

THE MUNICIPALITY OF THE COUNTY OF KINGS

REPORT TO COUNCIL

Subject: Planning Items

Date: July 26, 2018

A	Application for a development agreement to permit tourist accommodations, tourist cabins and an event venue at 440 Canaan road, Nicholasville (File 18-03)	Be it resolved that Municipal Council give Final Consideration to enter into a development agreement to permit tourist commercial facilities and an event venue at 440 Canaan Road (PID 55526461), Nicholasville, which is substantively the same (save for minor differences in form) as the draft set out in Appendix E of the report dated June 15, 2018. <u>Report attached.</u>
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THE MUNICIPALITY OF THE COUNTY OF KINGS

REPORT TO MUNICIPAL COUNCIL

Subject: **Public Hearing – Development Agreement**
Application to enter into a development agreement to permit tourist accommodations, tourist cabins and an event venue at 440 Canaan Road, Nicholasville (PID 55526461) (File 18-03)

From: Planning and Development Services

Date: July 17th, 2018

Background

Michelle and Jason Dingwall have applied for a development agreement to permit tourist accommodations, tourist cabins and an event venue at 440 Canaan Road, Nicholasville. The proposed use includes up to 5 tourist cabins each with no more than two guest rooms, three guest rooms within the existing dwelling, and the use of an existing barn as an event venue.

The application and staff report were reviewed by the Planning Advisory Committee on June 15th, 2018. The Committee forwarded a positive recommendation to Council. On July 3rd, 2018 Council gave Initial Consideration to the proposed development agreement and forwarded it on to this Public Hearing. The proposed development agreement is attached as Appendix A.

Public Hearing

At this Public Hearing members of the public have the opportunity to present opinions on the proposal directly to Municipal Council. Council is scheduled to consider approving the development agreement by giving it Final Consideration at the Municipal Council meeting immediately following this Public Hearing. If approved, a Notice of Passing will be published in the local paper, at which time a 14 day appeal period will begin.

THIS DEVELOPMENT AGREEMENT made this _____ day of _____, A.D., 2018

BETWEEN:

JASON C. DINGWALL AND MICHELLE L. DINGWALL, of Nicholsville, 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 55526461; and

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

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

WHEREAS Policy 4.4.8.5 and Policy 6.3.2.1 of the Municipal Planning Strategy and Clause 5.4.1 of the Land Use Bylaw provide that the proposed use may be developed only if authorized by development agreement; and

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

WHEREAS the Municipality by resolution of Municipal Council passed at a meeting on _____, 2018, approved this Development Agreement;

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

PART 1 AGREEMENT CONTEXT

1.1 Schedules

The following attached schedules shall form part of this Agreement:

Schedule A	Property Description
Schedule B	Site Plan

1.2 Municipal Planning Strategy and Land Use Bylaw

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

1.3 Definitions

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

- (a) *Development Officer* means the Development Officer appointed by the Council of the Municipality.
- (b) *Development Envelope* means the portion of the Property within which the development may take place.
- (c) *Indoor Event Venue* means an indoor location for the hosting of weddings, conferences, galas, and other similar events. Such a use may include a commercial kitchen serving such events. For greater clarity, this definition does not include a restaurant serving the traveling public.
- (d) *Tourist Cabin* means overnight accommodations within separate buildings servicing the travelling public.

PART 2 DEVELOPMENT REQUIREMENTS

2.1 Site Plans

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

2.2 Use

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

- (a) those uses permitted by the underlying zoning in the Land Use Bylaw (as may be amended from time to time); and

- (b) tourist commercial uses wholly contained within the Development Envelope, consisting of one or more of the following uses and in accordance with the terms of this Agreement:
 - i. Tourist accommodations contained within the existing residential dwelling and containing no more than three (3) guest rooms;
 - ii. Up to five (5) Tourist Cabins. Each cabin may not exceed 500 square feet in size and shall contain no more than two guest rooms each. Cabins shall be located within the treeline south of the dwelling; and,
 - iii. An Indoor Event Venue that is wholly contained within the existing barn as identified on Schedule B - Site Plan. The existing barn may be expanded by as much as 50% of the existing building footprint to accommodate a commercial kitchen and bathrooms in the future.

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

2.3 Signs

- (a) The total sign area of a ground sign shall not exceed 12 square feet if single sided, and 24 square feet if double sided;
- (b) The total sign area of a facial sign shall not exceed 16 square feet;
- (c) The total sign area of a projecting sign shall not exceed 12 square feet;
- (d) The total number of signs on the property shall not exceed two;
- (e) Internally illuminated signs are prohibited; and
- (f) The Developer shall obtain a development permit from the Development Officer prior to the erection or installation of any sign.

