

WHAT EVERY ATTORNEY NEEDS TO KNOW ABOUT SURVEY MAPS

GEORGE A. SCHELL, JR., ESQ.
Schell Law, P.C.
200 Perinton Hills Office Park, Suite 280
Fairport, New York 14450

March, 2014

1. Introduction.

The expression “location, location, location” first appeared, according to The Yale Book of Quotations, in 1926 in The Chicago Tribune. This expression, which is oft repeated by Realtors®, concisely states the importance of a survey map. The survey will confirm, inter alia, whether the property is located where the buyer believes the property to be located. Additionally, the survey can either raise concerns or resolve issues that may impact the closing process. As a result, a survey is involved in almost every real estate transaction. Accordingly, it is important for attorneys to have a basic knowledge of surveys to permit the review, evaluation and understanding of the survey map.

2. What is a Survey?

Black’s Law Dictionary defines a Survey as “The process of which a parcel of land is measured and its boundaries and contents ascertained; also a map, plat or statement of the result of such survey, with the courses and distances and the quantity of the land.” *Black’s Law Dictionary*, 1445 (6th ed. 1990).

“Survey” has also been defined as “To determine the boundaries, the area, or the elevations of (land or structures on the earth’s surface) by means of measuring angles and distances, using the techniques of geometry and trigonometry.” *The American Heritage® Dictionary of the English Language* (5th ed. 2013).

3. What is the Role of the Surveyor?

New York State Education Law defines the practice of land surveying as follows:

The practice of the profession of land surveying is defined as practicing that branch of the engineering profession and applied mathematics which includes the measuring and plotting of the dimensions and areas of any portion of the earth, including all naturally placed and man or machine-made structures and objects thereon, the lengths and directions of boundary lines, the contour of the surface and the application of rules and regulations in accordance with local requirements incidental to subdivisions for the correct determination, description, conveying and recording thereof or for the establishment or re-establishment thereof. *NYS Educ. Law §7203*

The New York State Education Department, in their “Land Surveying Practice Guidelines,” references §7203, and states:

A survey is the opinion of a Registered, Licensed Land Surveyor or Registered, Licensed Professional Engineer holding the “m” exemption, which is based on measurements, research, mathematical computation, analysis, and professional judgment consistent with rules of evidence, legal precedents, and in accordance with the applicable laws of New York State. This opinion is typically in the form of a graphic presentation (i.e.: map, electronic file, field monumentation, etc.) a written report (i.e.: Survey

Report, suggested legal description, correspondence) or expert testimony. *NYSED, "Land Surveying Practice Guidelines"* (Sec. 1).

Further, surveying has been described by Gary R. Kent, the Integrated Services Director for The Schneider Corporation, a land surveying, GIS and consulting engineering firm, as being part **art**, part **science**, and part **law**:

The **art** aspect could be said to apply to the judgments and decisions in the field related to where, and to what extent, to look for evidence, and how that information is all presented. For example, having a gut feeling on where to dig to try and find a stone marker set in 1840, or how to most effectively run a survey line from one location across a ravine and river and through the trees to another location.

The **science** aspect is generally the science of measurement – using angle measuring devices (theodolites, total stations), distance measuring devices (electronic distance measuring instruments, steel tapes) and GPS (global positioning system which uses satellites).

The **law** aspects relate to the interpretation and resolution of legal descriptions and boundaries. There are virtually no statutes or legislated laws that tell surveyors how to determine boundaries; the rules for that are from a body of common law derived from hundreds of years of court cases related to boundary disputes and legal descriptions. Surveyors cannot make proper boundary determinations without studying and understanding what the "weight of authority" has been in case law.

Taking into consideration the above definitions and description, it can be said that a professional land surveyor physically inspects the property, evaluates the real property evidence, and forms an opinion as to where the property lines are located. Once the surveyor forms an opinion as to the location of the boundary lines of the property, the surveyor then prepares a "map" commonly referred to as the "survey map".

In the context of the purchase of residential real estate, the survey map should show, at a minimum, (1) the dimensions of the property; (2) the location of the house, driveway, decks, patios, fences and other improvements; (3) whether the neighboring property has improvements which encroach onto the real property; and (4) whether there are any encroachments of the real property onto the property of an adjoining parcel.

4. What Standards Guide the Surveyor in the "Survey" of the Property and Preparation of the Survey Map?

The standards and practices pertaining to the survey of real property, and the preparation of a survey map thereafter, continue to evolve and change. There are a multitude of organizations which have created standards to define the minimum requirements for the practice of land surveying. These organizations and standards include, but are not necessarily limited to, the following:

- Monroe County Bar Association (MCBA) Suggested Title Standards for Treating Discrepancies Revealed by Surveys (March, 2012) (**Appendix A**).
- Monroe County Geodetic Survey Monumentation Law, Local Law No. 6 of 1971 – may be found at https://www.monroecounty.gov/Image/monumentation_law.pdf.
- The Minimum Standards for Residential Surveys adopted by the Monroe County Bar and the Genesee Valley Land Surveyors Associations (1994). (**Appendix B**).

- II Land Survey Standards Adopted by the Bar Association of Erie County and the Niagara Frontier Land Surveyors Association (Rev. April, 1984). **(Appendix C)**.
- Code of Practice for Land Surveys - Revised and Adopted by Genesee Valley Land Surveyor's, Inc., February 15, 2001 (originally adopted June 1969). The Code provides guidelines for the land surveyor in the preparation of a survey and it also acts as a standard of expectation for the public. **(Appendix D)**.
- New York State Education Department "Land Surveying Practice Guidelines." (February, 2000) **(Appendix E)**.
- Code of Practice for Land Surveys adopted by the New York State Association of Professional Land Surveyors. (7th Revision July 18, 1997). **(Appendix F)**
- American Land Title Association ("ALTA") standards adopted in conjunction with the American Congress on Surveying & Mapping ("ACSM") and the National Society of Professional Surveyors, Inc. (NSPS). In 1962, ALTA and ACSM developed a survey product titled an "ALTA/ACSM Land Title Survey," and the land surveyor's responsibilities were outlined in the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys." Since 1962, the requirements have been revised approximately ten times to the most current requirements that went into effect on February 23, 2011. **(Appendix G)**.
- New York State Department of Transportation "Land Surveying Standards and Procedures Manual." (Rev. 2009).

In terms of the contents of the standards, please see the following excerpts from the New York State Land Surveying Practice Guidelines and the 2011 ALTA/ACSM Land Title Survey Minimum Standards.

A. New York State Land Surveying Practice Guidelines.

Commencing in 1997, the New York State Education Department began issuing guidelines designed to, inter alia, "facilitate increased uniformity and ensure that surveys are performed and documented in accordance with acceptable procedures." NYSED, "Land Surveying Practice Guidelines" (Sec. 2).

The current version of the New York State Education Department's "Land Surveying Practice Guidelines" provides, in pertinent part, as follows:

Section 5

A. Research

The surveyor should develop, determine, and substantiate with reasonable certainty a professional opinion and provide a product that adequately addresses and reflects the historical development of the subject property or project. For the purposes of this section, a record is any documentary material filed in public repositories that maintain information about the location of real property.

1. For Boundary, Title or Similar Surveys:

Research of records and record sources should be performed with sufficient scope and depth to identify with reasonable certainty:

- a. The location of the clients record boundaries;
- b. Conflicting record and ownership boundary locations within, abutting or affecting the client's property or access to the same; and,
- c. Exceptions, easements, encumbrances, rights of way, privileges, restrictions and reversions affecting the client property or access to the same in so far as they affect the professional determinations to be made by the surveyor.

Note: None of the above is intended to require the surveyor to perform the title search. It is common practice for the surveyor to rely on title search information prepared by others qualified to do so.

Section 11

A. Deliverables

The surveyor should provide a professional opinion in the form of a written report, visual graphic representation, (map or electronic file) and/or correspondence as necessary, appropriate and/or as outlined in the agreement. Any such report or deliverable should be based on the surveyors' findings and professional opinion and should be:

1. Within and cover the scope of the agreement with the client;
2. Within the scope of the professional knowledge of the surveyor;
3. Supported by the facts, evidence and information relied upon by the surveyor;
4. In a format which will convey relevant and/or record information, and organized and displayed to be as comprehensible and understandable as possible to the client or their agent.

B. Mapping Requirements

All maps prepared should include the following information and all such additional information necessary to visually convey the findings of the survey to the client or their agent, other knowledgeable practitioners and/or the public.

A boundary survey map is a drawing that depicts the mathematical and physical features of a parcel of land with relation to deeds of record, map lines, and/or other pertinent reference data based upon an actual field survey. The map should:

1. Identify the client or project name;
2. Identify the surveyor, the surveyor's address and license number;
3. Identify the instruments affecting title to the parcel surveyed;
4. Identify the north reference and/or basis of bearings;
5. Provide sufficient data for the mathematical closure of the boundary lines depicted with the area enclosed indicated;
6. Clearly relate the record description calls to the parcel including deviations;

7. Identify record documents (i.e. mapping or other information) utilized in the establishment of the boundary lines surveyed;
8. Reference the parcel to the local political or municipal entities and/or boundaries (i.e. county, town, village, street lines, tax map parcel number);
9. Reference a datum and a specific benchmark or reference point when elevations are shown;
10. Identify the scale and any conversion factor necessary;
11. Identify character and location of visible physical features with reference to boundary lines as necessary to inform the owner of critical issues affecting title (i.e. encroachments, easements, structural projects and openings, visible utilities);
12. Indicate date of field survey completion and date of map preparation;
13. Identify and describe monuments found or set on the property being surveyed;
14. Identify all revision dates to original map with changes clearly stated;
15. Reference apparent easements, rights of way and lease lines; and
16. Indicate applicable ties (i.e. building corners, intersections, other monuments).

Map information and or survey reports should be clear, legible, and sufficient in nature so when associated with the record description, the boundary lines are evident without supplemental data or information.

5. Why should a Survey be required in a Real Estate Transaction?

There are many important reasons for requiring a survey in a real estate transaction. A non-exhaustive list is as follows:

A. To describe the property.

The degree of detail required in a legal description of the property is that which will enable a knowledgeable surveyor to interpret the description and locate the property on the ground. The surveyor determines this by ensuring (a) that the land description conforms to a mathematically closed figure and (b) that the description reasonably conforms to the physical evidence on the earth's surface. The former determination is done by numeric calculation and the latter, by physical measurements in the field.

B. To determine the relationship of the property to adjoining properties.

All parcels of land exist in relation to other parcels. At one time, all adjoining parcels were held in common by a single grantor. Over time, parcels were subdivided and sold. If errors were made in describing partitioned parcels, the legal descriptions of adjoining parcels might differ, potentially causing the boundary lines to either overlap or not meet. If errors in the legal description did in fact occur, a property owner may own more or less property than his deed indicated. *See e.g. Riggs v. Benning*, 290 A.D.2d 716 (3rd Dept., 2002) (The 3rd Department refused to reverse the determination of the lower court in a case involving a boundary line dispute. The lower court rejected the doctrine of "practical location" and instead relied on the property deeds and the confirmatory survey to resolve the boundary line dispute).

C. To determine the relationship of occupied lines to record lines.

The boundary lines, as physically occupied by the property's owner, may differ from the boundary lines as shown on the survey map which may in turn differ from the distances, directions, and/or monuments set forth in the recorded deed. For example, a fence creating an apparent boundary line between

adjacent properties may not be located on the record property line. Discrepancies between the property occupied and the record deed may range from minor variations to substantial encroachments.

D. To establish the location of physical improvements.

Surveyors are often requested to locate fences, walls, driveways, buildings, utilities, easements and natural features such as streams. This information is necessary in order for a prospective buyer to more accurately determine the value or use of the property and to determine conformity with zoning ordinances and recorded restrictions.

E. To discover facts not of record.

There are numerous unrecorded rights which may affect title to land. For example, the right of adjoining property holders to use unrecorded easements across the property may have been acquired by prescription or other unrecorded means. Examples of unrecorded rights to use property includes roads, rights-of-way, easements, water courses, encroachments, drains, telephone, telegraph or electric lines, water, sewer, oil, or gas pipelines on or across the property. The survey map may also demonstrate adverse possession or use of the property.

F. To obtain title insurance survey coverage for the Buyer.

Various matters not shown of record which can affect the title to the property are normally excluded from an owner's policy of title insurance policy. These excluded matters are referenced in the "General Exceptions" section of the policy. A survey exception is generally included in the General Exceptions as follows:

Any matters which would be disclosed by an accurate survey and inspection of the premises.

The survey exception in an owner's policy of title insurance may be deleted or removed only if a current survey map, in a form satisfactory to the title insurance company, is furnished to the title insurance company.

6. Glossary of Surveying Terms.

The following glossary is provided to assist you in understanding some of the more common terms used by surveyors. It is by no mean exhaustive. Accordingly, if a surveyor uses a term that you are not familiar with, please seek clarification.

- Abandon. To desert or forsake entirely. To voluntarily relinquish possession with intent of terminating ownership, but without vesting it in any other person. In determining whether one has abandoned property or rights, intent is the paramount object of inquiry for to abandon, one must intend to abandon. The intent must be clear and the act must be complete.
- Abstract of Title. A condensed history of the title to property, consisting of a synopsis or summary of the material or operative position of all the conveyances which in any manner affects said land or any estate or interest therein, together with a statement of all liens, charges, or liabilities to which the same may be subject.
- Abutting Property. The buttings or boundings of lands, showing to what other lands they adjoin.

- Acre. A unit of area measurement equal to 43,560 square feet, or 10 square chains. 640 acres equals 1 square mile.
- ACSM. American Congress on Surveying and Mapping.
- Adjacent. Lying near or close to; sometimes contiguous; neighboring. The term “adjacent” implies that the two objects or parcels of land are not widely separated, though they may not actually touch, while “adjoining” implies that they are so joined or united to each other that no third object or parcel of land intervenes.
- Adjoiner. An owner of land which touches the land of another, his name being given in the deed or instrument by which the land is conveyed.
- Adjoining. Touching or contiguous, as distinguished from lying near to or adjacent. To be in contact with; to abut upon.
- Adjoining Property. The land in contact with a property; neighboring property.
- Agreement Line. A concurrence between adjoining land owners on the location of their common boundaries.
- Appurtenance. Anything so annexed to the land or used with it that it will pass with the conveyance of the land. An incidental right (as a right of way) attached to a principal property right and passing in possession with it.
- Bank of Stream. The continuous margin along a river or stream where all upland vegetation ceases. The right bank of a stream is the bank on the right-hand side, and the left bank, the one on the left-hand side, as one proceeds downstream.
- Bearing. The angle between North and South and a direction.
- Benchmark. A physical object (natural or artificial) with a known elevation. It is used to determine the elevation of other points.
- Boundary Line. A line of demarcation between adjoining parcels of property.
- Boundary Monument. A material object placed on or near a boundary line to preserve and identify the location of the boundary line on the ground.
- Call. A reference to, or statement of, an object, course, distance or other matter of description in a survey.
- Cardinal. The cardinal directions; north, south, east and west.
- Centerline. Applied to a street, right of way or any other strip of land of uniform width, “centerline” defines the line midway between the side lines of said strip.

- Chain. A unit of measure. It is equal to 66 feet or 4 rods. A chain is divided into 100 links, each 0.66 feet (7.92 inches) long. A Rod is equal to $\frac{1}{4}$ of a Chain; a link is equal to $\frac{1}{100}$ of a Chain.
- Datum. In ordinary survey usage, a defined reference for survey measurements.
- Electronic Distance Meter ("EDM"). An instrument that measures distances electronically using infrared or laser light.
- Elevation. The vertical distance from a datum, generally mean sea level, to a point or object on the earth's surface. The terms "elevation" and "altitude" have sometimes been used synonymously, but in modern surveying practice the term "elevation" is preferred to indicate heights on the earth's surface whereas "altitude" is used to indicate the heights of points in space above the earth's surface.
- Elevation Certificate. A certificate that verifies the elevation of a structure on a given property relative to the ground level, with reference to a published datum. Elevation Certificates are often used to comply with floodplain management ordinances.
- FEMA. The Federal Emergency Management Agency, which plans for, mitigates against, and responds to man-made and natural disasters. A part of the Department of Homeland Security.
- Flood Insurance Rate Map ("FIRM"). The official FEMA map showing both the Special Flood Hazard Areas and Risk Premium Zones in a community. These maps are used to determine which property owners must obtain flood insurance.
- Global Positioning System ("GPS"). A network of satellites that can be used to determine the location of points on the ground. Also refers to the instruments that receive and process the satellite signals. The system is more accurately called the Global Navigation Satellite System ("GNSS"), since GPS only refers to a specific group of satellites, not to the satellite-positioning system as a whole. Modern survey equipment receives signals from several groups of satellites.
- Gradient Boundary. A boundary determined by the position of flowing water along a bank.
- High Water Mark. (1) The line which the water impresses on the soil by covering it for sufficient periods to deprive it of upland vegetation. (2) A line or mark left upon tide flats, beach, or alongshore objects indicating the elevation of the intrusion of high water. The mark may be a line of oil or scum on alongshore objects, or a more or less continuous deposit of fine shell or debris on the foreshore or berm. This mark is physical evidence of the general height reached by wave run-up at recent high waters.
- Hundredth. A unit of length equal to $\frac{1}{100}$ of a foot (0.12 inch or $\frac{1}{8}$ inch).
- Interior Angle. An angle between adjacent sides of a closed figure, measured on the inside of the figure.
- Landmark. (1) Any monument or material mark or fixed object used to designate the location of a land boundary on the ground. (2) Any prominent object on land which can be used in determining a location or a direction. (3) A landmark decision; a judicial decision considered a turning point or highpoint of the era.

- Legend. A description, explanation or table of symbols printed on a map or chart to permit a better understanding or interpretation of it.
- Link. A unit of length equal to 1/100 of a chain, or 0.66 feet (7.92 inches).
- Letter of Map Amendment (“LOMA”). An official document from FEMA that amends a Flood Insurance Rate Map.
- Monument. A physical object that represents the lines and boundaries of a survey. Monuments may be natural (boulders, trees, lakes, etc.) or man-made (wooden stakes, iron rods, iron pins, rebar, concrete monuments, etc.). Objects, to be ranked as monuments, should have certain physical properties such as visibility, durability and stability, and they must define location without resorting to measurements.
- More or Less. When used in connection with quantity or distance in a conveyance of land are considered words of safety or precaution, intended to cover some slight or unimportant inaccuracy. The same applies to the use of the word “about.”
- Rod. A unit of length equal to ¼ of a Chain, or 16.5 feet or 25 links. Rods are also sometimes called “Poles.”
- Special Flood Hazard Area. An area identified by FEMA as a high risk for flooding, making flood insurance mandatory for properties in this area.
- Subdivision. A portion of land that has been divided into lots; the process of splitting a section of land into smaller properties.
- Tenth. A unit of length equal to 1/10 of a foot (1.2 inches or 1 3/16 inches).

7. Types of Surveys.

The following is a non-exhaustive list of the various types of surveys:

A. ALTA/ACSM Land Title Survey.

An ALTA Survey verifies a legal description and possible easements of subject property. Additional items like planimetric and topographic data, utilities and site improvements, zoning and hazard land information may be requested. ALTA Surveys are almost exclusively performed for multi-family residential, commercial or industrial properties. **(See Appendix L).**

B. “As Built” Survey.

An “As Built” Survey is a detailed survey of a building or other improvement and its relation, as built, to the building plans or specifications. It is also used to demonstrate the location of an improvement on a parcel of land. That being said, it does not usually address boundary locations or title issues. This type of survey is commonly used in connection with the conversion of a residential construction home to permanent financing.

C. Boundary Survey:

Boundary Surveys are exactly what the name describes: a survey to establish the true boundaries of a given property. Through previously recorded markers and the establishment of new landmarks, a surveyor will establish the true boundaries of a property and then mark the corners and lines of the plot, using markers such as iron rods, pipes or concrete monuments in the ground, or nails set in concrete or asphalt. **(See Appendix L).**

D. Deformation Survey.

A Deformation Survey determines if a structure or object is changing shape or moving. By the taking of three-dimensional positions on specific points on an object, then letting a period of time pass before retaking and measuring the points, a determination of whether a structure is moving can be made

E. Foundation Survey.

A Foundation Survey is a type of “as-built” survey that collects the positional data on a foundation that has been poured and is now cured. Foundation surveys are done to ensure that the foundation has both been constructed in the proper location and has been built in the proper manner according to plans.

F. Geodetic Survey.

Geodetic Surveys fall under both the land and water category, as they map out the shoreline. Thomas Jefferson commissioned a geodetic survey in 1807 as the Survey of the Coast. It still exists today as the National Geodetic Survey and its responsibilities now include the interior lands of the United States as well as its coasts.

G. GPS Survey.

The Global Positioning System (GPS) is a space-based satellite navigation system that provides location and time information in all weather conditions, anywhere on or near the Earth where there is an unobstructed line of sight to four or more GPS satellites. The GPS project was developed in 1973 to overcome the limitations of previous navigation systems and is owned and operated by the United States Government as a national resource. GPS surveys do not require clear sight lines and the precise leveling of instruments is not necessary. Additionally, there is no delay in preparing these surveys due to inclement weather such as snow or rain.

H. Hydrographic Survey.

A Hydrographic Survey collects data relating to any body of water, and the data collected may include the water depth, bottom contours, the direction of the current, observing and recording high water marks and water levels, as well as location of fixed objects and landmarks for navigational purposes. They can also be conducted to gather information for engineering or resource management purposes, such as hydro power plants

I. Instrument Survey.

This type of survey is the most common survey used in residential real estate in the Monroe County area. It is the most complete form of survey map in that it shows the dimensions and angles of a particular parcel of land. In addition to providing the exact location of boundary lines, it shows location of improvements, easements, and encroachments, if any. **(See Appendix M).**

J. Mortgage Survey.

Mortgage Surveys are simple surveys that, for the most part, determine land boundaries and building locations. They are usually required by title companies and lending institutions when they provide financing to show that there are no structures encroaching on the property and that any structures on the property meet current zoning and building codes. This type of survey is sometimes referred to as an "as built" survey. **(See Appendix L).**

K. Perimeter Survey.

A Perimeter Survey is a survey of the perimeter of the property only. It does not show buildings or other improvements, encroachments, easements etc.

L. Plot Survey.

Also known as an architectural survey. The Plot Survey shows the plans and specifications for a particular building. It is used to obtain building permits or a certificate of occupancy for the building and it incorporates the legal description of the property. **(See Appendix L).**

M. Subdivision Map.

A Subdivision Map is a survey map of a larger parcel of land that will usually be divided into two or more parcels of land or building lots. The Subdivision Map is filed in the County Clerk's Office and may contain important information such as references to covenants, easements and restrictions that will affect all the lots or parcels shown on the map. Additionally, a reference to a lot shown on a subdivision map is sometimes used in place of a metes and bounds legal description in a deed.

N. Tap Location Map.

A Tap Location Map is made without the use of angle measurements. The Surveyor uses a "tape" measure to determine the metes and bounds of the property. This type of survey was widely used in the Rochester area before the advent of the secondary mortgage market which required instrument surveys.

O. Topographical Survey.

Topographic Surveys are land surveys that locate natural and man-made features. For example, buildings, improvements, fences, elevations, land contours, trees and streams. These are then measured for their elevation on a particular piece of land, and presented as contour lines on a plot. Topographical surveys are sometimes required by the government. Engineers and architects also use topographical surveys to aid in the design of improvements or developments on a site. **(See Appendix L).**

8. Legal Descriptions.

Legal descriptions exist for the purpose of describing the unique size, shape and location of real estate that is the subject of a conveyance. As such, a legal description should uniquely describe only the subject parcel, and no other, without ambiguity.

Generally speaking, a legal description must be considered legally “sufficient” or the conveyance may be declared invalid or require reformation. “Sufficiency” means that a competent surveyor can locate the described real estate on the ground – with or without reference to extrinsic evidence. If a surveyor cannot locate the real estate, it is essentially an indeterminate tract of land. It necessarily follows that if the property cannot be identified, it is assumed that no conveyance took place.

Where there are conflicts or ambiguities in the description, New York courts have held that what is contained within the four corners of the document will control unless extrinsic evidence is otherwise required to ascertain the intentions of the parties.

A. Elements of Legal Description.

Legal descriptions essentially have three (3) parts, although many legal descriptions will not necessarily have all three (3) distinct parts and, in fact, may combine two or more of the following parts:

1. The Caption. The “Caption” gives the general location of the parcel (for example, within a certain town, village, or city, county, and state). The real estate that is the subject of the description cannot lie outside the area that is defined by the caption.
2. The Body. The “Body” of the description defines the distinct size, shape and location of the actual parcel.
3. The Exceptions. The “Exceptions” remove those interests or portions of the land described in the body that ultimately are not being conveyed. For example, “..., except, however, 10 feet of the entire south side of said tract.”

B. Types of Legal Descriptions.

There are multiple types of descriptions that may be found in a deed. Most legal descriptions will take the form of one, or a combination of two or more, of the following:

1. Metes and Bounds:

A metes and bounds description is a description through measurements, by feet and monuments, of the boundary lines of a parcel of property. Put another way, a metes and bounds description describes real estate by directions and distances from a commencing and/or beginning point. It is the only type of legal description that actually circumscribes the parcel – describing its entire perimeter. A very basic definition would be that “metes” refers to distance and “bounds” refers to direction.

Each boundary line is described by a course and a distance. The course is the direction in which the boundary line travels and the distance is the length of the boundary line. The description must begin with one of the following: (1) a known point (a monument such as a street, a man-made monument or marker, or a natural object such as “a stone wall”); (2) a certain course and distance

from a monument. Once the place of beginning has been determined, the metes and bounds description proceeds along a series of courses and distances, each describing a boundary line of the property. The description sequentially works around the parcel by beginning at a point and ending at the same point. The description must always “close”, meaning that it must end at the same point it began. This is one of the more common errors concerning metes and bounds descriptions.

A typical metes and bounds description is as follows:

ALL THAT TRACT OR PARCEL OF LAND being part of Town Lot 20, Township 13, Range 4, situate in the Town of Penfield, County of Monroe, State of New York, being more particularly described as follows:

BEGINNING at a point in the centerline of Smith Road 928.79 feet south of the centerline intersection of Jones Road, said point also being 1766.60 feet north of the centerline of Penfield Road; **THENCE**, westerly, forming an exterior angle in the northwest quadrant of 87°51'25”, a distance of 275.00 feet to a point; thence, southerly, forming an internal angle of 87°51'25”, a distance of 10.14 feet to a point; **THENCE**, easterly, forming an interior angle of 90°01'50” (external angle of 89°58'10”), a distance of 49.81 feet to the northwest corner of lands of Schell; **THENCE**, continuing along the same course, a distance of 225.00 feet, for a total distance of 274.81 feet, to a point in the centerline of Smith Road, said point being the point and place of **BEGINNING**.

HEREBY intending to describe a triangular parcel of land, containing 0.032 acres of land in the Town of Penfield, County of Monroe, and State of New York.

2. Reference to Subdivision Maps.

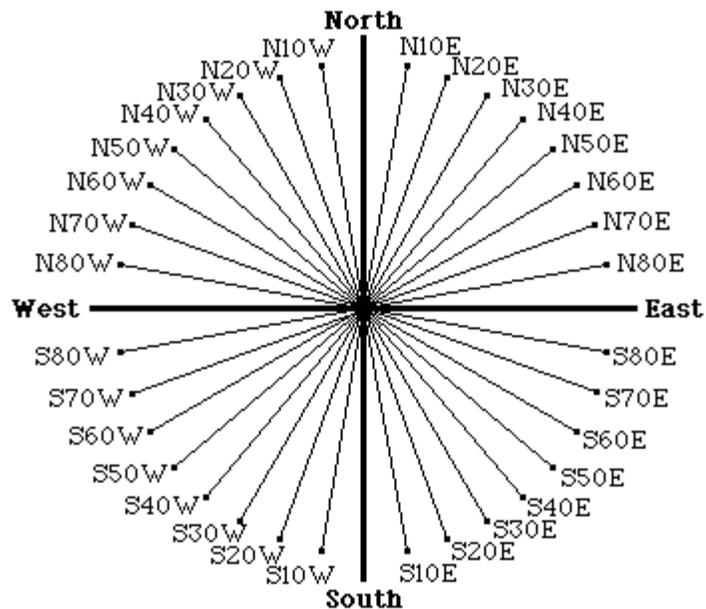
An increasingly popular method of describing the property in a deed is to refer simply to a lot set forth on a Subdivision Map recorded in the County Clerk’s Office. The subdivision map becomes part of the description by reference and the property is defined by the geometry on the recorded map. The following is an example of such a legal description:

ALL THAT TRACT OR PARCEL OF LAND being part of Town Lot 20, Township 13, Range 4, situate in the Town of Penfield, County of Monroe, State of New York, being more particularly described as follows:

Lot No. 24 of the Fairview Crossing Subdivision, Section 1, as shown on a map thereof made by John Smith, L.S., filed in the Monroe County Clerk’s Office in Liber 293 of Maps at Page 1. Said lot is of the dimensions as shown on said map.

3. Boundary Descriptions.

A boundary description defines a tract of land by that land which bounds it. While a boundary description is a good way to eliminate the possibility of any title gaps or overlaps, it can be ambiguous if the descriptions for the adjoining properties are themselves ambiguous. A boundary description is most often found in oil & gas leases in upstate New York. The following is an example of such a legal description



Most surveyors show degrees with a little zero or "o" raised above the numbers. Some don't do this and use an asterisk (*) instead to show degrees. Minutes are always shown with a single quotation mark (') and seconds with a double quotation mark ("). Thus, twelve degrees/sixteen minutes/forty-two seconds could appear as 12°16'42" or as 12*16'42".

There are two main ways that surveyors express directions: (1) with words; and (2) with bearings. Words are fairly straightforward: north is north, south is south, east is east and west is west. These words express definite directions and can be easily related to bearings. North, south, east, and west are known as "cardinal directions". Intermediate directions are northwest, northeast, southwest, and southeast.

The major components of a bearing are as follows:

1. The first part of a bearing will begin with either North (N) or South (S);
2. The angle written in degrees (°), minutes (') and seconds (") turned from either North (N) or South (S); and
3. The last part of a bearing will end with either East (E) or West (W).

The use of the suffix "ly" is usually not seen on a survey, although attorneys often use the suffix in creating a legal description. "Ly" words include "northerly", "westerly", "southeasterly", etc. Unfortunately, such terms do not clearly express direction. Notwithstanding this fact, they often appear in descriptions as "thence easterly along the creek", or "thence in a southwesterly direction along a road".

The following are general rules to follow with respect bearings:

1. The closer the line is to "due north" or "due south," the closer the degrees will be to 00°00'00". The closer the line is to "due east" or "due west," the closer the degrees are to 90°00'00".

2. The number of degrees (°) recited in a bearing cannot be greater than 90°, the number of minutes (′) or seconds (″) cannot be greater than 59 (i.e. there is no such bearing at N 95°21′63″ E).

Bearings are the most common way to express direction. They combine names and numbers to do this. For example, N 23°25′18″ E is a bearing. North and East are names of directions, 23°25′18″ is a number. The numbers and letters work together as follows:

1. You always start with N (for North) or S (for South);
2. You then get a number in degrees/minutes/seconds form;
3. Now look at the last letter (E or W), and imagine yourself swinging through that number of degrees, in the direction of the last letter.

Thus, with N 45° E, you start by pointing north; and then swing 45 degrees towards the East. With S 88°23′49″ W, you start by pointing south; and then swing about 88-1/2 degrees towards the West.

As you can see from the figure above, there are four distinct areas of the compass: NE, SE, SW, and NW. These are called quadrants and each quadrant has 90 degrees.

B. Cardinal Directions

1. Due North can be written as N 00°00′00″ E or N 00°00′00″ W;
2. Due South can be written as S 00°00′00″ E or S 00°00′00″ W;
3. Due East can be written as N 90°00′00″ E or S 90°00′00″ E; and
4. Due West can be written as N 90°00′00″ W or S 90°00′00″ W.

One of the most important features of bearings is that it is easy to go backwards. The opposite direction from N 10° E is S 10° W. The opposite direction from S 23°43′08″ E is N 23°43′08″ W. All you have to do to go in the opposite direction is change the letters to the opposite quadrant. The degrees stay the same.

C. Measurement by Angles.

Surveyors will often use angles to measure the exact direction of a boundary line rather than, or in addition to, bearings.

As set forth above, there are 360 degrees in a circle and a right angle is 90°. For purposes of residential land surveying, most surveyors will only use angles between 0° and 360°. Additionally, angles, like bearings, use degrees, minutes (each degree has 60 minutes) and seconds (each minute has 60 seconds).

An angle runs from the last described course and is either an interior (inside the property line) or exterior (outside the property line) angle. When reviewing a survey map that is using angles to describe one or more courses, at the point of the intersection of 2 lines, draw a circle using the intersection point as the center of the circle. The arc of the circle within the property's boundaries is the interior angle and the arc outside the property's boundaries is the exterior angle. Generally, most surveyors will only locate one interior or exterior angle at a corner, but not both. Please remember that the interior angle plus the exterior angle will always equal 360°.

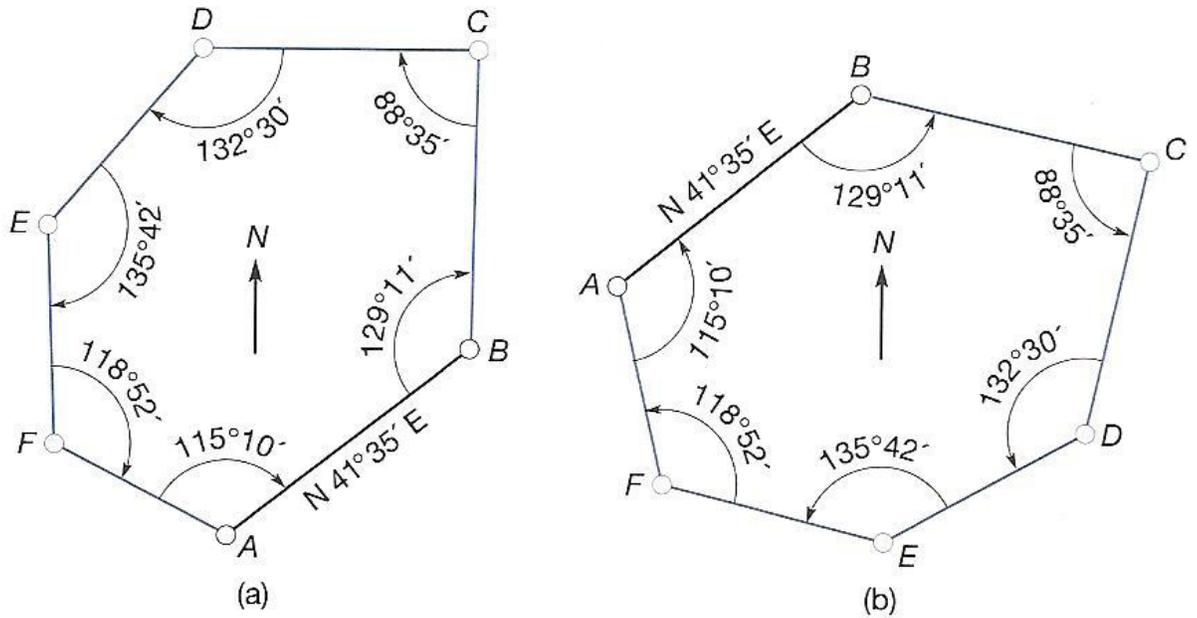
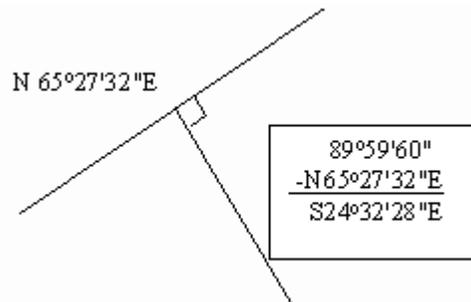


Figure (a) shows clockwise interior angles – also known as angles to the right. Figure (b) shows counterclockwise interior angles – also known as angles to the left.

It is possible to determine perpendicular angles using bearings by subtracting the known bearing from 90 degrees.



When two segments intersect each other, often a curve must be determined to describe the transition from one boundary to another – please see discussion regarding curves below.

D. Recording Angles.

Two different systems are used for recording angles: (1) The decimal degree system (“DD”) and (2) the degrees-minutes-seconds system (“DMS”).

1. Decimal Degrees System.

When the DD system is used, fractions of a degree are expressed as a decimal. This system is not encountered frequently in upstate New York.

2. Degrees-Minutes-Seconds System.

The DMS system is the prevalent system used by surveyors in upstate New York. When angles are measured using the DMS system, degrees are expressed as degrees (°), minutes (′), and seconds (″). One degree equals 60 minutes and one minute equals 60 seconds.

E. Addition and Subtraction of Angles.

In order to add, or subtract, angles, it is recommended that you separate degrees, minutes and seconds because you will need to remove multiples of 60 from the sums of minutes and seconds and determine how many degrees are contained in the sum of minutes and how many minutes are contained in the sum of seconds.

1. Addition of Angles.

In order to add 35°42′28″ and 57°31′59″, the following calculations are necessary:

<i>Degrees</i>	<i>Minutes</i>	<i>Seconds</i>
35°	42′	28″
+57°	+31′	+59″
92°	73′	87″

Since it is incorrect to have 73′ and 87″ (remember, there are only 60 minutes in a degree and 60 seconds in a minute), the number must be reduced. The 1st step is to subtract 60 from the seconds until the remainder is less than 60. In this example, only one subtraction is required. This means that one minute must be added to 73, changing it to 74. Next, 60 must be subtracted from the minutes until the remainder is less than 60. In this example, only one subtraction is required. This means one degree must be added to the degree column. The following illustrates this process:

<i>Degrees</i>	<i>Minutes</i>	<i>Seconds</i>
92°	73′	87″
		-60″
92°	=73′	=27″
	+1′	
	=74′	27″
	-60′	
	=14′	27″
+1°		
93°	14′	27″

The total is: 93°14′27″.

The same calculation using the DD system is as follows:

$$\begin{array}{r}
 35.71^\circ \\
 +57.54^\circ \\
 \hline
 93.25^\circ
 \end{array}$$

Note: The conversion from DMS to DD is accomplished by adding the degree of the angle plus the number of minutes divided by 60 (because there are 60 minutes in a degree), plus the number of seconds divided by 3600 (because there are 3600 seconds in a degree). Accordingly, the DMS angle of 35°42'28" converted to DMS is: $35^\circ + (42' \div 60 = .70) + (28'' \div 3600 = 0.0078)$ or $35 + .70 + 0.0078$ or 35.71° .

2. Subtraction of Angles.

The subtraction of angles is more difficult than the addition calculated above because you will need to borrow units of 60. For example, in order to subtract 25°33'42" from 28°13'28", the following calculations are necessary:

The problem starts when you try to subtract 42 seconds from 28 seconds. Surveying does not use negative angles. Accordingly, the 1st step is to borrow one minute from the minutes and add it to the seconds. Because there are 60 seconds in one minute, the minutes are reduced by one and the seconds are increased by 60. The same thing occurs with degrees and minutes. The calculation is as follows:

<i>Degrees</i>	<i>Minutes</i>	<i>Seconds</i>
28°	13'	28"
-1°	+60'	—
27°	73'	28"
—	-1'	+60"
27°	72'	88"
-25°	-33'	-42"
2°	39'	46"

The total is: 2°39'46".

