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April 22, 2015

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**VIA E-MAIL TRANSMISSION
AND
FIRST CLASS MAIL**

Docket No. 15-00047

Sharla Dillon, Clerk
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

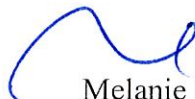
In Re: Petition of Eagles Nest, LLC To Require Laurel Hills Condominium Association,
Inc. To Permit Connection To Water System To Eagles Nest, LLC's Property On
Renegade Mountain

Dear Ms. Dillon:

Please find enclosed for filing in the above matter the original and four copies of the
Petition of Eagles Nest, LLC. Please also find enclosed our firm's check in the amount of \$25.00
representing the filing fee for this Petition.

With kindest regards, I remain

Very truly yours,



Melanie E. Davis

MED:ps

Enclosures

cc: Shiva Bozarth, Attorney
David Foster, Chief - Utilities Division
John J. Baroni, Attorney
Benjamin Gastel, Attorney
Eagles Nest, LLC

BEFORE THE
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In Re:

PETITION OF EAGLES NEST LLC
FOR WATER SERVICE TO BE
PROVIDED TO IT IN THE USUAL
COURSE OF BUSINESS AS A PROSPECTIVE
CUSTOMER OF THE WATER SYSTEM
OWNED BY LAUREL HILLS
CONDOMINIUM ASSOCIATION

NO. _____

PETITION OF EAGLES NEST, LLC TO REQUIRE LAUREL HILLS
CONDOMINIUM ASSOCIATION, INC TO PERMIT CONNECTION TO WATER
SYSTEM TO EAGLES NEST, LLC'S PROPERTY ON RENEGADE MOUNTAIN

1. Comes now Eagles Nest, LLC, ("Eagles Nest") a Nevada limited liability company, which owns real property on Renegade Mountain in an area served by the Laurel Hills Condominium Association's ("Laurel Hills") water system. Laurel Hills is served a copy of this Petition through its counsel, Ben Gastel , 227 2nd Ave N 4th Floor Nashville, TN 37219.

2. Eagles Nest is attempting to develop its property, and it needs water from Laurel Hills in order to do so. A Laurel Hills water line is within 20 feet of Eagles Nest's property where it wants to connect. No other water source is reasonably available. This is not a requested extension of the system, but a new connection in the usual course of business of the operation of the water system. The water line can be run from Eagles Nest's entrance to within 2 feet of the existing 4 inch line belonging to Laurel Hills with minimal effort by Eagles Nest.

3. Eagles Nest has the right to be a party to this case under T.C.A. §65-2-107 as a person having a right under the laws applicable to the authority to appear and be heard in contested cases before the TRA. Eagles Nest is a potential customer of the Laurel Hills water system as set forth herein.

4. This water system was at issue in T.R.A. Docket No. 12-00030 wherein this Agency denied the petition of Laurel Hills to grant it a Certificate of Convenience and Necessity to operate the water system at issue.

5. Thus, Laurel Hills was given 60 days to divest itself of the system on April 18, 2013, over two years ago.

6. In April of 2015, Laurel Hills still owns and operates the water system, but its appeals to the Court of Appeals and state Supreme Court have now been exhausted. It is subject of a show cause case in T.R.A. Docket No. 12-00077 due to its failure to divest itself of the water system.

7. Eagles Nests' attempted to intervene in Docket No. 12-00077 to ask for help in connecting to the water for its development, but its request was denied by order dated February 2, 2015, apparently because of the nature of the Show Cause proceeding. That show cause case remains open, waiting on a determination of the issue of the propriety of the Tennessee General Consumer Advocate's desired intervention in the case, which was also denied. It is unknown how much longer this determination will take, but likely it will be many months.

8. Eagles Nest, LLC petitions the TRA to order Laurel Hills to allow Eagles Nest to connect to the water system in Renegade Mountain. It is averred that this would be a simple process of shutting off some valves and allowing the service connection to be

made.

9. Attached as Exhibit A is a chart showing Eagles Nest, LLC's attempts to connect to the water system. As shown on this Exhibit, Laurel Hills, through its agent Daryl McQueen, is refusing to allow Eagles Nest, LLC to tie on to the water system based on its allegation that it is not permitted to do so by the Tennessee Regulatory Authority. Exhibit B is a letter from Laurel Hills' attorney Ben Gastel making the same claim.

10. In the usual course of operating the public water system, it would be necessary to allow reasonable additional customers to connect to the system. Otherwise, this community cannot be reasonably exist and be developed.

