Bunker Hill's failure to submit the reports to Brentwood for verification and signature (Plaintiff Exhibit 14 and 15).

25. Brentwood rejected Bunker Hill's LOSAP reports based on Bunker Hill's failure to provide supporting documentation for verification of the reports.

26. No evidence was presented that the County denied Bunker Hill's request for funds to buy fire apparatuses, make payments on the fire truck, or for supplies and station management costs.

27. The County pays and performs all fire truck maintenance at its Apparatus Maintenance Division.

28. The County failed to pay to replace a hose on Bunker Hill's fire truck; however, there was no supportive evidence of when or if a request for maintenance was made and the reason for denial or nonpayment.

29. Without notice, the Commission changed the process for obtaining authorization for Bunker Hill's training requests. Previously, Bunker Hill's Fire Chief Fisher was authorized to approve training for Bunker Hill's members. Under the changed procedure, Bunker Hill's training requests must be submitted to Brentwood to authorize training.

30. Sometime after the new procedure was instituted, Fire Chief Fisher, Bunker Hill Volunteer Fire Chief, attempted to directly register for fire training with the University of Maryland, Maryland Fire and Rescue Institution ("MFRI") and was initially



rejected by MFRI.

31. Thereafter, Fire Chief Fisher submitted a request for authorization for training at the University of Maryland and was approved by Brentwood and accepted by MFRI.

32. There was no evidence that Brentwood or the County denied Bunker Hill's members any request for additional training.

33. Bunker Hill, as an instrumentality of Prince George's County, can respond to emergency calls.

34. Bunker Hill, as an instrumentality of Prince George's County, can purchase fire apparatuses.

35. The County and the Commission entered into a Memorandum of Understanding (Plaintiff Exhibit 18 at 4.10) which delegated to the Fire Commission the management of all aspects of Recruitment and Retention of Volunteers.

## **II. DISCUSSION**

### **a. Injunction**

Plaintiff requests injunctive relief (Count V). "An injunction is a writ framed according to the circumstances of the case commanding an act which the court regards as essential to justice or restraining an act which it esteems contrary to equity and good conscience." *Colandrea v. Wilde Lake Community Ass'n*, 361 Md. 371, 376, (2000). Injunctive relief prohibits a party from doing some specified act or commanding a party to undo an act that caused some wrong or injury generally. *Id.* Injunctive relief functions as a preventive remedy aimed at protecting a party from future acts, but it is not intended to compensate for past bad acts. *Id.* A trial court has discretion whether to grant or deny

a request for injunctive relief. *Id.* The evidence presented at trial clearly proves that Brentwood is a non-profit incorporated organization, and thus, may act as an instrumentality of Prince George's County, Maryland. Furthermore, **both** Brentwood and Bunker Hill, as instrumentalities of the County and invitees upon a County's property, may occupy Station 55 and engage in legally authorized volunteer fire company activities. Since the County owns Station 55, it has the ability to revoke its invitation to either or both corporations at any time. Neither party presented evidence to demonstrate that Bunker Hill or Brentwood had a superior right to occupy or control Station 55. Plaintiff seeks for this Court to exclude Brentwood from Station 55. The evidence at trial showed that Brentwood is properly occupying Station 55, and thus, the Plaintiff's request for injunctive relief is improper. The County has the authority to designate the corporations(s) that may occupy Station 55.

**b. Declaratory Judgment**

Plaintiff also requests declaratory relief (Count VI). "The purpose of the Declaratory Judgment Act is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, Md. Code Ann., Cts. & Jud. Proc. § 3-402 (1973, 2006 Repl. Vol.). "The Act is remedial in nature and shall be liberally construed and administered. [Maryland] cases have repeatedly recognized the broad remedial purposes of the Declaratory Judgment Act. *Sprenger v. PSC*, 400 Md. 1, 23 (2007).

Bunker Hill specifically requests that this Court:

1. Determine and adjudicate the rights and obligations of the parties with respect to the legal relationships between and among the parties arising from the County Code;



2. Determine that Brentwood is not a non-profit organization and cannot serve as an instrumentality of the County;
3. Determine that Bunker Hill is the sole volunteer fire company operating out of the Bunker Hill station;
4. Determine that Defendants have acted unlawfully with respect to the relationships between and among Brentwood, Bunker Hill, the County government and the Fire/EMS Department;
5. Determine that Plaintiff as a volunteer fire company operating in the County has a right to submit materials to the Fire Commission under the LOSAP program;
6. Determine that the Fire Commission and/or other Defendants have an obligation to accept and process LOSAP submissions from Bunker Hill and its members; and
7. Award Bunker Hill costs of these proceedings including reasonable attorneys' fees.

