

**APPENDIX "A"**

Authority: Etobicoke York Community Council Item \_\_\_\_, as adopted by City of Toronto Council on \_\_\_\_\_

Enacted by Council:

**CITY OF TORONTO**

Bill No.

**BY-LAW No. -2011**

**To permanently close the public highway Weybourne Place**

WHEREAS it is recommended that the public highway Weybourne Place be permanently closed as a public highway; and

WHEREAS notice of the proposed by-law to permanently close the said highway was posted on the notices page of the City's web site in accordance with the requirements of City of Toronto Municipal Code, Chapter 162 and the Etobicoke York Community Council heard any person who wished to speak to the matter at its meeting held on September 12, 2011;

The Council of the City of Toronto HEREBY ENACTS as follows:

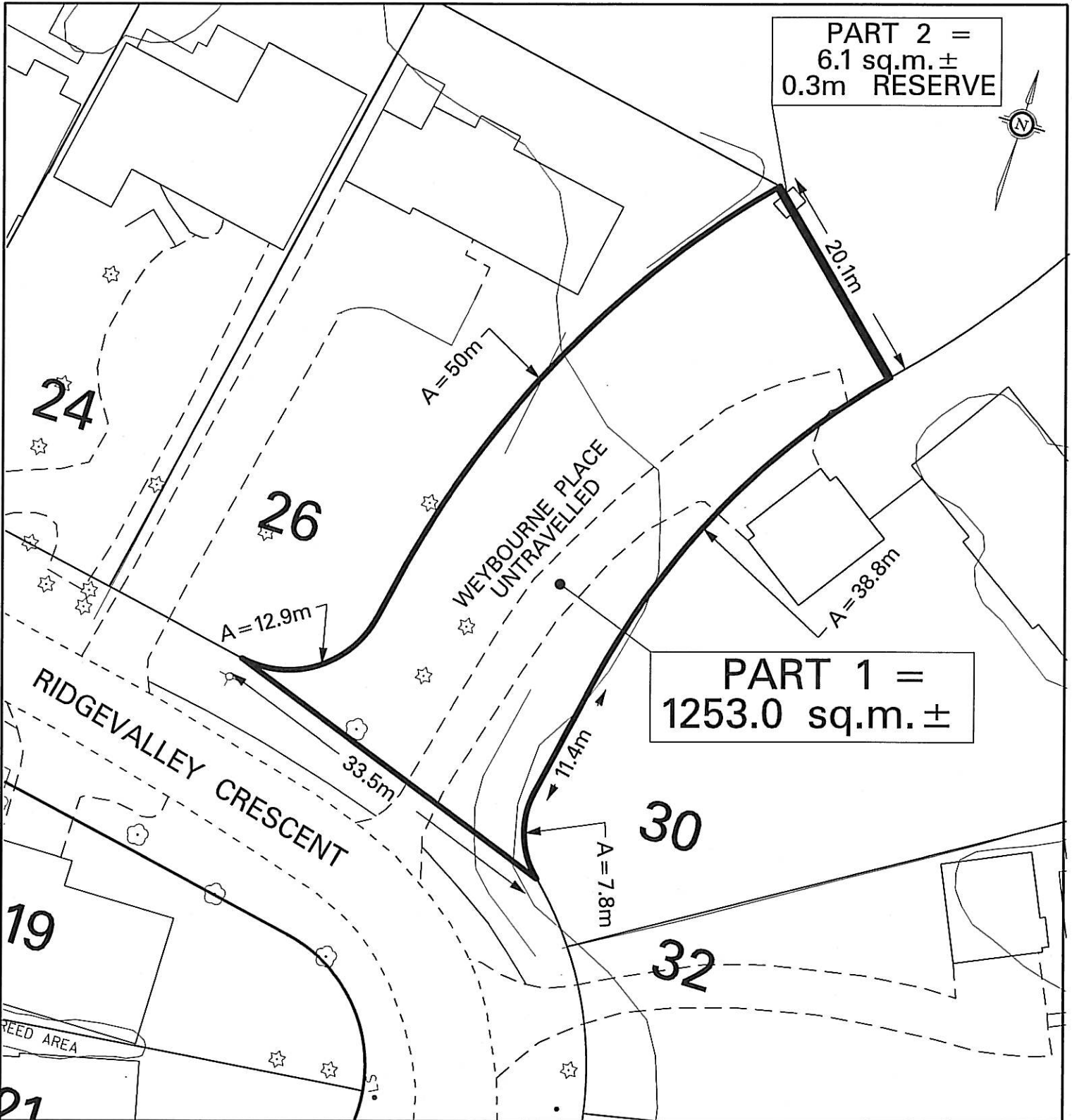
1. The public highway Weybourne Place, described as follows, is hereby permanently closed as a public highway:

