

CASS COUNTY PLANNING COMMISSION AGENDA

Thursday, October 28, 2021 at 7:00 a.m.

Vector Conference Room, 1201 Main Avenue West, West Fargo, 58078

A. Call to Order

B. Roll Call

C. Determination of a Quorum

D. Approve Meeting Minutes of September 23, 2021

E. Public Hearing Items

1. Hearing on an application requesting a Minor Subdivision Plat of **Sarah Subdivision** (NW ¼ of Section 10, Township 141 North, Range 50 West of the 5th Principal Meridian, Cass County North Dakota).
2. Hearing on an application requesting a Minor Subdivision **Hickson 2nd Subdivision** (NW ¼ of Section 24, Township 137 North, Range 49 West of the 5th Principal Meridian, Cass County North Dakota).
3. Hearing on an application requesting a Minor Subdivision Plat of **Score Residence Subdivision** (SE ¼ of Section 34, Township 138 North, Range 49 West of the 5th Principal Meridian, Cass County North Dakota).

F. New Business

Buyout Property – Eric Dodds

Information/Update – Crew Camp Ordinance, 2nd Hearing on November 1

Information/Action – Matthews Property

Information/Update – Subdivision Ordinance

Information/Update – 2022 Planning Commission Meeting Schedule

G. Old Business

Open Planning Commission Position

H. Adjournment

**CASS COUNTY PLANNING COMMISSION
SEPTEMBER 23, 2021**

A. CALL TO ORDER

A meeting of the Cass County Planning Commission was called to order on September 23, 2021, at 7:00am in the Vector Control Conference Room.

B. ROLL CALL

Planning Commissioners present in person were David Gust, Jim Kapitan, Ken Lougheed, Dr. Tim Mahoney, Keith Monson, and Brad Olson. Rocky Bertsch and Kris Schipper were absent.

Also present in person were Cass County Planner, Grace Puppe, Assistant Cass County Engineer, Tom Soucy, Cass County Senior Attorney, Tracy Peters and KLJ Planner Joel Quanbeck. Cass County Engineer, Jason Benson joined via Microsoft Teams.

C. DETERMINATION OF A QUORUM

It was determined that there was a quorum based on the roll call.

D. MINUTES, APPROVED

MOTION, *passed*

Mr. Monson moved and Mr. Olson seconded to approve the minutes of the August 21, 2021 meeting as presented.

Motion carried.

E. PUBLIC HEARING

- 1. Hearing on an application requesting a Minor Subdivision Plat of Mark Subdivision (SE ¼ of Section 23, Township 137 North, Range 54 West of the 5th Principal Meridian, Cass County North Dakota).**

Mr. Lougheed opened the public hearing.

Ms. Puppe provided an overview of an applicant seeking approval of a minor subdivision entitled Mark Subdivision to plat a one (1) Lot subdivision of approximately 2.11 acres. According to the applicant, the subdivision is requested to create a parcel for residential purposes.

The proposed ownership and maintenance responsibility of the subdivision will be private. The subdivision will use 52nd St SE for road access, ditches for storm sewer conveyance, rural water, and on-site septic systems for wastewater treatment.

Upon hearing no public comments, the public hearing was closed.

MOTION, *passed*

Mr. Gust moved and Mr. Kapitan seconded to accept the findings and recommend approval to the County Commission with any conditions outlined by the County Planner.

On a roll call vote with all in favor, motion carried.

F. NEW BUSINESS

Information/Update – Crew Camp Ordinance

The first reading had taken place on September 20, 2021 at the County Commission meeting. A second reading will take place on November 1, 2021 at the County Commission meeting for adoption. Dr. Mahoney said he spoke with contractors for the diversion and they estimate hiring 1500 people, they are wanting to hire mostly local workers if possible. There are approximately 3500 people that move to Fargo yearly and there are no issues with housing.

Information/Action – KNB Industrial Development

KNB started building an industrial building in 2019 in Stanley Township. They were asked to submit a subdivision application which they did, but it was incomplete. KNB has now split the parcel into several Auditor's Lots. Litigation has started and Ms. Peters added that they have until September 27, 2021 to answer, then they will proceed to court to interpret the ordinance. Ms. Peters said that KNB may have to go through the subdivision process if they lose in court, they will also have to create a deed restriction.

MOTION, *passed*

Mr. Gust moved and Mr. Kapitan to support the County Commission to litigate and enforce the Cass County Subdivision Ordinance.

On a roll call vote with all in favor, motion carried.

Information/Update – Matthews Property

Subdivision application has not been received for this property in Stanley Township. There are signs indicating they are selling lots and there was a new house moved to Auditor Lot 7. The house owner is unknown at this time. Mr. Quanbeck asked if they are getting easements. Ms. Puppe said they were not and that they would have to follow the ordinance for a large subdivision. If there continues to not have an application submitted, there may be a future injunction.

Mr. Gust asked if the county has had any meetings to discuss with them. Mr. Benson said there have been multiple attempts to meet with the head of the board and also their legal and planning individuals. They are claiming the county has no authority over townships regarding lots. This differs from the North Dakota Century Code that states the county does have jurisdiction. Mr. Gust said that they could have very large special assessments due to the large lot sizes. Mr. Gust added that townships may not know about Planning and Subdivision ordinance policies.

Information/Update – Subdivision Ordinance

Dr. Mahoney left the meeting at 7:28am.

Mr. Quanbeck discussed the updates made to the draft subdivision ordinance. The new structure of the ordinance will have all of the parts pertaining to minor subdivisions grouped together and separate from the parts for major subdivisions. This way it will help to avoid confusion about the requirements and processes for each.

Some of the topics that were discussed were about the current variance process along with future issues it may cause to applicants who were part of the buyout process for the diversion. There will be more discussion about it at the next planning commission meeting about how to handle these properties. Along with the proposed process for interpretation and dealing with appeals is to have the County Planner bring the issue before the Planning Commission to have discussion and a recommendation of action. Then that recommendation will be brought before the County Commission. An updated draft

ordinance document will be provided for the next meeting along with additional questions to be answered by the Planning Commission.

G. OLD BUSINESS

Open Planning Commission position

H. ADJOURNMENT

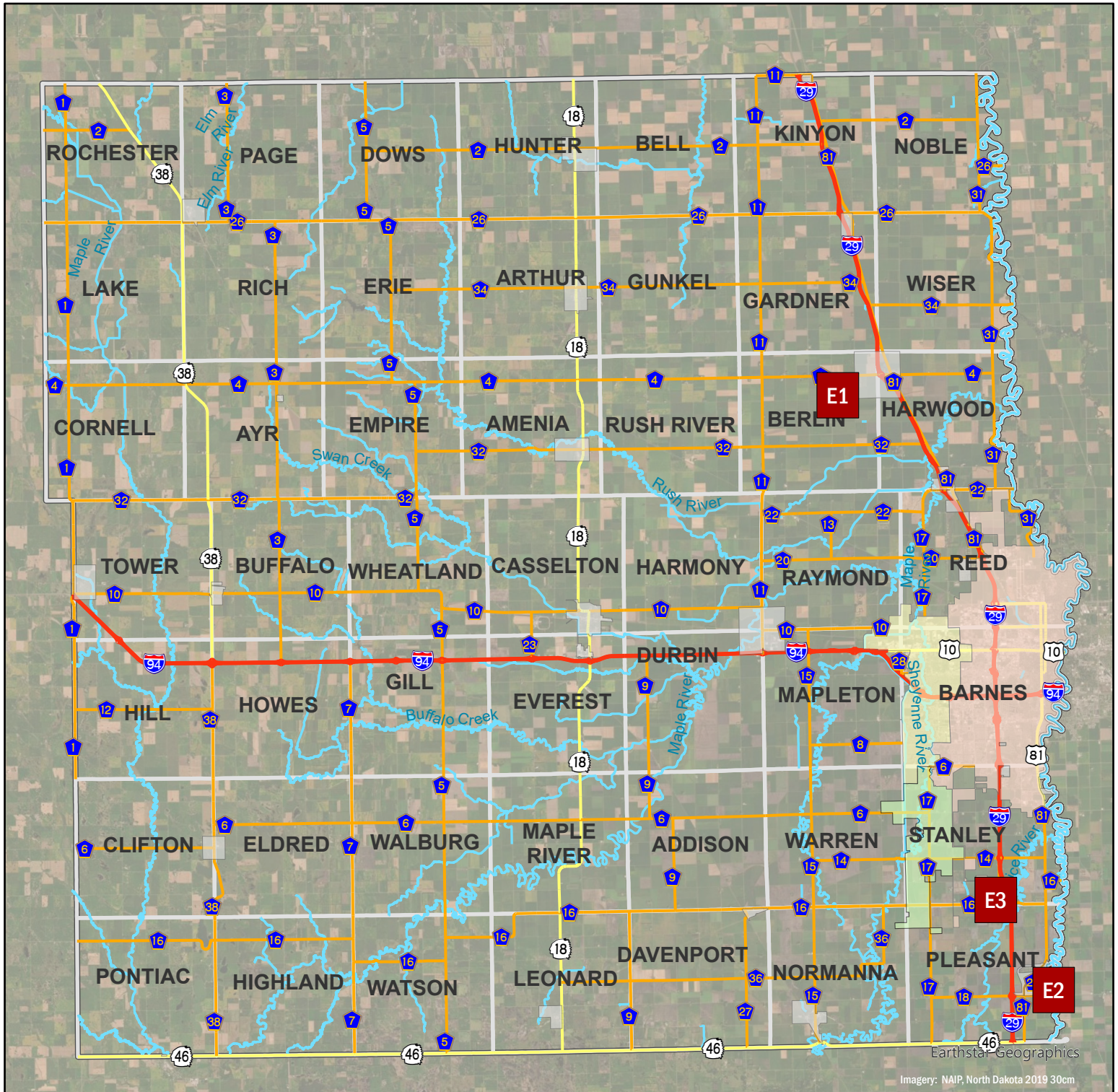
On motion by Mr. Olson seconded by Mr. Kapitan and all voting in favor, the meeting was adjourned at 8:10 AM.

Minutes prepared by Lisa Shasky, Principal Secretary, Highway Department

Agenda Items Map

Cass County Planning Commission

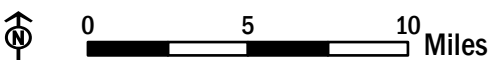
October 28, 2021



Agenda Items No.

- E1. - Sarah Subdivision
- E2. - Hickson 2nd Subdivision
- E3. - Score Residence Subdivision

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 Staff Report

Entitlements Requested:	Minor Subdivision (1 Lot) of a part of the NW ¼ of Section 10, Township 141 North, Range 50 West		
Title:	Sarah Subdivision	Date:	10-18-2021
Location:	NW ¼ of Section 10, Township 141 North, Range 50 West (Berlin Township)	Staff Contact:	Grace Puppe
Parcel Number:	27-0000-01357-070	Water District:	Rush River Water District
Owner(s)/Applicant:	Charles & Susan Sorvaag	Engineer/Surveyor:	Bolton & Menk
Status:	Planning Commission Hearing: October 28, 2021		

Existing Land Use	Proposed Land Use
Agriculture	Residential
Proposal	

The applicant is seeking approval of a minor subdivision entitled **Sarah Subdivision** to plat a one (1) Lot subdivision of approximately 14.94 acres. According to the applicant, the subdivision is requested to create a lot for daughter and son-in-law to build a single-family home.

The proposed ownership and maintenance responsibility of the subdivision will be private. The subdivision will use 165th Avenue SE road access, ditches for storm sewer conveyance, rural water, and on-site septic systems for wastewater treatment.

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.
Sprint	Clear from project.
AT&T	No comments were received prior to publishing the staff report.
Xcel Energy	No comments were received prior to publishing the staff report.
Otter Tail Power Company	No comments were received prior to publishing the staff report.
Magellan Pipeline Company	No comments were received prior to publishing the staff report.

NuStar Energy	No comments were received prior to publishing the staff report.
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	No issues.
Township Chairman	No comments were received prior to publishing the staff report.
The City of Fargo	No comments were received prior to publishing the staff report.
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

Land Use and Surrounding Uses
 The subject property is bound by agricultural production land on the east and south. Township road 165th Ave SE borders the west of the property with County Road 4 bordering the north.

Floodzone
 According to the FEMA Flood Map Service Center, no Special Hazard Flood Area has been identified. In addition, no wetlands or other notable features are present on the proposed subdivision Lot.

Land Development Rights
 The subject quarter-quarter section currently is developed and requires the transfer of a development right. 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.

Staff Recommendation

To accept the findings and recommendations of staff and recommend approval to the County Commission 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.

