Circuit Court for Prince George's County
Case No. CAL16-26561

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0614

September Term, 2019

PRINCE GEORGE'S COUNTY
VOLUNTEER FIRE AND RESCUE
ASSOCIATION, INC., *ET AL*.

v.

PRINCE GEORGE'S COUNTY,
MARYLAND

Fader, C.J.
Shaw Geter
Greene, Clayton, Jr.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Greene, J.

Filed: August 4, 2020

In this appeal, we examine the breadth of the Prince George's County Fire Chief's authority. In 2016, the Fire Chief revised General Order 01-03, which made certain modifications to the chain of command within the County's Fire/EMS Department ("the Department") that elevated the rank of a "Battalion Chief, Career/Volunteer" above that of a "Volunteer Company Chief[.]" Appellant, Prince George's County Volunteer Fire & Rescue Association ("PGCVFRA") took issue with the revised chain of command under General Order 01-03 arguing—in essence—that the revisions infringed upon its constitutional rights and fell outside the Fire Chief's scope of authority under the Prince George's County Charter (the "County Charter") the Prince George's County Code ("PGCC"), and the Court of Appeals' decision in *Prince George's Cty. v. Chillum-Adelphi Volunteer Fire Dept.*, Inc., 275 Md. 374, 383, 340 A.2d 265, 271 (1975). After PGCVFRA unsuccessfully sought relief in the Circuit Court for Prince George's County, this appeal followed.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant, PGCVFRA is an organization that represents the thirty-eight volunteer fire companies located in Prince George's County (the "County"). On May 7, 2015, the PGCVFRA and the County entered into a memorandum of understanding ("MOU") that concerned the relationship between the County and PGCVFRA. The preamble to the MOU provides that its purpose is "to promote mutual cooperation, collaboration and the effective delivery of emergency services to the residents and citizens of [the County]." The MOU notes that the County's firefighting efforts are a "combination system" one that blends "a traditional County agency (["the Department"]) with independent volunteer fire and rescue

corporations who play an integral role in service delivery[,]" and the MOU characterizes the relationship as a "cooperative effort."

The MOU, in substance, is a "revamp of the structure of the Fire Commission[.[1]]" Specifically, the MOU contemplates "the composition of the Fire Commission and certain functions delegated to it by [the County] for management of certain administrative volunteer fire matters, identifie[s] procedures related to 'major policy enhancements' and other interagency cooperation, and establishe[s] the role of the Volunteer Services Commander." Paragraph 4.8, titled "Major Policy Enhancements" provides that PGCVFRA and the Fire Commission will have the opportunity to review all policies and regulations proposed by the Fire Chief prior to their implementation, notwithstanding those involving "emergency situations."

Revised General Order 01-01, enacted on March 12, 2012 by former Fire Chief Marc. S. Bashoor (the "Fire Chief"), established a "General Order Work Group [(the "work

[1] The Prince George's County Fire Commission (the "Fire Commission") is an executive agency established under County Charter § 11-301(a). The County Charter broadly defines the Fire Commission's role and its oversight of volunteer fire companies:

> 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, together with appropriate justification, to the County Executive in accordance with the provisions of the Charter.

County Charter § 11-302.

group")].[2]" Among other things, General Order 01-01 provided a review process through which Department personnel could provide suggested changes to a proposed General Order. The General Order tasked the work group with reviewing any such suggested changes and making recommendations to the Fire Chief concerning them. Moreover, General Order 01-01 established a codified procedure under which the Fire Chief must distribute a draft of General Orders to specific persons or entities for review, and the PGCVFRA was the third entity to receive and review such drafts. In short, under the structure established by General Order 01-01, proposed General Orders were subject to a Work Group review process, in which PGCVFRA is afforded some level of participation.

In January 2010, the Fire Chief enacted the original General Order 01-03, which established a departmental chain of command. Under the chain of command at the time, the first four ranks, ordered from highest to lowest, were as follows: (1) County Fire Chief; (2) Career Lieutenant Colonel; (3) Career/Volunteer Major; and (4) First Due Volunteer Company Chief.[3] On July 16, 2015, Andrew K. Pantelis, President of the International Association of Fire Fighters, Local 1619 (the "Local 1619"), sent a letter to the Fire Chief suggesting that General Order 01-03 be reassessed and included a draft of proposed revisions to General Order 01-03 including substantive changes. The Fire Chief then

[2] We note that the workgroup, out of fifteen members, contained five volunteer firefighters—two of which represented PGCVFRA.

[3] The designation "Career" implies that an individual is a professional firefighter and not a volunteer. The terminology "first due" connotes an area of "primary geographic . . . responsibility for a particular station."

shared the correspondence with all of the Volunteer Fire Chiefs "that comprise the Chief's Council of the [PGCVFRA]." On July 21, 2015, the Fire Chief responded to Local 1619, acknowledged receipt of the suggested amendments, and informed Local 1619 that its suggestions would be forwarded to the Department's General Order Work Group for consideration. In addition, in this correspondence, the Fire Chief expressed his reluctance to adopt the proposed changes pending at that time.

On August 26, 2015, PGCVFRA, through its Chief's Council, sent a letter to the Fire Chief about Local 1619's proposed amendments to General Order 01-03 and urged the Fire Chief to reject the changes. After discussing the proposed changes with Mr. Pantelis and others during the Department's Command Meeting, the Fire Chief forwarded the proposal to the General Order Work Group with instructions to "take [its] time and to be very deliberate about the analysis." On October 12, 2015, PGCVFRA emailed the Fire Chief its own proposed changes to the revised General Order 01-03.

On October 13, 2015, January 4, 2016, and February 24, 2016, the work group held meetings on the proposed changes, exchanged related emails, and came to a consensus regarding certain revisions to General Order 01-03. Both the Fire Chief and the work group communicated its recommended changes of General Order 01-03 to PGCVFRA. Thereafter, PGCVFRA voiced several concerns over the revisions and communicated its concerns to the Fire Chief. On January 4, 2016, during the Work Group's review of the revisions, the president of PGCVFRA emailed the Fire Chief and others, informing them that PGCVFRA did not support any of the substantive revisions to General Order 01-03,

aside from grammatical and punctuation edits. PGCVFRA reiterated its position in a letter dated January 14, 2016.

The work group's deliberative process came to a head on February 26, 2016, when it provided a "Semi-Consensus version" of the revisions to General Order 01-03—indicating that the primary point of disagreement was the revisions to the chain of command. Prior to issuing the revised General Order 01-03, the Fire Chief "evaluated [it] for months[.]" Within this period, the Fire Chief had multiple correspondences with members of the Fire Commission, PGCVFRA, and Local 1619 regarding the revisions. The Fire Chief then considered alternative solutions: (i) make no revision to the chain of command; (ii) accept Local 1619's revisions; or (iii) make different revisions to the chain of command.