The same calculation using the DD system is as follows:

$$\begin{array}{r}
 28.23^\circ \\
 -25.56^\circ \\
 \hline
 2.67^\circ
 \end{array}$$

The total is: 2.67°.

3. Differences between DD and DMS systems.

It is important to note that if the same angle is converted by different methods (see above examples), the answers may be slightly different. This occurs because the different processes may round numbers differently and determine significant figures differently.

F. Distance: Feet, Chains, Meters.

Surveyors almost always use feet to express distance. Very rarely, if ever, with a surveyor give distances in chains or rods. It is also rare to see a distance set forth in meters.

Most surveyors, when working with distance measures, round the numbers. For example, a description may technically have a distance like "234.6792 feet" which is 234 and 6792 ten-thousandths of a foot.

The surveyor will often round the above number to either 235 feet or 234.68 feet when preparing the survey map or drafting a legal description.

G. Chains, Links and Rods.

One of the oldest surveying measures is the chain. It is named for a surveyor's chain that is 66 feet long. This isn't the heavy chain you would use to tow a car – It has very lightweight, wire links. There are 100 links in a chain. Thus, a link is (66 divided by 100) .66 feet long.

Another measurement you may find in an old legal description, but should not find on a survey today is the “rod.” A rod is 16-1/2 feet long and there are four of them in a chain.

There was a method to the madness when the surveying measures of chains, links and rods were created. An acre has 43,560 square feet and a square chain has (66 x 66) equals 4356 square feet or a tenth of an acre. Accordingly, ten square chains have (660 x 660) 435,600 square feet which equals ten acres. Additionally, eighty chains equals one mile (80 x 66 = 5280) and twenty chains equals one quarter mile (20 x 66 = 1320).

Since you may still find legal descriptions containing chains, links, and rods, the following charts are provided as a reference:

UNITS	INCHES	LINKS	FEET	YARDS	RODS	CHAINS
INCH=	1	0.126263	0.0833333	0.0277778	0.00505051	0.00126263
LINK=	7.92	1	0.66	0.22	0.04	0.01
FOOT=	12	1.515152	1	0.333333	0.0606061	0.0151515
YARD=	36	4.54545	3	1	0.181818	0.0454545
ROD=	198	25	16.5	5.5	1	0.25
CHAIN=	792	100	66	22	4	1
MILE=	63,360	8,000	5,280	1,760	320	80

CHAINS	FEET								
1	66	21	1386	41	2706	61	4026	81	5346
2	132	22	1452	42	2772	62	4092	82	5412
3	198	23	1518	43	2838	63	4158	83	5478
4	264	24	1584	44	2904	64	4224	84	5544
5	330	25	1650	45	2970	65	4290	85	5610
6	396	26	1716	46	3036	66	4356	86	5676
7	462	27	1782	47	3102	67	4422	87	5742
8	528	28	1848	48	3168	68	4488	88	5808
9	594	29	1914	49	3234	69	4554	89	5874
10	660	30	1980	50	3300	70	4620	90	5940
11	726	31	2046	51	3366	71	4686	91	6006
12	792	32	2112	52	3432	72	4752	92	6072
13	858	33	2178	53	3498	73	4818	93	6138
14	924	34	2244	54	3564	74	4884	94	6204
15	990	35	2310	55	3630	75	4950	95	6270
16	1056	36	2376	56	3696	76	5016	96	6336
17	1122	37	2442	57	3762	77	5082	97	6402
18	1188	38	2508	58	3828	78	5148	98	6468
19	1254	39	2574	59	3894	79	5214	99	6534
20	1320	40	2640	60	3960	80	5280	100	6600

Measurement	=	Measurement
144 Sq. Inches	=	1 Sq. Foot
9 Sq. Feet	=	1 Sq. Yard
30 ¼ Sq. Yards	=	1 Sq. Rod
1 Sq. Rod	=	272.25 Sq. Feet
160 Sq. Rods	=	1 Acre
1 Acre	=	4,840 Sq. Yards
1 Acre	=	43,560 Sq. Feet
640 Acres	=	1 Sq. Mile
1 Mile Sq.	=	1 Section
6 Miles Sq.	=	1 Township
36 Sections	=	36 Sq. Miles

Inches	=	Decimal
1"	=	0.08
2"	=	0.17
3"	=	0.25
4"	=	0.33
5"	=	0.42
6"	=	0.50
7"	=	0.58
8"	=	0.67
9"	=	0.75
10"	=	0.83
11"	=	0.92
12"	=	1.00

1 foot	=	0.3048 meters
1 meter	=	3.281 feet
1 chain	=	66 feet
1 chain	=	100 links
1 chain	=	4 rods
40 chains	=	0.5 mile
80 chains	=	1 mile
1 link	=	0.66 foot
1 rod	=	16.5 feet
1 rod	=	5.0292 meters
4 rods	=	1 chain
1 mile	=	80 chains
1 mile	=	1.609344 kilometer
1 mile	=	5280 feet
1 acre	=	43,560 square feet
1 acre	=	10 square chain
1 square rod	=	0.00625 acre
1 square yard	=	0.8361 square meter
1 square meter	=	10.76391 square feet
1 hectare	=	2.471054 acres

H. Curves.

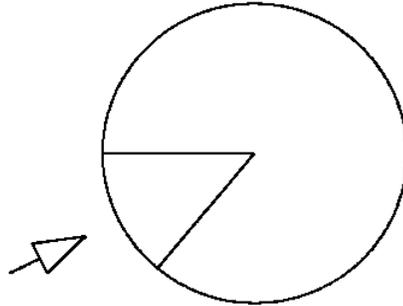
Not all property is, or can be, measured in straight lines. As such, a metes and bounds legal description may involve a curved boundary line. Where a curved boundary line is involved, the surveyor may provide some or all of the following information regarding the line:

1. The arc distance of the curve;
2. The radius distance of the curve;
3. The chord course – being a straight line drawn from the beginning point of the arc to the ending point of the arc; and
4. The distance of the chord.

The following is a list of the types of curves used by surveyors on survey maps and encountered in legal descriptions and was taken from the First American Title Company website: www.firstam.com:

1. Simple Curve.

A simple curve is the arc of a circle of a given radius.

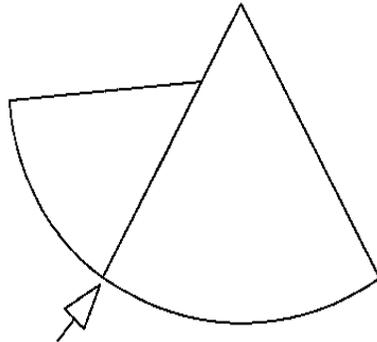


An example of a simple curve legal description is as follows:

“... thence 51.24 feet by a curve to the right having a radius of 36.28 feet with a chord bearing of S 07°52'39" E and chord length of 47.09' to a point of tangency at the westerly side of Main Street ...”

2. Compound Curve.

Curves are compound at a point if the curves have a common radial line at the point of contact, different lengths of radius and the centers of the circles are on the same side of the curve.

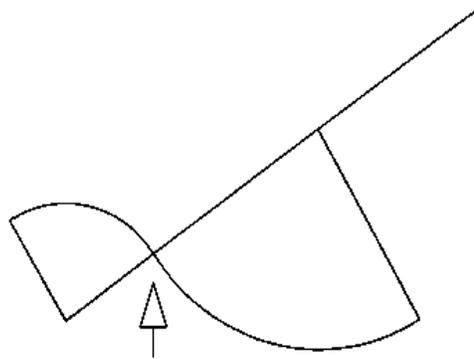


An example of a compound curve legal description is as follows:

“... thence Easterly and Northeasterly along a tangent curve to the left, having a radius of thence Easterly and Northeasterly along a tangent curve to the left, having radius of 100.00 feet, through a central angle of 85°00'00", an arc length of 148.35 feet to the beginning of a compound curve concave Westerly and having a radius of 200.00 feet; thence Northerly along said compound curve through a central angle of 30°00'00", an arc length of 104.72 feet ...”

3. Reverse Curve.

Curves are reverse if they have a common radial line at the point of reverse and the centers of the circles are on opposite sides of the curve.

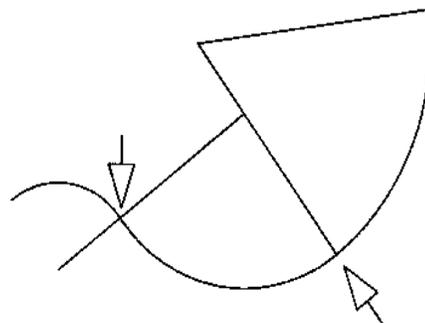


An example of a reverse curve legal description is as follows:

“... thence Easterly and Northeasterly along a tangent curve to the left, having a radius of 100.00 feet, through a central angle of $85^{\circ}00'00''$, an arc length of 148.35 feet to the beginning of a reverse curve concave to the Southeast having radius of 200.00 feet; thence Northeasterly along said reverse curve through a central angle of $30^{\circ}00'00''$, an arc length of 104.72 feet ...”

4. Tangent Curve.

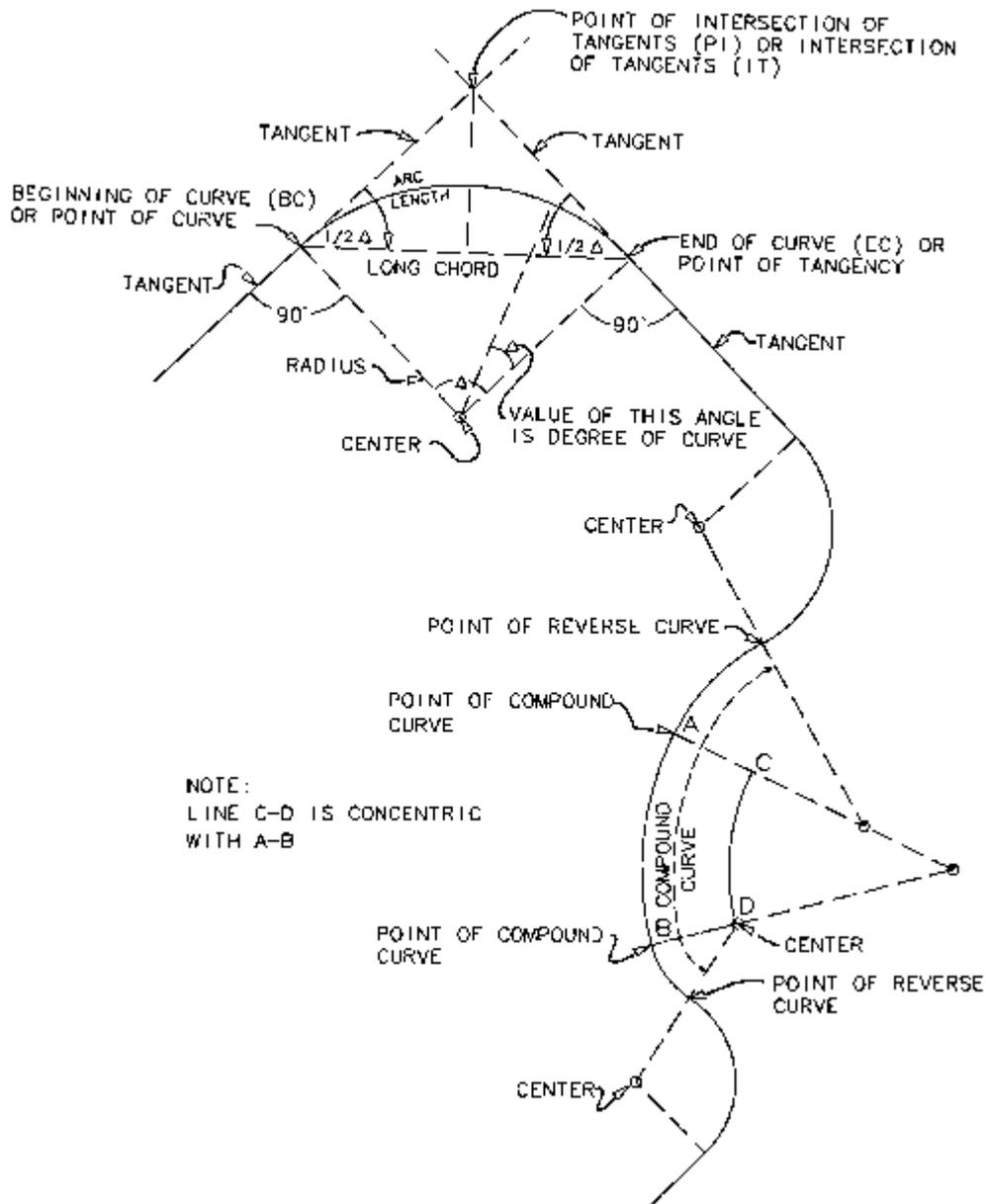
Curves are tangent if they have a common radius or radial line at the point of contact.



An example of a legal description involving a tangent curve is as follows:

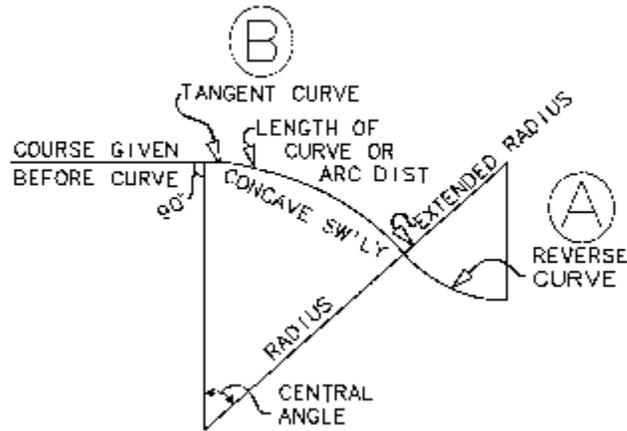
“... thence, along a tangent curve to the right, having a radius of 50.00 feet, through a central angle of 80° , an arc length of 69.81 feet ...”

5. Curve Parts.

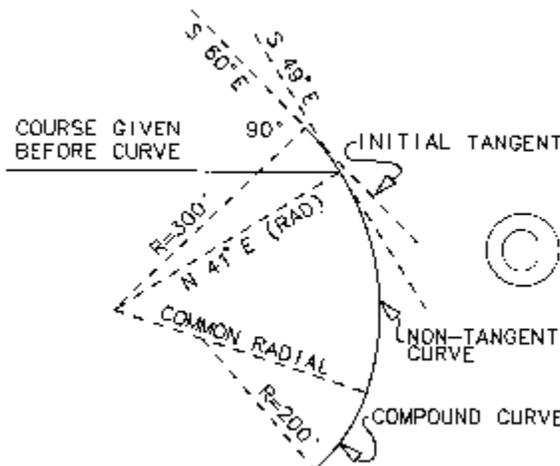


6. Plotting Curves.

- A. A Reverse curve is always plotted on the extended radius of a former curve. Additionally, the radius does not have to be of the same length.

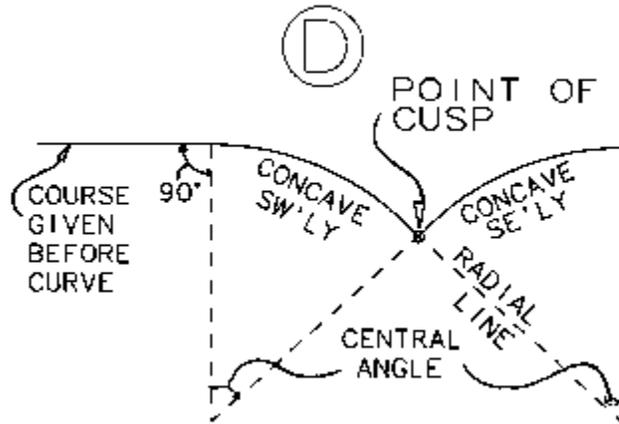


- B. A Tangent curve is always plotted from a radius drawn at 90° from ending. If curve is concave (curving over) to southwest, radial line is drawn southwesterly; if concave to northeast, radial line is drawn towards northeast, etc. Central angle determines length of arc (curve) since it is difficult to measure around a curve with a ruler.
- C. A Non-tangent curve description may give the angle of the radial line pass-through the ending point of the last course — this line being the bearing of the radius of the non-tangent curve; or the description may give the bearing of a line passing through the ending point of the last course to which the curve would be tangent. The radius would then be drawn at 90° from this bearing.



- D. A Compound curve is figured along the same radial line, but each curve has a radius of a different length.

- E. When plotting street and highway descriptions, curves sometimes double back on themselves. Description will read "to a point of cusp, thence along a curve," etc.



I. The Legend & Survey Symbols.

The legend on a survey map is essentially a decoder for all the symbols used on the map. As a general rule a map should always include a comprehensive legend which explains/defines the meaning of the symbols used. This removes the risk of a map being misinterpreted and/or used incorrectly. For example a tree symbol could represent a single tree, a forest, a plant nursery, a city park, a lawn cemetery or even something totally unrelated to plants. Where space does not permit all symbols to be shown in a map legend, surveyors will often omit the more obvious ones.

The following are examples of survey symbols often used in upstate New York:

- Chain link fence
- x— Wire or Chain Link Fence
- Stockade Fence
- //— Wood Fence
- Iron Pin Set
- Utility Pedestal
- Iron Pipe Set

See also **Appendix K** for examples of Legends used by surveyors in the Monroe County area.

Unfortunately, there is no one set of survey symbols that are uniformly used from one surveyor to the next. As such, it is always important to look at the legend when examining a survey to make certain you understand what each symbol represents.

J. Survey Certifications.

The purpose of certifying a survey to particular parties (for a specific transaction) is to confirm and reinforce the opinion of the surveyor to those particular parties listed in the certification. The certification establishes the contractual obligation and liability of the surveyor to the parties listed in the certification for the survey work performed. Often surveyors will limit their certifications-the certification may run to the person for whom the survey was prepared, their attorney, to the title company insuring the mortgage, the governmental agency and lending institution listed on the survey and to the assignees of the lending institution. However, the certification may state that it is not transferable to additional institutions or subsequent owners – since surveyors do not want to extend their obligation and liability beyond the specific transaction or certified parties. In some areas, surveyors will charge to certify the survey, often on a per name basis.

10. An Attorney's Checklist for Ordering a Survey.

- A. Time frame – can the surveyor meet your time frame?
- B. What type of survey is required for the transaction? Be specific as to the intended use of the survey – see Section 6 above.
- C. What standards will the surveyor be using? Will that be sufficient for the transaction? What does the contract, the title company and/or the lending institution require?
- D. Are there any special circumstances that could be problematic for the surveyor? – i.e. weather, difficult conditions, etc.
- E. Are there limitations on the certification and which parties and/or institutions should be listed on the certification?
- F. Cost of survey? (Is it a range or a cap price? Who will pay for the survey?)
- G. How many copies of the survey will be needed? Will the survey be recorded or filed in the county clerk's office. Will a Mylar copy be required?
- H. Will surveyor be given a current abstract of title covering the property to be surveyed?
- I. Is there an existing survey on the property? It is often less expensive and quicker to ask a surveyor who previously provided a survey to "update" his work rather than employ a new surveyor.
- J. Gather essential information to present to the surveyor, including:
 - a. Current title commitment and all exception documents. Abstract, copies of old surveys, plats, or similar documents, if available. NOTE: All archival information should be “referenced” on the face of the survey map.
 - b. The legal names of all parties who should be named to rely upon the survey, including the seller and buyer (or landlord and tenant), title company, the firms representing both parties, and any lenders.

- K. Should the property be staked or pins set at the corner? If the property is located in Monroe County, a specific request for staking usually must be made.

11. Survey Review Checklist.

Reviewing and critiquing a survey map is an important aspect of the real estate due diligence process. This is especially true when you consider that you, as the attorney for the buyer, is often the only person involved in the real estate transaction who will review the survey map on behalf of your client. In examining the survey map, there are many matters that you should review. Attached as **Appendix I** is a Survey Review Checklist.

In reviewing the survey map, an attorney should consider the following:

- A. Did the surveyor deliver the survey that you ordered? A review of the survey entails both an “administrative” and “substantive” analysis. If the survey signed?
- B. Is the survey map current (i.e. dated in accordance with the Contract)?
- C. If the survey map is not currently dated, have there been any changes which would be shown on a current survey map (i.e. fences, pools, structural additions to the dwelling, or detached sheds/outbuildings)?
- D. Is the property to be conveyed correctly identified on the survey map?
1. Compare the survey map with the legal description set forth in the Abstract (the “history of the property”).
 2. Compare the survey map with the legal description in the proposed deed from the seller.
 3. Discover inconsistencies and/or ambiguities and review them with the surveyor. Remember, all legal descriptions (the legal descriptions contained in the Deed, Mortgage, and Title Report), with certain exceptions (ie. since the title insurance does not insure acreage, any reference to the number of acres in the legal description should be omitted from the Title Report) must be identical.
- E. Is the survey map certified to the property parties?
- F. Are all improvements, recorded easements and rights of way located on the survey map? Are there any encroachments shown on the survey map? Is there any evidence of conflicting use or occupancy?
1. Confirm that all easements of record as reflected in the Abstract are depicted on the survey map.
 2. Confirm that all easements on the survey map are identified by their recording information.
 3. Consider the following easements which may be reflected in the Abstract:
 - i. Utility easements. Gas, electric, phone, telecommunications, public water, sanitary sewer, and storm sewer. Are all utilities within a public or private easement?
 - ii. Storm water drainage. Is the property encumbered by a drainage easement benefiting off-site properties? Does the property have on-site storm water management capabilities or does an off-site drainage improvement serve the property?
 - iii. Access easements. Does the land abut a public road, or is it accessed by a private road or shared access?
 - iv. Review encroachments depicted on the survey map. Fences and other recognizable boundaries often do not follow the correct boundary line. Adverse possession or prescriptive easement issues may surface.
 - v. Are wetlands delineated? Is the floodplain delineated?

- vi. Review the survey map against your checklist.
- G. Are the applicable setback distances shown on the survey map and if so, are the setback distances based on restrictive covenants or zoning requirements?
- H. Does the survey map comply with the applicable standards in your jurisdiction?
- I. Does the survey map contain a flood certification, if required by the lender?
- J. Does the survey map disclose any specific conditions or limitations?
- K. If the property is shown on a subdivision map filed in the County Clerk's Office, has the subdivision map been examined and has all relevant data affecting the property also been reflected on the survey map?
- L. Does the survey map disclose the location of wetland areas?

12. Use of Existing Survey Maps & Affidavits of No Change.

Periodically, the Seller of property will request that a Buyer accept an existing survey from the Seller with an "Affidavit of No Change." An Affidavit of No Change is an affidavit wherein the Seller states that there have been no changes to the Seller's property since the existing survey map was prepared. An example of an Affidavit of No Change is attached as **Appendix J**.

Many attorneys, and most consumers, are unaware of the pitfalls that exist when using an existing survey with an Affidavit of No Change. Essentially, the use of an Affidavit of No Change results in the Seller incurring liability that the Seller most likely would not accept if the Seller understood the potential risks involved. In other words, when an Affidavit of No Change is used, liability that would otherwise be attributed to a surveyor is shifted to the Seller. Unfortunately, many Sellers believe that after they sign the Affidavit of No Change and the recording of the deed, they are free from any liability with respect to the property and its boundaries. This is not necessarily accurate.

To illustrate the transfer of liability from the surveyor to the Seller, consider the following fact pattern:

Mr. Smith sells property to Ms. Jones and the parties agree that Ms. Jones will accept an existing survey with an Affidavit of No Change. The existing survey map was prepared at the time that Mr. Smith purchased the property. Thereafter, Mr. Smith had a garage constructed on the property. At closing, Ms. Jones receives the existing survey map along with an Affidavit of No Change that was signed by Mr. Smith. Neither the existing survey map nor the Affidavit of No Change reflect or make reference to the garage. Time passes and eventually Ms. Jones is advised by her neighbor that her garage encroaches upon the neighbor's property. Ms. Jones ends up paying for a survey of the property and upon receipt of the survey map, discovers that Mr. Smith, in his Affidavit or otherwise, failed to mention that when the garage was constructed along the east boundary line, it encroached upon the adjoining neighbor's property by up to 2.2 feet.

If a new survey map had been prepared at the time Ms. Jones purchased the property, the surveyor would have depicted the garage that encroached upon the adjoining property, which would have permitted Ms. Jones and Mr. Smith to negotiate a resolution to the garage encroachment, whether through a boundary line agreement or otherwise, prior to the completion of the transaction.

Furthermore, the new survey map most likely would have included a surveyor's certification. As discussed earlier in these materials, the surveyor's certification is a statement of reliability indicating that the survey was prepared in accordance with the standards listed thereon. Two examples of a surveyor's certification are as follows:

1. "Certifications listed hereon signify that this survey was prepared in accordance with the existing code of practice for land surveys adopted by the GVLSA and the Monroe County Bar Association;" and
2. "This survey was prepared in accordance with the existing code of practice for land surveys adopted by the New York State Assn. of Professional Land Surveyors."

In upstate New York, the new survey map would also have certified to certain persons, including Ms. Jones, certifying that the survey map was prepared in accordance with applicable standards, whether listed or not.

The survey certifications are essentially an acknowledgement by the surveyor that the persons listed ("I hereby certify to: ...") may rely upon the accuracy of the survey. As such, if the new survey map failed to depict the garage encroachment, Ms. Jones would potentially have a cause of action against the surveyor.

Unfortunately, since the Seller provided Ms. Jones with an Affidavit of No Change and the garage was constructed after the existing survey map was prepared, no cause of action would exist with respect to the surveyor. Instead, Ms. Jones' cause of action would lie against the Seller, Mr. Smith, who most likely has no idea that he is about to be sued by Ms. Jones to recoup her damages resulting from the inaccuracy of his Affidavit of No Change. Regardless of whether Mr. Smith was aware of the garage encroachment or not, Mr. Smith may be found liable for Ms. Jones' damages because Mr. Smith provided a written sworn statement made under oath (the Affidavit of No Change) that "[t]he survey shows the Property in its present condition. There have been no changes in the boundary lines of the Property or in its buildings, fences or other improvements as shown on the survey." Furthermore, even if Mr. Smith is not found liable based upon his Affidavit, he will, in defending against a lawsuit by Ms. Jones, incur costs well in excess of the cost of a new survey.

The potential liability for Mr. Smith, not to mention the cost and expense incurred in defending against a lawsuit, could easily have been avoided if Mr. Smith had simply provided Ms. Jones with a new survey map at the time he sold the property to Ms. Jones.

In addition to the potential cause of action against Mr. Smith, it should also be noted that Ms. Jones may also have a cause of action against her attorney if the attorney did not adequately advise Ms. Jones of the risks involved in accepting an existing survey with an Affidavit of No Change. It would also not be surprising if Mr. Smith sued his attorney for failing to adequately advise Mr. Smith of the shift in potential liability that occurred through the use of the existing survey and Affidavit of No Change.

In light of the potential liability that may be shifted to a Seller, the potential liability that may be incurred by an attorney if they don't adequately advise their client of the ramifications of using an existing survey with an Affidavit of No Change, and the potential costs that will be incurred by all parties in the event of an encroachment that would have been revealed if a new survey map was prepared, it is not recommend that an existing survey map with an Affidavit of No Change be used, regardless of the cost savings.

13. Contract Provisions.

The purchase and sale contract should always contain a provision for surveys. The Contract should, at a minimum, state which party will obtain and pay for the survey map. For example, the Monroe County Bar

Association Purchase and Sale Contract for Residential Property contains provisions relative to the production of a survey map based upon the local custom that the seller is responsible to furnish a current survey map for the property being sold. Please see the provisions set forth below. Notwithstanding such provisions, who will obtain and who will pay for the survey map can be a point of negotiation.

A. Monroe County Purchase and Sale Contract for Residential Property Provisions.

A survey map may reveal matters that could raise issues concerning marketability of the title to the property. For example, Paragraph 10 of the 2014 Monroe County Purchase and Sale Contract for Residential Property requires the Seller to deliver, at Seller's expense, certain documentation. Paragraph 10.A specifically provides as follows:

Title and Related Documents. Seller shall deliver at Seller's expense:

- A. At least fifteen (15) calendar days prior to the closing date, to Buyer or Buyer's attorney, (i) a draft of the proposed deed, (ii) abstract of title, fully guaranteed tax and U.S. Court searches, all dated or re-dated after the date of acceptance, with a local tax certificate for Village or City taxes, if any (all of which shall be continued to and including the day of closing at Seller's expense), and (iii) **an instrument survey map dated after the date of acceptance, certified and prepared to meet the standards of the Monroe County Bar Association and Buyer's mortgage lender;** and (*emphasis added*)

Paragraph 11 of the 2014 Monroe County Purchase and Sale Contract for Residential Property provides as follows:

Marketability of Title. Seller shall convey good and marketable title to the property in fee simple, free and clear of all liens and encumbrances. The parties acknowledge and agree that good and marketable title to the property, free and clear of all liens and encumbrances, means, without limit, that all gas, mineral, oil and timber rights will transfer with the property to Buyer except as otherwise provided in Paragraph 18 below. However, Buyer agrees to accept title to the property subject to: (a) restrictive covenants of record common to the tract or subdivision of which the property is a part, provided these covenants have not been violated or the time for objection to any violation has expired, (b) public utility easements within fifteen (15) feet of lot lines which do not interfere with any existing improvements on the property or with any improvements that Buyer may construct in compliance with all present restrictive covenants of record and zoning and building codes, and (c) except for waterfront properties, **fences deviating from the actual property line one foot or less, provided the fence placement does not impair access to the property from a right of way or cause the property to be in violation of any restrictive covenant, easement or agreement of record or of any building, zoning or subdivision code.** Seller and Buyer agree that potential objections revealed by the instrument survey map furnished pursuant to Paragraph 10.A. above shall be resolved pursuant to the "Suggested Title Standards for Treating Discrepancies Revealed by Surveys" of the Monroe County Bar Association. (*Emphasis added*).

B. Types of special contractual provisions regarding survey maps.

1. The purchase is "subject to any state of facts an accurate survey might disclose."
2. The purchase is "subject to any state of facts an accurate survey would disclose, provided the same does not render the title unmarketable."

3. The purchase is “subject to Buyer's approval, in Buyer's sole discretion, of a professional, recordable survey of the Property, conducted by Buyer (or Buyer's designee), at Seller's expense.”
4. The sale is “subject to any state of facts shown on a specific survey.”
5. The sale is “subject to an existing or “old” survey of the property with an Affidavit of No Change.
6. The purchase is “subject to Seller furnishing Buyer with a current metes and bounds survey certified by a licensed surveyor in the State of New York, not less than _____ (_____) days prior to closing. Said survey shall disclose:
 - i. The location of all improvements on said Property;
 - ii. The location of all easements, whether recorded or visible on the Property;
 - iii. All access to public streets or roads surrounding the Property;
 - iv. All encroachments either on the Property or on adjacent property from improvements on the Property.
 - v. That the Property consists of one contiguous parcel; and
 - vi. That the Property consists of not less than _____ (_____) [square feet] [acres].”

14. Matters that Render Title Unmarketable and Other Issues

A. Discrepancy with the Description.

What if the legal description used by the surveyor is different than the legal description in the vesting deed or title commitment? In a related problem, what if the surveyor alerts you that the legal description in the vesting deed is simply inaccurate or impossible? The survey description should be identical to the record description? Discrepancies won't automatically render the title unmarketable. However, depending on the extent of the discrepancy in the description, it could be a severe title problem and render the title unmarketable or result in litigation over the disputed parcel. In *Brown v. Ames*, 290 A.D. 2d 693 (3rd Dept. 2002), the Third Department based its decision on a frequently applied principal that, in determining the location of the property boundaries, "natural landmarks and artificial monuments take precedence over mere metes and bound descriptions".

B. Variations between the “record” description and the “measured” description.

Measurements along the same boundary vary between old and new surveys. As such, a survey map may sometimes show both “record” and “measured” distances. For example, a deed may contain a “record” distance. When the surveyor goes out to the property and actually measures the lot lines, the surveyor may discover that the “measured” distance varies from the “record” distance. This difference between the “record” distance and “measured” distance is often due to the greater accuracy of new technology. Accordingly, in most instances the difference between the “record” distance and the “measured” distance does not reflect any change in boundary location or the addition or loss of land.

Unfortunately, many attorneys continue to use the same legal description written 50 years or more ago. When you compare the survey map with the legal description from 50+years ago, you may determine that there is a significant variation between the “record” distances and the “measured” distances.

In terms of how the difference between the “record” distance and the “measured” distance is reconciled, there are multiple options. Some attorneys and surveyors are of the opinion that the

“record” description should control and be used. Others feel that the legal description should be amended to reflect the “measured” distances without including the “record” distances.

The better practice is to use both. For example, the initial legal description would reflect the “record” distances:

ALL THAT TRACT OR PARCEL OF LAND being part of Town Lot 20, Township 13, Range 4, situate in the Town of Penfield, County of Monroe, State of New York, being more particularly described as follows:

BEGINNING at a point in the centerline of Smith Road 926 feet south of the centerline intersection of Jones Road, said point also being 1766 feet north of the centerline of Penfield Road; **THENCE**, westerly, forming an exterior angle in the northwest quadrant of 87°51', a distance of 275 feet to a point; thence, southerly, forming an internal angle of 87°51', a distance of 10 feet to a point; **THENCE**, easterly, forming an interior angle of 90°01', a distance of 50 feet to a point; **THENCE**, continuing along the same course, a distance of 225 feet, for a total distance of 275 feet, to a point in the centerline of Smith Road, said point being the point and place of **BEGINNING**.

The “measured” distances could then be referenced as follows:

THE PREMISES BEING MORE RECENTLY DESCRIBED AS FOLLOWS:

ALL THAT TRACT OR PARCEL OF LAND being part of Town Lot 20, Township 13, Range 4, situate in the Town of Penfield, County of Monroe, State of New York, being more particularly described as follows:

BEGINNING at a point in the centerline of Smith Road 928.79 feet south of the centerline intersection of Jones Road, said point also being 1766.60 feet north of the centerline of Penfield Road; **THENCE**, westerly, forming an exterior angle in the northwest quadrant of 87°51'25", a distance of 275.00 feet to a point; thence, southerly, forming an internal angle of 87°51'25", a distance of 10.14 feet to a point; **THENCE**, easterly, forming an interior angle of 90°01'50" (external angle of 89°58'10"), a distance of 49.81 feet to the northwest corner of lands of Schell; **THENCE**, continuing along the same course, a distance of 225.00 feet, for a total distance of 274.81 feet, to a point in the centerline of Smith Road, said point being the point and place of **BEGINNING**.

When a “measured” distance legal description is added, it is recommended that you recite the survey map at the end of the legal description and attach a copy of the survey map to the deed. The recitation regarding the survey map may be stated as follows:

All as shown on an instrument survey map prepared by _____, P.L.S. dated _____.

C. Driveway Encroachments.

Driveway encroachments are generally considered an encumbrance to title and may render the title unmarketable. The driveway encroachment may be permitted to remain in place, pursuant to a valid

easement or license agreement between the owner and adjacent property owner. Such agreement should contain quit claim language to avoid the adverse possession rules of *Ahl v. Jackson*, *infra*.

D. Encroachments.

Certain encroachments can render the property unmarketable – they are often detected by physical facts, observed by the surveyor, but not contained in the record title.

The types of encroachments disclosed on surveys include the following:

1. Encroachments from improvements on the subject premises onto the adjoining property or streets, or
2. Encroachments from improvements on adjoining property onto the subject premises.

New York Courts will determine on a case by case basis if the encroachment rendered the title unmarketable. Minor encroachments will not normally render the title unmarketable. However, the nature and extent of any encroachment can effect marketability (*McPherson v. Schade*, 149 N.Y. 16 (1896)). In *McPherson*, the Court held that an encroachment of one and one-half inches warranted the rejection of the title. The courts will look to see if the encroachment is de minimis or immaterial, or whether it is substantial or harmful. The test courts will typically apply to determine if the encroachment is substantial – does the encroachment interfere with the probable use and enjoyment of the property? Contrast the *McPherson* decision with the Monroe County Suggested Title Standards for Treating Discrepancies (March, 2012).

E. Fences, Retaining Walls and Hedges.

Variations are deviations between the location of the fence, wall or hedge in question and the record title. If the variation is de minimis, it usually has not been viewed as a title problem. If the variation is significant, it could be a title concern.

The Appellate Division, 4th Department, in *Ahl v. Jackson*, 272 A.D.2d 965 (4th Dept. 2000) reinforced the automatic vesting of ownership by an adverse possessor when the elements of adverse possession are met. Subsequently, the New York State Legislature enacted RPAPL §543 on July 8, 2008, which section, inter alia, altered the elements of adverse possession.

The *Ahl* case involved a dispute between neighbors over title to a strip of land. Plaintiff (and his predecessors in title) had continuously maintained the improvements located on the disputed parcel for forty-six years. However, in 1997, the plaintiff, at the request of defendant's predecessor in title, signed a fence affidavit, in which he stated that he made no claim to the disputed parcel of land. An action was brought in the Supreme Court of Monroe County to resolve ownership to the parcel. The Court granted summary judgment in favor of the adverse possessor. Defendant appealed. The Appellate Court held that: (1) the trial court properly determined that the adverse possessor obtained title to the disputed parcel by adverse possession, and (2) the statement of adverse possessor in the fence affidavit after the statutory period had run was insufficient to divest adverse possessor of title to the disputed property. It was the Court's belief that once the title to the property vested in the plaintiff by adverse possession, title to the parcel of land may be transferred only by deed or other method recognized at law. Clearly, the Court did not view a fence affidavit to be a legal transfer of title.

As a result of the Fourth Department decision in *Ahl*, Fence Affidavits were no longer effective. In order to address the method of transfer of title in the opinion, Boundary Line Agreements have become the

acceptable method of resolving boundary line issues so long as the Boundary Line Agreement contains quit claim language.

Subsequent to *Ahl*, the New York State legislature enacted RPAPL §543. RPAPL §543 provides that "the existence of de minimis non-structural encroachments including, but not limited to, fences, hedges, shrubbery, plantings, sheds and non-structural walls," as well as "the acts of lawn mowing or similar maintenance across the boundary line of an adjoining landowner's property shall be deemed permissive and non-adverse." RPAPL §543 represents a shift in New York law. Previously, the non-structural encroachments and maintenance set forth in RPAPL §543 could be considered in determining whether the adverse possessor acquires title to the property in question. Now, such non-structural encroachments, if de minimis, are deemed permissive and non-adverse. Unfortunately, RPAPL §543 did not define "de minimis", leaving practitioners with uncertainty. Since a Fence Affidavit was no longer effective under *Ahl*, the Monroe County Bar Association addressed the issue through the Monroe County Bar Association Suggested Title Standards for Treating Discrepancies Revealed by Surveys – **See Appendix A** ("Survey Standards").

The Survey Standards relating to fences is broken down into two distinct time frames – those fences that existed on or before July 7, 1998 and those that were installed on or after July 8, 1998 and are set out fully in **Appendix A**.

F. Private or Public Streets or Roads.

Does the property front on a dedicated street or road or is it a private drive? Is there proper access to the property or is the property landlocked? These are all issues that could present title problems and may render the property unmarketable. A survey will help to disclose these problems.

