

ENCROACHMENTS



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TOPICS OF DISCUSSION

- **Definition of Encroachments**
- **Types of Encroachments**
- **GIS**
- **Mortgage Survey vs. Boundary Survey**



WHAT IS AN ENCROACHMENT?

Encroachments have several definitions, and can be interpreted very differently.



In football, encroachment is the crossing of the line of scrimmage or neutral zone by the defense, whether contact is made or not... Resulting in the violator being penalized.



WHAT IS AN ENCROACHMENT?

An encroachment in football and a property encroachment are very similar...



If you encroach onto your neighbor and get

WHAT IS AN ENCROACHMENT?

Encroachments can be found in various places

- At the surface of the ground (a driveway)**
- Below the surface (a wall footing)**
- High in the air (a billboard sign)**

A thorough boundary retracement survey and easement review should be conducted prior to labeling any structure as encroaching.

WHAT IS AN ENCROACHMENT?

Encroach: To enter by gradual steps or stealth into the possessions or rights of another; *To trespass or intrude.*

- To gain or intrude unlawfully upon the lands, property or authority of another.

Encroachment: An illegal intrusion in a highway or navigable river, with or without obstruction.

- An encroachment upon a street or highway is a fixture (such as a wall or fence) which illegally intrudes into or invades the highway or encloses a portion of it.
- It diminishes its width or area without closing it to public travel.

WHAT IS AN ENCROACHMENT?

According to the ACSM Dictionary of Surveying Terms, the definition of Encroachment is:

1. A building, a part of a building, or obstruction which intrudes upon or invades a highway or a sidewalk or trespasses upon the property of another.
2. The act of trespassing upon the domain of another. Partial, or gradual displacement of an existing use by another use; as locating factories in a residential district.
3. The gradual, stealthy, illegal acquisition of property.

WHAT IS AN ENCROACHMENT?

In the law of easements...

- If the owner of an easement alters the dominant tenement, so as to impose an additional restriction or burden on the servient tenement...

He is said to have committed an encroachment.

WHAT IS AN ENCROACHMENT?

- A land surveyor locates boundary lines according to the description of the deed.
- They then relate the lines of possession that do not agree with these lines.
- Finally, they report the facts to the client – preferably in writing.

(Brown's Boundary Control & Legal Principles.)

WHAT IS AN ENCROACHMENT?

- Unwritten rights of possession & titles relative to encroachments are very complicated and involved.
- The surveyor should be careful to keep the survey aspects separated from the legal aspects when it comes to encroachments.
- A surveyor should not attempt to give advice as to the legality of possession, use and encroachments.
- A surveyor can however, give information as to the strength and validity of the evidence of possession

WHAT IS AN ENCROACHMENT?

An article by Judge Cooley in the 1880's (about the judicial function of land surveyors) states:

What we determine as a boundary line is in fact an opinion.

- 99% of those boundary locations are accepted as fact.
- In practical terms (not the courts), we as surveyors determine boundaries that are relied on.
- This is a tremendous burden on the professional to get it right *every* time.

SURVEYOR'S TERM?

Questions have come up on whether or not the term “encroachment” should be used by surveyors.

- Some have called this common word a “legal” term.
- Some surveyors feel that it is ludicrous to say they should not use the term.

Options...

“Apparent Encroachments”

“Given this location of the boundary line, XYZ is

ENCROACHMENT IMPACT

- Major encroachments and overlaps are ordinarily shown on the plat to ensure clients are made aware of them.
- This emphasizes their importance and impact on the client's property.

TYPES OF ENCROACHMENTS

- **Property Line**
- **Right – of – Way**
- **Zoning Violations & Variances**

PROPERTY LINE ENCROACHMENTS

Potential Title Issues

Adverse Possession – A method of acquisition of title by possession for a statutory period (21 years in the State of Ohio) under certain conditions.

It has been described as the statutory method of acquiring title to land by limitation. The possession must be actual; adverse; under claim of right; continuous; open; notorious; exclusive; and hostile.

PROPERTY LINE ENCROACHMENTS

Potential Title Issues

Prescription – Title obtained in law by long possession. Occupancy for the prescribed period by the Code of Civil Procedure, as sufficient to bar an action for recovery of property, gives title by prescription.

Prescriptive Easement – A right acquired by an adverse use to use the land of another.

PROPERTY LINE ENCROACHMENTS

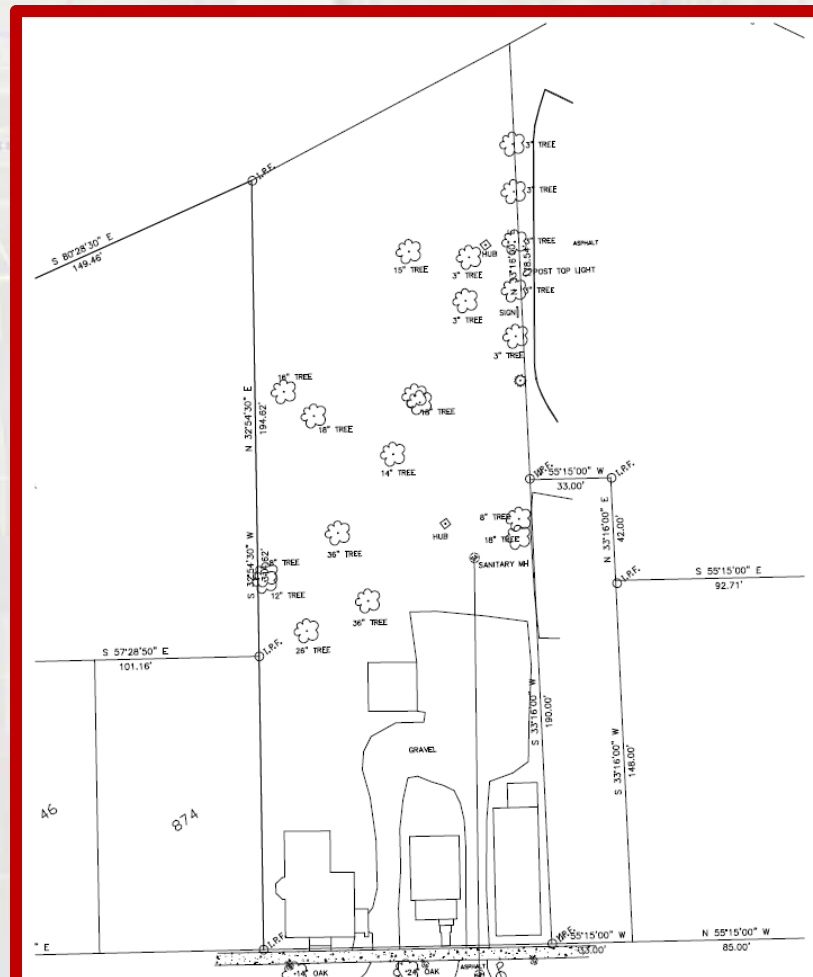
Title Insurance

Title insurance policies do not insure title issues that may arise from encroachments.

