

Andrew Fennell

From: Paul Dallas <pdallas@ocadu.ca>
Sent: June 3, 2022 10:00 AM
To: Bradley Bartlett; Property Standards Committee
Cc: Andrew.Lokan@paliarerland.com; Jill Dallas; Paul Dallas
Subject: Respondents' Material to SZ30.2 and SZ30.3 / June 13 PSC Hearing
Attachments: PSC_June13_Meeting30_respondent.pdf

Good morning, Mr. Bartlett,

Re:

SZ30.2

**Property Standards Order dated December 9, 2021, Folder # 21 245428 PRS 00 IV
67 Riverview Gardens, Toronto, PLAN 2714 LOT 34 W PT LOT 42**

SZ30.3

**Property Standards Order dated December 9, 2021, Folder # 21 2455429 PRS 00 IV
69 Riverview Gardens, Toronto, PLAN 2714 LOT 35**

Could you please ensure that the Property Standards Committee receives the **attached document** and that it is uploaded to the website's agenda prior to the scheduled June 13, 2022, 9:30AM- Meeting 30 of the Toronto/East York Panel?

We are Respondents to this Appeal meeting.

Thank you very much.

Best regards,

Paul and Jill Dallas
Owners of 54 Rivercrest Rd

June 3, 2022

Dear Property Standards Committee,

1. My name is Paul Dallas. My wife and I own the property at 54 Rivercrest Road. We are the Respondents in this appeal (the Respondents).
2. This dispute is about responsibility to rebuild or repair a hand built concrete block wall (the Wall) that is located at the back of three properties 54 Rivercrest Road (the Upper Property) and 67 and 69 Riverview Gardens (the Lower Properties)(the Appellants).
3. The only topographical survey prepared by the reputable firm Young and Young Surveying, Inc. dated August 4, 2021 confirms that the Wall is located on all three properties (The Young and Young Survey).
4. All three Property Standard Work Orders were properly registered by the City on the three Properties affected.
5. The City fairly and correctly took into account all of the up to date and accurate survey evidence, including the recent Young and Young Survey and registered the Second and Third Property Standard Orders on 67 and 69 Riverview Gardens that are the subject matter of this Appeal.
6. As the registered owners of 54 Rivercrest Rd. we are writing to respectfully request that the Property Standards Committee confirm the Property Standard Work Orders issued against 67 and 69 Rivercrest Gardens on December 9, 2021 and that this Appeal be dismissed.
7. We wish to participate in the Appeal adjourned from February 28, 2022 to June 13, 2022 and make the following submissions for your consideration. We can have the surveyor who prepared the Young and Young Survey present to answer any questions of the Appeal Panel.

The City's Position

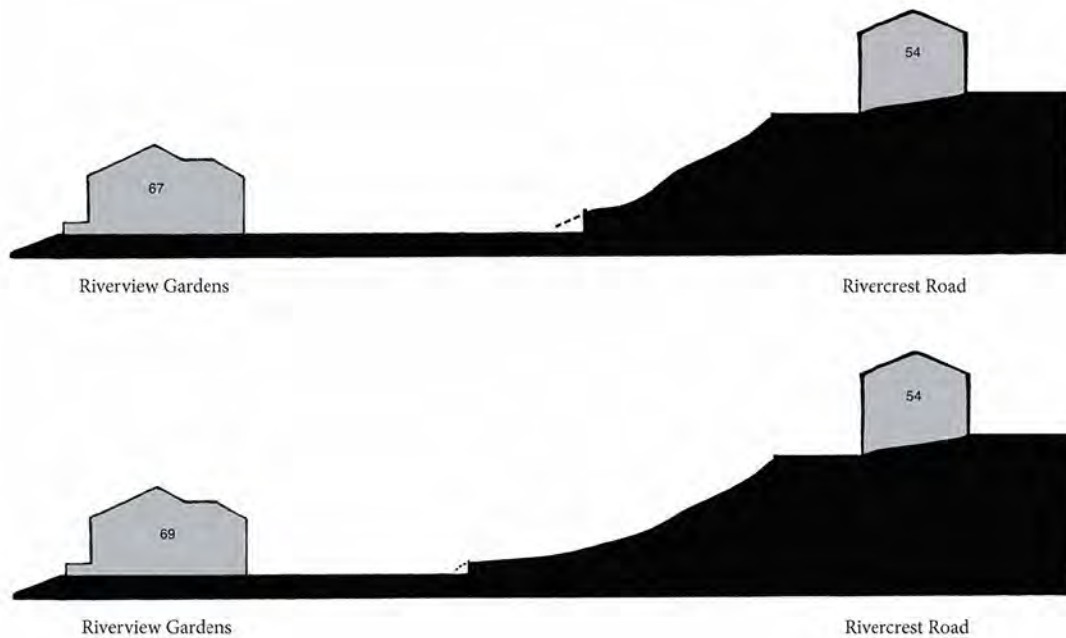
8. The City of Toronto has now placed three work orders against the Properties to repair/replace the Wall based upon Chapter 629 Property Standards.
9. First, on July 24, 2020 – at the request of the owners of 67 and 69 Riverview Gardens who suggested that the Wall constituted a danger, the City of Toronto placed a Property Standards Order confirmed by the Property Standards Committee on March 22, 2021, Folder #20 171908 PRS 99 registered on 54 Rivercrest Road.

