

**IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE**

IN RE:)	
)	
COMPLAINT AND PETITION OF THE)	
CONSUMER ADVOCATE DIVISION)	Docket No. 25-00048
IN THE OFFICE OF THE ATTORNEY)	
GENERAL AGAINST TELlico VILLAGE)	
PROPERTY OWNERS ASSOCIATION, INC.)	

**CONSUMER ADVOCATE’S RESPONSE TO TELlico VILLAGE PROPERTY
OWNERS ASSOCIATION, INC.’S MOTION TO DISMISS**

The Consumer Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate”), by and through counsel, pursuant to Tenn. Code Ann. § 65-4-118, respectfully files this response to the Tellico Village Property Owners Association, Inc.’s (“TVPOA” or the “Tellico Village”) Motion to Dismiss (“Motion”) for failure to state a claim upon which relief can be granted and for lack of subject matter jurisdiction by the Tennessee Public Utility Commission (“TPUC” or the “Commission”). The Motion is contrary to well-established law and should be denied.

For the reasons set forth herein, the Consumer Advocate respectfully submits it has satisfied Tennessee’s liberal pleading requirements by giving Tellico Village legally sufficient notice of the Consumer Advocate’s claims, and the Commission should deny Tellico Village’s Motion.

LEGAL STANDARD

The standard for which Tennessee courts assess and dispose of a motion to dismiss “have been clearly and consistently applied” for over 50 years following the adoption of the Tennessee

Rules of Civil Procedure in 1970.¹ A motion to dismiss “challenges only the legal sufficiency of the complaint, not the strength of the [petitioner’s] proof or evidence.”² Tennessee courts follow a liberal notice pleading standard which recognizes the primary purpose of pleadings is to give notice of the issues presented to the opposing party and court. In fact, Tennessee’s notice pleading regime is firmly established and longstanding. The Tennessee Supreme Court recognized well before the Tennessee Rules of Civil Procedure were adopted that “[t]he object and purpose of any pleading is to give notice of the nature of the wrongs and injuries complained of with reasonable certainty, and notice of the defenses that will be interposed, and to acquaint the court with the real issues to be tried.”³

In filing a motion to dismiss, the moving party, TVPOA, “admits the truth of all of the relevant and material allegations contained in the complaint, but . . . asserts that the allegations fail to establish a cause of action.”⁴ In order to survive a motion to dismiss, the complaint must not be entirely devoid of factual allegations.⁵ However, the complaint does not need to contain detailed factual allegations, but it “must contain sufficient factual allegations to articulate a claim for relief.”⁶ Further, a complaint “need not contain in minute detail the facts giving rise to the claim,” but “it must contain direct allegations on every material point necessary to sustain a recovery on any legal theory, even if it is not the theory suggested . . . by the pleader, or contain

¹ *Webb. v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011). **Significantly, TVPOA’s Motion to Dismiss does not once refer to the legal standard for a motion to dismiss or any case law under Tennessee Rule of Civil Procedure 12.02(6) governing the failure to state a claim upon which relief can be granted.**

² *Id.*

³ *Id.* at 426-227 (quoting *Hammett v. Vogue, Inc.*, 165 S.W.2d 577, 579 (Tenn. 1942)).

⁴ *Id.* at 426 (quoting *Leach v. Taylor*, 124 S.W.3d 87, 90 (Tenn. 2004)).

⁵ *Id.* at 427.

⁶ *Id.* (quoting *Abshire v. Methodist Healthcare-Memphis Hosp.*, 325 S.W.3d 98, 103 (Tenn. 2010)).

allegations from which it may be fairly inferred that evidence on these material points will be introduced at trial.”⁷

FACTS

Tellico Village is a Tennessee non-profit corporation duly authorized to do business in the state.⁸ Tellico Village is “a planned community located in Loudon and Monroe County, Tennessee.”⁹ It encompasses nearly 5,000 acres along Tellico Lake and has approximately 10,300 residents.”¹⁰

As Tellico Village states, it is not simply a residential community but is a “master planned” community.¹¹ Master planned communities include not only a residential use, but also other “mixed uses” such as “gyms, parks, golf courses, restaurants, and even schools.”¹² Accordingly, TVPOA’s Articles of Incorporation (“1984 Articles”) recognized the importance of its mixed uses by stating that one of its purposes is looking after the interests of both its residents and commercial owners.¹³ Specifically, the 1984 Articles state (emphasis added):

The Corporation does not contemplate pecuniary gain or profit, direct or indirect, to its members, and the specific purposes for which it is formed are to provide the preservation of the values of the real estate brought within the jurisdiction of the Corporation from time to time within the confines of **the a residential and commercial community** being created under the name of Tellico Village,

⁷ *Id.* (quoting *Donaldson v. Donaldson*, 557 S.W.2d 60, 61 (Tenn. 1977)).

