

FGH LAND TENNESSEE, LLC

VS

ZURICH HOMES, INC., et al.

PROCEEDINGS

August 21, 2026



IN THE CHANCERY COURT FOR CUMBERLAND COUNTY, TENNESSEE

FGH LAND TENNESSEE, LLC,

Plaintiff,

vs.

Case No. 2026-CH-2743

ZURICH HOMES, INC., and,
FAIRFIELD GLADE COMMUNITY
CLUB,

Defendants.

Proceedings Held Before
The Honorable Ronald Thurman
August 21st, 2026

Reported by:
BRITTANY A. TEMPLES, LCR
Cumberland Court Reporting
716 Spring Valley Rd.
Cookeville, TN 38501
(615)714-7961

A P P E A R A N C E S

For the Plaintiff:

NICHOLAS W. DIEGEL
Attorney at Law
265 Brookview Centre Way, Suite 600
Knoxville, TN 37919
ndiegel@bakerdonelson.com

For the Defendants:

JOSHUA R. DENTON
TONYA J. AUSTIN
Attorneys at Law
5120 Virginia Way, Suite C-11
Brentwood, TN 37027
jdenton@dentonaustin.com
taustin@dentonaustin.com

REPORTER'S NOTES:

QUOTATION MARKS ARE USED FOR CLARITY AND DO NOT
NECESSARILY REFLECT A DIRECT QUOTE

PROPER NAMES ARE PHONETICALLY SPELLED UNLESS STATED ON
THE RECORD

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

* * *

P R O C E E D I N G S

(WHEREUPON, the above-captioned matter was heard in open court as follows:)

THE COURT: Be seated. Counsel, I'm expecting a call from Justice Bivens in a minute, so we may have to take a break. We've been playing phone tag. I apologize in advance. I may have to cut you off for a second and let me talk to him.

I have read your paperwork, and I will hear your arguments.

MR. DIEGEL: Good morning, Your Honor. Nick Diegel with the Knoxville Bar. Thank you for having me in Putnam County this morning. Counsel for Plaintiffs FHG and the Fairfield Glade Community Club. We have a motion for a temporary injunction that has been pending for quite a while. The restraint we're seeking is to stop the defendant, Zurich Homes, Inc., from paving roads in Fairfield Glade in violation of a clear and unambiguous provision in the governing covenants and restrictions in Article 6, Section 3, that bestows the declarant with sole authority, sole judgment if the construction, extension, and improvement of roads in Fairfield Glade.

I don't think anyone disputes the fact that

1 on or about June 30, 2026, Zurich Homes began
2 attempting to pave a street called Hanover Court in
3 Fairfield Glade. Zurich Homes is also developing two
4 lots in that property -- well, technically, three, but
5 I think they're building on two of them at the same --
6 on the same parcel. They're trying to build luxury
7 homes. And so they found this spot. They said, we'll
8 put properties on these two lots, it will be completely
9 filled, and we'll build the road. And that way we up
10 our property value. They're not allowed to do that
11 under the C&Rs.

12 Your Honor, despite the length of the
13 briefing you have received this week, which I apologize
14 for -- I'm sure it wasn't fun to read -- this is
15 actually just a simple case of whether there are rights
16 to exclusive paving with FGH under the C&Rs. Our
17 position is that the plain language of the covenants,
18 the lodestar for contract interpretation under
19 Blue Cross, supports the plaintiff's position that the
20 development of the roads and streets in Fairfield Glade
21 belongs to FGH alone.

22 The language at issue, it's four sentences,
23 for the most part, maybe five. I just -- I'm going to
24 go through them one by one.

25 It is contemplated that the roads and streets

1 shall be constructed by the declarant, and that those
2 roads and streets, which are not accepted for
3 dedication by Cumberland County, will be a part of the
4 common area. And so this means roads and streets in
5 Fairfield Glade are constructed by FGH, or the
6 declarant. In this case, it is FGH. It also says
7 those records are common area. Regardless of whether
8 they are accepted for dedication -- or excuse me, if
9 they're not accepted for dedication, they'll be common
10 area.

11 The second sentence says: However, the
12 declarant shall be sole judge as to where such
13 roads and streets shall be -- excuse me, when such
14 roads and streets shall be constructed and extended
15 from time to time. So this language means FGH is the
16 sole judge as to when to construct and extend those
17 roads it is constructing in Fairfield Glade.

18 The third sentence: Declarant shall also be
19 the sole judge as to the extent the roads and streets
20 will be improved. FGH is the sole judge for when they
21 improve the roads.

22 Fourth sentence: In the event the declarant
23 shall decide it is not economically feasible to extend
24 improved roads or streets to a particular area, it is
25 not obligated to do so. This is just clarifying that

1 sole judgment can be exercised to decline an
2 improvement if it's not financially feasible for FGH at
3 that time.

4 Taken together all these provisions mean is
5 that FGH has the exclusive right to pave or authorize
6 other people to pave, improve, extend roads in
7 Fairfield Glade. And that makes sense. They have a
8 responsibility, an obligation, and a right to develop
9 Fairfield Glade, keep it a common community development
10 where everyone benefits.

11 And that's it. That's the language. It
12 doesn't require extensive scrutiny, not eight pages of
13 briefing on some alternative textual argument that is
14 tortured or unclear. The text is clear, unambiguous.

