

## **COMMITTEE OF THE WHOLE DECEMBER 6, 2011**

### **CURRENT POLICIES FOR OUTDOOR PATIOS WITHIN THE C11 MAINSTREET COMMERCIAL ZONE IN KLEINBURG WARD 1**

#### **Recommendation**

The Commissioner of Planning recommends:

1. THAT this report be received as information.

#### **Contribution to Sustainability**

N/A

#### **Economic Impact**

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

#### **Communications Plan**

A copy of this report will be forwarded to the Kleinburg Business Improvement Members for their information.

#### **Purpose**

This report has been prepared in response to the following Committee of the Whole (Working Session) direction on June 21, 2011, as adopted by Vaughan Council on June 28, 2011, respecting Item #1 - "Kleinburg Economic Development Strategy – A Mainstreet Revitalization Project (KEDS) – Final Report" (in part):

"That Planning staff review, in consultation with the Economic Development staff and KBIA, the current zoning restrictions for outdoor patios in Kleinburg and report back to a Committee of the Whole prior to the end of 2011 on the feasibility of amending the policies to allow flexibility for patio use in the Kleinburg core and to include costs associated to any amendments to address these barriers;"

The Development Planning Department has reviewed the current Official Plan, Zoning By-law and Site Plan documents and planning processes that are in place as they pertain to the approvals required for the addition of an accessory outdoor patio use to an existing Eating Establishment use. The Development Planning Department advises, through this report, that the current Official Plan policies and Zoning By-law requirements permit accessory outdoor patios as-of-right, and that the Site Plan Review process provides a streamlined, cost and time effective way to process minor revisions to an existing site plan approval. As such, an unenclosed outdoor patio use (eg. an ice-cream shop with limited bistro tables and chairs) within the C11 Mainstreet Commercial Zone is considered to be a minor revision, and shall be effected by a letter approval to the Director of Building Standards/Chief Building Official, as permitted through the delegated authority granted by Council to the Commissioner of Planning or his designate (Director of Development Planning) through the City's Site Plan Control By-law.

The Development Planning Department, in consultation with the Director of Economic Development have discussed the issues raised by the Kleinburg BIA with respect to the addition of an outdoor patio use to an existing eating establishment in the C11 Mainstreet Commercial Zone (Attachment #2). The concerns raised were processing time for a planning approval; and,

the cost associated with a revision to an existing site plan to include an outdoor patio use (\$3,280.00). The Director of Economic Development has discussed the approval process detailed in this report with the Kleinburg BIA, and the Kleinburg BIA were satisfied with the information provided.

### **Background - Analysis and Options**

On June 21, 2011, an item was forwarded to the Committee of the Whole (Working Session) by the Director of Economic Development, respecting the Kleinburg Economic Development Strategy - A Mainstreet Revitalization Project (KEDS) – Final Report. The following recommendation (in part) was adopted by Council on June 28, 2011:

- “3. That the City recognize and protect the economic vitality of the Kleinburg Mainstreet and Core areas, and through the Economic Development Department, offer support to the Kleinburg Business Improvement Area (KBIA) as a means to enhance retail opportunities and attract visitors.”

In light of the above, the Development Planning Department has reviewed the applicable Official Plan policies and Zoning By-law and Site Plan Control requirements, and determined that an efficient (quick turnaround time), inexpensive review process exists in the current planning process, to effectively issue a building permit for an outdoor patio use accessory to an existing eating establishment located within the C11 Mainstreet Commercial Zone, if the patio is unenclosed (no barriers) and an enclosure is not required by any other Authority.

The following policies are applicable to outdoor patio uses in the Kleinburg Core area and have been reviewed:

a) **OPA #601 (Kleinburg-Nashville Community Plan)**

The “Mainstreet Commercial” designation of OPA #601, was established through the approval of site-specific Official Plan Amendment #633 (Kleinburg Core Area Policy Review). The intent of OPA #633 was to incorporate policies contained in the Kleinburg-Nashville Heritage Conservation District Study and Plan into OPA #601, in order to provide appropriate policies with respect to massing, scale, built form and uses; and, to redesignate portions of the Kleinburg Core Area to Mainstreet Commercial.

OPA #633 (Kleinburg Core Area Policy Review) and Zoning By-law 167-2006 were approved by the Ontario Municipal Board, with modifications, on October 5, 2009.

