

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 88-9

Date issued: March 7, 1988

Requested by: Dennis E. Johnson
McKenzie County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether a registered land surveyor must conduct the survey and prepare the plat required by N. D. C. C. ' 40-50.1-01.

II.

Whether N. D. C. C. ' 40-50.1-01 requires that all divisions of land beyond the boundaries of a municipality be surveyed and platted?

- ATTORNEY GENERAL'S OPINIONS -

I.

It is my opinion that a registered land surveyor must conduct the survey and prepare the plat required by N. D. C. C. ' 40-50.1-01.

II.

It is further my opinion that N. D. C. C. ' 40-50.1-01 does not require that all divisions of land beyond the boundaries of a municipality be surveyed and platted.

- ANALYSES -

I.

N. D. C. C. ' 40-50.1-01 requires anyone who lays out a townsite, an addition to a townsite, or a subdivision of land must have the land surveyed and platted.

Nothing in N. D. C. C. ch. 40-50.1 specifically requires that a registered land surveyor conduct the survey and prepare the plat. Proper interpretation of statutes in the chapter, however, require that a registered land surveyor must perform these duties.

The requirement that a registered land surveyor conduct the survey is found in N. D. C. C. ' 40-50.1-02. A sentence of this section says all survey monuments "must bear the registration number of the land surveyor making the survey." Thus, not only must a land surveyor conduct the survey, but he or she must have a "registration number." The "registration number" referred to is that number issued, pursuant to N. D. C. C. ' 43-19.1-20, by the State Board of

Registration for Professional Land Surveyors. Therefore, N. D. C. C. ' 40-50.1-02 is a clear, though indirect, expression of the Legislature's intent that a registered land surveyor must conduct the survey required by N. D. C. C. ch. 40-50.1.

The requirement that a registered land surveyor prepare the plat is found in N. D. C. C. " 40-50.1-03, 40-50.1-14. The former statute says "[t]he registered land surveyor shall certify on the plat that the plat is a correct representation [sic] of the survey." To make this certification it is logical to assume that the surveyor must prepare the plat. N. D. C. C. ' 40-50.1-14 reveals the correctness of this logic. This section says that if a plat has an error "the registered land surveyor who prepared the plat may sign a certificate stating the nature of the error . . . and stating the information that surveyor believes corrects the error." (Emphasis supplied.)

Here, the Legislature specifically states the plat's preparation must be by a registered land surveyor.

Therefore, it is my opinion that to certify a plat's correctness pursuant to N. D. C. C. ' 40-50.1-03, a registered land surveyor must actually prepare the plat.

II.

Section 40-50.1-01 states that "[a]ny person desiring to lay out a townsite, an addition to a townsite, or a subdivision of land shall cause the land to be surveyed and a plat made of the land." These duties are not imposed on all divisions of land. Only those divisions of land for which some kind of development is planned fall within the statute. This conclusion is most compatible with the Legislature's purpose for enacting N. D. C. C. ' 40-50.1-01.

Although this purpose is not explained in N. D. C. C. ch. 40-50.1, one of its sections leads to the explanation.

N. D. C. C. ' 40-50.1-04 states that a plat of land beyond municipal boundaries is to be approved by the county commission pursuant to N. D. C. C. ' 11-33.2-11.

N. D. C. C. ch. 11-33.2, entitled "Subdivision Regulation," reveals the rationale for the survey and platting requirements. To promote "health, safety, morals, public convenience, general prosperity, and public welfare," counties are given the power to regulate and restrict subdivision of land. N. D. C. C. ' 11-33.2-02. A simple division of land does not create a governmental need for a survey and plat to ensure protection of these interests. But a division of land for which development is planned is another matter.