15 And so when FGH learned about the paving,
16 they sought injunction -- well, first they filed a
17 cease and desist letter. They served it on
18 Zurich Homes about July 7. The club served their own
19 cease and desist letter on July 8. And based on the
20 lack of assurance that they would cease paving, this
21 action was filed on July 14th.

22 The parties came to an agreement on a status
23 quo order, which Your Honor entered, I believe, on the
24 15th. And so we're here today. That contemplates
25 we'll have an injunction hearing, and that's what we're

1 here on today.

2 It's important to note the facts show that
3 Zurich Homes is well aware of these restrictions. In
4 2022, Zurich Homes reached out to FGH, asking for
5 permission to pave phase two of a lot called -- or of a
6 subdivision called Laurelwood, and FGH declined
7 permission to develop that road. And so to date,
8 Zurich Homes, I believe, has not even developed it.
9 They abstained from development activity based on our
10 road rights.

11 They never asked permission from FGH to pave
12 Hanover Court. We might have said yes. I don't know.
13 We were never given the opportunity to exercise our
14 discretion under Article 6, Section 3. And FGH's
15 position is not that it will never pave Hanover Court.
16 It's just that Zurich Homes doesn't get to decide that.
17 That is their right.

18 FGH proceeded with paving Hanover Court or
19 attempting to, and this is despite previous activity
20 abstaining from development. It's despite receiving a
21 notice from the architectural committee for
22 Fairfield Glade that they were not to improve common
23 areas, which includes the roads. And yet they
24 continued to develop. They refused to stop.

25 And Zurich Homes is not a stranger to these

1 C&Rs. They have been developing Fairfield Glade for 21
2 years. Every single deed for every single lot they've
3 developed, sold, bought has the C&Rs referenced
4 therein, and they contain this provision.

5 And it's not to say Zurich Homes hasn't been
6 the benefactor of these rights as well. In 2020 -- or
7 I guess beginning in 2018, and I think the relationship
8 lasted a couple of years, FGH and Zurich Homes had a
9 collaborative business relationship where FGH built a
10 road for Zurich Homes, sold them the lots, and
11 Zurich Homes improved and sold those lots. I believe
12 it was Chestnut Ridge, was the name of the road. So
13 they have benefited from this right previously.

14 If the defendant is permitted to continue its
15 unauthorized road development, the plaintiffs suffer
16 immediate and irreparable harm. I believe we've met
17 our burden there. The violation of a C&R alone is
18 adequate proof of immediate and irreparable harm. The
19 court of appeals recognized that just a few years ago
20 in Burkett v. Stevens. In that case, a parcel was
21 subdivided, and the subdivided parcel had a second
22 dwelling built on it, which violated the C&Rs. And a
23 permanent injunction was affirmed, ordering the removal
24 of the violating dwelling. And the Court in that case
25 said that is the immediate and irreparable harm, is the

1 violation.

2 No monetary damages can make either plaintiff
3 whole for this unauthorized paving. It undermines the
4 development of Fairfield Glade. It undermines FGH's
5 rights to control development of Fairfield Glade in
6 certain regards. It subjects the club to additional
7 maintenance obligations, and also to additional sewage
8 obligations. When roads are paved, they're supposed to
9 put sewer access along the roads. And so when you have
10 outsiders, non-declarants, putting infrastructure into
11 this development like Zurich Homes is trying to do, it
12 causes developmental chaos.

13 THE COURT: There's no question that these
14 roads have not been dedicated and the county received
15 them; they're not on the county road list, I believe?

16 MR. DIEGEL: Hanover Court is not. Some
17 roads have been accepted for public dedication.
18 Hanover Court has not.

19 THE COURT: Okay.

20 MR. DIEGEL: And so right now the position is
21 that's a common area, and the club is responsible. But
22 even if it's not common area, Article 6, Section 3,
23 there's a fifth sentence I didn't go over with
24 Your Honor, but it says that the club is responsible
25 for maintaining the roads regardless of whether they're

1 publicly dedicated, and that's in case the county drags
2 their feet on road repair.

3 In addition to it being a common area,
4 there's separate provisions of the C&Rs that require
5 maintenance of common area by the club. So this does
6 not alleviate the financial burden on the club. It
7 actually increases it if they have to maintain a paved
8 road instead of gravel road, without their input,
9 without FGH's input.

10 It also increases lot values. So there are
11 tiers to these lots in Fairfield Glade: A tier, B
12 tier, C tier, and they're based on either construction
13 of a home on a lot or infrastructure access to the lot.
14 And so a C lot is one that has no infrastructure. In
15 this case, this is a B lot. It had all but one
16 infrastructure. But as soon as a house is built on a
17 road, it becomes an A lot, regardless of infrastructure
18 access.

19 So what this will -- if Zurich Homes was
20 allowed to pave anywhere it wants in Fairfield Glade
21 that owns a lot adjacent to the road, this essentially
22 can force every other lot owner to increase their
23 assessments because their lot classification increases,
24 and they have no input in that.

25 THE COURT: So this subdivision development,

1 does it have sewer in it now?