The Fire Chief also researched policies from external jurisdictions, as well as internal reports regarding several incidents that occurred within the County. The Fire Chief was of the opinion that ambiguities within the chain of command had been demonstrated in earlier incidents in which there was confusion regarding the command hierarchy at the scene of fires. Ultimately, after lengthy review and ample communication, the Fire Chief concluded that revision to the chain of command was necessary. On June 1, 2016, the Fire Chief distributed a version of revised General Order 01-03 to all career and volunteer fire and Emergency Medical Service ("EMS") personnel. The General Order had an effective date of July 1, 2016.

The revised General Order 01-03 modified the chain of command, in which Career and Volunteer Battalion Chiefs would now outrank all Volunteer Company Chiefs. On June 13, 2016, the Fire Commission sent a letter to the Fire Chief objecting to the revisions. The following day, PGCVFRA also sent the Fire Chief a letter objecting to the revisions and included a proposed draft of suggested changes. Primarily, PGCVFRA took issue with the revisions to the chain of command and alleged that the change would "summarily demote every Volunteer Company Chief Officer[.]" In a June 14, 2016 letter, Local 1619 informed the Fire Chief that it agreed and disagreed with certain revisions in General Order 01-03.

In response, the Fire Chief notified PGCVFRA, the Fire Commission, and Local 1619 that he received their comments and made additional changes to General Order 01-03. The final version of General Order 01-03 still contained modification to the chain of command, which elevated Career and Volunteer Battalion Chiefs above Volunteer Company Chiefs, however, the language concerning "first due" was eliminated from the revised chain of command. The final version of General Order 01-03, provided the following chain of command, in pertinent part:

1. County Fire Chief.
2. Chief Deputy
3. Deputy Fire Chief
4. Assistant Fire Chief, Career/Volunteer
5. Battalion Chief, Career/Volunteer
6. Volunteer Company Chief

Based on the revisions to the chain of command, PGCVFRA and others,[4] filed a complaint against Prince George's County in the Circuit Court for that County. The amended complaint alleged breach of contract (Count One), application for temporary, preliminary, and permanent injunctive relief (Count Two), declaratory judgment (Count Three), violation of Maryland Declaration of Rights Article XXIV—Substantive Due Process (Count Four), violation of the Maryland Constitution, Article 3, § 40 (Count Five), violation of the *Accardi* doctrine (Count Six), and that the County's action was *ultra vires* (Count Seven). PGCVFRA also filed a motion seeking a temporary restraining order and preliminary injunctive relief.

In response, on July 9, 2016, the County filed a "Preliminary Motion to Dismiss the Amended Complaint and Response in Opposition to Preliminary Injunction." After the parties briefed and litigated the request for a temporary restraining order and preliminary injunctive relief, the circuit court deliberated and denied PGCVFRA temporary and preliminary injunctive relief. The hearing judge ordered the parties to brief the court regarding PGCVFRA's claim for declaratory judgment. Further, the court determined that the revisions of General Order 01-03 were within the Fire Chief's authority and did not constitute a governmental taking. Thus, the circuit court dismissed PGCVFRA's claims

[4] PGCVFRA was joined by several co-Plaintiffs including: (i) Morningside Volunteer Fire Department, Inc. ("Morningside"), a volunteer fire company in Prince George's County; (ii) Volunteer Fire Company Chief Michael Pecker of Morningside; (iii) Laurel Volunteer Rescue Squad, Inc.—Company 49 ("Company 49"); and (iv) Volunteer Fire/EMS Chief Michael Haggerty of Company 49. We will refer to these parties collectively as "PGCVFRA" for simplicity's sake.

seeking declaratory judgment and violation of the takings clause of the Maryland Constitution, Art. III, § 40.

On October 24, 2017, the circuit court decided that declaratory judgment was not warranted, because PGCVFRA failed to demonstrate that a justiciable controversy existed between the parties. The court also determined that "[the Fire Chief] had the exclusive authority to revise the General Order 01-03 . . . with respect to the chain of command in such a way that career battalion chiefs would be higher in rank than the volunteer company chiefs." After the circuit court disposed of those claims, the parties proceeded to conduct discovery.

After completing discovery, the parties appeared before the circuit court on March 19, 2019 and presented a "Joint Statement of Material Facts and List of Stipulated Exhibits to the Parties' Agreed Statement of Facts" the latter of which, consisted of twenty stipulated exhibits. The circuit court held a trial in the matter on March 19, 2019 that PGCVFRA characterizes as a "trial-by-stipulation" in which the parties presented a Joint Statement of Material Facts and the stipulated exhibits. At the hearing before the circuit court, the County noted that its motion to dismiss PGCVFRA's remaining claims was still outstanding.

During PGCVFRA's arguments in opposition to the County's motion to dismiss, PGCVFRA referenced the Joint Statement of Facts on several occasions, and requested the Court to reconsider its prior order "because of the lack of factual information that was available to the court at the time is now available." The circuit court reserved ruling on the

County's motion to dismiss. There was no testimony adduced at trial and the parties relied exclusively on the Joint Statement of Material Facts and related exhibits. Regarding PGCVFRA's claim for injunctive relief, the circuit court determined that there was insufficient evidence that PGCVFRA suffered any irreparable injury. Regarding PGCVFRA's governmental taking claim, the circuit court decided that no taking occurred and that PGCVFRA failed to demonstrate a property or liberty interest at issue. In terms of PGCVFRA's averment that the County violated the *Accardi* doctrine, the circuit court concluded that the MOU did not constitute an agency regulation, and therefore, the *Accardi* doctrine was inapplicable. The court expressed the view, however, that the Fire Chief complied with the provisions of the MOU, as it related to his revision of General Order 01-03.

On April 23, 2019, the circuit court held another hearing at which it addressed the County's motion to dismiss. Although the circuit court did not specifically reference Count Seven, which alleges that the County's action was *ultra vires*, the circuit court stated that it was examining all of PGCVFRA's counts that were "still viable in the amended complaint[.]" The circuit court then issued its ruling from the bench and granted the County's motion to dismiss the remaining counts. The circuit court determined that under *Chillum-Adelphi*, the revision of the chain of command under General Order 01-03 was within the Fire Chief's authority. In regard to the count for breach of contract, the circuit court concluded that the MOU was not an enforceable contract, because it lacked consideration. PGCVFRA then timely noted an appeal to the Court of Special Appeals.

