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<th>Date:</th>
<th>May 5, 2010</th>
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<td>To:</td>
<td>Scarborough Community Council</td>
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<tr>
<td>From:</td>
<td>Director, Community Planning, Scarborough District</td>
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<td>Wards:</td>
<td>Ward 39 – Scarborough-Agincourt</td>
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<td>Reference Number:</td>
<td>09 161120 ESC 39 OZ</td>
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**SUMMARY**

The purpose of this report is to inform City Council of the status of the subject zoning by-law amendment application and to seek direction from Council for an upcoming Ontario Municipal Board (OMB) Hearing on appeal by the owner. This report recommends that the City Solicitor and appropriate staff attend the OMB and bring forward the position outlined in this report to the Hearing scheduled for June 15, 2010.

The applicant proposes to expand small scale retail and service uses to portions of the subject lands that currently only allow industrial uses. The applicant also proposes to restrict the type and size of individual small scale retail/service and restaurant uses, increase the floor area for restaurant uses and reduce the minimum required parking standard. Other zoning uses currently permitted on the site would be maintained.

**RECOMMENDATIONS**

The City Planning Division recommends that:

1. City Council direct the City Solicitor and appropriate staff to attend the OMB hearing to ensure that the City’s
interests are appropriately represented and to support the proposed rezoning on the terms outlined in Recommendation 2.

2. That City staff be authorized to support amendments to the Employment District Zoning By-law #24982 (Milliken Employment District) for the lands at 3241-3261 Kennedy Road and 19-27 Passmore Avenue, subject to the following conditions:

   a. The additional small scale retail and service uses be restricted to those generally outlined in Attachment 5: Recommended List of Additional Uses;

   b. the size of any individual small scale retail and service uses be capped as generally shown in Attachment 5: Recommended List of Additional Uses;

   c. the small scale retail and service uses, including restaurants be restricted to a maximum of 30% of the gross floor area of all buildings or 5 240 square metres (56,405 square feet);

   d. maximum gross floor area of all restaurant uses be restricted to 1 466 square metres (15,780 square feet) or 8 percent of the gross floor area of all buildings; and,

   e. minimum of 366 parking spaces be provided.

3. City Council authorize the City Solicitor to request the OMB to withhold its Order approving the zoning by-law amendment until a draft by-law is prepared to the satisfaction of the City Solicitor in consultation with the Chief Planner and Executive Director of the City Planning Division.

4. City Council authorize the City Solicitor and City staff to take the necessary steps required to implement the foregoing.

Financial Impact
There are no financial implications resulting from the adoption of this report.

DECISION HISTORY
The current mixed industrial/retail zoning on the subject lands was established between 1988 and 1994. The zoning enabled some retail and restaurant uses to be located along the edges of Kennedy Road while preserving employment and industrial uses within the interior. This land use arrangement provided visibility for the retail uses located on the major road while reducing any potential conflicts between employment and retail / service uses in the interior.

An application for consent to a land severance was granted on November 5, 2003, to facilitate division of the land holdings of Al Reisman Limited (owner of the subject lands) into two separate and distinct parcels. As a condition of approval of the consent to
land severance, Al Reisman Limited entered into a consent agreement with the City of Toronto. The consent agreement provides for the conveyance of Part 4 on Plan 66R-21332 to the City of Toronto as a public road allowance to facilitate construction of a portion of the proposed Redlea Avenue / Milliken Boulevard extension between Passmore Avenue and McNicoll Avenue to the south. On January 23, 2008, the City of Toronto issued a Notice of Completion of the Environmental Study Report in relation to the Class Environmental Assessment for the proposed Redlea Avenue / Milliken Boulevard extension.

A total of 388 parking spaces currently exist on the site. The future extension of Redlea Avenue south will result in the loss of 22 parking spaces leaving a balance of 366 on the reduced site.

**Ontario Municipal Board**

On January 26, 2010, the subject zoning by-law amendment application was appealed by the applicant to the Ontario Municipal Board on the basis of the ‘failure of the City Council to approve the application in a timely manner’, pursuant to section 34(11) of the Planning Act.

The OMB hearing is scheduled for June 15, 2010 for a duration of 4 days.

