

THE MUNICIPALITY OF THE COUNTY OF KINGS

REPORT TO COUNCIL

Subject: Planning Items

Date: April 2, 2019

A	Application for a development agreement to permit a tourist commercial facility for lodging and ancillary event venue (File 18-20)	<i>Be it resolved that Municipal Council give Initial Consideration to and hold a Public Hearing regarding entering into a development agreement to permit a tourist commercial facility and an accessory event venue at 1636 Bishopville Road (PID 55511257), Bishopville, which is substantively the same (save for minor differences in form) as the draft set out in Appendix C of the report dated March 12, 2019.</i> <u>*Report attached</u>
B	Application for a development agreement to permit the expansion of an existing gas station at 8981 Commercial Street, New Minas (File 18-22)	<i>Be it resolved that Municipal Council give Initial Consideration to and hold a Public Hearing regarding entering into a development agreement to permit the expansion of a non-conforming use at 8981 Commercial Street (PID 55210108), New Minas, which is substantively the same (save for minor differences in form) as the draft set out in Appendix C of the report dated March 12, 2019.</i> <u>*Report attached</u>
C	Public Hearing	Tuesday, May 7, 2019 at 6:00 p.m.



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

Application: Application to enter into a development agreement to permit tourist accommodations, and an accessory event venue at 1636 Bishopville Road, Bishopville (PID 55511257) (File 18-20)

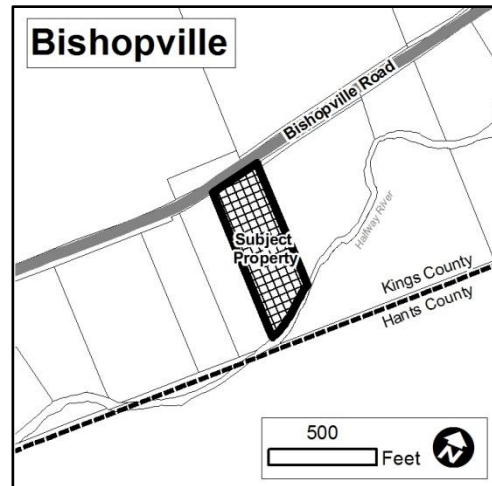
Date: March 12th, 2019

Prepared by: Planning Staff

Applicants	Elizabeth and Robert Pearce
Land Owner	Joyce Elizabeth Pearce
Proposal	To develop tourist accommodations and an accessory event venue
Location	1636 Bishopville Road (PID 55511257), Bishopville, N.S.
Lot Area	Approximately 3.81 acres
Designation	Forestry (F) Designation
Zone	Forestry (F1) Zone
Surrounding Uses	Residential, Agriculture, Institutional
Neighbour Notification	Letters were sent to the 8 owners of property within 500 feet of the subject property notifying them of the Public Information Meeting (PIM).

1. PROPOSAL

Elizabeth and Robert Pearce have applied for a development agreement to allow for a tourist commercial facility consisting of lodging and accessory event venue on their property located at 1636 Bishopville Road, Bishopville. They intend to run the tourist commercial facility for lodging from their existing home and the accessory event venue out of the existing barn, for which additions have been made without permits, located on the subject property.



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 recommending changes to the draft development agreement.

3. BACKGROUND

The property located at 1636 Bishopville Road was a part of a larger parcel owned by John William Payzant. In 2011, the subject property, was subdivided from the larger original parcel. The house, barn, and accessory structures found on the subject property all pre-date the subdivision.

The applicants have an existing permit for a Bed and Breakfast in the existing residential dwelling however they have expressed interest in being able to rent out the dwelling as a whole. As an accessory use to the tourist accommodations, the applicants have re-purposed the existing barn without the required approvals to host weddings and other special events.

4. INFORMATION

4.1 Site Information

The subject property is located on the south side of Bishopville Road which generally runs in a east-west direction. The subject property falls within the community of Bishopville and is approximately 5.4 kilometres from Highway 101. The subject property features approximately 246 feet of frontage on Bishopville Road and the property boundaries run in a general north-south direction from the road to the river. The eastern property boundary of the subject property is 590 feet in length from Bishopville Road to Halfway River while the western property boundary extends a distance of 735 feet from Bishopville Road to Halfway River. The area surrounding the subject property generally consists of forested land with some residential, agricultural and institutional uses in the general vicinity fronting onto Bishopville Road. The subject property is predominantly cleared of vegetation, with some forested areas towards the Halfway River. In addition to the farm house and barn, there are a few old storage buildings located on the subject property. The house, barn, and accessory buildings are located close to Bishopville Road. The area behind the house and barn is relatively flat, gradually sloping towards the river.

4.2 Site Visit

A Planner and Development Officer visited the subject property on November 2, 2018. At this time, both of the applicants were present and showed staff the buildings and property.

4.3 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 November 13, 2018 in the Council Chambers of the Municipal Complex with 3 members of the public in attendance. The complete notes from the PIM are attached as Appendix B.

4.4 Requests for Comments

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

4.4.1 Department of Transportation and Infrastructure Renewal

The Department of Transportation and Infrastructure Renewal has issued an access permit for the proposed new uses on the property.

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

EPW did not have any concerns with regard to the proposal.

4.4.3 Nova Scotia Environment

Nova Scotia Environment did not respond to planning staff's request for comments on the proposed Development Agreement, however, as per the municipal permitting process, an approval from Nova Scotia Environment for the on-site septic addressing the change of use from a barn to an event venue will be required.

4.4.4 Building and Enforcement Services

Building and Enforcement Services provided the following comments:

- The dwelling has not been inspected for compliance with regard to past permits issued.
- No permits were issued for the renovation and addition to the barn to-date. The event venue has had a recent fire and life safety inspection conducted prior to a wedding taking place on the property under the Temporary commercial Use regulation of the Land Use Bylaw.
- There are no concerns with regard to issuing permits for the proposed event venue so long as all code requirements are met in order to gain minimal code compliance.
- The Hantsport Fire Chief confirmed that fire protection services and equipment are adequate to serve the proposed event venue.
- The occupancy load for the event venue for the one permitted event was determined to be 80 people. This is subject to change should apply for and receive permits.

4.4.5 Development Control

Development Control noted that they have no concerns with the house operating as a Bed and Breakfast as defined in the Land Use Bylaw and the barn may be used as an event venue provided it is a permitted use and subject to the terms and conditions of the Development Agreement.

5. POLICY REVIEW

5.1 Ability to enter into a Development Agreement

Section 5.4.1 of the Land Use Bylaw states that "Tourist commercial uses for lodging, food services and ancillary uses in accordance with the policies of the Municipal Planning Strategy Section 4.4.8 and the provisions of the Land Use Bylaw Section 10.1.5 within the Forestry (F1) Zone, Country Residential (R6) Zone, and the Hamlet Historic Residential (R9) Zone" can be considered by development agreement.

Policy 3.3.2.8 f. of the Municipal Planning Strategy also provides direction for Council to consider the provision of tourist commercial facilities within the Forestry Districts. Policy 4.4.8.5 of the Municipal Planning Strategy provides the policy direction and criteria for approving

proposals for tourist commercial facilities by development agreement. These criteria are discussed in section 5.3 of this report.

5.2 Relevant Land Use Bylaw Regulations

Section 10.1.5 I outlines general provisions for all tourist commercial development in rural zones. These regulations are intended to apply to tourist commercial developments that are regulated through as-of-right permitting. Section 10.1.5.14 c of the LUB notes that proposals that do not meet the requirements specified in sections 10.1.5.4 to 10.1.5.13 of the LUB shall be considered by Development Agreement. This application does not meet two criteria (10.1.5.9 and 10.1.5.10), being that the road frontage is less than 250 feet and the setback of the barn is less than 50 feet from the front property line. Section 10.1.5.15 of the LUB pertains to uses that shall be permitted via a Development Agreement, provided the provisions contained within MPS Section 4.4.8 can be met.

5.3 Relevant Municipal Planning Strategy Policies

Tourist Commercial Facilities Policies

Section 4.4.8.5 of the MPS allows Council to consider large-scale tourism commercial uses in most rural areas of the Municipality by development agreement. This application falls under this policy since the proposed use does not meet LUB Regulation 10.1.5.9 which establishes the minimum required road frontage and 10.1.5.10 which establishes a minimum front setback for the tourist commercial use. Staff reviewed this application against the evaluation criteria contained in MPS Section 4.4.8.5; the criteria include requirements for architectural compatibility, buffering, landscaping and ground water protection.

