

COURT FILE NUMBER 2101-00793
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT **THOMAS H. FERGUSON**
RESPONDENTS **ALI TEJPAN, ZAHRA TEJPAN, REGISTRAR OF TITLES for the LAND TITLES OFFICE, JOHN DOE, JANE DOE, and ABC CORPORATION**
DOCUMENT **AFFIDAVIT**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Curtis E. Marble
Carbert Waite LLP
2300 Encor Place, 645 - 7th Avenue SW
Calgary, Alberta, T2P 4G8
Phone: 403-705-3642 Fax: 403-263-5553
File No.: 120632.001

Affidavit of James Durant
Sworn on June 4, 2021

I, James Durant, of Calgary, Alberta, make oath and say that:

1. I am a licensed professional Alberta Land Surveyor and have been practicing in Alberta since 2013. I attach a current copy of my CV as **Exhibit "A"** to my affidavit.
2. I have professional knowledge of the facts and matters deposed to below except where stated to be based on information and belief in which case I believe them to be true.
3. I surveyed the front setbacks of 21 homes in Elbow Park on Thursday June 3, 2021.
4. Attached as **Exhibit "B"** is the survey report, detailing the results of the survey and the addresses of the homes that I surveyed.
5. The purpose of these measurements was to determine the front setbacks as indicated by Instrument No. 7648 FT, which is attached hereto as **Exhibit "C"**. The relevant portion of **Exhibit "C"** states as follows:

"3 (e) That no house or other building shall be located or placed on the said lot within Twenty-five (25) feet of the Street or Avenue, and any dwelling house shall be not less than Twenty-five (25) feet from the rear of said lot."

6. I also note that section 8.5, Part D of the Manual of Standard Practice for Alberta Surveyors requires that when surveying for real property reports, the survey is to be conducted from the foundation of the home, unless otherwise noted on the plan and not

the eave or any other part of the home. A copy of the relevant excerpt is attached as **Exhibit "D"** to my Affidavit.

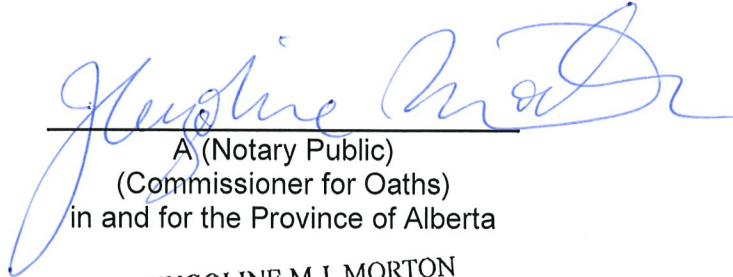
7. In conducting the surveys of the front setbacks of the 21 homes, I measured from the foundation of each of the 21 homes, as is required for real property reports pursuant to section 8.5, Part D of the Manual of Standard practice for Alberta Surveyors. Where the foundation was not consistently perpendicular to the Street or Avenue, I measured from the nearest point of the foundation to the Street or Avenue, as is the standard practice in industry. I measured to the Street or Avenue, as applicable, as is indicated in Instrument No. 7648 FT. Specifically, I measured to the back of curb of the Street or Avenue, as the industry practice for roadway measurements is to include the face of the curb.
8. Of the 21 homes surveyed, all but two (2) were setback 25 feet or greater from the Street or Avenue, as applicable. Those which were setback less than 25 feet are:
 - (a) 902 Ridge Road SW, which was 24.1 feet setback; and
 - (b) 916 Ridge Road SW, which was 23.1 feet setback.
9. I have reviewed the front setback measurements contained in Block Plan for Plan 3605 FO and Schedule "A" prepared by Horizon Land Surveys Inc. dated May 3, 2021 contained in the Affidavit of Zahra Tejpar dated May 13, 2021. I note that the methodology used to determine the front setback was to measure from the "dwelling to the property line". I cannot confirm what part of the dwelling the measurements were taken from.

SWORN BEFORE ME at Calgary, Alberta,
on June 4, 2021.

HUGOLINE MORTON, Lawyer
A Commissioner for Oaths
in and for the Province of Alberta
A NOTARY PUBLIC
IN AND FOR THE PROVINCE OF ALBERTA
MY APPOINTMENT EXPIRES
AT THE PLEASURE OF HER MAJESTY

JAMES DURANT

This is Exhibit "A"
referred to in the Affidavit of
James Durant sworn before me
this 4th day of June, 2021.



