

# INSPECTIONS AND SURVEYS

BENEFITS, RISKS, PITFALLS &  
PROBLEM SOLVING

# TYPES OF SURVEYS - WHAT YOU ARE LOOKING AT?



- BOUNDARY

CORNERS, MAYBE BOUNDARY  
IMPROVEMENTS

- TOPOGRAPHICAL

ELEVATION CONTOURS

- RECORD OF SURVEY - FOR RECORDING  
ONLY


CORNER MONUMENTS SET AND FOUND

- VARIOUS OTHERS

# ALTA/ACSM SURVEY



- Visible physical access (curb cuts, driveways)
- Access by others over the land (trails, etc.)
- Encroaching driveways & other access
- Water access – paths, piers, launch ramps,
- Encroachments over boundaries, easements, setbacks - ground & aerial
- All improvements within 5 feet of boundaries

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- Building distances from boundaries
  - Recorded easements & setbacks
  - Evidence of unrecorded easements, drainage, utilities, water courses
  - Water features (wetlands, ponds, etc.)
  - Cemeteries



- Off site monuments relied upon
- Discrepancies in distances, bearings
- Contiguity, gaps, overlaps – internal and with neighbors
- Identify any unlocatable easements
- Reasons for any revisions to the legal description

# CERTIFICATION



**Don't overlook it !!**

- Normally for lender & owner
- Require title company be added
- Surveyor should have E&O insurance

# Surveying is an Art

- It is not an exact science.
- Technological changes in equipment.
- No two surveyors will necessarily agree on where boundaries should be located on the ground.

# SURVEYOR'S ASSUMPTIONS

A dark silhouette of a city skyline with various building shapes, positioned horizontally across the top of the slide, partially overlapping the light blue header and the tan background.

- What monuments to rely on?
- Do ties or bearings/distances control?
- Apportioning to change distances?
- Are prior survey monuments reliable?
- Evidence of prior intent?



# WHAT'S MISSING?


A dark silhouette of a city skyline with various building shapes, positioned horizontally across the middle of the slide.

- Underground utilities – if not visible
- Non-visible intermittent use – neighbor mows the lawn & installed plantings, crosses walkway, etc.
- Unrecorded claim – fence ownership
- Unrecorded easement for water & sewer lines
- Dispute over ownership of hedge on line.