STANDARD OF REVIEW

PGCVFRA's Motion to Dismiss Treated as a Motion for Summary Judgment under Rule 2-322(c)

Throughout its brief, PGCVFRA takes the position that the circuit court erred in granting the County's motion to dismiss, because the circuit court considered the facts of the case and ostensibly made factual findings. Generally, a circuit court's review of a motion to dismiss is limited to examining the sufficiency of the pleadings, assuming the truth of all well-pleaded facts. *Worhsam v. Ehrlich*, 181 Md. App. 711, 722, 957 A.2d 161, 167 (2008) (citing *Hrehorovich v. Harbor Hosp. Ctr., Inc.*, 93 Md. App. 772, 784–85, 614 A.2d 1021, 1026 (1992)). The same narrowly circumscribed boundaries also apply to the appellate review of a circuit court's grant of a motion to dismiss. *Worsham*, 181 Md. App. at 722, 957 A.2d at 167 ("we look only to the allegations in the complaint and any exhibits incorporated in it and 'assume the truth of all well-pled facts in the complaint as well as the reasonable inferences that may be drawn from those relevant and material facts.'" (quoting *Smith v. Danielczyk*, 400 Md. 98, 103–04, 928 A.2d 795, 798 (2007)). In contrast, where a trial court resolves a motion for summary judgment it may not determine witness credibility and "must resolve all disputes of fact, along with all inferences that can be drawn from the evidence and pleadings in the record, against the moving party." *Bagwell v. Peninsula Regional Medical Ctr.*, 106 Md. App. 470, 488, 665 A.2d 297, 306 (1995). By engaging in this process, the court does not make factual findings. *Id.*

Maryland Rule 2-322, in certain instances, permits a trial court to consider matters outside the pleadings and, in such circumstances, the motion to dismiss will be treated as one for summary judgment. Rule 2-322(c) provides,

> If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 2-501.

As we have previously recognized, Rule 2-322(c) grants a trial court the discretionary authority,

> to convert a motion to dismiss to a motion for summary judgment by considering matters outside the pleading. If matters outside the pleading are excluded by the trial court, then it must decide the motion based on the legal sufficiency of the pleading. If, on the other hand, the trial judge does not exclude such matters, then the motion shall be treated as one for summary judgment.

Worsham, 181 Md. App. at 722, 957 A.2d at 167 (citations omitted). In such situations, the court "must provide the parties with a reasonable opportunity to present, in a form suitable for consideration on summary judgment, additional pertinent material." *Id.* (citing *Antigua Condominium Assoc. v. Melba Investors Atlantic, Inc.*, 307 Md. 700, 719, 517 A.2d 75, 85 (1986)).

In *Danielcyzk*, the Court of Appeals detailed the procedure for treating a motion to dismiss as one for summary judgment. 400 Md. at 105, 928 A.2d at 799. Therein, the Court noted that where the record does not adequately reflect whether the trial court excluded matters outside the pleadings, but evidence relating to matters outside the pleadings was presented to the court, "we must assume that [such evidence was]

considered." *Id.* The Court noted that although it would "ordinarily . . . be obliged to treat the court's ruling as a grant of summary judgment[,]" the motion to dismiss in the case should not be treated as a motion for summary judgment because "some of the relevant facts [were] not presented with the greatest clarity or even in the proper manner." *Id.* at 105, 928 A.2d at 800.

In *Worsham*, following the Court of Appeals' guidance set forth in *Danielcyzk*, we reviewed a motion to dismiss as a motion for summary judgment. *Worsham*, 181 Md. App. at 722–23, 957 A.2d at 167–68. In that case, the appellees moved to dismiss and the appellant "attached extraneous material, *i.e.*, [an] affidavit to his motion for partial summary judgment, and argued his position in support of that motion at the May 1 hearing." *Id.* at 723, 957 A.2d at 168.[5] The circuit court did not indicate, on the record, whether it was considering any of the facts appellant submitted to the court through the attachment to his motion for partial summary judgment when it ruled on the appellees' motion to dismiss. *Id.* Therefore, the Court "assumed that they were considered" and reviewed the circuit court's grant of appellee's motion to dismiss as a motion for summary judgment. *Id.*

The instant appeal presents a compelling circumstance in which we treat the circuit court's grant of the County's motion to dismiss as a motion for summary judgment. As explained above, this appeal results from a unique procedural posture. After the circuit

[5] The May 1st hearing was held to consider the appellees' motion to dismiss and the appellant's motion for summary judgment.

court denied PGCVFRA's request for injunctive relief, it ordered the parties to brief the court on PGCVFRA's claim for declaratory judgment, which the parties briefed and argued. Subsequently, the circuit court considered the pleadings and briefs of the parties and dismissed PGCVFRA's counts for declaratory relief that averred a violation of the "takings" clause of the Maryland Constitution. Thereafter, the parties conducted discovery with regard to the remaining counts in PGCVFRA's complaint, which resulted in the Joint Statement of Material Facts and the List of Stipulated Exhibits to the Parties' Agreed Statement of Facts—presented at the August 9th pre-trial conference. As a result, what PGCVFRA characterizes as a "trial-by-stipulation" occurred. The circuit court accepted into evidence the Joint Statement of Material Facts and exhibits and permitted the parties to present argument on the County's motion to dismiss.

In essence, the unique procedural aspect of this case is that the parties engaged in discovery and the court received evidence, *i.e.*, the Joint Statement of Material Facts, prior to ruling on the County's motion to dismiss. The record does not reflect that the circuit court specifically excluded matters outside the pleadings. In fact, as noted above, PGCVFRA referenced the Joint Statement of Material facts, in its arguments before the court on several occasions, and requested it to revisit its earlier dismissal based on the new factual information received.

Although the circuit court noted that it was ruling on the County's motion to dismiss and that it based its decision by examining "only the sufficiency of the pleadings[,]" we are compelled to review the circuit court's grant of the County's motion to dismiss as a

motion for summary judgment. As in *Worsham*, because there is no indication that the circuit court specifically excluded the factual matters outside of the pleadings submitted to it, "we must assume that they were considered." 181 Md. App. at 723, 957 A.2d at 168. This is especially true based on the facts of this case where, instead of an affidavit attached to a motion—like in *Worsham*—the court received a voluminous list of stipulated facts and associated exhibits. Accordingly, we review the circuit court's grant of the County's motion to dismiss as a motion for summary judgment.

Summary Judgment

As established, the unique procedural posture of this case compels us to treat the circuit court's grant of the County's motion to dismiss as the grant of a motion for summary judgment. Generally, an appellate court reviews a trial court's grant of motion for summary judgment *de novo*. *Dashiell v. Meeks*, 396 Md. 149, 163, 913 A.2d 10, 18 (2006) (citing *Rockwood Cas. Ins. Co. v. Uninsured Employers' Fund*, 285 Md. 99, 106, 867 A.2d 1026, 1030 (2005)). Nonetheless, "prior to determining whether the trial court was legally correct, an appellate court must first determine whether there is any genuine dispute of material facts." *Id.* (citing *Converge Services Group, LLC v. Curran*, 383 Md. 462, 476, 860 A.2d 871, 879 (2004)). In addition, disputes as to any factual allegations are "resolved in favor of the non-moving party." *Id.* (citing *Jurgensen*, 380 Md. 106, 114, 869 A.2d 865, 869 (2004)). Based on the fact that the only factual allegations or exhibits received by the trial court were the List of Stipulated Facts and associated exhibits, we are confident that

there is no genuine dispute as to any material facts and focus our analysis on a *de novo* review of the circuit court's grant of summary judgment. *Id.*

Declaratory Judgment

Under Courts and Judicial Proceedings Article § 3-409(a), "a court may grant a declaratory judgment . . . if it will serve to terminate the uncertainty or controversy giving rise to the proceeding[.]" *See also Volkman v. Hanover Investments, Inc.*, 225 Md. App. 602, 612, 126 A.3d 208, 214 (2015). Therefore, we review a trial court's decision to grant or deny declaratory judgment for abuse of discretion. *Id.* (quoting *Sprenger v. Pub. Serv. Comm'n of Md.*, 400 Md. 1, 21, 926 A.2d 238, 250 (2007)).

