



Fogler, Rubinoff LLP
Lawyers

77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8
t: 416.864.9700 | f: 416.941.8852
foglers.com

February 21, 2022

Reply To: Robert B. Macdonald
Direct Dial: 647.729.0754
E-mail: rmacdonald@foglers.com
Our File No. 211533

VIA EMAIL (psc@toronto.ca)

Property Standards Committee, Toronto and East York Panel, City Clerk's Office
City Hall, 2nd Floor
100 Queen Street West
Toronto, ON M5H 2N2

Dear Sirs/Madams:

**Re: Property Standards Order dated December 9, 2021, Folder # 21 245428 PRS 00 IV
67 Riverview Gardens, Toronto, PLAN 2714 LOT 24 W PT LOT 42**

We are counsel to Mr. Scott O'Hara, the registered owner of 67 Riverview Gardens, Toronto.

On December 29, 2021, Mr. O'Hara filed a Notice of Application regarding an Order to Comply bearing the above-noted Folder Number (the "**Notice of Appeal**"). Mr. O'Hara's appeal to the Property Standards Committee is currently scheduled to be heard on February 28, 2022.

I am writing to (1) request that the February 28th hearing of Mr. O'Hara's appeal be adjourned to a later date; (2) update the information contained in the Notice of Appeal; and (3) deliver additional documents on which Mr. O'Hara intends to rely as part of his appeal.

1. Adjournment Request

On February 14, 2022, Mr. Michael Simone and Ms. Salima Rawji, through counsel, wrote to the Property Standards Committee to request an adjournment of their appeal, which is also scheduled to be heard on February 28th. Mr. Simone and Ms. Rawji are Mr. O'Hara's next-door neighbours. Their appeal involves the same retaining wall that is at issue in Mr. O'Hara's appeal.

Mr. O'Hara supports Mr. Simone and Ms. Rawji's adjournment request. Given the common issues in the two appeals, documents and information that Mr. Simone and Ms. Rawji obtain may be relevant to Mr. O'Hara's appeal, and to the Property Standards Committee's consideration of both appeals. Further, it is clear that Mr. Simone and Ms. Rawji have not been able to obtain the additional documents and information referenced in their counsel's February 14th letter for reasons that are beyond their control.

In Mr. O'Hara's respectful view, the hearings scheduled on February 28th should be adjourned so that Mr. Simone and Ms. Rawji have an appropriate amount of time to complete the

investigations referenced in their counsel's February 14th letter, and so that the best possible information is before the Property Standards Committee when the two appeals are heard.

Conversely, if an adjournment is not granted, Mr. Simone, Ms. Rawji and Mr. O'Hara's interests all may be prejudiced, and unnecessarily so.

2. Update to Mr. O'Hara's Notice of Appeal

In the Notice of Appeal, we advised that Mr. Dallas did not cause to issue his Notice of Application in the Superior Court of Justice. Mr. O'Hara recently learned that the Notice of Application was, in fact, issued. However, it was never served on Mr. O'Hara.

A copy of the issued Notice of Application is enclosed as **Tab 1**.

3. Additional Documents in Support of Mr. O'Hara's Appeal

In addition to those documents enclosed with the Notice of Appeal, and the above-noted issued Notice of Application, Mr. O'Hara intends to rely on the following additional documents, copies of which are enclosed with this letter:

Tab 2	High Resolution Version of the 2013 Survey
Tab 3	1944 Survey for 46 and 48 Rivercrest Road, Toronto
Tab 4	1945 Survey for 46 and 48 Rivercrest Road, Toronto
Tab 5	Photograph of the retaining wall dated December 29, 2021 (side view)
Tab 6	Photograph of the retaining wall dated December 29, 2021 (top view)

Should the Property Standards Committee have any questions or require any additional information, please do not hesitate to contact the undersigned.

