

# THE MUNICIPALITY OF THE COUNTY OF KINGS

## REPORT TO COUNCIL

**Subject:** Planning Items

**Date:** May 7, 2019

A	<b>Applications to enable the relocation of an existing building and the development of a mixed-use residential-commercial building at 9209 Commercial Street, New Minas (File 18-10a)</b>	<i>Be it resolved that Municipal Council give First Reading to and hold a Public Hearing regarding the proposed rezoning of a portion of 9209 Commercial Street (PID55210421), New Minas from the Environmental Open Space (O1) Zone to the Major Commercial I (C1) Zone as described in Appendix C of the report dated April 1, 2019.</i>  <b><u>*Report attached</u></b>
B	<b>Applications to enable the relocation of an existing building and the development of a mixed-use residential-commercial building at 9209 Commercial Street, New Minas (File 18-10b)</b>	<i>Be it resolved that Municipal Council give First Reading to and hold a Public Hearing regarding a text amendment to regulations related to accessory residential uses in the Major Commercial I (C1) Zone New Minas Land Use By-law to enable expanded residential floor area behind or above commercial uses as described in Appendix D of the report dated April 1, 2019.</i>  <b><u>*Report attached</u></b>
C	<b>Applications to enable the relocation of an existing building and the development of a mixed-use residential-commercial building at 9209 Commercial Street, New Minas (File 18-10c)</b>	<i>Be it resolved that Municipal Council give Initial Consideration and hold a Public Hearing regarding entering into a development agreement to permit a 40 unit multi-unit residential development at 9209 Commercial Street (PID 55210421), New Minas, which is substantively the same (save for minor differences in form) as the draft set out in Appendix F of the report dated April 1, 2019.</i>  <b><u>*Report attached</u></b>
D	<b>Application to enter into a development agreement to permit a multi-unit dwelling at 167 Sunnyside Road, Greenwich (File #18-26)</b>	<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 multiunit dwelling at 167 Sunnyside Road (PID 55525620), Greenwich, which is substantively the same (save for minor differences in form) as the draft set out in Appendix D of the report dated April 9, 2019.</i>  <b><u>*Report attached</u></b>

E	<p><b>Application to enter into a development agreement to permit an excavation business and related activities at 4594 Highway #12, North Alton (File #18-09)</b></p>	<p><i>Be it resolved</i> that Municipal Council gives Initial Consideration to and holds a Public Hearing to enter into a development agreement to permit excavation and related industrial uses at 4594 Highway #12, (PID 55171870), North Alton, which is substantively the same (save for minor differences in form) as the draft set out in Appendix C of the report dated April 9, 2019.</p> <p><b><u>*Report attached</u></b></p>
F	<p><b>Application for a development agreement to permit a tourist commercial facility for lodging and ancillary event venue (File 18-20)</b></p>	<p><i>Be it resolved</i> that Municipal Council gives Final Consideration to enter 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 <u>report dated March 12, 2019.</u></p>
G	<p><b>Application for a development agreement to permit the expansion of an existing gas station at 8981 Commercial Street, New Minas (File 18-22)</b></p>	<p><i>Be it resolved</i> that Municipal Council gives Final Consideration to enter 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 <u>report dated March 12, 2019.</u></p>
H	<p><b>Public Hearing Date</b></p>	<p>Tuesday, June 4, 2019 at 6:00 p.m.</p>

# THE MUNICIPALITY OF THE COUNTY OF KINGS

## REPORT TO PLANNING ADVISORY COMMITTEE

**Subject:** Application to rezone a portion of the property from the Environmental Open Space (O1) Zone to the Major Commercial (C1) Zone, to amend the text of the New Minas Land Use Bylaw and to enter into a development agreement to facilitate the relocation of an existing building and to develop a mixed-use commercial-residential building at 9209 Commercial Street, New Minas, NS (PID 55210421) (File 18-10)

**From:** Planning and Development Services

**Date:** April 9, 2019

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### Background

On April 2<sup>nd</sup>, 2019 the New Minas Area Advisory Committee considered the staff report for the proposed development agreement to permit the relocation of the former Village Commission office building and develop a mixed-use residential-commercial building at 9209 Commercial Street, New Minas (see the attached staff report for more information).

The New Minas Area Advisory Committee forwarded three **positive** recommendations by passing the following motions:

*The New Minas AAC recommends that the Planning Advisory Committee recommend that Council give First Reading to and hold a Public Hearing regarding the proposed rezoning of a portion of 9209 Commercial Street (PID55210421), New Minas from the Environmental Open Space (O1) Zone to the Major Commercial I (C1) Zone as described in Appendix C of the report dated April 1, 2019.*

*The New Minas AAC recommends that the Planning Advisory Committee recommend that Council give First Reading to and hold a Public Hearing regarding a text amendment to regulations related to accessory residential uses in the Major Commercial I (C1) Zone New Minas Land Use Bylaw to enable expanded residential floor area behind or above commercial uses as described in Appendix D of the report dated April 1, 2019.*

*The New Minas AAC recommends that the Planning Advisory Committee recommend that Council give Initial Consideration and hold a Public Hearing regarding entering into a development agreement to permit a 40*

*unit multi-unit residential development at 9209 Commercial Street (PID 55210421), New Minas, which is substantively the same (save for minor differences in form) as the draft set out in Appendix F of the report dated April 1, 2019.*

### Recommendation

The New Minas Area Advisory Committee recommends that the Planning Advisory Committee pass the following motions:

**The Planning Advisory Committee recommend that Council give First Reading to and hold a Public Hearing regarding the proposed rezoning of a portion of 9209 Commercial Street (PID55210421), New Minas from the Environmental Open Space (O1) Zone to the Major Commercial I (C1) Zone as described in Appendix C of the report dated April 1, 2019.**

**The Planning Advisory Committee recommend that Council give First Reading to and hold a Public Hearing regarding a text amendment to regulations related to accessory residential uses in the Major Commercial I (C1) Zone New Minas Land Use Bylaw to enable expanded residential floor area behind or above commercial uses as described in Appendix D of the report dated April 1, 2019.**

**That the Planning Advisory Committee recommend that Council give Initial Consideration and hold a Public Hearing regarding entering into a development agreement to permit a 40 unit multi-unit residential development at 9209 Commercial Street (PID 55210421), New Minas, which is substantively the same (save for minor differences in form) as the draft set out in Appendix F of the report dated April 1, 2019.**



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

**Application:** Application to rezone a portion of the property from the Environmental Open Space (O1) Zone to the Major Commercial (C1) Zone, to amend the text of the New Minas Land Use Bylaw and to enter into a development agreement to facilitate the relocation of an existing building and to develop a mixed-use commercial-residential building at 9209 Commercial Street, New Minas, NS (PID 55210421) (File 18-10)

**Date:** April 1, 2019

**Prepared by:** Planning Staff

<b>Applicant</b>	Issam Kadray (Kadray Holdings Inc)
<b>Land Owner</b>	Kadray Holdings Inc.
<b>Proposal</b>	Relocate the existing building on the property and develop a mixed-use commercial-residential building
<b>Location</b>	9209 Commercial Street, New Minas, NS PID 55210421
<b>Lot Area</b>	Approximately 2.55 acres
<b>Designation</b>	Business (U) Designation and Parks and Open Space (P) Designation
<b>Zone</b>	Major Commercial I (C1) Zone and Environmental Open Space (O1) Zone and Well Capture Protection Zone B
<b>Surrounding Uses</b>	Commercial, residential
<b>Neighbour Notification</b>	Letters were sent to the 38 owners of property within 500 feet of the subject property notifying them of the Public Information Meeting (PIM).

### 1. PROPOSAL

Mr. Issam Kadray of Kadray Holdings Inc. has applied to adjust the Environmental Open Space (O1) Zone boundary, to amend the text of the New Minas Land Use Bylaw and to enter into a development agreement to enable the development of a mixed-use commercial-residential building on the property at 9209 Commercial Street, New Minas. The proposal also includes the relocation of the existing building on the subject property to a location northwest of its current location.



### 2. OPTIONS

In response to the application for a Land Use Bylaw Map Amendment, the Area Advisory Committee may recommend that the Planning Advisory Committee:

- A. Recommend that Council approve the amendment, as drafted;
- B. Recommend that Council refuse amendment; or,

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

In response to the application to amend the text of the Land Use Bylaw, the Area Advisory Committee may make recommend that the Planning Advisory Committee:

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

In response to the application for a development agreement, the Area Advisory Committee may recommend that the Planning Advisory Committee:

- A. Recommend that Council approve the development agreement contained in Appendix E as drafted;
- B. Recommend that Council approve the development agreement contained in Appendix F as drafted;
- C. Provide alternative direction, such as requesting further information on a specific topic, or making changes to the Development Agreement, as drafted; or
- D. Recommend that Council refuse the development agreement(s) as drafted.

### 3. BACKGROUND

The subject property is the site of the former Village Commission office for the Village of New Minas. The property was sold to Mr. Kadray in 2017, which was deemed surplus by the Village, following the construction of the Louis Millet Centre which now houses the Village Commission office for the Village of New Minas.

### 4. INFORMATION

#### 4.1 Site Information

The subject property is located on the north side of Commercial Street in the Village of New Minas between Jones Road and Cornwallis Avenue. The western property boundary of the subject property is in line with the intersection of Valley View Drive and Commercial Street.

The surrounding area is predominantly commercial in nature. The Country Fair Mall, as well as Canadian Tire, Sobey's and Henny



Penny's farm market are located on the south side of Commercial Street. There is a new building under development to the east of Henny Penny's farm market, in proximity to the public road frontage. An A&W restaurant is located west of the subject property and a credit union to the east. To the rear of the subject property, to the northwest, is the school yard for the New Minas Elementary School. To the northeast of portion of the subject property is a lot that has public road access to Castle Loma Drive and is occupied by a single family dwelling. This property was rezoned to the Major Commercial I (C1) Zone in 2012 as part of a different development proposal that included the subject property but did not move forward.

The subject property is irregularly shaped with approximately 490 feet of frontage along Commercial Street. The depth of the property at the eastern property line is approximately 150 feet. In the western portion of the property, the depth increases to approximately 400 feet and a portion of the property extends to the rear of the abutting A&W property to the west. There is an existing building on the subject property. This building is the former offices of the Village of New Minas.



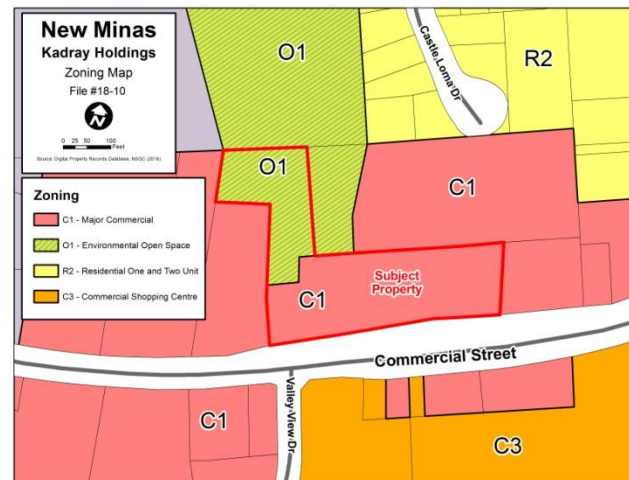
The subject property has a grade that is lower in elevation than the adjacent public road right-of-way, as seen in the photo to the right. Since the receipt of the application, the owner has been in the process of filling the site so that the grade at the time of development will be similar to that of the adjacent access and sidewalk.



The subject property has two registered easements in favour of the Village of New Minas for stormwater management infrastructure. One easement extends from the western property line approximately 100 feet north of the front lot line and extends to the northeast to the rear property line and the below grade infrastructure terminates at a brook that extends northward from the subject property and drains in the Cornwallis River to the north. The second easement extends from the eastern property line approximately 30 feet north of the front lot line and extends to the northwest to the rear lot line in the same location as the first easement. The proposed development on the subject property is not affected by these easements, as shown on the site plan accompanying the draft development agreements.



The subject property is split-zoned and is also located within two different land use designations. Most of the subject property is located within the Business District designation and the Major Commercial I (C1) Zone. The northwest portion of the subject property is within the Environmental Open Space designation and the Environmental Open Space (O1) Zone. The subject property is also located within Well Capture – Zone B which is a groundwater protection overlay that restricts the development of uses that are more likely to pose a risk to drinking water quality. These restrictions are in addition to and supersede the regulations for the zone in the Land Use Bylaw.



#### 4.2 Site Visit

A Planner and Development Officer visited the subject property on April 12, 2018.

#### 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 April 19, 2018 at the Louis Millett Community Complex with 35 members of the public in attendance. The complete notes from the PIM are attached as Appendix B.

#### 4.4 Request 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 provided comments indicating that the proposed access off Commercial Street at the existing traffic signal was acceptable but that the timing of the signalized intersection would likely need to be adjusted. Utility poles may also need to be relocated and road paint may need to be adjusted. With regard to a second access, proposed on the eastern portion of the subject property, DTIR indicated that such an access would be acceptable provided it was opposite the existing right-in, right-out access located to the west of Henny Penny's farm market, serving the mall.. Finally, DTIR indicated that a traffic study would not be required for the subject property.

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

EPW indicated that they will require the following documents to be submitted at the time of permitting, according to Municipal Specifications:



- Drainage plan and report, complete with calculations demonstrating that post development flow rates will be equal or less than predevelopment flow rates; and
- Erosion and sedimentation control plan.

The applicant has submitted a drainage plan and report as part of the application which has been deemed satisfactory by the Municipal Engineer however, it has been requested that it be submitted at the time of permitting as well and record drawings be submitted once the work is complete. The applicant also submitted a topographical report to indicate that the area within the Environmental Open Space (O1) Zone is not subject to an increased risk of flooding. EPW reviewed this report and found it satisfactory.

#### 4.4.3 Nova Scotia Environment

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

#### 4.4.4 Village of New Minas Water Utility

The Village of New Minas Water Utility indicated that it is able to meet the water/wastewater needs for the proposed development.

#### 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 Capture Zone B. They were asked whether it would be acceptable to them, in their capacity, to increase in the number of residential units permitted on the subject property to 40 units from the 30 units that would be permitted under the policies of the New Minas Sector Plan. The Water Commission indicated they had no objection to an increase in the number of permitted residential units.

## **5. POLICY REVIEW**

### **5.1 Land Use Bylaw Amendments**

#### 5.1.2 Land Use Bylaw Map Amendment Enabling Policy

An amendment to the zoning map of the New Minas Land Use Bylaw is required to facilitate the relocation of the former Village of New Minas Village Office building. The applicant has proposed to relocate the building to the northwest of its current location to open up the balance of the subject property for redevelopment. The relocated building is proposed to be occupied by only commercial uses. This area of the subject property is currently within the Environmental Open Space (O1) Zone which would not permit the relocation of the existing building on the subject property.

Policy 2.6.18 of the New Minas Sector Plan states:

*...it shall be the policy of Council to consider permitting minor Environmental Open Space (O1) Zone boundary adjustments by an amendment to the Land Use Bylaw provided that:*

- a. The site of the proposed use is located contiguous to similarly zoned and developed land which is compatible with the proposed use; and*
- b. Municipal services and facilities are capable of supporting the development.*
- c. The permitted uses will not increase the potential to pollute surface or ground water resources.*
- d. The site is above the elevation of any nearby dykes.*
- e. The proposal meets all applicable policies regarding amendments to the Land Use Bylaw contained in Part 3 of this Strategy.*
- f. In considering such rezoning, the developer may be required to:*
  - i. conduct a hydrotechnical and topographical study*
  - ii. submit a report by a professional engineer stating that the development of the lands will not negatively impact adjacent properties, roads or downstream watercourses*
  - iii. submit a letter to the Municipality acknowledging that the lands are susceptible to flooding.*

Staff are satisfied that these requirements have been met. The portion of the subject property outside the Environmental Open Space (O1) Zone is in the Major Commercial (C1) Zone, which is the proposed zone for that portion of the subject property in the Environmental Open Space (O1) Zone proposed to be removed, thereby being similarly zoned. Municipal services are capable of supporting the development, as confirmed by the Village of New Minas. The development will not increase the potential for pollution as the applicant will be required to submit a drainage plan and report showing that post development flows from the site will be contained on site, thereby reducing run off of pollutants. The topographical report submitted by the applicant confirmed that the subject property is above the elevation of nearby dykes. A draft amendment can be found in Appendix C of this report that shows the zone boundary adjustment.