“Proposals for larger scale tourist commercial facilities for lodging, food services, and ancillary uses or proposals for small scale tourist commercial facilities for lodging, food services, and ancillary uses which do not fulfill the requirements of the Land Use Bylaw Section 10.1.5 II (Provisions for Tourist Commercial Uses Permitted as of Right) in the Forestry, Country Residential, Hamlet Historic Residential and Shoreland Districts and all such proposals in the Shoreland Districts in the South Mountain, including facilities for food service which cater to the general public, (i.e., a full service restaurant) shall be considered by Development Agreement, in accordance with the provisions below:

MPS Policy Criteria	Staff Comment
<p><i>a. the facilities must be constructed in a manner which are architecturally compatible with other buildings in the surrounding area, and feature a pitched roof, natural, wood, stone, or brick cladding materials</i></p>	<p>The draft DA requires that all buildings be architecturally compatible with surrounding buildings including a pitched roof and the use of natural cladding materials. The proposed use will re-purpose the existing barn on the property, which has previously undergone extensive renovation.</p>
<p><i>b. the site facilities must be adequately buffered and well separated from surrounding residential dwellings, (other than a residential dwelling occupied by the operator), with a significant vegetative buffer, or other significant</i></p>	<p>The proposed use will be adequately separated and buffered from the neighbouring residential dwelling at the rear of the property to the west of the subject property. The draft development agreement includes a site plan demonstrating the</p>

<i>visual buffer, to mitigate noise, light, and other visual impacts</i>	requirement for a natural vegetative buffer of 30 feet on both the east and west property boundaries
<i>c. proposed site alteration, grading and landscaping must be sympathetic to the natural landscape and any significant natural features on the site, including significant woodland areas, watercourses and wetland areas, and steep slopes</i>	There does not appear to be any significant natural features on the site. Any future site alteration including grading and landscaping must meet required Municipal and Nova Scotia Environment setbacks from the Halfway River.
<i>d. the site must be capable of accommodating on-site sewage disposal systems and must also not pose any threat to the ground water supply, in term of water quality or water quantity, for surrounding properties</i>	An approval from Nova Scotia Environment regarding the on-site septic system will be required as part of the permit approval process to convert the barn to an event venue.

5.4 General Development Agreement Policies

Municipal Planning Strategy section 6.3.3.1 contains the criteria to be used when considering all development agreement proposals. 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 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 serviced by a private on-site 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. The draft development agreement implements controls on the permitted uses, maintenance of the property, parking, signage, lighting, buffering and the hours of operation.

MPS Policy Criteria	Staff Comment
<i>6.3.3.1 ... in addition to all other criteria as set out in various policies of this Strategy, Council shall be satisfied:</i>	The proposal conforms to all other policies outlined in the MPS.
<i>a) that the proposal is in keeping with the intent of the MPS</i>	The proposal is in keeping with the intent of the MPS, in particular policies 3.3.2.8 and 4.4.8.5, the enabling policies for considering a development agreement.
<i>b) that the proposal is not premature or inappropriate by reason of:</i>	
<i>i. financial capability of the municipality</i>	No municipal investment required.
<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</i>	An approval from Nova Scotia Environment regarding the on-site septic system will be required as part of the permit approval process to convert the barn to an event venue.

<i>on-site sewer and water systems</i>	
<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>	No pollution problem is anticipated with this proposal.
<i>iv. the adequacy of storm drainage and the effect of same on adjacent uses</i>	There are no concerns regarding storm drainage anticipated.
<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 issued an access permit for the proposed uses.
<i>vi. the adequacy, capacity and proximity of schools, recreation and other community facilities</i>	Not applicable as this is not a residential development.
<i>vii. adequacy of municipal fire protection services and equipment</i>	The Hantsport Fire Chief has stated that he has no concerns with the proposal. Fire protection is considered adequate for this development.
<i>viii. 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>	Not applicable.
<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>	There are no natural conditions or features found on the site that result in the property being unsuitable for the type of development proposed.
<i>x. traffic generation, access to and egress from the site, and parking</i>	It is anticipated that local roads will be able to accommodate any increase in traffic. An access permit has been issued by the Department of Transportation and Infrastructure. The parking area proposed meets the requirements of the draft development agreement.
<i>xi. compatibility with adjacent uses</i>	The proposed uses appear to be compatible with adjacent residential uses. The subject site is quite large and allows for a significant separation between the proposed use and neighbouring residential uses. The provision for buffering has also been included in the draft development agreement.
<i>c) ...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 operation of the event venue is restricted by the terms found in the draft development agreement.

<p><i>ii. the location of positioning of outlets for air, water and noise within the context of the Land Use Bylaw</i></p>	<p>Natural vegetative buffering is required on the eastern and western property boundaries alongside the parking area indicated on the site plan.</p>
<p><i>iii. the height, bulk and lot coverage of any proposed buildings or structures</i></p>	<p>The draft development agreement regulates the size of the structures used for the proposed use on the subject property.</p>
<p><i>iv. traffic generation</i></p>	<p>No special requirements are necessary.</p>
<p><i>v. access to and egress from the site and the distance of these from street intersections</i></p>	<p>As shown on the Site Plan.</p>
<p><i>vi. availability, accessibility of on-site parking</i></p>	<p>The Property Owner is required to provide on-site parking and no parking is permitted on Bishopville Road.</p>
<p><i>vii. outdoor storage and/or displays</i></p>	<p>No special requirements are necessary.</p>
<p><i>viii. signs and lighting</i></p>	<p>Sign limitations and restrictions on exterior lighting are included in the draft development agreement.</p>
<p><i>ix. hours of operation</i></p>	<p>Hours of operation are set out in Section 2.11 of the draft development agreement.</p>
<p><i>x. maintenance of the development</i></p>	<p>The draft development agreement requires that the property be maintained in good repair and kept in a neat and presentable condition.</p>
<p><i>xi. buffering, landscaping, screening and access control</i></p>	<p>Within the draft development agreement, vegetative buffering is required along a portion of the western and eastern boundaries of the parking area.</p>
<p><i>xii. the suitability of the site in terms of the landscape and environmental features</i></p>	<p>No special requirements necessary.</p>
<p><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></p>	<p>Provision is made for discharge.</p>
<p><i>xiv. appropriate phasing and stage by stage control</i></p>	<p>No special requirements necessary.</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</i></p>	<p>No performance bonding or security is needed.</p>

completed in a timely manner

5.5 Draft Municipal Planning Strategy/Land Use Bylaw Analysis

The current iteration of the draft Municipal Planning Strategy being considered for adoption contains a set of tourism policies that direct Council to encourage and promote opportunities for visitor-oriented businesses in the Municipality. These policies include the ability for Council to consider visitor-oriented development proposals for uses such as lodging, restaurants, event venues and other types of attractions by development agreement within the Municipality's rural designations.

6. SUMMARY OF DRAFT DEVELOPMENT AGREEMENT

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

Draft Development Agreement Location	Content
2.1	specifies that development must be in general conformance with the attached site plan
2.2	regulates the uses permitted on the site
2.3	regulates signs
2.4	regulates appearance of the property
2.5	regulates exterior lighting
2.6	regulates parking
2.7	regulates access and egress
2.8	regulates architectural design
2.9	regulates buffering
2.10	addresses servicing
2.11	regulates hours of operation
2.12	addresses erosion and sediment control
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 only substantive matters are the uses regulated in Section 2.2 and changes to or substitution of the Site Plan contained in Schedule 'B' of the

	development agreement.
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7. CONCLUSION

Staff have reviewed the application for consistency and compliance with the MPS including the policies for tourist commercial facilities. Since the terms of the draft development agreement are in keeping with and carry out the policies of the MPS, Staff are forwarding a positive recommendation to the Planning Advisory Committee.

