

DW08-088

Leighton, Adele

From: Howland, Debra
Sent: Monday, November 03, 2008 1:28 PM
To: Leighton, Adele
Subject: FW: DW 08-088 Hampstead Area Water Company (HAWC)

Did I already forward this to you for response?

Debra A. Howland

Executive Director & Secretary
New Hampshire Public Utilities Commission
21 S. Fruit St., Suite 10
Concord, NH 03301-2429
603.271.6003
debra.howland@puc.nh.gov



-----Original Message-----

From: Jon Longchamp [mailto:jlongchamp@daigleengineers.com]
Sent: Monday, November 03, 2008 7:01 AM
To: Howland, Debra
Subject: FW: DW 08-088 Hampstead Area Water Company (HAWC)

From: Jon Longchamp
Sent: Monday, November 03, 2008 6:56 AM
To: 'Mark.Naylor@puc.nh.gov'
Subject: FW: DW 08-088 Hampstead Area Water Company (HAWC)

Mark

Thank-you for speaking with me on Friday.

Below are my comments which I e-mailed to Debra Howland yesterday.

I have also attached a copy of a letter from an attorney I hired to review my complaint and who supports my position. This letter has also gone without response from the Town. I will forward a copy to Debra Howland as well.

Very Truly,

Jon Longchamp

11/3/2008

From: Jon Longchamp
Sent: Sunday, November 02, 2008 11:22 AM
To: 'debra.howland@puc.nh.gov'
Subject: DW 08-088 Hampstead Area Water Company (HAWC)

I would like to submit the following attached documents in support of my case that there have been numerous violations of Local Zoning and Land Use Ordinances as well as State Law, which have been perpetrated by the HAWC in establishing their wellfields in the town of Atkinson.

Although these documents were originally generated with respect to the Large Groundwater Permit Application, which is currently being reviewed by the NHDES, It has become clear to me that this information is also pertinent to DW 08-088.

I originally spoke with Mark Naylor concerning this matter after sending these same documents to him back in August. At that time he stated it was not something the NHPUC would be getting involved with at that time. He said it was an issue which needed to be resolved at the Town level, since it involved violations of Local zoning and Land Use Ordinances.

Unfortunately the Town of Atkinson has failed to provide a response to my concerns (over four months later) and refuses to discuss the matter with me. I feel that the Town's lack of response has deprived me of my due process rights in both the NHDES process, and now in DW 08-088.

In regard to DW 08-088 I believe the NHPUC should not allow any further expansion of the HAWC franchise area within the Town of Atkinson until the concerns I have raised are either discounted or rectified. I do not feel it is appropriate to be lending NH taxpayer funds to enable, what is in my opinion, an illegally established operation to expand, without first cleaning up it's current affairs.

I also believe Town of Atkinson has been mislead by public statements made by the HAWC concerning the Large Groundwater Permit Application, and that the residents have not been provided with enough information concerning DW 08-088. The HAWC has at the eleventh hour backed out of two public meetings, scheduled by town officials, which could have served to better educate the public on the need for this franchise expansion. I also do not believe the town has had enough time to review the future implications of this franchise expansion and interconnection particularly given the recent decisions involving Nashua and Pennichuck. For these reasons alone I think it would be prudent to postpone any decisions regarding DW 08-088 until the residents and Town officials can become properly educated on the future implications.

Very Truly,

Jon Longchamp
15 Bittersweet Lane
Atkinson NH 03811
603-362-8929 (H)
978-682-1748 (W)

11/3/2008

June 17, 2008

Jim Kirsch
Atkinson Code Enforcement Officer
21 Academy Avenue
Atkinson, NH 03811

RE: **ZONING ORDINANCE VIOLATION COMPLAINT - HAWC WELL FIELD LOCATIONS**

Dear Jim:

I am writing to document my concerns with the locations of the existing/proposed Hampstead Area Water Company's, Community Water System Well Fields. More specifically my concern is that the well fields are located in the designated "Open Space" areas of the clustered residential developments in town. I feel the locations of these well fields are in violation of the Town of Atkinson's Zoning ordinance as well as NH RSA 477:45 concerning Conservation Restrictions.

As you know the HAWC is in the process of trying to obtain a large Groundwater Withdrawal Permit from the NHDES. Upon reviewing their application I discovered that Midpoint well field could have an adverse effect on my well (see attached copy of Midpoint well field map). At the May 7, 2008 public hearing I also became aware of the fact that the HAWC already has production wells in the Open Space land of the Centerview Hollow Condominiums (Map 13 lot 96). These existing wells reportedly came on line in 1999. Coincidentally I also started to have problems with my well in 1999, which I have documented to the NHDES.

For the record, as a resident of Atkinson, and apparently an abutter with standing, I would like to document a few of the main concerns which I have with the location of the HAWC's Midpoint Well Field being located in the Open Space of the Centerview Hollow Condominiums. The following are references to the Atkinson Zoning Ordinance which need to be considered when evaluating if the location of these well fields are in violation of the ordinance, along with my specific concerns:

Section 250 ~ APPLICATION OF REGULATIONS

250:1 *Except as hereinafter provided, no building or structures shall be erected, moved, altered, or expanded and no land, building or structure shall be occupied for use unless in conformity with these regulations herein specified for the district in which it is located or proposed to be located. Any use not specifically permitted by these regulations shall be deemed prohibited. (1982)*

Zoning Ordinance Violation Complaint ~ HAWC Well Field Zoning Violations
Atkinson Code Enforcement Officer/Board of Selectmen

It appears that these well fields have been quietly developed in the "Covenanted Common Open Space" of the various Residential Cluster Developments which have been constructed in town within the last 10 to 15 years, with little if any review or scrutiny by Town Officials or the knowledge of the typical resident. I understand that the water company does have deeded rights to use these lands which were granted by the developers, however in this case deeded rights are not a license to violate local zoning.

No where in the Zoning Ordinance of the Town of Atkinson does it state that Community Water System Uses are permitted in these "Open Space" Areas or for that matter in the Residential Districts. Because this use is not expressly permitted by the ordinance, it is prohibited as a matter of law unless the Water Company first obtains a special exception or a variance. I have not seen any direct evidence that the town has granted any waivers, variances or special exceptions in these cases.

Section 300 ~ DEFINITIONS

E2 ESSENTIAL SERVICES All essential services shall be considered non-residential use and shall be subject to Site Plan Review. This includes the erection, construction or major alteration by any governmental agency, public utility company or private owner of any underground and/or overhead utilities, including poles, commercial equipment and accessory equipment thereto. Essential on-site services shall include sewage disposal and services, water supply systems and such buildings necessary for the furnishing of essential services. (1990)

I have not seen any evidence of a site plan review for the Midpoint well field in reviewing the town's files for Map 13 Lot 96 or the Centerview Hollow Condominium folder/approved site plans. Refer to the attached Approved Site Plan for Centerview Hollow Sheet 1 of 12.

02 OFF-SITE WATER SYSTEM A system of piped water for human consumption whose source is located on land other than that allocated for development density calculations and for which review and approval by the New Hampshire Water Supply and Pollution Control Commission, Division of Water Supply, has been received.

The Centerview Hollow Condominium Project was approved by the Planning Board with an Off-Site Water System per note 7 on the attached SHEET 2 of 12.

04 OPEN SPACE Land areas devoid of man-made, enclosed structures. These areas are characterized as [a] agricultural (tilled cropland, pasture, hayland, orchards, nurseries, and any open area being cultivated, hayed or mowed); (b) forested (land supporting tree growth); (c) idle (land formerly in agriculture, now abandoned with woody plant growth beginning); [d] developed (such as recreational, including golf courses, riding rings, and ski areas, and parks; (e) water-related (wetlands excluding open water, but including swamps, marshes, bogs, and beaches); and [f] open sand areas and bare rocks.

Zoning Ordinance Violation Complaint ~ HAWC Well Field Zoning Violations
Atkinson Code Enforcement Officer/Board of Selectmen

Currently there are numerous man-made enclosed structures in the midpoint Well Field which include enclosed pump houses and at least six enclosed well shafts. These are not permitted in the "OPEN SPACE" per the above description.

S5 STRUCTURE *Anything constructed or erected on or in the ground, or in the water, or any attachment to something having a fixed location on the ground, such as buildings, permanent or temporary; signs, carports, porches and other building features, including communications towers and antennas but not including sidewalks, fences, driveways, septic systems, boundary markers and field or garden walls or embankment retaining walls. (1999)*

Section 410 ~ WETLANDS ZONING

410:6 Easements, Rights of Way. *Streets, roads, and other access ways and utility rights of way or easements through wetlands which involve dredge and/or fill operations may be permitted provided that:*

- c. Such location and construction is compatible with the intent and purpose of this ordinance. After permission for such uses has first been received from the New Hampshire Wetlands Board and the Atkinson Conservation Commission, approval for such uses shall be obtained as part of subdivision and/or site plan approval or, if not applicable by special exception by the Board of Adjustment.*

I understand the Water Company obtained a Dredge and fill permit from the State (evidently with the Town of Atkinson's Conservation Commissions approval) back in 1998 which allowed them to gain access to the Pine Island where the Midpoint Well Field has been developed. I requested, but did not receive, a copy of the Conservation Commissions Meeting Minutes which may have helped me to understand why this was approved. I have not seen any evidence that a site plan was reviewed by the planning board or that a special exception was granted by the Board of Adjustment for this use of the land. I take exception to the premise that this "use" is compatible with the intent and purpose of the ordinance based on the land being under a conservation restriction. Additionally, this Open Space Common Land is only supposed to be accessed from a road within the development per Section 600:16 below. This dredge and fill provided access through the Birchwood Condominiums on Eldon Way (see attached Subdivision Plan Sheet 1 of 5).

Section 500 ~ ZONING DISTRICT OBJECTIVES AND GUIDELINES

500:3 (RR-2) Rural Residential-2. *This area is limited to agricultural, forestry, and low density residential uses. Other related uses as provided for in Section 520 are permitted and must be consistent with the comprehensive Master Plan. These areas designated for Rural Residential-2 allow for development, but require adequate lots in order to minimize community services, protect the public health, and prevent premature development beyond the capability of soil conditions with moderate to severe limitations.*

Zoning Ordinance Violation Complaint ~ HAWC Well Field Zoning Violations
Atkinson Code Enforcement Officer/Board of Selectmen

My property is located in the RR-2 zoning district as is the Midpoint well field. I never considered that my property could be affected by such a high density (arguably commercial) use of this particular parcel. As it turns out the water company's use of this property is the equivalent of having 850 residential wells (using the HAWC average of 250 gpd per household) located nearly in my back yard. The expansion of this well field is purported to be necessary to provide for the future needs of the water company. Those needs are directly related to the high density development at the Country Club. Is this consistent with the Master Plan Section 6 "***Sewage Disposal and Water Supply***" which states "***The goal is to maintain a sufficiently low development density that will allow for individual sewage disposal and individual water supply***"?

The only zone that I can see where a "community water system's source use" can be argued to be a permitted use is the Golf and Sports complex/residential sub-district per **Article 620:8-b-3**. If the use is classified as light industrial/manufacturing it may also be permitted in the town's commercial-industrial zone or the commercial-professional zone.

ARTICLE VI: RURAL CLUSTER RESIDENTIAL DEVELOPMENT

600:14 *At least fifty percent (50%) of the total area, exclusive of roads, public or private, parking, and essential services, shall be set aside as common land covenanted to be maintained as "permanent open space." (1990)*

This percentage of area is reduced to 40% per section 610:3 when the cluster development includes low income incentives as did the Centerview Hollow development.

Attached is a copy of the easement plan the Water Company has recorded at the Registry of Deeds with the sanitary protection area for the proposed new production well superimposed. I did not see a copy of this plan in the Town's files.

The combined area of the water company's use of the open space exceeds 50% of the 40% area which was supposed to be set aside exclusive of any essential services. Therefore the rural cluster residential development is only left with a net of 20% of open space which does not meet the zoning requirements.

600:15 *Such common land shall be restricted to open space recreational uses such as tot lot, park, swimming pool, tennis courts, playground, playfield, golf course, or conservation.*

No one with whom I have spoken at the Town has been able to explain to me how the water company's use of the "Open Space" Land complies with the above restricted uses. I contend that the Water Company's use of this land violates the conservation restrictions in that they will most likely be drawing down the water levels in the surrounding prime wetlands, as well as reducing the surface stream flows in the nearby rivers and streams.

Zoning Ordinance Violation Complaint ~ HAWC Well Field Zoning Violations
Atkinson Code Enforcement Officer/Board of Selectmen

600:16 *Such common land shall have suitable access to a road only within the development.*

The Water Company is accessing this land through the Birchwood Condominium property in direct violation of this provision.

600:17 *Open space, common areas, common facilities, private roadways, and other features within the rural cluster development shall be protected by covenants running with the land and shall be conveyed by the property owners to a homeowners association so as to guarantee the following:*

a. The continued use of land for the intended purposes.

