

**BEFORE THE IOWA ENGINEERING AND LAND SURVEYING
EXAMINING BOARD**

**Petition by Daniel F. Rittel for)
Declaratory Order on Iowa Code) RULING ON PETITION FOR
Sections 355.1, 355.8, and 542B.16) DECLARATORY ORDER**

Legal Framework

“The declaratory ruling procedure under [Iowa Code] section 17A.9 permits persons to seek formal opinions on the effect of future transactions and arrange their affairs accordingly.” *Women Aware v. Reagen*, 331 N.W.2d 88, 92 (Iowa 1983). “Section 17A.9 contemplates rulings based on purely hypothetical facts and renders them subject to review.” *Id.* “As a general rule, a petition for declaratory order is not a vehicle to adjudicate contested facts.” *City of Dubuque v. Iowa Utilities Bd.*, No. 12-0789, 2013 WL 85807, at *6 (Iowa Ct. App. Jan. 9, 2013).

Iowa Code section 17A.9(1)(a) allows any person to “petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency.” Section 17A.9(1)(b)(1) requires that an agency issue a declaratory order in response to a petition unless issuance would be contrary to a rule adopted under section 17A.9(2) and prohibits an agency from issuing a declaratory order that would “substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.”

In accordance with section 17A.9(2), the Professional Licensing and Regulation Bureau (“Bureau”), enacted 193 IAC Chapter 10, which explains the declaratory order process. Rule 10.9 provides ten grounds under which a licensing board with the Bureau may refuse to issue a declaratory order on some or all of the questions raised. Those grounds are:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
3. The board does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in current rule making, contested case, or other board or judicial proceeding that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

193 IAC 10.9(1)-(10).

Section 17A.3 requires an agency to provide notice of petitions for declaratory orders it receives, while section 17A.4 allows qualified persons to intervene in proceedings for declaratory orders. Section 17A.5 requires an agency to do one of the following within thirty days of receiving a petition for declaratory order: issue a declaratory order, set the matter for specified proceedings, agree to issue a declaratory order by a specified time, or decline to issue a declaratory order.

Procedural Background

1. Petitioner Daniel F. Rittell, an Iowa licensed professional land surveyor, filed a Petition for Declaratory Order with the Iowa Engineering and Land Surveying Examining Board (“Board”) dated November 21, 2016.
2. Petitioner asks the Board to answer four questions:
 - (1) Is a subdivision plat a land surveying document?
 - (2) Is a subdivision plat an engineering document or some type of multi-discipline document?
 - (3) Does [Iowa Code section] 542B.16.4 allow an engineer¹ to certify a subdivision plat?
 - (4) Shall a subdivision plat contain certain design information or data calculated by a professional engineer such as, but not limited to, minimum

¹ For purposes of this question, we assume Petitioner meant to say “licensed professional engineer” and not “engineer.”

protection elevations, calculated high water elevations, and spot elevations per grading plans?

3. On December 1, 2016, the Board provided notice of receipt of the Petition in accordance with section 17A.9(3).
4. Pursuant to Iowa Code section 17A.9(5)(b), on December 13, 2016, the Board set the matter for specified proceedings, which included oral arguments, at the Board's January 12, 2017 meeting, and an opportunity for public comment, with a submission deadline of February 23, 2017.
5. On December 13, 2016, the Board provided copies of the notice of proceedings, the City of Johnston's Petition for Intervention, and the City of Urbandale's Petition for Intervention to the Iowa League of Cities, the Society of Land Surveyors of Iowa, the Iowa Engineering Society, the City of Johnston, the City of Urbandale, the City of West Des Moines, and the City of Waukee.
6. Pursuant to Iowa Code section 17A.19(4), the Board allowed the Petition for Intervention by the City of Urbandale, Iowa filed on December 12, 2016, and the Petition for Intervention by the City of Johnston, Iowa, filed on December 12, 2016.
7. On January 12, 2017, the Board heard oral arguments from Petitioner and the two intervenors.²
8. At its regularly scheduled meeting on March 9, 2017, the Board discussed and deliberated the Petition. The following is the Ruling on Petition for Declaratory Order ("Ruling"), which becomes effective on the date of issuance.

Petitioner's Position

9. Petitioner urges the Board to answer the first question in the affirmative and questions two, three, and four in the negative. He cites Iowa Code sections 342B.2, 542B.16, 355.1, 355.8, and 354.24 to support his position.
10. Petitioner asserts that many city and county engineering and planning departments in Iowa, which are in charge of reviewing subdivision plats prior to final approval and recording, are requiring certain engineering design information and data be placed upon the subdivision plat and are also requiring professional engineers to provide certification statements on the face of the subdivision plat for this design information and data. Petitioner attached four "Final Plat" checklists from Iowa cities to demonstrate this occurrence to his Petition.

