

THE MUNICIPALITY OF THE COUNTY OF KINGS

REPORT TO COUNCIL

Subject: Planning Items

Date: October 2, 2018

| | | |
|---|---|---|
| A | Application for a Development Agreement to permit commercial uses in the former gas station at 2407 Highway 1, Aylesford (File 17-05) | Be it resolved that Municipal Council gives Initial Consideration and hold a Public Hearing to enter into a development agreement to permit light commercial uses at 2407 Highway 1 (PID 55078299), Aylesford which is substantively the same (save for minor differences in form) as the draft set out in Appendix D of the report dated September 11, 2018. <u>Report attached.</u> |
| B | Application to enter into a Development Agreement to permit the expansion of a non-conforming use to include additional commercial and agri-tourism activities including a tea room, special events venue, accessible washroom facilities, enlarged commercial/retail area, and a tourist cabin (File 18-04) | Be it resolved that Municipal Council gives Initial Consideration and hold a Public Hearing to enter into a development agreement to legalize and permit expanded commercial and agri-tourism operations including a tea room, permanent event venue location, washroom facilities, tourist cabin, interpretive area and associated uses at 11827 Highway 1 (PID 55231641 and 55231658), Grand Pré & Hortonville which is substantively the same (save for minor differences in form) as the draft set out in Appendix E of the report dated September 11, 2018. <u>Report attached.</u> |
| C | Application to enter into a Development Agreement to permit the expansion of an existing rural non-conforming use in order to facilitate an expansion of the use to accommodate additional cold storage and processing (File 18-08) | Be it resolved that Municipal Council gives Initial Consideration and hold a Public Hearing to enter into a development agreement to permit an expansion of a non-conforming use consisting of a retail convenience store and an agricultural related industry at 1751 Melanson Road (PID 55219273), Melanson which is substantively the same (save for minor differences in form) as the draft set out in Appendix D of the report dated September 11, 2018. <u>Report attached.</u> |
| D | Eastlink Proposed Cell Tower in Greenwood Square (File 18-11) | Be it resolved that Municipal Council supports the application by Eastlink to site a 36 metre telecommunications tower on a leased area of PID# 55316574 along Poor Farm Road in Greenwood Square. <u>Report attached.</u> |
| E | Public Hearing Date | November 6, 2018 - 1:00 pm |
| F | Proposed Timeline for Land Use By-law/ Municipal Planning Strategy Adoption | Be it resolved that Municipal Council adopt the timeline for the approval of the draft planning documents included in the agenda package of September 28, 2018. <u>Timeline attached.</u> |



Municipality of the County of Kings
Report to the Planning Advisory Committee

Application for a Development Agreement to permit commercial uses in the former gas station at 2407 Highway 1, Aylesford.

(File #17-05)

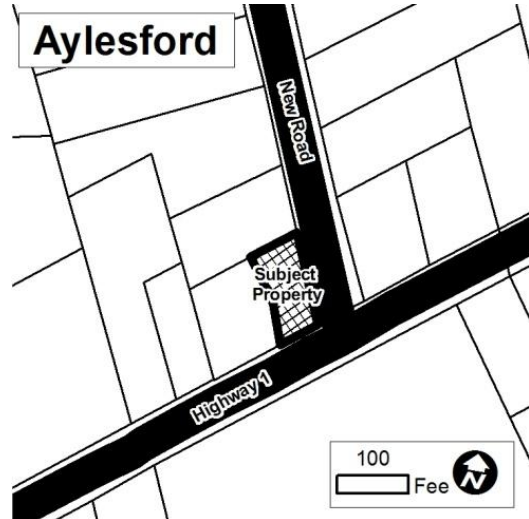
September 11, 2018

Prepared by: Planning and Development Services

| | |
|-------------------------------|--|
| Applicant | Kendall Atwater |
| Land Owner | Atwater's Chimney Cleaning Limited |
| Proposal | Development Agreement to legalize existing commercial use and permit additional commercial uses |
| Location | 2407 Highway 1, Aylesford (PID 55078299) |
| Lot Area | Approximately 7965 sq ft |
| Designation | Residential (R) |
| Zone | Residential One and Two Unit (R2) |
| Surrounding Uses | Mixture of 1 and 2 unit residential uses |
| Neighbour Notification | Staff sent notification letters to the 25 owners of property within 500 feet of the subject property |

1. PROPOSAL

Kendall Atwater has applied for a development agreement to permit commercial uses in the building at 2407 Highway 1 in Aylesford. The property is owned by the applicant's business, Atwater's Chimney Cleaning. The building is a unique piece of the history in Aylesford; built originally as a gas station and repair garage, the building has also been used for other automotive and construction related uses. The applicant has recently updated the building, with new siding and the addition of a pitched roof.



The building is currently rented to an illegal automotive detailing business. The applicant would like to legalize the car detailing business and the ability to rent the space to other similar businesses in the future. The property is in a residential zone which does not permit commercial uses so the applicant's request must be considered through a Development Agreement process.

2. OPTIONS

In response to the application, the Planning Advisory Committee may:

- A. Recommend that Council approve the Development Agreement, as drafted;
- B. Recommend that Council refuse the Development Agreement; or
- C. Provide alternative direction, such as requesting further information on a specific topic, or making changes to the draft Development Agreement.

3. INFORMATION

3.1 Property Description

The subject property is located in the northwest corner of the intersection of Highway 1 and New Road, Aylesford. The subject property has an approximate area of 7,965 square feet with approximately 60 feet of frontage on Highway 1 and approximately 130 feet of frontage on New Road. Highway 1 is identified as a Major Collector road on MPS Map 3. The property is located in the Residential (R) District and in the Residential One and Two Unit (R2) Zone. This zoning does not allow for commercial uses. However, due to its ongoing commercial use and location, the existing building is well suited for a variety of commercial uses. The building has most recently been used for automotive purposes, and is equipped with 2 garage bay doors at the front, and few egress windows. These characteristics make the building undesirable for conversion to a residential unit.

This corner currently allows for vehicles and pedestrians to access the property from Highway 1 or New Road. There are no curbs or defined access points into or out of the property. Improving the unrestricted vehicular access can be addressed through a development agreement.



3.2 Input from Other Departments and Agencies

Staff reached out for input and comments from internal and external government agencies:

- Department of Transportation and Infrastructure Renewal (DTIR) – Staff at the Department of Transportation and Infrastructure Renewal (DTIR) recognized the potential issues with the unrestricted access to the subject property and discussed some form of curb or barrier be installed along the Highway 1 frontage. They reserved the

opportunity to review this need dependant on the proposed use. The curbing is intended to restrict access from the front of the subject property and direct vehicular traffic to the side of the subject property, where visitors would be less likely to interfere with the intersection of Highway 1 and New Road.

- Engineering and Public Works – Engineering and Public Works (EPW) staff confirmed that the subject property is serviced by municipal sewer and a private well. They had no concerns with the proposed change to allow additional commercial uses.
- Development Services – Development Officers (DO) assisted in drafting the Development Agreement. Since the subject property is within a residential zone, minimizing the impact on neighbouring properties was important. The collaboration with a Development Officer helped with establishing parking areas, driveway access, buffering requirements and the list of permitted uses.

3.3 Public Information Meeting

A Public Information Meeting was held on July 26, 2017 at the Aylesford Fire Hall. There were 0 members of the public in attendance. Staff were unable to determine if any community concerns exist over the proposed Development Agreement. The applicant suspected that the meeting did not generate much interest because of the long standing commercial history of the building.

Staff sent 25 letters to notify the surrounding neighborhood of the application, and to invite them to the Public Information Meeting. Staff have not heard any concerns from the neighbourhood following these notification letters.



4. POLICY REVIEW

MPS 5.2.2 Unique Site Characteristics

Certain parcels of land may exhibit features which considerably limit their development potential for uses normally permitted in the assigned land use designation and zone due to previous development. In these situations also, Council may permit alternative use of the site under the Municipal Government Act by Development Agreement.

The Municipal Planning Strategy acknowledges that certain properties can be difficult to develop under the applied zoning. In this case, the subject property is a former gas station and has been

used for various automotive and construction related businesses. This section of the MPS attempts to recognize these types of situations and allow alternative uses to occur, through a Development Agreement process.

Enabling Policy

MPS 5.2.3.2

Council may provide for uses not normally permitted in the assigned zone where unique site characteristics significantly limit their potential for development permitted in the zone subject to a Development Agreement pursuant to the provisions of the Municipal Government Act pursuant to policy 5.2.3.3.

MPS 5.2.3.3

As provided for in Policies 5.2.3.1 or 5.2.3.2 above, application may be made for a Development Agreement to permit a specific use including any proposed expansion of existing buildings and additional structures and Council shall have regard to the following criteria:

| Criteria | Comments |
|---|--|
| a. the parcel has site or structural limitations from the previous commercial or industrial use which limit the development potential for uses intended for the designated district or have other unique features which limit the potential for uses normally permitted | The format of the building (2 bay garage with few egress windows) is a unique structure for a residential zone. This building format presents some difficulty in complying with the residential zoning. |
| b. the site has unique features that may be due to location, physiographic characteristics or site alterations resulting from previous development | The subject property is a relatively small corner lot, with unrestricted access resulting from previous developments. The DA aims to improve the site's unique access issues. |
| c. the previous use has ceased to exist | The original commercial use (gas station/garage) has ceased to exist. The building has recently been used for a business office for construction contractors, and is now occupied by an automotive detailing business. |
| d. the use shall not exceed or extend beyond the property lines at the time the use became not permitted | The commercial use is fully contained on the subject property as illustrated on the Site Plan (Appendix B) |
| e. the proposed use will not adversely affect adjacent land uses | The draft DA requires buffering and screening aimed at minimizing the impact of a commercial use, on adjacent land uses. |

| | |
|--|---|
| f. satisfactory demonstration of on-site sewage servicing capability for the proposed use | EPW Staff confirmed adequate sewer servicing |
| g. satisfactory demonstration of solid waste disposal provisions | The subject property is within the coverage of Valley Waste Resource Management's regular collection route. |
| h. satisfactory demonstration that the proposed use will not create well interference with an existing well on existing surrounding uses as determined by a hydrogeological assessment of ground water potential | A hydrogeology assessment was not considered necessary in this location. The age of the building and no known disturbances are good indicators of adequate ground water supply. |
| i. the proposal is in keeping with the other pertinent policies of this Strategy, including those applicable to Development Agreements contained in Part 6 | Generally consistent. Reviewed below in Appendix C |

In general these criteria look at the site characteristics that may limit the subject property's potential, maintaining all structures and related uses within the property extent and minimizing impact on adjacent land uses, ensuring adequate servicing and avoiding disturbance of nearby wells.

General Development Agreement criteria

Municipal Planning Strategy 6.3.3.1 contains a number of general criteria for considering all Development Agreements. These criteria consider the impact of the proposal on the road network, services, development pattern, environment, finances, and wellfields, as well as the proposal's consistency with the intent of the Municipal Planning Strategy. (See Appendix C for the full criteria review)

The Development Agreement satisfies these general criteria including the suitability of the site, sewer service, and better control over vehicular access to the surrounding road network. The Development Agreement also contains buffering requirements, and a screened parking area that is required to locate behind the building. These regulations can help minimize the visual impact on surrounding residential uses. The Development Agreement also controls maintenance of the subject property in an effort to ensure a tidy and well maintained operation.

In terms of overall consistency with the MPS, through the enabling policy, the DA achieves the re-use of a unique situation – a former gas station that is zoned residential. The draft DA balances the allowance of commercial uses, with the needs of an otherwise low density residential area. The controls put in place in the DA, help to maintain land use compatibility with surrounding uses, which is a primary goal of the MPS.

Proposed Zone in draft MPS/LUB

The draft planning documents consider the subject property in a similar manner, but may introduce some flexible zoning. The draft MPS and LUB are maintaining a Residential Designation, and applying a mixed use zone, called the Mixed Commercial Residential (C3) Zone. This C3 zone would allow for a variety of light commercial uses, and/or residential uses. This flexible zone would allow the applicant to use the building for many similar uses, which are permitted within the draft Development Agreement, as-of-right.

5. SUMMARY OF DRAFT DEVELOPMENT AGREEMENT

The draft development agreement has been attached as Appendix D to this report. The main content of the proposed development agreement includes:

| Draft Development Agreement Location | Content |
|---|---|
| 2.1 | permits a variety of light commercial uses |
| 2.2 | requires developments to generally conform to the site plan |
| 2.3 | regulates appearance and general maintenance be up kept |
| 2.4 | regulates subdivision |
| 2.5 | regulates access and egress |
| 2.6 | regulates parking |
| 2.7 | regulates signs |
| 2.8 | regulates outdoor storage and display |
| 2.9 | regulates screening and buffering |
| 3.3 | substantive matters in a development agreement are those that would require the entire process, including a public hearing, in order to amend the development agreement. In the draft development agreement the only substantive matters are the uses regulated in Section 2.1 of the development agreement, and that future development is in general conformance with the site plan. |

6. CONCLUSION

It is Staff's opinion that the draft development agreement meets the policy directives of the Municipal Planning Strategy and accommodates the commercial nature of the existing building, while protecting nearby residential uses through buffering and screening requirements. The development agreement allows for limited light commercial uses to occupy the building in the future. Controlling vehicular access to the subject property is addressed in the agreement, and

the community of Aylesford did not indicate any concern with maintaining some commercial uses in this location.

7. STAFF RECOMMENDATION

Staff recommend that the Planning Advisory Committee forward a positive recommendation by passing the following motion.

The Planning Advisory Committee recommends that Municipal Council give Initial Consideration and hold a Public Hearing to enter into a development agreement to permit light commercial uses at 2407 Highway 1 (PID 55078299), Aylesford which is substantively the same (save for minor differences in form) as the draft set out in Appendix D of the report dated September 11, 2018.

8. APPENDIXES

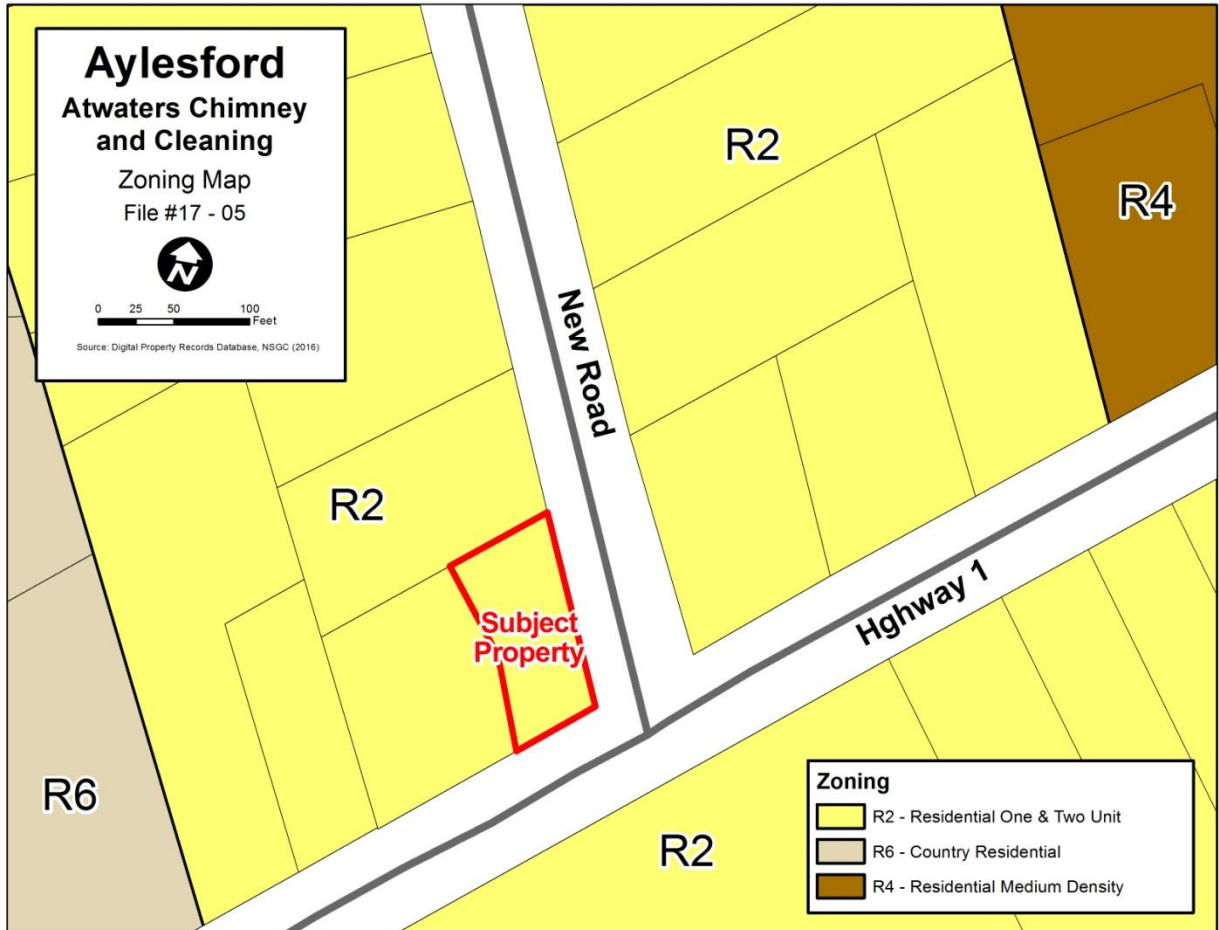
Appendix A – Zoning Map

Appendix B – Site Plan

Appendix C – General DA criteria (MPS 6.3.3.1)

Appendix D – Draft Development Agreement

Appendix A – Zoning Map



Appendix B – Site Plan

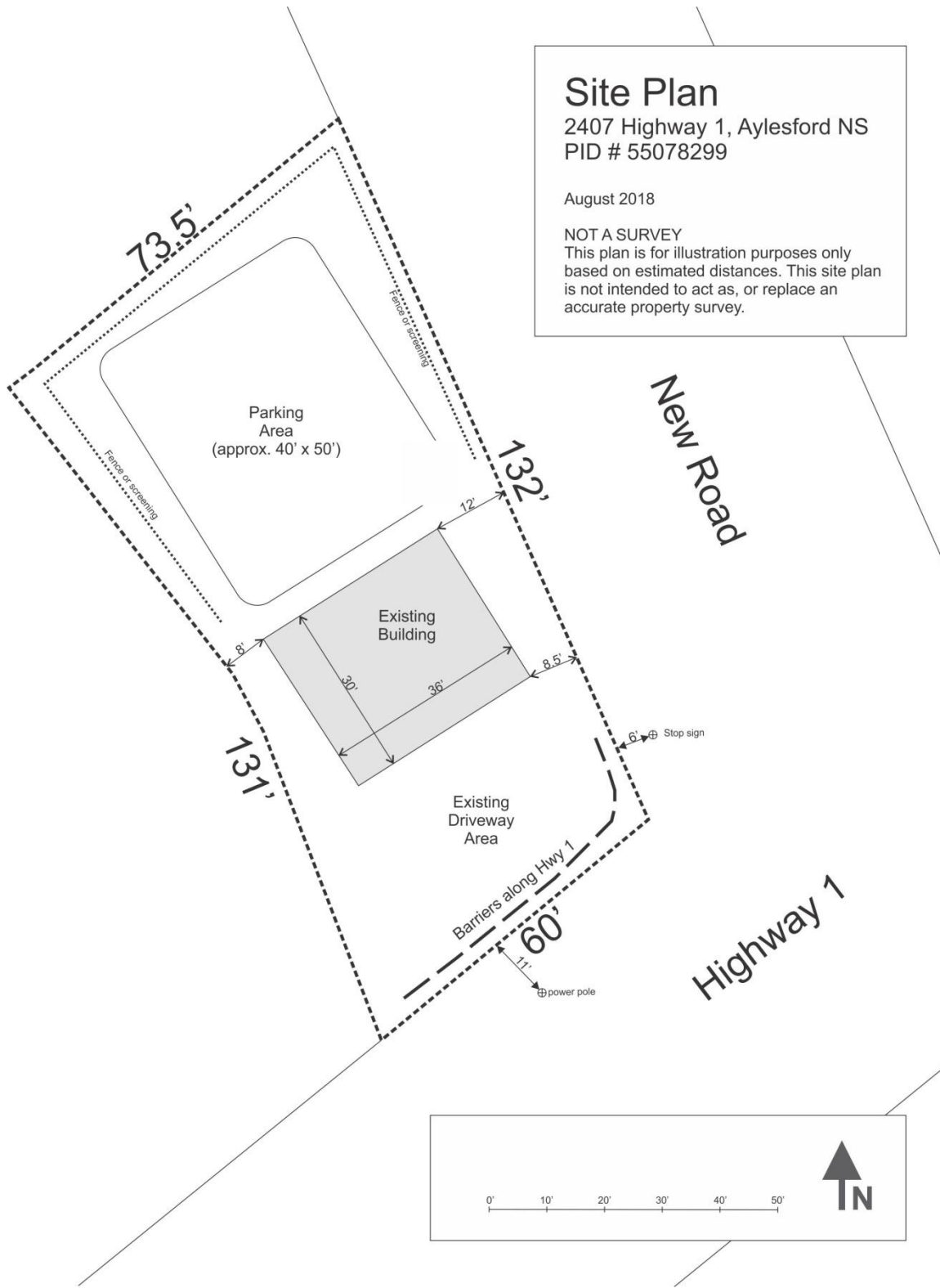
Site Plan

2407 Highway 1, Aylesford NS
PID # 55078299

August 2018

NOT A SURVEY

This plan is for illustration purposes only based on estimated distances. This site plan is not intended to act as, or replace an accurate property survey.



Appendix C – General Development Agreement Criteria – MPS 6.3.3.1

“A Development Agreement shall not require an amendment to the Land Use Bylaw but shall be binding upon the subject property until the agreement or part thereof is discharged by the Municipality. In considering Development Agreements under the *Municipal Government Act*, in addition to all other criteria as set out in various policies of this Strategy, Council shall be satisfied:”

| Criteria | Comments |
|--|---|
| j. the proposal is in keeping with the intent of the Municipal Planning Strategy, including the intent of any Secondary Planning Strategy | The proposal is in keeping with the intent of Council’s Municipal Planning Strategy as reviewed in Section 4 of this report. |
| k. that the proposal is not premature or inappropriate by reason of: | |
| i. the financial capability of the Municipality to absorb any costs related to the development of the subject site | The proposal does not require any direct investment on the part of the Municipality. |
| ii. the adequacy of municipal sewer and water services if services are to be provided. Alternatively, the adequacy of the physical site conditions for private on-site sewer and water systems | The existing building is connected to the central sewer system. No central water system is available here. |
| iii. the potential for creating, or contributing to, a pollution problem including the contamination of watercourses or the creation of erosion or sedimentation during construction. | There are no nearby watercourses or steep slopes vulnerable to erosion. |
| iv. the adequacy of storm drainage and the effect of same on adjacent uses | The site appears well drained and the existing building and slopes seem to divert surface water effectively. |
| v. the adequacy of street or road networks in, adjacent to, and leading to, the development | The main road leading to the subject property is a well maintained Major Collector road. The site’s unrestricted access is of concern to DTIR and there are access provisions in the DA to require curbing or other barriers to improve this situation. |

| | |
|--|---|
| vi. the adequacy, capacity and proximity of schools, recreation and other community facilities | Not applicable since the application is commercial in nature. |
| vii. adequacy of municipal fire protection services and equipment | Very close access to the Aylesford Fire Department. |
| viii. creating extensive intervening parcels of vacant land [...] | The proposal utilizes a parcel of land that is appropriate for the type of use proposed and reuses an existing building. |
| ix. the suitability of the proposed site in terms of steepness of grades, soil and/or geological conditions, [...] | The site and existing building appear very well suited to the proposed use. No concerns over soils, steepness or other site conditions. |
| x. traffic generation, access to and egress from the site, and parking | Parking is generally contained to the rear of the subject property. The unrestricted access is of concern to DTIR and there are access provisions in the DA to require curbing or other barriers along highway 1 to improve this situation. |

Appendix D – Draft Development Agreement

THIS DEVELOPMENT AGREEMENT made this _____ day of _____, A.D.