#### 5.1.3 Land Use Bylaw Text Amendment

In order to accommodate the proposed development on the subject property, a text amendment to the New Minas Land Use Bylaw is required. The proposed development includes 40 residential units within the proposed mixed-use commercial-residential building. The current New Minas Land Use Bylaw permits accessory residential uses in section 5.5.2.1. Subsection 5.5.2.1 states,

*Accessory Residential uses are permitted provided:*

- a. The dwelling floor area does not exceed the commercial floor area;*

- b. *The dwelling units are contained in the main building constituting the commercial use, except for a detached dwelling in existence on the lot prior to the development of the commercial use.*

Staff are proposing deleting subsection a. which would permit the residential portion of the building to exceed the commercial floor area of the proposed mixed-use building. In its place, staff are recommending the following text, *'dwelling units are located behind or above commercial uses;'* This amendment can be found in Appendix D of this report. The insertion of this text is proposed in order to ensure that commercial uses continue to be the most prominent uses on the ground floor on a given property and to ensure that a commercial presence is maintained.

Section 219 of the *Municipal Government Act*, related to the Land Use Bylaw and amendments thereto, outlines the purpose of a land use by-law:

*219 (1) Where a council adopts a municipal planning strategy or a municipal planning strategy amendment that contains policies about regulating land use and development, the council shall, at the same time, adopt a land-use by-law or land-use by-law amendment that shall enable the policies to be carried out.*

*(2) A council may amend a land-use by-law in accordance with policies contained in the municipal planning strategy on a motion of council or on application.*

*(3) A council shall not adopt or amend a land-use by-law except to carry out the intent of a municipal planning strategy.*

As such, when amending the text of the Land Use Bylaw, Council needs to be satisfied that the amendment to the Land Use Bylaw continues to be in keeping with, and serve to implement, the policies of the Municipal Planning Strategy. In this case, the amendment must be in keeping with and serve to implement the policies of the New Minas Sector Plan.

Section 1.1 of the New Minas Sector Plan identifies planning problems that were being experienced by the Village of New Minas at the time the Sector Plan was drafted. Under the Residential heading, it states, *"With the increasing cost of conventional types of housing, it becomes important to provide the opportunities for a wide range of alternative housing types to locate within the Village including mobile homes, apartment buildings and town houses. Locating these types of development in, or adjacent to, low density neighbourhoods is often met with opposition by local residents."* The proposal for the subject property is not located in proximity to, or within an established neighbourhood and provides an alternative form of housing.

Under the Commercial heading, it states, *"The commercial sector has developed in response to the needs and demands of the motoring public. This is reflected by the type of development located in the Business District that includes motels, drive-in restaurants, automobile related enterprises and shopping malls. This type of development is a high generator of traffic and as the commercial sector grows, the traffic generated by this growth will increase as well. This*

*could cause further problems of traffic congestion if appropriate measures are not taken.*” One way to reduce vehicular traffic is to promote active transportation such as walking and cycling. Reducing distances between residences and destinations that people would normally drive to assists in controlling traffic flows by making it more convenient for people to walk, cycle or use another alternative form of transportation to access commercial locations.

Section 1.2 of the New Minas Sector Plan outlines goals and objectives of the plan. The residential portion of this section encourages a variety of housing types. The commercial portion of this section indicates that the commercial goals of the Sector Plan are to, “*encourage the development of a distinct and viable business district...*” The proposed development is intended to contribute to the viability of the commercial area through an increased number of people residing within convenient access of commercial opportunities.

Section 2.4 of the New Minas Sector Plan provides policy direction for the Commercial Districts of the Growth Centre. Policy 2.4.2 states, “*It shall be the policy of Council to zone the lands within the Business District designation to a Major Commercial Zone that will permit a wide range commercial uses, existing residential dwellings, and new residential units attached to a commercial building and accessory to the commercial use.*” The proposed development includes commercial uses at grade and occupying the entire ground floor of the proposed building with the exception of an area devoted to accessing the upper level residential uses. The proposed text amendment continues to maintain this policy direction by requiring residential uses to be above or behind the commercial use which presents the commercial use as the main use on a given property.

In reviewing the New Minas Sector Plan, Staff are satisfied that increasing the permitted residential floor area within a building that also contains commercial uses continues to be in keeping with the policies of the New Minas Sector Plan.

#### 5.1.4 General Criteria for Land Use Bylaw Amendments

The New Minas Land Use Bylaw contains policies in Section 3.3 that are required to be considered as part of applications to amend the Land Use Bylaw. Policy 3.3.5 states:

*In considering amendments to the Land Use Bylaw, in addition to all other criteria as set out in various policies of this Plan, Council shall have regard to the following matters:*

- a. *That the proposal is in conformance with the intent of this Plan and with the requirements of all other Municipal Bylaws and regulations.*
- b. *that the proposal is not premature or inappropriate by reason of:*
  - i. *the financial capability of the municipality to absorb any costs relating to the development*
  - ii. *the adequacy of sewer and water services and utilities;*

- iii. precipitating or contributing to a pollution problem in the area;*
- iv. the adequacy of storm drainage and the effect of it on adjacent uses;*
- v. the adequacy and proximity of school, recreation and any other community facilities;*
- vi. the adequacy of road networks in, adjacent to, or leading to the development;*
- vii. the potential for the contamination of watercourses or the creation of erosion or sedimentation;*
- viii. creating a scattered or ribbon development pattern as opposed to compact development;*
- ix. the potential for contamination of, or interference with, a designated groundwater supply protection area.*

Staff are satisfied that the application to amend both the map and text of the Land Use Bylaw meet the criteria presented above.

The adjustment of the zone boundary and the proposed text amendment will not have any negative impacts on municipal finances. The proposed development can be accommodated by sewer and water services. It is not expected that the proposed map amendment or the text amendment will result in increased pollution as described in subsections iii. and vii. or negative drainage impacts. Since the zone boundary adjustment allows for the relocation of an existing building on the subject property, which is commercial in nature, concerns related to the adequacy of schools, recreation and other community facilities are not applicable, nor is it applicable to the proposed text amendment. The subject property is located within a well-developed area and enables the development of a compact development. The proposed amendments are not expected to increase the risk to groundwater quality or quantity within Wellfield Capture Zone B.

## **5.2 Development Agreements**

A development agreement is a contract between an owner of land and the Municipality to enable Council to consider a use that is not a listed permitted use within a zone on a specific lot. In New Minas, the ability for Council to consider a development agreement must be stated in Bylaw #57, the New Minas Land Use Bylaw (NMLUB) and Bylaw #42, the New Minas Sector Plan must identify the kinds of uses Council may consider in each area. 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 New Minas Sector Plan, 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 New Minas Sector Plan and not any other criteria.

#### 5.2.1 Ability to enter into a Development Agreement

The subject property lies within the Wellfield Capture Zone B for New Minas. Policy 2.10.3.3.2 of the New Minas Sector Plan sets out a list of uses that are prohibited in Wellfield Capture Zone B because of their potential to contaminate the groundwater.

Section 2.10.3.3.2 of the New Minas Sector Plan states that “*Where zoning does allow for multi-unit residential uses, multi-unit dwellings may be permitted to a maximum of 12 units per acre, and subject to development agreement provisions in Section 2.3 Residential Policies, of this Sector Plan.*” The proposed amendment to the New Minas Land Use Bylaw, if approved, enables more extensive residential development on the subject property. Policy 2.3.10 of the New Minas Secondary Plan provides the policy direction for approving such proposals.

#### 5.2.2 Multi-Unit Residential Development Policies

As described above, Policy 2.3.10 of the New Minas Sector Plan addresses multi-unit residential development requirements for the Growth Centre of New Minas. The policy allows for multi-unit 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 multi-unit residential uses in New Minas. Policy 2.3.10 including the criteria is as follows:

*It shall be the policy of Council to consider multiple family development including apartment houses, townhouses and family care group homes in residential districts by a development agreement under Section 225 of the Municipal Government Act, subject to the following conditions:*

- i. The privacy of adjacent single family dwellings will be maintained through the provision of natural or artificial buffering.*
- ii. The architectural design and landscaping will be compatible with the character of the residential neighbourhood.*
- iii. The building does not interfere with the sunlight received by adjacent dwellings.*
- iv. The building is located at a sufficient distance from the property line and/or adjacent dwellings and the design is such so as not to interfere with the privacy of adjacent residents.*
- v. Sufficient on-site parking is provided to accommodate all the residents plus visitors, and the parking will be located in such a manner as to minimize the adverse impacts to adjacent residents and to the residential neighbourhood as a whole.*
- vi. A suitably located landscaped amenity area, comprising a minimum of 10% of the total area of the proposed development will be provided to meet the needs of the*

*multiple family development. The location and configuration of the amenity area must be suitable for open space/leisure activities usually associated with a residential use. If the multiple family development is designed to accommodate children, this amenity area will include a play area designed to meet the needs of the expected number of children that will inhabit the building.*

vii. *The proposed densities does not exceed the following:*

*Town Housing                      16 unit/net acre*

*Apartment Housing              30 unit/net acre*

*For the purpose of this Plan, net acre is defined as the land remaining after the required land has been obtained for public purposes such as roads and open spaces.*

viii. *Village Water and Sewer Services are sufficient to accommodate the proposal.*

ix. *The proposal has direct access to a collector or arterial road as designated on the Future Land Use Map and is located such that associated traffic does not interfere with low density housing on local streets. Direct access may include a new street if no single family housing is to be located on the new street.*

x. *The proposal must, at a minimum, meet the lot size, lot coverage, frontage, parking and yard requirements of the Multiple Family Residential Zone.*

With regard to the requirements of policy 2.3.10, it is Staff's opinion that the proposed development meets these requirements. There is one single family dwelling located to the rear of the subject property within the Major Commercial I (C1) Zone. Notwithstanding the zoning of the property occupied by the single family dwelling, there is a natural vegetated buffer on the property between the proposed development and the adjacent dwelling. Future development of this property for residential uses is limited due to the commercial zoning on the property. Subsection ii related to architectural design is not applicable since the proposed development is not located within a residential neighbourhood. It is not expected that the proposed development will affect the sunlight received by adjacent dwellings nor the privacy of adjacent residents. The parking requirements for all commercial and residential uses on the property, in accordance with the requirements of the Land Use Bylaw shall be met by the developer.

With regard to amenity space, the developer has proposed a dedicated amenity area with a total area of approximately 4,000 square feet proposed to be provided in the northwest portion of the subject property, abutting the school yard for the New Minas Elementary School. Additionally, each residential unit shall be provided with a balcony with a minimum area of 50 square feet, thereby providing an additional amenity space of 2,000 square feet. While the subject property has a lot area of 2.55 acres (111,078 square feet), the area of the proposed development, including the areas occupied by buildings and the parking for all uses, is approximately 56,000 square feet. An amenity area of 6,000 square feet exceeds the 10% amenity space requirement of sub-section vi. The developer has indicated that the intended residents of the development are seniors, therefore, a play area is not required. The amenity area in the northwest portion of the subject property is required to provide benches or another form of



seating area for passive recreation. It should also be noted that the New Minas Elementary School is within easy walking distance of the subject property and is equipped with a publicly accessible play area. Lockhart Ryan Park is also within walking distance where sidewalks are available or a short drive of the subject property. It is Staff's opinion that there are sufficient recreation amenities and opportunities for residents of the subject property both on, and off site.

With regard to density on the subject property, the proposed development intends to be comprised of 40 residential units. With a lot area of 2.55 acres, this represents a density of almost 16 units per acre which would comply with policy 2.3.10 however, the ability to enter into a development agreement is granted through policy 2.10.3.3.2, related to wellfield protection policies. Policy 2.10.3.3.2, discussed in section 5.3.1 of this report limits the permitted on-site density to 12 units per acre, or a total 30 residential units based on the lot area. Staff discussed this with the New Minas Water Commission. The Water Commission expressed support for the full 40 residential units. As a result, Staff have prepared two draft development agreements. The first is a draft development agreement found in Appendix E that permits 30 residential units and the second draft development agreement found in Appendix F that permits 40 residential units. Otherwise, the draft development agreements are identical.

With regard to public infrastructure, the Village of New Minas Public Works staff have confirmed that there is sufficient capacity within the public water and sanitary sewer systems to accommodate the proposed development. The Department of Transportation and Infrastructure Renewal have confirmed that there is adequate road capacity for the proposed development and a traffic study is not necessary since primary access to and from the subject property shall be by way of an existing signalized intersection. All new access points will be required to be approved by DTIR in the future.

Finally, with regard to subsection x., the draft development agreement requires that the proposed mixed use commercial residential building meet the lot size, lot coverage, frontage, parking and yard requirements of the Multiple Family Residential (R3) Zone.

Policy 2.3.12 outlines conditions that the development agreement may regulate, including buffering, architectural design, site design, and time limits for the completion of construction. These conditions, where applicable, are addressed in the draft development agreement. This policy also states that Council may regulate any other similar matters which it feels necessary to ensure the general compatibility of the use and structure with adjacent residential uses. Other conditions that are regulated in the draft development agreement that are not specifically mentioned in Policy 2.3.12 include, provisions for lighting, outdoor storage, erosion and sediment control, drainage and the requirement to maintain the property in an attractive and useable state.

### **5.3 Draft Planning Documents**

Under the current draft planning documents, the subject property is proposed to be located within the Commercial Designation and is proposed to continue to have two zones applied: the General Commercial (C1) Zone to the majority of the subject property area and the

Environmental Constraint (O1) Zone to a portion of the property in the northwest portion of the subject site. The area zoned Environmental Constraint (O1) is proposed to be smaller than the current. The preparation of the draft planning documents included additional study related to floodplains, steep slopes and other areas within the existing Environmental Open Space (O1) Zone. This study indicated that a smaller area of the subject property than previously thought was subject to flooding or other developmental hazards. The proposed zone boundary adjustment considered through this application is consistent with the proposed zone boundary in the draft planning documents.

The proposed development on the subject property under the policies and regulations of the 2016 draft Municipal Planning Strategy and 2016 draft Land Use By-law would have been accommodated by way of a development agreement only.

**6. SUMMARY OF DRAFT DEVELOPMENT AGREEMENT**

The draft development agreements have been attached as Appendix E and Appendix F to this report. The main content of the proposed development agreements include:

<b>Draft Development Agreement Location</b>	<b>Content</b>
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 pedestrian infrastructure
2.5	regulates subdivision
2.6	regulates amenity areas
2.10	regulates parking
2.13	addresses erosion and sediment control including a requirement to submit a drainage plan
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 permitted on the property and the requirement to develop in general conformance with the Site Plan.

## 7. CONCLUSION

Staff have reviewed the application for consistency and compliance with the New Minas Sector Plan including the policies for multi-unit residential development however the proposal for 40 residential units is not consistent with the policies related to residential development within Wellfield Capture Zone B, notwithstanding the support from the New Minas Water Commission. Staff are of the opinion that the proposed amendments to both the map and text of the New Minas Land Use Bylaw are compatible with the policies of the New Minas Sector Plan. As a result and since the terms of the draft development agreement permitting are in keeping with and carry out the policies of the New Minas Sector Plan, Staff are forwarding a positive recommendation to the New Minas Area Advisory Committee for the proposed relocation of the existing building on site for use as a commercial building and the development for a mixed-use commercial-residential building having 30 residential units.