⁸ Consumer Advocate’s Complaint, p. 3 and CA Exhibit B, TVPOA’s annual filing for 2025 with the Secretary of State.

⁹ According to Tellico Village’s website, it represents the “Tellico Village Property Owners – and is responsible for governmental functions within Tellico Village. The POA maintains Tellico Village roads, amenities, **water and sewer systems**, and operates all Tellico Village facilities. We are a nonprofit organization funded by a monthly assessment and user fees paid by our property owners.” (emphasis added). The TVPOA’s Homepage, “Life at Tellico Village” is located at <https://www.tellicovillagepoa.org/>.

¹⁰ *Id.*

¹¹ Motion p. 3.

¹² Fruition Communities, *The Transformative History of Master Planned Communities* <https://myfruition.com/resources/master-planned-communities> (last visited September 6, 2025).

¹³ Consumer Advocate’s Complaint, p. 3, ¶ 5, CA Exhibit C, *Articles of Incorporation of Tellico Village Property Owner’s Association, Inc.* (Sept. 18, 1984; 12:07pm).

Tennessee and **to promote the health, safety and welfare of the residents and commercial owners** within the above described property and any additions thereto as may hereafter be brought within the jurisdiction of the Corporation and for this purpose.¹⁴

A map of the Tellico Village development, which is located on the TVPOA website, clearly shows the development's combination of both residential and commercial development.¹⁵ Also, a review of property records for lots within the TVPOA's footprint shows lots that are designated as commercial in nature. Some examples of these commercial lots are as follows:

- a. United Community Bank, 290 Village Square, Loudon, TN 37774;¹⁶
- b. Dollar General, 150 Mialaquo Road, Loudon, TN 37774;¹⁷
- c. Marathon Gas Station, 200 Choata Road, Loudon, TN 37774;¹⁸
- d. Food Lion, 101 Cheeyo Way, Loudon, TN 37774;¹⁹ and
- e. Sloan's Village Home Center, 200 Mialaquo Road, Loudon, TN 37774.²⁰

As part of the planned development, the TVPOA was tasked with the responsibility of owning and operating the development's water and sewer utilities.²¹ Tellico Village notified and has been recognized by the Tennessee Department of Environment and Conservation's ("TDEC") as a community water system (the "Water System") and was assigned a Public Water

¹⁴ Consumer Advocate's Complaint, CA, Exhibit C, *1984 Articles.*, p. 1, Article V.

¹⁵ Consumer Advocate's Complaint, CA Exhibit D, *Tellico Village Strategic Land Acquisition Initiative: Investing in our Future to Control Our Destiny*, p. 6 (Sept. 24, 2021). The Land Acquisition Initiative can also be accessed at <https://www.tellicovillagepoa.org/wp-content/uploads/9.24.21-TellicVillage-Plan.pdf>. A direct link to the Tellico Village Site map is at <https://www.tellicovillagepoa.org/wp-content/uploads/CCI-Property-MAP21.2pdf-copy.pdf>.

¹⁶ Consumer Advocate's Complaint, CA Exhibit E-1, Parcel Details Report and Deed.

¹⁷ Consumer Advocate's Complaint, CA Exhibit E-2, Parcel Details Report and Deed.

¹⁸ Consumer Advocate's Complaint, CA Exhibit E-3, Parcel Details Report and Deed.

¹⁹ Consumer Advocate's Complaint, CA Exhibit E-4, Parcel Details Report and Deed.

²⁰ Consumer Advocate's Complaint, CA Exhibit E-5, Parcel Details Report and Deed.