2 MR. DIEGEL: It does.

3 THE COURT: It's got everything except the --

4 MR. DIEGEL: Except the road. Yes,
5 Your Honor. But that's not the case elsewhere. The
6 balance of the equities, you know, we have an economic
7 interest in our rights; the club has an economic
8 interest in its rights, not being forced to put
9 infrastructure in when it's not ready.

10 The hardships identified by the defendant
11 would be that it can't reap the benefits of its
12 unauthorized conduct. And I believe most of the
13 complaints in their opposition are monetary, based on
14 not being able to have a road accessing their home.
15 They're not restrained from using that road. It's been
16 drivable since 2023 at least, when the first house was
17 built on that cul-de-sac. They're not losing anything
18 but the right to profit greater from their development
19 on those two lots when they knew they never had the
20 right to pave the road.

21 And anyway, we're not seeking any mandatory
22 injunctive relief. We're just seeking restraint that
23 helps balance the equities, and in addition, all of
24 their damage can be covered by a bond, all their
25 hardship, all of their inequity. So we would say that

1 the balance of equities doesn't favor the defendant.
2 It favors us. That road cannot be unpaved. The lot
3 values cannot be unaffected.

4 And finally, public interest. Enforcing
5 contracts as written and protecting vested rights is a
6 bedrock public interest in Tennessee law. That's
7 exactly what we're trying to do: Enforce the C&Rs.
8 Everyone else in this community abides by them. I
9 don't know why Zurich Homes is special or different,
10 that they get to disregard them for their own financial
11 gain.

12 And that -- I'm not going to belabor the
13 point. I think the briefing covers everything. And
14 it's 11:54 on a Friday, and it's past lunchtime for me,
15 and I'm sure it's close to lunchtime for you,
16 Your Honor.

17 I do want to just lodge an objection for the
18 record to the Roland Allen declaration that was filed
19 on Wednesday by defendant. It purports to be an expert
20 affidavit. I don't think it's appropriate. I would
21 raise that it doesn't satisfy the McDaniel factors, and
22 it's just rank speculation.

23 THE COURT: Okay.

24 MR. DIEGEL: Does Your Honor have any
25 questions?

1 THE COURT: No.

2 MR. DIEGEL: Thank you.

3 MS. AUSTIN: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MS. AUSTIN: Tonya Austin here for

6 Zurich Homes. With me is Josh Denton.

7 MR. DENTON: Morning, Your Honor.

8 MS. AUSTIN: Well, Mr. Diegel said a few
9 things a moment ago that I don't remember seeing in the
10 pleadings, and I will get to those in just a second.
11 But before we get into the language of the CC&Rs and
12 how this case may ultimately turn out if it makes it
13 that far, I just want to reframe for a second and talk
14 about what this case is really about. More
15 specifically, what this motion is really about.

16 This again is not a case where a builder has
17 gone rogue and opened up a new corridor of a
18 subdivision that the developer just wasn't ready to
19 open yet, wasn't ready to sell there yet. These are
20 lots that were platted in the late '70s. They were
21 sold decades ago by the original declarant, and these
22 people have been waiting on roads for a really long
23 time.

24 That is a common theme throughout a lot of
25 Fairfield Glade, and it is just not a situation where

1 somebody has pushed the declarant ahead of their
2 development plans and said, now that we're paving, you
3 have to -- you know, you have to open up this phase, so
4 that we can now use it for our own business.

5 We're talking about Hanover Court. It's a
6 cul-de-sac. There are two families living there on a
7 gravel cul-de-sac. There are two houses, not three.
8 I'm not sure -- maybe I misunderstood that. But
9 Zurich Homes has built two houses that are about to be
10 ready for sale. There is one other lot that's not
11 built on, and I just learned from the property
12 records -- this isn't before the Court, but that lot
13 was acquired by the people who own the lot facing
14 Beachfront Drive, which means they're going to be using
15 it as a backyard.

16 So construction -- when Zurich Homes
17 finishes, construction will be complete on that
18 cul-de-sac. And the goal is to pave it, a road that's
19 already being treated as a completed road in the
20 subdivision, that the club does maintain, just wants to
21 change that level of improvement to benefit these
22 specific property owners of Hanover Court.

23 So where's the harm for this motion? What is
24 the problem with getting that cul-de-sac paved? As the
25 Court noted a moment ago, it already has water. It

1 already has sewer. So the burden that was talked about
2 with the club, that expanding these roads is going to
3 require the expansion of sewer, require the expansion
4 of other things, that's not true for Hanover Court. It
5 already has it. The club is not going to have an
6 increased burden from this paving because it's already
7 maintaining Hanover Court.

8 I think in the actual filings, the position
9 was the club does not maintain gravel roads, only
10 completed roads, which was defined in the filings as
11 paved roads. But I think even Mr. Diegel just said a
12 moment ago that they do maintain gravel roads, and
13 that's accurate. The community services manager has
14 said that in an email that we submitted to the Court.
15 It's also just out in the open, on the club's internal
16 member portal, that they maintain, I think, 69 miles of
17 gravel road. So the idea of getting it onto the county
18 list is to alleviate the burden to the club, not add to
19 it.

20 So the irreparable harm that's alleged by the
21 plaintiffs, it's just not present here. There's no
22 irreparable harm. I think Mr. Diegel even said it a
23 moment ago, that you can't un-pave the road, and you
24 can't change the property values once they're on a
25 paved road, and we just find it absurd. First of all,

1 technically, you can un-pave a road. It would be a
2 crazy result.