Yours truly,

FOGLER, RUBINOFF LLP



Robert B. Macdonald
RBM/hc
Encls.

cc: Scott Venton, Fogler, Rubinoff LLP (*via email*)
Scott O'Hara (*via email*)

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

PAUL DALLAS and JILL DALLAS

Applicants

- and -

**SCOTT O'HARA and MICHAEL SIMONE and SALIMA
RAWJI**

Respondents



Application under Rule 14.05 of the Ontario *Rules of Civil Procedure* and

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing

- ☒ In person
- ☐ By telephone conference
- ☐ By video conference

at the following location: 330 University Avenue, Toronto, Ontario, on a date to be set by the registrar, at 10:00am.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of

service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IssueDate MARCH 22, 2021

Issued by Diane Rhoden

Digitally signed by Diane Rhoden
DN: cn=Diane Rhoden, o, ou, email=Diane.Rhoden@ontario.ca,
c=US
Date: 2021.03.26 10:12:56 -04'00'

Local Registrar

Address of
court office: 330 University Avenue, 8th Floor
Toronto ON M5G 1E6

TO: Scott O'Hara
c/o PNB Law Group
110 Adelaide Street East, 4th Floor
Toronto, ON M5C 1K9

Cameron Paulikot
Tel. 647.362.6691 ext. 1
Email: cameron@pnb.legal

AND TO: Michael Simone
69 Riverview Gardens
Toronto, ON M6S 4E6

AND TO: Salima Rawji
69 Riverview Gardens
Toronto, ON M6S 4E6

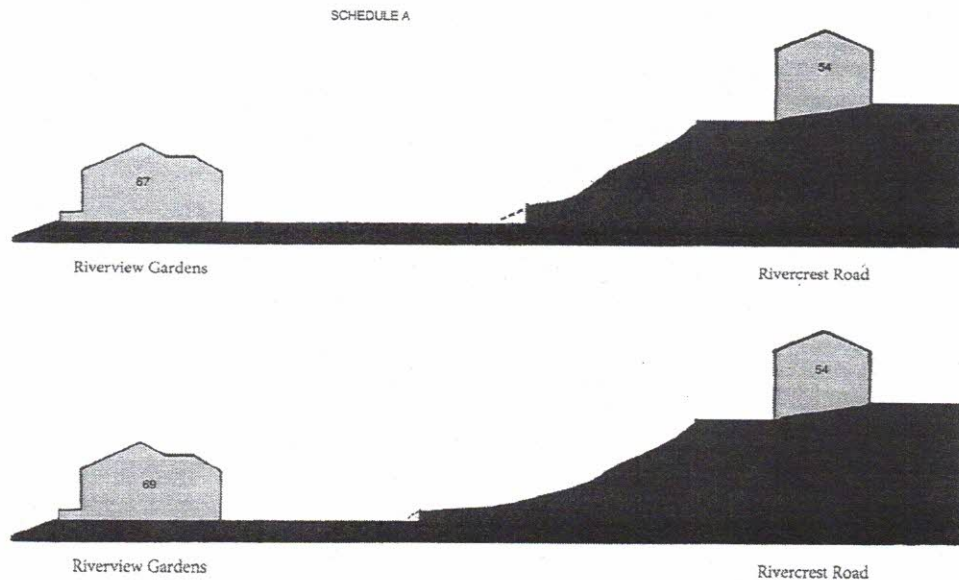
APPLICATION

1. The Applicants make application for:

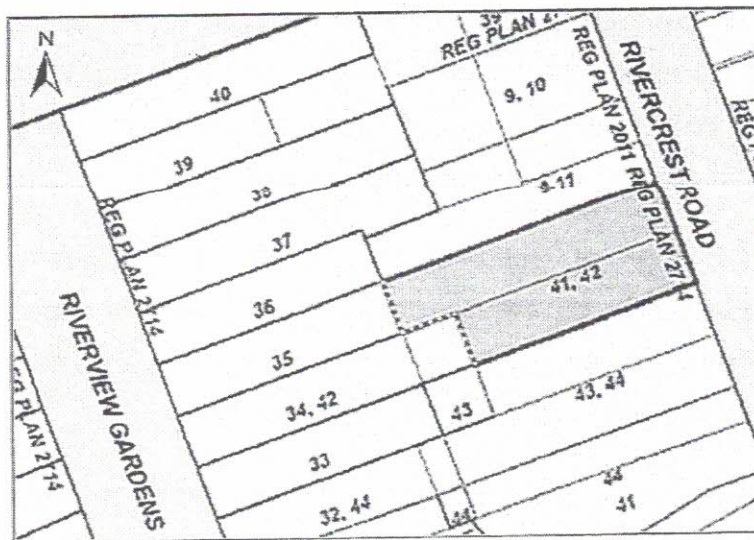
- (a) a declaration that the wall between the properties known municipally as 54 Rivercrest Road (owned by the Applicant) and 67 and 69 Riverview Gardens (owned by the Respondents) (the "Wall"), is on land owned and/or occupied by the Respondents;
- (b) a declaration that the Applicants have no right, title or interest in the land on which the Wall stands;
- (c) an order that the register under the *Land Titles Act* be rectified, if required, to show that the Respondents own the land on which the Wall stands;
- (d) a declaration that the Applicants are not responsible for the maintenance or repair of the Wall under the City of Toronto's Property Standards Bylaw (the "Bylaw");
- (e) a declaration that in the event the Applicants are required to incur the cost of repairing the Wall under the Bylaw, the Respondents have been unjustly enriched by the cost of the repairs;
- (f) an order that the Respondents reimburse the Applicants for the cost of the repairs, if incurred;
- (g) costs of this application on a substantial indemnity basis; and