²¹ Consumer Advocate's Complaint, CA Exhibit C, *1984 Articles*, pp. 1-2, Article V.(b). The 1984 Articles state that the TVPOA may "own, lease acquire, construct, operate, and maintain recreational facilities, greenbelt areas, private streets, **utilities**, specifically including, but not limited to, the **water and sewer system**, and other common facilities and amenities, together with improvements, buildings, structures, and personal properties incident hereto, **hereinafter referred to as "Common Properties."**" (emphasis added). *Id.*

System Identification (“PWSID”) number of TN0000871.²² In TDEC’s public dataviewer for water systems, TDEC states that Tellico Village has 5,502 drinking water connections and estimates that the Water System serves approximately 13,260 customers.²³

Also, as a part of the planned development, the TVPOA was tasked with the responsibility of owning and operating a wastewater system. Tellico Village applied for and was approved, by TDEC, to construct, install, modify, or operate its wastewater treatment works. Tellico Village has since renewed its State Operating Permit (“SOP-89079”) multiple times with the last renewal approved on September 1, 2023.²⁴ The wastewater permit authorizes Tellico Village to operate a municipal wastewater collection system which is then discharged partly to the Tellico Area Service System Wastewater Treatment Plant and partly to the Loudon Wastewater Treatment Plant for processing.²⁵

An important part of operating both a water and a sewer system is the authority and ability to manage the financial aspects of being a utility owner. The 1984 Articles recognized

²² The link to TDEC’s *Water Resources Drinking Water Watch* dataviewer is https://dataviewers.tdec.tn.gov/DWW/JSP/WaterSystemDetail.jsp?tinwsys_is_number=657&tinwsys_st_code=TN&wsnumber=TN0000871.

²³ Consumer Advocate’s Complaint, CA Exhibit G, UNITED STATES CENSUS BUREAU, QUICK FACTS: LOUDON COUNTY TENNESSEE *Persons per household, 2019-2023*. In calculating the number of customers from the number of service connections is determined by multiplying the number of connections (5,504) by 2.41, which is the Loudon County household factor. A copy of these Loudon County Quick Facts can also be accessed at <https://www.census.gov/quickfacts/fact/table/loudoncountytennessee/BZA115222>. It should be noted that in its 2018 Sanitary Survey, TDEC set out new monitoring requirements due to TVPOA’s drinking water customer population exceeding 10,000. At the time of this 2018 document, TVPOA had only 4,224 service connections at the time. CA Complaint, CA Exhibit H, Letter from Eric Webber, TDEC, to TVPOA, p. 3 (July 6, 2018). A link to a list of TDEC documents for TVPOA’s Water System can be accessed at https://dataviewers.tdec.tn.gov/dataviewers/f?p=2005:34031:9586418647251:::34031:P34031_SITE_ID:48482.

²⁴ Consumer Advocate’s Complaint, CA Exhibit I, Letter with renewed SOP Permit No. SOP-89079A from Vojin Janjic, Manager of TDEC Water-based Systems, to Chet Pillsbury, TVPOA CEO (August 31, 2023). A link to the TDEC permit and documents related to the wastewater system can be accessed at https://dataviewers.tdec.tn.gov/dataviewers/f?p=2005:34051:8848392531821:::34051:P34051_PERMIT_NUMBER:SOP-89079.

²⁵ Consumer Advocate’s Complaint, CA Exhibit J, p. 1.

this by authorizing the TVPOA to handle the financial needs of its water and sewer systems.²⁶ The 1984 Articles provide Tellico Village with the authority to fix, levy, and enforce payment by the terms of the Declaration of Covenants and Restrictions (“Declarations”), and to pay all expenses connected with the common properties.²⁷ TVPOA’s Declarations also explained that the water and sewer utilities will be part of its “common properties,” and that the cost of the two systems shall be paid from assessments and from charges to property owners for such services being provided by TVPOA.²⁸ Tellico Village has exercised this authority by requiring a potential utility customer to fill out an “Application for Utility Service” in which an applicant must choose water, sewer, or mailbox service (i.e. start service or end service).²⁹ An applicant must also identify the type of utility service – commercial or residential – for determining the amount of a refundable deposit.³⁰ Also, the water and sewer rates set by the TVPOA’s Board of Directors include rates for both residential and commercial customers.³¹

ARGUMENT

A. The Commission Has Jurisdiction to Determine Whether a Utility Is Exempt from its Regulatory Oversight.

The Commission has the “inherent and necessary . . . power to adequately regulate public utilities is the long-accepted ability of the TRA to interpret the statutory definition of a public

²⁶ Consumer Advocate’s Complaint, CA Exhibit C, 1984 Articles, p. 2, Article V.(d). The 1984 Articles specifically state that it may “**Fix, levy, collect and enforce payment** by any lawful means of all charges and assesment **pursuant to the terms of the Declaration** and to **pay all expenses in connection with the Common Properties** therefrom, including all office and other expensnes incident to the conduct of the business of the Association, together with all licenses, taxes, or governmental charges levied or imposed against the property” of its members. (emphasis added).