10. This order was based upon the submissions and surveys dated 1994 and 2013 produced by the Lower Properties that the Wall was located on 54 Rivercrest Road and that the Wall constituted a safety hazard (the First Property Standards Order).
11. I note that the Wall site has been inspected in June 2021 and that it is not a present danger. The inspector concluded "Based on our observations, no significant signs of erosion or slope instability were observed on your property at the time of inspection." (See Schedule A for details of this inspection).
12. After I provided a copy of the Young and Young Survey to the City, the City on December 9, 2021 placed a Second and Third Property Standards Order on 67 and 69 Riverview Gardens with respect to the Wall pursuant to subsection 15.2 (2) of the Building Code dated December 9, 2021 in Folder 21 245428 PRS 00IV for 67 Riverview Garden (the Second Property Standards Order) and Folder 21 245429 PRS 00IV for 69 Riverview Gardens. (the Second and Third Property Standards Orders).
13. The Appellants who are the present Lower Property owners appeal the Second and Third Property Standards Orders.

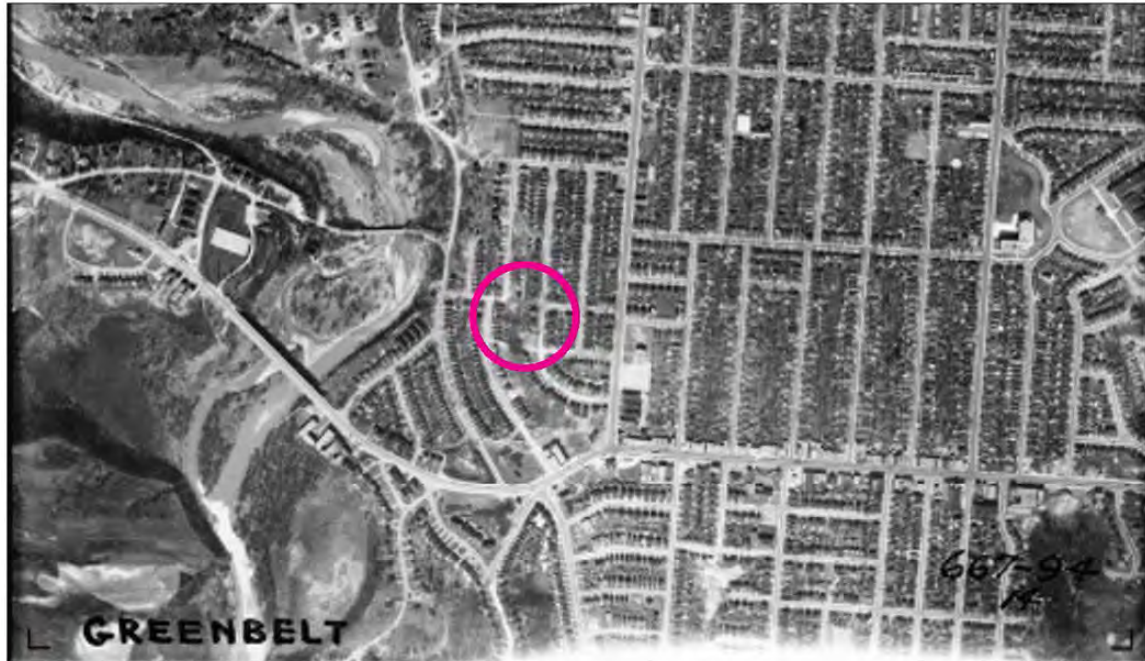
Background Facts

14. I am the grandson of Chrissa Kabakos the original owner of 54 Rivercrest Road. I have lived at 54 Rivercrest Road all my life. My home at 54 Rivercrest Road was built in 1945 and purchased by my grandmother.
15. The Wall is a hand-built concrete block wall, ranging in height from 4.5-6.5 feet high, located at the back of 67 and 69 Riverview Garden's gardens, which is at the bottom of our 160 feet deep property. It runs from North to South between Lots 35 (belonging to 69 Riverview Gardens) and 41 (belonging to 54 Rivercrest Road) for 30 feet, 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 Lower Properties and the Upper Property.
