

# **SHEPHERD'S HILL**

December 9, 2020

## **ATTACHMENTS**

- A. Settlement Agreement
- B. 2003 Approved Plan, Maynard & Paquette
- C. 2020 Proposed Plan, Keach Nordstrom & Associates

## **SUMMARY**

As part of the Settlement Agreement (**Attachment A**) between the Town of Hudson and the Shepherd's Hill Homeowner's Association, there is a provision for the development of the remaining 126 pad sites. This provision states:

“Any redevelopment proposal of the remaining 126 Pad Sites which is inconsistent with or deviates from existing plans may require approval from the Town of Hudson, and shall be submitted as a single redevelopment proposal for the entire area of the remaining 126 Pad Sites.”

**Attachment B** is the “existing plan” that was approved in 2003 and recorded at the registry.

**Attachment C** is the new proposal prepared by KNA. The area bounded in red on both plan comprises Phase V and Phase VI although staff mislabeled this as just Phase VI. The area bounded in green on both plans show Phase VII.

Staff has advised the owner and their representatives that in his opinion, the new proposal signifies a change requiring Town approval consistent with the Settlement Agreement. Without having first-hand knowledge of previous discussions with the Board, this judgement is based solely on the plans and the text of the agreement.

Further, regardless of what the Board decides, if the KNA plan moves forward, it is recommended by Town Counsel that the owner formally acknowledge that if there are fewer units than 126 that they no longer hold claim to the difference.

## **DRAFT MOTION**

The Board should make a motion indicating that the new plan either does, or does not, require Planning Board approval.

Carmela O'Caughlin

# 548  
Hudson  
ASSESSORS

FEES:	16.49
SURCHARGE:	2.00
CASH:	0

**SETTLEMENT AGREEMENT**

SETTLEMENT AGREEMENT by and between the **Town of Hudson** (hereinafter "Hudson"), a New Hampshire municipal corporation, with a principal address of 12 School Street, Hudson, NH 03051, and the **Shepherds Hill Homeowner's Association, Inc.** (hereinafter "Shepherds Hill"), a New Hampshire nonprofit corporation, with a principal address of 20 Trafalgar Square, suite 626, Nashua, NH, 03063.

WHEREAS, the Shepherds Hill Condominium (hereinafter "Condominium") is located on Route 111 and Kimball Hill Road, in Hudson, New Hampshire;

WHEREAS, the Condominium contains 274 units;

WHEREAS, by order of the Hillsborough County Superior Court, Southern Judicial District (hereinafter "Court"), dated March 18, 2014, in *Shepherds Hill Homeowners Association, Inc. v. Shepherds Hill Development Co., LLC*, Docket No. 2013-CV-00241, the convertible land rights for an additional 126 undeveloped units (hereinafter "Pad Sites") were deemed to have lapsed, effective February 26, 2013;

WHEREAS, the area of the convertible land is owned by the unit owners within the Condominium, as tenants in common, and may not be developed unless 80% of the unit owners present (or by proxy) at a duly called and noticed meeting approve an extension of the convertible land rights in accordance with RSA § 356-B:54, V;

WHEREAS, prior to March 18, 2014, Hudson assessed the Pad Sites as separate estates pursuant to RSA § 674:37-a, I, and the real estate taxes were taxed against the condominium declarant rather than the individual unit owners pursuant to RSA § 356-B:23, III;

WHEREAS, as result of the Court's decision, which was affirmed by the New Hampshire Supreme Court in *Shepherds Hill Homeowners Association, Inc. v. Shepherds Hill Development Co., LLC*, Docket No. 2014-306, a dispute arose between the Town and Shepherds Hill regarding unpaid real estate taxes for the tax years 2012, 2013, and 2014;

WHEREAS, in light of the Court's decision, Shepherds Hill has threatened to commence litigation against Hudson, requesting a declaratory judgment that the Pad Sites are not separately

taxable, and injunctive relief preventing Hudson from taking the Pad Sites for non-payment of taxes for the tax years 2012, 2013, and 2014;

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, including the settlement of all threatened claims, the parties hereby agree as follows:

