



## STAFF REPORT

### Planning and Development

**Subject:** *Application by Boatskeg Distilling Co. for a Development Agreement to enable an evening patio accessory to the craft distillery and lounge use on the property.*

**To:** Municipality of Argyle CAO and Planning Advisory Committee for July 15, 2021

**Date Prepared:** July 8, 2021

**Related Motions:** None

**Prepared by:** Jared Dalziel, LPP, MCIP, Project Planner, WSP Canada Inc.

**Reviewed by:** Jess Harper, LPP, MCIP, Project Planner, WSP Canada Inc.

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### Summary

The Municipality has received a Development Agreement application from Boatskeg Distilling Co. to enable an evening patio accessory to the craft distillery and lounge use on the property.

The subject site is split-zoned with Light Industrial (LI) above the ordinary high-water mark and Coastal Wetlands (CW) below the ordinary high-water mark. The current Land Use By-law (LUB) permits craft distilleries, lounge uses, and accessory evening patios which operate between 9am-9pm. Staff is proposing to go through the development agreement process for the subject site, 23 Du Pont Du Marais Chemin, in Middle West Pubnico, Nova Scotia (PID 90078452) to permit the patio component to operate past 9pm.

### Financial Impact Statement

There is no immediate financial impact aside from the typical public engagement process and staffing requirements resulting from the application.

### Recommendation

That the Planning Advisory Committee recommend to Council to give initial consideration to the Development Agreement Application of the subject site to allow for an evening patio use to operate between 9pm-9am. Note that the terms of the development agreement will determine the permitted duration which may be used during this period.

### Recommended Motion

Municipality of Argyle Public Works Department / Community Development recommends that the Planning Advisory Committee recommend that Council:

- give first reading to consider approval of a development agreement to allow for an evening patio use to operate between 9pm-9am on PID 90078452;
- proceed to a public hearing without a second meeting of Planning Advisory Committee unless substantial comments are received from the public; and
- authorize Staff to schedule a public hearing for the application.

## Background

Boatskeg Distilling Co. has applied for a development agreement application to permit an evening patio use to operate between 9pm-9am (PID 90078452). The property is designated Rural Centres (RC) in the Municipal Plan, and split-zoned with Light Industrial (LI) above the ordinary high-water mark and Coastal Wetlands (CW) below the ordinary high-water mark in the Land Use Bylaw.

Adjacent properties are majority split-zoned Mixed Use (MU) above the ordinary high-way mark and Coastal Wetlands (CW) below the ordinary high-water mark. Additional nearby properties are zoned Heavy Industrial (HI) Zone and Light Industrial (LI) Zone. Figure 1 shows the context of zoning currently in the area.

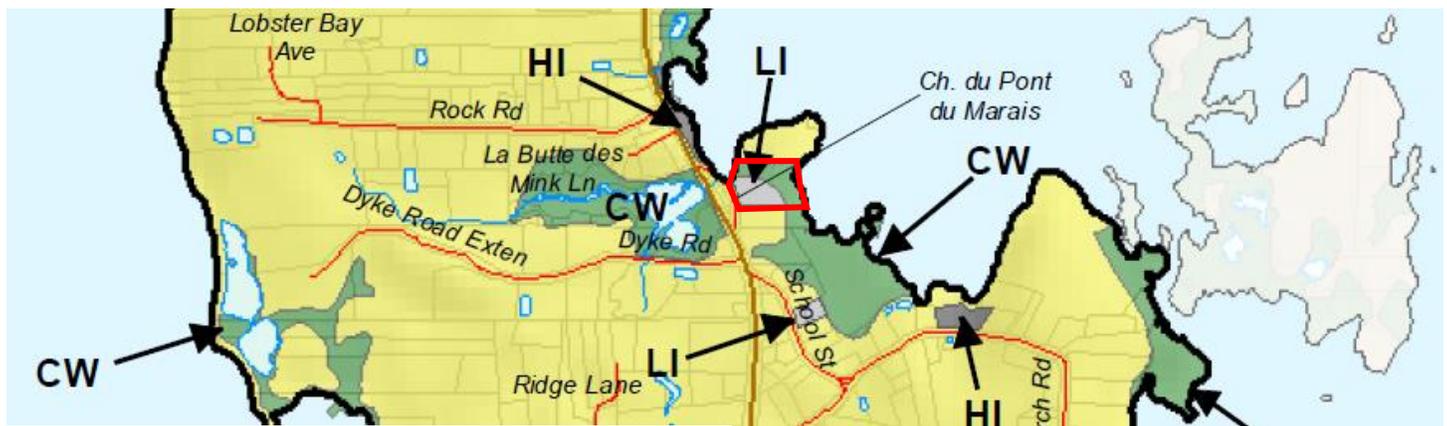


Figure 1: Zoning Map Excerpt of the Subject Property

## Subject Property

The subject property is located along 23 Du Pont Du Marais Chemin, in Middle West Pubnico, Nova Scotia (PID 90078452). As illustrated on Figure 2, the total size of the subject property is approximately  $\pm 2.75$  acres and has approximately 185 feet of frontage.