## 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 motions:

**The New Minas AAC recommends that the Planning Advisory Committee recommend that Council give First Reading to and hold a Public Hearing regarding the proposed rezoning of a portion of 9209 Commercial Street (PID55210421), New Minas from the Environmental Open Space (O1) Zone to the Major Commercial I (C1) Zone as described in Appendix C of the report dated April 1, 2019.**

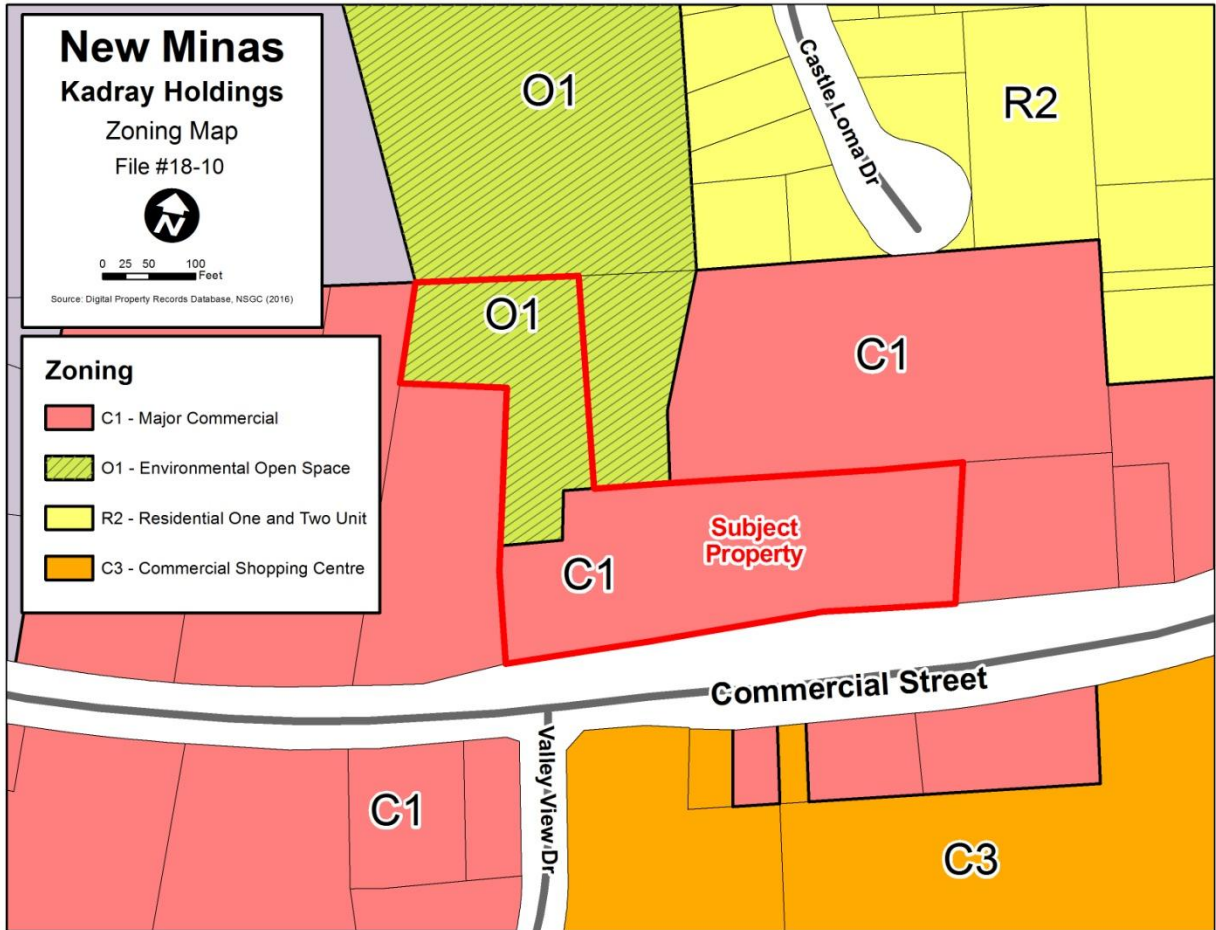
**The New Minas AAC recommends that the Planning Advisory Committee recommend that Council give First Reading to and hold a Public Hearing regarding a text amendment to regulations related to accessory residential uses in the Major Commercial I (C1) Zone New Minas Land Use Bylaw to enable expanded residential floor area behind or above commercial uses as described in Appendix D of the report dated April 1, 2019.**

**The New Minas AAC recommends that the Planning Advisory Committee recommend that Council give Initial Consideration and hold a Public Hearing regarding entering into a development agreement to permit a 30 unit multi-unit residential development at 9209 Commercial Street (PID 55210421), New Minas, which is substantively the same (save for minor differences in form) as the draft set out in Appendix E of the report dated April 1, 2019.**

## 9. APPENDICES

Appendix A	Zoning Map
Appendix B	Public Information Meeting Notes
Appendix C	Map Amendment
Appendix D	Text Amendment
Appendix E	Draft Development Agreement – Option 1
Appendix F	Draft Development Agreement – Option 2

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 for a Text and Map Amendment to the Land Use Bylaw, as well as a Development Agreement, to permit mixed use development at 9209 Commercial Street (PID 55210421), New Minas (File 18-10)**

**Meeting, Date and Time** A Public Information Meeting was held on Thursday, April 19<sup>th</sup>, 2018 at 7:00 p.m. in the Louis Millet Centre, 9489 Commercial Street, New Minas, Nova Scotia.

**Attending** In Attendance:

**Councillors** Councillor Jim Winsor – District 8 (Chair)

**Planning Staff** Laura Mosher – Manager of Planning and Development Services

**Applicant** Issam Kadray

**Public** 35 Members

**Welcome and Introductions** The Chair, Councillor Jim Winsor, 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** Laura Mosher provided a brief overview of the planning process and the criteria that will be used to evaluate the application from Issam Kadray to relocate the former Village Commission building and to develop a mixed-use building consisting of commercial and accessory residential uses at 9209 Commercial Street (PID 55210421), New Minas, Nova Scotia.

Mr. Kadray provided a brief overview of his experience in New Minas real estate, the reason for his planning application, and the ways in which his proposal would benefit the community.

**Comments from  
the Public**

John Eisker – Gaspereau

- Asked for more details on the proposal's vision.

Issam Kadray responded by explaining that the proposed development would help meet the needs of the community's aging population because of the site's close proximity to urban services. Issam Kadray indicated that the building would likely have an elevator installed and mostly offer one bedroom units. An existing fence and additional trees would buffer neighbouring residential areas and provide privacy to the building's residents.

Ken Barrett – Port Williams

- Asked for a definition of ribbon development.

Ms. Mosher provided a definition, noting that an alternative pattern of development has occurred in the area despite specific reference to ribbon development in the New Minas Sector Plan.

Mr. Barrett asked for clarification regarding the number of units that would be permitted per acre and in total on the subject property.

Ms. Mosher indicated that 12 units per acre would be permitted on the property because of its location in a Wellfield Zone. This translates to roughly 24 units permitted in total.

Mr. Barrett asked whether a new road was being considered in order to accommodate the development.

Ms. Mosher replied that this was not the case because the property fronts an arterial road.

Mr. Barrett ended his questions by expressing that he appreciates and supports people like Issam Kadray because their ideas help ensure the community does not stagnate and will survive over the long-term.

John – New Minas

- Expressed his appreciation of the existing building.
- Asked how Issam Kadray intended to repurpose it.

Mr. Kadray indicated that he was still accepting proposals for the building.

Councillor Winsor explained that while the community is waiting for the

new Municipal Planning Strategy to be adopted, business proposals like Mr. Kadray's must still come under consideration by planning staff. Otherwise, the community may stagnate. Council's philosophy is that business must continue.

John Davidson – Greenwich

- Expressed his concerns with regards to the road network and drainage.

Ms. Mosher indicated that the proposal is still in the early stages of the application process. The purpose of the Public Information Meeting is to gather preliminary public feedback to help inform and shape the development agreement. Laura Mosher provided a breakdown of the steps involved in the review of Issam Kadray's planning application, noting that John Davidson's concerns would be addressed as part of this process.

Mr. Kadray added that he will hire consultants to examine the proposal and offer their expertise.

Terry Knock – New Minas

- Voiced his concern regarding the aesthetic of the proposed building.
- Expressed that he hoped the design of the building would set a positive example in New Minas and help spur revitalization because of its central location in the community.

Laura Mosher pointed out that the character of Commercial Street in New Minas is diverse and that the Municipality does not have the power to establish architectural controls on buildings constructed as-of-right, apart from multi-unit developments.

Verny Parker – Kentville

- Asked whether there was a possibility that an additional road would be built.

Laura Mosher indicated this was unlikely and explained the reasons why. She provided examples of what the Department of Transportation and Infrastructure Renewal were inclined to ask.

Councillor Winsor reiterated that the process of developing a new Municipal Planning Strategy provides an opportunity for the community to share ideas and help improve the Plan. Councillor Jim Winsor urged the public to be engaged in this process.



**Adjournment**

There being no further discussion, the Chair thanked those in attendance and adjourned the meeting at 7:50 p.m.

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Laura Mosher  
Recorder

**APPENDIX C – Map Amendment**

**THE MUNICIPALITY OF THE COUNTY OF KINGS**

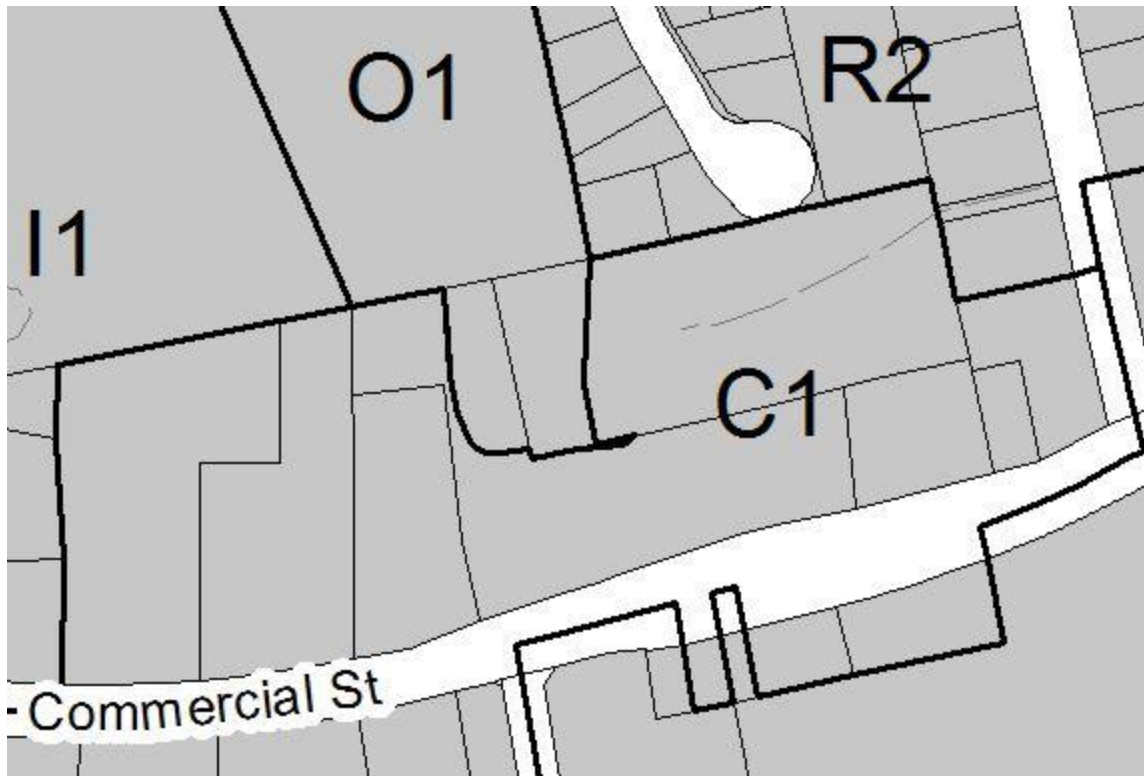
**AMENDMENT TO BYLAW # 57**

**NEW MINAS LAND USE BYLAW**

**Land Use Bylaw Map Amendment to rezone the property at 9209 Commercial Street  
(PID 55421210), New Minas from the Environmental Open Space to the  
Major Commercial I (C1) Zone**

**BYLAW 57 – NEW MINAS LAND USE BYLAW**

1. Amend Land Use Bylaw Schedule 11g, the Growth Centre map for New Minas, to rezone the property at 9209 Commercial Street as shown on the inset copy of a portion of Schedule 11g below.



**APPENDIX D – Text Amendment**

**THE MUNICIPALITY OF THE COUNTY OF KINGS**

**AMENDMENT TO BYLAW # 57**

**NEW MINAS LAND USE BYLAW**

**Land Use Bylaw Text Amendment to increase residential floor area permissions in the Major Commercial I (C1) Zone**

1. Replace the text in section 5.5.2.1 a.
  - \* deleted text shown in ~~strike through~~
  - \* added text shown **highlighted** for emphasis

**SPECIAL REQUIREMENTS IN C1 ZONE**

5.5.2 Any permitted use in any C1 Zone must comply with the following special requirements:

**Accessory Residential Uses**

5.5.2.1 Accessory residential uses are permitted provided:

- a. ~~The dwelling floor area does not exceed the commercial floor area;~~  
**Dwelling units are located behind or above commercial uses;**
- b. The dwelling units are contained in the main building constituting the commercial use, except for a detached dwelling in existence on the lot prior to the development of the commercial use.

## APPENDIX E – Draft Development Agreement – Option 1

THIS DEVELOPMENT AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, A.D.

BETWEEN:

**Kadray Holdings Inc.**, of Bedford, 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 55210421; and

WHEREAS the Property Owner wishes to use the Property for mixed-use commercial-residential development; and

WHEREAS the Property is designated Business and Parks and Open Space on the Future Land Use Map of the New Minas Sector Plan, and zoned Environmental Open Space (O1) and Major Commercial I (C1) and is located within Well Capture Protection Zone B on the Zoning Map of the New Minas Land Use Bylaw; and

WHEREAS policy 2.10.3.3.2 and 2.3.10 of the New Minas Sector Plan and section 3.1.33 b. of the New Minas 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**, 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) *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) *Pedestrian Walkway* means a pathway, which may include stairs, ramps or passageways, made of a hard, stable surface and which is kept clear of debris, snow and ice to facilitate the movement of pedestrians.
- (c) *Mixed Use Building* means a building containing both commercial and residential uses.
- (d) *Relocated Building* means a building existing on the Property at the time of registration of this Agreement and proposed to be relocated to the Relocated Building Envelope as identified on Schedule B, Site Plan to this Agreement.

## PART 2 DEVELOPMENT REQUIREMENTS

### 2.1 Use

The use of the Property shall be limited to:

- (a) A Mixed Use Building located wholly within the Mixed Use Building Envelope, including any balconies, canopies or other architectural elements, as identified on Schedule B, Site Plan and consisting of the following:
  - i. Commercial uses on the ground floor as listed in section 2.1(c) of this agreement; and

- ii. Up to 30 residential units located above commercial uses with the exception of an area on the ground floor providing access to residential units.
- (b) A new or relocated building located wholly within the Relocated Building Envelope as identified on Schedule B, Site Plan and used for commercial uses as identified in section 2.1(c) of this Agreement;
- (c) The following light commercial uses:
  - Bakery shops
  - Business Offices
  - Day Care Facilities
  - Dental Laboratories
  - Dressmaking and Tailoring
  - Financial Institutions
  - Laundromat
  - Personal Service Shops
  - Photography Studios
  - Restaurants
  - Retail Stores
  - Service Shops

## **2.2 Site Plan**

All uses enabled by this Agreement on the Property shall be developed generally in accordance with Schedule B, Site Plan.