- 1.0 Payment of 2012 Taxes. As consideration for this Agreement, Shepherds Hill has paid to the Town the sum of Seventy Nine Thousand Eight Hundred Fifty Six Dollars 94/100 Cents (\$79,856.94) in full payment of the outstanding real estate taxes for the tax year 2012.
- 2.0 Abatement of 2013 and 2014 Taxes. Hudson shall abate the outstanding taxes for the tax years 2013 and 2014. In order for Hudson to administratively process and grant an abatement, Shepherds Hill shall file an application for an abatement with the Board of Selectmen, which shall be filed after execution of this Agreement according to existing procedures, citing the Court's decision and such other grounds as Shepherds Hill may deem appropriate in support thereof. No taxes have been assessed on the pad sites for 2015. Also, as of this date, no taxes have been assessed on the pad sites for 2016, the same being subject to possible future taxation in 2016 as provided for in paragraphs 3.0 and 4.0 below.
- 3.0 Future Extension of Development Rights for Pad Sites. Shepherds Hill agrees that the remaining Pad Sites, with their associated acreage, will not be developed unless 80% of the unit owners present (or by proxy) at a duly called and notice meeting approve and record an Amendment to the Declaration of Condominium extending the convertible land rights in accordance with RSA § 356-B:54, V. Shepherds Hill agrees that any such approval shall be for the entirety of the remaining 126 Pad Sites with their associated acreage. Any redevelopment proposal of the remaining 126 Pad Sites which is inconsistent with or deviates from existing plans may require approval from the Town of Hudson, and shall be submitted as a single redevelopment proposal for the entire area of the remaining 126 Pad Sites. In the event of a redevelopment proposal that requires Planning Board approval, and in the event such approval is granted, the parties recognize that there cannot be two (2) approved development plans for the 126 Pad Sites and associated acreage. Shepherd Hill agrees that an extension of the development rights shall require an amendment to the Declaration of Condominium and be submitted to the New Hampshire Attorney General as required by RSA § 356-B:54, V. Shepherds Hill shall record the Amendment to the Declaration within seven (7) days of approval by the New Hampshire Attorney General.
- 4.0 Future Taxation of Pad Sites. Prior to the recording of an Amendment to the Declaration making effective future extension of the development rights for the Pad Sites, Hudson shall not assess or tax the Pad Sites as separate estates. Real estate taxes for the common area, including the area of the Pad Sites, shall be assessed as part of the individual unit assessments as non buildable common area of the condominium, provided that, Hudson will not artificially increase the tax assessments for the individual units in order to

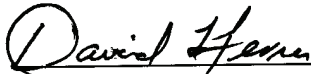
recapture the value of the Pad Sites as buildable land. In the event that Shepherds Hill obtains the necessary approval of the unit owners to extend the convertible land development rights to the Pad Sites, Hudson will again assess the Pad Sites as separate estates pursuant to RSA § 674:37-a, I. Taxes for the Pad Sites will be prorated, if approvals are after April 1 of a given tax year, for the tax year during which such approval is granted as of the date of the unit owners' vote to extend the convertible land development rights. The taxes for the Pad Sites will not be prorated once the Pad Sites value enter a new April 1 property tax year. Pad Site taxes will be assessed against Shepherds Hill, or should the Pad Site development rights be transferred, Pad Site taxes will be assessed against any such successor developer.

5.0 Reporting Requirements. Shepherds Hill shall notify, by certified mail to the Town Administrator's and Town Assessor's office, Hudson within seven (7) days of the unit owners' recording an Amendment to the Declaration extending the convertible land development rights to the Pad Sites. In the event that Shepherds Hill should transfer the development rights to the Pad Sites, Hudson shall be given, by certified mail to the Town Administrator's and Town Assessor's office, a copy of any such agreement effectuating any such transfer. Any such agreement shall include the requirement that the successor developer shall be responsible for payment of the taxes for the Pad Sites.

6.0 Recording. This Agreement may be recorded at the Hillsborough County Registry of Deeds, and shall be binding on Shepherds Hill, and its successors and assigns.

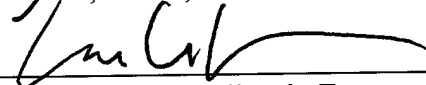
Executed on this 24<sup>th</sup> day of February, 2016.