I do not think the homeowners have any control over this land since it does not appear they were ever given access to it as is the intent of the ordinance. I also do not think this land is being used for anything other than the water company's intended purpose. Per Env-Dw 302.06 "Land uses within the Sanitary Protective area shall be only those necessary for the maintenance and operation of the production wells and shall not pose a risk to the groundwater". In other words the owners of the land can not use the land within the SPA's as shown on the attached easement plan even if they could access it. This land is not the Water Company's to develop Community water System well fields as they have done.

As we discussed earlier, back in 2001 the Town of Kingston took exception to the HAWC setting up a Well Field in the "Open Space" of a similar condominium Development based on Zoning Violations. The HAWC petitioned the Public Utility Commission for an exemption and was granted said exemption but not without the Water Company first providing the Well Owner's Response Plan (attached) for those abutters whose wells may be affected. Obviously this being a similar situation I feel the PUC will need to provide potentially affected Atkinson residents with some additional protection beyond that which the Water Company is required to provide by the NHDES regulations. I also feel relieve can be further pursued based on **NH RSA 674:21-a Development Restrictions Enforceable** (copy attached).

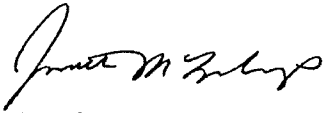
I honestly feel it is time to return this land to the intended purpose. And I respectfully request the town's support in enforcing the Town of Atkinson's Zoning Ordinance. Although I have focused my efforts on the Midpoint well field I believe many of these comments also pertain to the Settler's Ridge and Fieldstone Well Fields as well.

Page 6 of 6
June 17, 2008

Zoning Ordinance Violation Complaint - HAWC Well Field Zoning Violations
Atkinson Code Enforcement Officer/Board of Selectmen

Thank you in advance for your consideration of these important concerns. Please keep me informed of any decisions regarding these perceived zoning violations. I would be more than happy to meet with you and the Board of Selectmen to discuss these concerns.

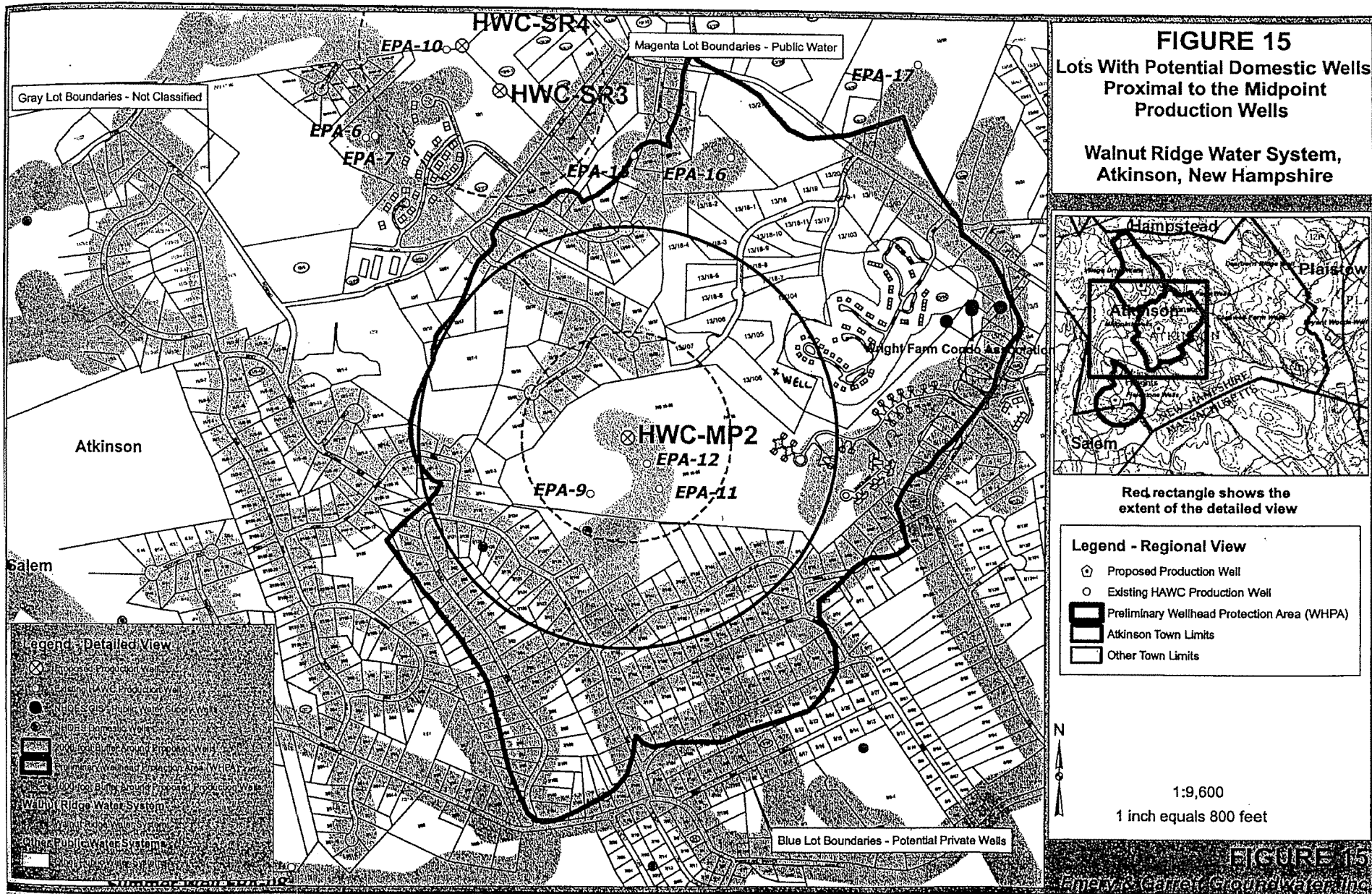
Very truly,

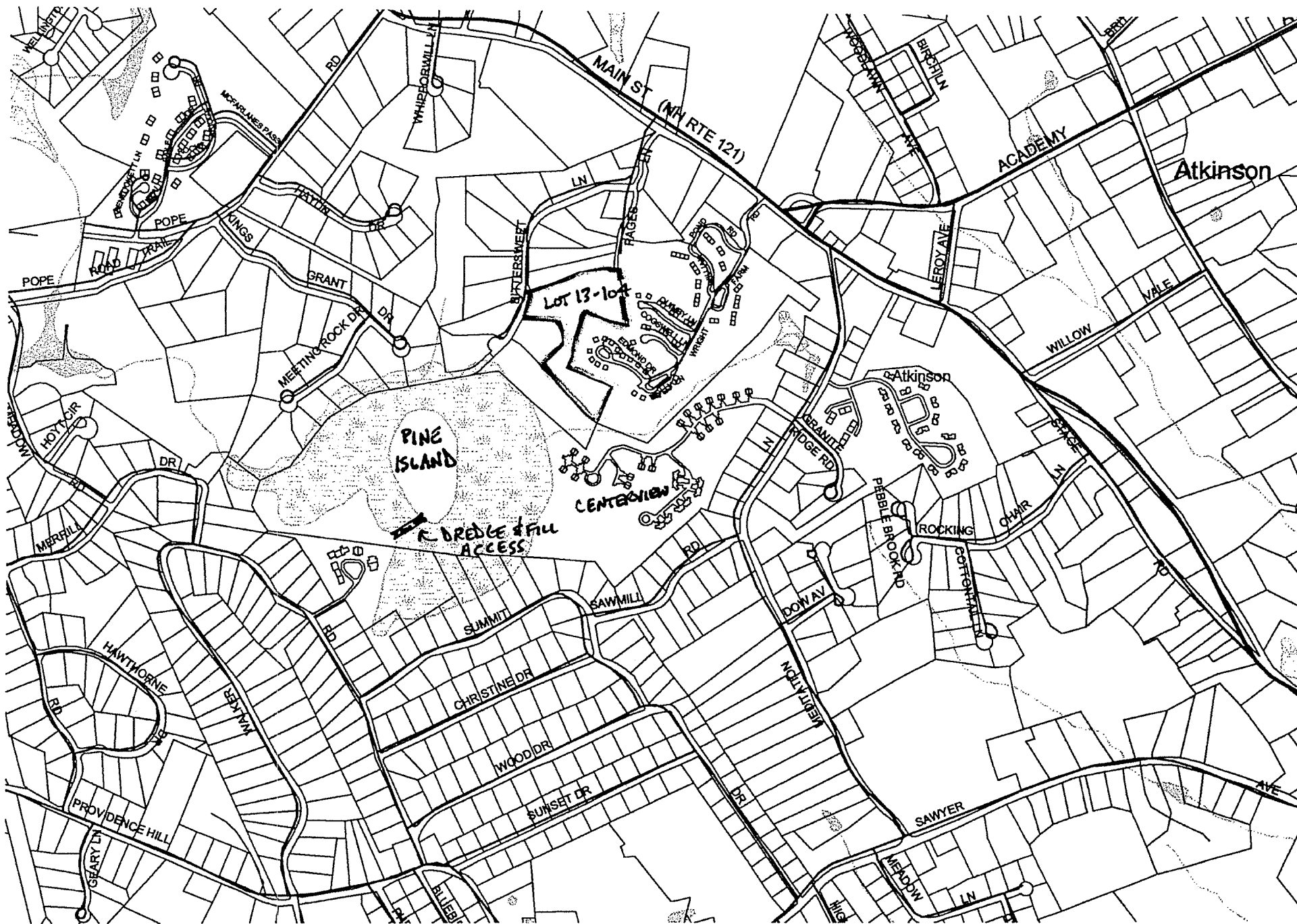


Jonathan M. Longchamp
15 Bittersweet Lane
Atkinson, NH 03811
(603) 362-8929 (home)
(978) 682-1748 ext. 117 (work)

x/c: Atkinson Board of Selectmen

Enclosures: Midpoint Well Field Map E&G
Partial Composite tax Map RPC
Centerview Hollow Condos Appd Site Plan Sheets 1 and 2 of 12
As-Built Site Plan Centerview hollow Condos
Subdivision Plan Birchwood Condos
NH RSA 477:45 and 674:21-a
HAWC Well owner Response Plan







LOCUS
SOLD 1st - 2000

[illegible]

LINE	DATE	TIME	LOCATION	REMARKS
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3	10/10/10	10:00	1000	1000
4	10/10/10	10:00	1000	1000
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11	10/10/10	10:00	1000	1000
12	10/10/10	10:00	1000	1000
13	10/10/10	10:00	1000	1000

