

Think Quality - Think Future

Blount County Planning Department

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MEMORANDUM

TO: Blount County Planning Commission

FROM: John Lamb – staff

DATE: August 15, 2007

SUBJECT: Homestead West Subdivision Phase 2A preliminary plat and variance request

The variance request and consideration of preliminary plat for Homestead Phase 2 was deferred from the last regular meeting at the request of the developer. This comes as a deferred item, but also with new information submitted. See attached recent submission of new information from the developer on traffic and road condition study. The new attachments were not submitted in time for staff or Highway Department review for this memo, and such review may follow in separate memo or be reported at the meeting.

Additional information review.

The developer submitted a road plan for an extension of road off of Long Rifle Road into Sevier County as indicated necessary in July memo. The Highway Department will report findings from the field at the meeting. Staff notes two deficiencies in the design. First, the initial 50 feet of road at intersection with Long Rifle Road is shown as a continuation of an 8.73 percent slope, and should be maximum of 4 percent slope at intersection. Second, the road profile shows two foot shoulders, and should be minimum 3 foot shoulders unless there is a request for variance due to severe

topographical constraints. The continuation of the road into Sevier County was not reviewed. The plans submitted were not stamped, and stamped copy needs to be submitted for records.

The July memo noted a section of Long Rifle Road that was in need of repair. Repairs have proceeded since that time. The Highway Department will report present status at the meeting.

Field inspection by staff has found that the detention/drainage structures shown on the plans submitted with preliminary plat have not been constructed.

Both the road extension and the detention/drainage structures will be subject of a required pre-construction conference. Any construction on the two items prior to preliminary plat approval and pre-construction conference is at the risk of the developer.

An adjoining property owner submitted information concerning a claimed boundary dispute between Harvey Garland and Naterra along the Naterra southern boundary. The claimed overlap could affect plat consideration since it includes a design element of required open space. The Planning Commission in the past has deferred consideration of a plat if documented boundary disputes affect any design elements of the plat. The developer of Naterra has been notified by phone of this claimed boundary dispute.

Staff has been in discussion with another adjoining property owner along the southern boundary with a separate claim of boundary dispute. However, staff has not received any definitive documentation on that dispute. Representative of the other adjoiner has stated that someone will be present at the meeting to address this dispute.

Immediately below is reproduced the body of the July 18 memo without indicated attachments (refer to the July memo for attachments):

Phil Taylor of Naterra Land Inc. requests consideration of Phase 2A preliminary plat for Homestead West, and variance from Section 6.01.2(b) concerning adequacy of off-site roads serving Homestead West subdivision. See letters attached. The first letter does not indicate a variance request,

requesting simply approval of the plat, but provides information on the plat. The second letter is the request for variance. Staff report will first address the variance request, and then the plat itself (beginning page 19).

Variance Request.

This staff analysis will provide the following:

- 1) provisions of Section 1.13 on variances to the Subdivision Regulations (beginning page 2);
- 2) provisions of Section 6.01.2 concerning land unsuitably located for subdivision, particularly subsection (b) on adequacy of road infrastructure (beginning page 3);
- 3) a short history of actions and deliberations on adequate road infrastructure and Section 6.01.2(b) (beginning page 5);
- 4) a short history of Homestead plat consideration to establish a timeline and pertinent factual considerations in relation to the variance request (beginning page 8);
- 5) an analysis of the variance request in relation to Section 1.13 decision criteria (beginning page 13); and
- 6) possible avenues for addressing the variance request (beginning page 17).

1) Provisions of Section 1.13 on variances to the Subdivision Regulations.

- 1 General: Where the Planning Commission finds that extraordinary hardships or practical difficulties may result from strict compliance with these regulations and/or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve variances to these subdivision regulations, provided that such variance shall not have the effect of nullifying the intent and purpose of these regulations; and further provided the Planning Commission shall not approve variances unless it shall make findings based upon the evidence presented to it in each specific case that:
 - (a) The granting of the variance will not be detrimental to the public safety, health, or welfare or injurious to other property; and,
 - (b) The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property; and,
 - (c) Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner

would result, as distinguished from a mere inconvenience, if the strict letter of these regulations are carried out.

(d) Economic considerations are not justification for a variance.

2. Conditions: In approving variances, the Planning Commission may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements of these regulations.
3. Procedures: A petition for any such variance shall be submitted in writing by the subdivider at the time the preliminary plat is filed for the consideration of the Planning Commission. The petition shall state fully the grounds for the application and all of the facts relied upon by the petitioner.

2) Provisions of Section 6.01.2(b) concerning land unsuitably located for subdivision, particularly adequacy of road infrastructure.

6.01.2 Land Unsuitably Located for Subdivision:

The Planning Commission shall not approve what it considers to be scattered or premature subdivision of land which would endanger health, safety or property because of lack of or adverse effect on water supply, schools, proper drainage, good transportation, other public services or public funds for the supply or maintenance of such services.

