

MEMORANDUM

TO: Cass County Board of Commissioners

FROM: Barrett Voigt, Cass County Planner

DATE: February 7, 2019

SUBJECT: Consent Agenda Topic for the February 18, 2019
Commission Meeting: Subdivision Application

The Cass County Planning Commission reviewed the application of the proposed subdivision located in Warren Township, Section 16 at a Public Hearing on January 24, 2019. The intended purpose of the subdivision is to create a lot for a public utility electric substation development in order to replace the public utility electric substation north of the property across County Road 6.

The Planning Commission approved of the variance request and is recommending approval of the proposed plat entitlement request. Warren Township has verified that the plat proposal has met township zoning requirements. Therefore, the Planning Commission recommendation is forwarded to the Cass County Board of Commissioners for action.

SUGGESTED MOTION:

To accept the findings and recommendations of the Planning Commission and staff and recommend approval of the Final Plat, as the proposal meets the goals and objectives of the Cass County Comprehensive Plan, the Cass County Highway Access Plan, the Flood Damage Prevention Ordinance, the Cass County Subdivision Ordinance, the Township Zoning Ordinance, and all other applicable regulations with the following conditions:

1. Dedication of right of way at the following locations prior to recording the proposed certificate of survey:

2. North property line along County Highway 6: From statutory 33 feet of right of way line to 100-foot distance from property line
3. West property line along County Highway 15: From 65-foot right of way line to 100-foot distance from property line
4. Add dedication of right of way document numbers to proposed certificate of survey prior to recording
5. Access approach on County Highway 6 is 262.2 feet east of County Highway 15 centerline



Cass County Planning Commission Staff Report

Entitlements Requested:	Minor Subdivision (1 Lot) and a variance request to allow a proposed electrical substation to be constructed without transferring development rights as required by the Cass County Subdivision Ordinance Section 308 of the NW 1/4 of Section 16, Township 138 North, Range 50 West		
Title:	Warren Substation Subdivision	Date:	01-15-2019
Location:	NW 1/4, Section 16, Township 138 North, Range 50 West (16508 44th Street SE, Warren Township)	Staff Contact:	Barrett Voigt
Parcel Number:	67-0000-12671-060		
Owner(s)/Applicant :	Paul & Denise Schulz/Minnkota Power Cooperative	Engineer/Surveyor:	Ulteig
Status:	Planning Commission Hearing: January 24, 2019		

Existing Land Use	Proposed Land Use
Agriculture	Public Utility

Proposal

The applicant is seeking approval of a minor subdivision entitled **Warren Substation Subdivision** to plat one (1) Lot and a variance request to allow a proposed electrical substation to be constructed without transferring development rights as required by the Cass County Subdivision Ordinance Section 308. This application request is for the purpose of allowing Minnkota Power Cooperative, Inc. to purchase the subject property and develop the site to construct an electrical substation that would replace the existing electrical substation directly north of the subject property across County Road 6. The applicant submitted a minor subdivision application in October 2018 for the same purpose, however reconsidered the development proposal to request a variance which requires the variance application to be submitted concurrently with a new minor subdivision application.

The proposed tract encompasses approximately two (2) acres of land and Minnkota Power Cooperative, Inc. would maintain responsibility of the subdivision. The subdivision will use county road access and will not have a waste water treatment system, utilize storm sewers, or rural water.

Agency Comments

County Engineer	No comments were received prior to publishing the staff report.
Water Resource District	No comments were received prior to publishing the staff report.
Cass County Electric Cooperative	No comments were received prior to publishing the staff report.
Century Link	No comments were received prior to publishing the staff report.
Cass Rural Water	No comments were received prior to publishing the staff report.
Xcel Energy	No comments were received prior to publishing the staff report.
Magellan Pipeline Company	Magellan Pipeline Company has no assets in any of these areas. Thanks.
North Dakota Department of Transportation	No comments were received prior to publishing the staff report.
County Sanitarian	All of the proposed lots meet or exceed our minimum requirements for onsite septic systems, and are not in a floodway. They are approved for the construction of an onsite septic system, but will have to provide the department with a soil test on an undisturbed section of the lot prior to approval to build a system.
Township Chairman	No comments were received prior to publishing the staff report.
The City of Fargo	The Warren Substation Subdivision, located in Warren Township, is outside of Fargo's city limits and extra-territorial jurisdiction.
The City of West Fargo	No comments were received prior to publishing the staff report.
Public Comment	No comments were received prior to publishing the staff report.