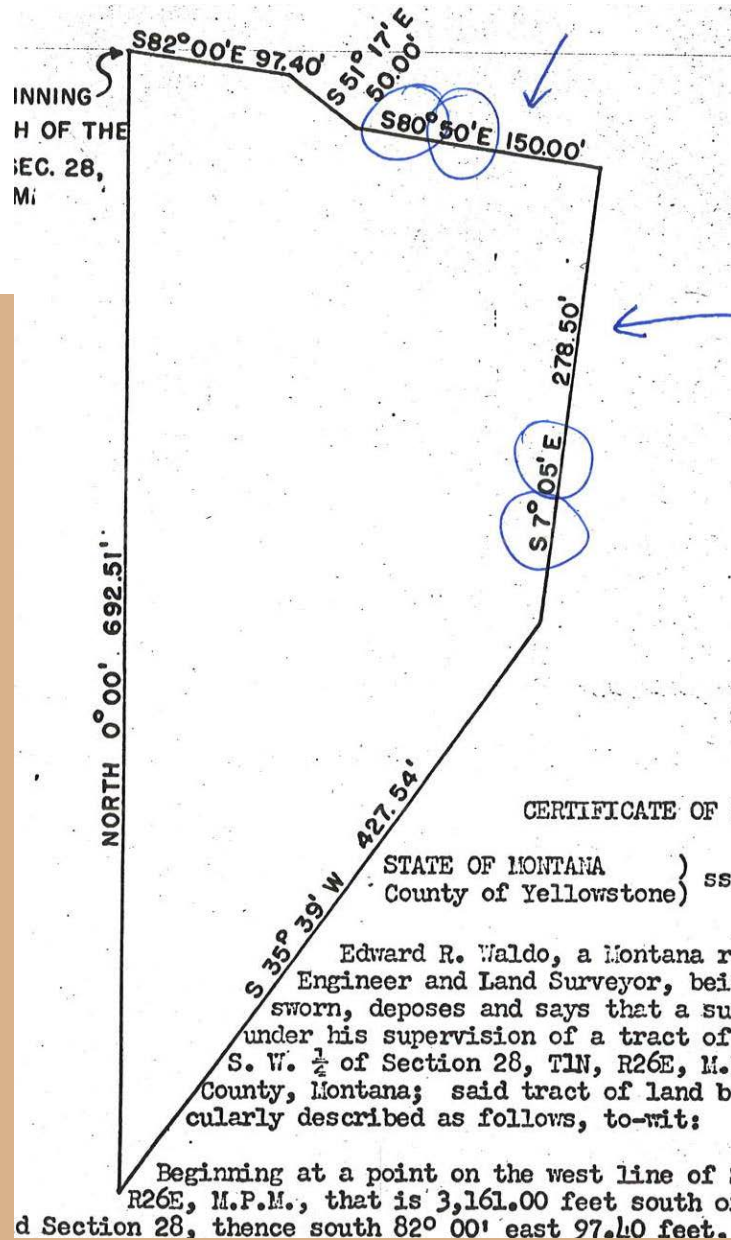
# INSPECTIONS

- Expense & time constraints - inspections desirable.
- Might be inaccurate even if survey monuments found. Monuments are sometimes offset.
- Less accuracy & detail requires careful exceptions.
- Inspect, even if a survey is obtained. Covers more issues (occupants, lien rights).
- Photos help interpret survey issues like ... what is really behind that fence?

# UNIQUE ISSUES

A dark silhouette of a city skyline with various building shapes, positioned horizontally across the middle of the slide, separating the title from the list.

- Tide & shore land boundaries are rarely extensions of upland boundaries.
- Build fence atop own rockery - neighbor later claims rockery & title up to fence.
- Read your easements, etc. Temporary easement or license expired? Adverse possession commences.
- Rotations of descriptions/drawings.