(a) In establishing the impacts of subdivision of land on public infrastructure or the public health, safety and welfare, the Planning Commission shall require studies of such potential impact to establish a factual basis for decision, shall refer to expert opinion and professional standards for infrastructure service, shall require cost estimates for any needed improvements to overcome deficiencies, and shall establish a record for each decision under this section. The Planning Commission may require the developer or subdivider to provide such studies and other information as part of subdivision plat consideration. The following subsection(s) present specific criteria and procedures for land suitability or infrastructure of concern, but shall not limit consideration of other issues of land suitability under this section.

(b) Minimum off-site Road Standards as Criteria Precedent to Platting. Except upon recommendation of the County Road Superintendent, a minimum off-site road of eighteen (18) feet of paved width with two (2) foot shoulders on either side shall be present from entrance to any subdivision or development to intersection with any road with same standard or better, for consideration of any major plat of five (5) lots or greater. In determining the status of a proposed subdivision as a major plat, this section shall apply also to any combined division of the same property within one year of consideration of any plat involving that property, and to overall platting of any land in phases.

For the purpose of determining paved width of roads, the roads list maintained by the Blount County Highway Department showing road pavement width shall be the basis for determination, provided that direct measurement showing roads of greater width than listed may be considered.

For the purpose of this section, shoulder shall mean an area outside of two nine (9) foot paved travel lanes (18 foot total travel surface) with the following characteristics:

- i) two feet of unobstructed and well drained width at outside of travel lanes,
- ii) no more than eight (8) percent slope from outside edge of travel lanes, and in no instance more than seven (7) percent maximum algebraic difference in slope between travel lane and shoulder grades, and
- iii) surface treatment of hard pavement, gravel or compacted earth, flush with the surface of travel lanes.

The traffic and roads condition study shall be done by a qualified engineer licensed in the State of Tennessee and acceptable to the County Road Superintendent.

The traffic and roads condition study shall at a minimum contain present road and shoulder width of off-site roads measured at intervals of no greater than one-tenth (0.1) miles, present and expected future ADT (average daily traffic), and specific impact of the proposed subdivision or development on the safety of traffic on off-site roads. Upon determination and recommendation by the County Road Superintendent or his designee, the study shall also assess road geometry (vertical and horizontal curves, etc), sight distances, bridges, and roadside hazards as part of determining safe and acceptable road conditions. The study shall also include estimates of cost to improve the existing roads to safe and acceptable conditions.

The traffic and roads condition study shall assess whether or not existing road width and shoulder width and other design factors of off-site roads would be sufficient to protect the public health, safety and welfare of existing and future county residents in relation to additional traffic generated by a proposed subdivision or development. Engineering standards and practices acceptable to the County Road Superintendent or his designee shall be the basis for determining traffic generation from the proposed subdivision or development and assessing traffic impact and acceptable road conditions, such standards and practices to include: A Policy on Geometric Design of Highways and Streets, published by American Association of State Highway and Transportation Officials (AASHTO), 2001; and Designing Safer Roads: Practices for Resurfacing, Restoration, and Rehabilitation, Special Report 214, by Transportation Research Board of the National Research Council, 1987.

In considering lesser pavement width and shoulder width under this subsection, the Planning Commission shall not approve a major subdivision which has ingress and egress on off-site road(s) with pavement width less than sixteen (16) feet; provided that any such off-site road(s) with less than two hundred (200) ADT (average daily traffic) may have distances of fifty (50) feet or less with pavement width between fourteen (14) and sixteen (16) feet if there are warning signs and adequate approach sight distances as approved by the County Road Superintendent or his designee. The Blount County Highway Superintendent can increase minimum standards based on posted speed limits, ADT, usage, road characteristics, or reports as necessary.

3) A short history of actions and deliberations on adequate road infrastructure and Section 6.01.2(b).

Prior to 1996, staff could find no evidence that the Planning Commission considered off-site infrastructure as a limiting factor in making decisions on subdivisions. In July of 1996, a 40 lot subdivision was proposed off of a 12 to 14 foot wide county road. Planning Staff recommended against approval of the subdivision due to inadequate road infrastructure and limited sight distance at road intersection. Upon consultation with the Highway Superintendent, an off-site road standard for that development was set which included a minimum 16 foot wide paved road improvement with improved shoulders, and provision for an alternate access on a more acceptable road in another county. The developer and the Highway Department came to agreement on sharing in the improvements. The developer was responsible for obtaining additional right-of-way.

The Planning Commission considered several other subdivisions on roads less than 16 feet wide in the years since 1996, extending the standard for needed road improvements to 18 feet of paved width with shoulders for larger subdivisions (prior to first consideration of the Homestead subdivision). This was done in consultation with the Highway Department on a case by case basis. At the same time, the Commission gave consideration to developments of lots 5 acres or greater on existing county roads of lesser paved width, and also gave consideration to minor plats on roads irregardless of existing county road pavement width. The Planning Commission also gave consideration to limited extents of lesser road width for “pinch points”. As with many incremental policy situations, case by case considerations built to a more standard application over time.