16. There is no one now alive that can confirm details of who built the Wall. There is nothing registered on title referring to the Wall. There is no written document concerning the Wall.

17. The Lower Properties, 67 and 69 Riverview Gardens were acquired by predecessors of the Appellants in 1934. To the best of my knowledge the Lower Properties were built in or around 1936.
18. Based upon available photographic evidence, it appears clear that the predecessors in title to the Appellants built the Wall sometime between 1936 and 1942.
19. It appears clear that the purpose of the Wall was to provide a flat backyard for the benefit of the Lower Properties replacing the natural slope of the ravine and enlarging their usable space in their back garden. I prepared this sketch based on surveys to the best of my ability as a professional illustrator:



20. At that time the Wall was built there was no house at 54 Rivercrest Road.
21. The Wall provides no practical utility or benefit for 54 Rivercrest Road.
22. It appears when the Wall was built the predecessors in title to the Appellants encroached on the Upper Property at 54 Rivercrest Road.



above: aerial photograph (667-94(14) Toronto City Archives) dating April 3, 1942

below: yellow arrows show supporting walls in question built prior to 1942

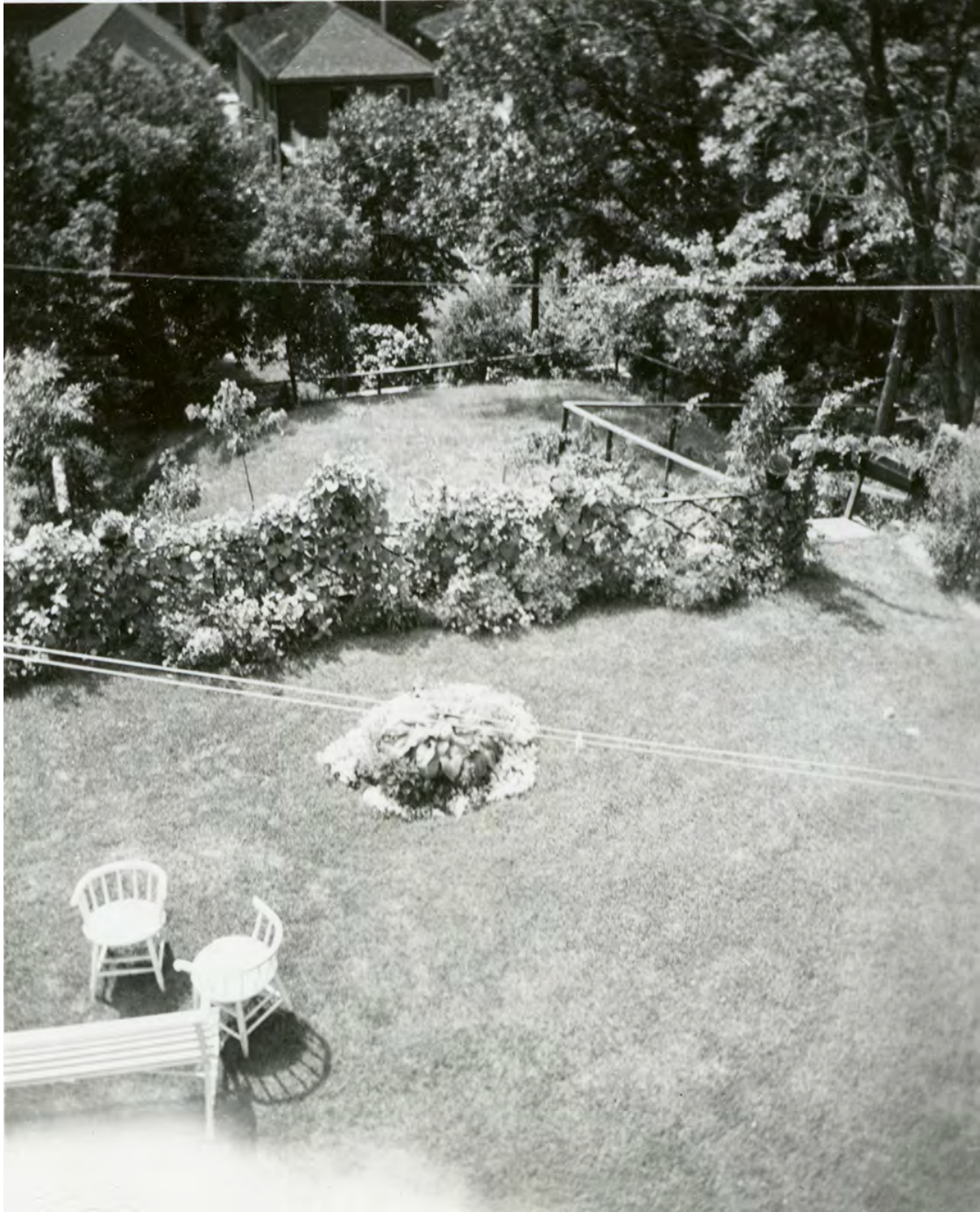
below: pink circle indicates NO house exists on 54 Rivercrest Road



