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September 18, 2015

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and

FIRST CLASS MAIL

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
Docket No. 15-00047

Dear Ms. Dillon:

Please find attached hereto the Direct Pre-Filed Testimony of Wendell Harkleroad on
behalf of Eagles Nest, LLC in the above-styled matter.

Should you have any questions, please give me a call at the direct dial number above.

With kindest regards, I am

Very truly yours,



Melanie E. Davis

MED:ps

Enclosure

cc: Ryan McGehee
Erin Merrick
Vance Broemel
Benjamin A. Gastel, Attorney
Eagles Nest, LLC

BEFORE THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

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

NO. 15-00047

DIRECT PRE-FILED TESTIMONY OF WENDELL HARKLEROAD ON
BEHALF OF EAGLES NEST, LLC

Comes now, Eagles Nest, LLC, and offers the following Direct Pre-Filed

Testimony of Wendell Harkleroad:

Q. What is your complete name and address?

A. Wendell Harkleroad. I reside in Leawood, Kansas.

Q. In what capacity do you testify?

A. I am the General Manager for Eagles Nest, LLC.

Q. What is Eagles Nest, LLC?

A. Eagles Nest, LLC owns property on Renegade Mountain in Cumberland County, Tennessee. Our intention is to immediately develop this property by building homes on it.

Q. Do you have preliminary plat approval for the property you are wanting to

develop?

- A. Yes, we have preliminary plat approval from Planning Commission for Phase One in Eagles Nest. Final plat approval is contingent on us getting the ability to hook onto the water system.

Q. How many homes are anticipated to be part of this development?

- A. Eagles Nest, Phase One, will involve six homes on six lots. We will have one home that needs to hook up immediately. The second would be sometime next year, and the other four sometime after that. Right now we just need to hook onto the one home. It would just take a very short time for us to do that. We already have the pipes in place.

Q. What are the available sources of water for this property?

- A. The only available reasonable source of water is the water system currently owned by Laurel Hills Condominium Association, Inc. on Renegade Mountain.

Q. Is this the same Laurel Hills that is subject to proceedings originally in Docket No. 12-00030 and subsequently in Docket No. 12-00077?

- A. Yes it is.

Q. Can you drill a well to get water to this property?

- A. No. That is not feasible.

Q. Are there any other reasonable sources of water available?

A. No. There is no other source of water reasonably available.

Q. Where is a Laurel Hills water line located in relation to Eagles Nest, LLC's property where it wants to connect?

A. A Laurel Hills water line is within twenty feet of Eagles Nest, LLC's property.

Q. Has Eagles Nest, LLC contacted Laurel Hills regarding its desire to hook onto the water?

A. Yes. We have requested this many times but have been told no allegedly because of the pending TRA action.

Q. Is this an expansion of the existing water system?

A. I contend that it is not an expansion. It is simply a new connection in the usual course of business of the operation of the water system.

Q. How would the water line be run from Eagles Nest, LLC's entrance?

A. The water line can be run from Eagles Nest, LLC's entrance to within two feet of the existing four-inch water line which belongs to Laurel Hills with very minimal effort by Eagles Nest, LLC.

Q. What would then be needed?

A. We would then just need to be allowed to attach onto the water system and

become paying customers of the water system.

Q. Is Eagles Nest, LLC a potential customer of Laurel Hills?

A. Yes. We are a potential customer of Laurel Hills due to the proximity of the water line.

Q. Was Laurel Hills previously denied a Certificate of Convenience and Necessity to operate the water system at issue?

A. Yes. That happened in TRA Docket No. 12-00030.

Q. Have you been following that case?

A. Yes I have. Laurel Hills was given sixty days to divest itself of the water system on April 18, 2013, approximately two and one-half years ago.

Q. In following the case, are you aware of its status?

A. Yes. The appeals have now been exhausted. The show cause case in Docket No. 12-00077 due to the failure of Laurel Hills to divest the water system has proceeded, and I understand there is now a proposed Agreed Order allowing a Receivership to take over the water system pending Authority approval.

Q. What are you asking for from the TRA?

A. We are asking as a potential customer for help in connecting to water for our development. We previously tried to intervene in the show cause proceeding but

our request was denied on February 2, 2015.