The standard policy developed over the years up to adoption of present regulations on adequate road infrastructure may be characterized as follows: for major subdivisions a standard of 18 feet of paved width on existing county roads serving the subdivisions would need to be present as criteria precedent to subdividing; for major subdivisions with all lots 5 acres or greater, a standard of 16 feet of pavement width on existing county roads may be acceptable; for minor subdivisions of four lots or less, road width of existing county roads would be accepted as is.

Prior to the late-1980s, the Planning Commission did not consider five acre lots as being subject to subdivision regulations. Around the late-1980s the Planning Commission began to regulate such divisions if extension of new roads was involved. This was in part based on state statute definition of what constitutes a subdivision. In particular, TCA 13-3-401(4) defines the following:

(B) "Subdivision" means, in all counties except those in subdivision (4)(A), the division of a tract or parcel of land into two (2) or more lots, sites, or other divisions requiring new street or utility construction, or any division of less than five (5) acres for the purpose, whether immediate or future, of sale or building development, and includes resubdivision and, when appropriate to the context, relates to the process of resubdividing or to the land or area subdivided.

The effect of the above definition is to exclude from subdivision regulations divisions of land into tracts of five acres or greater unless the division requires new street or utility construction. Note if the division does require extension of roads or utilities, then the subdivision regulations do apply irregardless of overall density of division or development.

The use of the five acre criterion in state statutes implies that the State Legislature applies relaxed standards to consideration of public health, safety and welfare for such large, low density divisions. This may be considered as a special case in judging impacts of proposed developments on existing infrastructure.

Prior to 2004, the Planning Commission applied evolving standards of adequate road infrastructure based on general provisions in the Subdivision Regulations and general allowances in state statutes.

Section 1.3(2) of the old Subdivision Regulations applicable at the time stated the following policy (underlined for emphasis):

Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from flood, fire, lack of water supply or other menace, and land shall not be subdivided until available public facilities and improvements exist and proper provision has been made for drainage, water, sewerage, and capital improvements such as schools, parks, recreation facilities, transportation facilities, and improvements.

Section 6.1 of the old Subdivision Regulations applicable at the time directly addressed suitability of land and adequacy of infrastructure as criteria precedent for subdivision as follows (underlined for emphasis):

(2) Land Unsuitably Located for Subdivision

The Planning Commission shall not approve what it considers to be scattered or premature subdivision of land which would endanger health, safety or property because of lack of or adverse effect on water supply, schools, proper drainage, good transportation, other public services or public funds for the supply or maintenance of such services.

In February 2004, the Planning Commission began to consider specific standards for adequate off-site infrastructure, particularly roads, as criteria precedent to platting as formal amendment to the Subdivision Regulations (reference attached staff memo of March 2004). The Planning Commission also undertook a training session on the legal aspects and basis in state statutes of considering adequate infrastructure as criteria precedent to platting (training session with attorney Steven Wise on March 23, 2004 documented in minutes of that date).

The Planning Commission considered engineering standards in setting minimum criteria for adequate road infrastructure. Recognized engineering references were utilized, including:

A Policy on Geometric Design of Highways and Streets, published by American Association of State Highway and Transportation Officials (AASHTO), 2001; and

Designing Safer Roads: Practices for Resurfacing, Restoration, and Rehabilitation, Special Report 214, by Transportation Research Board of the National Research Council, 1987.

In both engineering references, the minimum road standard under lowest traffic and speed circumstances was 18 feet of pavement with two foot shoulders to address safety issues.

The Planning Commission also considered a study from the Highway Department (see attached), using expert analysis by the engineering firm of Wilbur Smith Associates in report entitled “Blount County Minimum Road Standards Assessment.” The report found that a minimum road width of 18 feet with two foot shoulders is a standard engineering minimum for safety in low volume and low speed situations.

Excerpt of minutes of the March and May 2004 minutes are attached to document discussions at the time on adequacy of road infrastructure. Note in particular the discussion by Bill Dunlap, Road Superintendent, concerning priority road improvement needs and limitations of budget in the March 2004 minutes.

From March 2004 to January 2005, the Planning Commission considered alternatives to address adequate off-site road infrastructure in the Subdivision Regulations. On January 27, 2005, the Planning Commission held public hearing and adopted the present regulations (same wording in both old amended and newly adopted Subdivision Regulations.)

4) A short history of Homestead plat consideration to establish a timeline and pertinent factual considerations in relation to the variance request.

Staff and representatives of the development met prior to April 2001, and the issue of East Millers Cove Road was discussed in general along with other items of design. None of these conversations were documented in files.

The first record in Planning Department files for the Homestead subdivision was a concept plan submitted April 2001 and considered by the Planning Commission in May 2001. In both staff report and deliberations in the Planning Commission, inadequacies of East Millers Cove Road were identified, and it was noted that the developer would need to participate in improvements. Being a concept plan for discussion, the Planning Commission took no formal action.

