

## **MEMORANDUM**

TO: Cass County Board of Commissioners

FROM: Barrett Voigt, Cass County Planner

DATE: May 10, 2019

SUBJECT: Consent Agenda Topic for the May 20, 2019  
Commission Meeting: Ottis Subdivision  
Application

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The Cass County Planning Commission reviewed the application of the proposed subdivision and variance for the property located in Normanna Township, Section 34 at a Public Hearing on April 25, 2019. The intended purpose of the subdivision is for the sale of a farmstead. A variance was requested and approved to allow for the transfer of development rights from land currently identified to have a 1% chance flood plain. The flood hazard risk is anticipated to be reduced and comply with the Cass County Subdivision Ordinance when the new Flood Insurance Study (FIS) is adopted in the near future.

The Planning Commission approved of the variance request and is recommending approval of the proposed plat entitlement request. Normanna 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, and all other applicable regulations.



## Cass County Planning Commission Staff Report

<b>Entitlements Requested:</b>	<b>Minor Subdivision (1 Lot)</b> of the West 1/2 of Section 34, Township 137 North, Range 50 West		
<b>Title:</b>	<b>Ottis Subdivision</b>	<b>Date:</b>	04-12-2019
		<b>Update:</b>	05-10-2019
<b>Location:</b>	West 1/2 of Section 34, Township 137 North, Range 50 West (5350 166th Ave SE, Normanna Township)	<b>Staff Contact:</b>	Barrett Voigt
<b>Parcel Number:</b>	55-0000-09828-020	<b>Water District:</b>	Southeast WRD
<b>Owner(s)/Applicant:</b>	Mark & Joan Ottis/Cole A. Neset	<b>Engineer/Surveyor:</b>	Cole A. Neset
<b>Status:</b>	County Commission Hearing: May 20, 2019		

Existing Land Use	Proposed Land Use
Agriculture	Agriculture (Farmstead)

### Proposal

The applicant is seeking approval of a minor subdivision entitled **Ottis Subdivision** to create one (1) Lot and one (1) Block for the purpose of selling the farmstead. Because the farmstead is under 10 acres the proposed sale of the land will not be exempt from the Cass County Subdivision Ordinance. In addition, the applicant requested a variance to allow for the transfer of development rights from land that is currently delineated as floodplain that is restricted by Cass County Subdivision Ordinance Section 308. The proposed lot is located at 5350 166th Ave SE, Normanna Township and is approximately 4.69 acres.

The applicant submitted this minor subdivision plat application and received approval from the Planning Commission on February 28th, 2019. However, a physical copy of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map was identified after the meeting that verified that the proposed subdivision and surrounding land under common ownership was located in the 1% flood plain. Per Section 308 of the Cass County Subdivision Ordinance (CCSO), lands located in the floodplain are not eligible for the transfer of development rights. Therefore, as required by the CCSO, the applicant is resubmitting the subdivision application again in tandem with the variance application.

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

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### Agency Comments

<b>County Engineer</b>	No comments were received prior to publishing the staff report.
<b>Water Resource District</b>	No comments were received prior to publishing the staff report.
<b>Cass County Electric Cooperative</b>	No comments were received prior to publishing the staff report.
<b>Century Link</b>	No comments were received prior to publishing the staff report.
<b>Sprint</b>	No comments were received prior to publishing the staff report.
<b>AT&amp;T</b>	Barrett, AT&T is clear of this current work project
<b>Xcel Energy</b>	No comments were received prior to publishing the staff report.
<b>Magellan Pipeline Company</b>	Magellan Pipeline Company does not have any assets in this township. Thanks.
<b>Cass Rural Water</b>	Since no new utilities are being requested we have no comment.
<b>North Dakota Department of Transportation</b>	No comments were received prior to publishing the staff report.
<b>County Sanitarian</b>	Health has no issues with this property, as it is greater than 1 acre and does not appear to be in the floodplain.
<b>Township Chairman</b>	No comments were received prior to publishing the staff report.
<b>The City of Fargo</b>	The proposed Ottis Subdivision is in Normanna Township and so outside of the Fargo city limits and Fargo's extraterritorial jurisdiction. The City has no comment. Thank you for the opportunity to review this plat.
<b>The City of West Fargo</b>	No comments were received prior to publishing the staff report.
<b>Public Comment</b>	No comments were received prior to publishing the staff report.