Section 4.4.2.3, Permitted Uses, “Mainstreet Commercial” includes “Restaurants including sidewalk cafés” as a permitted use.

b) **Zoning By-law 1-88**

The following are the general provisions found in Zoning By-law 1-88 with respect to an “Outdoor Patio” use:

Section 2) Definitions, defines “Outdoor Patio” as follows:

**“OUTDOOR PATIO** – means a designated outdoor area adjoining an eating establishment where food or drink are offered for sale and served at the same table where the food and drink are ordered and are to be consumed; or where food and drink are brought by the customer from within the eating establishment to an adjoining outdoor area for consumption.”

The general provisions of the By-law provide the following requirements for outdoor patios:

"5.1.6 Outdoor Patio

An outdoor patio shall only be permitted as an accessory use to an "Eating Establishment" in accordance with the following provisions:

- a) The outdoor patio shall not exceed fifty percent (50%) of the gross floor area of the eating establishment in conjunction with which the outdoor patio use is permitted;
- b) The parking required for the outdoor patio shall be equal to that required for the main eating establishment use;
- c) An outdoor patio shall not be permitted in any yard located between the building containing the main eating establishment and any Residential Zone;
- d) Any lighting facilities illuminating an outdoor patio shall be arranged so as to deflect light away from adjoining properties and streets;
- e) The use of musical instrument, or other mechanical or electrical music equipment, and dancing, theatrical performances or audiovisual presentations, music concerts and shows, shall not be permitted in areas designated for outdoor patio use;
- f) No public sidewalk, road allowance or lane shall be used for the purpose of an outdoor patio;
- g) The ground surface of an outdoor patio shall be of concrete or other hard surface;
- h) The outdoor patio shall be completely enclosed by a physical barrier with access only from the interior of the eating establishment with the exception of at least one (1) exit to be used only in cases of emergency and which is not from the interior of the main building; and,
- i) An outdoor patio shall not be developed except in accordance with an approved site plan."

Zoning By-law 1-88, as amended by By-law 167-2006 incorporated the C11 Mainstreet Commercial Zone category, specifically created for the mainstreet commercial designation within the Kleinburg Core, as shown on Attachment #2. The C11 Zone permits an Eating Establishment; Eating Establishment, Convenience; and, Eating Establishment, Take-Out, all with an accessory outdoor patio use. In addition, the following provision also applies to the C11 Mainstreet Commercial Zone (in part):

"...unless required by any other applicable law, a patio is not required to be completely enclosed by a physical barrier."

In summary, the C11 Mainstreet Commercial Zone permits outdoor patios as an accessory use to all eating establishments and such outdoor patios may be unenclosed, if it is not required by another authority (for example, if a liquor license is required with a specific eating establishment, an outdoor patio must be completely enclosed by a physical barrier).

### City of Vaughan Site Plan Control By-law 228-2005, as amended

The City's Official Plan Amendment #200, as amended, designates the whole of the City as a Site Plan Control Area as implemented by the City's Site Plan Control By-law Number 228-2005 pursuant to Section 41(2) of the Planning Act.

By-law 228-2005, states (in part):

- "6. The powers of Council of the Corporation of the City of Vaughan under Section 41 of the Planning Act, other than those conferred by Paragraph 41(13)(a), are hereby delegated to:
  - a) The Commissioner of Planning in respect of applications which meet the criteria set out in Schedule "1" hereto under "Complex Procedures" for:
    - iii) Amendments to complex agreements for all classes of development where the application conforms to the zoning by-law, where the Commissioner of Planning is of the opinion that the use and development of the lands provided for by the original agreement remains substantially unaltered, and where no City Department or public agency objects to the application.
7. In the event that the terms and conditions set by the Commissioner of Planning for the approval of any delegated application are not agreed to, or for any other reason, the application may be referred to Council."

Schedule "1" to By-law 228-2005, as amended, includes the following Note (Note 5) which applies to "Amendments to Complex Site Plan Agreements or Letters of Undertaking":

- "5. Except where the proposed modification to a Site Plan Agreement or to a Site Plan Letter of Undertaking is insignificant in nature, in the opinion of the Commissioner of Planning or his designate, whereby it will be effected by a letter to the Director of Building Standards/Chief Building Official."

To summarize, the current Site Plan Control By-law, already delegates the authority to the Commissioner of Planning or his designate (Director of Development Planning) to approve minor revisions to an existing Complex Site Plan Agreement/Letter of Undertaking if in his opinion the revision is very minor in nature, by way of a letter approval to the Director of Building Standards, to which there is no fee charged. The applicant will be required to file a Building Permit Application for the outdoor patio use (\$50.00) and will be issued a Permit when the letter from the Commissioner or his designate is received. These letters do not require a lengthy review period, and can be expedited quickly. The Development Planning Department considers an unenclosed outdoor patio permitted only in the C11 Mainstreet Commercial Zone, as a minor revision.