A portion (428 acres) of the area for the proposed development was purchased by Taylor Investments (subsequently Four Seasons and now Naterra Land) with closing in May of 2001.

The second record in Planning Department files was a second concept plan submitted and considered September 2001. The inadequacies of East Millers Cove Road were again raised to the developers in both staff report and Planning Commission deliberations. Staff report was explicit in the expectation that East Millers Cove Road would need to be improved to "... 18 foot wide paved surface road, realigning the ditches, providing adequate compacted gravel shoulders... ." Being a concept plan for discussion, the Planning Commission took no formal action.

A second portion of the proposed development (664 acres) was purchased and closed January 2002.

The next record of Planning Commission consideration was a preliminary plat for 40 lots for phase 1 of the development submitted May 2002. Staff report was again explicit in expectation that East Millers Cove Road would need to be improved to 18 feet of paved width with shoulders to accommodate the proposed development. The plat was deferred to June, and further deferred to July 2002 at the request of the developer.

Staff met with representatives of the development on May 31, 2002 and again restated the 18 foot pavement width with shoulders for East Millers Cove Road as a standard precedent to the proposed development. This was reiterated in staff memo to Rick Rigsby, development representative, dated June 6, 2002, pertinent excerpt as follows:

This memo is a follow on to our conversation of May 31. The Planning Department (John Lamb and Doug Hancock) and the Highway Department (Bill Dunlap, Tony Abbott and Ron Sharp) met to determine answers to questions raised in the May 31 meeting. The following should provide guidance to you in developing the preliminary plat:

1. Offsite deficiencies needing improvement may be viewed in one of two ways depending on acceptability to the Planning Commission.

To date we have indicated that the minimum pavement width should be 18 feet for the whole road section of East Millers Cove Road, from development entrance to Old Walland Highway, given the magnitude of the proposed development. This would require improvement to most of the entire length of road. In addition,

one bridge would need to be replaced with a HS25 load rating bridge designed to state specs, and one severe hill and curve would need to be corrected. The developer would be responsible for design engineering, obtaining any additional right-of-way needed, and improvement of the additional width base, shoulder and ditches. The Highway Department would be responsible for paving any sections of present cold mix surface, and the developer would be responsible for paving all present hot mix surfaces. Guardrails may also be needed in places where appropriate shoulders cannot be reasonably designed, and this would also be the responsibility of the developer.

Based on past precedent for low density developments with five acre tracts, if the design of the subdivision was reduced to five acre tracts, then a minimum road width of 16 feet may be acceptable. This would depend on the judgment of the Planning Commission in relation to the overall magnitude of a lesser density development, and not the presently proposed average of one unit per three acres density. Off site deficiencies under this determination may be reduced to about 200 yards of road, possible guard rails, the bridge replacement, and the severe hill and curve situation.

For details, contact Bill Dunlap – Highway Superintendent.

At the written request of the developer, in July 2002, the Planning Commission removed from the agenda the preliminary plat for Phase 1 of the Homestead West subdivision.

The next record of consideration of the Homestead West development was a preliminary plat of 40 lots with road extending from East Millers Cove Road to another existing road within the Homestead development in Sevier County. The preliminary plat was considered at the February 2003 meeting of the Planning Commission. Based in part on inadequacies of East Millers Cove Road, the Planning Commission voted to deny plat approval.

The denial of the Homestead West Phase 1 plat was appealed to the Courts. In a February 2004 memorandum of opinion (amended April 2004), the Court found that the basis in record for denying the plat was not sufficient, and ruled that the preliminary plat be approved. In making the final judgment, the Court noted that “It should be stressed that this ruling creates no vested rights in the plaintiff and does not preclude further examination of the issues raised at a later stage of the approval process.”

The original Phase 1 preliminary plat (40 lots with road going through to Sevier County) was resubmitted to the Planning Commission in April 2004 along with a Phase 2 preliminary plat, but was deferred at request of the

developer. Based on ruling of the Court, the Planning Commission approved the Phase 1 preliminary plat on May 27, 2004. The Phase 2 preliminary plat was deferred at the same meeting with agreement of the developer to give time for the developer and the Highway Department to discuss issues of East Millers Cove Road.

At the May 27, 2004 meeting, as part of discussions of the Phase 2 preliminary plat, Roads Superintendent Bill Dunlap gave an estimate of \$528,807 to bring just the driving surface up to 18 feet of pavement, exclusive of shoulders and any needed right-of-way. This was in part based on a formal study by the Highway Department conducted April 2004 at 0.1 mile intervals of the road pavement width of East Millers Cove Road. The study found that the road pavement width ranged from 12 feet 5 inches to 22 feet, with most measurements falling within 14 to 17 feet of width, and average overall of 16 feet of width. (See estimate for road improvements and pavement width study attached.)