There are three (3) existing buildings on the subject property which were previously used as a single detached home, home-based boat building, and accessory buildings. The applicant intends to maintain two of the existing buildings as the site is redeveloped into a craft distillery, lounge, and patio use, as shown in Figure 2.

Staff are recommending that a development agreement application be applied to the subject property. This would permit the hours of operation to be controlled during the restricted hours between 9pm to 9am, through a development agreement. The development agreement can, and is proposed to, contain provisions to remove this permission for the use of the patio past 9pm if it is found to be problematic due to noise complaints or similar matters.

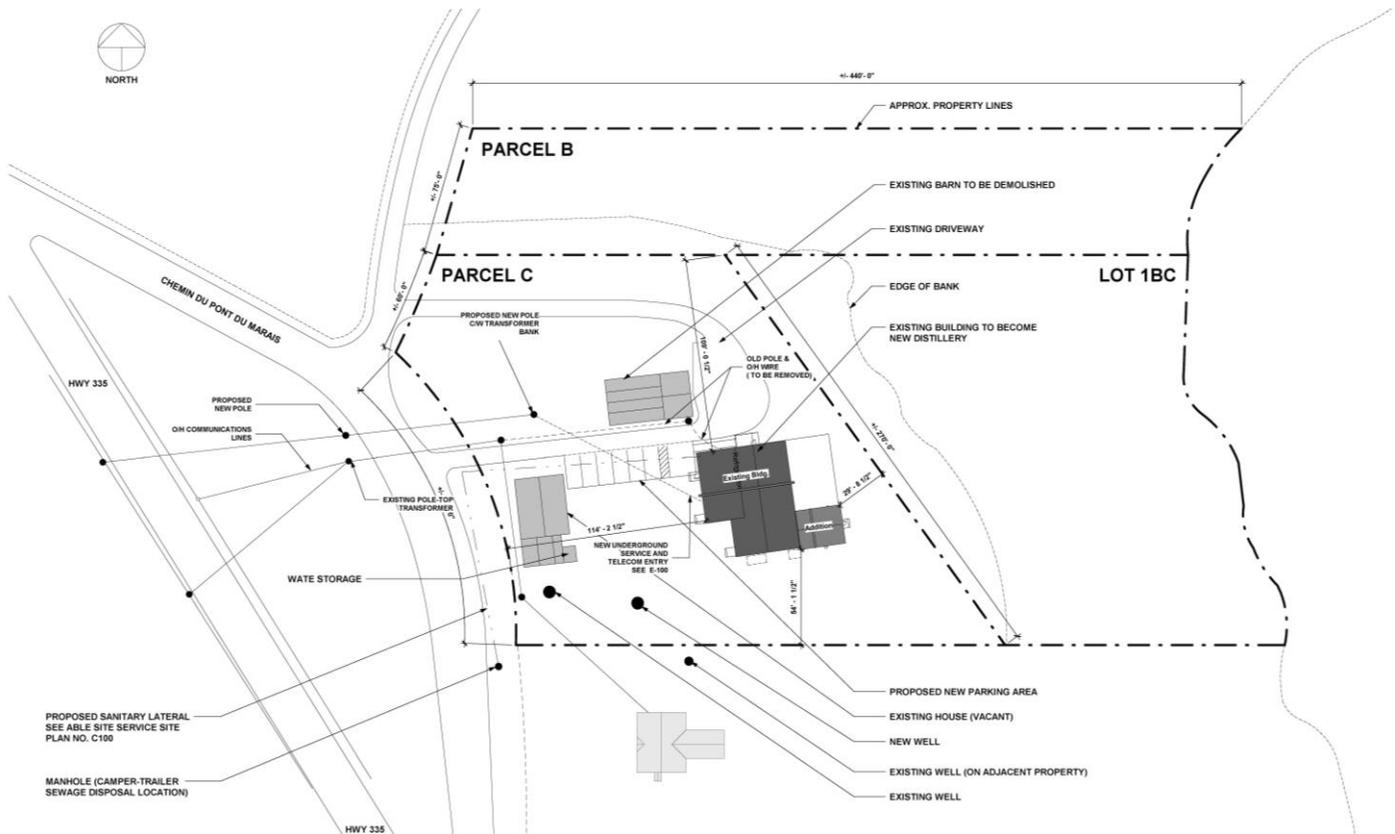


Figure 2: Proposed Site Plan of the Subject Property

### Policy Analysis

WSP and Staff are currently reviewing the application based on the applicable policies contained in the Municipal Planning Strategy (MPS).

Existing policies in the MPS allow Council to consider this development agreement without requiring amendments to *Municipal Planning Strategy*. The development agreement of the subject site is enabled by Policy 4.5.11 of the MPS. As indicated in the *Municipal Government Act*, there is a right of appeal option for approval or refusal of a development agreement.