Q. So, the process to allow this connection would be relatively simple?

A. Yes. It would be a simple process of shutting off some valves and allowing the service connection to be made.

Q. Do you have a chart showing Eagles Nest, LLC's attempts to connect to the water system?

A. Yes. That is shown as Exhibit A. This shows Laurel Hills, through its agent Gerald McQueen, refusing to allow Eagles Nest, LLC to tie onto the water system based on its allegation that it is not permitted as use by the TRA.

Q. Do you also have a letter from Laurel Hills' attorney?

A. Yes. That is attached as Exhibit B. It is a statement from Ben Gastel on behalf of Laurel Hills opining that they would not allow us to tie onto the water system.

Q. In the usual course of operating a water system, is it your opinion that it is necessary to allow reasonable additional customers to connect to the water system and to disconnect to the water system?

A. Yes. That would be my testimony.

Q. Without water, can your property be properly developed?

A. No it cannot.

Q. Do you have experience personally in operating a water system?

A. Yes. I had personal experience in operating a water system with over 900 customers. It was located 13217 Main Street, Trona, California 93562. I was involved in the years 1999-2004.

Q. Are you familiar with the Order in the TRA case, Docket No. 12-00030 dated April 11, 2013, denying the CCN to Laurel Hills?

A. Yes I am.

Q. What is your assertion regarding this Order?

A. On page 32 this Order in paragraph 5 states that "Pending divestiture of its water utility, Laurel Hills remains a public utility and shall follow all applicable statutes, rules and procedures. Specifically Laurel Hills shall furnish safe, adequate and proper service . . .". This is what I am relying on to say they should allow us water.

Q. Do you believe it was the intent of the TRA that all the customers be frozen in time?

A. No. I can't believe that that was their intent, particularly where this process has taken two and one-half years to come to this point.

Q. At this point, has Laurel Hills denied service to Eagles Nest, LLC as a potential customer?

A. Yes.

Q. Did you receive any sort of written statement as to why it is denied service?

A. No I did not other than the lawyer letter from Mr. Gastel.

Q. Are you appealing the decision to have service refused?

A. Yes I am pursuant to Tennessee Reg. 1220-4-3-19(k) wherein it 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 of service and of his or her right to appeal the Utility decision to the Authority".

Q. What are you asking the TRA to do at the hearing?

A. I am asking the TRA to order Laurel Hills to allow this connection by Eagles Nest, LLC to its water system pursuant to usual connection procedures. Eagles Nest, LLC is willing and able to pay the required connection fee and regular monthly charges for water.

Q. When the Order was entered in April of 2013, how long was it anticipated that this matter would continue?

A. I don't think it was ever anticipated that it would take so long to accomplish. The community needs to have the ability to connect to water until this matter is resolved and divestiture is accomplished.

Q. Has Eagles Nest, LLC begun construction?

A. Yes we have, but we are having great difficulty in proceeding without water.

Q. Would you ask the same relief be ordered of a Receiver in the event that the water system goes into Receivership?

A. Yes. I would ask that whatever Order be entered also apply to a Receiver so that we can just have the right to connect to the water system like any other customer.

Q. What about just waiting until the Receiver is appointed to get your water?

A. We do not know how long it will take for a Receiver to be appointed and cannot wait any longer for water.

Q. Does this concluded your direct testimony?

A. Yes, but I reserve the right to submit additional testimony in the future.

RESPECTFULLY SUBMITTED,

EAGLES NEST, LLC:

By: 

MELANIE E. DAVIS, Attorney

Tennessee Bar No. 017947

Kizer & Black Attorneys, PLLC

329 Cates Street

Maryville, Tennessee 37801

Telephone: (865) 980-1625

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing of the DIRECT PRE-FILED TESTIMONY OF WENDELL HARKLEROAD ON BEHALF OF EAGLES NEST, LLC has been served upon the following:

Ryan McGehee
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

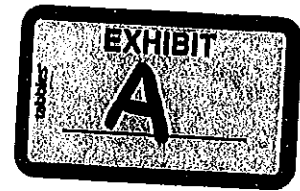
Erin Merrick and Vance Broemel
Consumer Advocate & Protection Division
Office of the Tennessee Attorney General
P. O. Box 20207
Nashville, TN 37202

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 14
day of Sept, 2015.

Kizer & Black Attorneys, PLLC:

By: 
Melanie E. Davis



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
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Fourth Floor
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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 _____ day of _____, 2015.

Kizer & Black Attorneys, PLLC:

By: 

Melanie E. Davis