- (h) such further and other relief as counsel may advise and this Honourable Court may accept.

2. The grounds for the application are:

- (a) The Applicants are the registered owner of property known municipally as 54 Rivercrest Road (the "Uphill Property"), where the Applicant Paul Dallas has lived from his birth in 1959 to the present, except for 1 year;
- (b) The Respondent Scott O'Hara is the registered owner of property known municipally as 67 Riverview Gardens, and the Respondents Michael Simone and Salima Rawji are the registered owners of property known municipally as 69 Riverview Gardens (collectively, 67 and 69 Riverview Gardens are referred to herein as the "Downhill Properties");
- (c) The Uphill Property is a deep lot, which slopes significantly downhill towards its western edge, where it borders on the Downhill Properties. In its natural state, that slope continued along the eastern portion of the Downhill Properties, towards the Humber River, as represented below:



- (d) In or about 1931, the lots for both the Downhill Properties and the Uphill Property were laid out in a Plan of Subdivision of Parts of Registered Plans 2011, 2293, 2315, and 2705 in the Township of York, being Plan No. 2714 ("Plan of Subdivision");
- (e) On the Plan of Subdivision, Lots 34 (which became 67 Riverview Gardens) and 35 (which became 69 Riverview Gardens) front onto Riverview Gardens, while Lots 41 and 42 (which together later became 54 Rivercrest Road) front onto Rivercrest Road;
- (f) The western boundary of Lots 41 and 42 meets the eastern boundary of Lots 34 and 35;
- (g) In 1934, the Downhill Properties were conveyed to the predecessors in title of the Respondents. Sometime between 1934 and 1942, houses were constructed on the Downhill Properties;
- (h) In 1936, the western 30-foot portion of Lot 42 was transferred to the owner of Lot 34 immediately to the East, thereby increasing the size of 67 Riverview Gardens;
- (i) Sometime between 1936 and 1942, the predecessors in title to the Respondents caused the Wall to be built at the back of their gardens, running from North to South between Lots 35 and 41, then East for 30 feet along the southern boundary of Lot 41, then South along the boundary between the western 30 feet of Lot 42 (belonging to 67 Riverview Gardens) and the remainder of Lot 42 (belonging to 54 Rivercrest Road), around the boundary between the Downhill Properties and the Uphill Property, as set out in the sketch below:



- (j) The Uphill Property did not have a house built on it at the time, and the Wall provided and continues to provide no practical utility or benefit to the Uphill Property;
- (k) Rather, the Wall was constructed solely for the benefit of the owners of the Downhill Properties, to provide for a level garden all the way to the back of their properties, instead of the upward slope that previously affected the eastern portion of their properties in their natural state;
- (l) The Wall was not constructed on the exact boundary between the Downhill Properties and the Uphill Property. Rather, the builders of the Wall appear to have encroached slightly on the Uphill Property, thereby maximizing the size of their back gardens;
- (m) Prior to the construction of the Wall, when the land was in its natural state, the owners of the Downhill Property owed a duty at common law to the owner of the Uphill Property, to provide lateral support to the Uphill Property;
- (n) When the owners of the Downhill Properties caused the back portions of the Downhill Properties to be excavated to create a level back garden for

their own benefit, they owed a duty to replace the lateral support to the Uphill Property that had been provided from their land in its natural state, with a properly-built retaining wall, and to keep such wall in good repair so that it would continue to provide such lateral support to the Uphill Property;

- (o) The duty to provide lateral support with a properly-built retaining wall, and to maintain such wall in good repair, was not and is not negated by the fact that the owners of the Downhill Properties encroached upon the Uphill Property;
- (p) In or about 1944-45, the owner of the Uphill Property constructed a house on the Uphill Property. In 1946, the Uphill Property was transferred to the Applicant Paul Dallas's maternal grandmother, Chrissa Kabakos. Ms. Kabakos and her family were the first occupants of the house, which has remained in the Applicants' family continuously since then;
- (q) At the time Ms. Kabakos and her family moved in, there was a fence at the back of the Uphill Property, just to the east of the Wall, marking the western edge of the land used and occupied by the Applicants' family;
- (r) From at least 1942 until the Downhill Properties and Uphill Property were brought under the *Land Titles Act* on or about October 19, 2001, the owners of the Downhill Properties were in open, continuous, notorious, and exclusive possession of the western portion of the Uphill Property up to and including the land on which the Wall was built, such that the doctrine of adverse possession applies to this portion of the Uphill Property;
- (s) In or about early 2020, the Respondents contacted the City of Toronto, seeking an order that the Applicants carry out repairs on the Wall to comply with the Bylaw ("Order to Comply"), which order was subsequently made on or about July 24, 2020;

- (t) The Applicants appealed the Order to Comply to the Property Standards Committee on August 11, 2020;
- (u) As of the date of this application, the Property Standards Committee has adjourned the appeal to allow the Applicants to make further inquiry;
- (v) The Property Standards Committee has no jurisdiction to determine matters of adverse possession, unjust enrichment, or to grant equitable relief;
- (w) A declaration that the Applicants have no right, title, or interest in the land at the western edge of the Uphill Property, up to and including the land under the Wall, and/or an order that the register be rectified to reflect that the Downhill Properties own such land, will reflect the actual boundary between the Downhill Properties and the Uphill Property as it has existed for approximately 80 years, and thereby do justice between the parties;
- (x) In the alternative, to the extent that the Applicants are required to incur the cost of repairing the Wall under the Order to Comply, the Respondents are unjustly enriched and should be required to reimburse the Applicants for such cost;
- (y) Sections 4 and 15 of the *Real Property Limitations Act* and sections 44, 51, 57(13), 159, and 160 of the *Land Titles Act*; and
- (z) Such further grounds as counsel may advise and this Honourable Court may accept.

3. The following documentary evidence will be used at the hearing of this Application:

- (a) Affidavits to be filed; and

- (b) Such further and other evidence as counsel may advise and this Honourable Court may permit.