It is best to have a survey performed that identifies significant encroachments prior to the purchase of real estate to avoid potential problems at a later date.

PROPERTY LINE ENCROACHMENTS

Trees and Vegetation



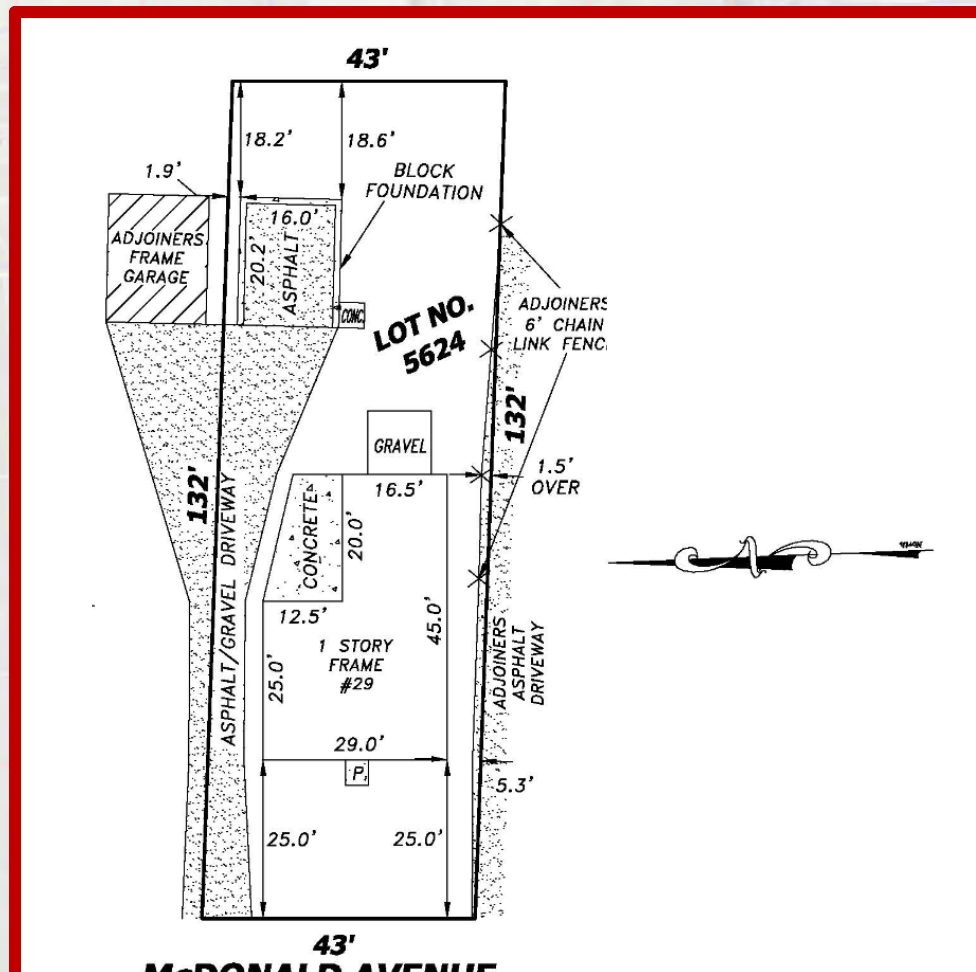
PROPERTY LINE ENCROACHMENTS

Trees and Vegetation



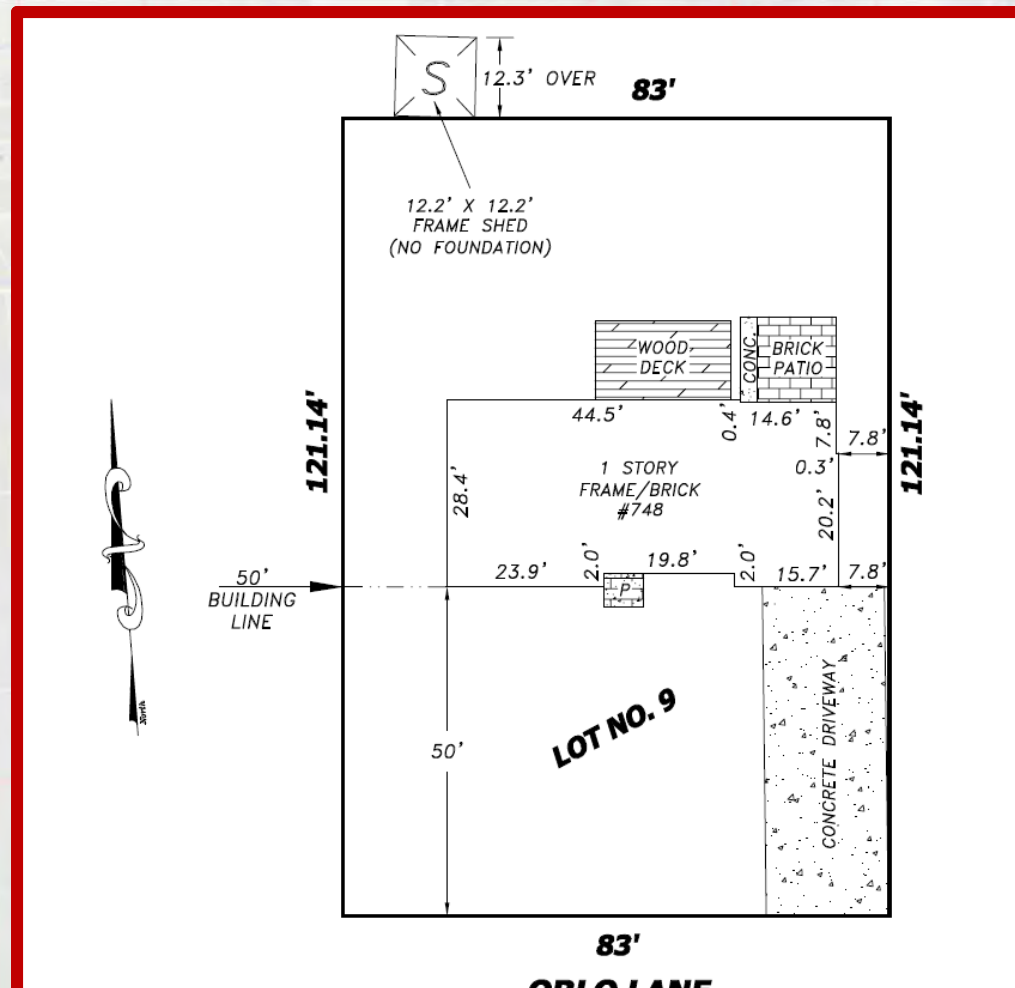