23. I note that after the Wall was built and before the construction of my home at 54 Rivercrest Road, that there was a fence on the western edge of my Property and other properties separating my home and property from the Wall. The only reasonable inference is that this fence confirms that the Wall belonged to the predecessors of the Appellants.

24. The following photographs taken in 1947 confirm the site and description from the perspective of 54 Rivercrest Road, including that of my grandfather.





Facts about the Young and Young Survey

25. The Properties are now governed by the City of Toronto and also the Toronto Regional Conservation Authority (TRCA), and the Toronto Ravine Authority (TRA). The procedure for obtaining permits and the cost of rebuilding the Wall is complex, requiring multiple experts, and is very costly.
26. One of the required preliminary steps for the TRCA application is to produce a topographical survey.
27. I commissioned a Surveyor's Real Property Report (SRPR) and topographical survey dated August 4, 2021 for 54 Rivercrest Road prepared by the well recognized surveyors at Young and Young, a subsidiary of Mauro Group Inc, in support of the TRCA application (the Young and Young Survey). The Young and Young Survey took 30 hours of field work and 34 hours of office work, and cost in excess of \$10,000.00.
28. The Young and Young Survey confirms that the base of the Wall and the upper portion of the Wall is located on all three properties.

"The attached drawing shows the top (red) and bottom (blue) ties from the concrete retaining wall (CRW) to the property line. The retaining wall is made of irregular concrete blocks so the measurements may vary at different locations. We measured the setbacks at the bends of the CRW. The direction of the ties from the CRW to the property line as shown on the drawing are abbreviated (i.e. South – S, North – N, etc.). The CRW is straddling the property lines at the base and the top as shown on the drawing. The face of the CRW does lean back towards the house but for the most part is on/over the property line as noted on the drawing." (Emphasis added)

- Frank Mauro, President, Mauro Group, parent company of Young & Young.
[See Schedule C for emails of Frank Mauro, August 16 & 24, 2021]

29. I gave no instructions to Young and Young about the issue of the location of the Wall prior to the preparation of the survey. When Young and Young provided their survey showing that the Wall was on all three properties, I was surprised based upon the surveys produced to date. I requested that they carefully review their conclusions as to the location of the base and upper portions of the Wall. They reconfirmed their conclusions.
30. Chris Ellis, Manager, Toronto East York District, The City of Toronto, makes two important points in his confirmation of the registration of the Property Standard Work Orders on 67 and 69 Riverview Gardens (the Second Property Standards Order).