The presumption is that one-half the abutting street belongs to adjoining owners. *See Van Winkle v. Van Winkle*, 184 N.Y. 903. "It is well settled that, where a grantor divides his property into lots which border on a street or highway and executes conveyances which describe the property as abutting the street, the grant is deemed to pass the fee to the center line of the street." *City of Albany v. State of New York*, 28 N.Y.2d 352 (1971) (citing *Bissell v. New York Cent. R. R. Co.*, 23 N.Y. 61; *Matter of Ladue*, 118 N.Y. 213; *Geddes Coarse Salt Co. v. Niagara, Lockport & Ontario Power Co.*, 207 N.Y. 500, 503; *Matter of City of New York [165th St.]*, 258 N.Y. 42, 50).

The above presumption is overcome if intention is clear that the street is to be excluded. *See Graham v. Stern*, 168 N.Y. 517, and *City of Albany v. State of New York*, 28 N.Y.2d 352 (1971) ("The presumption is not, however, inflexible and will yield to a showing in the deed of a contrary intent to exclude from the grant the bed of the street. Thus, when the deed describes the grant as starting at a corner of an intersection, and then running along parallel to or bounding on a street or streets to the beginning point, the grant is limited to the exterior line of the street." (see, e.g., *English v. Brennan*, 60 N.Y. 609; *White's Bank of Buffalo v. Nichols*, 64 N.Y. 65; *Kings County Fire Ins. Co. v. Stevens*, 87 N.Y. 287; *Deering v. Reilly*, 167 N.Y. 184; *Matter of City of New York*, 209 N.Y. 344; Ann. 2 A. L. R. 6)).

G. Projections.

An encroachment of a minor part of a building onto adjoining premises or street. Cornices, eaves, roof or decorative trim are considered projections. Unless encroachments come within the "de minimis" rules, they usually affect marketability. Fortunately, but minor projections issues are usually resolved

and do not pose a serious title issue. For example, where the encroachment of adjoining buildings on the property is slight, a buyer will not be permitted to reject title, although in some cases an abatement of price is decreed. See *McGraw v. Selkis*, 245 A.D. 786, Aff'd 269 N.Y. 534; *Ungrich v. Shaff*, 199 A.D. 843; *Mergers v. Ringler*, 34 A.D. 415, Aff'd 158 N.Y. 701; and *Gold v. Calderazzo*, 100 Misc. 598.

See also New York RPAPL §611 which permits an exterior wall to encroach, not exceeding 6 inches, on a neighbor's adjoining property if no action is commenced to remove the encroaching wall within one year after its completion. RPAPL §611(2), although previously applicable only to property in cities, is now also applicable to property located outside of cities.

See also *Village Law* §6-632; *Town Law* §130(7); and *General City Law* §38-A.

H. Prescriptive Easements.

The rules for acquiring an easement by prescription (a limited right to use the land of another) are the same as the rules for acquiring land in fee by adverse possession with limited exceptions. As a result, a prescriptive easement must meet the requirements of open, adverse, and notorious use for ten (10) years. See *CPLR* §212(a) and *RPAPL* §521.

Where the party claiming adverse possession has not possessed the property for the statutory period, the owner may "tack his adverse possession to that of his predecessor to satisfy the applicable statutory period." See *Brand v. Prince*, 35 NY2d 634, 637 (1974). Even where the disputed property is omitted from a deed description, tacking is permitted if it appears that the adverse possessor intended to and actually turned over possession of the undescribed part with the portion of the land included in the deed. See *Brand, supra*. However, where a deed does not contain the alleged prescriptive easement, and there is no proof that the grantor intended to include such an easement in the deed, the subsequent owner may not "tack" their alleged adverse use onto that of their predecessors. See *Brand, supra*; *Jacobs v. Lewicki*, 12 AD2d 625 (2d Dept., 1960). Additionally, a subsequent owner is not entitled to tack possession where it is not established that the predecessor owner ever asserted an adverse claim to the disputed property. See *Meerhoff v. Rouse*, 4 AD2d 740 (4th Dept., 1957).

I. Setback and Sideline Variations.

Generally speaking, the Abstract of title will disclose that the premises are encumbered by certain restrictions or covenants that may require that the improvements on the property be set back a specific distance from the street or lot line. The survey map should show if there is a violation of the setback or sideline requirements. See *RPAPL* §2001.

J. Map Cover Notations.

Notations on filed map covers regarding restrictions on land use are just as binding upon buyers as restrictive covenants and restrictions recorded in the County Clerk's Deed records. See *O'Mara v. Town of Wappinger*, 485 F.3d 693 (2nd Cir. 2007) (an open space restriction placed on a final plat pursuant to Town Law §276, when filed in the office of the county clerk pursuant to RPL §334, is enforceable against a subsequent purchaser). Typical restrictions imposed by a municipality when a developer takes title and subdivides land include building setbacks and sideline requirements, conservation and easement areas, and "open space" requirements.

K. Right of Way – Streets & Roads.

Surveys should also show the width of Right of Way associated with the roads or streets which border the property. Often, a street has not yet been widened to its fullest extent and may cause problems in the future if a widening took place. The survey should always disclose the width of the street or roadway.

15. Miscellaneous Items.

- A. Always have the most current survey reading in the title policy (if survey has been revised or re-dated remember to furnish it to the title company).
- B. If survey has been revised during the closing process, always re-review the entire re-dated survey. The survey may have been returned to surveyor for a specific change and another item on the survey gets added or changed as well.
- C. Does Surveyor have Errors and Omissions Policy or is the surveyor self-insured?
- D. To be considered valid – the survey map must be signed by a licensed land surveyor registered in the State of New York and contain the embossed seal of the surveyor.
- E. For Monroe and surrounding counties, the surveyor must conform to or exceed minimum standards of the Code of Practice for Land Surveys adopted by the Genesee Valley Land Surveyors Association, Inc. All limitations or variations from these standards are to be clearly stated on the survey.
- F. Alterations to a Survey – If a survey bearing the seal of a land surveyor is altered, the altering surveyor shall affix his/her seal to the survey and the notation "altered by" followed by their signature, date of alteration and specific description of the alteration. *Educ. Law §7209(2).*

16. Statutory Provisions.

A. General City Law §35.

This statute protects the official city mappings of streets and highways and prohibits the issuance of permits to build in the bed on any mapped street or highway, unless the board of appeals or similar board grants a permit which allows for a change in the official map or plan. This statute is a planning device which affords the city to plan for the future without having to do an immediate taking to acquire the title to the property. An owner should never build a structure within an area designated on an official map for streets without first applying for and receiving a permit from the appropriate board. May run the risk of the city taking the property without compensating owner.

B. General City Law §38-A.

This statute permits encroachment, onto streets and highways, of the front or other exterior wall of any building of not more than six inches to remain provided the encroachment existed prior to January 1, 1960.

C. Real Property Law §381.

Where a person seeks to register title to real property, this statute requires, inter alia, that a survey, map or plan of the land the title to which is sought to be registered, which shall be made by a competent surveyor and shall be subject to the approval of the court, and which shall clearly show the

exact boundaries of the land and its connection with adjacent lands and any adjoining or neighboring streets and avenues, and the distances from such adjoining or neighboring streets or avenues, and all encroachments, if any, and all other facts which are usually shown by accurate surveys, shall be filed with the register.

D. Real Property Actions and Proceedings Law.

1. RPAPL §501.

Adverse possession; defined. For the purposes of this article:

- 1) Adverse possessor. A person or entity is an "adverse possessor" of real property when the person or entity occupies real property of another person or entity with or without knowledge of the other's superior ownership rights, in a manner that would give the owner a cause of action for ejectment.
- 2) Acquisition of title. An adverse possessor gains title to the occupied real property upon the expiration of the statute of limitations for an action to recover real property pursuant to subdivision (a) of section two hundred twelve of the civil practice law and rules, provided that the occupancy, as described in sections five hundred twelve and five hundred twenty-two of this article, has been adverse, under claim of right, open and notorious, continuous, exclusive, and actual.
- 3) Claim of right. A claim of right means a reasonable basis for the belief that the property belongs to the adverse possessor or property owner, as the case may be. Notwithstanding any other provision of this article, claim of right shall not be required if the owner or owners of the real property throughout the statutory period cannot be ascertained in the records of the county clerk, or the register of the county, of the county where such real property is situated, and located by reasonable means.

2. RPAPL §521.

Adverse possession not under written instrument or judgment.

Where there has been an actual continued occupation of premises under a claim of right, exclusive of any other right, but not founded upon a written instrument or a judgment or decree, the premises so actually occupied, and no others, are deemed to have been held adversely.

3. RPAPL §521.

Essentials of adverse possession not under written instrument or judgment.

For the purpose of constituting an adverse possession not founded upon a written instrument or a judgment or decree, land is deemed to have been possessed and occupied in either of the following cases, and no others:

- 1) Where there have been acts sufficiently open to put a reasonably diligent owner on notice.
- 2) Where it has been protected by a substantial enclosure, except as provided in subdivision one of section five hundred forty-three of this article.

4. RPAPL §543.

Adverse possession; how affected by acts across a boundary line.

1. Notwithstanding any other provision of this article, the existence of de minimis non-structural encroachments including, but not limited to, fences, hedges, shrubbery, plantings, sheds and non-structural walls, shall be deemed to be permissive and non-adverse.
2. Notwithstanding any other provision of this article, the acts of lawn mowing or similar maintenance across the boundary line of an adjoining landowner's property shall be deemed permissive and non-adverse.

2. RPAPL §611.

An action cannot be maintained to force the removal of an encroaching exterior wall of a building (that does not exceed six inches in width) unless it is brought within one year after the completion of the erection of such wall. One year after completion – can bring an action for money damages. If no action brought within two years of the completion of the encroaching wall, owner of the building shall be deemed to have an easement to the strip of land for as long as the building stands. Once the encroaching wall is destroyed, the owner of the strip of land shall have the right to take or recover the possession of the encroached upon area as if such wall had never existed.

3. RPAPL §871.

An action may be maintained by the owner of land for a removal of an encroaching structure, but this section shall not be deemed to repeal or modify any existing statute or local law relating to encroaching structures (so time limitations provided for by section 611 would be applicable for this type of action).

4. RPAPL §2001.

An action to enforce a covenant or agreement restricting the use of land - as it relates to structures that maybe erected on the premises and limits such structures with respect to set-back or side-lines, location etc. – must be brought within two years from the completion of the structure in question.

E. Town Law §130 (7).

This statute permits encroachment of the front or other exterior wall of any building onto streets and highways so long as the encroachment is of not more than six inches, provided the encroachment existed prior to January 1, 1940.

F. Village Law §6-632.

This statute permits encroachments, onto streets and highways, of the front or other exterior wall of any building of not more than six inches to remain provided the encroachment existed prior to January 1, 1940.

17. Information in this article was adapted from the following resources:

- A. The Genesee Valley Land Surveyors Association Website (www.gvlsa.com).
- B. The New York State Education Department Website (www.nysed.gov).
- C. First American Title Insurance Company (www.firstam.com).

- D. "Update on Instrument Surveys" by Maureen Pilato Lamb, Esq. – NYSBA Coursebook – Real Estate Titles – Fall, 2007.
- E. "Land Surveys – A Guide for Lawyers and Other Professionals" (3rd Ed. 2012).

18. Appendices:

- Appendix A: Monroe County Bar Association Suggested Title Standards for Treating Discrepancies Revealed by Surveys (March, 2012).
- Appendix B: Minimum Standards for Residential Surveys adopted by the Monroe County Bar Association and the Genesee Valley Land Surveyors Association (2003).
- Appendix C: II Land Survey Standards Adopted by the Bar Association of Erie County and the Niagara Frontier Land Surveyors Association (Rev. April, 1984).
- Appendix D: Code of Practice for Land Surveys Revised and Adopted by Genesee Valley Land Surveyors, Inc. – February, 2001.
- Appendix E: New York State Education Department Land Surveying Practice Guidelines (February, 2000).
- Appendix F: Code of Practice for Land Surveys adopted by the New York State Assn. of Professional Land Surveyors (7th Rev. July 18, 1997).
- Appendix G: Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys (Eff. February 23, 2011).
- Appendix H: Example of Title Report language in light of requirements of MCBA Suggested Title Standards for Treating Discrepancies Revealed by Surveys (March, 2012).
- Appendix I: Survey Review Checklist.
- Appendix J: Affidavit of No Change.
- Appendix K: Examples of Surveyor Legends used in the Monroe County area.
- Appendix L: Examples of different types of Survey Maps.
 - 1. ALTA/ACSM Land Title Survey Map.
 - 2. Boundary Survey Map.
 - 3. Condo Survey Map.
 - 4. Mortgage Survey Map.
 - 5. Plot Survey Map.
 - 6. Topographical Survey Map.
- Appendix M: Examples of Instrument Survey Maps. With respect to the instrument survey maps referenced below, where possible, comments have been included referencing the Monroe County Bar Association Suggested Title Standards for Treating Discrepancies Revealed by Surveys (March, 2012).

1. Example of a Survey Map that depicts a potential prescriptive easement.
2. Example of 2 Survey Maps created by 2 different surveyors that depict the same property with different boundary lines.
3. Example of a Survey Map that depicts a distance of 11.7' between the southwest corner of the house on the subject property and the southeast corner of the house located on the adjoining property.
4. 2 separate examples of Survey Maps that depict an above ground pool encroaching onto adjoining property.
5. 2 examples of Survey Maps that depict a shed that either encroaches onto the adjoining property or encroaches on the subject property, depending upon who owns the shed.
6. 3 examples of Survey Maps where the age of fence determines whether a fence affidavit of Seller will be sufficient (fence 7/8/98 or newer) or whether a boundary line agreement with the adjoining property owner will be necessary (fence 7/7/98 or older).
7. Example of a Survey Map that depicts a shed encroaching an unknown distance onto a 12.5' wide drainage easement.
8. 2 examples of Survey Maps that depict a fence encroaching upon the adjoining property.
9. Example of a Survey Map that depicts a Frame Garage encroaching upon the adjoining property.
10. 2 examples of Survey Maps that depict the driveway of the subject property extending onto the adjoining property.
11. 2 examples of Survey Maps that depict a fence, presumably owned by the adjoining property owner, that encroaches on the subject property.
12. Example of a Survey Map that depicts the existence of a "Limited Development District."
13. Example of a Survey Map that depicts the driveway for the adjoining property encroaching onto the subject property up to 2.9' south of the north boundary line of the subject property. The driveway for the adjoining property also abuts up against the house on the subject property.
14. Example of 2 Survey Maps prepared by the same surveyor that depict a fence on the subject property both with and without a gate.
15. Example of Survey Map where the surveyor set the west boundary line for the subject property and also provided references on the Survey Map which indicate that the west boundary line of the subject property is other than as depicted.

16. Example of Survey Map that depicts a violation of the applicable minimum setback for the subject property.
17. Example of 2 Survey Maps created by 2 different surveyors that depict the same property with different boundary lines.

Appendix A: Monroe County Bar Association Suggested Title Standards for Treating Discrepancies Revealed by Surveys (March, 2012).

MONROE COUNTY BAR ASSOCIATION

SUGGESTED TITLE STANDARDS FOR TREATING DISCREPANCIES REVEALED BY SURVEYS (Last revised March 2012)

I. Statements of Necessity and Intended Use

- A. The standards suggested herein have been developed with extensive input from counsel for buyers, sellers, lenders and title insurance companies as well as purchasers of mortgage instruments on the secondary market. Recognizing each of these groups has different interests at stake and might apply varying individual standards in accordance with the interests of each, an attempt has been made to arrive at a set of standards that all can accept, as this is most likely to lead to a smooth functioning of the title examination and clearance process.
- B. These standards draw upon and are intended to be consistent with the well-established FHA/VA and secondary market standards promulgated by FNMA/FHLMC, but are intended to supplement those standards with respect to the specific issues treated. It is recognized that in certain cases these standards are more liberal than the automatic waiver provisions of the secondary market standards, but it is felt that specific local conditions justify the difference. Secondary market and FHA/VA standards generally yield to prudent accepted community practice, which these standards are intended to establish.
- C. Recent developments in common law and statute have necessitated this current revision of the standards. The Appellate Division, Fourth Department in *Ahl v. Jackson* (272 A.D.2d 965, 2000) re-enforced the automatic vesting of ownership by an adverse possessor when the elements of adverse possession are met. Subsequently, the Legislature enacted RPAPL Section 543 on July 8, 2008, among other provisions, altering the elements of adverse possession. ***Thus, the revised standards have a bright line rule centered on the date an improvement was installed: prior to, or July 8, 1998 and after.***
- D. Inherent in these standards is a review of the laws of *adverse possession*, and how the acts of property owners are affected thereby. Accordingly, two recurring themes found throughout these standards are ownership and access. It should be noted that for purposes herein, a seller CANNOT deny him or herself access to their own land merely by the placement of an improvement within their boundary line.

II. Exclusions, Limitations and Assumptions

- A. Exclusions: The variety of discrepancies and potential objections revealed by surveys is great, and these standards cover only the most common circumstances encountered in examining title to residential real property. Residential real property for this purpose shall be deemed to mean property consisting of 1-4 family dwellings on established subdivision lots or other building lots of customary size in the area in which located, where the residential use is the primary use of the property. Specifically excluded from treatment in this set of standards are the following:
 - 1. Unimproved property.
 - 2. Non-residential property.
 - 3. Rural properties.
 - 4. Zoning questions.

5. Restrictive covenant questions.
 6. Encroachments into public rights of way.
- B. Limitations: These standards are intended to provide a basis for an examining attorney to waive (with or without curative action) an apparent state of facts which would otherwise constitute an objection to title. The waiver of an objection to title does not constitute a waiver of a grantee's right under a warranty of title should a claim or encumbrance ultimately arise out of the state of facts in question.
- C. Assumptions: These standards assume that there is no record evidence of any dispute based on the state of facts under examination and no contradictory agreements or actions known to the examining attorney or the parties that suggest that an actual dispute or adverse claim of right exists or is likely to exist in the future.

These standards are designed to facilitate transfer of title and clearance of potential title objections based on the presumption that the discrepancies revealed by surveys have resulted from prior use of less accurate maps and consequent haphazard placement of fences, driveways, and improvements. Any evidence that the state of facts revealed by the survey is a conscious expression of the intent of the affected property owners to establish or confirm boundary lines or claims of title inconsistent with the record title would make these standards inapplicable.

These standards do not purport to treat every possible set of facts which may be revealed by surveys. The absence of any standard for a particular state of facts shall not be deemed to constitute a position as to whether or not it should be treated as an objection to title.

- D. Recommendation to Attorneys: The intent of these standards is to permit the waiver of objections to conditions that are not believed to affect title to the subject property; nevertheless, the same state of facts may present technical difficulties or constitute a nuisance to the Buyer. For example, a minor fence encroachment may not constitute a basis for a loss of title through adverse possession, but may result in impeded access to portions of the subject property or disputes with neighbors. Accordingly, attorneys for Buyers should make it a practice to point out discrepancies by reviewing the survey with their clients, even though such discrepancies will be waived as a matter of title examination. Attorneys should also note such variations on any written certifications of title given in lieu of title insurance protecting the fee interest. In many cases, this notation may be limited to an exception such as "subject to minor variations in fence placement as revealed by instrument survey prepared by John Doe, Surveyor, dated January 1, 1984."
- E. Acceptable proof of ownership and age of a fence, accessory structure or improvement:
1. Municipal records such permits, certificates of compliance and data on tax rolls; or
 2. An affidavit by seller or other knowledgeable party.
 3. Where there is no credible evidence to support the facts as to when and by whom an improvement was installed, the general rule is to treat the improvement as installed on or before July 7, 1998 by the neighbor.

III. Standards

A. Fences that existed on or before July 7, 1998

1. A fence deviating from the actual property line one foot or less shall not constitute an objection to title, regardless of the ownership of the fence, provided the Buyer has agreed to accept the same in the Purchase and Sale Contract.
2. A fence located three feet or more within the property lines of the subject property shall not constitute an objection to title if (i) there is access to that portion of the subject property outside the fence line, and (ii) documentary evidence is produced to show the fence is owned by the Seller of the subject property, as outlined in Section II E above, or as otherwise agreed upon by the parties.
3. Unless excepted by A(1) or A(2) above, a fence located within the property lines of the subject property shall constitute an objection to title. The objection must be cured by obtaining an instrument duly acknowledged and in recordable form executed by the record owners of the adjoining property. Said instrument shall be in the form the Monroe County Bar Association approved form, and shall be recorded in the County Clerk's office at the expense of the Seller. The agreement may be made bilateral to permit the continuation of the encroachment so long as the fence shall stand. The consent of the holder of any mortgage on the adjoining property shall not be required with respect to fence misplacements.
4. A fence, installed or maintained by the Seller, which encroaches onto the neighboring property more than one foot shall constitute an objection to title which shall be cured by an affidavit of the Seller affirming (i) that no demand has been made to remove the fence, (ii) that the Seller asserts title only to the surveyed property lines, notwithstanding the placement of the fence, and (iii) that no current dispute exists as to the location of the boundary line. Counsel for the Buyer shall advise his or her client as to the variance and the possibility of a future request to remove or relocate the fence or to execute a boundary or license agreement.

B. Accessory Structures and Improvements that existed on or before July 7, 1998:

1. Definitions:
 - a. An "accessory structure or improvement" is any improvement other than a dwelling or garage, the use of which is not essential to the primary function of the property, such as: storage sheds, greenhouses, pools, playhouses, etc.
 - b. A "moveable accessory structure or improvement" is one which (i) may be readily moved in its entirety, (ii) without substantial costs or significant damage to the property, and (iii) without leaving behind any foundation or residue.
 - c. The character of such structure or improvement shall be established by affidavit of the Seller or other knowledgeable party, but where the structure or improvement is substantial and the cost and feasibility of moving uncertain, additional independent substantiating evidence may be required.

- d. Any accessory structure or improvement that was installed July 8, 1998 or later shall be covered by Section III C of these Standards.
2. A moveable accessory structure or improvement appurtenant to an adjoining property and encroaching on the subject property one foot or less shall not constitute an objection to title. Such a structure or improvement which encroaches more than one foot shall be a valid objection to title and may be cured by (i) removal, evidence by an amended survey map or (ii) a written agreement in recordable form from the neighbor that no claim of title is asserted against the subject property as a result of such encroachment.
 3. A moveable accessory structure or improvement appurtenant to the subject property and encroaching on an adjoining property shall not constitute an objection to title. Buyers' counsel should, however, note the title certification that the Buyer may have no legal right to maintain the structure in its present location.
 4. A moveable accessory structure or improvement appurtenant to and on the subject property which encroaches on an easement improved by underground or overhead installations, or a surface drainage easement within the subject property shall not constitute an objection to title.
 5. A non-moveable accessory structure or improvement appurtenant to an adjoining property which encroaches on the subject property constitutes an objection to title and requires that an agreement in recordable form be obtained from the owner of the adjoining property that no claim of title is asserted against the subject property by virtue of such encroachment. The agreement may be made bilateral to permit the continuation of the encroachment so long as the structure or improvement shall stand.
 6. A non-moveable accessory structure or improvement appurtenant the subject property which encroaches on an adjoining property constitutes an objection to title and requires that an agreement in recordable form be obtained from the owner of the adjoining property consenting to the continuation of the encroachment so long as the structure or improvement shall stand. The consent of any mortgagee of the adjoining property is not required.
 7. A non-moveable accessory structure or improvement appurtenant to the subject property encroaching on an easement within the subject property requires written consent or release be obtained from the holder of the easement. This instrument may or may not be recorded, depending on the value and permanence of the encroaching structure or improvement.
- C. For improvements installed July 8, 1998 or later (all "de minimis non-structural encroachments including, but not limited to, fences, hedges, shrubbery, plantings, sheds and non-structural walls"), the following standards shall apply:
1. An improvement deviating from the actual property line one foot or less shall not constitute an objection to title, regardless of the ownership of the improvement, provided the Buyer has agreed to accept the same in the Purchase and Sale Contract.

2. An improvement, installed or maintained by the Seller, located more than one foot within the property lines of the subject property shall not constitute an objection to title.
3. An improvement, installed or maintained by the neighbor, located more than one foot within the subject property lines shall constitute an objection to title.
 - a. If the improvement encloses a portion of the subject premises, thus denying the Seller access to the property in question, the objection must be cured by obtaining an instrument duly acknowledged and in recordable form executed by the record owners of the adjoining property. Said instrument shall be in the form the Monroe County Bar Association approved form, and shall be recorded in the County Clerk's office at the expense of the Seller. The agreement may be made bilateral to permit the continuation of the encroachment so long as the improvement shall stand.
 - b. If the improvement does not enclose a portion of the subject premises, or deny Seller access to the property in question, the objection shall be cured by an affidavit of the Seller affirming (i) that no demand has been made to remove the improvement, (ii) that the Seller asserts title to the surveyed property lines, notwithstanding the placement of the improvement, and (iii) that no current dispute exists as to the location on the boundary line. Counsel for the Buyer shall advise his or her client as to the possible practical difficulties in full enjoyment of the premises encroached upon.
4. An improvement, installed or maintained by the Seller, which encroaches onto the neighboring property more than one foot shall constitute an objection to title which shall be cured by an affidavit of the Seller affirming (i) that no demand has been made to remove the improvement, (ii) that the Seller asserts title only to the surveyed property lines, notwithstanding the placement of the improvement, and (iii) that no current dispute exists as to the location of the boundary line. Counsel for the Buyer shall advise his or her client as to the deviation and the possibility of a future request to remove or relocate the improvement or to execute a boundary or license agreement.

D. Structural improvements such as a dwelling or garage:

1. A structural improvement appurtenant to an adjoining property which encroaches on the subject property constitutes an objection to title and requires that an agreement in recordable form be obtained from the owner of the adjoining property that no claim of title is asserted against the subject property by virtue of such encroachment. The agreement may be made bilateral to permit the continuation of the encroachment so long as the structural improvement shall stand.
2. A structural improvement appurtenant the subject property which encroaches on an adjoining property constitutes an objection to title and requires that an agreement in recordable form be obtained from the owner of the adjoining property consenting to the continuation of the encroachment so long as the structure or improvement shall stand. The consent of any mortgagee of the adjoining property is not required.

E. Driveways:

1. A driveway serving the subject property which encroaches onto an adjoining property:
 - a. Will not constitute an objection to title, **provided there is a seven (7) foot clearance between the property line and the nearest building wall on the subject property**. Counsel for Buyer should advise his or her client that the paving extends beyond the property line and is subject to removal by the adjoining owner.
 - b. If the clearance between the property line and the nearest building wall on the subject property is **less than seven (7) feet**, the encroachment shall constitute an objection to title. Seller shall provide an easement or driveway agreement allowing the continued use and maintenance of the driveway in its present location. Said agreement shall be in recordable form duly executed by the adjoining property owner, and shall be recorded at the Seller's expense. The abstract of title to the subject property shall be certified against the adjoining owner at the Seller's expense to ascertain whether the proper owners of record has/have executed it. The consent of the holder of any mortgage on the adjoining property shall not be required. Note: Where no encroachment exists, the fact that the driveway width is less than 7 feet does not constitute an objection to title, but counsel for Buyer should advise his or her client as to possible practical difficulties.
2. A driveway serving the adjoining property which encroaches onto the subject property:
 - a. **one (1) foot or less**, will not constitute an objection to title, unless it is apparent from the survey or other information that such encroachment is necessary for the adjoining owner's access or for the use of his or her driveway. In the latter instance, Seller shall provide an agreement as set forth in the following paragraph.
 - b. **more than one (1) foot**, shall constitute an objection to title (unless the exception set forth at paragraph c below applies). Seller shall provide an agreement in recordable form, duly executed by the owner of the adjoining property, in which the owner of the adjoining property waives, releases and conveys any claim of title resulting from such encroachment and agrees to: (i) remove the paving material upon request, or permit the removal of the paving material by the owner of the subject property upon notice, or (ii) maintain the encroaching portion of the driveway in a good and proper manner and that when the driveway is removed or replaced it will be reconfigured so that it no longer encroaches on the subject property. The agreement shall be recorded at the expense of the Seller, and the abstract of title to the subject property shall be certified against the adjoining owner at the Seller's expense to ascertain whether the proper owner(s) of record has/have executed it. The consent of the holder of any mortgage on the adjoining property shall not be required.

- c. An exception to paragraph b, above, shall be made for encroachments or extensions of paving that extend to the foundation of the house or structure located on the subject property provided: (i) the encroachment is three (3) feet or less, (ii) the neighbor has at least seven (7) feet of clearance between the property line and the nearest building wall on the neighbor's property. Such an encroachment shall not constitute an objection to title.

F. Retaining Walls:

1. Definition: A retaining wall is one which separates two levels of grade, thereby serving the function of support as well as delineation; it is thus distinguished from a decorative or boundary wall, which may generally be treated in the same manner as a fence.
2. Where the property line runs essentially parallel to and anywhere within the two sides of a retaining wall, no objection shall be raised. If the change of grade separated by the wall is substantial, counsel for the Purchaser should consider noting in the title certification the reciprocal obligations of support.
3. The variety of physical situations and possible interpretations of intent associated with retaining walls not contiguous to a property line makes it impossible to formulate a general standard for handling these cases. The title examiner must consider all applicable factors in determining whether an objection to title may be created by the location of such a retaining wall.

Appendix B: Minimum Standards for Residential Surveys adopted by the Monroe County Bar Association and the Genesee Valley Land Surveyors Association (2003).

MINIMUM STANDARDS FOR RESIDENTIAL SURVEYS

Adopted by the Monroe County Bar Association
and the GENESEE VALLEY LAND SURVEYORS ASSOCIATION

1. The client or agent shall provide the surveyor with an updated abstract of title, and the use of such abstract shall be referenced on the map.
2. The surveyor shall furnish a description based upon his survey whenever requested by the client, or whenever the description is at variance with the record title.
3. The boundaries, as well as lines of interior subdivisions, shall contain all the data necessary to establish the correctness of the mathematical figures represented by said lines; that is, all angles must be given either directly or by bearings, and where curved, at least two (2) elements of the curve shall be given. Tie distances to the nearest intersecting street, or to other definite points, or reference to state plane coordinates shall be given and any tie distance in the record description shall also be shown. The survey shall locate all visible improvements on the premises, including but not limited to fences, walls, walks and driveways that are situate on, across or within three (3) feet of any boundary. Underground improvements or encroachments are not covered by this standard. Any doubt as to whether any object is a "structure" or a "pertinent improvement" should be resolved in favor of inclusion on the survey map. All tie measurements shall be measured perpendicular to straight property lines and radially to curved property lines.
4. The character of all physical evidence of possession shall be noted and the location there of carefully shown in relation to the property lines on the survey. Surface indications of underground easements shall be shown. Physical evidence of possible easements shall also be shown. Sub-surface structures should not be shown where not visible or readily apparent. If the premises were surveyed when the weather or other conditions might have concealed physical features or appurtenances, said fact shall be indicated on the survey map.
5. The legal lines of streets, roads, alleys and avenues shall be given. Possible changes and proposed changes in the lines of the streets when known, shall be noted and the date of change and authority under which the change was made shall be given. Where there is any doubt as to the location on the ground of street and lot lines, namely, where the authorities for laying out the street and lots have not properly or definitely defined the same by monuments in the ground, or where there are errors in the setting of monuments or in the description of laying out the streets and lots, the nature of the difficulty shall be given and the range of possible differences defined upon the face of the map.
6. If streets abutting the premises are not physically opened, this shall be indicated upon the survey.
7. When the parcel surveyed is laid out on a previously filed map, the survey shall list the pertinent filing data. In any case when all or any part of the parcel is shown on a previously filed map or maps, such lot, street and parcel lines, whether existing or abandoned, shall be indicated or superimposed on the survey. When the street and lot lines are identical with those shown on another filed map, a notation to that effect shall be made.
8. Surveys of multiple parcels must clearly indicate contiguity, gores or overlaps.

9. All fences or buildings on adjoining lands within three (3) feet of the property should be shown. All encroachments of eaves, cornices, etc., shall be noted.
10. The nature, character and the location of all walls (independent, party or otherwise) within three (3) feet of the boundary lines shall be given. Location of both sides of party walls shall be shown when accessible. If a building on the premises has no independent wall, but uses any wall of adjoining premises, this condition should be shown and explained. The same requirements apply where conditions are reversed. All encroaching structural appurtenances and projections such as fire escapes, bay windows, flue pipes, stoops steps, building trim, etc., by or on adjoining property or on abutting streets shall be indicated with the extent of such encroachment or projection.
11. Visible evidence of cemeteries and burial grounds located within the premises must be shown.
12. Survey maps shall show all monuments, stakes, iron pipes, witness marks or marks found or placed upon the parcel being surveyed, or found so close thereto as to be an apparent boundary marker of the parcel being surveyed or of adjoining property lines.
13. Joint or common driveways must be shown with the width indicated. Independent driveways along the boundary, if encroaching, shall be shown with the extent of the encroachment indicated. If the structure on the adjoining property does not have a minimum clearance of seven (7) feet to the common property line, along the encroachment, the actual clearance should be noted.
14. Subsequent to the initial issuance of a survey map, all revisions thereto shall be specifically noted and dated.
15. Surface springs, streams, rivers, ponds or lakes located, bordering upon or running through the premises being surveyed must be shown.
16. The area of plots shall be given, except in the case of the recorded subdivision maps.
17. The north point should always be indicated on the map.
18.
 - a. When practicing in Monroe County:

Permanent survey markers will be set when specifically requested by the client or the person contracting for the survey or when deemed essential by the surveyor. Sufficient information shall be shown on the survey map so that any other surveyor may retrace the survey as shown on the map.
 - b. When practicing in the counties of Genesee, Livingston, Ontario, Orleans, Seneca, Wayne, Wyoming and Yates:

All corners of every survey shall be marked by the surveyor with permanent readily locatable and identifiable markers made of, or containing, ferrous metal. In the event a physical obstruction precludes placing a marker precisely at a corner, or the actual corner is likely to be disturbed, a reference marker shall be set, when practicable, on one or more of the boundary lines terminating at that corner and as close as practical to the corner. The relationship of the reference marker(s) to that corner shall be clearly stated on the survey map. If, due to extenuating circumstances, the surveyor is specifically requested by the client not to set corner markers, sufficient information

shall be shown on the survey map so that any other surveyor may retrace the survey as shown on the map.

19. Certification of survey shall be in the following or similar terms: "I (or we) [name of firm] certify that this map was made [date] in accordance with standards jointly adopted by GVLSA and [insert applicable county bar association]."

Signed _____

Professional Land Surveyor

License Number _____

Appendix C: II Land Survey Standards Adopted by the Bar Association of Erie County and the Niagara Frontier Land Surveyors Association (Rev. April, 1984).

(Last revised April 1984)

**II LAND SURVEY STANDARDS
ADOPTED BY
THE BAR ASSOCIATION OF ERIE COUNTY
and the
NIAGARA FRONTIER
LAND SURVEYORS ASSOCIATION**

**DEFINITION OF SURVEY MAP FOR DEFINING
REAL PROPERTY BOUNDARIES:**

A survey map is a drawing prepared by a licensed land surveyor registered in the State of New York, which depicts the mathematical and physical features of a parcel of land with relation to map lines, deeds of record, and/or other pertinent reference data based upon an actual field survey.

**POLICY GOVERNING PREPARATION
OF SURVEYS:**

A survey map shall be prepared for and used only for a specific identified purpose. A survey map shall not be used for any other purpose unless it is brought to date by the surveyor or the surveying firm which prepared the original survey. For a survey map to be considered valid, it must be prepared under the supervision of a licensed surveyor registered in the State of New York. All true copies thereof must bear the land surveyor's original embossed seal. In all instances, original tracings of the surveyor's survey map shall remain the property, and in the possession of the surveyor. When done, all certified surveys shall conform to the minimum standards set forth in this Code unless limitations or variances from such standards are clearly stated on the survey map.

The New York State Education Law stipulates that a note shall be placed on all survey maps bearing a land surveyor's seal concerning the alteration thereof. All plans, specifications, plats and reports shall also be signed on the original, (7209) by the Land Surveyors, when filed with public officials.

In order to implement the policy stated above, it is recommended that all certified survey maps bear the following notes:

"Unauthorized alteration or addition to a survey map bearing a licensed land surveyor's seal is a violation of section 7209, subdivision 2, of the New York State Education Law."

“Copies from the original of this survey map not marked with an original of the land surveyor’s embossed seal shall not be considered a valid true copy.”

“Certifications indicated hereon signify that this survey was prepared in accordance with the existing Code of Practice for Land Surveys adopted by the New York State Association of Professional Land Surveyors, as amended for Erie County. Said certifications shall run only to the person for whom the survey is prepared, and on his behalf to the title company, governmental agency and lending institution listed herein and to the successors (by merger or operation of law) to the lending institution and the assignees of the lending institution. Certifications are not transferable to additional institutions or subsequent owners.”

MINIMUM STANDARDS:

Surveys shall be prepared in accordance with the following minimum standards:

- 1. It shall be the responsibility of the client to furnish the surveyor with the record description and all easements, irhgts-of-way, boundary line agreements and other relevant instruments affecting the land being surveyed, including the liber and page showing the recorded information, and all necessary reference descriptions including but not limited to those of adjoining properties. When requested by the surveyor, an Abstract of Title shall be furnished to the Land Surveyor. When necessary to clarify the determination of the location of a particular line, the reference used, whether it be filed map, deed description or otherwise, shall appear on the survey map.**

- 2. The surveyor’s field work shall be performed with a transit and steel tape, or other modern devices considered equal or superior. Irregular perimeter surveys shall be based on a closed balanced traverse and all surveys shall close mathematically. Measurements shall be in accordance with the United States Standard. Any deviation shall be noted, as in localities where a local Map Standard of Measurement is traditionally used; and where practical, a factor to convert to United States Standard shall be indicated on the map. The boundaries, as well as the lines of interior subdivisions, shall contain all the data necessary to establish the correctness of the mathematical figure represented by said lines; that is; all angles must be given either directly or by bearings,**

and where curved, the radius and length of the curve shall be given. In those instances where curves are not tangent, additional information shall be given sufficient to form a closure.

Where necessary to properly locate the property surveyed in relation to adjoining properties, the distance to an intersecting street or streets may be shown at additional cost. The bearing of the nearest intersecting street is required only when it is pertinent to the record description. Surveys of parcels within a large tract shall be related to one of the exterior lines of the tract, preferably by distance along a street. Specific reference to an adjoining property line being as set forth in the description of premises being surveyed by liber and page is also deemed to be statement of contiguity. However, on surveys of large plots and acreage of farms, the listing of the names of adjacent reputed owners, whether or not set forth in the information provided by the client, are deemed to be given for information only and are not meant to imply contiguity, except where the record description of the adjoining property is stated on the survey map to be contiguous.

3. When the parcel surveyed is laid out on a filed map, the survey map must designate the map cover number and the lots and blocks of the premises. In any case, when all or part of a parcel is or was shown on any other filed map or maps as affecting the title and disclosed to the surveyor, such lot, street and map lines shall be indicated or superimposed on the survey map.
4. A survey map shall give a clear presentation of the facts with due regard to the scale of the map. A supplementary or exaggerated diagram shall be provided where necessary. The North point shall always be indicated. Where the bearing system used differs from the record description of the property surveyed, the meridian used shall be indicated, and if required for clarity, the bearing of each line based upon the record description system shall be shown parenthetically.
5. The character of all physical evidence of possession must be stated and the location thereof carefully given in relation to reference or record description lines.
6. The character and location of all buildings upon the plot must be shown and their locations given with reference to boundaries, dimensions shall be shown as

measured at right angles or radial as the case may be. (On acreage surveys, buildings remote to boundary lines must be plotted to scaled position.) Apparent street numbers should be shown wherever available. Physical evidence of possible easements of all kinds created by roads, rights-of-way, brooks, drains, telegraph, electric or telephone lines, etc., on or across the property shall be noted and located. Surface indications of underground easements shall also be shown. If the premises was surveyed when covered with snow, vegetation or other cover, so that any of the above conditions might have been concealed, this fact shall be indicated on the survey map. Subsurface structures, where not visible, will not be shown or will be shown by record only and indicated by the statement "not verified in field" and their location and extent will not be considered true unless verified.

