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Re: Amendment to Mayberry Phase 1 PUD

Dear Mr. Howser,

This firm represents the Upper Black Squirrel Creek Ground Water Management District (“the UBS District”). Applicant, N.E.S., Inc., on behalf of Mayberry Communities LLC (“Mayberry”), provided materials in support of their Application for an amendment to its PUD for 240 single-family residential lots, 3 industrial lots, and open space tracts on 71.39-acres located in part of the NE ¼ NE ¼ of Sec. 15 and part of the N ½ N ½ of Sec. 14, T14S, R63W, 6th P.M. off of State Highway 94 (“Application”). This proposed development is located within the District. The District previously provided comments to Applicant’s application for an amendment to Mayberry’s PUD on July 6, 2021. The District summarizes and re-emphasizes those comments here:

Proof of Dedicated Water Supply – Tipton Well & Cherokee Metropolitan District Well 1-8 Water Rights

Mayberry relies on a water supply commitment from Ellicott Utilities Co., which sources its water supply in part from an interest in the Tipton Well owned by Cherokee Water

LLC. Applicant claims Ellicott Utilities Co. holds a 30.96 acre-feet/year interest in the Tipton Well.

As the UBS District pointed out in its July 6, 2021 Letter, Applicant has not demonstrated that Ellicott Utilities Co. currently owns or controls this interest in the Tipton Well. Applicant claims this interest is demonstrated by two purchase and sales agreements between Ellicott Utilities Co. and the Marksheffel Business Center LLC and P.B. Patel and Savitaben P. Patel, respectively. *See Water Resources Report* at 101, 136. For two reasons, however, these agreements do not provide the requisite evidence of ownership or control over a portion of the Tipton Well. First, it is not clear that good title to an uncommitted interest in the Tipton Well rested with sellers upon them entering an agreement with Ellicott Utilities Co. Applicant must provide additional evidence clearly outlining the derivation of Ellicott Utilities Co.'s interest in the Tipton Well and proportionate interest owned or contractually committed to other entities. Additionally, these agreements only establish a contractual commitment to obtain an interest in the Tipton Well; they do not establish Ellicott Utilities Co.'s current contractual control or ownership interest in the Tipton Well. Applicant must provide evidence of Ellicott Utilities Co.'s current ownership and right to use a proportionate share in the Tipton Well.

Applicant also apparently claims that a portion of its water supply will be fulfilled through changing the "excess" water rights of Cherokee Metro District Well Nos. 1-8 currently committed to other subdivisions. *See Water Resources Report* at 6, 75-86. Pursuant to the order entered in Case No. 15GW15, Cherokee Metropolitan District committed its water rights from its Cherokee Well Nos. 1-8 to serve Viewpoint Estates/Antelope Park Estates in the amount of 50 acre-feet/year and Sunset Village in the amount of 60 acre-feet/year. *Id.* at 82. It is these allotments that Applicant apparently claims can be changed to supply the Mayberry subdivision. *Id.* at 6.

As the UBS District previously commented, Applicant cannot rely on water rights from these wells because Applicant has no authority to reduce the uses the wells are committed to under Case No. 15GW15, and Applicant has not provided evidence that Cherokee Metropolitan District has agreed to change their location of use.

Since receiving the UBS District's July 6, 2021 Letter, Applicant has not provided any additional information or evidence allaying these concerns with Applicant's claimed water supply. Applicant's Application relies on the same water resources report, without supplementation, that it relied on for its previous amendment application. Without clear evidence that Ellicott Utilities Co. has control or ownership over an uncommitted source of water to supply the Mayberry subdivision, the County **should not approve** Applicant's Application.

Wastewater Service

Applicant's proposed wastewater service will be provided by the Ellicott Springs Wastewater Treatment Plant, formerly known as the Sunset Wastewater Treatment Plant. *See Water Resources Report* at 10. It is the UBS District's understanding that this facility's discharge permit from the Colorado Water Quality Control Commission ("WQCC") expired on August 7, 2019 and that this facility has not been upgraded since 2002. Applicant's Application **should not be approved** unless and until Applicant provides sufficient evidence that its proposed wastewater

service provider has a valid discharge permit that is compliant with all regulations from the WQCC.

Underdrains

Due to local high ground water and soil conditions in the area of Mayberry, structures developed in Mayberry may need underdrains to capture and drain water that would otherwise flood those structures. Any underdrains will require a large capacity well permit and replacement plan. The UBS District previously raised this issue, but Applicant's Application contains no information addressing this concern.

The UBS District reserves the right to provide additional comments at a later date based upon information not readily ascertainable from the above-referenced application.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mirko L. Kruse', with a stylized flourish at the end.

Mirko L. Kruse
for
TROUT RALEY

cc: UBSCGWMD Board of Directors