**ISSUE BACKGROUND**

**Proposal**

A portion of the subject lands are located within the Community Commercial, Employment and Recreational Zone. These lands encompass the frontage along Kennedy Road, having a depth extending east of 57 metres from the property line. The zoning permissions on this portion of the subject lands will continue. The applicant is not seeking an amendment to these permissions, except to increase the permitted restaurant floor area.

The subject zoning amendment application contemplates an expansion of the range of permitted uses as well as the addition of small scale retail and service uses to a maximum of 30% of the gross floor area of the existing 7, one-storey commercial industrial buildings or 5 240 square metres (56,405 square feet). The size of any individual small scale retail and service is to be capped at 250 sq. m (2,700 sq. ft.).

The applicant also proposes to increase the gross floor area of restaurant uses from 363 sq. m. (3,907 sq. ft.) to 1 466 sq. m. (15,780 sq. ft.) or 8 percent of the gross floor area of all buildings. Restrictions on the type and extent of retail and restaurants uses are premised on these uses being ancillary to the employment uses and small scale to serve area businesses and workers. The uses proposed are found in Attachment 4: Applicants Proposed List of Uses.

A total of 388 parking spaces currently exist on the site. With the conveyance of Part 4 in 2003, as a result of the future extension of Redlea Avenue south, it will result in the
loss of 22 parking spaces leaving a balance of 366 on the site. The applicant is seeking a reduction in the minimum required parking standards required for the uses proposed to reflect this future condition of 366 on-site parking spaces. See Attachment 1: Site Plan

**Site and Surrounding Area**

The site is approximately 3.9 hectares (9.6 acres) in area, having approximately 173 metres (568 feet) of frontage on Kennedy Road; about 118 m. (387 ft.) frontage on Passmore Avenue and, approximately 236 m. (774 ft.) adjacent to the proposed Redlea Avenue extension.

The lands subject to this application are developed with 7 one-storey industrial / commercial buildings ranging in size from 943 sq. m. (10,151 sq. ft.) to just over 5 300 sq. m. (57,050 sq. ft.) for a total gross floor area of 17 456 sq. m. (187,900 sq. ft.).

Surrounding land uses:

North: automotive service station and mechanical car wash, offices, commercial and general industrial uses
South: place of worship, vacant lands
East: proposed extension of Redlea Avenue south of Passmore Avenue, GO Transit right-of-way, retail outlet, general industrial uses
West: institutional (church and private school), neighbourhood plaza, low density housing

**Provincial Policy Statement and Provincial Plans**

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The PPS sets the policy foundation for regulating the development and use of land. The key objectives include: building strong communities; wise use and management of resources; and, protecting public health and safety. City Council’s planning decisions are required to be consistent with the PPS.

The PPS supports the objective of ensuring that there is a mix and range of employment to meet long term needs and provide opportunities for a diversified economic base, including maintaining a range and choice of suitable sites for employment activity. The PPS also supports the objective of protecting and preserving employment areas for current and future uses and ensuring that the necessary infrastructure is provided to support current and projected needs.

The PPS defines employment areas as “areas designated in an official plan for clusters of business and economic activities including, but not limited to, manufacturing, warehousing, offices, and associated retail and ancillary facilities”. Conversion of lands within employment areas to non-employment uses is permitted only through a comprehensive review that has demonstrated that the land is not required for employment purposes over the long term and there is a need for the conversion.
The Growth Plan for the Greater Golden Horseshoe provides a framework for managing growth in the Greater Golden Horseshoe including: directions for where and how to grow; the provision of infrastructure to support growth; and protecting natural systems and cultivating a culture of conservation. City Council’s planning decisions are required to conform, or not conflict, with the Growth Plan for the Greater Golden Horseshoe.

The Growth Plan requires the City to maintain an adequate supply of lands providing locations for a variety of appropriate employment uses in order to accommodate the employment growth forecasts of the Plan. The Growth Plan includes similar policies to the PPS directed at the preservation of employment areas for future economic opportunities. An employment area is defined as an area “designated in an official plan for clusters of business and economic activities including, but not limited to, manufacturing, warehousing, offices and associated retail and ancillary facilities”. The definition of an employment area in the Growth Plan is the same definition used in the PPS. The Growth Plan clarifies that for the purpose of the conversion policy, major retail uses are considered non-employment uses.