31. First he confirms in his email to me dated December 2, 2021 that the City took the step registering the Property Standard Work Order on 54 Rivercrest Road without the current Young and Young survey confirming the current location of the Wall on all three properties. He confirms that the City "addresses non-compliance on properties where non-compliance exists currently."
32. Chris Ellis further confirms in his email dated December 2, 2021 that "historic responsibility for this non-compliance, for example for the shifting of the retaining wall over time, is a civil matter among the property owners and the City takes no position on this." [Emphasis added] [**See Schedule B for email of Chris Ellis dated December 2, 2021**]
33. Clearly today based upon the survey evidence there is non-compliance on all three Properties and both the First and Second and Third Property Standards Orders are properly registered on all three Properties.

Issues Raised in this Appeal

34. The Appellants in this appeal raise issues challenging the Second and Third Property Standards Orders.
35. First, they challenge the accuracy of the Young and Young Survey locating the Wall including its base on all three Properties. Counsel on behalf of 67 suggests that the base of the wall is not on all three properties. This is contrary to the findings in the Young and Young Survey.
36. The Appellants have apparently hired a surveyor to challenge the conclusions reached in the Young and Young Survey. To date no report or stamped survey contradicting the Young and Young survey has been disclosed.
37. If there is such a dispute between conflicting current surveys I am prepared to have my surveyor meet jointly with the Appellants' surveyor to clarify this issue and to produce if necessary a supplementary report to the Appeal Panel if so requested.
38. Second, the Appellants raise the allegation, without any evidence, that even if the Young and Young survey is accurate, that the Wall has shifted over time and they should not be responsible for repairing or building costs of a new Wall based upon the Young and Young Survey. To date no expert reports have been provided by the Appellants supporting these theories.
39. It is my position that the neighbours below built the Wall some 80 to 86 years ago for the sole benefit of the Lower Properties to create flat garden

space. The Wall has obvious damage and has in places buckled but is solid at its base. It is my position that the base of the wall remains where it has been since it was built long ago. This issue of the wall shifting is obviously an area for an appropriate expert.

40. Respectfully, the question of whether or not the wall has shifted is not a question for determination by the Property Standards Committee.
41. As I understand matters, the question whether the Wall has shifted must be determined in a civil court on a complete factual record: and according to Chris Ellis, is "not the concern of the City".
42. If the Appellants choose to proceed with the argument that the Wall has shifted, they are free to initiate a civil suit outlining their claim to which I will respond.
43. I note as well in the alternative submissions in the Notice of Appeal filed on behalf of 69 Riverview Gardens request further relief not within the jurisdiction of the Property Standards Committee. They request in the alternative, that this Tribunal allocate the responsibility for the proportion of costs to be shared by the present owners of 69 Riverview Gardens for the Wall.

All the expert reports are not concluded, and the cost of the wall will be significant. So far, I have paid \$ 94,997.97, plus legal fees in the amount of \$ 41,485.19.
44. The counsel for 69 Riverview Gardens also further requests that any new wall be built entirely on my land. These are obviously complex issues requiring full factual record and are, as confirmed by Chris Ellis, in the domain of the civil court should the owners of the Lower Properties choose to initiate such proceedings.
45. I am content to remove the Wall at a shared cost with my neighbours and to provide grading to return the ravine to its natural state. I do not believe that this is a palatable option for the Lower Properties as this solution would reduce their usable garden space. I also wish to be practical and fair with my neighbours to take the time to find a principled cost effective solution for all avoiding costly time consuming litigation.

Conclusion

46. The Appellant's appeal properly framed cannot succeed.
47. There are conflicting surveys. The Respondent, undertook as part of the TRCA process to obtain a topographical survey of his Property. This most recent and most comprehensive survey clearly confirms that both the base of the Wall and the Wall itself straddles all three Properties.
48. In these circumstances, the three Property Standard Work Orders were properly registered by the City on the three Properties affected.
49. The City fairly and correctly took into account all of the up to date and accurate survey evidence, including the recent Young and Young Survey and registered the Second and Third Property Standard Orders on 67 and 69 Riverview Gardens.
50. The Second and Third Property Standard Orders recognizes the present situation that the Wall built many years ago is on all three Properties and hence these orders are properly registered and should be confirmed. This appeal should be dismissed.

Respectfully submitted,



Paul Dallas co-owner of 54 Rivercrest Road

Schedule A: Details of Inspection and email of TRCA, June 7, 2021

"On Tuesday, June 1, 2021, Toronto and Region Conservation Authority (TRCA) staff completed a site inspection on your property, located at 54 Rivercrest Road, City of Toronto, to investigate erosion concerns that you brought to our attention. Based on our observations, no significant signs of erosion or slope instability were observed on your property at the time of inspection." (Emphasis added)

-Andrew Jules, Supervisor, Erosion Hazard Monitoring, Erosion Risk Management, Restoration & Infrastructure, TRCA, June 7, 2021.