7. All buildings or fences on adjoining lands within three (3) feet of the reference or record lines shall be shown and located, and all encroachments of eaves, cornices, blinds, etc., noted.
8. The nature, character and location of all walls (independent, party or otherwise) at or near boundary lines must be given. Location of both sides of party walls shall be shown when accessible. If a building on the premises has no independent wall but uses any wall of the adjoining premises, this condition shall be shown and explained. The same requirements shall apply where conditions are reversed. All encroaching structural appurtenances and projections such as fire escapes, bay windows, windows that open out, flue pipes, stoops, areas, steps, trim, etc., by or on adjoining property or on abutting streets must be indicated if they are within three (3) feet of the property line with a notation of apparent encroachment. Openings such as windows, doors, etc. in walls, and gates in fences, on premises surveyed or adjoining premises immediately adjacent to the boundary lines (other than street lines) must be shown.
9. The area of the plot shall be given when required. Exception – city, village or subdivision lots.
10. Where legal lines of a street right-of-way are established by a municipality they shall be shown. The width of the street R.O.W. where established shall be shown. Where the physical location of a street R.O.W.

conflicts with the official right-of-way or legal line, the extent of the conflict shall be shown. Where there are no official lines of a street R.O.W. established, the width, as physically open and in use, shall be shown. Alterations to the official R.O.W. lines of a street, when shown on an official public map, shall be noted and the date of change and authority under which it was made shall be stated. If streets abutting the premises are not physically open, this fact shall be so stated. Where there is any doubt as to the location on the ground of street R.O.W. and lot lines, namely, where the streets R.O.W. and lots have not been properly or definitely defined by monuments in the ground, or where there are errors in the setting of monuments or in the descriptions defining streets R.O.W. and lots, the nature of the difficulty shall be given and the apparent range of difference noted.

11. When physical evidence of cemeteries or burial grounds exist, they shall be shown and when a record of cemeteries or burial grounds is supplied, this information shall be noted.
12. Surveys of multiple parcels shall clearly indicate contiguity, gores or overlaps, if requested prior to the completion of the survey.
13. All monuments, stakes and marks found or placed, must be so designated.
14. Joint or common driveways must be shown with the width indicated. Independent driveways along the boundary, if encroaching, must be shown together with the extent of such encroachment.
15. Subsequent to the initial issuance of a survey map all revisions shall be specifically note and dated. Every resurvey map bearing a new date shall conform to the requirements of a new survey map unless specifically noted.
16. The Qreat Lot, Township and Range, or other similar designation, shall be indicated on the survey map, where applicable.
17. If construction of any improvements shown on the survey map was apparently incomplete from exterior physical evidence at the time of the survey, this fact shall be listed on the survey.

18. **Unmarked corners of vacant lots shall be staked when surveyed and if the property is vacant, the survey map shall so state. If requested, stakes may be omitted and so indicated on survey map.**
19. **All changes of, or additions to, the survey shall be made on the original survey map and no print containing superimposed changes or additions will be considered in accordance with these standards.**
20. **Typical Certifications For Residential Mortgage Purposes:**

I/We hereby certify to (Purchaser) (Title Insurance Company) (Lender), its successors and assigns, that this survey was prepared in accordance with the current Code of Practice for Land Surveys adopted by the New York State Association of Professional Land Surveyors and as amended by the Niagara Frontier Land Surveyors Association and the Bar Association of Erie County (New York).

This certification does not extend to subsequent owners, mortgages, or title insurers, unless this survey has been resurveyed for this purpose by the surveyor.

21. **Surveys ordered pursuant to these standards should be ordered on the order form attached to these standards.**

Appendix D: Code of Practice for Land Surveys Revised and Adopted by Genesee Valley Land Surveyors, Inc. – February, 2001.

CODE OF PRACTICE FOR LAND SURVEYS

Genesee Valley Land Surveyors Association, Inc.

Revised and Adopted by Genesee Valley Land Surveyor's Inc., February 15, 2001

Originally Adopted June 1969

Genesee Valley Land Surveyors, Inc.
1806 Lyell Avenue
Rochester, New York 14606
Phone: (716) 254-2350
Internet: www.GVLSA.com

FOREWORD:

Land Surveying Practice in New York State is ever changing and complex, evolving from Colonial Times to the present. This profession is rich in tradition and custom. Throughout the state, *the profession* is required to respect and accommodate historic standards in measurement, as the same apply to land boundaries and the succession of title dating back to the early sixteen hundreds. Historic and period standards have differed in scale and procedure throughout history, resulting in varying and unique *local standards* of horizontal and vertical datum which must be recognized and used for survey measurement in various section of citifies and towns that were mapped and/or sub-divided many years ago. (Generally prior to the first quarter of the twentieth century).

Land Surveying Practice in New York State has continued through socio-economic changes and advancing technologies to better serve the interests and well-being of the people of the State and protect the integrity of our land boundaries.

The *Code of Practice* of the Genesee Valley Land Surveyors Association has served, since 1969, to promote reasonable and prudent standards throughout the entire region of the Genesee Valley.

This present revision to the Code:

- * Provides uniformity, throughout the region as well as the State, in policy and general presentation and provides minimum standards, which are universal.**
- * Provides for area specific standards, which will address the historically diverse standards and practices of the Genesee Valley Region.**

The *Code* provides a framework and guide for the practicing land surveyor and a standard of expectation for the public. The *Code* is intended to be versatile, providing for and encouraging the use of evolving technologies while remaining sensitive to and protecting long standing local standards, customs, and mapping traditions.

The *Code* seeks to avoid legal pitfalls and the difficulty or confusion that may arise from mandating procedures, methods, or precedents that may disrupt established and customary practice, by creating “punch list solutions.”

The Genesee Valley Land Surveyors Association is ever mindful of the duty and responsibility of the *land surveyor* to: re-establish the original lines of surveyed property to: “walk in the foot steps of the original surveyor” thereby protecting the interests of all of the people of the State of New York.

DEFINITION OF SURVEY MAP FOR DEFINING REAL PROPERTY BOUNDARIES: (Title Survey)

Boundary Survey Map: The graphic opinion by a Land Surveyor, licensed and registered in the State of New York, which defined boundary limits and depicts in metes and bounds and physical possession of a parcel or parcels of land with relation to map lines, deeds of record, and/or pertinent reference data based on an actual field survey conducted under the supervision of the registered and licensed land surveyor preparing the map.

Title Survey: A Boundary Survey Map made for the purpose of the transfer of real property, and/or lease lines, mortgaging, and easements related to real property.

POLICY GOVERNING PREPARATION OF TITLE SURVEYS:

A. General

1. Abstract of Title should be furnished to the Land Surveyor, and the use of such abstract should be referenced on the map.
2. For a survey map to be considered valid, it must be signed and certified by a licensed land surveyor registered in the State of New York. All true copies thereof must bear the Land surveyor's embossed seal.
3. All archival information of the surveyor's survey maps, records, files, and data used or generated in the course of preparing a survey shall remain the property of the surveyor or his successors or assigns.
4. The sole purpose of certifying a survey to a title company or lending institution is to confirm the opinion of the Surveyor to his client and to the title company or lending institution for a specific transaction. It is not intended to extend this obligation beyond such transaction, or to additional title companies, lending institutions owners or subsequent owners.
5. All surveys shall conform to or exceed the minimum standards set forth in this Code unless limitations or variances from such standards are clearly stated on the boundary survey map.
6. [*NYSAPLS Policy*.] "The alteration of boundary survey maps by anyone other than the original preparer is misleading, confusing, and not in the general welfare and benefit of the public. Licensed Land Surveyors shall not alter survey maps, survey plans, or survey plats prepared by others." (NYSAPLS Policy: Adopted January 23, 1993).
7. [*New York Law*] The New York State Education law requires that a notation be placed on all altered survey maps: "*altered by*" followed by: the Land Surveyor's signature and seal, the date of the alteration, and a specific description of the alteration. (New York Education Law: Section 7209, sub-division 2)
8. The surveyor should furnish a description based upon his survey whenever requested by the client, or whenever the description is at variance with the record title.

B. Standard Notes

In order to implement the policy previously stated above, the surveyor should place the following or comparable notes on the boundary survey map:

1. Copy right or Copyright Sign "(C)" (Insert Year and Name of surveyor or copyright owner) All Rights Reserved.
2. Unauthorized alteration or addition to a survey map bearing a licensed land surveyor's seal is a violation of section 7209, sub-division 2, of the New York State Education Law.
3. Only boundary survey maps with the surveyor's embossed seal are genuine true and correct copies of the surveyor's original work and opinion.

4. Certification on this boundary survey map signify that the map was prepared in accordance with the current existing Code of Practice for Land Surveys adopted by the New York State Association of Professional Land Surveyors, Inc. The certification is limited to persons for whom the boundary survey map is prepared, to the title company, to the governmental agency, and to the leading institution listed on this boundary survey map.
5. The certifications hereon are not transferable.
6. The location of underground improvements or encroachments are not always known and often must be estimated. Underground improvements or encroachments are not covered by this certificate.

C. CERTIFICATION (Actions That Void Certification)

1. When preparing title surveys, the surveyor should place an embossed seal on all copies along with the following note: “Only title surveys bearing the makers embossed seal should be relied upon since other than embossed-seal copies may contain unauthorized and undetectable modifications, deletions, additions, and changes.”
2. A surveyor should place the following notice on work products: copyright label, year, [Name]. “Reproduction or copying of this document may be a violation of copyright law unless permission of the author and/or copyright holder is obtained.”
3. When preparing title surveys, the surveyor should place an embossed seal on all copies along with the following note: “A copy of this document without a proper application of the surveyor’s embossed seal should be assumed to be an unauthorized copy.”
4. Certification of survey should be in the following or similar terms: “I (or we) [name of firm] certify that this map was made [date] in accordance with standards jointly adopted by GVLSA and [insert applicable county bar association].”

D. RE-SURVEY

1. DEFINITIONS

1.1 DEFINITIONS

Standard and local use shall apply.

2. RESEARCH

2.1 RESEARCH

The surveyor’s research shall satisfy local criteria for reasonable care.

3. **SURVEY AND MAP**

All Boundary / Title Survey maps must satisfy the following:

“3.A” ORIENTATION

3.A.1. North point indicating direction as: Approximate North, a grid reference, a map reference, datum reference or deed reference.

“3.B” LOCATION

3.B.1. The survey should provide sufficient information on the boundary survey map so that a user will be able to locate the surveyed parcel with only the aid of a road map, quadrangle map sheet, or commercially available travel map.

3.B.2. It is recommended that the identification of a subject parcel be referenced on the title survey so as to define same as geographically unique by use of one or a combination of references as follows:

- * Map title reference
- * Premises note reference
- * Street intersection location or reference
- * Deed references
- * Filed map reference
- * Street plan references
- * Other record data references

3.B.3. Said identification and location should clearly delineate the surveyed land as a singularly unique parcel relative to the location within the State of New York.

“3.C” MEASUREMENT STANDARD

3.C.1. The boundary survey map shall be mapped in the designated standard of measure.

3.C.2. The parcel perimeter and pertinent interior lines shall contain the data necessary to delineate and establish said lines, utilizing natural features and/or a mathematical or geometric reference to one or more of the following:

- * Metes and bounds
- * Interior angles and distances
- * Parallel reference to street lines or other lines of record
- * Angular reference to street lines or other lines of record
- * Public Record Coordinate Systems
- * Reference to record corner / street intersections
- * Where curved at least two (2) elements of the curve shall be given

“3.D” SURVEYOR AUTHORSHIP

3.D.1. The name and license number of the surveyor or company of employ shall be shown.

3.D.2. The address of the surveyor or company of employ shall be shown.

“3.E” SCALE

- 3.E.1. The scale of the drawing shall be given.
- 3.E.2. The survey map shall give a clear presentation of the facts with due regard to the scale of the map.
- 3.E.3. A supplementary or exaggerated diagram should be provided when necessary.

“3.F.” DATE

- 3.F.1. The date of the field survey completion and the date of the boundary survey map completion shall be included.

“3.G” SURVEY RECORDS

(see “Policy Governing Preparation of Title Surveys – **Item 3A**)

“3.H” INTENTIONALLY OMITTED

“3.I.” INTENTIONALLY OMITTED

“3.J” RECORD LINES

- 3.J.1. When the parcel surveyed is laid out on a filed map the survey map should reference: the title of the map, the map number, lot numbers, and block numbers of the premises, as required. Other filed maps or maps locatable from the record title may be indicated or superimposed on the boundary survey map. When street and lot lines are identical with another map, a notation to that effect should be made.
- 3.J.2. Where legal lines of street or right-of-way are established by a municipality, they should be shown. The width of the street or right-of-way where established should be shown. Possible changes and proposed changes in the lines of the streets when known, shall be noted. Where there is any doubt as to the location on the ground of street and lot lines, namely, where the authorities for laying out the street and lots have not properly or definitely defined the same by monuments in the ground, or where there are errors in the setting of monuments or in the description of laying out the streets and lots, the nature of the difficulty shall be given and the range of possible difference defined upon the face of the map. If streets abutting the premises are not physically opened, this shall be indicated upon the survey.
- 3.J.3. Surveys of multiple parcels should clearly indicate contiguity, gores, or overlaps.
- 3.J.4. The Great Lot, Township, and Range, or other similar designation, shall be indicated on the survey map, where applicable.

“3.K” CONTENT & PHYSICAL LOCATION

- 3.K.1. Physical evidence of possession should be stated and the location given.

- 3.K.2. Location of buildings and all visible “on premises” structures and other improvements upon the boundary survey map should be shown and their location given with reference to boundaries. Location of all visible improvements on the premises, including but not limited to fences, walls, walks, and driveways that are situate on, across or within three (3) feet of any boundary. Any doubt as to whether any object is a “structure” or a “pertinent improvement” should be resolved in favor of inclusion on the survey map. Street numbers should be shown wherever available. On acreage surveys, buildings remote to boundary lines should be plotted to scaled position.
- 3.K.3. Visible evidence of easements on or across the property should be noted and located.
- 3.K.3. Surface indications of underground easements shall be shown.
- 3.K.4. Surface indications of underground easements shall be shown.
- 3.K.5. If the premises were surveyed when the weather or other conditions might have concealed physical features or appurtenances, said fact shall be indicated on the survey map.
- 3.K.6. Sub-surface structures should not be shown where not visible or readily apparent.
- 3.K.7. Buildings or fences, on adjoining land and encroachment of eaves, cornices, blinds, etc. within three (3) feet of the boundaries of the surveyed premises should be shown and located.
- 3.K.8. The nature, character and location of walls (independent, party or otherwise) within three (3) feet of the boundaries of the survey.
- 3.K.9. If a building on the premises has no independent walls but uses any wall of the adjoining premises, this condition shall be shown. The same requirements shall apply where conditions are reversed.
- 3.K.10. Encroaching structural appurtenances and projections such as fire escapes, bay windows, windows that open out, flue pipes, stoops, areas, steps, trim, etc., encroaching on adjoining property or on abutting streets should be indicated with a notation and the extent of apparent encroachment.
- 3.K.11. Joint or common driveways should be shown with the width indicated. Independent driveways along the boundary, if encroaching, shall be shown together with the extent of the encroachment. If the structure on the adjoining property does not have a minimum clearance of seven (7) feet to the common property line, along the encroachment, the actual clearance should be noted.
- 3.K.12. When apparent physical evidence of cemeteries or burial ground exist, it should be shown and when a record of cemeteries or burial ground is supplied, this information shall be noted.

3.K.13. If construction of any improvements shown on the survey map was apparently incomplete from exterior physical evidence at the time of the survey map, this fact shall be indicated on the survey.

3.K.14. The area of the parcel should be given when required.

3.K.15. All tie measurements shall be measured perpendicular to straight property lines and radially to curved property lines.

3.K.16. Surface springs, streams, rivers, ponds or lakes located, bordering upon or running through the premises being surveyed should be shown.

“3.L” CONFLICTS & DIFFERENCES

3.L.1. Any gore / overlap, or similar differences, related to the premises, should be indicated or noted.

“3.M” MONUMENTS

3.M.1. Monuments, stakes, iron pipes, witness marks, or marks found or placed upon the parcel being surveyed, or found so close thereto as to be an apparent boundary marker of the parcel being surveyed or of adjoining property lines should be noted and referenced.

3.M.1.a) When practicing in Monroe County, permanent survey markers will be set when specifically requested by the client or the person contracting for the survey or when deemed essential by the surveyor. Sufficient information shall be shown on the survey map so that any other surveyor may retrace the survey as shown on the map.

3.M.1.b) When practicing in the counties of Genesee, Livingston, Ontario, Orleans, Seneca, Wayne, Wyoming, and Yates.

All corners of every survey shall be marked by the surveyor with permanent readily locatable and identifiable markers made of or containing, ferrous metal. In the event a physical obstruction precludes placing a marker precisely at a corner, or the actual corner is likely to be disturbed, a reference marker shall be set, when practicable, on one or more of the boundary lines terminating at that corner and as close as practicable to the corner. The relationship of the reference marker(s) to that corner shall be clearly stated on the survey map. If, due to extenuating circumstances, the surveyor is specifically requested by the client not to set corner markers, sufficient information shall be shown on the survey map so that any other surveyor may retrace the survey as shown on the map.

Appendix E: New York State Education Department Land Surveying Practice Guidelines
(February, 2000).

New York State Education Department Land Surveying Practice Guidelines – February, 2000

Table of Contents

- [Section 1](#)
 - A. Practice of a Profession
 - B. The Practice of Land Surveying
- [Section 2](#)
 - A. Purpose of Practice Guidelines
- [Section 3](#)
 - A. Definitions
- [Section 4](#)
 - A. Type & Purpose of Survey
- [Section 5](#)
 - A. Research
 - 1. For Boundary, Title or Similar Surveys
 - 2. For All Other Surveys
- [Section 6](#)
 - A. Procedures
 - 1. Field
 - 2. Office
- [Section 7](#)
 - A. Equipment
- [Section 8](#)
 - A. Measurement Standard
- [Section 9](#)
 - A. Monuments
 - 1. For Boundary, Title or Similar Surveys
 - 2. For all Other Surveys
- [Section 10](#)
 - A. Internal Documents/Field Notes
- [Section 11](#)
 - A. Deliverables
 - B. Mapping Requirements
 - C. Survey Reports
- [Section 12](#)
 - A. Map Notes
- [Section 13](#)
 - A. Project File Information
- [Section 14](#)
 - A. Supervision/Review

Section 1

A. Practice of a Profession

The practice of a profession is a public trust, earned through educational preparation, experience, and examination and a commitment on the part of the practitioner to public service. The professional carries out that trust in accordance with principles developed through years often decades and even centuries of the best professional traditions, and in accordance with State laws, rules, and regulations. Professional practitioners are urged to be always conscious of the very special obligations of public service and of ethical conduct that the privilege of licensure creates.

B. The Practice of Land Surveying

(Re: NYS Education Law [Article 145 Section 7203](#))

The practice of the profession of land surveying is defined as practicing that branch of the engineering profession and applied mathematics which includes the measuring and plotting of the dimensions and areas of any portion of the earth, including all naturally placed and man or machine-made structures and objects thereon, the lengths and directions of boundary lines, the contour of the surface and the application of rules and regulations in accordance with local requirements incidental to subdivisions for the correct determination, description, conveying and recording thereof or for the establishment or re-establishment thereof.

A survey is the opinion of a Registered, Licensed Land Surveyor or Registered, Licensed Professional Engineer holding the "m" exemption, which is based on measurements, research, mathematical computation, analysis, and professional judgment consistent with rules of evidence, legal precedents, and in accordance with the applicable laws of New York State. This opinion is typically in the form of a graphic presentation (i.e.: map, electronic file, field monumentation, etc.) a written report (i.e.: Survey Report, suggested legal description, correspondence) or expert testimony.

Section 2

A. Purpose of Practice Guidelines

The following *Practice Guidelines* (hereafter referred to as *Guidelines*) for Land Surveying in this State of New York have been created to facilitate increased uniformity and ensure that surveys are performed and documented in accordance with acceptable procedures. All surveyors should consult with these *Guidelines* and be familiar with pertinent New York statutes, rules and regulations regarding the practice of the profession. These *Guidelines*:

1. Represent the current thinking of the State Board that amplifies a Regents Rule on unprofessional conduct.
2. May serve as a frame of reference by both the public and practitioners as to what constitutes good practice.
3. Are set forth to enable the surveying profession as a whole to better protect the health, safety, and welfare of the public.
4. Are intended to facilitate consumer awareness and knowledge on the part of users of the services of professional surveyors.
5. Are to be used in conjunction with the exercise of proper individual skill, professional discretion, and good judgment in fulfilling the legal or contractual requirements of any survey.

Section 3

A. Definitions

Terminology used in these *Guidelines* is either defined herein or when not defined herein the user should refer to the 1978 edition of "Definitions of Surveying and Associated Terms" as compiled by the joint committee of the American Society of Civil Engineers and the American Congress on Surveying and Mapping. A copy of this document is available from the American Congress on Surveying and Mapping.

Client: "Client" means the party who has retained the land surveyor to provide agreed-upon services. The client may retain the surveyor directly, through either verbal or written communication, or through an intermediate party, such as an agent or attorney, in which case the intermediate party is also considered to be the client.

Section 4

A. Type & Purpose of Survey

Each surveyor should confer with the client to determine the purpose of any surveying service. The specific purpose of a survey may determine the category of service needed, the information required and the work to be done.

A survey and/or survey map should be prepared for a specific identified purpose as stated in an agreement, a written contract, on a map, or noted in a Report of Survey.

Section 5

A. Research

The surveyor should develop, determine, and substantiate with reasonable certainty a professional opinion and provide a product that adequately addresses and reflects the historical development of the subject property or project. For the purposes of this section, a record is any documentary material filed in public repositories that maintain information about the location of real property.

1. For Boundary, Title or Similar Surveys:
Research of records and record sources should be performed with sufficient scope and depth to identify with reasonable certainty:

- a. The location of the clients record boundaries;
- b. Conflicting record and ownership boundary locations within, abutting or affecting the client's property or access to the same; and,
- c. Exceptions, easements, encumbrances, rights of way, privileges, restrictions and reversions affecting the client property or access to the same in so far as they affect the professional determinations to be made by the surveyor.

Note: None of the above is intended to require the surveyor to perform the title search. It is common practice for the surveyor to rely on title search information prepared by others qualified to do so.

2. For Other Surveys

Research of records and record sources should be performed with sufficient scope and depth to identify with reasonable certainty any historical information which will have an impact on survey computations, analyses and/or determinations that may affect the subject project, (i.e., record plans, information, geodetic information such as datum, coordinates, or other necessary historical information).

Note: Other surveys are intended to include, but not be limited to, construction layout, topographic surveys and flood elevation locations.

Section 6

A. Procedures

The surveyor, within the confines of the law, standards of the profession, and in consultation with or on behalf of the client, should determine the appropriate technical criteria or standards and the level of effort necessary to support that criterion.

1. Field

Survey control and boundary points should be located with sufficient redundant measurements to enable the detection of measurement blunders and ensure consistency which will result in precision estimates correlating with required accuracy. Other field data should be collected with care and techniques consistent with the established criteria.

2. Office

Data acquired should be reduced, adjusted, and analyzed as necessary, consistent with the technical criteria or standards to be met for the project.

Section 7

A. Equipment

Fieldwork should be performed with equipment that is technologically sufficient to support the technical criterion for the project. Equipment used by the surveyor should be maintained, checked, calibrated, and documented at reasonable intervals to achieve measurements and results compatible with the intended use, required technical criterion and industry standards.

Section 8

A. Measurement Standard

All measurements should be referenced to the Standard United States or metric measurements.

1. Distance and Elevation - U.S. Survey Foot and/or metric units and sub units of the same.
2. Angles - Degrees, decimal degrees, radians, azimuths or bearings.
3. If another standard of measurement is used, it shall be so referenced and the conversion factor shall be noted. (i.e. chains, rods, poles, perches, local area standards.)

Section 9

A. Monuments

Monuments, physical or referenced, are evidence of the survey determinations made by the surveyor and provide valuable information to the client, their agent, and the public and future surveyors. Monuments set should be constructed of reasonably permanent material, solidly embedded in the ground.

1. For Boundary, Title or Similar Surveys

The surveyor should provide Monuments, physical or referenced, upon completion of the survey so that the boundaries and/or reference points are apparent, obvious or may be reasonably determined using the final report, map or information presented at the conclusion of the survey. If monuments are not set and/or a release from this obligation is obtained from the client, a note should be placed on the map explicitly indicating that monuments will not be placed as part of that survey. For example, the note might state that "property corner monuments were not placed as a part of this survey".

When conditions require setting a monument on an offset rather than at the true corner, the location should be selected so that the monument lies on a boundary line. Offset monuments should be noted as such on the survey map along with the offset distance to the true corner.

It is suggested that monuments set have the surveyor's name and/or license number affixed thereto. Monuments shall be witnessed in such a manner that they will be easily discoverable. Where monuments can not be physically set, corners should be referenced to existing physical features and/or be noted on the map.

2. For Other Surveys

If required, the surveyor should determine the extent and necessity of setting and perpetuating physical or referenced monuments based on the proposed use and purpose of the survey being performed.

Section 10

A. Internal Documents/Field Notes

Details of daily work, sketches and data collected in the field should be legible, concise and accurately reflect the field procedures. Field notes in any form should be dated, indicate the identity and duties or position of those performing the work along with traditional information such as weather conditions, equipment used, etc. Copies of data collected and fieldwork performed should be made a permanent part of the project file and should be organized in such a way so as to support the basis for determinations made.

Section 11

A. Deliverables

The surveyor should provide a professional opinion in the form of a written report, visual graphic representation, (map or electronic file) and/or correspondence as necessary, appropriate and/or as outlined in the agreement. Any such report or deliverable should be based on the surveyors' findings and professional opinion and should be:

1. Within and cover the scope of the agreement with the client;
2. Within the scope of the professional knowledge of the surveyor;
3. Supported by the facts, evidence and information relied upon by the surveyor;
4. In a format which will convey relevant and/or record information, and organized and displayed to be as comprehensible and understandable as possible to the client or their agent.

B. Mapping Requirements

All maps prepared should include the following information and all such additional information necessary to visually convey the findings of the survey to the client or their agent, other knowledgeable practitioners and/or the public.

A boundary survey map is a drawing that depicts the mathematical and physical features of a parcel of land with relation to deeds of record, map lines, and/or other pertinent reference data based upon an actual field survey.

The map should:

1. Identify the client or project name;
2. Identify the surveyor, the surveyor's address and license number;
3. Identify the instruments affecting title to the parcel surveyed;
4. Identify the north reference and/or basis of bearings;
5. Provide sufficient data for the mathematical closure of the boundary lines depicted with the area enclosed indicated;
6. Clearly relate the record description calls to the parcel including deviations;
7. Identify record documents (i.e. mapping or other information) utilized in the establishment of the boundary lines surveyed;
8. Reference the parcel to the local political or municipal entities and/or boundaries (i.e. county, town, village, street lines, tax map parcel number);
9. Reference a datum and a specific benchmark or reference point when elevations are shown;
10. Identify the scale and any conversion factor necessary;
11. Identify character and location of visible physical features with reference to boundary lines as necessary to inform the owner of critical issues affecting title (i.e. encroachments, easements, structural projects and openings, visible utilities);
12. Indicate date of field survey completion and date of map preparation;
13. Identify and describe monuments found or set on the property being surveyed;
14. Identify all revision dates to original map with changes clearly stated;
15. Reference apparent easements, rights of way and lease lines;
16. Indicate applicable ties (i.e. building corners, intersections, other monuments)

Map information and or survey reports should be clear, legible, and sufficient in nature so when associated with the record description, the boundary lines are evident without supplemental data or information.

C. Survey Reports

A Survey Report if prepared, should provide a narrative description of the project, scope of work performed, a detailed description of the procedures, record information used, findings and the basis of the findings.

Section 12

A. Map Notes

All maps (hard copy and /or electronic files) shall bear the following or similar note: "*It is a violation of the State Education Law for any person, unless acting under the direction of a licensed land surveyor, to alter an item in any way.*" The altering of a boundary or title survey should only be prepared for a specific purpose named in the alteration. Any re-survey map bearing a new date should conform to the requirements of a new survey.

Section 13

A. Project File Information

Section 29.3(a)(4) of the Rules of the Board of Regents defines unprofessional conduct to include "failure by a licensee to maintain for at least six years all preliminary and final plans, documents, computations, records and professional evaluations prepared by the licensee, or the licensee's employees, relating to work to which the licensee has affixed his/her seal and signature."

Section 29.1(b)(7) of the Rules of the Board of Regents defines unprofessional conduct to include " failing to make available to a patient or client, upon request, copies of documents in the possession or under the control of the licensee which have been prepared for and paid for by the patient or client."

Section 14

A. Supervision/Review

All work by or under the authorship and signature of the surveyor shall be the professional responsibility of the surveyor.

All plans, specifications, plats, and reports prepared by the surveyor or by a full time or part time subordinate under the surveyors' supervision shall be stamped with such seal and shall also be signed on the original with the personal signature of the surveyor when filed with public officials. (NYS Education Law Section 7209)

Any documents signed and sealed by a surveyor not prepared by the surveyor or an employee under the direct supervision of the surveyor shall meet the minimum requirements as set forth in section 29.3(a)(3) of the Rules of the Board of Regents.

Appendix F: Code of Practice for Land Surveys adopted by the New York State Assn. of Professional Land Surveyors (7th Rev. July 18, 1997).

CODE OF PRACTICE FOR LAND SURVEYS

*New York State Association
of
Professional Land Surveyors*

Adopted October 1966

Seventh Revision: July 18, 1997

New York State Association of Professional Land Surveyors, Inc.
Land Surveyors Building
146 Washington Avenue
Albany, New York 12210-2203
Phone: (518) 432-4046
FAX: (518) 432-4055
Email: NYSAPLS@AOL.COM

FOREWORD:

Land Surveying Practice in New York State is ever changing and complex, evolving from Colonial Times to the present. This profession is rich in tradition and custom. Throughout the state, *the profession* is required to respect and accommodate historic standards in measurement, as the same apply to land boundaries and the succession of title dating back to the early sixteen hundreds. Historic and period standards have differed in scale and procedure throughout history, resulting in varying and unique *local standards* of horizontal and vertical datum which must be recognized and used for survey measurement in various section of cities and towns that were mapped and / or sub-divided many years ago. (Generally prior to the first quarter of the twentieth century).

Land Surveying Practice in New York State has continued through socio-economic changes and advancing technologies to better serve the interests and well being of the people of the State and protect the integrity of our land boundaries.

The *Code of Practice* of The New York State Association of Professional Land Surveyors has served, since 1966, to promote reasonable and prudent standards throughout the entire State of New York.

This present revision to the *Code*:

- Provides uniformity, throughout the State, in policy and general presentation and provides minimum standards which are universal.
- Provides for area specific standards which will address the historically diverse standards and practices of different areas within New York State.

The *Code* provides a framework and guide for the practicing land surveyor and a standard of expectation for the public. The *Code* is intended to be versatile, providing for and encouraging the use of evolving technologies while remaining sensitive to and protecting long standing local standards, customs, and mapping traditions.

The *Code* seeks to avoid legal pitfalls and the difficulty or confusion that may arise from mandating procedures, methods, or precedents that may disrupt established and customary practice, by creating "punch list solutions."

The New York State Association of Professional Land Surveyors is ever mindful of the duty and responsibility of the *land surveyor* to: re-establish the original lines of surveyed property to: "walk in the foot steps of the original surveyor" thereby protecting the interests of all of the people of the State of New York.

DEFINITION OF SURVEY MAP FOR DEFINING REAL PROPERTY BOUNDARIES: (Title Survey)

Boundary Survey Map: The graphic opinion by a Land Surveyor, licensed and registered in the State of New York, which defined boundary limits and depicts in metes and bounds and physical possession of a parcel or parcels of land with relation to map lines, deeds of record, and / or pertinent reference data based on an actual field survey conducted under the supervision of the registered and licensed land surveyor preparing the map.

Title Survey: A Boundary Survey Map made for the purpose of the transfer of real property , and / or lease lines, mortgaging, and easements related to real property.

POLICY GOVERNING PREPARATION OF TITLE SURVEYS:

A. General

1. Abstract of Title should be furnished to the Land Surveyor.
2. For a survey map to be considered valid, it must be signed and certified by a licensed land surveyor registered in the State of New York. All true copies thereof must bear the Land surveyor's embossed seal.

3. All archival information of the surveyor's survey maps, records, files, and data used or generated in the course of preparing a survey shall remain the property of the surveyor or his successors or assigns.
4. The sole purpose of certifying a survey to a title company or lending institution is to confirm the opinion of the Surveyor to his client and to the title company or lending institution for a specific transaction. It is not intended to extend this obligation beyond such transaction, or to additional title companies, lending institutions owners or subsequent owners.
5. All surveys shall conform to or exceed the minimum standards set forth in this Code unless limitations or variances from such standards are clearly stated on the boundary survey map.
6. [*NYSAPLS Policy*:] "The alteration of boundary survey maps by anyone other than the original preparer is misleading, confusing, and not in the general welfare and benefit of the public. Licensed Land Surveyors shall not alter survey maps, survey plans, or survey plats prepared by others." (NYSAPLS Policy: Adopted January 23, 1993)
7. [*New York Law*] The New York State Education Law requires that a notation be placed on all altered survey maps: "*altered by*" followed by: the Land Surveyor's signature and seal, the date of the alteration, and a specific description of the alteration. (New York Education Law: section 7209,sub-division 2)

B. Standard Notes

In order to implement the policy previously stated above, the surveyor should place the following or comparable notes on the boundary survey map:

1. Copyright or Copyright Sign "(C)" (Insert Year and Name of surveyor or copyright owner) All Rights Reserved.
2. Unauthorized alteration or addition to a survey map bearing a licensed land surveyor's seal is a violation of section 7209, sub-division 2, of the New York State Education Law.
3. Only boundary survey maps with the surveyor's embossed seal are genuine true and correct copies of the surveyor's original work and opinion.
4. Certifications on this boundary survey map signify that the map was prepared in accordance with the current existing Code of Practice for Land Surveys adopted by the New York State Association of Professional Land Surveyors, Inc. The certification is limited to persons for whom the boundary survey map is prepared, to the title company, to the governmental agency, and to the lending institution listed on this boundary survey map.

5. The certifications heron are not transferable.
6. The location of underground improvements or encroachments are not always known and often must be estimated. If any underground improvements or encroachments are not covered by this certificate.

C. CERTIFICATION (Actions That Void Certification)

1. When preparing title surveys, the surveyor should place an embossed seal on all copies along with the following note: "Only title surveys bearing the makers embossed seal should be relied upon since other than embossed-seal copies may contain unauthorized and undetectable modifications, deletions, additions, and changes."
2. A surveyor should place the following notice on work products: copyright label, year, [Name]. "Reproduction or copying of this document may be a violation of copyright law unless permission of the author and / or copyright holder is obtained."
3. When preparing title surveys, the surveyor should place an embossed seal on all copies along with the following note: "A copy of this document without a proper application of the surveyor's embossed seal should be assumed to be an unauthorized copy."

D. RE-SURVEY

1. Subsequent to the initial issuance of a survey map all revisions shall be specifically noted and dated. Every re-survey map bearing a new date shall conform to the requirements of a new survey map unless specifically noted and shall be made only by the original preparer.

MINIMUM STANDARDS

1. DEFINITIONS

1.1 DEFINITIONS

Standards and local use shall apply.

2. RESEARCH

2.1 RESEARCH

The surveyor's research shall satisfy local criteria for reasonable care.

3. SURVEY AND MAP

All Boundary / Title Survey maps must satisfy the following:

"3.A" ORIENTATION

1. North point indicating direction as: North, approximate North, a grid reference, a map reference, datum reference or deed reference.

"3.B" LOCATION

3.B.1 The survey should provide sufficient information on the boundary survey map so that a user will be able to locate the surveyed parcel with only the aid of a road map, quadrangle map sheet, or commercially available travel map.

3.B.2 It is recommended that the identification of a subject parcel be referenced on the title survey so as to define same as geographically unique by use of one or a combination of references as follows:

- Map title reference
- Premises note reference
- Street intersection location or reference
- Deed references
- Filed map references
- Street plan references
- Other record data references

3.B.3 Said identification and location should clearly delineate the surveyed land as a singularly unique parcel relative to the location within the State of New York.

"3.C" MEASUREMENT STANDARD

1. The boundary survey map shall be mapped in the designated standard of measure

2. The parcel perimeter and pertinent interior lines shall contain the data necessary to delineate and establish said lines, utilizing natural features and/or a mathematical or geometric reference to one or more of the following:

- Metes and bounds
- Interior angles and distances
- Parallel reference to street lines or other lines of record
- Angular reference to street lines or other lines of record
- Public Record Coordinate Systems
- Reference to record corner / street intersections

"3.D" SURVEYOR AUTHORSHIP

1. The name and license number of the surveyor or company of employ shall be shown

2. The address of the survey or company of employ shall be shown

"3.E" SCALE

1. The scale of the drawing shall be given

2. The survey map shall give a clear presentation of the facts with due regard to the scale of the map
3. A supplementary or exaggerated diagram should be provided when necessary

"3.F" DATE

1. The date of the field survey completion and the date of the boundary survey map completion shall be included

"3.G" SURVEY RECORDS

(see "Policy Governing Preparation of Title Surveys")

"3.J" RECORD LINES

1. When the parcel surveyed is laid out on a filed map the survey map should reference: the title of the map, the map number, lot numbers, and block numbers of the premises, as required. Other filed maps or maps locatable from the record title may be indicated or superimposed on the boundary survey map. When street and lot lines are identical with another map, a notation to that affect should be made.
2. Where legal lines of street or right of way are established by a municipality, they should be shown. The width of the street or right of way where established should be shown.
3. Surveys of multiple parcels should clearly indicate contiguity, gores, or overlaps.
4. The Great Lot, Township, and Range, or other similar designation, shall be indicated on the survey map, where applicable.

"3.K" CONTENT & PHYSICAL LOCATION

1. Physical evidence of possession should be stated and the location given.
2. Location of buildings upon the boundary survey map should be shown and their location given with reference to boundaries. Street numbers should be shown wherever available. On acreage surveys, buildings remote to boundary lines should be plotted to scaled position.
3. Visible evidence to easements on or across the property should be noted and located.
4. Surface indications of underground easements shall be shown.
5. If the premises were surveyed when the weather or other conditions might have concealed physical features or appurtenances, said fact shall be indicated on the survey map.
6. Sub-surface structures should not be shown where not visible or readily apparent.

7. Buildings or fences on adjoining land and encroachment of eaves, cornices, blinds, etc. within three (3) feet of the boundaries of the surveyed premises should be shown and located.