DISCUSSION

The Relationship Between Volunteer Fire Companies, the County, and the Fire Chief

Volunteer fire companies are non-profit organizations that preexist the County's adoption of a County Charter style government. The PGCC provides some guidance as to the relationship between the volunteer fire companies and the County. One relevant provision provides that, "[a]ll 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." PGCC § 11-324(a). Section 13 of the County Charter establishes that "[t]here shall be a Fire/Emergency Medical Services ("EMS") Department headed by a Fire Chief. The Fire Chief shall be responsible for fire prevention, fire suppression, emergency

medical services, fire and rescue communications, research and training activities, and coordination of the volunteer fire companies."

The Circuit Court Correctly Dismissed PGCVFRA's Governmental Taking Claim

Under the Fifth Amendment of the United States Constitution, incorporated and made applicable to the States through the Fourteenth Amendment, the government is prohibited from taking private property "for public use, without just compensation." Similarly, under Article 3, § 40 of the Maryland Constitution, the General Assembly is prohibited from enacting a "[l]aw authorizing private property to be taken for public use without just compensation, as agreed upon between the parties, or awarded by a jury, being first paid or tendered to the party entitled to such compensation." In addition, under a similar vein, Article 24 of the Maryland Declaration of Rights provides that "no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land." This Court has previously commented on the interrelated nature of the federal and state constitutional provisions and remarked that they "are substantially similar, so much so that in interpreting the Maryland Constitution Article 3, § 40, we may practically consider the Supreme Court's decisions interpreting the Fifth Amendment to be direct authority." *Raynor v. Maryland Dept. of Health and Mental Hygiene*, 110 Md. App. 165, 185, 676 A.2d 978, 988 (1996).

PGCVFRA asserts that the County's revisions of General Order 01-03, which modified the chain of command within the Prince George's County/EMS Department,

constituted a governmental taking. In contrast, the County contends that the circuit court correctly determined that no governmental taking occurred. The Court of Appeals has explained that, although certain governmental action that restricts the use of an individual's property may constitute a taking—not all takings are cognizable on a constitutional level. *Maryland Reclamation Associates, Inc. v. Harford Cty.*, 468 Md. 339, 391, 227 A.3d 230, 260 (2020) ("It is an accurate statement to say that every restriction upon the use and enjoyment of property is a 'taking' to the extent of such restriction; but every 'taking' is not a 'taking' in a constitutional sense for which compensation need be paid." (quoting *City of Annapolis v. Waterman*, 357 Md. 484, 497, 745 A.2d 1000 (2000)).

Moreover, for a taking to constitute an unconstitutional taking, an individual's use of his or her property must be severely diminished by governmental action:

> The legal principles whose application determines whether or not the restrictions imposed by the zoning action on the property involved are an unconstitutional taking are well established. If the *owner affirmatively demonstrates that the legislative or administrative determination deprives him of all beneficial use of the property, the action will be held unconstitutional*. But the restrictions imposed must be such that the property cannot be used for any reasonable purpose. It is not enough for the property owners to show that the zoning action results in substantial loss or hardship.

Maryland Reclamation Associates, Inc., 468 Md. at 392, 227 A.3d at 261 (emphasis added); *see also Governor of Maryland v. Exxon Corp.*, 279 Md. 410, 437, 370 A.2d 1102, 1117 (1977), *aff'd*, 437 U.S. 117, 98 S. Ct. 2207, 57 L. Ed. 2d 91 (1978). Therefore, PGCVFRA, to succeed on its governmental takings claim, must have demonstrated that General Order 01-03 deprived it of "all beneficial uses of [its] property[.]" *Maryland Reclamation Associates, Inc.*, 468 Md. at 392, 227 A.3d at 261. In the instant appeal,

PGCVFRA has failed to meet this burden and its assertions undergirding its claim of unconstitutional taking by the County are too speculative in nature.

In its amended complaint, PGCVFRA averred that General Order 01-03's chain of command revision, *i.e*. elevation of Battalion Chiefs over Volunteer Chiefs, "with the incredibly broad scope for the chain of command creates a leadership structure that **will allow** Battalion Chiefs control over the private property owned by volunteer fire departments.[6]" (emphasis added). This broad assertion is rooted in hypothetical action allegedly taken by the County. As we have already noted, to succeed on its claim of a governmental taking, PGCVFRA was required to demonstrate that General Order 01-03 entirely deprived it of the beneficial uses of property which it owns. This is simply not the case. There is no evidence in the record that the County attempted—in any way—to deprive or actually deprived PGCVFRA of the beneficial use of its property. Despite General Order 01-03's modification of the chain of command, PGCVFRA failed to cite any instance in which the County unconstitutionally exercised—or even attempted to exercise—control over its properties.

In its brief, PGCVFRA cites to *Chillum-Adelphi* to buttress its claim that General Order 01-03 constitutes a governmental taking. In *dicta*, the *Chillum-Adelphi* Court contemplated the relationship between the Fire Chief and volunteer fire companies, and sketched a situation in which an unconstitutional governmental taking may occur:

[6] PGCVFRA repeated this paragraph in three instances in its Amended Complaint: (i) Count Three, for declaratory judgment; (ii) Count Four, violation of substantive due process; and (iii) Count Five, the governmental takings claim.

> Section 14 of the schedule of legislation created a Prince George's County Fire Department. To say that there is only one fire department in the County would be to say that the volunteer companies were subsumed by the Prince George's County Fire Department, that they had lost their independent status, and were now mere appendages or parts of the County department. Such a construction would be unconstitutional because it would provide for a taking of private property without just compensation.

Chillum-Adelphi, 275 Md. at 383, 340 A.2d at 271. The situation envisioned by the *Chillum-Adelphi* Court is one in which the County attempts to usurp control over the volunteer fire companies and deprive them of "their independent status[.]" *Id.* The revision of General Order 01-03 merely modified the chain of command. It did not permit the County to exercise absolute control over volunteer fire companies. Moreover, despite PGCVFRA's assertions, prior to the modification of General Order 01-03, several County employees were positioned above Volunteer Company Chiefs within the chain of command. Therefore, PGCVFRA failed to meet its burden to demonstrate that a governmental taking occurred; its assertions of a governmental taking are too speculative. Accordingly, we affirm the circuit court's dismissal of PGCVFRA's governmental taking claim.