Site Inspection Follow-up - 54 Rivercrest Road, City of Toronto

4



Andrew Jules <Andrew.Jules@trca.ca>

Mon 2021-06-07 3:03 PM

To: Paul Dallas

Cc: Daniel Pina <Daniel.Pina@trca.ca>; Darryl Laramy <Darryl.Laramy@trca.ca>

Works and Access Agreements... 310 KB

Ravine and Bluff Brochure.pdf 362 KB

2 attachments (672 KB) Save all to OneDrive - OCAD University Download all

Good Afternoon Mr. Dallas,

On Tuesday, June 1, 2021, Toronto and Region Conservation Authority (TRCA) staff completed a site inspection on your property, located at 54 Rivercrest Road, City of Toronto, to investigate erosion concerns that you brought to our attention.

Based on our observations, no significant signs of erosion or slope instability were observed on your property at the time of inspection; however, a failing concrete/cinder block retaining wall is located along the western limit of your rear yard. A 10.3 m long section of the retaining wall is bulging and leaning downslope and two gaps in the wall (0.25 m and 0.15 m in length) were observed where the wall is separating and leaning. Several stone retaining walls, that appear to be in overall good condition, are located along the slope in various locations. Overall the slope is well vegetated with large trees; however, a significant amount of yard waste, composed of leaf litter, is located along the top of the slope, adjacent to your dwelling. According to measurements taken during the inspection, your dwelling is located 9.3 m from the top of the slope and 14 m from the failing retaining wall at the closest distances. Despite the aforementioned deficiencies, your dwelling does not appear to be at immediate risk at the present time.

TRCA has an Erosion Risk Management Program (ERMP) that inspects erosion risks to public infrastructure and private property and based on the results of the inspections, TRCA prioritizes and implements projects to stabilize the hazards. TRCA has no legal obligation to stabilize erosion hazards impacting privately owned property, but we receive funding from our municipal partners to implement this work in certain areas of our jurisdiction, including the City of Toronto. As your dwelling is not at immediate risk at the present time, TRCA will not be in a position to proceed with any work on your property, under the ERMP, in the near future. However, TRCA can monitor your property on an on-going basis in order to update our overall priority list. Should you wish to participate in the ERMP, please review, sign, and send the attached Works and Access Agreement to andrew.jules@trca.ca by Monday, June 28, 2021.

Your property is located within TRCA's Regulation Limits. As such, should you wish to undertake works on your own, you may require a permit from TRCA's Development Planning and Permits department to ensure that the works are not going to negatively impact the slope or neighbouring properties. Information on when a permit is required and the permitting process can be found at TRCA's Planning and Permits website: <https://trca.ca/planning-permits/>.

Should you have any questions about the permitting process, please contact Daniel Pina (copied on e-mail) who is the TRCA Planner for the York area at 416-661-6600 ext. 5250 or daniel.pina@trca.ca.

It's recommended that the leaf litter be removed from the top of the slope as it kills underlying vegetation and is adding weight to the slope, which can contribute to slope instability.

Please find attached a brochure that explains the process of erosion, how the actions of property owners may impact bluff or ravine erosion, and how by-laws/policies/regulations affect a property owner.

For more information on TRCA's ERMP, please visit the following website: <https://trca.ca/conservation/erosion-risk-management/>.

Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Andrew

Andrew Jules, HBSc, C.E.T.
Supervisor, Erosion Hazard Monitoring
Erosion Risk Management | Restoration & Infrastructure

T: (416) 661-6600 ext. 5535

C: (647) 539-4859

E: andrew.jules@trca.ca

A: [9741 Canada Company Avenue, Vaughan, ON, L4H 0A3](https://www.google.com/maps/place/9741+Canada+Company+Avenue,+Vaughan,+ON,+L4H+0A3/@43.78581,-79.53111,15z) | trca.ca



**Schedule B: Email of Chris Ellis, Manager, Investigation Services, MLS;
December 2, 2021**

From: Paul Dallas pdallas@ocadu.ca
Subject: Fw: Letter regarding Wall
Date: December 2, 2021 at 3:24 PM
To: Paul Dallas paul@pauldallas.com