A (Notary Public)
(Commissioner for Oaths)
in and for the Province of Alberta

HUGOLINE M.J. MORTON
A NOTARY PUBLIC
IN AND FOR THE PROVINCE OF ALBERTA
MY APPOINTMENT EXPIRES
AT THE PLEASURE OF HER MAJESTY



ELEMENT
Land Surveys Inc.

#203, 1201 5 St SW
Calgary, AB Canada T2R 0Y6

Phone
Fax

403-286-7937
403-247-0325

www.elementsurveys.com
info@elementsurveys.com

James Durant, ALS, B.Sc. **President – Element Land Surveys Inc.**

James brings over 20 years' experience working in the Survey Industry. James graduated from the University of Calgary in 2001, with a B.Sc. in Earth Sciences (Geography and Geology double major) and has worked in both the field and office capacity of the Survey Industry for many years. Mr. Durant served his articles Mr. Jeff Johnston, ALS, and Mr. Bernard Lamarche, ALS. James received his ALS commission in August of 2013, and is currently the owner, president, and principal Alberta Land Surveyor of Element Land Surveys Inc.

James' experience is broad, ranging from extensive field experience with both GPS and conventional survey methods in area of legal boundary survey, construction, high rise, topographic, and oil and gas. James has worked on a wide variety of projects that serve both the municipal and energy sector. Highlights include "The Bow" tower in Calgary, AB, Hotel St. Germain, Keynote Office Project, and recently the South Bank and Avli on Atlantic project in Inglewood, Calgary, AB.

James has served as project manager and senior field crew chief for many oil field well sites and pipeline projects within the energy sector. Past clients include Apache, Shell, NAL Resources, and Enbridge, to name a few. James has been involved in all aspects of survey including completing the field work and office project management to prepare well site survey plans and pipeline construction and legal drawings.

Education

CBEPS Certificate of Completion – 2009
(Canadian Board of Examiners for Professional Surveyors)

University of Calgary – 2021
(B.Sc. Earth Sciences Program)

Work Experience

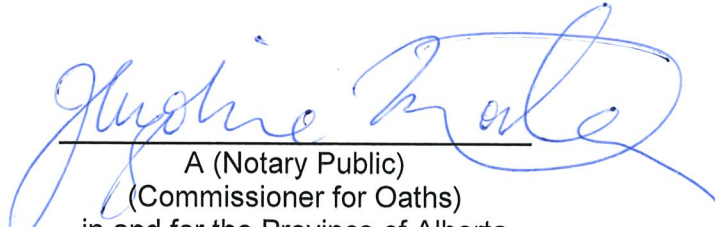
Element Land Surveys Inc. - President, Principal Alberta Land Surveyor
June 2013 – Current

Lamarche Land Surveyors Ltd. – ALSA Articling Pupil and Operations Manager
June 2010 – June 2013

Eclipse Geomatics and Engineering – ALSA Articling Pupil and Geomatics Technologist
Jan 2009 – June 2010

Usher Canada/MMM Group (Now WSP) – Geomatics Technologist
Sept 2004 – Jan 2009

This is Exhibit "B"
referred to in the Affidavit of
James Durant sworn before me
this 4th day of June, 2021.



A (Notary Public)
(Commissioner for Oaths)
in and for the Province of Alberta

HUGOLINE M.J. MORTON
A NOTARY PUBLIC
IN AND FOR THE PROVINCE OF ALBERTA
MY APPOINTMENT EXPIRES
AT THE PLEASURE OF HER MAJESTY

BLOCK PLAN SKETCH

LEGAL DESCRIPTION: Blocks: 78, 79, 80,
(Portions of) 90, 91, 92, & 93
Plan: 3605 FO

PREPARED FOR: Corbert Waite LLP

MUNICIPAL ADDRESS: VARIOUS
Calgary, Alberta

SCALE: NOT TO SCALE

NOTES: SURVEY WAS COMPLETED JUNE 3, 2021
LOTS WITH FOUNDATION PROJECTIONS INTO THE 25' SETBACK AS PER CAVEAT 7648 FT: 902 & 916 RIDGE RD SW
MEASUREMENTS ARE TAKEN FROM THE BACK OF THE CITY CURB (ROAD) TO THE NEAREST PERPENDICULAR POINT ON THE FOUNDATION
ALL MEASUREMENTS ARE SHOWN IN METRES AND (DECIMAL FEET) AND COMPLETED IN THE FIELD ON JUNE 3, 2021.
PROPERTY BOUNDARIES AND BUILDING FOOTPRINTS WERE NOT MEASURED AND MAY NOT BE EXACTLY AS SHOWN ON THIS PLAN

Page 1 of 1



Dated at Calgary, Alberta on this 4th day of June, 2021.