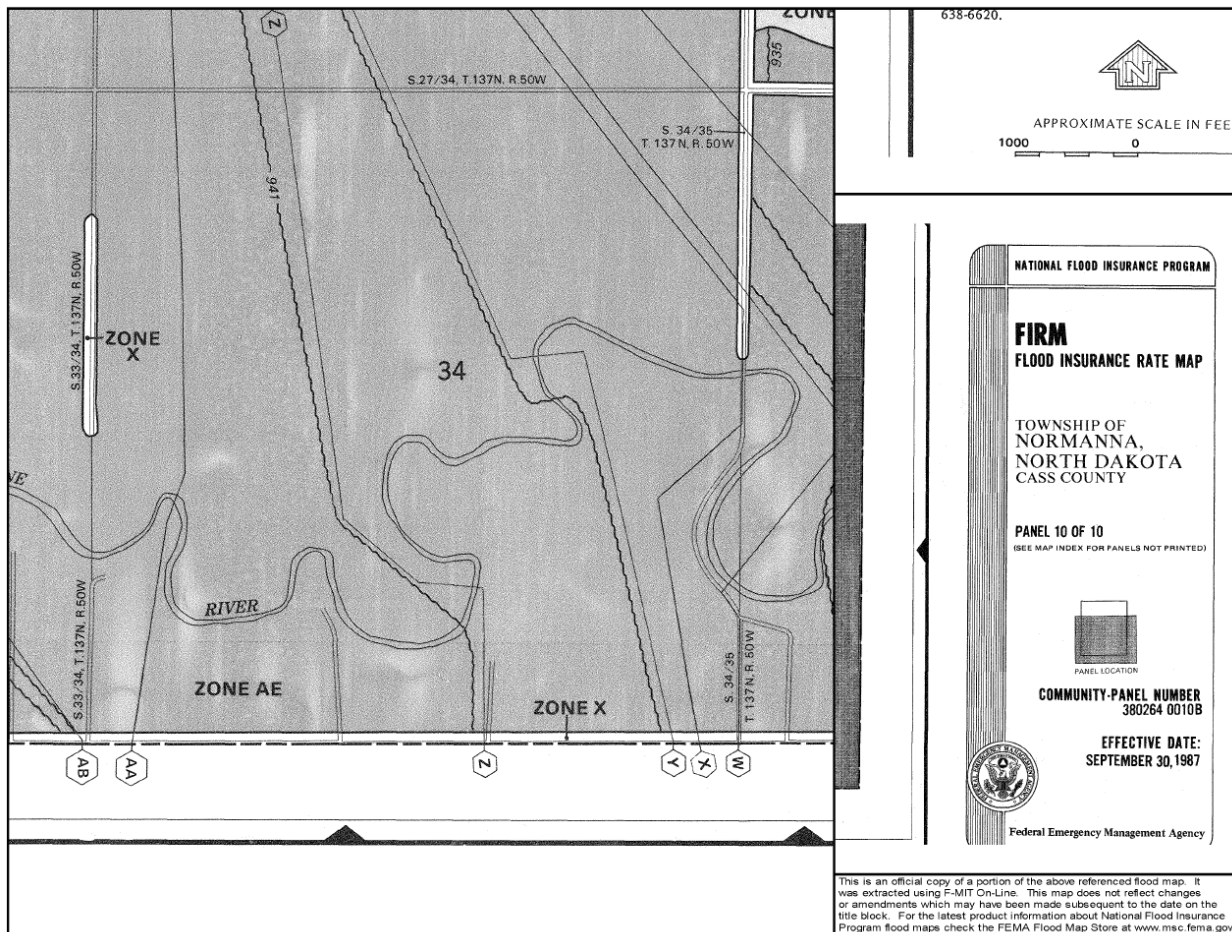
## Staff Analysis

### Surrounding Uses

The subject property is bound by agricultural production land north, west, and east of the property. Land that appears to be used as a farmstead is located south of the property. Land southwest of the property appears to be wooded. Land to the east of the property is identified by the United States Geological Survey as a wetland.