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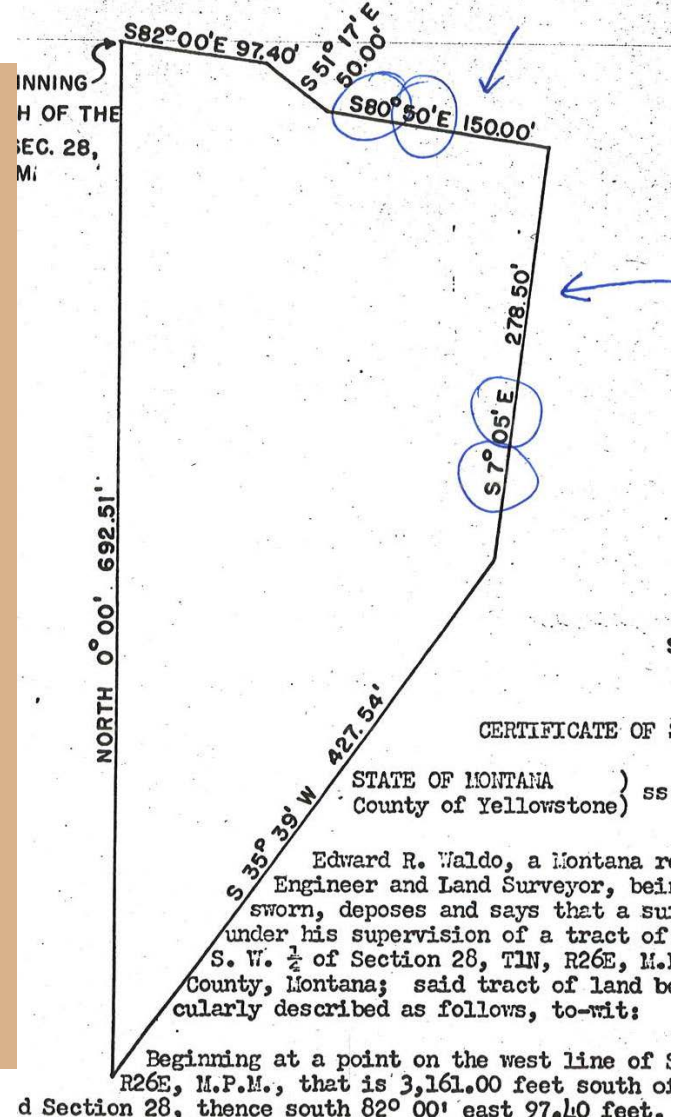