The Circuit Court did not Abuse its Discretion in Denying PGCVFRA Declaratory Judgment

Before the circuit court, PGCVFRA moved for declaratory judgment. In regard to declaratory judgment, § 3-409(a) of the Courts and Judicial Proceedings Article ("CJP") provides that,

> (a) Except as provided in subsection (d) of this section, a court may grant a declaratory judgment or decree in a civil case, if it will serve to terminate the uncertainty or controversy giving rise to the proceeding, and if:
>
> (1) An actual controversy exists between contending parties;
>
> (2) Antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; or
>
> (3) A party asserts a legal relation, status, right, or privilege and this is challenged or denied by an adversary party, who also has or asserts a concrete interest in it.

To maintain an action for declaratory judgment, a justiciable controversy is "an absolute prerequisite." *Hatt v. Anderson*, 297 Md. 42, 45, 464 A.2d 1076, 1078 (1983) (citing *Kronovet v. Lipchin*, 288 Md. 30, 58, 415 A.2d 1096, 1112 (1980)). A justiciable controversy is one where "parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded." *Id.* at 45–46, 464 A.2d at 1078.

More specifically, to demonstrate the existence of a justiciable controversy requires "more than a mere difference of opinion[ ] and . . . there must be more than a mere prayer for declaratory relief." *Id.* at 46, 464 A.2d at 1078. The requirement that a justiciable controversy exists stems from our prohibition against rendering advisory opinions. *Id.* at 46, 464 A.2d at 1078; *see also Maryland-National Capital Park and Planning Comm'n v. Randall*, 209 Md. 18, 27, 120 A.2d 195, 199 (1956) (citing *Tanner v. McKeldin*, 202 Md. 569, 580, 97 A.2d 449, 454 (1953).

Further, the Court of Appeals has noted that the existence of a justiciable controversy is "especially [an] important principle" in cases alleging violation of

constitutional rights. *Hatt*, 297 Md. at 46, 464 A.2d at 1078. As a result, the Court has recognized that "in such instances we ordinarily require concrete and specific issues to be raised in actual cases, rather than as theoretical or abstract propositions." *Id.* (citing *Salisbury Beauty Schools v. State Bd. of Cosmetologists*, 268 Md. 32, 300 A.2d 367 (1973)). Moreover, when a party alleges that a regulation is unconstitutional and seeks declaratory judgment, an actual dispute must be demonstrated "beyond that which might be implied by the mere facial existence of the regulation . . . this alone is plainly insufficient to present a justiciable controversy." *Id.* at 47, 464 A.2d at 1079. Overall, the record in this case contains insufficient evidence to demonstrate that the circuit court abused its discretion in denying declaratory relief.

In *Hatt*, the plaintiff alleged that a regulation, Regulation 2.6,[7] promulgated by the Anne Arundel County Fire Department was unconstitutionally overbroad and sought declaratory relief under the Uniform Declaratory Judgments Act. 297 Md. at 43, 464 A.2d at 1077. The plaintiff contended that the regulation was overly broad, because it limited his First Amendment right to free speech without limitation. *Id.* at 44, 464 A.2d at 1076. The circuit court found that Regulation 2.6 was not overbroad. *Id.* On appeal, however, the Court of Appeals, disagreed with Mr. Hatt's assertions and the analysis of the circuit court, holding that no justiciable controversy existed between the parties, and the circuit

[7] Regulation 2.6 provided that, "[c]riticism of superior officers, discourtesies to the public or to other personnel of the fire department, unjust treatment of officers or personnel and movements tending to create dissension or appearing to ignore responsible officials will be considered breaches of discipline."

court erred by not dismissing the complaint and making a finding as to the regulation's constitutionality. *Id.* at 46–47, 464 A.2d at 1078–80.

The *Hatt* Court commented that "[t]he short of it is that nothing appears in the pleadings that even remotely suggest[s] that an actual dispute exists between the parties[.]" *Id.* at 46, 464 A.2d at 1079. The Court further reasoned that the *Hatt* plaintiff did not

> assert that any of his claimed free speech rights are actually being disputed, challenged or contested by the Fire Administrator. There is no indication that Hatt has been ordered to do, or not do, anything under the regulation either in his individual capacity or as a firefighter . . . . At most, Hatt speculates as to what might happen under the regulation if he criticizes his superior officers.

Id. at 47, 464 A.2d at 1079. Further, the Court commented that Mr. Hatt's assertions regarding the factual basis underlying his claim that Regulation 2.6 was unconstitutional were "simply too theoretical, too abstract and too speculative to form the basis for an action for declaratory relief under the Act[,]" because Mr. Hatt did not sufficiently demonstrate that a justiciable controversy existed. *Id.*

Hatt is instructive because, like in that case, PGCVFRA failed to sufficiently establish that a justiciable controversy existed between it and the County, based on the modification of the change of command that resulted from the Fire Chief's revision of General Order 01-03. Here, the circuit court did not abuse its discretion in finding there was no justiciable controversy. Similar to the factual situation in *Hatt*, PGCVFRA failed to cite specific examples or instances in which the Fire Chief, under the authority of General Order 01-03, acted unconstitutionally.

In several counts of its Amended Complaint, PGCVFRA stated that the elevation of County-employed Battalion Chiefs over Volunteer Chiefs, "with the incredibly broad scope for the chain of command creates a leadership structure that **will allow** Battalion Chiefs control over the private property owned by volunteer fire departments." *See supra* at 16 (emphasis added). As in *Hatt*, PGCVFRA's allegations about the County-employed fire personnel exercising power over volunteer fire personnel is "simply too theoretical, too abstract and too speculative to form the basis for an action for declaratory relief under the Act." *Hatt*, 297 Md. at 47, 464 A.2d at 1079.

General Order 01-03 modifies the "chain of command" by elevating a "Battalion Chief, Career/Volunteer" above a "Volunteer Company Chief.[8]" Despite PGCVFRA's contentions and evident from the plain language of General Order 01-03, a volunteer firefighter could occupy the position of Battalion Fire Chief. Moreover, prior to any change to the chain of command, through General Order 01-03, several County employees

[8] Under revised General Order 01-03, the relevant portion of the chain of command reads as follows:

1. County Fire Chief
2. Chief Deputy
3. Deputy Fire Chief
4. Assistant Fire Chief, Career/Volunteer
5. Battalion Chief, Career/Volunteer
6. Volunteer Company Chief

PGCVFRA's principal issue with the chain of command under revised General Order 01-03 is its elevation of Battalion Chiefs above Volunteer Company Chiefs.

were positioned above Volunteer Company Chiefs within the chain of command.[9] Additionally, § I.B of General Order 01-03 provides that "[t]he individual Volunteer Fire Department 501[(c)(3)] corporate non-operational activities, that do not interfere with operational readiness or operational activities, continue to be fully under the purview of the individual Volunteer Corporations." Although PGCVFRA contends that the term "operational readiness or operational activities" could be interpreted to encompass any aspect of a volunteer fire company's activities, the County makes compelling arguments that control over a volunteer fire company's operations would not entitle the County to obtain control over "how volunteer fire companies could spend their own money or dispose of their own assets[.]" *Chillum-Adelphi*, 275 Md. at 384, 340 A.3d at 272.