[Handwritten signature in blue ink]

James G. Durant, A.L.S.
This document is not valid unless it bears on original signature in blue ink and an Element Land Surveys Inc. permit stamp in red ink.

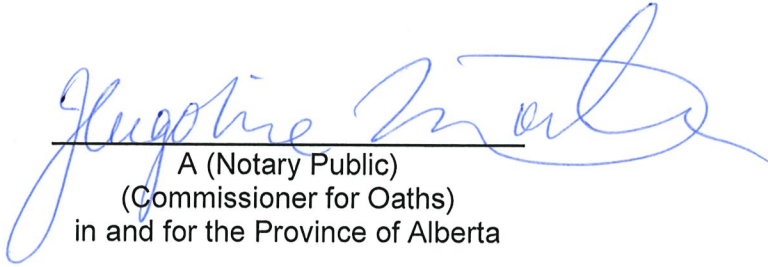


© Copyright Element Land Surveys Inc. 2021

Element Land Surveys Inc.
#203, 1201 5th Street SW Ph.: 286-7937
Calgary, Alberta T2R 0Y6 Fax: 247-0325

Surveyed: JD	Drawn: JD
File No.: 210230	Date: June 4, 2021

This is Exhibit "C"
referred to in the Affidavit of
James Durant sworn before me
this 4th day of June, 2021.



A (Notary Public)
(Commissioner for Oaths)
in and for the Province of Alberta

HUGOLINE M.J. MORTON
A NOTARY PUBLIC
IN AND FOR THE PROVINCE OF ALBERTA
MY APPOINTMENT EXPIRES
AT THE PLEASURE OF HER MAJESTY

C A V E A T.

7648 FT

THE REGISTRAR
FOR THE SOUTH ALBERTA LAND REGISTRATION DISTRICT:

TAKE NOTICE that the CANADIAN PACIFIC RAILWAY COMPANY

claims an interest in:

- 70.0 mb {
- Lots One (1) to Seven (7), Block Seventy-eight (78);
 - Lots One (1) to Nine (9), Block Seventy-nine (79);
 - Lots One (1) to Five (5) and Lot Eight in Block Eighty (80);
 - Lots Two (2), Three (3), Five (5), Six (6) and Seven (7), Block Ninety (90);
 - Lots One (1), Four (4) and Lots Eight (8) to Eleven (11) inclusive, Block Ninety-one (91);
 - Lots One (1), Seven (7), Eight (8) and Nine (9), Block Ninety-two (92); and
 - Lots One (1) to Eight (8) inclusive, Block Ninety-three (93), according to a plan of part of the City of Calgary, of record in the Land Titles Office for the South Alberta Land Registration District as Plan 3605 F.O., all standing in the register in the name of the Canadian Pacific Railway Company;
- 70.0 mb {
- OK. AS TO FORM
Assistant Solicitor
- 016


under and by virtue of an Agreement made between the Canadian Pacific Railway Company and Joseph J. Greenan, Barrister, and Mary P. Greenan (his wife), both of the City of Calgary, dated the 29th day of April, 1948, copy of which Agreement is hereto attached.

AND the Canadian Pacific Railway Company forbids the registration of any person as transferee or owner of, or of any instrument affecting the said estate or interest unless such instrument be expressed to be subject to its claim.

IT APPOINTS the Office of its Department of Natural Resources in the City of Calgary, in the Province of Alberta,

as the place at which notices and proceedings relating
hereto may be served.

DATED this 29th day of April, A.D.1948.



Witness.

CANADIAN PACIFIC RAILWAY COMPANY

Per Leslie Munroe
Leslie Munroe, Manager,
Department of Natural Resources.

7648 F.T.



THIS AGREEMENT made in duplicate this 29th of

April, A.D.1948.

