

COMMITTEE OF THE WHOLE MARCH 26, 2007

**ZONING BY-LAW AMENDMENT FILE Z.98.021
SITE DEVELOPMENT FILE DA.98.020
791296 ONTARIO LIMITED
REPORT #P.98.110**

Recommendation

The Commissioner of Planning recommends:

1. THAT applications to amend the Official Plan and Zoning By-law are required to permit a "Fitness Club" and/or a "Karate School" on the subject lands shown on Attachment #1.

Economic Impact

There are no requirements for new funding associated with this report.

Communications Plan

N/A

Purpose

The purpose of this report is to respond to the February 8, 2007 letter (Attachment #3) submitted by Mr. Dan Dalimonte, who appeared as a deputation at the Committee of the Whole meeting on February 19, 2007, concerning the uses permitted on the subject lands (Attachment #1) as set out in Zoning By-law 216-2006 (Zoning By-law Amendment File Z.98.021) as shown on Attachment #2, and in response to the following resolution by Council on February 26, 2007:

"That in keeping with the City's efforts to entrench physical fitness in the community and to ensure children's fitness programming, that Staff be directed to report on the necessary steps to reinstate the previously permitted fitness use."

Background - Analysis and Options

In 1995, the subject lands, shown on Attachment #1, were zoned OS1 Open Space Conservation Zone by By-law 310-95 to permit a stormwater management facility for Draft Plan of Subdivision File 19T-94014 (Graybank Limited Partnership and Maytree (Vaughan) Limited). In May 1997, the Toronto and Region Conservation Authority (TRCA), and the City determined that the subject lands were no longer required for a stormwater management facility, since an alternative stormwater management arrangement was designed to the satisfaction of the TRCA and the City.

On March 2, 1998, the Owner (791296 Ontario Limited) of the subject lands submitted Zoning By-law Amendment and Site Development Applications (Files Z.98.021 and DA.98.020) to facilitate a 3,769.8 m², 3-storey mixed-use building, with office uses on the first floor, 20 apartment units on the second floor and a third floor loft. A Public Hearing was held on May 19, 1998, to consider the Zoning Amendment application.

On September 20, 1999, a community information meeting was held between the Owner and area residents to discuss concerns associated with the proposed mixed-use office/commercial and residential development. The Owner subsequently amended the applications by eliminating the residential component of the proposal and proposed the following uses:

- business or professional office;
- day nursery;
- eating establishment; and,
- retail store.

A letter/petition dated September 29, 1999, from the Denton Circle, Prestonwood Court and Stonebriar Drive residents was received by the City. The residents expressed concerns related to increased traffic, access issues from Masters Avenue onto Keele Street, reduced privacy, and decreased property values. The residents' petition indicated that a low-rise commercial retail building would be preferable.

The Development Planning Department reviewed the modified proposal, and it was determined that exceptions to the minimum zoning standards were required to facilitate the revised proposal, including a reduction of 23 parking spaces from 92 to 69 parking spaces. The Owner had requested that an eating establishment be a permitted use. However, an eating establishment use generates a high demand for parking, which would be difficult to provide on the site, given the building size of 1953.8 m², the 0.37 ha site area, and the parking deficiency already proposed. Accordingly, it was recommended that an eating establishment not be a permitted use. In recognition of the restricted site area, the day nursery, business and professional office and retail store uses were identified as permitted uses on the subject lands with specific gross floor area limits ultimately incorporated into the implementing by-law (By-law 216-2006).

On December 18, 2001, Council ratified the Committee of the Whole recommendation from December 3, 2001, to approve the Zoning By-law Amendment Application to rezone the subject lands from OS1 Open Space Conservation Zone to C8 Office Commercial Zone and to permit up to 600 m² of GFA for retail commercial uses, business or professional offices with up to 2 regulated health professionals, and a day nursery up to 700 m² of GFA, and approved the site plan. Following Council's approval, the Owner did not proceed to advance the zoning and site plan approvals for over two and one-half years.

On August 13, 2004, the Owner submitted a revised proposal to eliminate the day nursery use and replace it with a commercial school. In correspondence dated September 15, 2004, the Building Department advised that the proposal for a commercial school required 103 parking spaces instead of 69 parking spaces provided on the approved site plan and a minimum 15 m building setback from a Residential Zone. On January 11, 2005, the Owner revised the proposal back to the day nursery use and eliminated the commercial school use.

The subject lands are designated "Office Commercial" by OPA #350 (Maple Community Plan), as amended. The "Office Commercial" designation allows low-rise office buildings, with limited ground floor retail, in a scale and form that is complementary and compatible with adjacent low-rise residential development. A "Fitness Club" or "Karate School" would not be permitted in the "Office Commercial" designation.