The Growth Plan provides that municipalities may permit conversion of lands within employment areas to non-employment uses only through a municipal initiated comprehensive review. Under the Growth Plan, conversion of lands within an employment area to major retail uses is considered to be a conversion of land to non-employment uses. The conversion may be permitted only where it has been demonstrated through the municipal comprehensive review that it meets a number of criteria.

Staff have reviewed the proposed development and with the inclusion of detailed performance standards respecting the retail uses as generally set out in Attachment 5, find it consistent with the PPS and in conformity with the Growth Plan for the Greater Golden Horseshoe.

**Official Plan**

The site is identified as an Employment District on Map 2 Urban Structure. Policy 1 of the Employment District identifies the need to protect and promote these areas for economic activity in order to attract new and expand existing employment clusters that are key to Toronto’s competitive advantage; develop quality Employment Districts that are global and nurture Toronto’s diverse economic base; provide a range of employment opportunities for Toronto residents that can be reached by means other than the private automobile.

Employment Districts will be enhanced to ensure they are attractive and function well through actions such as: permitting a broad array of economic activity that encourages existing businesses to branch out into new areas of activity and facilitates firms with functional linkages to locate in close proximity to one another; investing in key infrastructure or facility investment through special tools, programs or partnerships in order to promote the distinctive character or specialized function of a District to attract firms within a particular targeted cluster of economic activity.
The Toronto Official Plan designates the property as Employment Areas on Map 22, Land Use Plan. Policy 4.6.1 provides for uses such as office, manufacturing, warehousing, distribution, research and development facilities, utilities, media facilities, parks, hotels, retail outlets ancillary to the preceding uses, and restaurants and small scale stores and services that serve area businesses and workers.

Policy 4.6.2 of the Official Plan indicates that within Employment Areas, places of worship, recreation and entertainment facilities, business and trade schools and branches of community colleges or universities may locate only on major streets as shown on Map 3. Kennedy Road is identified as a major street while Passmore Avenue and the future Redlea Road extension are not.

In addition to the general policies of the Official Plan, Site and Area Specific Policy No. 104 states that: “Business and trade schools, libraries, fraternal organizations, long term care facilities, recreational uses and places of worship are permitted”.

Zoning
The subject lands have multiple zoning which straddles the existing buildings. The western 57 metres of the site is zoned Community Commercial (CC), Employment (E) and Recreational (RU) Zone from the property line in the Milliken Employment District Zoning By-law No. 24982, as amended.

Generally, permitted uses within the Community Commercial (CC) Zone include: day nurseries, financial institutions, offices, places of worship, personal service shops, restaurants and retail stores. The gross floor area of all restaurants is restricted to 363 sq. m. (3,907 sq. ft.). The gross floor area of all recreational uses is restricted to 557 sq. m. (6,000 sq. ft.) and the gross floor area of all uses permitted in the Community Commercial and Recreational (RU) Zone is restricted to 3,065 sq. m. (33,000 sq. ft.) or 0.5 times the area of the lot.

Within Employment (E) Zones, permitted uses include industrial uses, offices, day nurseries, educational and training facility uses, places of worship and recreational uses.

Within Recreational (RU) Zones, permitted uses include day nurseries, places of worship and recreational uses.

Exception #202 and #205 are applicable to the western 100 metres of the site zoned Community Commercial (CC), Employment (E) and Recreational (RU) Zone. Exception #202 prohibits non-accessory ground signs excluding marketplace signs and wall signs which are non-accessory. Exception #205 prohibits games arcade, billiard halls or pool halls on this portion of the subject lands.

Immediately adjacent to the zones mentioned above and extending approximately 40 metres east, the lands are zoned Industrial (M). Generally, permitted uses within the Industrial Zone include industrial uses, offices (excluding medical and dental offices),
day nurseries, educational and training facility uses, places of worship and recreational uses. Exception #202, as described above, is also applicable to this portion of the subject lands.

The remainder of the subject lands are zoned Industrial (M), General Industrial (MG) and Special Industrial (MS). Permitted uses within the General Industrial Zone include industrial uses, offices (excluding medical and dental offices), open storage, day nurseries, educational and training facility uses, places of worship and recreational uses. The Special Industrial Zone permits all of the uses found in the General Industrial Zone with the addition of special industrial uses which include chemical manufacturing, processing or warehousing, metal, mineral or ore smelting. See Attachment 2: Zoning.