PIN 07479-0408 (LT)  
WEYBOURNE PL, PL 3515  
City of Toronto (former City of Etobicoke) Province of Ontario  
Land Titles Division of the Toronto Registry Office (No. 66)

ENACTED AND PASSED this \_\_\_\_ day of \_\_\_\_\_, A.D. 2011.

ROB FORD,  
Mayor

ULLI S. WATKISS,  
City Clerk



PROPERTY INFORMATION SHEET

CITY OWNED LAND

SKETCH SHOWING WEYBOURNE PLACE (PART 1) AND  
0.3m RESERVE (PART 2)  
ABUTTING NOS. 26 AND 32 RIDGEVALLEY CRESCENT

**Toronto**

TECHNICAL SERVICES DIVISION  
SURVEY & UTILITY MAPPING

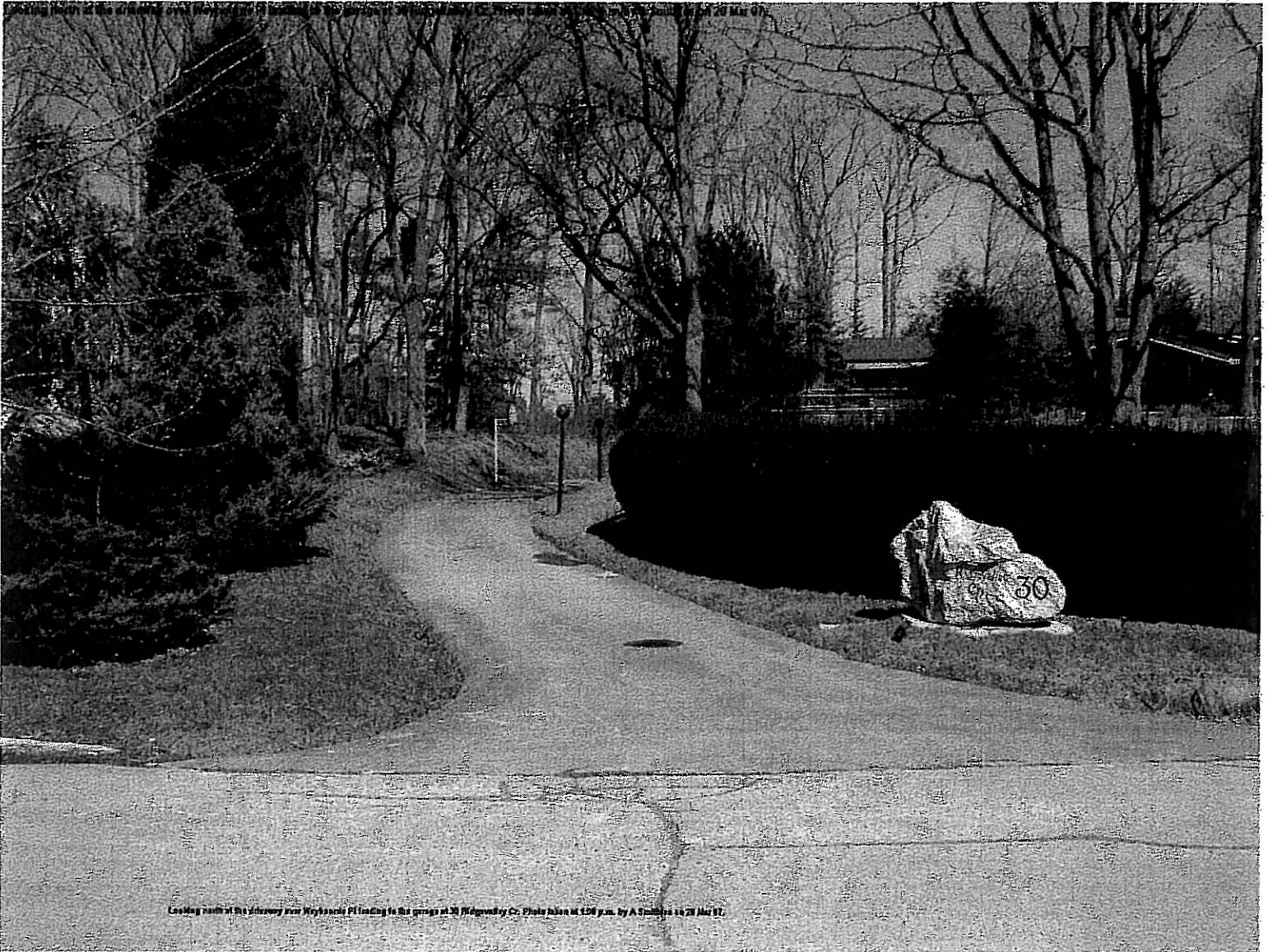
NOTE:  
THIS SKETCH HAS BEEN  
COMPILED FROM OFFICE  
RECORDS. MEASUREMENTS  
ARE APPROXIMATE