On June 26, 2006 Council, enacted By-law 216-2006 (Attachment #2), to rezone the subject lands from OS1 Open Space Conservation Zone to C8 Office Commercial Zone to permit the uses as follows:

- commercial/retail uses up to 600 m² of GFA;
- and professional office uses including up to 2 regulated health professionals; and,
- day nursery up to 700 m² of GFA.

By-law 216-2006 does not permit "Fitness Club" and/or a "Karate School" uses. The "Fitness Club" and/or a "Karate School" uses were never uses requested by the Owner in the submission

of the applications to amend the Zoning By-law and for Site Plan approval. Further, the "Fitness Club" and/or a "Karate School" uses were never considered by Council.

Additional Use(s)

In the February 8, 2007 letter (Attachment #3), submitted by Mr. Dan Dalimonte, he indicates that he wants a "Fitness Club" as a permitted use on the subject lands, and that he was unaware of the limitations of By-law 216-2006 on the subject lands. The Owner, who has been involved with the proposal since March 1998, has been aware of the uses permitted on the subject lands throughout the entire process. On February 15, 2007, Mr. Dan Dalimonte and his prospective tenant came to the Development Planning Department to advise that they wanted to establish a "Karate School" use on the subject lands. They were advised by the Development Planning Department that a "Fitness Club" use or "Karate School" use are currently not permitted and would require the submission of applications to amend the Official Plan and Zoning By-law, as the uses are not permitted. This interpretation of the zoning by-law was also confirmed by the Building Standards Department.

The Owner was issued an "Order to Comply" on July 5, 2006, "Stop Work Orders" on July 7, 2006 and November 29, 2006, and an "Order Not to Cover Construction" on February 13, 2007. On February 15, 2007, the Owner returned the signed copies of the Site Plan Agreement and the required securities and insurance documents to the Development Planning Department. The Site Plan Agreement was registered on February 22, 2007.

Relationship to Vaughan Vision 2007

This staff report is consistent with the priorities set forth in Vaughan Vision 2007, particularly 'A-5', "Plan and Manage Growth".

Regional Implications

N/A

Conclusion

The Development Planning Department has reviewed the request to permit a "Fitness Club" and "Karate School" uses on the subject lands. The requested "Fitness Club" and/or "Karate School" uses as set out in the February 8, 2007 letter (Attachment #3) submitted by Mr. Dan Dalimonte, are not permitted uses and were never permitted uses for the subject lands shown on Attachment #1. The only permitted uses for the subject lands shown on Attachment #1 are commercial/retail uses up to 600 m² of GFA, business and professional office uses including up to 2 regulated health professionals, and a day nursery up to 700 m² of GFA in the C8 Office Commercial Zone by By-law 216-2006, which was enacted by Council on June 26, 2006 (Attachment #2). A stormwater management facility, which was zoned OS1 Open Space Conservation Zone by By-law 310-95 and enacted by Council on October 30, 1995, was the only use permitted on the subject lands shown on Attachment #1 prior to the enactment of By-law 216-2006 to rezone the subject lands to C8 Office Commercial Zone for the permitted uses discussed in Recommendation #3 of this Report.

The proposed uses do not conform to the Official Plan and are not permitted by By-law 1-88 as amended by By-law 216-2006. Accordingly, should the Owner wish to establish either of these uses on the subject lands, applications to amend the Official Plan and Zoning By-law are required. The proposed uses would be reviewed in accordance with the applicable policies of the Official Plan and the requirements of the Zoning By-law, and with respect to compatibility and appropriateness in the context of development on the subject lands and with the surrounding area.

Attachments

1. Location Map
2. Zoning By-law 216-2006
3. February 8, 2007 letter submitted by Mr. Dan Dalimonte

Report prepared by:

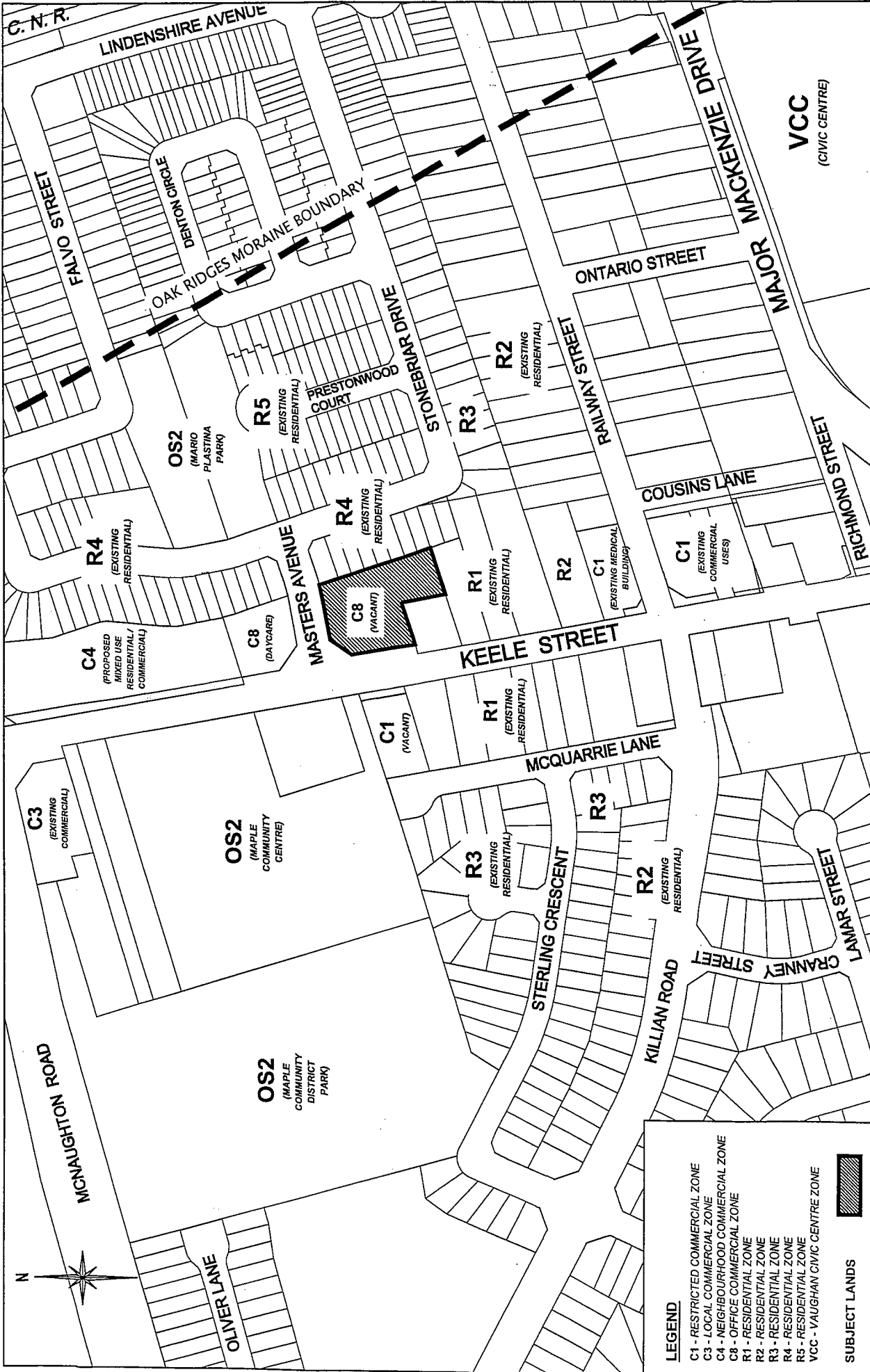
Judy Jeffers, Planner, ext. 8645
Mauro Peverini, Senior Planner, ext. 8407
Grant Uyeyama, Manager of Development Planning, ext. 8635

Respectfully submitted,


JOHN ZIPAY
Commissioner of Planning

MARCO RAMUNNO
Director of Development Planning

/CM



- LEGEND**
- C1 - RESTRICTED COMMERCIAL ZONE
 - C3 - LOCAL COMMERCIAL ZONE
 - C4 - NEIGHBOURHOOD COMMERCIAL ZONE
 - C8 - OFFICE COMMERCIAL ZONE
 - R1 - RESIDENTIAL ZONE
 - R2 - RESIDENTIAL ZONE
 - R3 - RESIDENTIAL ZONE
 - R4 - RESIDENTIAL ZONE
 - R5 - RESIDENTIAL ZONE
 - VCC - VAUGHAN CIVIC CENTRE ZONE

SUBJECT LANDS 

Location Map

Part of Lot 21,
Concession 3

APPLICANT:
791296 ONTARIO LIMITED

N:\DFT\1 ATTACHMENTS\2\z.98.021\d6.98.021



Development Planning Department

Attachment

FILE No.:
Z.98.021 & DA.98.021

Not to Scale
March 7, 2007




THE CORPORATION OF THE CITY OF VAUGHAN

IN THE MATTER OF Section 34,
Subsections (18) and (19) of
the Planning Act, R.S.O. 1990, c.P.13


I, JOHN D. LEACH, of the Town of Caledon, in the Regional Municipality of Peel, make oath and say:

1. THAT I am the City Clerk of the Corporation of the City of Vaughan and as such, have knowledge of the matters hereinafter deposed to.
2. THAT By-law Number 216-2006 was passed by the Council of the Corporation of the City of Vaughan on the 26th day of June, 2006, and written notice was given on the 29th day of June, 2006 in the manner and form and to the persons prescribed in Regulation 199/96.
3. THAT no notice of appeal setting out an objection to By-law 216-2006 was filed with me within twenty (20) days from the date of written notice of the passing of the by-law.
4. THAT By-law Number 216-2006 is deemed to have come into effect on the 26th day of June, 2006.