Date: March ~~16~~²², 2021

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1

Andrew Lokan (LSO #31629Q)
Tel.: 416.646.4324
Fax: 416.646.4301
email: andrew.lokan@paliareroland.com

Lawyers for the Applicants

PAUL DALLAS
Applicant

-and-

SCOTT O'HARA and MICHAEL SIMONE and SALIMA RAWJI
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO**

NOTICE OF APPLICATION

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1

Andrew Lokan (LSO #31629Q)
Tel.: 416.646.4324
Fax: 416.646.4301
email: andrew.lokan@paliareroland.com

Lawyers for the Applicant

TAB 2

SURVEYOR'S REAL PROPERTY REPORT
PLAN OF

LOT 34 AND PART OF LOT 42
REGISTERED PLAN 2714

CITY OF TORONTO
(FORMERLY CITY OF YORK)

SCALE = 1 : 200
0 5 10 15 metres

METRIC

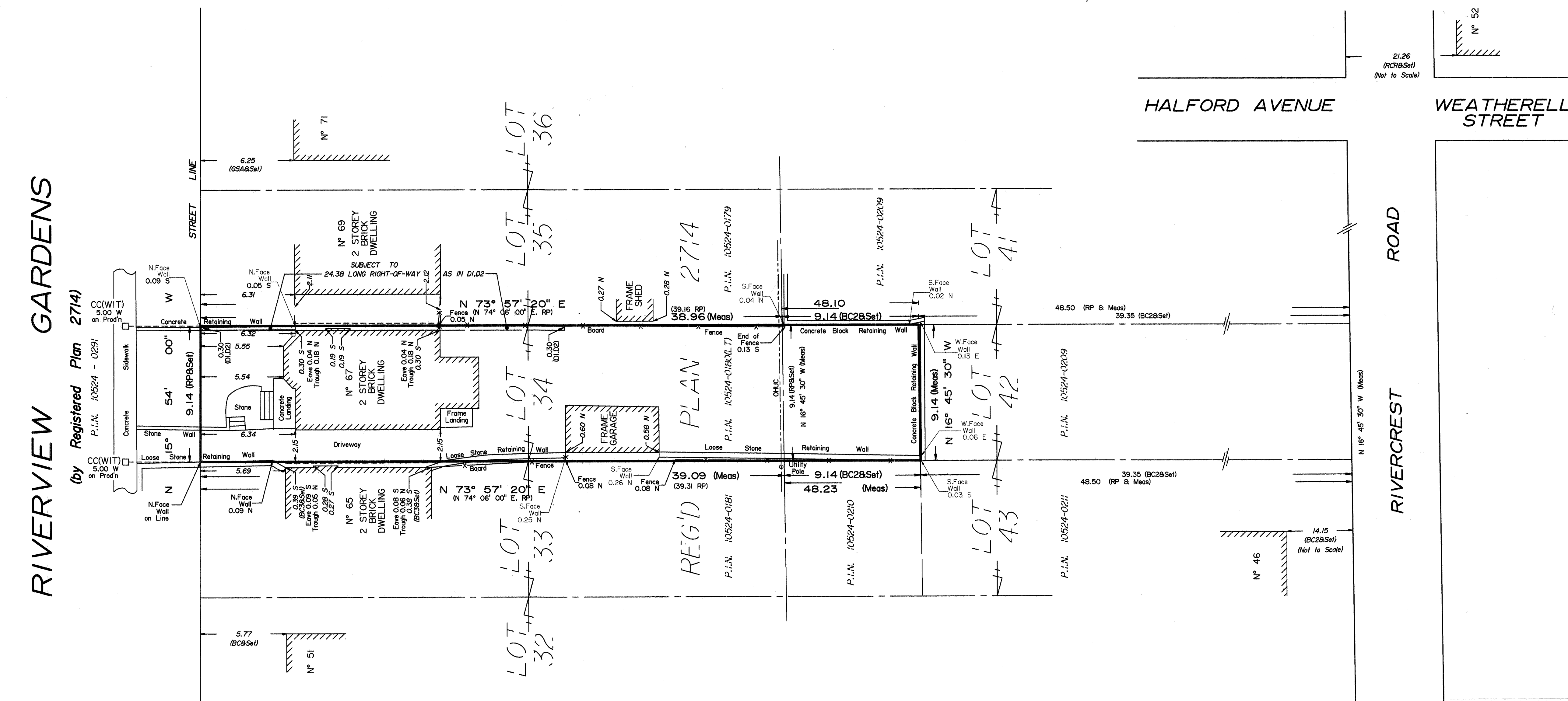
DISTANCES SHOWN HEREON ARE IN METRES
AND CAN BE CONVERTED TO FEET BY
DIVIDING BY 0.3048