Staff Analysis

Surrounding Uses

The subject property is bound by agricultural land and a substation to the north (which will be removed). Approximately one mile to the south is the closest subdivision (Jordan Subdivision). The remaining portion of the parcel will remain tillable. The proposed use is consistent with Township Ordinances.

Floodzone

According to the most recently adopted FEMA flood insurance study, this parcel is unmapped and outside of any delineated special flood hazard area. No wetlands or manmade features are present on the land.

Land Development Rights

The quarter-quarter section is currently developed with a farmstead. Section 308 of the Cass County Subdivision Ordinance (CCSO) states that every quarter-quarter section is granted one (1) Development Right to create a buildable lot, however a transfer of development rights, along with a deed restriction is required when subdivision proposal requests exceed 1 Lot and/or propose additional development to a quarter-quarter section that already has a development right granted.

The proposed development would be entitled to one development right of the farmstead and would require the transfer of additional development rights and a deed restriction to allow for the additional development of the electrical substation.

The electrical substation is a public utility and would result in a public benefit. In addition, it is not likely that the development would create a substantial amount of vehicle trips. If the ordinance requirements were adhered to, a deed restriction would be required and would prohibit future development on contiguous land tracts. The applicant is requesting a variance to this requirement because he would like the opportunity for unspecified future private development on contiguous land tracts in the future.

Strict adherence to CCSO Section 308 would create an unnecessary burden on the property owner because the proposed development would provide public benefit, but eliminate future development opportunities for the land owner.

Staff Recommendation

To accept the findings and recommendations of staff and recommend approval to the County Commission of the subdivision application and variance, as the proposal meets the goals and objectives of the Cass County Comprehensive Plan, the Cass County Highway Access Plan, the Flood Damage Prevention Ordinance, the Cass County Subdivision Ordinance, the Township Zoning Ordinance, and all other applicable regulations and the following conditions:

1. Dedication of right of way at the following locations prior to recording the proposed certificate of survey:
 - a. North property line along County Highway 6: From statutory 33 feet of right of way line to 100-foot distance from property line
 - b. West property line along County Highway 15: From 65-foot right of way line to 100-foot distance from property line
2. Add dedication of right of way document numbers to proposed certificate of survey prior to recording
3. Access approach on County Highway 6 is 262.2 feet east of County Highway 15 centerline

Attachments

1. Location Map
2. Certificate of Survey
3. Site Plan
4. Variance Request Document

Minor Subdivision

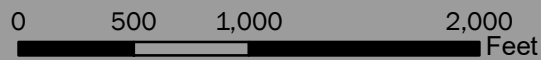
Warren Substation Subdivision

Warren, Section 16 - Township 138 North - Range 50 West



Maps and data are to be used for reference purposes only and Cass County, ND, is not responsible for any inaccuracies herein contained. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, use or misuse of the information herein provided.

Cass County Planning Commission
January 24, 2018

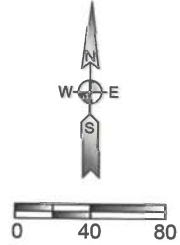
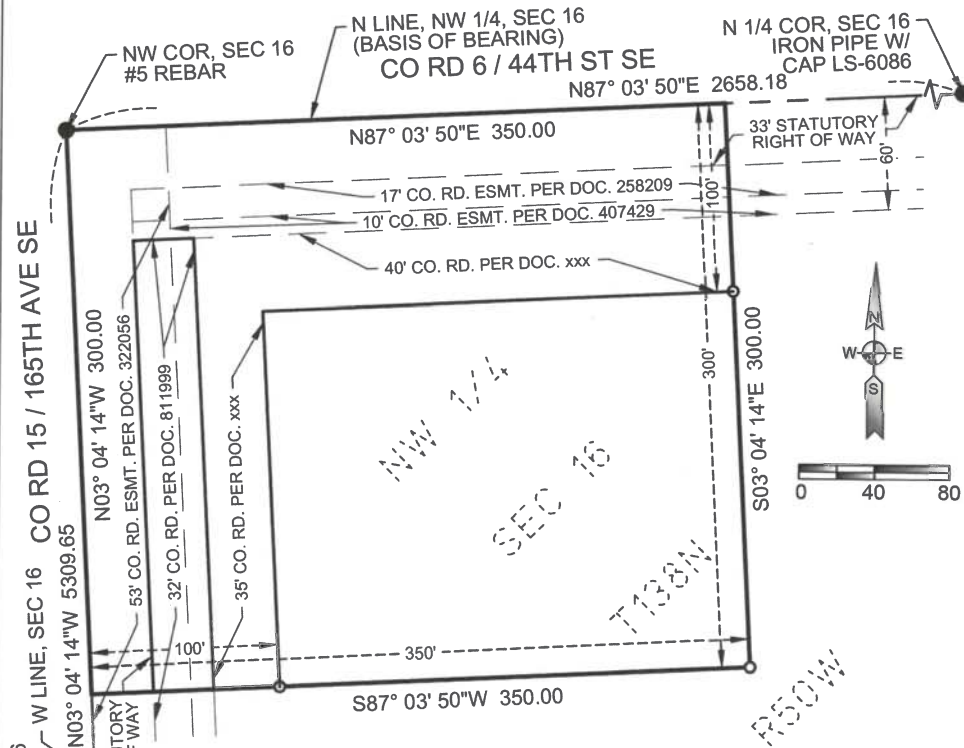


