

# THE MUNICIPALITY OF THE COUNTY OF KINGS

## REPORT TO COUNCIL

**Subject:** Planning Advisory Committee Recommendations

**Date:** November 3, 2020

A	<b>Application for a substantive amendment to the development agreement for the property at 440 Canaan Road, Nicholasville (File 20-08)</b>	<i>Be it resolved</i> that Municipal Council give Initial Consideration and hold a Public Hearing to amend the existing development agreement for the property at 440 Canaan Road (PID# 55526461), Nicholasville to permit the construction of a deck and use of a tent as part of a permitted event venue use, which is substantively the same (save for minor differences in form) as the draft set out in Appendix E of the report dated October 13, 2020.  <u>Report Attached</u>
B	<b>Public Hearing Date</b>	Tuesday, December 1, 2020 at 6:00 p.m.



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

Application for a substantive amendment to an existing development agreement to permit the construction of a deck to be affixed to the existing event venue, and the use of a tent as part of the event venue at 440 Canaan Road (PID# 55526461), Nicholsville  
(File# 20-08)

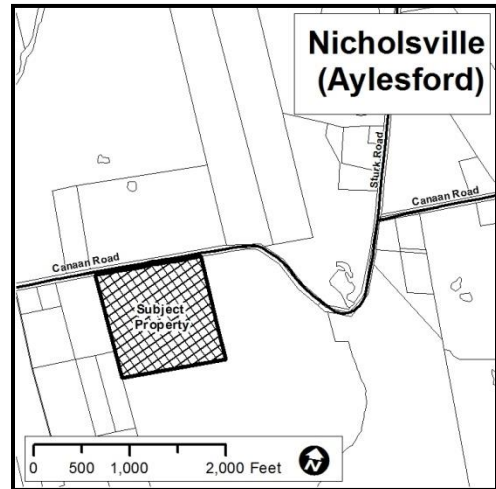
**October 13<sup>th</sup>, 2020**

**Prepared by:** Planning Services Staff

<b>Applicant</b>	Michelle and Jason Dingwall
<b>Land Owner</b>	Michelle and Jason Dingwall
<b>Proposal</b>	The construction of a deck to be affixed to an existing barn which has been repurposed for use as an event venue, permitted as a use in conjunction with the existing development agreement for the property, and the use of a tent as part of the event venue.
<b>Location</b>	440 Canaan Road, Nicholsville PID 55526461
<b>Lot Area</b>	Approximately 28 acres
<b>Designation</b>	Agriculture (A) Designation
<b>Zone</b>	Rural Mixed Use (A2) Zone
<b>Surrounding Uses</b>	Residential, Agriculture, Salvage Yard, Rural Industrial, Aggregate Extraction
<b>Neighbour Notification</b>	Staff sent notification letters to the 8 owners of property within 500 feet of the subject property

**1. PROPOSAL**

Michelle and Jason Dingwall have applied for a substantive amendment to the existing development agreement registered on their property at 440 Canaan Road, Nicholsville. The amendment, if approved, would permit the construction of a deck to be situated in an existing concrete foundation and affixed to an adjacent repurposed barn, used as an event venue. The amending agreement would also permit the use of a tent as part of the event venue use. The existing development agreement, signed in 2018, permits tourist commercial uses. This includes tourist accommodations contained within the existing residential dwelling, tourist cabins, and an indoor event venue.



**2. OPTIONS**

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

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

### **3. BACKGROUND**

The property located at 440 Canaan Road, Nicholsville was owned by the Sturk family from 1845 until 2015. During this time, it mainly functioned as a cattle farm; the main barn was constructed in 1912 and was last used for cattle in 1996. Purchased by the current owners in 2015, with the intention of using the property as a commercial tourist operation, a development agreement was signed in 2018. This agreement permits various forms of tourist accommodations and the use of the repurposed barn as an event venue to host weddings and other special events.

### **4. INFORMATION**

#### **4.1 Site Information**

The subject property is located on the south side of Canaan Road, between Sturk Road and Victoria Road. It falls within the community of Nicholsville, but is also very close to the community of Morristown. The area surrounding the subject property is predominantly forested land with some residential, agricultural and industrial uses spread throughout. The subject property is comprised of cleared fields, with some forested areas. In addition to the farmhouse and barn, there are a few old storage buildings on the site. The house and barn are at a high point of land on the property, which slopes down toward Canaan Road as well as sloping towards the eastern property boundary. The area to the south, behind the house and barn, is relatively flat.