8. Location of walls (independent, party or otherwise) at or near boundary lines within three (3) feet of the boundaries of the surveyed premises should be given.

9. If a building on the premises has no independent walls but uses any wall of the adjoining premises, this condition shall be shown. The same requirements shall apply where conditions are reversed.

10. Encroaching structural appurtenances and projections such as fire escapes, bay windows, windows that open out, flue pipes, stoops, areas, steps, trim, etc., encroaching or on adjoining property or on abutting streets should be indicated with a notation of apparent encroachment.

11. Joint or common driveways should be shown. Independent driveways along the boundary, if encroaching, shall be shown together with the extent of the encroachment.

12. When apparent physical evidence of cemeteries or burial ground exist, it should be shown and when a record of cemeteries or burial ground is supplied, this information shall be noted.

13. If construction of any improvements shown on the survey map was apparently incomplete from exterior physical evidence at the time of the survey map, this fact shall be indicated on the survey.

14. The area of the parcel should be given when required.

"3.L" CONFLICTS & DIFFERENCES

1. Any gore / overlap, or similar differences, related to the premises, may be indicated or noted.

"3.M" MONUMENTS

1. Monument and witness marks should be noted and referenced.

Appendix G: Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys
(Eff. February 23, 2011).

**MINIMUM STANDARD DETAIL REQUIREMENTS FOR
ALTA/ACSM LAND TITLE SURVEYS**
(Effective February 23, 2011)

1. Purpose - Members of the American Land Title Association (ALTA) have specific needs, unique to title insurance matters, when asked to insure title to land without exception as to the many matters which might be discoverable from survey and inspection, and which are not evidenced by the public records.

For a survey of real property, and the plat, map or record of such survey, to be acceptable to a title insurance company for the purpose of insuring title to said real property free and clear of survey matters (except those matters disclosed by the survey and indicated on the plat or map), certain specific and pertinent information must be presented for the distinct and clear understanding between the insured, the client (if different from the insured), the title insurance company (insurer), the lender, and the surveyor professionally responsible for the survey.

In order to meet such needs, clients, insurers, insureds, and lenders are entitled to rely on surveyors to conduct surveys and prepare associated plats or maps that are of a professional quality and appropriately uniform, complete and accurate. To that end, and in the interests of the general public, the surveying profession, title insurers and abstracters, the ALTA and the National Society of Professional Surveyors, Inc. (NSPS) jointly promulgate the within details and criteria setting forth a minimum standard of performance for ALTA/ACSM Land Title Surveys. A complete 2011 ALTA/ACSM Land Title Survey includes the on-site fieldwork required under Section 5 herein, the preparation of a plat or map showing the results of the fieldwork and its relationship to record documents as required under Section 6 herein, any information in Table A herein that may have been negotiated with the client, and the certification outlined in Section 7 herein.

2. Request for Survey - The client shall request the survey or arrange for the survey to be requested, and shall provide a written authorization to proceed from the person or entity responsible for paying for the survey. Unless specifically authorized in writing by the insurer, the insurer shall not be responsible for any costs associated with the preparation of the survey. The request shall specify that an "**ALTA/ACSM LAND TITLE SURVEY**" is required and which of the optional items listed in Table A herein, if any, are to be incorporated. Certain properties, including, but not limited to, marinas, campgrounds, trailer parks and leased areas, may present issues outside those normally encountered on an ALTA/ACSM Land Title Survey. The scope of work related to such properties should be discussed with the client, lender and insurer, and agreed upon in writing prior to requesting the survey. The client may need to secure permission for the surveyor to enter upon the property to be surveyed, adjoining properties, or offsite easements.

3. Surveying Standards and Standards of Care

A. Effective Date - The 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys are effective February 23, 2011. As of that date, all previous versions of the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys are superseded by these standards.



- B. Other Requirements and Standards of Practice** - Some Federal agencies, many states and some local jurisdictions have adopted statutes, administrative rules and/or ordinances that set out standards regulating the practice of surveying within their jurisdictions. In addition to the standards set forth herein, surveyors shall also conduct their surveys in accordance with all applicable jurisdictional requirements and standards of practice. Where conflicts between the standards set forth herein and any such jurisdictional requirements and standards of practice occur, the more stringent shall apply.
- C. The Normal Standard of Care** - Surveyors should recognize that there may be unwritten local, state, and/or regional standards of care defined by the practice of the 'prudent surveyor' in those locales.
- D. Boundary Resolution** - The boundary lines and corners of any property being surveyed as part of an ALTA/ACSM Land Title Survey shall be established and/or retraced in accordance with appropriate boundary law principles governed by the set of facts and evidence found in the course of performing the research and survey.
- E. Measurement Standards** - The following measurement standards address Relative Positional Precision for the monuments or witnesses marking the corners of the surveyed property.
- i. "Relative Positional Precision" means the length of the semi-major axis, expressed in feet or meters, of the error ellipse representing the uncertainty due to random errors in measurements in the location of the monument, or witness, marking any corner of the surveyed property relative to the monument, or witness, marking any other corner of the surveyed property at the 95 percent confidence level (two standard deviations). Relative Positional Precision is estimated by the results of a correctly weighted least squares adjustment of the survey.
 - ii. Any boundary lines and corners established or retraced may have uncertainties in location resulting from (1) the availability, condition, history and integrity of reference or controlling monuments, (2) ambiguities in the record descriptions or plats of the surveyed property or its adjoining, (3) occupation or possession lines as they may differ from the written title lines, and (4) Relative Positional Precision. Of these four sources of uncertainty, only Relative Positional Precision is controllable, although due to the inherent errors in any measurement, it cannot be eliminated. The magnitude of the first three uncertainties can be projected based on evidence; Relative Positional Precision is estimated using statistical means (see Section 3.E.i. above and Section 3.E.v. below).
 - iii. The first three of these sources of uncertainty must be weighed as part of the evidence in the determination of where, in the surveyor's opinion, the boundary lines and corners of the surveyed property should be located (see Section 3.D. above). Relative Positional Precision is a measure of how precisely the surveyor is able to monument and report those positions; it is not a substitute for the application of proper boundary law principles. A boundary corner or line may have a small Relative Positional Precision because the survey measurements were precise, yet still be in the wrong position (i.e. inaccurate) if it was established or retraced using faulty or improper application of boundary law principles.
 - iv. For any measurement technology or procedure used on an ALTA/ACSM Land Title Survey, the surveyor shall (1) use appropriately trained personnel, (2) compensate for systematic errors, including those associated with instrument calibration, and (3) use appropriate error propagation and measurement design theory (selecting the proper instruments, geometric layouts, and field and computational procedures) to control random errors such that the maximum allowable Relative Positional Precision outlined in Section 3.E.v. below is not exceeded.



- v. The maximum allowable Relative Positional Precision for an ALTA/ACSM Land Title Survey is 2 cm (0.07 feet) plus 50 parts per million (based on the direct distance between the two corners being tested). It is recognized that in certain circumstances, the size or configuration of the surveyed property, or the relief, vegetation or improvements on the surveyed property will result in survey measurements for which the maximum allowable Relative Positional Precision may be exceeded. If the maximum allowable Relative Positional Precision is exceeded, the surveyor shall note the reason as explained in Section 6.B.ix below.

4. Records Research - It is recognized that for the performance of an ALTA/ACSM Land Title Survey, the surveyor will be provided with appropriate data which can be relied upon in the preparation of the survey. The request for an ALTA/ACSM Land Title Survey shall set forth the current record description of the property to be surveyed or, in the case of an original survey, the current record description of the parent parcel that contains the property to be surveyed. Complete copies of the most recent title commitment, the current record description of the property to be surveyed (or, in the case of an original survey, the parent parcel), the current record descriptions of adjoining, any record easements benefiting the property, the record easements or servitudes and covenants burdening the property (all hereinafter referred to collectively as "Record Documents"), documents of record referred to in the Record Documents, documents necessary to ascertain, if possible, the junior/senior relationship pursuant to Section 6.B.vii. below, and any other documents containing desired appropriate information affecting the property being surveyed, and to which the ALTA/ACSM Land Title Survey shall make reference, shall be provided to the surveyor for use in conducting the survey. Reference is made to Section 3.B. above.

5. Field Work - The Survey shall be performed on the ground (except as otherwise negotiated pursuant to Table A, Item 15 below, if selected by the client), and the field work shall include the following:

A. Monuments

- i. The location and description of any monuments or lines that control the boundaries of the surveyed property.
- ii. The location, size and type of any monuments found (or set, if Table A, Item 1 is requested by the client, or if otherwise required – see Section 3.B. above) on the boundary of the surveyed property.

B. Rights of Way and Access

- i. The distance from the appropriate corner or corners of the surveyed property to the nearest right of way line, if the surveyed property does not abut a right of way.
- ii. The name of any street, highway or other public or private way abutting the surveyed property, and the width and location of the travelled way relative to the nearest boundary line of the surveyed property.
- iii. Visible evidence of physical access (such as, but not limited to, curb cuts and driveways) to any abutting streets, highways or other public ways.
- iv. The location and character of vehicular, pedestrian or other forms of access by other than the apparent occupants of the surveyed property to or across the surveyed property, including, but not limited to driveways, alleys, private roads, sidewalks and footpaths observed in the process of conducting the survey.
- v. Without expressing a legal opinion as to ownership or nature, the location and extent of any potentially encroaching driveways, alleys, and other ways of access from adjoining properties onto the surveyed property observed in the process of conducting the survey.



- vi. Where documentation of the width or location of any abutting street, road or highway right of way was not disclosed in Record Documents provided to the surveyor or was not otherwise available from the controlling jurisdiction (see Section 6.C.iv. below), the evidence and location of parcel corners recovered which might indicate the width or location of such right of way lines.
- vii. Evidence of access to and from waters adjoining the surveyed property, such as paths, boat slips, launches, piers and docks observed in the process of conducting the survey.

C. Lines of Possession, and Improvements along the Boundaries

- i. The character and location of evidence of possession or occupation along the perimeter of the surveyed property, both by the occupants of the surveyed property and by adjoining, observed in the process of conducting the survey.
- ii. The character and location of all walls, buildings, fences, and other improvements within five feet of each side of the boundary lines, observed in the process of conducting the survey.
- iii. Without expressing a legal opinion as to the ownership or nature of the potential encroachment, the evidence, location and extent of potentially encroaching structural appurtenances and projections observed in the process of conducting the survey, such as fire escapes, bay windows, windows and doors that open out, flue pipes, stoops, eaves, cornices, areaways, steps, trim, etc., by or onto adjoining property, or onto rights of way, easements or setback lines disclosed in Record Documents provided to the surveyor.

D. Buildings

Based on the normal standard of care, the location of all buildings on the surveyed property shown perpendicular to the nearest perimeter boundary line(s) and expressed to the appropriate degree of precision.

E. Easements and Servitudes

- i. Evidence of any easements or servitudes burdening the surveyed property, disclosed in the Record Documents provided to the surveyor and observed in the process of conducting the survey.
- ii. Evidence of easements or servitudes not disclosed in the Record Documents provided to the surveyor, but observed in the process of conducting the survey, such as those created by roads; rights of way; water courses; ditches; drains; telephone, fiber optic lines, or electric lines; water, sewer, oil or gas pipelines on or across the surveyed property and on adjoining properties if they appear to affect the surveyed property.
- iii. Surface indications of underground easements or servitudes on or across the surveyed property observed in the process of conducting the survey.
- iv. Evidence of use of the surveyed property by other than the apparent occupants observed in the process of conducting the survey.

F. Cemeteries

As accurately as the evidence permits, the location of cemeteries, gravesites, and burial grounds (i) disclosed in the Record Documents provided to the surveyor, or (ii) observed in the process of conducting the survey.

G. Water Features

- i. The location of springs, together with the location of ponds, lakes, streams, and rivers bordering on or running through the surveyed property, observed during the process of conducting the survey. See Table A, Item 19 for wetlands locations.



- ii. The location of any water boundary on the surveyed property. The attribute(s) of the water feature located (e.g. top of bank, edge of water, high water mark, etc.) should be congruent with the boundary as described in the record description or, in the case of an original survey, in the new description. (See Section 6.B.vi. below).

6. Plat or Map - A plat or map of an ALTA/ACSM Land Title Survey shall show the following information. Where dimensioning is appropriate, dimensions shall be in accordance with the appropriate standard of care.

A. The evidence and locations gathered during the field work as outlined in Section 5 above.

B. Boundary, Descriptions, Dimensions and Closures

- i. The current record description of the surveyed property, and any new description of the surveyed property that was prepared in conjunction with the survey, including a statement explaining why the new description was prepared. Preparation of a new description should be avoided unless deemed necessary or appropriate by the surveyor and insurer. Preparation of a new description should also generally be avoided when the record description is a lot or block in a platted, recorded subdivision.
- ii. The location and description of any monuments, lines or other evidence that control the boundaries of the surveyed property or that were otherwise relied upon in establishing or retracing the boundaries of the surveyed property, and the relationship of that evidence to the surveyed boundary. In some cases, this will require notes on the plat or map.
- iii. All distances and directions identified in the record description of the surveyed property (and in the new description, if one was prepared). Where a measured or calculated dimension differs from the record by an amount deemed significant by the surveyor, such dimension shall be shown in addition to, and differentiated from, the corresponding record dimension.
- iv. The directional, distance and curve data necessary to compute a mathematical closure of the surveyed boundary. A note if the record description does not mathematically close. The basis of bearings and, when it differs from the record basis, the difference.
- v. The remainder of any recorded lot or existing parcel, when the surveyed property is composed of only a portion of such lot or parcel, shall be graphically depicted. Such remainder does not need to be included as part of the actual survey, except to the extent necessary to locate the lines and corners of the surveyed property, and it need not be fully dimensioned or drawn at the same scale as the surveyed property.
- vi. When the surveyed property includes a water boundary, a note on the face of the plat or map noting the date the boundary was measured, which attribute(s) of the water feature was/were located, and the caveat that the boundary is subject to change due to natural causes and that it may or may not represent the actual location of the limit of title. When the surveyor is aware of natural or artificial realignments or changes in such boundaries, the extent of those changes and facts shall be shown or explained.
- vii. The relationship of the boundaries of the surveyed property (i.e. contiguity, gaps, or overlaps) with its adjoiners, where ascertainable from Record Documents and/or from field evidence gathered during the process of conducting the survey of the property being surveyed. If the surveyed property is composed of multiple parcels, the extent of any gaps or overlaps between those parcels shall be identified. Where gaps or overlaps are identified, the surveyor shall, prior to preparation of the final plat or map, disclose this to the insurer and client for determination of a course of action concerning junior/senior rights.



- viii. When, in the opinion of the surveyor, the results of the survey differ significantly from the record, or if a fundamental decision related to the boundary resolution is not clearly reflected on the plat or map, the surveyor shall explain this information with notes on the face of the plat or map.
 - ix. A note on the face of the plat or map explaining the site conditions that resulted in a Relative Positional Precision that exceeds the maximum allowed under Section 3.E.v. of these standards.
 - x. A note on the face of the plat or map identifying the title commitment/policy number, effective date and name of the insurer for any title work provided to the surveyor.
- C. Easements, Servitudes, Rights of Way, Access and Record Documents**
- i. The width and recording information of all plottable rights of way, easements and servitudes burdening and benefitting the property surveyed, as evidenced by Record Documents which have been provided to the surveyor.
 - ii. A note regarding any right of way, easement or servitude evidenced by a Record Document which has been provided to the surveyor (a) the location of which cannot be determined from the record document, or (b) of which there was no observed evidence at the time of the survey, or (c) that is a blanket easement, or (d) that is not on, or does not touch, the surveyed property, or (e) that limits access to an otherwise abutting right of way, or (f) in cases where the surveyed property is composed of multiple parcels, which of such parcels the various rights of way, easements, and servitudes cross.
 - iii. A note if no physical access to a public way was observed in the process of conducting the survey.
 - iv. The width of abutting rights of way and the source of such information (a) where available from the controlling jurisdiction or (b) where disclosed in Record Documents provided to the surveyor.
 - v. The identifying titles of all recorded plats, filed maps, right of way maps, or similar documents which the survey represents, wholly or in part, with their recording or filing data.
 - vi. For non-platted adjoining land, names and recording data identifying adjoining owners according to current public records. For platted adjoining land, the recording data of the subdivision plat.
 - vii. Platted setback or building restriction lines which appear on recorded subdivision plats or which were disclosed in Record Documents provided to the surveyor.
- D. Presentation**
- i. The plat or map shall be drawn on a sheet of not less than 8 ½ by 11 inches in size at a legible, standard engineering scale, with that scale clearly indicated in words or numbers and with a graphic scale. When recordation or filing of a plat or map is required by law, such plat or map shall be produced in recordable form. The boundary of the surveyed property drawn in a manner that distinguishes it from other lines on the plat or map. A north arrow (with north to the top of the drawing when practicable), a legend of symbols and abbreviations, and a vicinity map showing the property in reference to nearby highway(s) or major street intersection(s).
 - ii. Supplementary or detail diagrams when necessary.
 - iii. If there are no visible buildings on the surveyed property, a note stating “*No buildings existing on the surveyed property*” shall appear on the face on the survey.



- iv. The surveyor's project number (if any), and the name, registration or license number, signature, seal, street address, telephone number, and email address of the surveyor who performed the survey. The date(s) of any revisions made by said surveyor.
- v. Sheet numbers where the plat or map is composed of more than one sheet.
- vi. The caption "ALTA/ACSM Land Title Survey."

7. **Certification** - The plat or map of an ALTA/ACSM Land Title Survey shall bear only the following certification, unaltered, except as may be required pursuant to Section 3.B. above:

To (name of insured, if known), (name of lender, if known), (name of insurer, if known), (names of others as negotiated with the client):

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items _____ of Table A thereof. The field work was completed on _____.

Date of Plat or Map: _____ (Surveyor's signature, printed name and seal with Registration/License Number)

8. **Deliverables** - The surveyor shall furnish copies of the plat or map of survey to the insurer and client, and as otherwise negotiated with the client. Hard copies shall be on durable and dimensionally stable material of a quality standard acceptable to the insurer. Digital copies of the plat or map may be provided in addition to, or in lieu of, hard copies in accordance with the terms of the contract. When required by law or requested by the client, the plat or map shall be produced in recordable form and recorded or filed in the appropriate office or with the appropriate agency.



TABLE A

OPTIONAL SURVEY RESPONSIBILITIES AND SPECIFICATIONS

NOTE: The items of Table A must be negotiated between the surveyor and client. It may be necessary for the surveyor to qualify or expand upon the description of these items (e.g., in reference to Item 6(b), there may be a need for an interpretation of a restriction). The surveyor cannot make a certification on the basis of an interpretation or opinion of another party. Notwithstanding Table A Items 5 and 11(b), if an engineering design survey is desired as part of an ALTA/ACSM Land Title Survey, such services should be negotiated under Table A, item 22.

If checked, the following optional items are to be included in the ALTA/ACSM LAND TITLE SURVEY, except as otherwise qualified (see note above):

1. _____ Monuments placed (or a reference monument or witness to the corner) at all major corners of the boundary of the property, unless already marked or referenced by existing monuments or witnesses.
2. _____ Address(es) if disclosed in Record Documents, or observed while conducting the survey.
3. _____ Flood zone classification (with proper annotation based on federal Flood Insurance Rate Maps or the state or local equivalent) depicted by scaled map location and graphic plotting only.
4. _____ Gross land area (and other areas if specified by the client).
5. _____ Vertical relief with the source of information (e.g. ground survey or aerial map), contour interval, datum, and originating benchmark identified.
6. _____ (a) Current zoning classification, as provided by the insurer.
_____ (b) Current zoning classification and building setback requirements, height and floor space area restrictions as set forth in that classification, as provided by the insurer. If none, so state.
7. _____ (a) Exterior dimensions of all buildings at ground level.
_____ (b) Square footage of:
_____ (1) exterior footprint of all buildings at ground level.
_____ (2) other areas as specified by the client.
_____ (c) Measured height of all buildings above grade at a location specified by the client. If no location is specified, the point of measurement shall be identified.



8. _____ *Substantial features observed in the process of conducting the survey (in addition to the improvements and features required under Section 5 above) such as parking lots, billboards, signs, swimming pools, landscaped areas, etc.*
9. _____ *Striping, number and type (e.g. handicapped, motorcycle, regular, etc.) of parking spaces in parking areas, lots and structures.*
10. _____ *(a) Determination of the relationship and location of certain division or party walls designated by the client with respect to adjoining properties (client to obtain necessary permissions).*
- _____ *(b) Determination of whether certain walls designated by the client are plumb (client to obtain necessary permissions).*
11. _____ *Location of utilities (representative examples of which are listed below) existing on or serving the surveyed property as determined by:*
- _____ *(a) Observed evidence.*
- _____ *(b) Observed evidence together with evidence from plans obtained from utility companies or provided by client, and markings by utility companies and other appropriate sources (with reference as to the source of information).*
- *Railroad tracks, spurs and sidings;*
 - *Manholes, catch basins, valve vaults and other surface indications of subterranean uses;*
 - *Wires and cables (including their function, if readily identifiable) crossing the surveyed property, and all poles on or within ten feet of the surveyed property. Without expressing a legal opinion as to the ownership or nature of the potential encroachment, the dimensions of all encroaching utility pole crossmembers or overhangs; and*
 - *utility company installations on the surveyed property.*
- Note - With regard to Table A, item 11(b), source information from plans and markings will be combined with observed evidence of utilities to develop a view of those underground utilities. However, lacking excavation, the exact location of underground features cannot be accurately, completely and reliably depicted. Where additional or more detailed information is required, the client is advised that excavation may be necessary.*
12. _____ *Governmental Agency survey-related requirements as specified by the client, such as for HUD surveys, and surveys for leases on Bureau of Land Management managed lands.*
13. _____ *Names of adjoining owners of platted lands according to current public records.*
14. _____ *Distance to the nearest intersecting street as specified by the client.*
15. _____ *Rectified orthophotography, photogrammetric mapping, laser scanning and other similar products, tools or the basis for the showing the location of*

airborne/mobile
technologies as



NSPS

certain features (excluding boundaries) where ground measurements are not otherwise necessary to locate those features to an appropriate and acceptable accuracy relative to a nearby boundary. The surveyor shall (a) discuss the ramifications of such methodologies (e.g. the potential precision and completeness of the data gathered thereby) with the insurer, lender and client prior to the performance of the survey and, (b) place a note on the face of the survey explaining the source, date, precision and other relevant qualifications of any such data.

16. _____ *Observed evidence of current earth moving work, building construction or building additions.*
17. _____ *Proposed changes in street right of way lines, if information is available from the controlling jurisdiction. Observed evidence of recent street or sidewalk construction or repairs.*
18. _____ *Observed evidence of site use as a solid waste dump, sump or sanitary landfill.*
19. _____ *Location of wetland areas as delineated by appropriate authorities.*
20. _____ *(a) Locate improvements within any offsite easements or servitudes benefitting the surveyed property that are disclosed in the Record Documents provided to the surveyor and that are observed in the process of conducting the survey (client to obtain necessary permissions).*
- _____ *(b) Monuments placed (or a reference monument or witness to the corner) at all major corners of any offsite easements or servitudes benefitting the surveyed property and disclosed in Record Documents provided to the surveyor (client to obtain necessary permissions).*
21. _____ *Professional Liability Insurance policy obtained by the surveyor in the minimum amount of \$_____ to be in effect throughout the contract term. Certificate of Insurance to be furnished upon request.*
22. _____ _____

*Adopted by the Board of Governors, American Land Title Association, on October 13, 2010.
American Land Title Association, 1828 L St., N.W., Suite 705, Washington, D.C. 20036.*

*Adopted by the Board of Directors, National Society of Professional Surveyors, on November 15, 2010.
National Society of Professional Surveyors, Inc., a member organization of the American Congress on Surveying and Mapping, 6 Montgomery Village Avenue, Suite 403, Gaithersburg, MD 20879*



Appendix H: Example of Title Report language in light of requirements of MCBA Suggested Title Standards for Treating Discrepancies Revealed by Surveys (March, 2012).

Example of Title Report Schedule B Exception language in light of requirements of MCBA Suggested Title Standards for Treating Discrepancies Revealed by Surveys (March, 2012)

Survey Map made by _____, L.S., dated _____, 20____ shows structures and improvements located within the lines of the insured premises.

EXCEPT: (Owner's Policy ONLY)

- a) NEED Certifications
- b) variance with lines of record title including fence located up to _____ feet _____ of the _____ Lot Line.

If the fence was constructed on or before July 7, 1998:

A Boundary Line Agreement in recordable form with owner(s) of the premises to the _____ quitclaiming lands located between the fence(s) and the boundary line and recognizing said boundary line as correct will be required at closing.

If the fence was constructed on or after July 8, 1998 and is owned and maintained by the Seller:

Affidavit of no claim executed by Seller is required, affirming that: 1) No demand has been made to remove the fence; 2) Seller asserts title to the surveyed property lines notwithstanding the placement of the fence; and 3) No current dispute exists as to the location of the boundary line.

If the fence was constructed on or after July 8, 1998 and is owned and maintained by the neighbor to the _____ of the property:

A Boundary Line Agreement in recordable form with owner(s) of the premises to the _____ quitclaiming lands located between the fence(s) and the boundary line and recognizing said boundary line as correct will be required at closing.

NOTE: Proof of fence construction via receipts, permit from the municipal authority, or an affidavit is required.

Appendix I: Survey Review Checklist.

SURVEY REVIEW CHECKLIST

GSJR CV ED OTHER: _____ Date: _____

Client Name(s): _____ File assigned to: _____

Property Address: _____

Check Date of Survey: _____
(Survey must be dated after date of Contract)

Locate North arrow

Locate Legend of all symbols and abbreviations used on the survey present

Check Surveyor's seal and signature

Check Surveyor's Certificate language

Determine if correct parties certified to with correct spelling

(Clients' Names, Schell Law, P.C., clients' lender, bank attorney, and title insurance company insuring the mortgage)

Check property address

Compare property description and location

Description on survey matches proposed Deed description.

Description on survey matches title commitment description.

Compare to tax map

Check boundaries:

Point of commencement/point of beginning ("POB") shown (and description returns to POB)
(ie. distance to intersecting street shown)

If applicable, pins placed at all major corners of property (if required)

Curves – length and arc or radius shown Distance of house to ROW line & other boundary lines

Compared recorded easements and other physical encumbrances with what is shown on survey map.

(ie. Utility easement to RGE recorded in Book 56, page 53 affects subject property as is shown hereon, or does not affect; or is a blanket type easement and may not be plotted on the survey map)

Plot easements from Abstract on map if not shown thereon

Check for evidence of prescriptive easements/adverse possession or use of the property or matters NOT shown on the title commitment.

Check for any indication of any authorized or unauthorized use of the property by a 3rd party or unexpected conditions

(ie. shared driveway)

Check for improvement encroaching on easement

Survey Review Checklist

Page 2 of 2

Property Address: _____

- Improvements:
 - Building and structures (perimeter dimensions) Fences (determine ownership & issues)
 - Sheds Decks Pools
 - Other: _____
- Check for encroachments of improvements onto or from surveyed property
 - Fences Driveway
 - Other: _____
- Check access:
 - Are all Roads, adjoining streets, highways, alleys (public vs. private), and right-of-ways shown
 - Confirm ingress and egress (driveways)
- Check Building set-back lines
- Water (locate including flow direction all creeks, rivers, ponds, bays, lakes adjacent to or on property)
- Flood Hazard notations, if any
- Field notes on survey: _____

Notes:

Appendix J: Affidavit of No Change.

AFFIDAVIT OF NO CHANGE - SURVEY

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

_____ and _____, being duly sworn, depose and state:

1. We are the owners of the real property commonly known as _____, _____, New York _____ (the "Property").
2. We were named as grantees in a certain deed recorded in the _____ County Clerk's Office as follows: Warranty Deed from _____ to _____ and _____, dated _____ and recorded _____ in the _____ County Clerk's Office in Liber _____ of Deeds, page _____.
3. Our attention has been called to the following instrument survey map prepared by _____, L.S.: Survey Map dated _____, File No. _____ (the "Survey Map").
4. We have examined the Survey Map and state that since that date thereof, no additions, extensions, porches or garages have been added and the Property is in the same condition as when the Survey Map was made.
5. We further state there are no encroachments on the Property, such as common driveways, pathways, and fences, improvements or structures on adjoining premises, other than shown on the Survey Map.
6. We recognize the boundary lines of record for the Property as indicated on the Survey Map and no changes to the boundary lines have been made since we took ownership.
7. To the best of our knowledge and belief, no neighbor has disputed the location of any of the Property's boundary lines, as shown on the Survey Map.
8. To the best of our knowledge and belief, no person, or persons, presently claims any rights to own or use the Property or any part thereof.
9. We give this Affidavit to induce _____ and _____ to complete the purchase transaction for the Property.

(Signature)

(Signature)

Sworn to before me this _____
day of _____, 20_____.

Notary Public

Appendix K: Examples of Surveyor Legends used in the Monroe County area.

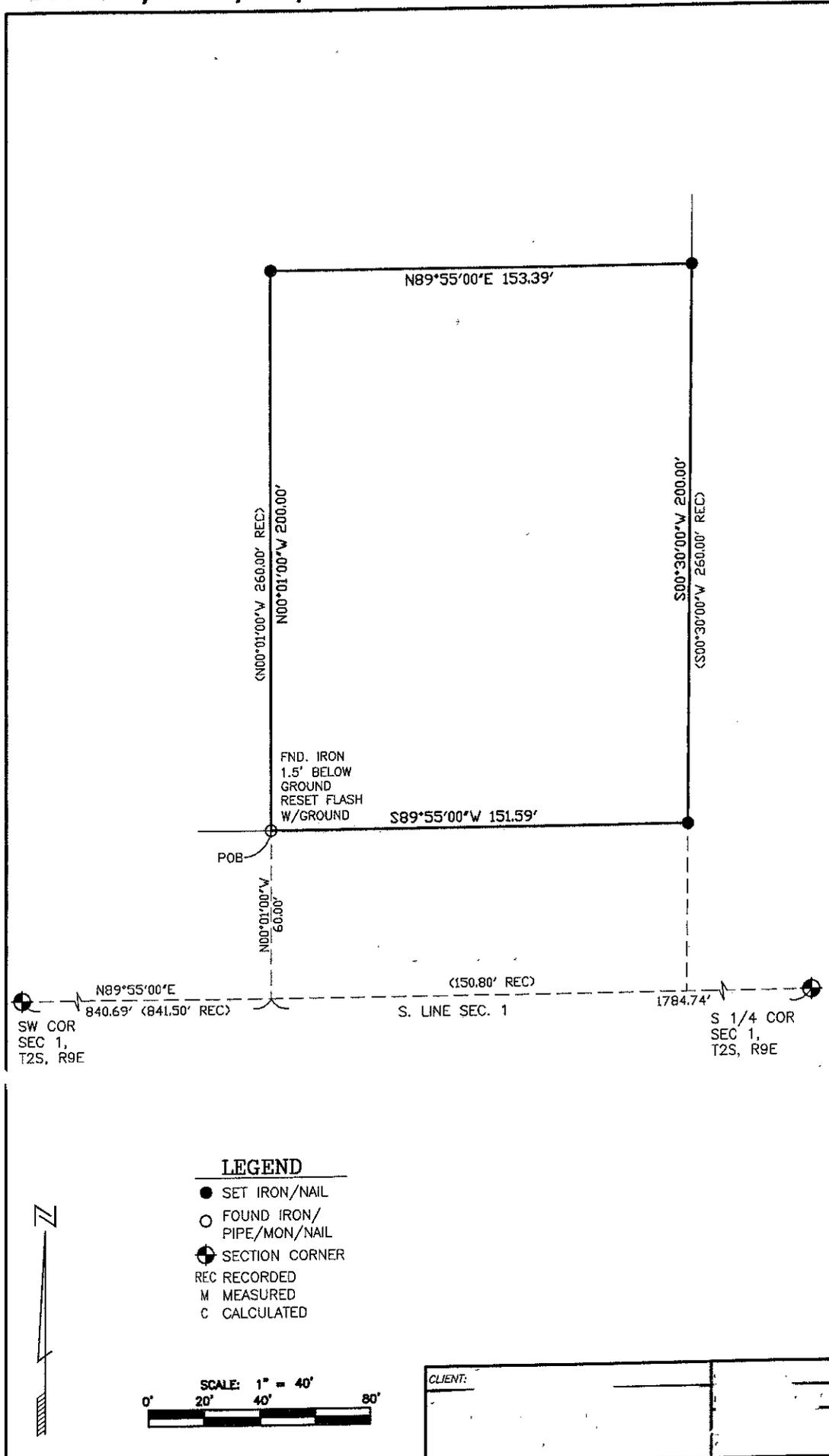
LEGEND:

⊗	<i>PIPE FOUND</i>
●	<i>PIN FOUND</i>
⊗	<i>NAIL FOUND</i>
○	<i>PIPE SET</i>
●	<i>PIN SET</i>
⊗	<i>NAIL SET</i>
⊗	<i>UTILITY POLE</i>
□	<i>UTILITY PEDESTAL</i>
⊗	<i>HYDRANT</i>

Appendix L: Examples of different types of Survey Maps.

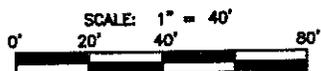
1. ALTA/ACSM Land Title Survey Map.
2. Boundary Survey Map.
3. Condo Survey Map.
4. Mortgage Survey Map.
5. Plot Survey Map.
6. Topographical Survey Map.

Boundary Survey Map



LEGEND

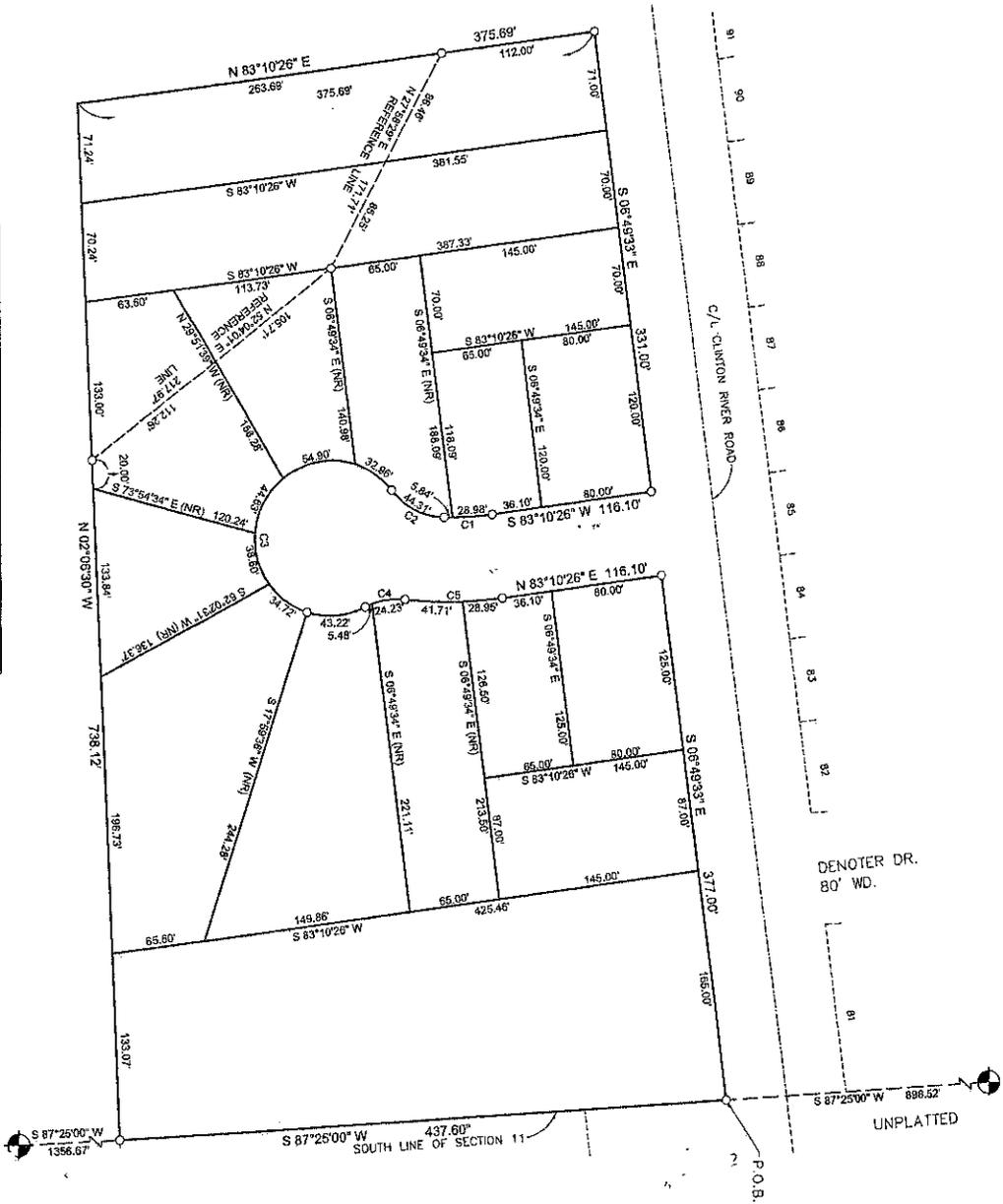
- SET IRON/NAIL
- FOUND IRON/
PIPE/MON/NAIL
- ⊕ SECTION CORNER
- REC RECORDED
- M MEASURED
- C CALCULATED



CLIENT: _____

Condo Survey Map

CURVE TABLE					
NO.	RADIUS	ARC	DELTA	CHORD	CHORD BEARING
C1	220.00	34.82	09°04'08"	34.79	S 87°42'30" W
C2	50.00	44.31	50°46'34"	42.87	N 82°22'10" W
C3	55.00	248.03	258°25'36"	84.62	S 13°18'20" W
C4	50.00	29.71	34°02'35"	29.27	N 80°36'44" E
C5	280.00	70.66	14°27'31"	70.47	S 89°35'49" E



DENOTER DR.
80' WD.

UNPLATTED

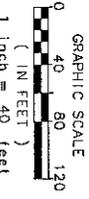
P.O.B.