CHECK BY JOHN HOUSE

PREPARED BY: DWAYNE PITT

WARD 4 - ETOBICOKE CENTRE  
DATE: JULY 18, 2011

SKETCH No. PS-2011-071



Looking north at the driveway from Waybancroft Pl leading to the garage at 30 Ridgeway Cr. Photo taken at 1:30 p.m. by A. Scullion on 28 Jan 11.





0 2 4 8 12 16  
Meters







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*\* Certified by the Law Society as a Specialist in  
 Municipal Law: Local Government / Land  
 Use Planning & Development*

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File No. 3000-805-9087-11

**Date:** August 5, 2011

**To:** Joe Pennachetti, City Manager

**From:** Anna Kinastowski, City Solicitor

**Cc:** Luba Tymkewycz, Manager, Portfolio Management, Real Estate Services  
 Bill Kiru, Manager, Community Planning, City Planning  
 Al Smithies, Manager, Traffic Planning/Right of Way Management, Transportation Services

**Reference:** Use of Driveway on Weybourne Place, adjoining 30 Ridgevalley Crescent

I am writing to provide my opinion on whether Anthony Crisanti, the owner of 30 Ridgevalley Crescent, has a permanent legal right to maintain and use the existing driveway located on Weybourne Place, which Mr. Crisanti presently uses to access the garage located on his property.

### Summary

In my view, Mr. Crisanti does not have a permanent legal right to maintain and use the existing driveway located on Weybourne Place.

### Establishment of Weybourne Place as a Public Highway

In 1947, Weybourne Place was laid out on Plan of Subdivision 3515 as a street. Accordingly, pursuant to section 57 of the *Surveys Act* (Ontario), Weybourne Place is deemed to be a public highway. Pursuant to the provisions of *City of Toronto Act, 2006* and previous *Municipal Act* legislation, the City has jurisdiction over and owns all highways shown on a plan of subdivision within the City. Accordingly, in 1947, title to Weybourne Place vested with the Township of Etobicoke and is now vested with the City of Toronto.