Attachment A contains the draft proposed development agreement that would apply to 23 Du Pont Du Marais Chemin. Attachment B contains a preliminary table of the evaluative criteria from the enabling policies and corresponding comments from WSP related to the use of the patio to serve food and/or beverages between the hours of 9pm-9am.

### Discussion

The majority of nearby properties along Highway 3 contain residential uses and are currently zoned Mixed Use (MU). Evening patio uses can generate land use conflicts with adjacent residential properties due to the generation of noise. To assist in mitigating potential issues, the draft development agreement has a number of stipulations proposed under s. 3.1.1:

- a) All uses permitted in the underlying zoning, as per the requirements of the Municipality of the District of Argyle Land Use Bylaw, as amended from time to time, in addition to any other uses permitted by this agreement; and
- b) The developer shall be permitted to install a patio having a maximum area of 120 square metres. The



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following matters shall apply to the use of the patio:

- i. The patio may be used to serve patrons alcohol with or without food;
  - ii. The hours of operation for the patio shall be between 8:30am until 12:00 (midnight), and additionally, from midnight to 2:00am on Saturdays, Sundays, July 2<sup>nd</sup>, and January 2<sup>nd</sup>;
  - iii. No live entertainment shall be permitted on the patio;
  - iv. Background music shall be permitted on the patio at a volume that will not disturb surrounding residential uses.
- c) other uses, signage, parking or loading areas accessory to the principal use as per the requirements of the Municipality of the District of Argyle Land Use Bylaw, as amended from time to time.

Noise-related land use impacts can arise from many types of land uses, and having a conscientious operator is one of the most important steps to ensure that activities are taken out in a manner sensitive to the existing residential context of the surrounding area. If operations are problematic, and a number of complaints received, the proposed draft development agreement contains provisions where it may be discharged, and any development permits revoked without the concurrence of the property owner, as indicated below:

- 3.2.2 The Development Officer, at their discretion, may revoke a development permit pursuant to this agreement if:
- a) the development is not in accordance with:
    - i. the Land Use Bylaw where not varied by this agreement,
    - ii. this agreement, or
    - iii. the plans associated with the approved development permit.
  - b) the permit was issued based on incorrect information provided by the applicant when applying for a development permit; or
  - c) the permit was issued in error; or
  - d) continued complaints and matters of non-compliance arise due to noise generation related from the operation of the outdoor patio use.

If this were to take place, s. 238 of the *Municipal Government Act* would apply. Since the proposed patio use on this property was not a lawful use when the current Land Use Bylaw was adopted, operation of the patio past 9pm would no longer be permitted.

#### **Nonconforming structure or use**

**238 (1)** A nonconforming structure, nonconforming use of land or nonconforming use in a structure, may continue if it exists and is lawfully permitted at the date of the first publication of the notice of intention to adopt or amend a land-use by-law.

Based on the above information, Staff feels the proposal is sufficiently consistent with the intent of the Municipal Planning Strategy (MPS) to proceed to a public hearing. A review of policies contained in the MPS, is indicated in more detail in Appendix B, and may be subject to modification prior to the final staff report.



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#### Public Participation

Staff will comply with Public Participation Policies of the Municipal Planning Strategy when processing this application. As per Section 206 of the *Municipal Government Act*, a public hearing is required for entering into a Development Agreement to hear input from the community.

Figure 2 illustrates the general process followed by the Municipality for a Development Agreement application. A newspaper advertisement will be placed in the local newspaper, *VanGuard*, notifying the public of the application as well as for the public hearing two weeks in advance of the public hearing. A sign will also be placed on the subject property notifying residents that an application has been received by the Municipality. A notice of the application will also be placed on the municipal website.

Staff will mailout a notice of application to all property owners within 152 meters of the subject property and a public hearing will be held prior to the decision of Council.

The public is encouraged to request additional information and clarification from Staff leading up to the public hearing if they have any questions.

Note that there is a right of appeal option for approval or refusal by Council for the adoption of a development agreement.

#### Conclusion

Staff will continue to review the application by Boatskeg Distilling Co. to apply for a Development Agreement (DA) to allow for an evening patio use to operate between 9pm-9am. Note that the terms of the development agreement will determine the permitted duration which may be used during this period. The applicant's proposal will be evaluated using all applicable policies in the Municipal Planning Strategy. Staff will make a recommendation to Council in its final staff report.

#### Recommendation

That the Planning Advisory Committee recommend to Council to give initial consideration to the Development Agreement Application of the subject site to allow for an evening patio use to operate between 9pm-9am. Note that the terms of the development agreement will determine the permitted duration which may be used during this period.