2.4 Appearance of Property

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

2.5 Lighting

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

2.6 Parking

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

- (a) Parking spaces shall be provided at the following rates:
 - a. one space for each guest room within the tourist accommodations;
 - b. one space for each guest room within each Tourist Cabin;
 - c. one space for every 60 (sixty) square feet of floor area for the Indoor Event Venue; and
 - d. one space for every employee, up to a total of 10 spaces.
- (b) The parking area shall be maintained with a stable surface that is treated to prevent the raising of dust or loose particles.
- (c) Parking locations shall comply with the *National Building Code, Part 3, Fire Truck Access Route*.

2.7 Access and Egress

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

2.8 Architectural Design

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

2.9 Buffering

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

- (a) the area located between the western property line in proximity to the parking area, being no less than 50 feet in width, shall be maintained in a natural vegetated state;

If vegetation acting as a buffer is destroyed or removed for any reason, including vegetation in the treeline area in proximity to the location of the tourist cabins, the Property Owner shall replace it with vegetation or an opaque fence. Replacement vegetation shall be at least four (4) feet in height and capable of growing to at least six (6) feet in height. A replacement fence shall have a height of 6 feet. The replacement shall be completed within 1 month.

2.10 Servicing

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

2.11 Hours of Operation

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

2.12 Erosion and Sedimentation Control

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

PART 3 CHANGES AND DISCHARGE

- 3.1** The Property Owner shall not vary or change the use of the Property, except as provided for in Section 2.2, Use, of this Agreement, unless a new development agreement is entered into with the Municipality or this Agreement is amended.
- 3.2** Any matters in this Agreement which are not specified in Subsection 3.3 below are not substantive matters and may be changed by Council without a public hearing.
- 3.3** The following matters are substantive matters:

- (a) Changes to the uses permitted on the property by Section 2.2 of this Agreement; and
- (b) Changes to or substitution of the Site Plan contained in Schedule 'B' of this Agreement.

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

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

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

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

PART 4 IMPLEMENTATION

4.1 Commencement of Operation

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

4.2 Expiry Date

- (a) The Property Owner shall sign this Agreement within 180 calendar days from the date the appeal period lapses or all appeals have been abandoned or disposed of or the development agreement has been affirmed by the Nova Scotia Utility and Review Board or the unexecuted Agreement shall be null and void.

PART 5 COMPLIANCE

5.1 Compliance With Other Bylaws and Regulations

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

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

5.2 Municipal Responsibility

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

5.3 Warranties by Property Owner

The Property Owner warrants as follows:

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

5.4 Costs

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

5.5 Full Agreement

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

5.6 Severability of Provisions

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

5.7 Interpretation

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

5.8 Breach of Terms or Conditions

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

THIS AGREEMENT shall 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:

Witness

Jason C. Dingwall

Witness

Michelle L. Dingwall

Schedule 'A'
Property Description

Copied from Property Online on May 14, 2018

PID 55526461

All that lot of land situate at Nicholsville/Morristown, in the County of Kings, and Province of Nova Scotia, more particularly bounded and described as follows:

Beginning at a point on the south sideline of the Canaan Road, at the northeast corner of lands conveyed by Hilton Lutz to Phyllis Lutz, by deed dated March 6, 1996, and recorded in the Registry of Deeds for Kings County on March 11, 1996 in Book 1051 at Page 312 as Document number 1850;

Thence in a southerly direction along the east side line of lands of Phyllis Lutz, and lands conveyed by Nellie Lutz to Hilton Lutz by deed dated June 17, 2008 and recorded in the Registry of Deeds for Kings County on June 17, 2008, as Document number 90936841, a total distance of 1,100 feet;

Thence in an easterly direction, and parallel to the south sideline of the Canaan Road, a distance of 1,100 feet to a point;

Thence in an northerly direction, and parallel to the east sideline of lands of Hilton Lutz and Phyllis Lutz, a distance of 1,100 feet to the south sideline of the Canaan Road;

Thence in a westerly direction, along the south sideline of the Canaan Road, a distance of 1,100 feet to the point of Beginning. Containing 27.778 acres.

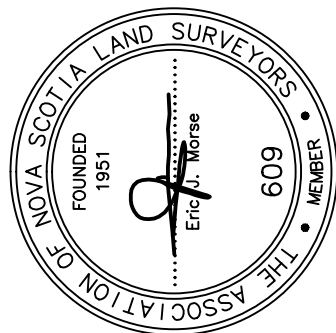
*** Municipal Government Act, Part IX Compliance ***

Exemption:

The parcel is exempted from subdivision approval under the Municipal Government Act because the parcel was created by a subdivision

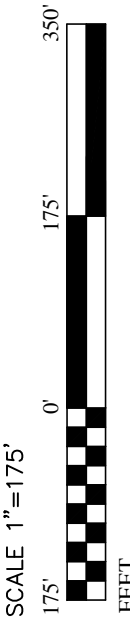
Reason for exemption:

Clause 268(2)(a) where all lots to be created, including the remainder lot exceed ten hectares in area.