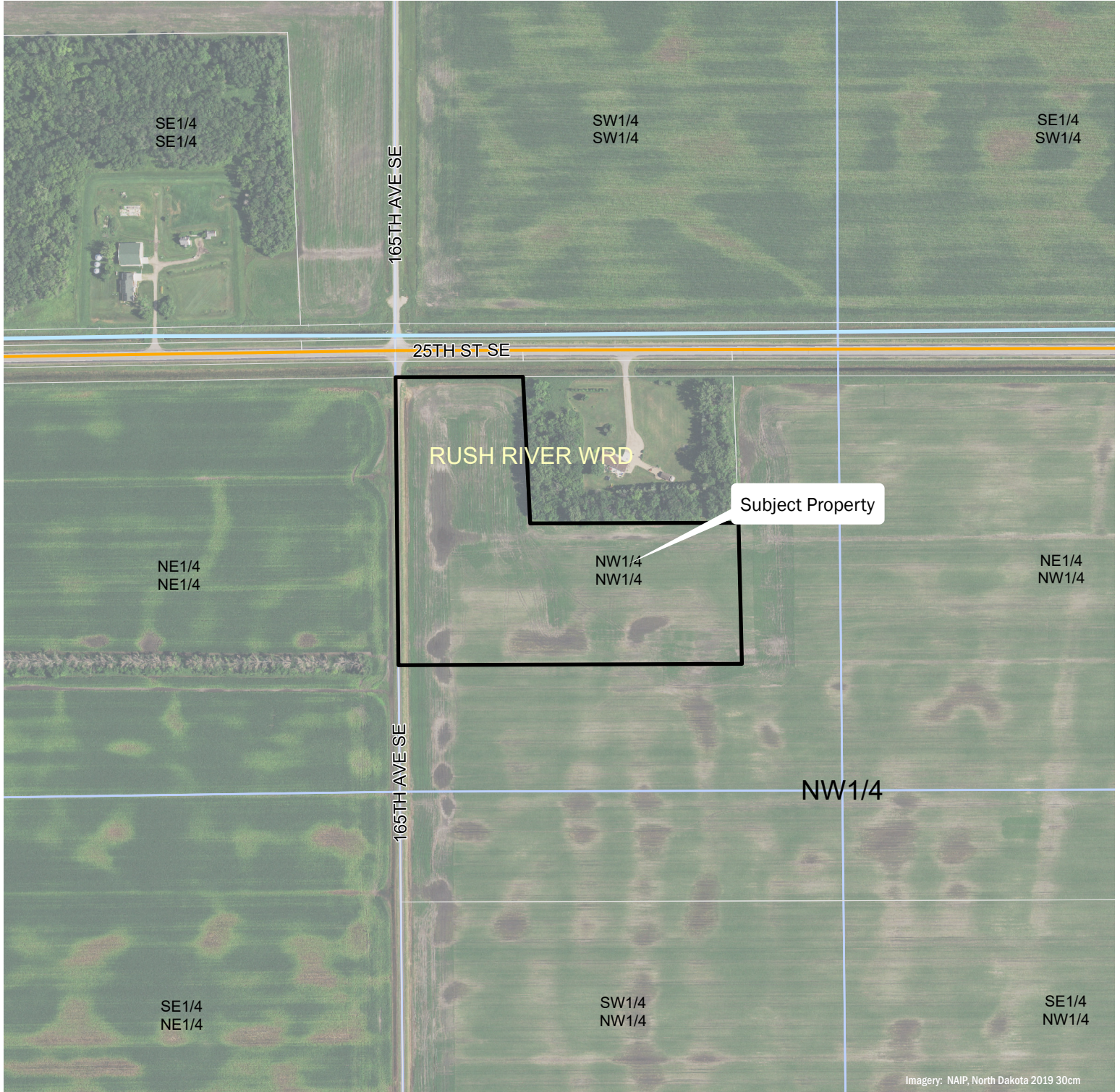
Attachments

1. Location Map
2. Plat Document
3. Deed Restriction

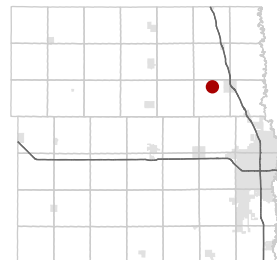
Minor Subdivision

Sarah Subdivision

Berlin Twp, Section 10 - Township 141 North - Range 50 West



Cass County Planning Commission
October 28, 2021

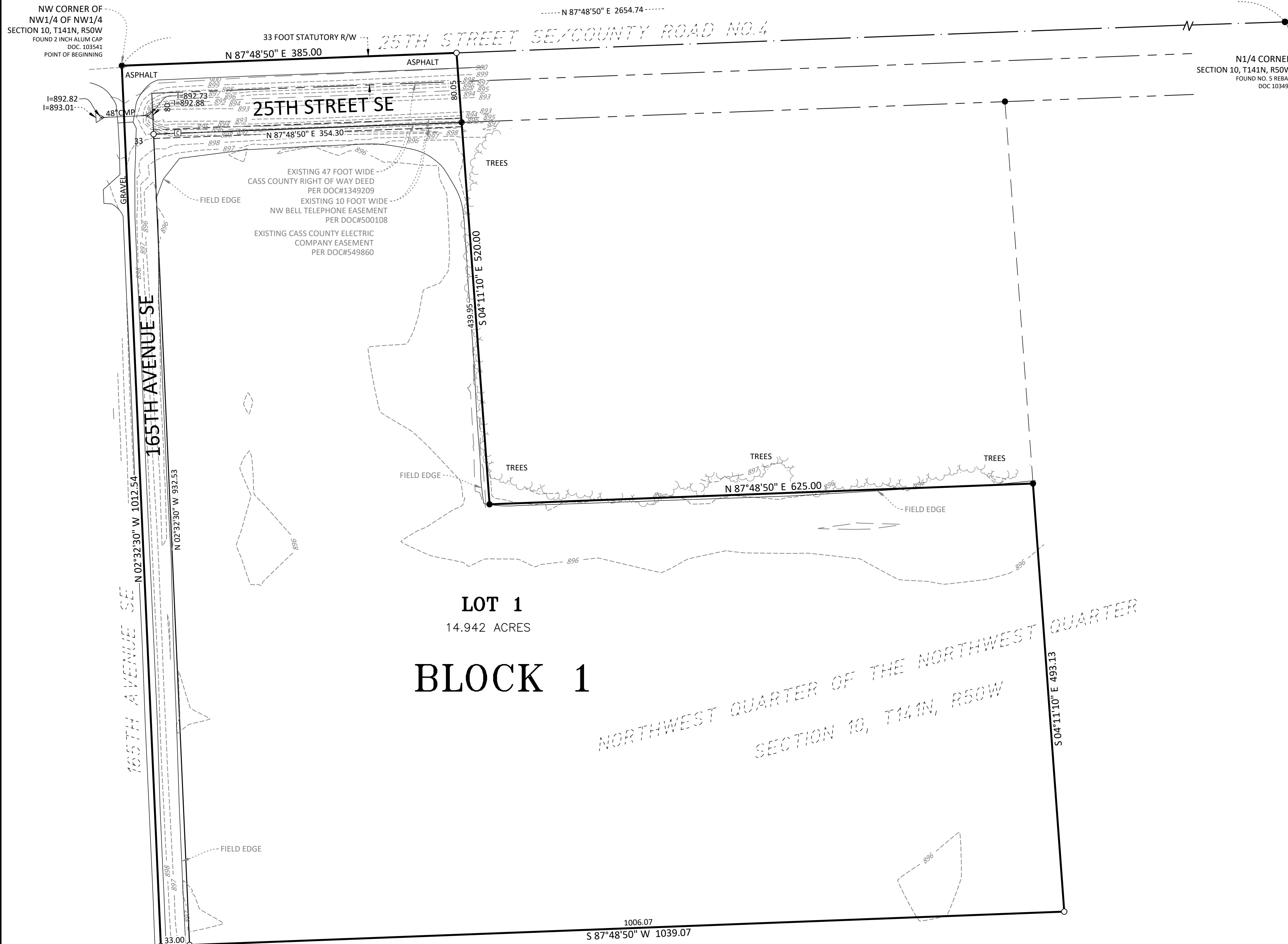


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SARAH'S ACRES SUBDIVISION

PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER, SECTION 10,
TOWNSHIP 141 NORTH, RANGE 50 WEST OF THE FIFTH PRINCIPAL MERIDIAN,
BERLIN TOWNSHIP, CASS COUNTY, NORTH DAKOTA
A MINOR SUBDIVISION



OWNERS DESCRIPTION AND DEDICATION

KNOW ALL PERSONS BY THESE PRESENTS, That Charles H. Sorvaag and Susan L. Sorvaag, husband and wife, as owners of a parcel of land located in the Northwest Quarter of the Northwest Quarter of Section 10, Township 141 North, Range 50 West of the Fifth Principal Meridian, Cass County, North Dakota and more particularly described as follows:

That part of the Northwest Quarter of the Northwest Quarter of Section 10, Township 141 North, Range 50 West, Cass County, North Dakota described as follows:

Beginning at the northwest corner of said Northwest Quarter of the Northwest Quarter; thence North 87 degrees 48 minutes 50 seconds East, assumed bearing, along the north line of said Northwest Quarter of the Northwest Quarter, 385.00 feet to the northwest corner of a parcel of land described in Document 1322861 on file and of record in the Office of the County Recorder, Cass County, North Dakota; thence South 04 degrees 11 minutes 10 seconds East, along the west line of said document, 520.00 feet to the southwest corner of said document; thence North 87 degrees 48 minutes 50 seconds East, along the south line of said document, 625.00 feet to the southeast corner of said document; thence South 04 degrees 11 minutes 10 seconds East 493.13 feet; thence South 87 degrees 48 minutes 50 seconds West 1039.07 feet to the west line of said Northwest Quarter of the Northwest Quarter; thence North 02 degrees 32 minutes 30 seconds West, along said west line, 1012.54 feet to the point of beginning.

Containing 16.358 acres, of land, more or less and is subject to all easements, restrictions, reservations and rights of way of record, if any.

Said owners have caused the above described parcel of land to be surveyed and platted as SARAH'S ACRES SUBDIVISION to Cass County, North Dakota and do hereby dedicate to the public for public use forever 25th Street SE and 165th Avenue SE as shown on this plat.

OWNERS:

By: Charles H. Sorvaag, husband

By: Susan L. Sorvag, wife

State of North Dakota }
County of Cass } SS

On this _____ day of _____, 2021, before me, a notary public within and for said County and State, personally appeared Charles H. Sorvaag, husband and Susan L. Sorvag, wife, known to me to be the persons who are described in and who executed the within instrument, and acknowledged to me that they executed the same.

Notary Public

BERLIN TOWNSHIP

Reviewed by Berlin Township, Cass County, North Dakota
this _____ day of _____, 2021.

Karl Langseth, Chairman

Attest: _____
???????, Clerk

CASS COUNTY ENGINEER

Reviewed by the Cass County Engineer this _____ day of _____, 2021.

Jason Benson, Cass County Engineer

CASS COUNTY PLANNING COMMISSION

Reviewed by the Cass County Planning Commission this _____ day of _____, 2021.

Ken Lougheed, Chairman

Attest: _____
Secretary

CASS COUNTY BOARD OF COMMISSIONERS APPROVAL

Approved by Cass County, North Dakota this _____ day of _____, 2021.

By: Chad Peterson, Chairman

Attest: _____
Robert Wilson, Finance Director

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT

I, Gregg Stroeing, Registered Professional Land Surveyor under the laws of the State of North Dakota do hereby certify that this plat is a correct representation of the survey, that all distances shown are correct and that the monuments for the guidance of future surveys have been located or placed in the ground as shown and that the outside boundary lines are correctly designated on the plat.

Gregg Stroeing, Professional Land Surveyor Date
North Dakota License Number LS-6703

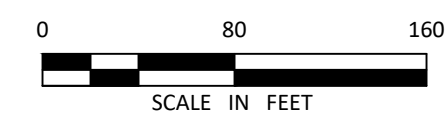
State of North Dakota }
County of Cass } SS

On this _____ day of _____, 2021, before me, a notary public within and for said County and State, personally appeared Gregg Stroeing, Professional Land Surveyor, known to me to be the person who is described in and who executed the within instrument, and acknowledged to me that he executed the same.

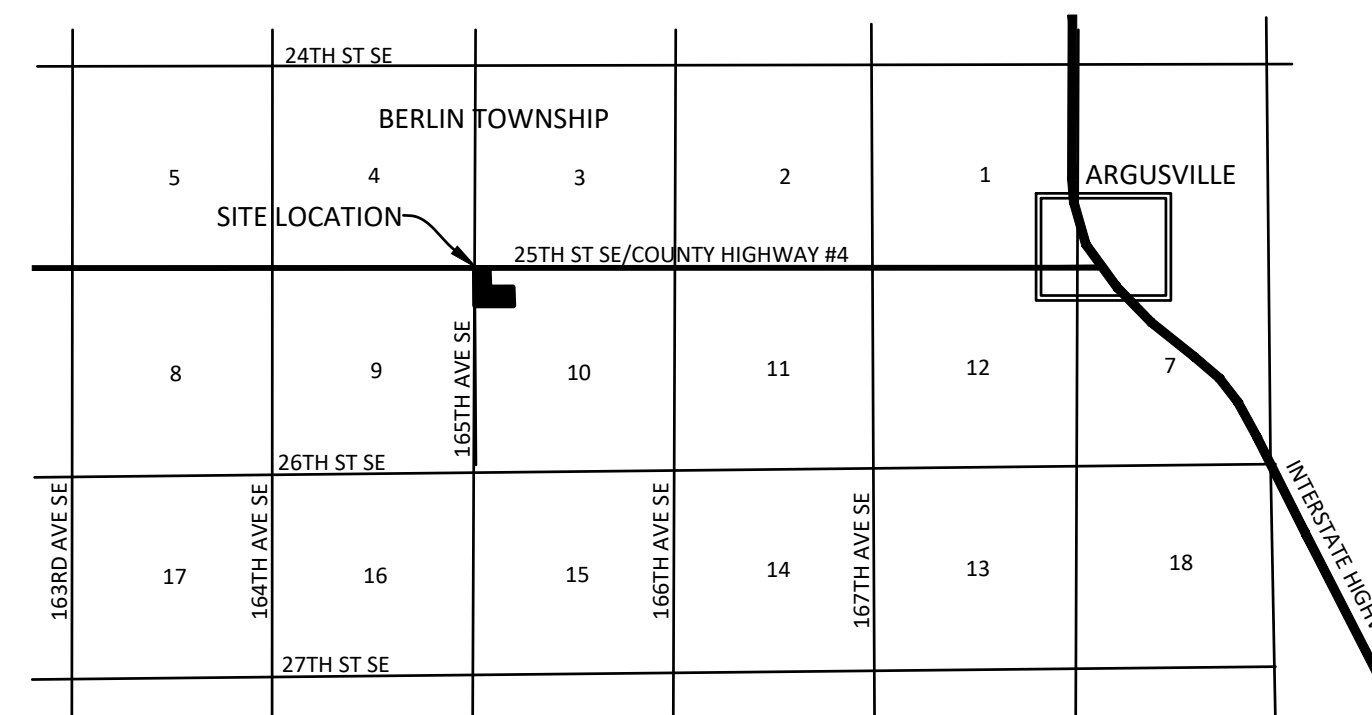
Notary Public

LEGEND

- 5/8"x18" REBAR MONUMENT SET MARKED BY CAP NO. LS-6703
- MONUMENT FOUND
- SUBJECT PROPERTY LINE
- - - SECTION LINE
- - - EXISTING PROPERTY LINE
- - - EXISTING RIGHT OF WAY LINE
- - - EASEMENT LINE
- - - CONTOUR LINE
- COMMUNICATION PEDESTAL