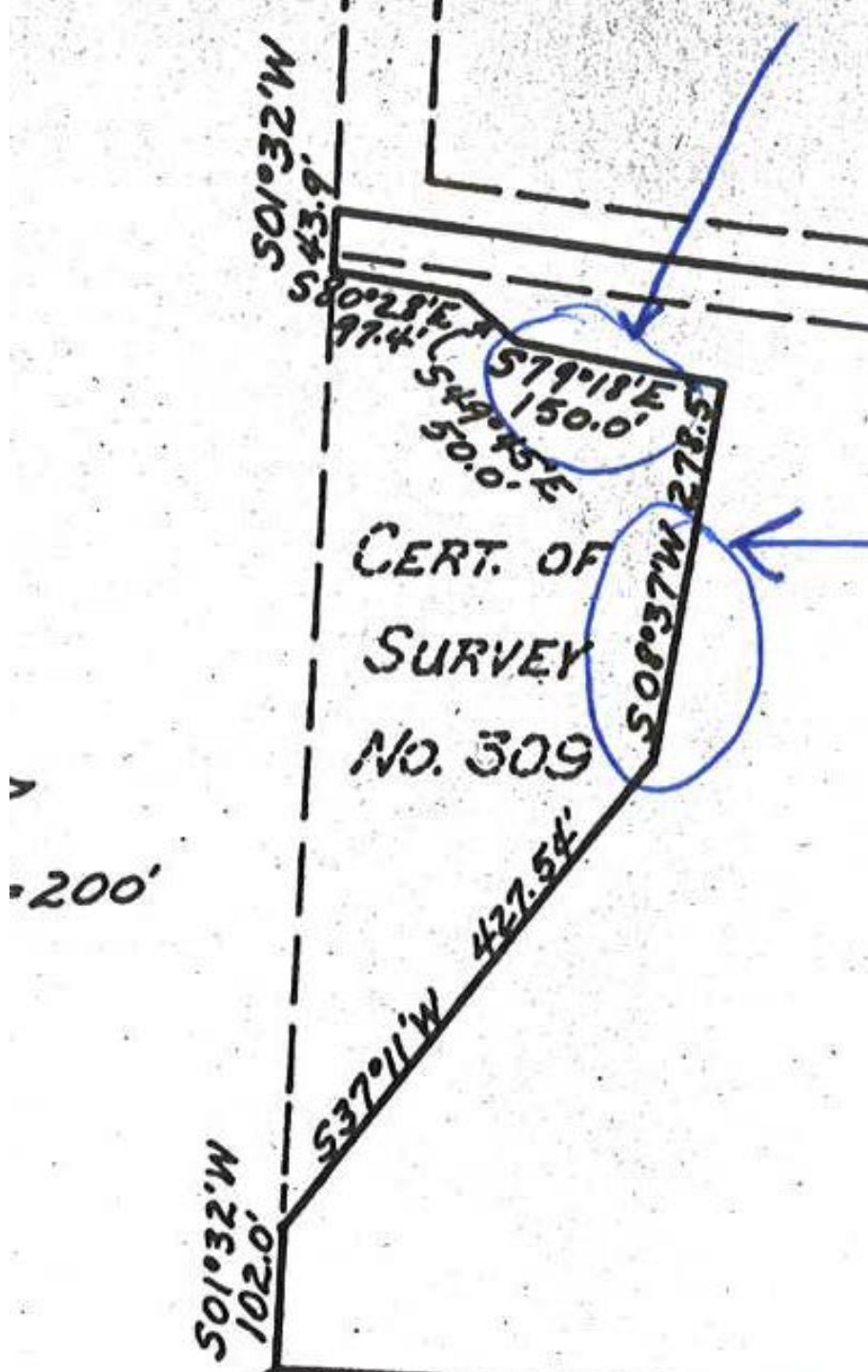
CERTIFICATE OF