APPROVED BY THE AIRBORNE PLANNING BOARD

<p> <u>Stat page 1 / Page 10, 1-1</u> 1-1, 1-2, 1-3, 1-4, 1-5, 1-6, 1-7, 1-8, 1-9, 1-10, 1-11, 1-12, 1-13, 1-14, 1-15, 1-16, 1-17, 1-18, 1-19, 1-20, 1-21, 1-22, 1-23, 1-24, 1-25, 1-26, 1-27, 1-28, 1-29, 1-30, 1-31, 1-32, 1-33, 1-34, 1-35, 1-36, 1-37, 1-38, 1-39, 1-40, 1-41, 1-42, 1-43, 1-44, 1-45, 1-46, 1-47, 1-48, 1-49, 1-50, 1-51, 1-52, 1-53, 1-54, 1-55, 1-56, 1-57, 1-58, 1-59, 1-60, 1-61, 1-62, 1-63, 1-64, 1-65, 1-66, 1-67, 1-68, 1-69, 1-70, 1-71, 1-72, 1-73, 1-74, 1-75, 1-76, 1-77, 1-78, 1-79, 1-80, 1-81, 1-82, 1-83, 1-84, 1-85, 1-86, 1-87, 1-88, 1-89, 1-90, 1-91, 1-92, 1-93, 1-94, 1-95, 1-96, 1-97, 1-98, 1-99, 1-100, 1-101, 1-102, 1-103, 1-104, 1-105, 1-106, 1-107, 1-108, 1-109, 1-110, 1-111, 1-112, 1-113, 1-114, 1-115, 1-116, 1-117, 1-118, 1-119, 1-120, 1-121, 1-122, 1-123, 1-124, 1-125, 1-126, 1-127, 1-128, 1-129, 1-130, 1-131, 1-132, 1-133, 1-134, 1-135, 1-136, 1-137, 1-138, 1-139, 1-140, 1-141, 1-142, 1-143, 1-144, 1-145, 1-146, 1-147, 1-148, 1-149, 1-150, 1-151, 1-152, 1-153, 1-154, 1-155, 1-156, 1-157, 1-158, 1-159, 1-160, 1-161, 1-162, 1-163, 1-164, 1-165, 1-166, 1-167, 1-168, 1-169, 1-170, 1-171, 1-172, 1-173, 1-174, 1-175, 1-176, 1-177, 1-178, 1-179, 1-180, 1-181, 1-182, 1-183, 1-184, 1-185, 1-186, 1-187, 1-188, 1-189, 1-190, 1-191, 1-192, 1-193, 1-194, 1-195, 1-196, 1-197, 1-198, 1-199, 1-200, 1-201, 1-202, 1-203, 1-204, 1-205, 1-206, 1-207, 1-208, 1-209, 1-210, 1-211, 1-212, 1-213, 1-214, 1-215, 1-216, 1-217, 1-218, 1-219, 1-220, 1-221, 1-222, 1-223, 1-224, 1-225, 1-226, 1-227, 1-228, 1-229, 1-230, 1-231, 1-232, 1-233, 1-234, 1-235, 1-236, 1-237, 1-238, 1-239, 1-240, 1-241, 1-242, 1-243, 1-244, 1-245, 1-246, 1-247, 1-248, 1-249, 1-250, 1-251, 1-252, 1-253, 1-254, 1-255, 1-256, 1-257, 1-258, 1-259, 1-260, 1-261, 1-262, 1-263, 1-264, 1-265, 1-266, 1-267, 1-268, 1-269, 1-270, 1-271, 1-272, 1-273, 1-274, 1-275, 1-276, 1-277, 1-278, 1-279, 1-280, 1-281, 1-282, 1-283, 1-284, 1-285, 1-286, 1-287, 1-288, 1-289, 1-290, 1-291, 1-292, 1-293, 1-294, 1-295, 1-296, 1-297, 1-298, 1-299, 1-300, 1-301, 1-302, 1-303, 1-304, 1-305, 1-306, 1-307, 1-308, 1-309, 1-310, 1-311, 1-312, 1-313, 1-314, 1-315, 1-316, 1-317, 1-318, 1-319, 1-320, 1-321, 1-322, 1-323, 1-324, 1-325, 1-326, 1-327, 1-328, 1-329, 1-330, 1-331, 1-332, 1-333, 1-334, 1-335, 1-336, 1-337, 1-338, 1-339, 1-340, 1-341, 1-342, 1-343, 1-344, 1-345, 1-346, 1-347, 1-348, 1-349, 1-350, 1-351, 1-352, 1-353, 1-354, 1-355, 1-356, 1-357, 1-358, 1-359, 1-360, 1-361, 1-362, 1-363, 1-364, 1-365, 1-366, 1-367, 1-368, 1-369, 1-370, 1-371, 1-372, 1-373, 1-374, 1-375, 1-376, 1-377, 1-378, 1-379, 1-380, 1-381, 1-382, 1-383, 1-384, 1-385, 1-386, 1-387, 1-388, 1-389, 1-390, 1-391, 1-392, 1-393, 1-394, 1-395, 1-396, 1-397, 1-398, 1-399, 1-400, 1-401, 1-402, 1-403, 1-404, 1-405, 1-406, 1-407, 1-408, 1-409, 1-410, 1-411, 1-412, 1-413, 1-414, 1-415, 1-416, 1-417, 1-418, 1-419, 1-420, 1-421, 1-422, 1-423, 1-424, 1-425, 1-426, 1-427, 1-428, 1-429, 1-430, 1-431, 1-432, 1-433, 1-434, 1-435, 1-436, 1-437, 1-438, 1-439, 1-440, 1-441, 1-442, 1-443, 1-444, 1-445, 1-446, 1-447, 1-448, 1-449, 1-450, 1-451, 1-452, 1-453, 1-454, 1-455, 1-456, 1-457, 1-458, 1-459, 1-460, 1-461, 1-462, 1-463, 1-464, 1-465, 1-466, 1-467, 1-468, 1-469, 1-470, 1-471, 1-472, 1-473, 1-474, 1-475, 1-476, 1-477, 1-478, 1-479, 1-480, 1-481, 1-482, 1-483, 1-484, 1-485, 1-486, 1-487, 1-488, 1-489, 1-490, 1-491, 1-492, 1-493, 1-494, 1-495, 1-496, 1-497, 1-498, 1-499, 1-500, 1-501, 1-502, 1-503, 1-504, 1-505, 1-506, 1-507, 1-508, 1-509, 1-510, 1-511, 1-512, 1-513, 1-514, 1-515, 1-516, 1-517, 1-518, 1-519, 1-520, 1-521, 1-522, 1-523, 1-524, 1-525, 1-526, 1-527, 1-528, 1-529, 1-530, 1-531, 1-532, 1-533, 1-534, 1-535, 1-536, 1-537, 1-538, 1-539, 1-540, 1-541, 1-542, 1-543, 1-544, 1-545, 1-546, 1-547, 1-548, 1-549, 1-550, 1-551, 1-552, 1-553, 1-554, 1-555, 1-556, 1-557, 1-558, 1-559, 1-560, 1-561, 1-562, 1-563, 1-564, 1-565, 1-566, 1-567, 1-568, 1-569, 1-570, 1-571, 1-572, 1-573, 1-574, 1-575, 1-576, 1-577, 1-578, 1-579, 1-580, 1-581, 1-582, 1-583, 1-584, 1-585, 1-586, 1-587, 1-588, 1-589, 1-590, 1-591, 1-592, 1-593, 1-594, 1-59</p>

APPROVED
JUL 02 1987

PLAN REFERENCES

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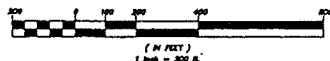
DEED REFERENCES

4 A.A.A. BANK / 2520 / PARKER / 004
 4 A.A.A. BANK / 2520 / PARKER / 004
 4 A.A.A. BANK / 2520 / PARKER / 004

LEGEND

MINI PWC PUMP	●
BALL, HOLE PUMP	●
MINI PWC SET	○
BALL, HOLE SET	●
SCREW & JIGSAW PUMP	■
SCREW BALL	●

GRAPHIC SCALE



TAX MAP 13 / PARCEL 96
(TOWN, RANGE, AND SECTION ALL BOUNDARY SHOWN LINES)
5,019,032 s.f.
115.22 acres

NIGHT FARM CONDOMINIUMS - PHASE II

PLAN MAP AND PARCEL NUMBER --
(Optional)

WRIGHT FARM CONDOMINIUMS - PHASE I

10/15/98

PLAN OF LAND

FOR
TAX MAP 13 / PARCEL 98
CENTERVIEW HOLLOW
CONDOMINIUMS

ATKINSON, NEW HAMPSHIRE
AS DRAWN FOR
LEWIS BUILDERS DEVELOPMENT, INC.
84 SAWYER AVE.
ATKINSON, N.H. 03811
SCALE: 1" = 200' DATE: 2/20/87

SCALE: 1" = 200' DATE: 2/20/97

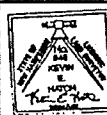
LEWIS BUILDERS
DEVELOPMENT, INC.

Prepared by
Louis Balfanz Development,
54 Burger Ave.
Alhambra, N.Y. 03001
(603) 362-5333 FAX 362-

SHEET 1 OF 12

I HEREBY CERTIFY THAT THIS PLAN IS THE RESULT OF AN ACTUAL FIELD SURVEY AND HAS A TRAVERSE ERROR OF CLOSURE NOT GREATER THAN 1 PART IN 10,000 ON ALL LINES BORDERING THE SUBJECT PROPERTY.

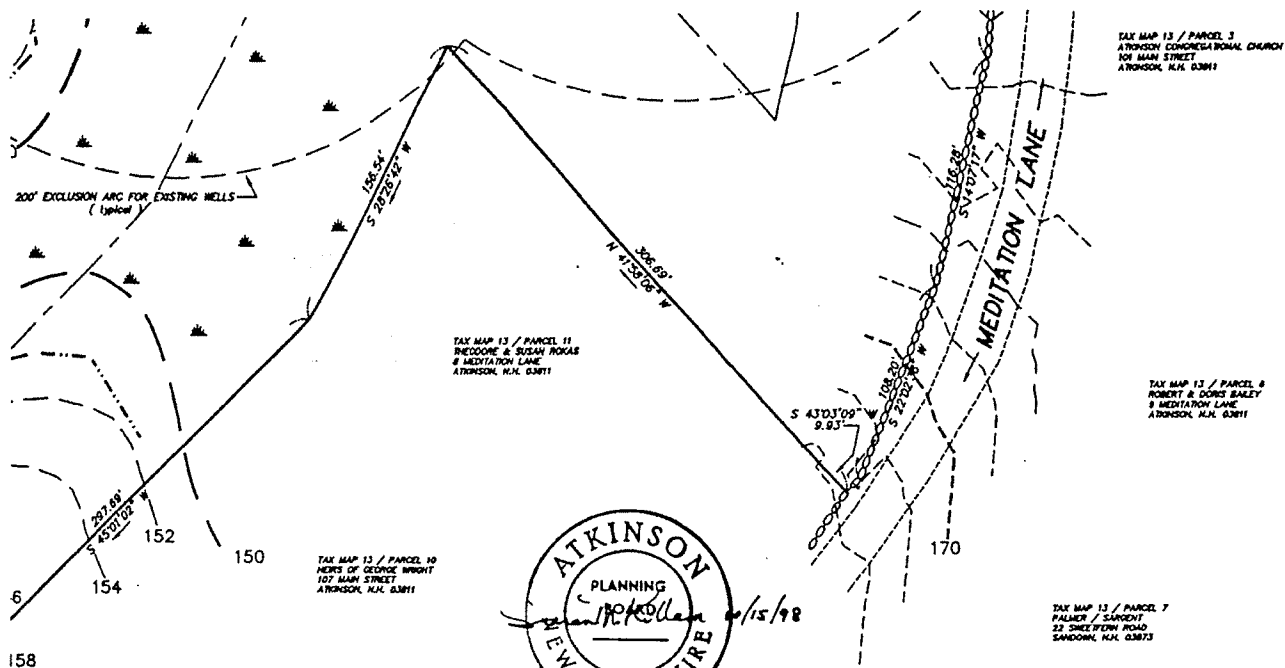
Kevin E. Nathan, LLC 4-14-97
DATE



REVISIONS

3	ADD SOME LINKS	DATE:	3/23/97
2	NOTES & ROAD LAYOUT	DATE:	3/23/97
1	POW CIRCUIT BOARD	DATE:	3/23/97
0	PLAN SUBMITTAL	DATE:	3/23/97

DRAWN BY:	CH	DATE:	3/23/97
CALCULATED BY:	KEH	DATE:	3/23/97
APPROVED BY:	KEH	DATE:	3/23/97



APPROVED

JUL 02 1997

NOTES

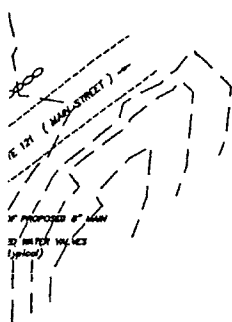
- 1) THESE SITE DEVELOPMENT PLANS PROPOSE (52) - 2 BEDROOM CONDOMINIUM UNITS SITUATED ON 115.22 ACRES. THE PROJECT UTILIZES THE LOW - MODERATE INCOME HOUSING ACCOMMODATION SYSTEM, (SECTION 610.3). THERE WILL BE (11) UNITS RESERVED FOR LOW-MODERATE INCOME FAMILIES AS REQUIRED BY ATKINSON ZONING ORDINANCE ARTICLE VI, (SECTION 610.2 a.1).
- 2) THIS PARCEL IS SHOWN AS TAX MAP 13 / PARCEL 96 ON THE TOWN OF ATKINSON ASSESSOR MAPS.
- 3) THIS PARCEL IS NOT LOCATED IN A FLOOD HAZARD ZONE, REFERENCE NATIONAL FLOOD INSURANCE PROGRAM F.I.R.M. COMMUNITY PANEL NUMBER 330175 0005 B.
- 4) THE ZONING DISTRICTS FOR THIS PARCEL ARE TOWN RESIDENTIAL 2 (TR-2) ; RURAL RESIDENTIAL 2 (RR-2) ; AND TOWN CENTER, (TC) AS SHOWN ON THE TOWN OF ATKINSON ZONING MAP.

- 5) OWNER OF RECORD: MARILYN MATTE, SUMMER HILL-B7 SUNDOWN DRIVE, DERRY, N.H. 03038. OPTION HOLDER / DEVELOPER: LEWIS BUILDERS DEVELOPMENT, INC., 54 SAWYER AVENUE, ATKINSON, N.H. 03811.
- 6) DEED REFERENCES: R.C.R.D. BOOK # 2538 / PAGE # 669, R.C.R.D. BOOK # 2538 / PAGE # 674, R.C.R.D. BOOK # 2538 / PAGE # 678.

- 7) THIS PROJECT WILL BE SERVED BY OFF-SITE WATER FROM THE WALNUT RIDGE WATER COMPANY, (C.W.S. # 0012080) AND ON-SITE SUBSURFACE SEWAGE DISPOSAL SYSTEMS. ALL UTILITIES WILL BE UNDERGROUND.
- 8) EACH UNIT SHALL ACCOMMODATE A MINIMUM OF (2) PARKING SPACES.
- 9) ELEVATIONS ON THIS PLAN REFERENCE U.S.G.S. DATUM.
- 10) HIGH INTENSITY SOILS MAPPING AND WETLAND DELINEATION WAS PERFORMED BY GOVE ENVIRONMENTAL SERVICES, INC., P.O. BOX 118, EXETER, N.H. 03833.
- 11) NO PORTION OF ANY SUBSURFACE SEWAGE DISPOSAL SYSTEM SHALL BE LOCATED WITHIN 100' OF WETLANDS AS DELINEATED BY GOVE ENVIRONMENTAL SERVICES, INC.
- 12) N.H.D.E.S. SUBDIVISION APPROVAL NO. IS SA1997000422.
- 13) N.H.D.E.S. SITE SPECIFIC APPROVAL NO. IS WPS-4785-A.
- 14) N.H.D.E.S. DREDGE AND FILL PERMIT NO. IS 97-00411.
- 15) THERE WILL BE ROADSIDE STORAGE OF SNOW THROUGHOUT THE DEVELOPMENT.
- 16) MUTCD STANDARD R-11 STOP SIGNS SHALL BE PROVIDED AT ALL STREET INTERSECTIONS.
- 17) ALL UNITS SHALL HAVE SPRINKLER SYSTEMS PER NFPA-13R REQUIREMENTS.