(Although not documented in Planning Commission files, the developer met with County Commission at committee level requesting that the County condemn right-of-way to allow improvements to East Millers Cove Road. The County Commission declined.)

At the June 2004 Planning Commission meeting the plat was again deferred at the written request of the developer. The developer requested in writing that the item be withdrawn from the agenda in July 2004. The withdrawal was approved by the Planning Commission.

The Planning Commission held public hearing on amendment of the subdivision regulations concerning adequacy of road infrastructure in January 2005. Mr. Ed Garrett wrote a letter requesting that the Homestead development be grandfathered. The letter was delivered after the public hearing was closed. The Planning Commission approved amended 6.1(2) of the Subdivision regulations adding provisions for adequate road infrastructure as criteria precedent to platting. See wording above under subject item 2.

The Phase 2 preliminary plat was resubmitted February 2005, but was deferred at request of the developer. The condition of East Millers Cove Road was discussed in some detail at the March 2005 meeting, but plat was deferred again with agreement of the developer.

At the March 2005 meeting, reference was made to a traffic impact study completed by project engineers Barge, Waggoner, Sumner and Cannon the year before and submitted by the developer along with the preliminary plat. Based on existing and projected traffic, the study found in part the following on page 4: “According to the current edition of the American Association of State Highway and Transportation Officials (AASHTO) publication *A Policy on Geometric Design of Highways and Streets*, the absolute minimum width of East Millers Cove Road to accommodate this traffic is 18 feet of pavement with 2 feet wide shoulders.”

The Highway Department received “Blount County Roadway Needs Study Update – 2004” dated March 2005. See attached excerpt table 9 of “Long Term Roadway Improvements and Cost Estimates” which shows East Millers Cove Road priority year of 2015 in relation to other long term and immediate roadway improvement needs in the County.

The plat was again deferred at the April 2005 meeting at the request of the developer. The Planning Commission held hearing on the Phase 2 preliminary plat at the May 26, 2005 regular meeting at insistence of the developer. See letters attached dated May 12 and May 26, 2005 from Ed Garrett representing Naterra Land, developer of Homestead West Subdivision. See also attached staff report on the May 26 agenda item, and minutes of the May 26 meeting.

The Planning Commission denied preliminary plat approval for Phase 2 of the Homestead West Subdivision at the May 26 meeting based at least in part on condition of East Millers Cove Road in relation to Section 6.01.2(b). The denial of the preliminary plat for Phase 2 of Homestead West subdivision was appealed to the Courts by the developers, and is presently in judicial process.

Although not in Planning Commission files, for completeness of record, the developer applied for variance of Subdivision Regulation requirements to the Board of Zoning Appeals. The appeal requested variance of adequate road requirements. The Planning Commission determined that the Board of Zoning Appeals had no authority to grant variance of Subdivision Regulations and confirmed its May 26 denial of preliminary plat again at the September 22, 2005 regular meeting.

The Homestead West Phase 1 final plat was approved September 29, 2006, with modification in number of lots based on septic capability and road adjustments to Long Rifle Road from field construction. Two plats of five acre or greater lots, with total of 20 new lots along existing Long Rifle Road were entered in Planning Department files with exemption from platting under state statutes. The plats were dated January 31, 2007 and May 1, 2007 (these are shown for context in the new Phase 2 plat submission attached). There were also a few minor adjustments in lot lines on one lot plats for Phase 1 lots to present.

5. Analysis of the variance request in relation to Section 1.13 decision criteria.

There are six decision criteria that the Planning Commission needs to address for variances considered under Section 1.13 of the Subdivision Regulations. Note that all six of the criteria need to be appropriately addressed for the record in any decision. The six criteria are as follows:

- 1) Extraordinary hardships or practical difficulties may result from strict compliance with these regulations and/or the purposes of these regulations may be served to a greater extent by an alternative proposal;
- 2) Such variance shall not have the effect of nullifying the intent and purpose of these regulations;
- 3) The granting of the variance will not be detrimental to the public safety, health, or welfare or injurious to other property;
- 4) The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property;
- 5) Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations are carried out; and
- 6) Economic considerations are not justification for a variance.

Following are staff findings in relation to the six criteria:

1) *Extraordinary hardships or practical difficulties may result from strict compliance with these regulations and/or the purposes of these regulations may be served to a greater extent by an alternative proposal.*

Some practical difficulties are readily established from the record. The developer has not been able to overcome the issue of right-of-way for improvement of East Millers Cove Road to 18 feet and two foot shoulders. The acquisition of public right-of-way by condemnation is out of the control of the developer, and the County has not shown a willingness to exercise its option to condemn land for road improvements. Observation of the road by staff indicates that there may be some practical physical difficulties in meeting the full 18 feet of pavement in certain areas (pinch points) due to topography and streams. However, the practical difficulties do not necessarily extend for the entire length of East Millers Cove Road, and more information is needed to evaluate the full extent of practical difficulties, both right-of-way and engineering, to meet the standard of 18 feet of pavement width and two foot shoulders. The roads condition study noted in Section 6.01.2(b) could provide needed information for this decision criterion.