Town of Hudson,  
By and through its Attorneys,  
Tarbell & Brodich, P.A.



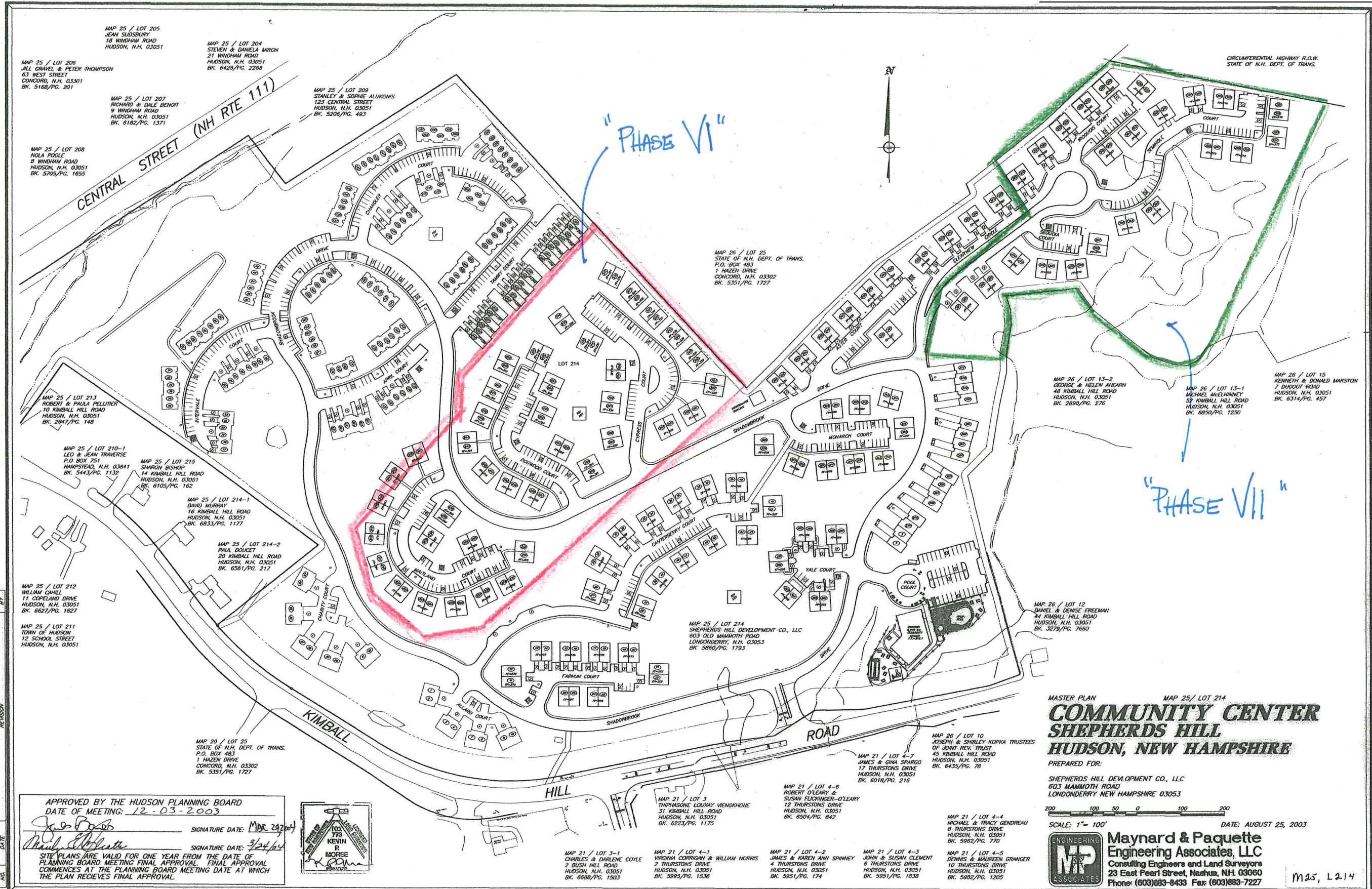
By: David E. LeFevre, Esq.  
45 Centre Street  
Concord, NH 03301  
(603) 226-3900

Shepherds Hill Homeowner's Assoc., Inc.  
By and through its attorneys,  
Marcus, Errico, Emmer & Brooks, P.C.