3 But the fact that the harm would be that
4 these people's property becomes more valuable and we
5 can't undo that, that's a pretty absurd view of harm.
6 If anything, there is an allegation that having these
7 houses for sale on a paved road creates some
8 competition for FGH, the home -- who is also a home
9 builder.

10 THE COURT: Well, I don't -- I guess the
11 folks that live in that cul-de-sac would like to have
12 it paved. I understand that. And it took me a while
13 to try to figure out, well, what is the harm here? But
14 under the case law in Tennessee, if you have
15 restrictive covenants and you don't stop people from
16 violating them, you can develop a waiver issue, and
17 that's what sort of jumped out at me.

18 You know, I struggled with this, too, when I
19 read it. That's the reason I didn't want to try to
20 decide this on the phone, because there was so much
21 paperwork. I couldn't. But that's -- that to me is
22 where the harm would come in.

23 I think it would benefit the value of the
24 homes. I think, you know, it makes sense to me to do
25 that. But having said that, I think that's the --

1 that's the issue that I have to look at here.

2 MS. AUSTIN: If I could address that,
3 Your Honor?

4 THE COURT: Sure.

5 MS. AUSTIN: So looking at the irreparable
6 harm, I think all of that presupposes that these
7 declarations are going to be enforceable in exactly the
8 way that FGH has presented them, and I think there are
9 some very strong arguments, probably in that very long
10 brief that you weren't excited to see arrive. We have
11 gone through that in detail, and I've got notes here.
12 I'm happy to go over all of that.

13 But for the sake of this motion, we're
14 looking at irreparable harm, and that needs to be
15 nonmonetary. It needs to be something that can't be
16 undone. And when we're specifically talking about
17 Hanover Court, which I will remind the Court is the
18 only road at issue right now that is being threatened
19 with paving -- they have not alleged that Zurich Homes
20 or any other builder, for that matter, or any other
21 individual, for that that matter, has trucks ready to
22 launch onto these other roads. We're talking about
23 Hanover Court. The only possible harm that could
24 result from Hanover Court getting paved is potentially
25 some sort of competitive disadvantage to FGH if these

1 properties increase in value in competition with the
2 paved road lots.

3 And I understand the Court's position about
4 waiver, again, presupposing that FGH is right, but this
5 lawsuit is already here. That is a very different
6 question. Whether there's an issue for the Court to
7 address and whether they've asserted the objection to
8 the paving doesn't change the fact that this road
9 getting paved doesn't result in any irreparable harm
10 other than money. If it turns out Zurich Homes is
11 wrong about the position taken in this case, then we
12 can resolve all that with money damages. It would just
13 be a matter of proving, how were you hurt? How were
14 you hurt by this cul-de-sac being paved?

15 THE COURT: Well, if it was wrongfully paved,
16 the remedy would have to be to tear all the asphalt
17 out, wouldn't it?

18 MS. AUSTIN: I guess that's one of the
19 remedies. But it is something that can be solved with
20 -- I mean, it can be done. I mean, it's not fun and
21 everyone would be really upset about it, but it is
22 something that can be solved with money.

23 So if you take that view of Hanover Court,
24 there is no irreparable harm, as to the only road that
25 there is any present threat of being paved, then

1 there's no irreparable harm at all. That's a separate
2 question from whether there's a justiciable issue here
3 in the case. There is a dispute about what these
4 covenants mean, so from the declaratory judgment act
5 perspective, there's still a case. That's just very
6 different from whether a temporary injunction needs to
7 go down.

8 And I think it's really important, when you
9 take Hanover Court out of the picture, they've been
10 really clear that they want this injunction to apply to
11 the whole community, not just Hanover Court. Meaning,
12 go ahead now, Judge, and enjoin Zurich Homes from doing
13 work anywhere in the community, and to do that you
14 necessarily have to interpret and construe the CC&Rs
15 and their contract.

16 And the case law that we cited in our briefs
17 is very clear that when you are construing a contract
18 that there are lots of parties to -- and this was in
19 the context of CC&Rs -- those parties need to be
20 present. And we don't even have all of the parties on
21 Hanover Court present, much less all of the thousands
22 of community members, lot owners who are also going to
23 be bound by a temporary injunction that says something
24 to the effect of FGH is the only one allowed to
25 maintain, build, construct roads in the community.

1 It is -- I mean, it brings me to the point
2 about subject matter jurisdiction that is a preview for
3 the motion to dismiss that we'll be filing.

4 THE COURT: What you're saying is this is a
5 declaratory action, and all the parties involved have
6 not been joined, and therefore the Court can't --

7 MS. AUSTIN: You took the words right out of
8 my mouth. That's exactly where --

9 THE COURT: You would have said them more
10 artfully than I would have.

11 MS. AUSTIN: No. I don't think I would have.
12 That's exactly it, Your Honor. I mean, it's -- and
13 it's not a case that we're having to be really creative
14 to come up with that argument. This is exactly what
15 happened in Brock v. Eick. In that case, there was --
16 just one homeowner was being the bad boy. One
17 homeowner wanted to list their house on Vrbo and
18 whatever the other one is -- Airbnb. And another
19 homeowner sued, saying, make them stop doing that. And
20 that homeowner's view of it was this isn't a
21 community-wide issue. This is about this one guy
22 trying to put his house on Vrbo.