Bearing Orientation Based on
Cass County NAD83 Horizontal Datum
International Foot
Ground Distances
Scale Factor 1.0001125127
Date of Survey: November 12, 2020



VICINITY MAP
NO SCALE

PREPARED BY:
BOLTON & MENK

PRELIMINARY

DEED RESTRICTION

Pursuant to Section 309 of the Cass County Subdivision Ordinance, this **DEED RESTRICTION** is entered into this 13 day of October, 2021, by

Owner(s): Charles H. & Susan L. Sorvaag

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 most current Cass County Comprehensive Plan. 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**

That part of the North Half (N1/2) of the Northwest Quarter (NW1/4) of Section Ten (10) Township One Hundred Forty-one (141) North, of Ranger Fifty (50), West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at the Northwest corner of the Northwest quarter of said section 10; thence on an assumed bearing of North 87°48'50" East, along the North line of said section 10, a distance of 1,010.00 feet to the point of beginning; thence and continuing along the North line of NW1/4 of said section 10 a distance of 1,644.74 feet to the Northeast corner of the NW1/4 of said section 10; thence on an assumed bearing of South 02°32'30" East, along the East line of the NW1/4 of said section 10 a distance of 747.02 feet; thence South 87°48'50" West a distance of 1,623.29 feet; thence North 04°11'20" West a distance 747.46 feet, to the point of beginning: Less the North 80.00 feet thereof. Said tract contains 25.00 acres, more or less, and is subject to rights-of-way and easements of record.

PIN: 27-0000-01537-070



Cass County Planning Commission Staff Report

Entitlements Requested:	Minor Subdivision (1 Lot) of a part of the NW ¼ of Section 24, Township 137 North, Range 49 West		
Title:	Hickson 2nd Subdivision	Date:	10-20-2021
Location:	NW ¼ of Section 24, Township 137 North, Range 49 West (Pleasant Township)	Staff Contact:	Grace Puppe
Parcel Number:	57-0100-10459-000	Water District:	Southeast Water District
Owner(s)/Applicant:	Paul Nelson	Engineer/Surveyor:	Moore Engineering
Status:	Planning Commission Hearing: October 28, 2021		

Existing Land Use	Proposed Land Use
Residential	Residential
Proposal	

The applicant is seeking approval of a minor subdivision entitled **Hickson 2nd Subdivision** to replat a two (2) Lot subdivision of approximately 0.32 acres. According to the applicant, the subdivision is requested to replat lots 11 and 12 to allow for sale of buildings and respective lots.

The proposed ownership and maintenance responsibility of the subdivision will be public. The subdivision will use 1st Avenue for road access, ditches for storm sewer conveyance and rural water.

Agency Comments	
County Engineer	No concern with replat of existing two lots into two new lots. Concerned with the survey tie ins to make sure the locations are accurate as the adjacent home to the west is very close to the property line.
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.
Sprint	Clear.
AT&T	No comments were received prior to publishing the staff report.
Xcel Energy	No comments were received prior to publishing the staff report.
Otter Tail Power Company	No comments were received prior to publishing the staff report.

Magellan Pipeline Company	No comments were received prior to publishing the staff report.
NuStar Energy	No comments were received prior to publishing the staff report.
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	No comments were received prior to publishing the staff report.
Township Chairman	No comments were received prior to publishing the staff report.
The City of Fargo	No comments were received prior to publishing the staff report.
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

Land Use and Surrounding Uses

The subject property is bound by residential land on all sides.

Floodzone

According to the FEMA Flood Map Service Center, this property is in Special Hazard Flood Area zone AE. In addition, no wetlands or other notable features are present on the proposed subdivision Lot.

Land Development Rights

The subject lots have already been platted as developable lots. Since no additional lots are being created during this replat no additional development rights are needed. A deed restriction is not required at this time.

Staff Recommendation

To accept the findings and recommendations of staff and recommend approval to the County Commission 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.

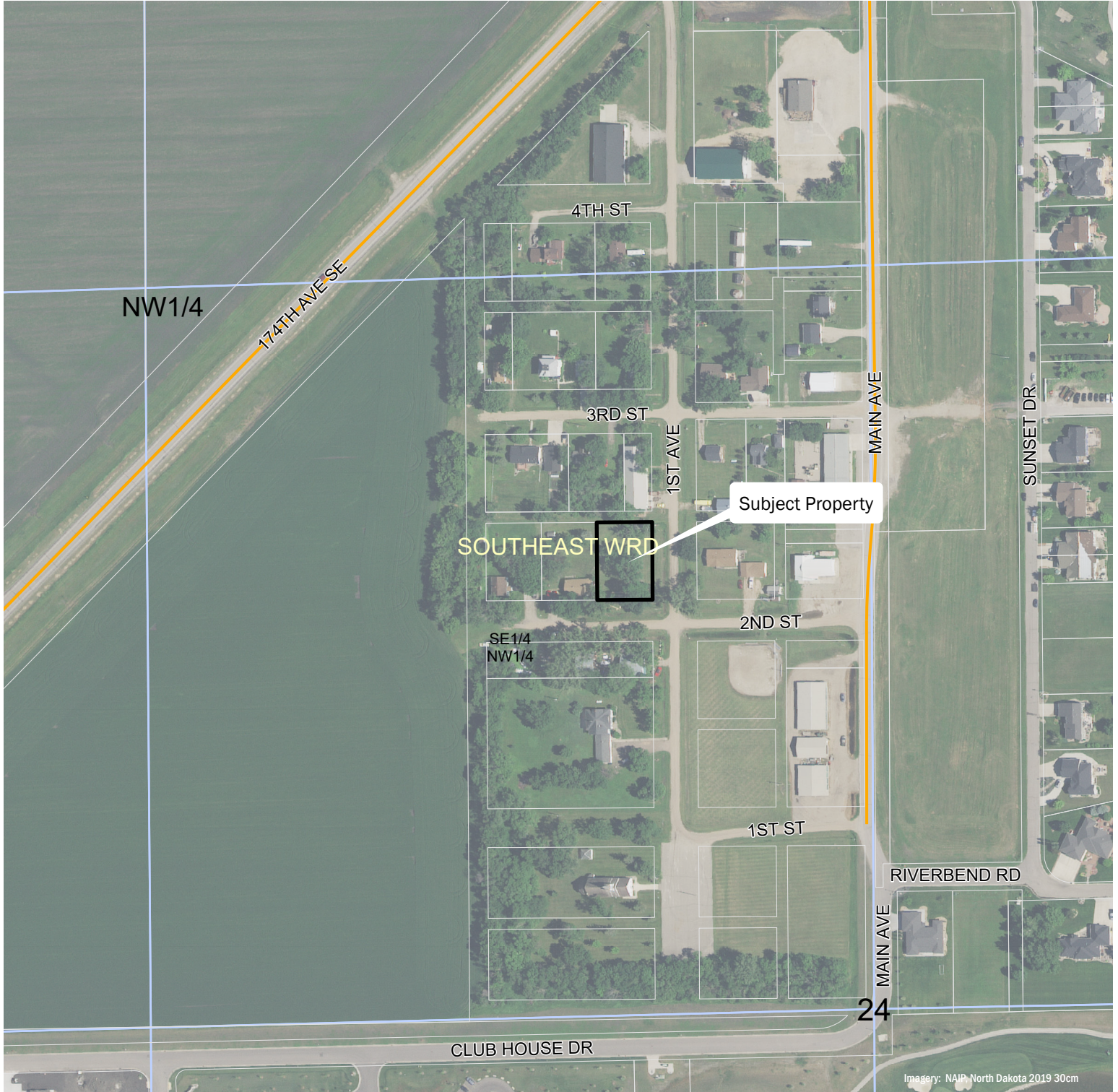
Attachments

1. Location Map
2. Plat Document

Minor Subdivision

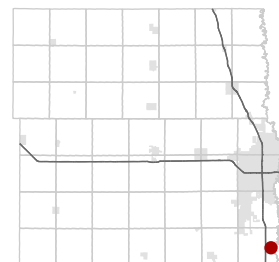
Hickson 2nd Subdivision

Pleasant Twp, Section 24 - Township 137 North - Range 49 West



Imagery: NAIP North Dakota 2019 30cm

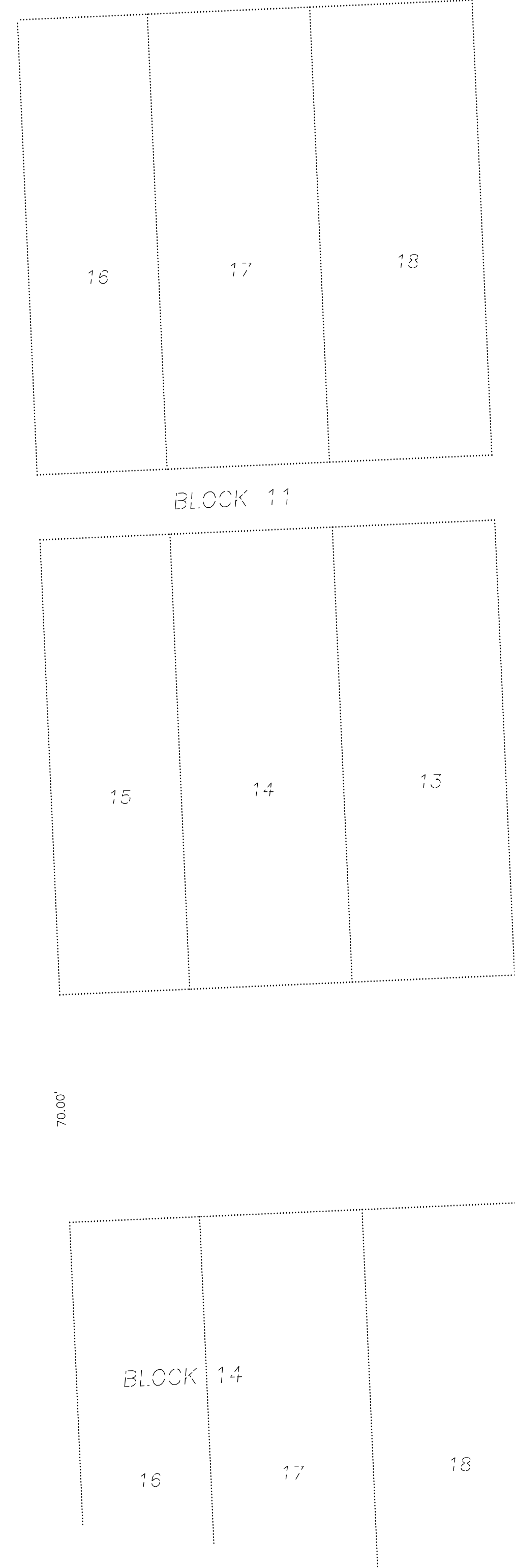
Cass County Planning Commission
October 28, 2021



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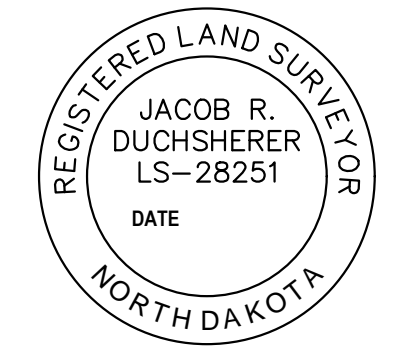
**PLAT OF
HICKSON 2ND SUBDIVISION
A REPLAT OF LOTS 11 & 12, BLOCK 12, CITY OF HICKSON
CASS COUNTY, NORTH DAKOTA**



CERTIFICATE

JACOB R. DUCHSHERER, BEING DULY SWORN, DEPOSES AND SAYS THAT HE IS THE REGISTERED LAND SURVEYOR WHO PREPARED AND MADE THE ATTACHED PLAT OF "HICKSON 2ND SUBDIVISION", A REPLAT OF LOTS 11 & 12, BLOCK 12, CITY OF HICKSON, CASS COUNTY, NORTH DAKOTA; THAT SAID PLAT IS A TRUE AND CORRECT REPRESENTATION OF SAID SURVEY; THAT ALL DISTANCES ARE CORRECTLY SHOWN ON SAID PLAT; THAT MONUMENTS HAVE BEEN PLACED IN THE GROUND AS INDICATED FOR THE GUIDANCE OF FUTURE SURVEYS AND THAT SAID SUBDIVISION IS DESCRIBED AS FOLLOWS, TO WIT:

LOTS 11 & 12, BLOCK 12, CITY OF HICKSON. ACCORDING TO THE RECORDED PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE RECORDER, CASS COUNTY, NORTH DAKOTA. SAID TRACT CONTAINS 0.32 ACRES, MORE OR LESS, AND IS SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS OF WAY OF RECORD, IF ANY.