CERTIFICATE OF SURVEY

Certificate of Survey for Paul J. Schulz and Denise M. Schulz, husband and wife
and Minnkota Power - Warren Substation

LOCATION: Northwest Quarter, Section 16, Township 138 North, Range 50 West,
5th Principal Meridian, Cass County, North Dakota

PROPERTY DESCRIPTION: The southerly 200 feet of the northerly 300 feet of the easterly 250 feet
of the westerly 350 feet of the Northwest Quarter of Section 16,
Township 138 North, Range 50 West of the 5th Principal Meridian,
Cass County, North Dakota.
Subject to easements and rights of way of record.



SURVEYOR'S NOTES

1. Bearings are based on the north line of the Northwest Quarter of Section 16 which bears North 87 degrees 03 minutes 50 seconds East derived from an OPUS solution.
2. Distances shown hereon are ground distances, international feet.
3. Date of survey: October 11, 2018
4. Area of property is 105,000 sq. ft., of which 55,000 sq. ft. are dedicated right of way.

LEGEND

- - Found Monument as described
- - Set #5 rebar with cap "LS-6294"

Ulteig
4285 Lexington Ave. N., St. Paul, Minnesota 55126
Phone: 651.415.3800 Fax: 651.415.2001
Bismarck - Cedar Rapids - Denver - Detroit Lakes
 Fargo - Minot - Sioux Falls - St. Paul - Williston
Web: www.ulteig.com
Revised 1/11/2019

PRELIMINARY

CERTIFICATE OF SURVEY

Northwest Quarter, Section 16, Township 138 North, Range 50 West

Present owner: Paul J. Schulz and Denise M. Schulz, husband and wife

OWNER'S CERTIFICATE

THE UNDERSIGNED, owners of the within described property, in accordance with the provision of Section 57-02-39 of the North Dakota Century Code as Revised 2001, and upon demand of the County Auditor of Cass County, North Dakota, have caused to be made the within and foregoing survey of said land with the lot as therein described, and have caused the same to be placed on record, as provided by law.

Witness our hands and seals this _____ day of _____, 2019.

In Presence of _____
(SEAL)

(SEAL)

(SEAL)

STATE OF NORTH DAKOTA
COUNTY OF CASS

I, _____, Notary Public within and for said County, do hereby certify that on this _____ day of _____, 2019 personally appeared before me Paul J. Schulz and Denise M. Schulz, husband and wife, to me known to be the same persons described in and who executed the within and foregoing instrument and acknowledge that they executed the same freely and voluntarily.

My Commission Expires _____, 20____

SURVEYOR'S CERTIFICATE

I, William J. Haddick, registered Land Surveyor, do hereby certify that at the request of Paul J. Schulz and Denise M. Schulz, husband and wife, I made the within and foregoing plat and description of the land as herein described and that the lots, distances, area, and location as indicated on said plat and contained in said description are true and correct.

~~PRELIMINARY~~
~~PRELIMINARY~~

Subscribed and sworn to before me this _____ day of _____, 20____

My Commission Expires _____, 20____



EXISTING SUBSTATION

44TH ST SE

165TH AVE SE

275.5'

100' ROW

24'

136.5'

300'

100' ROW

90'

2.41+/- ACRES INCLUDES ROW
1.75+/- ACRES EXCLUDING ROW

162.5'

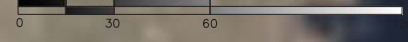
160'

NW 1/4 16-138-50

350'