In 1975, the Court of Appeals of Maryland clarified the role of the County, its Fire Department, the Fire Commission, and the volunteer corporations. See *Prince George's County v. Chillum-Adelphi Volunteer Fire Department*, 275 Md. 374 (1975). The Court of Appeals was clear on the issue of control, and stated:

"The fire chief is clearly in control and has the right to direct operations at the scene of any fire including specifying what types of equipment and what fire fighting methods should be used... In the interest of protecting the public safety by fighting fires by the most efficient means he might well prescribe the training required for persons in the chain of command such as chiefs and assistant chiefs of volunteer fire companies. On the other hand, the volunteer fire companies remain as separate entities." *Id.* at 383.

Using *Chillum* as a guide, this Court will address each of Plaintiff's requests:

1. **Determine and adjudicate the rights and obligations of the parties with respect to the legal relationships between and among the parties arising from the County Code.**

Both Bunker Hill and Brentwood have the right to serve as instrumentalities of the County in their capacity as volunteer fire companies. Equally, the Fire Commission has the obligation to process each of their LOSAP documentation as submitted through the appropriate personnel from each fire company as provided in its Manual (Plaintiff Exhibit 17).

The Fire Commission does not have the right under the Code or their LOSAP Manual to obligate Bunker Hill to submit documentation for LOSAP, fire apparatus maintenance, or training requests through Brentwood. Under the County's and the Fire Commission's Memorandum of Understanding, the Fire Commission may direct all volunteer recruitment activities.

**2. Determine that Brentwood is not a non-profit organization and cannot serve as an instrumentality of the County.**

Bunker Hill contends that an actual controversy and justiciable issue exists between the parties with regards to the relationship between the non-profit volunteer fire companies and the County. Bunker Hill failed to present any evidence that showed that Brentwood was not a non-profit corporation. On the contrary, the evidence clearly shows that Brentwood is a non-profit corporation recognized by the State of Maryland Department of Assessment and Taxation. Additionally, its non-profit status is clearly stated in its Charter (Defendants Exhibits 8, 9, and 10).

**3. Determine that Bunker Hill is the sole volunteer fire company operating out of the Bunker Hill station.**

The County is the sole owner of Station 55. Thus, The County is free to invite or dismiss any person or company from Station 55.

Again, this Court directs Plaintiff and Defendants to *Prince George's County v. Chillum-Adelphi Volunteer Fire Department*. In *Chillum*, the Court of Appeals held that:

"If a given volunteer fire company elects to accept County funds, then it follows that the County may impose conditions on the granting and use of those funds, e. g., that the company's books would be kept in a certain manner, that the funds granted would be only expended for certain specified purposes, and that to assure the County of this fact the company's books would be subject to audit by persons designated for that purpose by the County. Indeed, the County might well specify that no part of the funds would be expended for new equipment without advance approval of the County, might say what type of equipment could be purchased with funds from the County, and might provide for the manner of maintaining



equipment purchased with County funds. In other words, the County may impose reasonable regulations relative to the funds which come from it. On the other hand, if a volunteer fire company does not accept County funds, it is only subject to such regulations of the County as may be imposed under the police power.”

*Chillum*, 275 Md. 374, 382-83 (1975). Here, Bunker Hill’s occupation and utilization of Station 55 is the equivalent of accepting public monies. The County may establish the conditions for its County owned facility.

**4. Determine that Defendants have acted unlawfully with respect to the relationships between and among Brentwood, Bunker Hill, the County government, and the Fire/EMS Department.**

Plaintiff contends that the Defendants acted unlawfully because for-profit volunteer fire companies cannot serve as instrumentalities of the County’s Fire/EMS Department, and thus, cannot obtain funds or benefits. Plaintiff asserts that Brentwood is a for-profit company and has been illegally serving as an instrumentality of the County. This Court finds that based on the evidence provided at trial, Brentwood is a non-profit entity (Defendants Exhibits 8, 9, and 10) therefore; there has been no unlawful action in regards to Brentwood functioning as an instrumentality of the County.