8. STAFF RECOMMENDATION

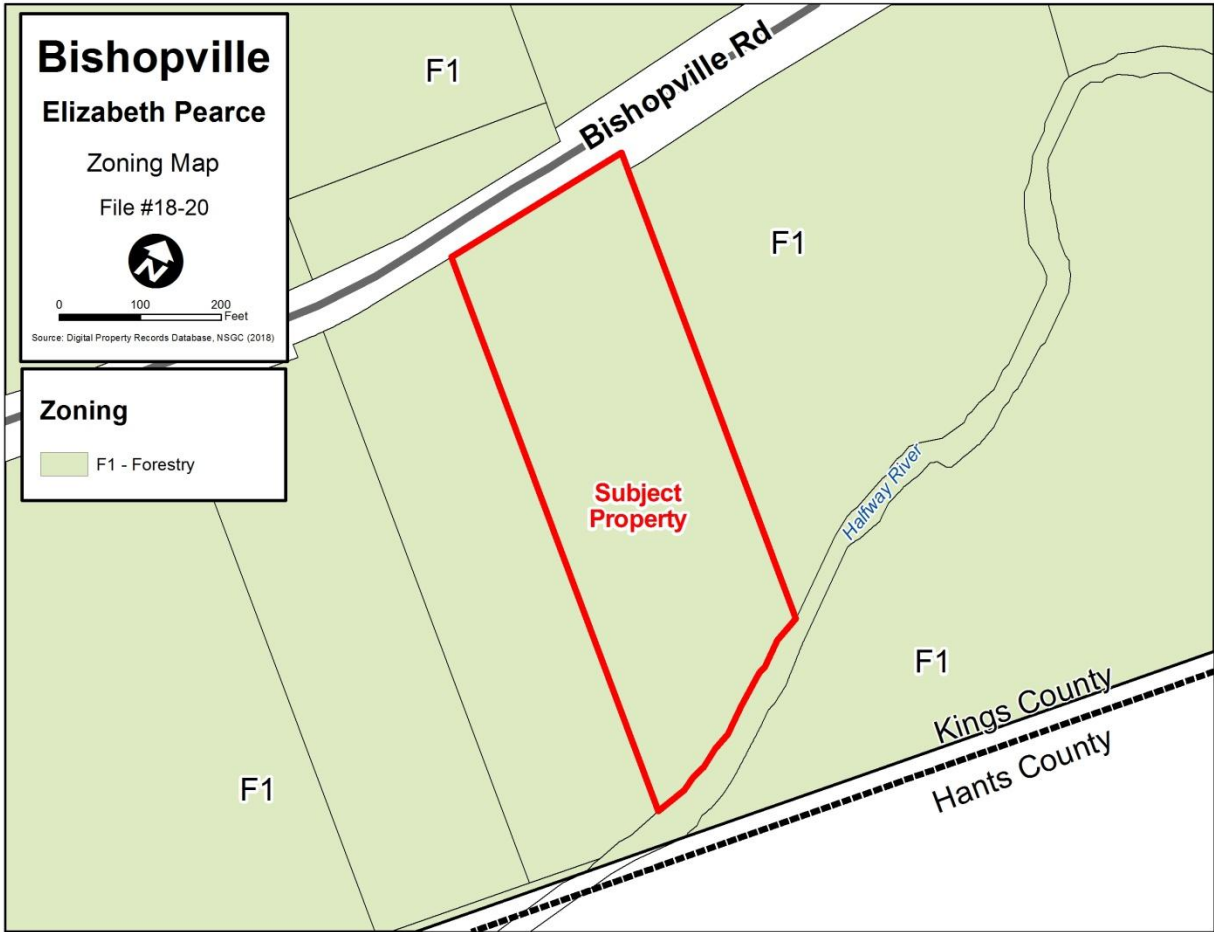
Staff recommends that the Planning Advisory Committee forward a positive recommendation to Council by passing the following motion:

The Planning Advisory Committee recommends that Council give Initial Consideration to and hold a Public Hearing regarding entering into a development agreement to permit tourist commercial facility and an accessory event venue at 1636 Bishopville Road (PID 55511257), Bishopville, which is substantively the same (save for minor differences in form) as the draft set out in Appendix C of the report dated March 12, 2019.

9. APPENDICES

Appendix A	Zoning Map
Appendix B	Public Information Meeting Notes
Appendix C	Draft Development Agreement

APPENDIX A - Zoning Map



APPENDIX B – Public Information Meeting Notes

MUNICIPALITY OF THE COUNTY OF KINGS

PLANNING AND DEVELOPMENT SERVICES

PUBLIC INFORMATION MEETING NOTES

**Planning Application to Permit Tourist Accommodations (Bed and Breakfast) and
Accessory Event Venue at 1636 Bishopville Road, Bishopville
(File 18-20)**

Meeting, Date and Time A Public Information Meeting was held on Tuesday November 13, 2018 at 1 p.m. in the Council Chambers of the Municipal Complex, 87 Cornwallis Street, Kentville, NS.

Attending In Attendance:

Planning Advisory Committee Members Councillor Peter Allen – District 9 (PIM Chair)
Councillor Brian Hirtle – District 3
Deputy Mayor Emily Lutz – District 7
Councillor Martha Armstrong – District 4 (for Councillor Meg Hodges)
Councillor Paul Spicer – District 5
Councillor Jim Winsor – District 8
Emile Fournier – Citizen Member
Tom Cosman – Citizen Member

Regrets

Councillors

Planning Staff Trish Javorek – Director of Planning and Inspections
Laura Mosher – Manager of Planning and Development Services
Mark Fredericks – GIS Planner
Will Robinson-Mushkat – Planner
Jasmine Bradet – Planner
Lilly Ashdown – PAC Recording Secretary

Applicants Elizabeth and Robert Pearce

Public 3 Members

Welcome and Introductions The Chair of the Public Information Meeting, Peter Allen, called the meeting to order, introductions were made and the members of the public were welcomed to the meeting.

Presentations Will Robinson-Mushkat explained that the purpose of the meeting was to inform the public of the application, to explain the planning policies that enable the application to occur and to receive preliminary feedback from

the public. No evaluation has been completed and no decisions have been made at this point.

Mr. Robinson-Mushkat provided a brief overview of the planning process and the criteria that will be used to evaluate the application. The proposal is to enter into a development agreement to permit a tourist accommodation (Bed and Breakfast) and accessory event venue at 1636 Bishopville Road (PID 55511257), Bishopville

Mr. Robinson-Mushkat stated that the Public Information Meeting provides an opportunity for the public to express concerns and/or receive clarification on any aspect of the proposal.

Following the presentation, Robert Pearce was given the opportunity to speak to the proposal and declined.

The floor was then opened for comments from the public.

***Comments from
the Public***

No comments or questions from the public were posed.

Adjournment

There being no further discussion, the Chair thanked those in attendance and adjourned the meeting at 1:11 p.m.



Will Robinson-Mushkat
Recording Secretary

Appendix C – Draft Development Agreement

THIS DEVELOPMENT AGREEMENT made this _____ day of _____, A.D., 2019

BETWEEN:

Joyce Elizabeth Pearce, of Bishopville, 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) Number 55511257; and

WHEREAS the Property Owner wishes to use the Property for tourist commercial and ancillary uses; and

WHEREAS the Property is situated within an area designated Forestry on the Future Land Use Map of the Municipal Planning Strategy, and zoned Forestry (F1); and

WHEREAS Policy 4.4.8.5 and Policy 6.3.2.1 of the Municipal Planning Strategy and Clause 5.4.1 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 **[Insert Date]**, 2019, 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, 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) *Development Envelope* means the portion of the Property within which the development may take place.
- (c) *Event Venue* means a building used for the hosting of weddings, conferences, galas, and other similar events. Such uses may include an area for catering preparation and storage, but may not contain a commercial kitchen for cooking. The indoor Event Venue may also include the outdoor use of an attached deck or area adjacent to the building. For greater clarity, this definition does not include a restaurant serving the traveling public.

PART 2 DEVELOPMENT REQUIREMENTS

2.1 Site Plans

The Property Owner shall develop and use the lands in general conformance with the Site Plan attached as Schedule 'B' to this Agreement.

2.2 Use

2.2.1 The Property Owner's use of the Property shall be limited to:

- (a) tourist commercial uses wholly contained on the site, consisting of one or more of the following uses and in accordance with the terms of this Agreement:
 - i. Tourist Commercial Facilities for Lodging contained within the existing residential dwelling and containing no more than three (3) guest rooms, subject to the provisions of the Land Use Bylaw;
 - ii. An Event Venue accessory to the Tourist Commercial Facility for Lodging within the existing barn as identified on Schedule B - Site Plan.

2.2.2 Uses that are permitted by the underlying zoning pursuant to the Land Use By-Law, as may be amended from time to time.

2.2.3 Except as otherwise provided in this Agreement, the provisions of the Land Use Bylaw, as may be amended from time to time, apply to any development undertaken pursuant to this Agreement.

2.3 Signs

- (a) The total sign area of a ground sign shall not exceed 24 square feet on either side and may have a maximum height of 12 feet;
- (b) The total sign area of a facial sign shall not exceed 16 square feet;
- (c) Internally illuminated signs are prohibited;
- (d) The Property Owner shall obtain a development permit from the Development Officer prior to the erection or installation of any sign; and
- (e) In all other respects, the provisions of the Land Use Bylaw pertaining to signs are applicable.

2.4 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, and maintain the Property in a neat and presentable condition.

2.5 Lighting

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

2.6 Parking

The Property Owner shall meet the following criteria and standards for parking and shall locate all parking in general conformance with Schedule B:

- (a) Parking spaces shall be provided at the following rates:
 - i. one space for each guest room within the Tourist Commercial Facility for Lodging; and
 - ii. a maximum of 70 parking spaces for the Event Venue as indicated on the site plan, schedule B.
- (b) The parking area shall be maintained with a stable surface.

2.7 Access and Egress

- (a) Vehicle access and egress shall be in general conformance with Schedule B.
- (b) The Property Owner must submit current permits from Nova Scotia Transportation and Infrastructure Renewal, or any successor body, before receiving any development or building permits for uses permitted by this Agreement.
- (c) Road access points shall comply with the *National Building Code*, Part 3, Fire Truck Access Route.

2.8 Architectural Design

Construction and any subsequent alterations of a proposed structure or structures shall be constructed in a manner which is architecturally compatible with other buildings in the surrounding area. Construction of all buildings shall feature a pitched roof and use natural cladding materials including, but not limited to, wood, stone, stucco or brick.

2.9 Buffering

The Property Owner shall provide buffering on the Property in the following locations:

- (a) the area located along the western property line in proximity to the parking area, being no less than 30 feet in width, shall be maintained in a natural vegetated state;
- (b) the area located along the eastern property line in proximity to the parking area, being no less than 30 feet in width, shall be maintained in a natural vegetative state.