STATE OF MONTANA ) ss  
County of Yellowstone)

Edward R. Waldo, a Montana  
Engineer and Land Surveyor, being  
sworn, deposes and says that a survey  
under his supervision of a tract of  
S. W.  $\frac{1}{4}$  of Section 28, T1N, R26E, M.P.M.  
County, Montana; said tract of land be  
cularly described as follows, to-wit:

Beginning at a point on the west line of  
R26E, M.P.M., that is 3,161.00 feet south of  
d Section 28, thence south 82° 00' east 97.40 feet.

# 50 year old Overlap problem?

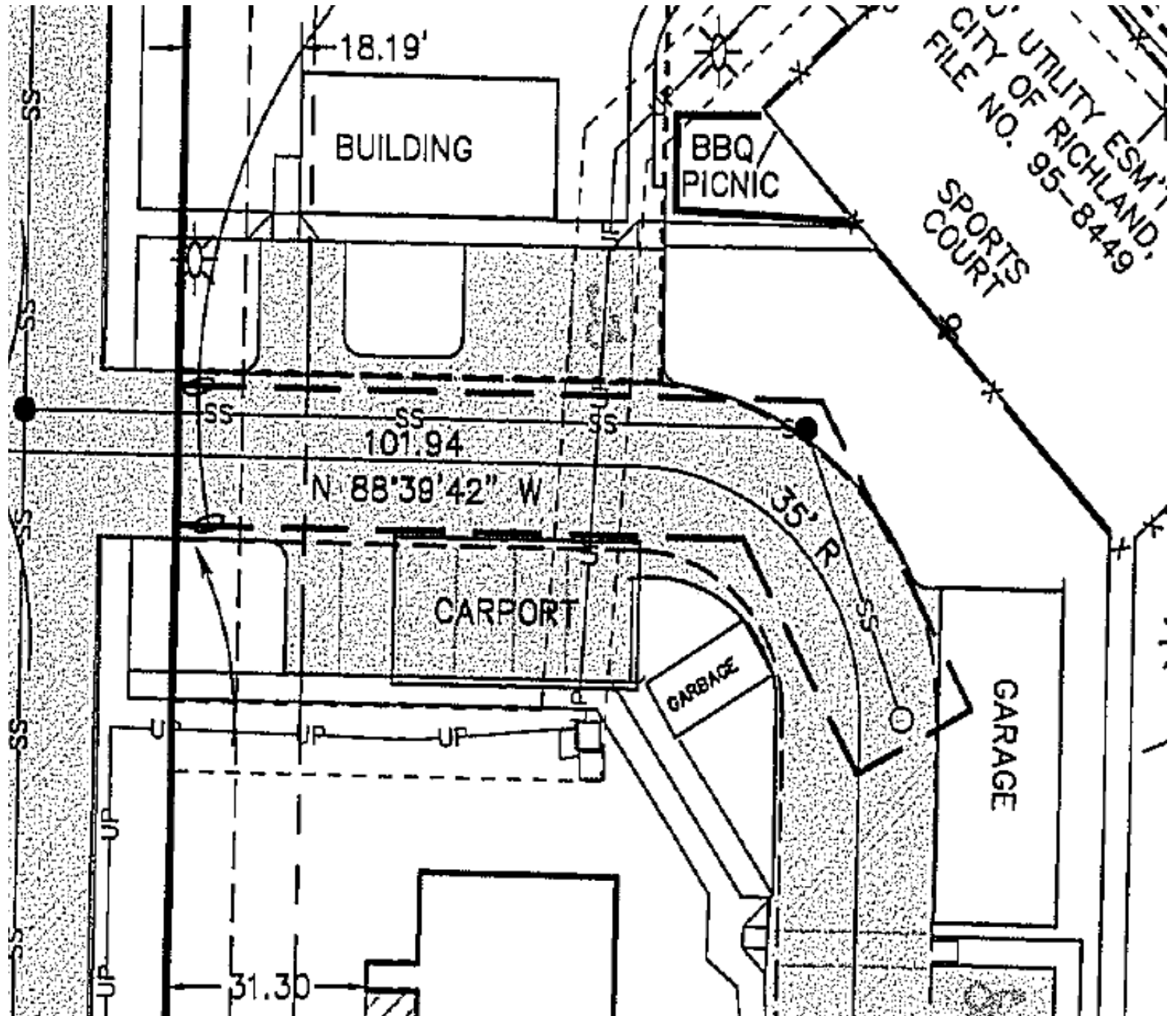


# IS AN ENCROACHMENT MEANINGFUL?

Building is onto utility easement:

- Was the building there first?
- Where is the utility? Any evidence of location?
- Can the utility be repaired/replaced without damaging improvements? Cost to reroute it?
- Does the utility only serve the building?