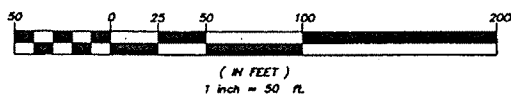
LEGEND

- WETLAND
- 100' WETLAND SETBACK
- EDGE OF WETLAND
- PROPOSED SEWER CLEAN OUT
- PROPOSED SEWER LATERAL
- PROPOSED SEWER LINE
- PROPOSED SEWER FORCE MAIN
- PROPOSED WATER LINE
- PROPOSED WATER VALVE
- PROPOSED WATER SERVICE
- PROPOSED FLUSH VALVE
- PROPOSED CULVERT
- EXISTING CONTOUR
- PROPOSED CONTOUR
- TEST PIT
- PERCOLATION TEST
- STONE WALL



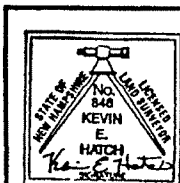
"THE WAYS SHOWN ON THIS PLAN ARE INTENDED BY LEWIS BUILDERS DEV., INC. AND THE PLANNING BOARD TO REMAIN AS PRIVATE WAYS. THE RECORDING OF THIS PLAN SHALL NOT BE CONSTRUED AS AN OFFER OF DEDICATION OF THOSE WAYS AS PUBLIC HIGHWAYS UNDER THE NEW HAMPSHIRE LAW OF DEDICATION AND ACCEPTANCE." (SECT. RS 440:7,a)

GRAPHIC SCALE



LAP 13 / PARCEL 1
77 KACHAMAN
BOX, N.H. 03811

APPLICATION WAS GRANTED
NING BOARD OF ADJUSTMENT
IFRIMED THERE IS NO NEED
YOSCAPED BUFFER WHERE THIS
"EXISTING WRIGHT FARM"



REVISIONS

3	WAIVER NOTES ADDED	DATE: 6/23/97
2	PER TOWN ENGINEER REVIEW	DATE: 5/30/97
1	PROJECT NAME / ROAD STA.	DATE: 4/14/97
0	PLAN SUBMITTAL	DATE: 3/24/97

DRAWN BY: RSB/CPF DATE: 2/22/97
DESIGNED BY: CPF DATE: 2/22/97
APPROVED BY: KEH DATE: 3/24/97

SITE PLAN

FOR
TAX MAP 13 / PARCEL 96
CENTERVIEW HOLLOW
CONDOMINIUMS
IN
ATKINSON, NEW HAMPSHIRE
AS DRAWN FOR
LEWIS BUILDERS DEVELOPMENT, INC.
54 SAWYER AVE.
ATKINSON, N.H. 03811
SCALE: 1" = 50' DATE: 2/22/97

Prepared by:
Lewis Builders Development, Inc.
54 Sawyer Ave.
Atkinson, N.H. 03811
(603) 362-5333 FAX 362-4936

SHEET 2 OF 12

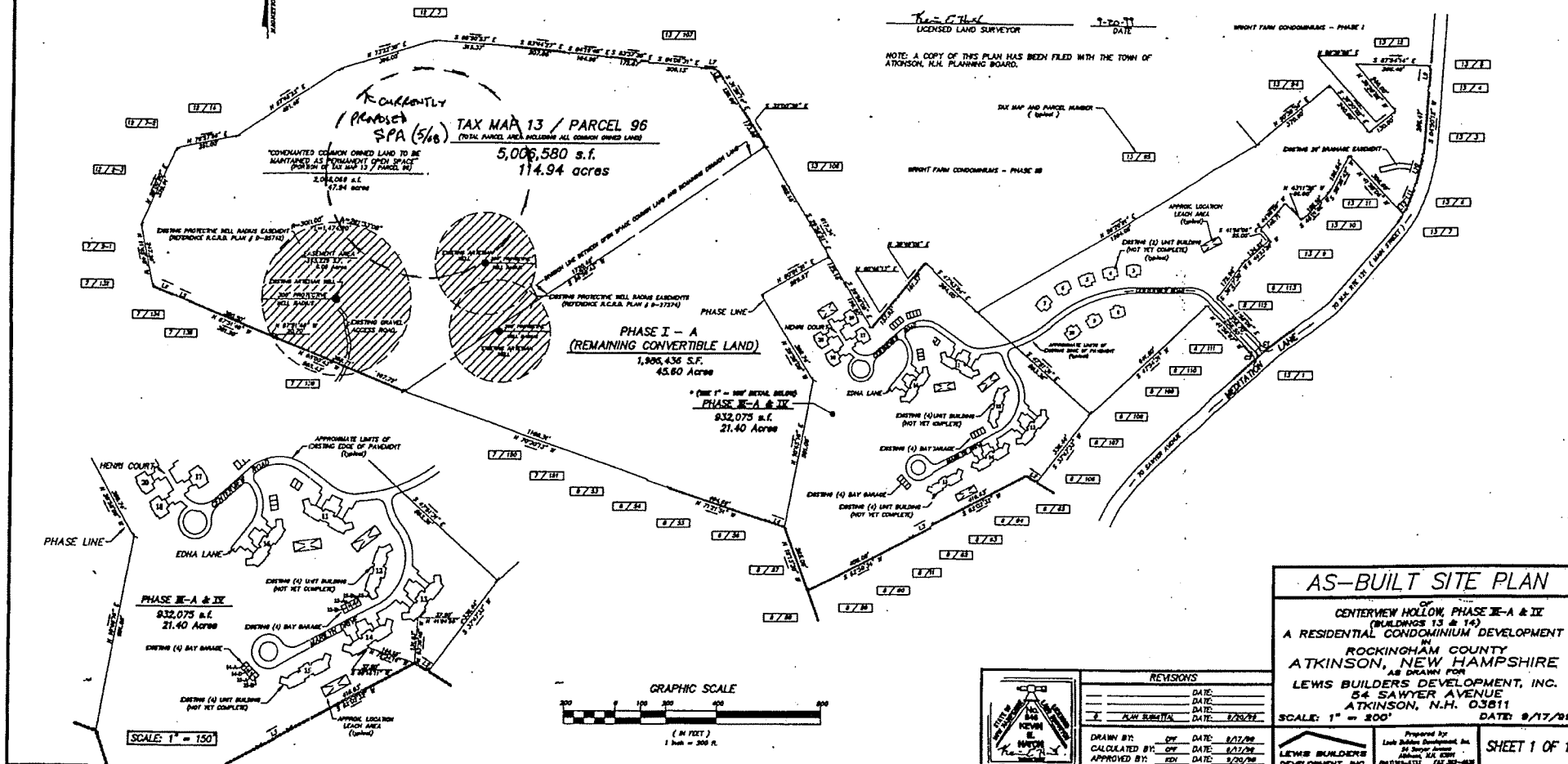
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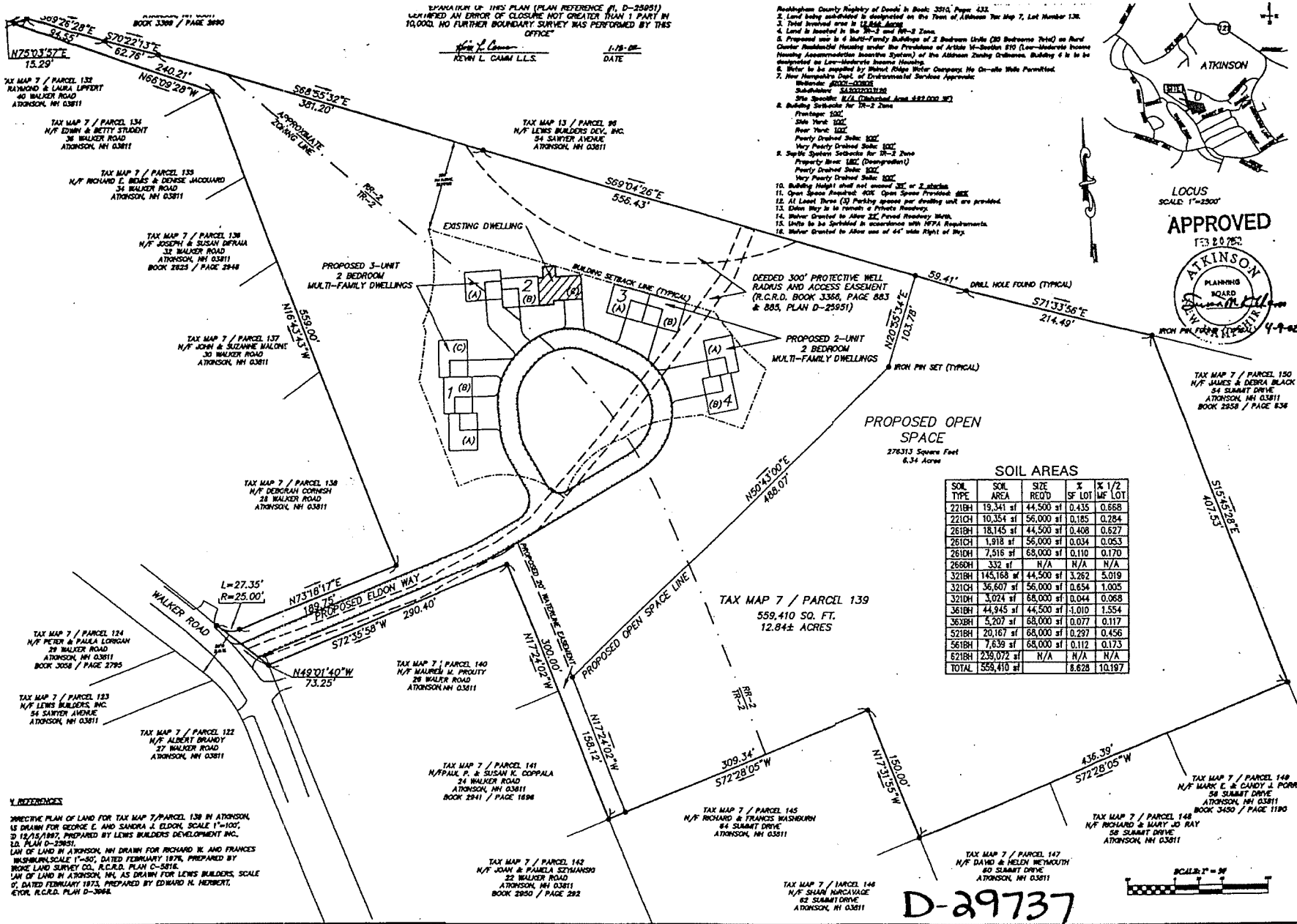


LINE	DATE	DESCRIPTION	AMOUNT	BALANCE
1	1/1	OPENING BALANCE	27.00	27.00
2	1/1	SALES	4.00	31.00
3	1/1	SALES	10.00	41.00
4	1/1	SALES	2.00	43.00
5	1/1	SALES	2.00	45.00
6	1/1	SALES	2.00	47.00
7	1/1	SALES	2.00	49.00
8	1/1	SALES	2.00	51.00
9	1/1	SALES	2.00	53.00
10	1/1	SALES	2.00	55.00
11	1/1	SALES	2.00	57.00
12	1/1	SALES	2.00	59.00
13	1/1	SALES	2.00	61.00
14	1/1	SALES	2.00	63.00
15	1/1	SALES	2.00	65.00
16	1/1	SALES	2.00	67.00
17	1/1	SALES	2.00	69.00
18	1/1	SALES	2.00	71.00
19	1/1	SALES	2.00	73.00
20	1/1	SALES	2.00	75.00
21	1/1	SALES	2.00	77.00
22	1/1	SALES	2.00	79.00
23	1/1	SALES	2.00	81.00
24	1/1	SALES	2.00	83.00
25	1/1	SALES	2.00	85.00
26	1/1	SALES	2.00	87.00
27	1/1	SALES	2.00	89.00
28	1/1	SALES	2.00	91.00
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49	1/1	SALES	2.00	133.00
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51	1/1	SALES	2.00	137.00
52	1/1	SALES	2.00	139.00
53	1/1	SALES	2.00	141.00
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55	1/1	SALES	2.00	145.00
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58	1/1	SALES	2.00	151.00
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61	1/1	SALES	2.00	157.00
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63	1/1	SALES	2.00	161.00
64	1/1	SALES	2.00	163.00
65	1/1	SALES	2.00	165.00
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67	1/1	SALES	2.00	169.00
68	1/1	SALES	2.00	171.00
69	1/1	SALES	2.00	173.00
70	1/1	SALES	2.00	175.00
71	1/1	SALES	2.00	177.00
72	1/1	SALES	2.00	179.00
73	1/1	SALES	2.00	181.00
74	1/1	SALES	2.00	183.00
75	1/1	SALES	2.00	185.00
76	1/1	SA		

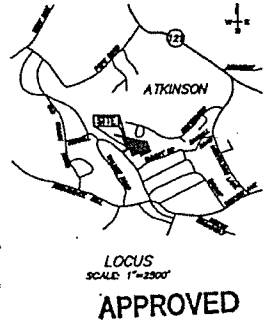
I FURTHER CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION
PUSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND
WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR
WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN.
SA 878.18, 19)

NOTE: A COPY OF THIS PLAN HAS BEEN FILED WITH THE TOWN OF
ATKINSON, N.H. PLANNING BOARD.