JACOB R. DUCHSHERER
REGISTERED LAND SURVEYOR
REG. NO. LS-28251
STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS _____ DAY OF _____, 20___, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED JACOB R. DUCHSHERER, REGISTERED LAND SURVEYOR, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME AS HIS FREE ACT AND DEED.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

DEDICATION

WE, THE UNDERSIGNED, DO HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE LAND DESCRIBED IN THE PLAT OF "HICKSON 2ND SUBDIVISION", A REPLAT OF LOTS 11 & 12, BLOCK 12, CITY OF HICKSON, CASS COUNTY, NORTH DAKOTA; THAT WE HAVE CAUSED IT TO BE PLATTED INTO LOTS AND BLOCKS AS SHOWN BY SAID PLAT AND CERTIFICATE OF JACOB R. DUCHSHERER, REGISTERED LAND SURVEYOR AND THAT THE DESCRIPTION AS SHOWN IN THE CERTIFICATE OF THE REGISTERED LAND SURVEYOR IS CORRECT.

OWNER:

PAUL D. NELSON
STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS _____ DAY OF _____, 20___, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED PAUL D. NELSON, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEDICATION AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME AS HIS FREE ACT AND DEED.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

PLEASANT TOWNSHIP REVIEW

REVIEWED BY HIGHLAND TOWNSHIP, CASS COUNTY, NORTH DAKOTA, THIS _____ DAY OF _____, 20___.

SIGNED: _____
MARK HIATT, CHAIR
ATTEST: _____
NICOLE BICE, CLERK

COUNTY ENGINEER REVIEW

REVIEWED BY THE CASS COUNTY ENGINEER THIS _____ DAY OF _____, 20___.

SIGNED: _____
JASON BENSON, CASS COUNTY ENGINEER

CASS COUNTY PLANNING COMMISSION REVIEW

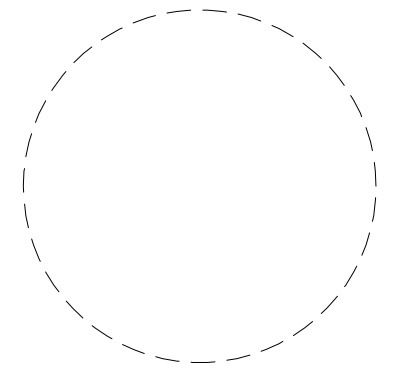
REVIEWED BY THE CASS COUNTY PLANNING COMMISSION THIS _____ DAY OF _____, 20___.

SIGNED: _____
KEN LOUGHEED, CHAIR
ATTEST: _____
SECRETARY

CASS COUNTY COMMISSION APPROVAL

APPROVED BY CASS COUNTY, NORTH DAKOTA, THIS _____ DAY OF _____, 20___.

SIGNED: _____
CHAD PETERSON, CHAIR
ATTEST: _____
ROBERT WILSON, FINANCE DIRECTOR



LEGEND
● IRON MONUMENT FOUND
○ SET 5/8"x18" REBAR WITH PINK PLASTIC CAP #28251



Cass County Planning Commission Staff Report

Entitlements Requested:	Minor Subdivision (1 Lot) of a part of the SE ¼ of Section 34, Township 138 North, Range 49 West		
Title:	Score Residence Subdivision	Date:	10-20-2021
Location:	SE ¼ of Section 34, Township 138 North, Range 49 West (Stanley Township)	Staff Contact:	Grace Puppe
Parcel Number:	64-0000-02932-000	Water District:	Southeast Water District
Owner(s)/Applicant:	Eric Score	Engineer/Surveyor:	KPH, Inc.
Status:	Planning Commission Hearing: October 28, 2021		

Existing Land Use	Proposed Land Use
Agriculture	Residential
Proposal	

The applicant is seeking approval of a minor subdivision entitled **Score Residence Subdivision** to plat a one (1) Lot subdivision of approximately 7.95 acres. According to the applicant, the subdivision is requested to plat an existing Auditor’s Lot to build a house and shop on. The applicant was bought out by the FM Diversion and this parcel was agreed upon between both parties to be built on.

The proposed ownership and maintenance responsibility of the subdivision will be private. The subdivision will use the existing County Road 21 road access, ditches for storm sewer conveyance, rural water, and on-site septic systems for wastewater treatment.

Agency Comments	
County Engineer	This site has an existing access that would be allowed to remain for this subdivision.
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.
Sprint	Clear.
AT&T	No comments were received prior to publishing the staff report.
Xcel Energy	No comments were received prior to publishing the staff report.
Otter Tail Power Company	No comments were received prior to publishing the staff report.

Magellan Pipeline Company	No comments were received prior to publishing the staff report.
NuStar Energy	No comments were received prior to publishing the staff report.
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	No comments were received prior to publishing the staff report.
Township Chairman	No comments were received prior to publishing the staff report.
The City of Fargo	No comments were received prior to publishing the staff report.
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

Land Use and Surrounding Uses

The subject property is bound by agricultural production land on the west and north. County Road 21 borders the east of the property with County Road 16 to the south.

Floodzone

According to the FEMA Flood Map Service Center, this property is currently located in Special Hazard Flood Area Zone A. In addition, no wetlands or other notable features are present on the proposed subdivision Lot.

Land Development Rights

The subject quarter-quarter section currently is developed and requires the transfer of a development right. 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.

Staff Recommendation

Staff recommends two options to the Planning Commission for consideration:

Deny the request for variance:

A variance from the density requirements set for by Subdivision Ordinance #2006-1 which implements goals of the Cass County Comprehensive Plan would set a negative precedent which may open the door to future requests to the Planning Commission thereby negating the goals and objectives set forth by the Comprehensive Plan.

Accept the request for variance:

The land was turned into an Auditor's lot in 1986. Platting of this subdivision would include the platting on an existing unplatted parcel.

Attachments

1. Location Map
2. Plat Document
3. Variance Request

Minor Subdivision

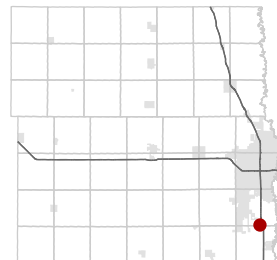
Score Residence Subdivision

Stanley Twp, Section 34 - Township 138 North - Range 49 West



Imagery: NAIP, North Dakota 2019 30cm

Cass County Planning Commission
October 28, 2021

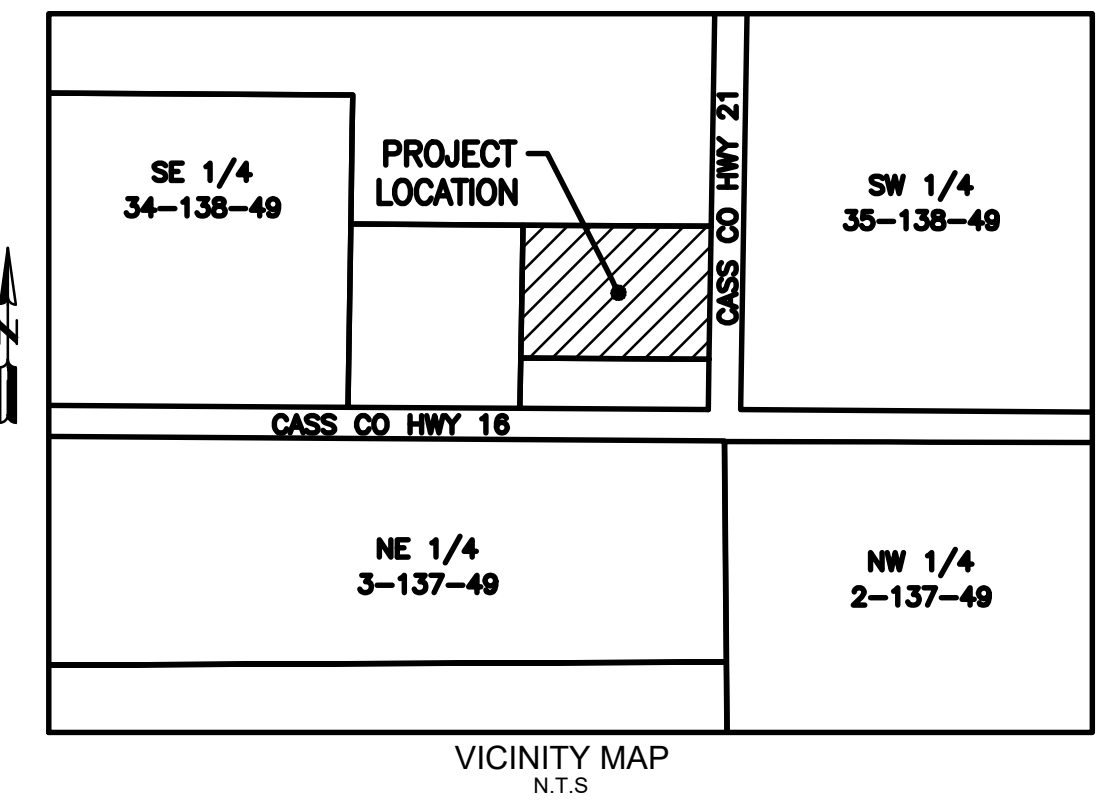


Maps and data are to be used for reference purposes only and Cass County, ND, is not responsible for any inaccuracies herein contained. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, use or misuse of the information herein provided.



SCORE ADDITION

PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, SECTION 34, TOWNSHIP 138 NORTH, RANGE 49 WEST OF THE FIFTH PRINCIPAL MERIDIAN CASS COUNTY, NORTH DAKOTA
A MINOR SUBDIVISION



OWNER'S CERTIFICATE
KNOW ALL PERSONS BY THESE PRESENTS, That Eric Score, owner of a parcel of land located in that part of the Southeast Quarter of the Southeast Quarter of Section 34, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, being more particularly described as follows:

Auditors Lot Number Three of the Southeast Quarter of Section 34, Township 138 North, Range 49 West of the Fifth Principal Meridian, recorded as Document Number 656118A, on file and of record in the Office of the County Recorder, Cass County, North Dakota.

Containing 7.96 acres, more or less.

Said owners of the above described property, have caused the same to be surveyed and platted as "SCORE ADDITION" to Cass County, North Dakota.

OWNER:

Eric Score
State of North Dakota)
County of Cass) SS

On this ___ day of _____, 20___, appeared before me, Eric Score, known to me to be the person whose name is subscribed to the above certificate and did acknowledge to me that they executed the same as their own free act and deed.

Notary Public: _____

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT
I, Joshua J. Nelson, Professional Land Surveyor under the laws of the State of North Dakota, do hereby certify that this plat is a true and correct representation of the survey of said subdivision; that the monuments for the guidance of future surveys have been located or placed in the ground as shown.

Dated this ___ day of _____, 20___.

Joshua J. Nelson, PLS
Professional Land Surveyor
Registration No. LS-27292

State of North Dakota)
County of Cass) SS

On this ___ day of _____, 20___, appeared before me, Joshua J. Nelson, known to me to be the person whose name is subscribed to the above certificate and did acknowledge to me that he executed the same as his own free act and deed.

Notary Public: _____

CASS COUNTY BOARD OF COMMISSIONERS APPROVAL
Approved by Cass County, North Dakota this ___ day of _____, 20___.

Chad Peterson, Chairman

Attest:
Robert Wilson, Financial Director

CASS COUNTY ENGINEER APPROVAL
Approved by Cass County Engineer this ___ day of _____, 20___.

Jason Benson, Cass County Engineer

STANLEY TOWNSHIP APPROVAL
Approved by Stanley Township this ___ day of _____, 20___.

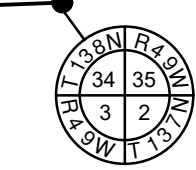
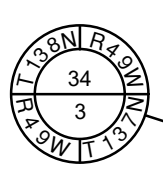
Todd Ellig, Chairman

Attest:
Max Cosslette, Clerk

CASS COUNTY PLANNING COMMISSION APPROVAL
Approved by the Cass County Planning Commission this ___ day of _____, 20___.