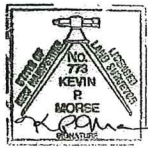
By: Edmund A. Allcock, Esq.  
45 Braintree Hill Office Park, Suite 107  
Braintree, MA 02184-8733





NO.	DATE	REVISION
1	10/01/03	REV. PER FIRE DEPT. REVIEW
2	11/03/03	RELOCATE MAILBOX ACCESS
3	12/16/03	REV. PER APPROVAL STIPS
4	01/06/04	REV. PER APPROVAL STIPS
5	01/06/04	REV. PER APPROVAL STIPS
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100	01/06/04	REV. PER APPROVAL STIPS

APPROVED BY THE HUDSON PLANNING BOARD  
 DATE OF MEETING: 12-03-2003  
 [Signature] SIGNATURE DATE: MAR 23 2004  
 [Signature] SIGNATURE DATE: 3/24/04  
 SITE PLANS ARE VALID FOR ONE YEAR FROM THE DATE OF PLANNING BOARD MEETING FINAL APPROVAL. FINAL APPROVAL COMMENCES AT THE PLANNING BOARD MEETING DATE AT WHICH THE PLAN RECEIVES FINAL APPROVAL.



HCRO # 33069

MASTER PLAN  
 MAP 25 / LOT 214  
**COMMUNITY CENTER**  
**SHEPHERDS HILL**  
**HUDSON, NEW HAMPSHIRE**  
 PREPARED FOR:  
 SHEPHERDS HILL DEVELOPMENT CO., LLC  
 603 MAMMOTH ROAD  
 LONDONDERRY NEW HAMPSHIRE 03053  
 SCALE: 1" = 100'  
 DATE: AUGUST 25, 2003  
**ENGINEERING**  
**MP**  
**ASSOCIATES**  
**Maynard & Paquette**  
 Consulting Engineers and Land Surveyors  
 23 East Pearl Street, Nashua, NH 03060  
 Phone: (603)883-8433 Fax: (603)883-7227  
 M25, L214

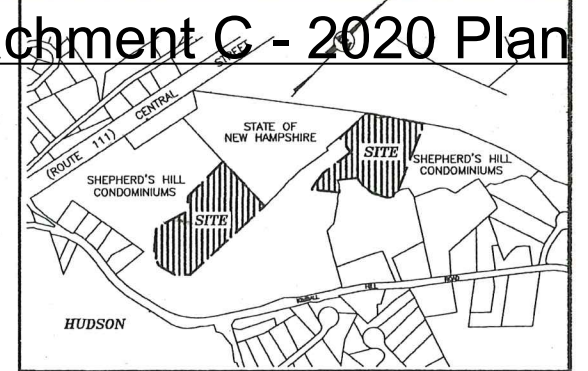
DESIGNED	DRAFTED	CHECKED	APPROVED	BOOK & PAGE	3	D	11349

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 MAYNARD & PAQUETTE ENGINEERING ASSOCIATES, LLC  
 LEGAL TO COPY THIS PLAN/PRINT WITHOUT WRITTEN PERMISSION.



**LEGEND**

- ABUTTER LINE
- PHASE LINE
- BOUNDARY LINE
- WETLAND
- EDGE OF PAVEMENT
- ZONE LINE



VICINITY MAP  
NOT TO SCALE

**REFERENCE PLAN**

- SHEPHERD'S HILL CONDOMINIUM, SITE AND FLOOR PLANS FOR LAND UNITS #1, #2 & #3.
- REMAINING CONVERTIBLE LAND IN ACCORDANCE WITH THE 24TH DECLARATION OF THE SHEPHERD'S HILL CONDOMINIUM, HCRD PLAN #37633.

**PHASING NOTES:**

- PHASES I-IV HAVE ALREADY BEEN COMPLETED.
- CONSTRUCTION SHALL BE COMPLETED IN THE FOLLOWING THREE PHASES: PHASE V, PHASE VI, PHASE VII.
- ALL PHASES MUST BE BELOW 5 ACRES AND STABILIZED BEFORE ADVANCING TO THE SUBSEQUENT PHASE.