PROPERTY LINE ENCROACHMENTS

Fences and Driveways



PROPERTY LINE ENCROACHMENTS

Buildings and Sheds



PROPERTY LINE ENCROACHMENTS

Drainage & Runoff



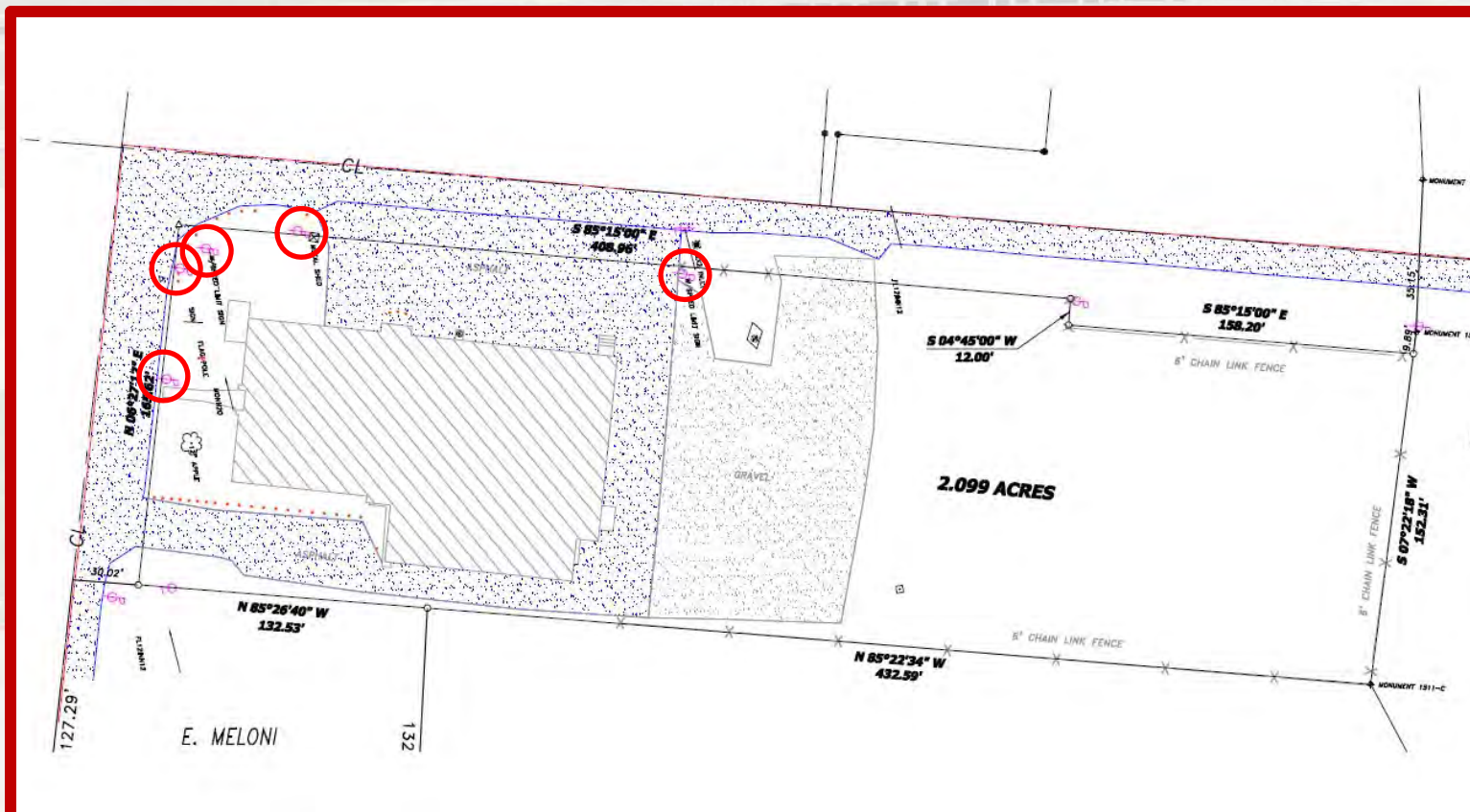
PROPERTY LINE ENCROACHMENTS

Drainage & Runoff



PROPERTY LINE ENCROACHMENTS

Utilities



PROPERTY LINE ENCROACHMENTS

Driveways