### Planning Considerations

The Development Planning Department performed a site visit of the Kleinburg Core area in early spring of this year, and physically noted all the existing patios in the Mainstreet Commercial Core area at that time, as shown on Attachment #2. These patios all obtained the appropriate site plan and building permit approvals. Development Planning Department also contacted Enforcement Services to determine if there were any infractions with respect to illegal outdoor patios in the Mainstreet Commercial, and was advised that there were no active infractions.

In the past, the Development Planning Department received inquiries with respect to the applications required to amend an existing site plan to include an accessory outdoor patio use within the Kleinburg area, specifically the area now zoned C11 Mainstreet Commercial Zone.

These inquiries were made prior to the approval of Zoning By-law 167-2006 (prior to October 5, 2009), which at that time, did not permit unenclosed outdoor patios in the C11 Mainstreet Commercial Zone. Based on the current policy and approvals framework, an outdoor patio use accessory to an existing eating establishment requires site development approval in the form of a Simple Revision to a previously approved site development, to which a fee of \$3280.00 is applied. This review process and fee is appropriate for an outdoor patio use that requires the review of a physical change to a site, by delineating an enclosed area, the review of fencing material, landscaping requirements, and to ensure it meets the specific zoning provisions of an outdoor patio as noted earlier. However, for an accessory outdoor patio use that requires no physical alterations to the site, and includes a very limited seating area which is easily removed at the end of the business day (eg. ice cream shop with limited bistro tables and chairs), this approval process is considered inefficient and inappropriate as there is no development occurring. In addition, the process may also have the effect of discouraging economic investment into the Kleinburg commercial core, when it is clear that the City should be encouraging uses that add to the life and vitality within the Kleinburg Core area.

In addition, the Simple Revision to a Site Plan fee (\$3,280.00) is unjustified, as compared to more complex revisions, where the change is considered minor by the Commissioner. The review by Development Planning staff in minor revisions, is limited and in this case would be the potential location of the unenclosed area, to which a nominal amount of chairs or bistro tables would be placed for patrons when the establishment opens for business, and are removed at closing. As an unenclosed outdoor patio is a relatively new use and only permitted in the C11 Commercial Zone, it has been determined that it is categorized under a Minor Revision Approval, Note 5, of the Site Plan Control By-law as previously described, which requires a letter approval from the Commissioner of Planning or his delegate (Director of Development Planning) to the Building Standards Department, to which no fee will be charged.

The process would entail that the applicant contact the Development Planning Department and discuss the proposal with the area planner. A site plan drawing with the existing building and the proposed area to be used for an unenclosed outdoor patio should be submitted (no fee is collected for a minor revision letter) for review. The review period should take no more than one to two days. If it is the opinion of the Development Planning Department that the proposed revision is minor, no further information is required, and the Commissioner of Planning or his designate (Director of Development Planning) will issue the approval letter to the Building Standards Department. A Building Permit (\$50.00 fee) will be issued once the approval letter is received by the Building Standards Department.

#### **Relationship to Vaughan Vision 2020/Strategic Plan**

This staff report is consistent with the priorities set forth in Vaughan Vision 2020, particularly "Manage Growth & Economic Well-being".

#### **Regional Implications**

N/A

#### **Conclusion**

The Official Plan policies of OPA #601 permit and encourage outdoor patio uses. Zoning By-law 1-88 establishes a list of provisions that restricts and controls how, and when an outdoor patio use can be established. The current Site Plan Control By-law provides an avenue to streamline the site plan approval process by authorizing the Commissioner of Planning or his delegate (Director of Development Planning) the jurisdiction to review and approve certain minor revisions to Complex Site Plan Agreements or Letters of Undertaking. The Development Planning Department advises that an unenclosed, outdoor patio use accessory to an existing eating establishment within the C11 Mainstreet Commercial Zone, is a minor revision and therefore, is

effected by way of a Letter approval to the Building Standards Department/Chief Building Official. Should the Commissioner, however, conclude through his review that in a particular case, the proposed outdoor patio use is not a minor revision or not insignificant, he or his designate can advise the Owner to proceed through the Amendment to a Complex Site Plan Agreement/Letter of Undertaking process and Council approval would be required.