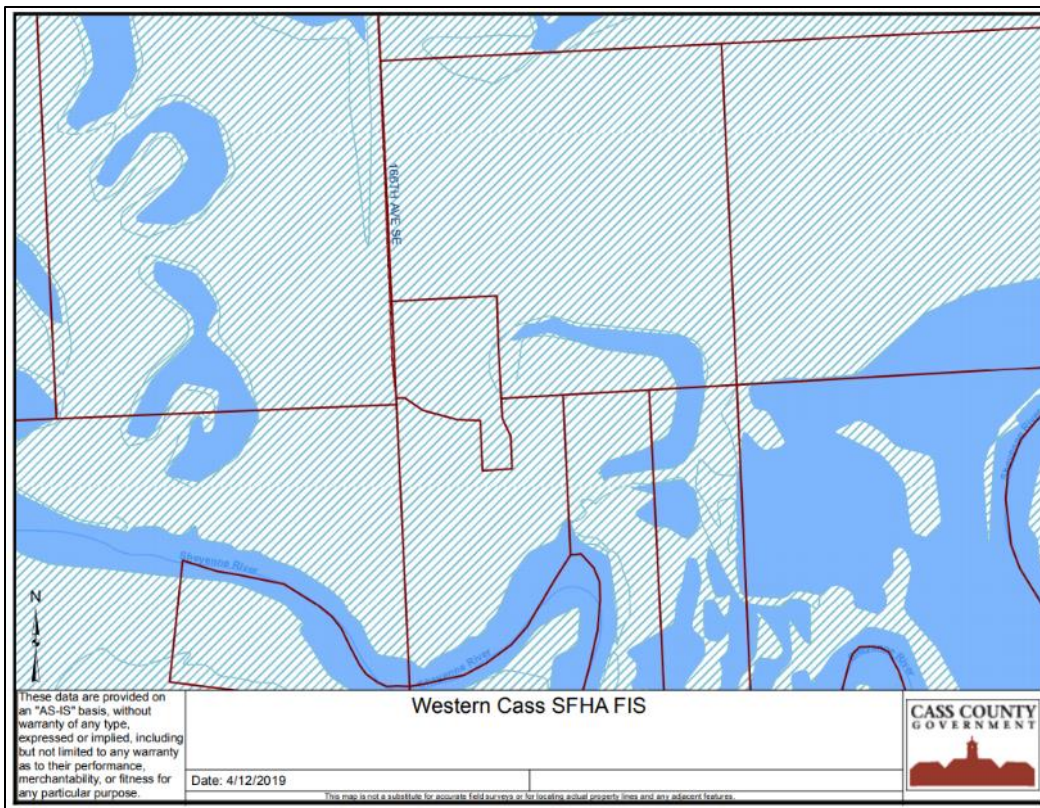
### Floodzone

The Sheyenne River is located more than 600 feet south of the property. According FEMA FIRM 380264 0010B, conducted September 30, 1987, the location of the proposed subdivision and surrounding land are located within the 1% floodplain. For more information, please refer to the illustration below.



However, a Western Cass Special Flood Hazard Area (SFHA) Flood Insurance Study (FIS) has been completed and is tentatively scheduled for adoption during the fall of 2019. As shown in the illustration below, the Western Cass SFHA FIS shows that the 1% floodplain is not located within the boundary of the proposed subdivision and would be found in small areas of the properties surrounding the lot.





*Land Development Rights*

The subject quarter-quarter section currently has one (1) unplatted residential development. 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 with a minimum of 40 acres. Because the lot subdivision proposal is less than 40 acres, a transfer of a development right is required along with a deed restriction. However, Section 308 does not allow for development rights to be transferred from lands located in the floodplain. Because the 1987 FIRM is the most currently adopted map, the proposed development would not be able to transfer development rights because all of the surrounding land in located in the 1% floodplain. As a result, if the ordinance requirements were strictly adhered to, the subdivision application would not be able to go forward because no transfer of development rights would be permitted.

When the Western Cass SFHA FIS is adopted, the 1% flood plain will be removed from the proposed subdivision lot and the majority of the areas of the surrounding land area. If the ordinance requirements were strictly adhered to, the applicant would not be able to subdivide until the new FIS is adopted. Therefore, the applicant faces a hardship where the proposed subdivision is not permitted because of events beyond the control of the applicant. A more current study shows a reduced floodplain risk which would permit for the transfer of development rights after the new FIS completes the adoption process. Therefore, the applicant is requested a variance so that the application can proceed forward and all CCSO requirements will be met after the adoption of the Western Cass SFHA FIS.

*Planning Commission*

On April 25th, 2019 the Planning Commission heard and approved the variance application, as well as recommend the subdivision application for approval by the County Commission.