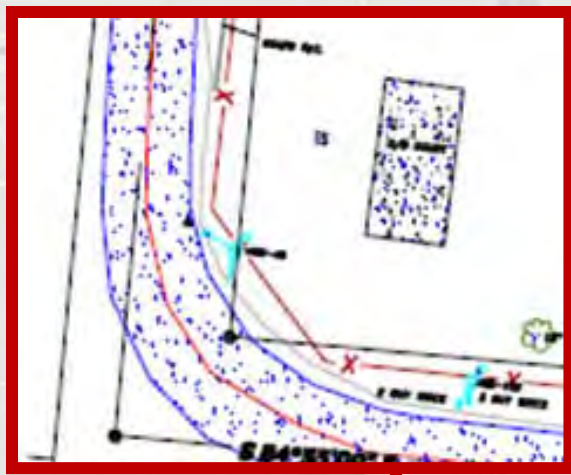


LIGHT-OF-WAY ENCROACHMENTS

Parking Lots

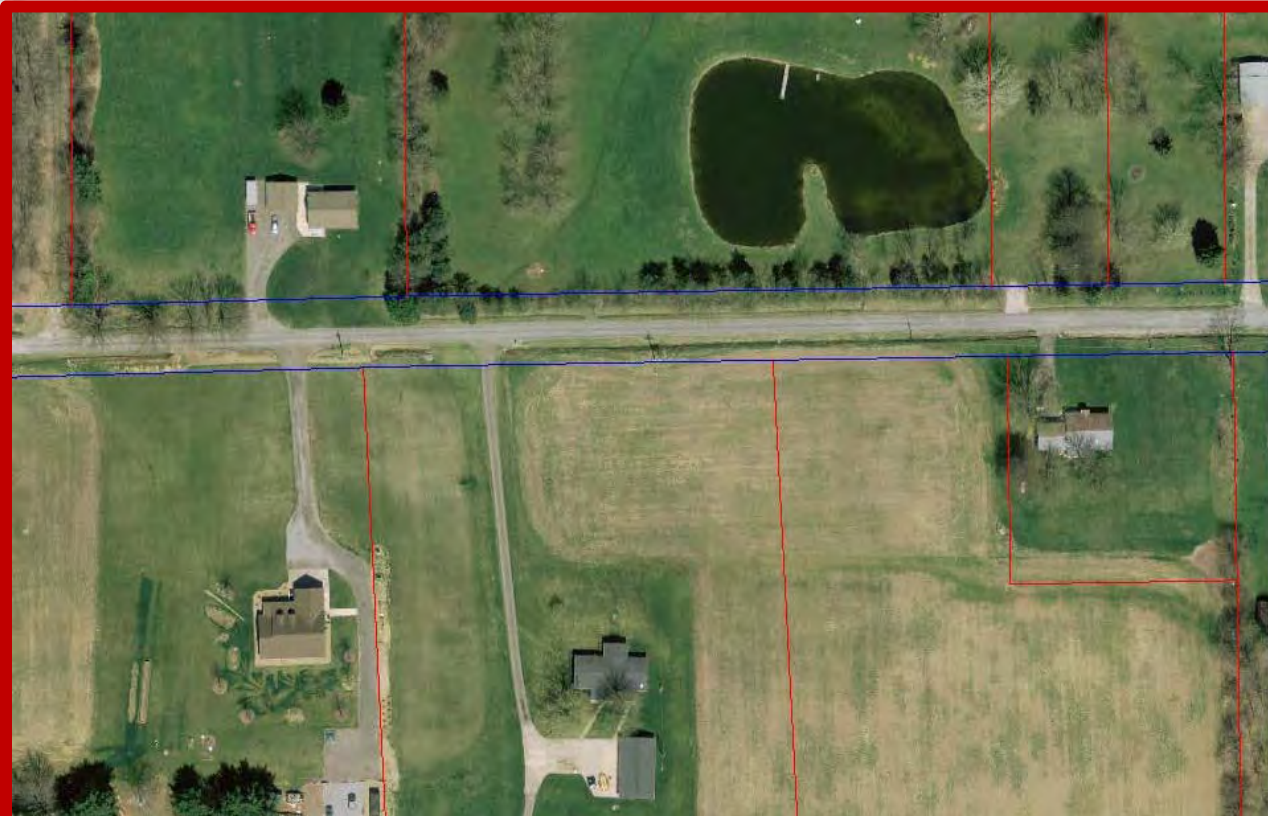


LIGHT-OF-WAY ENCROACHMENTS



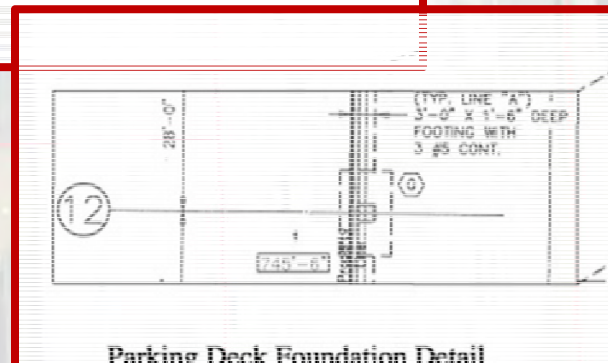
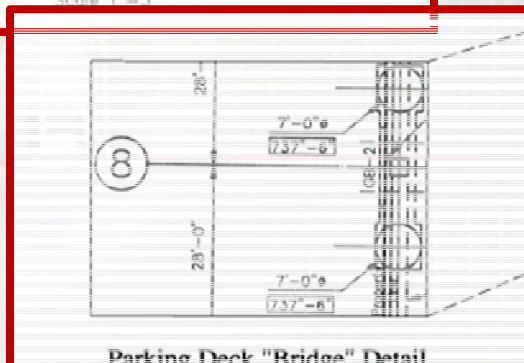
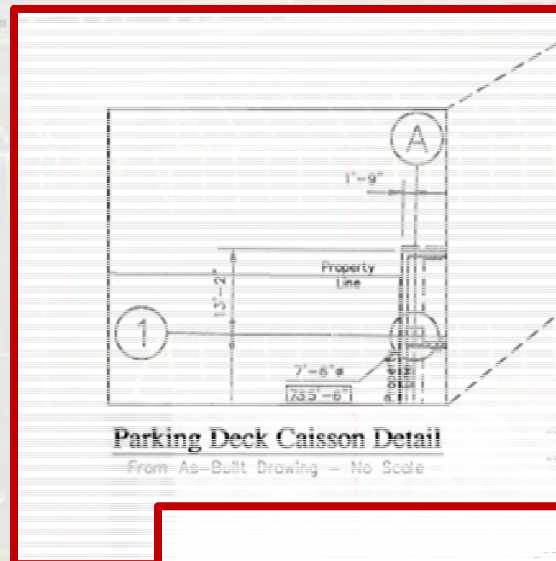
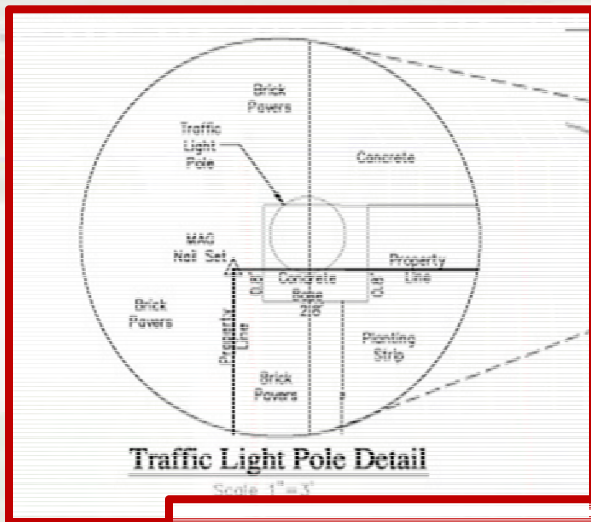
LIGHT-OF-WAY ENCROACHMENTS