²⁷ Consumer Advocate’s Complaint, CA Exhibit C, 1984 Articles, p. 2, Article V.(b).

²⁸ Consumer Advocate’s Complaint, CA Exhibit F, Declaration, p. 10, Article VI, § 1.

²⁹ Consumer Advocate’s Complaint, CA Exhibit N, Application for Utility Service.

³⁰ *Id.*

³¹ Consumer Advocate’s Complaint, CA Exhibit L, TVPOA’s Water and Sewer Rates. A link to the TVPOA’s rates can also be accessed at <https://www.tellicovillagepoa.org/wp-content/uploads/Water-Sewer-Rates-2025.pdf>.

utility and that of a non-utility” as set out in statutes.³² The Consumer Advocate agrees with the Commission’s authority to determine whether a utility falls within its regulatory oversight and has stated such:

“In Tenn. Code Ann. 65-4-104, the Tennessee Legislature expressly granted the TRA the power to regulate all public utilities. Inherent in and necessary to the power to regulate utilities is the power to determine what a utility is. . . . If the TRA does not have the authority to apply the definition of what a public utility is, any public utility could simply declare itself to be some form of entity that is not subject to TRA regulation and the TRA would be prohibited from inquiring into whether the entity was really what it claimed to be.”³³

Neither the Commission’s nor the Consumer Advocate’s positions have changed regarding TPUC’s authority to investigate whether a utility is regulated by it. In fact, utilities have continued to petition the Commission for a determination that a Certificate of Convenience and Necessity (“CCN”) is not required since the utility is not a “public utility” as defined in Tenn. Code Ann. § 64-4-101(6). Such determinations are not uncommon, and the Commission recently acted on two such positions last month by its issuance of two written orders determining that a CCN was not needed since the petitioner was not regulated by the Commission.³⁴

B. The Homeowners Association Exception Under Tenn. Code Ann. § 65-4-101(6)(B)(ii).

The basic facts not in dispute are that Tellico Village (1) is a property owners association; (2) its membership includes both residential and commercial lot owners; and (3) it operates both a water and wastewater system. Beyond these facts, the Parties disagree. Before explaining the

³² *Order Declaring Berry’s Chapel Utility, Inc. to Be a Public Utility*, p. 16, TRA Docket No. 11-00005 (August 5, 2011).

³³ *Consumer Advocate’s Initial Brief that Berry’s Chapel Utility, Inc., Is a Public Utility Under Tennessee Law and Should Be Regulated by the TRA*, p. 3, TRA Docket No. 11-00005 (February 11, 2011).

³⁴ *Initial Determination that a CCN Is Not Required, In re: Petition of Meadows Townhome Development Located in Coopertown, Robertson County, Tennessee to Determine if a CCN Is Needed*, TPUC Docket No. 25-00037 (August 1, 2025) and *Initial Determination that a CCN Is Not Required, In re: Petition of Waterloo RV Park Located in Lawrenceburg, Lawrence County, Tennessee to Determine if a CCN Is Needed*, TPUC Docket No. 25-00038 (August 1, 2025).

details of the dispute, it is important first to see the statutory exception for homeowners associations (“HOA”) in total with the words and phrases in dispute underlined:

‘Public utility’ does not mean nonprofit homeowners association or organizations whose membership is limited to owners of lots in residential subdivisions, which associations or organizations own, construct, operate or maintain water, street light or park maintenance service systems for the exclusive use of that subdivision; provided, however, that the subdivisions are unable to obtain such services from the local utility district. None of the property, property rights or facilities owned or used by the association or organization for the rendering of such services shall be under the jurisdiction, supervision or control of the Tennessee public utility commission.³⁵

Tellico Village’s disagreement with the Consumer Advocate’s Complaint is, in essence, based on how words or phrases should be defined or the effect of the absence of words. First, the parties disagree on how the phrase “residential development” should be read. The TVPOA argues that the statutory exemption does not use the term “exclusively” when it refers to the phrase “residential subdivisions” nor does it use the terms “only” and “residential” in reference to “lots.”³⁶ Further, it argues that the statute does not preclude the HOA from providing utility service to other types of lots “other than” residential lots.³⁷