**Attachments**

1. Context Location Map
2. Location Map

**Report prepared by:**

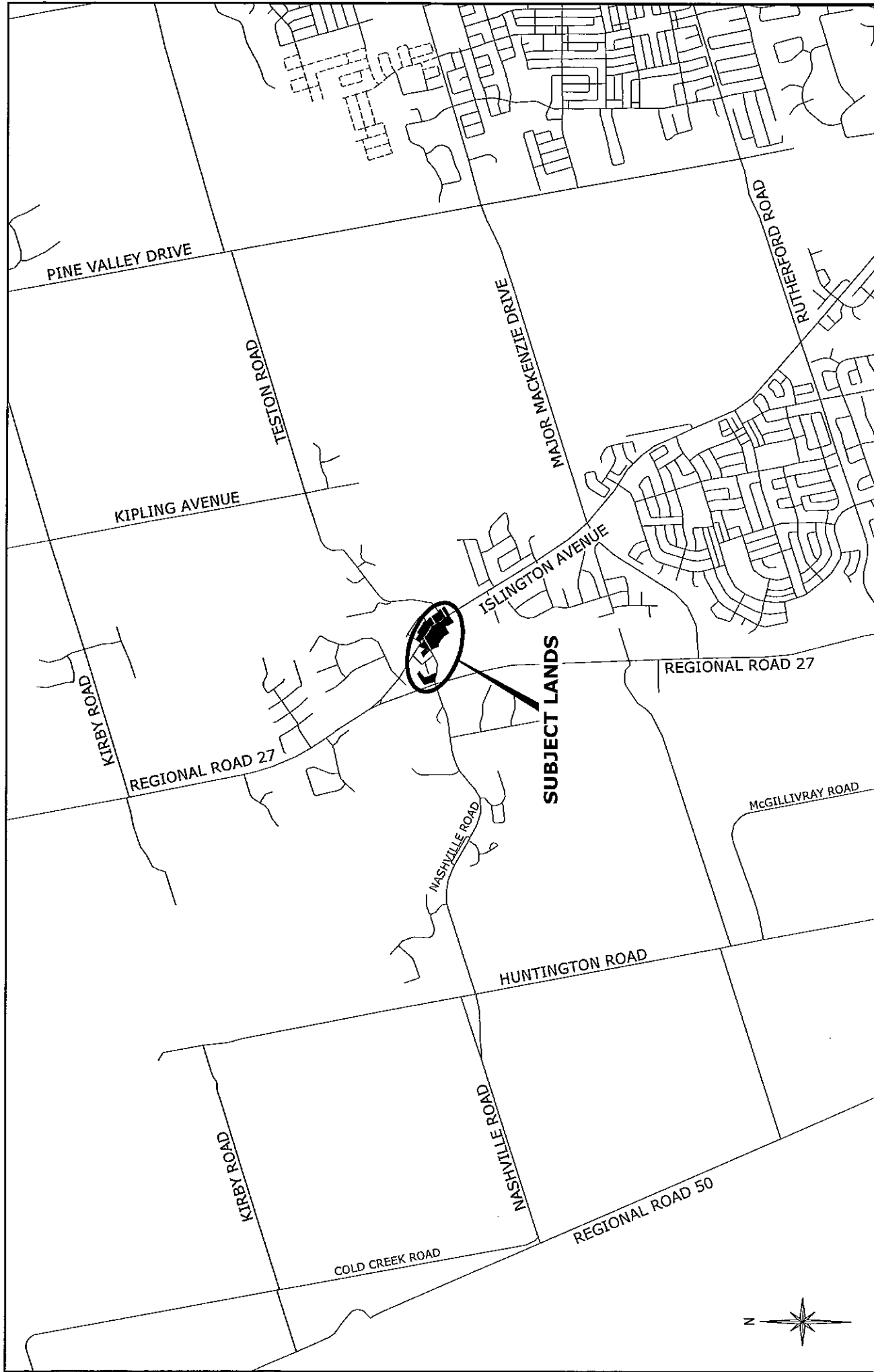
Carmela Marrelli, Senior Planner, ext. 8791

Respectfully submitted,

JOHN MACKENZIE  
Commissioner of Planning

GRANT UYEYAMA  
Director of Development Planning

/CM



## Context Location Map

Location: Part of Lot 24,  
Concession 8

Applicant:  
City of Vaughan

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Development Planning Department

## Attachment

Not to Scale  
Date:  
November 22, 2011


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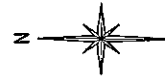
# EXISTING APPROVED OUTDOOR PATIOS

- ① 10462 Islington Avenue
- ② 10496 Islington Avenue
- ③ 10499 Islington Avenue
- ④ 10503 Islington Avenue
- ⑤ 10512 Islington Avenue
- ⑥ 10519 Islington Avenue
- ⑦ 21 Nashville Road
- ⑧ 110 Nashville Road