Vegetation



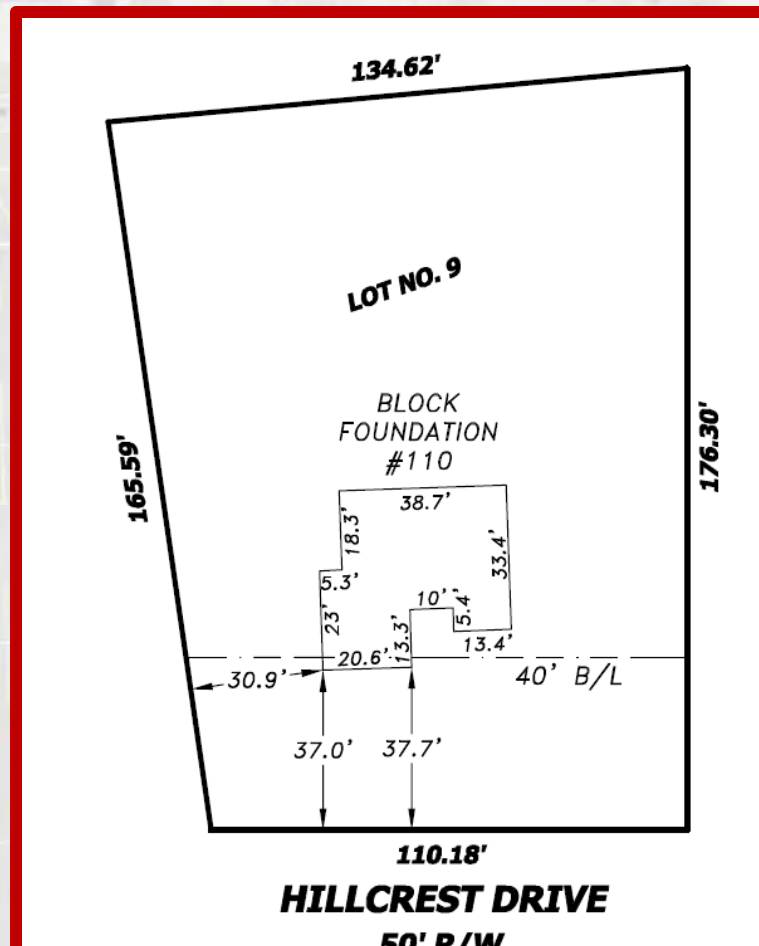
LIGHT-OF-WAY ENCROACHMENTS

Subterranean



BUILDING VIOLATIONS & VARIANCES

Building Line Setbacks



GIS

GEOGRAPHICAL INFORMATION SYSTEM

- **Can GIS help identify potential encroachments?**
- **Can GIS give a false impression that an encroachment exists?**

GIS

GEOGRAPHICAL INFORMATION SYSTEM



GIS

GEOGRAPHICAL INFORMATION SYSTEM



SURVEYS: MORTGAGE VS. BOUNDARY

What is Mortgage Survey?

- A survey typically used by title companies and mortgage lenders.
- Obtains proof that the major improvements on the property are free of encroachments onto neighboring properties or into recorded easements.
- Obtains proof that improvements made on neighboring properties do not encroach onto the parcel.
- This type of survey is not a boundary survey (which confirms the set property corners or sets missing corners.)

SURVEYS: MORTGAGE VS. BOUNDARY

Mortgage Surveys...

- **Disclose possible errors in the legal description for the property address in the lending documents.**
- **Depict apparent encroachments on the property.**
- **Depict platted easement locations and building setback lines which may limit or restrict future improvements to the property.**
- **Depict the size and shape of the property and how the home is situated within the property boundary.**
- **Disclose substantial closure errors in Metes and Bounds legal**

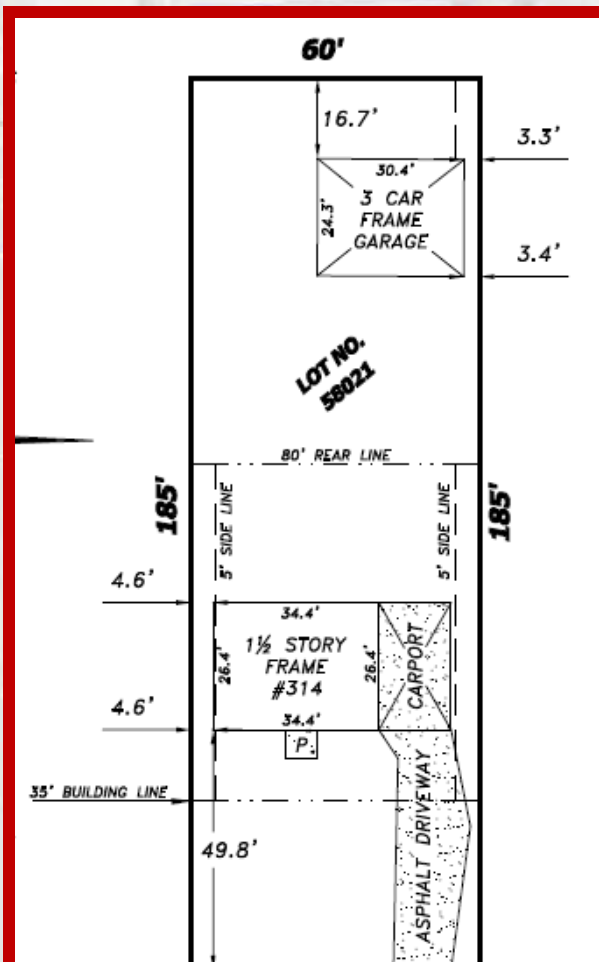
SURVEYS: MORTGAGE VS. BOUNDARY

Mortgage Surveys...

- **Depict alley or road vacations.**
- **Depict building dimensions, decks, pools and sheds.**
 - **Building dimensions may be compared with the assessor's office records to identify whether undocumented improvements were made to the property, which could impact the buyer.**
- **Cost much less than boundary surveys and should not be used to determine property lines.**

