

Department of Commerce
Professional Licensing Bureau
FILED 4/14/2021 (Date)
TELSEB
Board / Commission
Robert E. Lampe
Signature, Executive Officer

BEFORE THE IOWA ENGINEERING AND LAND SURVEYING
EXAMINING BOARD

**Petition by Daniel F. Rittel for
Declaratory Order on Iowa
Administrative Code rule 193C—11.5
and Iowa Code section 355.10**

**RULING ON PETITION FOR
DECLARATORY ORDER**

Pursuant to Iowa Code section 17A.9 and Iowa Administrative Code 193—chapter 10, the Iowa Engineering and Land Surveying Examining Board (“Board”) issues the following ruling in response to the Petition for Declaratory Order filed by Daniel F. Rittel (“Petitioner”).

I. Legal Framework for Declaratory Orders.

“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 enacted Iowa Administrative Code 193—chapter 10, which explains the declaratory order process which applies to petitions before the Board. After the Board receives a petition for a declaratory order, it gives notice of the petition to all persons not served by the petitioner to whom notice is required by law. Iowa Admin Code r. 193—10.2. Any persons who qualify as an intervenor may file a petition for intervention. *Id.* r. 10.3. The petitioner or intervenors, if any, may file briefs in support of the position they urge. *Id.* r. 10.4. Upon the petitioner’s request, the Board may schedule a brief informal meeting between the petitioner, intervenors, and the Board—either the

full Board, a member of the Board, or a member of the Board's staff—to discuss the question raised. *Id.* r. 10.7. The Board may solicit comments from any person and comments may be submitted by any person who wishes to do so. *Id.* The Board may take action on the petition pursuant to rule 193—10.8 and may refuse to issue the order for the reasons stated in rule 193—10.9. A declaratory order is binding on the Board, the petitioner, and any intervenors, and is applicable only in circumstances where the relevant facts and law are indistinguishable from those on which the order was based. *Id.* r 10.2.

II. Procedural Background.

Petitioner, an Iowa licensed professional land surveyor, filed a Petition for Declaratory order with the Board dated November 19, 2019. Petitioner asks the Board the following questions:

(1) Is an ALTA/NSPS Land Title Survey (“ALTA Survey”) a “property survey” as defined by Iowa Administrative Code rule 193C—11.2?

(2) Is the plat or map of the ALTA Survey a “plat of survey” or “retracement plat of survey” as defined by Iowa Code section 355.1?

(3) Must the plat or map of the ALTA Survey be recorded in the appropriate office of the county recorder?

Petitioner urges that the Board answer the three questions in the affirmative.

Along with the Petition, Petitioner submitted four exhibits. Petitioner identifies two exhibits as recent ALTA Surveys prepared for properties in Polk County, Iowa. Petitioner asserts that the two ALTA Surveys were not recorded with the Office of the Polk County Recorder nor had either property had a recent plat of survey or retracement survey recorded by the surveyor who produced the ALTA Survey. A third exhibit is titled “Warranty Deed” that appears to have been recorded in Polk County and references a “current copy of survey,” which Petitioner states was one of the unrecorded ALTA Surveys. Finally, Petitioner offers a document titled “Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys (Effective February 23, 2016),” authored by the American Land Title Association and the National Society of Professional Surveyors.

No other persons filed a petition for intervention nor did the Board solicit or receive any comments. The Petitioner did not request an informal meeting to discuss the Petition.

At its regularly scheduled meeting on January 9, 2020, the Board discussed and deliberated the Petition.

III. Decision to Answer the Petition.

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 Iowa Administrative Code rule 193—10.9.

IV. Analysis.

A. Is an ALTA Survey a property survey?

Iowa Administrative Code chapter 193C—11 includes the Board's rules for minimum standards for property surveys. Rule 193C—11.2 includes several definitions which apply to the Board's rules. One of these definitions is for "property survey," which means "any land survey performed for the purposes of describing, monumenting, retracing and establishing boundary lines, dividing, subdividing, or platting one or more parcels of land." Iowa Admin Code r. 193C—11.2.

According to the American Land Title Association and the National Society of Professional Surveyors, title insurance companies will request a land title survey for the purposes of insuring title to real property. Land title surveys are necessary because there are many matters that may affect the title to the real property which may be discovered from survey and inspection but which are not shown in the public records. To that end, the American Land Title Association and the National Society of Professional Surveyors have promulgated minimum standards for land title surveys so that these surveys contain the pertinent information necessary for title insurance. Land title surveys that are performed under these standards are therefore called "ALTA/NSPS Land Title Surveys."

As stated in the "Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys," the plat or map of an ALTA Survey must show the description of the surveyed property, its monuments and lines, and must establish or retrace the boundaries lines of the property according to the appropriate boundary law. Therefore, an ALTA Survey clearly describes, monuments, and retraces and establishes boundary lines of the surveyed property, and is therefore a property survey within the meaning of Iowa Administrative Code rule 193C—11.2.

B. Is the plat or map of the ALTA Survey a plat of survey or retracement plat of survey?

Under Iowa Code section 355.1, a "plat of survey" is defined as "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." Iowa Code section 355.7 directs that a plat of survey is to be created "for each land survey performed for the purpose of correcting boundaries, correcting descriptions of surveyed land, or for the division of land." A "retracement plat of survey" is defined as "a graphical representation of a survey of one or more parcels of land prepared by a licensed professional land surveyor and described by an existing recorded property description used for the transfer of land." *Id.* § 355.1(11). Iowa Code section 355.7A directs that a retracement plat of survey is to be created "for each land survey performed

for the purpose of surveying an existing recorded description of one or more parcels or tracts of land and shall not be used for the division of land.”

Based on the description of ALTA Surveys provided in the “Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys” and as noted above, an ALTA Survey is either a “plat of survey” or a “retracement plat of survey” within the meaning of Iowa Code chapter 355.

C. Must the plat or map of the ALTA Survey be recorded at the office of the county recorder?

Under Iowa Code section 355.10, a surveyor is directed to record the plat and description with the county recorder within thirty days after signing the plat “if the survey was made for one of the following purposes: *a.* To correct boundaries and descriptions of land. *B.* For the division of land. *C.* To retrace an existing recorded description of a parcel or tract of land.”

As already explained above and as stated in the “Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys,” an ALTA Survey either “retrace[s] an existing recorded description of a parcel or tract of land” or must establish the property description and its boundaries, which would qualify as “correct[ing] boundaries and descriptions of land.” Therefore, a surveyor must record the map or plat of the ALTA survey with the county recorder pursuant to Iowa Code section 355.10.

V. Responses to the Questions Presented.

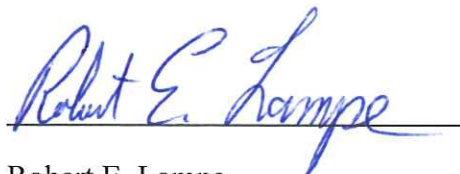
Pursuant to the above analysis, the Board answers the questions posed by the Petition as follows:

(1) Is an ALTA/NSPS Land Title Survey (“ALTA Survey”) a “property survey” as defined by Iowa Administrative Code rule 193C—11.2? **Yes.**

(2) Is the plat or map of the ALTA Survey a “plat of survey” or “retracement plat of survey” as defined by Iowa Code section 355.1? **Yes.**

(3) Must the plat or map of the ALTA Survey be recorded in the appropriate office of the county recorder? **Yes.**

This Ruling on the Petition for Declaratory Order is issued by the Board on January 14, 2021.



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