FNMA/HUD requirements: Show & Endorse

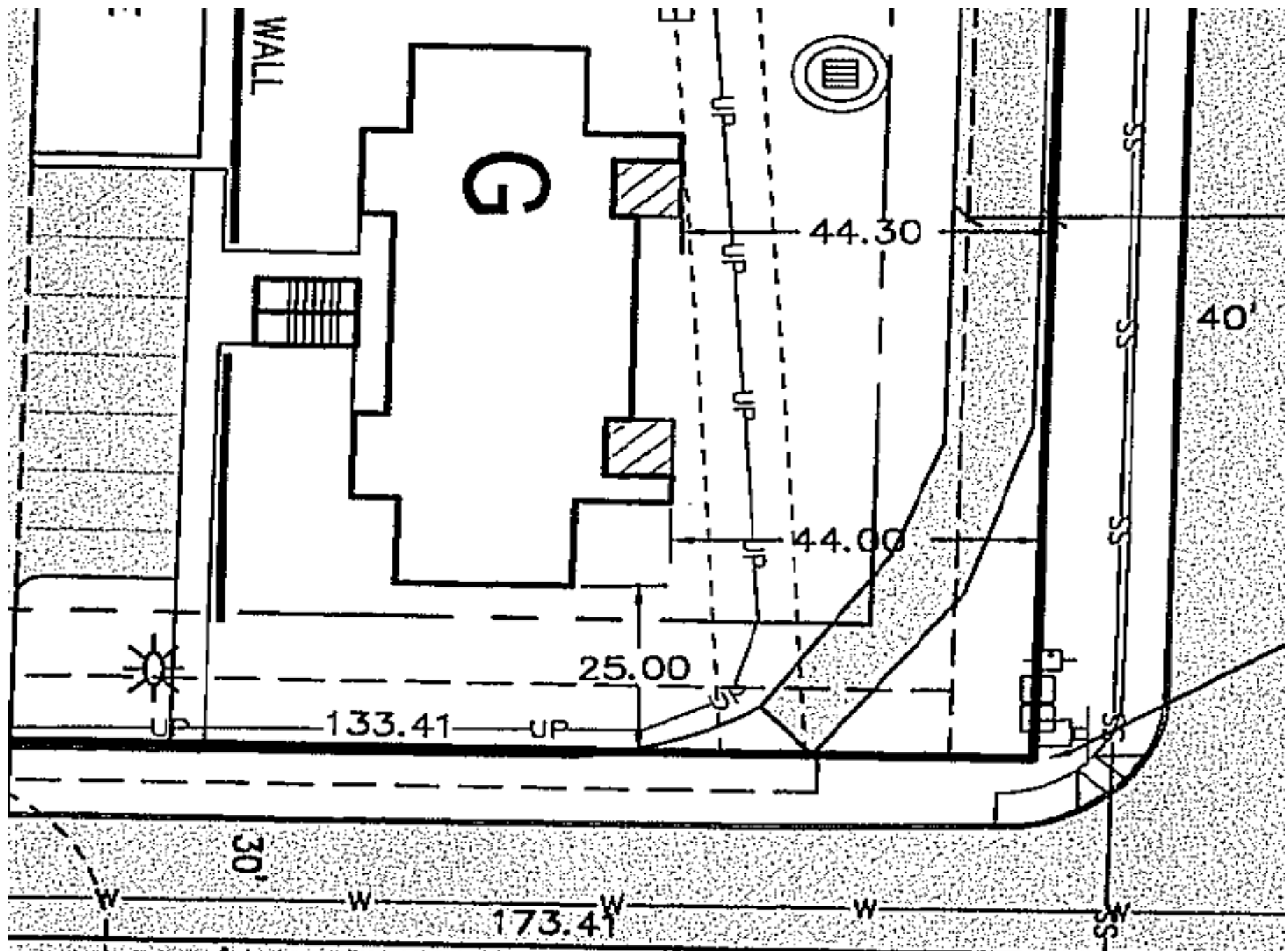


UTILITY ESM  
CITY OF RICHLAND  
FILE NO. 95-8449  
SPORTS COURT









# WRITING EXCEPTIONS



Identify the real problem before you write it.

Take exception to the *problem* in plain English.

- What it is
- How it is disclosed
- Where it is located
- Who has the interest (if applicable)

# WRITING EXCEPTIONS



## Physical Issues & Legal Rights:

- Encroachment
- Improvement not located on a line
- Adverse rights of other party
- Unrecorded easement rights

Your underwriter may have preferred language.

# REMEMBER THE POLICY LANGUAGE THAT LEADS INTO ALL EXCEPTIONS:

“You are not insured against loss ... resulting from:” *(from ALTA Homeowners)*

*Your exception should mesh with the Schedule B lead-in. Your underwriter may have preferred language.*

1. Encroachment of \_\_\_ as disclosed by \_\_\_.
2. Right, title and interest of \_\_\_ as disclosed by \_\_\_
3. The following matters disclosed by (identify survey/inspection):
  - a. \_\_\_\_\_

# Multiple ways to phrase exceptions:

- Impairment of the easement recorded \_\_\_ by a carport extending 4 feet into the easement.
- Encroachment by a carport 4 feet into the easement recorded \_\_\_.
- Carport extends 4 feet into the easement recorded \_\_\_. *(if the easement does not prohibit the improvement, it might not be an "encroachment".)*

# BE CLEAR & ACCURATE

- Don't assume fence is owned by vestee unless sure.
- Avoid personal "our".
- Avoid "title-ese" & abbreviations (REUS, etc.)
- Lenders like specifics, footages.
- Lender guidelines may allow encroachments of less than one foot.

# Two Issues: PHYSICAL MATTERS and LEGAL RIGHTS

- Encroachment by an old wooden post and wire fence appurtenant to property adjoining on the south as disclosed by \_\_\_.
- Right, title and interest of the owner of land adjoining on the south lying between the property line and an old wooden post and wire fence as disclosed by \_\_\_.
- *(Can these be combined? Yes.)*

# DON'T BE TOO VAGUE




Vague exceptions won't fully protect you.