SOUTH LINE OF SECTION 11

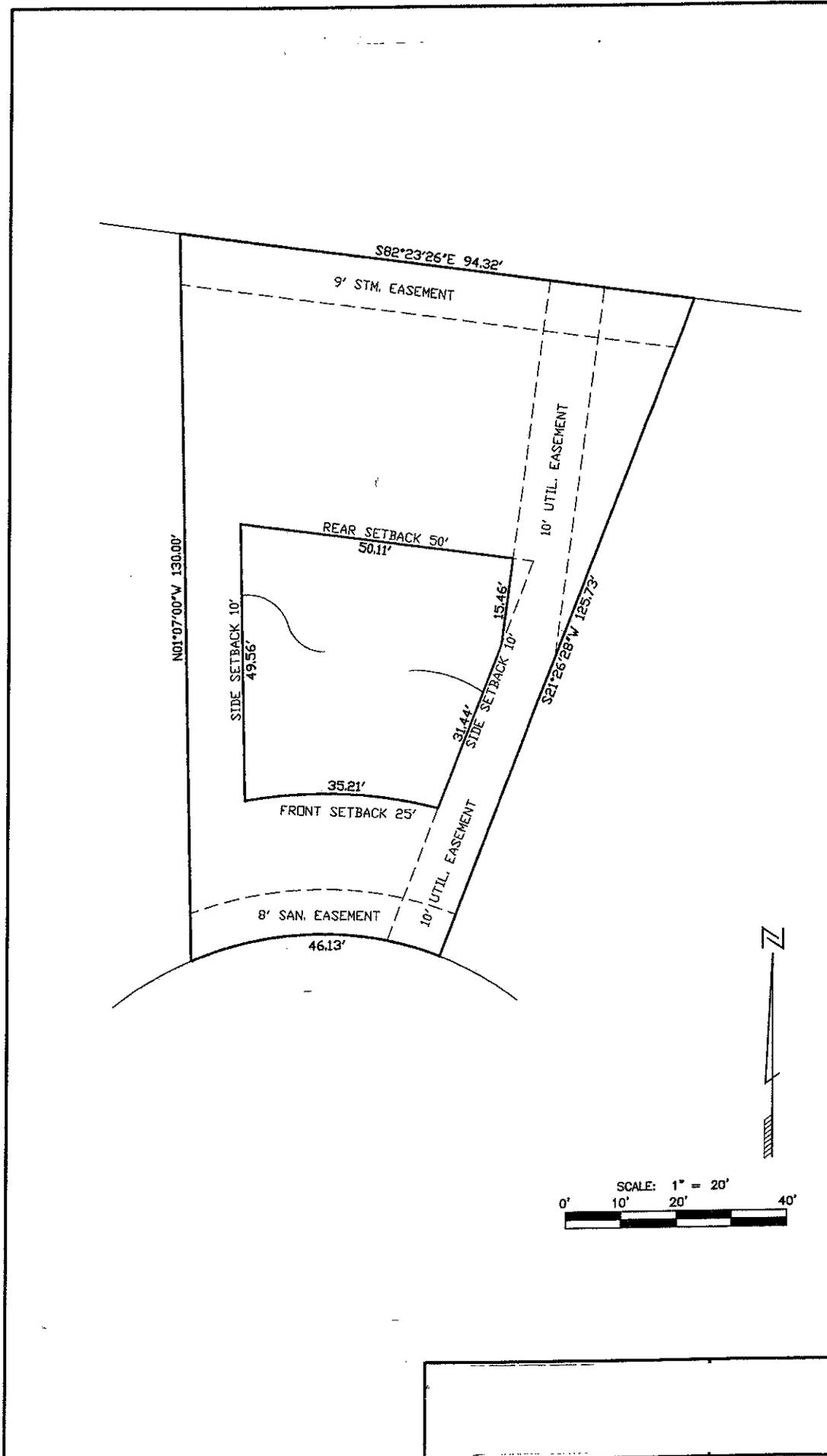
LEGEND

- CONCRETE MONUMENT SET
- (R) RADIAL
- (NR) NON-RADIAL

NOTES:
- PETROS COURT IS PUBLIC.
- IRONS SET AT ALL UNIT CORNERS



Mortgage Survey Map





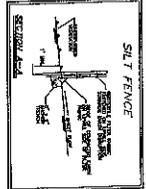
LOT COVERAGE
 Lot area (to be finished)
 23,001 sq. ft.
 Building area
 1,500 sq. ft.
 Total impervious surface area
 1,500 sq. ft.
 Total impervious surface area
 1,500 sq. ft.

PERMIT FIELD
 PERMIT FIELD
 PERMIT FIELD

BENCH MARKS
 Primary Benchmarks
 Ⓞ Site Benchmark No. 1
 Ⓞ Site Benchmark No. 2

LEGEND
 ○ FOUND IRON
 ⊙ SINKHOLE
 ⊕ BENCHMARK
 ⊕ WATER MAIN, PROPOSED, DATE MARK
 ⊕ WATER SHUT-OFF, WATER LETTER
 ⊕ UTILITY LINE O/L, P.O.L., GUY WIRE
 ⊕ LIGHT POLE
 ⊕ RETAINING WALL
 ⊕ EX. CONTOUR
 ⊕ EX. CONTOUR, GRADE
 ⊕ PR. SOAK WATER TOWER
 ⊕ CONTEMPORARY TREE
 ⊕ HOUSE FINISH FLOOR ELEV.
 ⊕ GARAGE FINISH FLOOR ELEV.
 ⊕ WALKWAY FINISH FLOOR ELEV.
 ⊕ PR. DRIVEWAY

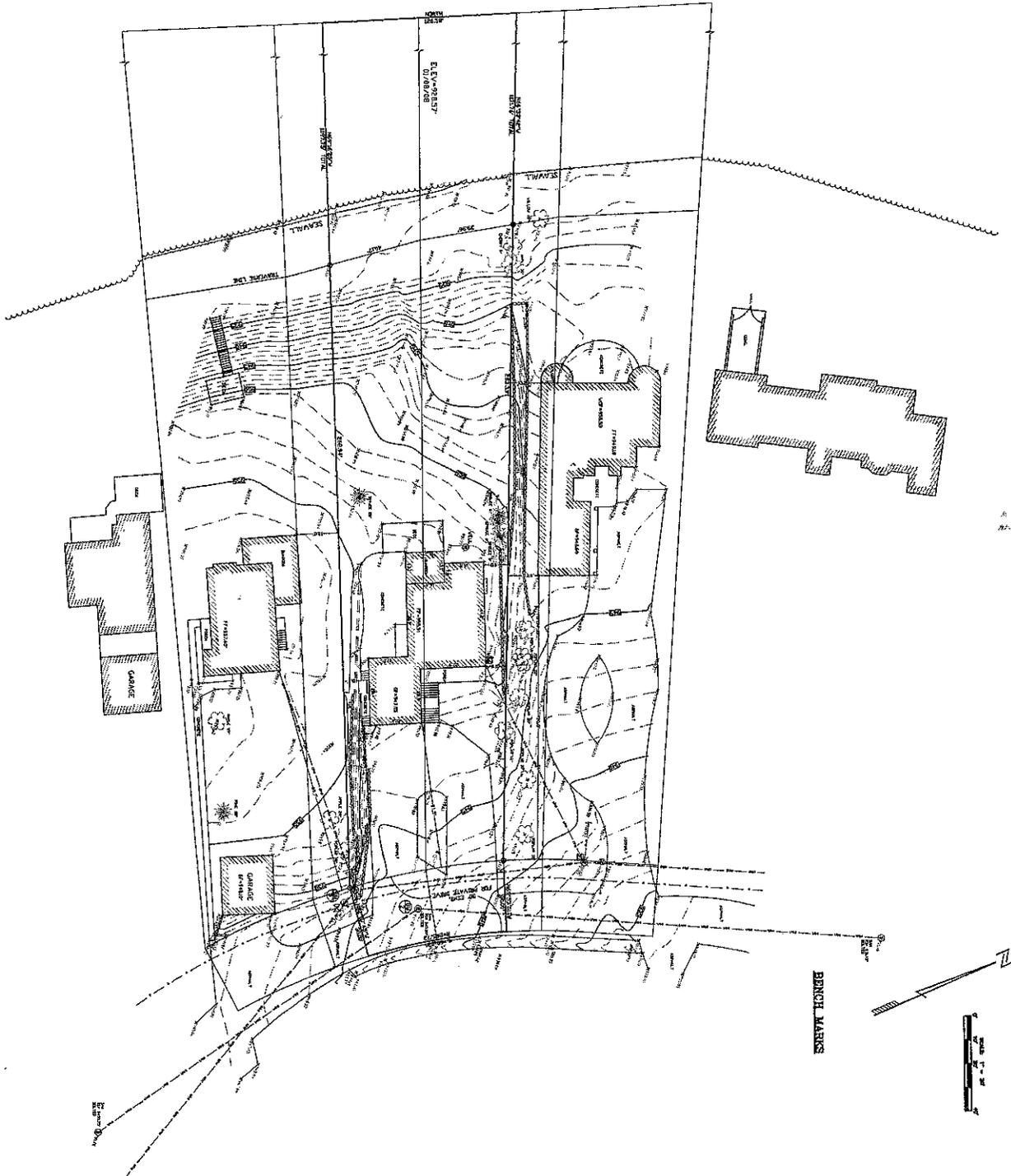
SEQUENCE OF CONSTRUCTION:
 1) ALL SOIL BORING CONTROL, SHALERS, PILES, AND
 PILES TO BE INSTALLED AND PROVED TO THE
 DESIGNER'S SATISFACTION.
 2) THE EXISTING CONCRETE FOUNDATION SHALL BE
 REINFORCED WITH STEEL REBAR AND
 CONCRETE SHALL BE CAST IN PLACE.
 3) ALL STRUCTURAL STEEL SHALL BE WELDED TO THE
 EXISTING CONCRETE FOUNDATION.
 4) ALL STRUCTURAL STEEL SHALL BE WELDED TO THE
 EXISTING CONCRETE FOUNDATION.
 5) ALL STRUCTURAL STEEL SHALL BE WELDED TO THE
 EXISTING CONCRETE FOUNDATION.



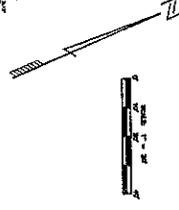
LEGAL DESCRIPTION Parcel No. 14-00-01-0000
 (FROM THE RECORDS)
NOTES

DATE	DESCRIPTION
02-21-09	GRADING
02-21-09	CONCRETE
02-21-09	STEEL
02-21-09	WELDER
02-21-09	WELDER

Topographical Survey Map



BENCH MARKS



- 50' BENCH MARK
- FOUNDATION/PIVOT/NOV/ANK
- SECTION CORNER
- ELEVATIONS
- BENCH MARKS
- SANITARY DRAIN, MANHOLE
- STEW DRAIN, MANHOLE
- CATCH BASIN SQUARE, ROUND
- GAS SECTION, MANHOLE, GATE VALVE
- WATER SHUT-OFF, WATER METERS
- CASHMET STREET & MANHOLE
- UNKNOWN DRAINAGE, VALVE
- UTILITY LINE O/D, POLE, GUY WIRE
- ELECTRIC LINE U/A, MANHOLE
- GAS, IGNITION DEPT, MANHOLE
- ELECTRIC METER
- TELEPHONE METER
- TELE LINE O/D, POLE, GUY WIRE
- TELE LINE O/D, MANHOLE
- MAIL BOX
- PARKING METER
- SIGN
- DECIDUOUS TREE
- CONIFEROUS TREE

- SHRUB
- TREE LINE
- TREE
- WALL
- GUARD RAIL
- HOUSE FINISH FLOOR ELEV.
- GARAGE FINISH FLOOR ELEV.
- WALKOUT FINISH FLOOR ELEV.

LEGAL DESCRIPTION

(to be provided by the client)

NOTES

CERTIFICATION

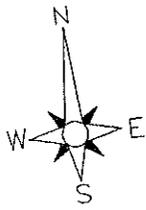
07/17/09 AMK TBRD
 1:30 PM
 07/17/09

Appendix M: Examples of Instrument Survey Maps. With respect to the instrument survey maps referenced below, where possible, comments have been included referencing the Monroe County Bar Association Suggested Title Standards for Treating Discrepancies Revealed by Surveys (March, 2012).

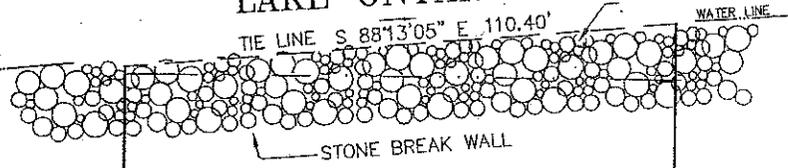
1. Example of a Survey Map that depicts a potential prescriptive easement.
2. Example of 2 Survey Maps created by 2 different surveyors that depict the same property with different boundary lines.
3. Example of a Survey Map that depicts a distance of 11.7' between the southwest corner of the house on the subject property and the southeast corner of the house located on the adjoining property.
4. 2 separate examples of Survey Maps that depict an above ground pool encroaching onto adjoining property.
5. 2 examples of Survey Maps that depict a shed that either encroaches onto the adjoining property or encroaches on the subject property, depending upon who owns the shed.
6. 3 examples of Survey Maps where the age of fence determines whether a fence affidavit of Seller will be sufficient (fence 7/8/98 or newer) or whether a boundary line agreement with the adjoining property owner will be necessary (fence 7/7/98 or older).
7. Example of a Survey Map that depicts a shed encroaching an unknown distance onto a 12.5' wide drainage easement.
8. 2 examples of Survey Maps that depict a fence encroaching upon the adjoining property.
9. Example of a Survey Map that depicts a Frame Garage encroaching upon the adjoining property.
10. 2 examples of Survey Maps that depict the driveway of the subject property extending onto the adjoining property.
11. 2 examples of Survey Maps that depict a fence, presumably owned by the adjoining property owner, that encroaches on the subject property.
12. Example of a Survey Map that depicts the existence of a "Limited Development District."
13. Example of a Survey Map that depicts the driveway for the adjoining property encroaching onto the subject property up to 2.9' south of the north boundary line of the subject property. The driveway for the adjoining property also abuts up against the house on the subject property.
14. Example of 2 Survey Maps prepared by the same surveyor that depict a fence on the subject property both with and without a gate.

15. Example of Survey Map where the surveyor set the west boundary line for the subject property and also provided references on the Survey Map which indicate that the west boundary line of the subject property is other than as depicted.
16. Example of Survey Map that depicts a violation of the applicable minimum setback for the subject property.
17. Example of 2 Survey Maps created by 2 different surveyors that depict the same property with different boundary lines.

Example of a Survey Map that depicts a potential prescriptive easement. The Survey Map depicts a “5’ wide grass trail” which runs from a point on the subject property to an unknown point on the adjoining property.

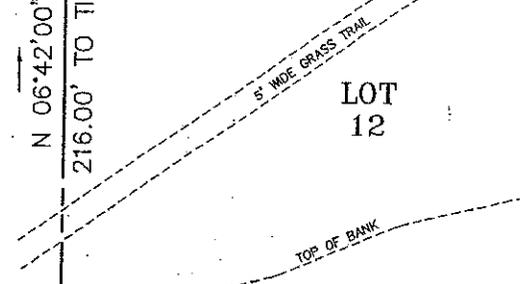


LAKE ONTARIO



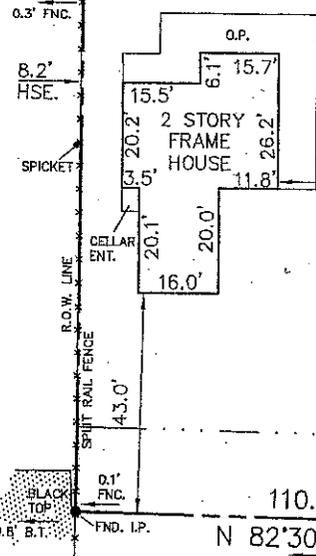
N 06°42'00" E
216.00' TO TIE LINE

LOT
12



FND. I.P. W-0.53'
FND. I.P. E-0.08'
WIRE 1.2' FNC.
IRREGULAR WIRE FENCE
WIRE 0.6' FNC.
PICKET 0.3' FNC.

FND. I.P.
0.3' FNC.



AREA TO R.O.W. =
0.56 ± ACRES

227.00' TO TIE LINE
S 06°42'00" W

R.O.W. LINE
SPILT RAIL FENCE
43.0'
0.1' FNC.
0.6' B.T.

REPUTED 99' R.O.W. PER REF. 3
0.6' FNC.
FND. I.P. N-0.62' W-0.32'
R.O.W. LINE
FND. I.P. S-0.17'

110.00' N 82°30'00" W

REFERENCES:
1. 2. 3. 4. 5.

CERTIFICATION:
I hereby certify to:

Survey Map - potential prescriptive easement

NOTE: Property corners should only be set by a licensed, registered land surveyor.

TITLE: INSTRUMENT SURVEY MAP

Tax Account No.

"Unauthorized alteration or addition to a survey map bearing a licensed land surveyors seal is a violation of section 7209 Subdivision 2, of the New York State Education Law."
"Only copies from the original of this survey marked with an original land surveyors seal shall be considered to be valid true copies."
"Certifications shall run only for the person for whom the survey is prepared, and on behalf of the title company insuring the fee, the governmental agency and lending institution listed hereon, and to the assignees of the lending institution. Certifications are not transferable to additional institutions or subsequent owners." This map is subject to any easements and/or encumbrances that an abstract of title may show. No guarantee is made that all easements pertinent to the subject property are shown on this map.
The word "certify" or "certification" as shown and used hereon means an expression of professional opinion regarding the facts of the survey and does not constitute a warranty of guarantee expressed or implied. Location of subterranean improvements, easements, and utilities which are covered may be approximate or not even shown hereon. Landscaping features are not shown on this map unless otherwise specified.

FILE No.
OWNER:
SCALE: 1" = 30'

Example of 2 Survey Maps created by 2 different surveyors that depict the same property with different boundary lines.

Survey Map 1 depicts a deck and fence extending up to 2.2' west of the west boundary line of the subject property.

COMMENT:

If the fence existed on or before July 7, 1998, the following analysis applies:

- The fence constitutes an objection to title which may be cured by an affidavit of the Seller.

If the fence was installed on July 8, 1998 or thereafter, the following analysis applies:

- The fence still constitutes an objection to title which may be cured by an affidavit of the Seller.

Survey Map 2 depicts the deck and fence being located 0.5' east of the west boundary line of the subject property.

COMMENT:

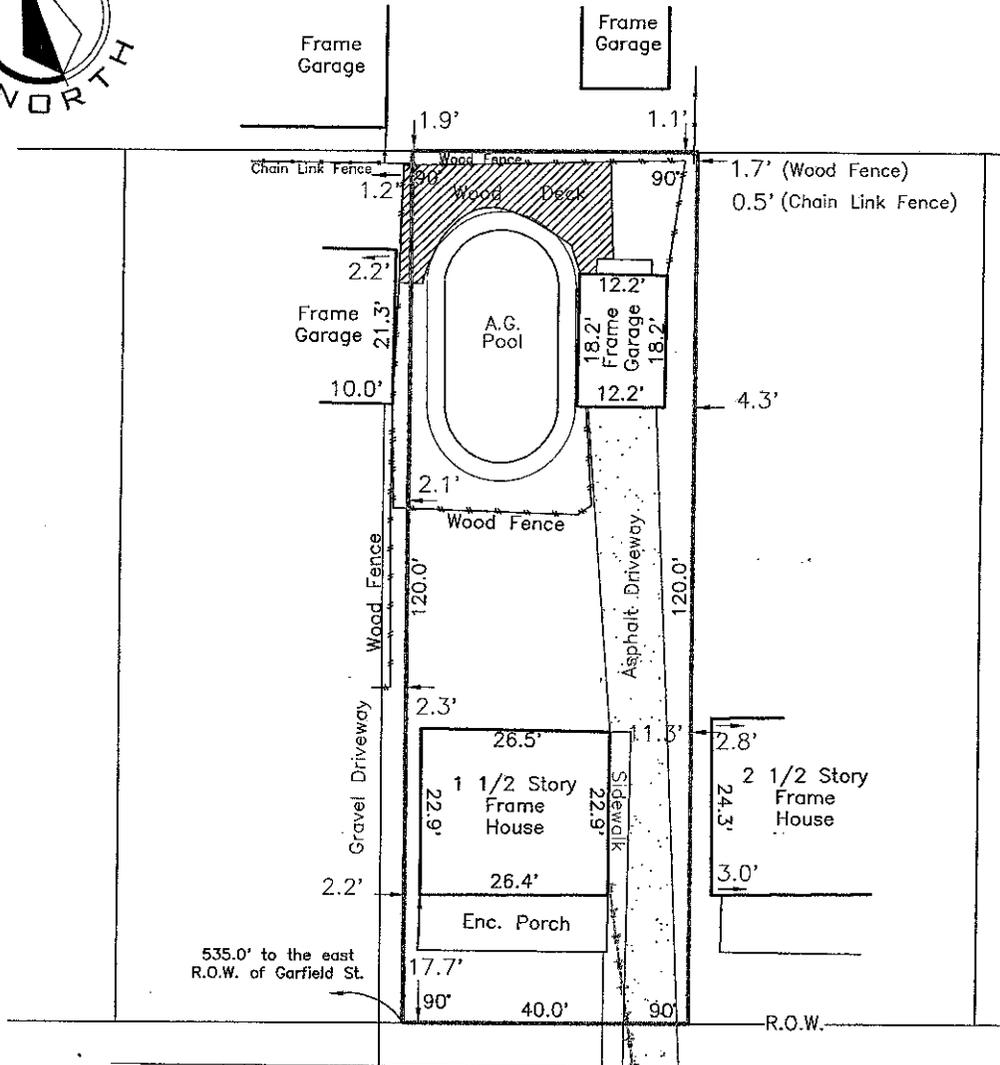
Whether the fence existed on or before July 7, 1998 or was installed on July 8, 1998, the following analysis applies:

- The fence does not constitute an objection to title because the fence does not encroach onto the neighboring property.

INSTRUMENT LOCATION MAP

SHOWING

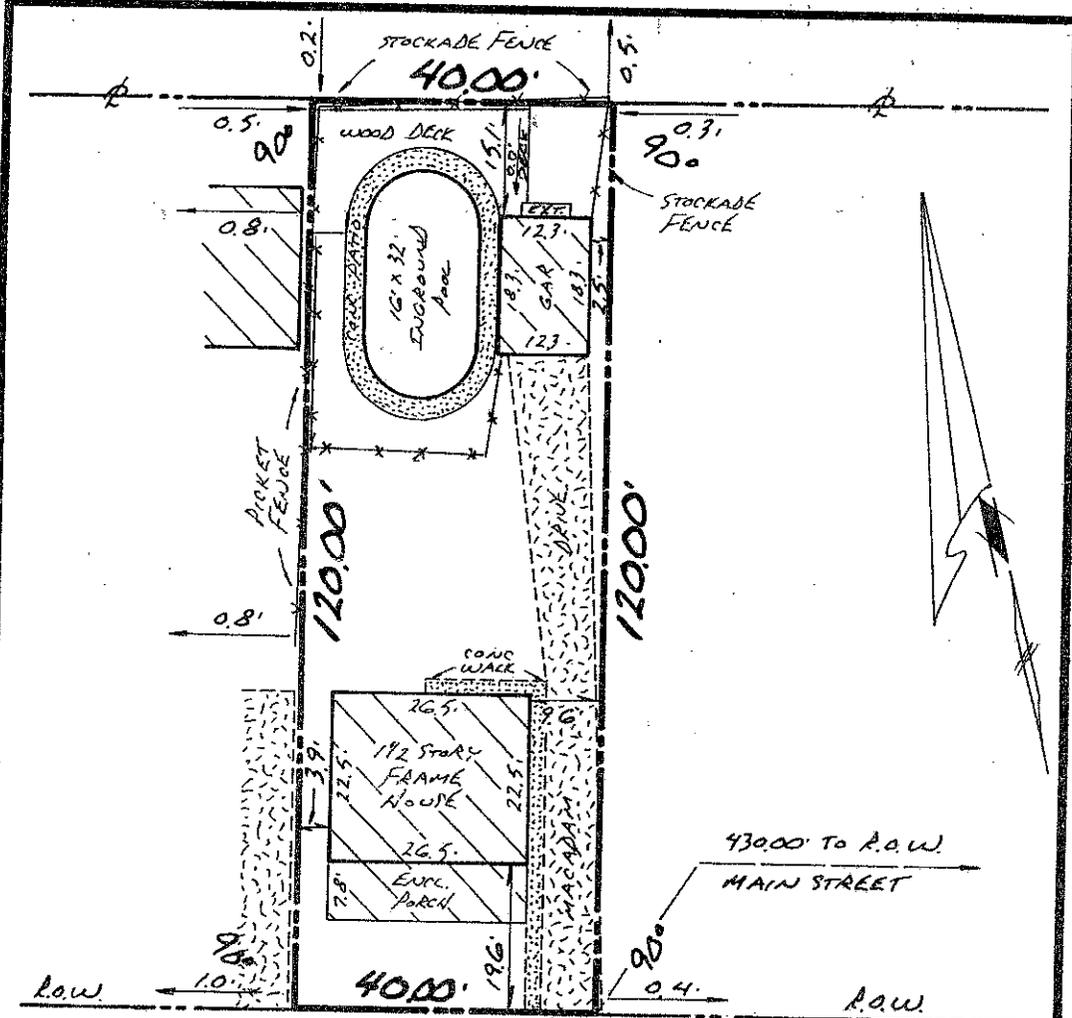
Survey Map 1 - Deck & Fence encroach on adjoining property



CERTIFIED TO:

REFERENCES:

UNAUTHORIZED ALTERATION OR ADDITION TO A SURVEY MAP BEARING
A LICENSED LAND SURVEYOR'S SEAL IS A VIOLATION OF SECTION
7209, SUBDIVISION 2 OF THE NEW YORK STATE EDUCATION LAW.



REFERENCES:

Survey Map 2 - Deck & Fence located within boundary

CERTIFICATION:
I hereby certify to:

TITLE: <u>INSTRUMENT SURVEY MAP</u>	Tax Account No.
DATE:	<small>Unauthorized alteration or addition to a survey map bearing a licensed land surveyors seal is a violation of section 7209 Subdivision 2, of the New York State Education Law. "Only copies from the original of this survey marked with an original land surveyors seal shall be considered to be valid true copies." Certifications shall run only for the person for whom the survey is prepared, and on behalf of the title company insuring the fee, the governmental agency and lending institution listed hereon, and to the assignees of the lending institution. Certifications are not transferable to additional institutions or subsequent owners." This map is subject to any easements and/or encumbrances that an abstract of title may show. The word "certify" or "certification" as shown and used hereon means an expression of professional opinion regarding the facts of the survey and does not constitute a warranty or guarantee expressed or implied. Location of subterranean improvements and those which are covered may be approximate or not shown hereon. Landscaping features are not shown hereon, unless otherwise specified.</small>
FILE No.	
OWNER:	
SCALE: <u>1 inch = 20 FEET</u>	

Example of a Survey Map that depicts a distance of 11.7' between the southwest corner of the house on the subject property and the southeast corner of the house located on the adjoining property.

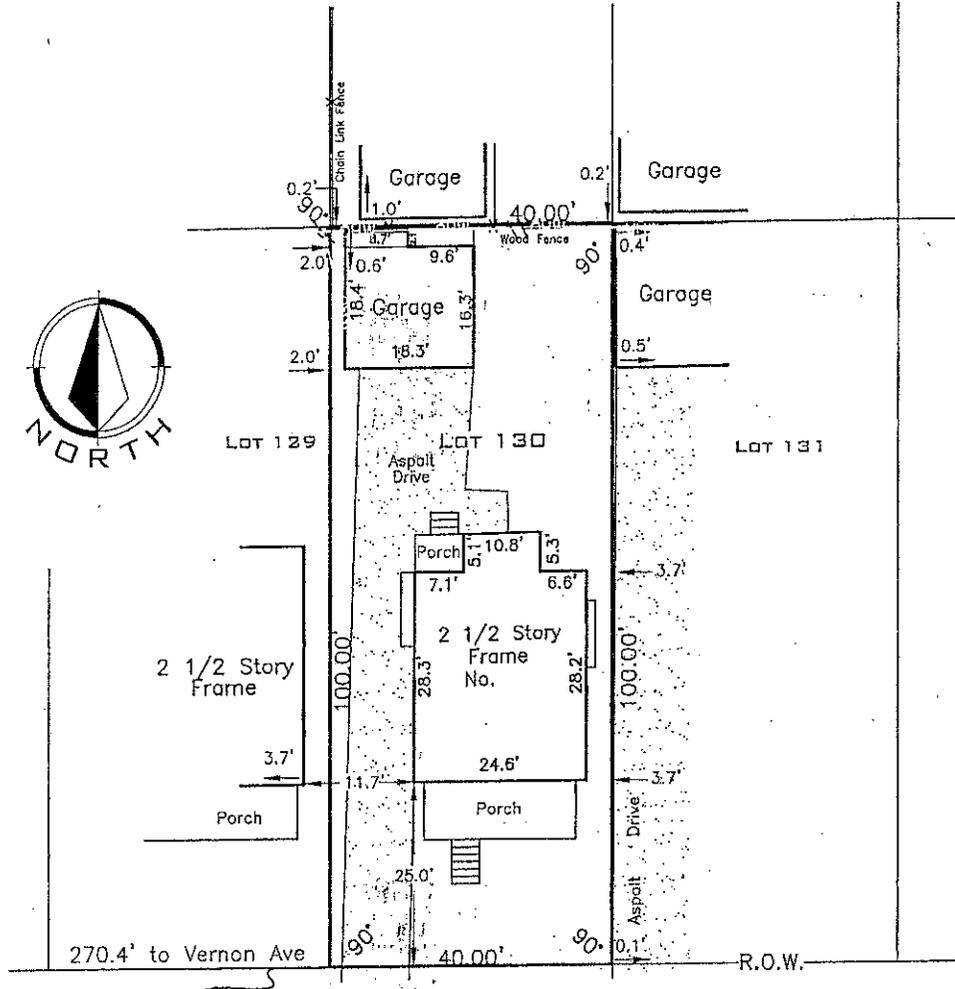
COMMENT:

The Survey Map measurement depicting a distance of 11.7' is in error as the Survey Map should depict the distance between the southwest corner of the house on the subject property and the west boundary line of the subject property.

INSTRUMENT LOCATION MAP

SHOWING

Survey Map with error in measurements depicted



CERTIFIED TO:

REFERENCES:

2 separate examples of Survey Maps that depict an above ground pool encroaching onto adjoining property.

Survey Map 1 depicts an above ground pool where the deck encroaches onto the adjoining property up to 9.9’.

COMMENT:

If the pool existed on or before July 7, 1998, the following analysis applies:

- Whether the pool is owned by the owner of the subject property or owned by the owner of the adjoining property, the pool is considered a non-moveable accessory structure and therefore constitutes an objection to title. An agreement in recordable form (a “Boundary Line Agreement” or “BLA”) is required.

If the pool was installed on July 8, 1998 or thereafter, the following analysis applies:

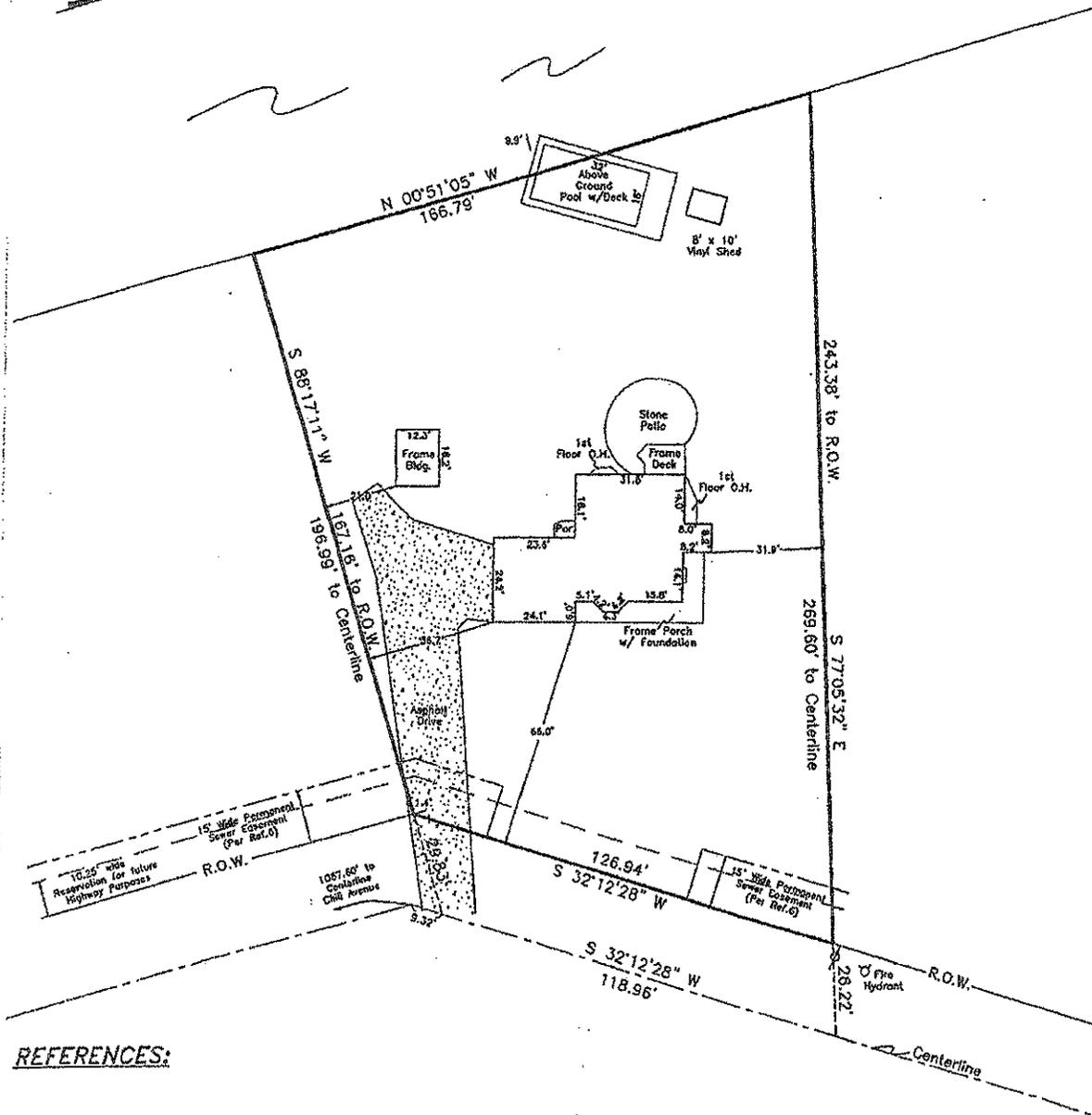
- If the pool is owned by the owner of the subject property, the pool constitutes an objection to title which may be cured by an Affidavit of the owner affirming that:
 - no demand has been made to remove the improvement;
 - the owner of the subject property asserts title only to the surveyed property lines, notwithstanding the placement of the improvement; and
 - no current dispute exists as to the location of the boundary line.
- If the pool is owned by the owner of the adjoining property, the pool constitutes an objection to title. Since the pool cuts off the access of the owner of the subject property to the land occupied by the pool, the objection to title must be cured by an agreement in recordable form be obtained from the owner of the adjoining property that no claim of title is asserted against the subject property by virtue of such encroachment.

Survey Map 2 depicts an above ground pool where the deck encroaches onto the adjoining property up to 5.0’.

COMMENT:

The same analysis applies to Survey Map 2 as set forth above regarding Survey Map 1.

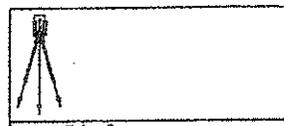
Pool encroaching onto adjoining property - Survey Map 1



REFERENCES:

LEGEND

Survey Pole



Intentional alteration of a corner to a survey may be made if the land surveyor's need is a matter of Section 220, Subsection 2, of the New York State Education Law.

July 1984 was the original of this survey started with the original of the surveyor's instrument and shall be considered to be used for reference.

Intentional alteration of a corner to a survey may be made if the land surveyor's need is a matter of Section 220, Subsection 2, of the New York State Education Law.

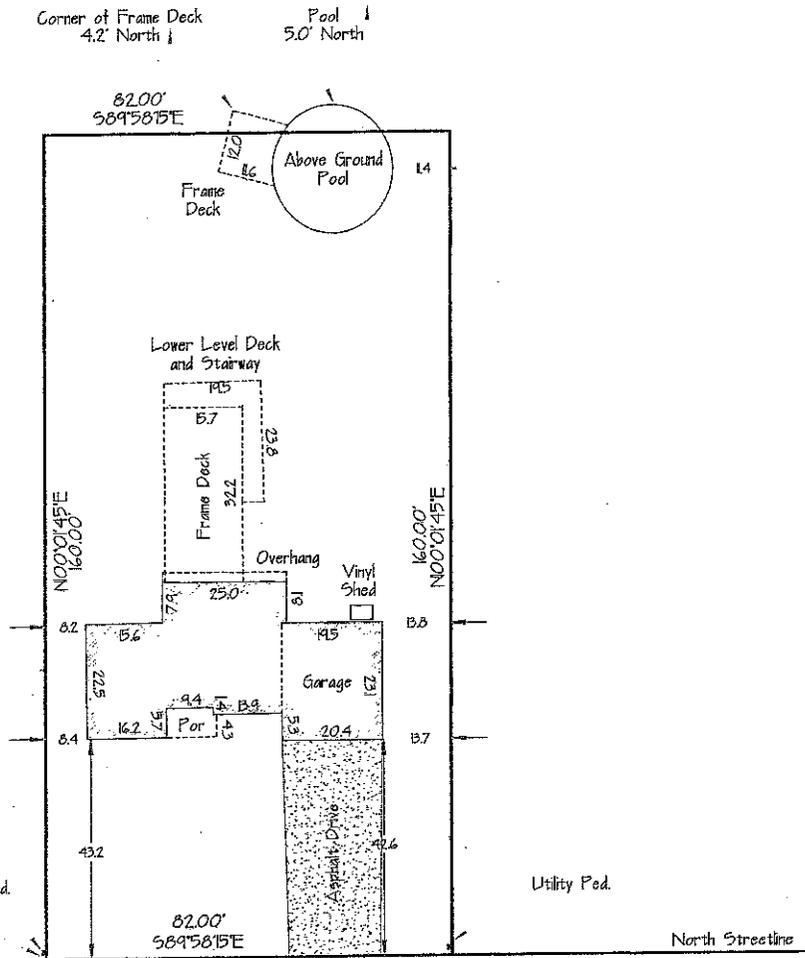
Intentional alteration of a corner to a survey may be made if the land surveyor's need is a matter of Section 220, Subsection 2, of the New York State Education Law.

Intentional alteration of a corner to a survey may be made if the land surveyor's need is a matter of Section 220, Subsection 2, of the New York State Education Law.

Intentional alteration of a corner to a survey may be made if the land surveyor's need is a matter of Section 220, Subsection 2, of the New York State Education Law.

INSTRUMENT SURVEY MAP

SCALE 1" = 30'



Survey Map 2 - pool encroaches on adjoining property

REFERENCES:

CERTIFICATIONS TO:

PREMISES SUBJECT TO:

2 examples of Survey Maps that depict a shed that either encroaches onto the adjoining property or encroaches on the subject property, depending upon who owns the shed.

Survey Map 1 depicts a shed extending up to 4.83' north of the north boundary line of the subject property onto the adjoining property. The shed also extends up to 1.20' south of the north boundary line of the subject property. The portion of the shed located up to 1.20' south of the north boundary line of the subject property also encroaches onto a 20' wide access easement located on the subject property.

COMMENT:

If the shed existed on or before July 7, 1998, the following analysis applies:

- If the shed is owned by the owner of the subject property and the shed is moveable, the shed will not constitute an objection to title. If the shed is not moveable, the shed constitutes an objection to title and requires that an agreement in recordable form be obtained from the owner of the adjoining property consenting to the continuation of the encroachment so long as the structure or improvement shall stand.
- If the shed is owned by the owner of the adjoining property and the shed is moveable, the shed constitutes an objection to title (as it encroaches on the subject property more than one foot) objection to title and may be cured by (i) removal, evidence by an amended survey map or (ii) a written agreement in recordable form from the neighbor that no claim of title is asserted against the subject property as a result of such encroachment. If the shed is not moveable, the shed constitutes an objection to title and requires that an agreement in recordable form be obtained from the owner of the adjoining property that no claim of title is asserted against the subject property by virtue of such encroachment.