In making this argument, Tellico Village proposes that the phrase “residential subdivision” should be read more broadly to allow for development that is primarily residential but includes a “de minimis number of commercial amenities and lots.”³⁸ Beyond the fact that the TVPOA has not provided the statutory or regulatory authority for the existence of the term “de minimis” in this context, Tellico Village does not explain what is the standard for the number of commercial lots that a HOA can have and still be considered a “residential subdivision” under

³⁵ TENN. CODE ANN. § 65-4-101(6)(B)(i).

³⁶ Motion pp. 11-12.

³⁷ Motion p. 12.

³⁸ Motion p. 5.

Tenn. Code Ann. § 65-4-101(6)(B)(i). Tellico Village does not set out the magical number of commercial lots allowed before its designation as residential is lost. However, it appears that the existence of five commercial lots is insufficient to alter the residential designation since Tellico Village was unimpressed with the listing of “a purported five (5) commercial lots” by the Consumer Advocate in its Complaint.³⁹

In its Motion, Tellico Village states that “Tennessee law has long held that the primary use of land is determinative for purposes of land use designation in many legal context” and cites to six cases as examples.⁴⁰ However, a closer look at the cited cases reveals no cases involving a determination for regulatory oversight by the Commission or any other such government agency. Rather, four of the cited cases⁴¹ involve tax exemptions and two cases⁴² involve compliance with zoning ordinances. After a deeper review of the cited cases, it is clear that Tellico Village’s Motion to Dismiss is inappropriate and should be rejected.

Tellico Village stated it is a residential neighborhood with only incidental commercial lots and activity, and that was the master plan approved by the Tellico Reservoir Development Agency (“TRDA”).⁴³ However, one thing is clear in the cited tax-exempt cases: the courts did not simply take the word of the organizations seeking tax exempt status but conducted fact specific analyses before making a determination of a tax exempt status. One court summarized this view with the statement “[i]t is the use of the property and not the charitable nature of its

³⁹ Motion p. 11.

⁴⁰ Motion p. 15.

⁴¹ Motion p. 15 citing *North Gates Elks Club. v. Garner*, 496 S.W.2d 887 (Tenn. 1973); *State v. Rowan*, 106 S.W.2d 861 (Tenn. 1937); *Christ Church Pentecostal v. Tenn. State Bd. of Equalization*, 428 S.W.3d 800, 818 (Tenn. Ct. App. 2012); and *Youth Programs, Inc. v. Tenn. State Bd. of Equalization*, 170 S.W.3d 92, 98 (Tenn. Ct. App. 2004).

⁴² Motion pp. 15-16 citing *Thomas v. Tenn. DOT*, 2013 Tenn. App. LEXIS 527 (Tenn. Ct. App. Aug. 12, 2013) and *City of Lebanon v. Harris*, 2001 Tenn. App. LEXIS 758 (Tenn. Ct. App. Oct. 10, 2001).

⁴³ Motion pp. 13-17.

owner, which determines its exempt status.”⁴⁴ So, although Tellico Village and TRDA may characterize the development as residential, it is not their characterization that is determinative to the Commission’s jurisdictional analysis of this Docket.

It is also clear from these cases that, not only did the courts not take the word of the organization seeking tax exempt status, but this characterization by the entity was also not the determining factor either. Instead, tax exempt status determinations require an analysis of particularized factual findings.⁴⁵ For example, the North Gates Elks Club argued that its property was exclusively used for charitable and educational purposes.⁴⁶ However, in its analysis the court agreed that the “facts of this case clearly indicate that the Elks Club did not occupy or use its property exclusively for any of the exempt purposes,” but used the property for activities.⁴⁷ In *State v. Rowan*, the court itself highlighted the fact-specific nature for determining tax exempt status by asking itself “What, then is the primary use of the property here involved? What is the incidental use?”⁴⁸ So although the University Club of Memphis claimed it was an educational institution, the court’s analysis of the facts came to a different conclusion:

Upon the whole record we see little, if any, difference in the use to which the property of defendant club is put and the use to which the property of other clubs are put. The social and athletic activities of defendant club seem so greatly to

⁴⁴ *Youth Programs, Inc. v. Tenn. State Bd. of Equalization*, 170 S.W.3d 92, 98 (Tenn. Ct. App. 2004). The issue in this case was “whether the exclusive use of the property as a staging/parking area for the tournament, where the property is owned by a charitable organization and where the proceeds generated by the property benefit another charitable organization, constitute a charitable use under the statute.” *Id.* The temporary nature of the use as a staging/parking area does not seem to fit the facts detailed so far in this Docket.