SWORN BEFORE ME in the City)
of Vaughan, in the Regional)
Municipality of York, this)
20th day of July, 2006.)



JOHN D. LEACH



A Commissioner, etc.

JOSEPH ANTHONY VINCENT CHIARELLI,
a Commissioner, etc.,
Regional Municipality of York,
for The Corporation of the City of Vaughan.
Expires March 7, 2008.

THE CITY OF VAUGHAN

BY-LAW

BY-LAW NUMBER 216-2006

A By-law to amend City of Vaughan By-law 1-88, as amended.

WHEREAS the matters herein set out are in conformity with the Official Plan of the Vaughan Planning Area, which is approved and in force at this time;

AND WHEREAS there has been no amendment to the Official Plan adopted by Council and not approved at this time, with which the matters herein set out are not in conformity;

NOW THEREFORE the Council of the Corporation of the City of Vaughan ENACTS AS FOLLOWS:

1. That City of Vaughan By-law Number 1-88, as amended, be and it is hereby further amended by:

a) Rezoning the lands shown as "Subject Lands" on Schedule "1" attached hereto, from OS1 Open Space Conservation Zone in Paragraph 9(913) to C8 Office Commercial Zone, in the manner shown on the said Schedule "2";

b) Adding the following Paragraph to Section 9.0 "EXCEPTIONS":

"(1262) Notwithstanding the provisions of:


- a) Subsections 5.1.4 and 5.9 respecting Permitted Uses in a C8 Office Commercial Zone;
- b) Subsection 5.1.5 and Schedule "A", respecting the Minimum Lot Area, Minimum Lot Frontage, Minimum Front Yard Setback, Minimum Rear Yard Setback; Minimum Exterior Side Yard Setback; Minimum Interior Side Yard Setback, and the Minimum Setback to a Residential Zone in a C8 Office Commercial Zone and for Institutional Uses;
- c) Subsection 3.9 (a) respecting the Loading Space requirements for a Commercial Use;
- d) Subsections 3.13, 5.1.1(a) and 5.1.1(b) respecting the Minimum width of the Landscaping Strip for an Institutional Use and a Commercial Zone abutting a Residential Zone;
- e) Subsection 3.8 (a) respecting Minimum Parking requirements for an Office Building Retail Store, a Day Nursery, a Business or Professional Office, and a Regulated Health Professional Office or Clinic;
- f) Subsection 3.8(f) respecting the Minimum Aisle Width Leading to an Angled Parking Space;

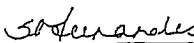
the following provisions shall apply to the lands shown as "Subject Lands" on Schedule "E-1390", attached hereto as Schedule "1":

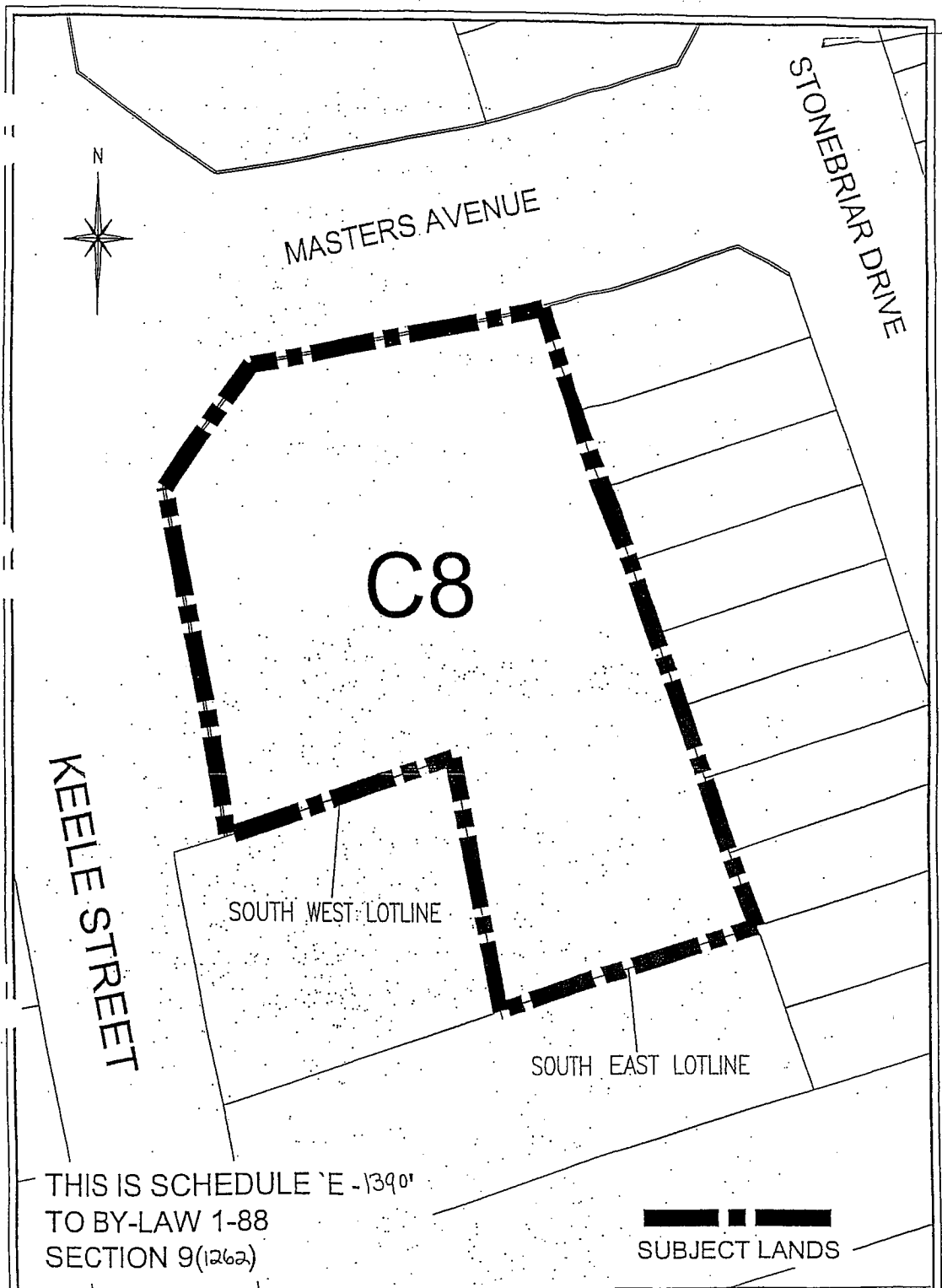
- ai) the following uses shall be permitted:

- i) commercial/retail uses up to a maximum of 600m² of gross floor area restricted to the ground floor only;
 - ii) Business and Professional Offices including a maximum of two (2) Regulated Health Professionals);
 - iii) a Day Nursery up to a maximum of 700m² of gross floor area;
 - bi) the following zone requirements shall apply:
 - i) the Minimum Lot Area shall be 3730m²;
 - ii) the Minimum Lot Frontage shall be 38m;
 - iii) the Minimum Front Yard Setback (Masters Avenue) shall be 2.0m;
 - iv) the Minimum Building Setback abutting a sight triangle shall be 3.0m;
 - v) the Minimum Rear Yard Setback shall be 1.7m;
 - vi) the Minimum Exterior Side Yard Setback (Keele Street) shall be 1.0m;
 - vii) the Minimum Interior Side Yard Setback shall be 3.0m;
 - viii) the Minimum Setback from a Building or Structure to a Residential Zone shall be 1.7m;
 - ci) a Loading Space is not required;
 - di) the Minimum Landscape Strip shall be as follows:
 - i) abutting Masters Avenue: 2.0m;
 - ii) abutting Keele Street: 1.0m;
 - iii) abutting a Sight Triangle: 3.0m;
 - iv) between a Building and an R1 Residential Zone (south-west lot line): 1.7m;
 - v) abutting an R4 Residential Zone: 1.0m;
 - vi) abutting an R1 Residential Zone (south-east lot line): 0m;
 - ei) a minimum of 66 Parking Spaces shall be provided; and
 - fi) the minimum Aisle Width leading to the Angled Parking Spaces shall be 4.0m;
 - c) Adding Schedule "E-1390" attached hereto as Schedule "1".
 - d) Deleting Schedule "E-997" and substituting therefor Schedule "E-997" attached hereto as Schedule "2".
 - e) Deleting Key Map 3E and substituting therefor the Key Map 3E attached hereto as Schedule "3".
2. Schedules "1", "2" and "3" shall be and hereby form part of this By-law.

READ a FIRST, SECOND and THIRD time and finally passed this 26th day of June, 2006.


Michael Di Biase, Mayor


Sybil Fernandes, Deputy City Clerk



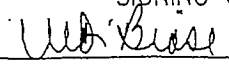
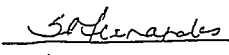
THIS IS SCHEDULE 'E' - 1390'
 TO BY-LAW 1-88
 SECTION 9(1262)