#### **4.2 Site Visit**

A municipal planner conducted a site visit on the subject property on August 5<sup>th</sup>, 2020 and met with the applicant to further discuss the proposed amendment to the development agreement. The municipal planner took photographs of the subject property and the area where the deck is proposed to be constructed.

#### **4.3 Public Information Meeting**

Under the Planning Policies of the Municipality of the County of Kings (PLAN-09-001), a Public Information Meeting was required because the application concerns a substantive amendment to an existing development agreement. A letter was sent to eight property owners within a 500 foot radius of the subject property, advising them of the planning application and seeking comment and feedback on the proposed substantive amendment to the existing development agreement. Due to the state of emergency declared by the Province of Nova Scotia as a result of the COVID-19 pandemic, a Public Information Meeting was held remotely commencing on August 15<sup>th</sup>, 2020 for a period of 30 days. A video recording, hosted by the area Councillor and containing a presentation by the Municipal Planner assigned to the application was posted for review by members of the public. The recording presented the application and enabling policies and invited members of the public to ask questions of the planner or to provide comments to the planner via telephone and email.

No comments were received from members of the public pertaining to this application.

#### **4.4 Requests for Comments**

Staff requested comments from both internal and external departments on the application. The Department of Transportation and Infrastructure Renewal issued an access permit for the use, as part of the original application, in 2018. Nova Scotia Environment was contacted and did not provide comment. Engineering and Public Works commented that, during construction, the applicant will be required to follow Nova Scotia Environment regulations regarding sedimentation/erosion control and any alterations to existing drainage caused by development must be designed in accordance with municipal specifications. Building and Enforcement noted the applicant, during construction, would be required to meet minimal building code. The Aylesford Fire Chief provided confirmation that equipment and services were sufficient for the proposed use.

A full summary of the comments received are found in Appendix C of this report.

### **5. POLICY REVIEW – DEVELOPMENT AGREEMENT**

#### **5.1 Development Agreement**

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

##### **5.1.1 Changes to the Existing Development Agreement**

Section 3 of the existing development agreement stipulates that the property owner shall not vary or change the use of the property, unless a new agreement is entered into or the existing agreement is amended. Further, the existing agreement outlines that changes in use are considered substantive amendments and require a public hearing in order to be altered. In this instance, the use permitted by the development agreement is an *indoor event venue*, wholly contained within the existing repurposed barn. Therefore, in order for a deck to be constructed for the event venue use, a substantive amendment to the existing development agreement is necessary.

#### **5.2 Land Use By-Law**

Section 8.4.5 of the Land Use By-law (By-law #106) of the Municipality of the County of Kings states: *“Pursuant to the Municipal Planning Strategy, the uses noted below may be considered by Development Agreement within the Rural Mixed Use (A2) Zone:*

- (a) Proposals for visitor-oriented development not permitted as-of-right in accordance in policy 2.5.13 of Municipal Planning Strategy.”*

### 5.3 Municipal Planning Strategy - Enabling Policy and Criteria

Policy 2.5.13 of the Municipal Planning Strategy states: *“consider only by development agreement within the Agriculture, Resource, and Shoreland Designations, with the exception of in the Agriculture (A1) Zone, proposals for visitor-oriented developments not permitted as-of-right. In evaluating development agreements, Council shall be satisfied that:*

- a. *“the proposal is oriented to visitors or the travelling public, such as, but not limited to, lodging, restaurants, event venues, or other type of special attractions;”*

The uses permitted by the existing development agreement and amending agreement are oriented towards visitors in the form of tourist lodging and a venue for events such as weddings.

- b. *“the subject property has a lot area that can appropriately accommodate the proposed use, any accessory uses, and structures, parking areas and required infrastructure;”*

The site plan, which forms a schedule of the existing development agreement, demonstrates that the development envelope for the subject property can comfortably accommodate the permitted uses, structures, vehicular parking requirements, and required infrastructure.

- c. *“the site facilities are adequately buffered and/or separated from surrounding residential dwellings (other than a residential dwelling occupied by the operator) to mitigate negative impacts associated with noise, light, and other visual impacts;”*

Section 2.9 of the existing development agreement stipulates buffering requirements for the subject property, outlines the requirements to replace the buffering if it is removed or damaged, and situates a timeline for doing so. The required buffering is demonstrated on the accompanying site plan.

- d. *“if the proposal is for a lot located on a lake within the Shoreland designation, Council shall be satisfied that...”*

These criteria are not applicable for this development as the subject property is not located in the Shoreland designation.