23 And the trial court, with the Court of
24 Appeals affirming, said, no, it's not that simple,
25 because we're talking about a declaratory judgment.

1 You want the Court to construe the covenants as to what
2 they mean, and it was a disputed provision about
3 whether this type of conduct was permitted or not.

4 It's not just about whether Fred Smith -- or
5 Eick, I guess, in this case -- can have an Airbnb. It
6 really becomes about whether anybody can. And we're
7 not going to decide that issue without everybody there.
8 Because the Declaratory Judgment Act is very clear that
9 all persons shall be made parties who have a claim --
10 have or claim any interest which would be affected by
11 the declaration, and no declaration shall prejudice the
12 rights of persons not parties to the proceeding.

13 And the Court is really clear that nonjoinder
14 is fatal to -- that word gives me trouble --
15 justiciability. The Supreme Court, the Tennessee
16 Supreme Court, said it in one sentence: Unless all
17 parties to be bound by the judgment are joined in the
18 action, the trial court has no authority to grant
19 declaratory relief.

20 And it's really important to note that the
21 standard under the Dec Act statute is stricter than
22 joinder under 19.01. In that case, there is some
23 analysis about, is the interest of the parties needed
24 to be joined? Is it -- are they represented? There's
25 just none of that here under the Declaration Judgment

1 Act. It's very clear that it doesn't matter if people
2 are aligned if the interest is represented. It comes
3 down to, is your interest impacted? Then you need to
4 be before the Court. Otherwise, it does not have
5 jurisdiction.

6 THE COURT: Well, isn't the community club a
7 member of this? Does that bring them in it?

8 MS. AUSTIN: It does not. It does bring them
9 into it, but it doesn't solve the problem. The reason
10 it doesn't solve the problem is, first of all, the club
11 has not in the pleadings, or even in the declaration
12 that was submitted Wednesday afternoon, they've not
13 taken the position that they're here representing the
14 view of the people. It's the view of FGH. And even if
15 that were the case, again, that's not enough under the
16 Dec Act. I can point you to -- I only have --

17 THE COURT: I read your brief.

18 MS. AUSTIN: That's great. Thank you,
19 Your Honor. Well, that -- basically, that issue has
20 been looked at several times under the Dec Act, and it
21 doesn't matter if people are aligned. It matters if
22 they're present.

23 And in the Brock case, it was a smaller
24 subdivision, but his complaint, after the trial court
25 ruled, was, come on. I can't. It's not financially

1 feasible for me to get 200 members in here. And the
2 Court said, well, that's what you've got to do.

3 So that's where we are here in this case,
4 too. We've got a claim against Zurich Homes about
5 Hanover Court that FGH and the club now want to
6 extrapolate onto the entire community, like make an
7 example out of them and then have that apply to
8 everybody without any of those other parties -- even
9 knowing that this hearing is happening today, much less
10 that these rights are on the chopping block.

11 As you may have seen in Mr. Zuercher's
12 declaration, the first one, people have been building
13 their own roads in this community a while. I think
14 Laurelwood that he mentioned, the first part of that
15 was built before FGH said no to the other piece.

16 And just to note, there were some exhibits, I
17 think, to those declarations filed yesterday. We
18 didn't get those. Did the Court get the exhibits to
19 plaintiff's declarations? So there were several emails
20 mentioned that I've never seen.

21 THE COURT: I don't know. I was in three
22 counties yesterday. I didn't get in until 9:30, and
23 picked this up.

24 MS. AUSTIN: I'm impressed that you --

25 MR. DIEGEL: I didn't realize they weren't

1 attached. I apologize if they weren't. It's --
2 they're mostly public records.

3 MS. AUSTIN: Well, there were several emails
4 that -- I think the ones he was relying on for the
5 admission and whatever. I've never seen those. We did
6 try to find what they might be talking about through
7 our client, but we weren't able to find those.

8 So with respect to the interest, it comes
9 down to direct versus remote, and in this case, it's
10 the direct interest like you see in Brock v. Eick. And
11 so I think the bottom line is the Court does not have
12 jurisdiction to see the case through.

13 Which, that matters for temporary
14 injunctions, too, because an order entered here without
15 those owners -- think about how this could look. The
16 order goes down, and then ABC Construction starts
17 paving a road elsewhere in the subdivision. Is FGH
18 going to file a new lawsuit, maybe ask to consolidate,
19 then maybe they're -- there's a new injunction that
20 applies, maybe to everybody, maybe to two people, and
21 then the rest of the community is still bound without
22 knowledge.

23 The whole point of it is that everybody who
24 is -- who needs to be before the Court on the issue
25 needs to be before the Court, rather than subjecting

1 the Court to all of this piecemeal: The next person
2 that tries it, the next person that tries it. And
3 that's separate from whether there is an issue to be
4 figured out. It's just a jurisdictional bar from
5 getting there.

6 And then I think, if the Court has not lost
7 patience already, there are some really strong
8 arguments against the likelihood of success here, even
9 if FGH's interpretation of the covenants is correct.