NOTE

- 1) THIS PLAN MUST BE READ IN CONJUNCTION WITH SURVEY REPORT DATED JUNE 7TH, 2013.
- 2) THIS PLAN AND REPORT WERE PREPARED FOR MARY KULIK AND THE UNDERSIGNED ACCEPTS NO RESPONSIBILITY FOR USE BY OTHER PARTIES.

RIVERVIEW GARDENS

(by Registered Plan 2714)



LEGEND

□	DENOTES	MONUMENT PLANTED
■	—	MONUMENT FOUND
WIT	—	WITNESS
CC	—	CUT CROSS
IB	—	IRON BAR
RP	—	REGISTERED PLAN 2714
D1	—	INST. N° CY368509
D2	—	INST. N° CA312202
P.I.N.	—	PROPERTY IDENTIFIER
BC	—	SKETCH OF SURVEY BY BROWNE & CAVELL, O.L.S., DATED DECEMBER 1ST, 1942.
BC2	—	SKETCH OF SURVEY BY BROWNE & CAVELL, O.L.S., DATED APRIL 23RD, 1945.
BC3	—	FIELD NOTES BY BROWNE & CAVELL, O.L.S., DATED FEBRUARY 27TH, 1932.
RCR	—	BUILDING LOCATION SURVEY BY R.C. RABIDEAU, O.L.S., DATED APRIL 3RD, 1988.
OHUC	—	OVERHEAD UTILITY CABLES

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BEARING NOTE

BEARINGS ARE ASTRONOMIC AND ARE REFERRED TO THE EASTERLY LIMIT OF RIVERVIEW GARDENS HAVING A BEARING OF N 15° 54' 00" W AS SHOWN ON REGISTERED PLAN 2714.

SURVEYOR'S CERTIFICATE

I CERTIFY THAT :

1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT, THE SURVEYORS ACT AND THE REGULATIONS MADE UNDER THEM.
2. THE SURVEY WAS COMPLETED ON JUNE 7TH, 2013.

JUNE 7th, 2013
DATE

PETER J. HOMER
Ontario Land Surveyor

ASSOCIATION OF ONTARIO LAND SURVEYORS
PLAN SUBMISSION FORM
1874291

THIS PLAN IS NOT VALID UNLESS IT IS AN EMBOSSED ORIGINAL COPY ISSUED BY THE SURVEYOR in accordance with Regulation 1026, Section 29(3).

