

Iowa Engineering and Land Surveying Examining Board

Petition by Daniel F. Rittel for)	
Declaratory Order on Iowa Administrative)	PETITION FOR
Code Section 193C-11.5 & Iowa Code)	DECLARATORY ORDER
Section 355.10)	

1. The Petitioner is requesting the Iowa Engineering and Land Surveying Examining Board to consider whether an ALTA/NSPS Land Title Survey (hereafter "ALTA Survey") and its related plat or map falls under the definition of a property survey and/or plat as defined by Iowa Administrative Code and Iowa Code and therefore should be recorded with the county recorder's office.

The Petitioner submits herewith, as examples, two (2) recent ALTA Surveys prepared by others for properties located in Polk County, Iowa. Neither ALTA Survey has been recorded in the Office of the Polk County Recorder and neither property identified on said ALTA Surveys has a recent Plat of Survey or Retracement Survey recorded in the Office of the Polk County Recorder by the surveyor who produced the respective ALTA Survey.

2. Reference is made to the following relevant sections of Iowa law:

Iowa Administrative Code 193C-11.2(542B) DEFINITIONS

Plat, means both a plat of survey and a subdivision plat as those terms are defined in Iowa Code Section 355.1.

Property Survey, means **any land survey performed for the purpose of describing, monumenting, retracing and establishing boundary lines**, dividing, subdividing, or platting one or more parcels of land. (Emphasis added)

Iowa Administrative Code 193C-11.5(542B) PLATS

A plat shall be drawn for every property survey performed ...

Iowa Administrative Code 193C-11.5(8)

The surveyor shall record every plat and description with the county recorder no later than 30 days after signature on the plat by the surveyor.

The 30 day requirement shall not apply to subdivision plats. (Emphasis added)

Iowa Code 355.1 DEFINITIONS

9. Plat of survey means a graphical representation of a survey of one or more parcels of land, including a complete and accurate description of each parcel within the plat, prepared by a licensed professional land surveyor.

9B. Retracement plat of survey means a graphical representation of a survey of one or more tracts of land prepared by a licensed professional land surveyor and described by an existing recorded property description used for the transfer of land.

Iowa Code 355.10 RECORD

1. **The surveyor shall record a plat and description with the county recorder no later than thirty days after signature on the plat by the surveyor** if the survey was made for one of the following purposes: (Emphasis added)

b) For the division of land.

c) To retrace an existing recorded description of a parcel or tract of land.

3. Questions to be Answered

A. Can an ALTA/NSPS Land Title Survey be defined as a Property Survey per Iowa Administrative Code 193C-11.2(542B)?

B. Can the plat or map of an ALTA/NSPS Land Title Survey be defined as a Plat of Survey or Retracement Plat of Survey per Iowa Code 355.1?

C. Is the plat or map of an ALTA/NSPS Land Title Survey required to be recorded in the office of the county recorder?

4. Desired Answers

A. **Yes.** An ALTA/NSPS Land Title Survey is a Property Survey per definition in Iowa Administrative Code 193C-11.2(542B).

B. **Yes.** The plat or map of an ALTA/NSPS Land Title Survey can be defined as a Plat of Survey or Retracement Plat of Survey per Iowa Code 355.1.

- C. **Yes.** Since an ALTA/NSPS Land Title Survey is a Property Survey and the plat or map of said ALTA/NSPS Land Title Survey can be defined as a Plat of Survey or Retracement Plat of Survey, then the plat or map of an ALTA/NSPS Land Title Survey is required to be recorded in the office of the county recorder.
5. This request for a declaratory ruling is being made to clarify that an ALTA Survey is a Property Survey per Iowa laws and regulations and the resulting plat or map should be recorded as such. There seems to be some confusion among surveyors as to whether the produced plat of an ALTA Survey should be recorded. Some surveyors record them. Some surveyors put together a separate Retracement Survey to record that does not necessarily show all the details of the ALTA Survey. And some surveyors do not record anything.

Included with this petition are a copy of the currently effective 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys. Note the following from these standards:

3.B. Other Requirements and Standards of Practice - 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 applicable jurisdictional survey 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. (Emphasis added)

6.D.iii. **When recordation or filing of a plat or map is required by law, such plat or map shall be produced in recordable form.** (Emphasis added)

The Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys clearly contemplate that there may be local or jurisdictional regulations in addition to those outlined that the surveyor may need to meet (such as a duty to record) and allow for such jurisdictional regulations.

Recent examples that ALTA Surveys are not always being recorded:

Example 1

ALTA/NSPS Land Title Survey prepared by Kirk Eschliman (Iowa License No. 9961) of Millman National Land Services for Lot 1 in Bianchi Auditor's Plat, Pleasant Hill, Polk County, Iowa. The survey was signed and sealed by Eschliman on September 6, 2019. To date, this survey nor any Retracement Survey by Eschliman for this particular property has been recorded. I only discovered that the survey had been made by reviewing a current deed for the property which referenced this survey. Note this ALTA Survey plat is not

formatted for recording with the appropriate recorder's index legend or area reserved for the recorder's stamp.

Example 2

ALTA/NSPS Land Title Survey prepared by Norman Ellerbrock (Iowa License No. 25035) of Four Points Land Surveying & Engineering, Inc. for a property being part of Lot 1 in E.J. Ellison Estate, Pleasant Hill, Polk County, Iowa. The survey I obtained does not have a signature or seal, but it appears the field work was completed August 5, 2019. I do not know if Ellerbrock is "finished" with this survey as some ALTA Surveys seem to take forever to review by lender's attorneys, but monuments were found at the corners identified as being set by Ellerbrock. Note, again, that this ALTA Survey plat is not formatted for recording with the appropriate recorder's index legend or area reserved for the recorder's stamp.

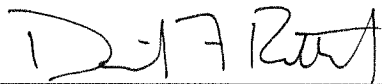
It is my belief that the practice of not recording ALTA Surveys is more widespread and I would like the Iowa Engineering and Land Surveying Examining Board to issue and publish this order so that all will know the expectations going forward.

6. I am not a party to any other official proceedings involving the questions at issue in this petition. However, I have recently filed a complaint online against Kirk Eschliman for the practice of Land Surveying while under a suspended license which included failure to record the above referenced ALTA Survey.

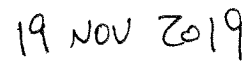
I am unaware of any other official proceedings or investigations involving the questions at issue in this petition by any governmental entity.

7. The answers to the questions presented in this petition will be of interest to all professional land surveyors performing ALTA Surveys in the State of Iowa.
8. Please direct any communications concerning this petition to the petitioner.

Petitioner:



Daniel F. Rittel, PLS



Date

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