BETWEEN:

ATWATERS CHIMNEY CLEANING LIMITED, of Aylesford, Nova Scotia, hereinafter called the "Property Owner"

of the First Part

and

MUNICIPALITY OF THE COUNTY OF KINGS, a body corporate pursuant to the Municipal Government Act, S.N.S., 1998, Chapter 18, as amended, having its chief place of business at Kentville, Kings County, Nova Scotia, hereinafter called the "Municipality",

of the Second Part

WHEREAS the Property Owner is the owner of certain lands and premises (hereinafter called the "Property") which lands are more particularly described in Schedule A attached hereto and which are known as 2407 Highway 1, Aylesford and Property Identification (PID) Number 55078299; and

WHEREAS the Property Owner wishes to use the Property for Commercial uses

WHEREAS the Property is situated within an area designated Residential on the Future Land Use Map of the Municipal Planning Strategy, and zoned Residential One and Two Unit (R2); and

WHEREAS Section 5.2.3.3 of the Municipal Planning Strategy and Section 5.2.8 of the Land Use Bylaw provide that the proposed use may be developed only if authorized by development agreement; and

WHEREAS the Property Owner has requested that the Municipality of the County of Kings enter into this development agreement pursuant to Section 225 of the Municipal Government Act so that the Property Owner may develop and use the Property in the manner specified; and

WHEREAS the Municipality by resolution of Municipal Council passed at a meeting on (add date of motion), approved this Development Agreement;

Now this Agreement witnesses that in consideration of covenants and agreements contained herein, the parties agree as follows:

PART 1 AGREEMENT CONTEXT

1.1 Schedules

The following attached schedules shall form part of this Agreement:

| | |
|------------|----------------------|
| Schedule A | Property Description |
| Schedule B | Site Plan |

1.2 Municipal Planning Strategy, Land Use Bylaw and Subdivision Bylaw

- (a) *Municipal Planning Strategy* means Bylaw 56 of the Municipality, approved on August 6, 1992, as amended, or successor bylaws.
- (b) *Land Use Bylaw* means Bylaw 75 of the Municipality, approved on August 6, 1992, as amended, or successor bylaws.
- (c) *Subdivision Bylaw* means Bylaw 60 of the Municipality, approved on Sept 5, 1995, as amended, or successor bylaws.

1.3 Definitions

Unless otherwise defined in this Agreement, all words used herein shall have the same meaning as defined in the Land Use Bylaw. Words not defined in the Land Use Bylaw but used herein are:

- (a) *Development Officer* means the Development Officer appointed by the Council of the Municipality.
- (b) *Craft Product Workshop* means products assembled or made by hand or small custom production processes, generally inside and including but not limited to potters, pewterers, goldsmiths, silversmiths, jewellers, toymakers, leatherworkers, upholsterers, woodworkers, furniture makers, musical instrument makers, clothing designers and makers, shoemakers, antique refinishers, glass or stained glass workers, and caterers.

PART 2 DEVELOPMENT REQUIREMENTS

2.1 Use

That the Parties agree that the Property shall be limited to the following uses:

- (a) those uses permitted by the underlying zoning in the Land Use Bylaw (as may be amended from time-to-time); and
- (b) the following uses in accordance with the terms of this Agreement
 - Antique Shops
 - Auto Repair
 - Art Galleries

- Bakeries
- Business Offices
- Building and Construction Contractors
- Craft Product Workshop
- Equipment Rental
- Light Manufacturing
- Personal Service Shops
- Photography Studios
- Printing Establishments
- Professional Offices
- Retail Stores
- Service Shops
- Warehousing

Except as otherwise provided in this Agreement, the provisions of the Land Use Bylaw apply to any development undertaken pursuant to this Agreement.

2.2 Site Plan

The uses permitted within this development agreement shall be developed generally in accordance with the Schedule B - Site Plan.

2.3 Appearance of Property

The Property Owner shall at all times maintain all structures and services on the Property in good repair and a useable state.

2.4 Subdivision

Except as otherwise provided for in this Agreement, the subdivision of the Property shall comply with the requirements of the Subdivision Bylaw, as per the underlying zone requirements, as may be amended from time-to-time.

2.5 Access and Egress

The property owner shall control access to the site along Highway 1 through the installation of curbing barriers or other similar form. One (1) vehicular access point via New Road, and/or one (1) vehicular access point via Highway 1, shall be permitted without an amendment to this Agreement, subject to NS Department of Transportation and Infrastructure Renewal approval. Access improvements and barriers shall be the responsibility of the Property Owner.

2.6 Parking

Parking shall meet the requirements contained in Section 3.4 of the Land Use Bylaw, applicable to the proposed Use. Parking shall generally be contained to the parking area shown on the Site Plan. No parking shall be permitted in the flankage yard. Customer parking shall not be provided in the front yard except for space that may be required for barrier free parking. Temporary loading/unloading may occur in the front yard.

2.7 Signs

Signage shall be permitted subject to the requirements of the Mixed Use (RC) Zone, as regulated in Section 3.7 of the Land Use Bylaw.

2.8 Outdoor Storage and Display

- (a) Outdoor Storage shall be limited to a maximum of 200 square feet, and is required to be located in the rear yard, located behind the building.
- (b) Outdoor Commercial Display is limited to a maximum of 200 square feet, and may be permitted in the front yard, located in front of the building.

2.9 Screening or buffering

Uses enabled by this Development Agreement shall be visually screened from existing residential uses behind the building. The side and rear yards located behind the building shall be screened with either:

- a) An opaque fence 6 feet in height; or
- b) Coniferous trees with a maximum spacing of 10 feet on centre and an initial minimum height of 4 feet, with a capability of growing to a minimum height of 10 feet.

2.10 Water Services

The Property Owner shall be responsible for providing adequate water services to the standards of the authority having jurisdiction and at the Property Owner's expense.

PART 3 CHANGES AND DISCHARGE

3.1 The Property Owner shall not vary or change the use of the Property, except as provided for in Section 2.1, Use, of this Agreement, unless a new development agreement is entered into with the Municipality or this Agreement is amended.

3.2 Any matters in this Agreement which are not specified in Subsection 3.3 below are not substantive matters and may be changed by Council without a public hearing.

3.3 The following matters are substantive matters

- The uses allowed by the development agreement, in section 2.1
- Developments not in accordance with the Site Plan

3.4 Upon conveyance of land by the Property Owner to either:

- (a) the road authority for the purpose of creating or expanding a public street over the Property; or

- (b) the Municipality for the purpose of creating or expanding open space within the Property;

registration of the deed reflecting the conveyance shall be conclusive evidence that that this Agreement shall be discharged as it relates to the public street or open space, as the case may be, as of the date of registration with the Land Registry Office but this Agreement shall remain in full force and effect for all remaining portions of the Property.

- 3.5** Notwithstanding the foregoing, discharge of this Agreement is not a substantive matter and this Agreement may be discharged by Council at the request of the Property Owner without a public hearing.

PART 4 IMPLEMENTATION

4.1 Commencement of Operation

No construction or use may be commenced on the Property until the Municipality has issued any Development Permits, Building Permits and/or Occupancy Permits that may be required.

4.2 Drawings to be Provided

When an engineered design is required for any portion of a development, record drawings shall be provided to the Development Officer within ten days of completion of the work which requires the engineered design.

4.3 Completion and Expiry Date

- (a) The Property Owner shall sign this Agreement within 90 days from the date the appeal period lapses or all appeals have been abandoned or disposed of or the development agreement has been affirmed by the Nova Scotia Utility and Review Board or the unexecuted Agreement shall be null and void;
- (b) The Property Owner shall install vehicular access barriers along New Road and Highway 1, within 120 days after receiving approval from the Department of Transportation and Infrastructure Renewal.

PART 5 COMPLIANCE

5.1 Compliance With Other Bylaws and Regulations

Nothing in this Agreement shall exempt the Property Owner from complying with Federal, Provincial and Municipal laws, bylaws and regulations in force or from obtaining any Federal, Provincial, or Municipal license, permission, permit, authority or approval required thereunder.

5.2 Municipal Responsibility

The Municipality does not make any representations to the Property Owner about the suitability of the Property for the development proposed by this Agreement. The Property owner assumes all risks and must ensure that any proposed development complies with this Agreement and all other laws pertaining to the development.

5.3 Warranties by Property Owner

The Property Owner warrants as follows:

- (a) The Property Owner has good title in fee simple to the Lands or good beneficial title subject to a normal financing encumbrance, or is the sole holder of a Registered Interest in the Lands. No other entity has an interest in the Lands which would require their signature on this Development Agreement to validly bind the Lands or the Developer has obtained the approval of every other entity which has an interest in the Lands whose authorization is required for the Developer to sign the Development Agreement to validly bind the Lands.
- (b) The Property Owner has taken all steps necessary to, and it has full authority to, enter this Development Agreement.

5.5 Costs

The Property Owner is responsible for all costs associated with recording this Agreement in the Registry of Deeds or Land Registration Office, as applicable.

5.6 Full Agreement

This Agreement constitutes the entire agreement and contract entered into by the Municipality and the Property Owner. No other agreement or representation, oral or written, shall be binding.

5.7 Severability of Provisions

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

5.8 Interpretation

Where the context requires, the singular shall include the plural, and the masculine gender shall include the feminine and neutral genders.

5.9 Breach of Terms or Conditions

Upon the breach by the Property Owner of the terms or conditions of this Agreement, the Municipality may undertake any remedies permitted by the Municipal Government Act.

THIS AGREEMENT shall enure to the benefit of and be binding upon the parties hereto, their respective agents, successors and assigns.

IN WITNESS WHEREOF this Agreement was properly executed by the respective parties hereto and is effective as of the day and year first above written.

SIGNED, SEALED AND ATTESTED to be the proper signing officers of the Municipality of the County of Kings, duly authorized in that behalf, in the presence of:

MUNICIPALITY OF THE COUNTY OF KINGS

Witness

Peter Mutartt, Mayor

Witness

Janny Postema, Municipal Clerk

SIGNED, SEALED AND DELIVERED
In the presence of:

ATWATERS CHIMNEY CLEANING LIMITED

Witness

Kendall Atwater

Appendix A
Property Description

Schedule A

Parcel Description

Registration County: KINGS COUNTY

Street/Place Name: 2407 HIGHWAY 1 /AYLESFORD

Title of Plan: PLAN OF S/D SHOWING LANDS CONVEYED TO SLYVIA R. VEINOTTE,
ROBERT AUBREY SLAUENWHITE & THERESA M. FREEMAN TO FORM LOT 1A &
LOT 2B TRUNK NO. 1 AYLESFORD

Designation of Parcel on Plan: Lot 1A

Registration Number of Plan: 99404320

Registration Date of Plan: 2011-10-26 13:49:02

*** Municipal Government Act, Part IX Compliance ***

Compliance:

The parcel is created by a subdivision (details below) that has been filed under the Registry Act
or registered under the Land Registration Act

Registration District: KINGS COUNTY

Registration Year: 2011

Plan or Document Number: 99404320

Appendix B
Site Plan

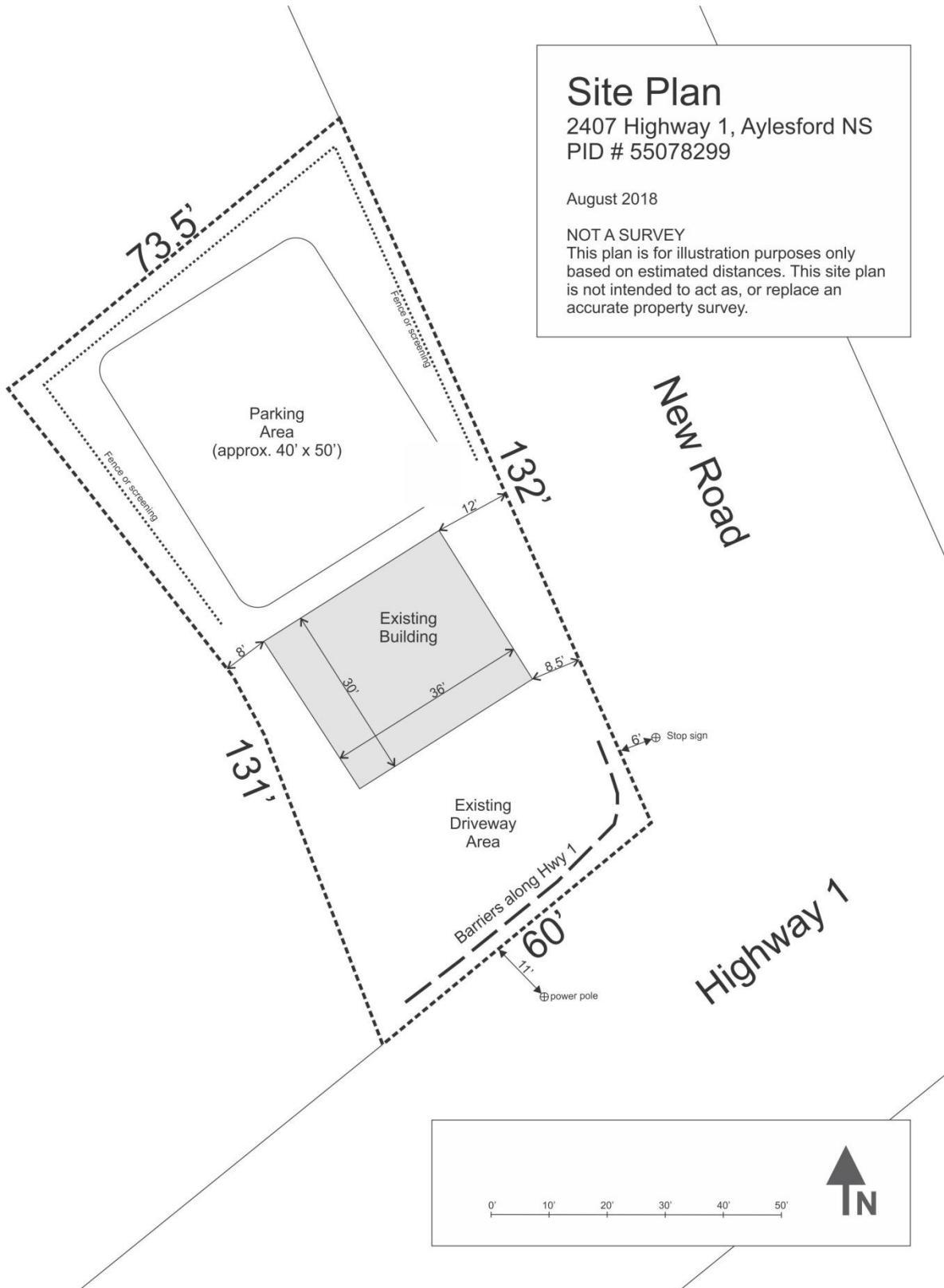
Site Plan

2407 Highway 1, Aylesford NS
PID # 55078299

August 2018

NOT A SURVEY

This plan is for illustration purposes only
based on estimated distances. This site plan
is not intended to act as, or replace an
accurate property survey.





Municipality of the County of Kings Report to the Planning Advisory Committee

Application to enter into a Development Agreement for lands at PID# 55231641 and 55231658 (File# 18-04)

September 11th, 2018

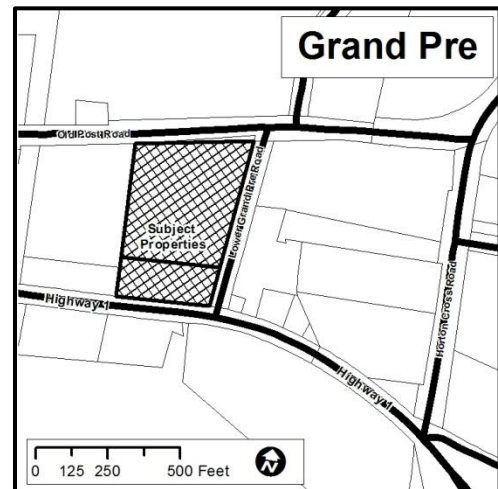
Prepared by: Planning and Development Services

| | |
|-------------------------------|---|
| Applicant | Beverly McClare |
| Land Owner | Beverly McClare |
| Proposal | Application to enter into a Development Agreement to permit the expansion of a non-conforming use to include additional commercial and agri-tourism activities including a tea room, special events venue, accessible washroom facilities, enlarged commercial/retail area, and a tourist cabin |
| Location | 11827 Highway #1, (PID# 55231641 and 55231658), Grand Pré & Hortonville, Nova Scotia |
| Lot Area | Total: 4.66+/- acres |
| Designation | Agricultural |
| Zone | Agricultural (A1) Zone |
| Surrounding Uses | Primarily agricultural and residential. There is an institutional use (cemetery) adjacent to the property and an agri-tourism use located approximately 3000 feet from the Subject Property. |
| Neighbour Notification | Staff sent notification letters to the 23 owners of properties within 500 feet of the Subject Property and held a Public Information Meeting on April 16 th , 2018 |

1. PROPOSAL

Beverly McClare has applied for a Development Agreement for two properties located 11827 Highway #1, (PID# 55231641 and PID# 55231658) Grand Pré. The Development Agreement would legalize and permit the expansion of commercial and agri-tourism uses at the noted properties, which would include the following:

- Illegal Tea room
- Permanent location for special events tent
- Accessible washroom facilities for special events tent & existing garden attraction/agritourism use
- Accessible washroom facility for tea room – through internal conversion of existing space in residence located on-site
- Tourist cabin
- Bicycle parking
- Vehicle parking for above uses



The applicant operates an existing commercial and agri-tourism operation on the properties that produces herbs which are then processed into consumable products such as jellies, vinegars,

liquors, and ice cream. There is a retail operation that sells the products produced on-site as well as locally made art and crafts. The application for a development agreement came before the Municipality because the applicant had sought a letter from the Municipality confirming compliance with the regulations and policies found within the Municipal Planning Strategy and Land Use Bylaw in order to obtain a liquor license. When it was confirmed that the tea room had been operating in contravention of the policies and regulations contained within the Municipal Planning Strategy and the Land Use Bylaw the applicant submitted a planning application. A development agreement is required to legalize the tea room and for the expansion of the business because some of the activities and structures on-site are non-conforming with the current regulations found in the Land Use Bylaw. The applicant has complied with our requests for inspections and remedied any issues in a timely manner.

2. OPTIONS

In response to the application, the Planning Advisory Committee may:

- A. Recommend that Council approve the Development Agreement, as drafted;
- B. Recommend that Council refuse the Development Agreement, as drafted;
- C. Provide alternative direction, such as requesting further information on a specific topic, or making changes to the Development Agreement, as drafted;

3. BACKGROUND

The Subject Property is located within Grand Pré & Hortonville. The community was founded in the late 1600s by Acadian settlers. The area remains rich in fertile soil and agricultural production. In 1755 Grand Pré was one of the main sites of the forced expulsion of the Acadians by the British military, an act immortalized by Henry Wadsworth Longfellow in the poem *Evangeline*, published in 1847. The community has become well-known through its connection to the Longfellow poem, and a statue of *Evangeline* was erected in Grand Pré in 1920. Grand Pré was settled by New England Planters in the 1760s. As the railway was developed in the area during the latter-half of the 1800s, Grand Pré became a critical hub for the export of livestock and apples from the Annapolis Valley. During the 20th Century, Grand Pré was developed as a tourist destination, principally due to its connection to the well-known Longfellow poem, as well as its pastoral scenery and preserved Acadian dyke-land. In 2012 the Landscape of Grand-Pré was named a World Heritage Site by UNESCO. Property falls in the Buffer Zone.

The Tangled Garden was established over 20 years ago on a property that fronts onto Highway #1 (PID# 55231641) as an herb garden and retail location for value added products and folk art. The second lot (PID# 55231658) was incorporated into the business in 2001. The addition of this property expanded the area for herb production and a labyrinth used by visitors to the Subject Property was developed in 2004.

4. INFORMATION

4.1 Subject Property Information

The Subject Properties consist of two lots. The southerly lot is approximately 1 acre in size and has approximately 320 feet of road frontage on Highway #1 running in a general east-west direction and an additional 140 feet of frontage on Lower Grand Pré Road running in a general north-south direction. The northerly lot is approximately 4 acres in size and features approximately 460 feet of frontage on Lower Grand Pré Road, running in a general north-south direction and approximately 415 feet of road frontage on Old Post Road running in a generally east-west direction. Both properties abut a cemetery on the west boundary of the properties.

There is a commercial building located on the southerly lot containing space for commercial production of goods as well as an area for retail sales. There is a gravel parking area consisting of 10 parking spaces, along with signage for the business. There is a single-unit residential dwelling located on this lot, a portion of which has been converted into an accessible washroom facility and small interpretive centre for tour groups. Located behind the commercial and residential structure is a tea room which is used for additional storage during the winter. There are two garden sheds used for storage located on the northerly lot as well as a parking area for staff and tour buses, accessed off of Lower Grand Pré Road.

Both lots feature landscaped vegetative gardens that contain the herbs and other vegetables used in the production of goods that are retailed by Tangled Garden. There are pathways and a labyrinth for visitors to walk amongst. The topography of the subject properties gradually slopes upwards in a northwesterly direction, away from Highway # 1 and Lower Grand Pré Road. There is a pond located in the northeast portion of the northerly lot and a level parking area, accessed from Old Post Road with 50 parking spaces. This parking area is intended for guests attending special events at the venue. There is an area dedicated for a proposed special event venue (tent) for weddings and other special events, as well as an area proposed for separate washroom facilities for the special events.

Both lots are in the Agricultural District under the future land use map, as are the abutting properties. The Subject Properties are located in the Agriculture (A1) Zone and the properties that abut the Subject Properties are also within the Agricultural (A1) Zone. The Subject Properties are approximately 400 feet from the boundary of the Grand Pré Heritage Conservation District. Further, the Subject Properties abut the area eligible for inclusion in the Heritage Conservation District on the western property line. The Subject Properties are within the boundaries of the Grand Pré Community Plan.