² Petitioner and both intervenors filed briefs for the Board's consideration prior to oral arguments.

11. Petitioner contends that Iowa law clearly states that a subdivision plat is a land surveying document and not an engineering document. Petitioner further contends that a professional engineer is not authorized by the Iowa Code to certify a subdivision plat or any information shown thereon, and consequently certain engineering calculations and design should not be presented on the subdivision plat.
12. As a practical matter, Petitioner contends the subdivision plat is not (and was never intended to be) a set of engineer's construction drawings, as the professional engineering information and data required to be depicted on the subdivision plat are readily available in the engineer's reports, drawings, plans, and specifications that are also provided to the city or county for review and approval.
13. As a legal matter, Petitioner argues that Iowa Code sections 542B.2 and 355.1, with further support from Iowa Code sections 355.8 and 354.24, specify that a subdivision plat is a land surveying document. Further, he notes Iowa Code section 542B.16 clearly provides that a subdivision plat is a land surveying document that can only be prepared by a licensed land surveyor and cannot contain information or data calculated by a licensed professional engineer.

Intervenor Johnston's Position

14. The City of Johnston believes that per Iowa Code sections 542B.2 and 355.1, a subdivision plat is a land surveying document; it does not believe; however, that the law prohibits the inclusion of additional information on the subdivision plat. Rather, Johnston reads Iowa Code section 355.8 as setting the minimum standards for subdivision plats.
15. Therefore, Johnston contends a subdivision plat can contain engineering design data.
16. Further, Johnston believes Petitioner's third and fourth questions are misleading, as the city is not asking an engineer to certify a subdivision plat, nor is the city asking a land surveyor to certify any engineering document, it is only asking the land surveyor to certify the land surveying work as defined in Iowa Code section 542B.2.

Intervenor Urbandale's Position

17. The City of Urbandale similarly believes that per Iowa Code sections 542B.2 and 355.1, a subdivision plat is a land surveying document. Urbandale shares Johnston's position that Iowa Code section 355.8 sets minimum standards for subdivision plats and does not prohibit the inclusion of additional information on the subdivision plat.
18. Urbandale also contends that engineering data can be certified on a subdivision plat by a licensed professional engineer and a land surveyor can limit his or her

certification to the information that requires certification by a licensed professional land surveyor. In fact, Urbandale notes that at least two final subdivision plats have been recorded with an Iowa county with these types of delineations.

Public Comment

19. The Board received written comments from one organization, the Society of Land Surveyors of Iowa. The Society urges the Board to answer the first question in the affirmative and questions two, three, and four in the negative, as argued by Petitioner.
20. First, the Society notes it concurs with Petitioner's "understanding of Iowa Code sections 355.1 and 355.8, specifically that a subdivision plat is a land surveying document, prepared by a licensed land surveyor and is not an engineering document." Further, "placement of design elevation information on a subdivision plat does not fall under the practice of land surveying as defined by the Iowa Code" and it is therefore inappropriate to include on a subdivision plat.
21. Next, the Society is of the opinion that "[w]hen seeking a construction permit, the ordinary citizen will contact the city or county development department and not the Recorder's office;" consequently "requiring the placement of [design elevation information and other engineering data] on a subdivision plat is superfluous and does little to protect the public."
22. Further, the Society notes that the intervening cities "have already adopted a strict site plan procedure that requires elevation information and other data that can only be found on the original construction drawings which are available at city or county development [and] engineering departments."
23. Additionally, the Society argues the requirement to show elevations on a subdivision plat, data that will almost certainly change over time "will result in that plat carrying erroneous, confusing, and useless elevation data into the future." Correcting these errors, if and when discovered, will be costly for the land owner, if they are required to be corrected at all.
24. Lastly, the Society "suggests that an engineering document in the form of an as-built survey could be required for an occupancy permit [and] recorded as a Retracement Plat of Survey as defined by Iowa Code section 355.7A."
25. The prevailing reaction of the land surveyors, who responded, was that requiring engineering data on a subdivision plat was not only contrary to Iowa law, but would also burden the public, because future land owners may need to correct outdated elevation data. Further, this engineering data and information can be found on other readily available documents, namely, the construction drawings.

