

N.D.A.G. Letter to Maxson (July 14, 1987)

July 14, 1987

Honorable Jim Maxson
State Senator
Northland Professional Building
600 - 22nd Avenue NW
Minot, ND 58701

Dear Mr. Maxson:

Thank you for your letter of May 20, 1987, in which you request an opinion from this office with regard to House Bill No. 1342 enacted by the 1987 North Dakota Legislative Assembly. I apologize for the delay in responding to you.

The question you pose in your letter is whether the provisions of Section 1 of House Bill No. 1342 apply to land used primarily for agricultural purposes. In your request for an opinion, you specifically set out a factual situation and request my opinion on whether House Bill No. 1342 requires a farmer who desires to convey a portion of his property to have the land surveyed and a plat made of the same.

As introduced, § 1 of House Bill No. 1342 stated the following:

If an owner of land that is not already platted divides that land into parcels to transfer ownership for uses other than agricultural that land will be divided into numbered a plat of that division will be recorded.

On February 5, 1987, a representative of the North Dakota Society of Professional Land Surveyors appeared and testified before the House Political Subdivisions Committee which was considering House Bill No. 1342. The representative requested the committee to adopt an amendment to House Bill No. 1342 deleting the agriculture use exception as found in § 1 of the bill. According to the representative, this deletion was necessary as all tracts of land should be subject to plat requirements. Furthermore, the representative argued that the existence of one exception would breed additional exceptions to come in later sessions of the Legislative Assembly. Hearings on H. 1342, 50th Leg., (February 5, 1987) (Statement of Carl Vender, N.D. Society of Professional Land Surveyors).

However, the committee did not accept the recommendation of the representative of the North Dakota Society of Professional Land Surveyors and did not address the agricultural use exception. Instead, Chairman Moore of the Political Subdivision Committee caused an amendment to be offered to the committee removing the language of § 1 of House Bill No. 1342 as introduced and replacing it with language that is now found in the bill as enacted by the 50th Legislative Assembly. The amendment offered by Chairman Moore and adopted by the full Legislative Assembly discusses townsites and subdivisions, and

makes no mention of agricultural land or uses. In reviewing the tapes which were made of the hearings held by the various committees of the Legislature considering House Bill No. 1342, one notes the lack of any discussion whatsoever as to the subject of applicability of the bill to agricultural land. Instead, the theme that seems to be repeated time and time again is the fact that the bill accomplishes no major or significant changes from existing law.

With regard to your specific question, Section 1 of House Bill No. 1342 provides, in part, as follows:

SECTION 1. Laying out townsites, additions, and subdivision -- Survey and plat required -Contents of plat. Any 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.

N.D.C.C. § 40-50-01 provides, in part, as follows:

40-50-01. LAYING OUT TOWNSITES, ADDITIONS AND SUBDIVISIONS -- SURVEY AND PLAT REQUIRED -CONTENTS OF PLAT. Any person desiring to lay out a townsite in this state, or an addition thereto, or a subdivision of outlots therein, shall cause the same to be surveyed and a plat thereof made.

With the enactment of House Bill No. 1342, N.D.C.C. § 40-50-01 was repealed, effective July 1, 1987.

A review of the language set forth above reveals that N.D.C.C. § 40-50-01 differs from House Bill No. 1342 in that N.D.C.C. § 40-50-01 appears to be more restrictive in its application. N.D.C.C. § 40-50-01 is applicable to "a subdivision of outlots therein" whereas House Bill No. 1342 applies to "a subdivision of land". Neither N.D.C.C. § 40-50-01 nor House Bill No. 1342, however, defines the term "subdivision".

North Dakota law provides that "words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears" N.D.C.C. § 1-02-01. N.D.C.C. § 1-01-09, however, provides:

1-01-09. WORD DEFINED BY STATUTE ALWAYS HAS SAME MEANING.-- Whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase wherever it occurs in the same or subsequent statutes, except when a contrary intention plainly appears.

A review of the North Dakota Century Code reveals that the term "subdivision" has been defined by statute in at least two sections of the code.

Under the provisions of N.D.C.C. ch. 40-48, relating to the authority of a city to adopt a

municipal master plan for the physical development of the city, "subdivision" is defined by N.D.C.C. § 40-48-01 as follows:

40-48-01. DEFINITIONS. In this chapter, unless the context or subject matter otherwise requires:

. . . .

2. "Subdivision" means the division of a tract or parcel of land into lots for the purpose, whether immediate or future, of sale or of building development, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights of way, whether public or private, for access to or from such lots, and the creation of new or enlarged parks, playgrounds, plazas, or open spaces.

Under the provisions of N.D.C.C. ch. 11-33.2, relating to a county's authority to regulate subdivisions, "subdivision" is defined by N.D.C.C. § 11-33.2-01 as follows:

11-33.2-01. "SUBDIVISION" DEFINED.

. . . "subdivision" means 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, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights of way, whether public or private, for access to or from any such lot, tract, or parcel, and the creation of new or enlarged parks, playgrounds, plazas, or open spaces.

Pursuant to the definitions of the term "subdivision" in N.D.C.C. §§ 48-48-01 and 11-33.2-01 it would appear that the provisions of Section I of House Bill No. 1342 are not applicable to land used primarily for agricultural purposes. The legislative history concerning the enactment of House Bill No. 1342 supports this conclusion.

Therefore, in answer to your specific question, it is my opinion that House Bill No. 1342 does not require a farmer who desires to convey a portion of his property to another to have the property surveyed by a registered surveyor and a plat made of the land. Unless there is a desire to "lay out a townsite, an addition to a townsite, or a subdivision" (as defined in N.D.C.C. §§ 40-48-11 and 11-33.2-01), there is no need to have the property surveyed nor a plat prepared of the land.

Sincerely,

Nicholas J. Spaeth

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