The societal interest in orderly, planned development is significant. See e.g., Eck v. City of Bismarck, 283 N.W.2d 193, 197 (N.D. 1979). In such instances, a survey and plat is needed to protect this interest. Indeed, N. D. C. C. ' 11-33.2-01 defines "subdivision" as "the division of a lot, tract, or parcel of land, creating one or more lots, tracts, or parcels for the purpose, whether immediate or future, of sale or of building development." Because of the connection between N. D. C. C. chs. 11-33.2 and 40-50.1, this definition of "subdivision" is useful in understanding the meaning of "subdivision" as it appears in N. D. C. C. ' 40-50.1-01. When this is done it becomes clear that the surveying and platting requirements of N. D. C. C. ' 40-

50.1-01 are not directed at all divisions of land.

This conclusion is also supported by the common definition of "subdivision." Statutory words are to be understood in their ordinary sense. N.D.C.C. ' 1-02-02. The common meaning of "subdivision" is a division of land into small parcels for sale. Webster's New World Dictionary 1417 (2nd col. ed. 1986). The general legal definition of "subdivision" is similar. Black's Law Dictionary 1593 (4th ed. rev. 1968). Numerous judicial decisions have stated that the generally accepted meaning of "subdivision" is the division of a tract of land into smaller lots or parcels. State ex rel. Anaya v. Select Western Lands, Inc., 613 P.2d 425, 429 (N.M. Ct. App. 1979); McKain v. Toledo City Plan Commission, 270 N.E.2d 370, 373 (Ohio Ct. App. 1971); County of Yuma v. Leidenderker, 303 P.2d 531, 535 (Ariz. 1956); People v. Embassy Realty Associates, 167 P.2d 797, 800 (Cal. Dist. Ct. App. 1946).

Thus, merely transferring a part of a larger tract of land is not a subdivision. Some kind of development of the parcel into smaller parcels must be planned. A federal court has explained the general difference between a division and a subdivision: "Division is the act of dividing into parts or portions. Subdivide is to further divide (what has already been divided): to divide the parts into more parts." In re Estate of Symonds, 424 F.2d 928, 930 (D.C. Cir. 1970).

The term "plat" also appears in N.D.C.C. ' 40-50.1-01. "Plat" is ordinarily understood to mean "a map or plan, esp. of a piece of land divided into building lots." Webster's New World Dictionary 1090 (2nd col. ed. 1986). A plat is "[a] map, or representation on paper, of a piece of land subdivided into lots, with streets, alleys, etc. . . ." Black's Law Dictionary 1309 (4th ed. rev. 1968). This general definition has been accepted by the courts. See, e.g., Monaco v. Bennion, 585 P.2d 608, 611 (Idaho 1978); N. Indiana Public Service Co. v. McCoy, 157 N.E.2d 181, 184 (Ind. 1959); Gannett v. Cook, 61 N.W.2d 703, 707 (Iowa 1953). If development of a division of land into parcels is not planned, the requirement that a plat be prepared would be meaningless. Since the Legislature does not require idle acts, State v. Nordquist, 309 N.W.2d 109 (N.D. 1981), the term "subdivision" in N.D.C.C. ' 40-50.1-01 only refers to the development of a tract into small parcels.

Questions about the application of N.D.C.C. ch. 40-50.1 have arisen in the past. We responded to those questions in a July 14, 1987, letter to State Senator Jim Maxson and in 1987 N.D. Op. Att'y Gen. 85 (Attorney General's opinion 87-19). Since issuance of 1987 opinion, some people have commented that the conclusion of the opinion conflicts with that of the letter. We take this opportunity to explain there is no conflict.

1987 N.D. Op. Att'y Gen. 85 addresses this question: Does N.D.C.C. ch. 40-50.1 only apply to subdivisions within city limits, or does it also apply to subdivisions in rural areas? The opinion concluded the chapter has universal application and that it applies to all subdivisions, whether they be in rural or urban areas.

The July 14, 1987, letter addresses a more fundamental question: What is a subdivision? The letter reaches the same conclusion as that reached in part II of this opinion; that is, the mere conveyance of a part of a larger tract

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is not a subdivision.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. ' 54-12-01. It governs the actions of public officials until such time as the questions presented are decided by the courts.

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