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January 22, 2015

Rutherford County Planning Commission
1 South Public Square
Murfreesboro, Tennessee 37130

RE: Request for Waiver
Estates of Lewis Downs Subdivision

Dear Commissioners:

This firm represents New South Developers, LLC in regard to the above referenced matter. We have been requested to make a formal written request for a waiver on behalf of our client.

This request concerns the stormwater detention pond for the Estates of Lewis Downs Subdivision. Per current County Subdivision regulations, all stormwater detention ponds must be on a numbered lot and cannot be on a residential building lot. Presumably, this requirement was enacted so that the stormwater detention pond could be conveyed and maintained by the subdivision homeowners' association. This letter will explain why we believe this particular requirement is not appropriate for this development.

First, as you will see on the proposed construction drawings (included with this request) the layout of this development requires that the stormwater detention area sit directly behind lot number 10 leaving approximately twelve (12) acres of land on the other side of the stormwater detention pond. If the stormwater detention pond were to be its own lot, it would have to include not only the detention pond but also the approximately twelve (12) acres located behind the pond, since there would otherwise be no public road access to this land. While requiring the developer to relinquish an acre of the development for a detention pond is reasonable, this requirement inadvertently requires the developer to relinquish almost 13 acres of land of which only an acre will be used as a stormwater detention pond. Also, if the stormwater detention pond were to be its own lot, the developer would be required to reduce the size of Lot 10 to provide a fifty foot (50') access from the public road to the stormwater detention pond.

Second, if the stormwater detention pond (and the acreage behind the stormwater detention pond) is its own lot, that lot must be conveyed to a homeowners' association so that it can be maintained. In larger subdivisions, this would not be problematic; however, the Estates of Lewis Downs will only contain fourteen (14) residential building lots, with no other common area to maintain. The smaller the subdivision, the more difficult it is to find volunteers to manage the homeowners' association and to collect dues to operate the association and maintain the stormwater detention pond. There may be little to no motivation for the homeowners' association to maintain the detention pond on a regular basis, which will not only be problematic for the County, but also an eyesore and potentially dangerous

for the owner of Lot 10, whose lot backs up to the pond. It is more likely, therefore, that the owner of Lot 10 would maintain the stormwater detention pond and the approximately twelve (12) acres behind the detention pond, if the owner of lot 10 were permitted to own that land.

Third, if the homeowners' association were to own the stormwater detention pond and the acreage behind the detention pond, it is much more likely that homeowners in the subdivision might wish to utilize said land for recreational purposes. In order to access the land directly behind the stormwater detention pond, homeowners would have to travel through a right-of-way between Lots 9 and 10 and travel through the stormwater detention pond. This not only creates potentially unwanted pedestrian traffic between Lots 9 and 10, but also creates a liability for the homeowners' association, which must take measures to insure that homeowners and their guests stay out of the stormwater detention pond area. The association would incur additional expenses (for which funds may not even be available) to purchase liability insurance and to take reasonable measures to insure that homeowners do not injure themselves in the stormwater detention pond area (this might include building and maintaining a fence).

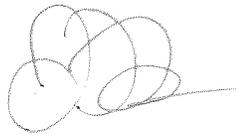
In summary, we believe that the requirement for placing the stormwater detention pond in its own lot is not feasible in this particular situation. It would require the developer to relinquish an unreasonable amount of land that could otherwise be sold, it requires the establishment and maintenance of a homeowners' association, which may be problematic in a subdivision of this size, and it creates a potential nuisance for the owners of Lots 9 and 10 and a potential liability for the homeowners' association. If the owner of Lot 10 were to own the stormwater detention pond and the acreage behind the stormwater detention pond, it is much more likely that the pond and surrounding acreage would be maintained (in fact it will be required by the County pursuant to maintenance agreement), it will eliminate the need for a homeowners' association and the need to collect dues from homeowners to maintain the stormwater detention pond and surrounding acreage, and it would greatly reduce the likelihood that other homeowners would attempt to access the land, therefore eliminating a potential nuisance to the owners of Lots 9 and 10 and greatly reducing the potential liability.

As you may recall, a similar waiver was granted under the new subdivision regulations in the Stewart Springs Subdivision, whereby an individual owner was permitted to own and maintain the subdivision stormwater detention pond under a maintenance agreement with the County.

For these reasons, we respectfully request a waiver from the Rutherford County Subdivision Regulations, Article III, Section D, Paragraph 3a, requiring that all stormwater detention ponds be on numbered lots and preventing stormwater detention ponds to be located on residential building lots. Thank you for your consideration.

Sincerely,

KIOUS, RODGERS, BARGER,
HOLDER & KIOUS, PLLC



J. D. Kious

JDK/bjc
cc: New South Developers, LLC