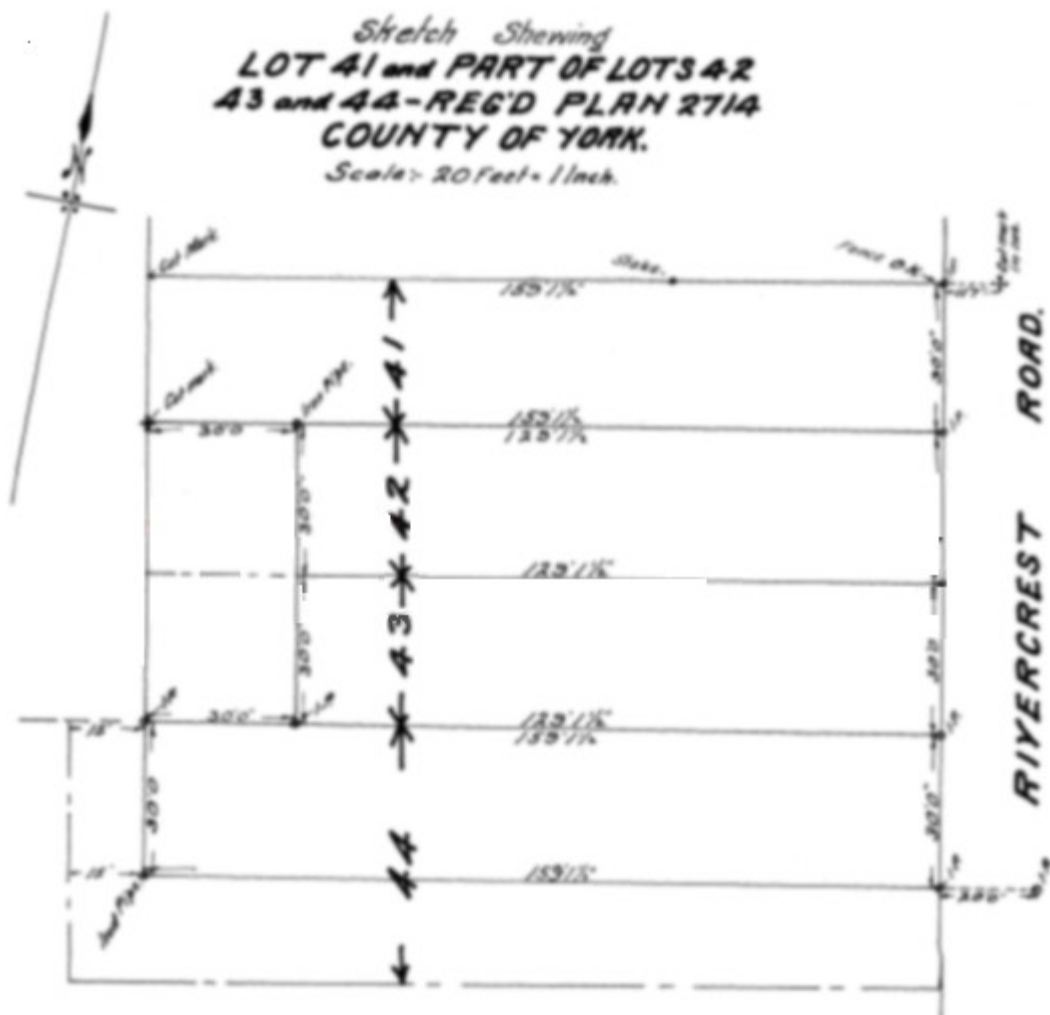
LSG | LAND SURVEY GROUP
ONTARIO LAND SURVEYORS

777 THE QUEENSWAY, UNIT 1, TORONTO, ONTARIO, M8Z 1N4
Tel: 416-252-2511 416-467-8023 Fax: 416-252-1501 www.landsurveygroup.com

DRAWN : V.C. CHECKED BY : PJH PLAN N° : LSG-2236

TAB 3

Sketch Shewing
LOT 41 and PART OF LOTS 42
43 and 44 - REG'D PLAN 2714
COUNTY OF YORK.
 Scale - 20 Feet = 1 Inch.