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## 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.

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## Attachments

1. Location Map
2. Plat Document
3. Variance Request Document
4. Supplemental Maps
5. Township Approval Letter



# Minor Subdivision

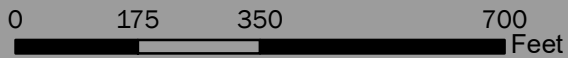
## Ottis Subdivision and Variance

Normanna, Section 34 - Township 137 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  
April 25, 2019



SE1/4 SE1/4

SW1/4 SW1/4

# PLAT OF OTTIS SUBDIVISION

## A MINOR SUBDIVISION

ALL OF AUDITORS LOT 1 AND PART OF THE WEST 1/2 OF SECTION 34, TOWNSHIP 137 NORTH, RANGE 50 WEST  
NORMANNA TOWNSHIP, COUNTY OF CASS, STATE OF NORTH DAKOTA

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	33.00'	N87°08'11"E
L2	119.39'	S56°32'11"E
L3	60.27'	N84°57'09"E
L4	33.14'	S47°21'07"E
L5	110.11'	S88°32'46"E
L6	31.36'	N2°28'48"W
L7	89.55'	N87°54'58"W
L8	137.99'	N74°56'10"W
L9	86.45'	N55°50'22"W
L10	33.00'	N87°19'58"E
L11	33.37'	S2°40'02"E
L12	33.00'	S87°04'10"W

### OWNER'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS, THAT MARK & JOAN OTTIS, ARE THE OWNERS OF OTTIS SUBDIVISION DESCRIBED AS FOLLOWS;

ALL OF AUDITORS LOT 1 AND PART OF THE W 1/2 OF SECTION 34, TOWNSHIP 137 NORTH, RANGE 50 WEST OF THE 5TH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 34; THENCE S02°40'02"E ALONG THE WEST LINE OF SAID SECTION 34 A DISTANCE OF 2,670.87 FEET TO THE POINT OF BEGINNING; THENCE N87°08'11"E A DISTANCE OF 33.00 FEET; THENCE S56°32'11"E A DISTANCE OF 119.39 FEET; THENCE N84°57'09"E A DISTANCE OF 60.27 FEET; THENCE S47°21'07"E A DISTANCE OF 33.14 FEET; THENCE S88°32'46"E A DISTANCE OF 110.11 FEET; THENCE S02°28'48"E A DISTANCE OF 162.75 FEET; THENCE N86°29'48"E A DISTANCE OF 115.37 FEET; THENCE N02°28'48"W A DISTANCE OF 126.81 FEET; THENCE N25°22'24"W A DISTANCE OF 76.44 FEET; THENCE N03°01'18"W A DISTANCE OF 33.00 FEET; THENCE N01°50'43"W A DISTANCE OF 195.06 FEET; THENCE S87°04'10"W A DISTANCE OF 376.60 FEET; THENCE S87°04'10"W A DISTANCE OF 33.00 FEET TO THE WEST LINE OF SAID SECTION 34; THENCE S02°40'02"E ALONG SAID LINE A DISTANCE OF 410.62 FEET TO THE POINT OF BEGINNING. SAID TRACT OF LAND CONTAINS ±4.93 ACRES MORE OR LESS AND IS SUBJECT TO EASEMENTS AND RIGHTS OF WAY OF SIGHT AND RECORD.

BY:

MARK OTTIS

JOAN OTTIS

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ ) SS

BE IT KNOWN ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019, BEFORE ME PERSONALLY APPEARED MARK & JOAN OTTIS 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 \_\_\_\_\_

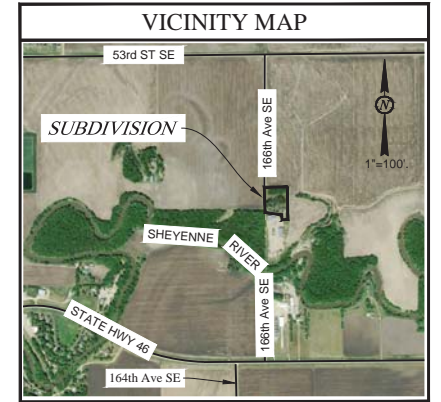
STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ ) SS