⁴⁵ *Christ Church Pentecostal v. Tenn. State Bd. of Equalization*, 428 S.W.3d 800, 808 (Tenn. Ct. App. 2012).

⁴⁶ *North Gates Elks Club. v. Garner*, 496 S.W.2d 887, 888 (Tenn. 1973).

⁴⁷ *Id.* at 889.

⁴⁸ *State v. Rowan*, 106 S.W.2d 861, 863 (Tenn. 1937).

exceed its educational and literary activities we can but conclude that the latter must be regarded as incidental.⁴⁹

In *Christ Church Pentecostal v. Tennessee State Board of Equalization*, the court upheld the decision that the Church's bookstore/café was not tax exempt, and its fitness center was partially exempt.⁵⁰ In its analysis, the court noted the factual findings of the board that the bookstore/café were "permanent, full-scale retail business enterprises, complete with paid employees, . . . that it was open throughout the week; and it actively seeks to bring in customers from the general public."⁵¹ It is clear from these decisions that a fact-based analysis is required for a determination of a tax exempt status; thus, inappropriate for the granting of a motion to dismiss prior to fact-finding by the appropriate agency, such as the Commission

As previously stated, two of the cited cases by Tellico Village for the premise that "primary use" is determinative in land use cases involving zoning laws. Mr. William H. Thomas in *Thomas v. Tenn. DOT* argued that the Steve Road Locations were zoned Planned Development Commercial; therefore, he could erect outdoor billboards on site. However, the court upheld the state's denial for outdoor billboard because it held that the Steve Road Locations were actually in an area zoned residential/flood plain and agricultural/flood plain.⁵² The carve-out for specific commercial activity (i.e., a daycare center, mini-storage warehouse, etc.) in this zone did not alter the overall zoning of the area; thus, the state was correct in its decision that billboard construction permits could not be issued.⁵³ The other case involved Mr. Harris, who is in the business of selling and leasing insulated metal outdoor utility/storage

⁴⁹ *Id.* at 864.

⁵⁰ *Christ Church Pentecostal v. Tenn. State Bd. of Equalization*, 428 S.W.3d 800, 813 (Tenn. Ct. App. 2012).

⁵¹ *Id.* at 808.

⁵² *Thomas v. Tenn. DOT*, 2013 Tenn. App. LEXIS 527 *17-18 (Tenn. Ct. App. Aug. 12, 2013).

⁵³ *Id.* at *24-25.

buildings, and he placed these type of buildings, with advertising signage of the side of the buildings, on several lots with the permission of the property owners around the City of Lebanon.⁵⁴ The court agreed with the City's interpretation of its zoning ordinance that allowed only one principal building and customary accessory buildings.⁵⁵ Since Mr. Harris' buildings were not the primary building of the lots in question or accessory buildings/structures related to the primary permitted use, Mr. Harris' buildings were in violation of the City's zoning laws.⁵⁶ Based on the brief summaries provided above, the two zoning cases are not relevant to the issue at hand, which is whether the Commission has jurisdiction over Tellico Village, a planned company that includes commercial enterprises open to the general public served the TVPOA's water and wastewater systems.

In further reading and analysis of TVPOA's Motion, it appears there is a misunderstanding of the purpose and nature of the Consumer Advocate's Complaint. The Complaint sets out facts and legal arguments for a foundation of its request for the Commission to issue a Show Cause order to investigate whether Tellico Village should be regulated by the Commission. However, the Complaint itself is not the investigation, as it is the Commission that is the regulatory agency. The list of 5 commercial lots in the Complaint was not meant to be an exhaustive list but rather to highlight the issue itself. If a Show Cause order is issued, the Commission will investigate and develop the record for this Docket, so the Commission can publicly deliberate the facts and legal arguments leading to its determination of its jurisdiction. Again, once a Show Cause order is issued, the investigation can include the development of facts and legal arguments not already in the record from the Parties. Such an investigation may

⁵⁴ *City of Lebanon v. Harris*, 2001 Tenn. App. LEXIS 758 *2 (Tenn. Ct. App. Oct. 10, 2001).