Accordingly, the circuit court did not err when it determined that there was no justiciable controversy underlying PGCVFRA's claim for declaratory judgment. Despite PGCVFRA's averments that the Fire Chief could use the revised chain of command to exercise control over the volunteer fire companies, it failed to cite any instances or examples in which the Fire Chief violated any rights of any volunteer fire companies. As the plaintiff in *Hatt*, PGCVFRA failed to assert the existence of an actual dispute aside from a mere difference in opinion and "beyond that which might be implied by the mere facial existence of the regulation[.]" *Hatt*, 297 Md. at 47, 464 A.2d at 1079. Thus, based

[9] *See supra* at n.8. Currently, under General Order 01-03, the first three ranks within the chain of command are generally career firefighters and outrank Volunteer Company Chiefs. Prior to the revisions, the County Fire Chief and Career Lieutenant Colonel outranked any position occupiable by a volunteer firefighter. Moreover, all of the officers holding these positions report to the Fire Chief.

on the speculative and hypothetical nature of PGCVFRA's averments underlying its declaratory judgment claim, we conclude that PGCVFRA's assertions are "too theoretical, too abstract and too speculative to form the basis for an action for declaratory relief[.]" *Id.* at 46, 464 A.2d at 1079.

The parties debate the substance of the Court of Appeals' decision in *Chillum-Adelphi*. Despite PGCVFRA's reliance on that case, *Chillum-Adelphi* provides minimal support for PGCVFRA's position. In *Chillum-Adelphi*, the Chillum-Adelphi Volunteer Fire Department challenged the enactment of what is now entitled PGCC § 11-324. The ordinance governs the relationship between the County and volunteer fire companies. The provision provides the following summary of that relationship:

> 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.

PGCC § 11-324(a). Among other things, the *Chillum-Adelphi* Court addressed the issue of whether "[the] County ha[d] the power to control the activities of the volunteer fire companies, and, if so, to what extent?" 275 Md. at 379, 340 A.2d at 269. As referenced by the County, the Court noted that, under the County Charter § 13, the Fire Chief "shall be responsible for fire prevention, fire suppression, emergency medical services, fire and rescue communications, research and training activities, and coordination of the volunteer fire companies." County Charter § 13; *Chillum-Adelphi*, 275 Md. at 379, 340 A.2d at 269.

The *Chillum-Adelphi* Court commented that "[w]hether or not a given regulation is within the scope of this power [*i.e.* County Charter § 13] is not before the Court in this case. We can only set forth the standard which will control the resolution of any future dispute as to a given regulation." *Id.* at 382, 340 A.2d at 270. Ultimately, the Court concluded that the Fire Chief, under County Charter § 13, has "the power to **reasonably regulate** these volunteer fire companies to protect the public health, safety, morals, or welfare." *Id.* (emphasis added). We note that General Order 01-03 modifies the previous chain of command with regard to the relationship between County-employed and volunteer firefighters. It cannot be said that under the facts of this case, the County attempted under the terms of the revised Order to unreasonably regulate its volunteer fire companies. The *Chillum-Adelphi* Court noted that the Fire Chief does not have the absolute authority to regulate volunteer fire companies and seemingly provided examples of situations in which the County's action would be unreasonable and constitute governmental overreach:

> 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. Of course, any directions he gives may well pass through a chain of command, but he would remain as the person in control and ultimately responsible. 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. The fact that the chief is in control of fire fighting would not give him the right to prescribe how volunteer fire companies could spend their own money or dispose of their own assets, nor could he prescribe on what night of the week or at what hours these volunteer fire companies might meet. His control certainly would extend to imposing limitations upon the speed of fire engines proceeding to and from fires and to specifying the training and duties of paid firemen assigned to the volunteer fire companies since all of this would be directly related to the fighting of

> fires. However, his powers would not go so far as to say that volunteer firemen not then fighting a fire could not engage in a friendly game of pinochle at the firehouse or watch a sports event there on television.

Chillum-Adelphi, 275 Md. at 383–84, 340 A.2d at 271–72. As noted by the Court, the Fire Chief is responsible for coordination between the County and the volunteer fire companies. *Id.* at 383, 340 A.2d at 271. Considering the court's contemplation on the Fire Chief's authority, in conjunction with its comments on the role a chain of command plays within the County's firefighting system, we are confident that modification of the Department's chain of command, as effectuated through revision of General Order 01-03, falls under the Fire Chief's authority, granted under County Charter § 13, to coordinate with the volunteer fire companies. *See Id.*; County Charter § 13.[10] Although the *Chillum-Adelphi* Court did not decide what forms of regulation fall within the Fire Chief's authority, our independent review of the record confirms that the circuit court did not err in concluding that, under *Chillum-Adelphi*, the Fire Chief maintains the authority to modify the chain of command, and such a regulation—modifying the relevant chain of command—is not an unreasonable exercise of this authority.

Throughout its brief, PGCVFRA claims that the circuit court misquoted or misapplied *Chillum-Adelphi*. More specifically, PGCVFRA points out that the circuit court erroneously cited a portion of *Chillum-Adelphi* in summarizing the County's position. The circuit court quoted the portion of that opinion that states "the volunteer fire companies

[10] At the time of *Chillum-Adelphi*, County Charter § 13 was § 14. *See* 275 Md. at 383, 340 A.2d at 271.

'are instrumentalities of the County such that the fire chief of (the) County . . . has the power and authority to direct and control the internal operations of the volunteer fire companies." *Chillum-Adelphi*, 275 Md. at 380, 340 A.2d at 270 (alterations in original).

The circuit court, however, omitted the introductory phrase of that sentence which made it clear that this was—in fact—the County's position. *Id.* Although the *Chillum-Adelphi* Court did not adopt the County's position in its entirety, it held that the Fire Chief does have the authority to reasonably regulate volunteer fire companies. *Id.* at 382, 340 A.2d at 270. Our review of the record suggests that the circuit court properly followed the mandates of *Chillum-Adelphi* and determined that the Fire Chief's revision of General Order 01-03 constituted such a reasonable regulation of the fire companies. Accordingly, we conclude that PGCVFRA's assertions are unpersuasive. Thus, the circuit court did not abuse its discretion in denying PGCVFRA's claim for declaratory judgment.

The Circuit Court Correctly Dismissed PGCVFRA's County Alleging Breach of the MOU

PGCVFRA contends that the MOU entered into between the parties was an enforceable contract, and that the circuit court erred in concluding that the MOU is unenforceable because of a lack of consideration. Therefore, PGCVFRA argues that the circuit court erred in dismissing Count One, for breach of contract. In contrast, the County asserts that the circuit court was correct in finding that the MOU was not an enforceable contract, because it lacked consideration and acted appropriately in dismissing the count.