If vegetation acting as a buffer is removed by the property owner for any reason the Property Owner shall replace it with vegetation or an opaque fence having a height of 6 feet. Replacement vegetation shall consist of at least 50% coniferous trees, initially be at least four (4) feet in height and capable of growing to at least six (6) feet in height, planted in intervals of 12 feet and the replacement buffer shall be 50 feet in width. The replacement vegetation or fence shall be completed within 1 month of the destruction or removal of the existing vegetation or, if in the off-season, before the first event of the calendar year.

2.10 Servicing

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

2.11 Hours of Operation

The hours of operation for the Event Venue permitted in Section 2.2.1 (a) ii. of this Agreement shall be between the hours of 7:00 a.m. and 11:00 p.m. Sunday through Thursday, inclusive, except when a Sunday precedes a holiday Monday when the hours of operation shall be between the hours of 7:00 a.m. and 12:00 a.m. Hours of operation on Fridays and Saturdays shall be between the hours of 7:00 a.m. and 12:00 a.m.

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.

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 2.2, 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:

- (a) Changes to the uses permitted on the property by Section 2.2 of this Agreement; and
- (b) Changes to or substitution of the Site Plan contained in Schedule 'B' of this Agreement;
- (c) Expansion of the gross floor area of the Event Venue;
- (d) Subdivision of the 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 Expiry Date

The Property Owner shall sign this Agreement within 180 calendar 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 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 Registry of Deeds or Land Registration Office, as applicable.

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.

THIS AGREEMENT shall endure 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:

Witness

Joyce Elizabeth Pearce

Schedule 'A'
Property Description

Copied from Property Online on January 16, 2019

PID 55511257

Registration County: KINGS COUNTY

Street/Place Name: BISHOPVILLE ROAD /BISHOPVILLE

Title of Plan: PLAN OF SUBDIVISION LOT SP-1 & LOT SP-2 LANDS DEVISED TO JOHN W
PAYZANT LOT CP-2 LANDS OF JOHN W PAYZANT BISHOPVILLE

Designation of Parcel on Plan: LOT SP-2

Registration Number of Plan: 98727622

Registration Date of Plan: 2011-07-18 10:01:15

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

Compliance:

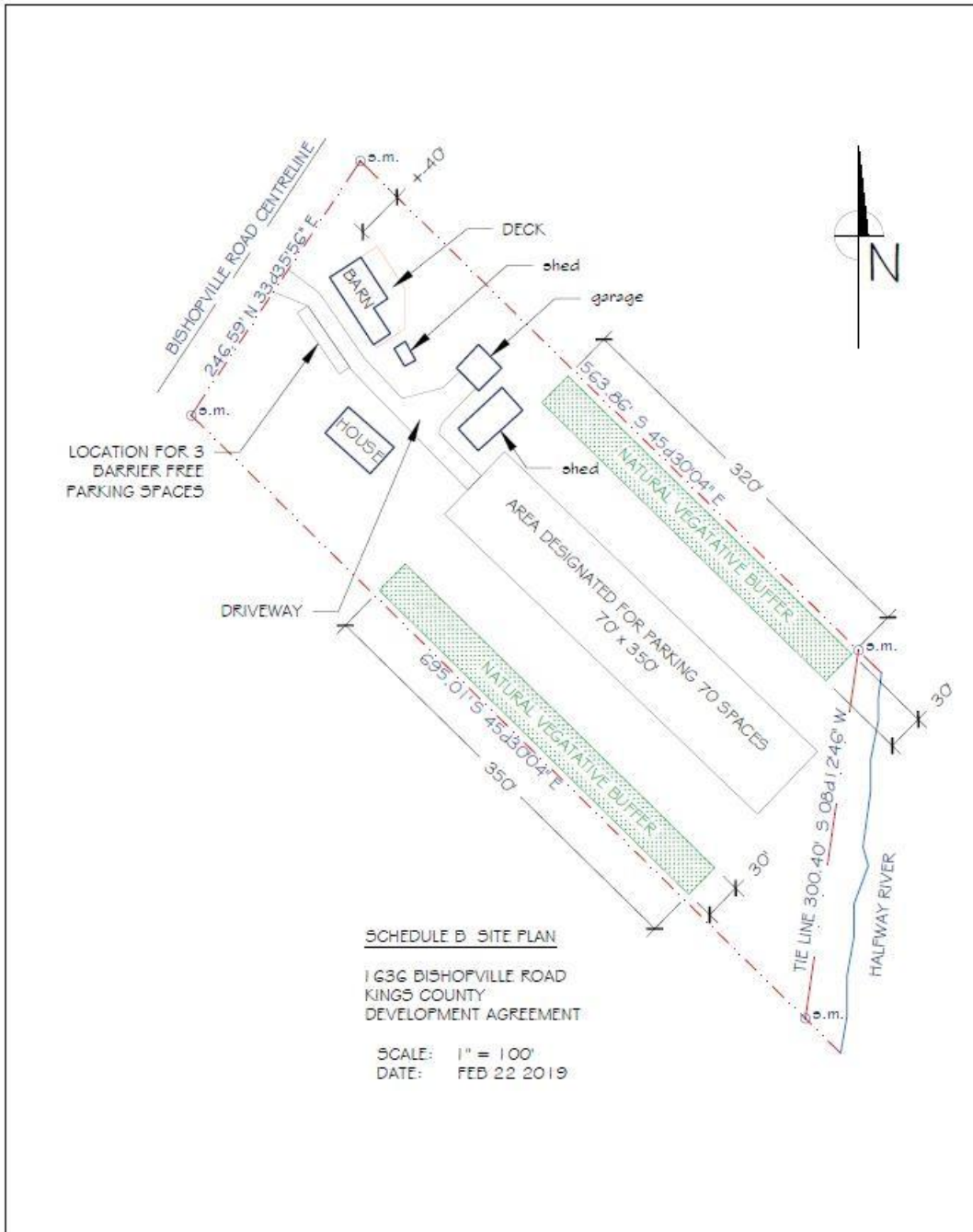
The parcel is created by a subdivision (details below) that has been filed under the Registry Act or registered under the Land Registration Act

Registration District: KINGS COUNTY

Registration Year: 2011

Plan or Document Number: 98727622

Schedule 'B' Site Plan



SCHEDULE B SITE PLAN

1636 BISHOPVILLE ROAD
KINGS COUNTY
DEVELOPMENT AGREEMENT

SCALE: 1" = 100'
DATE: FEB 22 2019



Municipality of the County of Kings Report to the New Minas Area Advisory Committee

Application: Application to enter into a development agreement to permit the expansion of a non-conforming use at 8981 Commercial Street, New Minas, NS (PID# 55210108) (File# 18-22)

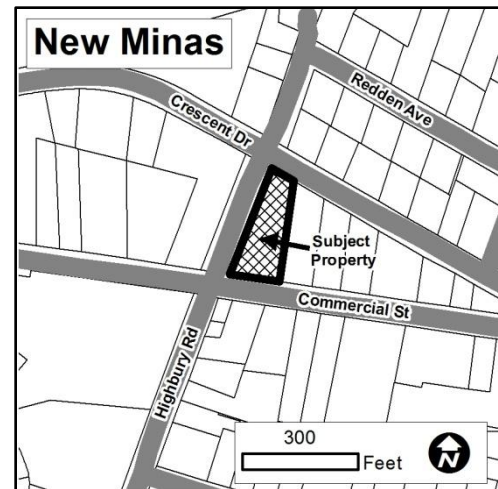
Date: March 4th, 2019

Prepared by: Planning and Development Services

Applicant	Jeff Doucette (Mel's Enterprises Inc.)
Land Owner	Mel's Enterprises Inc.
Proposal	Expansion of a non-conforming use
Location	8981 Commercial Street (PID# 55210108), New Minas, Nova Scotia
Lot Area	Approximately 0.74 acres (32,167ft ²)
Designation	Business (U) Designation
Zone	Major Commercial I (C1) Zone
Surrounding Uses	Commercial and Residential Uses
Neighbour Notification	Letters were sent to the 56 owners of property within 500 feet of the subject property notifying them of the Public Information Meeting (PIM).

1. PROPOSAL

Mr. Jeff Doucette of Mel's Enterprises Inc. has applied for a development agreement to permit the expansion of a non-conforming use located at 8981 Commercial Street, New Minas. The intention is to replace the existing underground petroleum tanks with new, larger tanks in a different location on the subject property. The applicant also intends to renovate the interior and exterior of the store and restaurant components of the convenience store and gas bar. The applicants are also intending to re-establish the restaurant and drive-through on the property.



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 recommending changes to the draft development agreement.

3. BACKGROUND

Mel's Enterprises Inc. was established over twenty-five years ago and has expanded to own and operate 10 full-service gas stations located on Prince Edward Island and Nova Scotia. All of

the gas bars have a convenience store component and many have a quick service restaurant component, under the Country Style, Mr. Sub, or Thai Express banner. Mel's Enterprises Inc. employs between 125 and 150 persons at any given time. The company has a focus on the customer experience as well as engaging with the local community.