P

From: Christopher Ellis <Christopher.Ellis@toronto.ca>
Sent: December 2, 2021 1:33 PM
To: Paul Dallas <pdallas@ocadu.ca>; 'Jill Dallas' <jilldallas@rogers.com>
Cc: Nicole Sweetapple <Nicole.Sweetapple@toronto.ca>; Michael Antoniou <Michael.Antoniou@toronto.ca>
Subject: Letter regarding Wall

Good Afternoon,

I apologize for the delayed response to this matter. As you know, the City issued a Property Standards Order to your property at 54 Rivercrest Road requiring repair of the retaining wall. The City is now in receipt of a current stamped survey of the retaining wall which is attached. This survey was not available to the City when the Property Standards Order was issued to your property. After consulting with our survey staff in the Building Division, we are satisfied that this current survey shows the retaining wall is located on 67 and 69 Riverview Gardens as well as 54 Rivercrest Road. Property Standards Orders will be issued to 67 and 69 Riverview Gardens, in addition to 54 Rivercrest Road, to repair the retaining wall. We hope that you will work with your neighbours to resolve this non-compliance within the time frame set out in the Property Standards Order.

Please note that Chapter 629, Property Standards, addresses non-compliance on properties where that non-compliance exists currently. Historic responsibility for this non-compliance, for example for the shifting of a retaining wall over time, is a civil matter among the property owners and the City takes no position on this.

Best Regards,



Chris Ellis
Manager, Toronto/East York District
Investigation Services
Municipal Licensing & Standards
416-392-7735
christopher.ellis@toronto.ca

Schedule C: Emails of Frank Mauro, President, Mauro Group Inc (parent company of Young & Young Surveyors); August 16 & 24, 2021

Mon, Aug 16, 2021, 10:51 AM

Hi Issa,

We can differentiate the MS points but that wasn't in our scope of work so the drafting costs will be invoiced at our hourly rates if you want us to proceed.

Regarding the property owner's comments, we measured the top and bottom of the retaining wall location with the top elevation shown on the subject property side. The concrete retaining wall does meander along the property line as shown on the highlighted sketches.

A Reference Plan of Survey (R-Plan) could show the wall's location in more detail but it will not create a different boundary than what is shown on our SRPR.

Regards,

Frank Mauro, B.Tech., O.L.S.

President

Hi Kornit,

The attached drawing shows the top (red) and bottom (blue) ties from the concrete retaining wall (CRW) to the property line. The retaining wall is made of irregular concrete blocks so the measurements may vary at different locations. We measured the setbacks at the bends of the CRW. The direction of the ties from the CRW to the property line as shown on the drawing are abbreviated (i.e. South – S, North – N, etc.).

The CRW is straddling the property lines at the base and the top as shown on the drawing. The face of the CRW does lean back towards the house but for the most part is on/over the property line as noted on the drawing.

I hope this helps.

Regards,

Frank Mauro, B.Tech., O.L.S.

President

To visually clarify in the Young & Young drawing where the base of the Wall sits, I have connected the **“Base of CRW”** (concrete retaining wall) blue ties and **highlighted in yellow where the Wall sits on the Lower Properties**. This summary is confirmed by James Agyemang, Supervisor, Mauro Group Inc.

james@maurogroup.ca

To: Paul Dallas

Cc: 'Jill Dallas' <jilldallas@rogers.com>; 'Phil Perzia, P.Eng.' <Phil@perzia.pro> +1 other

Tue 2022-05-24 8:34 AM

Good morning Phil and Paul
Sorry for the late reply. Yes the summary depicts the base of the wall.

Regards,
James Agyemang, O.L.S., O.L.I.P., B.Eng.
Supervisor



MAURO GROUP INC.