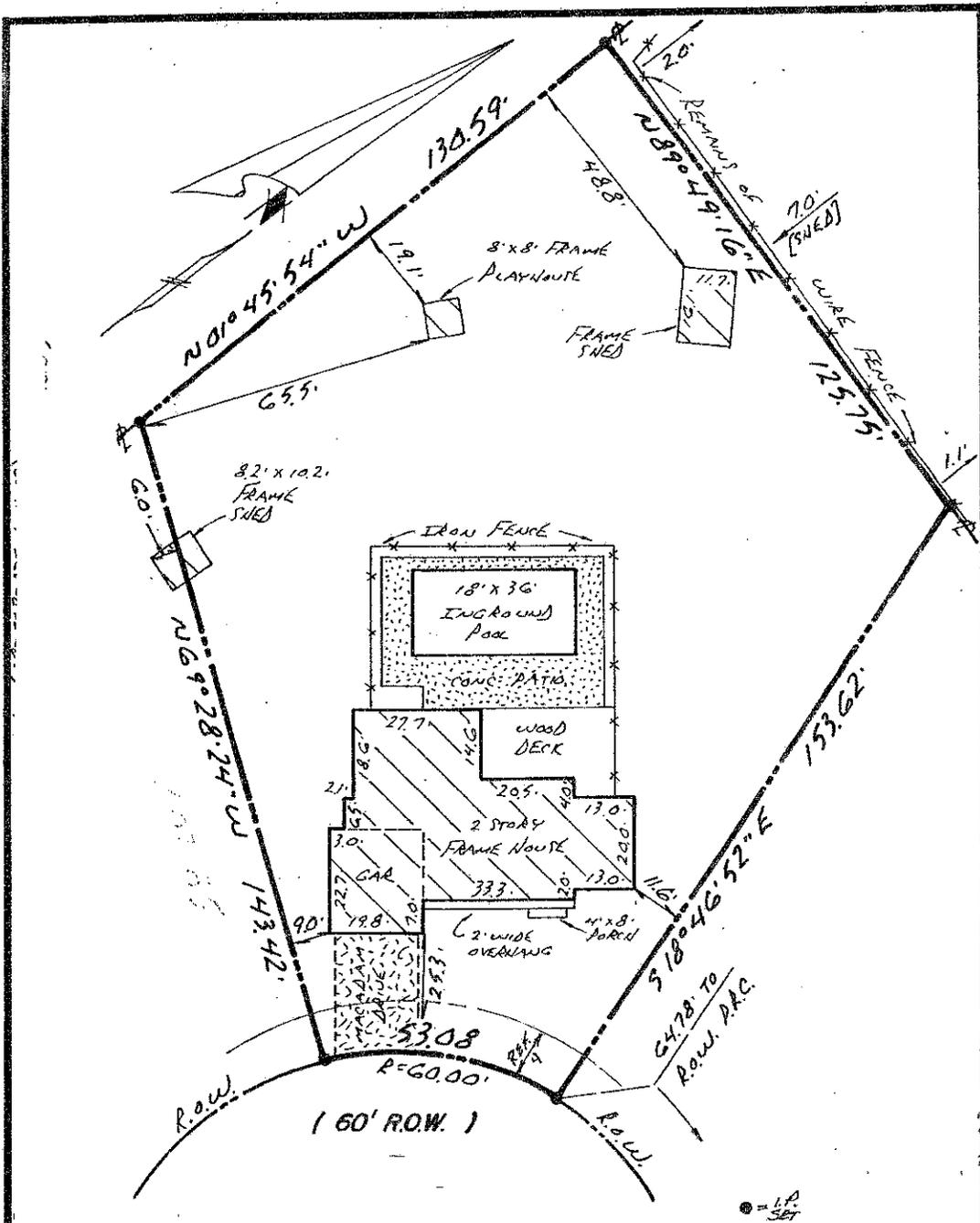
If the shed was installed on July 8, 1998 or thereafter, the following analysis applies:

- If the shed is owned by the owner of the subject property, the shed constitutes an objection to title which shall be cured by an affidavit of the Seller affirming (i) that no demand has been made to remove the improvement, (ii) that the Seller asserts title only to the surveyed property lines, notwithstanding the placement of the improvement, and (iii) that no current dispute exists as to the location of the boundary line.
- If the shed is owned by the owner of the adjoining property, the shed constitutes an objection to title which shall be cured by an agreement in recordable form be obtained from the owner of the adjoining property that no claim of title is asserted against the subject property by virtue of such encroachment.

Survey Map 2 depicts a shed extending up to 6.0' south of the south boundary line of the subject property onto the adjoining property and an unknown distance north of the north boundary line of the subject property.

COMMENT:

The same analysis applies to Survey Map 2 as set forth above regarding Survey Map 1.



CERTIFICATION:

I hereby certify to:

Survey Map 2 - shed encroaches upon adjoining property

TITLE:	INSTRUMENT SURVEY MAP	Tax Account No.
FILE No.	<p>"Unauthorized alteration or addition to a survey map bearing a licensed land surveyors seal is a violation of section 7209 Subdivision 2, of the New York State Education Law."</p> <p>"Only copies from the original of this survey marked with an original land surveyors seal shall be considered to be valid true copies."</p> <p>Certifications shall run only for the person for whom the survey is prepared, and on behalf of the title company issuing the fee, the governmental agency and lending institution listed hereon, and to the assignees of the lending institution. Certifications are not transferable to additional institutions or subsequent owners." This map is subject to any easements and/or encumbrances that an abstract of title may show. The word "certify" or "certification" as shown and used hereon means an expression of professional opinion regarding the facts of the survey and does not constitute a warranty or guarantee expressed or implied. Location of subterranean improvements and those which are covered may be approximate or not shown hereon.</p>	

3 examples of Survey Maps where the age of fence determines whether a fence affidavit of Seller will be sufficient (fence 7/8/98 or newer) or whether a boundary line agreement with the adjoining property owner will be necessary (fence 7/7/98 or older).

Survey Map 1 depicts a chain link fence located up to 1.54' west of the east boundary line of the subject property. The fence is owned by the owner of the subject property.

COMMENT:

If the fence existed on or before July 7, 1998, the following analysis applies:

- Whether the fence is owned by the owner of the subject property or the owner of the adjoining property, the fence constitutes an objection to title and shall be cured by a written agreement in recordable form from the neighbor that no claim of title is asserted against the subject property as a result of the fence.

If the fence was installed on July 8, 1998 or thereafter, the following analysis applies:

- The fence does not constitute an objection to title.

Survey Map 2 depicts a board fence/picket fence located up to 2.0' south of the north boundary line of the subject property as well as a board fence located up to 1.9' east of the west boundary line of the subject property. The fences are owned by the owner of the subject property.

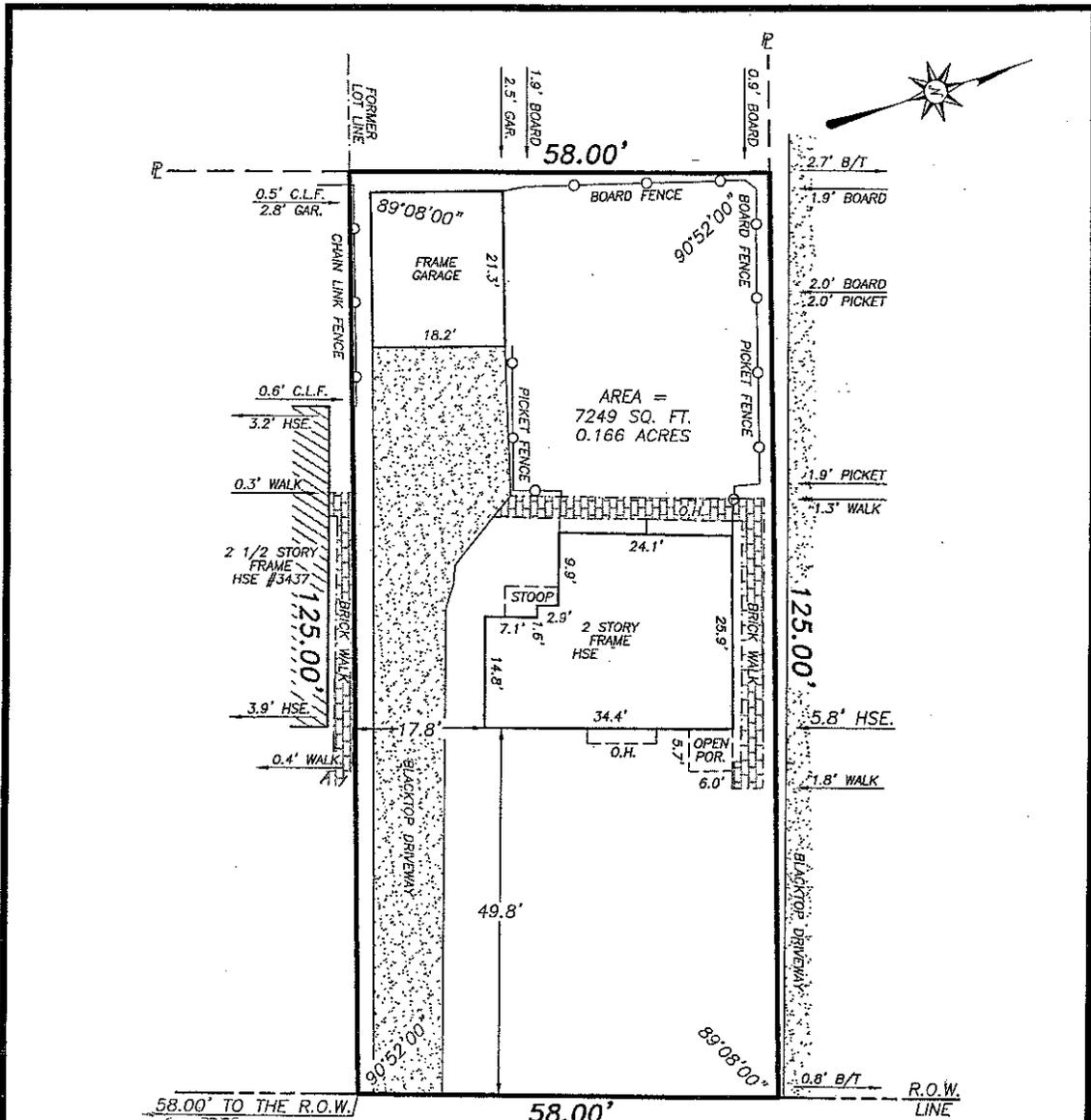
COMMENT:

The same analysis applies to Survey Map 2 as set forth above regarding Survey Map 1.

Survey Map 3 depicts a chain link fence located up to 3.2' east of the west boundary line of the subject property, a chain link fence located up to 7.1' north of the south boundary line of the subject property, and a chain link fence located up to 1.6' west of the east boundary line of the subject property. The fences are owned by the owner of the subject property.

COMMENT:

The same analysis applies to Survey Map 3 as set forth above regarding Survey Map 1.



Survey Map 2 - age of fence determines treatment thereof

REFERENCES:

NOTE: PREMISES SUBJECT TO ALL EASEMENTS, RESTRICTIONS & COVENANTS OF RECORD.

TITLE: INSTRUMENT SURVEY MAP

"Unauthorized alteration or addition to a survey map bearing a licensed land surveyor's seal is a violation of Section 7209, sub-division 2, of the New York State Education Law."

"Only copies from the original of this survey marked with an original of the land surveyor's red ink seal shall be considered to be valid true copies."

"Certifications indicated hereon signify that this survey was prepared in accordance with the existing Code of Practice for Land Surveyors adopted by the New York State Association of Professional Land Surveyors. Said certifications shall run only to the person for whom the survey is prepared, and on his behalf to the title company, governmental agency and lending institution listed hereon, and to the assignees of the lending institution. Certifications are not transferable to additional institutions or subsequent owners."

SCALE: 1" = 20'	TAX ACCOUNT:	JOB NO.:	DATE:
--------------------	--------------	----------	-------

Example of a Survey Map that depicts a shed encroaching an unknown distance onto a 12.5' wide drainage easement. The shed is owned by the owner of the subject property.

COMMENT:

If the shed existed on or before July 7, 1998, the following analysis applies:

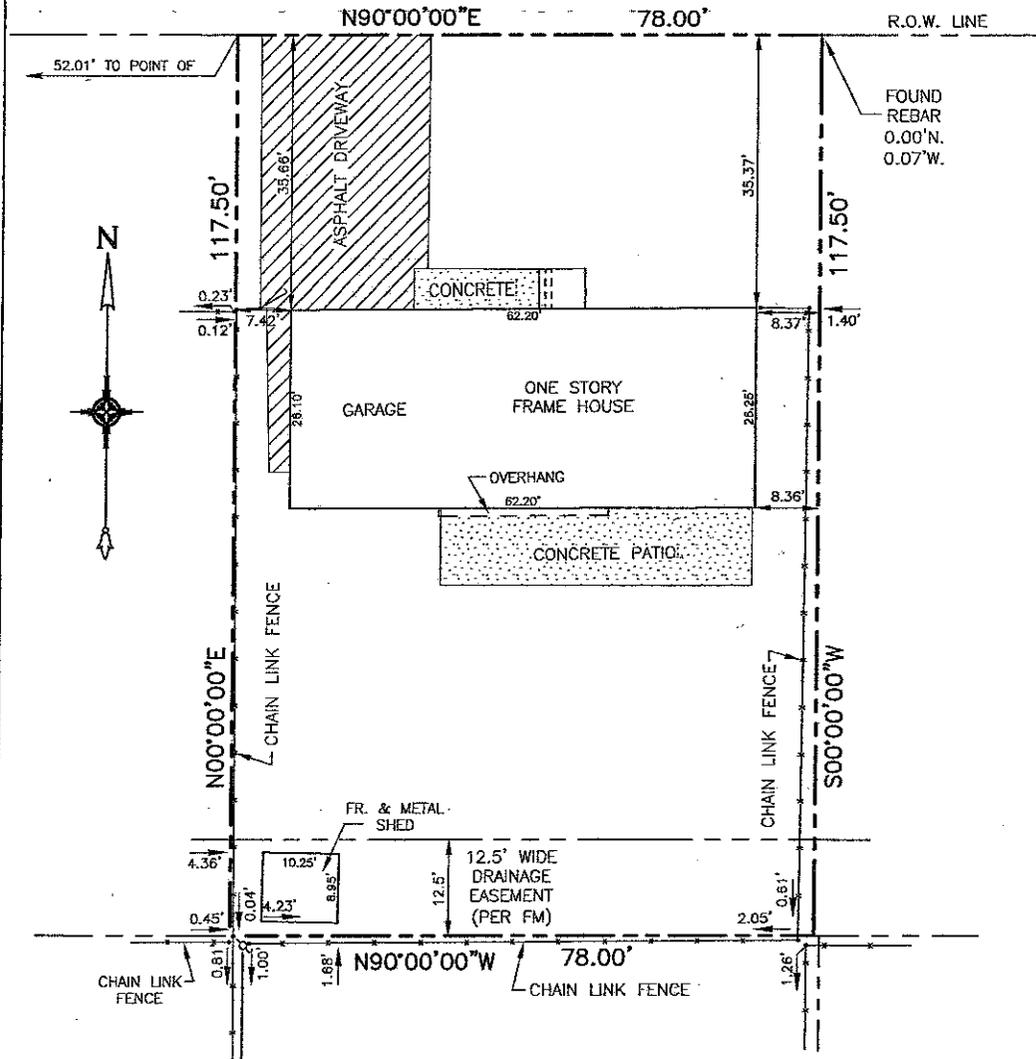
- If the shed is moveable, the shed does not constitute an objection to title. If the shed is not moveable, the shed constitutes an objection to title and shall be cured by a written consent or release be obtained from the holder of the easement.

If the shed was installed on July 8, 1998 or thereafter, the following analysis applies:

- The shed does not constitute an objection to title.

INSTRUMENT SURVEY

Survey Map - shed encroaches on easement



1. Certifications indicated hereon signify that this survey was prepared in accordance with the existing Code of Practice for Land Surveys adopted by the New York State Association of Professional Land Surveyors. Said certifications shall run only to the person for whom the survey is prepared, and on his behalf to the title company, governmental agency and lending institution listed hereon, and to the assignees of the lending institution. Certifications are not transferable to additional institutions or subsequent owners. 2. Only copies from the original of this survey marked with an original of the land surveyor's inked seal or his embossed seal shall be considered to be valid true copies. 3. Unauthorized alteration or addition to a survey map bearing a licensed land surveyor's seal is a violation of section 7209, sub-division 2, of the New York State Education Law.

I HEREBY CERTIFY TO:

THAT THIS MAP WAS PREPARED FROM NOTES OF AN INSTRUMENT SURVEY COMPLETED ON

2 examples of Survey Maps that depict a fence encroaching upon the adjoining property.

Survey Map 1 depicts a fence located up to 2.09' south of the south boundary line of the subject property. The Survey Map also depicts a fence located up to 2.15' south of the north boundary line of the subject property. The fence is owned by the owner of the subject property.

COMMENT:

If the fence existed on or before July 7, 1998, the following analysis applies:

- The fence constitutes an objection to title which shall be cured by an affidavit of the Seller affirming (i) that no demand has been made to remove the fence, (ii) that the Seller asserts title only to the surveyed property lines, notwithstanding the placement of the fence, and (iii) that no current dispute exists as to the location of the boundary line.

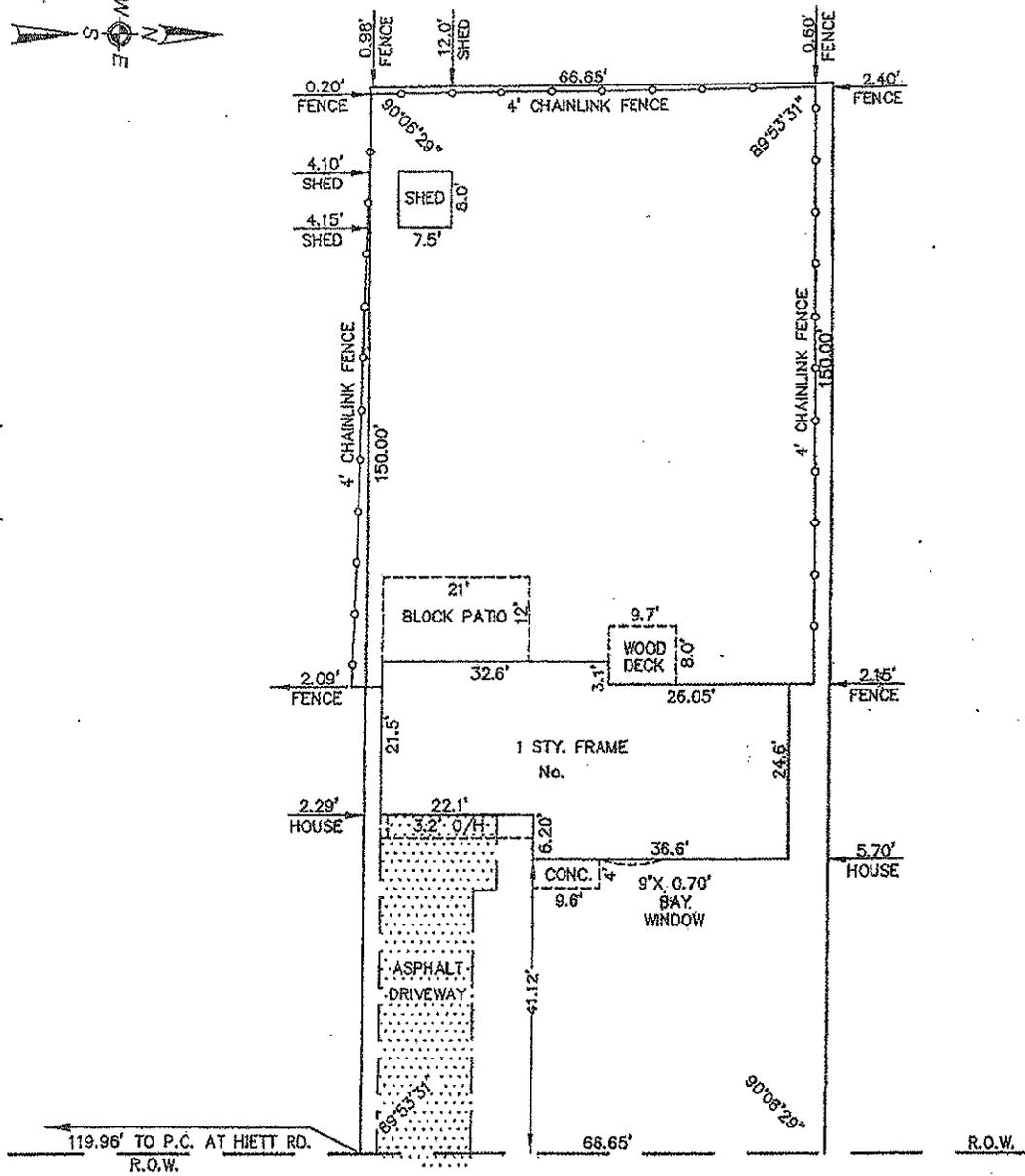
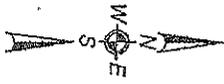
If the fence was installed on July 8, 1998 or thereafter, the following analysis applies:

- The fence shall constitute an objection to title which shall be cured by an affidavit of the Seller affirming (i) that no demand has been made to remove the improvement, (ii) that the Seller asserts title only to the surveyed property lines, notwithstanding the placement of the improvement, and (iii) that no current dispute exists as to the location of the boundary line.

Survey Map 2 depicts a chain link fence located up to 26.8±' north of the north boundary line of the subject property.

COMMENT:

The same analysis applies to Survey Map 2 as set forth above regarding Survey Map 1.



REFERENCES:

(50' ROW)

Survey Map 1 - fence encroaches on adjoining property

~~VERIFICATION~~

2	INSTRUMENT SURVEY MAP	PROJECT SURVEYOR
		DRAFTED BY
208		CHECKED BY
		SCALE
UNAUTHORIZED ALTERATIONS OR ADDITIONS TO A SURVEY MAP BEARING THE SEAL OF A LICENSED LAND SURVEYOR IS A VIOLATION OF ARTICLE 145, SECTION 7209, SUBDIVISION 2 OF THE NEW YORK STATE EDUCATION LAW		DATE: C

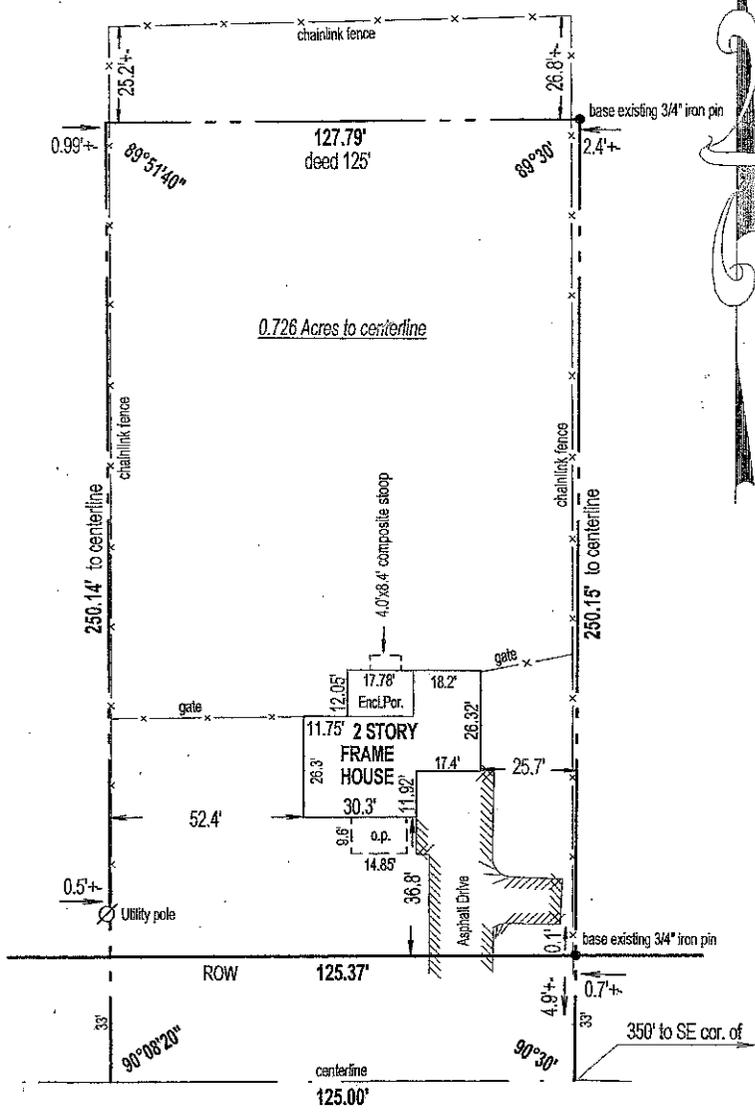
INSTRUMENT SURVEY

Survey Map 2 - fence encroaches on adjoining property

N

REFERENCES:

CERTIFICATION TO:



	<p><u>SCALE</u></p> <p>1" = 40'</p>
	<p><u>DATE</u></p>

Certifications indicated hereon signify that this survey was prepared in accordance with the Code of Practice for Land Surveys adopted by the New York State Association of Professional Land Surveyors, Inc. Said certifications shall run only to the person for whom the survey is prepared and on his behalf to the title company, governmental agency and lending institution listed hereon, and to the assignees of the lending institution. Certifications are not transferable to additional institutions or subsequent owners and do not extend to underground improvements or encroachments. Only copies from the original of this survey marked with an original of the land surveyor's inked or embossed seal shall be considered to be valid true copies. Unauthorized alteration or addition to a survey map bearing a licensed land surveyor's seal is a violation of section 7209, sub-division 2, of the New York State Education Law.

Example of a Survey Map that depicts a Frame Garage encroaching upon the adjoining property. The Frame Garage is located up to 2.2' east of the east boundary line of the subject property.

COMMENT:

Whether the garage existed on or before July 7, 1998 or was installed on or after July 8, 1998, the following analysis applies:

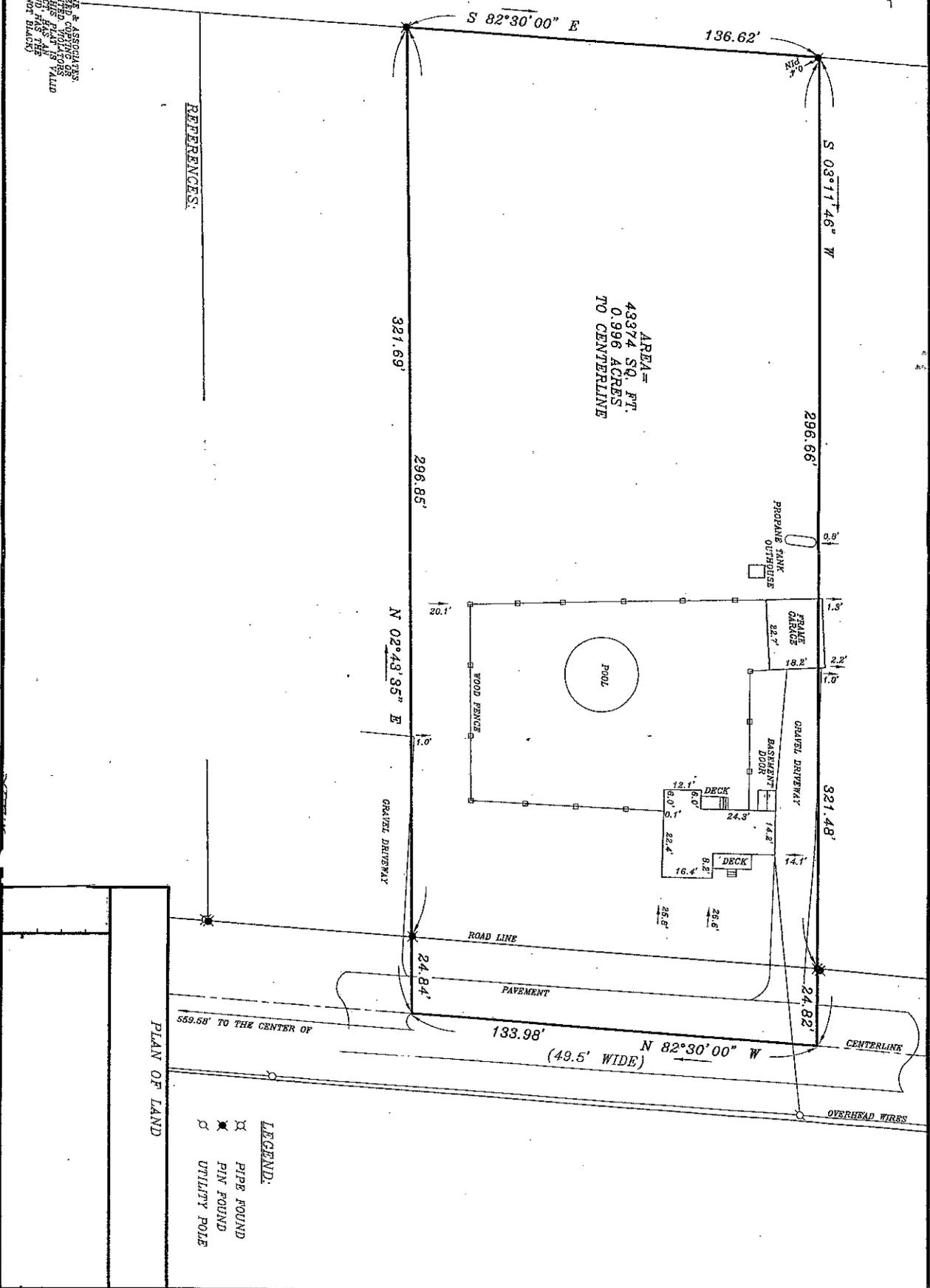
- The garage constitutes an objection to title that must be cured by an agreement in recordable form from the owner of the adjoining property consenting to the continuation of the encroachment so long as the structure or improvement shall stand.

Survey Map - garage encroaches on adjoining property

COPYRIGHT © 2013 JOHN A. GREENE & ASSOCIATES
 USE OF THIS DOCUMENT IS PROHIBITED FOR ANY
 OTHER THAN THE PROJECTED PURPOSES
 ORIGINAL SIGNATURE AND DATE AND HAS THE
 STAMPED SURVEYOR'S SEAL

REFERENCES:

AREA =
 43374 SQ. FT.
 0.996 ACRES
 TO CENTERLINE



PLAN OF LAND

LEGEND:

- ⊗ PIPE FOUND
- ⊗ PIN FOUND
- UTILITY POLE

2 examples of Survey Maps that depict the driveway of the subject property extending onto the adjoining property.

Survey Map 1 depicts the driveway of the subject property extending up to 5.0' south of the south boundary line of the subject property.

COMMENT:

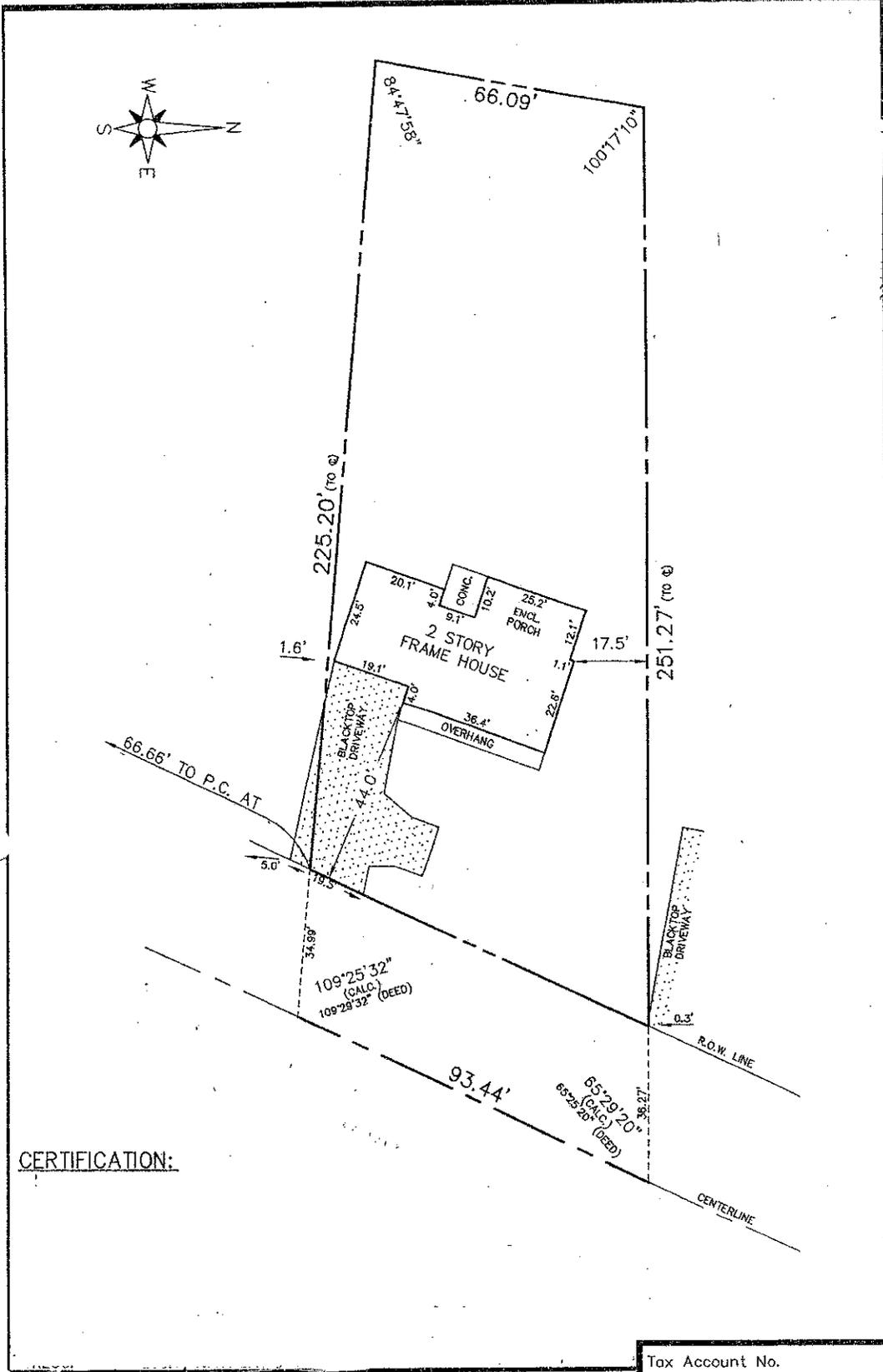
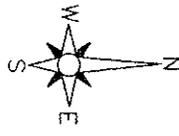
Whether the driveway existed on or before July 7, 1998 or was installed on or after July 8, 1998, the following analysis applies:

- The driveway does not constitute an objection to title since there is at least seven (7) feet of clearance between the property line of the subject property and the nearest building wall on the subject property.

Survey Map 2 depicts a portion of the driveway for the subject property extending up to 24.2' north of the north boundary line of the subject property.

COMMENT:

The same analysis applies to Survey Map 2 as set forth above regarding Survey Map 1.



CERTIFICATION:

TITLE: INSTRUMENT SURVEY MAP

Tax Account No.

"Unauthorized alteration or addition to a survey map bearing a licensed land surveyors seal is a violation of section 7209 Subdivision 2, of the New York State Education Law."
 "Only copies from the original of this survey marked with an original land surveyors seal shall be considered to be valid true copies."
 Certifications shall run only for the person for whom the survey is prepared, and on behalf of the title company insuring the fee, the governmental agency and lending institution listed hereon, and to the assignees of the lending institution. Certifications are not transferable to additional institutions or subsequent owners. This map is subject to any easements and/or encumbrances that an abstract of title may show. The word "certify" or "certification" as shown and used hereon means an expression of professional opinion regarding the facts of the survey and does not constitute a warranty or guarantee expressed or implied. Location of subterranean improvements and those which are covered may be approximate or not shown hereon. Landscaping features are not shown hereon.

Survey Map 1 - driveway encroachments on adjoining property

MAP OF A SURVEY

CLIENT

SCHELL LAW, P.C.

SCALE

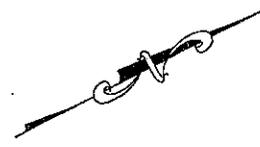
1" = 30'

PROJECT NO.

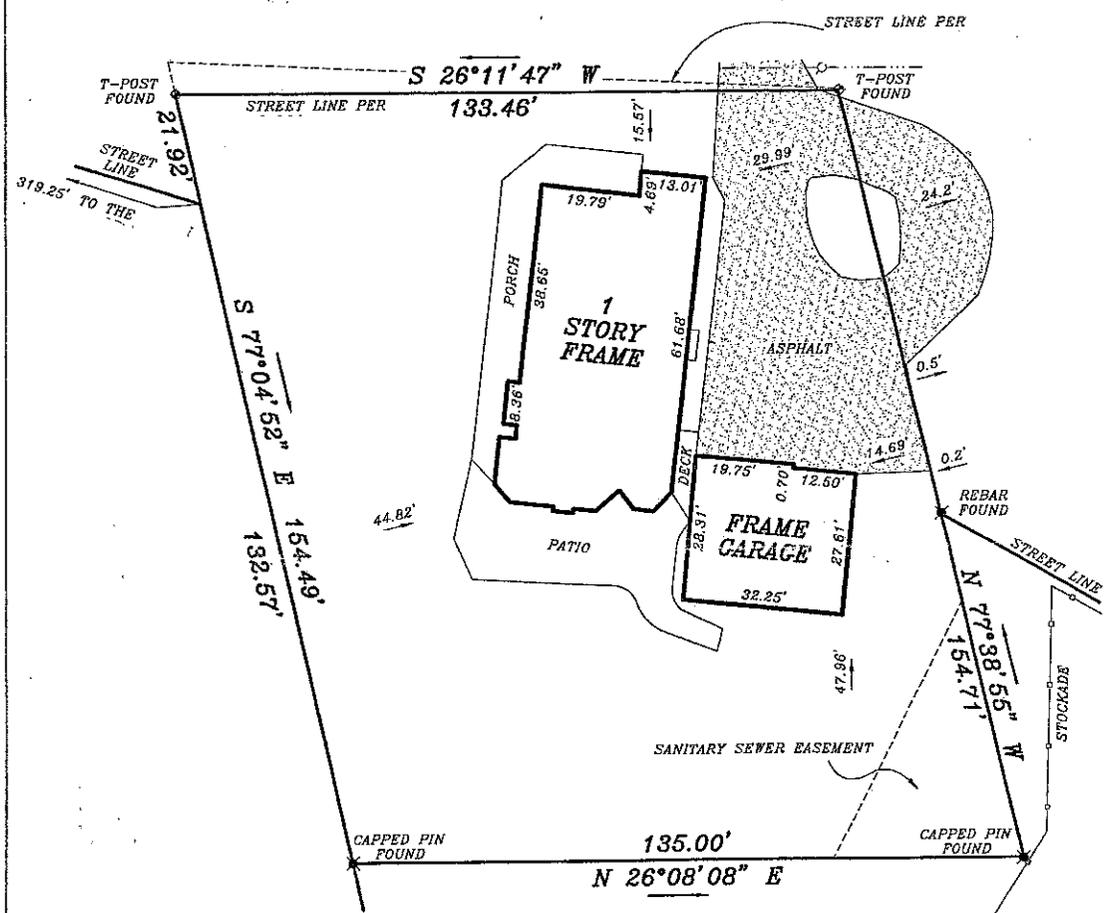
REFERENCES:

NOTES:

REFERENCE IS MADE TO A UTILITY EASEMENT GRANTED TO ROCH. GAS & ELEC. CORP.