4. INFORMATION

4.1 Site Information

The subject property is located in the western portion of the Growth Centre of New Minas. The history of the subject property pre-dates the New Minas planning documents by a considerable timeframe, but also provides context and explanation with regard to the growth of New Minas as a commercial node for the Municipality and the larger Annapolis Valley region. In 1929 Highway #1 was realigned to run a straight course through New Minas, rather than along Old Post Road, a portion of which became Crescent Drive. In 1938 the subject property, along with a number of lots to the east of the subject property, was subdivided from a large apple orchard that fronted along the Main Highway (now Highway #1). The property was then sold in 1942 to the Milne family by Super Service Stations Ltd. The use of the property as a gas and automobile service station has continued in some capacity since circa 1940. The location of the property at a visible intersection of New Minas, along a major roadway lends itself to this type of business. Further, it coincided with the growth of New Minas as a commercial hub, with a number of automotive businesses, located in close proximity to the subject property, including Bruce Auto Express, CARSTAR New Minas, and Speedy Auto Glass. However, automotive dealerships have recently trended away from Commercial Street towards Highway 101. The service station on the property was discontinued in the 2000s to accommodate the development of the existing convenience store building.

The 1975 New Minas Sector Plan designated this property and those fronting along Commercial Street (Highway #1) as a Business District. In the western portion of New Minas, from the boundary with the Town of Kentville extending eastward to Granite Drive, the Major Commercial I

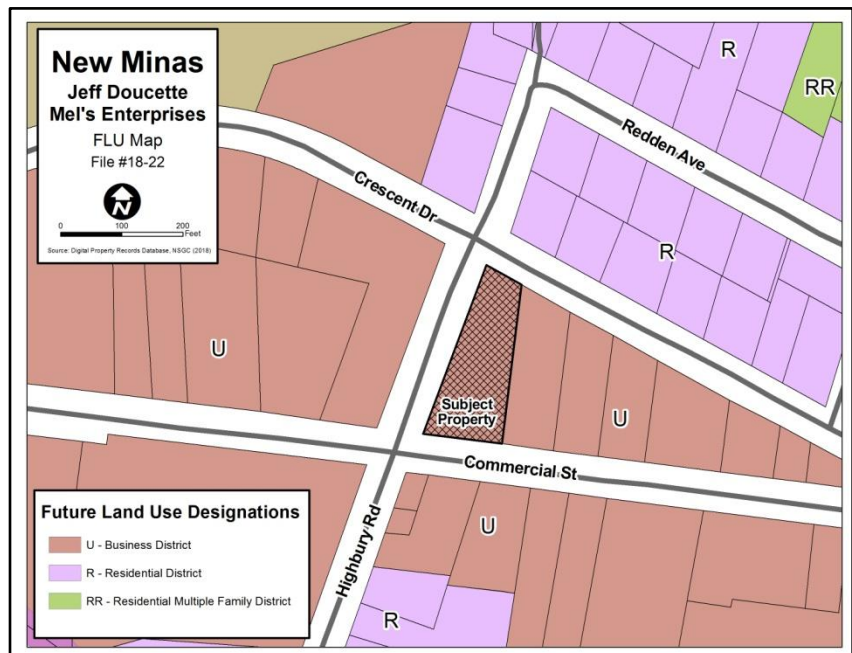


Figure 1 – Future Land Use Map, New Minas

(C1) Zone was established. This zone was, and remains, an area intended for a broad range of commercial uses and is reflective of the longstanding use of Commercial Street (Highway #1) as

a node of business activity in the Village of New Minas and the Municipality as a whole. Residential uses are limited to those that are in existence or as an accessory use to a commercial enterprise. However, residential uses are found on Crescent Drive, set back one block from Commercial Street. See Figure 1, a portion of the New Minas Future Land Use Map for greater detail.

The subject property has a lot area of 32,167 square feet (0.74 acre). The subject property is located at the signalized intersection of Commercial Street (Highway #1), running east-west, and Highbury Road, running north-south, but also has frontage on Crescent Drive at the rear of the subject property. There are three access points to the subject property, one off of each of the roadways noted above. The subject property features approximately 150 feet of frontage along Commercial Street, 300 feet of frontage along Highbury Road, and 85 feet of frontage along Crescent Drive. The existing gas bar consists of 4 fuel pumps, two nozzles apiece, with both full-serve and self-serve options beneath a canopy.

The gas bar fronts onto Commercial Street and is typically accessed either from Commercial Street, at the eastern edge of the subject property, or from Highbury Road. Set behind the island is the only building on the subject property, which comprises the retail and restaurant component of the business. Currently, the restaurant is not being utilized however a commercial kitchen is located within this building. There is a drive-through component of the building, which is also not being utilized but the infrastructure remains in place. The drive-through restaurant is configured such that patrons would access the drive-through by entering off of Commercial Street, driving alongside the building, placing their order at the rear of the building, driving parallel to Highbury Road to pick-up, and then exiting onto Highbury Road. The applicants have expressed interest in re-establishing the restaurant and drive-through use on the property.

In 2000, the New Minas Water Commission retained the services of consultants to prepare a "water resource management plan". The development of this plan was rooted in recognition that "a safe and reliable water supply is critical to public health and stable economic growth". Land use policies and regulations were introduced in 2005 based on the recommendations of the report as a means of protecting the community wells and safeguarding the water supply thereby reducing the risk of contamination and loss of volume from other wells drawing from the same aquifers. Risk management was based on the principle that the shorter distance and less time a contaminant required to travel to penetrate a water supply, the greater the risk it posed. Therefore, four separate Wellfield zones were applied around each wellhead and for each zone closer to the wellhead, the prohibition and restrictions on land uses and activities became increasingly stringent. The restrictions and prohibitions within a Wellfield zone supersede the permitted uses of the Land Use Bylaw.

The subject property is located in Wellfield Protection Zone C of the overlay map. There are a number of land-uses prohibited in Wellfield Protection Zone C, or only permitted via development agreement. Any prohibited uses in existence at the time of adoption of the wellfield policies and regulations became non-conforming uses. The service station and gas bar as well as the storage of bulk petroleum fuels is listed in Section 2.10 of the NMSP as a non-conforming use. Pursuant to Section 2.2 Urban Non-Conforming Uses, Policy 8 of the New

Minas Sector Plan, the expansion of a non-conforming use is enabled by a development agreement approved by Municipal Council.

4.2 Site Visit

A Planner and Development Officer visited the subject property on November 2, 2018. At this time, the applicant's representative discussed in more detail the intentions of Mel's Enterprises Inc. for the subject property with staff.

4.3 Public Information Meeting

Council's Planning Policy PLAN-09-001 requires a Public Information Meeting (PIM) for all new uses that are to be considered by development agreement. The required Public Information Meeting was held on December 3, 2018 at the Louis Millett Community Complex with 3 members of the public in attendance. Members of the public expressed general concerns with the volume of traffic on Commercial Street and adjacent residential streets. However, members of the public also noted the role the business plays in the community and were supportive of the applicant's intention to expand the overall business. The complete notes from the PIM are attached as Appendix B to this report.

4.4 Request for Comments

Comments were requested from the following departments and agencies with the results as described:

4.4.1 Department of Transportation and Infrastructure Renewal

The Department of Transportation and Infrastructure Renewal does not have any concerns with traffic generation and access/egress from the site at this time. DTIR feels the road networks are adequate and will not require a Traffic Impact Statement for this proposal at this time. The Municipal Building and Development Permit approval process will require a permit from Department of Transportation if any change of use or traffic flow is proposed.

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

EPW indicated that applicant will be required to follow our Municipal Specifications and applicable NSE regulations regarding sedimentation/erosion control during construction.

4.4.3 Nova Scotia Environment

Nova Scotia Environment did not respond to planning staff's request for comments.

4.4.4 Municipality of the County of Kings Building and Enforcement

Building and Enforcement offered the following comments:

- The building was recently inspected (October 1, 2018) by a building inspector;
- No concerns regarding the issuance of permits for the proposed uses. The installation of below-ground fuel tanks is exempt from requiring a Municipal Building Permit through the Nova Scotia Building Code Regulations. All other aspects of the proposal are achievable but will be required to meet minimum building code requirements;
- The New Minas Fire Chief has provided a confirmation letter identifying that fire protection services are adequate to serve this proposal.

4.4.5 New Minas Water Commission

The New Minas Water Commission was asked for comments regarding the proposal as the subject property is located within Wellfield Protection Zone C. The Commission noted no objections to the planning application to enter into the a development agreement provided that the specifics of the development agreement fall within the criteria of the ‘grandfather clause’ (non-conforming use) for the property and the Source Water Protection Plan for the Village of New Minas.