### Use of Weybourne Place

Weybourne Place has never been opened or assumed by the City. Mr. Crisanti asserts that the City (through the former Township of Etobicoke) permitted the previous owners of 30 Ridgevalley Crescent to construct and maintain their driveway on Weybourne Place because the City issued a building permit in the early 1950's for the construction of the house and garage that are currently located on the privately-owned property at 30 Ridgevalley Crescent and that the City has permitted the continued use and enjoyment of the driveway since that time, without interruption. Mr. Crisanti purchased 30 Ridgevalley Crescent in 2008. He takes the position that he is legally entitled to maintain the status quo and continue to use the driveway on Weybourne Place, without payment of any compensation to the City.

No documentation or other evidence whatsoever has been presented to the City, however, to establish that the City ever consented to the use of the highway for a private driveway or that the City was even aware that the driveway to be used to access the garage was to be located on City-owned property.

Without any such evidence, it is impossible to determine if the City ever did permit the use of Weybourne Place as a private driveway or, if the City did permit such use, the terms on which the use was permitted.

In the absence of express permission from the City to use Weybourne Place as a private driveway, in order for Mr. Crisanti to establish that he has acquired a permanent right to maintain his driveway in its current location, he would have to prove that he has either acquired title to Weybourne Place through adverse possession by his predecessors in title or that he has acquired a prescriptive easement over Weybourne Place as a result of the long-term usage of the driveway by his predecessors in title.

### **Adverse Possession**

It is not legally possible to obtain title through adverse possession in the case of public highways. Pursuant to section 16 of the *Real Property Limitations Act* (Ontario), it is not possible to obtain title through adverse possession to a public highway owned by the Crown, a municipality or other public body, except if the rights were acquired prior to June 13, 1922. As Weybourne Place was established as a public highway in 1947, the exception cannot possibly apply. Therefore, it is not possible for Mr. Crisanti to establish that he or his predecessors have acquired possessory title to all or any portion of Weybourne Place.

### **Prescriptive Easement**

In the case of public highways, the courts have held that it is not possible to acquire a prescriptive easement over a public highway given that the general public has a common law right of passage over public highways, which carries with it the right to use the highway in a manner that is not inconsistent with its character as a public highway. In essence, one cannot, through the exercise of one's common law rights, acquire an easement to do the thing one is legally entitled to do. Accordingly, in my view, Mr. Crisanti would not be successful if he were to claim he has acquired a prescriptive easement to maintain and use his driveway on Weybourne Place.

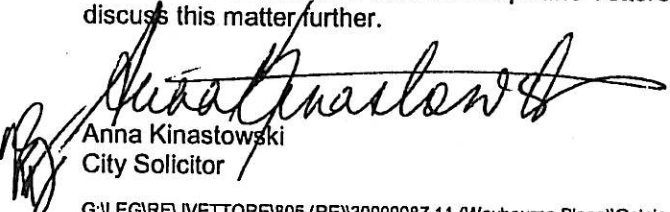
### **Closure of Weybourne Place**

Pursuant to section 39 of *City of Toronto Act, 2006*, it is clear that the City has authority to "remove or restrict the common law right of passage by the public over a highway and the common law right of access to the highway by an owner of land abutting a highway". Accordingly, if Council wishes, Council can enact a by-law permanently closing Weybourne Place as a public highway, subject to the usual procedural requirements, thereby extinguishing Mr. Crisanti's (and the public's) right of passage over Weybourne Place. Mr. Crisanti would no longer be entitled to use Weybourne Place to access his property if such a by-law were enacted and registered on title. As Mr. Crisanti's property fronts on Ridgevalley Crescent, he would nonetheless continue to have access to his property.

### **Conclusion**

In my view, Mr. Crisanti does not have a permanent legal right to maintain and use the existing driveway located on Weybourne Place and he would not be successful if he claimed he has either acquired title to Weybourne Place through adverse possession or he has acquired a prescriptive easement over Weybourne Place through long-term usage. The City has statutory authority to permanently close Weybourne Place as a public highway, which would extinguish the public's, including Mr. Crisanti's, common law right of passage over Weybourne Place.

Please do not hesitate to contact Jacqueline Vettorel of my staff if you have any questions or would like to discuss this matter further.

  
Anna Kinastowski  
City Solicitor