- Bedfordham County Registry of Deeds in Book 3315, Page 432.
- Land being subdivided is designated on the Town of Atkinson Tax Map 7, Lot Number 138.
 - Total involved area is 12.84± Acres.
 - Land is located in the R-2 and R-2.5 Zones.
 - Proposed use is 4 Multi-Family Buildings of 3 Bedroom Units (20 Bedrooms Total) on Rural Center Residential Zoning under the Provisions of Article 14-Section 810 (Low-Moderate Income Housing Accommodative Incentive System) of the Atkinson Zoning Ordinance. Building 4 is to be designated as Low-Moderate Income Housing.
 - Water to be supplied by Mutual Water Company. No On-site Water Permitted.
 - Power to be supplied by Atkinson Electric Company. No On-site Power Permitted.
 - Fire Department, Atkinson, NH.
 - Site Specific: N/A (Estimated Area 421,000 SF)
 - Building Setbacks for R-2 Zone:
 - Frontage: 100'
 - Rear Yard: 100'
 - Side Yard: 100'
 - Purely Drained Slope: 100'
 - Very Poorly Drained Slope: 100'
 - Property Lines: 100' (Overgrown)
 - Purely Drained Slope: 100'
 - Very Poorly Drained Slope: 100'
 - Building Height shall not exceed 35' or 2 stories.
 - Open Space: 100' (Open Space Provision)
 - At Least Three (3) Parking spaces per dwelling unit are provided.
 - Other Way to be Furnish a Private Roadway.
 - Water Granted to Allow 25' Paved Roadway Width.
 - Units to be Sited in accordance with NFPA Requirements.
 - Water Granted to Allow use of 44' wide Right of Way.



SOIL AREAS

SOIL TYPE	SOIL AREA	SIZE REQ'D	% OF LOT	% 1/2	% 1/2
271BH	19,341 sf	44,500 sf	0.435	0.668	
221CH	10,354 sf	56,000 sf	0.185	0.284	
261CH	18,145 sf	44,500 sf	0.408	0.627	
261CH	1,918 sf	56,000 sf	0.034	0.053	
261CH	7,515 sf	68,000 sf	0.110	0.170	
266DH	332 sf	N/A	N/A	N/A	
321BH	145,168 sf	44,500 sf	3.262	5.019	
321CH	36,607 sf	56,000 sf	0.654	1.005	
321DH	3,024 sf	68,000 sf	0.044	0.068	
361BH	44,945 sf	44,500 sf	1.010	1.554	
361BH	5,207 sf	68,000 sf	0.077	0.117	
521BH	20,167 sf	68,000 sf	0.297	0.456	
561BH	7,639 sf	68,000 sf	0.112	0.173	
621BH	239,072 sf	N/A	N/A	N/A	
TOTAL	1559,410 sf		8.628	10.197	

REFERENCES

PRELIMINARY PLAN OF LAND FOR TAX MAP 7, PARCEL 138 IN ATKINSON, IS DRAWN FOR GEORGE E. AND SANDRA J. ELDON, SCALE 1"=100', 10/15/1997, PREPARED BY LEWIS BUILDERS DEVELOPMENT INC., 12, PLAN D-29737.

PLAN OF LAND IN ATKINSON, NH DRAWN FOR RICHARD K. AND FRANCES WASHBURN, SCALE 1"=50', DATED FEBRUARY 1976, PREPARED BY BROOKS LAND SURVEY CO., R.C.R.D. PLAN C-5816.

PLAN OF LAND IN ATKINSON, NH, AS DRAWN FOR LEWIS BUILDERS, SCALE 1"=50', DATED FEBRUARY 1973, PREPARED BY EDWARD H. HENRIKSEN, EYOR, R.C.R.D. PLAN D-3068.

SUBDIVISION PLAN - BIRCHWOOD CONDOMINIUMS

Project Location: ELDON WAY, TAX MAP 7 / PARCEL 138, ATKINSON, NH

Prepared For: REDDY HOME BUILDERS, INC., 13 OLIVE WOODS ROAD, SALEM, NH 03079

Prepared By: M.C. Land Planning & Consulting, PO BOX 370, E. HAMPSHIRE, NH 03828, TAD/TEL/FAX (603) 382-8944

REVISIONS

NO.	DATE	DESCRIPTION
1	10/18/2000	FINAL APPROVAL
2	10/18/2000	FINAL APPROVAL
3	10/18/2000	FINAL APPROVAL
4	10/18/2000	FINAL APPROVAL
5	10/18/2000	FINAL APPROVAL
6	10/18/2000	FINAL APPROVAL
7	10/18/2000	FINAL APPROVAL
8	10/18/2000	FINAL APPROVAL
9	10/18/2000	FINAL APPROVAL
10	10/18/2000	FINAL APPROVAL

SCALE: 1" = 50'

DATE: 10/18/2000

DRAWN BY: RSB

SHEET 1 OF 5

D-29737

TITLE XLVIII CONVEYANCES AND MORTGAGES OF REALTY

CHAPTER 477 CONVEYANCES OF REALTY AND INTERESTS THEREIN

Conservation and Preservation Restrictions

Section 477:45

477:45 Definitions. –

I. A conservation restriction shall mean a right to prohibit or require, a limitation upon, or an obligation to perform, acts on or with respect to, or uses of, a land or water area, whether stated in the form of a restriction, easement, covenant or condition, in any deed, will, or other instrument executed by or on behalf of the owner of the area or in any order of taking, which right, limitation, or obligation is appropriate to retaining or maintaining such land or water area, including improvements thereon, predominantly in its natural, scenic, or open condition, or in agricultural, farming, open space or forest use, or in any other use or condition consistent with the protection of environmental quality.

II. A preservation restriction shall mean a right to prohibit or require, a limitation upon, or an obligation to perform, acts on or with respect to, or uses of, a structure or site historically significant for its architecture, archaeology or associations, whether stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the structure or site or in any order of taking, which right, limitation or obligation is appropriate to the preservation or restoration of such structure or site.

III. "Agricultural preservation restriction" means the restraint placed on the development rights of agricultural land whether stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land which is appropriate to retaining land or water areas predominantly in their agricultural use, to prohibit or limit construction or placement of buildings except those used for agricultural purposes or for dwellings used for family living by the land owner, his immediate family or employees; excavation, dredging or removal of loam, sod, peat, gravel, soil, rock or other mineral substance in such a manner as to adversely affect the land's future agricultural potential; or other acts or uses detrimental to such retention of the land for agricultural use.

Source. 1973, 391:1. 1979, 301:4, eff. Aug. 21, 1979.

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Zoning

Section 674:21-a

674:21-a Development Restrictions Enforceable. – Any open space designation or other development restriction which is part of a cluster development, planned unit development, village plan alternative subdivision, or other proposal approved under innovative land use controls, or which is lawfully imposed by a local land use board as a condition of subdivision, site plan, variance, or other type of approval, and which has been filed in the records of the local land use board in accordance with its established procedure, shall be deemed to create a conservation restriction as defined in RSA 477:45, I, which shall run with the land, and shall be enforceable by the municipality, or by the owner of any property which would be specially damaged by the violation of such restriction, regardless of whether any deed or other instrument conveying such restriction has been executed or recorded. For purposes of this section, an applicant's statement of intent to restrict development, submitted with or contained in an application which is subsequently approved, shall be deemed a condition of the approval.

Source. 1988, 149:3, eff. June 20, 1988. 2002, 236:3, eff. July 16, 2002.

HAMPSTEAD AREA WATER COMPANY

WELL OWNER RESPONSE POLICY - TOWN OF KINGSTON

(Three [3] Production Wells No. K-1, K-2, and K-3

Located at Bartlett Brook Condominium ["The Production Well(s)"])

Introduction and Summary of Policy

This Well Owner Response Policy (the "Policy") for Hampstead Area Water Company ("Hampstead") has been prepared for the protection of *Eligible Wells* located near Hampstead's *Production Wells* in Kingston, New Hampshire. As a general policy statement, should a *Well Owner* claim that the operation of a *Production Well* has *adversely impacted* his, her, or their *Eligible Well*, Hampstead will respond as if that *Well Owner* were a customer of Hampstead. In accordance with the procedures detailed in this Policy, Hampstead will promptly investigate, no later than seventy-two (72) hours after proper notification, and act in good faith to determine whether the operation of a *production Well* has *adversely impacted* such *Eligible Well* in the manner claimed. Hampstead will provide potable water for drinking and cooking purposes to the *Well Owner* within twelve (12) hours of notification and potable water for other domestic use, up to the *HUD Standard*, within forty-eight (48) hours of such notification. Hampstead will continue to provide such temporary water service throughout its investigation. If it is concluded that the operation of a *Production Well* is the source of the *Well Owner's* problem, Hampstead will take immediate measures to resolve the problem, as detailed in Section 4 of this Policy. Italicized words and phrases in this paragraph have specific meanings and are defined in Section 1 of this Policy.

WELL OWNER RESPONSE POLICY - TOWN OF KINGSTON

(Production Well No. K-1, K-2, and K-3)

This document sets forth the Well Owner Response Policy (the "Policy") of Hampstead Area Water Area Water Company ("Hampstead") for Eligible Wells (as defined below) located in the Town of Kingston.

1. DEFINITIONS. As used in this Policy, the following terms and phrases shall have the following meanings:

1.1 General Terms and Phrases.

- a. ***Construction Details*** shall mean the following construction characteristics of a Well: well depth, well location (bedrock or overburden), depth or well pump, capacity of well pump, type of casing ("open hole" of steel cased), and age.
- b. ***Drawdown*** shall mean the distance the Static Water Level of a Well is depressed due to man-made influences (measured in feet).
- c. ***HUD Pump Test*** shall mean a constant-rate pumping test, performed by a Licensed Pump Installer, using the pumping equipment existing in the subject Well at the time of the test, for a period of four (4) consecutive hours beginning at a withdrawal rate equal to the HUD Standard. If a Well cannot sustain a withdrawal rate equal to the HUD Standard, the pumping test will be repeated, following recovery, at a lower pumping rate (reduced in 1.0 gallon per minute increments) to determine the rate that such Well can sustain for a period of four (4) consecutive hours. The water level in the Well will be measured every fifteen (15) minutes during the pumping test.
- d. ***HUD Standard*** shall mean a flow rate of five (5) gallons of water per minute for a period of four (4) consecutive hours each day (equating to 1,200 gallons of water for said four-hour period), which is based on the present requirements of the United States Department of Housing and Urban Development for wells serving as a water supply for private domestic use.
- e. ***Interference Effects*** shall mean the influence, if any, of any Production Well located within a 500-foot radius of an Eligible Well.

- f. ***Licensed Pump Installer*** shall mean a pump installer certified and licensed by the State of New Hampshire to install pumps for Wells.
- g. ***LPI Report*** shall mean a written report issued by a Licensed Pump Installer.
- h. ***Monitoring Program*** shall mean the monitoring program described in Section 2 of this Policy.
- i. ***Residence*** shall mean a property used as a "Dwelling" as that phrase is defined under the Town of Kingston Zoning Ordinance.
- j. ***Seasonal Variation*** shall mean the natural fluctuation of the Static Water Level during the course of a year.
- k. ***Static Water Level*** shall mean the elevation, referenced to the National Geodetic Vertical Datum ("NGVD" commonly known as "sea level"), of the naturally occurring, non-pumping level of the groundwater in a Well at the time of measurement.

1.2 Well Related Terms and Phrases.

- a. ***Well*** shall mean a hole or shaft sunk into the earth to observe, sample, or withdraw groundwater.
- b. ***Residential Well*** shall mean a Well which serves a Residence.
- c. ***Eligible Well(s)*** shall mean, individually and/or collectively as the context may require, a Residential Well existing on or before January 1, 2000, on one of the parcels of land listed on Schedule A attached hereto and incorporated herein by reference.
- d. ***Replacement Well*** shall mean a Well constructed after January 1, 2000, during the term of this Policy which replaces an Eligible Well.
- e. ***Production Well(s)*** shall mean, individually and/or collectively as the context may require, the following Production Wells owned by Hampstead (i) Production Wells No. K-1, K-2, and K-3, located on premises situate in Kingston, New Hampshire, and described in the Town of Kingston tax records as "Tax Map R-7/Parcel 7."