CP 2

- SYMBOL LEGEND**
- EXISTING MAJOR CONTOUR
 - EXISTING MINOR CONTOUR
 - PROPOSED MAJOR CONTOUR
 - PROPOSED MINOR CONTOUR
 - PROPERTY LINE
 - UNDERGROUND ELECTRIC
 - FENCE LINE
 - OVERHEAD POWER LINE
 - UNDERGROUND FIBER CABLE
 - SECTION LINE
 - POWER POLE
 - PROPERTY CORNER
 - SECTION CORNER
 - ▲ CONTROL POINT



					DRAWN JPB
					DATE 11/2/18
					APPROVED
					PROJECT # 21183
DATE	PROJECT #	WO #	REVISIONS	BY	WO #

WARREN SUBSTATION
EXHIBIT 5



SCALE 1" = 30' SHEET 1 OF 1
DWG.NO. WA400-EXB-2018-001-05



A Touchstone Energy® Cooperative 

5301 32ND Avenue South
Grand Forks, ND 58201
Phone 701.795.4000
www.minnkota.com

December 26, 2018

Cass County Planning Office
Attn: Barrett Voigt
1201 Main Avenue West
West Fargo, ND 58078

Subject: Variance Request for waiving the Deed Restriction in the Northwest Quarter of Section 16, Township 138 North, Range 50 West, Cass County, North Dakota

Mr. Voigt,

Paul Schulz and Minnkota Power Cooperative (MPC) are requesting a variance to waive the Deed Restrictions pursuant to Section 309 of the Cass County Subdivision Ordinance. MPC is a non-profit public utility that supplies power to rural Cass County via Cass County Electric. Mr. Schulz is very willing to sell MPC land to provide the local area residents with reliable electricity.

MPC currently has a substation directly north of this proposed lot in the SW1/4SW1/4 OF Section 9, Township 138 North, Range 50 West. This facility was built in 1949 and is in need of upgrading to provide reliable power to the rural Mapleton, Davenport, and Horace areas.

MPC and Paul Schulz request a variance for these reasons:

- We are of the opinion the Deed Restriction will cause undue hardship to Mr. Schulz’s future development plans. Mr. Schulz should not be encumbered by a Deed Restriction for allowing a non-profit cooperative to locate critical infrastructure needed to provide safe and reliable electricity to the area, which resource has developed into a public necessity. MPC understands the need for the ordinance, and respectfully requests consideration of the unique circumstances surrounding this waiver. Mr. Schulz, by providing the opportunity for MPC to locate a substation on his property, is aiding in providing a critical service required to serve an ever expanding area. The need for electrical infrastructure, and Mr. Schulz subsequent willingness to provide land for placement, should not act as a future restriction to Mr. Schulz’ ability to utilize his property within the confines of the current county and township zoning and use restrictions.
- The alternate standard proposed provides better results and is more in line with public policy. The construction of a new substation as planned in Section 16 provides long-term benefits to MPC, Cass County Electric, and the local cooperative and area community members served. MPC is dedicated to maintaining safe and reliable power to the area with minimal interruptions during construction of required infrastructure to ensure long-term delivery of reliable power to the growing area.

We respectfully request consideration of our request for a variance, and appreciate your willingness to work with Paul Schulz and MPC in this process. Please call me at 701-795-4354 if you have any questions.

Sincerely,

Brian S. Hoffart, PLS
Property and Right of Way Manager

Sincerely,

Paul Schulz
Property Owner

February 1, 2019

Jeff Fuchs
Warren Township Chairman
****I DO NOT KNOW YOUR ADDRESS, JEFF****

Attn: Barrett Voigt, Cass County Planner
Cass County Highway Department
1201 Main Avenue West
West Fargo, ND 58078

Subject: WARREN SUBSTATION SUBDIVISION

Mr. Voigt,

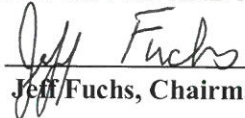
Warren Township has reviewed the WARREN SUBSTATION SUBDIVISION in the Northwest Quarter of Section 16, Township 138 North, Range 50 West of the Fifth Principal, Cass County, North Dakota for Paul Schulz and Minnkota Power Cooperative, Inc. Warren Township approves the said subdivision. The subdivision and proposed site plan meet the Warren Township zoning regulations.

We appreciate your help and cooperation in this matter. If you have any concerns or questions, please don't hesitate to call me at 701-261-4769.

Regards,

Jeff Fuchs, Warren Township Chairman

APPROVED AND AGREED TO THIS FEBRUARY 1, 2019.



Jeff Fuchs, Chairman of Warren Township

APPROVED AND AGREED TO THIS FEBRUARY 1, 2019.



Randy Hajek, Supervisor of Warren Township

RECEIVED FEB 04 2019