In *Mayor & City Council of Baltimore v. Clark*, the Court of Appeals examined a MOU entered into between the Mayor of Baltimore and a former Police Commissioner of Baltimore City. 404 Md. 13, 17, 944 A.2d 1122, 1124 (2008).[11] PGCVFRA relies on *Clark*, for the proposition that MOUs constitute enforceable contracts. In contrast, the County argues that the MOU contemplated in *Clark* is distinguishable, because it was in effect an employment contract, and—even if the MOU were an enforceable contract—the County did not breach it.

The *Clark* Court treated the MOU at issue as a contract, and the parties seemingly did not contest its enforceability. *Id.* at 17, 944 A.2d at 1124. In fact, the MOU by its terms was described as a "contract[,]" and contained remedies for breach, and consideration. *Id.* at 17, 944 A.2d at 1125. As alluded to earlier, the MOU concerned the employment relationship between the Police Commissioner of Baltimore City and the Mayor. *Id.* at 17–18, 944 A.2d at 1124–25. The primary issue before the *Clark* Court was whether a provision of the MOU that provided that either party could terminate it—and thus the employment relationship—by notifying the other party forty-five days prior to its decision, was in conflict with Public Local Laws § 16-5 which, at the time, enumerated a limited list of reasons for which the Mayor could remove the Police Commissioner. *Id.* at 17, 34–36, 944 A.2d at 1125, 1134–35. The Court held that the Mayor could not essentially

[11] After the Court of Appeals examined the case, Mr. Clark filed a Motion for a "Writ of Mandamus or Injunction for Reinstatement to Office Forthwith[,]" which the circuit court later denied, and this Court reviewed an appeal originating from that case. *See Clark v. O'Malley*, 186 Md. App. 194, 207–10, 973 A.2d 821, 829–30 (2009) (discussing the MOU at issue and the procedural posture of that appeal).

transform the Police Commissioner into an at-will employee through a clause contained in an MOU. *Id.* at 33, 944 A.2d at 1133–34.

Consideration has been defined as "[mutual promises in each of which the promisor undertakes some act or forbearance that will be, or apparently may be detrimental to the promisor or beneficial to the promisee[.]" *Hercules Powder Co. v. Harry T. Campbell Sons Co.*, 156 Md. 346, 517, 144 A. 510 (1929). Moreover, "anything which fulfills the requirement of consideration, that is, one recognized as legal, will support a promise, whatever may be the comparative value of the consideration and of the thing promised." *Vogelhut v. Kandel*, 308 Md. 183, 191, 517 A.2d 1092, 1096 (1986) (quoting *Blumenthal v. Heron*, 261 Md. 234, 243, 274 A.2d 636, 640 (1971)). Generally, "[i]t is basic contract law that courts generally will not inquire as to the adequacy of consideration[.]" *Lillian C. Blentlinger, LLC v. Cleanwater Linganore, Inc.*, 456 Md. 272, 278 n.2, 173 A.2d 549, 552 n.2 (2017) (quoting *Vogelhut v. Kandel*, 308 Md. 183, 190–91, 517 A.2d 1092, 1096 (1986)).

In the instant case, § 6 of the MOU titled "Long Term Agreement Development" stated:

> All parties agree to work together to develop additional agreements or memoranda of understanding related to funding, administrative, and operational issues. That process shall commence with the execution of this MOU, with an initial goal of completion by June 30, 2013, or within twelve ('12') months after the execution of this MOU[.]
>
> The Volunteer Fire/EMS Corporations, working under the Association and with the Fire Commission, shall establish a strategy committee to determine the short and long term priorities of the Volunteer Fire/EMS service as it integrates with the overall Fire/EMS.

Section 6 of the MOU requires the volunteer fire companies to work together with the County with several goals in mind—action that the volunteer fire companies would not be required to undertake, but for the MOU. Based on the principles set forth above, the MOU contains adequate consideration. Both the County and PGCVFRA agreed to undertake action that they likely would not have undertaken otherwise. Therefore, the circuit court erred in determining that the MOU was not an enforceable contract, based on a lack of consideration. Nonetheless, we must examine the County's contentions that, even if the MOU was an enforceable contract, the County did not breach it.

Despite the circuit court's error, the County complied with the mandates of the MOU upon which PGCVFRA alleges a breach occurred. Section 4.8 of the MOU provides that,

> [t]he Fire Commission and [PGCVFRA] will be provided the opportunity to review and comment on all Fire/EMS Department policies or regulations proposed by the Fire Chief, prior to implementation (except in case of emergency situations). If the Fire Commission has concerns with the proposed policy or regulation they must document those concerns and forward to the Fire Chief within 14 calendar days of receipt. The Fire Commission will appoint two representatives to continuously represent the Fire Commission of the Fire/EMS Department General Order Workgroup (or any future equivalent designated review body) . . . .
>
> The Fire Chief will provide, except in emergency situations all segments of the Fire/EMS Department and will work closely with each segment to mediate and mitigate concerns, when possible, based on the operational needs and the requirements of the provisions of the County Code and Union Contracts.

The circuit court found that the Fire Chief fulfilled his obligation to allow PGCVFRA review and comment on revised General Order 01-03. The circuit court also

concluded that the Fire Chief made sufficient attempts to "mediate and mitigate" PGCVFRA's concerns through meetings and letters. In fact, the record is replete with communications between the County and PGCVFRA that express their concerns and seemingly attempted to work towards addressing those concerns. Therefore, our review of the record makes clear that the County did not breach the MOU it entered into with PGCVFRA. Accordingly, although the circuit court erroneously concluded that the MOU was not enforceable, the County complied with the terms of the MOU and dismissal of Count One, *i.e*. breach of contract, was nonetheless appropriate. Therefore, we affirm the circuit court's dismissal of PGCVFRA's breach of contract claim.

The Circuit Court Correctly Dismissed PGCVFRA's Request for Injunctive Relief

PGCVFRA contends that the circuit court erred also erred in dismissing its claim for permanent injunctive relief. PGCVFRA's sole contention on this issue is that the circuit court erroneously engaged in factfinding. In ruling on PGCVFRA's claim and determining that PGCVFRA failed to demonstrate that it suffered irreparable injury, the circuit court determined that "in the three years [since General Order 01-03 was enacted], there has been no evidence of [the County Fire Chief taking personal property or control of the volunteer fire corporations].[12]"

Generally, "[i]njunctive relief normally will not be granted unless the petitioner demonstrates that it will sustain substantial and irreparable injury as a result of the alleged

[12] This determination was also relevant to the circuit court's disposition on PGCVFRA's governmental takings claim.

wrongful conduct." *El Bey v. Moorish Sci. Temple of Am., Inc*., 362 Md. 339, 355, 765 A.2d 132, 140 (2001) (citing *Maryland-Nat'l Capital Park and Planning Comm'n v. Washington Nat'l Arena*, 282 Md. 588, 615, 386 A.2d 1216, 1234 (1978)). The Court of Appeals has defined an "irreparable injury" as one that "cannot be measured by any known pecuniary standard." *Id.* at 355, 765 A.2d at 140 (quoting *Dudley v. Hurst*, 67 Md. 44, 52, 8 A. 901, 904 (1887)). The Court has also held that "mere allegations or arguments by a petitioner that it will suffer irreparable damage are not sufficient foundation upon which to base injunctive relief; facts must be adduced to prove that a petitioner's apprehensions are well-founded." *Id.* at 356, 765 A.2d at 141 (citing *Smith v. Shiebeck*, 180 Md. 412, 421, 24 A.2d 795, 801 (1942)).