4.2 Site Visit

A site visit was conducted on Thursday, March 8th, 2018 by a Planner and a Development Officer. The Planner and Development Officer met with the applicant. Ms. McClare discussed her intentions for the proposed uses on the subject property in the event the development agreement is approved by the Municipality.

4.3 Comments from Public Information Meeting

Council's Planning Policy PLAN-09-001 requires a Public Information Meeting (PIM) for all new uses which are to be considered by development agreement. The required Public Information Meeting was held on April 16th, 2018 at the Horton Community Centre, with 12 members of the public in attendance, along with the applicant, Planner, and Councillor for the area.

The planner made a brief presentation on the application. Members of the public were generally supportive of the proposed development. Concerns were raised regarding increased noise levels, vehicular traffic, and parking.

The complete notes from the PIM are attached as Appendix B.

4.4 Requests for Comments

Staff requested comments from both internal and external departments on the application. Comments were requested from the following groups with the results as described:

4.4.1 Department of Transportation and Infrastructure Renewal (DTIR)

Department of Transportation and Infrastructure Renewal offered the following comments:

- Existing business has been operating on the site for a number of years and DTIR does not have any restrictions regarding the existing use.
- The owner indicated there would be no further traffic congestion generated from the development onto NS Trunk #1 and that any additional traffic and parking would be directed to the side roads (Lower Grand Pre Rd and Old Post Road) through appropriate signage.
- New driveways, installed in 2017, along the side roads verified for stop sight distance and other DTIR criteria.
- Parking for 50 vehicles to be established on the grassed area adjacent to Old Post Road, no additional parking is to be established along Trunk 1.
- Tea room to be established with a maximum total floor area of 600 square feet with access and parking to the area from Lower Grand Pre Road.
- Delivery vehicles to access the property from Lower Grand Pre Road.

4.4.2 Municipality of the County of Kings Engineering and Public Works (EPW)

Engineering and Public Works commented on the following:

- The existing retail business and existing residence, both located on PID 55231641, are connected to Municipal sewer;
- The proposed washroom facilities will be able to connect into the Municipal sewer via the existing lateral, however a sewer permit will be required at the time of permitting;
- Engineering and Public Works will also require, prior to approval of the sewer permit, documentation showing that there is a private sewer easement over PID 55231658 in favour of PID 55231641 or consolidation of both properties into a single lot.

4.4.3 Municipality of the County of Kings Building and Enforcement (B&E)

Building and Enforcement provided the following comments:

- The most recent inspection conducted on this property was March 29th, 2018; the inspection was for a plumbing rough in for the barrier free washroom.
- Building and Enforcement also conducted a fire and life safety inspection on October 26th, 2017.
- There would be no problems with the proposed uses under the National Building Code. However the property owner may be faced with such requirements as fire separations, ventilation requirements, barrier free access requirements and additional engineering for floor loads in order to achieve compliance at the permitting stage.
- Additional considerations for the proposed tourist cabin are spatial separations between the cabin and other structures on the property.
- Limiting distances will need to be considered for such issues as distance to property lines and the types of materials that can be used during construction of the tourist cabin.
- The Wolfville Fire Chief has confirmed that fire service equipment is more than adequate to fight fire at this location.

4.4.4 Municipality of the County of Kings Development Control

The Planner on this file has worked closely with development control throughout the processing of this application. The Municipal Development Officer had no concerns with relation to issuing permits for the proposed Development Agreement.

4.4.5 Nova Scotia Environment

Nova Scotia Environment had no concerns with the proposed use given there was no intention of not connecting and/or utilizing municipal sewer services.

5. POLICY REVIEW – Development Agreement

5.1 Development Agreement

A development agreement is a contract between a landowner and the Municipality to permit a use not normally permitted within the zone applied to a property. In turn, the Municipality is able to require additional controls to minimize and mitigate potential negative impacts that may be associated with the new use. The ability for Council to consider a development agreement must be stated in the Land Use Bylaw (LUB) and the Municipal Planning Strategy (MPS). The MPS must also identify the kinds of uses Council may consider under each development agreement. Uses that Council may consider are those that Council has determined has increased potential for negative impacts on an area that a negotiated process is required to ensure the potential negative impacts are minimized. In the MPS Council identifies both specific and general criteria that must be considered when making decisions regarding a development agreement.

5.2 Land Use Bylaw

Section 5.2 of the LUB states that *“Within Hamlets, Country Residential, Forestry, and Agricultural Districts the following shall be permitted by development agreement: Expansion of non-conforming commercial and industrial uses as provided for in Policy 3.7.10.2 of the Municipal Planning Strategy.”*

It is Staff’s opinion that Ms. McClare’s proposal qualifies under this provision of the Land Use to be considered by development agreement.

5.3 Municipal Planning Strategy

Policy 3.7.10.2 of the Municipal Planning Strategy states that *“Within the Country Residential, Forestry, and Agricultural Districts as well as Hamlets, Council may provide for the expansion of a non-conforming use referred to in Policy 3.7.10.1 by Development Agreement pursuant to the Municipal Government Act.”*

In considering the terms of a development agreement, Council shall have regard to the following:

- a. *The expansion is to a related use; that is, a new product, service, or additional line of business complementary to the original business*
The proposed uses are complementary to the existing business.
- b. *The expansion does not limit nor interfere with adjacent agricultural, forestry or non-resource uses*
The proposed uses would all be contained on the property owned by Ms. McClare and would not interfere with adjacent land uses
- c. *The expansion does not exceed or extend beyond the property lines that were in existence at the time the use became non-conforming (i.e. not on a consolidated lot or lot addition)*
The expansion would not exceed or extend beyond the property lines which were in existence at the time the use became non-conforming
- d. *A subsequent plan of subdivision which involves the severance of land from a parcel containing a non-confirming use and bound by a Development Agreement shall be subject to an amendment to the agreement executed by a resolution of Council*
A clause stating this is written into the draft development agreement
- e. *The Proposal can meet all other requirements of this Strategy, including Policies contained within Part 6 of this Strategy.*

5.4 Grand Pré Heritage Conservation District and Community Plan

5.4.1. Grand Pré Heritage Conservation District

The community of Grand Pré has a long and rich history as an Acadian and Planter community, as well as being one of the oldest continuous settlements in Nova Scotia. As a result, there are a number of heritage buildings and properties spanning the latter-half of the eighteenth century onward located within the community; the oldest building within the district dates from circa 1767. In the 1990s, at the behest of residents of Grand Pré, a Heritage Conservation District was established in order to provide protection of historic buildings and settings within the community and enhance the attractiveness of the community as a tourist destination. While the subject property is in close proximity to the Grand Pré Heritage Conservation District, with the boundary of the district located approximately 400 feet from the closest property line of the Subject Properties, it is outside of the current bounds of the Heritage Conservation District.

5.4.2 Grand Pré Community Plan

The Subject Property is located within the boundaries of the Grand Pré Community Plan. This plan is specific to four distinct communities within the overall Grand Pré area: Grand Pré, Hortonville, North Grand Pré, and Lower Wolfville. Consultations for the community plan commenced in 2008 with the overall goal of developing policies that reflect the needs and wishes of the local community members throughout the area; the overall objectives outlined in Policy 4.4.9.1 of the plan, embedded within the Municipal Planning Strategy, are to support the initiatives of the Community Plan, support protection of the area as a unique cultural resource, and to provide opportunities for tourism development in the area. With specific regard to the proposed development agreement, the plan, noted in Policy 4.4.9.4, outlines the objectives of encouraging agricultural industries and appropriate related business. Further, the plan also notes, in Policy 4.4.9.7, the business objectives of ensuring that commercial activity serves the local community, as well as visitors to the area. The proposed uses meet these objectives and are consistent with the policies of the Grand Pré Community Plan.

5.5 General Development Agreement Amendment Policies

Municipal Planning Strategy section 6.3.3.1 contains the criteria to be used when considering all development agreement proposals (Appendix D). These consider the impact of the proposal on the road network, services, development pattern, environment, finances, and wellfields, as well as the proposal's consistency with the intent of the Municipal Planning Strategy. The proposal meets the general criteria in that it will not result in any direct costs to the Municipality, raises no concerns in terms of traffic or access, is suitable for the development and appears to be free of hazards, will be connected to municipal sewer service or be serviced by an approved private sanitary septic system, is compatible with adjacent uses, and raises no concerns regarding emergency services.

MPS subsection 6.3.3.1 (c) specifies a number of controls a development agreement may put in place in order to reduce potential land use conflicts. Controls have been placed on the location of the special events tent, the hours of operation for the special events venue, and the parking areas. These controls have been placed on the subject property and business in order to reduce potential land-use conflicts with neighbouring properties.

6. SUMMARY OF DRAFT DEVELOPMENT AGREEMENT

The draft development agreement (Appendix E) would allow the applicant to utilize the property for a commercial use which could include:

- a tea room
- a location for a permanent event site for a tent
- washroom facilities to be used in conjunction with the event site
- a tourist cabin
- a visitor orientation area located within the existing residential dwelling
- parking spaces to accommodate fifty (50) vehicles for events
- bicycle parking

The draft development agreement would also allow the property owner to use the property for any use permitted by the underlying zoning on the lot.

The main specific content of the proposed development agreement includes:

| Draft Development Agreement Location | Content |
|---|--|
| 2.1 | Use of the property for a tea room, commercial building, interpretive area, permanent location for an event space, washrooms, and a tourist cabin |
| 2.2 | Specifies a site plan and regulation of the location of structures. |
| 2.3 | Regulates architecture. |
| 2.4 | Regulates subdivision. |
| 2.5 | Regulates signs. |
| 2.6 | Regulates appearance of property. |
| 2.7 | Regulates lighting. |
| 2.8 | Prohibits outdoor storage and display except when associated for uses permitted in underlying zone. |
| 2.9 | Regulates parking. |
| 2.13 | Regulates hours of operation. |
| 3.3 | Substantive matters in a development agreement are those that would require the entire process, including a Public Hearing, in order to change them within the development |

| | |
|---|---|
| | <p>agreement.</p> <p>In the draft development agreement the substantive matters are the uses allowed on the property, the location of the uses on the lot and regulations related to subdivision.</p> |
| 6 | <p>The applicant acknowledges that standard agricultural practices in the area can generate traffic, noise, dust, and odours.</p> |

7. CONCLUSION

The proposal and the terms of the draft development agreement are in keeping with the intent of Council's Municipal Planning Strategy.

The proposal is enabled by Council's rural non-conforming uses policies, and is consistent with the criteria of those policies.

The proposal meets all other general development agreement criteria.

As a result, a positive recommendation is being made to the Planning Advisory Committee.

8. STAFF RECOMMENDATION

Staff recommend that the Planning Advisory Committee forward a positive recommendation by passing the following motion:

The Planning Advisory Committee recommends that Municipal Council give Initial Consideration and hold a Public Hearing to enter into a development agreement to legalize and permit expanded commercial and agri-tourism operations including a tea room, permanent event venue location, washroom facilities, tourist cabin, interpretive area and associated uses at 11827 Highway 1 (PID 55231641 and 55231658), Grand Pré & Hortonville which is substantively the same (save for minor differences in form) as the draft set out in Appendix E of the report dated September 11, 2018.

9. APPENDIXES

Appendix A: Reference Zoning Map

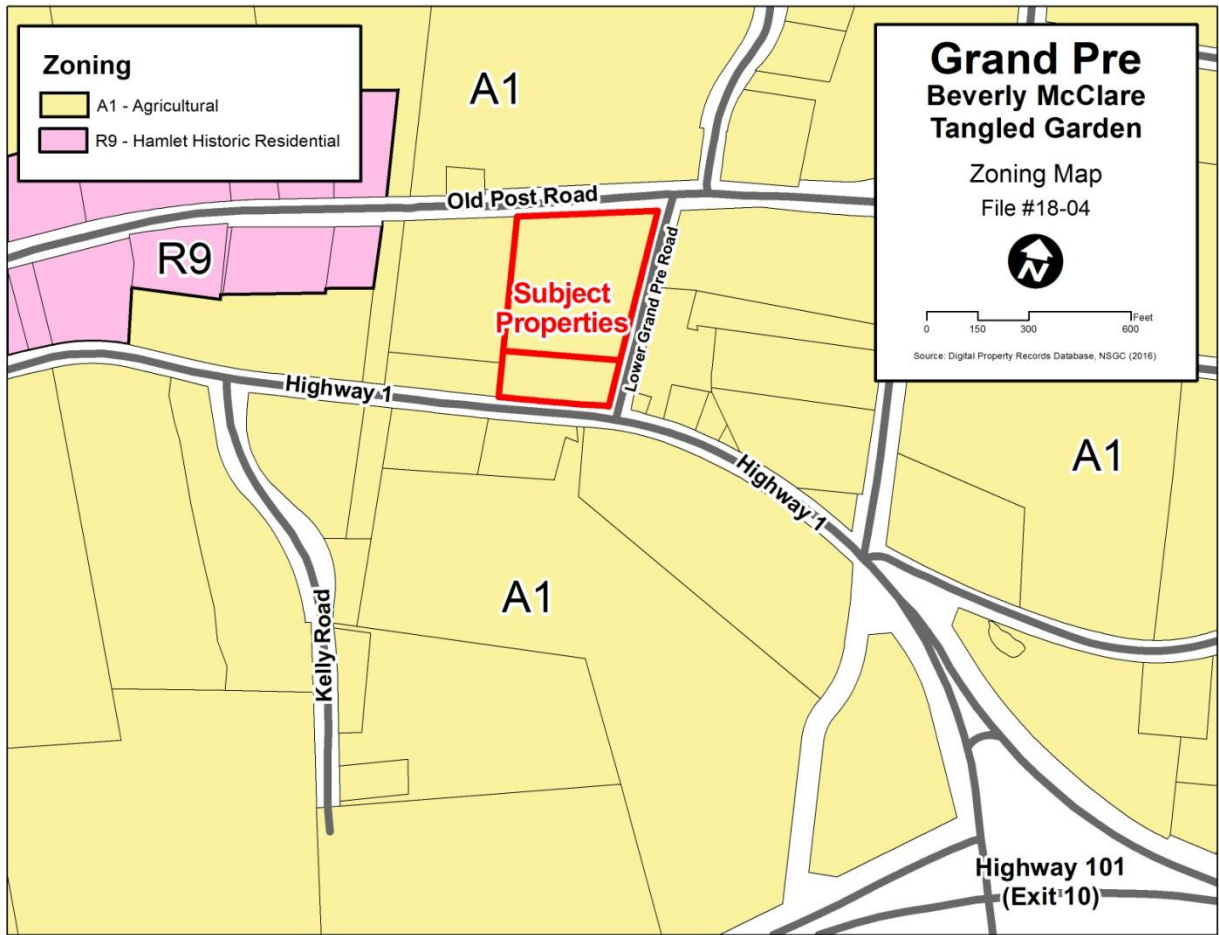
Appendix B: Notes from the April 16th, 2018 Public Information Meeting

Appendix C: Municipal Planning Strategy, Section 3.7.10 – Relevant Policies

Appendix D: Municipal Planning Strategy, Section 6.3.3.1 – General Land Use Bylaw Amendment Criteria

Appendix E: Draft Development Agreement

Appendix A – Reference Zoning Map



Appendix B – Notes from the April 16th, 2018 Public Information Meeting

MUNICIPALITY OF THE COUNTY OF KINGS

PLANNING AND DEVELOPMENT SERVICES

PUBLIC INFORMATION MEETING NOTES

Planning Application to legalize and permit an expansion of commercial and agri-tourism land uses at Tangled Garden – 11827 Highway #1, Grand Pré (File 18-04)

Meeting, Date and Time A Public Information Meeting was held on Monday, April 16th, 2018 at 7:00 p.m. at the Horton Community Hall, 11794 Highway #1, Grand Pré, Nova Scotia.

Attending In Attendance:

Councillors Councillor Peter Allen – District 9 (Chair)

Planning Staff Will Robinson-Mushkat – Planner, Planning and Development Services

Applicant Beverly McClare

Public 12 Members

Welcome & Introductions The Chair, Councillor Peter Allen, called the meeting to order, introductions were made and the members of the public were welcomed to the meeting. The Public Information Meeting provides an opportunity for the public to express concerns and/or receive clarification on any aspect of the proposal. No evaluation has been completed and no decisions have been made at this point.

Presentations Will Robinson-Mushkat provided a brief overview of the planning process and the criteria that will be used to evaluate the application from Beverly McClare to permit an expansion of commercial and agri-tourism land uses at Tangled Garden – 11827 Highway #1, (PID 55231641 and PID 55231658) Grand Pré, Nova Scotia.

Comments from the Public Edythe Lloyd – 11810 Highway #1, Grand Pré

- No issues with development of business
- Concerns with parking at Tangled Garden, specifically visibility
- Does not want to see parking on the side of Highway #1
- Believes noise by-law limits noise to 11 pm – would prefer 10 pm

Will Robinson-Mushkat indicated that the preliminary site plan provided by the applicant noted a parking area, contained entirely on the subject

property, for the event venue guests would ensure that excess parking would not occur alongside Highway #1. Will Robinson-Mushkat also noted that hours of operation and noise levels could be managed through the list of possible conditions that the Development Agreement could consider.

Beverly McClare addressed the members of the public and noted that the Tangled Garden recognizes that parking is an ongoing concern of neighbouring residents.

Howard Kelly – 11776 Highway #1, Grand Pre

- Commented that the parking lot needs to be constructed prior to hosting events
- Concerned with the number of vehicles arriving for events; noted that while cars can manoeuvre around other vehicles, parking presents challenges for farm equipment on the roads

Will Robinson-Mushkat showed the parking areas on the applicant's site plan as well as photos of the site that showed where the area for parking had been developed and the access point for vehicles

- Asked if the property was connected to municipal sewer services

Will Robinson-Mushkat noted that there is a municipal sewer line which runs under Old Post Road and ends at the cemetery, adjacent to the subject property. The business intends to run a private line to connect with the municipal sewer line.

Beverly McClare notes that the Tangled Garden had a private lateral installed to connect with the municipal sewer line. The reasoning was that washrooms would be much more attractive and complementary than using port-a-potties.

Jim Brown – Old Post Road

- Asks if parking for events will be on Old Post Road

Will Robinson-Mushkat notes that all parking for events will be on the Tangled Garden property and there is to be no parking on Old Post Road.

Laura McNutt – Ridge Road, Wolfville

- Asks about the frequency of events, would they be a weekly occurrence

Beverly McClare states that the tea room is intended for daily use by customers of the retail operations of Tangled Garden. The tent would be used for when special events, such as weddings, are booked for the Tangled Garden and the purpose of keeping the tent up for the season is to avoid having to erect and disassemble the tent for each event.

Steve Gaudet – Dykeland Street, Wolfville

- Notes that the property is outside of the UNESCO site boundaries but within the buffer zone
- Asks if the applicant would receive information with regard to archeological digs and/or be held to the same standard as sites within the boundaries

Will Robinson-Mushkat doesn't believe they would be required to be held to the same standard concerning archeological digs given the property is outside of the UNESCO boundaries but can provide voluntary guidelines to applicant as well as not proximity to UNESCO boundaries as part of the staff report.

Unknown name – Unknown address

- Inquires about the enlargement of the retail portion of the business

Beverly McClare notes the enlargement is to accommodate tour groups as an orientation area to ensure there is sufficient space in the retail area.

Adjournment

There being no further discussion, the Chair thanked those in attendance and adjourned the meeting at 7:35 p.m.



Will Robinson-Mushkat, Recorder

APPENDIX C: Municipal Planning Strategy, Section 3.7.10 – Relevant Policies

3.7.10 Rural Non-Conforming Use – Policies

3.7.10.1 Council recognizes that the following land uses have legal non-conforming status and are subject to the relevant Sections of the *Municipal Government Act*:

a. uses in existence prior to June 19, 1979 which became non-conforming with the adoption of the Municipal Planning Strategy; and,

b. uses established since 1979 in conformity with the Land Use Bylaw, but made non-conforming as the result of subsequent Land Use Bylaw amendments, including the adoption of the amended Land Use Bylaw subsequent to the 1991/92 revision

A use will be considered non-conforming within the context of the Strategy where there is confirmation of a. or b. above as demonstrated through suitable records or documentation of the use, and a sworn affidavit provided by the applicant confirming that the subject use is non-conforming.

3.7.10.2 Within the Country Residential, Forestry, and Agricultural Districts as well as Hamlets, Council may provide for the expansion of a non-conforming use referred to in Policy 3.7.10.1 by Development Agreement pursuant to the *Municipal Government Act*. Additional criteria are listed in Policy 3.7.10.3 for the expansion of a non-conforming use in the Environmental Open Space (O1) Zone.