10 Because under Tennessee law -- this issue has been
11 looked at quite a few times in the context of
12 developers who just don't do the things that the
13 subdivision plans were anticipating and keep holding
14 onto control for a long, long time, and not letting
15 people use their property in the way it was intended,
16 while also not providing the benefits and services.

17 And some of those cases -- you said you've
18 read our brief, so I won't belabor it, but Innerimages
19 is one of them, and Con versus Donlon. And then a
20 third one that we did not cite in our briefing but
21 Mr. Diegel cited for a different reason, if you read a
22 little further down from where he cited, that is
23 actually a -- I'm trying to find it -- a
24 Cumberland County case about another neighborhood that
25 was also a club neighborhood. And in that case, it

1 was -- there was an HOA, a club. The original
2 complaint was brought by people with some infighting
3 over a lot of issues, including whether the developer
4 had lost the right to enforce --

5 THE COURT: That was my case.

6 MS. AUSTIN: Okay.

7 THE COURT: That was Renegade Mountain that I
8 got reversed on.

9 MS. AUSTIN: That's right.

10 THE COURT: It took a year to try it. Yeah,
11 I'm familiar with that one.

12 MS. AUSTIN: I didn't realize you were the
13 judge. I thought --

14 THE COURT: I was. And --

15 MS. AUSTIN: -- Judge Davies was on that one.

16 THE COURT: Lee got it the second time, and
17 it took him two weeks to try it the second time. And I
18 don't even recognize the facts of the second case.

19 MS. AUSTIN: Oh, wow.

20 THE COURT: He made the right decision.
21 That's what I would have done to start with, but that
22 wasn't the facts I had.

23 MS. AUSTIN: Well, that decision was upheld,
24 and it was to basically in equity remove the
25 developer's rights to continue to enforce the covenants

1 against the owners. And I think what was really
2 helpful in that case, and it gives us a nice framework
3 for what may need to happen here if we get past the
4 jurisdictional issues, is that perhaps FGH isn't
5 dormant everywhere in the community, isn't neglecting
6 every area of the community, but there was, in the
7 declarations, a lot of talk about long-term development
8 plans, doing this, doing that, opening up a whole new
9 area, 1200 acres of raw land. There was nothing in
10 those declaration about a plan for the 70 -- 1978
11 platted lots and finally getting these people roads.

12 Some of these people have gravel roads that
13 maybe they've quietly prepared themselves or have just
14 been allowed, but some people have grass roads. I have
15 driven the neighborhood and tried to get around, and my
16 GPS kept taking me to grass pastures. I was like, how
17 am I getting out of this neighborhood?

18 So where that lands is that FGH is asking
19 this Court ultimately, when we get separate from even
20 this motion, to enter an order that says FGH is the
21 only one who can improve, repair, do anything to a road
22 until it's paved, and then it becomes either the county
23 or the club's responsibility, just depending on how
24 that shakes out. But if, for example, Hanover Court
25 washes out tomorrow and these people can't even get to

1 their homes, if you -- just technically speaking, FGH's
2 argument is they can't do anything about it. They
3 can't repair it. They can't maintain it. The club
4 supposedly can't maintain it. They're just out of
5 luck. And they own this property.

6 THE COURT: Question. The state of the
7 pleadings as they are right now -- the thing that
8 turned that Renegade Mountain case the second time it
9 was tried when the appeals court affirmed Judge Davies
10 was that there had been a gap or a lapse in the
11 developer rights. That's what that case turned on.

12 Are the pleadings on your client's behalf or
13 these other people's behalf such that -- that the
14 plaintiff has done acts like they did in
15 Renegade Mountain, basically run the folks off to not
16 provide services, that nature? That's some of the
17 arguments you're making.

18 MS. AUSTIN: Yes.

19 THE COURT: Are the pleadings such that
20 that's been alleged or not?

21 MS. AUSTIN: No, Your Honor. We haven't
22 answered or counterclaimed or moved to dismiss or
23 anything yet. We're early. We're really early. And I
24 do think that there's going to be a lot of proof
25 about -- again, I think it's even in Mr. Zuercher's

1 declaration that people have been developing their own
2 roads for a long time out there. And --

3 THE COURT: That's the issue about --

4 MS. AUSTIN: -- there is some waiver.

5 THE COURT: Yeah. That's the issue about
6 irreparable harm and waiver. That's some of the proof
7 you use to establish that, is that people have been
8 ignoring the rules for years, and they've not done
9 anything about it.

10 MS. AUSTIN: Yes. But that's not really all
11 before the Court yet --

12 THE COURT: Not today --

13 MS. AUSTIN: -- on one side or the other.

14 THE COURT: -- it's not.

15 MS. AUSTIN: Exactly, Your Honor.

16 THE COURT: I understand your arguments, and
17 I know how that works. That sort of cuts a little bit
18 both ways here.

19 MS. AUSTIN: Yeah. Most things will,
20 Your Honor. And the other piece of it that you
21 mentioned, the lapse in the transfer between prior
22 declarants, I think the bigger issue or one of the big
23 issues that the trial court looked at was just a
24 general neglect. It was holding onto control while not
25 shouldering the burden of that maintenance and actually

1 getting people the amenities they were promised. And
2 the result was not only preventing the developer from
3 continuing to enforce the restrictions, but it was to
4 transfer the management of those assets to the club so
5 that people who were willing to put their money out
6 there to get the pool or whatever could do it. And I
7 think that's so similar to what we have here.