BETWEEN:

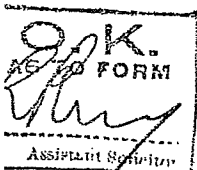
CANADIAN PACIFIC RAILWAY COMPANY,
(hereinafter called "the Owner"),

OF THE FIRST PART,

- and -

JOSEPH J. GREENAN, Barrister,
and MARY P. GREENAN, (his wife),
both of the City of Calgary, in
the Province of Alberta, (herein-
after called "the Purchasers"),

OF THE SECOND PART.



IN CONSIDERATION of the sum of Nine Hundred Dollars (\$900.00) paid by the Purchasers to the Owner, receipt of which sum is hereby acknowledged, the Owner has sold and agreed to transfer to the Purchasers Lot Seven (7), in Block Ninety (90), according to a plan of part of the City of Calgary of record in the Land Titles Office for the South Alberta Land Registration District as Plan No. 3605 F.O., subject to the following covenants, terms and conditions:

1. That the Owner shall, as and when requested by the Purchasers, transfer to the Purchasers said Lot Seven (7), Block Ninety (90), Plan No. 3605 F.O.
2. As the amount of the 1948 taxes in respect of the said Lot is not yet known, the Purchasers agree to pay the full year's taxes for the year 1948 in respect of the said lot, and upon production by them of their Tax Receipt, the Owner hereby

agrees to refund to them the proportion of the said taxes due from the 1st day of January, 1948, to the 31st day of March, 1948.

3. The Owner hereby agrees to insert in all Agreements for Sale entered into by the Owner for the sale of any one of the following lots or parcels of land, namely:

- Lots One (1) to Seven (7), Block Seventy-eight (78).
- × Lots One (1) to Nine (9), Block Seventy-nine (79).
- Lots One (1) to Five (5) and Lot Eight (8) in Block Eighty (80).
- Lots Two (2), Three (3), Five (5) and Six (6), Block Ninety (90).
- Lots One (1), Four (4), and Lots Eight (8) to Eleven (11), Block Ninety-one (91).
- Lots One (1), Seven (7), Eight (8) and Nine (9), Block Ninety-two (92); and
- Lots One (1) to Eight (8), Block Ninety-three (93), as shown on said plan No. 3605 F.O.,

restrictive covenants similar to the covenants hereinafter contained.

IT IS HEREBY COVENANTED AND AGREED with the Owner by the above mentioned Purchasers on behalf of themselves, their executors, administrators and assigns, and successors in title, as follows:

(a) That there shall not be erected or suffered or permitted to be erected or used or placed upon the said Lot Seven (7), Block Ninety (90), Plan 3605 F.O., any building whatsoever except for the purposes of a private residence and private garage in connection therewith.

(b) That there shall not be erected upon the said Lot more than one (1) such residence and garage.

(c) That there shall not be erected on the said lot any dwelling house to cost less than Seven Thousand Dollars (\$7,000.00), and same shall be of a neat design and completed in a proper and workmanlike manner.

(d) That if the said dwelling house consists of basement and one floor, the ground area occupied by same shall not be less than Twelve Hundred (1200) square feet, exclusive of the garage, and if it consists of One and a Half ($1\frac{1}{2}$) or more storeys, said dwelling house shall occupy a ground area of not less than One Thousand (1,000) square feet, exclusive of the garage.

(e) That no house or other building shall be located or placed on the said lot within Twenty-five (25) feet of the Street or Avenue, and ^{any dwelling house} shall be not less than Twenty-five (25) feet from the rear of said lot.

(f) That the said lot shall not be used for the purpose of a sand or gravel pit or quarry, and there shall not be removed or suffered or permitted to be removed any sand, gravel, stone or other material, except such as may be necessary for improving the lot or building thereon.

(g) That no house or other building on the said lot shall be used for mercantile, business or manufacturing purposes, and no work of an offensive, dangerous or noisy character shall be carried on which may be or become an annoyance or nuisance.

(h) That all work done on the said lot shall comply in all

respects with By-laws or Building Regulations of the City of Calgary.

(i) That covenants similar to the above shall be inserted in all Agreements for Sale made by the Purchasers for a resale of the said lot.

(j) That the Purchasers and their executors, administrators and assigns, and successors in title, shall observe the aforesaid restrictions applicable to the said lot, and that same shall be enforceable against him or them or on behalf of the owner or owners from time to time of any of the said lots or parcels of land referred to in Paragraph 3 hereof.