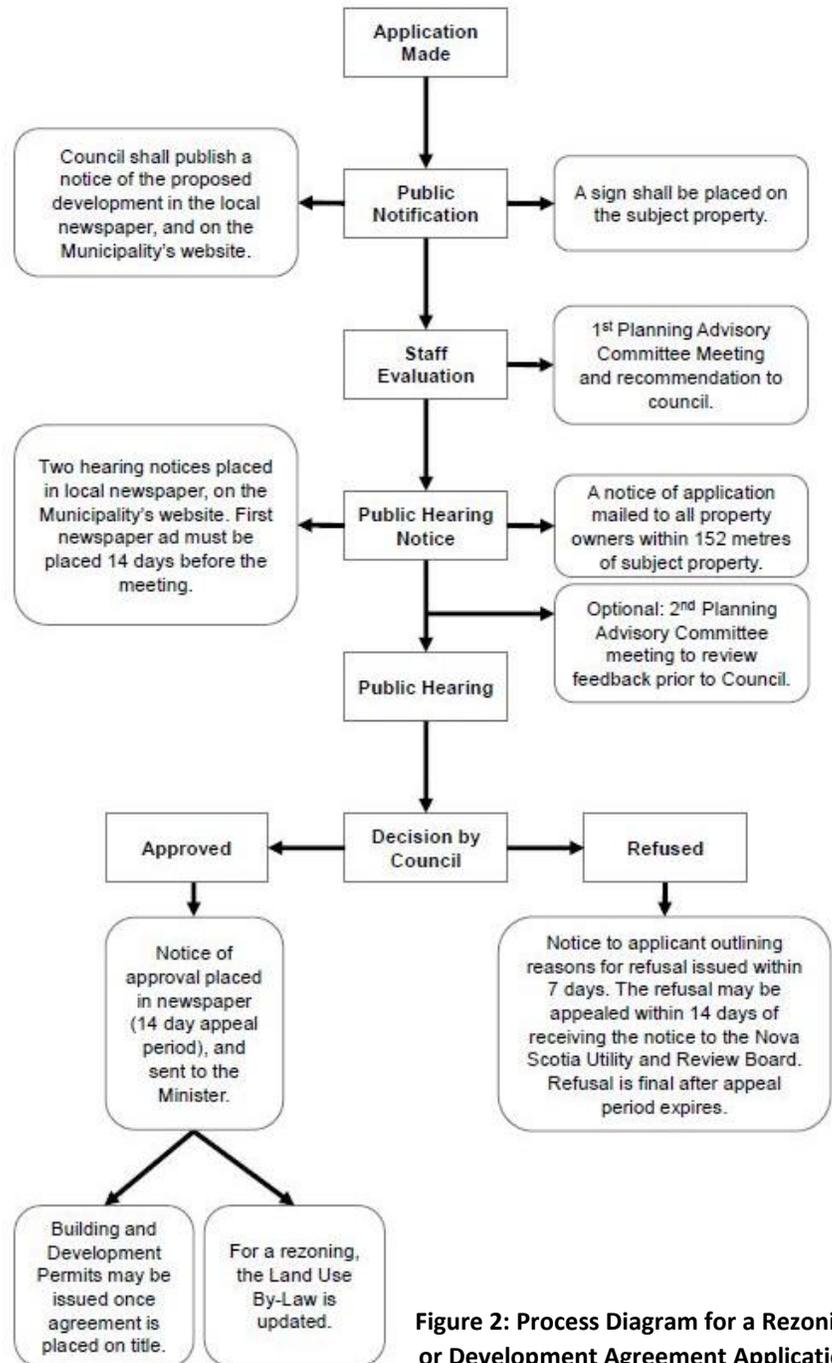


Figure 2: Process Diagram for a Rezoning or Development Agreement Application



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#### Alternatives

1. The Planning Advisory Committee may recommend that Council refuse the proposed Development Agreement, and **in doing so, must provide reasons why the proposed development does not reasonably carry out the intent of the MPS.** A decision of Council to refuse the proposed Development Agreement is appealable to the N.S. Utility & Review Board.



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**Appendix A: Draft Proposed Development Agreement (DA)**

# DEVELOPMENT AGREEMENT

TO PERMIT AN EVENING AFTER-HOURS PATIO LOUNGE USE,  
PID No. 90078452

THIS AGREEMENT MADE THIS \_\_\_\_\_ DAY OF **SEPTEMBER** 2021

BETWEEN:

**JAMES D'ENTREMONT BOAT BUILDERS LIMITED**, of Middle West Pubnico, Province of Nova Scotia  
(hereinafter called the "Developers")

OF THE FIRST PART

- and -

**THE MUNICIPALITY OF THE DISTRICT OF ARGYLE**, a body corporate  
(hereinafter called the "Municipality")

OF THE SECOND PART

**WHEREAS** the Developers have good title to lands situated on 23 Du Pont Du Marais Chemin, in Middle West Pubnico, Nova Scotia and identified as PID number 90078452, and which said lands (hereinafter called the "Property") is more particularly described in Schedule "A" of this Agreement;

**AND WHEREAS** pursuant to Policy 4.5.11 of the Municipality of the District of Argyle's Municipal Planning Strategy the Developers have requested that a development agreement be entered into to permit the Property to be used for a craft distillery, lounge, and patio accessory to a forgoing serving food or drink between the hours of 9pm and 9am, hereinafter called the "Development";

**AND WHEREAS** the Municipality, by a resolution of Council passed on the **7<sup>th</sup> day of September 2021** approved this Development Agreement to permit the Development.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the granting by the Municipality of the Development Agreement requested by the Developers, the Developers and the Municipality agree as follows:

## **PART 1: DEFINITIONS**

For the Purpose of this Agreement, all other words shall carry their customary meaning except those defined under in the definitions section of the Municipality of the District of Argyle's Land Use Bylaw, as amended from time to time.