2 Holland Drive, Unit 5, Bolton ON, L7E 1E1
(905) 951-6000, Ext.226 – www.maurogroup.ca

Yellow highlight illustrates where the Base of Wall sits on Lower Properties

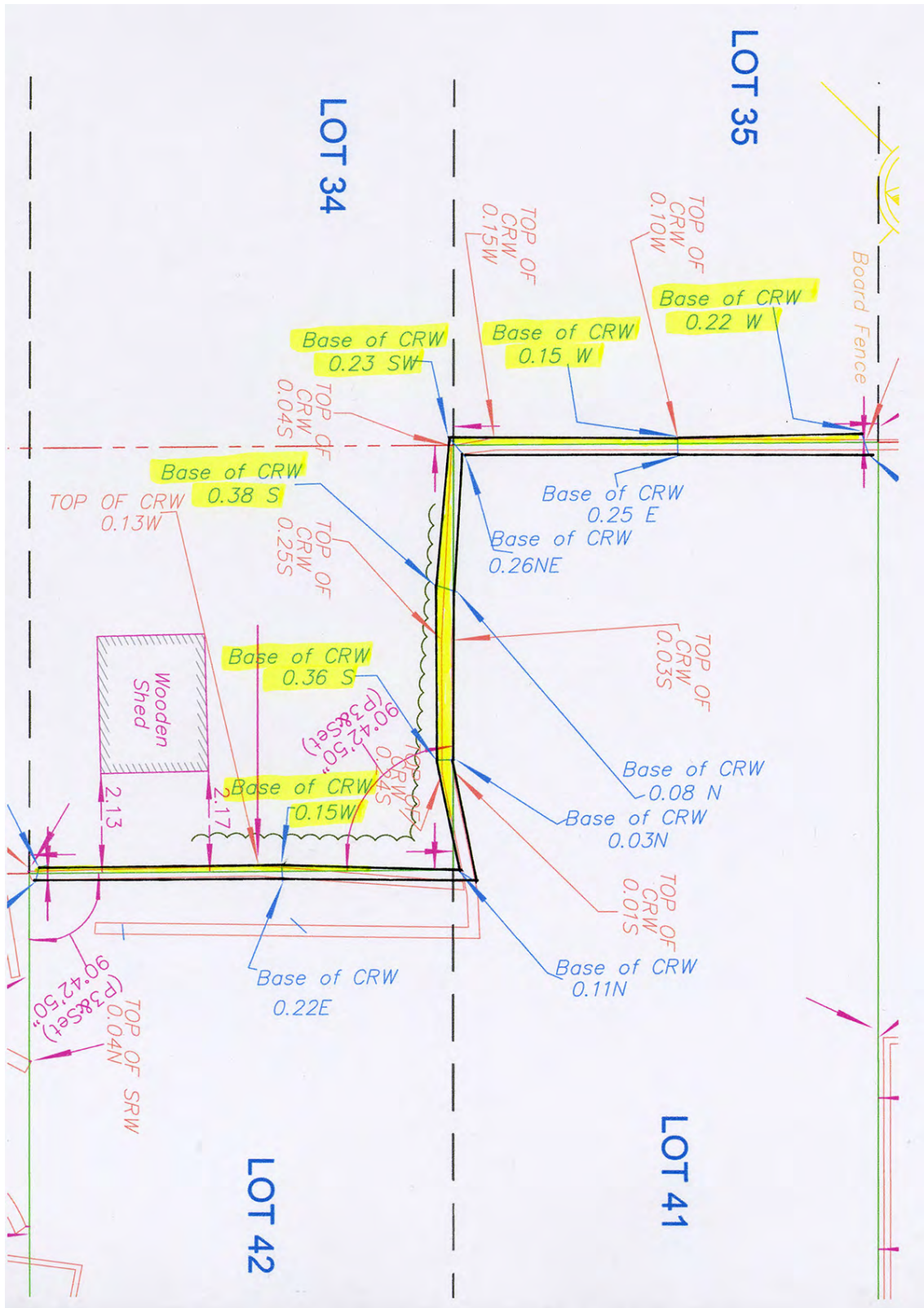


EXHIBIT 'A'

View of Wall from 54 Rivercrest Rd west to flat yards below of 67 and 69 Riverview Gardens.



EXHIBIT 'B'

The Wall, looking west on 67 Riverview Gardens' flat yard.



EXHIBIT 'C'

The Wall, looking north on 67 Riverview Gardens' flat yard.



EXHIBIT 'D'

View from 54 Rivercrest Rd at 67 Riverview Gardens' flat yard.



EXHIBIT 'E'

View of Wall and Upper Property of 54 Rivercrest Rd east from 67 Riverview Gardens.



EXHIBIT 'F'

View of Wall and Upper Property of 54 Rivercrest Rd from 67 Riverview Gardens.