The letter from Mr. Taylor attached claims hardship as follows: “If Section 6.1(2) (sic) of the Subdivision Regulations is given strict application in this matter, we will be limited to the lots already approved in Phase 1 of the subdivision. As such, the majority of remaining land will go undeveloped at a complete loss of any use or beneficial value to Naterra.” This statement is factually incorrect.

First, Naterra has divided 20 additional parcels of five acres or greater along the existing Long Rifle Road approved in Phase 1. Being five acre or greater tracts along an existing road with utilities present, the divisions reached exemption from subdivision regulations under state statutes. Thus, there has been no complete loss of beneficial use, and the remaining land outside Phase 1 plat is being developed beyond lots approved in Phase 1.

In addition, the present regulations allow development of up to four lots per 12 month period without consideration of adequacy of present infrastructure. Future development is thus not forestalled, just metered. The developer has not taken benefit of this provision.

2) *Such variance shall not have the effect of nullifying the intent and purpose of these regulations.*

A blanket variance doing away with any consideration of Section 6.01.2(b) would in effect nullify the intent and purpose of the regulations. There may be some basis for granting limited variance to specific portions of East Millers Cove Road, but present information does not allow such determination. The roads condition study noted in Section 6.01.2(b) could provide needed information for this decision criterion.

The record shows that the intent and purpose of the regulations in addressing adequacy of road infrastructure was communicated from the beginning in discussions with the developer, prior even to purchase of the property on which the development is proposed. The present wording of regulations in Section 6.01.2(b) is for the most part a codification of standards being applied at the time and conveyed to the developer early-on in discussions.

Staff refers also to the judgment of the Court in the case of Phase 1 where the Court states: “It should be stressed that this ruling creates no vested rights in the plaintiff and does not preclude further examination of the issues raised at a later stage of the approval process.” Staff refers in particular to record established in the minutes of May 27, 2004, excerpts attached and noted earlier. The mere fact that the Planning Commission codified a standard that had been applied for years before formal consideration of the Phase 2 preliminary plat is not necessarily a basis for variance.

3) *The granting of the variance will not be detrimental to the public safety, health, or welfare or injurious to other property.*

The letter from Mr. Taylor attached claims no detrimental effect under this criterion based on the traffic study noted in the record of previous plat consideration above, claims that Long Rifle Road meets or exceeds County road standards, claims that the seasonal nature of the development will result in minimal impact, and claims that effect of the subdivision will be mitigated by phasing and build-out of the development over a long period of time.

See the referenced traffic study attached dated May 2004. The traffic projected from the overall development was 1,138 average weekday trips (p.4), of which 30 percent or 341 daily trips would be expected to exit via

East Millers Cove Road. The study finds that this would be about 27 percent of expected traffic on East Millers Cove Road at build-out, constituting about a 50 percent increase over present traffic. This would be a substantial increase. Whether this is minimal impact is left to judgment of the Planning Commission.

The traffic study went further and stated that “According to the current edition of the American Association of State Highway and Transportation Officials (AASHTO) publication *A Policy on Geometric Design of Highways and Streets*, the absolute minimum width of East Millers Cove Road to accommodate this traffic is 18 feet of pavement with 2 feet wide shoulders.” This is precisely the standard that was being applied at the time of the study and the same standard codified in present regulations. The presumption should be that the minimum standard is based on considerations of public health, safety and welfare. Deviation or variance from the standard should be done with due consideration to the basis of the standard established in the record of the Planning Commission and confirmed in the developers own traffic study.

The claim that Long Rifle Road meets or exceeds county road standards begs the issue that Long Rifle Road is part of the overall development that has been planned in phases. Phase 2 is an extension of and builds on Phase 1 of overall development. The issue of road standard applies to East Millers Cove Road serving the entire development, and possibly also to connecting roads in Sevier County. See study attached by the Highway Department that establishes that East Millers Cove Road is deficient for the most part in relation to the standard of 18 feet and 2 foot shoulder. The developer has not submitted any factual information on status of roads leading to the overall development in Sevier County.

The claim that the expected seasonal nature of the development would lead to minimal impact may be at best seasonal in nature. Seasonal development by its nature probably would have seasonal peaks that could lead to substantial impact.

The claim that the length of time for development to build-out mitigates the impact begs the question of incremental and ultimate impact. The present regulations accept four lots per 12 month period without consideration of adequate road infrastructure. Any acceleration of development pace beyond that is presumed to have unacceptable impact. There is an issue of timeliness

of development in relation to expected improvements. The 2004 update of the county roads study (excerpt attached) indicates that the development would be premature at least up to the year 2015, which is the earliest date given for improvements of East Millers Cove Road in relation to demands for improvements to other roads in the County.