## LEGEND

- A - AGRICULTURAL ZONE
- C11 - MAINSTREET COMMERCIAL ZONE
- OS1 - OPEN SPACE CONSERVATION ZONE
- OS2 - OPEN SPACE PARK ZONE
- RR - RURAL RESIDENTIAL ZONE
- R1 - RESIDENTIAL ZONE
- RM2 - MULTIPLE RESIDENTIAL ZONE
- (H) - HOLDING PROVISION

 SUBJECT LANDS

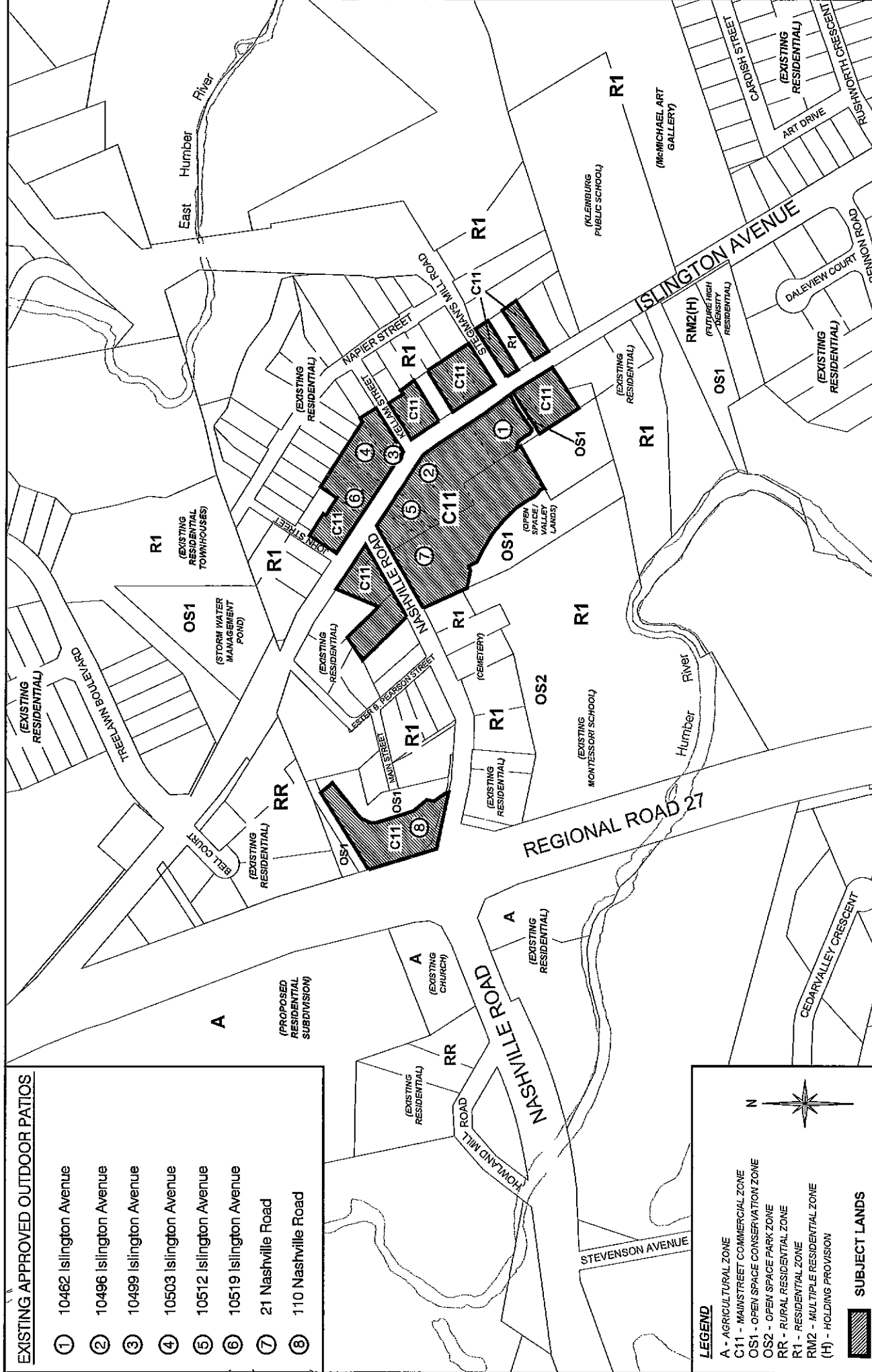


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N:\APPLY 1 ATTACHMENTS\Map\Kleinburg Commercial.dwg



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Not to Scale  
Date:  
November 23, 2011