(k) That the restrictions aforementioned as imposed on each of the said lots or parcels of land referred to in Paragraph 3 hereof shall be enforceable by or on behalf of or against the owner or owners from time to time of any one or more of the said lots or parcels of land referred to in said Paragraph 3.

(l) The Purchasers shall be entitled to register in the Land Titles Office a Caveat protecting the restrictions above set out, and the transfer by the owner to the purchasers of the said lots or parcels of land referred to in Paragraph 3

hereof shall be expressed to be subject to said Caveat to be registered as aforesaid.

IN WITNESS WHEREOF the Owner has caused these presents to be executed by the Manager of its Department of Natural Resources, and the Purchasers have hereunto set their hands and seals, all on the day and year first above written.

CANADIAN PACIFIC RAILWAY COMPANY

Per Leslie Munroe
Leslie Munroe, Manager,
Department of Natural Resources.

Betty Gablehouse
Witness.

Betty Gablehouse
Witness.

Joseph J. Greenan
Joseph J. Greenan.

Mary P. Greenan
Mary P. Greenan.

CANADA)
PROVINCE OF ALBERTA)
TO WIT:V)

I, Cecil J. Loeb, of the City
of Calgary, in the Province of Alberta, Secretary,
make oath and say:

1. THAT I was personally present and did see Leslie
Munroe, Manager of the Department of Natural Resources of the
Canadian Pacific Railway Company at Calgary, in the Province
of Alberta, named in the within instrument, who is personally
known to me to be the person named therein, duly sign and
execute same for the purposes named therein.

2. THAT the same was executed at the City of Calgary,
in the Province of Alberta, and that I am the subscribing
witness thereto.

3. THAT I personally know the said Leslie Munroe,
and he is in my belief of the full age of twenty-one years.

SWORN before me at the City
of Calgary, in the Province
of Alberta, this 21st day
of May, A.D. 1948.

Cecil J. Loeb

E. W. Minnell

A COMMISSIONER FOR OATHS in and for the
Province of Alberta.

CANADA)
PROVINCE OF ALBERTA)
TO WIT:)

I, Betty Galbraith, of the City of
Calgary, in the Province of Alberta, Heretofore,
make oath and say:

1. THAT I was personally present and did see Joseph J. Greenan and Mary P. Greenan named in the within instrument, who are personally known to me to be the persons named therein, duly sign and execute the same for the purposes named therein.
2. THAT the same was executed at the City of Calgary, in the Province of Alberta, and I am the subscribing witness thereto.
3. THAT I personally know the said Joseph J. Greenan and Mary P. Greenan, and they are in my belief of the full age of twenty-one years.

SWORN before me at the City)
of Calgary, in the Province)
of Alberta, this 5th day)
of May, A.D. 1948.)

Betty Galbraith

A. C. Duff

A COMMISSIONER FOR OATHS in and for the
Province of Alberta.

CANADA)
PROVINCE OF ALBERTA)
TO WIT:)

I, Leslie Munroe, of the City of Calgary, in the Province of Alberta, Manager, make oath and say:

1. THAT I am agent of the above-named Caveator.
2. THAT I believe I have a good and valid claim upon the said lands and I say this Caveat is not being filed for the purpose of delaying or embarrassing any person interested therein or proposing to deal therewith.

SWORN before me at the City of Calgary, in the Province of Alberta, this 21st day of May, A.D. 1948. m

Leslie Munroe

J. D. Munroe

A COMMISSIONER FOR OATHS in and for the Province of Alberta.

DATED

D. 194

BETWEEN:

CANADIAN PACIFIC RAILWAY COMPANY,

OF THE FIRST PART,

- and -

JOSEPH J. GREENAN & MARY P. GREENAN,

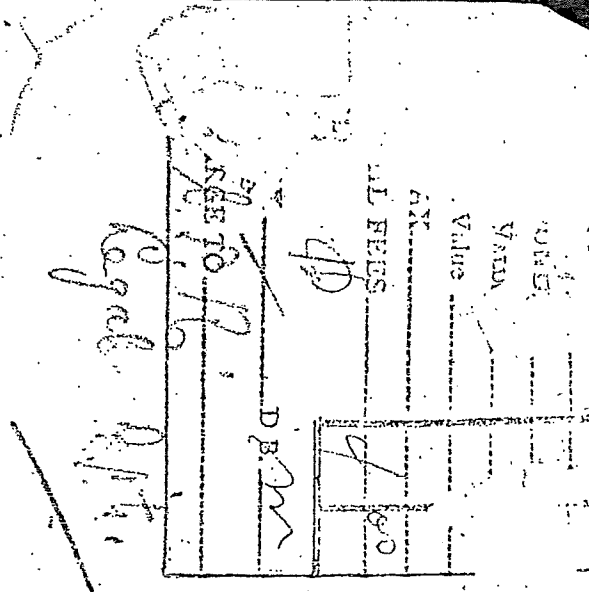
OF THE SECOND PART.