**5. Determine that Plaintiff as a volunteer fire company operating in the County has a right to submit annual reports to the Fire Commission under the LOSAP program.**

At trial, the County conceded that Bunker Hill is a non-profit and an instrumentality of the County.

As noted above, the County or the Fire Commission did not have the right to send the Letter to Mr. Mutchler demanding that Bunker Hill submit all LOSAP reports to Brentwood for preliminary approval (Defendant Exhibit 1). This procedure was clearly

contrary to that described in the LOSAP Manual (Plaintiff Exhibit 17).<sup>2</sup> Both the Charter and the LOSAP Manual state **each** company shall submit to the Commission.

**6. Determine that the Fire Commission and/or other Defendants have an obligation to accept and process LOSAP submissions from Bunker Hill and its members.**

As noted above, both the Code and the LOSAP Manual make clear that **each** volunteer fire department is to submit LOSAP documentation for their department. The County argued that the LOSAP Manual was written for the majority of fire stations in the County, and because Station 55 is the only station housing more than one volunteer fire department, the Manual does not provide for it. This Court finds that the LOSAP Manual shall be followed by the Commission and County when processing Bunker Hill's LOSAP submissions. Provided the Fire Commission does not violate any company's equal protection rights or the County Charter, the Fire Commission may modify its Manual.

**7. Award Bunker Hill costs of these proceedings including reasonable attorneys' fees.**

The award of attorneys' fees in this case is permissive and not required under Maryland Rules 2-703 and 2-704. This Court will not award attorneys' fees to the Plaintiff as under the American system each side pays for its own attorneys' fees. There is nothing exceptional about this matter that moves this Court to award attorneys' fees.

**c. Writ of Mandamus and Writ of Prohibition**

Plaintiff's writ of mandamus and writ of prohibition plead in Counts VII and VIII must be denied because Bunker Hill's contentions are factually incorrect.

A writ of mandamus and/or prohibition is generally used to compel inferior tribunals, public officials or administrative agencies to perform their function or perform

---

<sup>2</sup> 2.3 LOSAP Administration, "Each Company is responsible for assigning responsibility for performing the various LOSAP administrative tasks. Segregating these duties among different members of a Company LOSAP Committee would significantly reduce the risks for incorrect application, abuse, or fraud in the system....Therefore, it is required that each Company has a LOSAP Committee..."



some particular duty imposed upon them which, in its nature, is imperative and to the performance of which duty the party applying for the writ has a clear legal right. *Wilson v. Simms*, 380 Md. 206, 209 (2004); *In re Petition for Writ of Prohibition*, 312 Md. 280, 305 (1988).

A writ of mandamus seeks to compel a person or official to perform an act and may only be issued if the party seeking the writ demonstrates that: (1) he has a clear and indisputable right to the relief sought, (2) the official action sought to be compelled is a ministerial one, **not a discretionary one**, and (3) there is no other adequate remedies or means by which to obtain the relief sought. *City of Seat Pleasant v. Jones*, 364 Md. 663, 673 (2000). If there is any other adequate remedy, mandamus cannot lie. *Goodwich v. Nolan*, 343 Md. 130 (1996).

A writ of mandamus or prohibition may not be granted “if a petitioner’s right is unclear or issues only at the discretion of a decision maker.” 380 Md. 206 at 224. Thus, “if the right be doubtful, or the duty discretionary, or of a nature to require the exercise of judgment, or if there be any ordinary adequate legal remedy to which the party applying could have recourse, the writ will not be granted.” *Id.* Therefore, a legal right and a corresponding duty must therefore exist before a court may grant a writ of mandamus or prohibition. *Id.*

Here, Bunker Hill requests that this Court enter an Order prohibiting Brentwood from providing emergency services to the residents of Prince George’s County, Maryland. Bunker Hill also seeks to have this Court enter an Order forcing the County to recognize Bunker Hill as the sole volunteer fire department located at Station 55. The relief sought is based on Bunker Hill’s contention that Brentwood is not a non-profit. As

stated previously herein, this Court finds that the evidence presented in the form of Brentwood's Charter and the State of Maryland Department of Assessment and Taxation certification is sufficient to prove its non-profit status. The Plaintiff produced no evidence that Bunker Hill has any right to the relief sought. Moreover, Station 55 is County owned. Thus, Prince George's County, Maryland has all the rights and responsibilities of a property owner. This Court has no jurisdiction to order otherwise.

