

Legal Analysis of FGCC's 300-Foot Sewer "Served" Classification as Applied to Declarant-Owned Lots

on behalf of FGH Land Tennessee, LLC (Declarant)

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Abstract

This paper evaluates whether the Fairfield Glade Community Club's (FGCC) sewer policy deeming lots within 300 feet of a Central Sewer System (CSS) line "served" conflicts with (i) the Development and Option Agreement between FGCC and the Declarant and (ii) the Amended and Restated Declaration of Covenants and Restrictions for Fairfield Glade (1997). The analysis concludes the policy is unenforceable because it contravenes the Agreement's explicit adjacency trigger, bypasses the Declaration's amendment requirements, and materially interferes with phased development and road/utility sequencing. Targeted remedies include abandoning/modifying existing sewer policy to conform with the Option Agreement and the C&R's, a clarifying amendment to the Option Agreement, a formal demand and, if necessary, declaratory and injunctive relief.

Introduction

FGCC adopted a sewer policy (last modified Apr. 27, 2023) that treats any lot within 300 feet of a CSS line as "served," imposing availability fees and enabling reclassification. This position paper examines the lawfulness of applying that policy to lots in the Development Phases and proposes practical remedies to restore the bargained-for development framework.

Background

- **Option Agreement (Nov. 2024).** Declarant controls phasing (§1.E); Class "C" lots remain Class "C" until road and sewer are installed adjacent to the lot (§8.B); amendments require a signed writing by both parties (§9.M); the Declaration controls in conflicts but cannot be used to unilaterally revise the Agreement (§9.Q).
- **Sewer Resolution (last modified Apr. 27, 2023).** §1.1 deems lots within 300 ft of a CSS line "served," imposing availability fees.

- **Declaration (1997).** Art. VI §2 empowers the Board to extend the CSS based on capability/need; Art. VI §2(b)(ii) fixes sewer-obligated properties by recorded Exhibit “C”; Art. XIV §4 requires ¾ membership approval and Declarant consent for material amendments.
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Analysis

A. Direct Conflict with Agreement’s Adjacency Trigger

The 300-ft rule reclassifies and assesses before adjacent road/sewer installation, violating §§8.B and 9.M. FGCC policy cannot amend a private contract.

B. Declaration Violation: Substantive & Procedural

Treating proximity as service effectively enlarges Exhibit “C” without Art. XIV §4 approvals (¾ vote + Declarant consent).

It also exceeds Art. VI §2 discretion, which ties extensions to **financial capability and reasonable need, not distance.**

Article VI §2 reads “Fairfield Glade ... shall consider the following factors and such others as the Board may deem proper from time to time: (1) the economic feasibility of extending such system (2) the demand for housing in an established subdivision, (3) the health needs of the community and regulatory requirements of local, state and federal authorities, (4) the need to provide sewer service to Lots for construction of new housing for those Lot Owners trading from areas that are not presently served by sewer facilities where such cannot economically be served at that time due to their location, (5) the need to encourage the continued growth of the permanent residential community by providing sewer service to Lot Owners who intend to move to Fairfield Glade and build a home, (6) the need to provide sewer service for multi-family housing, including second homes, for non-resident property owners, and (7) the need to provide sewer service for community facilities, including amenities of various types and recreational facilities that enhance the attractiveness and the value of the community for all property owners.”

C. Interference with Phased Development & Roads

Proximity-based “served” pockets coerce premature road extensions, invite leap-frog builds on isolated Class “C” lots, and degrade phase-level design efficiencies (grading, coordinated utility corridors, drainage). These effects materially impair Declarant’s reserved development rights under the Agreement and Declaration. (Articles V & VI)

Section E of the Option Agreement establishes that only the Declarant may direct phased development within the mapped areas identified in Collective Exhibit “A.” By extending sewer service beyond those designated boundaries, FGCC has effectively altered Exhibit “A” without the written amendment jointly executed by both parties as required under the Agreement. These unauthorized extensions disrupt the intended sequencing of road and utility projects, interfere with Declarant’s exclusive control over phased development, and materially impair the Declarant’s rights expressly reserved under the Option Agreement.

D. Economic and Competitive Distortions

Premature fees increase holding costs and encourage opportunistic acquisition of inexpensive Class “C” lots near sewer mains, undermining coordinated buildout.

E. Good-Faith Concerns

Redefining “availability” without approvals and applying it to Declarant agreement lots violates good faith of the Agreement and Declaration.

Remedies

- 1. Confirm lots remain Class “C” until adjacency; no proximity-based fees. Cite Agreement §§1.E, 8.B, 9.M, 9.Q and Declaration Art. VI, Art. XIV §4.**
- 2. Clarifying Amendment to the Option Agreement.** *“Notwithstanding any policy, Declarant-owned Development Phase lots are not reclassified or assessed sewer-related fees until the adjacent road and sewer are installed and accepted. Lots within Exhibit A of the Option Agreement will remain ‘C’ lots under option until the Declarant moves them into a Development Phase.”*
- 3. Clarifying Sewer Policy.** *“The Board of Directors of FGCC shall be the sole judge as to the extension of the CSS per Section 2(b)(i) of Article VI of the Declaration. FGCC will consider extension of the CSS collection line to the nearest point of a property based on the master planned layout of the CSS.”*
- 4. Addition to Sewer Policy: “Sewer service will not be extended to areas where there is not an existing hard surfaced road.”**

Conclusion

FGCC’s 300-foot “served” classification conflicts with the Agreement’s adjacency condition, violates the Declaration’s amendment procedures, and disrupts phased road/utility sequencing. The appropriate resolution is a written clarification reaffirming the

Board of Directors shall be the sole judge of where sewer is extended **and making the addition that confirms sewer service will not be extended to areas where there is not an existing hard surface road.**

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