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: \_\_\_\_\_

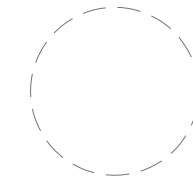
NOTARY PUBLIC



### 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.

MARY SCHERLING, CHAIRWOMEN

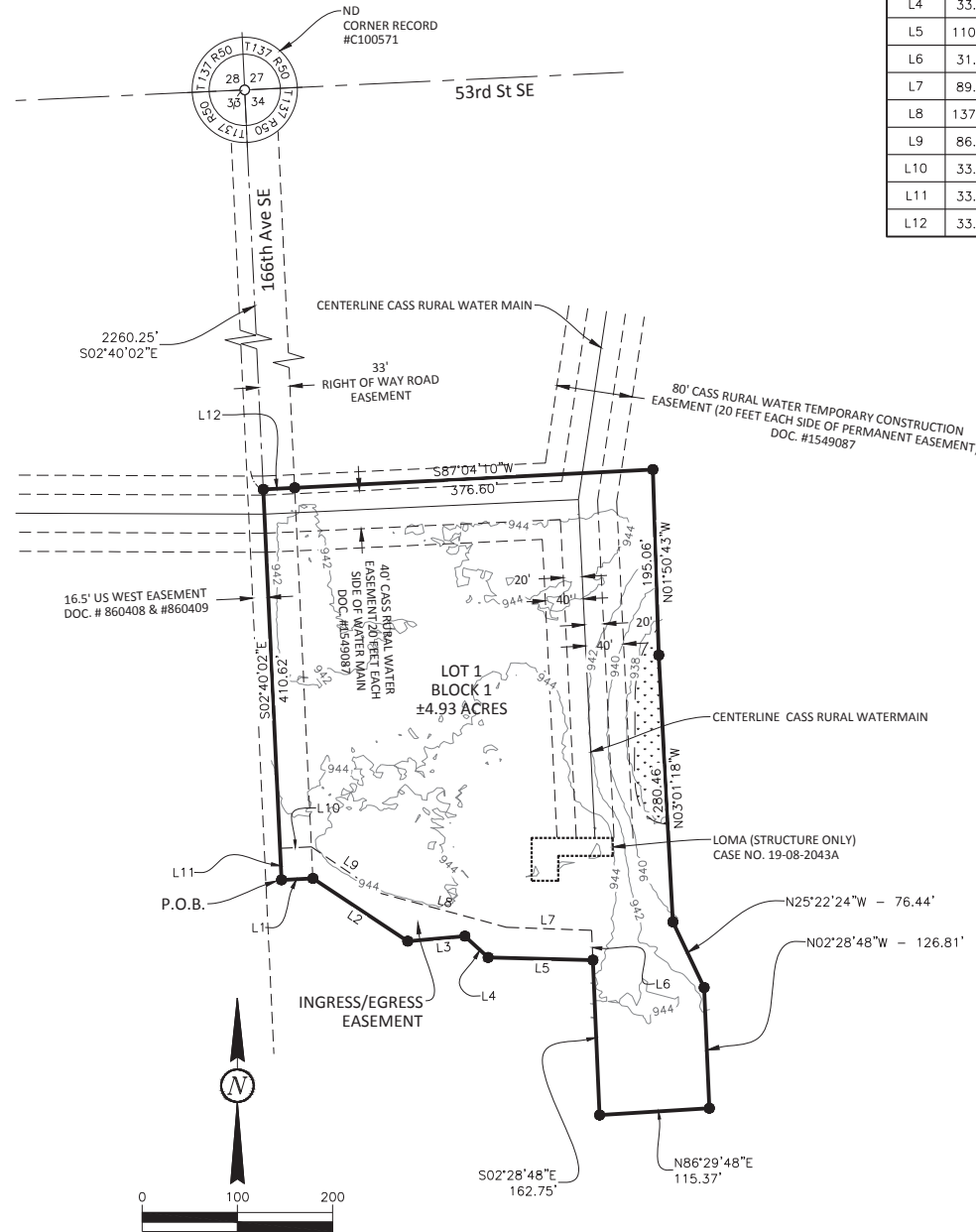
ATTEST:  
MICHAEL MONTPLAISIR, CASS COUNTY AUDITOR