8 These people just want roads, and even if --
9 and we disagree with it, but even if FGH's reading of
10 this is that they truly get to just say no -- for no
11 reason whatsoever, they get to just say, no, you don't
12 get a road, we don't judge you worthy of a road, the
13 bottom line is they can only do that for so long.
14 These declarant rights are meant to protect their
15 ability to get the neighborhood going. You know, maybe
16 you don't have to build phase two and three until
17 you're sure phase one is going to stick. But
18 40-something years later those clocks have run, and
19 particularly they've run as to Hanover Court.

20 THE COURT: Okay. It potentially has an
21 annexation case by a municipality. When you annex, you
22 have to promise services within a reasonable amount of
23 time. But that's a -- potentially a fight for a
24 different day.

25 MS. AUSTIN: Right. And I think a point to

1 tag onto that, Your Honor, is this would never be
2 allowed to happen today. I'm sure the Court is aware
3 that Tennessee has strong statutes, and the local
4 governments all have ordinances on top of ordinances
5 that govern. You're not going to be able to file a
6 final -- record a final plat and start selling lots
7 until you've either got the infrastructure in place or
8 you've got a lot of bonds in place to make sure that
9 somebody can do it.

10 And the law fills the gap that these old
11 plats that maybe landed before there was a planning
12 commission and before that statute attaches, based on
13 the way things are written -- I'm not sure in this
14 moment where we land in that timeline. But it is clear
15 that no bonds were required for these final plats. And
16 the law still protects because -- this is a pretty old
17 case. I don't have the date of the citation. But in
18 Foley, the Court held that the reasonable expectation
19 of purchases of property in a recorded regional
20 subdivision, which is what we have, absent -- even
21 absent any statutory scheme, that roads therein will be
22 public roads maintained by the county. And so these
23 were dedicated to the county, and all Zurich Homes is
24 trying to do is get it up to a level that the county
25 can accept it, which frankly should have been the

1 predecessor declarant's job from the go. I could go on
2 forever. I know everyone is hungry. But do you have
3 any questions for me, Your Honor?

4 THE COURT: No.

5 MS. AUSTIN: Thank you, Your Honor.

6 THE COURT: Thank you.

7 MR. DIEGEL: I'll try to be brief,
8 Your Honor. My wife says that's not my strong suit.

9 THE COURT: It's not been mine either.

10 MR. DIEGEL: I'm just going to try to address
11 a couple of the things that Ms. Austin raised. We hear
12 a lot about they've been waiting on roads, they've been
13 waiting on roads. For 44 years this has been
14 platted -- well, it's been longer, but for 44 years,
15 until the first lot was developed with a home, nothing.
16 No one was trying to build. There are thousands of
17 lots in Fairfield Glade that have full infrastructure
18 access. Those were intended to be developed. And what
19 we had was someone cut line, cut the plan, and put
20 their own road in because they saw more economic
21 benefit there than in the lots that were already
22 available with full infrastructure.

23 THE COURT: Well, let me cut you off. I
24 think you've met your burden today. Having said that,
25 there's a lot of issues here, if they're true, that

1 very well may impact what the Court does down the road
2 on this. And I've driven off this bridge two or three
3 times, so I know a little bit about it.

4 There's issues about waiver. There's issues
5 about not developing. But that's the reason for the
6 question earlier to counsel, is are we in the pleading
7 stage where that can be developed? And I understand
8 there may be a motion to dismiss and other things.

9 I think from reading the language of the
10 restrictive covenants, on its face I think you're
11 entitled to that right now. I think you'll have to
12 post a bond. But the Court very well may have to
13 revisit this once issues are actually joined and we see
14 where this thing is going. But I think -- as far as
15 the temporary injunction, I think it's probably
16 appropriate at this time, but we'll have to issue a --
17 deal with the issue of bond.

18 MR. DIEGEL: And we're happy to address that,
19 Your Honor.

20 MR. DENTON: I was going to address that.

21 THE COURT: Sure.

22 MR. DIEGEL: I think -- I'm going to defer to
23 Mr. Denton, because I think he's actually got proof of
24 that, and I will just respond when he presents.

25 MR. DENTON: Good morning, Your Honor. I

1 guess, a couple of things. I know that the Court has
2 read all of these papers. There were a couple of
3 declarations that we had in the filings to address the
4 bond issue, especially after our conference call last
5 Friday. So --

6 THE COURT: Well, I was lost during most of
7 that conference call, trying to figure out where the
8 moving parts were.

9 MR. DENTON: Well, you wouldn't know it. I
10 guess I'll shortcut it for the Court. The monthly
11 carrying costs for these two homes, based on my
12 analysis of Mr. Zuercher's declaration, tops out a
13 little over 10,000 a month. It's 10,126.25. And then
14 the declaration of Mr. Jay Allen deals with two things.
15 It deals with the length of time to market the
16 properties if it's on a gravel road, which he said was
17 three to six months.