11. The Order in Tennessee Regulatory Authority, Docket No: 12-00030, dated April 11, 2013 denying a CCN to Laurel Hills states as follows in pertinent part:

5. "Pending divestiture of its water utility, Laurel Hills remains public utility and shall follow all applicable statutes, rules and procedures. Specifically, Laurel Hills shall furnish safe, adequate and proper service..." (Order p. 32).

12. Generally, service may be refused to a potential water customer only in situations specified in Tennessee Regulatory Authority Rule 1220-4-3.19, none of which apply here. Laurel Hills is in violation of the TRA regulations by denying services to Eagles Nest, a potential customer. It further did not send any written statement as to why it was denied service under 1220-4-3-19(k). Under 19(k), such a prospective customer has a right to appeal the decision to have service refused to the authority. 1220-4-3-19(k) states:

When a prospective customer is refused service under the provisions of this section, the utility shall notify him/her

promptly of the reason for the refusal to serve and of his/her right to appeal the utility decision to the authority. Accordingly, such appeal right exists for a prospective customer such as Eagles Nest.

13. Petitioner asks that the TRA order Laurel Hills to allow this connection by Eagles Nest, LLC to its system pursuant to usual connection procedures. Eagles Nest, LLC is willing and able to pay the required connection fees and regular monthly charges for water.

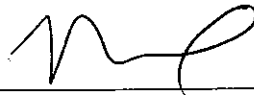
14. It was not anticipated that divestiture of the water system would take so long to accomplish and the community needs to have the ability to connect to water until this matter is resolved when the divestiture is accomplished. It may be another year or more before divestiture is accomplished. The water systems' customers and potential customers should not be punished by denying them water service in the meanwhile.

15. An expedited hearing is requested as soon as possible on this Petition so that the construction can begin this spring

WHEREFORE. Petitioner requests as follows:

1. That Laurel Hills be permitted to respond to this Petition.
2. That an expedited hearing be held where the T.R.A. orders Laurel Hills to allow Eagles Nest to connect to the water system
3. For such other relief to which the Petitioner may show itself entitled at a hearing of this cause.

RESPECTFULLY SUBMITTED,



MELANIE E. DAVIS, Attorney for
Eagles Nest, LLC
Tennessee Bar No. 017947
Kizer & Black Attorneys, PLLC
329 Cates Street
Maryville, Tennessee 37801
Telephone: (865) 980-1625



Efforts to effect connection to the Laurel Hills Water System by Eagle's Nest, LLC Development

By Wendell Harkleroad, Gen.Mgr.

- On October 14, 2014, I visited with Darryl McQueen, self-appointed engineer/manager of the Laurel Hills Water System (LHWS) for the purpose of discerning how and where Eagle's Nest LLC Development could tap into the water so that the planned development of new homes could have water service. Darryl informed me that since the LHWS was under an order of divestiture by the TRA, they could not hook up any new customers. He told me that the line that ran down the road adjacent to the Upper Eagle's Nest Road entrance was a four inch line. He also questioned me as to the size of the fee I would be willing to pay to hook up to the LHWS and suggested they might be willing to do it for \$1,000/house and \$700 for each associated meter. He advised me to contact the TRA by letter requesting resolution;
- On/about October 15, 2014, I phoned Mr. Shiva Bozarth, General Counsel, Tennessee Regulatory Authority, briefly telling Mr. Bozarth what I needed in a voice mail;
- On October 16, 2014, I appeared before the Cumberland County Planning Commission and presented a Preliminary Plat for Preliminary approval to proceed to plan the Eagle's Nest LLC Phase I of the Development consisting of seven lots and new construction homes. It should be noted that Eagle's Nest LLC had to date spent in excess of \$600,000 capital outlays to get the Development ready to build homes. Timing of the construction start would be critical to get the first home dried-in before winter. The Commission refused preliminary approval until I could ascertain the size of the water line to which Eagle's Nest must hook the Development's required six inch line for fire protection. The Commission suggested that I contact Crab Orchard Utilities to ascertain the size of the

line and/or the pressure of the water at the source to Eagle's Nest's proposed line.

- **On October 17, 2014, I visited with Everett L. Bolin, Jr., Gen. Mgr. of Crab Orchard Utilities, and explained the reluctance of the Planning Commission to approve my Development Plat preliminary due to the uncertainty of the water line size to which I would connect the Eagle's Nest Development line. Mr. Bolin explained to me that either the Planning Commission misstated the facts or I misunderstood the issue, in that four inch lines were connected to six inch lines all over the County; and that the pressure would be the same in the lines, though different in size; but the real issue was what the water pressure and flow rate was at the point where the lines connect. He proposed that, since there was a fire plug at the site, a simple pressure/flow test would reveal the answer; and he said that his engineer would conduct the test, probably, that afternoon. By phone on October 20, 2014, Mr. Bolin's office informed me**

EXHIBIT A, CONT.