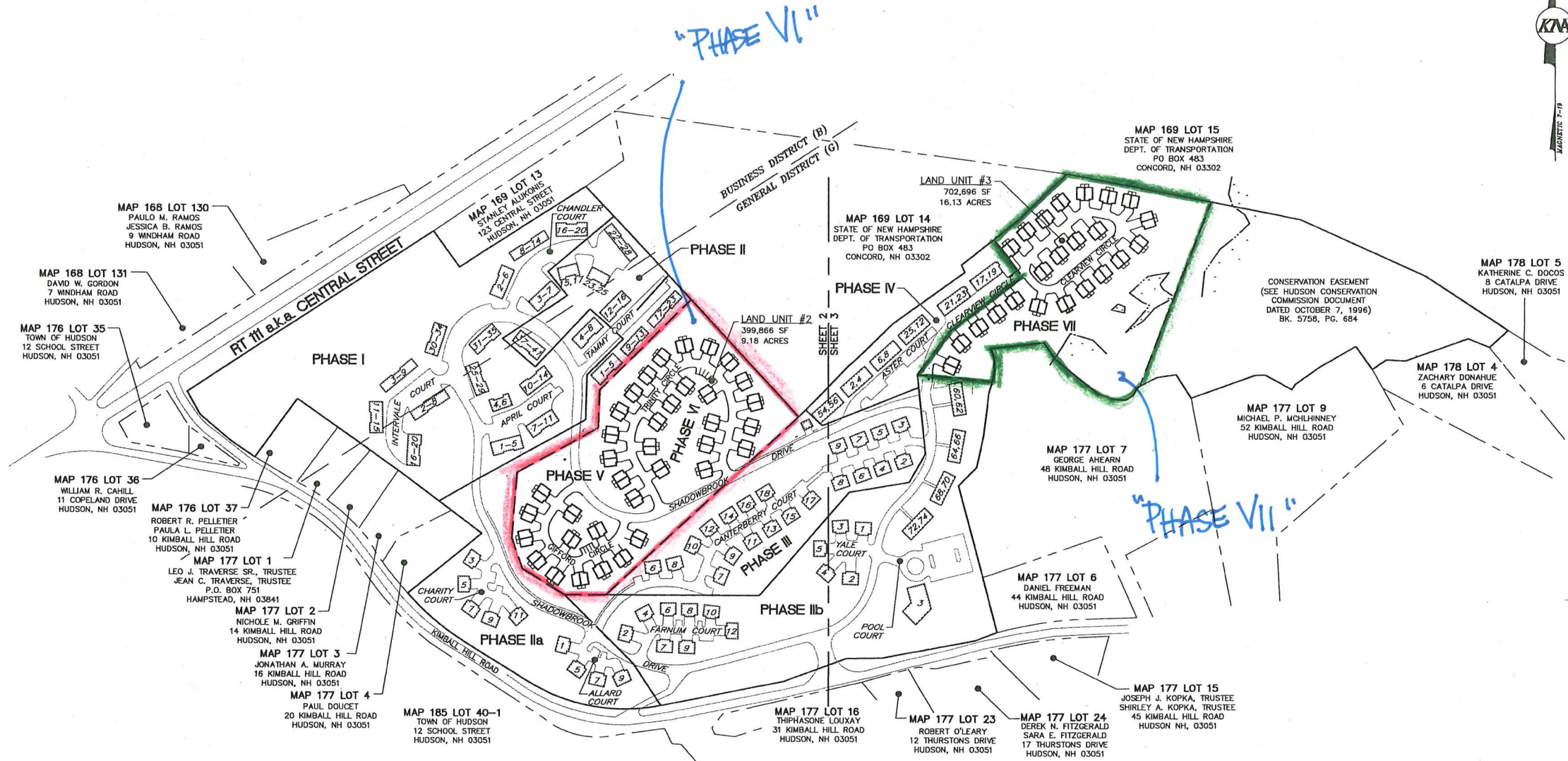
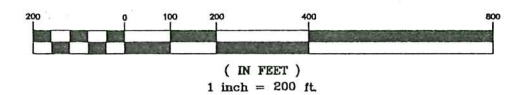
**NOTES:**