### NORMANNA TOWNSHIP

REVIEWED BY NORMANNA TOWNSHIP, CASS COUNTY, NORTH DAKOTA, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

TYLER ODEGAARD, CHAIRMAN

ATTEST:  
CLERK



### LEGEND

- MONUMENT SET
- MONUMENT FOUND
- ⊠ RIGHT OF WAY MARKER
- - - - - EX. EASEMENT
- - - - - EX. PROPERTY LINE
- — — — — PROPERTY BOUNDARY LINE
- — — — — NEW ROW/PROPERTY LINE
- - - - - NEW EASEMENT
- — — — — SECTION LINE
- ▨ WETLAND

### NOTE

BLANKET INGRESS/EGRESS EASEMENT ACROSS THE NORTH 1/2 OF THE NORTHWEST 1/4 AND THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 34. DOCUMENT #1549087

### SURVEY INFORMATION

DATE OF SURVEY: JULY 2018  
BASIS OF BEARING: ASSUMED BEARING  
BENCHMARK: RM1 AS PER FIS REPORT DATED: SEPTEMBER 30, 1987. ELEV=948.30'  
DATUM: NGVD 29

### FLOOD INFORMATION

ENTIRE PROPERTY IS LOCATED IN FLOOD ZONE  
AE AS PER FEMA FIRM PANEL: 3802640010B  
COMMUNITY NUMBER: 380264  
BASE FLOOD ELEVATION 941.50'