## **2.3 Development Standards**

- (a) The Property Owner shall construct the Mixed Use Building in conformance with the minimum lot area, maximum lot coverage, maximum height, minimum lot frontage, and minimum yard requirements of the Residential Multiple Family (R3) Zone within the New Minas Land Use Bylaw, or a comparable medium density multi-unit residential zone in any successor documents.
- (b) Accessory buildings shall be subject to the requirements of the Major Commercial I (C1) Zone of the New Minas Land Use Bylaw or a comparable general commercial zone in any successor document.

## **2.4 Pedestrian Access**

- (a) The Property Owner shall develop on the Property pedestrian walkways as identified on Schedule B, Site plan to provide safe access for pedestrians to and within the Property. Where located on a paved area, pedestrian walkways shall be differentiated from parking areas through the use of paint or alternative paving materials.
- (b) The pedestrian walkway accessing the proposed amenity area shall have a minimum width of 3 feet.

- (c) A pedestrian walkway, with a minimum width of 3 feet shall be provided along the front and side walls of the Mixed Use Building and shall be wholly contained within the Mixed Use Building Envelope.

## **2.5 Subdivision**

An unused portion of the Property east of the Mixed Use Building may be subdivided, provided all provisions within this Agreement and all provisions of the underlying zone of the in force Land Use Bylaw and Municipal Subdivision By-law are met. Once a plan of subdivision has been approved as per this section, the Municipality and the Property Owner agree that this Agreement shall be discharged from the portion of the Property that has been subdivided.

## **2.6 Amenity Area**

The Property Owner shall provide amenity areas on the property in accordance with the following:

- (a) Each residential unit within the Mixed Use Building shall be provided with a private patio, balcony, or deck with an area no less than 50 square feet and wholly located within the Mixed Use Building Envelope.
- (b) A designated amenity area suitable for open space/leisure activities for the residential use, measuring no less than 4,000 square feet in area, shall be provided as identified on Schedule B, Site Plan. The amenity area shall be developed with hardscaping or grassed area and shall include benches or other seating options and shall be maintained in a useable state.
- (c) All undeveloped areas of the Property not used for buildings, driveways or parking shall either be maintained in a natural forested state or landscaped with grass, trees, flowers, or decorative stone work.

## **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 or yard equipment shall be entirely within an accessory



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 in accordance with the following:

- (a) Residential parking shall be provided in accordance with the parking requirements of the Residential Multiple Family (R3) Zone of the New Minas Land Use Bylaw, or comparable medium density multi-unit residential zone in any successor document; and
- (b) Commercial parking shall be provided in accordance with the parking requirements of the Major Commercial I (C1) Zone of the New Minas Land Use Bylaw, or comparable general commercial zone in any successor document.

## **2.11 Access and Egress**

- (a) 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; and
- (b) The property owner is responsible for supplying engineered access designs if required by Nova Scotia Transportation and Infrastructure Renewal, or any successor body.

## **2.13 Erosion and Sedimentation Control and Drainage**

- (a) Submission of a detailed drainage report and plan for the entire Property shall be required prior to the issuance of Development Permits or Building Permits, in accordance with the Municipal Specifications and as approved by the Municipal Engineer.
- (b) During any site preparation or building construction 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.
- (c) 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.

## **2.14 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 that 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; and
  - (b) development generally not in accordance with Schedule B, Site Plan
- 3.4 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**

- (a) No construction or use may be commenced on the Property for a use enabled by this Agreement, nor a building relocated, until the Municipality has issued any Development Permits, Building Permits and/or Occupancy Permits that may be required; and
- (b) A Development Permit shall not be issued for the construction of the Mixed Use Building until the existing building on the property is relocated to the Relocated Building Envelope.

#### **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 180 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 Mixed Use Building within seven (7) years of this Agreement being recorded at the Registry of Deeds.
- (c) The Property Owner shall be in complete compliance with the Amenity Area, and Parking provisions of this Agreement within one year of receiving an Occupancy Permit for the Mixed Use 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 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  
In the presence of:

**KADRAY HOLDINGS INC**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Issam Kadray, President

**Schedule A – Property Description**  
*Accessed on Property Online February 15, 2019*

ALL that certain parcel of land lying, being and situate on the north side of Commercial Street, Village of New Minas, being more particularly bounded and described as follows:

BEGINNING at a survey marker shown on Plan of Survey entitled "Plan of Survey Showing Lands of the Village of New Minas, Commercial St., New Minas, NS" and bearing Hiltz & Seamone number D658, the survey marker being found where the southwest corner of land of Barney and Thelma Bishop as conveyed in Book 188, page 86 and Book 197, page 394 intersects the north bound of Commercial Street, Village of New Minas as sown on the aforementioned plan;

THENCE South 76 degrees 36 minutes 30 seconds West a distance of 90.23 feet to a survey marker found as shown on the Plan of Survey entitled "Plan of Survey Showing Lands of the Village of New Minas, Commercial St., New Minas, NS" and bearing Hiltz & Seamone number D658;

THENCE South 70 degrees 31 minutes 13 seconds West a distance of 215.54 feet to an iron pipe found as shown on Plan of Survey entitled "Plan of Survey Showing Lands of the Village of New Minas, Commercial St., New Minas, NS" and bearing Hiltz and Seamone number D658;

THENCE South 77 degrees 24 minutes 16 seconds West a distance of 70.0 feet to an iron pipe found as shown on Plan of Survey entitled "Plan of Survey Showing Lands of the Village of New Minas, Commercial St., New Minas, NS" and bearing Hiltz and Seamone number D658;

THENCE South 67 degrees 17 minutes 46 seconds West a distance of 108.98 feet to a point as shown on Plan of Survey entitled "Plan of Survey Showing Lands of the Village of New Minas, Commercial St., New Minas, NS" and bearing Hiltz and Seamone number D658;

THENCE North 13 degrees 53 minutes 36 seconds West a distance of 100.0 feet to a survey marker found as shown on Plan of Survey entitled "Plan of Survey Showing Lands of the Village of New Minas, Commercial St., New Minas, NS" and bearing Hiltz and Seamone number D658;

THENCE North 07 degrees 36 minutes 23 seconds West a distance of 197.0 feet to a survey marker place as shown on plan of subdivision recorded at the Registry of Deeds/Land Registration Office for the District of Kings as Plan P8560;

THENCE South 82 degrees 28 minutes 53 seconds West a distance of 115.0 feet to a survey marker place as shown on plan of subdivision recorded at the Registry of Deeds/Land Registration Office for the District of Kings as Plan P8560;

THENCE North 00 degrees 57 minutes 28 seconds West a distance of 110.0 feet to a survey marker found as shown on plan of subdivision recorded at the Registry of Deeds/Land Registration Office for the District of Kings as Plan P8560;

THENCE North 77 degrees 56 minutes 09 seconds East a distance of 175.47 feet to a survey marker found as shown on plan of subdivision recorded at the Registry of Deeds/Land Registration Office for the District of Kings as Plan P8560;

THENCE South 14 degrees 06 minutes 44 seconds East a distance of 228.85 feet to an iron pipe found as shown on plan of subdivision recorded at the Registry of Deeds/Land Registration Office for the District of Kings as Plan P8560;

THENCE North 75 degrees 54 minutes 22 seconds East a distance of 70.23 feet to an iron pipe found as shown on Plan of Survey entitled "Plan of Survey Showing Lands of the Village of New Minas, Commercial St., New Minas, NS" and bearing Hiltz and Seamone number D658;

THENCE North 76 degrees 24 minutes 14 seconds East a distance of 236.73 feet to an iron pipe found as shown on Plan of Survey entitled APlan of Survey Showing Lands of the Village of New Minas, Commercial St., New Minas, NS@ and bearing Hiltz and Seamone number D658;

THENCE North 75 degrees 00 minutes 37 seconds East a distance of 90.53 feet to an iron pipe found as shown on Plan of Survey entitled APlan of Survey Showing Lands of the Village of New Minas, Commercial St., New Minas, NS@ and bearing Hiltz and Seamone number D658;

THENCE South 04 degrees 55 minutes 25 seconds East a distance of 148.63 feet to a survey marker found as shown on Plan of Survey entitled APlan of Survey Showing Lands of the Village of New Minas, Commercial St., New Minas, NS@ and bearing Hiltz and Seamone number D658 being the place of beginning;

BEING AND INTENDED TO BE Lot 1-A as shown on plan of subdivision recorded at the Registry of Deeds/Land Registration Office for the District of Kings as Plan P8560.

#### BENEFITS

TOGETHER with an easement/right-of-way as described in Document 98151591 as recorded on April 15, 2011.

#### BURDEN

SUBJECT TO the granted easement/right of way (burden)] created by the Grant of Storm Sewer Easement dated August 29, 2017, recorded in the Land Registration Office for Kings

County, Nova Scotia as Document No. 111326329 on August 30, 2017; this instrument contains the usage details of this easement in full text.

\*\*\* 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: 1991

Plan or Document Number: P8560

DRAFT





## APPENDIX F – Draft Development Agreement – Option 2

THIS DEVELOPMENT AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, A.D.

BETWEEN:

**Kadray Holdings Inc.**, of Bedford, 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 55210421; and

WHEREAS the Property Owner wishes to use the Property for mixed-use commercial-residential development; and

WHEREAS the Property is designated Business and Parks and Open Space on the Future Land Use Map of the New Minas Sector Plan, and zoned Environmental Open Space (O1) and Major Commercial I (C1) and is located within Well Capture Protection Zone B on the Zoning Map of the New Minas Land Use Bylaw; and

WHEREAS policy 2.10.3.3.2 and 2.3.10 of the New Minas Sector Plan and section 3.1.33 b. of the New Minas 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**, 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) *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) *Pedestrian Walkway* means a pathway, which may include stairs, ramps or passageways, made of a hard, stable surface and which is kept clear of debris, snow and ice to facilitate the movement of pedestrians.
- (c) *Mixed Use Building* means a building containing both commercial and residential uses.
- (d) *Relocated Building* means a building existing on the Property at the time of registration of this Agreement and proposed to be relocated to the Relocated Building Envelope as identified on Schedule B, Site Plan to this Agreement.

## PART 2 DEVELOPMENT REQUIREMENTS

### 2.1 Use

The use of the Property shall be limited to:

- (a) A Mixed Use Building located wholly within the Mixed Use Building Envelope, including any balconies, canopies or other architectural elements, as identified on Schedule B, Site Plan and consisting of the following:
  - i. Commercial uses on the ground floor as listed in section 2.1(c) of this agreement; and

- ii. Up to 40 residential units located above commercial uses with the exception of an area on the ground floor providing access to residential units.
- (b) A new or relocated building located wholly within the Relocated Building Envelope as identified on Schedule B, Site Plan and used for commercial uses as identified in section 2.1(c) of this Agreement;
- (c) The following light commercial uses:
  - Bakery shops
  - Business Offices
  - Day Care Facilities
  - Dental Laboratories
  - Dressmaking and Tailoring
  - Financial Institutions
  - Laundromat
  - Personal Service Shops
  - Photography Studios
  - Restaurants
  - Retail Stores
  - Service Shops

## **2.2 Site Plan**

All uses enabled by this Agreement on the Property shall be developed generally in accordance with Schedule B, Site Plan.

## **2.3 Development Standards**

- (a) The Property Owner shall construct the Mixed Use Building in conformance with the minimum lot area, maximum lot coverage, maximum height, minimum lot frontage, and minimum yard requirements of the Residential Multiple Family (R3) Zone within the New Minas Land Use Bylaw, or a comparable medium density multi-unit residential zone in any successor documents.
- (b) Accessory buildings shall be subject to the requirements of the Major Commercial I (C1) Zone of the New Minas Land Use Bylaw or a comparable general commercial zone in any successor document.

## **2.4 Pedestrian Access**

- (a) The Property Owner shall develop on the Property pedestrian walkways as identified on Schedule B, Site plan to provide safe access for pedestrians to and within the Property. Where located on a paved area, pedestrian walkways shall be differentiated from parking areas through the use of paint or alternative paving materials.
- (b) The pedestrian walkway accessing the proposed amenity area shall have a minimum width of 3 feet.

- (c) A pedestrian walkway, with a minimum width of 3 feet shall be provided along the front and side walls of the Mixed Use Building and shall be wholly contained within the Mixed Use Building Envelope.

## **2.5 Subdivision**

An unused portion of the Property east of the Mixed Use Building may be subdivided, provided all provisions within this Agreement and all provisions of the underlying zone in the in force Land Use Bylaw and Municipal Subdivision By-law are met. Once a plan of subdivision has been approved as per this section, the Municipality and the Property Owner agree that this Agreement shall be discharged from the portion of the Property that has been subdivided.

## **2.6 Amenity Area**

The Property Owner shall provide amenity areas on the property in accordance with the following:

- (a) Each residential unit within the Mixed Use Building shall be provided with a private patio, balcony, or deck with an area no less than 50 square feet and wholly located within the Mixed Use Building Envelope.
- (b) A designated amenity area suitable for open space/leisure activities for the residential use, measuring no less than 4,000 square feet in area, shall be provided as identified on Schedule B, Site Plan. The amenity area shall be developed with hardscaping or grassed area and shall include benches or other seating options and shall be maintained in a useable state.
- (c) All undeveloped areas of the Property not used for buildings, driveways or parking shall either be maintained in a natural forested state or landscaped with grass, trees, flowers, or decorative stone work.

## **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 or yard equipment shall be entirely within an accessory

building(s), or other suitable receptacle(s) that do not compromise driveways, parking areas or safety.

## **2.11 Parking**

The Property Owner shall provide on-site parking in accordance with the following:

- (c) Residential parking shall be provided in accordance with the parking requirements of the Residential Multiple Family (R3) Zone of the New Minas Land Use Bylaw, or comparable medium density multi-unit residential zone in any successor document; and
- (d) Commercial parking shall be provided in accordance with the parking requirements of the Major Commercial I (C1) Zone of the New Minas Land Use Bylaw, or comparable general commercial zone in any successor document.

## **2.11 Access and Egress**

- (c) 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; and
- (b) The property owner is responsible for supplying engineered access designs if required by Nova Scotia Transportation and Infrastructure Renewal, or any successor body.

## **2.13 Erosion and Sedimentation Control and Drainage**

- (a) Submission of a detailed drainage report and plan for the entire Property shall be required prior to the issuance of Development Permits or Building Permits, in accordance with the Municipal Specifications and as approved by the Municipal Engineer.
- (b) During any site preparation or building construction 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.
- (c) 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.

## **2.14 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 that 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; and
  - (d) development generally not in accordance with Schedule B, Site Plan
- 3.4 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**

- (c) No construction or use may be commenced on the Property for a use enabled by this Agreement, nor a building relocated, until the Municipality has issued any Development Permits, Building Permits and/or Occupancy Permits that may be required; and
- (d) A Development Permit shall not be issued for the construction of the Mixed Use Building until the existing building on the property is relocated to the Relocated Building Envelope.