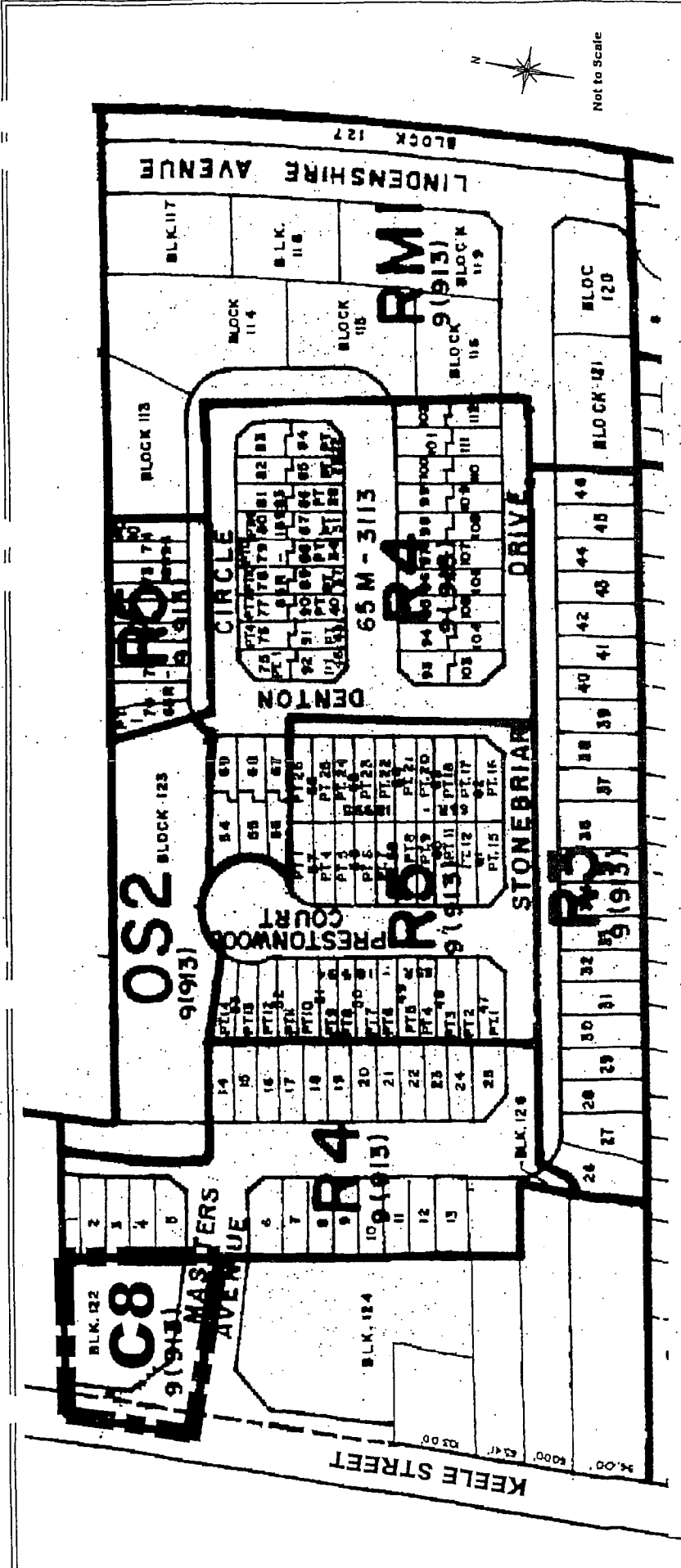

 SUBJECT LANDS

NOT TO SCALE

THIS IS SCHEDULE '1'
 TO BY-LAW 216 - 2006
 PASSED THE 26 DAY OF JUNE, 2006

FILE No. Z.98.021
 RELATED FILE No. DA.98.020
 LOCATION: Lot 21, Concession 3
 APPLICANT: 791296 ONTARIO LTD.
 CITY OF VAUGHAN