Site Plan Control
The subject lands are under site plan control. Although no new development is anticipated and no application for site plan control has been submitted, alterations to the existing site may require site plan approval.

Reasons for the Application
The multiple zoning on the lands are proposed to be amended primarily for the lands beyond the westerly 57 metres of the Kennedy Road property line in order to permit an expansion of small scale retail and service uses within the existing series of 1-storey buildings throughout the site. The applicant has provided staff with a list of these uses for consideration. See Attachment 4: Proposed Uses (Applicant)

Further amendments to the by-law are requested to increase the maximum gross floor area of all restaurants from 363 sq. m. (3,907 sq. ft.) to 1,466 sq. m (15,780 sq. ft.).

Lastly, amendments to the by-law are requested to reduce the minimum required parking supply from 388 to 366 parking spaces.

Community Consultation
A community consultation meeting, hosted by Planning staff, was held on December 17, 2009, where the applicant presented the subject proposal.

Representatives from the Chinese Baptist Church, located immediately to the south, 2 business owners and a few residents attended and expressed general support for the applicant's request.

Agency Circulation
The subject application was circulated to all appropriate agencies and City divisions. Responses received to date have been used to assist in evaluating the applications and to formulate appropriate by-law standards.
COMMENTS

Official Plan and Zoning

This applicant proposes to expand certain small scale retail and service uses to portions of the subject lands that currently do not permit retail and service commercial uses. The site currently allows for a maximum of 3,065 sq. m. (33,000 sq. ft.) of community commercial uses along Kennedy Road. The applicant is seeking an additional 2,178 sq. m. (24,000 sq. ft.) of small scale retail and service uses including 1,103 sq. m. (11,873 sq. ft.) of restaurant space.

A portion of the subject lands are located within the Community Commercial, Employment and Recreational Zone. Specifically, these lands encompass the frontage along Kennedy Road, having a depth extending east of 57 metres from the property line. It is staff’s recommendation that the continuation of these as of right zoning permissions on this portion of the subject lands is appropriate.

Staff are prepared to support an expansion of the range of employment uses as well as the addition of small scale stores, services and restaurant uses to a maximum of 30% of the gross floor area of the existing 7 one-storey commercial/industrial buildings or 5,240 sq. m. (56,405 sq. ft.). Staff would support such an expansion of retail uses provided a restriction on the size of any individual small scale store and service use is incorporated in the zoning. Staff are proposing that retail uses be capped at approximately 250 sq. m. (2,700 sq. ft.), whereas the applicant’s proposal contemplates a maximum of 465 sq. m. (5,000 sq. ft.). Recent discussions with the applicant indicate they are agreeable to such a restriction.

The applicant also proposes to increase the gross floor area of restaurant uses from 363 sq. m. (3,907 sq. ft.) to 1,466 sq. m. (15,780 sq. ft.). Through discussions with the applicant, they have agreed to include the additional restaurant area as part of the small scale retail and service uses. Staff are supportive of the restriction in the size of any individual restaurant to 465 sq. m. (5,000 sq. ft.).

Restrictions on the type and extent of small scale retail/service and restaurant uses are premised on these uses being ancillary to the employment uses and/or small scale to serve area businesses and workers. Staff have reviewed the applicant's proposed list of uses (Attachment 4: Applicants Proposed List of Uses) in detail to determine which uses are small scale stores and services that serve area businesses and workers. Based on staffs review, a Recommended List of Additional Uses (Attachment 5) has been created which is acceptable and should be used to settle the appeal in regard to permitted retail/service uses.

In order to support the application, staff will require the proposed zoning by-law to place restrictions on the range of small scale retail and service uses as well as on maximum unit sizes. In considering the total gross floor area of small scale retail and service uses, the proposed restaurant floor area must be included. Retail and service uses should be
oriented to existing streets. Staff are of the opinion that these restrictions together with detailed performance standards will ensure consistency with Official Plan policies and will maintain the employment character of the subject lands and area. The proposed 30/70% split between small scale retail/service and employment uses is appropriate at this location as it maintains the existing character and is consistent with similar applications recently approved by the OMB.