- f. **Test Well(s)** shall mean, individually and/or collectively as the context may require, the following Wells to be monitored during the Monitoring Program: (i) the Production Wells, and (ii) the Eligible Wells.
- g. **Well Owner(s)** shall mean, individually and/or collectively as the context may require, the owner(s) of an Eligible Well. If a Well Owner elects not to participate in the Monitoring Program pursuant to Paragraph 2.7, below, his, her, or their Well will no longer be considered an Eligible Well for purposes of this Policy.

1.3 **Yield Related Terms and Phrases.**

- a. **Yield** shall mean the amount of water a Well can produce for a given period of time, based upon: (i) the Static Water Level of such Well, taking into consideration Seasonal Variation, (ii) the Construction Details of such Well, and (iii) Interference Effects, all at the time of measurement.
- b. **Residential Yield** shall mean the Yield of a Residential Well, as determined by a HUD Pump Test.
- c. **Existing Residential Yield** shall mean the Residential Yield that an Eligible Well would have continued to achieve at any given point in time during a calendar year, which may fluctuate depending on Seasonal Variation and Interference Effects, but for the operation of the Production Wells.
- d. **Pre-Pumping Yield** shall mean the first determination of Residential Yield for an Eligible Well, based upon a HUD Pump Test conducted prior to the time the Production Wells commence operation.
- e. **Residential Yield Report** shall mean a written report issued by a Licensed Pump Installer or other duly qualified expert which presents the results of a HUD Pump Test.
- f. **Adverse Impact**, whether used as a noun or an adverb, shall mean or refer to a reduction in the Static Water Level of an Eligible Well, taking Seasonal Variation and Interference Effects into consideration, to an elevation which causes the Residential Yield of such Eligible Well to fall below its Existing Residential Yield

2. Determination of Construction Details, Pre-pumping Yield, Seasonal Variation, and Interference Effects; Monitoring Program..

2.1 Monitoring Period. Prior to and during the operation of the Production Wells for the period set forth below, Hampstead at Hampstead's expense, shall establish and maintain a Monitoring Program with respect to the Test Wells to evaluate the Static Water Level table in the vicinity of the Production Wells. The Monitoring Program shall begin on the date either the Town of Kingston or the New Hampshire Public Utilities Commission ("PUC") enters a final order in any proceeding instituted by Hampstead concerning the Production Wells under NH RSA 674:30, and shall continue for a period of two (2) years from the date Hampstead first commences regular operation of a Production Well, during which time Hampstead shall integrate the Production Wells into its water system and manage the water system in Hampstead's usual and customary manner. At the end of said two (2) year period, this Policy shall terminate unless the Town of Kingston shall have petitioned the PUC for an order to modify this Policy.

2.2 Determination of Construction Details and Pre-pumping Yield. At the commencement of the Monitoring Program, Hampstead will obtain, with the assistance of the applicable land owners, the Construction details for all Eligible Wells and, at Hampstead's sole cost and expense, will conduct a HUD Pump Test with respect to each Eligible Well to determine the Pre-pumping Yield thereof and prepare a Residential Yield Report with respect to such pump test.

2.3 Determination of Interference Effects. The Interference Effects with respect to Eligible Wells shall be determined at the time the pump test to determine Pre-pumping Yield is being conducted with respect to such Wells by measuring the Drawdown in other Wells within 500 feet of an Eligible Well during such pump test. The largest change in this Drawdown recorded during such determination of Pre-pumping Yield shall be accepted as the value of the Interference Effects of other Wells with respect to such Eligible Well.

2.4 Measurement of Static Water Level. Hampstead will measure the Static Water Level of all Test Wells until the termination of the Monitoring Program as follows:

With respect to the Eligible Wells listed on Schedule A attached hereto and incorporated herein by reference, Hampstead will measure the Static Water Level of such Eligible Wells monthly measurements for the first six (6) months of the Monitoring Program and quarterly measurements thereafter until the termination of the Monitoring Program.

With respect to all other Test Wells, Hampstead will measure the Static Water Level of such Test Wells quarterly until the termination of the Monitoring Program.

Measurements with respect to Eligible Wells will be taken at the beginning of each month or quarter, as applicable, in accordance with a pre-determined schedule.

2.5 Determination and Evaluation of Seasonal Variation in Static Water Levels of Eligible Wells. The natural fluctuations of the Static Water Level in the Eligible Wells shall be based upon fluctuations in the Static Water Level of the bedrock Eligible Wells. The evaluation of the impact, if any, of a Production Well on Seasonal Variation shall be made by evaluating the data from test results on the basis of the "t-variable" statistical method, which is calculated by subtracting the mean of the data from each data point and then dividing this difference by the standard deviation of the data (mean and standard deviation shall be recomputed each time a new data point is available)

2.6. Water Quality. Hampstead will take appropriate decontamination measures each time it takes water samples or measurements involving downhole equipment from the Test Wells in accordance with recognized industry standards. In addition, Hampstead will perform bacterial testing before and after conducting any test to determine the Residential Yield of an Eligible Well.

2.7 Waiver of Right to Participate in Monitoring Program. At the commencement of the Monitoring Program, Hampstead will send a letter to each Well Owner extending the opportunity to participate in the Monitoring Program and to be governed exclusively by this Policy. A Well Owner's failure to execute and return such letter to Hampstead, which affirmatively indicates an election to participate in the Monitoring Program and to be governed exclusively by this Policy, by the deadline set forth therein, shall constitute a waiver of any obligation by Hampstead under this Policy to such Well Owner.

2.8 Replacement Wells. At the time a Replacement Well is installed, the Well Owner shall conduct a HUD Pump Test, at the Well Owner's sole cost and expense, to determine the initial Residential Yield of such Replacement Well, and provide a copy of the Residential Yield Report to Hampstead.

3. Claims Procedure.

3.1 Claim Requirements. In the event a Well Owner claims that the operation of a Production Well has adversely impacted his, her, or their Well (a "Claimant"), such Claimant must submit an LPI Report prepared at the Claimant's sole cost and expense which (i) evaluates the physical condition of such Well and appurtenant equipment, and (ii) includes a Residential Yield Report with respect to the Residential Yield of such Well at the time of the Claimant's complaint.

3.2 Evaluation of Claims/Hampstead's Obligations. Hampstead will have no obligation to respond to a Claimant's complaint until such Claimant submits to Hampstead an LPI Report which establishes that (i) equipment failure, well casing deterioration, and/or

inferior Well construction is not the source of the Claimant's problem, and (ii) the Yield of such Eligible Well is below its Existing Residential Yield. As used in this Policy, "inferior Well construction" shall mean any manner of improper Well construction except improper Well depth. Upon the submission of the evidence described in this Section 3, Hampstead shall respond in the manner set forth in Section 4, below.

4. Response policy. Upon satisfaction of the conditions precedent set forth in Section 3, above, Hampstead will respond as follows:

4.1 As promptly as possible, and in no case more than twelve (12) hours after receipt of the evidence described in Section 3, above, Hampstead, at Hampstead's expense, will provide potable water for drinking and cooking purposes to the Well Owner.

4.2 As promptly as possible, and in no case more than forty-eight (48) hours after receipt of the evidence described in Section 3, above, Hampstead, at Hampstead's expense, will provide potable water for other domestic uses in an amount up to the HUD Standard, and will continue to provide such water service to the Well Owner until (i) Hampstead restores the Yield of the subject Eligible Well to the Existing Residential Yield in accordance with Paragraph 4.4.a., below, or (ii) the Well Owner accepts the findings of Hampstead as determined in accordance with Paragraph 4.4.b., below, or (iii) the conclusion of the arbitration process conducted in accordance with Section 5, below.

4.3 Within seventy-two (72) hours after receipt of the evidence described in Section 3, above, Hampstead will inspect the subject Eligible Well with such experts as Hampstead determines to be necessary in its discretion.

4.4 Within thirty (30) days after receipt of the evidence described in Section 3, above, Hampstead will determine whether or not the operation of a Production Well has adversely affected the subject Eligible Well, and will render a written decision to the Well Owner with respect to its findings.

a. If Hampstead determines that the operation of a Production Well has adversely impacted such Eligible Well, Hampstead will reimburse the Well Owner for any fees and expenses incurred in connection with the LPI Report commissioned by the Well Owner, will immediately fashion a remedy appropriate to the situation, at Hampstead's expense, from those described below; such remedies will be typically, but not necessarily, exercised in the following order, to provide such Well Owner with a Residential Yield at least equal to the Existing Residential Yield:

(1) Hampton will first reset the pump in such Eligible Well to a greater depth, but no closer than twenty (20) feet from the bottom of the Well, if such remedy is applicable to the situation.

(2) If such action does not restore the Residential Yield of such Eligible Well to the Existing Residential Yield, Hampstead will install a larger capacity pump, if such remedy is applicable to the situation.

(3) If such action does not restore the Residential Yield of such Eligible Well to the Existing Residential Yield, Hampstead will deepen the Eligible Well, if such remedy is applicable to the situation.

(4) If such action does not restore the Residential Yield of such Eligible Well to the Existing Residential Yield, Hampstead will drill a new Well which provides a Residential Yield at least equal to the Existing Residential Yield in a location mutually agreed upon by Hampton and the Well Owner; provided, however, that the Well Owner may, by private agreement with Hampstead, accept the current improvements and not require the drilling of a new Well.

(5) If a new Well (as described in Paragraph 4.4.a.(4), above) does not have a Residential Yield which satisfies the Existing Residential Yield, Hampton will install all necessary capital facilities to provide water to the Well Owner; provided however, that the Well Owner may, by private agreement with Hampstead, accept the current improvements and not require the installation of facilities to connect to Hampton's water distribution system. In the event that the Well Owner connects to Hampstead's water distribution system, the Well Owner will be responsible to pay for all water thereafter provided by Hampstead to the Well Owner at the rate set forth in, and in accordance with, the tariffs approved by the PUC for Hampton's customers, as the same may be modified or replaced from time to time (the "Tariffed Rate").

b. If Hampstead concludes that the operation of a Production Well is not the source of the Well Owner's problem, Hampstead's obligation to provide temporary water service shall not terminate until the Well Owner accepts Hampstead's findings or until the conclusion of the arbitration process conducted in accordance with Section 5, below. Upon the Well Owner's acceptance of Hampstead's findings or upon the conclusion of the arbitration process, Hampstead's obligation to provide temporary water service shall immediately terminate. If the arbitration process results in a judgment in favor of Hampstead, the Well Owner shall reimburse Hampstead for all water provided during the period of the arbitration process at the Tariffed Rate(s) in effect during such period.

5. Arbitration of Disputes. Any dispute between Hampstead and a Well Owner arising out of Hampstead's construction or application of this Policy shall be submitted to arbitration in Rockingham County, New Hampshire, before an arbitrator who has at least ten (10) years

experience as an arbitrator and who is otherwise mutually acceptable to Hampstead and the Well Owner who is a party to the dispute. In the event such Well Owner and Hampstead are unable to agree upon a single arbitrator, the dispute shall be decided by a single arbitrator appointed by the Rockingham County Superior Court. Hampstead shall file all necessary pleadings, at its expense, to secure the appointment of such arbitrator. Except as expressly set forth herein, such arbitration shall be conducted in accordance with the commercial arbitration rules of the American Arbitration Association. The decision of the arbitrator, made as soon as practicable after submission of the dispute, which shall be set forth in a written opinion and based on appropriate scientific principles, and on applicable law and judicial precedent, shall be binding upon the parties and shall be enforceable as follows: within thirty (30) days of the issuance of such written decision, either party may apply to a court of competent jurisdiction for an order confirming, modifying, or vacating the decision, and upon such application that court shall have the power to review whether, as a matter of law, based on the findings of fact by the arbitrator, the decision should be confirmed, modified, or vacated in order to correct any errors of law made by the arbitrator. If the arbitration process results in a judgment in favor of the Well Owner, Hampstead shall bear all costs associated with the arbitration (except attorneys' fees incurred by the Well Owner). If the arbitration process results in a judgment in favor of Hampstead, Hampstead and the Well Owner shall equally share all costs associated with the arbitration (except attorneys' fees). At all times, each party to the arbitration shall be responsible for its own attorneys' fees.

6. Status of Legal Representatives, Successors, and Assigns. The benefits and burdens of this Policy shall inure to the benefit of and be binding upon the respective legal successors and assigns of Hampstead and the Well Owner.

SCHEDULE A

KINGSTON

1. Ernest G. & Donna L. Wakeman, Tax Map R-7/Lot 8
2. Stanley D. & Anita G. Peterson, Tax Map R-6/Lot 22
3. Ralph H. & Phyllis M. Maxwell, Tax Map Lot R-6/Lot 21

HAMPSTEAD

1. Kevin L. & Barbara W. Camm, Trustees, Tax Map 19/Lot 9
2. Renee M. Price, Tax Map 19/Lot 10

June 19, 2008

Christine Bowman
NHDES
P.O. Box 95, 29 Hazen drive
Concord, NH 03302-0095

RE: **HAWC Preliminary Large Groundwater Permit - Atkinson NH**

Dear Christine:

This letter is to follow up on some of the concerns which I have previously voiced concerning the referenced permit application. Obviously my primary area of concern is with the Midpoint Well Field which has been previously developed without my knowledge near my property. The applicant is proposing to expand upon this installation as part of the present permit application.