A G R E E M E N T.

File 16129
RRM/JAF

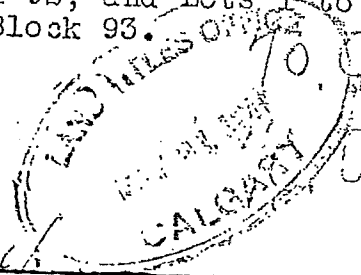
JAMES Mc CAIG, K.C.
C.P.R. SOLICITOR
CALGARY, ALBERTA.

7648 F.T. APR. 1948



CON. REE
TRA REF. CERT
EXTRA NEW TITLE
STRICT

Lots 1 to 7, Block 78; Lots 1 to 9, Block 79; Lots 1 to 5, and Lot 8, in Block 80; Lots 2, 3, 5, 6 and 7 in Block 90; Lots 1, 4, and Lots 8 to 11 inclusive, Block 91; Lots 1, 7, 8 and 9, Block 92; and Lots 1 to 8 inclusive, Block 93.



In Dub.

CAVEAT.

70 0 24/6
2/7

70 0 24/6


I certify that the within instrument is duly Entered and Registered in the Land Titles Office for the South Alberta Land Registration District at Calgary, in the Province of Alberta at _____ o'clock _____ M., on the _____ day of _____ A.D., 19____ Number _____ Book _____ Folio _____

[Signature] Registrar
S. A. L. R. D.

File 16129.

C.P.R. BUILDING
CALGARY, ALBERTA

This is Exhibit "D"
referred to in the Affidavit of
James Durant sworn before me
this 4th day of June, 2021.



A (Notary Public)
(Commissioner for Oaths)
in and for the Province of Alberta

HUGOLINE M.J. MORTON
A NOTARY PUBLIC
IN AND FOR THE PROVINCE OF ALBERTA
MY APPOINTMENT EXPIRES
AT THE PLEASURE OF HER MAJESTY



8.5 Improvements

The improvements to be shown on the plan for an Alberta Land Surveyor's Real Property Report include, at minimum, the following:

1. All buildings and projections therefrom, together with their dimensions. Minimum setback dimensions shall be shown from the boundaries of the subject parcel to exterior walls and/or foundation as required by the municipality. A statement clarifying the extent of setback dimensions is to be shown.
2. The measured location of common wall(s) and their relationship to the property line (e.g., "property line falls within the common wall" or "property line does not fall within the common wall; see dimensions on Detail A") in cases where a building that is subject to the Real Property Report is an attached dwelling, a semi-detached dwelling, or another form of construction where a shared common wall is present, and where there is an intent for a property line to fall within one or more common wall(s).

If measurements are not obtainable, the Surveyor shall note on the Real Property Report that the common wall(s) have not been measured and either that their shown location(s) have been assumed from dimensions on building plans or that the wall(s) have not been shown.

3. Eaves, dimensioned to the line of the fascia or foundation, together with a note showing this in the legend.
4. Driveways if they encroach onto the adjacent parcel.
5. Eavestroughs, steps, and landings if they encroach onto the adjacent parcel, street, or lane.
6. All permanent sheds and their dimensions.
7. Retaining walls that appear to define property lines or that encroach onto adjacent parcels, rights-of-way, streets, or lanes.
8. Utility poles and pedestals if they encroach onto the subject parcel.
9. Decks and their height above ground.
10. In-ground swimming pools.



11. In urban areas, fences that appear to define property lines. Indicate in the legend that all fences are within 0.2 metres of the property line unless otherwise noted. Fences more than 0.2 metres from the property line shall be dimensioned. Fences shall not be indicated as encroaching unless the encroachment is onto public lands.

To avoid confusion and conflict, fence ownership should not be inferred.

12. Adjacent municipal sidewalks and curbs, together with the distance from the property line to the back of each sidewalk and curb.