The proposed list of amended uses and performance standards are summarized in Attachment 5: Recommended List of Additional Uses. This report recommends that staff support the rezoning as generally outlined in Attachment 5.

Impact
Staff has examined whether or not any negative impacts will result from not only the introduction of additional uses but also the suitability of the proposed ratio of small scale retail to employment as well as the effect of reduced parking.

It is staff’s opinion that the Recommended List of Additional Uses (Attachment 5) is generally appropriate at this location. The restriction on size of any individual small scale retail and service uses as well as including a maximum restaurant floor area is consistent with official plan policies and will not have a negative impact of the surrounding employment area. The bulk of the additional small scale retail and restaurant uses will be located on the Kennedy Road frontage while service uses will be subject to locational restrictions.

Compatibility
While no new buildings will be constructed, the development standards were reviewed to ensure that the proposed introduction of additional uses fits within the existing context of the industrial and general industrial uses that surrounds the subject lands. The draft by-law will ensure that the character of the employment area is maintained and the likelihood of conflicts between employment and small scale retail and service uses will be minimized.

Traffic Impact, Access, Parking
Staff reviewed a Traffic Impact Brief, dated March 22, 2010, prepared by Sernas Transtech. The purpose of the Traffic Impact Brief was to examine the potential impacts associated with the approval of the subject application. Staff concur with the conclusions of the Traffic Impact Brief that the increased traffic resulting from the requested zoning by-law amendment will generate only a modest volume of new traffic and that the existing road network is adequate.

Existing access points off Kennedy Road and Passmore Avenue are being maintained.

The applicant proposes to reduce the minimum required parking standard from 388 to 366. It is staff’s position that the reduction of 22 parking spaces will not have any negative impacts on the overall parking demand for this site.
Conclusions
Staff would support a draft zoning by-law that: restricts small scale retail and service uses to a maximum of 30% of the existing gross floor area; restricts the size of small scale retail/service and restaurant units; restricts the range of additional uses and; provides locational requirements for small scale retail/service and restaurant units generally in accordance with the discussion in this report. It is staff’s recommendation that this Direction Report be adopted and that the City Solicitor and appropriate staff support this position at the Ontario Municipal Board in accordance with Recommendations 1, 2 and 3.

Through ongoing discussions with the applicant, staff have been advised verbally that there is support for a resolution to outstanding matters in accordance with the approach set out in this report.

CONTACT
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SIGNATURE

___________________________________________________
Allen Appleby, Director
Community Planning, Scarborough District

ATTACHMENTS
Attachment 1: Site Plan
Attachment 2: Zoning
Attachment 3: Application Data Sheet
Attachment 4: Applicants Proposed List of Uses
Attachment 5: Recommended List of Additional Uses
Attachment 1: Site Plan

Site Plan
Applicant’s Submitted Drawing

3241, 3252 & 3261 Kennedy Road & 19, 23, 25 & 27 Passmore Avenue

File #: 09-161120 OZ
Attachment 3: Application Data Sheet

Application Type: Rezoning
Application Number: 09 161120 ESC 39 OZ
Details: Rezoning, Standard
Application Date: August 21, 2009

Municipal Address: 3241, 3251 & 3261 KENNEDY RD and 19, 23, 25 & 27 PASSMORE AV
Location Description: PLAN 9828 RCP PT LOT 26 RP 66R21332 PARTS 1 AND 2 AND 6 TO 21 **GRID E3903
Project Description: The application proposes to intensify and broaden the range of retail and service commercial uses on a portion of the subject lands

Applicant: MCDERMOTT & ASSOCIATES LIMITED
Agent: C/O JOHN MCDERMOTT
Architect: AL REISMAN LIMITED
Owner: PLANNING CONTROLS

Official Plan Designation: Employment Areas
Zoning: M, MG, MS, ME, CC, E, RU
Site Specific Provision: Site Plan Control Area: Yes
Historical Status: "