#### **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**

- (d) The Property Owner shall sign this Agreement within 180 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.
- (e) The Property Owner shall develop the Mixed Use Building within seven (7) years of this Agreement being recorded at the Registry of Deeds.
- (f) The Property Owner shall be in complete compliance with the Amenity Area, and Parking provisions of this Agreement within one year of receiving an Occupancy Permit for the Mixed Use 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 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  
In the presence of:

**KADRAY HOLDINGS INC**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Issam Kadray, President

**Schedule A – Property Description**  
*Accessed on Property Online February 15, 2019*

ALL that certain parcel of land lying, being and situate on the north side of Commercial Street, Village of New Minas, being more particularly bounded and described as follows:

BEGINNING at a survey marker shown on Plan of Survey entitled "Plan of Survey Showing Lands of the Village of New Minas, Commercial St., New Minas, NS" and bearing Hiltz & Seamone number D658, the survey marker being found where the southwest corner of land of Barney and Thelma Bishop as conveyed in Book 188, page 86 and Book 197, page 394 intersects the north bound of Commercial Street, Village of New Minas as shown on the aforementioned plan;

THENCE South 76 degrees 36 minutes 30 seconds West a distance of 90.23 feet to a survey marker found as shown on the Plan of Survey entitled "Plan of Survey Showing Lands of the Village of New Minas, Commercial St., New Minas, NS" and bearing Hiltz & Seamone number D658;

THENCE South 70 degrees 31 minutes 13 seconds West a distance of 215.54 feet to an iron pipe found as shown on Plan of Survey entitled "Plan of Survey Showing Lands of the Village of New Minas, Commercial St., New Minas, NS" and bearing Hiltz and Seamone number D658;

THENCE South 77 degrees 24 minutes 16 seconds West a distance of 70.0 feet to an iron pipe found as shown on Plan of Survey entitled "Plan of Survey Showing Lands of the Village of New Minas, Commercial St., New Minas, NS" and bearing Hiltz and Seamone number D658;

THENCE South 67 degrees 17 minutes 46 seconds West a distance of 108.98 feet to a point as shown on Plan of Survey entitled "Plan of Survey Showing Lands of the Village of New Minas, Commercial St., New Minas, NS" and bearing Hiltz and Seamone number D658;

THENCE North 13 degrees 53 minutes 36 seconds West a distance of 100.0 feet to a survey marker found as shown on Plan of Survey entitled "Plan of Survey Showing Lands of the Village of New Minas, Commercial St., New Minas, NS" and bearing Hiltz and Seamone number D658;

THENCE North 07 degrees 36 minutes 23 seconds West a distance of 197.0 feet to a survey marker place as shown on plan of subdivision recorded at the Registry of Deeds/Land Registration Office for the District of Kings as Plan P8560;

THENCE South 82 degrees 28 minutes 53 seconds West a distance of 115.0 feet to a survey marker place as shown on plan of subdivision recorded at the Registry of Deeds/Land Registration Office for the District of Kings as Plan P8560;

THENCE North 00 degrees 57 minutes 28 seconds West a distance of 110.0 feet to a survey

marker found as shown on plan of subdivision recorded at the Registry of Deeds/Land Registration Office for the District of Kings as Plan P8560;

THENCE North 77 degrees 56 minutes 09 seconds East a distance of 175.47 feet to a survey marker found as shown on plan of subdivision recorded at the Registry of Deeds/Land Registration Office for the District of Kings as Plan P8560;

THENCE South 14 degrees 06 minutes 44 seconds East a distance of 228.85 feet to an iron pipe found as shown on plan of subdivision recorded at the Registry of Deeds/Land Registration Office for the District of Kings as Plan P8560;

THENCE North 75 degrees 54 minutes 22 seconds East a distance of 70.23 feet to an iron pipe found as shown on Plan of Survey entitled "Plan of Survey Showing Lands of the Village of New Minas, Commercial St., New Minas, NS" and bearing Hiltz and Seamone number D658;

THENCE North 76 degrees 24 minutes 14 seconds East a distance of 236.73 feet to an iron pipe found as shown on Plan of Survey entitled APlan of Survey Showing Lands of the Village of New Minas, Commercial St., New Minas, NS@ and bearing Hiltz and Seamone number D658;

THENCE North 75 degrees 00 minutes 37 seconds East a distance of 90.53 feet to an iron pipe found as shown on Plan of Survey entitled APlan of Survey Showing Lands of the Village of New Minas, Commercial St., New Minas, NS@ and bearing Hiltz and Seamone number D658;

THENCE South 04 degrees 55 minutes 25 seconds East a distance of 148.63 feet to a survey marker found as shown on Plan of Survey entitled APlan of Survey Showing Lands of the Village of New Minas, Commercial St., New Minas, NS@ and bearing Hiltz and Seamone number D658 being the place of beginning;

BEING AND INTENDED TO BE Lot 1-A as shown on plan of subdivision recorded at the Registry of Deeds/Land Registration Office for the District of Kings as Plan P8560.

#### BENEFITS

TOGETHER with an easement/right-of-way as described in Document 98151591 as recorded on April 15, 2011.

#### BURDEN

SUBJECT TO the granted easement/right of way (burden)] created by the Grant of Storm Sewer Easement dated August 29, 2017, recorded in the Land Registration Office for Kings County, Nova Scotia as Document No. 111326329 on August 30, 2017; this instrument contains the usage details of this easement in full text.

\*\*\* 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

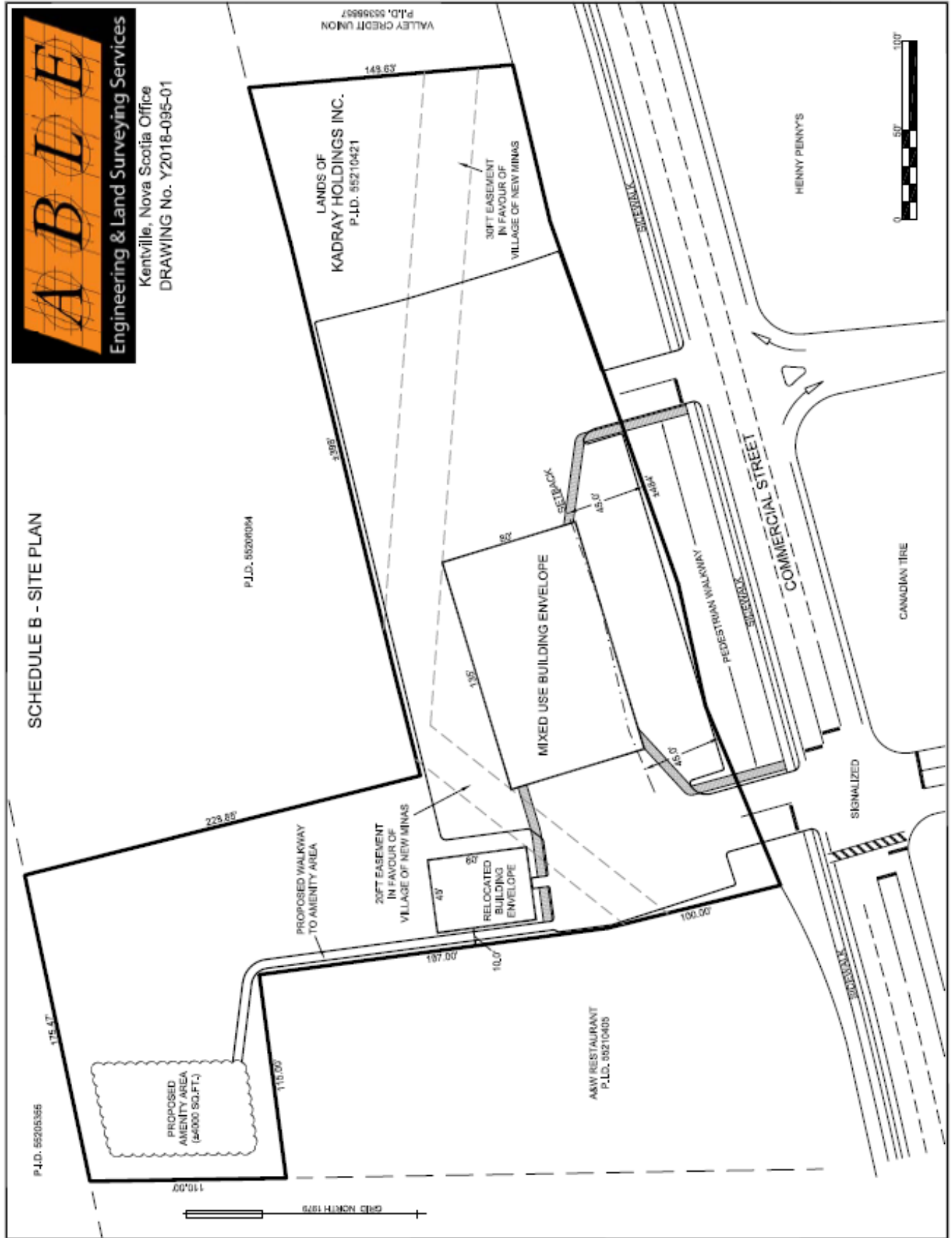
Registration District: KINGS COUNTY

Registration Year: 1991

Plan or Document Number: P8560

DRAFT

# Schedule B – Site Plan





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

Application to enter into a development agreement to permit a multi-unit dwelling at 167 Sunnyside Road, Greenwich.

(File #18-26)

April 9, 2019

Prepared by: Planning and Development Services

<b>Applicant</b>	Carman and Tina Hillier
<b>Land Owner</b>	Carman and Tina Hillier
<b>Proposal</b>	Add two residential units to an existing two unit dwelling
<b>Location</b>	167 Sunnyside Road, Greenwich (PID 55525620)
<b>Lot Area</b>	Approximately 2.07 acres
<b>Designation</b>	Hamlet Residential (HR)
<b>Zone</b>	Hamlet Residential (R7)
<b>Surrounding Uses</b>	Mixture of residential uses and densities
<b>Neighbour Notification</b>	Staff sent notification letters to the 10 property owners within 500 feet of the subject property

### 1. BACKGROUND

Carman and Tina Hillier have applied to enter into a development agreement to permit the addition of two residential units onto an existing two unit dwelling at 167 Sunnyside Road in Greenwich. Council can consider multi-unit residential dwellings in Hamlets like Greenwich through a site-specific development agreement rather than a re-zoning. This offers additional development controls that help to ensure the development does not introduce conflicts with surrounding lower density uses.

The applicant has owned the property since 2012 and has recently completed a new home, immediately adjacent to the subject property. The additional rental units are initially intended to accommodate the applicant's mother and another aging family member.



### 2. INFORMATION

The property is located in the Hamlet of Greenwich. The property is designated as Hamlet Residential (HR) on the Future Land Use map, and is zoned Hamlet Residential (R7).

The property is over 2 acres in size and has been approved for an on-site septic system large enough to accommodate four residential units. There is an existing on-site well that the

applicant expects can provide adequate domestic water needs to the proposed multi-unit residential dwelling, which is a requirement of the development agreement.

Staff held a Public Information Meeting on February 12, 2019. There were no members of the public in attendance, and Staff has received no correspondence from the surrounding neighborhood. A summary of the Public Information Meeting is attached as Appendix B.

Staff consulted with the following internal and external agencies for comments on the proposal.

- Engineering and Public Works – confirmed the property is not serviced by central water or sewer systems and indicated that NS Environment approvals would be required at the permitting stage.
- Department of Transportation – indicated no concerns with the proposed use or the existing access on Sunnyside Road. They also indicated the surrounding road network was adequate in its ability to accommodate the proposed use
- Municipal Building and Inspection – Indicated the proposal will be subject to full compliance with the Building Code and required to have all inspections conducted as per the Building Code Regulations. Following construction, once the structure becomes a four unit building, it will then be subject to a fire inspection as per the Nova Scotia Fire Safety Act/Regulations. The building will be required to be inspected once every 4-5 years.
- Municipal Development Officer – Comments were incorporated into the development agreement.

### **3. POLICY REVIEW**

#### **3.1 Municipal Planning Strategy – Hamlets**

MPS section 3.6.4 recognizes certain Hamlets with urban influences. Greenwich is one of these Hamlets with urban influences due to its proximity to the Growth Centre of New Minas as well as the central sewer system which services much of the community. These Hamlets may be suitable for modest density increases.

The MPS also sets the following objectives for Hamlets, which this proposal helps to achieve.

*3.6.5.3 To accommodate rural residential development through infilling vacant lands within Hamlet boundaries.*

*3.6.5.4 To maintain the character and visual quality of the rural landscape through controls on land use mix and density, and limits on the provision of municipal services.*

*3.6.5.5 To limit the development density to a level which will not require full Municipal services.*

The proposal intensifies a large property, located within a Hamlet boundary without requiring additional municipal infrastructure investments.



### **3.2 Enabling Policy - MPS Section 3.6.7.8**

*Within areas designated Hamlet (H) or those specifically designated Hamlet Residential (HR), Council may permit the following by Development Agreement subject to the policies of this Strategy and the provisions of the Municipal Government Act:*

- a. a new multi-unit residential building of up to four units within a new building or by conversion*

The proposed use is a conversion/expansion of an existing two unit dwelling into a multi-unit residential dwelling having four separate units that can be permitted through a development agreement. This proposal represents an increase in the size of the building and the total number of units on the property. The following criteria apply to development agreements enabled under this policy.

*3.6.7.9 In considering development agreements for multi-unit residential uses in Hamlets, Council shall have regard to the following:*

- a. that the lot is approved for on-site servicing capability, as confirmed by the Nova Scotia Department of Health*
- b. architectural compatibility with surrounding residential uses, and in particular includes a:
  - i. pitched or mansard roof*
  - ii. exterior cladding materials common to existing dwellings within the immediate surrounding areas*
  - iii. wall to window ratio common to existing residential dwellings within the immediate surrounding areas**
- c. that adequate on-site parking be provided to the side or rear of the dwelling*
- d. provision of an adequate and suitably located landscaped amenity area sufficient for the leisure needs of the residents*
- e. the proposal can meet all pertinent policies of this Strategy including the criteria for development agreements contained in Part 6 of this Strategy*

The proposed development has an approval for an on-site septic system from Nova Scotia Environment for a 9-bedroom single unit dwelling which is equivalent to the proposed 4 units. At the time of permitting this approval will need to be confirmed to the satisfaction of the Development Officer to comply with the proposed 4 separate residential units.

The dwelling is expected to be compatible with nearby homes without any prescriptive controls on cladding materials and window placement. The surrounding homes vary significantly in age and architectural style. The development agreement does ensure the structure will have a pitched roof and will not exceed 35 feet in height.

Adequate parking is proposed in the side yard to the south of the dwelling as opposed to the rear of the building since the area to the rear of the dwelling is best utilized as amenity space. Also, the parking area is fairly small, plus the proposed building expansion includes 2 garage units which may minimize the number of parked cars visible in the front and side yards.

The proposed amenity area is mostly flat and well buffered with south and west facing views, ideal for watching the sun set and other leisure activities. This amenity area is also lined with mature hardwood trees. The property owner may choose to separate the amenity areas to

provide individual outdoor areas for each unit, provided there is a minimum of 100 sq ft of outdoor space, per unit.

The proposal’s consistency with the criteria contained in Part 6 of the MPS is outlined in Appendix C. There were no significant shortcomings in satisfying these criteria.

#### 4. DA SUMMARY

The development agreement enables the expansion of the existing two unit dwelling, into a 4 unit dwelling by expanding the structure and adding 2 additional units.

The Agreement addresses the following development controls:

<b>Draft Development agreement Location</b>	<b>Content</b>
2.1	Use of the property – Multi-Unit Residential dwelling up to a maximum of 4 residential units and accessory uses consistent with the underlying zone
2.2	Ensures all development generally complies with the locations shown on the site plan
2.3	Ensures maintenance of structures and services on the site
2.4	Addresses subdivision of the property, and requires that the overall lot area be maintained.
2.5	Ensures adequate parking is provided at a rate of 1.5 spaces per unit.
2.6	Requires an outdoor amenity area be provided at a minimum rate of 100sq ft per unit.
2.7	Indicates the property owner’s responsibility in ensuring appropriate approvals for on-site water and sewer systems.
2.8	Ensures the new construction will have a pitched roof and a maximum height consistent with surrounding residential uses to help blend in with surrounding architectural styles.
2.9	Requires that all development will comply with the erosion and sedimentation regulations of Nova Scotia Environment.