Decision to Answer Petition

26. The Board appreciates the passion and engagement of all parties that offered opinions and observations on these important questions.
27. The Board is only answering the questions presented to it and takes no position on what information could be included on other documents, including construction documents.
28. The Board concludes the declaratory order process is suitable to answer the questions presented. The Board finds the Petition contains sufficient background and facts from which the Board can issue a reasonably certain declaration. The Petition asks the Board for a declaratory order over statutes and rules within the Board's legislatively vested jurisdiction and there is no reason to decline the Petition pursuant to 193 IAC 10.9(1)-(10).

Analysis

Question 1:

Is a subdivision plat a land surveying document? Petitioner and both Intervenors agree that a subdivision plat is a land surveying document. Iowa Code section 355.1(13) defines a subdivision plat as, "a graphical representation of the subdivision of land, prepared by a licensed professional land surveyor, having a number or letter designation for each lot within the plat and a succinct name or title that is unique for the county where the land is located." *Id.*; see Iowa Code § 354.2(18) (noting same definition); also *id.* § 355.1(4) (defining "land surveying" as "surveying of land pursuant to chapter 542B"); *id.* § 355.1(14) (defining "surveyor" as "a licensed professional land surveyor who engages in the practice of land surveying pursuant to chapter 542B"); *id.* § 354.2(19) (noting same definition as Iowa Code section 355.1(14)). Further, Iowa Code section 542B.2(10)(a)(2), defines the practice of land surveying to include "professional services" not limited to, "Making any survey for the division or subdivision of any tract or parcel of land." Therefore, the Board concludes that a legal significance attaches to the definition of subdivision plat, which is defined by statute and cannot be interpreted or enlarged beyond how the legislature so defined.

Question 2:

Is a subdivision plat an engineering document or some type of multi-discipline document? A subdivision plat is a land surveying document and not an engineering document or some type of multi-discipline document. As stated in the Board's response to question one, a subdivision plat is a land surveying document. Because a subdivision plat is a land surveying document, it is not an engineering document, as the two are statutorily distinct documents, prepared by separately licensed professionals. Iowa Code section 542B.2(3) defines "engineering documents" to include "all plans, specifications, drawings, and reports, if the preparation of such documents constitutes or requires the practice of engineering." The Board concludes a subdivision plat cannot be an engineering document because a subdivision plat is defined as being prepared by a licensed professional land surveyor, see Iowa Code § 355.1(1), and an engineering

document is defined as constituting the practice of engineering. The Board therefore believes a subdivision plat cannot legally be defined to include information not able to be certified by a licensed professional land surveyor.

Question 3:

Does [Iowa Code section] 542B.16.4 allow an engineer to certify a subdivision plat? Iowa Code section 542B.16(4) states, "A licensee shall not place the licensee's signature or seal on any engineering document or land surveying document unless the licensee was in responsible charge of the work, except that the licensee may do so if the licensee contributed to the work and the licensee in responsible charge has signed and certified the work." "In responsible charge" is defined as, "having direct control of and personal supervision over any land surveying work or work involving the practice of engineering. One or more persons, jointly or severally, may be in responsible charge." Iowa Code § 542B.2(6). The Board concludes a licensed professional engineer cannot have "direct control of and personal supervision over any land surveying work," which includes the certification of subdivision plats, as this is outside a licensed professional engineer's scope of practice.

Question 4:

Shall a subdivision plat contain certain design information or data calculated by a professional engineer such as, but not limited to, minimum protection elevations, calculated high water elevations, and spot elevations per grading plans? A subdivision plat is defined by Iowa Code section 355.1(13), as a document prepared by a licensed professional land surveyor. Therefore, a subdivision plat, as certified by a professional licensed land surveyor, can only include information in the land surveyor's scope of practice. Design information or data calculated by a professional licensed engineer is outside this scope of practice. If a land surveyor were to certify a document outside of their scope of practice, this could be potential cause for discipline, as the land surveyor would be certifying information they cannot legally include.

Additionally, the Board is concerned that requiring design information, including elevations, to be included on subdivision plats could result in the necessity for future land owners to make costly corrections. And further, the design information can be found on other documents, and therefore the necessity to include it on subdivision plats, is more of a convenience.

Responses to Questions Presented

- (1) Is a subdivision plat a land surveying document? Yes.
- (2) Is a subdivision plat an engineering document or some type of multi-discipline document? No.
- (3) Does [Iowa Code section] 542B.16.4 allow an engineer to certify a subdivision plat? No.
- (4) Shall a subdivision plat contain certain design information or data calculated by a professional engineer such as, but not limited to, minimum

protection elevations, calculated high water elevations, and spot elevations per grading plans? No.

29th This Ruling on the Petition for Declaratory Order is issued by the Board on the day of March, 2017.



Chairperson
Iowa Engineering and Land Surveying Examining Board
on behalf of chair, Rita Perez

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