- THE PURPOSE OF THIS PLAN IS TO SHOW THE DEVELOPMENT OF THE REMAINING 118 UNITS IN THE SHEPHERD'S HILL CONDOMINIUM ON ASSESSORS MAP 117 LOT 5, SPECIFICALLY IN LAND UNITS 2 & 3 AS SHOWN HEREON AND NO OTHER REASON.
- AREA OF PARCEL = 68.1 ACRES.
- OWNERS OF RECORD:  
SHEPHERD'S HILL HOME OWNERS ASSOCIATION  
C/O GREAT NORTHERN PROPERTY MANAGEMENT  
3 HOLLAND WAY, SUITE 201  
EXETER, NH 03833  
DECLARATION OF CONDOMINIUM: HCRD BK. 6846 PG. 0065  
24TH AMENDMENT BK. 8530 PG. 1901  
SETTLEMENT AGREEMENT: HCRD BK. 8835 PG. 2477  
COURT ORDER: HCRD BK. 8837 PG. 2078
- THE SUBJECT PARCEL LIES WITHIN THE GENERAL (G) & BUSINESS (B) ZONING DISTRICT  
MINIMUM BUILDING SETBACK REQUIREMENTS: GENERAL: 43,560 S.F., BUSINESS: 53,560 S.F.

LOT FRONTAGE	150'	150'
FRONT YARD	50 FT	50 FT
SIDE YARD	15 FT	15 FT
REAR YARD	15 FT	15 FT

- BOUNDARY INFORMATION IS BASED ON REFERENCE PLAN.
- NORTH ORIENTATION IS MAGNETIC. HORIZONTAL DATUM IS ASSUMED. VERTICAL DATUM IS NAVD83.
- EXISTING CONDITIONS FOR LAND UNITS 2 & 3 ARE BASED ON AN ACTUAL FIELD SURVEY MADE BY THIS OFFICE IN SEPTEMBER, OCTOBER & NOVEMBER OF 2017.
- EXAMINATION OF THE FLOOD INSURANCE RATE MAP (FIRM) FOR THE TOWN OF HUDSON NEW HAMPSHIRE, HILLSBOROUGH COUNTY, MAP NUMBER 3301C0518D, PANEL NUMBER 518 OF 701, EFFECTIVE DATE: SEPTEMBER 25, 2009, INDICATES THAT THE SUBJECT PARCEL IS NOT LOCATED WITHIN A FLOOD HAZARD AREA.
- BENCHMARKS SET AS NOTED, BASED ON NAVD83.
- THE LOCATION OF ANY UNDERGROUND UTILITY INFORMATION SHOWN ON THIS PLAN IS APPROXIMATE. KEACH-NORDSTROM ASSOCIATES, INC. MAKES NO CLAIM TO THE ACCURACY OR COMPLETENESS OF UTILITIES SHOWN, PRIOR TO ANY EXCAVATION ON SITE. THE OWNER OR CONTRACTOR SHALL CONTACT DIG SAFE AT 811.
- WETLANDS WERE DELINEATED BY JOSHUA BRIEN, C.W.S. #256 OF KEACH-NORDSTROM ASSOCIATES, INC. IN OCTOBER OF 2020.
- EASEMENTS, RIGHTS AND RESTRICTIONS SHOWN OR IDENTIFIED HEREON ARE THOSE THAT WERE FOUND DURING RESEARCH CONDUCTED AT THE HILLSBOROUGH COUNTY REGISTRY OF DEEDS. ADDITIONAL EASEMENTS, RIGHTS AND RESTRICTIONS MAY EXIST WHICH A TITLE EXAMINATION OF THE PREMISES MAY DETERMINE.

**GRAPHIC SCALE**



PURSUANT TO THE SITE REVIEW REGULATIONS OF THE HUDSON PLANNING BOARD, THE SITE PLAN APPROVAL GRANTED HEREIN EXPIRES TWO YEARS FROM DATE OF APPROVAL.