⁵⁵ *Id.* at *7.

⁵⁶ *Id.* at *13.

include determining the actual number of commercial lots in the Tellico Village development, and what other TVPOA amenities are open to the public but are located on common property owned by TVPOA such as golf courses or restaurants.

C. The Non-Profit Exception Under Tenn. Code Ann. § 65-4-101(6)(B)(ii).

The facts are that Tellico Village (1) is a duly organized Tennessee non-profit corporation with Articles of Incorporation from September 1984; (2) its membership includes both residential and commercial lot owners; and (3) it operates both a water and wastewater system. Beyond these facts, the parties disagree on meaning or relevance of other facts or arguments. First, Tellico Village added to the record a letter from the Tennessee Regulatory Agency⁵⁷ (“TRA”) regarding its jurisdiction of a separate non-profit organization as a fact that is determinative of TPUC’s jurisdiction in the current Docket. Tellico Village argues that its organization is indistinguishable from the “Fairfield Glade Community Club (“FGCC”), which was established in 1970 as a nonprofit corporation organized for the purpose of operating the master planned residential subdivision of Fairfield Glade in Crossville, Tennessee.”⁵⁸ To this end, Tellico Village points to a letter from J. Richard Collier, the then General Counsel of the TRA about the issue of its jurisdiction over the FGCC, which states that the TRA does not have jurisdiction over the FGCC.⁵⁹ It should be noted that the letter from the TRA’s attorney was not within the confines of a contested case, nor did it involve the public deliberations of the TRA Directors. As such, it has no precedential value to the Commission. Also, the FGCC determination involves a statutory provision that has since been revised.

⁵⁷ The Tennessee Regulatory Authority, or TRA, is the predecessor agency to the TPUC, just as the Tennessee Public Service Commission or TPSC predated the TRA. While the nomenclature has changed, the scope and function of these entities has remained essentially the same.

⁵⁸ Motion p. 23, Exhibit L.

⁵⁹ Motion p. 24, Exhibit O.

Tellico Village cites to an older statute, Tenn. Code Ann. § 65-4-101(6)(E), as the basis of its exemption; however, the actual statute at issue is Tenn. Code Ann. § 65-4-101(6)(B)(ii).⁶⁰ As the Consumer Advocate explained in its Complaint, the exception for 501(c)(4) entities is a two-step process: (1) designation as a 501(c)(4) non-profit and (2) a written statement of exemption from the Commission. Tenn. Code Ann. § 65-4-101(6)(B)(ii) states:

(ii) “Public utility” does not mean any nonprofit corporation, as defined in § 501(c)(4) of the Internal Revenue Code (26 U.S.C. § 501(c)(4)), which owns and operates a wastewater system primarily for the use of the members of the corporation and which has received **a written statement of exemption** from regulation as a public utility from the Tennessee public utility commission prior to January 1, 2009.⁶¹ (emphasis added).

Tellico Village wants to be treated like the FGCC; however, it is not in the same position as FGCC since an analysis of FGCC shows it is within the parameters of this statutory exception. The two-step analysis reveals that FGCC is a 501(c)(4) non-profit, **and** it has a written state of exemption from the Commission prior to January 1, 2009. In its Complaint, the Consumer Advocate conducted the same two step analysis for TVPOA including filing a records request with the Commission for a written exemption from regulation for the TVPOA.⁶² The Commission had no written exemption for the Tellico Village in its files.⁶³ Therefore, unlike FGCC, Tellico Village does not fall within the exemption from regulation.

Next, Tellico Village argues that it has a vested right not to be regulated by the Commission based on the previous statute, and that the current statute could not revoke its vested right. However, the current statute does not revoke the previously written exemptions requested by utilities from regulation by the TRA. Rather, the current statute recognizes the utilities that

⁶⁰ Motion pp. 23-24

⁶¹ TENN. CODE ANN. § 65-4-101(6)(B)(ii).

⁶² Consumer Advocate Complaint, CA Exhibit Q, CA Request for Records and TPUC Response.