Ultimately, PGCVFRA failed to sufficiently allege that it suffered irreparable injury through the Fire Chief's revision of General Order 01-03 and its amendment of the chain of command. As noted in our discussion on PGCVFRA's governmental takings claim, PGCVFRA failed to establish any sort of injury. Its claims regarding potential injury are hypothetical, speculative, and depend on future—uncertain—conduct that PGCVFRA alleges the County may undertake. The speculative nature of these complaints is apparent, and these "mere allegations" are insufficient to ground PGCVFRA's claim for permanent injunctive relief. *Id.* In consideration of PGCVFRA's arguments that the circuit court impermissibly engaged in factfinding, we recognize that we are treating the County's motion for dismissal as one for summary judgment. The circuit court had before it, a voluminous record of stipulated facts and exhibits, which included undisputed factual

matters outside the pleadings, and the record clearly supports the circuit court's ultimate conclusion. Accordingly, we affirm the circuit court's dismissal of PGCVFRA's claim for permanent injunctive relief, because PGCVFRA failed to sufficiently demonstrate that it was prejudiced by revision of General Order 01-03.

The Circuit Court Correctly Dismissed PGCVFRA's Ultra Vires Count

PGCVFRA contends that the circuit court erroneously failed to address its claim that the Fire Chief's actions were *ultra vires*—Count Seven of PGCVFRA's amended complaint. In its written order and oral pronouncements from the bench, the circuit court failed to specifically identify Count Seven as one of the Counts before it. The circuit court did, however, make a specific statement which undermines PGCVFRA's *ultra vires* claim and evidences that the circuit court implicitly dismissed the count. The circuit court stated on the record that General Order 01-03 was an order made within the scope of the Fire Chief's authority. In addition, section 11-324 of the Prince George's County Code provides that volunteer fire companies are instrumentalities of the county and municipality in which they operate. Reading *Chillium-Adelphi* along with section 11-324(a), of the County Code, one may reasonably conclude that all volunteer fire companies in Prince George's County when "operational" and called upon to respond to an emergency are instrumentalities of the Prince George's County Fire Department. Accordingly, it was PGCVFRA's burden to demonstrate how the County Fire Chief's actions in setting forth standards and processes for both career and volunteer firefighters under a centralized chain of command constituted *ultra vires* activity.

An *ultra vires* act is "one not within the express or implied powers of the corporation as fixed by its **charter, the statutes, or the common law.**" *Steele v. Diamond Farm Homes Corp.*, 464 Md. 364, 377, 211 A.3d 411, 419 (2019) (emphasis in original) (quoting *Greenbelt Homes v. Nyman Realty, Inc.*, 48 Md. App. 42, 57 n.4, 426 A.2d 394, 403 n.4 (1981)). Specifically, in the circuit court's October 24, 2017 order, the court stated that the revision of General Order 01-03 was within the scope of the Fire Chief's authority.

In its amended complaint, PGCVFRA merely alleged that "Revised General Order 01-03 is *ultra vires* because the Fire Chief was acting outside his scope of power when he created a rank structure that vested County-employed Battalion Chiefs with control over volunteer fire company chiefs and their departments." To this extent, PGCVFRA fails to provide sufficient argument or evidentiary justification as to how the Fire Chief's action were *ultra vires*. As discussed *supra*, the Fire Chief's revision of General Order 01-03, modifying the chain of command, was permitted under the County Charter, the PGCC, and *Chillum-Adelphi*. Moreover, although the circuit court did not specifically reference PGCFRA's *ultra vires* claim, it specified at the hearing that it was addressing all of PGCVFRA's counts that were "still viable in the amended complaint[.]" Therefore, the circuit court implicitly dismissed this claim and the dismissal was legally correct.

The Circuit Court Correctly Determined that the Accardi Doctrine is Inapplicable

Lastly, PGCVFRA contends that the circuit court erroneously dismissed Count Six of its amended complaint, alleging violation of the *Accardi* doctrine. Under the *Accardi* doctrine, "[i]t is well established that rules and regulations promulgated by an

administrative agency cannot be waived, suspended or disregarded in a particular case as long as such rules and regulations remain in force[.]" *Pollock v. Patuxent Inst. Bd. of Review*, 374 Md. 463, 485, 823 A.2d 626, 639–40 (2003) (quoting *Maryland Transp. Authority v. King*, 369 Md. 274, 282, 799 A.2d 1246, 1250 (2002)). In other words, the *Accardi* doctrine requires administrative agencies to abide by the rules, regulations, and procedures they promulgate. *Id.* at 485–86, 823 A.2d at 639. Under Maryland's modified version of the *Accardi* doctrine, a complainant must demonstrate that he or she experienced "substantial prejudice as a result of the agency action." *Id.* at 490, 823 A.2d at 642.

As concluded above, the MOU constitutes an enforceable contract and not an administrative regulation or rule. Therefore, the *Accardi* doctrine is inapplicable. Even assuming *arguendo* that the MOU constitutes an administrative regulation, the circuit court correctly determined that PGCVFRA failed to demonstrate that the Fire Chief's revision of General Order 01-03 caused it substantial prejudice. As discussed above, the Fire Chief complied with the provisions of the MOU, and the stipulated facts and exhibits contained within the record confirm our interpretation. Moreover, several County employees had always outranked volunteer firefighters within the chain of command, prior to the Fire Chief's revision of General Order 01-03. Therefore, given these circumstances, PGCVFRA failed to demonstrate that it experienced substantial prejudice resulting from the revision of General Order 01-03. Even if PGCVFRA could demonstrate substantial prejudice, its claim based on violation of the *Accardi* doctrine would fail, because the Fire Chief complied with the relevant provisions of the MOU. Accordingly, we conclude that

the circuit court correctly dismissed PGCVFRA's claim alleging violation of the *Accardi* doctrine and affirm its judgment.

CONCLUSION

For the aforementioned reasons, we conclude that the circuit court correctly dismissed PGCVFRA's amended complaint and did not abuse its discretion in denying PGCVFRA declaratory relief. Accordingly, we affirm the judgment of the Circuit Court for Prince George's County.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.