- On February 19, 2015, I, again, appeared before the Cumberland County Planning Commission; and, once again, presented a Preliminary Plat for Preliminary approval to proceed with infrastructure and housing construction for Eagle's Nest LLC Phase I. Mr. Everett L. Bolin, Jr., Gen. Mgr. of Crab Orchard Utilities, appeared in support of the Eagle's Nest LLC's intention to connect to the LHWS water line. Mr. Bolin's statement was that it was very common for six inch water lines to be connected to four inch lines throughout Cumberland County in his utility district. What ensued was a discussion of water pressure issues, insurance fire water issues, and the operation of the LHWS system for which Crab Orchard Utilities supplies the water.

The Planning Commission next, then, took the normal procedural step and approved the Eagle's Nest Phase I Development by majority vote of the Commission members. The Tennessee State Community Planner, Mr. Tommy Lee, Upper Cumberland Development District recorded the vote and results for publication in the public records;

- As of April 14, 2015, Eagle's Nest LLC has now spent in excess of \$691,000 in capital outlays to get the Development ready to build the first home. Eagle's Nest now has contracts in hand for construction and completion of 1200 feet of six inch water line and for burying 1200 feet of electric utilities, including high speed internet cable, during April 2015. Logging contractors have cleared the first seven lots of trees; and, following construction of infrastructure utilities, Eagle's Nest will immediately initiate a contract to pave 1200 feet of roadway into the Development, since the roadway base already is prepared. These segments of spending will add over \$93,000 of capital outlays to bring the total over \$784,000 before start of construction of the first house;
- The Eagle's Nest timeline anticipates breaking ground on the first home during the first week of May 2015. The construction contract for the home has been awarded, and marketing and advertising will follow the ground breaking, leading to an open house on May 30, 2015. The Eagle's Nest Development website can be viewed at Eaglesnest-tn.com.

Melanie Davis

From: Ben Gastel <beng@bsjfirm.com>
Sent: Friday, April 10, 2015 2:14 PM
To: Melanie Davis; Shiva Bozarth (Shiva.K.Bozarth@tn.gov)
Subject: Eagles Nest



Melanie,

I'm in receipt of your letter related to the Eagles' Nest connection. My client does not have a certificate to operate a water system. It's ability to expand the system to add new connections is at best in legal limbo. I've previously asked Shiva to clarify the TRA's position on the matter as my client does not want to perform any illegal action in extending a service it is not authorized provide in the first place. The TRA has in fact taken the position that my client's operation of the system as it exists today subjects it to a daily fine of \$50. Extending the service without TRA approval could be another basis for a fine. My client is not trying to be difficult in this regard, but I cannot advise my client to extend its system without TRA approval. See Tenn. Code Ann. 65-4-114(2).

Further, under the current rate structure, my client has no available funds to incur the legal costs necessary for another TRA proceeding. As you are fully aware, the current rate structure approved by the TRA affords no rate for legal proceedings. If your clients want to jointly petition the TRA for an increase in rates to cover this additional, unaccounted for cost, I'm happy to have such a discussion.

Thanks,

Ben Gastel
Branstetter, Stranch & Jennings, PLLC
227 Second Ave. N.
Fourth Floor
Nashville, TN 37061-1631
P: 615.254.8801
F: 615.255.5419

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing of the PETITION OF EAGLES NEST, LLC TO REQUIRE LAUREL HILLS CONDOMINIUM ASSOCIATION, INC TO PERMIT CONNECTION TO WATER SYSTEM TO EAGLES NEST, LLC'S PROPERTY ON RENEGADE MOUNTAIN has been served upon the following:

David Foster, Chief-Utilities Division
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Shiva Bozarth, General Counsel
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

John J. Baroni, Attorney
Consumer Advocate Division
Office of the Attorney General
P.O. Box 20207
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Nashville, TN 37243-0500

Benjamin A. Gastel, Attorney
Branstetter, Stranch and Jennings, PLLC
227 Second Avenue North, 4th Floor
Nashville, TN 37201-1631

by mailing a true and accurate copy via U.S. Mail, postage prepaid, this the 22nd day of April, 2015.

Kizer & Black Attorneys, PLLC:

By: 
Melanie E. Davis