



MEMORANDUM

Highway Department

Jason Benson, P.E.
County Engineer

Thomas B. Soucy, P.E.
Deputy County Engineer

Blaine Laaveg
Superintendent

TO: Cass County Board of Commissioners

FROM: Barrett Voigt, Cass County Planner

DATE: April 18, 2019

SUBJECT: Consent Agenda Topic for the May 6, 2019
Commission Meeting: Harbeke Subdivision
Application

The Cass County Planning Commission reviewed the application of the proposed subdivision located in Lake Township, Section 12 at a Public Hearing on January 24, 2019. The intended purpose of the subdivision is bring a farmstead and residential lot development into conformance with the Cass County Subdivision Ordinance.

The Planning Commission is recommending approval of the proposed plat entitlement request and Lake 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.

1201 Main Avenue West
West Fargo, North Dakota
58078-1301

701-298-2370
Fax: 701-298-2395



Cass County Planning Commission Staff Report

Entitlements Requested:	Minor Subdivision (2 Lots) of the NE 1/4 of the SE 1/4 of Section 12, Township 142 North, Range 55 West		
Title:	Harbeke Subdivision	Date:	01-15-2019
		Update:	04-18-2019
Location:	NE ¼, SE ¼, Section 12, Township 142 North, Range 55 West (1970 138 Ave SE, Lake Township)	Staff Contact:	Barrett Voigt
Parcel Number:	50-0000-08152-000		
Owner(s)/Applicant:	Joseph J. & Carol A. Harbeke/Cole A. Neset	Engineer/Surveyor:	Cole A. Neset
Status:	County Commission Hearing: May 6, 2019		

Existing Land Use	Proposed Land Use
Agriculture	Residential

Proposal

The applicant is seeking approval of a minor subdivision entitled **Harbeke Subdivision** to subdivide a property with 2 existing residential units on a quarter-quarter section. The applicant proposes to establish a two (2) Lot, one (1) Block subdivision that would encompass approximately 21 acres. This minor subdivision would bring the site into compliance with the Cass County Subdivision Ordinance so that the land is subdivided to allow for the current development and development rights are established.

The proposed ownership and maintenance responsibility of the subdivision will be private. The subdivision will use state highway road access, ditches for storm sewer conveyance, rural water, and on-site septic systems for waste water treatment.

Agency Comments

County Engineer	No comments were received prior to publishing the staff report.
Water Resource District	The Southeast Cass and Maple River Water Resource Districts have no comment to submit. Thank you.
Cass County Electric Cooperative	Cass County Electric has an underground power line running through these lots to feed the three houses in the SE corner of Sec. 13. See attached map. The easement for this powerline is Document No. 471746 Book C-6 Page 327. Cass County Electric has no objections to this subdivision.
Century Link	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.
Cass Rural Water	No comments were received prior to publishing the staff report.
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 Harbeke Subdivision, located in Lake 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 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 has two (2) developments. Section 308 of the Cass County Subdivision Ordinance states that every quarter-quarter section is granted one (1) Development Right to create a buildable lot.

The proposed development would be entitled to one development right and would require the transfer of additional development rights, along with a deed restriction.

Staff Recommendation

To accept the findings and recommendations of the Planning Commission and staff to approve of the subdivision application 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 and all other applicable regulations, with the following conditions:

1. A deed restriction be recorded that meets the requirements of Section 308 of the Cass County Subdivision Ordinance.

Attachments

1. Location Map
2. Plat Document
3. Township Letter
4. Deed Restriction Document

Minor Subdivision

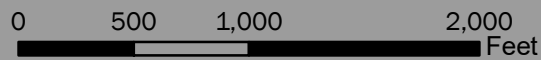
Harbeke Subdivision

Lake, Section 12 - Township 142 North - Range 55 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