⁶³ *Id.*

took the step to seek a written statement by the TRA. Specifically, the statute recognizes 501(c)(4) non-profits who had “received a written statement of exemption from regulation as a public utility from the Tennessee public utility commission prior to January 1, 2009,” would continue to be exempt from regulation by the TRA.⁶⁴ However, the current record in this Docket does not show that Tellico Village made a request from the TRA, as did FGCC. The Consumer Advocate confirmed this in a public records request for a written confirmation of an exemption from regulation for Tellico Village, but the Commission has no such documentation. Since Tellico Village does not have a written statement of exemption from TRA regulation, the TVPOA had no vested right revoked by the current statute.

D. The Commission’s Intent to Exempt the Tellico Village from Regulation.

In its final legal argument, TVPOA appears to claim that the Commission has ceded its authority to regulate public utilities as defined in its statute except for investor-owned utilities.⁶⁵ Tellico Village does not cite authority for its position such as statutory revisions, Commission rules, administrative orders issued by the Commission or court decisions that limit the Commission’s jurisdiction to only investor-owned utilities. Rather, Tellico Village argues that the Commission has limited its jurisdiction through statements in public documents⁶⁶ that appear to briefly explain TPUC’s jurisdiction without explaining the details of the exceptions to the term “public utility” as used in the statutory framework for the Commission. It is the Consumer Advocate’s position that it is the statutory language that controls the jurisdiction of the Commission and not publicly available statements in reports or from other entities.

⁶⁴ TENN. CODE ANN. § 65-4-101(6)(B)(ii).

⁶⁵ Motion p. 26.

⁶⁶ Motion pp. 26-28.

Also, according to the Motion to Dismiss, the Commission has knowingly decided not to regulate the TVPOA or any similarly situated entity.⁶⁷ To support this argument, Tellico Village points to a list of regulated entities on the Commission's webpage and to TDEC's public dataviewers, which sets out the hundreds of water and wastewater utilities located in Tennessee. Despite the various lists it provided, the Tellico Village failed to provide a specific example of a determination by the Commission that it does not have jurisdiction over any specific HOA, much less one that is similarly situated to the TVPOA. To support its argument, Tellico Village points to a court decision, *Berry's Chapel Util. v. Tenn. Regulatory Auth.*, to argue that it should not be regulated since it has a member elected board of directors, unlike Berry's Chapel.⁶⁸ However, the decision in *Berry's Chapel* involved the older statute, Tenn. Code Ann. § 65-4-101(6)(E), and not the existing statute, Tenn. Code Ann. § 65-4-101(6)(B)(ii), and it focused on defining what is a cooperative corporation. Although *Berry Chapel's* involves the older statute, it and the TRA's administrative order do provide some insight into the necessary fact-specific analysis that the Commission performs when faced with utilities claiming exemption from its regulatory oversight. Rather than attempting to discern the Commission's intent in the actions or inactions described above, it would be prudent for the Commission to investigate and develop a record for it to reach a determination of its jurisdiction under the current statute. Tenn. Code Ann. § 65-4-101(6)(B)(ii).

CONCLUSIONS

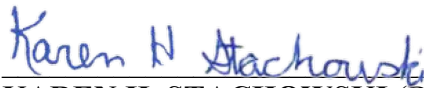
The Consumer Advocate's Petition has sufficient factual allegations to articulate a claim for relief. Moreover, the Consumer Advocate's factual claims, if taken as true as required under

⁶⁷ Motion p. 29.

⁶⁸ *Berry's Chapel Util. v. Tenn. Regulatory Auth.*, 2012 WL 6697288 (Tenn. Ct. App. 2012) and *Order Declaring Berry's Chapel, Inc. to Be a Public Utility*, TRA Docket No. 11-00004 (August 5, 2011).

the standards for reviewing a motion to dismiss, absolutely establish that TVPOA is a regulated entity. Tellico Village's challenge to the strength of evidence set forth in the Consumer Advocate's Petition by providing additional facts and statutory interpretations rather than challenging the legal sufficiency of the Complaint itself, therefore, is misplaced under the standards for a motion to dismiss. As such and for the reasons set forth herein, the Consumer Advocate respectfully submits it has satisfied Tennessee's liberal notice pleading requirements, and the Court should deny Tellico Village's Motion to Dismiss.

RESPECTFULLY SUBMITTED,



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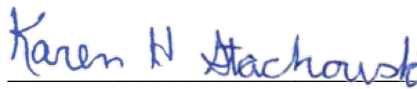
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via electronic mail, and upon request, a courtesy copy sent by U.S. mail:

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This the 8th day of September, 2025.


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