Ken Loughheed, Chairman

Attest:
Thomas B. Soucy, Secretary

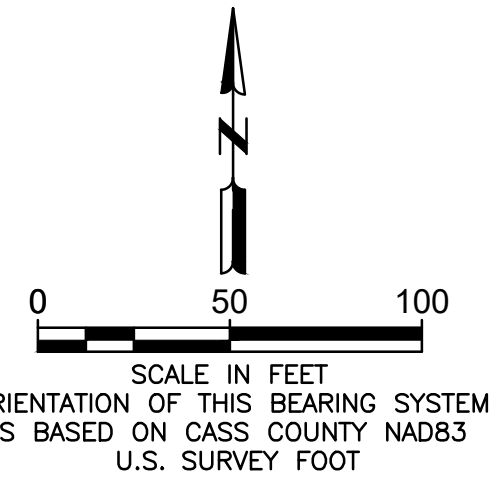


KPH, INC.
SURVEY
9530 39TH ST. S.
FARGO, ND 58104
701-499-7979

LEGEND

--- SECTION LINE
--- EXISTING/BACKGROUND PROP. LINE
--- PLAT OVERALL BOUNDARY

○ SET MONUMENT
● FOUND MONUMENT
(5,000) LOT AREA (ACRES)



P:\SURVEY\01_Projects\2021\21-578_Eric Score Plat - Cass County, ND\CassCo\21-578_Eric Score Plat.dwg

October 14, 2021

Grace Puppe
Cass County Planning Office
1201 Main Avenue West
West Fargo, ND 58078

RE: OIN 1121 – Eric Score/Score Brothers Construction – Variance

Dear Ms. Puppe,

I reside at a rural residence located at 4701 124th Avenue S, Horace ND 58047, approximately 1.25 miles to the West from the parcel I am trying to purchase and develop as the location of my new home and business. I am being forced to sell my property to the FM Diversion Authority because of the impending construction of the FM Flood Diversion Project. Unfortunately, my current home and business are located within the upstream mitigation area, an area that will be cleared of all structures.

OIN 1121 is a 7.95 acre parcel called out as: Auditor's Lot #3 of the SE1/4 of Section Thirty Four (34), Township One Hundred Thirty Eight (138N) North of Range Forty-Nine (49) West of the Fifth Principal Meridian. The Property (PIN) Number is 64.0000.02932.000. This was a part of the property owned by the Crooks family, a residence was located on the property prior to being bought out by the FM Diversion Project back on April 2, 2019 and removed.

Oly Olafson and I have searched the area for the past two years looking for a rural location to relocate my home and business. I eventually pointed to this location as suitable and visited with Stanley Township who agreed to grant a permit to build my home and all-purpose building. There is a purchase agreement prepared for the sale of my current property to the FM Diversion Project and a purchase agreement between myself and the FM Diversion Project for the 7.95 acre site currently owned by said FM Diversion Project. At this time there are no adjacent acres owned by the FM Diversion Project to allow for the creation of a minor subdivision. The site is already a stand-alone tax parcel number and legal description (referenced above).

I'm not a seasoned developer, eventually I discovered the County has a say, along with the township on granting me permission to build. I have provided you with plans for both the home I plan on building and for the all-purpose building I am also going to build. My existing shop burned in a fire a little over two weeks ago, I need to have a shop for my business and I would like to begin construction yet this fall if at all possible. In reviewing the neighborhood there are several similar properties with a home and an outbuilding.

Please consider this letter as an application for a Variance to allow me to purchase and build out what I have planned for this rural site.

Sincerely,

Eric Score

582

6524

PLAT OF

AUDITORS LOT NO. 3

S.E. 1/4 SECTION 34 TOWNSHIP 138 N. RANGE 49 W.

656118

NORTH

1/4 SECTION LINE

N 00° 18' 18" E



SCALE : 1" = 400'

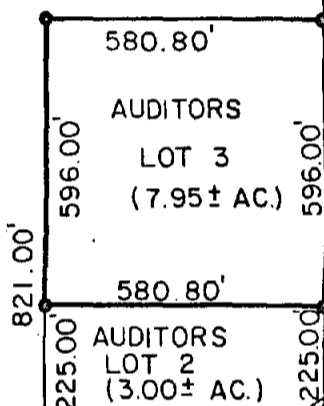
- = IRON MONUMENT FOUND
- = IRON MONUMENT PLACED

N 00° 05' 45" E

SECTION LINE

NO. 21

COUNTY ROAD



COUNTY ROAD NO. 16 SOUTH N 90° 00' 00" E

SECTION LINE

SCALE: IF 1/4 SEC. 1" = 400'
 IF 1/4 1/4 SEC. 1" = 200'
 NOTE: INDICATE SECTION CORNER!

LOT NUMBER 3 OF S.E. 1/4 SECTION 34
 TOWNSHIP 138 N. RANGE 49 W. DESCRIBED AS FOLLOWS:

THAT PART OF THE SOUTH 54 ACRES OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION THIRTY FOUR (34), TOWNSHIP ONE HUNDRED THIRTY EIGHT (138) NORTH, RANGE FORTY NINE (49) WEST, CASS COUNTY, NORTH DAKOTA DESCRIBED AS FOLLOWS:

THE NORTH FIVE HUNDRED NINETY SIX (596.00) FEET OF THE SOUTH EIGHT HUNDRED NINETY ONE (891.00) FEET OF THE EAST SIX HUNDRED THIRTY AND EIGHTY HUNDREDTHS (630.80) FEET OF SAID SOUTHEAST QUARTER (SE 1/4) LESS THE EAST FIFTY (50.00) FEET THEREOF FOR COUNTY ROAD RIGHT-OF-WAY.

SAID TRACT CONTAINS 7.95 ACRES, MORE OR LESS.

#6524 382

SURVEY RECORD

PLAT OF

AUDITORS LOT NO. 3

AUDITOR'S OFFICE

COUNTY OF CASS, NORTH DAKOTA

October 8 1986
Delinquent Taxes and Special Assessments, or installments of Special Assessments, paid and transfer entered
Audited by B. Parrott DEPUTY

SE 1/4 Section 34 Township 138 N Range 49 W

Present Owner Leo A. & Amy M. Cossett

OWNER'S CERTIFICATE

THE UNDERSIGNED, Owners of the within described property, in accordance with the provisions of Section 57-02-39 of the North Dakota Century Code as Rev. 1943, and upon demand of the County Auditor of Cass County, North Dakota, have caused to be made the within and foregoing plat of said land with the lots as therein described, and have caused the same to be placed on record, as provided by law.

Witness our hands and seals this 6th day of October, 1986.

In Presence of Amy M. Cossett (SEAL)
Leo A. Cossett (SEAL)

STATE OF NORTH DAKOTA

County of Cass

SS:

I, Judith A. Miller, a resident within and for said County, do hereby certify that on this 6th day of October, A.D. 1986, personally appeared before me Leo A. & Amy M. Cossett, to me well known to be the same persons described in and who executed the within and foregoing instrument and acknowledged that they executed the same freely and voluntarily.

My commission expires 9-30, 1988

Judith A. Miller

SURVEYOR'S CERTIFICATE

I, Lee Sprague, Registered Land Surveyor, do hereby certify that at the request of Leo A. & Amy M. Cossett 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.



Subscribed and sworn to before me this 30th day of September, 1986

My Commission expires Oct. 1, 1988

Notary Public, Cass County, ND

Lee Sprague

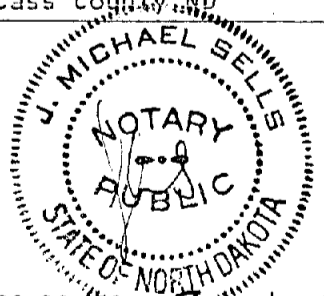
DOCUMENT NO. 656118

PLAT OF

Sec. Twp. R.

RECORDING FEE 7.00 chg.

Office of the Register of Deeds
Cass County, N.D.



I hereby certify that the within instrument was filed for record in this office on the 8th day of Oct., 1986, at 9:00 o'clock P.M., and was duly recorded on page 582 of Book C of Plats of Auditor's Misc. Tracts

Deanna Pensrud
Register of Deeds

By Arlene Sprunk Deputy

MEMORANDUM

TO: Cass County Planning Commission

FROM: Grace Puppe, Cass County Planner

DATE: October 21, 2021

SUBJECT: Matthews Property Update

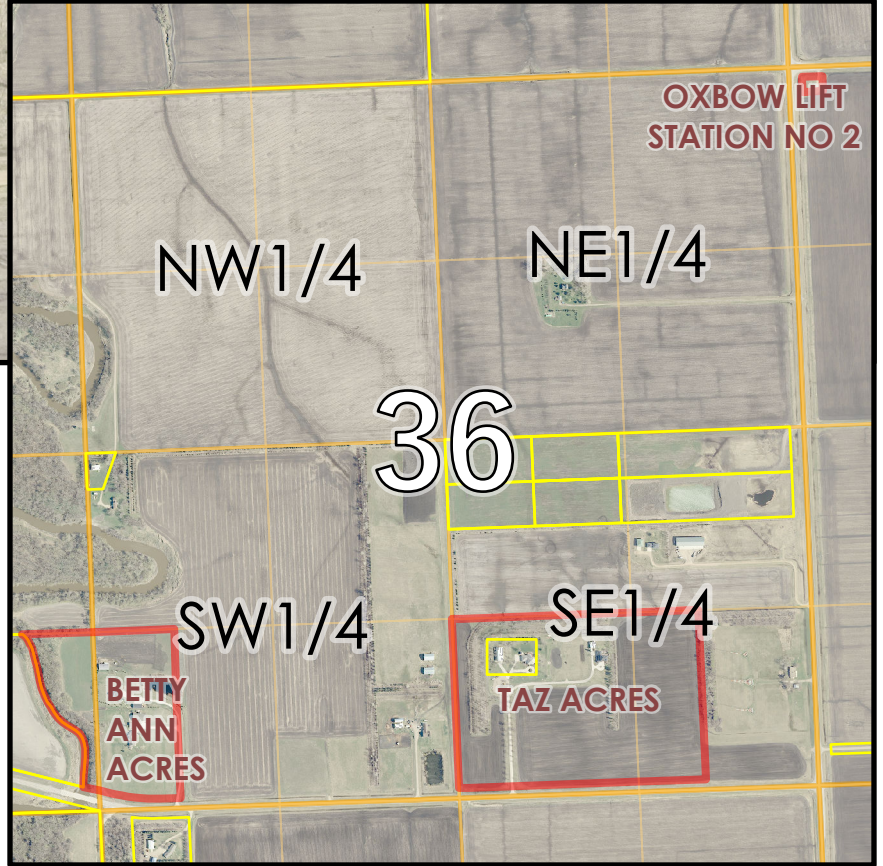
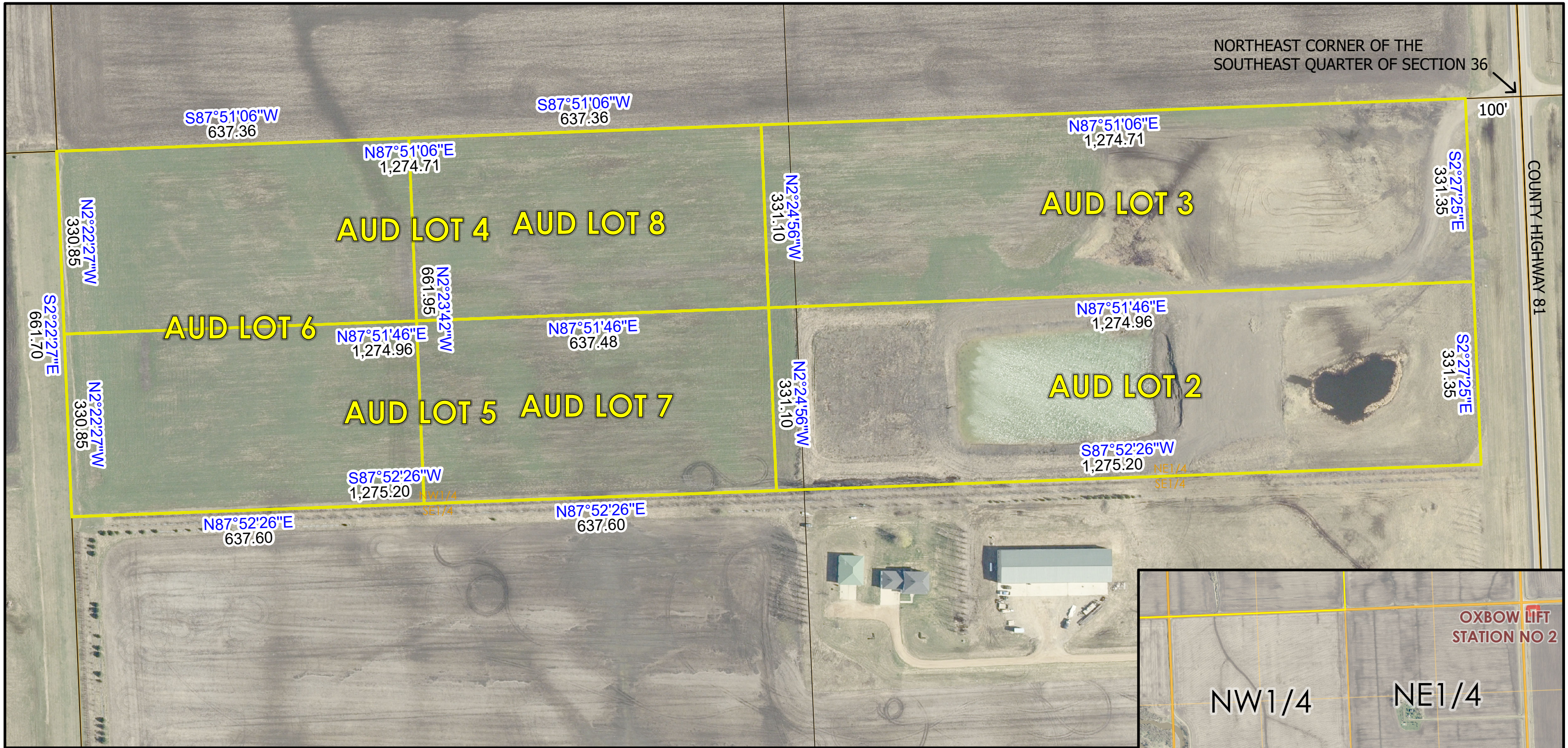
Robert and Vickie Matthews property is located at 11983 University Dr S in Section 36 of Stanley Township. They currently own a total of 40 acres.