4) *The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property.*

The request for blanket variance is based on standards that have been and continue to be applied to all development in the county. The application to Homestead West is not unique. However, there are unique aspects of the overall consideration of Homestead West that may be a basis for variance. In particular, the standards applied at the time of first discussions and consideration ranged from 16 feet of paved width for five acre tract developments, to 18 feet of paved width otherwise. The 16 feet of paved width for five acre tract developments was also noted above excerpted from staff memo of June 6, 2002. This may provide some unique basis if the subdivision is redesigned as a five acre tract development.

5) *Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations are carried out.*

As noted under criteria 1 above, there is some basis for finding particular hardship in topography of physical surroundings. However, also as noted above, the practical difficulties do not necessarily extend for the entire length of East Millers Cove Road, and more information is needed to evaluate the full extent of practical difficulties, both right-of-way and engineering, to meet the standard of 18 feet of pavement width and two foot shoulders. The roads condition study noted in Section 6.01.2(b) could provide needed information for this decision criterion.

6) *Economic considerations are not justification for a variance.*

The letter from Mr. Taylor notes difficulties in full development of the property, which by implication are based at least in part on economic considerations. Analysis of criteria above provides possibility for variance

without relying on economic considerations, and economic considerations should not be entertained by the Planning Commission.

6) Possible avenues for addressing the variance request.

There are several avenues for addressing the variance request. The two most obvious are: 1) approve the variance in full as requested; or 2) disapprove the variance as requested. Note that the record should reflect the Planning Commission's findings on all six criteria noted above.

The Subdivision Regulations provide for a third avenue of variance with conditions. The applicable wording is: "In approving variances, the Planning Commission may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements of these regulations." For this avenue, staff poses the following as framework for discussion.

The Planning Commission may find hardship as indicated for criterion 1 above, but needs more information on which to base specific variance. The roads condition study noted in Section 6.01.2(b) could provide needed information for this decision criterion.

The Planning Commission may find that granting the variance as requested would nullify the intent of the regulations under criterion 2 above, but that there may be some basis for granting limited variance to specific portions of East Millers Cove Road consistent with the intent of the regulations. The Planning Commission may explore possible conditional variance approval. The condition may address development density in relation to road width as a mitigating circumstance, particularly that the development be of density no greater than five acres per dwelling unit, and that the road standard be varied to 16 feet of pavement where necessary to address engineering and right-of-way constraints. This would be consistent with application at the time of first consideration of the development. Pinch points less than 16 feet of pavement may also be considered if sight distance and signage could mitigate. Present information does not allow such specific determination. The roads condition study noted in Section 6.01.2(b) could provide needed information for this decision criterion.

The Planning Commission may find that there may be an improvement to public safety with a standard less than in present regulations, but greater than

is indicated in the present road situation. This implies some improvement to East Millers Cove Road. The developer has shown in the past a willingness to explore possibilities to improve the road situation, and such possibilities should be explored by the developer with the Highway Department. As a basis for discussions, a new traffic study (to reflect connection through to Sevier County) and the roads condition study noted in Section 6.01.2(b) could provide needed information.

The Planning Commission may find that there are unique aspects of the proposed Homestead development under criterion 4 above, particularly the application of different road standards than are present today at the time of first discussions and consideration. Those standards included accepting 16 feet of pavement for five acre density developments, and this may form the basis for reasonable condition for variance.

The Planning Commission may find there is some basis for particular hardship in topography of physical surroundings under criterion 5 above. However, more information is needed to evaluate the full extent of practical difficulties, both right-of-way and engineering. The roads condition study noted in Section 6.01.2(b) could provide needed information for this decision criterion.

The Planning Commission may find that any of its necessary findings under criteria above do not involve economic considerations or conditions in relation to the development or the developer, but are focused only on practical difficulties in the proposed subdivision development and its context under present regulations.

If the Planning Commission finds that it needs more information as noted above, the appropriate action would be deferral to allow the applicant to provide the necessary information.

Preliminary Plat of Phase 2 Homestead West.

See copy of preliminary plat attached. The preliminary plat for Homestead West Phase 2 shows changes in design from the one considered and denied in May of 2005. First, the road alignment just past the lots in Phase 1 shows field adjustments accepted in the final plat of Phase 1 for Long Rifle Road. Lots in that area thus show substantial change in design from the previous

plat. Second, an extension of the road system with a cul-de-sac road has been deleted near Lot 54W before the lots leading to the Sevier County Line. Consequently all proposed lots are accessed exclusively off of existing Long Rifle Road. Third, the addition of 20 parcels of five acres or greater are shown along Long Rifle Road, all of which were created with exemptions under state statutes.

The letter from Phil Taylor indicates "... changes in Naterra's overall project plan for Homestead West." It would be appropriate for Naterra to submit at least a revised concept plan for the entire project to allow proper evaluation of Phase 2A in relation to overall design.

The overall internal design of the Phase 2A plat is consistent with previous analysis of cluster development in the R-2-Rural District 2 zone. Lots are 1.5 acres or greater and appropriate common area has been designated to bring overall density to one unit per three acres.