5. POLICY REVIEW

5.1 Development Agreement

A development agreement is a contract between an owner of a property/properties and the Municipality to permit Council to consider a use that is not a listed permitted use within a zone on a specific lot(s). In New Minas, the ability for Council to consider a development agreement must be stated in By-Law #57, the New Minas Land Use By-law (NMLUB) and By-law #42, the New Minas Sector Plan (NMSP) must identify the kinds of uses Council may consider in each area. Uses which Council may consider are those which Council has determined may have sufficient impact on an area that a negotiated process is required to ensure the potential impact is controlled and negative impacts are mitigated. In the NMSP, Council identifies specific criteria which must be considered when making decisions regarding a development agreement.

A proposal being considered must be measured against only the criteria for the specific proposal in the NMSP and not any other criteria.

5.2 Ability to enter into a Development Agreement

Section 3.1.33 d. of the NMLUB states that expansion or change of non-conforming uses as provided by Section 242 of the *Municipal Government Act* and pursuant to Section 2.2. GENERAL POLICIES of the New Minas Sector Plan are to be considered by development agreement. Section 2.2 Policy 8 of the NMSP provides the policy criteria for approving such proposals. Since the subject property falls within the boundaries of Wellfield Protection Zone C and would otherwise be considered a prohibited use in this zone, the only avenue for expansion of the existing use to occur on the subject property is through the development agreement process.

5.3 Development Policies

The subject property lies within the Wellfield Protection Zone C for New Minas. Policy 2.10.3.3.3 of the NMSP sets out a list of uses that are prohibited in Wellfield Protection Zone C because of their potential to contaminate the groundwater. While a gas bar is a prohibited use in the Wellfield, the subject property and its use qualifies as a non-conforming use. Within the NMSP Section 2.2, Policy 8 permits the expansion of non-conforming uses within a Wellfield zone provided the use meets the listed criteria, discussed in greater detail below. The policy allows for urban non-conforming development to be accommodated only through the development agreement approval process. The policy provides criteria for Council to consider when entering into a development agreement for non-conforming uses in New Minas.

8. *It shall be the policy of Council, by Development Agreement under the Municipal Government Act provisions, to consider within New Minas the expansion of non-conforming uses, including a change in use to one expected to have no greater impact on the adjacent land uses than the existing legal use.*

In considering a Development Agreement, Council shall ensure:

<i>Policy Criteria</i>	Staff Comment
<i>i. The use does not extend beyond the boundaries of the lot in existence on November 30, 1982 containing that use</i>	The subject properties boundaries were in existence prior to November 30, 1982 and the use prior to this date was as a gas bar.
<i>ii. The use will not adversely affect adjacent land uses</i>	The use of the subject property as a gas bar has been in existence for several decades and has no perceived affect on adjacent land uses nor affected adjacent land uses during this time.
<i>iii. That adequate buffering and setback distances are maintained from low density residential uses and that landscaping treatments are included to reduce the visual impact</i>	The gas bar is located on the opposite side of a low density residential use and new vegetative treatments are to be installed as part of the exterior renovations.
<i>iv. The expanded or converted use is not obnoxious by virtue of noise, odor, dust, vibration, smoke, or other emission</i>	The installation of new underground fuel tanks will not create any undue effect beyond the current use. The benefit of the expansion is new safer tanks and the expected reduction in fuel delivery.
<i>v. That adequate provision is made for the acceptable maintenance and appearance of the expansion or conversion</i>	The applicant intends to renovate however the expansion that initiated the Development Agreement is all underground. The applicant intends to add landscaping and vegetative features as part of the renovations.
<i>vi. The expansion or conversion shall not affect the hours of operation where the use would</i>	The hours of operation are intended to

<i>interfere with or create undue problems for the residents of the surrounding area</i>	remain the same.
<i>vii. The proposal meets all of the pertinent policies of this Plan, including policies for amending the Land Use Bylaw contained in Section 3.3</i>	The proposal meets the pertinent policies of the plan and meets the policies concerning amending the Land Use Bylaw.
<i>viii. where such a non-conforming use lies within Wellfield Protection Zones A, B, C, or D, a favourable review by the New Minas Water Commission which stipulate that the applicant undertake appropriate studies by a qualified independent groundwater expert to assess the risk of impacts on the quality and quantity of groundwater, and when appropriate, prescribe performance standards for both the site design and ongoing operational aspects of the development and an independent monitoring regime with regular reporting to the New Minas Water Commission to determine compliance with the terms of the agreement.</i>	The New Minas Water Commission provided no objection to the proposed expansion provided the agreement falls within the non-conforming (grandfather) clause and the terms of the source water protection plan for the Village of New Minas.
<i>ix. Where such a non-conforming use lies within Wellfield Protection Zones A, B, C, or D, conformance with Provincial guidelines and conditions attached as individual licenses required under the Provincial Environment Act and other Provincial and Federal regulations.</i>	The draft development agreement requires the applicant to follow all Provincial and Federal regulations with regard to water protection.

Staff believe that the draft development agreement meets all of the criteria set out in Section 2.2 Policy 8 because it does not extend beyond the boundaries of the lot in existence on November 30, 1982 containing the use, the expansion of the use does not adversely affect adjacent land uses, requires sufficient buffering, setbacks, on-site parking, will not be obnoxious in terms of noise, odor, dust, or other emissions, adequate provisions are in place for maintenance and appearance of the expanded use, and has appropriate hours of operation.

Section 2.2 Policy 9 outlines conditions that the development agreement may regulate, including the bulk and scale of any building covered by the development agreement and said building's exterior finish, the area used for outdoor storage, and the impact of the expanded use on traffic volumes, road network, traffic circulation, sighting distances, and access points. All of these conditions are addressed in the draft development agreement.

9. *In addition to the above, Council shall have regard to the following in considering entering a Development Agreement as provided in Policy 8:*

<i>Policy Criteria</i>	<i>Staff Comment</i>
<i>i. the bulk and scale of any building and its exterior finish is compatible with</i>	The conceptual drawing as part of this agreement show the bulk, scale, and finish of the building is compatible with adjacent

<i>adjacent uses</i>	uses.
<i>ii. total area used for outdoor storage, and adequate provisions for year-round, artificial or natural, screening devices</i>	The conceptual drawing note the location of vegetative buffers. There is no outdoor storage on the site.
<i>iii. the impact of the proposed expanded use on traffic volumes and the local road network, as well as traffic circulation, sighting distances and entrances and exit to and from the site</i>	DTIR has noted they are satisfied with the traffic volumes generated, impact on local road networks, traffic circulation, sighting distances, and entrances/exists to and from the site.

6. 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	regulates the uses permitted on the site
2.2	specifies that development must be in general conformance with the attached site plan
2.3	regulates development standards
2.4	regulates architecture
2.5	regulates subdivision
2.6	regulates amenity areas
2.8	regulates buffering
2.10	regulates lighting
2.11	regulates outdoor storage
2.12	regulates parking
2.12	regulates erosion and sedimentation control and drainage
2.14	addresses erosion and sediment control
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 only substantive matters are the uses allowed on the property and the requirement to develop in general conformance with the Site

	Plan.
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7. CONCLUSION

Staff have reviewed the application for consistency and compliance with the NMSP including the policies for the expansion of non-conforming uses by development agreement and wellfield protection. It is Staff’s opinion that the proposed development is compatible with the area and will contribute to positive commercial conditions and diversity in New Minas. Since the terms of the draft development agreement meet the criterion requirements and fulfill the policy objectives of the NMSP, Staff are forwarding a positive recommendation to the New Minas Area Advisory Committee.