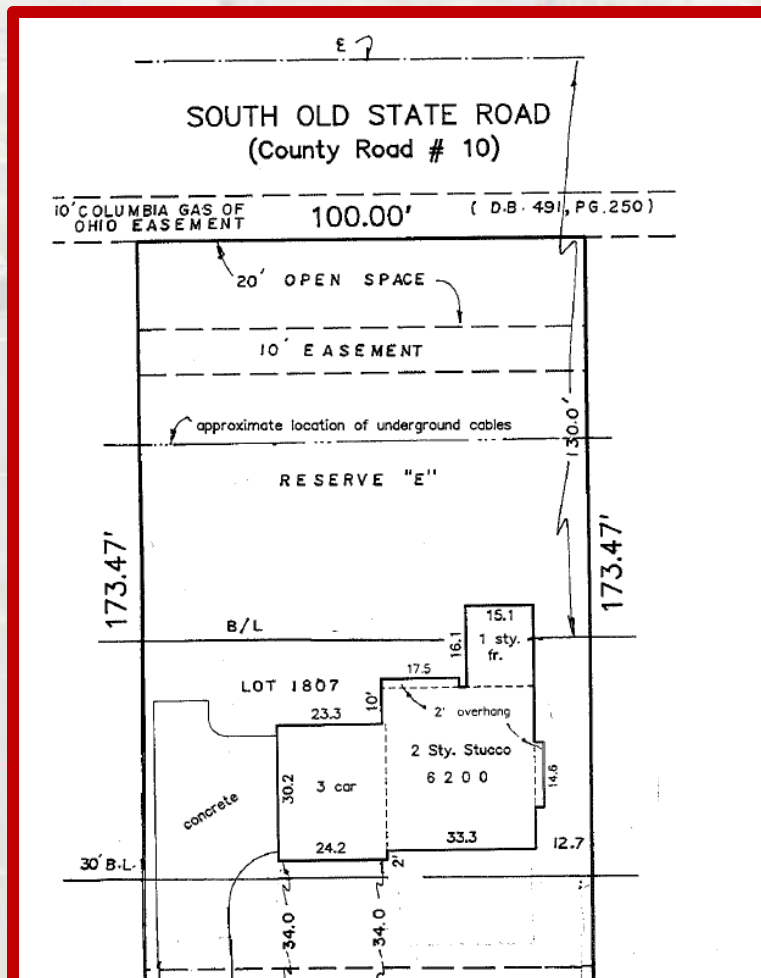
SURVEYS: MORTGAGE VS. BOUNDARY

**Mortgage Survey
(Building Setback Line)**



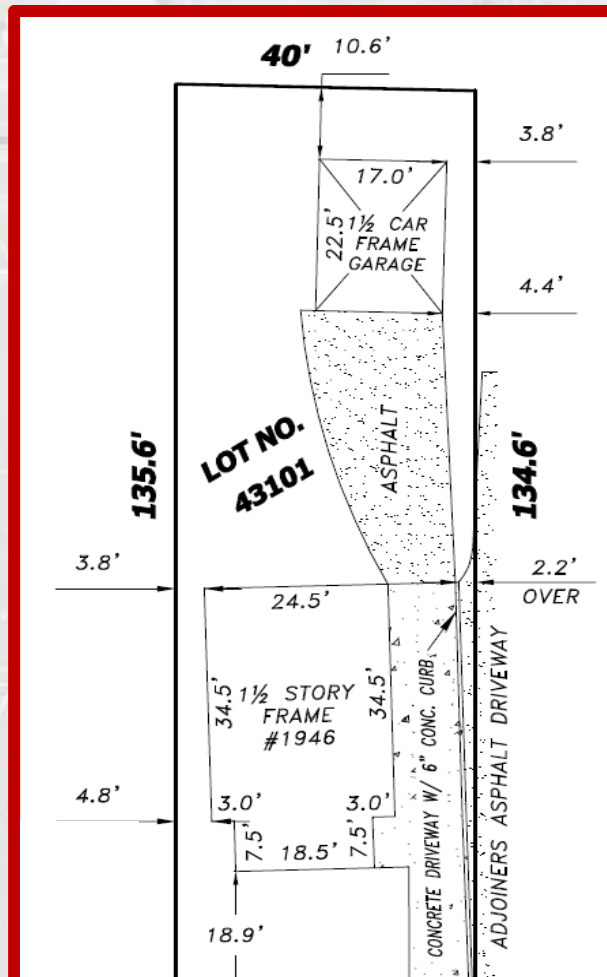
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**Mortgage Survey
(Building Setback Line)**



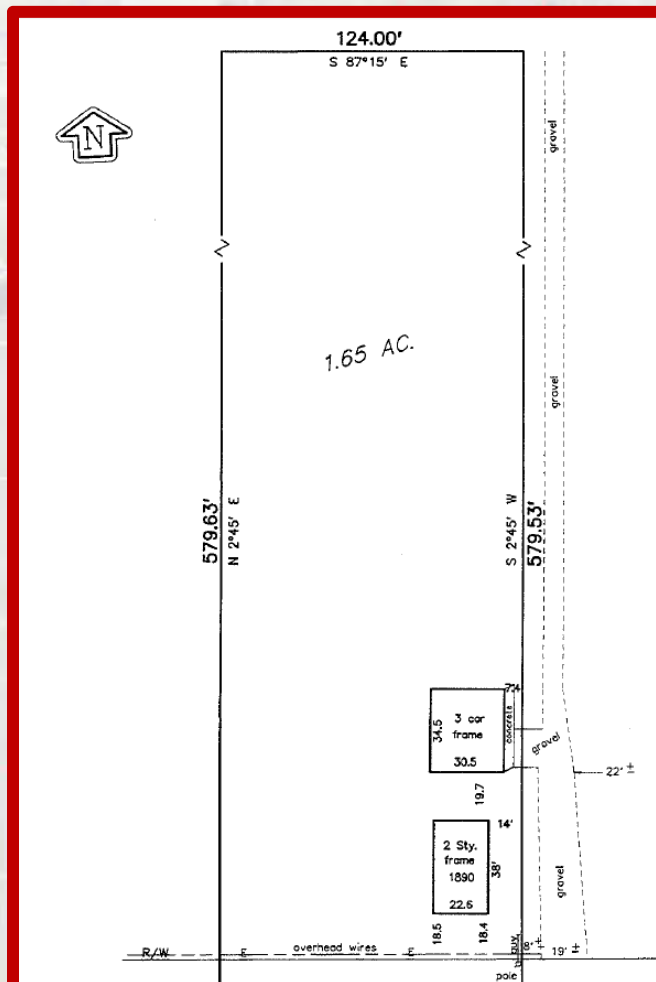
SURVEYS: MORTGAGE VS. BOUNDARY

Mortgage Survey
(Driveway)



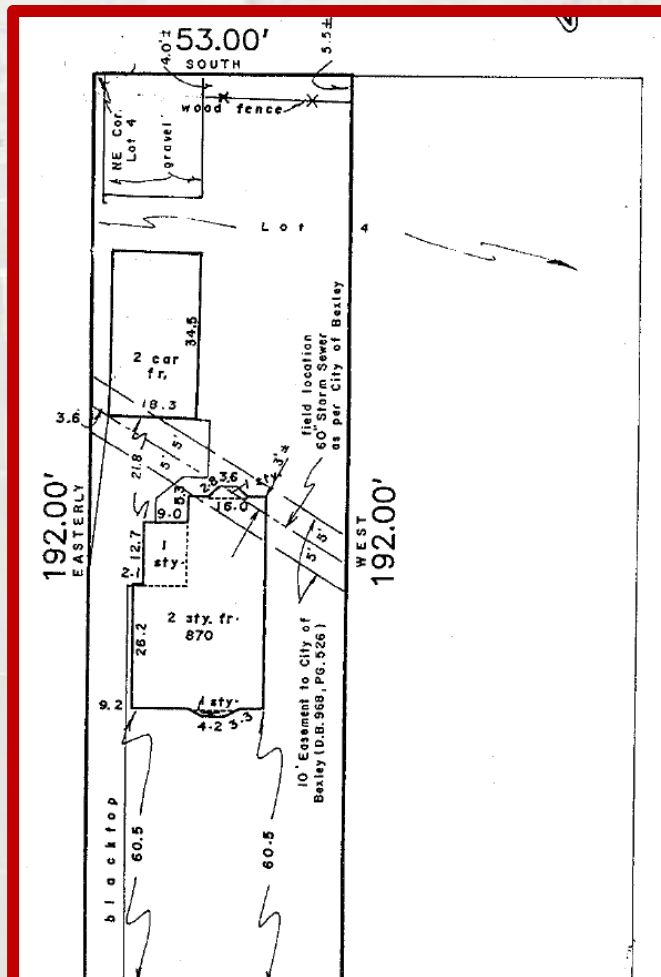
SURVEYS: MORTGAGE VS. BOUNDARY

**Mortgage Survey
(Ingress/Egress on Adjoiner)**



SURVEYS: MORTGAGE VS. BOUNDARY

Mortgage Survey
(Utility)



SURVEYS: MORTGAGE VS. BOUNDARY

What is Boundary Survey?