PLAT OF HARBEKE

A MINOR SUBDIVISION
PART OF THE NE 1/4 OF THE SE 1/4 OF SECTION 12 T142N R55W
COUNTY OF CASS, STATE OF NORTH DAKOTA

OWNER'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS, THAT JOSEPH J. HARBEKE, CAROL A. HARBEKE, & HARBEKE FARMS, A NORTH DAKOTA COOPERATIVE, OF FARGO, NORTH DAKOTA, ARE THE OWNERS OF HARBEKE SUBDIVISION DESCRIBED AS FOLLOWS;

PART OF THE NE 1/4 OF THE SE 1/4 OF SECTION 12 T142N R55W, COUNTY OF CASS, STATE OF NORTH DAKOTA.

COMMENCING AT THE EAST 1/4 CORNER OF SAID SECTION 12; THENCE S88°13'47"W ALONG THE EAST WEST QUARTER LINE OF SAID SECTION 12 A DISTANCE OF 75.00 FEET TO THE WEST RIGHT OF WAY OF STATE HIGHWAY 38, THE POINT OF BEGINNING; THENCE S88°13'47"W CONTINUING ALONG SAID QUARTER LINE A DISTANCE OF 614.45 FEET; THENCE S02°13'06"E A DISTANCE OF 1526.20 FEET; THENCE N88°13'47"E A DISTANCE OF 589.01 FEET TO THE WEST RIGHT OF WAY OF STATE HIGHWAY 38; THENCE N02°12'07"W ALONG SAID RIGHT OF WAY A DISTANCE OF 911.18 FEET; THENCE N88°13'47"W ALONG SAID RIGHT OF WAY A DISTANCE OF 25.00 FEET; THENCE N02°12'07"W ALONG SAID RIGHT OF WAY A DISTANCE OF 615.02 FEET TO THE POINT OF BEGINNING. SAID TRACT OF LAND CONTAINS ±20.98 ACRES.

SAID OWNERS HAVE CAUSED THE ABOVE DESCRIBED TRACT OF LAND SHOWN ON THIS PLAT TO BE SURVEYED AND PLATTED AS HARBEKE A MINOR SUBDIVISION TO COUNTY OF CASS, STATE OF NORTH DAKOTA. HARBEKE A MINOR SUBDIVISION CONSIST OF 2 LOTS, 1 BLOCK, AND CONTAINS 20.98 ACRES MORE OR LESS TOGETHER WITH EASEMENTS AND RIGHTS OF WAYS OF RECORD.

BY:

JOSEPH J. HARBEKE - PRESIDENT OF HARBEKE FARMS

CAROL A. HARBEKE

STATE OF _____)
COUNTY OF _____) JSS

BE IT KNOWN ON THIS _____ DAY OF _____, 2019, BEFORE ME PERSONALLY APPEARED JOSEPH J. & CAROL A. HARBEKE KNOWN TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THE EXECUTION OF THE SAME AS A FREE ACT AND DEED.

MY COMMISSION EXPIRES: _____

NOTARY PUBLIC

SURVEYORS CERTIFICATE

I, COLE A. NESET HEREBY CERTIFY THAT THIS SURVEY, PLAN AND/OR REPORT WAS PREPARED UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NORTH DAKOTA.

COLE A. NESET
REGISTERED LAND SURVEYOR No. LS-7513
STATE OF NORTH DAKOTA

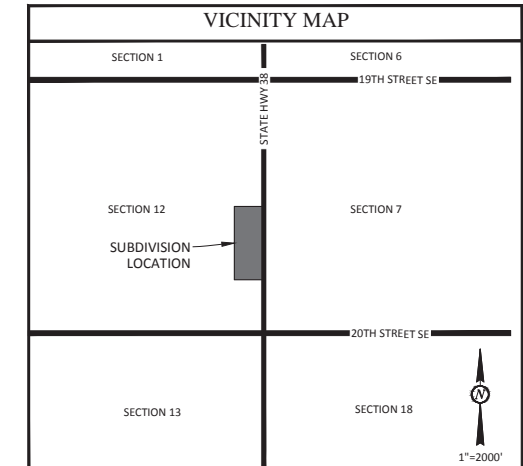
DATE _____

STATE OF _____)
COUNTY OF _____) JSS

BE IT KNOWN ON THIS _____ DAY OF _____, 2019, BEFORE ME PERSONALLY APPEARED COLE A. NESET, NORTH DAKOTA REGISTERED LAND SURVEYOR, TO ME KNOWN TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THE EXECUTION OF THE SAME AS A FREE ACT AND DEED.