**Neset**  
LAND SURVEYS

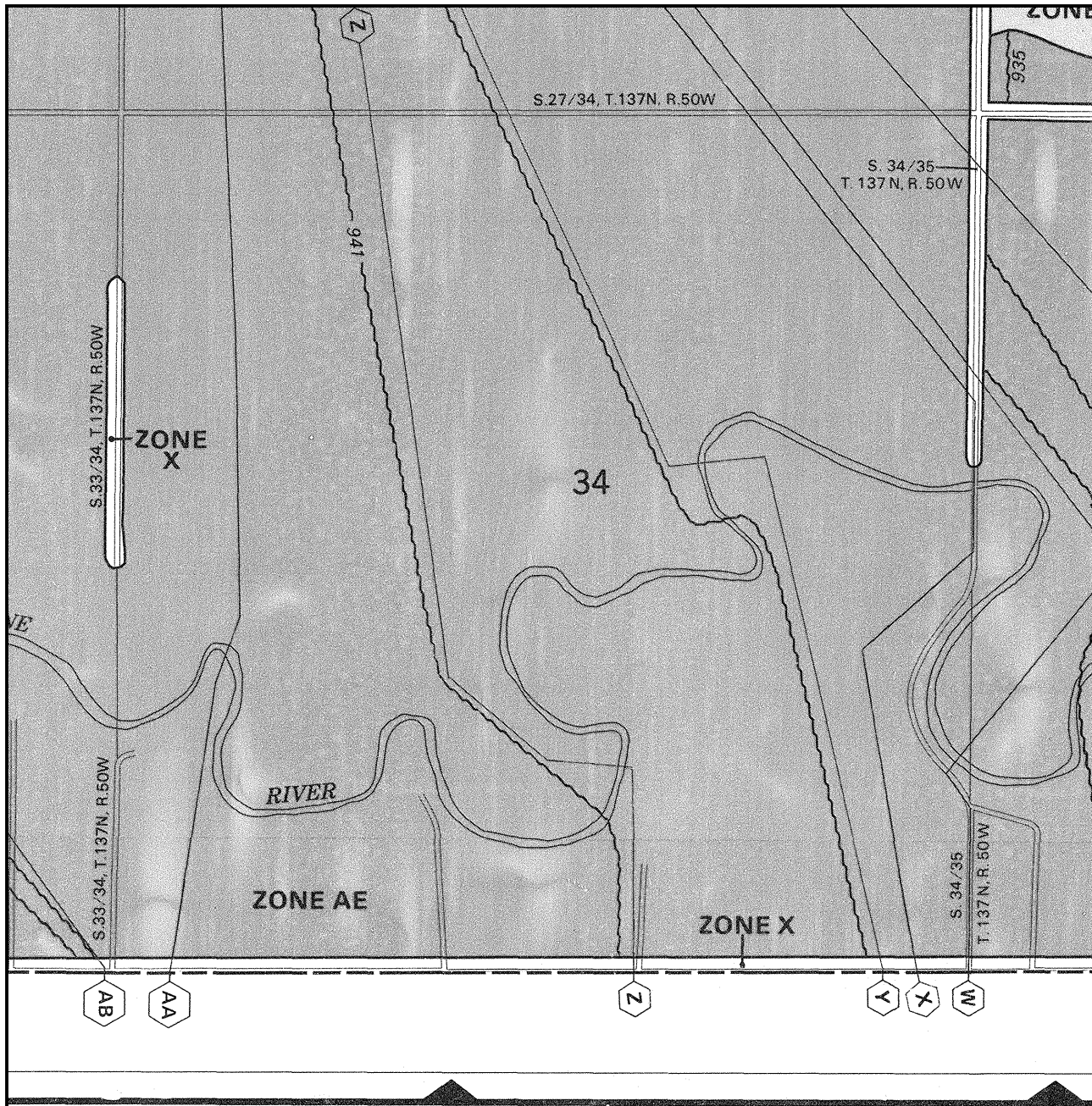


Neset Land Surveying

Variance Request: Plat of Ottis- A Minor Subdivision

Date: April 2, 2019

Cass County Subdivision Ordinance (CCSO) places an undue burden and creates a hardship on to the property because the transfer development rights cannot be done under the current FEMA FIRM map, as per Section 308 of the CCSO. By CCSO the land is deemed "unsuitable" since the land is in the floodplain. In communication with the Cass County Planner the county is waiting on a new FIS report that would remove the property from the floodplain restriction once the new FIS report is adopted, which is expected to be adopted sometime in the next year.



638-6620.



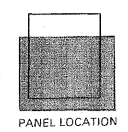
APPROXIMATE SCALE IN FEET  
1000 0

NATIONAL FLOOD INSURANCE PROGRAM

**FIRM**  
FLOOD INSURANCE RATE MAP

TOWNSHIP OF  
NORMANNA,  
NORTH DAKOTA  
CASS COUNTY

PANEL 10 OF 10  
(SEE MAP INDEX FOR PANELS NOT PRINTED)



COMMUNITY-PANEL NUMBER  
380264 0010B

EFFECTIVE DATE:  
SEPTEMBER 30, 1987



Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at [www.msc.fema.gov](http://www.msc.fema.gov)





These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

## Unapproved Western Cass FIS Results

Date: 4/3/2019

This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.





Normana Township

Barrett Voigt  
Cass County Planner

Dear Barrett,

This letter is in regard to the Ottis Subdivision. The Normanna Township reviewed the application and the submitted Platt drawing and after careful review we feel the proposed subdivision is consistent with all Normanna Township zoning regulations. Therefore we approve the application and submitted Platt drawing.



Curt Leslie  
Normanna Township Clerk  
701-238-8073

## DEED RESTRICTION

Pursuant to Section 309 of the Cass County Subdivision Ordinance, this **DEED RESTRICTION** is entered into this 2 day of May, 2019, by:

Owner(s): Mark L Ottis and Joan E Ottis

### 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 Southeast Quarter of the Northeast Quarter of Section 33, Township 137N, Range 50 West, County of Cass, State of North Dakota.



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

Mark Ottis  
Owner(s) Signature

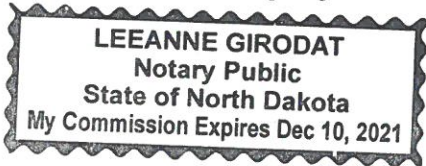
5-2-2019  
Date

Joan Ottis  
Owner(s) Signature

5-2-2019  
Date

State of North Dakota )  
  ) ss  
County of Cass            )

On this 2 day of May, 2019, before me, a notary public within and for said county and state, personally appeared Mark & Joan Ottis, known to be the person(s) described in and who executed the foregoing instrument and acknowledged that they executed same.



Leeanne Girodat  
Notary Public

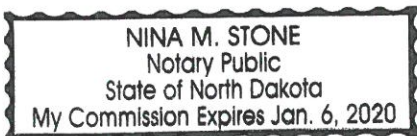
The foregoing instrument was acknowledged before me, this 15 day of May 2019, 2019, by Jason Benson, County Engineer.

Jason Benson  
County Engineer Signature

5/15/19  
Date

State of North Dakota )  
  ) ss  
County of Cass            )

On this 15<sup>th</sup> day of May, 2019, before me, a notary public within and for said county and state, personally appeared Jason Benson, County Engineer, known to be the person(s) described in and who executed the foregoing instrument and acknowledged that they executed same as their free act and deed.



Nina M Stone  
Notary Public