18 There's also the issue that Mr. Zuercher's
19 declaration touched on, which is the fact that if
20 this -- if the temporary injunction stays in place and
21 we get to December, then even if it's lifted, we're not
22 paving until April. So that gets us to nine months,
23 give or take, that it could -- we could pick back up,
24 depending on how long this lasts. That's going to get
25 us, you know, close to the \$100,000 mark.

1 And if they go ahead and try to sell the
2 properties, Mr. Allen's best analysis was that they
3 would take a 10 to 12 percent hit based on his market
4 analysis on the prices, which gets you to a range of
5 167 to 200,000. So I would think -- we'd ask for a
6 bond somewhere in the \$400,000 range for this.

7 And we would also ask, because we are so
8 early and we do think there are going to be -- this
9 motion to dismiss was really ready to go, and then
10 there was the amendment where the club switched course
11 and joined. And so there were some additional things
12 we were wrapping up there. But that will be ready to
13 be set pretty quickly. And we do intend to plow
14 forward with discovery very quickly, and we would like
15 to have the temporary injunction revisited within a
16 pretty expedited time period.

17 THE COURT: Well, I'll drive off that bridge
18 when somebody files something.

19 MR. DENTON: Okay. We'll file it when we're
20 ready. But I would say that's where -- that's where I
21 would suggest we land, somewhere in that \$450,000 bond
22 mark, because that only addresses Hanover Court. It
23 doesn't address -- they're not out there presently
24 trying to pave any others, but the injunction they're
25 requesting isn't just to Hanover Court, and

1 Zurich Homes has a lot of other properties out there.

2 THE COURT: All right. Counsel?

3 MR. DIEGEL: Your Honor, I will be brief,
4 because frankly I don't have a declaration in the
5 record to contest this, but I do know that the new
6 market for Fairfield Glade, the -- I think there's 35
7 new homes on the market right now. The average age
8 is -- or, excuse me, Zurich Homes has one new build on
9 the market. It's 195 days old.

10 A lot of this proof of bond is speculative.
11 These two lots on Hanover Court are not even listed yet
12 on MLS or any other real estate site. Their assumption
13 that they're going to sell for a certain price at a
14 certain time is rank speculation. We would say the
15 bond was zero because we're just enjoining them from
16 paving. They can still build their homes and sell
17 their homes. I think it's the cost of paving, maybe
18 \$5,000.

19 To the extent Zurich Homes ends up needing to
20 extend any loans, we can revisit bond, and they can ask
21 for additional security, but this is all rank
22 speculation of how he's going to -- how they're going
23 to build their lots and if they're going to sell.

24 THE COURT: The Court is going to set the
25 bond at \$100,000. I think that's fair. I understand

1 there's some factors about how quick things get done.
2 It can be revisited if there's an issue. But there is
3 some speculation any time on what the harm might be and
4 what the cost might be. But I think considering right
5 now we're just talking about Hanover Court, there's
6 questions about whether it applies to everybody there,
7 if it's a Dec Action. There's a lot of moving parts
8 here that I don't have before me that might affect it.
9 But I think that's sufficient to cover the potential
10 loss at this time.

11 MR. DIEGEL: And, Your Honor, just to pick up
12 on that.

13 THE COURT: Sure.

14 MR. DIEGEL: To the extent it's going to be
15 limited to Hanover Court, I understand. What they've
16 requested is an injunction as to the entire
17 Fairfield Glade community.

18 THE COURT: Right now --

19 MR. DIEGEL: And the reason -- oh, I'm sorry,
20 Your Honor.

21 THE COURT: Right now it's just
22 Hanover Court. Because there may be an issue about --
23 you've not filed a motion to dismiss, whether you've
24 got all the parties here, even the two lot owners
25 that -- there's other questions here that I'm not

1 addressing here because they're not properly before me.
2 I can see some of these worms crawling out of the can,
3 but we're not there yet. I'm just dealing right now
4 with Hanover Court, Zurich paving that, right now.

5 MR. DENTON: Thank you.

6 MR. DIEGEL: Your Honor, do you want me to
7 prepare a proposed order with findings and conclusions?

8 THE COURT: Draw an order. Pass it over to
9 opposing counsel. If y'all can agree on it. If not,
10 lodge them under the local rules of court.

11 MR. DIEGEL: Does Your Honor have a
12 preference for enumerating or using a transcript? Any
13 preference?

14 THE COURT: I'll let y'all submit whatever
15 you want to. You can incorporate it by reference if
16 you want to, but we have a fine court reporter. She
17 catches me a lot of times when I make mistakes, so she
18 will be more than happy to accommodate you any way you
19 need to be accommodated.

20 MR. DIEGEL: Thank you, Your Honor.

21 THE COURT: Thank y'all. Have a good
22 weekend.

23 (End of proceedings, 12:24 PM.)
24
25

State of Tennessee)
)
County of Putnam)

I, Brittany Temples, Court Reporter, with offices in Cookeville, Tennessee, hereby certify that I reported the foregoing court proceeding by machine shorthand to the best of my skills and abilities, and thereafter the same was reduced to typewritten form by me.

I further certify that I am not related to any of the parties named herein, nor their counsel, and have no interest, financial or otherwise, in the outcome of the proceedings.

8/26/2026



Brittany Temples
Brittany Temples, LCR #099
Notary Public
State of Tennessee

My Commission Expires 7/9/2030
LCR Commission Expires 6/30/2028