## 5. CONCLUSION

Staff consider the draft development agreement to adequately accommodate a four unit dwelling in a Hamlet. The proposed building is appropriately scaled for the location in an area with a mixture of housing types and densities.

## 6. 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 to and hold a Public Hearing regarding entering into a development agreement to permit a multiunit dwelling at 167 Sunnyside Road (PID 55525620), Greenwich which is substantively the same (save for minor differences in form) as the draft set out in Appendix D of the report dated April 9, 2019.**

## 7. APPENDIXES

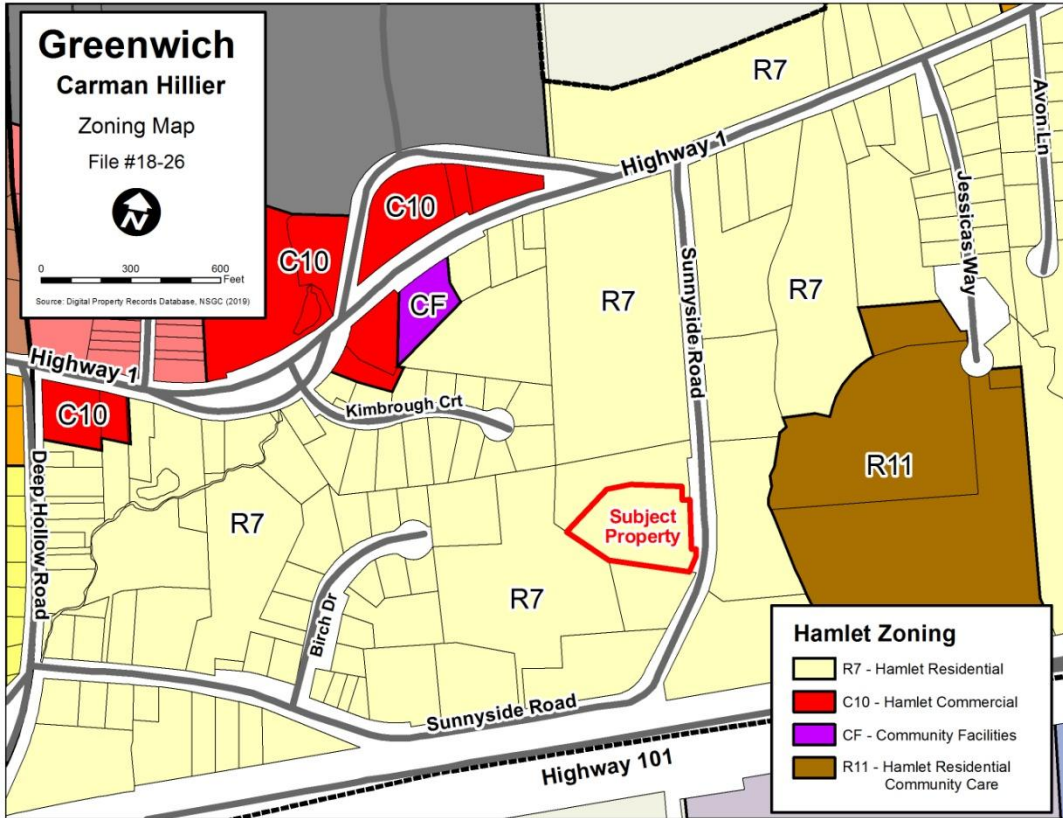
**Appendix A – Maps**

**Appendix B – PIM notes**

**Appendix C – MPS Part 6.3.3.1 General DA criteria**

**Appendix D – Draft DA**

# Appendix A – Maps



**Appendix B – PIM notes**

**MUNICIPALITY OF THE COUNTY OF KINGS**

**PLANNING AND DEVELOPMENT SERVICES**

**PUBLIC INFORMATION MEETING NOTES**

**Planning Application for a development agreement to permit a 4 unit residential building at  
167 Sunnyside Road, Greenwich**

**(File 18-26)**

<b>Meeting, Date and Time</b>	A Public Information Meeting was held on Tuesday, February 12 <sup>th</sup> , 2019, at 1:00 p.m. in the Orchards Room of the Municipal Complex 87 Cornwallis St, Kentville.
<b>Attending</b>	In Attendance:
<b>Councillors</b>	Councillor Jim Winsor – District 8 (Chair)
<b>Planning Staff</b>	Mark Fredericks – GIS Planner, Planning and Development Services
<b>Applicant</b>	Carman Hillier  Mark Redmond
<b>Public</b>	0 Members
<b>Welcome and Introductions</b>	The Chair, Councillor Jim Winsor, called the meeting to order, introductions were made. 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.
<b>Presentations</b>	Mark Fredericks provided a brief overview of the planning process and the criteria that will be used to evaluate the application from Carman Hillier to permit a 4 unit residential building at 167 Sunnyside Road, Greenwich (PID 55525620).
<b>Adjournment</b>	There being no further discussion, the Chair thanked those in attendance and adjourned the meeting at 1:10 p.m.

---

Mark Fredericks  
Recorder

## Appendix C – MPS Part 6 General DA 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:*

<b>Criteria</b>	<b>Comments</b>
<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 Hamlet Objectives as discussed in part 3 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 well and the applicant will be required to work with Nova Scotia Environment to ensure that their requirements are met for septic system and drinking water systems.
<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. Erosion controls are required during construction phase through the applicable NS Environment regulations regarding sedimentation/erosion.
<i>iv. the adequacy of storm drainage and the effect of same on adjacent uses</i>	The subject property is elevated and the building site is relatively flat. The existing drainage conditions are not expected to change significantly
<i>v. the adequacy of street or road networks in, adjacent to, and leading to, the development</i>	Department of Transportation indicated the surrounding road network was adequate in its ability to accommodate the proposed use.
<i>vi. the adequacy, capacity and proximity of schools, recreation and other community facilities</i>	The location is in close proximity to many opportunities for recreation and community facilities in both Greenwich and New Minas
<i>vii. adequacy of municipal fire protection services and equipment</i>	Municipal Building and Enforcement Services has indicated that local fire services (Greenwich) can adequately provide service to the proposed use.
<i>viii. creating extensive intervening</i>	This proposal is an addition onto an existing

<i>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>	building. This represents intensification in a community recognized as being under urban influence as identified in MPS section 3.6.4.
<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 majority of the lot is suitable for development, and staff are not aware of any site conditions that would pose a risk. The southern edge of the property is a steep slope but this area is only intended to be used for a septic field.
<i>x. traffic generation, access to and egress from the site, and parking</i>	The Department of Transportation and Infrastructure Renewal had no concerns with the access to the site or the proposed parking area.
<i>xi. compatibility with adjacent uses</i>	No compatibility issues are expected, as no issues are known to exist with the current two unit dwelling, and the proposed change would be an expansion of this residential use.
<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>	The Department of Transportation and Infrastructure Renewal were not concerned with the potential traffic generated with the 2 additional units.
<i>v. access to and egress from the site and the distance of these from street intersections</i>	The Department of Transportation and Infrastructure Renewal had no concerns with the access to the site.
<i>vi. availability, accessibility of on-site parking</i>	The draft development agreement specifies the minimum on-site parking required.
<i>vii. outdoor storage and/or display</i>	Not applicable for a residential development
<i>viii. signs and lighting</i>	Not applicable for a residential development
<i>ix. the hours of operation</i>	Not applicable for a residential development
<i>x. maintenance of the development</i>	The draft development agreement requires reasonable maintenance of the subject property.
<i>xi. buffering, landscaping, screening and</i>	No buffering, landscaping or screening have

<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 majority of the lot is suitable for development, and staff are not aware of any site conditions that would pose a risk. The southern edge of the property is a steep slope but this area is only intended to be used for a septic field.
<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 D – Draft DA**  
(See following page)

THIS DEVELOPMENT AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, A.D.

BETWEEN:

**Tina Hillier and Carman Hillier**, of Greenwich, 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 167 Sunnyside Road, Greenwich and Property Identification (PID) Number 55525620; and

WHEREAS the Property Owner wishes to use the Property for a Multi-Unit dwelling.

WHEREAS the Property is situated within an area designated Hamlet Residential (HR) on the Future Land Use Map of the Municipal Planning Strategy, and zoned Hamlet Residential (R7); and

WHEREAS 3.6.7.8 of the Municipal Planning Strategy and 5.2.3 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 on September 5, 1995, as amended.

### **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) A Multi-Unit Dwelling (expansion of the existing building) to a maximum of 4 residential units, in accordance with the terms of this Agreement, and in general conformity with the site plan
- (b) Those uses permitted by the underlying zoning in the Land Use Bylaw (as may be amended from time-to-time); except for additional residential units above what is permitted in section 2.1 (a) above, and
- (c) Accessory structures and uses permitted by the underlying zoning in the Land Use Bylaw (as may be amended from time-to-time)

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 property shall be developed in general conformance with Schedule 'B' – Site Plan. The use permitted in 2.1 (a) shall be limited to the area identified as *Building Envelope for Proposed 2* unit on the Site Plan. Future alterations to the Site Plan that result in any change to vehicular access to the Property shall be approved by the road Authority.

## **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**

- (a) Subdivision that would reduce the total land area of the Property is not permitted.
- (b) Other subdivision of the Property shall comply with the requirements of the Subdivision Bylaw as may be amended from time-to-time.

## **2.5 Parking**

For the use permitted in section 2.1 (a), the Property Owner shall provide parking at a minimum rate of 1.5 spaces per residential unit, located generally as indicated on the site plan.

## **2.6 Amenity Area**

- (a) The Property Owner shall provide an outdoor amenity area or amenity areas comprising a minimum of 100 square feet per residential unit, and may be located as shown on the Site Plan.
- (b) The amenity area(s) shall be landscaped with a combination of grass, trees, flowers, or decorative stonework, all of which are designed to meet the outdoor leisure needs and privacy of residents.
- (c) The amenity area(s) may be divided and reserved for the exclusive use of specific dwelling units, provided each dwelling unit is allocated a minimum of 100 square feet of outdoor amenity area.

## **2.7 Water and Sewer**

- (a) The Property Owner is responsible for providing adequate on-site water services to the standards of the authority having jurisdiction.
- (b) Prior to obtaining a Development Permit for a multi unit dwelling, the property owner shall obtain the necessary approval from the authority having jurisdiction for an on-site septic system.

- (c) If central water/sewer services become available in this location, the Property Owner may connect at their expense.

## **2.8 Architecture**

- (a) The Property Owner shall ensure any development permitted in section 2.1 (a) is built with a pitched roof and has a maximum height of 35 feet.
- (b) Accessory structures and uses are limited in height, by the underlying zoning (as may be amended from time-to-time).

## **2.9 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, 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 in Section 2.1

- 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 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 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 Muttart, Mayor

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Janny Postema, Municipal Clerk

SIGNED, SEALED AND DELIVERED  
In the presence of:

**TINA HILLIER AND  
CARMAN HILLIER**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Tina Hillier

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Carman Hillier



Schedule A  
Property Description

*Registration County: KINGS COUNTY*

*Street/Place Name: SUNNYSIDE ROAD /GREENWICH*

*Title of Plan: PLAN OF S/D LANDS OF CARMAN & TINA HILLIER PID NO 55525612 LOT 114  
TO FORM PARCEL A & LOT 118 PARCEL A TO BE AN ADDITION TO PID NO 55525620 LOT  
214 TO FORM LOT 218 AT GREENWICH*

*Designation of Parcel on Plan: LOT 218*

*Registration Number of Plan: 113947254*

*Registration Date of Plan: 2019-01-29 14:29:51*

*\*\*\* 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: 2019*

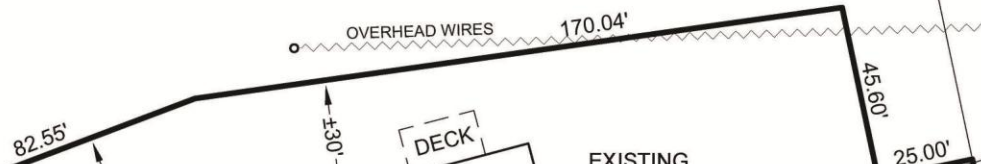
*Plan or Document Number: 113947254*

Schedule B  
Site Plan  
(See following page)



LANDS OF  
CARMAN & TINA HILLIER  
P.I.D. 55525612

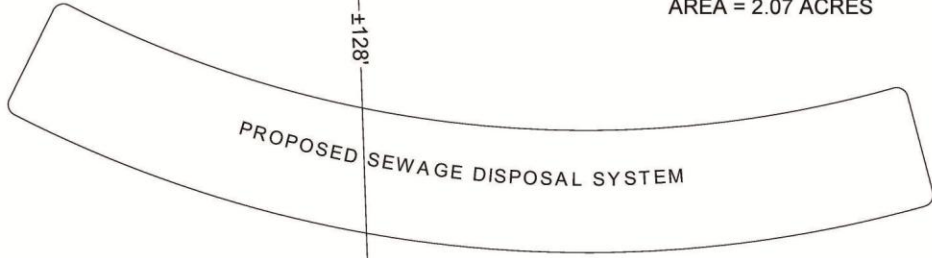
OVERHEAD WIRES 170.04'



BUILDING  
ENVELOPE FOR  
PROPOSED 2 UNIT  
(EXPANSION)



LANDS OF  
CARMAN & TINA HILLIER  
P.I.D. 55525620  
AREA = 2.07 ACRES



SUNNYSIDE ROAD

LANDS OF  
SHERDON DEVELOPMENTS LIMITED  
P.I.D. 55354575

LANDS OF  
LENGERT  
P.I.D. 55192405



**ABLE**  
Engineering & Land Surveying Services  
Kentville, Nova Scotia Office  
DRAWING No. Y2017-101-02



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

Application to enter into a development agreement to permit an excavation business and related activities at 4594 Highway 12 (PID# 55171870), North Alton (File #18-09)

**April 9, 2019**

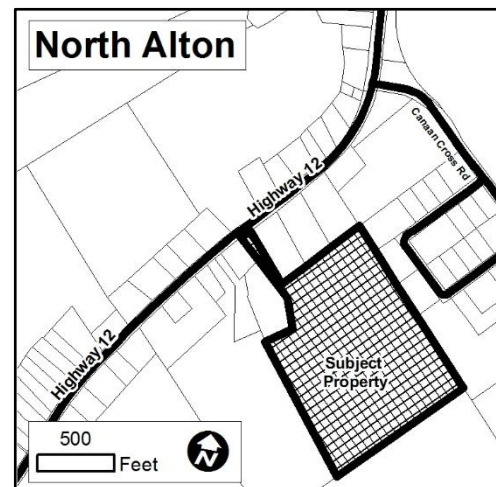
**Prepared by:** Planning Services

<b>Applicant</b>	Peter Kalkman
<b>Land Owner</b>	Peter Kalkman and Katrena Kalkman
<b>Proposal</b>	Excavation and associated industrial and commercial uses
<b>Location</b>	4594 Highway #12 (PID 55171870), North Alton
<b>Lot Area</b>	26.14 acres
<b>Designation</b>	Forestry
<b>Zone</b>	Forestry (F1) Zone
<b>Surrounding Uses</b>	Primarily Residential uses
<b>Neighbour Notification</b>	Staff sent notification letters to the 32 owners of property within 500 feet of the subject property

### 1. PROPOSAL

Mr. Peter Kalkman, PK Construction, has made an application to enter into a development agreement which would permit an excavation company and related industrial and commercial uses including:

- Excavation equipment storage and use
- Manufacturing of topsoil, sand, and gravel
- Fleet maintenance including machinery and vehicle repair as well as accessory sales
- Motor vehicle component salvaging
- Snow removal equipment storage
- Portable washroom storage and rental
- Septic system installation business and storage of associated parts



The application for the development agreement arose from a complaint registered with the Municipality based on topsoil mixing that was occurring on the subject property. Municipal staff investigated the complaint and, based on the results of the investigation, concluded that some uses that were occurring on the subject property were in contravention of uses permitted as-of-right in the Forestry (F1) Zone. Policies within the Municipal Planning Strategy provide Council to consider the current and proposed uses under a Development Agreement with the Municipality.