WHEREFORE, it is by this 15<sup>th</sup> day of February, 2019, hereby,

**ORDERED**, that Plaintiff, Bunker Hill, and Defendant, Brentwood, are non-profit volunteer fire and rescue corporations providing fire and rescue services to the community in Prince George's County as an instrumentality for the County, pursuant to Section 11-324 of the Prince George's County Code; and it is further,

**ORDERED**, that, under the laws of the State of Maryland and of Prince George's County, Bunker Hill and Brentwood are entitled to the rights and benefits as a non-profit volunteer fire and rescue corporation to the same extent as any other non-profit volunteer fire and rescue corporation in Prince George's County; and it is further,

**ORDERED**, that, the decision of the Fire Commission in December 2014 to recognize Brentwood, as the sole legal entity at Station 55, was unauthorized and exceeded the Fire Commission's legal right and is hereby declared to be NULL AND VOID; and it is further,

**ORDERED**, that the County may recognize Bunker Hill as a volunteer fire corporation located and occupying Station 55, the County may recognize Brentwood as a volunteer fire corporation, or the County may establish a chain of command at Station 55 for fire prevention, fire suppression, fire and rescue communications, research and



training activities, and for the coordination of the two volunteer corporations located at Station 55; and it is further,

**ORDERED**, that Bunker Hill has the right to submit directly to Defendant, Prince George's County, to its Fire Commission or as otherwise proper under applicable law, its requests for funding; and it is further,

**ORDERED**, that, pursuant to Section 11-302 of the Prince George's County Code, the Fire Commission is obligated to **review** and **assess** on an annual basis, the requests for funds from the Bunker Hill and the needs for funds of the Bunker Hill fairly, impartially, and otherwise in compliance with applicable law, in the course of preparing and submitting to the Prince George's County Executive, its annual budget and justification; and it is further,

**ORDERED**, that Bunker Hill has the right to submit to the County its requests for maintenance of its apparatus and equipment; and it is further,

**ORDERED**, that the County, the Fire Commission, and Fire Commissioners, are obligated to consider Bunker Hill's requests for maintenance of its apparatus and equipment to the same extent as the obligations to maintain the apparatus and equipment of other volunteer fire and rescue companies operating in the County; and it is further,

**ORDERED**, that Bunker Hill has the right to recruit new members as volunteer fire and rescue personnel; however, the Fire Commission has been delegated coordination responsibilities per its Memorandum of Understanding with the County. Therefore, Bunker Hill may only recruit new members as the Fire Commission directs for all volunteer corporations; and it is further,

**ORDERED**, that the Fire Commission shall process any and all requests or

applications of prospective volunteer fire and rescue personnel as members of Plaintiff, Bunker Hill Volunteer Fire And Rescue Company, Inc., and to review and consider such requests or applications fairly, impartially, and pursuant to applicable law; and it is further,

**ORDERED**, that Bunker Hill has the right to request and obtain training and certification for its members to the same extent as other nonprofit volunteer fire and rescue companies operating in the County; and it is further,

**ORDERED**, that, pursuant to LOSAP, as set forth in Section 11-328 of the Prince George's County Code, and the standards and procedures established by the Fire Commission's LOSAP Manual, Bunker Hill has the right to submit directly to the Fire Commission, the annual LOSAP reports for its members, including LOSAP reports for FY16, FY17, FY18, and for all subsequent years; and it is further,

**ORDERED**, that the members of Bunker Hill are entitled to receive LOSAP credits for their activities with the Bunker Hill, as more fully set forth in Section 11-328 of the Prince George's County Code; and it is further,

**ORDERED**, that the County, the Fire Commission, and Fire Commissioners, are obligated to process the LOSAP reports submitted by the Bunker Hill Volunteer Fire And Rescue Company, Inc., including for FY16, FY17, FY18, and for all subsequent years, fairly, impartially, timely, and pursuant to Section 11-328 of the Prince George's County Code, the LOSAP Manual, and any other applicable law.

  
\_\_\_\_\_  
John P. Davey, Judge



Copies emailed by the Court to:

Andrew Levy, Esq., [alevy@mdlawyer.biz](mailto:alevy@mdlawyer.biz)

Shelley Johnson, Esq., [sjohnson@co.pg.md.us](mailto:sjohnson@co.pg.md.us)

Jourdan Brooks, Esq., [jebrooks@co.pg.md.us](mailto:jebrooks@co.pg.md.us)