MY COMMISSION EXPIRES: _____

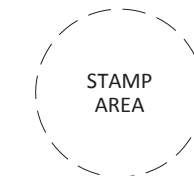
NOTARY PUBLIC



CASS COUNTY ENGINEER

REVIEWED BY THE CASS COUNTY ENGINEER THIS _____ DAY OF _____, 2019.

JASON BENSON, CASS COUNTY ENGINEER



CASS COUNTY PLANNING COMMISSION

REVIEWED BY THE CASS COUNTY PLANNING COMMISSION THIS _____ DAY OF _____, 2019.

KEN LOUGHEED, CHAIRMAN

ATTEST: _____
SECRETARY

CASS COUNTY BOARD OF COMMISSIONER'S APPROVAL

REVIEWED BY CASS COUNTY, NORTH DAKOTA THIS _____ DAY OF _____, 2019.

CHAD PETERSON, CHAIRMAN

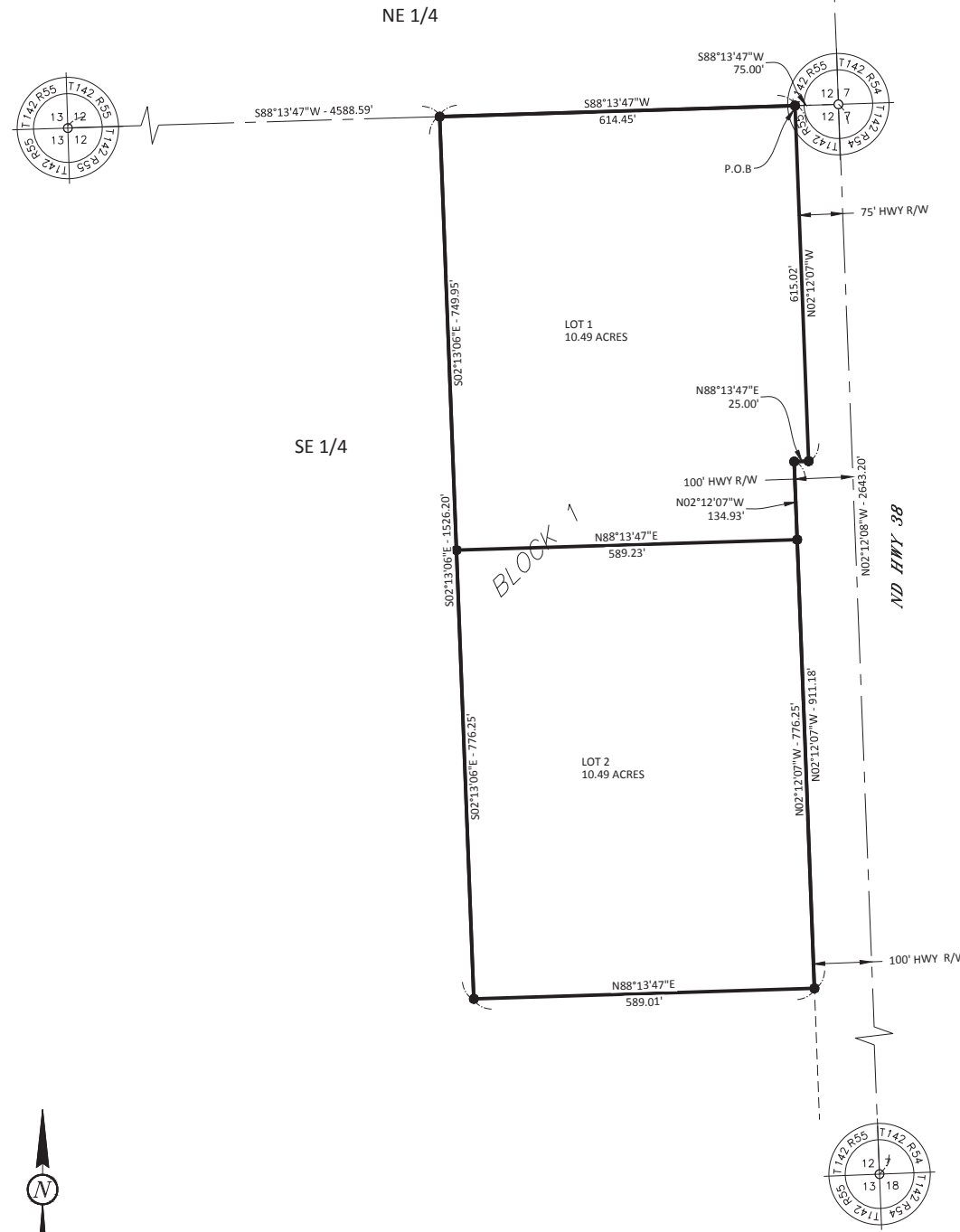
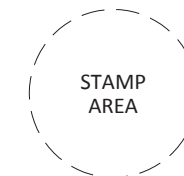
ATTEST: _____
MICHAEL MONTPLAISIR, CASS COUNTY AUDITOR