## **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 subject property is designated as Forestry in the Municipal Planning Strategy and zoned Forestry (F1) in the Land Use Bylaw. The neighbouring properties are also within this district and zone.

PK Construction was established more than twenty years ago by Peter Kalkman, who has grown his business to employ twelve employees. Along with his business, Mr. Kalkman has a single detached residential dwelling on the subject property. As Mr. Kalkman expanded his business, intensity of operations increased and grew to encompass a greater portion of the land on the approximately 26 acre subject property. The subject property is accessed off of Highway 12 with a 72 foot wide driveway. Operations that occur on the subject property include septic system component storage which is accessory to an installation operation, mixing, storage, and delivery of raw aggregate materials such as topsoil, gravel, sand, and stone. Excavation operations and related activities which include snow removal. Heavy equipment and machinery repair with sales and salvage accessory to the excavation operations. The business currently operates seven days of the week with no set hours of operations.

## **4. INFORMATION**

### **4.1 Site Information**

The subject property is located on Highway 12, approximately three kilometres from the southern boundary of the Growth Centre of Coldbrook, and four kilometres from the southern boundary of the Growth Centre of New Minas. The bulk of the subject property is rectangular shaped, measuring approximately 1000 feet in a generally north-south direction and 1260 feet in a generally east-west direction with an approximately 411 foot long, 72 feet of frontage on Highway 12 to access the bulk of the property, giving the subject property characteristics similar to a flag-lot. The subject property is relatively flat, with no steep topographic slopes. The subject property contains forested areas on the southern and eastern sides, with a former agricultural field on the north-eastern side. The business operations occur throughout the subject property, with the exception of the forested portions located in the southern portion of the property.

The subject property is approximately 1.8 kilometres from the exit 13 interchange along Highway 101. The subject property borders four residential lots on Morningside Drive, and ten residential lots along Highway 12.

## **4.2 Site Visit**

A Municipal Planner and a Municipal Development Officer visited the subject property on April 6th, 2018 and met with the applicant. Mr. Kalkman discussed his intentions for the use which would occur on the subject property in the event the development agreement is approved by the Municipality.

## **4.3 Public Information Meeting**

Council's Planning Policy PLAN-09-001 requires a Public Information Meeting (PIM) for all planning applications which are to be considered by development agreement. The required Public Information Meeting was held on Tuesday, May 8<sup>th</sup>, 2018, prior to a regularly scheduled Planning Advisory Committee at the Municipal Complex at 87 Cornwallis Road, Kentville, with 14 members of the public in attendance, along with the area councillor and planner. All members of the Planning Advisory Committee were present for the Public Information Meeting as well.

The planner made a brief presentation on the application. Members of the public raised concerns with the intensity of operations that the development agreement would permit, stating noise, debris, unsightliness and hours of operation were of points of contention with the existing business operations and land uses which occur on the subject property. Questions were posed with regard to the impact that the business will have on the values of adjacent properties as well as the ability to enjoy adjacent properties while other attendees present stated support for the business.

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 (DTIR)**

- The road networks into, adjacent to, and leading to the subject property have been deemed adequate by DTIR for the current and proposed uses and access permits have been issued;
- There are no concerns with traffic generation, access, and egress from the subject property onto the road networks;
- DTIR does not require a traffic impact study or another form of traffic analysis.

### **4.4.2 Nova Scotia Environment (NSE)**

- NSE offered no comment on the current and proposed uses for the subject property given that no excavation pit activities are proposed and that the uses are no within thirty metres of a watercourse,.

### **4.4.3 Municipality of the County of Kings Engineering and Public Works (EPW)**

- Municipal Services are not available at the location of the subject property;
- During construction of the proposed new building (garage) the applicant is required to

follow Municipal Specifications and applicable Nova Scotia Environment regulations regarding sedimentation and erosion control;

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

- There are no open building permits for this property;
- There are no concerns with the proposed garage, however, prior to issuing permits there is a need for an engineered design for the structure, limiting distance from property lines, type of materials to be used in construction, and barrier free compliance and other matters to achieve compliance with the National Building Code;
- Fire protection services for the subject property have been deemed to be adequate by the local fire chief.

#### 4.4.5 Municipality of the County of Kings Development Control

- Comments from Development Control have, in part, informed the terms of the draft development agreement.

## 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, or uses, not permitted on a property as-of-right within the zone within which the property is located. In turn, the Municipality is able to require additional controls to minimize and mitigate potential negative impacts associated with the proposed use(s). The ability for Council to consider a development agreement must be stated in the Land Use Bylaw (LUB) and the Municipal Planning Strategy (MPS) and must also identify the types of use(s) 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 to warrant a negotiated process to ensure the potential impact(s) are minimized. In the MPS, Council identifies both specific and general 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 MPS and not any other criteria.

### 5.2 Land Use Bylaw

Section 5.2.12 of the LUB states “*Council shall provide for excavation company related industrial uses involving the transportation and storage of extracted materials and fleet maintenance in the Forestry (F1) Zone by development agreement as provided for in Policy 3.3.4.6 of the Municipal Planning Strategy.*”

It is Staff’s opinion that the current and proposed uses on the subject property are consistent with the above noted section of the LUB and may be considered by development agreement under this policy since an excavation company and related industrial uses is not a listed permitted use within the Forestry (F1) Zone under the LUB.

### **5.3 Municipal Planning Strategy**

Policy 3.3.4.6 of the Municipal Planning Strategy states: “*Council may consider proposals for excavation company related industrial uses involving the transportation and storage of extracted materials and fleet maintenance, by way of a development agreement, subject to the conditions contained in Part 6 of this Strategy.*”

The subsequent policy, 3.3.4.7, establishes the specific criteria for which Council shall have regard for when considering a development agreement application under Policy 3.3.4.6: “*In satisfying the requirements in Policy 3.3.4.6, by addressing the conditions contained in Part 6, Council shall be satisfied that the development agreement has sufficient provisions addressing:*

*a. the amount and location of extracted materials to be stored*

The draft development agreement specifies the location of raw materials to be stored on the subject property as well as the maximum amount permitted to be stored at one time.

*b. nuisance created by the processing of extracted materials*

The draft development agreement specifies the location of activities on the subject property in order to minimize the nuisance created through excavation and related activities with regard for neighbouring property owners and land uses adjacent to the subject property.

*c. hours of operation, with restrictions or a prohibition on activities in the evenings and weekends where warranted*

Specifications regarding hours of operations and a prohibition of on activities for some of the current and proposed uses are included as part of the draft Development Agreement.

### **5.4 General Development Agreement Criteria**

Municipal Planning Strategy section 6.3.3.1 contains the criteria to be used when considering all development agreement proposals. 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.

The current and proposed uses meet 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 pattern, is serviced by an approved private sanitary septic system, is compatible with adjacent uses provided appropriate setbacks and buffers are respected, and raises no concerns regarding emergency services.

MPS subsection 6.3.3.1 (c) specifies a number of controls that may be put into the terms and conditions of a development agreement in order to reduce potential land use conflicts. These controls include traffic generation, outdoor storage and/or display, signs and lighting, the hours of operation, maintenance of the development, buffering, landscaping, screening and access control.



### 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:*

<b>Criteria</b>	<b>Comments</b>
<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. 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 supports the existing uses. Septic approval for the new building will be required at time of permitting.
<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. Disposal of solid and liquid waste resulting from the portable washroom and septic system cleaning components of the business is conducted off-site.
<i>iv. the adequacy of storm drainage and the effect of same on adjacent uses</i>	There is adequate storm drainage and does not cause undue effect to adjacent uses and properties.
<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 raised no concerns and access permits have been issued.
<i>vi. the adequacy, capacity and proximity of schools, recreation and other community facilities</i>	No applicable since the application is non-residential in nature.
<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 current and proposed uses for the subject property. 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 ribbon development pattern as opposed to compact development</i>	Not applicable since subdivision is not proposed as part of this application.
<i>ix. the suitability of the proposed site in terms of steepness of grades, soil and/or geological conditions, and the</i>	The lot is suitable for development, and staff is not aware of any soil or geological conditions in the area that would have a negative impact

<i>relative location of watercourses, marshes, swamps or bogs</i>	on development.
x. <i>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.
xi. <i>compatibility with adjacent uses</i>	The uses enabled by the development agreement are compatible with adjacent uses provided the terms of the development agreement are respected.
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>	
i. <i>the type of use</i>	The draft development agreement specifies the permitted uses.
ii. <i>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. Doors for the garage are on the southwest wall of the garage, facing away from residential uses.
iii. <i>the height, bulk and lot coverage of any proposed buildings or structures</i>	Site plan specifies the approximate location of the proposed garage and architectural standards.
iv. <i>traffic generation</i>	No special requirements are necessary.
v. <i>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.
vi. <i>availability, accessibility of on-site parking</i>	The draft development agreement requires a minimum on-site parking for staff and customers.
vii. <i>outdoor storage and/or display</i>	Controls on the amount of raw materials and maximum number of vehicles/machines permitted for outdoor storage and display are contained within the draft development agreement.
viii. <i>signs and lighting</i>	The draft development agreement places restrictions on signs and lighting, consistent with the requirements of the LUB.
ix. <i>the hours of operation</i>	The draft development agreement places controls on the hours of operation.
x. <i>maintenance of the development</i>	The draft development agreement requires that the property be maintained in good repair and a reasonable state.
xi. <i>buffering, landscaping, screening and access control</i>	The various current and proposed uses outlined in the draft development agreement are subject to setbacks based on the accompanying site plan with the intention of providing adequate buffering from adjacent properties/uses. The draft development agreement stipulates the need to maintain a natural vegetative buffer from adjacent residential uses as well as to maintain the

	forested portion of the property at the southern and eastern ends of the subject property.
<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 regard 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 applicable.
<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.

## 6. SUMMARY OF DRAFT DEVELOPMENT AGREEMENT

The draft development agreement (Appendix C) would allow the applicant to utilize the property for an industrial and residential uses which could include on the subject property:

- excavation equipment storage and use including snow plowing, machinery and vehicle repair with accessory salvage and sales
- septic system installation business with associated component storage manufacturing and storage of topsoil, gravel, sand, and other similar raw, aggregate materials
- storage of portable washroom units

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	Regulates the use of the property
2.2	Specifies that development must occur in accordance with the site plan that forms part of the agreement.
2.3	Regulates architecture and building materials for new

	structures enabled by the development agreement located on the subject property.
2.4	Regulates signage.
2.5	Regulates appearance of property.
2.6	Regulates lighting.
2.7	Regulates outdoor storage and commercial display, limiting the amount of raw materials permitted to be stored on the subject property, the amount of raw materials for display purposes, and limiting the number of vehicles/machinery permitted to be displayed for accessory sales purposes.
2.8	Regulates parking areas, the number of parking spaces, and the maintenance of parking areas with stable surfaces, treated to prevent the raising of dust and particles.
2.12	Regulates the hours of operation and prohibits commercial activities, other than those associated with snow plowing, on Sundays and statutory holidays.
2.13	Regulates the amount and type of natural vegetative buffering required between the operations located on the subject property and neighbouring residential properties.
3.3	Substantive matters in a development agreement are those that would require the full application process, including a public hearing, in order to amend 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.

## **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 policies regarding industrial uses within the Forestry District of the Municipal Planning Strategy. 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 recommends that the Planning Advisory Committee forward a positive recommendation by passing the following motions:

**The Planning Advisory Committee recommends that Municipal Council give Initial Consideration to and hold a Public Hearing to enter into a development agreement to permit excavation and related industrial uses at 4594 Highway #12, (PID 55171870), North Alton which is substantively the same (save for minor differences in form) as the draft set out in Appendix C of the report dated April 9, 2019.**

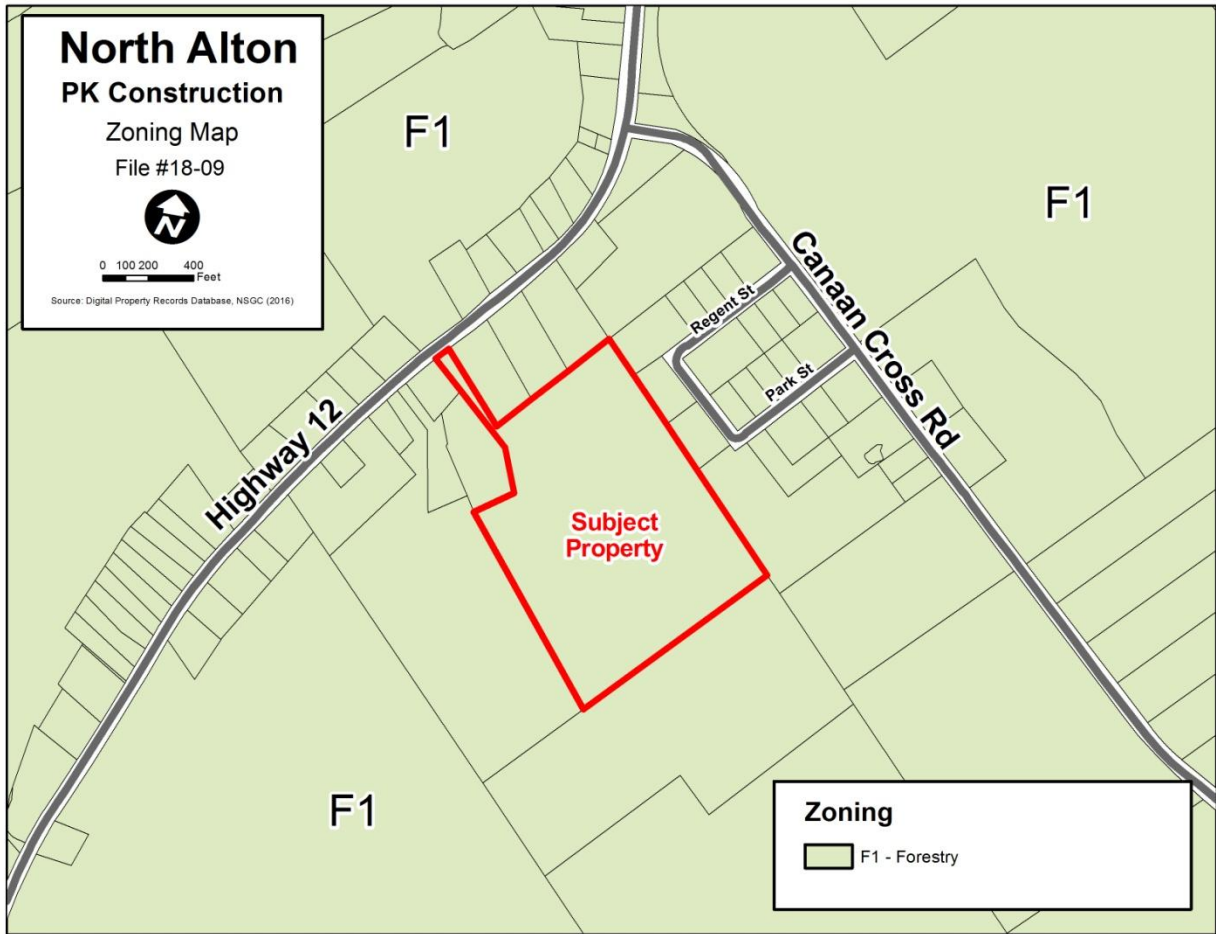
## **9. APPENDIXES**

Appendix A: Reference Zoning Map

Appendix B: Public Information Meeting (May 8, 2018) Notes

Appendix C: Draft Development Agreement

Appendix A – Reference Zoning Map



## MUNICIPALITY OF THE COUNTY OF KINGS

### PLANNING AND DEVELOPMENT SERVICES PUBLIC INFORMATION MEETING NOTES

#### Planning Application to enter into a Development Agreement to permit an excavation business and related activities at 4594 Highway #12 (PID 55171870), North Alton (File 18-09)

<b><i>Meeting, Date and Time</i></b>	A Public Information Meeting was held on Tuesday, May 8 <sup>th</sup> , 2018 at 1:00 p.m. in the Council Chambers of the Municipal Complex at 87 Cornwallis Street, Kentville, Nova Scotia.
<b><i>Attending Councillors</i></b>	In Attendance: Deputy Mayor Emily Lutz – District 7 (Chair) Councillor Brian Hirtle – District 3 Councillor Meg Hodges – District 1 Councillor Paul Spicer – District 5 Councillor Jim Winsor – District 8 Councillor Peter Allen – District 9
<b><i>Planning Staff</i></b>	Trish Javorek – Director of Community Development Services Laura Mosher – Manager of Planning and Development Services Will Robinson-Mushkat – Planner, Planning and Development Services Mark Fredericks – Planner, Planning and Development Services Lindsay Slade – Summer Planning Student Nicole White – Summer GIS Student
<b><i>Applicant</i></b>	Peter Kalkman and Katrena Kalkman
<b><i>Public</i></b>	14 Members
<b><i>Welcome Introductions</i></b>	<b><i>and</i></b> The Chair, Deputy Mayor Emily Lutz, 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.
<b><i>Presentations</i></b>	Will Robinson-Mushkat provided a brief overview of the planning process and the criteria that will be used to evaluate the application from Peter Kalkman to permit an excavation business and related activities at 4594 Highway #12 (PID 55171870), North Alton, NS.