Required technical information on preliminary soils map, topo map, slope category map (from previous submissions) and drainage calculations were submitted with the plat. Even though no new construction of roads is indicated, the developer should either confirm inclusion of the proposed lots in its previous SWPPP and other water quality permits, or submit new or revised approved SWPPP and other water quality permits. The plans show two drainage structures that are under review and will be reported on at the meeting.

To confirm that no new road construction is intended, the submission for soils and drainage/grading plan should be revised to delete the cul-de-sac and the soils and drainage/grading plan should number lots consistent with the preliminary plat.

Gary Ferguson of the Environmental Department reports that preliminary soils are sufficient for preliminary plat evaluation, but that lot lines or lot locations may need to be adjusted with detailed evaluation at final plat stage.

Staff notes that the plat indicates extension of a road into Sevier County across from proposed lot 94W into what is labeled "Proposed Homestead West Phase 3". The plat for Phase 1 did not approve any extension of road in this location. If the plat intends to seek approval of road extension in this location, engineering plans need to be submitted. Field inspection indicates

that there has been substantial grading of new roads in the Sevier County side, reportedly to about 19 new lots.

The Highway Department reports that present Long Rifle Road has a section of fill that is beginning to slide and deteriorate the roadway. The Highway Department requests, and staff concurs, that this situation be resolved before any plat approval.

Mr. Taylor in letter attached notes: “Access to Sevier County is granted via Long Rifle Road, which exceeds the minimum standards of Blount County. Additionally, the Sevier County road, which intersects with Long Rifle Road, meets the minimum requirements of Blount County.” As noted in previous staff analysis (May 2005 attached), there has been no detail or specific information to back up that claim, particularly for Sevier County roads leading up to Homestead West in Sevier County.

East Millers Cove Road does not meet standards of Section 6.01.2(b) for road width. This is subject of variance request above.

The land under control of Naterra Land and proposed for development fronts on East Millers Cove Road. A proper condition of plat approval should include improvement of that frontage to minimum standards contained in the Subdivision Regulations independent of any consideration of status of off-site road conditions precedent to platting. The developer should coordinate with the Highway Department and submit such plans for improvements.

If the Planning Commission desires to approve the preliminary plat at this time, appropriate conditions would be the following:

NOTE 1: Installation of all erosion control measures shall be in place prior to any construction activities. Pre-construction meeting with developer and all contractors.

NOTE 2: The developer is responsible for acquiring any necessary permits for storm water and erosion control (SWPPP) and supplying copies to staff prior to onsite construction for Phase 2. The full SWPPP should be submitted to Justin Teague under new county requirements for erosion control plans and permit. The developer will be responsible for acquiring any necessary permits from the State of Tennessee including ARAP and TNCGP permits as necessary.

NOTE 3: All road drainage and detention facilities must be certified as being built in accordance with the project engineering plans and specifications prior to final plat submittal for Phase 2.

NOTE 4: Property Owner's Association documentation should be supplied prior to final plat submission for review and consultation with Attorney for the County Mayor, as necessary.

NOTE 5: Platting Fee of \$40 per lot for Phase 2 lots due with final plat.

The issues of adequate road infrastructure, particularly for East Millers Cove, should be resolved prior to approval of the preliminary plat. See discussion above under variance.

The following is body of a supplementary July 24 memo with staff analysis of a submission included in the July agenda packet

New "Facility Adequacy Assessment – East Millers Cove Road at Homestead West"

A representative of Naterra Land delivered copies of "Facility Adequacy Assessment – East Millers Cove Road" on Thursday of last week as the Planning Department was putting the agenda packet into envelopes for mailing and distribution. The Planning Department included the report in the packet with no staff analysis. This memo acts as staff analysis of that new report in relation to the variance request and preliminary plat for Homestead West Phase 2A.

The use of the term "adequacy" in the title refers to the measurement of congestion on East Millers Cove Road. The report does not address the adequacy of East Millers Cove Road in relation to our Subdivision Regulations Section 6.01.2(b). Section 6.01.2(b) addresses standard for width of road, not congestion on that road.

As the report indicates in Conclusions starting on page 10, “Existing geometry, nine-foot lane widths and no shoulders, was utilized in each scenario,” (referring to runs on a highway capacity computer program). Note that existing geometry of East Millers Cove Road is less than 18 feet wide (two nine foot travel lanes) for much of its length. Thus, the report assumes an improved situation not present at this time.

The report relies on 2004 traffic data, the same as presented in a previous report also supplied in the agenda packet. Bill Dunlap recommends an update of traffic data to reflect the present situation on East Millers Cove Road.

The Planning Commission should not extend the conclusions of the report to cover the overall adequacy of East Millers Cove Road in relation to Section 6.01.2(b) of the Subdivision Regulations. East Millers Cove Road does not meet the adequacy criteria of 18 feet of pavement with two foot shoulders indicated in Section 6.01.2(b).