- e. *“if the use is a listed permitted use, the condition(s) that prevent the proposal from being permitted as-of-right in the designation is addressed by development agreement including, but not limited to, enhanced buffering and the positioning and design of buildings and structures; and”*

This criterion is not applicable as the uses permitted by the existing development agreement is not a permitted use in the underlying Rural Mixed Use (A2) Zone. A development agreement is necessary for the tourist commercial uses on the subject property and the existing development agreement contains permissions for tourist cabins in addition to the event venue on the subject property.

- f. *“the proposal meets the general development agreement criteria set out in section 5.3 Development Agreements & Amending the Land Use By-law.”*

The uses permitted by the existing development agreement and the amending agreement meet the general criteria set out in section 5.3 of the Municipal Planning Strategy. It is Staff’s opinion that the proposal meets the general criteria in that it will not result in any direct costs to the Municipality, raises no concerns in terms of traffic or access, is serviced by a private sanitary septic system, is compatible with adjacent

uses, and raises no concerns regarding emergency services. A full review of these criteria as they pertain to this application are outlined in Appendix B of this report.

## **6. SUMMARY OF DRAFT DEVELOPMENT AGREEMENT**

The proposed changes reflect the desire of the applicant to amend some of the provisions in the existing development agreement to permit the construction of a deck as part of the event venue for the purpose of hosting special events.

The proposed amendments would necessitate changes and/or additions in the following sections of the existing development agreement:

1. New definitions for *event venue* and *tent* would be inserted (section 1.3 - Definitions).
2. Indoor event venue is removed as a permitted use and replaced with event venue, permitting the special event venue use to occur in an area identified on Schedule B – Site Plan. The event venue use permitted to be either an indoor or outdoor use, or a combination thereof (Section 2.2 – Uses).
3. Restrictions related to amplified noise are added to the existing development agreement in order to prohibit amplified music (e.g. speakers) from occurring outside of the indoor portion of the event venue space (Section 2.13).

The draft amending development agreement has been attached as Appendix E to this report.

## **7. CONCLUSION**

The proposal and the terms of the draft amending development agreement are in keeping with the intent of the Municipal Planning Strategy. The proposal is enabled by Council's economic development policies, and is consistent with the criteria of those policies. The proposal meets all other general criteria for amending an existing development agreement. 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 motion:

**The Planning Advisory Committee recommends that Municipal Council give Initial Consideration to and hold a Public Hearing to amend the existing development agreement at 440 Canaan Road (PID# 55526461), Nicholasville to permit the construction of a deck and use of a tent as part of a permitted event venue use, which is substantively the same (save for minor differences in form) as the draft set out in Appendix E of the report dated October 13, 2020.**

## **9. APPENDICES**

Appendix A: Zoning Map

Appendix B: General Development Agreement Criteria (MPS Policies 5.3.7 and 5.3.8)

Appendix C: Summary of Requests for Comments

Appendix D: Existing Development Agreement

Appendix E: Draft Amending Development Agreement

**APPENDIX B: By-law 105 - Municipal Planning Strategy, Policy 5.3.7 General Criteria to Consider for all Development Agreements and Land Use By-law Amendments**

**Policy 5.3.7**

*Council expects to receive applications to amend the Land Use By-law or enter into a development agreement for development that is not permitted as-of-right in the Land Use By-law. Council has established criteria to ensure the proposal is appropriate and consistent with the intent of this Strategy.*

*Council shall be satisfied that a proposal to amend the Land Use By-law or to enter into a development agreement:*

<b>Criteria</b>	<b>Comments</b>
<i>a. is consistent with the intent of this Municipal Planning Strategy, including the Vision Statements, relevant goals, objectives and policies, and any applicable goals, objectives and policies contained within a Secondary Plan;</i>	
<i>b. is not in conflict with any Municipal or Provincial programs, By-laws, or regulations in effect in the Municipality;</i>	
<i>c. that the proposal is not premature or inappropriate by reason of:</i>	
<i>i. the Municipal or village costs related to the proposal;</i>	The proposal does not involve any development costs to the Municipality.
<i>ii. land use compatibility with surrounding land uses;</i>	The primary land use on the subject property is residential and commercial tourism; compatible uses to the surrounding land uses.
<i>iii. the adequacy and proximity of school, recreation and other community facilities;</i>	Not applicable.
<i>iv. the creation of any excessive traffic hazards or congestion due to road or pedestrian network adequacy within, adjacent to, and leading to the proposal;</i>	The Department of Transportation and Infrastructure Renewal issued an access permit for the original application in 2018. There is adequate parking for vehicles identified on the site plan.
<i>v. the adequacy of fire protection services and equipment;</i>	The Aylesford Fire Chief confirmed during the original agreement that fire protection services and equipment were adequate for the existing and proposed uses.
<i>vi. the adequacy of sewer and water services, including but not limited to on-site services;</i>	Municipal Engineering and Public Works has confirmed that central sewer and water services are not available at the subject property. On-site services fall under the jurisdiction of Nova Scotia Environment.
<i>vii. the potential for creating flooding or serious drainage problems either within the area of development or nearby areas;</i>	Property owner is required to contain all post-development storm water flow on site.