## **PART 2: GENERAL REQUIREMENTS**

- 2.1 Subject to the provisions of this Agreement, the Developers shall be bound by all bylaws and regulations of the Municipality as well as by any applicable provincial and federal statutes and regulations.
- 2.2 Notwithstanding Section 2.1, where the provisions of this Agreement conflict with those of any provincial or federal regulations, bylaws or codes, the more stringent requirements shall apply.
- 2.3 The Developers shall assume full responsibility for meeting all obligations and financial liabilities required to meet all federal, provincial, or municipal regulations, bylaws or codes in force at the present time, or any time in the future.
- 2.4 The Developers shall ensure that any structure permitted by this Agreement meets the requirements of the National Fire Code and the National Building Code at the time of construction.
- 2.5 The Schedules to this Agreement form part of this Agreement and are binding upon the Developers. Where a provision of a Schedule conflicts with the body of this Agreement, the body of this Agreement shall prevail.

## **PART 3: DEVELOPMENT OF THE PROPERTY**

### **3.1 Land Use**

- 3.1.1 Only the following uses shall be permitted on the Property:
  - a) All uses permitted in the underlying zoning, as per the requirements of the Municipality of the District of Argyle Land Use Bylaw, as amended from time to time, in addition to any other uses permitted by this agreement; and
  - b) The developer shall be permitted to install a patio having a maximum area of 120 square metres. The following matters shall apply to the use of the patio:
    - i. The patio may be used to serve patrons alcohol with or without food;
    - ii. The hours of operation for the patio shall be between 8:30am until 12:00 (midnight), and additionally, from midnight to 2:00am on Saturdays, Sundays, July 2<sup>nd</sup>, and January 2<sup>nd</sup>;
    - iii. No live entertainment shall be permitted on the patio;
    - iv. Background music shall be permitted on the patio at a volume that will not disturb surrounding residential uses.
  - c) other uses, signage, parking or loading areas accessory to the principal use as per the requirements of the Municipality of the District of Argyle Land Use Bylaw, as amended from time to time.
- 3.1.2 Except where specifically stated otherwise in this agreement, all provisions of the Land Use Bylaw of the Municipality of the District of Argyle, approved by Municipal Council, as amended from time to time, shall apply to this development.
- 3.1.3 The Developers shall ensure that:

- a) all structures are maintained in good repair and in a tidy, attractive and usable state;
- b) all lawns, trees, shrubs, parking areas, lighting systems, and other landscaping elements are maintained in a tidy, attractive and usable state free of unkempt matter of any kind;
- c) the Development shall not generate emissions such as noise, dust, radiation, odors, liquids, or light to the air, water, or ground so as to create a recognized health or safety hazard, or create an unreasonable nuisance to adjacent properties.

### **3.2 Development Permit**

- 3.2.1 This development agreement shall be administered by the Development Officer as appointed by the Council of the Municipality of Argyle.
- 3.2.2 The Development Officer, at their discretion, may revoke a development permit pursuant to this agreement if:
  - a) the development is not in accordance with:
    - i. the Land Use Bylaw where not varied by this agreement,
    - ii. this agreement, or
    - iii. the plans associated with the approved development permit.
  - b) the permit was issued based on incorrect information provided by the applicant when applying for a development permit; or
  - c) the permit was issued in error; or
  - d) continued complaints and matters of non-compliance arise due to noise generation related from the operation of the outdoor patio use.
- 3.2.3 Development permits issued pursuant to this agreement will have a condition that the use of the patio may be revoked at the discretion of the development officer if compliance issues persist related to the development.
- 3.2.4 The development described in this agreement shall not be approved until the Development Officer has issued a development permit. In addition, the Development Officer shall not issue a development permit until:
  - a) Nova Scotia Department of Transportation and Active Transit has granted positive recommendation on all transportation issues within their responsibility and has given their approval, if any is required.
  - b) Payment for all required permit fees, registration of the document at the Registry of Deeds, and costs associated with advertising and processing the application have been received by the Municipality.

### **3.3 Building and Site Requirements**

- 3.3.1 **Municipal Services**  
All on site servicing and connections to the Municipality's Sanitary Sewer Services by the Developers will be maintained in a manner that is satisfactory to the Municipality.
- 3.3.2 **Parking and Loading Areas**
  - a) The parking and loading areas shall be surfaced with asphalt, gravel, or similar hard surface materials.