SIGNING OFFICERS

 MAYOR

 CLERK



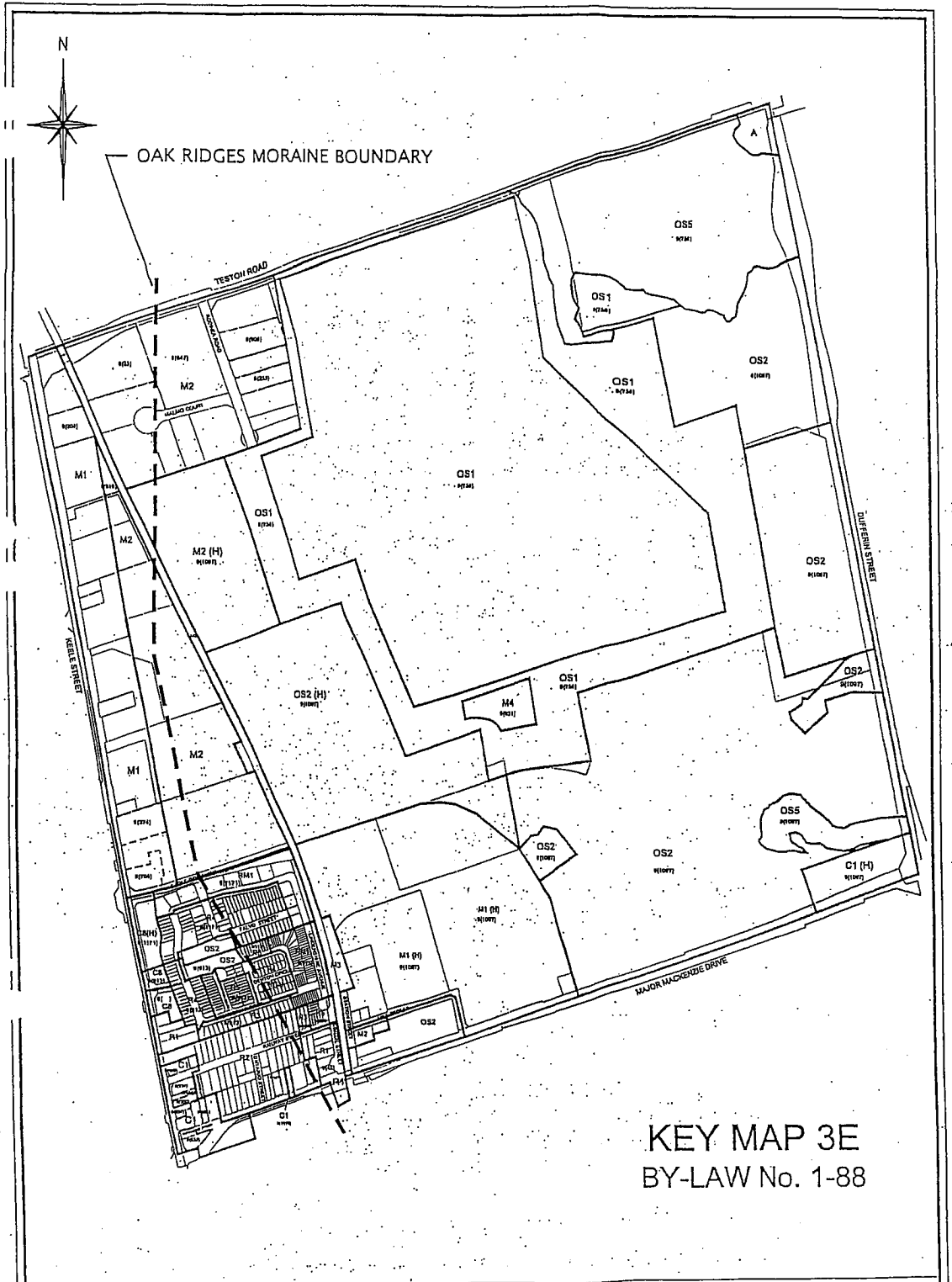
THIS IS SCHEDULE 'E' - 997
 TO BY-LAW 1-88
 SECTION 9(913)

SUBJECT LANDS

SIGNING OFFICERS
W. G. ... MAYOR
B. ... CLERK

THIS IS SCHEDULE '2'
 TO BY-LAW 216 - 2006
 PASSED THE 26 DAY OF JUNE, 2006

FILE No. 7.98.021
 RELATED FILE No. DA.98.020
 LOCATION: Lot 21, Concession 3
 APPLICANT: 791296 ONTARIO LTD.
 CITY OF VAUGHAN