viii. <i>negative impacts on identified wellfields or other groundwater supplies for the area;</i>	There are no identified wellfields in the area, nor groundwater supplies. The area is serviced by private wells.
ix. <i>pollution, in the area, including but not limited to, soil erosion and siltation of watercourses; or</i>	EPW has commented the applicant will be required to follow Municipal specifications regarding soil erosion at the time of construction.
x. <i>negative impacts on lake water quality or nearby wetlands;</i>	Not applicable.
xi. <i>negative impacts on neighbouring farm operations;</i>	The current and proposed uses will not have an impact on neighbouring farm operations
xii. <i>the suitability of the site regarding grades, soils and geological conditions, location of watercourses, marshes, bogs and swamps, and proximity to utility rights-of-way.</i>	The subject property is suitable in terms of grades, soils, geological conditions, and proximity to natural features and rights-of-way.

### Policy 5.3.8

Establish controls that may be needed to adequately address any concerns raised by the criteria set out in Policy 5.3.7 above, including but not limited to controls regarding:

Criteria	Comments
a. <i>the type of uses permitted on the lot;</i>	The types of uses are controlled by the existing and proposed amending development agreement.
b. <i>the location, height, bulk, and lot coverage of any proposed buildings or structures;</i>	Proposed deck will be controlled by building code regulations.
c. <i>access, egress and parking requirements including, but not limited to the following:</i>	
i. <i>the location of parking areas on the lot;</i>	Areas for parking are identified on site plan.
ii. <i>off-road parking and loading spaces, that do not require consistency with the Land Use By-law requirements;</i>	Parking and loading is not permitted off-site.
iii. <i>waiving parking requirements;</i>	Not applicable.
iv. <i>the acceptance of cash-in-lieu for required parking provided there is adequate street or parking on other sites to serve the commercial uses; and;</i>	Not applicable.
v. <i>shared parking arrangements;</i>	Not applicable.
c. <i>hours of operation;</i>	Regulated by existing development agreement.
d. <i>signs and lighting;</i>	Regulated by existing development agreement.
e. <i>phasing of the development;</i>	Not applicable.
f. <i>integrating the proposal into the surrounding area by means of good landscaping, buffering, sensitive site orientation and screening;</i>	Not applicable.
g. <i>reducing the impacts of noise, odour, dust, or light or any other form of emission on other properties in the area;</i>	The amplification of sounds is prohibited from occurring outside of the existing building identified as “proposed event venue” on Schedule B – Site Plan.

<i>h. reducing the potential for contamination of, or interference with, wellfields or other designated groundwater supply protection area;</i>	Not applicable.
<i>i. reducing contamination risk and damage to either the natural or built environment;</i>	Not applicable.
<i>j. managing lighting to reduce glare, light trespass, and skyglow;</i>	Regulated by existing development agreement.
<i>k. architectural features, including but not limited to bulk, scale, height, roof shape, building materials, exterior cladding, and shape and size and placement of doors and windows, to ensure they are visually compatible with nearby buildings in the case of a new building, or with the original building in the case of an addition;</i>	Regulated by existing development agreement.
<i>l. ensuring the proposal provides sufficient park and trail features consistent with the applicable policies of section 2.7 Recreation and within the Subdivision By-law;</i>	Not applicable.
<i>m. the location of structures on the lot to ensure minimal interference with sunlight received by abutting properties, including but not limited to potential impact on solar collectors;</i>	Not applicable.
<i>n. management of garbage collection and industrial waste disposal;</i>	Garbage is collected by Valley Waste.
<i>o. ensuring no part of the area of the development agreement will be developed so as to prejudice or compromise future development on site or on nearby lands;</i>	The location of the proposed deck falls within the development envelope identified on Schedule B – Site Plan, which forms part of the existing development agreement.
<i>p. on-going maintenance of the development;</i>	Not applicable.
<i>q. time limits for construction;</i>	Not applicable.
<i>r. requirements for adequate performance bonding or security to ensure that major components of the development, including but not limited to, road construction or maintenance, landscaping, or development of amenity areas, are completed in an appropriate and timely manner and maintained for a specific time period;</i>	Not applicable.
<i>s. the discharge of the agreement or parts thereof; and</i>	Not applicable.
<i>t. any other matter determined by Council.</i>	Not applicable.