- b) The Developers shall be responsible for supplying, installing, and maintaining at the Developers' cost, directional and regulatory signage on the Property as required by the Provincial Traffic Authority.

### 3.3.3 Traffic and Vehicle Access

Final design and location of all driveways, pedestrian walkways, and regulatory signage are subject to approval by the Provincial Traffic Authority.

- 3.3.4 All outdoor lighting shall be installed so as to reflect light away from adjacent properties. In order to preserve the night sky, the Developer is encouraged to use sensitive lighting which is orientated downward, is low wattage, energy efficient and minimizes glare.

### 3.3.5 Operation and Maintenance of Property

- a) Any refuse, composting, or recycling container must be screened from public view and not situated within 6 m of any property abutting the development.
- b) The Developers shall keep the Property free from litter and debris and shall provide litter (and recycling if provided) receptacles in appropriate and easily accessible locations and service, maintain, and empty the receptacles as required.

## **PART 4: VARIANCE**

- 4.1 The Development Officer may grant a variance in the terms of this Agreement in accordance with Section 235 of the Municipal Government Act.

## **PART 5: AMENDMENTS**

- 5.1 Any amendment to this agreement, whether substantive or otherwise, must be approved by both parties in writing.
- 5.2 The following shall be considered non-substantial matters:
  - a) The addition, removal or relocation of accessory buildings.
  - b) An extension to the time limits identified in Part 7 of this agreement by a period to be decided by Council.
  - c) Matters dealing with signage.
  - d) Matters dealing with parking.
  - e) Matters dealing with landscaping.
  - f) Changes to the permitted use of the property that are necessary to accommodate features that are subject to approval or authorization by other authorities such as, but not limited to, the Nova Scotia Department of Transportation and Active Transit and Nova Scotia Environment.
- 5.3 Any non-substantial amendment to either the terms of this agreement or to any Schedules shall be subject to the amendment procedures set out in the Municipal Government Act.
- 5.4 Substantial matters shall relate to any matter not identified as insubstantial in this Part or otherwise addressed in this Agreement. This Agreement may be amended in order to provide for substantial matters according to the Municipal Government Act.

## **PART 6: IMPLEMENTATION**

- 6.1 Upon breach by the Developers of any of the terms or conditions of this Agreement, the Municipality may, after thirty days notice in writing to the Developers of the breach, enter the Property and perform any of the terms and conditions of this Agreement. It is agreed that all reasonable expenses arising out of the entry or the performance of the terms and conditions may be recovered from the Developers by direct suit and shall form a charge on the Property.
- 6.2 This Agreement shall be binding upon the Developers' assigns, mortgagees, lessees, successors and occupiers of the Property.
- 6.3 This agreement shall be filed by the Municipality in the Registry of Deeds at Bridgewater, Nova Scotia, and shall form a charge or encumbrance upon the property as described in Schedule "A" attached hereto.
- 6.4 The Developers hereby certify that they are the sole owner of the Properties.
- 6.5 The Developers further certify that they have not disposed of any interest in the Property and there are no judgements, mortgages or other liens or encumbrances affecting the Property in addition to those described in this Agreement.
- 6.6 The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not prejudice the validity or enforcement of any other provisions.
- 6.7 The Developer shall at all times indemnify and save harmless the Municipality from and against all claims, demands, losses, costs, damages, actions, suits or other proceedings by whomever made, brought or prosecuted to the extent that the foregoing are based upon, occasioned by or attributable to anything done or omitted by the Developer or his servants or his agents or his employees in the fulfillment of any of his obligations under this Agreement.
- 6.8 Upon completion of the Development, or after three (3) years from the date of approval of this Agreement, whichever time period is less, Council may review this agreement, in whole or in part, and may:
  - a) retain the Agreement in its present form; or
  - b) discharge the Agreement on the condition that for those portions of the development that are deemed complete by the Council, the Developer's rights hereunder are preserved, and Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use Bylaw.

## **PART 7: TIMING**

- 7.1 The Developers shall enter into this Agreement within one year of the Municipality of the District of Argyle's approval of this Agreement.
- 7.2 Pursuant to the terms and conditions of this agreement, the Developer shall apply for a development permit for the patio within three (3) years of the parties entering into this development agreement. Once a development permit has been issued, the development shall be made consistent with all terms and conditions of this agreement no later than two (2) years after the development permit has been issued, otherwise the development agreement may be terminated and the existing zone and all provisions of the Land Use Bylaw shall apply without the concurrence of the property owner.
- 7.3 If the Developers fails to conform to any of these specified time limits, or breaches any

other term of this Agreement, this Agreement may be discharged by Council, with or without the concurrence of the property owner, and the lands will become subject to the Municipal Planning Strategy and Land Use Bylaw.