Survey Map 2 - driveway encroaches on adjoining property



"Unauthorized alteration of, or addition to, this survey map is a violation of section 7209 of the New York State Education Law"
 Copies of this survey map not bearing the land surveyor's inked or embossed seal shall not be considered to be a valid true copy.
 "Guarantees or certifications indicated hereon shall run only to the person for whom the survey is prepared, and on his behalf to the title company,
 governmental agency and lending institution listed hereon, and to the assignees of the lending institution.
 Guarantees or certifications are not transferable to the institutions or subsequent owners"

2 examples of Survey Maps that depict a fence, presumably owned by the adjoining property owner, that encroach on the subject property.

Survey Map 1 depicts a chain link fence that is located up to 4.7' south of the north boundary line of the subject property. The fence is owned by the owner of the adjoining property.

COMMENT:

If the fence existed on or before July 7, 1998, the following analysis applies:

- Since there is no access to that portion of the subject property enclosed by the fence of the adjoining property, the fence constitutes an objection to title and must be cured by a written agreement in recordable form from the neighbor that no claim of title is asserted against the subject property as a result of the fence.

If the fence was installed on July 8, 1998 or thereafter, the following analysis applies:

- Since the fence encloses a portion of the subject premises, thus denying the Seller access to the property in question, the fence constitutes an objection to title and must be cured by a written agreement in recordable form from the neighbor that no claim of title is asserted against the subject property as a result of the fence.

Survey Map 2 depicts a wood stockade fence that is located up to 4.3' south of the north boundary line of the subject property. The wood stockade fence also is located up to 5.9' west of the east boundary line of the subject property.

COMMENT:

The same analysis applies to Survey Map 2 as set forth above regarding Survey Map 1.

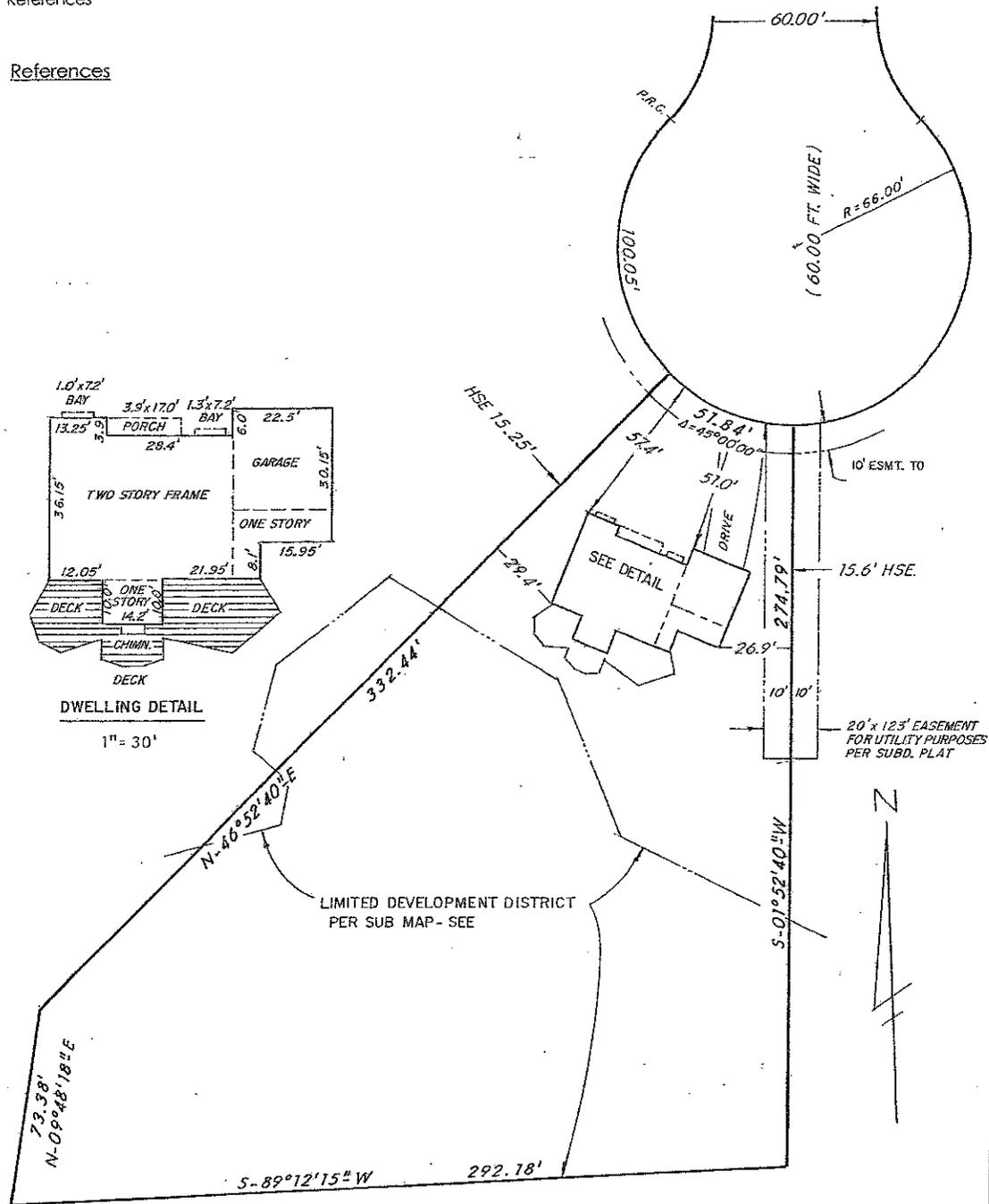
Example of a Survey Map that depicts the existence of a "Limited Development District."

INSTRUMENT SURVEY MAP

Survey Map - depicts "Limited Development District"

Street,
Subdivision
Parcel at
References

References



SCALE 1" = 50'

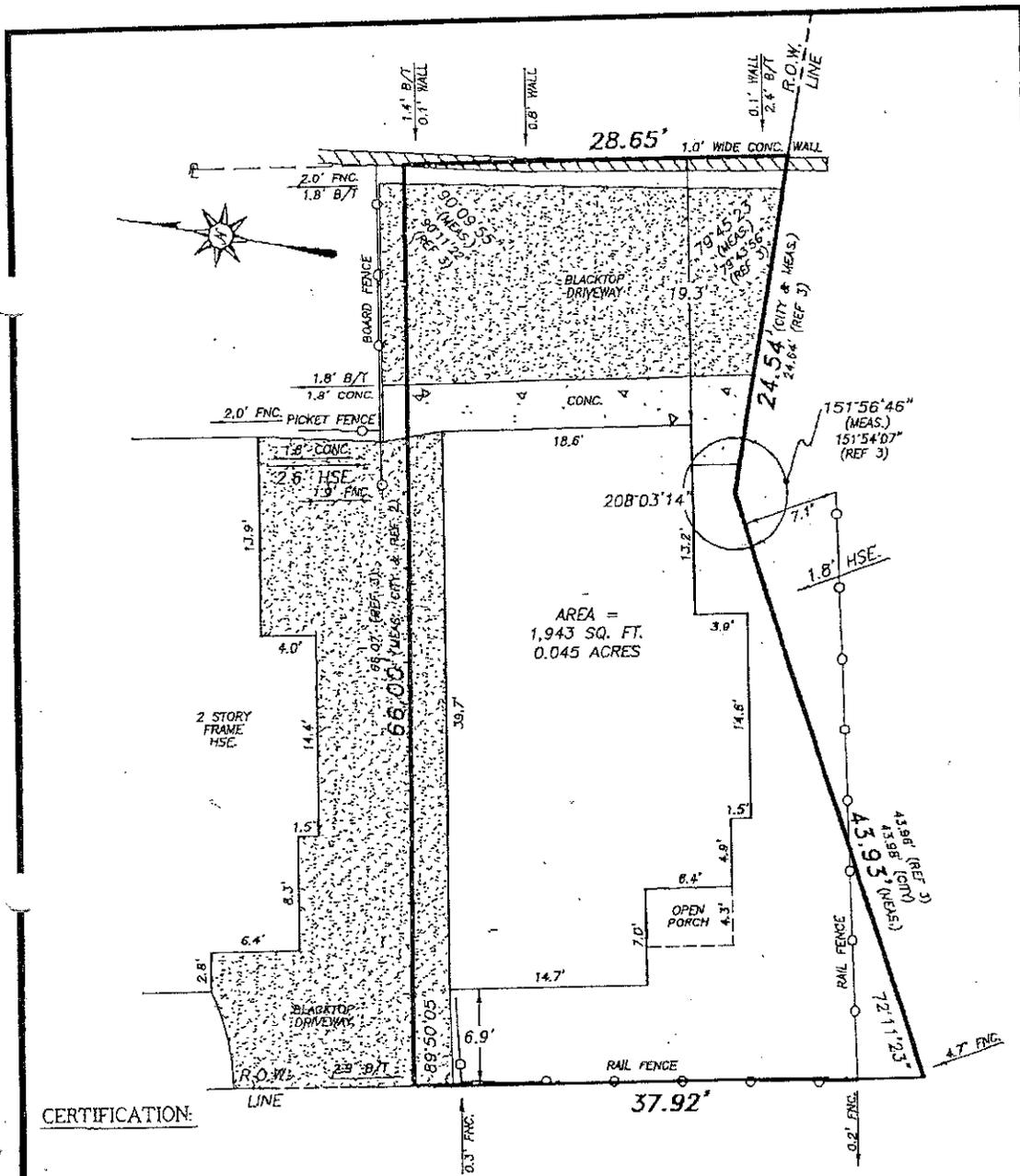
"Unauthorized alteration or addition to a survey map bearing a licensed land surveyor's seal is a violation of Section 7209, subdivision 2, of the New York State Education Law" I hereby certify to the following that this map was made from notes of an Instrument Survey

Example of a Survey Map that depicts the driveway for the adjoining property encroaching onto the subject property up to 2.9' south of the north boundary line of the subject property. The driveway for the adjoining property also abuts up against the house on the subject property.

COMMENT:

Whether the driveway existed on or before July 7, 1998 or was installed on or after July 8, 1998, the following analysis applies:

- The initial analysis indicates that the driveway constitutes an objection to title which must be cured by a written agreement in recordable form, duly executed by the owner of the adjoining property, in which the owner of the adjoining property waives, releases and conveys any claim of title resulting from such encroachment and agrees to: (i) remove the paving material upon request, or permit the removal of the paving material by the owner of the subject property upon notice, or (ii) maintain the encroaching portion of the driveway in a good and proper manner and that when the driveway is removed or replaced it will be reconfigured so that it no longer encroaches on the subject property. However, since the driveway extends to the foundation of the house located on the subject property, the driveway does not constitute an objection to title because (i) the encroachment is three (3) feet or less, (ii) the neighbor has at least seven (7) feet of clearance between the property line and the nearest building wall on the neighbor's property. Note: The Survey Map did not set forth the number of feet of clearance on the adjoining property so the surveyor had to go back out to the property and measure the distance, which was over 8 feet).



CERTIFICATION:

Survey Map - driveway of adjoining property encroachment

NOTE: PREMISES SUBJECT TO ALL EASEMENTS, RESTRICTIONS & COVENANTS OF RECORD.

TITLE: INSTRUMENT SURVEY MAP

"Unauthorized alteration or addition to a survey map bearing a licensed land surveyor's seal is a violation of Section 7203, sub-division 2, of the New York State Education Law."

"Only copies from the original of this survey marked with an original of the land surveyor's red ink seal shall be considered to be valid true copies."

"Certifications indicated hereon signify that this survey was prepared in accordance with the existing Code of Practice for Land Surveyors adopted by the New York State Association of Professional Land Surveyors. Said certifications shall run only to the person for whom the survey is prepared, and on his behalf to the title company, governmental agency and lending institution listed hereon, and to the assignees of the lending institution. Certifications are not transferable to additional institutions or subsequent owners."

SCALE: 1" = 10'	TAX ACCOUNT:	JOB NO.:	DATE:
--------------------	--------------	----------	-------

Example of 2 Survey Maps prepared by the same surveyor that depict a fence on the subject property both with and without a gate. The fence is owned by the owner of the subject property.

Survey Map 1 depicts a fence located up to 21.7' north of the south boundary line of the subject property.

COMMENT:

The initial analysis upon reviewing Survey Map 1 was based upon the surveyor's failure to note that there was a gate in the fence which would provide access to the 21.7' in question.

If the fence existed on or before July 7, 1998, the following analysis applies:

- Since there is no access to that portion of the subject property enclosed by the fence of the adjoining property, the fence constitutes an objection to title and must be cured by a written agreement in recordable form from the neighbor that no claim of title is asserted against the subject property as a result of the fence.

If the fence was installed on July 8, 1998 or thereafter, the following analysis applies:

- The fence does not constitute an objection to title because the fence was installed or maintained by the Seller.

Survey Map 2 also depicts the same fence as Survey Map 1 (fence located up to 21.7' north of the south boundary line of the subject property). Survey Map 2, however, adds a gate to the fence in question and sets out a 50' storm sewer easement, which most likely was the cause for the placement of the fence 21.7' north of the south boundary line of the subject property.

COMMENT:

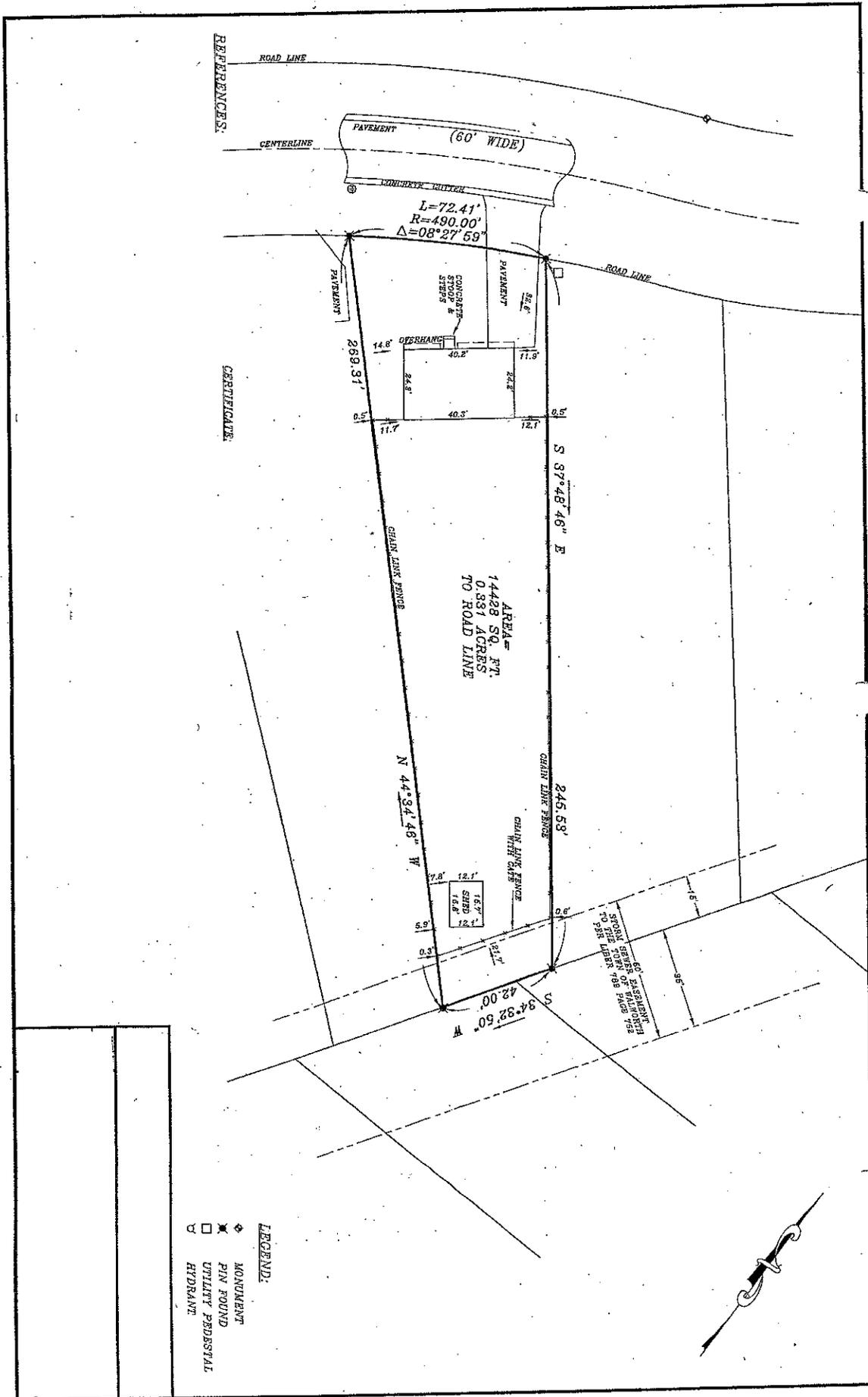
If the fence existed on or before July 7, 1998, the following analysis applies:

- The fence does not constitute an objection to title because the fence is located three feet or more within the property lines of the subject property and there access to the portion of the subject property "outside" the fence line through a gate in the fence.

If the fence was installed on July 8, 1998 or thereafter, the following analysis applies:

- The fence does not constitute an objection to title because the fence was installed or maintained by the Seller.

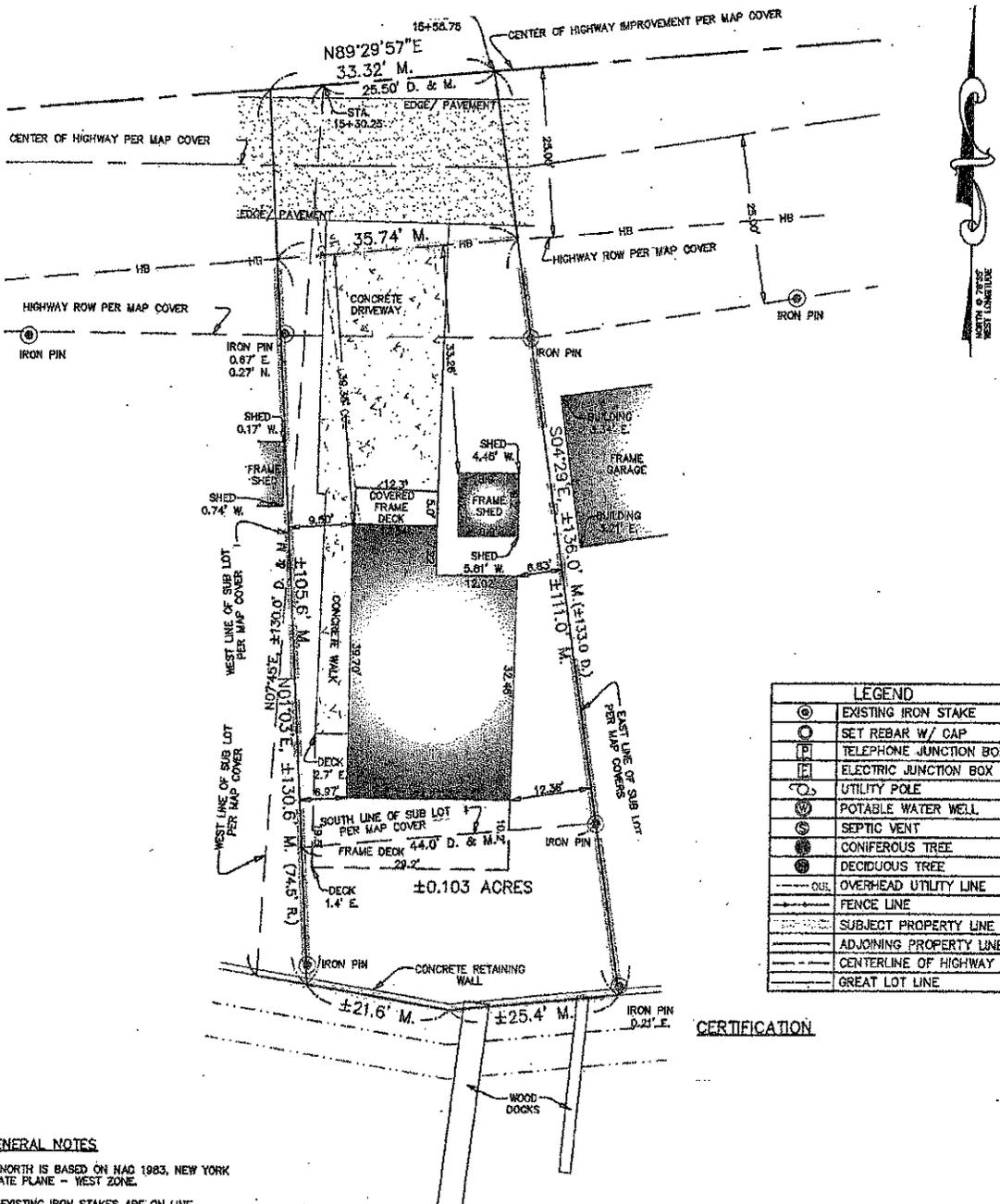
Survey Map 2 - surveyor added gate & storm sewer easement



Example of Survey Map where the surveyor set the west boundary line for the subject property and also provided references on the Survey Map which indicate that the west boundary line of the subject property is other than as depicted. The subject property is located on a lake.

NOTE: THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF AN UP TO DATE ABSTRACT OF TITLE AND IS SUBJECT TO ANY STATE OF FACTS BY SUCH.

NOTE: UNAUTHORIZED ALTERATION OR ADDITION TO ANY SURVEY, DRAWING, DESIGN SPECIFICATION PLAN OR REPORT IS A VIOLATION OF SECTION 7209 PROVISION 2 OF THE NEW YORK STATE EDUCATION LAW.



LEGEND	
	EXISTING IRON STAKE
	SET REBAR W/ CAP
	TELEPHONE JUNCTION BOX
	ELECTRIC JUNCTION BOX
	UTILITY POLE
	POTABLE WATER WELL
	SEPTIC VENT
	CONIFEROUS TREE
	DECIDUOUS TREE
	OVERHEAD UTILITY LINE
	FENCE LINE
	SUBJECT PROPERTY LINE
	ADJOINING PROPERTY LINE
	CENTERLINE OF HIGHWAY
	GREAT LOT LINE

CERTIFICATION

The certifications hereon are not transferable.

The location of underground improvements or encroachments are not always known and often must be estimated. Underground improvements or encroachments are not covered by this certificate.

Certifications on this boundary survey map signify that the map was prepared in accordance with the current existing code of practice for land surveys adopted by the New York State Association of Professional Land Surveyors, Inc. The certification is limited to persons for whom the boundary survey map is prepared, to the title company, and to the lending institution listed on this boundary survey map.

- GENERAL NOTES**
1. NORTH IS BASED ON NAD 1983, NEW YORK STATE PLANE - WEST ZONE.
 2. EXISTING IRON STAKES ARE ON LINE UNLESS OTHERWISE NOTED.
 3. N., S., E., & W. ARE ABBREVIATIONS FOR CARDINAL DIRECTIONS.
 4. R. & M. = RECORD & MEASURED
 5. D. & M. = DEED & MEASURED
 6. L. - P. = DEED LIBER & PAGE
 7. ROW = RIGHT OF WAY
 8. HB = HIGHWAY BOUNDARY
 9. ONLY ABOVE GROUND UTILITIES VISIBLE AT THE TIME OF SURVEY ARE SHOWN. CONTACT 1-800-242-1776 PRIOR TO ANY EXCAVATION WORK.

REFERENCES

Only boundary survey maps with the surveyor's embossed seal are genuine true and correct copies of the surveyor's original work and opinion.

Date _____

Revision Date _____ Revision No. _____

Changes _____

Survey Map - surveyor included historical reference depicting boundary line

Example of Survey Map that depicts a violation of the applicable minimum setback for the subject property.

COMMENT:

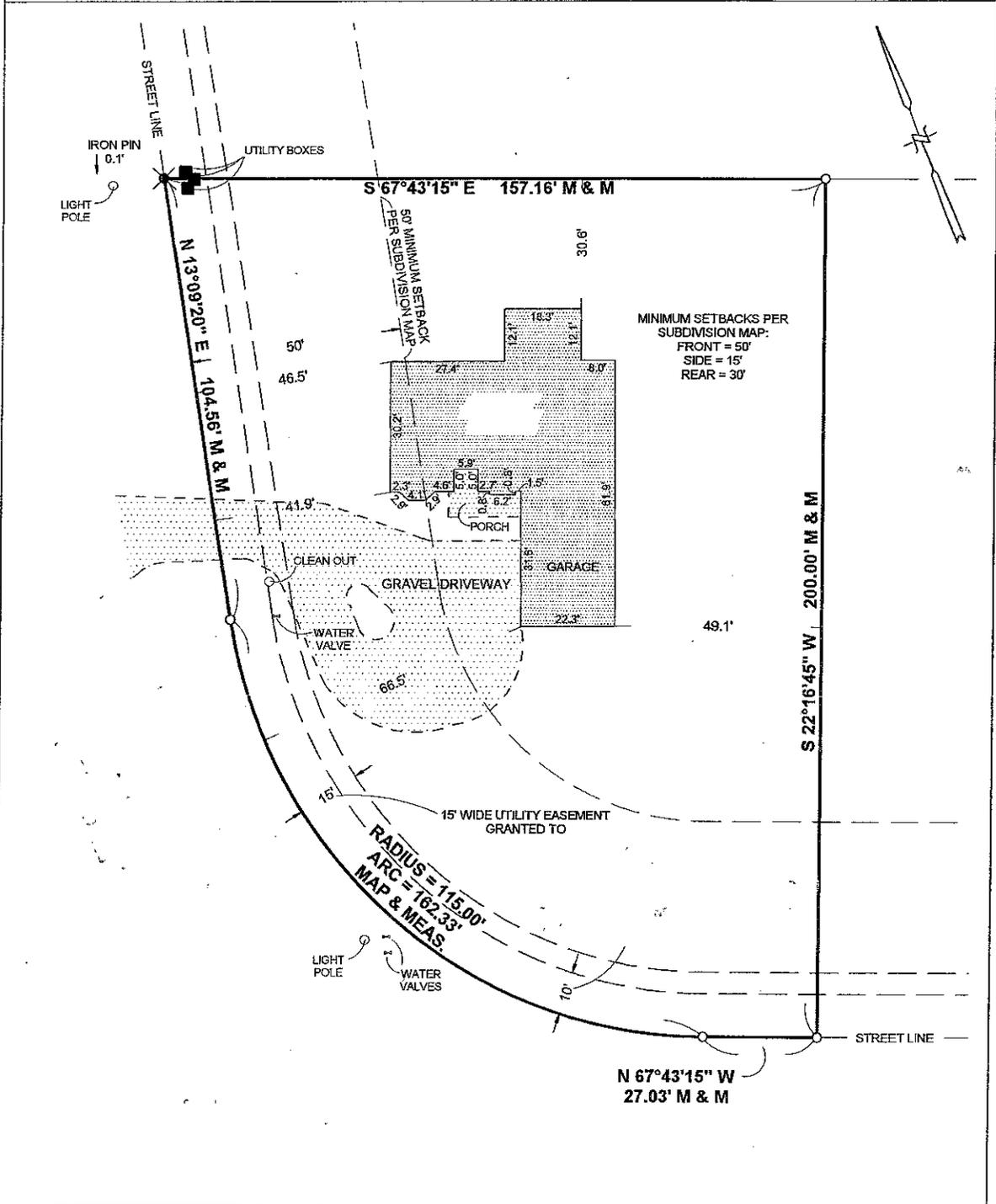
The violation of the 50' minimum setback may be cured by a Section 2001 affidavit.

--- REFERENCE MATERIAL ---

--- LEGEND ---

- = IRON PIN SET ● = IRON PIPE FOUND ⊗ = IRON PIN FOUND
- ⊗ = FENCE POST △ = MASONRY NAIL SET ⚡ = UTILITY POLE

UNAUTHORIZED ALTERATION OR ADDITION TO A SURVEY MAP BEARING A LICENSED LAND SURVEYOR'S SEAL IS A VIOLATION OF SECTION 7209, SUB-DIVISION 2, OF THE NEW YORK STATE EDUCATION LAW.



Survey Map - house violates minimum setback

<p style="text-align: center;">--- BOUNDARY SURVEY MAP ---</p> <p>OWNER LOCATION</p>	<p>DATE:</p>
<p>I HEREBY CERTIFY TO:</p>	<p>SCALE: 1 IN. = 30 FT.</p>

Example of 2 Survey Maps created by 2 different surveyors that depict the same property with different boundary lines. The fence is owned by the owner of the subject property.

Survey Map 1 depicts a chain link fence up to 4.0' south of the north boundary line of the subject property.

COMMENT:

If the fence existed on or before July 7, 1998, the following analysis applies:

- Whether the fence is owned by the owner of the subject property or the owner of the adjoining property, the fence constitutes an objection to title because there is no access to that portion of the subject property enclosed by the fence. As such, the objection based upon the fence must be cured by a written agreement in recordable form from the neighbor that no claim of title is asserted against the subject property as a result of the fence.

If the fence was installed on July 8, 1998 or thereafter, the following analysis applies:

- If the fence is owned by the owner of the subject property, the fence does not constitute an objection to title.
- If the fence is owned by the owner of the adjoining property, the fence constitutes an objection to title since the fence encloses a portion of the subject premises, thus denying the owner of the subject property access to the portion of the property in question. The objection to title must be cured by a written agreement in recordable form from the neighbor that no claim of title is asserted against the subject property as a result of the fence.

Survey Map 2 depicts the same chain link fence as Survey Map 1 which is up to 0.1' north of the north boundary line of the subject property.

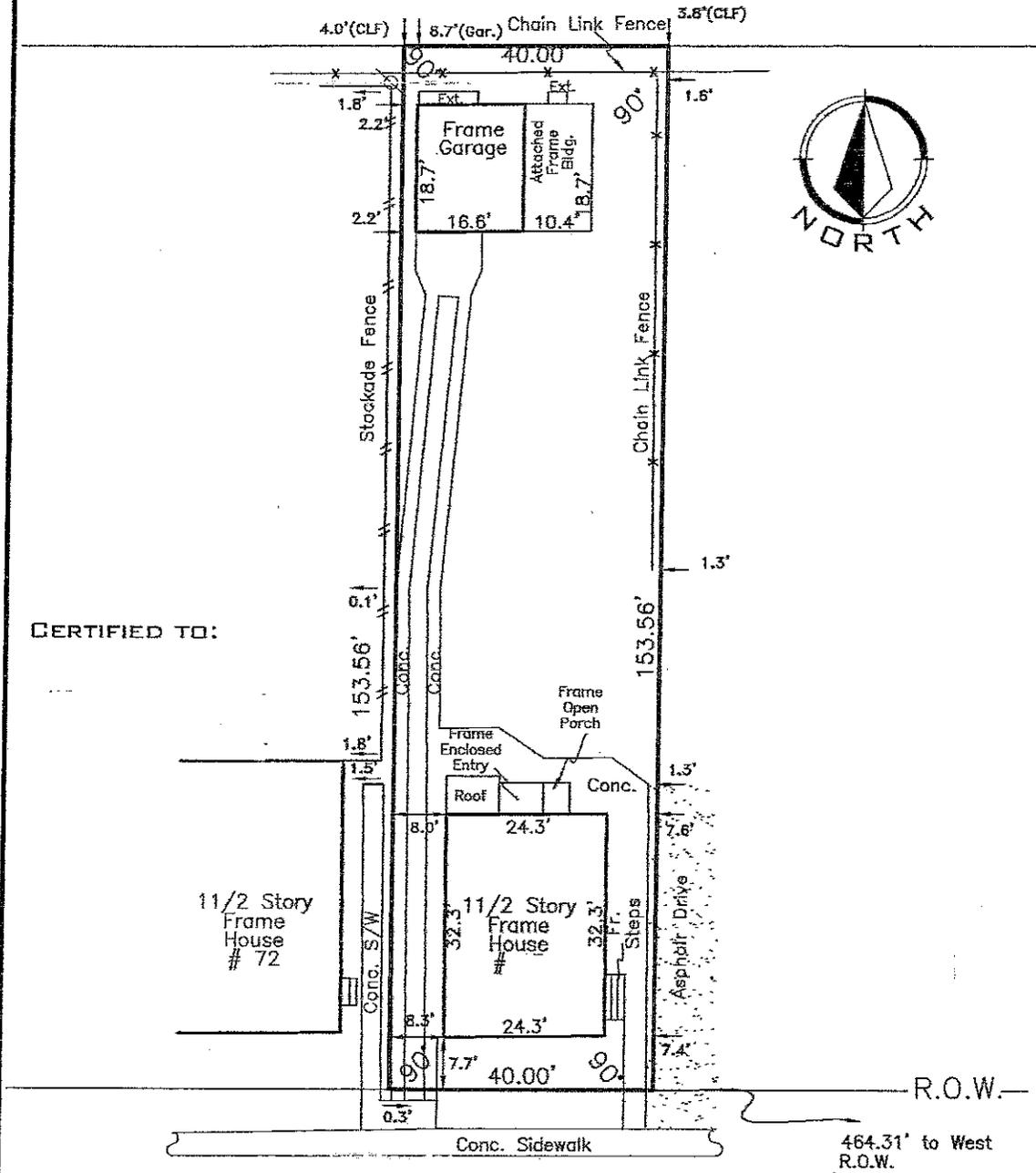
COMMENT:

Upon receipt of Survey Map 1, a discussion was had with the client regarding the potential need for a boundary line agreement with the owner of the adjoining property. Fortunately, at the conference to discuss the matter, the client brought with her the contents of her file regarding the house, which included an old survey map. Upon a review of the old survey map, it was determined that Survey Map 1 may not be accurate. As such, a surveyor was hired to prepare Survey Map 2. The surveyor was not told of Survey Map 1 or the old survey in possession of the client. When Survey Map 2 was produced, it matched the old existing survey. The end result, after disclosure and discussion with the buyer's attorney, was the acceptance of Survey Map 2 and no boundary line agreement was necessary.

INSTRUMENT LOCATION MAP

SHOWING

SCALE: 1" = 30'

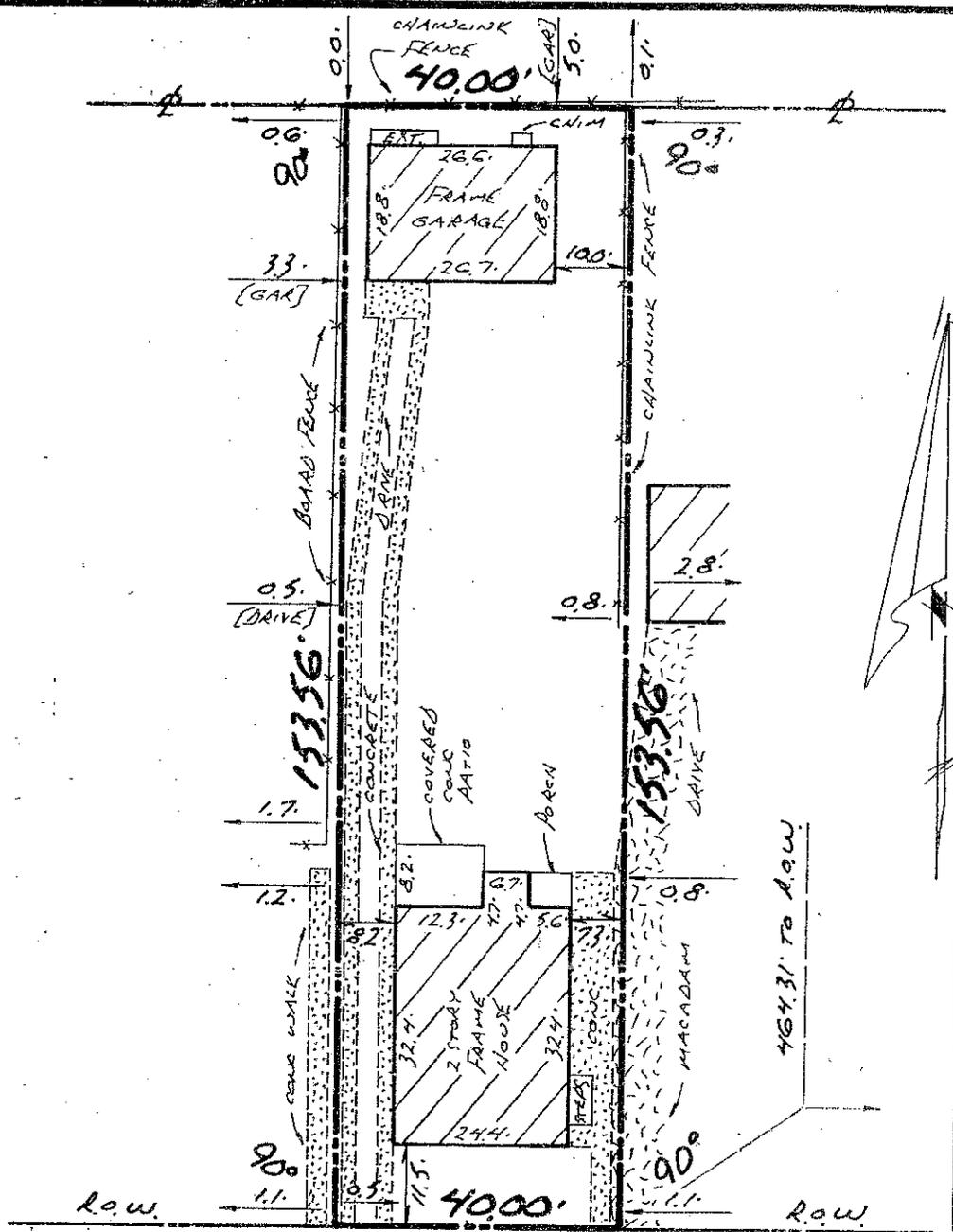


CERTIFIED TO:

REFERENCES:

Survey Map 1 - depicts fence located up to 2.0' south of north boundary line

Survey Map 2 - depicts fence located up to 0.1' north of north boundary line



REFERENCES:

CERTIFICATION:
I hereby certify to:

NOTE: Property corners should only be set by a licensed, registered land surveyor. Snow cover has impeded ability to locate ground features.

TITLE: **INSTRUMENT SURVEY MAP**

DATE: _____

FILE No. _____

OWNER: _____

SCALE: 1"=20 FEET

Tax Account No. _____

"Unauthorized alteration or addition to a survey map bearing a licensed land surveyors seal is a violation of section 7209 Subdivision 2, of the New York State Education Law." "Only copies from the original of this survey marked with an original land surveyors seal shall be considered to be valid true copies." Certifications shall run only for the person for whom the survey is prepared, and on behalf of the title company insuring the fee, the governmental agency and lending institution listed hereon, and in the absence of the lending institution. Certifications are not transferable to additional institutions or subsequent owners. This map is subject to any assessments and/or encumbrances that an abstract of title may show. The word "certify" or "certification" as shown and used hereon means an expression of professional opinion regarding the facts of the survey and does not constitute a warranty or guarantee expressed or implied. Location of subterranean improvements and those which are covered may be approximate or not shown hereon. Landscaping features are not shown hereon, unless otherwise specified.