Mr. Matthews originally came in last fall looking to see what is required split a property for development. At that time, I notified Mr. Matthews that there were a couple of options that he had. If he was looking to create one buildable lot, then he could split his parcel in to two, creating one buildable lot and deed restricting the remainder. Mr. Matthews stated that he would like to create four buildable lots each being 10 acres. I explained that he would need an additional 120 acres to be deed restricted for four development rights. Otherwise, he could build the development up to city standards similar to what is required for major subdivisions. Mr. Matthews left saying he would like to plat the one lot and would get his subdivision application in to do so.

In February 2021, I was notified of four Auditor's Lots that had been recorded for this property, each being approximately 10 acres. The Cass County Planning Department had sent out a notice to Mr. and Mrs. Matthews saying that they were in violation of the Cass County Subdivision ordinance and that an application must be filled out and to proceed with the subdivision process. Since then, they have recorded four more Auditor's Lots and have been trying to sell these as developable lots.

There is currently one house located on Auditor's Lot 2. In August 2021, another house was moved onto the property onto what appears to be Auditor's Lot 7. The attached map shows the updated parcel information along with the layout of the auditor's lots.

Suggested motion to take action of injunction.



Auditor's Lots of the N 1/2 of the SE 1/4 of
Section 36, Stanley Township
 Township 138 N, Range 49 W

Imagery Date: May 2020



DISCLAIMER: This map is made available as a public service. 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.

MEMORANDUM

TO: Cass County Planning Commission

FROM: Grace Puppe, Cass County Planner

DATE: October 21, 2021

SUBJECT: Subdivision Ordinance Update

Over the past year the Cass County Planning Department has been working with Joel Quanbeck at KLJ to update our Subdivision Ordinance. During the last few Planning Commission meetings, we have had discussions about major topics in the Subdivision Ordinance. The information obtained from these discussions has been used to update the Draft Subdivision Ordinance Document.

The new Draft Subdivision Ordinance will have the Minor and Major subdivisions separated into different parts to help avoid confusion of the requirements for each. The current Draft Subdivision Ordinance has sections with language for the General Provisions, Administration and Enforcement, Interpretation, Plat Approval Required and Minor Subdivisions. Additional sections will continue to be added for review as they are ready.

Included with this memo is a summary of the changes.

SUMMARY of CHANGES

Article I

1. Revised language of Section 1.03 PURPOSE to eliminate redundancy of previous draft and summarize those functions and purposes considered to be consistent with the NDCC. It incorporates general purposes of enabling legislation for County subdivision regulation and summarizes multiple objectives of the regulations.
2. Revises language of Section 1.04 APPLICABILITY AND JURISDICTION (b) to match language found in NDCC 11-33.2-15 that pertains to the circumstances in which these regulations are applicable. This is dependent on the NDCC 11-33.2-1 definition of "subdivision."
3. Slightly rewords Section 1.04 APPLICABILITY AND JURISDICTION (d) to strengthen readability and applicability.
4. Slightly rewords Section 1.05 COMPLIANCE (b) to clarify applicability. *It may be appropriate to insert language from the separate county ordinance on approach or access permitting.*

Article II

1. Revised language of Section 2.05 VARIANCE to eliminate applicability to zoning since this ordinance is not about zoning. Note also that the variance procedure now includes the intermediate step of a hearing at the Planning Commission which then makes a recommendation to the Board of County Commissioners for a final decision.

Article III

1. Revised language of Section 3.04 RESPONSIBILITY FOR INTERPRETATION so that any appeal of an interpretation must go to the Planning Commission for a recommendation before the Board of County Commissioners makes a final decision on the appeal. *It may be that this appeals process should follow the same format as the VARIANCE process --- this should be referred to the States Attorney office.*

Articles IV through VIII contain content in a new order. All requirements applicable to Minor Subdivisions occurs first, then requirements on Density and Deed Restrictions, and then all the requirements applicable for Major Subdivisions.

Article IV

1. Revised language of Section 4.01 SUBDIVISION REVIEW AND PLAT APPROVAL REQUIRED so that the area that plat approval is required excludes any area where a city has established subdivision authority outside its municipal boundary. The intent of this change is to ensure that a loophole is not created wherein there is no local government authority to review and approve subdivisions. *This is a matter for review by the States Attorney office.*
2. Removed the creation of subdivisions for the purpose of mobile home parks and sites for the placement of manufactured housing as subject to the procedures and standards of the Ordinance. With the exception of farming and ranching, and other exemptions specified in the ordinance, all subdivisions are subject to the procedures and standards of the Ordinance.

Article V

1. Revised language of Section 5.03 MINOR SUBDIVISION PROCEDURES FOR PLAT REVIEW so that any written recommendation from the township in which the plat is being proposed allows final action by the Board of County Commissioners. *This is a matter for review by the States Attorney office.*
2. Revised language of Section 5.04 MINOR SUBDIVISION DEVELOPMENT STANDARDS so that access easements from a permitted access point across a lot to provide access to additional lots or parcels is allowed.
3. Revised language of Section 5.04 MINOR SUBDIVISION DEVELOPMENT STANDARDS to specify that lot grading plans must meet the requirements of the County Engineer.
4. Lot density restrictions are inserted into Section 5.04 MINOR SUBDIVISION DEVELOPMENT STANDARDS
5. Lot density is reworded to say no subdivision of land shall exceed one buildable lot per quarter quarter or government lot
6. Vegetative buffer zones are added to Section 5.04 MINOR SUBDIVISION DEVELOPMENT STANDARDS
7. Watercourse setbacks are added to Section 5.04 MINOR SUBDIVISION DEVELOPMENT STANDARDS
8. Erosion and sedimentation requirements are added to Section 5.04 MINOR SUBDIVISION DEVELOPMENT STANDARDS

Article I. General Provisions

Section 1.01 TITLE

- (a) This Ordinance shall be known and may be cited and referred to as the “Cass County Subdivision Ordinance” and will be referred to herein as “this Ordinance.”

Section 1.02 AUTHORITY

- (a) This Ordinance is enacted pursuant to the powers granted and limitations imposed on counties by the laws of the State of North Dakota, including without limitation North Dakota Century Code §11-09.1, §11-33 and §11-33.2 and by the Cass County Home Rule Charter. The Board of County Commissioners hereby expresses that neither this Ordinance, nor any amendment to it or any decision under it, may be challenged on the basis of an alleged non-conformity with any other planning document, inclusive of the Cass County Comprehensive and Transportation Plan.

Section 1.03 PURPOSE

- (a) The purpose of this Ordinance is to promote the health, safety, morals, public convenience, general prosperity, and public welfare of Cass County and its residents.
- (b) The regulations herein established for the subdivision of land are adopted in order to:
 1. Establish standard procedures and requirements for the preparation, submission, and consideration for approval of plats for the subdivision of land as provided in NDCC 11-33.2 and NDCC 40-50.1 and this Ordinance.
 2. Encourage the rational development of land in ways that are consistent with the Cass County Comprehensive Plan.
 3. Encourage the development of land in ways that provide for safe and adequate transportation, access of emergency vehicles, and adequate ingress and egress to public and private property.
 4. Require that adequate public facilities and necessary public improvements are available and will have sufficient capacity to serve the subdivision.
 5. Promote development in ways that minimize costs to local citizens and that promote effective and efficient provision of public services.
 6. Encourage the wise use and management of natural resources throughout the County in order to preserve the integrity, stability and beauty of the County and the value of its land.
 7. Minimize impacts of development on surrounding property owners.
 8. Encourage that land development be consistent with the goals and strategies of the Cass County Multi-Hazard Mitigation Plan.
 9. Provide uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey.

Section 1.04 APPLICABILITY AND JURISDICTION

- (a) This Ordinance applies to all lands over which the Cass County Board of County Commissioners has jurisdiction under the constitution and laws of the State of North Dakota and of the United States, except for land within the corporate limits of any municipality or land within the area of application of extraterritorial zoning pursuant to §40-47-01.1 of the North Dakota Century Code.
- (b) This Ordinance applies to any person, partnership, corporation, or limited liability company who or which being the owner or agent of any lot, tract, or parcel of land shall lay out, construct, open, or dedicate any street, sanitary sewer, storm sewer, water main, or other improvements for public use, travel or other purposes or for the common use of occupants of buildings abutting thereon, or who or which sells, transfers, or agrees or enters into an agreement to sell or transfer any land in a subdivision or engages in the subdivision of land or erects any buildings thereon.
- (c) This Ordinance shall not prohibit or prevent the use of land or buildings for farming or any of the normal incidents of farming.
- (d) A county auditor's plat made pursuant to NDCC §57- 02-39 is for taxation purposes for convenience of tax officials in describing property on tax rolls and does not confer rights in or transfer title to land. Such an auditor's plat may only be initiated by a tax official of Cass County. Thus, an Auditor's Lot is not approved by the County *as an instrument for the purposes* of sale or development.

Section 1.05 COMPLIANCE

- (a) No lot of record that did not exist on the effective date of this Ordinance shall be created, by subdivision or any other mechanism, that does not conform to the applicable requirements of this Ordinance.
- (b) No access connection (new, changed, altered, re-constructed) including any field entrance, driveway or public/private roadway (permanent, temporary or field access/opening) onto a County highway or public right-of-way shall be permitted except in accordance with the applicable regulations as set forth within this Ordinance.

Section 1.06 SEVERABILITY

- (a) If any section, paragraph, clause, phrase, or part of this Ordinance is for any reason found to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance; and the application of the remaining provisions to any persons or circumstances shall not be affected.
- (b) If any application of any part of this Ordinance to a particular lot, tract, parcel, building, structure, land, or use is for any reason found to be invalid by a court of competent jurisdiction, such decision shall not affect the application of the same provision to any other lot, tract, parcel, building, structure, land or use not specifically included in the decision.

Section 1.07 EFFECTIVE DATE

- (a) The Cass County Subdivision Ordinance, and any amendment to this Ordinance, shall be effective after its passage, publication, and recordation as provided by NDCC §11-33.2-06.

Section 1.08 REPEAL

- (a) Any Cass County subdivision ordinances, resolutions or regulations previously established by the Cass County Board of County Commissioners, and all amendments of said ordinances, resolutions or regulations are hereby repealed.
- (b) Notwithstanding Section 1.08 (a) of this Ordinance, the Cass County Floodplain Regulations adopted [date] remain effective.

Section 1.09 TRANSITIONAL PROVISIONS

- (a) Decisions based on previous subdivision ordinances, resolutions or regulations approving divisions of land or other matters addressed by the previous ordinances, resolutions or regulations that were effective prior to the effective date of this Ordinance remain effective. It is the intention of this Ordinance to continue in force such existing provisions so that all rights and liabilities that have accrued thereunder are preserved and may be enforced, unless specifically surrendered by specific provisions of this Ordinance.
- (b) The adoption of this Ordinance, and any amendment thereto, shall not adversely affect the County's right to prosecute any violation of the predecessor subdivision ordinances, resolutions, or regulations provided that such violation first occurred while said ordinances, resolutions or regulations were in effect.
- (c) Applications for land use or development that were submitted in complete form and were pending approval on or before the effective date of this ordinance, or any amendment to this ordinance, shall be reviewed wholly under the terms of any ordinance, resolution, or regulation as it existed at the time the complete application was submitted.

Section 1.10 Reserved

Article II. Administration and Enforcement

Section 2.01 Board of County Commissioners

(a) Powers and Authority

In addition to all powers and authority granted to the Board of County Commissioners by general or specific law, the Board of County Commissioners shall have the following powers and authority under the provisions of this Ordinance.

(b) Appoint County Planner

The Board of County Commissioners may appoint a County Planner. The County Planner may be an employee of Cass County or a contract consultant.

(c) Appoint Planning Commission

The Board of County Commissioners shall appoint members of the Planning Commission.

(d) Comprehensive Plan

The Board of County Commissioners shall have the authority to adopt the Cass County Comprehensive Plan and, from time to time, approve or disapprove amendments to the Comprehensive Plan.

(e) Subdivision Ordinance

The Board of County Commissioners shall have the authority to adopt the Cass County Subdivision Ordinance, and from time to time, approve or disapprove amendments to the Ordinance.

(f) Plat Approval

The Board of County Commissioners shall have the authority to consider applications for plat approval, and to deny, amend, or approve such applications.

(g) Appeals

The Board of County Commissioners shall hear and decide any appeals of a decision made by the County Planner regarding the administration, interpretation, and enforcement of this Ordinance.

(h) Variance

The Board of County Commissioners shall have the authority to adjust the application or enforcement of any provision of this Ordinance in any specific case when a literal enforcement of such provision would result in great practical difficulties, unnecessary hardship, or injustice, so as to avoid such consequences, provided such action shall not be contrary to the public interest or the purposes of this Ordinance or the general purposes of NDCC 11-33 and of NDCC 11-33.2.

(i) Other Actions

The Board of County Commissioners shall have the authority to take other actions not delegated to another decision-making or administrative body that the Board of County Commissioners deem necessary and desirable to implement provisions of the Comprehensive Plan or this Ordinance.