## **SCHEDULES**

- A Legal description of property

DRAFT

**IN WITNESS WHEREOF** the parties hereto have executed these presents on the day and year first above written.

SIGNED, SEALED & DELIVERED

in the presence of:

	)	<u>DEVELOPER</u>
	)	
	)	
_____	)	_____
Witness	)	James D'Entremont Boat Builders Limited
	)	
	)	
	)	<u>THE MUNICIPALITY OF THE DISTRICT OF</u>
	)	<u>ARGYLE</u>
	)	
_____	)	_____
	)	Chief Administrative Officer
Witness	)	

PROVINCE OF NOVA SCOTIA  
COUNTY OF YARMOUTH

On this \_\_\_\_\_ day of September 2021, before me, the subscriber, personally came and appeared \_\_\_\_\_, a subscribing witness to the foregoing agreement, who having been by me duly sworn, made oath and said that the developer, one of the parties thereto, caused the same to be executed in their name in his/her presence.

\_\_\_\_\_  
A Barrister of the Supreme Court of Nova Scotia

PROVINCE OF NOVA SCOTIA  
COUNTY OF YARMOUTH

On this \_\_\_\_\_ day of September 2021, before me, the subscriber, personally came and appeared \_\_\_\_\_, a subscribing witness to the foregoing agreement who having been by me duly sworn, made oath and said that the Municipality of the District of Argyle, a Municipal Body Corporate, duly affixed its Corporate Seal and executed by Mr. Alain Muise, its Chief Administrative Officer, its proper officers duly authorized in that behalf in his/her presence.

\_\_\_\_\_  
A Barrister of the Supreme Court of Nova Scotia

## **SCHEDULE “A”**

### ***PID 90078452***

This agreement applies to property identified by PID 90078452 and further described by Plan filed at the Registry of Deeds Office for the registration district of Yarmouth in Bridgewater, Nova Scotia, registered under the *Land Registration Act*.



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#### Appendix B: Policy Evaluation

The proposal may be considered by Council through the following applicable policies of the Municipal Planning Strategy for Argyle (MPS):

Applicable Policies	Staff Comments
<p><b>Policy 4.5.1:</b> It shall be the policy of Council to designate the communities of West Pubnico, Wedgeport and Tusket as Rural Centres (RC) designation on the Generalized Future Land Use Maps to accommodate a wide range of uses in a manner which is flexible and sensitive to the needs of the residents. The existing wind farm Pubnico Point will be excluded from this designation.</p>	<p>The subject site is within this designation.</p>
<p><b>Policy 4.5.2:</b> It shall be the policy of Council that the intent of the Rural Centres (RC) designation is to accommodate a wide range of residential, institutional, commercial, agricultural, recreational, wind energy, and utility uses.</p>	<p>The subject site is within this designation, and the proposed use of the site is both commercial and industrial.</p>
<p><b>Policy 4.5.3:</b> It shall be the policy of Council to establish in the Rural Centres (RC) designation the following zones:</p> <ul style="list-style-type: none"> <li>a) Mixed Use (MU) Zone;</li> <li>b) A Light Industrial (LI) zone and a Heavy Industrial (HI) Zone. Existing industrial uses will be zoned according to their operations, either as Light Industrial (LI) zone or Heavy Industrial (HI) zone.</li> <li>c) A Pubnico Point Wind Farm (WF) Zone in the Land Use By-law at the Pubnico Point Wind Farm site.</li> <li>d) A Residential Park (RP) Zone for the western portion of the current and former Municipal lands in Tusket.</li> <li>e) A Marine Industrial (MI) Zone as per the policies of Section 8.9.</li> </ul>	<p>The subject site is within the Light Industrial (LI) Zone.</p>
<p><b>Policy 4.5.7:</b> It shall be the policy of Council to exclude from the Rural Centre designation certain agricultural uses, commercial uses, industrial uses and recreational uses deemed not compatible with the fabric of the Rural Centre communities.</p>	<p>Craft distillery uses and lounges are permitted uses within the light industrial zone.</p>
<p><b>Policy 4.5.10:</b> It shall be the policy of Council that Council shall consider the following uses by site plan approval in the Light Industrial (LI) Zone:</p> <ul style="list-style-type: none"> <li>a) Small Scale Wind Turbine Generator</li> </ul>	<p>N/A</p>
<p><b>Policy 4.5.11:</b> It shall be the policy of Council that Council may consider the following uses by development agreement, pursuant to the requirements of Policy 13.14 and Section 4.5, in the Light Industrial (LI) Zone:</p> <ul style="list-style-type: none"> <li>a) Aquaculture (Indoor and Outdoor)</li> <li>b) Drive-throughs</li> <li>c) Restaurant, Evening Patio Use</li> </ul>	<p>The proposed development agreement is for a 'Restaurant, Evening Patio Use'.</p>
<p><b>Policy 8.6.1:</b> It shall be the policy of Council to establish a Heavy Industrial (HI) Zone and a Light Industrial (LI) Zone in the Rural Centre designation (refer to the Rural Centre designation policies).</p>	<p>The subject property is within the Rural Centre designation.</p>