In considering the terms of a development agreement, Council shall have regard to the following:

| Criteria | Comment |
|---|--|
| <i>a. the expansion is to a related use; that is, a new product, service, or additional line of business complementary to the original business</i> | The expansion is complementary to the original business |
| <i>b. the expansion does not limit nor interfere with adjacent agricultural, forestry or non-resource uses</i> | The expansion does not interfere with adjacent uses |
| <i>c. the expansion does not exceed or extend beyond the property lines that were in existence at the time the use became non-conforming (i.e. not on a consolidated lot or lot addition)</i> | The expansion would extend beyond the boundaries of the Southern Property which, at the time the use became non-conforming, was the only property that activities related to Tangled Garden occurred on. |
| <i>d. a subsequent plan of subdivision which involves the severance of land from a parcel containing a nonconforming use and bound by a Development Agreement shall be subject to an amendment to the agreement executed by a resolution of Council</i> | N/A |
| <i>e. the proposal can meet all other requirements of this Strategy, including</i> | See Appendix D |

| | |
|--|--|
| <i>Policies contained in Part 6 of this Strategy</i> | |
|--|--|

APPENDIX D: Municipal Planning Strategy, Section 6.3.3.1 General Development Agreement Criteria

Policy 6.3.3.1

A Development Agreement shall not require an amendment to the Land Use Bylaw but shall be binding upon the property until the agreement or part thereof is discharged by the Municipality. In considering Development Agreements under the Municipal Government Act, in addition to all other criteria as set out in various policies of this Strategy, Council shall be satisfied:

| Criteria | Comments |
|---|---|
| <i>a. the proposal is in keeping with the intent of the Municipal Planning Strategy, including the intent of any Secondary Planning Strategy</i> | The proposal is in keeping with the intent of the MPS as discussed in part 5 of this report as well as the objectives of the Grand Pré Community Plan. |
| <i>b. that the proposal is not premature or inappropriate by reason of:</i> | |
| <i>i. the financial capability of the Municipality to absorb any costs related to the development of the subject site</i> | The proposal does not involve any development costs to the Municipality. |
| <i>ii. the adequacy of municipal sewer and water services if services are to be provided. Alternatively, the adequacy of the physical site conditions for private on-site sewer and water systems</i> | There is an existing sewer lateral on the subject properties associated with the existing buildings. Permits to connect the washroom facilities to the existing lateral will be required at the permitting stage. |
| <i>iii. the potential for creating, or contributing to, a pollution problem including the contamination of watercourses or the creation of erosion or sedimentation during construction</i> | The proposal does not cause concern regarding pollution or contamination of watercourses. |
| <i>iv. the adequacy of storm drainage and the effect of same on adjacent uses</i> | The Subject Properties slopes downwards in a southeasterly direction towards a water-feature, therefore there is no concern regarding adequate storm drainage on this property. |
| <i>v. the adequacy of street or road networks in, adjacent to, and leading to, the development</i> | The Department of Transportation and Infrastructure Renewal has no concerns. Additional areas for vehicular parking are proposed to accommodate parking requirements for special events. |
| <i>vi. the adequacy, capacity and proximity of schools, recreation and other community facilities</i> | Not applicable as this is a commercial use. |
| <i>vii. adequacy of municipal fire protection services and equipment</i> | Municipal Building and Enforcement Services has indicated that local fire services have more than enough equipment to adequately serve the proposal. The local Fire Chief also has no concerns. |

| | |
|--|--|
| <p>viii. <i>creating extensive intervening parcels of vacant land between the existing developed lands and the proposed site, or a scattered or ribbon development pattern as opposed to compact development</i></p> | <p>Since no subdivision is proposed this criterion is not applicable.</p> |
| <p>ix. <i>the suitability of the proposed site in terms of steepness of grades, soil and/or geological conditions, and the relative location of watercourses, marshes, swamps or bogs</i></p> | <p>The lot is suitable for development, and Staff are not aware of any soil or geological conditions in the area that would have a negative impact on development.</p> |
| <p>x. <i>traffic generation, access to and egress from the site, and parking</i></p> | <p>The Department of Transportation and Infrastructure Renewal is satisfied that the proposed use will not generate an undue amount of traffic on the surrounding roads.</p> |
| <p>xi. <i>compatibility with adjacent uses</i></p> | <p>The draft development agreement includes restrictions on the hours of operation for the uses permitted by the agreement to reduce any potential compatibility issues.</p> |
| <p>c. <i>the Development Agreement may specify that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:</i></p> | |
| <p>i. <i>the type of use</i></p> | <p>The draft development agreement specifies the uses permitted.</p> |
| <p>ii. <i>the location and positioning of outlets for air, water and noise within the context of the Land Use Bylaw</i></p> | <p>No special requirements are necessary.</p> |
| <p>iii. <i>the height, bulk and lot coverage of any proposed buildings or structures</i></p> | <p>No special requirements are necessary.</p> |
| <p>iv. <i>traffic generation</i></p> | <p>No special requirements are necessary.</p> |
| <p>v. <i>access to and egress from the site and the distance of these from street intersections</i></p> | <p>The draft development agreement specifies that access and egress must be in general conformance with the site plan.</p> |
| <p>vi. <i>availability, accessibility of on-site parking</i></p> | <p>The draft development agreement requires a minimum on-site parking for special events.</p> |
| <p>vii. <i>outdoor storage and/or display</i></p> | <p>None was requested; none is permitted on the lot beyond storage associated with uses permitted in underlying zoning.</p> |
| <p>viii. <i>signs and lighting</i></p> | <p>The draft development agreement places restrictions on signs and lighting, consistent with the requirements of the LUB</p> |
| <p>ix. <i>the hours of operation</i></p> | <p>The draft development agreement places restriction on the hours of operation.</p> |
| <p>x. <i>maintenance of the development</i></p> | <p>The draft development agreement requires reasonable maintenance of the Subject Property.</p> |
| <p>xi. <i>buffering, landscaping, screening and</i></p> | <p>No buffering, landscaping or screening has</p> |

| | |
|---|--|
| <i>access control</i> | been required in the draft development agreement. |
| <i>xii. the suitability of the proposed site in terms of steepness of grades, soil and/or geological conditions, and the relative location of watercourses, marshes, swamps, or bogs</i> | The site is suitable with regards to topographical and geological conditions as well as the relative location of watercourses, marshes, swamps, or bogs. |
| <i>xiii. the terms of the agreement provide for the discharge of the agreement or parts thereof upon the successful fulfillment of its terms</i> | The draft development agreement provides for discharge of the agreement. |
| <i>xiv. appropriate phasing and stage by stage control</i> | Phasing is not needed and has not been requested or included within the draft development agreement. |
| <i>d. performance bonding or security shall be included in the agreement if deemed necessary by Council to ensure that components of the development such as, but not limited to, road construction or maintenance, landscaping or the development of amenity areas, are completed in a timely manner</i> | No performance bonding or security is needed. |

APPENDIX E: Draft Development Agreement

THIS DEVELOPMENT AGREEMENT made this _____ day of _____, A.D.

BETWEEN:

Beverly McClare, of Grand Pré, Nova Scotia, hereinafter called the "Property Owner"

of the First Part

and

MUNICIPALITY OF THE COUNTY OF KINGS, a body corporate pursuant to the Municipal Government Act, S.N.S., 1998, Chapter 18, as amended, having its chief place of business at Kentville, Kings County, Nova Scotia, hereinafter called the "Municipality",

of the Second Part

WHEREAS the Property Owner is the owner of certain lands and premises (hereinafter called the "Property") which lands are more particularly described in Schedule A attached hereto and which are known as Property Identification (PID) Numbers 55231658 & 55231641; and

WHEREAS the Property Owner wishes to develop a tearoom, permanent location for special events, accessible washroom facilities for special events, accessible washroom within the building footprint of an existing dwelling, tourist cabin; and

WHEREAS the Property is situated within an area designated Agricultural (A) on the Future Land Use Map of the Municipal Planning Strategy, and zoned Agricultural (A1) on the Zoning Map of the Land Use By-law; and

WHEREAS policies 3.7.10.2 and 3.2.8.2 of the Municipal Planning Strategy and sections 5.2.7 and 5.2.14 of the Land Use Bylaw provide that the proposed use may be developed only if authorized by development agreement; and

WHEREAS the Property Owner has requested that the Municipality of the County of Kings enter into this development agreement pursuant to Section 225 of the Municipal Government Act so that the Property Owner may develop and use the Property in the manner specified; and

WHEREAS the Municipality by resolution of Municipal Council passed at a meeting on **[DATE ADOPTED]**, approved this Development Agreement;

Now this Agreement witnesses that in consideration of covenants and agreements contained herein, the parties agree as follows:

PART 1 AGREEMENT CONTEXT

1.1 Schedules

The following attached schedules shall form part of this Agreement:

| | |
|------------|----------------------|
| Schedule A | Property Description |
| Schedule B | Site Plan |

1.2 Municipal Planning Strategy, Land Use Bylaw and Subdivision Bylaw

- (a) Municipal Planning Strategy means Bylaw 56 of the Municipality, approved on August 6, 1992, as amended, or successor bylaws.
- (b) Land Use Bylaw means Bylaw 75 of the Municipality, approved on August 6, 1992, as amended, or successor bylaws.
- (c) Subdivision Bylaw means Bylaw 60 of the Municipality, approved September 5, 1995, as amended, or successor bylaws.

1.3 Definitions

Unless otherwise defined in this Agreement, all words used herein shall have the same meaning as defined in the Land Use Bylaw. Words not defined in the Land Use Bylaw but used herein are:

- (a) *Development Officer* means the Development Officer appointed by the Council of the Municipality.
- (b) *Tent* means a covered, open-air building—that can be disassembled—intended for use by the public for events such as weddings and receptions.
- (c) *Special Outdoor Event* means an event which takes place in an outdoor setting, with or without the use of a tent and which is limited to: themed celebration, wedding, festival, or other similar uses.
- (d) *Tea Room* means a location for the preparation and serving of tea, coffee, and other alcoholic and non-alcoholic beverages and the serving, but not preparation, of food such as sandwiches, cookies, scones, and other foods that do not require utensils and/or cutlery for their consumption.
- (e) *Tourist Cabin* means a building which primarily provides fixed roof accommodations for the travelling public and may or may not contain kitchen facilities.
- (f) *Interpretive Area* means an area used for providing tour groups with information respecting of the activities that occur on site.

PART 2 DEVELOPMENT REQUIREMENTS

2.1 Use

The use of the Property shall be limited to:

- (a) Those uses permitted by the underlying zoning in the Land Use Bylaw, as amended from time to time;
- (b) A commercial building with a total floor area no greater than 1,800 square feet containing areas for the production and retail sale of goods. Although permitted to be reconstructed in the event of destruction, the commercial building shall continue to be a non-conforming structure pursuant to the *Municipal Government Act* and the Land Use Bylaw provisions affecting non-conforming structures. In the event of destruction the building will be required to meet Agricultural (A1) Zone setback requirements;
- (c) Tea room with a total floor area no greater than 600 square feet;
- (d) Special outdoor events in the area identified on Schedule B - Site Plan;
- (e) Washroom facilities to be used in conjunction with the special outdoor event site;
- (f) A tourist cabin with a footprint no greater than 40 feet by 40 feet;
- (g) Interpretive area no greater than 500 square feet, located within the existing residence for tour groups; and,
- (h) Agritourism uses and garden tours.

Except as otherwise provided in this Agreement, the provisions of the Land Use Bylaw apply to any development undertaken pursuant to this Agreement.

2.2 Site Plan

- (a) All uses enabled by this Agreement on the Property shall be developed generally in accordance with Schedule B, Site Plan;
- (b) Any future changes to Schedule B - Site Plan that would result in a change to the access and/or parking configuration must be approved by the Department of Transportation and Infrastructure Renewal or any successor body;
- (c) Schedule B - Site Plan is a graphical illustration only. In the event of the destruction of structures noted on Site Plan it is the responsibility of the Property Owner to prove the location of structures on the property; and,
- (d) Access from Lower Grand Pre Road and Old Post Road as shown on Schedule B – Site Plan are conceptual only and are subject to approval from road authority. The access points may be located in a different location along each frontage without an amendment to this Agreement.

2.3 Architecture

All buildings enabled by this Agreement shall be clad in horizontal or vertical clapboard or equivalent, or wood, masonry, stone, or metal, in any combination and shall generally reflect the roof, door and window style of the existing buildings located on the Property.

2.4 Subdivision

No alterations to the lot configuration that would result in a reduced lot area are permitted without a substantive amendment to this agreement except as may be required by the road authority for the purpose of creating or expanding a public street over the Property.

2.5 Signs

- (a) Permitted ground signs shall be constructed only of wood and/or metal.
- (b) Internally illuminated signs shall be prohibited.
- (c) The following signs shall be permitted:
 - (i) one facia (wall) sign, per building, with a maximum sign area of 20 square feet; and,
 - (ii) one ground sign with a maximum sign area of 40 square feet and maximum height of 8 feet.
- (d) Signs shall be located at least 5 feet from any property line.
- (e) Signs otherwise permitted in the underlying zone shall be permitted in accordance with the Land Use Bylaw.

2.6 Appearance of Property

The Property Owner shall at all times maintain all structures and services on the Property in good repair and in a useable state and maintain the Property in a neat and presentable condition.

2.7 Lighting

The Property Owner shall ensure that any lights used for illumination of the Property or signs shall be arranged so as to divert light away from streets and neighbouring properties.

2.8 Outdoor Storage and Display

Outdoor storage and display are prohibited except for outdoor storage associated with uses permitted in the underlying zone.

2.9 Parking and Loading Areas

- (a) Parking spaces and loading areas for each use shall be provided in accordance with the requirements of the Land Use Bylaw for the applicable use and shall be located generally in accordance with Schedule B - Site Plan.
- (b) In addition to the spaces provided for pursuant to paragraph 2.9(a), a minimum of 50 parking spaces, inclusive of barrier-free spaces, as required by the National Building Code, shall be provided for the purposes of the area for special outdoor

events. Required spaces shall be provided within the general area designated in accordance with Schedule B - Site Plan.

- (c) Loading areas are accessed from Lower Grand Pre Road, and shall be provided within the general area designated in accordance with Schedule B - Site Plan.

2.10 Access and Egress

The Property Owner must submit current permits from Nova Scotia Transportation and Infrastructure Renewal, or any successor body, to the Municipality before receiving any Development or Building Permits for uses enabled by this Agreement.

2.11 Servicing

The Property Owner shall be responsible for providing adequate water services and wastewater disposal services to the standards of the authority having jurisdiction and at the Property Owner's expense.

2.12 Erosion and Sedimentation Control

During any site preparation or construction of a structure or parking area, all exposed soil shall be stabilized immediately and all silt and sediment shall be contained within the site as required by the Municipal Specifications and according to the practices outlined in the Department of Environment *Erosion and Sedimentation Control Handbook for Construction*, or any successor documents, so as to effectively control erosion of the soil.

2.13 Hours of Operation

The hours of operation for the special outdoor events use listed in Section 2.1 (d) of this Agreement shall be from 9 am to 9 pm, inclusive, from Sunday to Thursday and from 9 am to 12 am, inclusive, on Friday, Saturday and holidays.

PART 3 CHANGES AND DISCHARGE

3.1 The Property Owner shall not vary or change the use of the Property, from that provided for in Section 2.1 of this Agreement, unless a new Agreement is entered into with the Municipality or this Agreement is amended.

3.2 Any matters in this Agreement which are not specified in Subsection 3.3 below are not substantive matters and may be changed with the written consent of Council without a public hearing provided that Council determines that the changes do not significantly alter the intended effect of these aspects of this agreement.

3.3 The following matters are substantive matters:

- (a) the uses permitted on the property as listed in Section 2.1 of this Agreement;
- (b) development that would result in any change to Schedule B - Site Plan for uses specifically enabled by this Agreement. Uses and structures permitted by the

underlying zoning on the Property shall not require any amendment to this Agreement

- (c) a subsequent plan of subdivision which involves the severance of land from the subject properties containing a non-conforming use and bound by this Agreement
- 3.4 In the event the tourist cabin is converted into a private residence, the current private residence is not permitted to be occupied as a dwelling or converted into an area accessed by the public, other than the interpretive area permitted by this Agreement. Manufacturing and storage uses are permitted in the converted area.
- 3.5 Upon conveyance of land by the Property Owner to the road authority for the purpose of creating or expanding a public street over or adjacent to the Property, registration of the deed reflecting the conveyance shall be conclusive evidence that this Agreement shall be discharged as it relates to the public street, as of the date of registration with the Land Registry Office but this Agreement shall remain in full force and effect for all remaining portions of the Property.
- 3.5 Notwithstanding the foregoing, discharge of this Agreement is not a substantive matter and this Agreement may be discharged by Council without a public hearing.

PART 4 IMPLEMENTATION

4.1 Commencement of Operation

No construction or use may be commenced on the Property for a use enabled by this Agreement until the Municipality has issued any Development Permits, Building Permits and/or Occupancy Permits that may be required.

4.2 Drawings to be Provided

When an engineered design is required for any portion of the development, record drawings shall be provided to the Development Officer within ten days of completion of the work which requires the engineered design.

4.3 Completion and Expiry Date

- (a) The Property Owner shall sign this Agreement within 60 calendar days of the date the appeal period lapses or all appeals have been abandoned or disposed of or the development agreement has been affirmed by the Nova Scotia Utility and Review Board or the unexecuted Agreement shall be null and void.
- (b) The Property Owner shall develop the tourist cabin use within ten (10) years of this Agreement being recorded at the Land Registration Office.

PART 5 COMPLIANCE

5.1 Compliance With Other Bylaws and Regulations

Nothing in this Agreement shall exempt the Property Owner from complying with Federal, Provincial and Municipal laws, bylaws and regulations in force or from obtaining

any Federal, Provincial, or Municipal license, permission, permit, authority or approval required thereunder.

5.2 Municipal Responsibility

The Municipality does not make any representations to the Property Owner about the suitability of the Property for the development proposed by this Agreement. The Property owner assumes all risks and must ensure that any proposed development complies with this Agreement and all other laws pertaining to the development.

5.3 Warranties by Property Owner

The Property Owner warrants as follows:

- (a) The Property Owner has good title in fee simple to the Lands or good beneficial title subject to a normal financing encumbrance, or is the sole holder of a Registered Interest in the Lands. No other entity has an interest in the Lands which would require their signature on this Development Agreement to validly bind the Lands or the Developer has obtained the approval of every other entity which has an interest in the Lands whose authorization is required for the Developer to sign the Development Agreement to validly bind the Lands.
- (b) The Property Owner has taken all steps necessary to, and it has full authority, to enter this Development Agreement.

5.4 Costs

The Property Owner is responsible for all costs associated with recording this Agreement in the Land Registration Office.

5.5 Full Agreement

This Agreement constitutes the entire agreement and contract entered into by the Municipality and the Property Owner. No other agreement or representation, oral or written, shall be binding.

5.6 Severability of Provisions

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

5.7 Interpretation

Where the context requires, the singular shall include the plural, and the masculine gender shall include the feminine and neutral genders.

5.8 Breach of Terms or Conditions

Upon the breach by the Property Owner of the terms or conditions of this Agreement, the Municipality may undertake any remedies permitted by the Municipal Government Act.

PART 6 ACKNOWLEDGEMENT OF FARMING PRACTICES

The Property Owner acknowledges that the Property is located in an area of active agricultural practices and agricultural processing industries, which may generate traffic, noise, dust, and odors. The Property Owner recognizes the right of surrounding landowners to carry on activities normally associated with farming and related businesses.

THIS AGREEMENT shall ensure to the benefit of and be binding upon the parties hereto, their respective agents, successors and assigns.

IN WITNESS WHEREOF this Agreement was properly executed by the respective parties hereto and is effective as of the day and year first above written.

SIGNED, SEALED AND ATTESTED to be the proper signing officers of the Municipality of the County of Kings, duly authorized in that behalf, in the presence of:

MUNICIPALITY OF THE COUNTY OF KINGS

Witness

Peter Muttart, Mayor

Witness

Janny Postema, Municipal Clerk

SIGNED, SEALED AND DELIVERED
In the presence of:

BEVERLY MCCLARE

Witness

Beverly McClare

Schedule A
Property Description
Taken from Property Online June 13, 2018

ALL that certain lot, piece or parcel of land situate lying and being at Grand Pre, in the County of Kings, and Province of Nova Scotia, and being more particularly bounded and described as follows:

BOUNDED on the North, East and South by Roads, and

ON the West by lands now or formerly belonging to Frank B. Fuller and lands now or formerly belonging to the Lower Horton Cemetery Company, containing five (5) acres, more or less.

SAVING AND EXCEPTING that lot of land conveyed to George Walford recorded at the Kings County Registry of Deeds in Book 604 at Page 356 and more particularly described as follows:

ALL that certain lot, piece or parcel of land situate lying and being at Grand Pre, in the County of Kings and Province of Nova Scotia, and being more particularly bounded and described as follows:

COMMENCING at a survey marker set on the western boundary of the Lower Grand Pre Road at a point North 82 degrees 14 minutes 40 seconds West a distance of 792.26 feet from Nova Scotia Control Monument No. 8391;

THENCE South 84 degrees 54 minutes 10 seconds West a distance of 338.02 feet to a survey marker set on the eastern boundary of lands of the Lower Horton Cemetery Company;

THENCE South 04 degrees 13 minutes 00 seconds East a distance of 135.52 feet to a survey marker set on the northern boundary of Highway No. 1;

THENCE in an easterly direction following the northern boundary of the said Highway No. 1 along an arc having a radius of 3,410 feet, a distance of 323.63 feet to a survey marker set at the point of intersection of the northern boundary of Highway No. 1, aforesaid, and the western boundary of the Lower Grand Pre Road, aforesaid;

THENCE along the western boundary of the Lower Grand Pre Road, aforesaid, North 01 degrees 53 minutes 00 seconds East a distance of 136.57 feet to a survey marker set being the point of commencement.

CONTAINING in all an area of 1.03 acres.

BEING AND INTENDED TO BE Parcel I.F.M.-1 as shown on a plan of survey drawn by Valley Surveys Limited dated September 14, 1981, as Plan No. 81-1330, said Plan being on file at the Kings County Registry of Deeds, Kentville, NS as Plan No. P-4818

BEING AND INTENDED TO BE part of those lands conveyed to Ivan Frank Morine and Muriel E. Morine by Deed recorded at the Kings County Registry of Deeds in Book 471 at Page 179.

FURTHER SAVING AND EXCEPTING THEREFROM ALL that certain lot, piece or parcel of land situate, lying and being at or near the District of Grand Pre, County of Kings, Province of Nova Scotia, as shown on Sheet 1 of 1 of the Province of Nova Scotia Department of Transportation plan Mitchell Hill Road from Grand Pre Road Easterly, dated November 5, 1971, latest revision July 10, 1986, and being more particularly bounded and described as follows:

BEGINNING at the point of intersection of the boundary between lands of the Grantor and lands now or formerly of Lower Horton Cemetery with the south-western boundary of the reconstruction of Mitchell Hill Road and 33 feet perpendicularly distant from the center line of reconstruction thereof;

THENCE in a southeasterly direction parallel to said center line, a distance of 410 feet, more or less, to meet the northwestern boundary of Lower Grand Pre Road, so called;

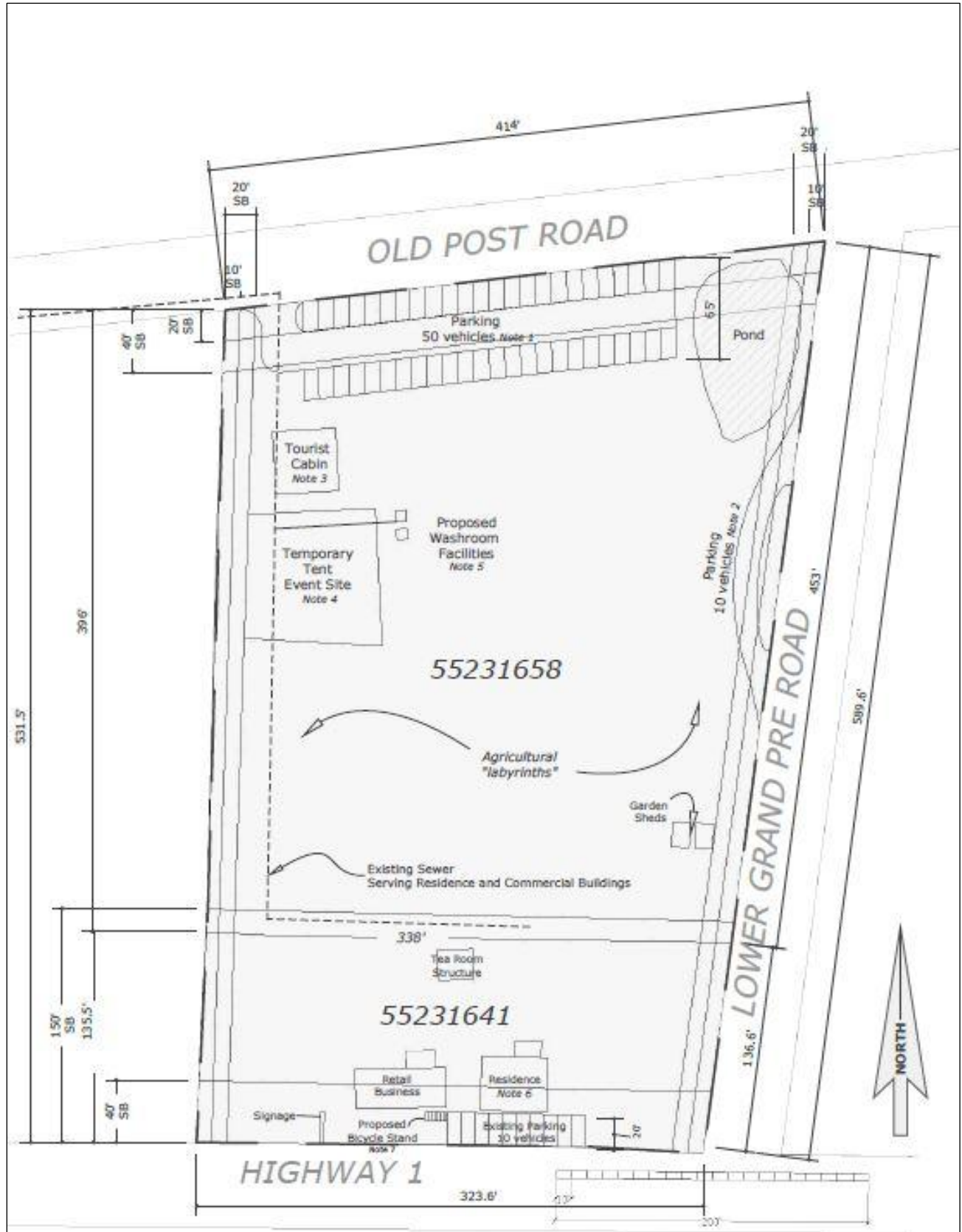
THENCE in a northeasterly direction along the last mentioned road boundary, a distance of 17 feet, more or less, to meet the original southwestern boundary of aforesaid Mitchell Hill Road;

THENCE in a northwesterly direction following the several courses of the last mentioned road boundary, a distance of 415 feet, more or less, to meet the aforesaid boundary between lands of the Grantor and lands now or formerly of the Lower Horton Cemetery, being the point of beginning.