- **A study, investigation and evaluation of major factors affecting and influencing the location of the boundaries / ownership lines.**
- **Right-of-way and/or Easement lines may also be located and/or established within or surrounding a certain lot, parcel or quantity of real estate.**
 - ❖ **Such study and evaluation will culminate in the deliberate location or relocation on the ground of the perimeters, division lines or boundaries and the determination of area on the certain lot, parcel or quantify of real estate.**

SURVEYS: MORTGAGE VS. BOUNDARY

What is Boundary Survey?

- **Not for title insuring purposes, but is suitable for most any other purpose.**
- **This survey will not normally locate improvements, rights-of-way or easements within the surveyed site unless requested by the client, or where such items appear to the surveyor in his professional judgement to indicate an encumbrance on the real estate.**

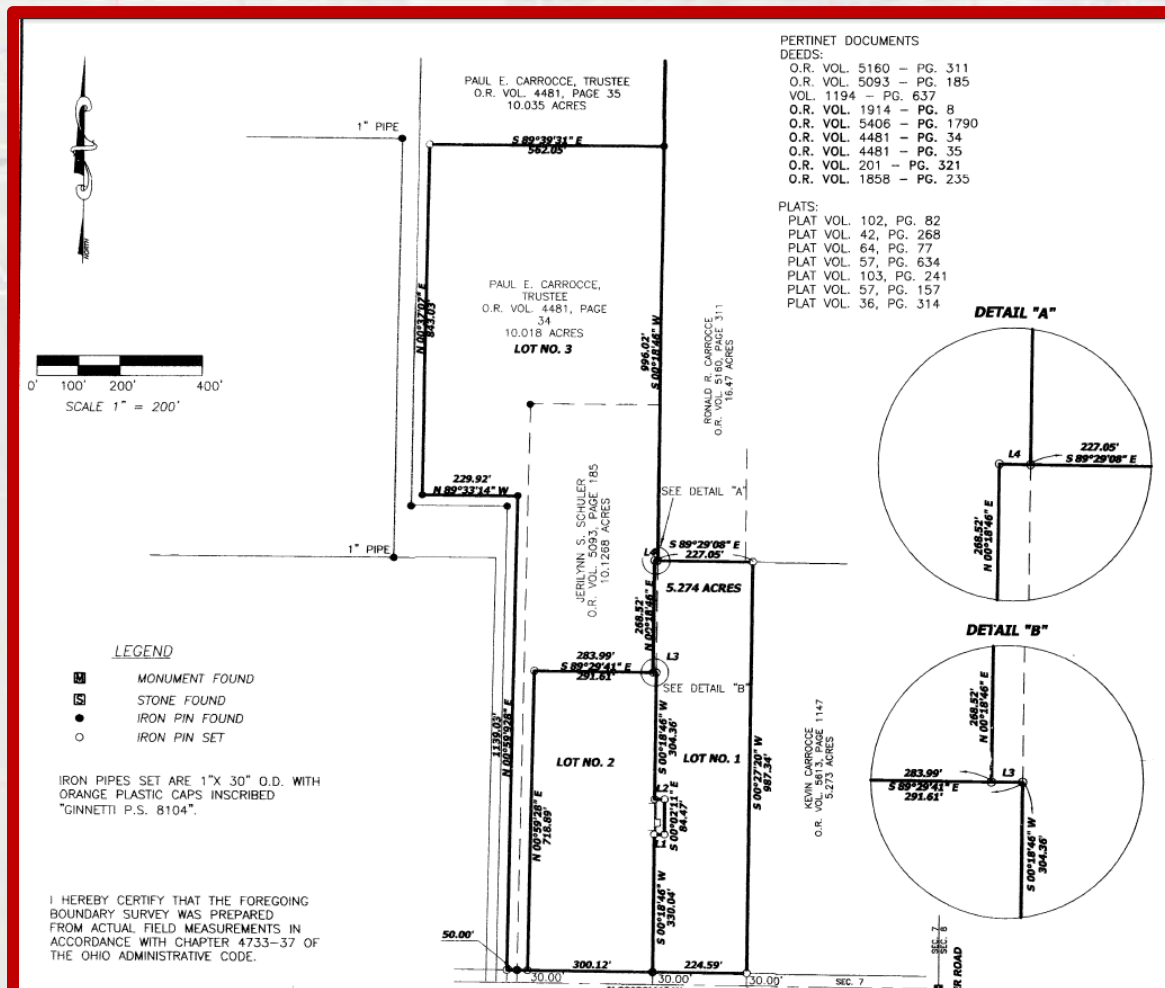
SURVEYS: MORTGAGE VS. BOUNDARY

Boundary Survey Requirements

- **The practice of locating land boundaries requires the expert skill of a Registered Professional Land Surveyor well-versed in the science and art of boundary law and long-practiced in the mechanics of measuring and computing values pertaining to such surveys.**
- **This involves record and field research, measurements and computations to establish boundary lines in conformance with State Minimum Standards and local Conveyance Standards.**