LAKE TOWNSHIP

REVIEWED BY LAKE TOWNSHIP, CASS COUNTY, NORTH DAKOTA, THIS _____ DAY OF _____, 2019.

KEVIN BAASCH, CHAIRMAN

ATTEST: _____
ANTHONY LINDSETH, CLERK



- LEGEND**
- MONUMENT SET
 - MONUMENT FOUND
 - - - EX. EASEMENT
 - - - EX. PROPERTY LINE
 - PROPERTY BOUNDARY LINE
 - - - SECTION LINE

01/15/19 08:40:41 AM Z:\Users\Shared\Files\Cole Projects\2019 Projects\18_Harbeke_Joe - Page - ND Survey - Project\Harbeke Parcels.dwg



Lake Township

1970 138th Ave SE
Page, ND 58064

(701) 659-0135
anthony.lindseth@gmail.com

January 31, 2019

Mr. Voigt
1201 Main Ave West
West Fargo, ND 58078

Dear Mr. Voigt:

On Behalf of Lake Township, I have reviewed the Final Plat of the Harbeke Farm subdivision. Everything looks to be in order. The lake township Chairman, Kevin Baasch, and I approve of this subdivision.

Cordially,



Anthony Lindseth

Lake township zoning officer

DEED RESTRICTION

Pursuant to Section 309 of the Cass County Subdivision Ordinance, this **DEED RESTRICTION** is entered into this 4 day of April, 2019, by:

Owner(s): Joseph J. Harbeke and Carol A. Harbeke
2108 Rose Creek Boulevard S.
Fargo, ND 58104

1. PURPOSE

The owner recognizes the following agreement is set forth to encourage orderly and economically feasible growth, prevent new developments from creating economic strains on county residents, protect the county's valuable farmland and agricultural traditions and promote development that will more easily convert to an urban environment and implement the goals and objectives established by the Cass County Comprehensive Plan (2005). The following agreement will promote small, truly rural developments that will mesh more easily with existing agricultural land and activities, and will encourage larger urban style subdivisions to develop in the urban fringe and other areas with supportive infrastructure. Developments built beyond the density restriction will be constructed with full supportive urban infrastructure, ensuring developments that will more easily transition into an urban development upon annexation without extensive and costly infrastructure upgrades.