**Comments from the Public** Peter Kalkman – 4594 Highway #12, North Alton

- Commented on his business and the proposed expansion on his property.

Diana Church – 4605 Highway #12

- Inquired about how an excavation business is permitted in a Forestry Zone.

Will Robinson-Mushkat responded that a number of businesses are permitted as-of-right in the Forestry (F1) Zone. In this case, the applicant had applied for a development agreement to permit the operation of their particular excavation business. Will Robinson-Mushkat then provided a general explanation of development agreements. He specified that the development agreement for the subject property would not modify the zoning, but would institute controls on the business.

Diana Church resumed, expressing her concerns about the impact on the surrounding residential area in the event that the business expanded and grew busier, and the polluting effect of the business given its nature and location on a hill.

Will Robinson-Mushkat responded that the residential land uses in the surrounding area are also within the Forestry (F1) Zone and are permitted as-of-right. To reduce conflict with adjacent land uses, he indicated that there are different controls and regulations that can be instituted through development agreements, as listed in Policy 6.3.3. This policy provides general criteria for development agreements.

Diana Church asked about the purpose of the meeting. In particular, she asked to know whether it meant the applicant's proposed expansion would be very big.

Will Robinson-Mushkat responded that the development agreement process was instigated following a complaint. The process would help address concerns about the proposed expansion.

Laura Mosher elaborated on the development agreement process, noting that the complaint led to the discovery of certain Land Use Bylaw violations on the subject property. The development agreement is a planning tool that provides a way for Peter Kalkman to correct those violations.

Diana Church asked whether the development agreement would permit the business to be greatly enlarged.

Will Robinson-Mushkat replied that there was no plan to enlarge the business or enhance activity on the site beyond the proposed uses.



Gary Misner – 4606 Highway #12, North Alton

- Located in front of Peter Kalkman's property
- No complaints
- Expressed that the dust and noise were not excessive
- Stated his support for the applicant and the local business

Raquel Vanderploeg – 4840 Morningside Drive, North Alton

- Located behind Peter Kalkman's property
- Concerned about the dust and in particular the dirt piles near their shared property line. She complained that it adversely affects her family's enjoyment of their property.
- Concerned about the potential depreciation of her property value because the business is "a real eye sore".
- Distinguished between her support of the local business and the effect it has on her property.
- Spoke on behalf of Sandra and Allen Anderson who could not be in attendance. They too had complaints about the dust.

Councillor Jim Winsor

- Asked what the initial complaint was about.

Trish Javorek responded by indicating that the complaint brought the Land Use Bylaw violations to the attention of planning staff. It is these violations, rather than the complaint itself, that matters to the development agreement process.

Councillor Windsor asked what was in place to permit the operation of the business prior to this process being undertaken.

Trish Javorek replied that there was nothing in place.

Peter Kalkman – 4594 Highway #12, North Alton

- Expressed that he was willing to take measures to address the complaints and accommodate his neighbours. He stated that he did not plan on expanding the business; he was just seeking permission to build a bigger garage through this process.

*Adjournment*

There being no further discussion, the Chair thanked those in attendance and adjourned the meeting.



---

Jasmine Bradet, Recorder

## Appendix C – Draft Development Agreement

THIS DEVELOPMENT AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, A.D.

BETWEEN:

**Peter Kalkman and Katrena Kalkman**, of North Alton, 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 4594 Highway #12, North Alton and Property Identification (PID) Number 55171870; and

WHEREAS the Property Owner wishes to use the Property for an excavation business and related activities; 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 3.3.4.6 and policy 3.3.4.7 of the Municipal Planning Strategy and Section 5.2.12 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.
- (b) *Septic Service* means a business related to the installation and maintenance of private septic systems. This business may also include the storage and rental of portable washrooms.
- (c) *Topsoil and Aggregate Mixing Operation* means a use involving the commercial processing and sale of topsoil or aggregate through a process of mixing different types of aggregate material and/or organic material.
- (d) *Excavation Operation* means a use involving heavy equipment to remove, on-site or off-site, aggregate materials, snow, maintenance and salvaging of parts and machinery used in these operations, and accessory sales of vehicles, machinery, and/or parts.
- (e) *Building and Construction Contractor* means land, a building or a portion of a building use by general purpose and specialized building and construction contractors; including, but not limited to, well drillers, plumbers, carpenters, electricians, heating and air conditioning technicians and residential and commercial cleaning.

## **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:
  - i. Heavy Equipment Sales, Storage and Service
  - ii. Septic Service
  - iii. Building and Construction Contractor
  - iv. Topsoil and Aggregate Mixing Operation
  - v. Excavation Operation
- (c) Except as otherwise provided in this Agreement, the provisions of the Land Use Bylaw apply to any development undertaken pursuant to this Agreement.
- (d) The accessory buildings identified on the site plan as 'building' shall be limited to personal use, accessory to the dwelling upon the completion of the new building in the building envelope.

### **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;
  - i. Development Area 'A' permits only the use of signage and outdoor commercial display (aggregate, vehicles, machinery, etc.).
  - ii. Remaining area outside Development Area 'A' permits all other uses enabled by the development agreement, but uses permitted in Area 'A' are prohibited.
- (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 .

### **2.3 Architecture**

- (a) A new building for the uses identified in 2.1 (b) of the agreement and all components of the new building shall be contained within the area labeled "building envelope" on the Site Plan.
- (b) The new building enabled by this Agreement shall have a maximum height of thirty-five (35) feet and shall not have entrances intended for vehicles located on any side of the building other than those facing the existing driveway located on the southwest side of the subject property.

### **2.4 Signs**

- (a) A maximum of one ground sign shall be permitted on the property subject to the following:
  - i. The sign shall be constructed of wood and/or metal;
  - ii. Sign area shall not exceed 32 square feet;
  - iii. Sign shall not exceed 10 feet in height;
  - iv. Sign shall be located no closer than 5 feet from any lot line;
  - v. The sign shall be lighted only by lights focused on the surface of the sign, and directed away from the street and nearby dwellings ; and
  - vi. Internally illuminated sign shall be prohibited.
- (b) 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 shall be arranged so as to divert light away from streets and neighbouring properties.

## **2.7 Outdoor Storage and Commercial Display**

- (a) Outdoor storage of derelict vehicles related to the Heavy Equipment Use shall not exceed forty (40) vehicles at one time, shall not be visible to any member of the travelling public on a public road, shall be screened from adjacent properties and shall only be permitted in the area denoted on the site plan “salvaged vehicles material storage” and the newly constructed garage.
- (b) Outdoor storage related to the Topsoil and Aggregate Mixing operation shall not exceed an area and volume of fifty (50) feet by fifty (50) feet by fifty (50) feet, per raw material (e.g. topsoil, gravel, etc.) and shall only be permitted in the area denoted on the site plan “top soil screen area” and “parking and material storage”.
- (c) Outdoor commercial display related to the Topsoil and Aggregate Mixing operation shall not exceed an area and volume of six (6) feet by six (6) feet by six (6) feet in total and shall only be permitted in development area A, as denoted on the site plan.
- (d) Outdoor commercial display of vehicles and machinery shall not exceed a maximum of four (4) at any time and shall only be permitted in development area A, as denoted on the site plan.

- (e) All other forms of outdoor storage and commercial display are prohibited except for outdoor storage associated with uses permitted in the underlying zone.

## **2.8 Parking and Loading Areas**

- (a) Parking spaces and loading areas for each use developed shall be provided in accordance with the requirements of the Land Use Bylaw for the applicable use.
- (b) Access and parking areas shall be maintained with a stable surface that is treated to prevent the raising of dust or loose particles.
- (c) Parking associated with the uses identified in 2.1(b) of this Agreement shall be limited to the area denoted on the site plan as “parking and material storage”.

## **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 Department of Environment *Erosion and Sedimentation Control Handbook for Construction*, or any successor documents, so as to effectively control erosion of the soil.

## **2.12 Hours of Operation**

- (a) The hours of operation on site for the uses listed in Section 2.1 (b) of this Agreement shall be from 7:00am to 8:00pm, inclusive, on Monday through Saturday.
- (b) Vehicles stored on site for business purposes occurring off-site shall be permitted to leave and return to the property from 5:00am to 11:59pm, inclusive, on Monday through Saturday.

- (c) The uses listed in section 2.1(b) shall be prohibited to operate on Sundays and Statutory Holidays.
- (d) There shall be no restrictions on the hours of operation for the use listed in Section 2.1 (b) (v), when pertaining to snow and ice removal only.

### **2.13 Buffering**

- (a) A natural vegetative buffer of a minimum of 30 feet surrounding the subject property and 50 feet on the north eastern and north western boundaries of the subject property shall be maintained, except along the driveway portion of the property, as indicated on the Site Plan (Schedule B) where the natural vegetative buffer is permitted to be reduced to 10 feet.
- (b) The natural vegetative buffer on the north eastern and north western boundaries of the subject property shall consist of a mixture of coniferous trees, deciduous trees, and other vegetation in order to provide year-round screening of the areas denoted on the Site Plan. The trees shall be a minimum of four (4) feet in height when initially planted and installed within one (1) year of registration of the Development Agreement.
- (c) A berm with a minimum height of eight (8) feet with vegetation planted on the top level shall be constructed on the north eastern and north western sides of the property and may form part of the required vegetative buffer.
- (d) The Existing Wooded Area, identified on the Site Plan, shall be maintained in a natural state.

## **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, Uses, 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 or expansion resulting 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) Changes to the minimum required natural vegetative buffer surrounding the site.

**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 thirty (30) 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 Developer shall commence construction within one (1) year, and complete all construction within three (3) years of recording this Agreement at the Registry of Deeds.
- (c) The developer shall relocate the topsoil and salvage vehicles within six (6) months of recording this Agreement.
- (d) Property shall be in full compliance of this Agreement within four (4) years of recording this Agreement at the Registry of Deeds.



## **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 Muttart, Mayor

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Janny Postema, Municipal Clerk

SIGNED, SEALED AND DELIVERED  
In the presence of:

**PETER KALKMAN  
KATRENA KALKMAN**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Peter Kalkman

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Katrena Kalkman

**Schedule A**  
**Property Description**  
**Taken from Property Online August 3, 2018**

All and singular that land and premises situate, lying and being on the South side of the New Ross Road at North Alton in the County of Kings and Province of Nova Scotia, more particularly bounded and described as follows:

COMMENCING at a point where the Western Boundary line of lands of John Doyle intersects the Southern boundary line of the said New Ross Road;

THENCE Southerly along the Western boundary line of lands of John Doyle for 24 rods and in a line of prolongation along the Southern boundary line of lands of Brenton Best, for a distance of 78 rods and 2 feet where said line of prolongation intersects the Northern boundary line of lands of Gardiner Dodge;

THENCE Westerly along the Northern boundary line of lands of Gardiner Dodge for a distance of 60 rods or the lands of Clayton Corbin;

THENCE Northerly along lands of Clayton Corbin for a distance of 61 rods and 8 feet to a stake driven;

THENCE Easterly for a distance of 11 rods and 8 feet to a stake driven;

THENCE Northerly for a distance of 40 rods and 12 feet or to the Southern boundary of said New Ross Road;

THENCE Easterly along the various courses of the said New Ross Road for a distance of 42 rods or to the place of BEGINNING, intending to convey 35 acres, more or less.

BEING AND INTENDED TO BE the same lands and premises as conveyed to Nellie D. Rooney, by Gardiner Dodge et ux, by Deed dated April 11, 1961, and recorded in the Registry of Deeds at Kentville, Nova Scotia, in Book 204 at Page 289.

EXCEPTING AND RESERVING THEREFROM:

1. ALL and singular the land and premises situated lying and being in the South Side of the New Ross Road in the County of Kings and Province of Nova Scotia and more particularly bounded and described as follows:  
BEGINNING at the intersection of the Westerly Boundary of land owned by John Doyle and the Southerly Limits of the Highway leading from Kentville to New Ross;

THENCE Westerly along said Southerly road limits 200.0 feet to an iron pipe planted being the point of commencement;

THENCE continuing along said road limits South 64 degrees 25 minutes West, a distance of 200.0 feet to an iron pipe planted.

THENCE South 21 degrees 15 minutes East, a distance of 401.0 feet to an iron pipe planted;

THENCE North 64 degrees 25 minutes East, a distance of 200.0 feet to an iron pipe planted.

THENCE North 21 degrees 15 minutes West, a distance of 401.0 feet to the point of commencement, containing by admeasurement 1.8 acres.

2. All that certain lot, piece or parcel of land situate, lying and being on the south side of the New Ross Road, in the County of Kings and Province of Nova Scotia, more particularly bounded and described as follows:

Commencing at the intersection of the Easterly boundary of lands of Bill Ward on the Southerly limits of the New Ross Road to Kentville Highway;

THENCE South 21 degrees 15 minutes East a distance of 401.0 feet to the Southeast corner of said Bill Ward lands;

THENCE North 64 degrees 50 minutes East a distance of 200.00 feet to the lands of John Doyle;

THENCE North 21 degrees 15 minutes West following said John DoYLES Westerly boundary 401.0 feet to the said southerly highway limits;

THENCE South 64 degrees 50 minutes West along said southerly limits 200.0 feet to the point of commencement, containing by admeasurement 1.8 acres.

3. Lot C as shown on an approved Plan of Survey dated April 15, 1976 prepared by H.B. Smith showing Parcel C, being a part of the Lands of Nova Scotia Farm Loan Board, North Alton, Kings County, NS, and recorded at the Kings County Registry of Deeds office on November 1, 1977 as Plan number P-2872.

# Schedule B

## Site Plan