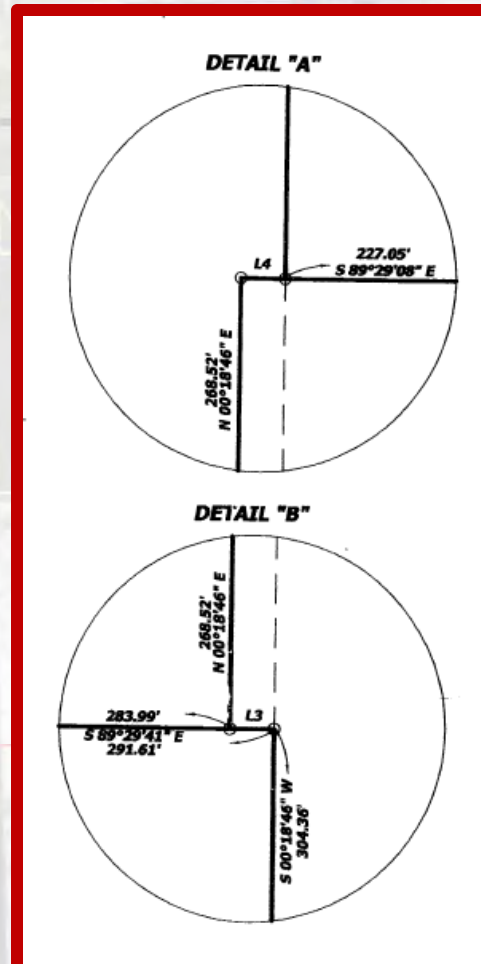
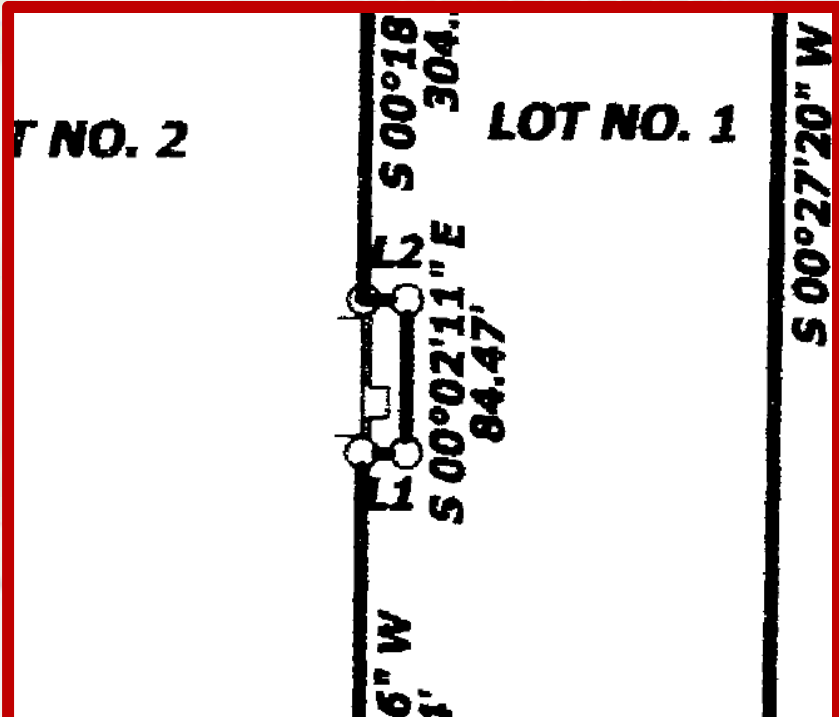
SURVEYS: MORTGAGE VS. BOUNDARY

Boundary Survey



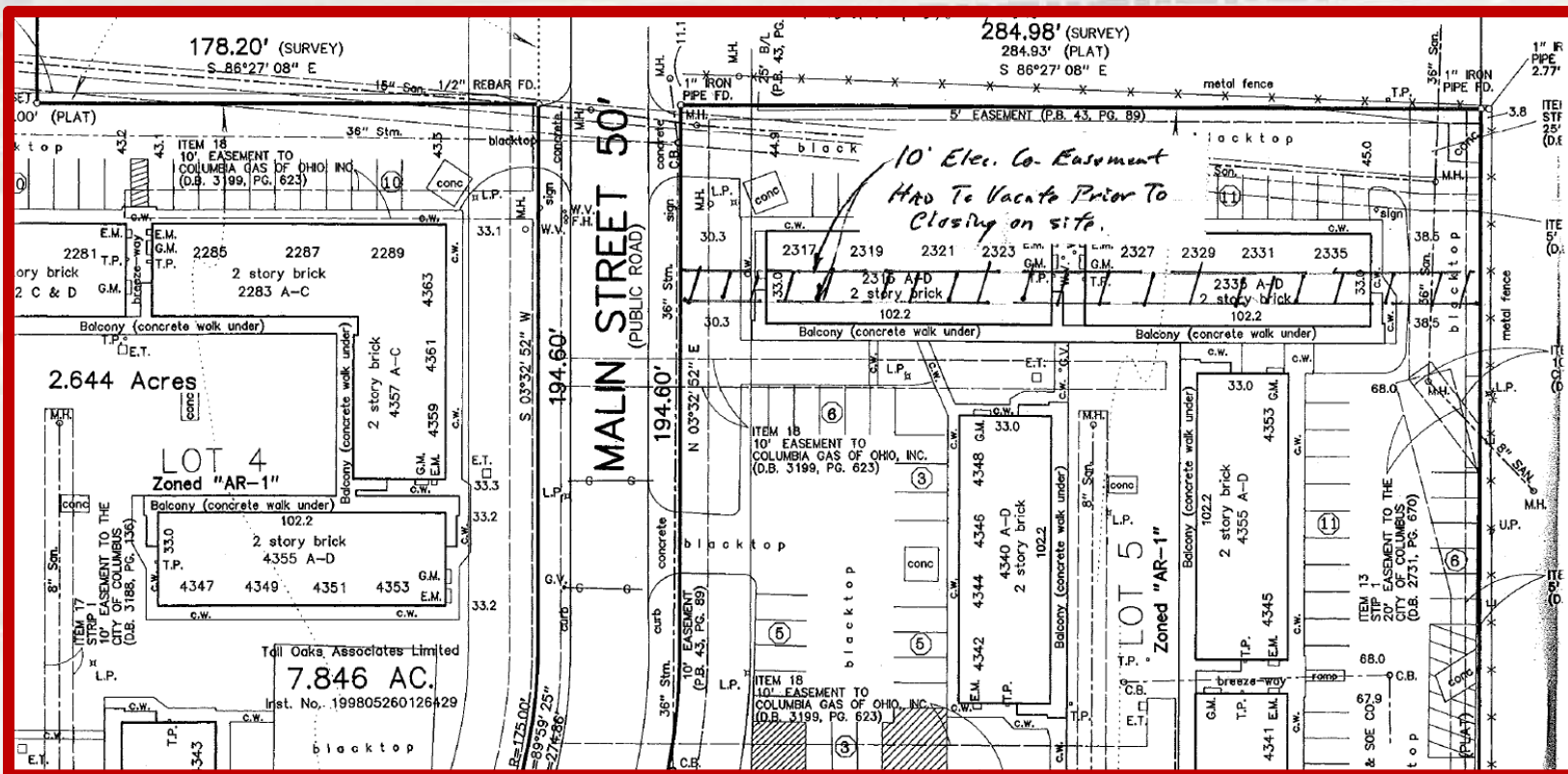
SURVEYS: MORTGAGE VS. BOUNDARY

Boundary Survey



SURVEYS: MORTGAGE VS. BOUNDARY

Boundary Survey





ENCROACHMENTS

CONCLUSION



ENCROACHMENTS

GET

IT

SURVEYED

SPECIAL THANKS

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