During the course of reviewing the location of the Midpoint Well Field I have discovered what appear to be significant violations of the Atkinson Zoning Ordinance. Attached is a copy of correspondence which I have provided to the Town of Atkinson outlining my concerns. Should these concerns prove to be valid I do not feel the applicant can claim legal control over the land upon which the Sanitary Protective Areas are located. As you probably know, per Env-Dw 302.06 (k), "Documentation of legal control of the sanitary protective area shall be provided in the final report". If the applicant has taken control over the land in violation of the Atkinson Zoning Ordinance I do not believe the water company is there legally.

I understand that the applicant being a NH Public Utility could petition the PUC for an exemption from compliance with local zoning regulations. Should this occur, and the exemption is granted, I still do not think this will provide the applicant with the required legal control over the Midpoint Well Field land. It appears the attached provisions of the Centerview Hollow Condominium documents require that the applicant comply with the Town of Atkinson's Zoning Ordinances in order to be legitimately occupying the condominium's land. I do not believe the PUC can override these private contractual provisions through their exemption process.

Admittedly I am not fully knowledgeable with respect to the powers of the PUC but I also believe there may be an issue with the fact that the Midpoint Well Field land was set aside as "Open Space" as part of a Cluster Development, thus is under a conservation restriction per NH RSA 477:45. In my opinion the use of this land is not consistent with the protection of environmental quality. I recall reading in the E&G Application that the withdrawal may have a negative effect on the surrounding wetlands and most likely will cause reduced stream flows within the zone of contribution. If these effects do not show up during the testing process they will most likely become increasingly apparent over time. It also appears this water is being withdrawn in part to facilitate significant additional development elsewhere in town which is certainly not consistent

with environmental quality. The land currently contains several pump houses, newly constructed access roads, utility poles, clear cut areas, and wells. It also required a dredge and fill permit to gain access to the Pine Island where the production wells are located. Essentially this "Open Space" land has been developed into a community water system's source production area exclusively. As I understand the development restrictions on this land are enforceable per NH RSA 674:21-a. Again I believe this would preclude the applicant from claiming "legal control" over the land. I am not sure the PUC has the authority to override State Laws. Based on the NH Administrative Rules it appears the issue of legal control over the land on which the SPA's are located will need to be sorted out by the NHDES prior to the permit being granted. I recommend this be done sooner rather than later in the permit application process since in my opinion there appears to be some question as to the legality of the Water Company occupying this "Open Space" land.

Many of the above comments may also pertain to the other two Well Fields which also have been developed in the "Open Space" of Cluster Developments in town. Unfortunately due to time constraints and the fact that the application includes three well fields, I have only been able to focus on the one which has the most direct influence on my property.

In a more general context I present the following comments for your review:

It appears that the water company is requesting permits for an excessive amount of water based on the past history of their operations. Table II of the application indicates that they have been able to meet the needs of their 1067 service connections adequately with a permitted production volume of 425 gpm. Under this permit application they are requesting an additional permitted volume of 450 gpm (875 gpm total). How does adding 395 future service connections (37% increase from current) equate to greater than a 200% permitted capacity increase? If it is redundancy that they are looking for than I think it is only fair to provide the surrounding water users with the same redundancy. This could probably be accomplished through increasing the pumping rates during the withdrawal testing process.

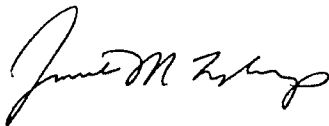
1) I am concerned that the recharge rate of the Midpoint Well Field would not be able to support the combination of the three existing wells @ 118.5 gpm and the proposed 150 gpm well. The existing wells should be decommissioned or the withdrawal test should be run with all wells as part of the program if all four wells are ever allowed to operate simultaneously. Please indicate how the use of the emergency backup wells will be controlled?

2) The application does not provide specifics as to exactly how the discharge water from the Midpoint Well Field will be prevented from influencing the surrounding wetlands surface water levels. I think it is critical to review the proposed plans for discharge outlet location to assure it does not back feed the wetlands area thus providing false results. I would like to see the proposed plan for the discharge set up. Will someone from the NHDES be monitoring the discharge location and methodologies?

3) Although not directly stated in the application the majority of the 395 new service connections are related to the proposed Atkinson's Heights Project (388 units) being developed by the parent company of the HAWC, Lewis Builders. This raises serious conflict of interest concerns in my mind with the builder and the water company being one in the same. How is this viewed by the NHDES?

4) Attached is a partial copy of the Water Rights Deed and Easements that Lewis Builder's granted to the HAWC. Perhaps coincidentally this was executed immediately following the Town's approval of the Centerview Hollow Condominiums Site Plan. The approved site plan does not show any of the wells or pump houses in the Open Space nor does it even show a proposed access road to the Pine Island. If the Groundwater in NH is in the Public Trust can the water company legally strip all the water away from a parcel of land being developed into a condominium? This deed seems to violate the premise that no one owns the groundwater and that all are entitled to Reasonable Use. I was under the impression that Reasonable Use related to utilizing the groundwater on one's overlying land and not transporting it from one's land to another? In other words under the American Rule -Reasonable Use -"lift" is prohibited Perhaps this would be different if the land was taken through eminent domain by the municipality.

Thank you in advance for your consideration of these important concerns. Please keep me informed of any decisions in regard to these issues. I look forward to receiving a response from the NHDES.



Jonathan M. Longchamp
15 Bittersweet Lane
Atkinson, NH 03811
(603) 362-8929 (home) (978) 682-1748 ext. 117 (work)

Enclosures: As noted

B3227 P0564

Schedule "A" To Public Offering Statement

APPENDIX "D(1)"

DECLARATION OF CONDOMINIUM
FOR
CENTERVIEW HOLLOW CONDOMINIUMS

This DECLARATION is made this 18 day of July, 1997, by
LEWIS BUILDERS DEVELOPMENT, INC., a New Hampshire Corporation (hereinafter
sometimes called "*Declarant*"), for the purposes of submitting certain property to
condominium use and ownership in accordance with the provisions of The New Hampshire
Condominium Act, New Hampshire RSA Chapter 356-B ("*The Act*");

WHEREAS *Declarant* owns a certain tract of land, with the improvements
heretofore or hereafter constructed thereon, located on Meditation Lane in the Town of
Atkinson, County of Rockingham, State of New Hampshire on which it proposes to construct
certain buildings containing a maximum total of fifty-two (52) two (2) bedroom
condominium dwelling *Units* in single and multifamily *Units* with parking areas, which
Declarant intends as a condominium project known as Centerview Hollow Condominiums
(hereinafter sometimes called "*The Condominium*"); and

WHEREAS *Declarant* intends to sell and convey *Units* in *The Condominium*,
subject to certain mutually beneficial restrictions, covenants, conditions, equitable servitude,
and charges which it desires to impose thereon under a general plan of improvement of *The
Condominium* for the benefit of all of said living *Units* and the future *Owners* thereof;

NOW THEREFORE, *Declarant* hereby declares that all of the premises described
in Exhibit "A" (*Deed Description*) attached hereto, including all of the living *Units* and other
improvements located and to be located thereon, and all easements, rights, and appurtenances
belonging thereto are hereby submitted to the provisions of *The Act* and are held, and shall
be held, conveyed, encumbered, leased, used, occupied, and improved subject to the
following restrictions, covenants, conditions, uses, limitations, and obligations, all of which
are declared, intended, and agreed to enhance and protect the value and desirability of *The
Condominium* as a whole and to mutually benefit each of the servitude upon each of said
Units in favor of each and all other *Units* therein; to create reciprocal rights and privity of
contract and estate between all persons acquiring or owning an interest in any of said *Units*,
including *Declarant*, and its grantees, heirs, devisees, successors, and assigns, and shall be
deemed to run with the land and be a burden and benefit to all such persons, including
Declarant, its grantees, heirs, devisees, successors, and assigns.

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ROCKINGHAM COUNTY
REGISTRY OF DEEDS

ARTICLE 1
DEFINITIONS

B3227 P0565

NEW HAMPSHIRE RSA: 356-B 3:

- 1-0. Certain of the *Terms* as used in this Declaration and in the Bylaws which are annexed hereto as Schedule "B" and are made a part hereof, are defined and shall have meaning as follows, unless the context clearly indicates a different meaning therefor:
- 1-1. "*The Act*" means the New Hampshire Condominium Act (RSA Chapter 356-B).
- 1-2. "*Additional Land*" - Not Applicable.
- 1-3. "*Amendment*" means any amendment to this Declaration whereby any sub-phase is contained within the convertible land is submitted to, and becomes part of *The Condominium*, or typographical errors hereto are corrected, or any other permitted change to this Declaration is made.
- 1-4. "*Assessment*" means that portion of the cost of maintaining, repairing, and managing the property which is to be paid by each *Owner*.
- 1-5. "*The Association*" or "*Association of Owners*" means the Owners acting as a group in accordance with *The Act*, the Declaration, and the Bylaws of the Centerview Hollow Condominiums Unit Owners Association.
- 1-6. "*The Board*" or "*Board of Directors*" means the executive and administrative entity designated in this Declaration, the Articles of Agreement, or by Bylaws of *The Association* as the governing body of *The Association*.
- 1-7. "*Bylaws*" means the instrument attached hereto as Schedule "B" and made a part hereof, which instrument provides for the self-government of *The Condominium* by *The Association*.
- 1-8. "*Common Areas*" means all that portion of *The Condominium*, other than the *Units*, and is more particularly described in Article 2 hereof. *Common Area* includes *Limited Common Area* and *Open Space Areas* as shown on the *Site Plan*, and is described by metes and bounds in Exhibit "A-1," as may be amended from time to time.

B3227 P0572

(semis) commercial vehicles, snowmobiles, or other such personal property shall be stored in the *Common Area*, unless and except to the extent a specific storage area is designated by *The Association*. Nothing shall be altered, constructed in, or removed from the *Common Area* without the prior written consent of *The Board*.

2-7-3. No noxious or offensive use shall be made of any part of *The Condominium*, and nothing shall be done therein which is or will become an annoyance or nuisance to other *Owners*. No use shall be made of any part of *The Condominium* which shall constitute a fire hazard or which will result in the cancellation of insurance on any part of *The Condominium*, or which is in violation of any law, ordinance, or governmental regulation applicable thereto. No use shall be made of any part of *The Condominium* which will increase the rate of insurance on the *Common Area* without the prior written consent of *The Board*.

2-7-4. No signs (except as provided in Paragraph 2-7-6 below), clothes lines, television antennas, refuse or loose clothing or similar material or equipment shall be hung, posted, or otherwise so placed as to be within the public view or within the view of other *Owners* without the prior written consent of *The Board*.

2-7-5. No animals, livestock, or poultry, except one (1) domesticated household pet, consisting of either one dog or one cat, shall be kept anywhere within *The Condominium*. Fish aquariums not in excess of twenty (20) gallons are exempt.

2-7-6. *The Condominium* shall be governed by *The Association* and administered by *The Association's Board of Directors*. Each *Owner* shall be a member of *The Association*. The membership of *The Association* shall consist of all the *Owners*. The administration, powers, and duties of *The Association* and its *Board of Directors* shall be as contained within this Declaration and the Bylaws of *The Association*.

Declarant shall be deemed to be the *Owner* of any *Units* not sold by *Declarant* and *Declarant* and its representatives and assigns may make such use of such unsold *Units* and of the *Common Area* as may facilitate such sale, including, without limiting the generality of the foregoing, the maintenance of a sales office, the showing of the property and the displaying of signs; however, all of the foregoing shall not substantially interfere with the use of the *Units* by the respective *Owners*.

B3227 P0592

- (2) In the event an *Institutional Lender*, or other purchaser of a *Unit*, obtains title to such *Unit* as a result of foreclosure by the *Institutional Lender*, or if an *Institutional Lender* accepts a deed to such *Unit* in lieu of foreclosure, the person or entity so acquiring title shall not be liable for any *Assessments* by *The Association* pertaining to such *Unit*, or chargeable to the former *Owner* which became due prior to acquisition of title as a result of the foreclosure or deed in lieu of foreclosure. Such unpaid *Assessments* shall be deemed to be *Common Expenses* collectible from all of the *Owners* including the person or entity acquiring title.
- (3) No person who acquires an interest in a *Unit*, except through foreclosure by an *Institutional Lender*, or the acceptance by an *Institutional Lender* of a deed in lieu of foreclosure, (including, without limitation, persons acquiring title by operation of law, including purchasers at judicial sales), shall be entitled to occupancy of the *Unit* or enjoyment of the *Common Area* until such time as all unpaid *Assessments* due and owing by the former *Owner* have been paid. *The Association* shall have the right to assign its claim for the recovery of any unpaid *Assessments* to *Declarant*, or to any *Owner* or group of *Owners*, or to any third party.

- 10-4-1. **Limitation upon Liability of the Association.** Notwithstanding the duty of *The Association* to maintain and repair parts of *The Condominium*, *The Association* shall not be liable for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by *The Association*.