8. STAFF RECOMMENDATION

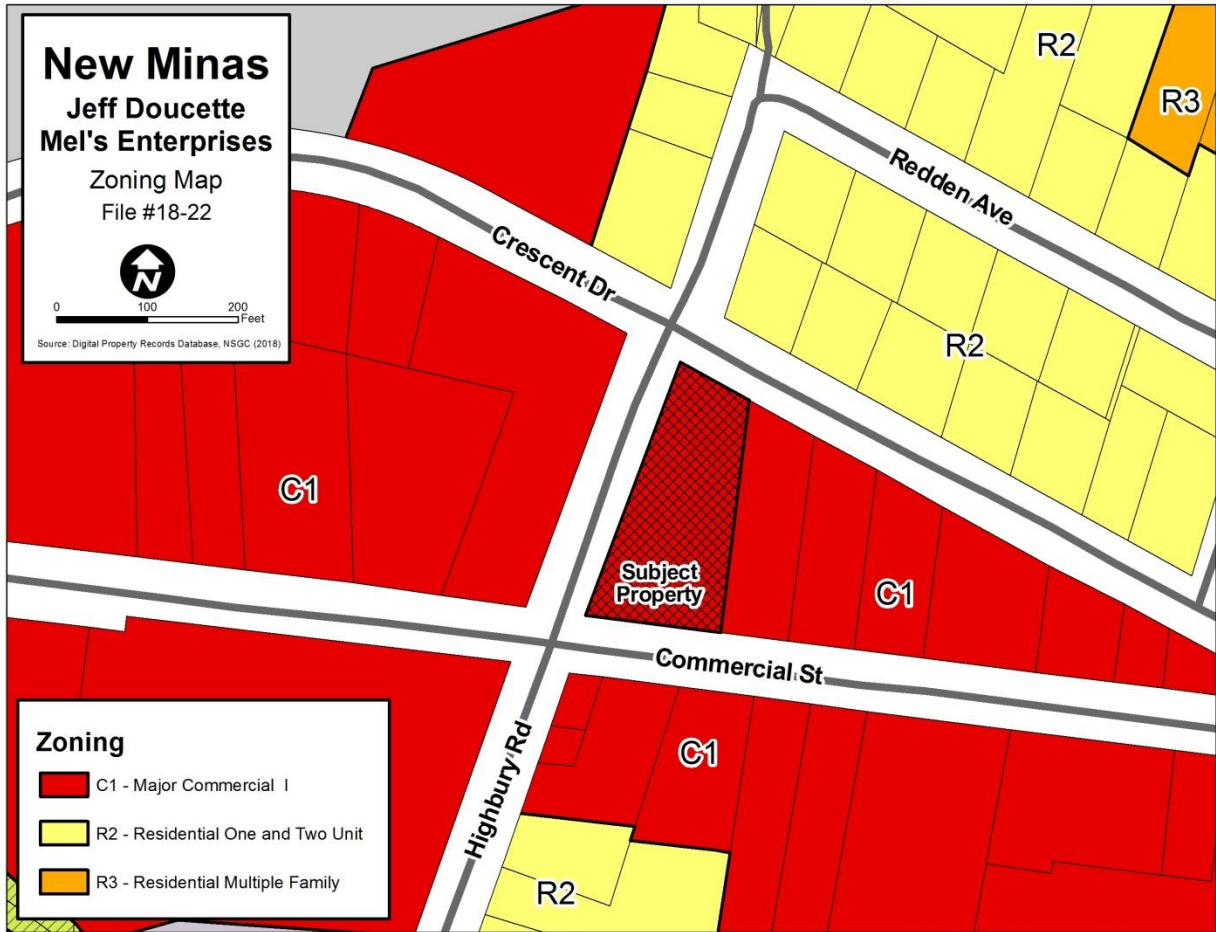
Staff recommends that the New Minas Area Advisory Committee forward a positive recommendation to the Planning Advisory Committee by passing the following motion:

The New Minas Area Advisory Committee recommends that the Planning Advisory Committee recommend that Council give Initial Consideration to and hold a Public Hearing regarding entering into a development agreement to permit the expansion of a non-conforming use at 8981 Commercial Street (PID 55210108), New Minas, which is substantively the same (save for minor differences in form) as the draft set out in Appendix C of the report dated March 4, 2019.

9. APPENDICES

- Appendix A Zoning Map
- Appendix B Public Information Meeting Notes
- Appendix C Draft Development Agreement

APPENDIX A - Zoning Map



APPENDIX B – Public Information Meeting Notes

**MUNICIPALITY OF THE COUNTY OF KINGS
PLANNING AND DEVELOPMENT SERVICES
PUBLIC INFORMATION MEETING NOTES**

**Planning Application to enter into a Development Agreement at 8981 Commercial Street,
New Minas to permit the expansion of a non-conforming use.**

(File # 18–22)

Meeting, Date and Time	A Public Information Meeting was held on Monday, December 3 rd , 2018 at 7:00 p.m. at the Louis Millet Community Complex, New Minas, N.S.
Attending	In Attendance:
Councillors	Councillor Jim Winsor – District 8 (Chair)
Planning Staff	Will Robinson-Mushkat – Planner
Applicant	Jeff Doucette – Mel’s Enterprises Inc. Merlyn Smith – Mel’s Enterprises Inc.
Public	3 Members
Welcome and Introductions	<p>The Chair, Councillor Jim Winsor, called the meeting to order, introductions were made and the members of the public were welcomed to the meeting.</p> <p>It was explained that the purpose of the meeting was to inform the public of the application, to explain the planning policies that enable the application to occur and to receive preliminary feedback from the public. No evaluation has been completed and no decisions have been made at this point.</p>
Presentations	<p>Will Robinson-Mushkat provided a brief overview of the planning process and the criteria that will be used to evaluate the application from Jeff Doucette, Mel’s Enterprises Inc. The application is to expand a non-conforming use located at 8981 Commercial Street, New Minas. The applicant is seeking to upgrade the petroleum fuel tanks in a separate location on the subject property from the location where the current tanks are situated.</p> <p>Mr. Robinson-Mushkat stated that the Public Information Meeting provides an opportunity for the public to express concerns and/or</p>

receive clarification on any aspect of the proposal.

Merlyn Smith, Mel's Enterprises Inc. made a brief presentation on the company which recently purchased the gas bar located at 8981 Commercial Street, New Minas. Mr. Smith noted the need to replace the current petroleum tanks, intentions to refresh the interior and exterior of the building, and noted that new pumps have already been installed. Mr. Smith showed drawings of the proposed changes to the exterior of the service station.

Following the presentations, the floor was opened for comments from the public.

Comments from the Public William Morine, 123 Crescent Drive

- Noted concerns with the increase in traffic using Crescent Drive to avoid Commercial Street during peak traffic periods. Commented there were a number of families with young children in the area and that vehicles travelled along Crescent Drive at speeds exceeding the posted speed limit for the street.
- Also noted the lack of sidewalk and condition of the roads made travel challenging for pedestrians in the area.
- Noted support for the business and was in favour of the proposal.

Adjournment

There being no further discussion, the Chair thanked those in attendance and adjourned the meeting at 7:47 p.m.



Will Robinson-Mushkat, Recorder

APPENDIX C – Draft Development Agreement

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

BETWEEN:

Mel's Enterprises Inc., of Charlottetown, Prince Edward Island, 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) Number 55210108; and

WHEREAS the Property Owner wishes to use the Property for a Gas Bar, Retail Store and Restaurant; and

WHEREAS the Property is situated within an area designated Business on the Future Land Use Map of the New Minas Sector Plan, and zoned Major Commercial I (C1) on the Zoning Map of the New Minas Land Use Bylaw and within Wellfield Protection Zone C; and

WHEREAS policy 2.10.3.3 of the New Minas Sector Plan and section 3.1.33 d. of the New Minas Land Use Bylaw provide that the proposed use may be expanded 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**, 2019, 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
Schedule C	Conceptual Drawing

1.2 Municipal Planning Strategy, Land Use Bylaw and Subdivision Bylaw

- (a) *New Minas Sector Plan* means Bylaw 42 of the Municipality, approved on June 17, 1979, as amended, or successor by-laws.
- (b) *New Minas Land Use Bylaw* means Bylaw 57 of the Municipality, approved on June 17, 1979, as amended, or successor by-laws.
- (c) *Subdivision Bylaw* means Bylaw 60 of the Municipality, approved on October 26, 1995, as amended, or successor by-laws.

1.3 Definitions

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

- (a) *Development Officer* means the Development Officer appointed by the Council of the Municipality.
- (b) *Access and Traffic Aisles* means the vehicular access (ingress and egress) from the property to a public road as well as on-site access to parking areas.

PART 2 DEVELOPMENT REQUIREMENTS

2.1 Use

The use of the Property shall be limited to:

- (a) The replacement and expansion of the bulk storage of petroleum fuel tank(s) serving the gas bar with a total maximum capacity of 110,000 litres;
- (b) Those uses permitted by the underlying zone and applicable sections in the New Minas Land Use Bylaw.

2.2 Site Plan

The existing lot conditions such as, but not limited to, parking, setbacks, and access, as shown on the site plan attached as Schedule B are approved for the uses occurring on the lot (Gas Bar with accessory Retail Store and accessory Drive-In Restaurant) and the expansion enabled by this Development Agreement. The use of the lot shall continue in general conformance with Schedule B – Site Plan.

2.3 Development Standards

Any further development or change of use shall be in conformance with the underlying zone and the applicable sections in the New Minas Land Use Bylaw.

2.4 Architecture

The commercial building shall be renovated appear generally as shown in Schedule C - Conceptual Drawing.

2.5 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.

2.6 Buffering and Landscaping

New vegetation consisting of at least 50% shrubbery, with the ability to grow to a maximum height of two (2) feet above the grade of the street, and shall be planted along the portion of the western property line in the area indicated as "concrete curbs gravel" as well as along a portion of the property line along Commercial Street as indicated on Schedule B, Site Plan.

2.7 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.

2.8 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.

2.9 Outdoor Storage

Outdoor storage on the Property is not permitted and the Property Owner shall ensure that any storage of waste is within building(s), or other suitable receptacle(s) that do not compromise driveways, parking areas or safety.

2.10 Parking

The Property Owner shall provide on-site parking as per the site plan, Schedule B.

2.11 Erosion and Sedimentation Control and Drainage

- (a) During any site preparation, construction, or the removal and replacement of underground fuel tanks all exposed soil shall be stabilized immediately 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.

- (b) Adequate measures shall be taken by the Property Owner to contain within the site all silt and sediment created during construction according to the practices outlined in the Department of Environment *Erosion and Sedimentation Control Handbook for Construction*, or any successor documents.