The above parcel of land contains in total 0.08 acre, more or less, and is shown on the aforementioned plan recorded at the Registry of Deeds Office for the County of Kings as plan number P-6519

The description for this parcel originates with a deed dated October 18, 1945, registered in the registration district of Kings County in Book 168 at Page 290 and the subdivision is validated by Section 291 of the Municipal Government Act.

Schedule B
Site Plan



AFFIDAVIT OF CLERK, MUNICIPALITY OF THE COUNTY OF KINGS

I, Janny Postema of Canning, Kings County, Nova Scotia make oath and swear that:

1. I am the Clerk of the Municipality of the County of Kings (the “Municipality”) and I have personal knowledge of the matters to which I have sworn in this Affidavit.
2. The Municipality is a body corporate pursuant to the *Municipal Government Act*, S.N.S. 1988, c.18, as amended.
3. I acknowledge that the Municipality executed the attached Instrument by its proper designates duly authorized in that regard under seal on the date of this Affidavit pursuant to subsection 13(3) of the *Municipal Government Act*, S.N.S. 1988, c.18, as amended. This acknowledgement is made pursuant to subsection 31(a) of the *Registry Act*, R.S.N.S. 1989, c.392 and/or clause 79(1)(a) of the *Land Registration Act*, S.N.S. 2001, c.6, as amended, for the purpose of registering or recording the Instrument.
4. The Municipality is resident in Canada for the purposes of the *Income Tax Act* (Canada).

SWORN TO at Kentville, in Kings County,)
Nova Scotia, on _____ (date),)
before me:)
)
)
_____ (signature))
)
_____ (name))
A BARRISTER/COMMISSIONER OF)
THE SUPREME COURT OF NOVA SCOTIA)

Janny Postema, Clerk (signature)

I CERTIFY that on this date Janny Postema personally came before me and swore under oath the foregoing Affidavit.

_____ (signature)

A BARRISTER/COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA



Municipality of the County of Kings Report to the Planning Advisory Committee

Application to enter into a Development Agreement for lands at PID# 55219273
(File# 18-08)

September 11th, 2018

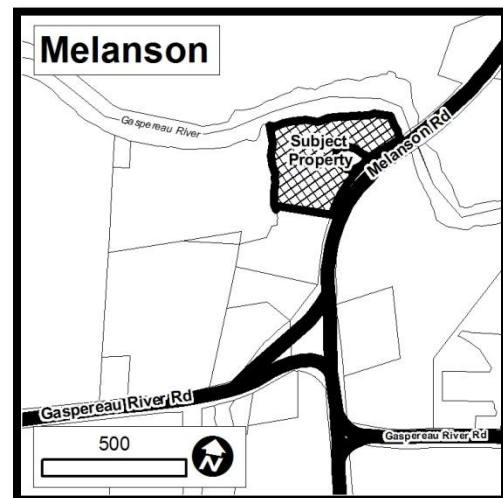
Prepared by: Planning and Development Services

| | |
|-------------------------------|--|
| Applicant | Michael Newman |
| Land Owner | Kevin Reid |
| Proposal | Application to enter into a Development Agreement to permit the expansion of an existing rural non-conforming use in order to facilitate an expansion of the use to accommodate additional cold storage and processing |
| Location | 1751 Melanson Road (PID# 55219273), Melanson, Nova Scotia |
| Lot Area | Total: 1.9 acres |
| Designation | Natural Environment and Agricultural |
| Zone | Environmental Open Space (O1) Zone and Agricultural (A1) Zone |
| Surrounding Uses | Primarily agricultural and residential uses. |
| Neighbour Notification | Staff sent notification letters to the 11 owners of property within 500 feet of the subject property and held Public Information Meeting on April 17 th , 2018 |

1. PROPOSAL

Michael Newman on behalf of Kevin Reid has applied for a Development Agreement for his property located at 1751 Melanson Road (PID# 55219273), Melanson, Nova Scotia. The Development Agreement would permit the expansion of an existing rural non-conforming use to facilitate an expansion of the existing building for additional cold storage and processing.

The applicant operates an existing commercial operation on the property that includes a retail convenience store, and butcher shop. There is an attached dwelling unit. A development agreement is required for the expansion of the business since the use(s) on-site are non-conforming with the current regulations of the Land Use Bylaw and because the property is located in the Environmental Open Space (O1) Zone.



2. OPTIONS

In response to the application, the Planning Advisory Committee may:

- A. Recommend that Council approve the Development Agreement, as drafted;
- B. Recommend that Council refuse the Development Agreement, as drafted;

- C. Provide alternative direction, such as requesting further information on a specific topic, or making changes to the Development Agreement, as drafted;

3. BACKGROUND

The Subject Property is located within Melanson, a small community located approximately three kilometres South of Grand Pré, along the banks of the Gaspereau River. Traditionally, the area has been an agricultural community and there are a number of active commercial farms in the vicinity of the subject property producing a variety of products for consumption. Due to the fertile soils in the area and the proximity to Towns and Growth Centres, there have been a number of vineyards established in the area.

Reid's Meats was established in 1979 and offers a number of butchering services including custom meat orders, freezer orders, house made sausages, pepperoni, jerky, smoking, and preparation of game, in addition to the retail convenience store offerings.

4. INFORMATION

4.1 Subject Property Information

The Subject Property consists of one lot with a lot area of approximately 1.9 acres and features approximately 360 feet of frontage on Melanson Road running in a general north-south direction. The Subject Property features approximately 510 feet of frontage along the southern bank of the Gaspereau River and is in proximity to Melanson Road Bridge, replaced in 2004, which crosses the Gaspereau River. The Subject Property is primarily zoned Environmental Open Space (O1) given its proximity to the Gaspereau River, while a portion of the southeastern corner of the Subject Property, including the area occupied by the existing building is within the Agricultural (A1) Zone.

There is a man-made water feature located in the northern portion of the Subject Property as well as a watercourse at the western boundary of the Subject Property which drains into the Gaspereau River. The Subject Property abuts two properties (PID 55292346 and PID 55219232) with approximately 213 feet and 295 feet of abutting frontage, respectively. PID 55292346 is zoned Agriculture (A1) in its entirety while PID 55219232 is primarily zoned Agriculture (A1) with a portion of the property zoned Environmental Open Space (O1) adjacent to the Gaspereau River. Under the most recent draft of the new Municipal Planning Strategy and Land Use Bylaw, the current designation and zoning is intended to be carried forward.

There is a two-storey building located on the Subject Property containing both commercial and residential uses. The ground level consists of the commercial use at the front of the building, fronting onto Melanson Road. This includes the retail store for meat and convenience items as well as the butchering, smoking, processing, and storage of meat. A portion of the ground level and the entire second level is used for residential purposes and consists of a single residential unit.

4.2 Site Visit

A site visit was conducted on Thursday, April 12th, 2018 by a Planner and a Development Officer. The Planner and Development Officer met with the applicant's brother during the site visit and discussed the uses which occur on the Subject Property and the intent of the proposed addition in the event the development agreement is approved by the Municipality. The file was reassigned to a different planner and a subsequent site visit occurred on Tuesday, June 5th, 2018 without the applicant present.

4.3 Comments from Public Information Meeting

Council's Planning Policy PLAN-09-001 requires a Public Information Meeting (PIM) for all new uses which are to be considered by development agreement. The required Public Information Meeting was held on April 17th, 2018 at the Melanson Community Hall, (1287 Gaspereau River Road), Melanson, Nova Scotia, with 6 members of the public in attendance, along with the applicant, Planner, and Councillor for the area.

The Planner made a brief presentation on the application. Members of the public were generally supportive of the proposed development. No concerns with the application were raised.

The complete notes from the PIM are attached as Appendix B.

4.4 Requests for Comments

Staff requested comments from both internal and external departments on the application:

Comments were requested from the following groups with the results as described:

4.4.1 Department of Transportation and Infrastructure Renewal (DTIR)

Department of Transportation and Infrastructure Renewal offered the following comments:

- The existing access to the Subject Property is acceptable;
- The road networks adjacent and leading to the Subject Property are adequate for the proposed development;
- There are no concerns with traffic generation, access and egress from the Subject Property; and,
- A Traffic Information Study is not required.

4.4.2 Municipality of the County of Kings Engineering and Public Works (EPW)

Engineering and Public Works commented on the following:

- The applicant is required, under the *Environment Act*, to ensure that Nova Scotia Environment's Erosion Control guidelines are followed during construction of the proposed expansion;
- No storm water management plan has been submitted;
- Proposed expansion appears suitable relative to the existing development based on the available information. The proposed expansion will likely be constructed in a manner similar to the existing building;

- The flood resistant designed proposed by the applicant's consulting engineer appears to be appropriate; and,
- EPW tends to concur with the consulting engineer that the proposed expansion will have minimal impact on flood conditions relative to the current conditions on the Subject Property.

4.4.3 Municipality of the County of Kings Building and Enforcement (B&E)

Building and Enforcement provided the following comments:

- There have not been any inspections recently conducted for compliance pertaining to the existing retail convenience store and agricultural related industry; and,
- The area fire chief has no concerns and has confirmed that fire protection services and equipment are more than adequate.

4.4.4 Municipality of the County of Kings Development Control

The Planners on this file have worked closely with development control throughout the processing of this application. The Municipal Development Officer had no concerns with relation to issuing permits for the proposed Development Agreement.

4.4.5 Nova Scotia Environment

Nova Scotia Environment did not provide comment on the application.

5. POLICY REVIEW – Development Agreement

5.1 Development Agreement

A development agreement is a contract between a landowner and the Municipality to permit a use not normally permitted on a property within the zone within which it is located. In turn, the Municipality is able to require additional controls to minimize and mitigate potential negative impacts associated with the new use. The ability for Council to consider a development agreement must be stated in the Land Use Bylaw (LUB) and the Municipal Planning Strategy (MPS). The MPS must also identify the kinds of uses Council may consider under each development agreement. Uses that Council may consider are those that Council has determined may have sufficient impact on an area that a negotiated process is required to ensure the potential impact is minimized. In the MPS, Council identifies both specific and general criteria which must be considered when making decisions regarding a development agreement.

5.2 Land Use Bylaw

Section 5.2 of the LUB states that *"Within Hamlets, Country Residential, Forestry, and Agricultural Districts the following shall be permitted by development agreement: Expansion of*

non-conforming commercial and industrial uses as provided for in Policy 3.7.10.2 of the Municipal Planning Strategy.”

It is Staff's opinion that the proposed use on the Subject Property is consistent with the above noted section of the LUB.

5.3 Municipal Planning Strategy

Policy 3.7.10.2 of the Municipal Planning Strategy states that *“Within the Country Residential, Forestry, and Agricultural Districts as well as Hamlets, Council may provide for the expansion of a non-conforming use referred to in Policy 3.7.10.1 by Development Agreement pursuant to the Municipal Government Act.”*

In considering the terms of a development agreement, Council shall have regard to the following:

- a. *The expansion is to a related use; that is, a new product, service, or additional line of business complementary to the original business*
The proposed uses which would fall under the development agreement would be complementary and, in effect, a direct extension and expansion of the existing business.
- b. *The expansion does not limit nor interfere with adjacent agricultural, forestry or non-resource uses*
The proposed uses would all be contained on the subject property and would not interfere with adjacent land uses.
- c. *The expansion does not exceed or extend beyond the property lines that were in existence at the time the use became non-conforming (i.e. not on a consolidated lot or lot addition)*
The expansion would not exceed or extend beyond the property lines which were in existence at the time the use became non-conforming.
- d. *A subsequent plan of subdivision which involves the severance of land from a parcel containing a non-conforming use and Bound by a Development Agreement shall be subject to an amendment to the agreement executed by a resolution of Council*
A clause stating this is included in the draft development agreement.
- e. *The Proposal can meet all other requirements of this Strategy, including Policies contained within Part 6 of this Strategy.*
See Appendix D of this report.

Policy 3.7.10.3 of the Municipal Planning Strategy states that in addition to the conditions outlined in Policy 3.7.10.2, above, for the expansion of non-conforming uses in the Environmental Open Space (O1) Zone, Council shall have regard to the following:

- a. *a report by a professional engineer stating that the structure will not interfere with the flow of water or displace water such that it creates a worse flooding situation for other properties may be requested by Municipal Staff.*

A letter drafted by a professional engineer was submitted to the Municipality stating that the proposed structure will not interfere with the flow or water or displace water in a manner that creates a worse flooding situation.

- b. *the structure and the associated utilities shall be designed and constructed in accordance with the accepted flood-proofing measures (as certified by a professional engineer) and entrances and exits from the building can be safely used without hindrance in the event of a flood.*

Detailed building plans, at the permitting stage, will confirm the design and associated utilities for the extension will be adequate to ensure accepted flood-proofing measures are in place. Conditions made in DA to require this submission.

- c. *the proposed use of the facility and site will not involve any storage of potential pollutants such as fuels, chemicals, pesticides, manure, or any other substance with the potential to pollute surface or groundwater resources.*

There is no proposed use which would require the storage of the potential pollutants listed.

- d. *the property owner submits a letter to Municipal Staff acknowledging they are aware they are developing in a floodplain or the development agreement shall contain a clause that acknowledges that the development is within a floodplain area and that the property owner is aware that the lands are susceptible to flooding.*

Section 5.1 of the draft Development Agreement contains a clause acknowledging the property owner is aware that the proposed development is within an identified floodplain.

5.4 General Development Agreement Amendment Policies

Municipal Planning Strategy section 6.3.3.1 contains the criteria to be used when considering all development agreement proposals (Appendix D). These consider the impact of the proposal on the road network, services, development pattern, environment, finances, and wellfields, as well as the proposal's consistency with the intent of the Municipal Planning Strategy. The proposal meets the general criteria in that it will not result in any direct costs to the Municipality, raises no concerns in terms of traffic or access, is suitable for the development and appears to be free of hazards, will be connected to municipal sewer service or be serviced by an approved private sanitary septic system, is compatible with adjacent uses, and raises no concerns regarding emergency services.

MPS subsection 6.3.3.1 (c) specifies a number of controls a development agreement may put in place in order to reduce potential land use conflicts. Controls have been placed on the minimum number of parking spaces for customers, the hours of operation, and signage. These controls have been placed on the subject property and business in order to reduce potential land-use conflicts with neighbouring properties.

6. SUMMARY OF DRAFT DEVELOPMENT AGREEMENT

The draft development agreement (Appendix D) would allow the applicant to utilize the property for a commercial use which could include within the structure located on the subject property

- a retail store
- an agricultural related industry consisting of such things as meat smoking, drying, preparation coolers, freezer, processing area, and a butchering area
- a single-unit dwelling

The draft development agreement would also allow the property owner to use the property for any use permitted by the underlying zoning on the lot.

The main specific content of the proposed development agreement includes:

| Draft agreement | Development Location | Content |
|------------------------|-----------------------------|--|
| 2.1 | | Use of the property for a retail store, an agricultural related industry, and a single-unit dwelling. |
| 2.2 | | Specifies a site plan and regulation of the location of structures. |
| 2.3 | | Regulates architecture and stipulates flood resistant construction materials |
| 2.4 | | Regulates signs. |
| 2.5 | | Regulates appearance of property. |
| 2.6 | | Regulates lighting. |
| 2.7 | | Prohibits outdoor storage and display except when associated for uses permitted in underlying zone. |
| 2.8 | | Regulates parking. |
| 3.3 | | Substantive matters in a development agreement are those that would require the entire process, including a public hearing, in order to change them within the development agreement. In the draft development agreement the substantive matters are the uses allowed on the property, and the location of the uses on the lot. |
| 5.1 | | The applicant acknowledges that the Subject Property is located in an identified flood plain and that there is an associated risk of flood potential. Further, that the Municipality bears no responsibility or liability for any damages to the property or building caused by flooding. |

7. CONCLUSION

The proposal and the terms of the draft development agreement are in keeping with the intent of Council's Municipal Planning Strategy.

The proposal is enabled by Council's rural non-conforming uses policies, and fits within the criteria of those policies.

The proposal meets all other general development agreement criteria.

As a result, a positive recommendation is being made to the Planning Advisory Committee.

8. STAFF RECOMMENDATION

Staff recommend that the Planning Advisory Committee forward a positive recommendation by passing the following motion:

The Planning Advisory Committee recommends that Municipal Council give Initial Consideration and hold a Public Hearing to enter into a development agreement to permit an expansion of a non-conforming use consisting of a retail convenience store and an agricultural related industry at 1751 Melanson Road (PID 55219273), Melanson which is substantively the same (save for minor differences in form) as the draft set out in Appendix D of the report dated September 11, 2018.

9. APPENDIXES

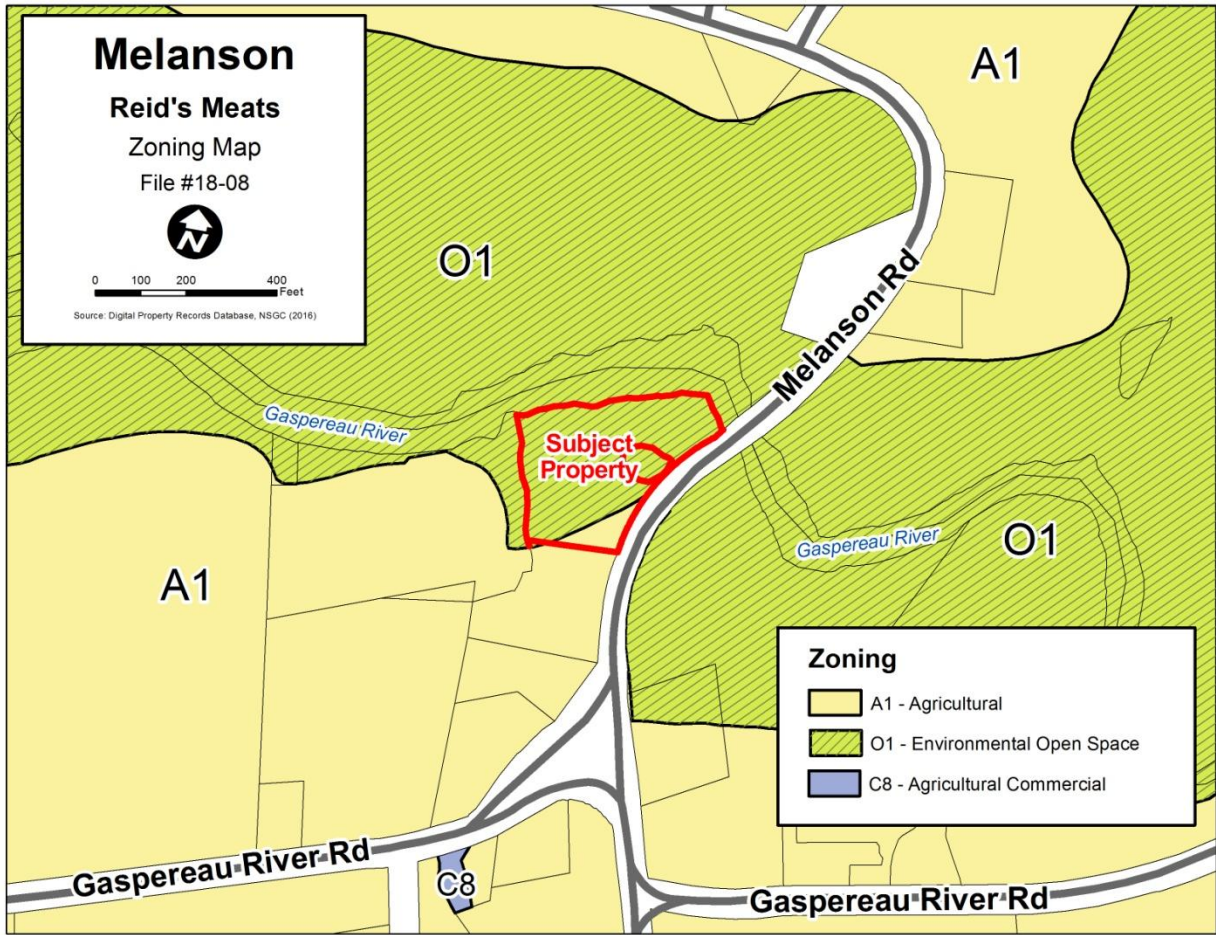
Appendix A: Reference Zoning Map

Appendix B: Notes from the April 17th, 2018 Public Information Meeting

Appendix C: Municipal Planning Strategy, Section 6.3.3.1 – General Land Use Bylaw Amendment Criteria

Appendix D: Draft Development Agreement

Appendix A – Reference Zoning Map



Appendix B – Notes from the April 17th, 2018 Public Information Meeting

MUNICIPALITY OF THE COUNTY OF KINGS

PLANNING AND DEVELOPMENT SERVICES

PUBLIC INFORMATION MEETING NOTES

Planning Application to permit an expansion of a non-conforming use at Reid's Meats – 1751 Melanson Road, Melanson (File# 18-08)

| | |
|---|---|
| <i>Meeting, Date and Time</i> | A Public Information Meeting was held on Tuesday, April 17 th , 2018 at 7:00 p.m. at the Melanson Community Hall, 1287 Gaspereau River Road, Melanson, Nova Scotia. |
| <i>Attending</i> | In Attendance: |
| <i>Councillors</i> | Councillor Peter Allen – District 9 (Chair) |
| <i>Planning Staff</i> | Laura Mosher – Manager, Planning and Development Services |
| <i>Applicant</i> | Michael Newman and Kevin Reid |
| <i>Public</i> | 6 Members |
| <i>Welcome & Introductions</i> | The Chair, Councillor Peter Allen, called the meeting to order, introductions were made and members of the public were welcomed to the meeting. The Public Information Meeting provides an opportunity for the public to express concerns and/or receive clarification on any aspect of the proposal. No evaluation has been completed and no decisions have been made at this point. |
| <i>Presentations</i> | Laura Mosher provided a brief overview of the planning process and the criteria that will be used to evaluate the application from Michael Newman to permit an expansion of non-conforming uses at Reid's Meats – 1751 Melanson Road, (PID# 55219273) Melanson, Nova Scotia. |
| <i>Comments from the Public</i> | John Cleveland – 1131 Gaspereau River Road, Melanson <ul style="list-style-type: none">• Noted the application appeared to be straight forward• The land behind the building where the proposed expansion is to occur has been in the same condition for a number of years• The existing business has been in the community for almost forty years |

Adjournment

There being no further discussion, the Chair thanked those in attendance and adjourned the meeting at 7:35 p.m.