2. AGREEMENT

WHEREAS, for the granting of the division described herein pursuant to Section 309 of the Cass County Subdivision Ordinance, acknowledged herein as good and valuable consideration, the Owner(s) consent and agree to the filing of this **DEED RESTRICTION**, and understand that its effect will be to limit any further residences, divisions, or nonagricultural development on the restricted parcel described herein, except as may be permitted by Section 309.02 of the Cass County Subdivision Ordinance and any amendment thereto:

- A. This **DEED RESTRICTION** shall terminate at such time the deed restricted parcel is completely within the extraterritorial (ET) boundaries of an incorporated city of Cass County;
- B. This **DEED RESTRICTION** shall terminate at such time the restricted parcel is completely annexed by an incorporated city of Cass County; or
- C. Any further subdivision of the restricted parcel will conform to full urban design standards and the strictest requirements outlined within Article VI of the Cass County Subdivision Ordinance, including, but not limited: paved roads with curb and gutter, a paved access road, municipal sewer system, public water supply system with functioning fire hydrants, storm water facilities, street lights, street trees, street signs, sidewalks, bike paths, and park dedications.

WHEREAS, this **DEED RESTRICTION** shall run with the land in perpetuity and be binding on all owners, successors, heirs, assigns, lessees, users, or parties having or acquiring any right, title, or interest in the restricted parcel herein described or any part thereof.

WHEREAS, the restricted parcel described herein meets the criteria established in Section 308 of the Cass County Subdivision Ordinance.

WHEREAS, this **DEED RESTRICTION** shall expire at such time any of the exceptions under Section 309.02 of the Cass County Subdivision Ordinance, and any amendment thereto, apply to the restricted parcel described herein. Upon the written request of any interested party, the Cass County Engineer is authorized to record an instrument with the Cass County Recorder, which declares such an exception applies to the restricted parcel described herein and the DEED RESTRICTION is expired.

3. VIOLATION OF DEED RESTRICTION

In the event of a violation of this **DEED RESTRICTION**, the penalties and remedies provided under Section 906 (Penalties and Violations) of the Cass County Subdivision Ordinance and North Dakota law shall apply.

4. LEGAL DESCRIPTION OF THE RESTRICTED PARCEL

The Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Twelve (12), Township One Hundred Forty-two (142) North of Range Fifty-five (55) West of the Fifth Principal Meridian, LESS Lots One (1) and Two (2) of Block 1 of Harbeke Subdivision, being a part of the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of said Section Twelve (12), and LESS the East 100.00 feet of the south 2030.25 feet and the East 75 feet of the North 615 feet of the Southeast Quarter of said Section 12, all in Cass County, North Dakota.

IN WITNESS of the restrictions, the Owner(s) have caused this DEED RESTRICTION to be executed effective as of:

Joseph J. Harbeke
Joseph J. Harbeke

April 4, 2019
Date

Carol A. Harbeke
Carol A. Harbeke

April 4, 2019
Date

State of North Dakota)
County of Traill) ss

On this 4 day of April, 2019, before me, a notary public within and for said county and state, personally appeared **Joseph J. Harbeke and Carol A. Harbeke, husband and wife**, known to me to be the person(s) described in and who executed the foregoing instrument and acknowledged that they executed the same.

SAVANNAH HAHN
Notary Public
State of North Dakota
My Commission Expires Dec. 29, 2021

Savannah Hahn
Notary Public

The foregoing instrument was acknowledged before me this 17th day of April, 2019, by Jason P. Benson, County Engineer.

Jason P. Benson
County Engineer Signature

4/17/19
Date

State of North Dakota)
County of Cass) ss

On this 17th day of April, 2019, before me, a notary public within and for said county and state, personally appeared Jason Benson, **County Engineer**, known to me to be the person(s) described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

SHARI HALLAND
Notary Public
State of North Dakota
My Commission Expires Aug. 30, 2019

Shari Halland
Notary Public