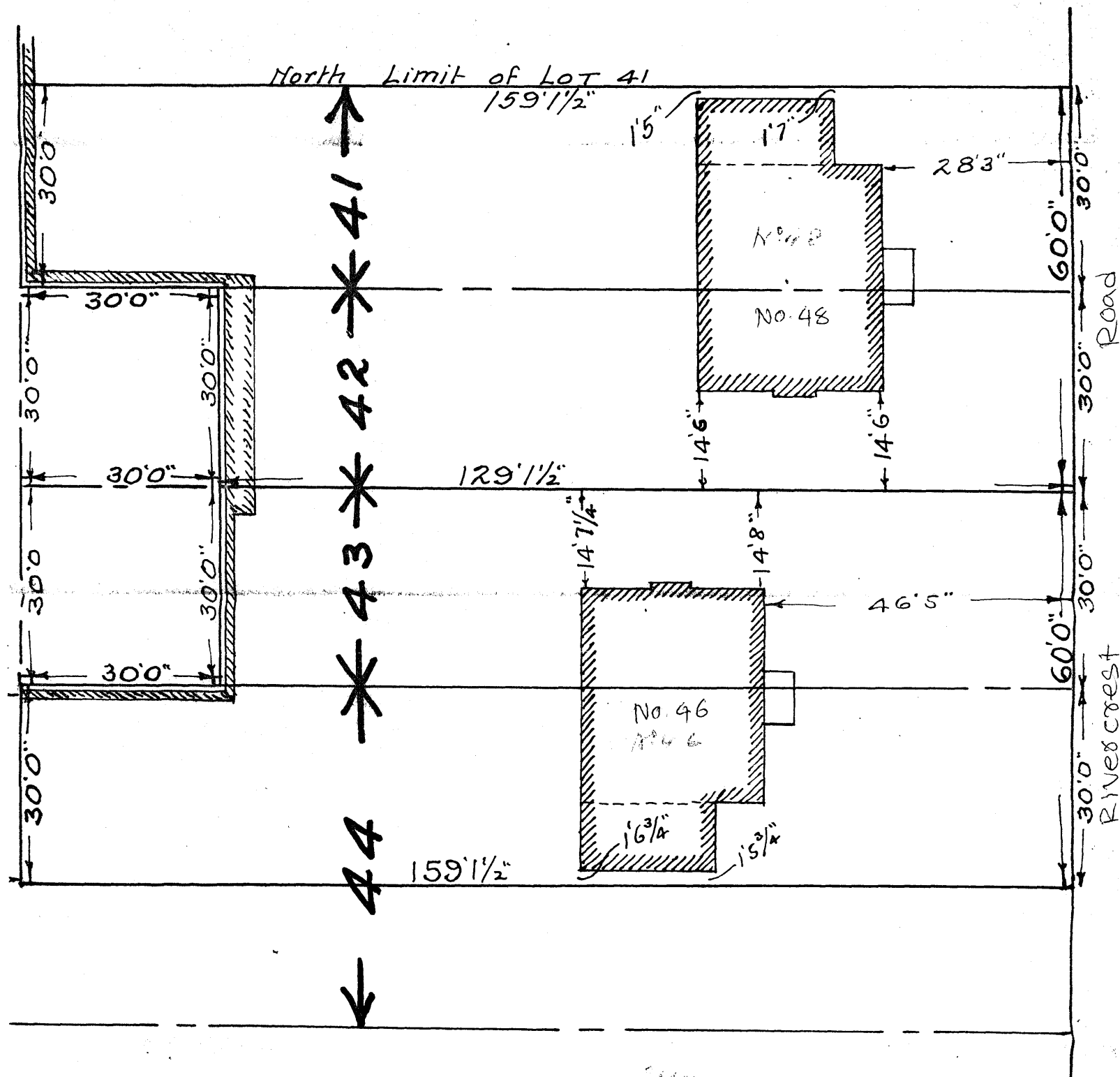


Broome & Cavell
 Ontario Land Surveyors.
 Toronto Oct 26th 1936.
 Resub A April 11th 1949.

TAB 4

Sketch Showing
LOT 41 and PART OF LOTS 42
43 and 44 - REG'D PLAN 2714
COUNTY OF YORK.
TOWNSHIP OF YORK.

Scale:— 1" = 20'



Browne & Cavell.
 Ontario Land Surveyors.
 Toronto April 23rd 1945.

TAB 5



TAB 6