PROJECT INFORMATION

Site Area (sq. m): 38725.3 Height: Storeys: 1
Frontage (m): 173.4 Metres: 0
Depth (m): 175.7
Total Ground Floor Area (sq. m): 17456
Total Residential GFA (sq. m): 0 Parking Spaces: 366
Total Non-Residential GFA (sq. m): 17456 Loading Docks: 32
Total GFA (sq. m): 17456
Lot Coverage Ratio (%): 45
Floor Space Index: 0.45

DWELLING UNITS

Tenure Type: Above Grade Below Grade
Rooms: 0 Residential GFA (sq. m): 0 0
Bachelor: 0 Retail GFA (sq. m): 5 240 0
1 Bedroom: 0 Office GFA (sq. m): 0 0
2 Bedroom: 0 Industrial GFA (sq. m): 12 2160 0
3+ Bedroom: 0 Institutional/Other GFA (sq. m): 0 0
Total Units: 0

FLOOR AREA BREAKDOWN (upon project completion)

CONTACT: PLANNER NAME: Renrick Ashby, Senior Planner
TELEPHONE: (416) 396-7022
Attachment 4: Applicants Proposed List of Uses (August 2009)
(excerpt from Preliminary Report)

The applicant has requested that the following retail and service commercial uses be permitted on the subject land:

- automotive, truck and trailer parts sales and service establishment
- automotive detailing and/or glass and trim establishment
- automotive service and repair establishment
- bakery and/or bake shop
- bank and/or financial institution
- bicycle and/or motorcycle sales and service establishment
- billiards equipment and supply sales and service establishment
- business and/or professional office inclusive of a medical and/or dental clinic
- cellular communications sales and service establishment
- computer and/or electronics sales and service establishment
- convenience store
- courier establishment inclusive of mail box facilities, photocopying and other related business services
- dry cleaning depot and/or establishment
- florist
- furniture and/or major appliance sales and service establishment inclusive of the sale of outdoor furniture, appliances and accessories
- lighting and/or electrical supply and sales establishment
- health and fitness establishement
- home decoration and furnishing sales establishment
- industrial parts sales and service establishment
- kitchen and bathroom design and sales establishment
- musical instruments sales and service establishment
- office equipment sales, supply and service establishment
- personal service shop
- photographic and/or art studio and gallery
- plumbing, heating and air conditioning sales and service establishment
- pool and/or spa sales and service establishment
- printing and/or publishing establishment
- small appliance sales and service establishment
- snowmobile and/or recreational vehicle sales and service establishment
- specialty food store inclusive of a fish and/or meat market
- delicatessen
- wine and/or beer making establishment
- sporting goods sales and service establishment
- warehouse outlet and/or a wholesale establishment
- other accessory uses as are normally considered incidental and subordinate to the foregoing uses

Source: Land Use Planning Rationale
McDermott & Associates Limited, August 2009, Section 3.3, Page 3-7
Attachment 5: Recommended List of Additional Uses

A. Additional Employment Uses

- a photographic and/or art studio and gallery
- publishing establishment
- a wine and/or beer making establishment
- financial institution
- offices, inclusive of medical and dental offices

Notes
1. No restrictions on gross floor area, unit size or location for these uses

B. Additional small scale stores, services and restaurant uses

- a cellular and/or telecommunications sales and service establishment;
- a computer and/or electronics sales and service establishment;
- a convenience store;
- a delicatessen;
- a florist;
- a health food and nutritional supplement sales outlet;
- an optical dispensing and product related sales outlet;
- a pharmacy;
- a courier service establishment inclusive or mail box facilities, photocopying and other related business services
- a dry cleaning establishment
- a personal service shop
- a printing shop
- a restaurant
- an automotive, truck and trailer parts sales and service establishment;
- an automotive dealing and/or glass and trim establishment;
- an industrial parts sales and service establishment;
- a kitchen and bathroom design and sales establishment;
- a medical equipment and supplies sales and service establishment
- an office equipment sales, supply and service establishment
- a plumbing, heating and air conditioning sales and service establishment
- a small engine sales and service establishment inclusive of a lawn and garden equipment sales and service establishment
- a snowmobile and/or recreational vehicle sales and service establishment

Notes
1. Maximum 30% gross floor area of all existing buildings or 5 240 sq. m
2. Maximum 250 sq. m for any individual unit
3. Locational requirements apply
4. Restaurant maximum gross floor area 465 sq. m.