A handwritten signature in black ink, appearing to read "S.W. Mushkat". The signature is written in a cursive style with a large initial "S" and "W".

Will Robinson-Mushkat, Recorder

APPENDIX C: Municipal Planning Strategy, Section 6.3.3.1 General Development Agreement Criteria

Policy 6.3.3.1

A Development Agreement shall not require an amendment to the Land Use Bylaw but shall be binding upon the property until the agreement or part thereof is discharged by the Municipality. In considering Development Agreements under the Municipal Government Act, in addition to all other criteria as set out in various policies of this Strategy, Council shall be satisfied:

| Criteria | Comments |
|---|---|
| <i>a. the proposal is in keeping with the intent of the Municipal Planning Strategy, including the intent of any Secondary Planning Strategy</i> | The proposal is in keeping with the intent of the MPS as discussed in part 5 of this report. There is no Secondary Planning Strategy in this area. |
| <i>b. that the proposal is not premature or inappropriate by reason of:</i> | |
| <i>i. the financial capability of the Municipality to absorb any costs related to the development of the subject site</i> | The proposal does not involve any development costs to the Municipality. |
| <i>ii. the adequacy of municipal sewer and water services if services are to be provided. Alternatively, the adequacy of the physical site conditions for private on-site sewer and water systems</i> | There is an existing private on-site sewer and water system which is adequate to support the existing and proposed uses. |
| <i>iii. the potential for creating, or contributing to, a pollution problem including the contamination of watercourses or the creation of erosion or sedimentation during construction</i> | The proposal does not cause concern regarding pollution or contamination of watercourses. |
| <i>iv. the adequacy of storm drainage and the effect of same on adjacent uses</i> | There is adequate storm drainage and the topography slopes downwards towards the Gaspereau River. |
| <i>v. the adequacy of street or road networks in, adjacent to, and leading to, the development</i> | The Department of Transportation and Infrastructure Renewal has no concerns. |
| <i>vi. the adequacy, capacity and proximity of schools, recreation and other community facilities</i> | There are no concerns with regard to the adequacy, capacity, and proximity to schools, recreation, and community facilities. |
| <i>vii. adequacy of municipal fire protection services and equipment</i> | Municipal Building and Enforcement Services has indicated that local fire services have more than enough equipment to adequately serve the proposal. The local Fire Chief also has no concerns. |
| <i>viii. creating extensive intervening parcels of vacant land between the existing developed lands and the proposed site, or a scattered or</i> | Not applicable since subdivision is not proposed as part of this application. . |

| | |
|--|---|
| <i>ribbon development pattern as opposed to compact development</i> | |
| <i>ix. the suitability of the proposed site in terms of steepness of grades, soil and/or geological conditions, and the relative location of watercourses, marshes, swamps or bogs</i> | The lot is suitable for development, and staff are not aware of any soil or geological conditions in the area that would have a negative impact on development. |
| <i>x. traffic generation, access to and egress from the site, and parking</i> | The Department of Transportation and Infrastructure Renewal is satisfied that the proposed use will not generate an undue amount of traffic on the surrounding roads. |
| <i>xi. compatibility with adjacent uses</i> | The uses are compatible with adjacent uses. |
| <i>c. the Development Agreement may specify that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:</i> | |
| <i>i. the type of use</i> | The draft development agreement specifies the uses permitted. |
| <i>ii. the location and positioning of outlets for air, water and noise within the context of the Land Use Bylaw</i> | No special requirements are necessary. |
| <i>iii. the height, bulk and lot coverage of any proposed buildings or structures</i> | No special requirements are necessary. |
| <i>iv. traffic generation</i> | No special requirements are necessary. |
| <i>v. access to and egress from the site and the distance of these from street intersections</i> | The draft development agreement specifies that access and egress must be in general conformance with the site plan. |
| <i>vi. availability, accessibility of on-site parking</i> | The draft development agreement requires a minimum on-site parking for customers. |
| <i>vii. outdoor storage and/or display</i> | None was requested; none is permitted on the lot. |
| <i>viii. signs and lighting</i> | The draft development agreement places restrictions on signs and lighting, consistent with the requirements of the LUB. |
| <i>ix. the hours of operation</i> | The draft development agreement places restrictions on the hours of operation. |
| <i>x. maintenance of the development</i> | The draft development agreement requires reasonable maintenance of the subject property. |
| <i>xi. buffering, landscaping, screening and access control</i> | No buffering, landscaping or screening has been required in the draft development agreement. |
| <i>xii. the suitability of the proposed site in terms of steepness of grades, soil and/or geological conditions, and the relative location of watercourses, marshes, swamps, or bogs</i> | The site is suitable with regards to topographical and geological conditions as well as the relative location of watercourses, marshes, swamps, or bogs. |
| <i>xiii. the terms of the agreement provide</i> | The draft development agreement provides for |

| | |
|--|---|
| <p><i>for the discharge of the agreement or parts thereof upon the successful fulfillment of its terms</i></p> | <p>discharge of the agreement.</p> |
| <p><i>xiv. appropriate phasing and stage by stage control</i></p> | <p>Phasing is not needed and has not been requested or included within the draft development agreement.</p> |
| <p><i>d. performance bonding or security shall be included in the agreement if deemed necessary by Council to ensure that components of the development such as, but not limited to, road construction or maintenance, landscaping or the development of amenity areas, are completed in a timely manner</i></p> | <p>No performance bonding or security is needed.</p> |

APPENDIX D: Draft Development Agreement

THIS DEVELOPMENT AGREEMENT made this ____ day of _____, A.D.

BETWEEN:

Kevin Reid, of Melanson, Nova Scotia, hereinafter called the "Property Owner"

of the First Part

and

MUNICIPALITY OF THE COUNTY OF KINGS, a body corporate pursuant to the Municipal Government Act, S.N.S., 1998, Chapter 18, as amended, having its chief place of business at Kentville, Kings County, Nova Scotia, hereinafter called the "Municipality",

of the Second Part

WHEREAS the Property Owner is the owner of certain lands and premises (hereinafter called the "Property") which lands are more particularly described in Schedule A attached hereto and which are known as 1751 Melanson Road and Property Identification (PID) Number 55219273; and

WHEREAS the Property Owner wishes to use the Property for the purposes of a Retail Store, Agricultural Related Industry, and Dwelling.

WHEREAS the Property is situated within an area designated Natural Environment and Agricultural on the Future Land Use Map of the Municipal Planning Strategy, and zoned Environmental Open Space (O1) and Agricultural (A1); and

WHEREAS 3.7.10.2 and 3.7.10.3 of the Municipal Planning Strategy and 5.2.7 of the Land Use Bylaw provide that the proposed use may be developed only if authorized by development agreement; and

WHEREAS the Property Owner has requested that the Municipality of the County of Kings enter into this development agreement pursuant to Section 225 of the Municipal Government Act so that the Property Owner may develop and use the Property in the manner specified; and

WHEREAS the Municipality by resolution of Municipal Council passed at a meeting on (add date of motion), approved this Development Agreement;

Now this Agreement witnesses that in consideration of covenants and agreements contained herein, the parties agree as follows:

PART 1 AGREEMENT CONTEXT

1.1 Schedules

The following attached schedules shall form part of this Agreement:

Schedule A Property Description

Schedule B Site Plan

1.2 Municipal Planning Strategy and Land Use Bylaw

- (a) *Municipal Planning Strategy* means Bylaw 56 of the Municipality, approved on August 6, 1992, as amended.
- (b) *Land Use Bylaw* means Bylaw 75 of the Municipality, approved on August 6, 1992, as amended.
- (c) *Subdivision Bylaw* means Bylaw 60 of the Municipality, approved September 5, 1995, as amended, or successor bylaws.

1.3 Definitions

Unless otherwise defined in this Agreement, all words used herein shall have the same meaning as defined in the Land Use Bylaw. Words not defined in the Land Use Bylaw but used herein are:

(a) *Development Officer* means the Development Officer appointed by the Council of the Municipality.

PART 2 DEVELOPMENT REQUIREMENTS

2.1 Use

That the Parties agree that the Property shall be limited to the following uses:

- (a) those uses permitted by the underlying zoning in the Land Use Bylaw (as may be amended from time-to-time);
- (b) a retail store, wholly contained on the ground level of the building, for the purpose of retailing convenience items and agricultural products processed on-site. Although permitted to be reconstructed in the event of destruction, the commercial building shall continue to be a non-conforming structure pursuant to the *Municipal Government Act* and the Land Use Bylaw provisions affecting non-conforming structures;
- (c) an agricultural related industry consisting of such things as meat smoking, drying, preparation, coolers, freezer, processing area, and butchering area; and,
- (d) a single residential unit.

In the event of an accident, the structure is permitted to be reconstructed in a similar size and form.

Except as otherwise provided in this Agreement, the provisions of the Land Use Bylaw apply to any development undertaken pursuant to this Agreement.

2.2 Site Plan

- (a) All uses enabled by this Agreement on the Property shall be developed generally in accordance with Schedule B, Site Plan;
- (b) Any future changes to Schedule B, Site Plan that would result in a change to the access and/or parking configuration must be approved by the Department of Transportation and Infrastructure Renewal or any successor body; and,
- (c) Schedule B - Site Plan is a graphical illustration only. In the event of the destruction of structures noted on Site Plan it is the responsibility of the Property Owner to prove the location of structures on the property.

2.3 Architecture and Construction

- (a) All building expansions enabled by this Agreement shall be clad in horizontal or vertical clapboard or equivalent, masonry, stone, or metal, in any combination and shall generally reflect the roof, door and window style of the existing buildings located on the Property;
- (b) The building enabled by this agreement shall be constructed on a reinforced concrete slab to match the existing floor elevation; and,
- (c) All walls of buildings enabled by this Agreement shall be constructed of materials that will not be impacted in the event of a flood such as insulated concrete forms, concrete blocks, non-porous wall coverings such as stainless steel, plastic paneling, or materials of an equivalent nature.

2.4 Signs

- (a) Permitted ground signs shall be constructed only of wood and/or metal and shall have a maximum sign area of 100 square feet.
- (b) The following signs shall be permitted:
 - (i) One facia (wall) sign with a maximum sign area of forty (40) square feet; and,
 - (ii) That the sign be lighted only by lights focused on the surface of the sign, and directed away from the street and nearby dwellings.
- (c) Existing internally illuminated signs are only permitted to be operated during business hours and new internally illuminated signs shall be prohibited.

- (d) Signs shall be located at least 5 feet from any property line.
- (e) Signs otherwise permitted in the underlying zone shall be permitted in accordance with the Land Use Bylaw.

2.5 Appearance of Property

The Property Owner shall at all times maintain all structures, driveways, storage areas and services on the Property in good repair and in a useable state. The Property Owner shall maintain the Property in a neat and presentable condition at all times.

2.6 Lighting

The Property Owner shall ensure that any lights used for illumination of the Property or signs shall be arranged so as to divert light away from streets and neighbouring properties.

2.7 Outdoor Storage and Display

All forms of outdoor storage and display are prohibited except for outdoor storage associated with uses permitted in the underlying zone.

2.8 Parking and Loading Areas

- (a) Parking spaces for each developed use shall be provided in accordance with the requirements of the Land Use Bylaw for the applicable use.
- (b) Regardless of the Land Use Bylaw requirement identified in paragraph 2.8(a), a minimum of six spaces, inclusive of barrier-free spaces, as required by the National Building Code, shall be provided for the retail store use.
- (c) Access and parking areas shall be maintained with a stable surface that is treated to prevent the raising of dust or loose particles.

2.9 Access and Egress

The Property Owner must submit current permits from Nova Scotia Transportation and Infrastructure Renewal, or any successor body, to the Municipality before receiving any Development or Building Permits for uses enabled by this Agreement.

2.10 Servicing

The Property Owner shall be responsible for providing adequate water services and wastewater disposal services to the standards of the authority having jurisdiction and at the Property Owner's expense.

2.11 Erosion and Sedimentation Control

During any site preparation or construction of a structure or parking area, all exposed soil shall be stabilized immediately and all silt and sediment shall be contained within the

site as required by the Municipal Specifications and according to the practices outlined in the Department of Environment *Erosion and Sedimentation Control Handbook for Construction*, or any successor documents, so as to effectively control erosion of the soil.

PART 3 CHANGES AND DISCHARGE

3.1 The Property Owner shall not vary or change the use of the Property, except as provided for in Section 2.1 of this Agreement, unless a new development agreement is entered into with the Municipality or this Agreement is amended.

3.2 Any matters in this Agreement which are not specified in Subsection 3.3 below are not substantive matters and may be changed by Council without a public hearing.

3.3 The following matters are substantive matters:

- (a) the uses permitted on the property as listed in Section 2.1 of this Agreement;
- (b) development that would result in any change to Schedule B, Site Plan for uses specifically enabled by this Agreement. Uses and structures permitted by the underlying zoning on the Property shall not require any amendment to this Agreement; and,
- (c) a subsequent plan of subdivision involving the severance of land from the Subject Property.

3.4 Upon conveyance of land by the Property Owner to either:

- (a) the road authority for the purpose of creating or expanding a public street over the Property; or
- (b) the Municipality for the purpose of creating or expanding open space within the Property;

registration of the deed reflecting the conveyance shall be conclusive evidence that that this Agreement shall be discharged as it relates to the public street or open space, as the case may be, as of the date of registration with the Land Registry Office but this Agreement shall remain in full force and effect for all remaining portions of the Property.

3.5 Notwithstanding the foregoing, discharge of this Agreement is not a substantive matter and this Agreement may be discharged by Council at the request of the Property Owner without a public hearing.

PART 4 IMPLEMENTATION

4.1 Commencement of Operation

No construction or use may be commenced on the Property until the Municipality has issued any Development Permits, Building Permits and/or Occupancy Permits that may be required.

4.2 Drawings to be Provided

When an engineered design is required for any portion of a development, record drawings shall be provided to the Development Officer within ten days of completion of the work which requires the engineered design.

4.3 Completion and Expiry Date

The Property Owner shall sign this Agreement within 120 days from the date the appeal period lapses or all appeals have been abandoned or disposed of or the development agreement has been affirmed by the Nova Scotia Utility and Review Board or the unexecuted Agreement shall be null and void;

PART 5 Acknowledgement

5.1 Acknowledgement of Flood Plain Risk

The property owner acknowledges, by signing this Development Agreement, that the existing building and any additions to the building are located in an identified flood plain and that there is a risk of flooding associated. Further, the Municipality bears no responsibility or liability for any damages to the property or the building caused by flooding.

PART 6 COMPLIANCE

6.1 Compliance With Other Bylaws and Regulations

Nothing in this Agreement shall exempt the Property Owner from complying with Federal, Provincial and Municipal laws, bylaws and regulations in force or from obtaining any Federal, Provincial, or Municipal license, permission, permit, authority or approval required thereunder.

6.2 Municipal Responsibility

The Municipality does not make any representations to the Property Owner about the suitability of the Property for the development proposed by this Agreement. The Property owner assumes all risks and must ensure that any proposed development complies with this Agreement and all other laws pertaining to the development.

6.3 No Further Expansion/Alteration

The Property Owner agrees as follows:

- (a) The Property Owner agrees there is to be no further expansion and/or external additions to the building located on the property following the completion of construction of the external addition permitted by this Development Agreement.
- (b) The Property Owner agrees that there is to be no further alteration to the topography of the property and that, in the event the topography is altered, the

property owner will be required to remediate the topography to its condition at the time this Development Agreement comes into effect.

6.4 Warranties by Property Owner

The Property Owner warrants as follows:

- (a) The Property Owner has good title in fee simple to the Lands or good beneficial title subject to a normal financing encumbrance, or is the sole holder of a Registered Interest in the Lands. No other entity has an interest in the Lands which would require their signature on this Development Agreement to validly bind the Lands or the Developer has obtained the approval of every other entity which has an interest in the Lands whose authorization is required for the Developer to sign the Development Agreement to validly bind the Lands.
- (b) The Property Owner has taken all steps necessary to, and it has full authority to, enter this Development Agreement.

6.5 Costs

The Property Owner is responsible for all costs associated with recording this Agreement in the Registry of Deeds or Land Registration Office, as applicable.

6.6 Full Agreement

This Agreement constitutes the entire agreement and contract entered into by the Municipality and the Property Owner. No other agreement or representation, oral or written, shall be binding.

6.7 Severability of Provisions

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

6.8 Interpretation

Where the context requires, the singular shall include the plural, and the masculine gender shall include the feminine and neutral genders.

6.9 Breach of Terms or Conditions

Upon the breach by the Property Owner of the terms or conditions of this Agreement, the Municipality may undertake any remedies permitted by the Municipal Government Act.

PART 7 ACKNOWLEDGEMENT OF FARMING PRACTICES

The Property Owner acknowledges that the Property is located in an area of active agricultural practices and agricultural processing industries, which may generate traffic, noise, dust, and odors. The Property Owner recognizes the right of surrounding landowners to carry on activities normally associated with farming and related businesses.

THIS AGREEMENT shall enure to the benefit of and be binding upon the parties hereto, their respective agents, successors and assigns.

IN WITNESS WHEREOF this Agreement was properly executed by the respective parties hereto and is effective as of the day and year first above written.

SIGNED, SEALED AND ATTESTED to be the proper signing officers of the Municipality of the County of Kings, duly authorized in that behalf, in the presence of:

MUNICIPALITY OF THE COUNTY OF KINGS

Witness

Peter Muttart, Mayor

Witness

Janny Postema, Municipal Clerk

SIGNED, SEALED AND DELIVERED

KEVIN REID

In the presence of:

Witness

Kevin Reid

Schedule A

Property Description

Taken from Property Online August 7, 2018

ALL THAT certain parcel of land lying, being and situate on the Northwest side of the Melanson Road, in the County of Kings and Province of Nova Scotia, being more particularly described as follows:

COMMENCING at a survey marker placed on the Northwest side of the Melanson Road running between Melanson and Gran Pre marking the intersection of the Northeast corner of an existing right-of-way and the Northwest side of the Melanson Road and marking the place of beginning;

THENCE North 69 degrees 18 minutes West for a distance of 193.3 feet to a survey marker placed near the bank of the Harding Brook;

THENCE North along the east side of the Harding Brook for approximately 265 feet or to the south side of the Gaspereau River;

THENCE East for approximately 250 feet and southeast for approximately 160 feet along the bank of the Gaspereau River to a survey marker placed at the northeast side of the Melanson Road;

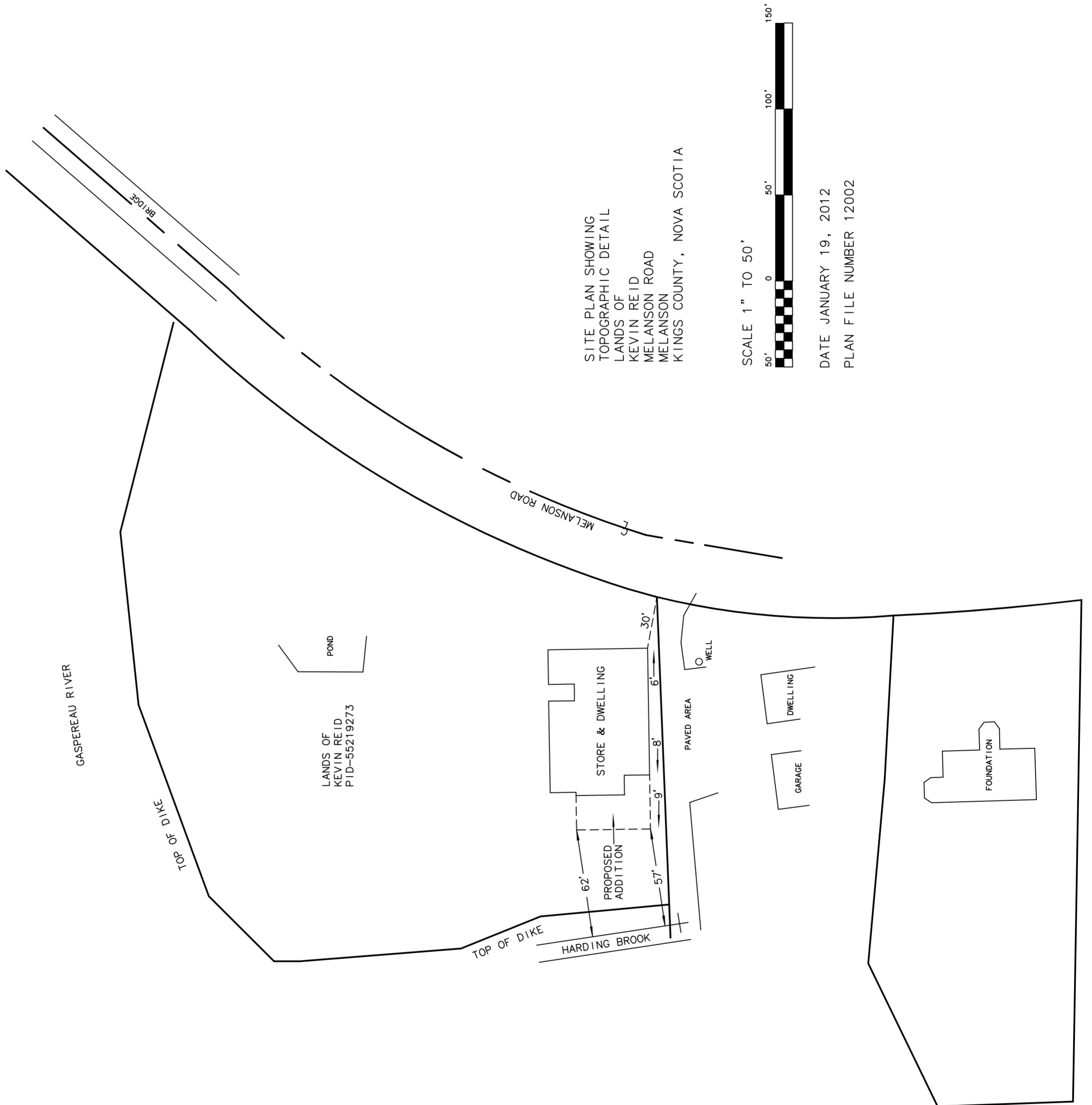
THENCE along the Northwest side of the Melanson Road along the arc of curve having a chord distance of 331.1 feet to a survey marker, marking the place of beginning.