Section 2.02 County Planner

- (a) There is hereby created the position of County Planner, who shall be a duly appointed person charged with the administration, interpretation, and enforcement of this Ordinance.
- (b) The County Planner shall have the following duties:
 - 1. Complete such activities as will assist the Board of County Commissioners and the Planning Commission in fulfilling the duties established by this Ordinance
 - 2. Complete research and prepare findings of fact pertaining to applications for plat approval
 - 1. Make determinations regarding the interpretation of this Ordinance when it becomes necessary
 - 2. Carry out such activities as may be necessary to assist in the enforcement of this Ordinance
 - 3. Conduct such other business as may be authorized or directed by the Board of County Commissioners or the Planning Commission
 - 4. [reserved]

Section 2.03 Planning Commission

- (a) The Planning Commission for Cass County shall be known as the “Cass County Planning Commission” and may be referred to as the “Planning Commission.”
- (b) The membership of the Planning Commission shall consist of nine (9) members appointed by the Board of County Commissioners in a manner consistent with NDCC 11-33.2-04, 11-33-04, and 11-33-05.
- (c) The members of the Planning Commission may be compensated in a manner established by the Board of County Commissioners and consistent with NDCC 11-33-05.
- (d) The Planning Commission shall have the following duties:
 - 1. Prepare proposed subdivision resolution to be submitted to the Board of County Commissioners
 - 2. Prepare proposed subdivision resolution amendments to be submitted to the Board of County Commissioners
 - 3. Prepare recommendations to be submitted to the Board of County Commissioners pertaining to any proposed plat which is presented for consideration
 - 4. Conduct such other business as may be authorized or directed by the Board of County Commissioners
 - 5. [reserved]

Section 2.04 Appeals

- (a) Any person, unit of government or agency may file an appeal when aggrieved by a decision or interpretation by the County Planner, provided that the appeal is based on an allegation that:
1. The County Planner made an error in the interpretation of this Ordinance, and
 2. The erroneous interpretation specifically aggrieves the appellant.
- (b) Application and Procedure.
1. A letter of appeal must be filed with the County Auditor within 30 days of the date of written notice of interpretation or determination. The letter shall cite the decision made and state the alleged error. The letter of appeal shall be accompanied by a fee established by the Board of County Commissioners.
 2. If after such fee has been paid and a properly filed appeal is successful, the fee shall be refunded. Otherwise, no part of any such fee shall be refundable after an appeal is filed and such fee paid.
 3. A letter of appeal is not considered complete until such fee has been paid.
 4. After acceptance of the letter of appeal, the County Auditor shall transmit the letter of appeal to the Board of Adjustment.
 5. The County Auditor shall set a hearing date within 30 days of acceptance of the letter of appeal and payment of the established appeal fee, publish notice thereof as provided for in this Ordinance, and notify all parties of interest. Public notice of the hearing shall be placed in the official County newspaper and any newspaper of general circulation in the County at the discretion of the County Auditor for two successive weeks prior to the date of the hearing.
 6. Where an appeal concerns a particular piece of property, written notice shall be mailed to all property owners with property within 5280 feet of the subject property at least 15 days prior to the said hearing. Where the subject property abuts a right-of-way, the 5280-foot measurement shall be in addition to this right-of-way along the abutting side.
 7. An appeal under the terms of this Ordinance stays all proceedings in the matters appealed unless the County Planner certifies to the Board of Adjustment that the application, by reason of the facts stated in the certification, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed, except by a restraining order granted by the Board of County Commissioners or a court of record.
 8. The Board of Adjustment shall conduct a public hearing on the letter of appeal. At that hearing, the Board of Adjustment shall review the particular facts and circumstances of appeal and develop findings and conclusions. The Board of Adjustment shall make a decision by motion. The concurring vote of a majority the quorum of the Board of Adjustment members present shall be necessary to reverse any order, requirement, decision, or determination of the County Planner or to decide in favor of the appellant on any other matter.

9. Any person aggrieved by a decision of the Board of County Commissioners may file an appeal to the district court in the manner provided in NDCC 28-34-01.

(c) Findings Required.

1. Every decision of the Board of County Commissioners pertaining to a letter of appeal shall be based upon findings of fact and every finding of fact shall be supported in the record of its proceedings.

Section 2.05 Variance

- (a) Certain circumstances may exist or arise wherein an unnecessary hardship is created through strict adherence to the provisions of this Ordinance. Hereinafter are provisions for the granting of a variance to adjust the application or enforcement of any provision of this Ordinance, so that the public welfare is secured, and substantial justice can be done to those so affected.

(b) Application and Procedure.

1. An application for a variance shall be made on a form provided by the County Planner. Requests for more than one variance for the same project on the same property may be filed on a single application and charged a single fee.
2. The completed application and fee as set by the Board of County Commissioners shall be submitted to the County Planner.
3. No part of any such fee shall be refundable after an application is filed and such fee paid.
4. An application is not considered complete until such fee has been paid.
5. After acceptance by the County Planner, the completed application shall be transmitted to the Planning Commission and the Board of County Commissioners.
6. The County Planner shall set a Planning Commission hearing date, publish notice thereof as provided for in this Ordinance, and notify all parties of interest. Public notice of the hearing shall be placed in the official County newspaper and any newspaper of general circulation in the County at the discretion of the County Planner or the Planning Commission for two successive weeks prior to the date of the hearing.
7. Written notice shall be mailed to all property owners with property within 5280 feet of the subject property at least 15 days prior to the said hearing. Where the subject property abuts a right-of-way, the 5280-foot measurement shall be in addition to this right-of-way along the abutting side.
8. The Planning Commission shall conduct a public hearing on the variance application. At that hearing, the Commission shall review the particular facts and circumstances of the situation and develop findings and conclusions.
9. When considering a variance application, the Planning Commission may recommend such conditions as are, in its judgment, necessary to promote the general provisions of this Ordinance.
10. The Planning Commission shall make a decision by motion. It shall take the affirmative vote of a majority of the Planning Commissioners present to recommend approval of a variance. An affirmative vote by the Planning Commission shall mean that the Planning Commission recommends the Board of County Commissioners approve the requested variance. Any

conditions included in the Planning Commission's affirmative vote are a part of the Planning Commission recommendation.

11. The County Planner shall set a Board of County Commissioners hearing date, publish notice thereof as provided for in this Ordinance, and notify all parties of interest. Public notice of the hearing shall be placed in the official County newspaper and any newspaper of general circulation in the County at the discretion of the County Planner or the Board of County Commissioners for two successive weeks prior to the date of the hearing.
12. Written notice shall be mailed to all property owners with property within 5280 feet of the subject property at least 15 days prior to the said hearing. Where the subject property abuts a right-of-way, the 5280-foot measurement shall be in addition to this right-of-way along the abutting side.
13. The Board of County Commissioners shall conduct a public hearing on the variance application. At that hearing, the Commission shall review the recommendation of the Planning Commission and the particular facts and circumstances of the situation and develop findings and conclusions.
14. In approving a variance, the Board may impose such conditions as are, in its judgment, necessary to promote the general provisions of this Ordinance.
15. The Board of County Commissioners shall make a decision by motion. It shall take the affirmative vote of three members of the Board to grant a variance. Failing such vote, the request for variance is denied.
16. A hearing may be continued at the request of the applicant or upon motion of the Board, provided however, that the granting of a continuance is a matter of grace, resting solely in the discretion of the Board, and a refusal to continue is not a denial of a right, conditional or otherwise.
17. Decision on continuance of a hearing can be reached by a simple majority but must be made prior to voting on the application itself.
18. A variance shall be valid indefinitely, provided it is exercised within one year of the date of issuance, or as otherwise provided for by the Board of County Commissioners.
19. A request may be re-heard only when there has been a manifest error affecting the Board's decision or it appears that a substantial change in facts, evidence, or conditions has occurred. Such determination shall be made by the County Planner within 60 days of final action of the Board.
20. Any persons aggrieved by a decision of the Board of County Commissioners pertaining to a variance application may file an appeal with a court of competent jurisdiction.

(c) **Criteria for Consideration; Findings Required**

1. Findings are required to be made by the Board of County Commissioners for approval of a variance. No variance shall be granted unless the Board finds that all of the following conditions are met or found to be not pertinent to the particular case:
 - a. Strict compliance with the provisions of this Ordinance will:
 - i. Limit the reasonable use of the property, and
 - ii. Deprive the applicant of rights enjoyed by other properties similarly situated in the same district, and
 - iii. Will result in a hardship to the applicant.

- b. The hardship is the result of lot size, shape, topography, or other circumstances over which the applicant has no control.
 - c. The hardship is peculiar to the property.
 - d. The hardship was not created by the applicant.
 - e. The hardship is not economic (when a reasonable or viable alternative exists).
 - f. Granting the variance will not adversely affect the neighboring properties or the public.
 - g. The variance requested is the minimum variance which will alleviate the hardship.
 - h. Granting the variance will not confer a special privilege that is denied other similar properties in the same district.
2. Every decision of the Board of County Commissioners pertaining to a variance application shall be made by motion and shall be based upon "Findings of Fact" and every Finding of Fact shall be supported in the record of its proceedings. The above criteria required to grant a variance under this Ordinance shall be construed as limitations on the power of the Board to act. A mere finding or recitation of the enumerated conditions unaccompanied by findings of specific fact shall not be deemed in compliance with this Ordinance.

Section 2.06 Amendments to this Ordinance

- (a) The provisions of this Ordinance may, from time to time, and for the furtherance of public necessity, convenience, and welfare and in recognition that circumstances, and conditions may be altered substantially as time passes, be amended, supplemented, changed, modified, or replaced.
- (b) Requests to amend the text of this Ordinance may be initiated by the Board of County Commissioners, the Planning Commission, or any affected party or entity.
- (c) Application and Procedures
 1. An application for an Ordinance Amendment shall be made on a form provided by the County Planner.
 2. The completed application and fee as set by the Board of County Commissioners shall be submitted to the County Planner.
 3. No part of any such fee shall be refundable after an application is filed and such fee paid.
 4. An application is not considered complete until such fee has been paid.
 5. After acceptance by the County Planner, the completed application shall be transmitted the Planning Commission for their review and evaluation.
 6. After acceptance by the County Planner, the completed application shall be reviewed under the regulations in place on the date a complete application is submitted to the County Planner.
 7. The County Planner shall set a public hearing date and publish notice of the time, place and purpose of the hearing once each week for two consecutive weeks in the official County newspaper and any newspaper published in the County as the County Planning Commission may deem necessary. Said notice shall describe the nature, scope, and purpose of the

proposed amendment, and shall state the times at which it will be available to the public for inspection and copying at the office of the County Auditor.

8. The Planning Commission shall consider the application at the date established for the hearing, and give opportunity for parties of interest and citizens to be heard. The Planning Commission shall make a recommendation to the Board of County Commissioners to grant, amend, or deny the application.
9. Upon receipt of the recommendation of the Planning Commission, the Board of County Commissioners shall hold a public hearing. Notice of this hearing (including the general character of the proposed amendments, the time and place of the hearing and that the proposed amendments are on file for public inspection at the office of the County Auditor) shall be posted and advertised once a week for two weeks prior to the hearing in the official County newspaper and any newspaper of general circulation in the county at the discretion of the County Planner or the Board of County Commissioners. Based on the results of the hearing, other public input, the staff report and findings of the Planning Commission, the Cass County Board of Commissioners may adopt the proposed amendments with such changes it may deem advisable.
10. Upon adoption of the proposed amendment with any changes it deems advisable, the County Auditor shall file a certified copy of the adopted amendment with the County Recorder. Immediately after the adoption of the amendment with any changes, the County Auditor shall cause notice of the same to be published for two successive weeks in the official newspaper of the County and in such other newspapers published in the county as the Board of County Commissioners may deem necessary. Said notice of the same shall describe the nature, scope, and purpose of the adopted amendment, and shall state the times at which it will be available to the public for inspection and copying at the office of the recorder. Proof of such publication shall be filed in the office of the County Auditor. If no petition for a separate hearing is filed within 30 days after the first notice publication pursuant to NDCC 11-33-10 or NDCC 11-33.2, the amendment thereto shall take effect upon the expiration of the time for filing said petition. If a petition for a separate hearing is filed within 30 days after the first notice publication pursuant to NDCCC 11-33-10 or NDCC 11-33.2, the amendment shall not take effect until the Board of County Commissioners has affirmed such amendment in accordance with the relevant procedures established in the North Dakota Century Code. This Ordinance may, from time to time, be amended or repealed by the Board of County Commissioners upon like proceedings as in the case of its original adoption or subsequent amendment.
11. In the event that an application to amend this Ordinance is denied by the Board of County Commissioners or that the application for amendment is withdrawn after the hearing of the Planning Commission, the County Planner shall have the authority to refuse to accept another application for any similar amendment for one year from the date of hearing of the previous application by the Planning Commission.

- (d) Criteria for Consideration; Findings Required. When considering an application for amendment to the provisions of this Ordinance, the Planning Commission and the Board of County Commissioners shall be guided by and adopt findings of fact based upon the following:
 - 1. Whether the proposed amendments are made in accordance with the Comprehensive Plan
 - 2. Whether the proposed provisions of the Ordinance are designed to:
 - a. Secure safety from fire and other dangers
 - b. Promote public health, safety, and general welfare, and
 - c. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.
 - 3. Consideration of
 - a. The reasonable provision of adequate light and air;
 - b. The effect on motorized and non-motorized transportation systems;
 - c. Compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;

Section 2.07 Procedures for the Review and Consideration of Plat Applications

- (a) Procedures for the Review and Consideration of Plat Applications in accordance with this Ordinance are described in Articles IV, V, and VI.