ARTICLE 11
COVENANTS REGARDING OPEN SPACES

- 11-1. **Limitations on Use.** *Declarant* on behalf of itself and its successors in interest and *The Association* covenant that those "*Open Spaces*" as are set forth on the *Site Plan*, are and shall forever be and remain subject to the following restrictions:

- A. such reasonable *Rules and Regulations* as may from time to time be promulgated by *The Association* for their use;

B3227 P0593

- B. such improvements by *Declarant* and/or *The Association* to the extent, such improvements do not detract from the intent and purpose of "Permanent Open Space" provisions of the Town of Atkinson Zoning Ordinance;
- C. such uses as shall from time to time be permitted for "Permanent Open Space" by the Town of Atkinson Zoning Ordinance;
- D. No improvements shall be constructed within any "Well Radius Protective Easement," if any, as may be shown on any *Site Plan* which would violate the Rules, Regulations, standards, or requirements of the New Hampshire Water Supply and Pollution Control Commission or its successor agency. These restrictions and covenants may be enforced by:
 - (i) any *Unit Owner*;
 - (ii) *The Association*;
 - (iii) the State of New Hampshire; or
 - (iv) the Town of Atkinson.

ARTICLE 12
WAIVER

- 12-1. **No Waiver.** The failure of *The Board* to insist, in any instance, upon the strict performance of any of the terms, covenants, conditions, or restrictions of this Declaration or of the Bylaws, or to exercise any right herein or therein contained, or to serve any notice, or to institute any action, shall not be construed as a waiver or a relinquishment in the future of such term, covenant, condition, restriction, or right shall remain in full force and effect. The receipt by *The Board* of payment of any *Assessment* from an *Owner* with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach and no waiver by *The Board* of any provision hereof shall be deemed to have been made unless expressed in writing and signed by *The Board*.

03227 P0596A

- 16-3. Water Easement. *Declarant* reserves to itself and its affiliate and Walnut Ridge water Co., Inc., a New Hampshire Corporation with offices at 54 Sawyer Avenue, Atkinson, New Hampshire 03811, and in common with *The Association* the right and easement to drill wells, lay pipes and mains, install pumps and pump houses, valves and other equipment on, in, and under the *Common Area*, as it, in its sole discretion deems appropriate for the purposes of pumping, operating, and maintaining a water supply system to sell and supply water to *The Condominium* and to others off-site and without *The Condominium*; and the right to enforce all well protective easements as now or in the future shown on approved *Site Plan* shall be deemed to be included in this reservation.
- 16-4. Renewal of Management or Other Agreement. If entered into during the period of control contemplated by this ARTICLE 16, no Management Agreement, or any other contract or lease executed by or on behalf of *The Association*, its *Board of Directors* or the *Owners* as a group shall be binding after such period of control unless then renewed or ratified with the consent of *Owners of Units* to which a majority of the votes in *The Association* appertain.

ARTICLE 17 TERMINATION OF CONDOMINIUM

NEW HAMPSHIRE RSA 356-B:33:

- 17-1. Termination Prior to Conveyance of a Unit. Prior to the conveyance of a *Unit* to an *Owner* other than *Declarant*, *The Condominium* may be terminated at any time by an instrument in writing signed by *Declarant*.

NEW HAMPSHIRE RSA 356-B:34:

- 17-2. (1) Termination After Conveyance of A Unit - Required Vote. Subsequent to the conveyance of a *Unit* to an *Owner* other than *Declarant*, *The Condominium* may be terminated only by an instrument in writing approved and agreed to by *Owners of Units* to which four-fifths (4/5) of the voting power in *The Association* appertain.

BK 3340 PG 2587
ORIGINAL

WATER RIGHTS
DEED AND EASEMENTS


KNOW ALL MEN BY THESE PRESENTS, that LEWIS BUILDERS DEVELOPMENT, INC., a New Hampshire Corporation with offices at 54 Sawyer Avenue, Atkinson, Rockingham County, New Hampshire 03811 ("*Grantor*") GRANTS TO WALNUT RIDGE WATER CO., INC., a New Hampshire Corporation with offices at 54 Sawyer Avenue, Atkinson, Rockingham County, New Hampshire 03811 ("*Grantee*") with QUITCLAIM COVENANTS the following interests in land situated in Atkinson, Rockingham County, New Hampshire, as set forth on Exhibit "A" hereto.

I. WATER RIGHTS:

The right and title to all ground and bedrock water in, on, or that may be produced from all of the land shown on Exhibit "A" ("*The Premises*"); together with:

II. EASEMENT FOR ACCESS TO CONSTRUCT WATER WELLS AND WATER SYSTEM AND FACILITIES:

The right and easement for the full right of ingress and egress over upon and across so much of *The Premises* as is reasonably necessary for the purpose of exploring for such and for drilling wells or producing the same and for storing and removing the same when so produced. This right of ingress and egress shall include the right to make and use of so much of the surface of the land described and shown on *The Plan* as Common Owned Land and Open Space Common Owned Land, as may be reasonably incident or convenient to any exploration, development, storage or production, including drilling of water wells and the erection of pipe lines, storage tanks, pumps, pump houses, and other surface structures incident or convenient to such production, storage or removal of water from *The Premises*. All such structures, material, machinery or equipment placed upon the property by *Grantee* or anyone claiming under it may be removed by *Grantee* or those claiming under them at any time; together with:

STATE OF NEW HAMPSHIRE			
DEPARTMENT OF REVENUE ADMINISTRATION			REAL ESTATE TRANSFER TAX
XX THOUSAND XX HUNDRED AND 40 DOLLARS			
MO.	DAY	YR.	AMOUNT
11	29	83	50767
			\$40.00
VOID IF ALTERED			

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ROCKINGHAM COUNTY
REGISTRY OF DEEDS

BK 3340 PG 2588

III. RIGHT TO SECURE FACILITIES AND CONTROL ACCESS:

The right to fence-off and otherwise secure all such water wells, pumping and storage facilities and to control access thereto as may be reasonably necessary to protect and preserve the quality of water so provided and stored and to prevent the interruption of supply of water; together with:

IV. RIGHT AND EASEMENT TO ENFORCE PROTECTIVE WELL RADIUS EASEMENTS:

The right and easement to enforce all well protective easements now or hereafter created on *The Premises* as may be shown on any site plan as shall be recorded in the Rockingham registry of Deeds, or as the same may be amended or revised from time to time; together with:

V. THE RIGHT AND EASEMENT TO CONSTRUCT, RECONSTRUCT, REPAIR, MAINTAIN, AND OPERATE A WATER DISTRIBUTION SYSTEM, FACILITIES AND SYSTEM:

The right and easement to lay, construct, maintain and operate pipe lines, valves, "hookups" and meters for the supply of domestic water to the "Centerview Hollow Condominiums," Atkinson, Rockingham County, New Hampshire, as shown on *The Plan*, and to such adjoining or other premises as now or as may be in the future constituted as part of said Development.

The within granted right being the right to enter onto and construct, reconstruct, maintain and operate water lines, valves, "hookups" and meters in and under private and public ways and in and under strips of land

1. along and adjacent to public and private ways; and
2. across such strips of the land as shown on *The Plan* as may be reasonably necessary to lay, construct, and maintain water lines, pipes and valves to serve *The Premises* and other premises within any franchise area licensed to *Grantee* by the New Hampshire Public Utility Commission, Centerview Hollow Condominiums as the same may, from time to time, be constituted.

WITNESS its hand and seal this 6 day of November, 1998

LEWIS BUILDERS DEVELOPMENT, INC.

By: Peter A. Lewis

BK3340PG2589

STATE OF NEW HAMPSHIRE
ROCKINGHAM, SS.

NOV 6, 1998

Personally appeared before me, the above-named Peter A. Lewis, as President of Lewis Builders Development, Inc., and acknowledged the foregoing for the purposes therein contained on behalf of The Corporation.


Justice of the Peace/Notary Public

ROBERT H. FRYER, Justice of the Peace
My Commission Expires August 6, 2002

c:\centervi.hol\walnutri.eas/mg:LD0522 1824 Lewis Builders Development, Inc.
Centerview Hollow Condominiums



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September 16, 2008

Board of Selectmen
Town of Atkinson
21 Academy Avenue
Atkinson, NH 03811

Re: Land Use and Zoning Violations, Centerview Hollow, Map 13, Lot 96

Dear Board:

I am writing on behalf of my client, Jonathan Longchamp, of 15 Bittersweet Lane, Atkinson. By letter dated June 17, 2008, my client wrote to Jim Kirsch, Atkinson Code Enforcement Officer (CEO), complaining that the placement of both existing and new wells and pump houses by the Hampstead Area Water Company (HAWC) on the "Covenanted Common Owned Land to be Maintained as Permanent Open Space" approved as part of the Centerview Hollow Subdivision by the Atkinson Planning Board in 1998¹, violated several provisions of Atkinson's Zoning Ordinance, Subdivision Regulations, and Site Plan regulations.

By memo dated August 7, 2008, your Planning Board referred the question of whether the construction of these wells and associated structures violates Town regulations, and more pointedly, informs the Board that the remedy, if violations are found, lies with the Board of Selectmen and the CEO, and not with the Planning Board. I agree with your Planning Board's memo, and emphasize that the violations are actionable by this Board and its CEO². The purpose of this letter is to elicit the Board's response to my client's letter of June 17, 2008, to which he has not yet received a response.

Allow me to summarize and slightly bolster my client's argument. In 1997, applicant Lewis Builders Development, Inc. ("Lewis") submitted its Subdivision and Site Plan application to the Planning Board. On March 19, 1997, the application was voted complete and jurisdiction accepted, and on July 2, 1997, the Board granted Conditional

¹ See Registry, Drawer D-26674, recorded Oct. 16, 1998.

² See Zoning Ordinance (ZO), Sections 900:1, 900:2, 1200:1, and 1200:2.

Subdivision Approval³. On October 15, 1998, the Subdivision Plan was signed by the Planning Board signifying that the conditions had been met, and on October 16, 1998, that Subdivision Plan was recorded at the Registry⁴. That recorded Subdivision Plan shows the "Covenanted Common Owned Land to be Maintained as Permanent Open Space", and clearly, there are no wells, pump houses, or associated pipes shown, despite the fact that some already existed⁵. This failure to accurately reflect on the submitted Subdivision Plan, actual existing structures and easements, violates Subdivision Regulations Sections 510:1; 600:1, d, f; and 700:3, a, t. More significantly, construction of the well field infrastructure violated the Atkinson Zoning Ordinance, Sections 250:1 (holding that uses not specifically permitted (by Section 510, or variance), are prohibited); Section 510 (the Table of Permitted Uses); Sections 500:3, 600:14 through 17, and 610:3, b.3 (related to prohibited uses of the open space in the Rural Cluster Residential Development)⁶.

I further note that on September 2, 1999, the Planning Board signed a Corrective Plan (adjusting one boundary; adding drainage easement), which was recorded on September 24, 1999, again illegally not showing the wells and pump house that were already on the restricted "Open Space."⁷ Interestingly, on September 20, 1999, an "As-Built Site Plan" showing the wells and gravel access road was submitted to the Planning Board, and on September 23, 1999, the day before the "Corrective Plan" without wells was recorded, the "As-Built" Plan showing the wells and road was recorded⁸.

It is my contention that the Subdivision Approval was illegal due to the legal violations noted *supra* in the application and Plans, and that even more significantly in 2008, construction of additional wells and infrastructure in this restricted area in 2006 and 2008, and a current application before DES for a groundwater withdrawal permit, were and remain **illegal** as unpermitted uses under the Zoning Ordinance, as uses violative of the 1998 Subdivision Approval, as uses violative of the Atkinson Site Plan Regulations⁹,

³ See PB Minutes of those dates.

⁴ Registry, Drawer D-26674

⁵ See two DES Well Completion Reports, 1997; Building Permit issued for pump house, 12-8-97; two DES Well Completion Reports 1998; Pump house occupancy permit issued 8-5-98.

⁶ See also Section 300:1, O4 (definition of Open Space"), and S5 (definition of "Structure")

⁷ Registry, Drawer D-27496 (one sheet)

⁸ Registry, Drawer D-27493 (seven sheets)

⁹ Site Plan Regs, Sections 200:1(requiring compliance with ZO), and 510 (requiring Site Plan approval for a well field).

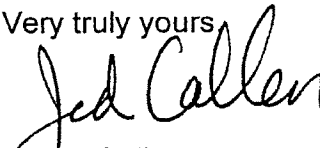
and as uses violative of the "Declaration of Condominium" approved by the Atkinson Planning Board, and recorded at the Registry as a condition of that approval on July 22, 1997 at Book 3227, Pages 0564 *et seq.*

I seek, on behalf of my client, the Town of Atkinson's position regarding the above, and an indication of what, if anything, the Town intends to do about it. My client, as a near neighbor, has standing to object to HAWC's Groundwater Withdrawal Permit Application on the basis that the well and associated structures and road were constructed in violation of Atkinson's Zoning Ordinance and Land Use Regulations. I hereby seek the Town's legal analysis of the points laid out above, and a determination of what the Town will do about the existing situation, and about the proposed increased withdrawals.

If you have questions about the above, or need copies of any of the documents cited, please do not hesitate to call me. I look forward to your prompt response to my client's letter of June 17, 2008, and to this letter.

cc: client

Very truly yours,



Jed Z. Callen