- "Fence along the north line"  
(BUT really it is meandering over the line)
- "Fence is 4 feet south of the north line"  
(BUT does this cover neighbor's adverse possession claims? Does this just mean you can move the fence to enlarge the yard?)



# IS THERE MORE TO THE PROBLEM?

- “Northwest corner of building is 1.6 feet west of the west property line”  
(BUT isn't more of the building over the line?)
- Sidewalk over the south property line”  
(BUT is a private sidewalk into the street or public sidewalk on the Land?)
- “Sprinkler valve in the southeast corner”  
(BUT where is the water line it is connected to?)

- 
- Unrecorded easement 7 feet in width for ATV trail as disclosed by \_\_\_.

*Lender's comments:*

*"Show me a copy of the easement document."*

*"How do you know it is exactly 7 feet wide?"*

- VS.
- Unrecorded rights arising from use of an ATV trail approximately 7 feet in width as disclosed by \_\_\_.



Matters disclosed on Survey filed \_\_\_\_.

(BUT are all matters really clear and visible on the survey or do you have to read between the lines to understand the impact?

Think “fence location” vs. “adverse possession”)

# ***CAUTION***



Don't provide affirmative coverage by disclosing helpful "facts" or "appearances" or irrelevant chit-chat such as "We note an appurtenant easement ..." which is not being insured.

# DON'T GIVE LEGAL ADVICE

- Any advice you give can be construed as “legal advice”!
- There are multiple ways of dealing with problems. Will someone think yours was not the best or most appropriate?

# Owner's Extended Coverage

- Different risks than loan coverage
- Waterfront houses have some of the most significant claims.
- Big disputes over minor issues.
- Often have funds to pay for litigation.
- Don't forget appurtenant easement issues, encroachments into/out of driveway.

# RESOLVING MATTERS

- New easement or license?

Must be "accepted".

- Remove encroachment?

Need permission/waiver.

- Quit Claim Deed?

Need BLA & lender releases.

- Court Order?

Time & expense. Include lenders.

# AFFIRMATIVE COVERAGE



Get

Underwriting

approval



# Encroachments into Easements

## *ALTA 28-06*

... loss or damage sustained ... by reason of:

- (1) damage to an existing building located on the Land, or
- (2) enforced removal or alteration of an existing building located on the Land,

as a result of the exercise of the right of use or maintenance of the easement ... for the purpose for which it was granted or reserved.

# Enforced Removal by Neighbor

*Not just attempted removal, but pursuant to final order of a court of competent jurisdiction*

... insures the insured against loss or damage ...

by reason of the entry of a final order of a court of competent jurisdiction which denies the right to maintain the existing improvements on the land specifically set forth at ...

# Encroachment into Public ROW

*Permit/License/Ordinance? Any costs, provisions?*

This endorsement does not insure against loss or damage resulting from any license fee or other costs which may be imposed by the City of \_\_\_ for the continued maintenance of said improvements, or any right of the City of \_\_\_ to require the removal of said improvements in accordance with the terms and provisions of the (license/permit/ordinance) authorizing the maintenance of said improvements.

# Diminished Value

## *For Loan Policies*

... loss or damage by reason of the diminution of value of the security shown in Schedule A as a result of a final judgment or decree by a court of competent jurisdiction denying the right to maintain the improvements owned by borrower and now located on the Land because of the encroachment shown at , , ,

# Zoning Setback Encroachment



... loss or damage sustained ... by reason of a final decree of a court of competent jurisdiction

- a. prohibiting the use of the Land, with any existing structure, ...; or
- b. requiring the removal or alteration of the structure on the basis that, ... the zoning ordinances ... have been violated with respect to ...:
- iii. Setback of the structure from the property lines of the Land