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<p><b>Policy 8.6.4:</b> It shall be the policy of Council to permit compatible Light Industrial uses in the Coastal Communities (CC) Zone, the Light Industrial (LI) Zone, the Business Park (BP) Zone, and the Rural Development (RD) Zone.</p>	<p>The Light Industrial (LI) Zone is currently applied to a portion of the subject property.</p>
<p><b>Policy 8.6.4:</b> It shall be the policy of Council to permit compatible Light Industrial uses in the Coastal Communities (CC) Zone, the Light Industrial (LI) Zone, the Business Park (BP) Zone, and the Rural Development (RD) Zone.</p>	<p>Staff feel the proposed development agreement for a 'Restaurant, Evening Patio Use' provides sufficient provisions to enable land use compatibility with adjacent uses.</p>
<p>To enter into development agreement pursuant to the <i>Municipal Government Act</i> on the terms and conditions set forth in this Municipal Planning Strategy and a development agreement shall:</p> <p><b>13.12.1</b> specify the development, expansion, alteration, or change in use permitted; and</p> <p><b>13.12.2</b> specify the conditions under which the development may occur; and</p> <p><b>13.12.3</b> set forth the terms by which Council may terminate the agreement.</p> <p><b>13.12.4</b> The provisions of the Land Use By-law shall prevail after discharge of any agreement.</p>	<p>The required provisions are contained in the draft development agreement.</p>
<p><b>13.14</b> To consider the following in addition to all other criteria set out in the various policies of this Municipal Planning Strategy, when considering amendments to the Land Use By-law, or proposals for development agreements:</p> <p><b>13.14.3</b> Where a proposal is for a use which involves the advertising, sales, and/or production of production facilities for alcohol and cannabis, Council will consider the proximity and exposure of the use to areas where children and youth frequent. Council will also consider the potential negative effects on residents by odours resulting from such production facilities.</p>	<p>The site is not within proximity from locations children and youth frequent, and is approximately 3.5km from École Pubnico-Ouest.</p>
<p><b>Policy 13.14.4:</b> That the proposal is not in conflict with Municipal or Provincial programs in effect in the Municipality; and that the proposal is not premature or inappropriate by reason of the:</p> <p><b>a)</b> Financial ability of the Municipality to absorb costs related to the development; or</p> <p><b>b)</b> Adequacy of sewer and water services, including fire flows and water pressure or the adequacy of the site for on-site services; or</p> <p><b>c)</b> Creation or worsening of a pollution problem in the area such as but not limited to soil erosion and siltation of watercourses; or</p> <p><b>d)</b> Adequacy of storm drainage and effects of alteration to drainage patterns, including the potential for creation of a flooding problem; or</p> <p><b>e)</b> Suitability of the site regarding grades, soils and geological conditions, location of watercourses, marshes, bogs and swamps, and proximity to utility rights-of-way; or</p>	<p><b>a)</b> No financial impacts are expected to the Municipality from the proposed development.</p> <p><b>b)</b> Servicing to the site is adequate, on-site services will need to be determined as part of detailed design.</p> <p><b>c)</b> No concerns are expected from the proposed development.</p> <p><b>d)</b> No drainage concerns are expected from the proposed development.</p> <p><b>e)</b> A portion of the rear of the site has marshy conditions, but the front portion of the property appears to be developable.</p> <p><b>f)</b> Subject site is not nearby to schools, recreation and other community facilities. This is preferable for this application.</p> <p><b>g)</b> No significant impacts are expected to the transportation network from the proposed development. NSTAT may provide further detail on if this expectation is accurate.</p> <p><b>h)</b> The proposed development needs to conform to zoning requirements for parking.</p>



## STAFF REPORT

### Planning and Development

<p><b>f)</b> Adequacy and proximity of school, recreation and other community facilities; or</p> <p><b>g)</b> Adequacy of road networks in, nearby, and leading to the development, regarding congestion and traffic hazards; and</p> <p><b>h)</b> That the proposal provides adequate off-street parking to prevent congestion, nuisance and inconvenience in the area; and</p> <p><b>i)</b> The hours of operation are appropriate for the neighbourhood; and</p> <p><b>j)</b> That the primary architectural features of the proposal, including but not limited to bulk, scale, roof shape, building materials, exterior cladding and shape, and size and relationship of doors and windows, shall be visually compatible with nearby buildings in the case of a new building, or with the original building in the case of an addition; and</p> <p><b>k)</b> That the proposal will not significantly alter the character or stability of the surrounding neighbourhood.</p>	<p><b>i)</b> The hours of operation are regulated in a manner with sufficient protections to remove the use if significant complaints are received.</p> <p><b>j)</b> The proposed development's bulk is expected to be similar in size to nearby industrial developments.</p> <p><b>k)</b> The proposed development is expected to be similar in industrial character to nearby developments.</p>
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