SITE PLAN SHOWING
PID 55526461
 LANDS CONVEYED TO
JASON C. DINGWALL
& MICHELLE LYNN DINGWALL
 440 CANAAN ROAD
 NICHOLSVILLE

NOTES
 1. PARKING SPACES ARE 9' X 18'

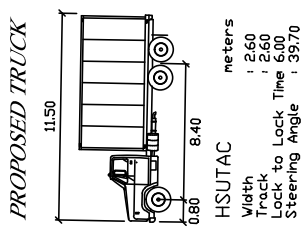
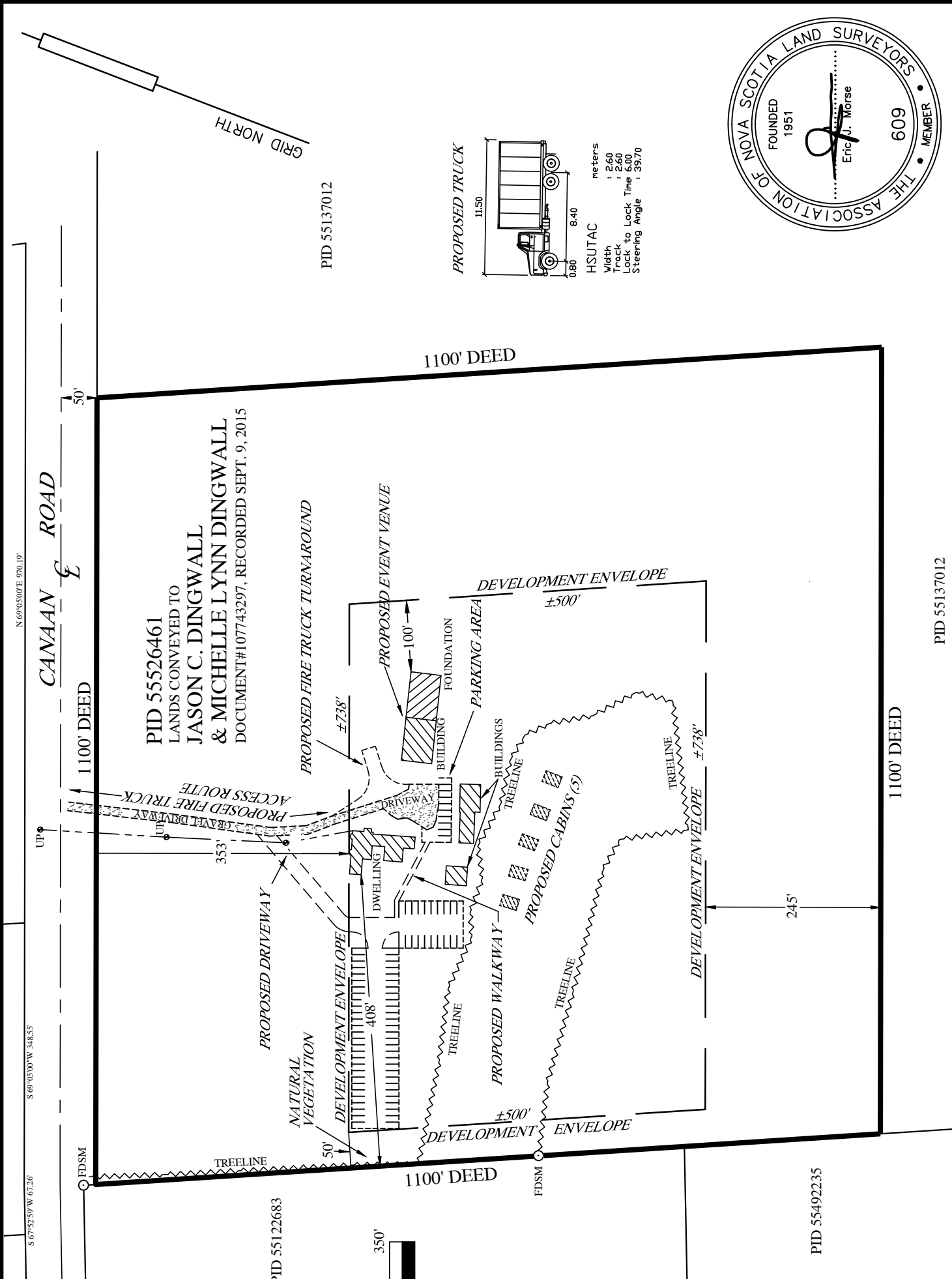


DATE: JUNE 5, 2018
 PLAN No. 2018-059 Rev2

LEGEND

SURVEY MARKERSMO
IRON PIPEI.P.O
WITNESSWIT
FOUNDFD
UTILITY POLEUP
OVERHEAD WIRESOHW
NOT TO SCALE	———
FIELD MEASUREMENTF
PLAN MEASUREMENTP
DEED MEASUREMENTD

DeWOLFE & MORSE
SURVEYING LIMITED
 P. O. BOX 520
 MIDDLETON
 NOVA SCOTIA
 BOS 1P0



PID 55137012

PID 55122683

PID 55492235

PID 55137012