KEY MAP 3E
BY-LAW No. 1-88

THIS IS SCHEDULE '3'
TO BY-LAW 216 - 2006
PASSED THE 26 DAY OF JUNE, 2006

NOT TO SCALE

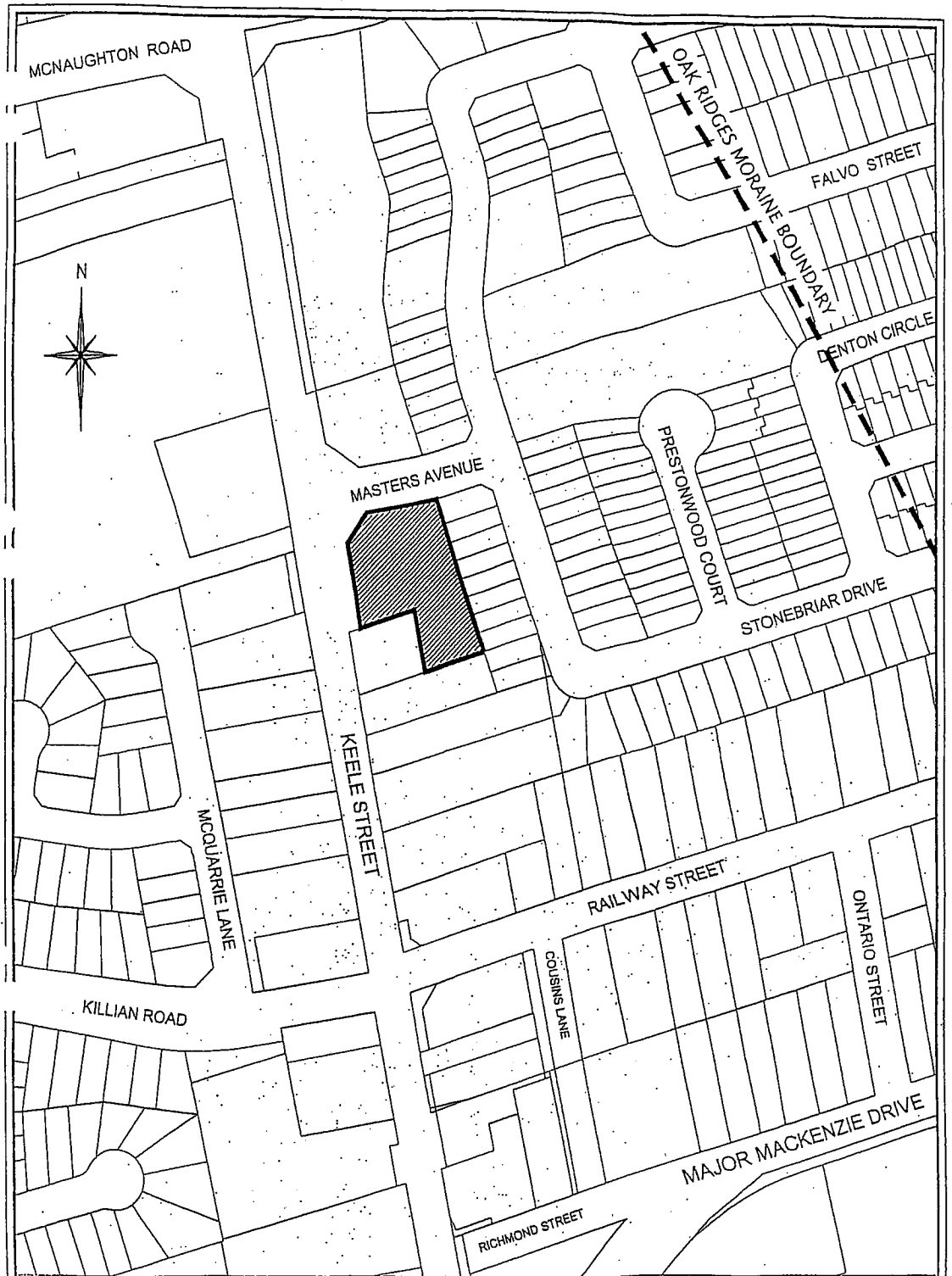
FILE No. Z.98.021
RELATED FILE No. DA.98.020
LOCATION: Lot 21, Concession 3
APPLICANT: 791296 ONTARIO LTD.
CITY OF VAUGHAN

SIGNING OFFICERS
[Signature] MAYOR
[Signature] CLERK

SUMMARY OF BY-LAW 216-2006

The lands subject to this By-law are located on the southeast corner of Keele Street and Masters Avenue being Block 124 on Plan 65M-3113, in Part of Lot 21, Concession 3, City of Vaughan.

The purpose of this By-law is to rezone the subject lands from OS1 Open Space Conservation Zone to C8 Office Commercial Zone to facilitate the development of the subject lands with a two-storey building to be used for commercial, business and professional office, and day nursery uses. The By-law provided for exceptions to the minimum required lot area and frontage, building setback, parking, loading space, landscape and driveway aisle width requirements of By-law 1-88 in order to implement a Council approved site plan.



LOCATION MAP
TO BY-LAW 216-2006

NOT TO SCALE

FILE: Z.98.021
 RELATED FILE No. DA.98.020
 LOCATION: Lot 21, Concession 3
 APPLICANT: 791296 ONTARIO LTD.
 CITY OF VAUGHAN



Dan DALIMONTE

188 Marsi Road
RICHMOND HILL, Ontario
L4C 5S8

February 8, 2007

Delivered by Hand

CITY OF VAUGHAN
2141 Major Mackenzie Drive
VAUGHAN, Ontario
L4C 5S8

Attention: John LEACH, Clerk of The City of Vaughan

Dear Sirs;

Re: Zoning By-law Amendment File Z.98.021

RECEIVED
FEB - 8 2007
CLERK'S DEPT

I would like to request that the referenced application be placed before Council Committee of the Whole as a special deputation for reconsideration.

When this application was originally heard, I did not realize that the passage of the amendment would restrict my uses of the property to only those set out in the amendment. I assumed that previous permitted zoning uses prior to the amendment would also continue. Specifically, I thought that the existing "technical" zoning permitting fitness clubs would continue.

After the Committee of the Whole approved the zoning amendment application I was informed by my future tenant that he attended at the building department in order to obtain information regarding a permit for his fitness club use and that he told that use was not permitted by the amended zoning.

I had always intended that the fitness use continue as I had already committed part of the building to this tenant for that use and through my error this use had been extinguished.

I now respectfully request that the zoning amendment be further amended to permit the fitness use. I apologize for any inconvenience that this has caused Council and Staff and thank you in advance for your thoughtful consideration to my request.

Yours truly,

Dan DALIMONTE
DD/