CONTAINING IN AREA 1.9 acres.

BEING AND INTENDED TO BE those lands according to a plan of survey showing Lands of Phyllis G. Church, prepared by H. B. Smith from a survey conducted on January 16, 1979, which plan was filed in the Registry of Deeds for Kings County, February 7, 1979, under number P-3644.

Schedule B - Site Plan

GRID NORTH
1979 ADJUSTMENT



SITE PLAN SHOWING
TOPOGRAPHIC DETAIL
LANDS OF
KEVIN REID
MELANSON ROAD
KINGS COUNTY, NOVA SCOTIA

SCALE 1" TO 50'
50' 0 50' 100' 150'

DATE JANUARY 19, 2012
PLAN FILE NUMBER 12002

CASPEREAU RIVER

TOP OF DIKE

LANDS OF
KEVIN REID
PID-55219273

POND

TOP OF DIKE

HARDING BROOK

MELANSON ROAD

STORE & DWELLING

PROPOSED
ADDITION

PAVED AREA

WELL

GARAGE

DWELLING

FOUNDATION

BRIDGE

AFFIDAVIT OF CLERK, MUNICIPALITY OF THE COUNTY OF KINGS

I, Janny Postema of Canning, Kings County, Nova Scotia make oath and swear that:

1. I am the Clerk of the Municipality of the County of Kings (the “Municipality”) and I have personal knowledge of the matters to which I have sworn in this Affidavit.
2. The Municipality is a body corporate pursuant to the *Municipal Government Act*, S.N.S. 1988, c.18, as amended.
3. I acknowledge that the Municipality executed the attached Instrument by its proper designates duly authorized in that regard under seal on the date of this Affidavit pursuant to subsection 13(3) of the *Municipal Government Act*, S.N.S. 1988, c.18, as amended. This acknowledgement is made pursuant to subsection 31(a) of the *Registry Act*, R.S.N.S. 1989, c.392 and/or clause 79(1)(a) of the *Land Registration Act*, S.N.S. 2001, c.6, as amended, for the purpose of registering or recording the Instrument.
4. The Municipality is resident in Canada for the purposes of the *Income Tax Act* (Canada).

SWORN TO at Kentville, in Kings County,)
Nova Scotia, on _____ (date),)
before me:)
)
) _____ (signature))
) Janny Postema, Clerk)
)
_____ (signature))
)
) _____ (name))
A BARRISTER/COMMISSIONER OF)
THE SUPREME COURT OF NOVA SCOTIA)

I CERTIFY that on this date Janny Postema personally came before me and swore under oath the foregoing Affidavit.

_____ (signature)

_____ (name)
A BARRISTER/COMMISSIONER OF THE
SUPREME COURT OF NOVA SCOTIA

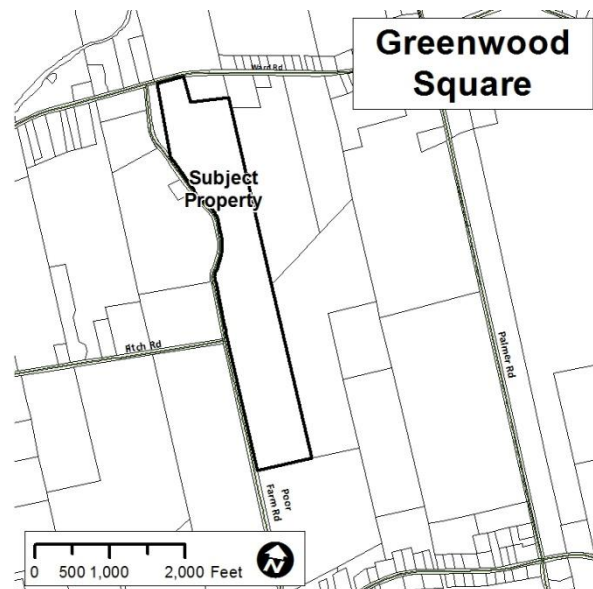


Municipality of the County of Kings
Report to the Kingston Area Advisory Committee
Eastlink Proposed Cell Tower in Kingston (File #18-11)
Date: September 11, 2018
Prepared by: Planning and Development Services

| | |
|-------------------------------|---|
| Applicant | Eastlink Wireless |
| Land Owner | Brian Fitch |
| Proposal | Construction of a 36 metre monopole telecommunications tower |
| Location | Poor Farm Road, Greenwood Square |
| Area | 86.5 acre property – 12 metre x 12 metre leased area - including equipment shelter, 36 metre tower and perimeter security fencing |
| Zone | Agricultural (A1) Zone |
| Surrounding Uses | Agricultural and rural residential uses in the area |
| Neighbour Notification | 42 neighbours notified within 1,000 feet (300 metres) |

1. PROPOSAL

Eastlink has made an application to site a 36 metre (118 foot) telecommunication tower on a leased portion of a property along Poor Farm Road, in Greenwood Square (PID# 55316574). The proposed tower is a monopole style structure located near the intersection of Fitch Road and Poor Farm Road. The proposed tower is intended to extend Eastlink cellular service to the residents and businesses in the area, while maintaining compliance with the height limits of nearby 14 Wing Greenwood Air Force base.



2. STAFF RECOMMENDATION

Staff recommend that the Planning Advisory Committee move this application forward, by passing the following motion.

The Planning Advisory Committee (PAC) recommend that Municipal Council support the application by Eastlink to site a 36 metre telecommunications tower on a leased area of PID# 55316574 along Poor Farm Road in Greenwood Square.

3. BACKGROUND

The purpose of the Municipality's telecommunication facility siting policy is to provide guidance and direction in the processing of applications to construct telecommunication facilities. A telecommunication facility is defined in the Land Use Bylaw as a "facility, apparatus or other thing that is used or being used for telecommunications or for any operation directly connected with telecommunication, and includes a transmission facility." The evolution of wireless technology has necessitated the physical development of the land. Accordingly, the telecommunication policy has evolved in order to provide choices for consumers, while respecting the environment, public health, community goals and development plans.

Municipal Process and Responsibility

The jurisdictional authority to licence and approve telecommunications sites lies completely with the Federal Government as stated in the *Radio-communications Act section 5.1*. Innovation, Science and Economic Development Canada is responsible for evaluating, regulating, and granting licences for the construction of all radio and telecommunications infrastructure in Canada. Municipalities however, as the entities responsible for land-use management and planning, are included in the process to provide municipalities and local residents an opportunity to voice and discuss any concerns related to the construction of telecommunication facilities. The proponents, as mandated by Innovation, Science and Economic Development Canada, are required to answer these concerns and to work with the municipality to mitigate potential negative effects these sites might cause to the surrounding area.

As per usual, staff will provide recommendations to the Planning Advisory Committee. The Planning Advisory Committee will consider the staff recommendations, staff report and its supporting documentation including input from the public meeting as well as Eastlink's response to those concerns and then make a recommendation to Council. Should Council support the application, Eastlink would be eligible for a development permit and must meet the municipal site requirements. This is the extent of Municipal involvement. Council's resolution as well as all supporting documentation and correspondence form part of Eastlink's application to Innovation, Science and Economic Development Canada for Federal approval. Eastlink may only proceed with construction of the tower when they have received final approval from Innovation, Science and Economic Development Canada.

Innovation, Science and Economic Development Canada may delay the issuance of antennae authorization if it becomes aware that a land use authority has raised an objection to a proposed antenna or modification. If Innovation, Science and Economic Development Canada concludes that the land use authority and the antenna proponent have reached an impasse in their consultation, and a mutually acceptable resolution is not possible, the antenna proponent is permitted to file a written submission (petition) to Innovation, Science and Economic Development Canada requesting that the license be issued. The submission must describe all of the efforts made by the proponent to accommodate the concerns raised by the land use authority. At this point, Innovation, Science and Economic Development Canada can attempt to resolve the matter(s) in dispute, deny the license, issue the license on the terms and conditions set out in the original application or grant the license with modifications intended to provide a balanced resolution for the parties. No time frames are provided for this impasse (dispute resolution) stage.

Mandate

Section 5 of the *Radiocommunication Act* states that the Minister of Industry issues radio authorizations and approves each site on which radio apparatus, including antenna systems, may be located. Under Canadian constitutional law, radio regulatory matters fall exclusively within the jurisdiction of the federal government. As such, Provincial governments do not have any direct constitutional jurisdiction over radiocommunication that could be delegated to Canadian municipalities. However, a properly framed bylaw, policy, protocol or the like, relating only incidentally to the radiocommunications (e.g. buffering provisions or setbacks) may co-exist with federal legislation provided such bylaws do not prohibit nor unduly restrict the conduct of radio services or the operation of federally-licensed radio stations.

Innovation, Science and Economic Development Canada regulates all significant supporting structures (towers) regardless of the type of radio equipment located on the supporting structure. A significant supporting structure is any structure for the transmission of radiocommunications with a height greater than 15 metres (approximately 49 feet). Cell technology is referred to as a License Spectrum. This type of license covers all cell sites and it must comply with CPC 2-0-03 which includes Health Canada's Safety Code 6 requirements.

Innovation, Science and Economic Development Canada's Client Procedure Circular 2-0-03

Innovation, Science and Economic Development Canada's Client Procedure Circular 2-0-03 (Client Procedure Circular-Radiocommunication and Broadcasting Antenna Systems) sets out what the applicant (Eastlink) needs to do or submit for their application to Innovation, Science and Economic Development Canada to install or modify a significant telecommunication tower. Circular CPC 2-0-03 provides a general policy framework for the land use consultations that are to occur between certain antenna proponents and Canadian land use authorities when significant antenna and/or supporting structures (including towers) are to be installed or modified. The CPC document itself does not create the consultation obligations for the various categories of radio station in Canada. For the most part, the local consultation requirements applicable to various categories of radio stations are imposed by Innovation, Science and Economic Development Canada as a condition of licence.

The Consumer and Clinical Radiation Protection Branch of Health Canada produces Safety Code 6. It is a safety guideline for exposure to radio frequency fields. Innovation, Science and Economic Development Canada's CPC 2-0-03 sets out that it is the responsibility of the proponents and operators of installations to ensure that all radiocommunication and broadcasting installations comply with Safety Code 6 at all times, including the consideration of combined effects of nearby installation within the local radio environment. It is Innovation, Science and Economic Development Canada that has required compliance with it by incorporating Safety Code 6 into radio regulatory provisions.

Innovation, Science and Economic Development Canada's CPC 2-0-03 outlines the Federal process that Eastlink is to follow. The broad elements of the process are as follows:

1. Investigating, sharing or using existing infrastructure before proposing new antenna-supporting structures.

2. Contacting the land use authority to determine local requirements regarding antenna systems.
3. Undertaking public notification and addressing relevant concerns, whether by following local land use authority requirements or Innovation, Science and Economic Development Canada's default process, as is required and appropriate.
4. Satisfying Innovation, Science and Economic Development Canada's general technical requirements.

Unless the proposal meets the exclusion criteria, proponents must consult with the local land use authority on any proposed antenna system prior to any construction with the aim of discussing site options; ensuring the local processes related to antenna systems are respected; addressing reasonable and relevant concerns (as set out in Section 4.2) from both the land use authority and the community they represent; and obtaining land use authority concurrence in writing.

Reasonable and Relevant Concerns

The factors that will determine whether a concern is reasonable or relevant (according to Section 4.2 in CPC 2-0-03) in the public consultation process will vary but will generally be considered if they relate to the requirements of the circular and to the particular amenities or important characteristics of the area surrounding the proposed antenna system. Examples of concerns that proponents are to address include:

- Why is the use of an existing antenna system or structure not possible?
- Why is an alternate site not possible?
- What is the proponent doing to ensure that the antenna system is not accessible to the general public?
- How is the proponent trying to integrate the antenna into local surroundings?
- What options are available to satisfy aeronautical obstruction marking requirements at this site?
- What are the steps the proponent took to ensure compliance with the general requirements of the circular including the *Canadian Environmental Assessment Act* (CEAA), Safety Code 6, etc?

Concerns that are not relevant include:

- disputes with members of the public relating to the proponent's service, but unrelated to antenna installations;
- potential effects that a proposed antenna system will have on property values or municipal taxes;
- questions whether the *Radiocommunication Act*, the circular, Safety Code 6, locally established bylaws, other legislation, procedures or processes are valid or should be reformed in some manner.

Safety Code 6

Safety Code 6 is Canada's national standard on human exposure to radiofrequency electromagnetic fields. It is a comprehensive document that sets out safety requirements for the installation and use of radiofrequency (RF) and microwave devices that operate in the frequency range from 3 kHz to 300 GHz. Safety Code 6 provides two sets of RF exposure limits that are based upon the status of the individual who may be exposed. One refers to radiofrequency and microwaves for workers who may be exposed in the course of their daily work. The other refers to other persons including the

general public who may be exposed at any time or place. It is the responsibility of proponents and operators of installations to ensure that all radiocommunication and broadcasting installations comply to Safety Code 6 at all times, including the consideration of combined effects of nearby installations within the local radio environment. Innovation, Science and Economic Development Canada has required compliance with Safety Code 6 by incorporating it into radio regulatory provisions dealing with antenna installations. The onus is placed on the owner/operator to ensure that the radio equipment is compliant with Safety Code 6 requirements and Innovation, Science and Economic Development Canada may conduct audits of operational radio stations.

Overall, the myriad of interwoven processes, regulation, and governmental departments involved ensure that the siting of telecommunication facilities is conducted in a sensitive manner. Community members are consulted, impact on the environment is taken into account, and health and safety issues are considered. The Municipal process ties into the Federal approval process. It also ensures that community concerns are heard and that opinion at the local level (i.e. Council resolution for support or non-support) is relayed to Innovation, Science and Economic Development Canada via Eastlink's application to Innovation, Science and Economic Development Canada for approval.

4. INFORMATION

Eastlink launched their cellular network in 2013. As a company that is relatively new to the cell phone industry, they were left with a higher frequency in the spectrum allotted by Innovation, Science and Economic Development Canada. The higher frequency constrains Eastlink to a smaller range for their towers. For this reason Eastlink is seeking to erect towers on the valley floor in order to reach its customers in population centres and along major roadways. The proposed site was also chosen in consultation with CFB Greenwood in order to select a location that would not interfere with their operations.

The site is a 12 metre by 12 metre leased area (approximately 1,550 square feet) located on a privately owned property. The structure is a monopole design rather than the usual lattice type structure with the goal of further limiting the visual impact. The tower access will be via Poor Farm Road, near the intersection with Fitch Road. The base of the tower and equipment shelter will be enclosed with steel wire fencing, 6 feet – 8 feet high. The tower will be equipped with an anti-climb apparatus. The site meets the separation distances required in the Municipal Planning Strategy (MPS). These include separations between the proposed tower and existing homes, schools and hospitals.

Eastlink has submitted information outlining the proposed tower's compliance with Health Canada's Safety Code 6, and Transport Canada requirements (Appendix D).

5. POLICY REVIEW

As described above, a properly framed Municipal bylaw relating only incidentally to radio-communications may co-exist with federal legislation provided such bylaws do not prohibit nor unduly restrict the conduct of radio services or the operation of federally licensed radio stations. In 2004, Council approved amendments to control the location of telecommunication structures to mitigate the impacts on adjacent property owners and in

areas where it is imperative to preserve the landscape and retain view planes and vistas. MPS Policy 5.3, Siting of Communication Facilities, provides direction to staff when processing applications for the siting of telecommunication facilities. MPS Policy 5.3 refers to structures that are significant which includes structures with heights greater than 12.2 metres (40 feet) or any building mounted structure greater than 3 metres or 25% of the building height.

Siting Objectives

Protection of Land Uses

Siting Objectives are set out in MPS 5.3.1 (please refer to appendix A). The objectives are to be achieved through the policies contained in MPS 5.3.2 via site requirements, information and attestations, and public consultation. The Municipality endeavours to manage the location of telecommunication facilities to the extent it can, given the jurisdictional framework. The siting objectives contain policies seeking to encourage the protection of agricultural lands and those areas important to tourism. The proposed tower would be located on a small footprint of land with minimal impact on agriculture or tourism.

Setbacks

The Municipality will not normally consider a communication facility if it is proposed to be located within 2 times the height of an existing residential dwelling unit, school or hospital. The proposed tower is approximately 36 metres (118 feet) high and is to be set back a distance of 165 metres from the nearest residence and an even greater distance to the nearest school or hospital. These distances do satisfy the setback requirements in the Municipal Planning Strategy (MPS).

Visual Impacts

Site requirements contain efforts aimed at minimizing the visual impact of towers. It is understood that no amount of screening will totally hide the tower. The proponent has taken steps to limit the visual impact by proposing a monopole style tower. Monopole towers have relatively small footprints and are generally preferred aesthetically over lattice towers and towers requiring guy wires.

Health Effects

The Municipality wishes to consider public health and safety to the extent permitted. Health Canada produces Safety Code 6, a safety guideline for exposure to radio frequency fields. It is Innovation, Science and Economic Development Canada that has required compliance with it by incorporating Safety Code 6 into radio regulatory provisions. Eastlink has provided a Safety Code 6 Attestation for the proposed tower location. This proposed installation falls well below the acceptable Radio Frequency emission limit set by Safety Code 6.

Protection of Adjacent Properties

Another objective of the policy for siting telecommunication facilities is to avoid potential physical damage to adjacent properties through sound engineering practices and the proper siting of antenna/tower support structures. The tower installation must be constructed to comply with the structural standards contained in CSA 37-01 and all applicable engineering and construction standards.

Co-Location

The Municipality promotes and encourages co-location on existing and new towers as an option rather than construction of additional single-antenna towers and to reduce the number of such structures needed in the future. Innovation, Science and Economic Development Canada also has a requirement that the Proponent, Eastlink, must demonstrate that co-location is not possible. Co-location is a preferable option as it makes Innovation, Science and Economic Development Canada approvals timelier and is less expensive than going through the process of obtaining a site and erecting a new tower. Eastlink has assessed the location of existing towers or other structures and has determined that there are no suitable existing structures located within the search ring for the proposed tower site.

Public Consultation

Public consultation plays a pivotal role in both the Municipal and Federal application processes. MPS Policy 5.3.2.2 sets out the process to be followed. The notice for the Public Meeting was advertised in the local newspaper and a sign was erected on the property, two weeks prior to the meeting. A total of 42 property owners within 1,000 feet of the property were also given notice and information pertaining to the proposed tower in their area. The purpose of the public meeting is to explain the application and provide an opportunity for the public to express concerns and ask questions. Following the public meeting, the applicant is to submit a written report to the Municipality that addresses concerns expressed by the public and how the applicant plans to address these concerns (see appendix F).

A public meeting was held on May 28, 2018 at the Kingston Fire hall. This meeting was attended by 6 members of the public, as well as the local Councillor. The minutes of this public meeting are attached as Appendix E. There were questions from the public with regard to health effects, property values and the visual impact of this tower. The applicant responded to the concerns raised at the meeting (see appendix E & F).

6. CONCLUSION

Cellular towers are an important part of the communication infrastructure in Kings County and throughout rural Nova Scotia. Residents often expect a high level of service. It is also the case that these structures pose a perceived risk to human health, and our environmentally and culturally sensitive areas. While it is in the interest of cellular companies to provide good service to their clients and customers, it is the responsibility of Municipalities and the Federal Government to ensure that the health, safety and interests of residents are protected.

The proponent has provided Transport Canada concurrence and approval documentation as required by *Part 5, Section 5.3* of the *Kings Municipal Planning Strategy*.

This application is consistent with the policies and requirements of the Municipal Planning Strategy, and has thus far met the satisfaction of municipal staff in terms of timely and accurate disclosure of necessary information. Staff recommends that the Planning Advisory Committee forward a positive motion to Council to Support this application by Eastlink for the construction of a telecommunications facility in Greenwood Square.

7. APPENDIXES

Appendix A - Enabling Policy

Appendix B - Municipal Planning Strategy Siting Policies

Appendix C - Maps

Appendix D - Supporting Documents

Appendix E – Public Information Meeting Minutes

Appendix F – Applicant Response to Public Information Meeting

Appendix A

BYLAW # 56 - MUNICIPAL PLANNING STRATEGY, PART 5, SECTION 5.3

5.3 SITING OF COMMUNICATION FACILITIES

The Municipality, with increasing frequency, has been approached with requests to locate telecommunication towers and antennas. The purpose of this Policy is to establish general guidelines for the siting of telecommunication facilities. These Policies are intended to provide guidance and direction to staff when dealing with siting telecommunication facilities. The ultimate approving authority of such telecommunication facilities lies with the governing federal body, which may or may not choose to accept Council's recommendation.

A small proportion of telecommunication facilities are exempted from the licensing requirements of the federal government. In 2007, Council approved amendments to put in place some controls for locating these structures to mitigate the impacts to adjacent property owners and in areas where it is imperative to preserve the landscape and retain view planes and vistas.