APPROVED BY THE HUDSON, NH PLANNING BOARD  
DATE OF MEETING: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE DATE: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE DATE: \_\_\_\_\_

SITE PLANS ARE VALID FOR TWO YEARS FROM THE DATE OF PLANNING BOARD MEETING FINAL APPROVAL. FINAL APPROVAL COMMENCES AT THE PLANNING BOARD MEETING DATE AT WHICH THE PLAN RECEIVES FINAL APPROVAL.

OWNER OF MAP 117 LOT 5

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**NPDES NOTE**

THIS PROJECT DISTURBS IN EXCESS OF 1-ACRE OF LAND. THEREFORE IT WILL BE REQUIRED TO OBTAIN NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT COVERAGE AS ISSUED BY THE ENVIRONMENTAL PROTECTION AGENCY (EPA). THE OWNER/DEVELOPER AND "OPERATOR" (GENERAL CONTRACTOR) SHALL EACH BE REQUIRED TO PREPARE AND SUBMIT A NOTICE OF INTENT (NOI) TO THE EPA PRIOR TO THE START OF CONSTRUCTION AND SHALL BE RESPONSIBLE FOR THE PREPARATION AND IMPLEMENTATION OF A STORM WATER POLLUTION PREVENTION PLAN (SWPPP) MEETING THE REQUIREMENTS OF THE CURRENT CONSTRUCTION GENERAL PERMIT.

**UTILITY NOTE**

THE UNDERGROUND UTILITIES DEPICTED HEREON HAVE BEEN DRAWN FROM FIELD SURVEY INFORMATION AND/OR PLOTTED FROM EXISTING DRAWINGS. KEACH-NORDSTROM ASSOCIATES, INC. MAKES NO GUARANTEES THAT THE UNDERGROUND UTILITIES DEPICTED COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. FURTHER, KEACH-NORDSTROM ASSOCIATES, INC. DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM THE INFORMATION AVAILABLE. KEACH-NORDSTROM ASSOCIATES, INC. HAS NOT PHYSICALLY LOCATED THE UNDERGROUND PORTIONS OF THE UTILITIES.

JOSHUA BRIEN, CERTIFIED WETLAND SCIENTIST #256 OF KEACH-NORDSTROM ASSOCIATES, INC. OF BEDFORD, NH PERFORMED THE DELINEATION OF JURISDICTIONAL WETLANDS IN OCTOBER OF 2020 USING THE TECHNICAL CRITERIA IN THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL (TECHNICAL REPORT Y-87-1, JANUARY 1987).

**SURVEYOR'S CERTIFICATION:**

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR THOSE UNDER MY DIRECT SUPERVISION. FURTHER, THAT THIS PLAN IS BASED ON AN ACTUAL FIELD SURVEY MADE ON THE GROUND BY THIS OFFICE BETWEEN AUGUST OF 2008 AND NOVEMBER OF 2019. SAID SURVEY HAS AN ERROR OF CLOSURE BETTER THAN ONE PART IN TEN THOUSAND (1:10,000).

\_\_\_\_\_  
LICENSED LAND SURVEYOR

\_\_\_\_\_  
DATE

**MASTER SITE PLAN**  
**SHEPHERD'S HILL**  
MAP 117 LOT 5  
SHADOWBROOK DRIVE  
HUDSON, NEW HAMPSHIRE  
HILLSBOROUGH COUNTY

**OWNER OF RECORD:**  
SHEPHERD'S HILL HOME OWNERS ASSOCIATION  
C/O GREAT NORTH PROPERTY MANAGEMENT  
3 HOLLAND WAY, SUITE 201  
EXETER, NH 03833

**APPLICANT:**  
SHEPHERD'S HILL DEVELOPMENT, LLC  
253 MAIN STREET  
NASHUA, NH 03060

**KMA** KEACH-NORDSTROM ASSOCIATES, INC.  
Civil Engineering Land Surveying Landscape Architecture  
10 Commerce Park North, Suite 3B, Bedford, NH 03110 Phone (603) 627-2881

REVISIONS			
No.	DATE	DESCRIPTION	BY

DATE: OCTOBER 22, 2020 SCALE: 1"=200'  
PROJECT NO: 17-0824-1 SHEET 1 OF 54