2.12 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 these services will be provided 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, 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 generally not in accordance with Schedule B, Site Plan, except as provided for in section 2.3 of this Agreement.
- 3.4 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 120 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 be in complete compliance with the Buffering and Landscaping provisions of this Agreement within one year of receiving a Development Permit for the renovations to the existing building.

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.

THIS AGREEMENT shall endure 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:

Mel's Enterprises Inc.

Witness

Jeff Doucette, VP Operations

Schedule A – Property Description
Taken from Property Online: February 20th, 2019

Place Name: NEW MINAS, KINGS COUNTY, NOVA SCOTIA

Municipality/County: MUNICIPALITY OF THE COUNTY OF KINGS/KINGS COUNTY

Designation of Parcel on Plan: Lot 1

Title of Plan: PLAN OF PROPOSED SUBDIVISION FOR A.A. TURNER

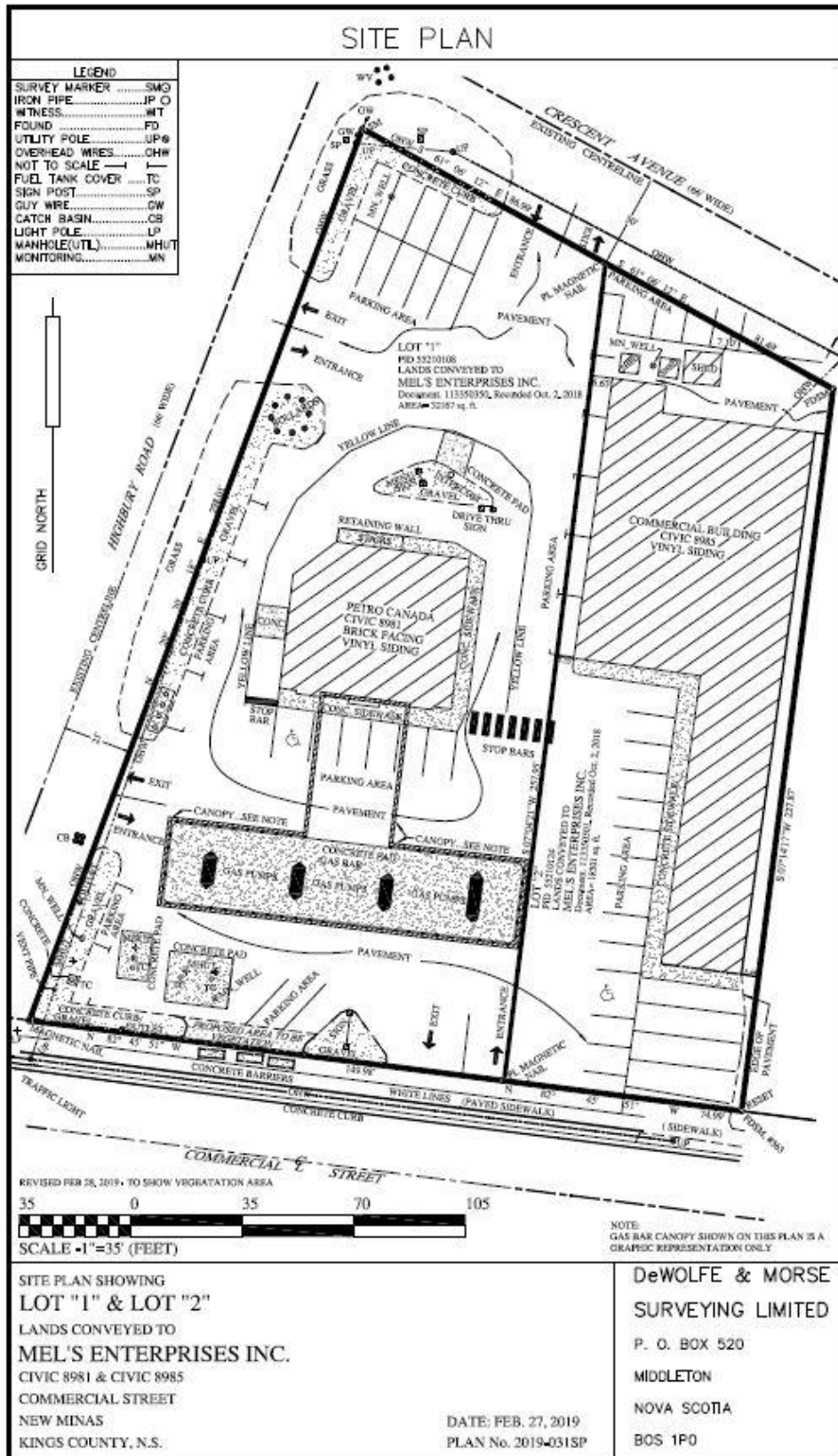
Registration County: KINGS COUNTY

Registration Number of Plan: A-99

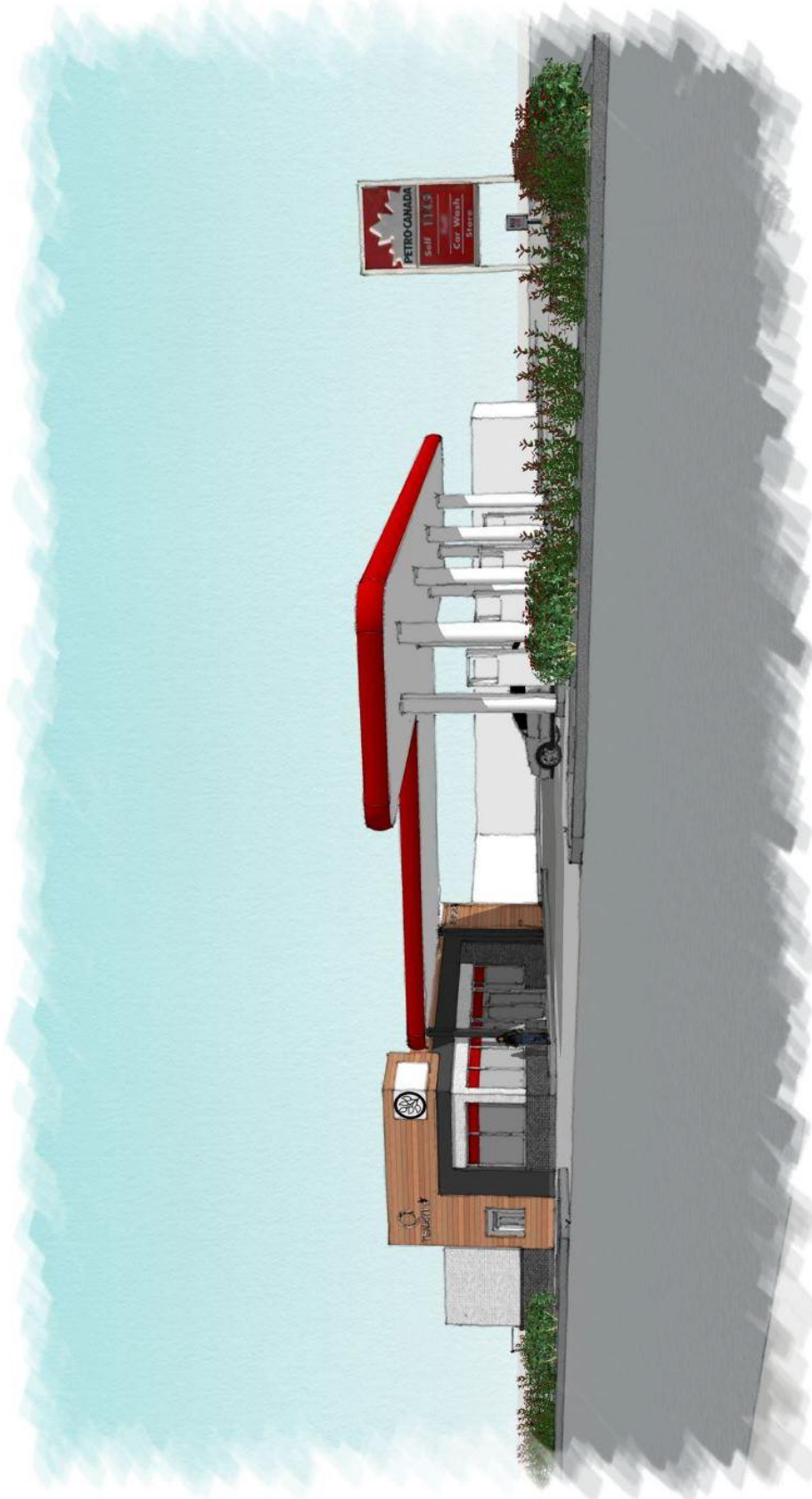
Registration Date of Plan: 1938-11-01

The parcel complies with the subdivision provisions of Part IX of the Municipal Government Act.

Schedule B – Site Plan



Schedule C – Conceptual Drawing



Milne Court Petro Canada - Concept Package
Proposed Building
2018.12.03

ARCHITECTURE + SUSTAINABLE DESIGN
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STUDIOS