5.3.1 Siting Objectives

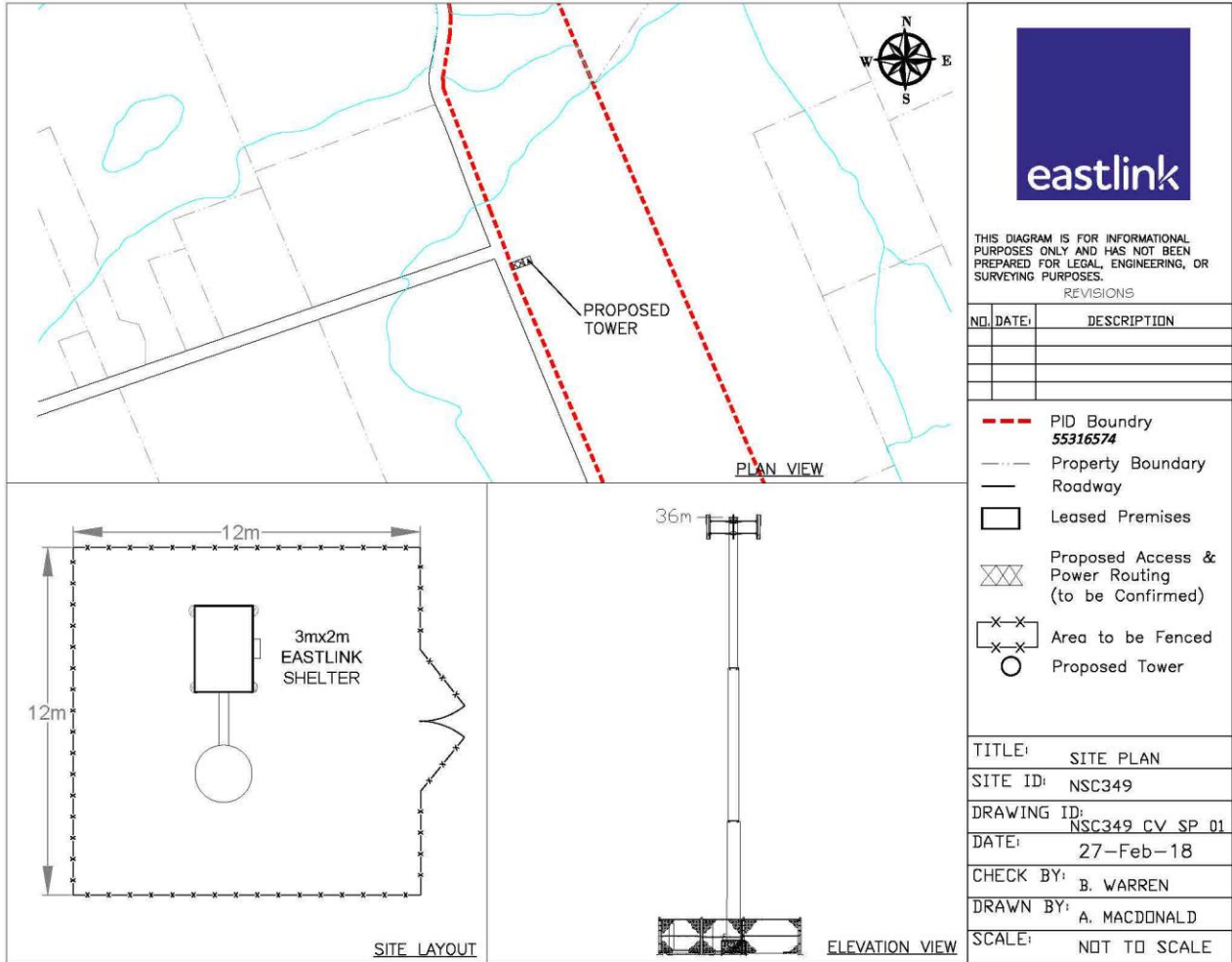
- i. to manage the location of telecommunication facilities in the Municipality
- ii. to protect residential areas and land uses from potential adverse impacts of telecommunication facilities
- iii. to encourage the protection of Agricultural lands
- iv. to encourage the protection of those areas important to tourism in the County of Kings
- v. to minimize adverse visual impacts of towers through careful design, siting, landscape screening, and innovative camouflaging techniques
- vi. to accommodate any increased requirement to serve the telecommunication needs of municipal residents and businesses
- vii. to promote and encourage co-location on existing and new towers as an option rather than construction of additional single-antenna towers, and to reduce the number of such structures needed in the future
- viii. to consider public health and safety to the extent permitted and
- ix. to avoid potential physical damage to adjacent properties through sound engineering practices and the proper siting of antenna/tower support structures

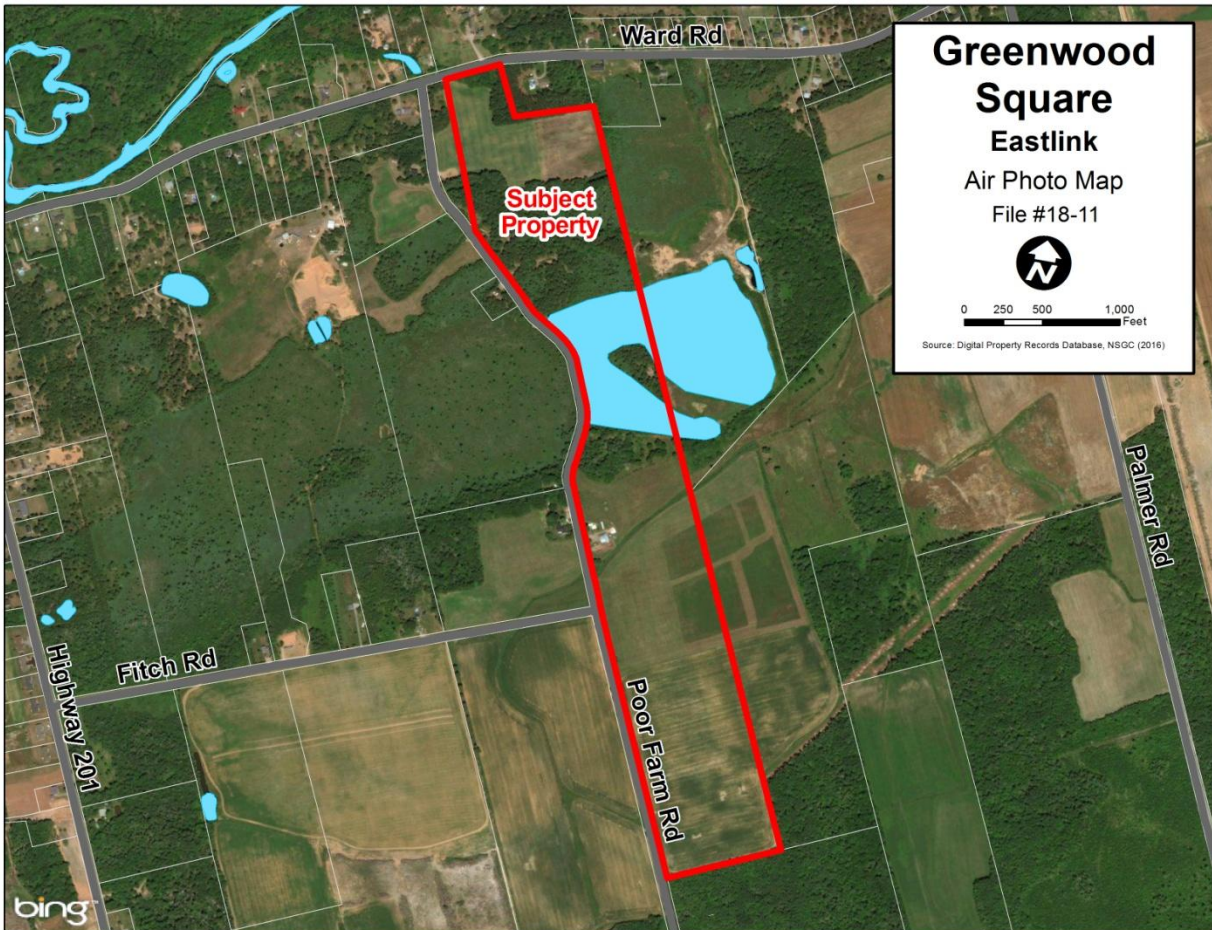
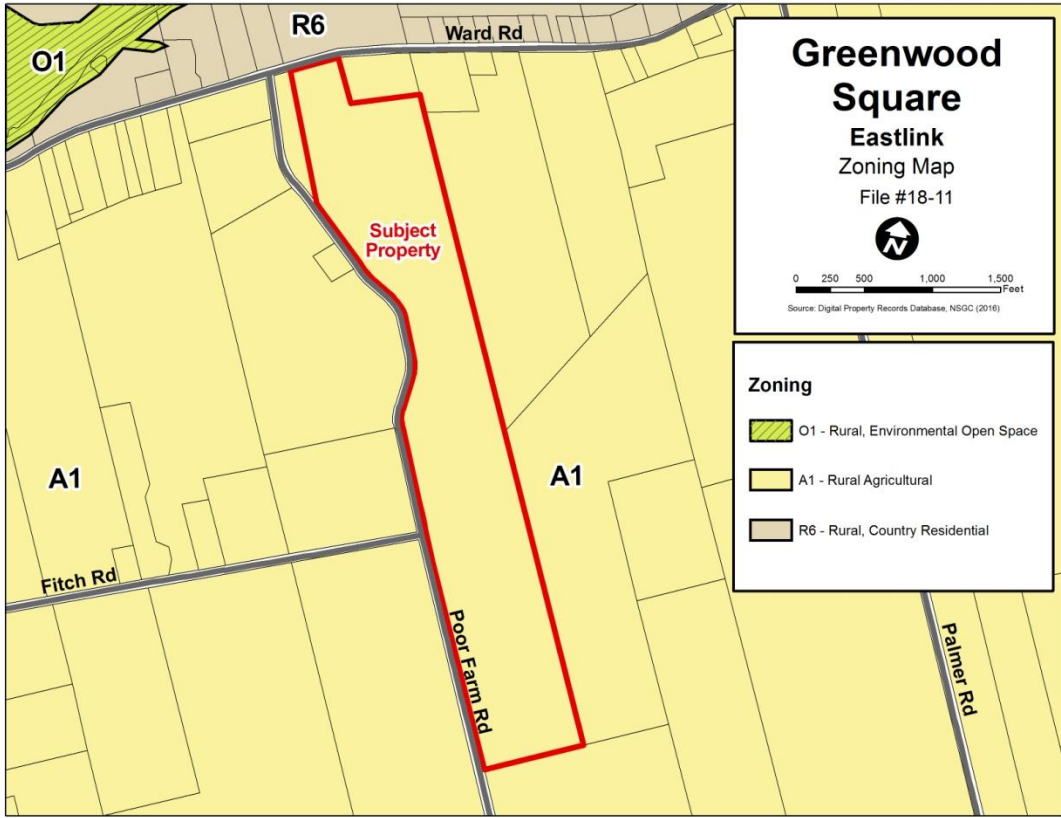
Appendix B
MPS Siting Policies - Policy 5.3.2.1 - Information Required

| Policy | Proposal |
|--|---|
| <p>5.3.2.1 Information Required</p> <p>To apply to erect a telecommunication facility, including significant alterations or additions to existing telecommunication facilities, the applicant shall submit the following information to Planning Staff:</p> <p>i. a scaled site plan clearly indicating the location, type and height of the proposed telecommunication facility, on-site land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, parking, and other information deemed by Municipal Staff to be necessary.</p> | <p>Site plan and supporting documentation and information provided.</p> |
| <p>ii. a statement of potential impacts on the surrounding the environment (a copy of the Environmental Attestation to Innovation, Science and Economic Development Canada)</p> | <p>The site is exempt from Environmental Assessment as the footprint is less than 25 square metres and the proposed tower is not within 30 metres of a body of water</p> |
| <p>iii. the setback distance between the proposed telecommunication facility and the nearest residential unit, public open space, school or hospital</p> | <p>The proposed tower is set back 165 metres from the nearest residential unit. There are no hospitals, schools or public open spaces within the immediate area.</p> |
| <p>iv. letter from the property owner stating that they are aware of the application and have consented to the proposed location of a telecommunication facility on their property or building.</p> | <p>Submitted and signed by both the land owner, Brian Fitch</p> |

| | |
|--|---|
| <p>v. to minimize adverse visual impacts associated with the proliferation of towers, co-location of telecommunication facilities on existing or new towers is encouraged – as follows:</p> <p>a. the Municipality may deny an application to construct new telecommunication facilities if the applicant has not shown by substantial evidence that a diligent effort has been made to mount the facilities on an existing structure or tower.</p> <p>b. to reduce the number of antenna support structures in the future, the Municipality may require evidence that a diligent effort has been made to invite other telecommunication service providers to co-locate.</p> | <p>Co-location options were not available in the coverage area. Height restrictions within the area of 14 Wing, result in more shorter towers, because one taller tower is not an option.</p> |
| <p>v. submit an application fee (non-refundable) and advertising deposit similar to the standard rezoning fees as established by the Municipality</p> | <p>Submitted</p> |

Appendix C Maps





Appendix D Supporting Documents

March 1, 2018

Safety Code 6 Attestation for NSC349

| Site General Information | |
|--------------------------|-------------------------|
| Site Name | NSC349 – Poor Farm Road |
| Community | Kingston NS |
| Latitude | 44 59 22.22N |
| Longitude | 64 51 53.2W |
| Tower Height | 36m |
| Tower Type | monopole |
| Number of antennas | 6 |

It is the responsibility of operators of radio-communication and broadcasting installations to ensure that their facilities comply with Health Canada's Safety Code 6 at all times, taking into consideration the local radio environment. Compliance with Safety Code 6 is an ongoing obligation. Eastlink acknowledges this obligation and its entire site design and operational processes reflect this.

To ensure compliance at the design stage, Eastlink uses engineering best practices. These practices include preventing any access in front of the antenna, installing antennas to ensure at least a minimal distance from any windows, designing the site in a way that the public cannot come close to the antenna and never installing antennas near balconies. At all time and anywhere the general public can have access, emissions from Eastlink's wireless installations are well below the established limits.

Once the site is built, Eastlink continuously monitors the power of its equipment remotely and ensures Safety Code 6 compliance even in the event that equipment is changed or added to the site. Upon request by Industry Canada or other public authorities, Eastlink can engage a third Party firm to perform live measurements to demonstrate compliance with the Safety Code 6.


William Gooding, Manager, Radio Network Engineering
Eastlink P. Eng# 100131934



AERONAUTICAL ASSESSMENT FORM FOR OBSTACLE EVALUATION

| |
|---|
| Transport Canada number TC # 2018-074 |
| Applicant number NSC 349 |

| | | | |
|---|---------------------------|--|------------------------------|
| SECTION 1 | | | |
| Owner's Name Eastlink | | Contact Person Logan McDaid | |
| Address box 8660, 6080 Young St | | | |
| City Halifax | | Province NS | Postal Code B3K5M3 |
| Telephone number (999-999-9999) 902-818-5971 | Fax number (999-999-9999) | Email Address | |
| SECTION 2 | | | |
| Applicant's Name Eastlink | | Contact Person Logan McDaid | |
| Address box 8660, 6080 Young St | | | |
| City Halifax | | Province NS | Postal Code B3K5M3 |
| Telephone number (999-999-9999) 902-818-5971 | Fax number (999-999-9999) | Email Address | |
| SECTION 3 | | | |
| Description of Proposal (or as attached) NSC349 - Kingston/Millville | | | |
| 36m monopole tower | | | |
| SECTION 4 | | | |
| Nearest Community Kingston | | Province NS | |
| SECTION 5 | | SECTION 6 | |
| Nearest Aerodrome CFB Greenwood | | Have you contacted the aerodrome? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | |
| SECTION 7 | | SECTION 8 | |
| Notice of <input checked="" type="checkbox"/> New Construction <input type="checkbox"/> Change to existing structure | | Duration <input checked="" type="checkbox"/> Permanent <input type="checkbox"/> Temporary | |
| SECTION 9 | | | |
| Proposed Construction Date Beginning (yyyy-mm-dd) 2018-07-01 | | | |
| SECTION 10 | | | |
| Temporary Structure From date (yyyy-mm-dd) _____ To date (yyyy-mm-dd) _____ | | | |

Transport Canada number
TC # 2018-074

SECTION 11

Geographic Coordinates NAD83 NAD27 WGS84 N Latitude deg 44 min 59 sec 22
 For multiple structures in a grouping, submit geographical coordinates on a separate spreadsheet (e.g. windfarms, transmission lines) W Longitude deg 64 min 51 sec 53

SECTION 12

Marking and Lighting Proposed (refer to Standard 621)

Red lights and paint Red and M.I. white lights White M.I. lights
 Red and H.I. white lights White H.I. lights No painting
 No lighting Paint marking only
 Other (provide description): _____

SECTION 13

Monitoring to Standard 621, article 4.7
 Visual inspection - 24 hrs ¹ Remote Indicator - failure alarm Remote indicator - with self-diagnostic
 ² Other _____

¹ Mitigation to be detailed in Section 3 ² Justification to be given in Section 3

SECTION 14

Catenary/Cable Crossing
 Paint supporting structures Cable marker spheres Shore markers
 Support structure lighting Cable marker lights

SECTION 15

| | Feet | Metres |
|---|------|--------|
| A Ground Elevation (AMSL) | 115 | 35 |
| B Height of an addition to a structure | | |
| C Total structure height including B (AGL) | 118 | 36 |
| Overall height (A plus C) (AMSL) | 233 | 71 |

Structure alone

Structure with an add-on

SECTION 16

Does the proposal comply with *Airport Zoning Regulations*?
 Yes No N/A

Where the location of the object is on lands affected by *Airport Zoning Regulations*, a legal survey is required with the submittal.

I hereby certify that all the above statements made by me are true, complete and correct to the best of my knowledge. Also, I agree to mark and/or light and maintain the structure with established marking and lighting standards as necessary.

Logan mcdaid Name of person filing notice
 Signature
 2018-03-02 Date (yyyy-mm-dd)

TRANSPORT CANADA ASSESSMENT (Transport Canada use only)

Marking and lighting required (as per Standard 621)
 Night protection required Day protection required Temporary lighting required No protection required

Completion of this form does not constitute authorization for construction nor replace other approvals or permits. See instruction E and F

Civil Aviation Inspector Denise Murphy Signature Denise Murphy Date (yyyy-mm-dd) 2018-03-06

Note 1: This assessment expires 18 months from the date of assessment unless extended, revised, or terminated by the issuing office.
 Note 2: If there is a change to the intended installation, a new submittal is required.



**Appendix E
Public Meeting Minutes**

MUNICIPALITY OF THE COUNTY OF KINGS

PLANNING AND DEVELOPMENT SERVICES

PUBLIC MEETING

**Telecommunications Tower - Site Code NSC349
Property Poor Farm Road, Greenwood Square (File 18-11)**

| | |
|----------------------------------|--|
| Meeting, Date and Time | A Public Meeting was held on May 28, 2018 at 7:00 p.m. at the Kingston Fire Hall, 570 Sparky Street, Kingston, NS. |
| Attending | In Attendance: |
| Council Members | Councillor Martha Armstrong – District 4 |
| Planning Staff | Mark Fredericks – GIS Planner |
| Eastlink Wireless | Logan McDaid – Wireless Site Planner Stephen Banks – Site Acquisition Manager |
| Public | 6 Members |
| Welcome and Introductions | The Chair, Councillor Martha Armstrong, called the meeting to order, introductions were made and the members of the public were welcomed to the meeting. The Chair explained that the meeting was being held to solicit public input on the proposal by Eastlink Wireless to construct a 36 metre monopole telecommunications tower on property on Poor Farm Road, Greenwood Square. |
| Staff Presentation | Mark Fredericks presented a power point presentation on the application by Eastlink. He explained the approval process for telecommunication sites as well as the Municipality's role in the process and the requirements that a proponent must meet in order to receive municipal approval. In terms of jurisdiction, the Federal Government, has the final say in approving sites for telecommunication towers. The Municipality's role is to engage a public consultation process so that concerns and questions from the public can be addressed and the proponents are obliged to work with the County to ensure that communities are not subject to unnecessary adverse effects from their proposal. No evaluation has been completed and no decisions have been made at this point. |
| Eastlink Presentation | Logan McDaid provided general information on Eastlink, headquartered in Halifax, Nova Scotia. Eastlink operates in 5 provinces and is expanding its wireless network coverage. In 2015 there were over 29 million cellular subscribers in Canada, over 90% of Canadians over 15 years of age use a mobile device, and 70% of 911 calls are made from mobile devices. |

Eastlink is the first provider to build its entire network using 4G LTE technology.

In addressing the specifics of the proposed site, the 36 metre (118 foot) monopole telecommunications tower will have controlled directional lighting as per Transport Canada requirements and it will be equipped with an anti-climb apparatus. There will be no moving parts on the tower and it will not generate noise.

Mr. McDaid commented that Health Canada regulates the health and safety of telecommunications antenna installation to ensure the safety of the public and that it is continuously reviewing health and safety associated with the transmission of radio frequencies. In 2015, Health Canada updated their Safety Code 6 standards.

Following the presentations, the Chair opened the floor for comments from the public

***Comments from
the Public***

- A nearby resident moved to the area 3 years ago for the rural look and feel, and has dealt with poor cell coverage. Why install this tower now?

Generally it is customer complaints that drive cellular providers to build new infrastructure in a particular area. Eastlink is responding to a lower than desired coverage in this area by adding a new tower to better serve its customers.

- There was a question about the coverage differences in cellular phone range vs. cellular data range.

Generally high speed cellular data coverage is only a couple of kilometres radius around a tower, and this is why they often locate in close proximity to population centers. However a phone call signal can reach the same infrastructure at much greater distances, often around 10+ kilometres from the tower.

- Questions about property de-valuation as a result of the tower being built lead to possible compensation upon sale of a home if the property value was affected.

There is no consistent impact on property values when a cell tower is built. In some situations, value of a home will go up, rather than down when it is in close range of a cell tower, because many home buyers today are now seeking this service in their neighborhoods.

- Questions around co-location and the cumulative impact on exposure limits if multiple providers were to share a tower. Does each provider have a cap on their own equipment or is it a total measurement from all carriers on the tower?

Safety Code 6 considers the total, cumulative impact of all the infrastructure mounted to any tower. The total exposure limits are capped and each tower's cumulative impact is regulated by the standards of Safety Code 6.

Adjournment

There being no further discussion, the Chair thanked those in attendance and adjourned the meeting at 7:35 p.m.

Appendix F
Applicant Response to Public Information Meeting



June 28th, 2018

NSC349 Kingston (Poor Farm Road) Public Information Meeting
Eastlink's Response to Public Concerns

Site Location

We received one phone call from a neighbor (who was also at the meeting) with some concerns about the proximity to his home and also concerns about potential noise and lighting.

Environmental Impact

No environmental concerns were raised.

Health and Safety

Some questions were raised regarding a "safe" setback distance for proposed towers to residential properties, we assured the attendees that although there is no federal policy around setbacks, that we do meet the setback requirement set forth in the Kings guidelines.

We received no correspondence after the May 28th public information meeting.

Best Case Timeline for MPS and LUB Adoption

Release and Adoption of Revised Draft Planning Documents

Municipality of the County of Kings

Revision Date: September 24, 2018

Key Dates

MPS Review - Deferred Motions

LUB Review

Edits to Documents (4 months)

Legal Review

Redline Release to PAC and public

Final Public Participation Meeting

PAC Recommendation

Council First Reading

Public Hearing and Final Consideration

Municipal affairs review

1-2 meetings, Late September

2 meetings, October

November 2018 - February 2019

March 2019

April 2019

May 2019

May 2019

June 2019

July 2019

90 days

September - October

2018

November 2018 - February 2019

March 2019

April 2019

MPS-LUB

Complete review with
PAC - 2 dates in October

Edits to documents

Production of redline documents

Legal Review

Includes time
to incorporate
edits

Release of staff edits
to PAC

For review by PAC
prior to public release
Public release after
PAC motion

May 2019

May 2019

June 2019

July 2019

July 2019-October
2019

Final Public Meeting

Formal meeting of
PAC

PAC
Recommendation

Council First
Reading

Could occur
sooner if special
Council called
Dual approval
starts

Public Hearing
and Adoption

Municipal Affairs
Review