## APPENDIX C – Summary of Requests for Comments

### Department of Transportation and Infrastructure Renewal (DTIR)

- No comments were received from DTIR.
- DTIR issued an access permit for the current uses at the time of the original development agreement application in 2018.

### Nova Scotia Environment (NSE)

- No comments were received from NSE.

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

- The Manager of Engineering Services commented that the applicant will be required to follow municipal specifications and applicable NSE regulations regarding sedimentation/erosion control during any site construction, particularly given the proximity of water features shown in our mapping downstream of the subject site.
- Any alterations to the existing drainage caused by development of the site must be designed according to our Municipal Specifications.

### Municipality of the County of Kings Building and Enforcement

- The Manager of Building and Enforcement Services commented that there are no unique building code requirements for the proposed deck and that minimal code requirements must be met for the construction of the deck.
- Fire protection services for the subject property have been deemed to be adequate by the local fire chief.

### Municipality of the County of Kings Development Control

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

THIS DEVELOPMENT AGREEMENT made this 26<sup>th</sup> day of July 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 July 26<sup>th</sup>, 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.



## Appendix E - Draft Amending Development Agreement

THIS AMENDING AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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 Coldbrook Kings County, Nova Scotia, hereinafter called the "Municipality",

of the Second Part

WHEREAS the parties entered into a Development Agreement registered at the Kings County Land Registration Office as Document 113282900 on September 20, 2018, affecting land described therein and now known as PID 55526461 (hereinafter called the "Property");

WHEREAS the parties wish to amend the Development Agreement as hereinafter set forth; and

WHEREAS the amendments are identified in the Development Agreement as matters that are substantive matters; and

WHEREAS policy 2.5.13 of the Municipal Planning Strategy (By-law 105) and section 8.4.5. (a) of the Land Use By-Law (By-law 106) provide that the use proposed through amending the existing development agreement may be permitted if authorized by a development agreement

WHEREAS the Municipality by resolution of Municipal Council passed at a meeting on XX of 2020, approved this amending agreement.

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

1. Section 1.3 (c), Definitions, is deleted and replaced with the following:

(c) *Event Venue* means a location for the hosting of weddings, conferences, galas, and other similar events. Such a use may include the use of indoor and outdoor spaces with or without the use of tents or other temporary structures for use by the public and may include a commercial kitchen. This definition does not include a restaurant serving the traveling public. For greater clarity, "*Event Venue*" replaces "*Indoor Event Venue*" throughout the document.

2. Section 1.3 (e), Definitions, is added to the section:

(e) *Tent* means a covered, open-air building—that can be disassembled—intended for use by the public and/or for serving special events and is accessory to the Event Venue use.

3. Section 2.2.1 (iii), is deleted and replaced with the following:

- (iii) Event Venue wholly contained within the area identified as “proposed Event Venue” and “foundation” on Schedule B – Site Plan, and consisting of the existing barn, deck, or combination thereof. 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.
- (iv) The use of tents or other temporary structures for the operation of the Event Venue is permitted within the Development Envelope identified on Schedule B – Site Plan subject to an inspection for fire and life safety.

4. Section 2.13: Amplified Sound, is added:

The amplification of sound (e.g. speakers) for special events shall be prohibited from occurring outside of the “proposed Event Venue” as identified on Schedule B – Site Plan. For greater clarity, the amplification of sound is prohibited to occur within a tent or on a deck.

This Amending Agreement is to be read and construed with the Development Agreement and be treated as part thereof, and for such purpose and so far as may be necessary to give effect to this Amending Agreement the Development Agreement, is hereby amended, and the Development Agreement as so amended, together with all the covenants and provisions thereof, which shall remain in full force and effect.

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

**IN WITNESS WHEREOF** this Agreement was properly executed by the respective parties hereto on 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:

**JASON C. DINGWALL**  
**MICHELLE L. DINGWALL**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Jason C. Dingwall

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Michelle L. Dingwall



## Schedule A

### Property Description – Taken From Property On-line: September 25<sup>th</sup>, 2020

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:

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