Section 2.08 Public Hearings Procedure

- (a) Public Hearings required by this Ordinance shall be conducted pursuant to the standards and procedures of this Section.
- (b) Notice

Unless state law requires differently, written notice of the public hearing, pursuant to Section 5.10 Public Notice, shall be sent by mail to the owner of the property that is subject to the public hearing and to owners of land that is with property within 5280 feet of the property that is subject to the public hearing. In addition to the mailed notice, a Public Notice of the hearing that describes the application and provides the time, date and place of the public hearing shall be published in the official county newspaper and any newspaper of general circulation in the county at the discretion of the County Planner or the body holding the hearing. The Public Notices shall be mailed, and the published notice shall appear in each newspaper once a week for two successive weeks prior to the date of the hearing.
- (c) Announcement

The presiding officer shall announce the purpose and subject of the public hearing, verify that proper public notice was given and provide the opportunity for any member of the Commission or Board to declare a conflict of interest.
- (d) Right to Speak

Any interested person may appear at the public hearing and submit evidence or make comments either as an individual or on behalf of an organization. Each person appearing at the public hearing shall be identified by name and address of residence and name of organization if applicable.

(e) Staff Report Presentation

The County Planner shall present a report that provides a detailed overview of the application and requested decision, its site, context and its compliance with the comprehensive plan and this ordinance.

(f) Applicant Presentation

The applicant shall present any information the applicant deems appropriate.

(g) Public Comments

Members of the public shall be provided the opportunity to speak about the merits or shortcomings of the application. At the discretion of the presiding officer, reasonable time limits may be placed on all speakers in the interest of accommodating all people desiring to speak and to provide for an efficient meeting. Comments shall be directed only to the presiding officer.

(h) Applicant Response

After the members of the public have given their comments, the applicant shall be provided the opportunity to respond to any public comments made during the public hearing.

(i) Staff Response

After the public comments and applicant response, the County Planner or any other County official shall be provided the opportunity to clarify or address public comments and applicant responses made during the public hearing.

(j) Deliberation, Decision

The presiding officer shall declare the public comment period of the meeting to be closed and invite discussion, deliberation and a decision by the body holding the hearing (Board of County Commissioners or Planning Commission).

(k) Record of Proceedings

The public hearing and meeting shall be audio taped and the tape shall be retained by the County for the minimum length of time established by the Board of County Commissioners. A recording secretary shall record written minutes of the public hearing. All exhibits, reports, evidence and written materials submitted during the public hearing shall be retained by the County as part of the record of the proceeding.

(l) Continuance

The body conducting the public hearing, on its own initiative, may continue the hearing to a future date. Notice of continuance shall be posted in a conspicuous and visible location at the County Courthouse and other regular locations determined by the County Planner.

Section 2.09 Public Notice

- (a) Public Notice shall be published in the official newspaper of the County. Public notice may also be published in any other newspaper of general circulation in the county at the discretion of the County Planner or the body holding the hearing. The public notice shall contain the following information and comply with public notice requirements of state law.
- (b) Type of Application
The type of application, such as Subdivision, Variance, Appeal, or Ordinance Amendment.
- (c) Description of Decision
A brief description of the decision or action sought by the applicant.
- (d) Name of Owner, Applicant
The name of the landowner and applicant.
- (e) Location of Land
A legal description and a general description of the location of the subject land, if applicable.
- (f) Location, Date, Time
The location, date and time of the public hearing or public meeting.
- (g) Where Information Available
The location where information about the application may be viewed and the general hours available for viewing.
- (h) Proposed Use
When applicable, a description of the type of use being proposed.

Article III. Interpretation

Section 3.01 Liberal Interpretation to Further Underlying Purposes

- (a) Interpretation and application of this Ordinance are the basic and minimum requirements for the protection of public health, safety, comfort morals, convenience, prosperity, and welfare. This Ordinance shall be liberally interpreted in order to further its underlying purposes. The meaning of any and all words, terms, or phrases in this Ordinance shall be construed in accordance with the following Rules and Definitions.

Section 3.02 Rules of Construction and Interpretation

- (a) Words, phrases, and terms defined in this Ordinance shall be given the defined meaning as set forth in the following text.
- (b) Words, phrases, and terms not defined in this Ordinance shall be given their usual and customary meanings except where the context clearly indicates a different meaning.
- (c) The word “shall” is mandatory and not permissive; the word “may” is permissive and not mandatory.
- (d) Words used in the singular include the plural, and words used in the plural include the singular.
- (e) Words used in the present tense include the future tense, and words used in the future tense include the present tense.
- (f) In computing any period of time prescribed or allowed by this Ordinance, the day of the notice or final application, after which the designated period of time begins to run, is not to be included. Further, the last day is to be included unless it is not a working day, in which event the period runs until the next working day.
- (g) The word “person” indicates a corporation, a sole proprietorship, an unincorporated association, a partnership, estate, or any other legally recognized entity, as well as an individual.
- (h) Within this Ordinance, sections prefaced “purpose” are intended to convey official statements of legislative findings or purpose. These statements are intended to guide the administration and interpretation of this Ordinance and shall be treated in the same manner as other aspects of legislative history. However, they are not binding standards.

Section 3.03 Definitions

- (a) The following words have the specific meaning listed:
 1. **Platted Lot** – any recorded lot established by County Commission approval following a subdivision approval process.
 2. **Buildable Lot** – a lot that meets zoning dimensional requirements in the district where it is located.
 3. **Parcel** – a lot or combination of lots that are contiguous and under common ownership; may or may not have a single tax parcel identification.
 4. **Tract** – a lot or group of lots that are contiguous.
 5. **Burial Plot** – an area of land within a cemetery separated from other areas within the cemetery for burial of one or more people.
 6. **Condominium lot?**
 7. **Development** – any man-made change to improved or unimproved real estate, including but not limited to construction of or substantial improvements to buildings or other structures, the placement of mobile homes, subdivision of land, mining, dredging, filling, grading, paving, excavation, or drilling operations. **OR** any human caused change to improved or unimproved real estate that requires a permit or approval from any agency of the County or of the State of North Dakota, including but not limited to construction, subdivision of land, placement of mobile homes, storage of materials, mining, filling, grading, excavation, and drilling activities.

8. Abutting. To physically touch or border upon; or to share a common property line.
9. Abutting. To physically touch or border upon; or to share a common property line.
10. Access. A way or means of approach to provide physical entrance to a property.
11. Access Drive. A private drive providing vehicular access to and between parking areas for more than two parking spaces within a subdivision; any drive servicing two or more units of occupancy on a single lot.
12. AADT. Annual average daily traffic count.
13. Agricultural Land. Land used exclusively for the cultivation of the soil, the production of crops or livestock, or the science of forestry; also, land diverted from agricultural use by an active Federal farm program, provided the diverted land has a conservation cover of grass, legume, trees, or wildlife shrubs. Agricultural land may include, to a minor degree, farmsteads inhabited by the cultivator of the land housing for farm employees and land, used for preparation of agricultural products by the cultivator of the land.
14. Agriculture. See Agricultural Land.
15. Alley. A public right-of-way which affords a secondary means of access to abutting property (see also Street).
16. Animal Feeding Operation. A place where: livestock have been, are, or will be confined, concentrated and fed for 45 or more days in any 12 month period; pasture, crops, or other vegetation are not normally managed or sustained for grazing during the normal growing season; and, animal waste or manure accumulates. This term does not include an animal wintering operation. Adjoining animal feeding operations under common ownership are considered to be one animal feeding operation, if they use common areas or systems for manure handling.
17. Animal Wintering Operation. The confinement of cattle or sheep used or kept for breeding purposes in a feedlot or sheltered area at any time between October 15 and May 15 of each production cycle under circumstances in which these animals do not obtain a majority of their feed and nutrients from grazing. This term includes the weaned offspring of cattle and sheep but does not include the breeding operations of more than one thousand (1000) animal units (as defined by the North Dakota Department of Health) or weaned offspring which are kept longer than one hundred and twenty (120) days and that are not retained for breeding purposes.
18. Applicant. A developer and/or landowner, as hereinafter defined, including heirs, successors, and assigns, who has filed an application for subdivision.
19. Application for Subdivision. The application form and all documents and exhibits required of an applicant by the County Planner, Planning Commission or Board of County Commissioners for subdivision review purposes.
20. Area Sketch. An area sketch is a rough map of a proposed subdivision and the surrounding land to be used for the purpose of discussion and clarification of proposed land divisions.
21. Big Box Retail. Single retail sales facility that has greater than twenty thousand (20,000) square feet of gross floor area and is contained in a single building.
22. Block. A tract of land comprised of one or more lots which is entirely bounded by streets, public parks, cemeteries, railroads and/or watercourses.
23. Board of County Commissioners. The Board of County Commissioners of Cass County.

24. Borrow Pit. A pit or hole that has been excavated to provide earth that can be used as fill in another area.
25. Buildable Lot. All lots in a proposed subdivision that are not defined as an unbuildable lot due to environmental conditions and lots meeting all requirements of this Ordinance, as specified in Sections 307, 308 and 309.
26. Building. Any enclosed or open structure, other than a boundary wall or fence, occupying more than four (4) square feet of area and/or having a roof supported by columns, piers, or walls.
 - a. **Building, Accessory**. A detached, subordinate building, the use of which is customarily incidental and subordinate to that of the principal building, which is located on the same lot as that occupied by the principal building. Farm buildings not intended for habitation are considered to be accessory buildings.
 - b. **Building, Principal**. A building which is enclosed within exterior walls or fire walls and is built, erected, and framed of component structural parts. The Principal Building is also designed for housing, shelter, enclosure and support of individuals, animals, or property of any kind and is a main structure on a given lot.
27. Building Setback Line. A line within a lot, designated on a plan as the minimum required distance between any structure and the adjacent street centerline, right-of-way line, natural feature, or as specified by any applicable zoning ordinances, regulations, or this Ordinance.
28. Capacity. The maximum number of vehicles that can be expected to pass over a given section of roadway or on a specific lane.
29. Cass County Planning Commission. The Cass County Planning Commission or, when authorized, the Planning Commission's staff.
30. Cass County Subdivision Ordinance. See Ordinance.
31. Certificate of Survey. A graphic representation of any parcel or tract of real property whose primary purpose is to show the results of a boundary survey.
32. Clear Sight Triangle. An area of unobstructed vision at a street intersection defined by a line of sight between points at centerlines.
33. Comprehensive Plan. A document consisting of maps, charts, and textual material, that constitutes a policy guide to decisions about the physical and social development of a municipality.
34. Condominium. A multiple unit land development in which there is a system of separate ownership of individual units of occupancy and undivided interest of land and common facilities.
35. County. The County of Cass, North Dakota.
36. County Commission. See Board of County Commissioners.
37. County Planning Commission. See Cass County Planning Commission.
38. Dedication. The deliberate appropriation of land by its owner for general public use.
39. Deed. A written instrument whereby an estate in real property is conveyed.
40. **Deed Restriction**. A restriction upon the use of a property placed in a deed. As specified in Section 309 of this Ordinance, a deed restriction refers to the legally binding restrictions placed on development as it relates to Sections 307, 308 and 309 of this Ordinance.
41. Density. The number of buildable lots permitted per acre, exclusive of street rights-of-way.

42. Design Standards. The specifications to landowners or subdividers for the preparation of plats, both preliminary and final, indicating among other things, the optimum, minimum, or maximum dimensions of such items as rights of ways, blocks, easements and lots.
43. Detention Basin. A reservoir which temporarily contains storm water runoff and releases it gradually into a watercourse or storm water facility. Developer. Any landowner, agent of such landowner, equitable owner, or tenant with the permission of the landowner, for whom subdivision plans are being or have been made.
44. Development. An activity which materially alters or affects the existing conditions or use of any land.
45. Development Plan. The provisions for development, including a plat of subdivision, all covenants relating to use, location and bulk of buildings and other structures, intensity of use or density of development, streets, ways and parking facilities, common open space, and public facilities. The phrase "provisions of the development plan" when used in this Ordinance shall mean the written and graphic materials referred to in this definition.
46. Development Rights. An interest in and the right to use and subdivide land for any and all residential, commercial and industrial purposes and activities which are not incident to agriculture and open space, in accordance with zoning and other regulations. Development rights can be used, held, or transferred, from adjacent property under common ownership, to plat an additional buildable lot on a contiguous receiving property.
47. Double Frontage Lot. A lot with front and rear street frontage.
48. Drainage Easement. The land required for the installation of storm sewer or drainage facilities or required along a natural stream or watercourse for preserving the channel and providing for the flow of water therein, or to safeguard the public against flood damage.
49. Drainage Plan. The plan of the subdivision showing the direction of surface water runoff and the removal of surface water or groundwater by drains, grading runoff controls, or other means.
50. Driveway. A private drive providing vehicular access between a street or access drive and a parking area for a single residential unit of occupancy, or a private drive for non-residential uses permitted to provide less than three parking spaces.
51. Easement. A right-of-way granted for limited use of property by the landowner for a public or quasi-public or private purpose and within which the owner of the property shall not have the right to make use of the land in a manner that violates the right of the grantee.
52. Eligible Land. An undeveloped quarter-quarter section or Legal Lot that meets the conditions specified in Section 308 of this Ordinance.
53. Engineer. See Registered Engineer.
54. Farm.
55. Final Plat. See Plat.
56. Flood buyout. The purchase of private property by a federal, state, or local government for the purpose of mitigating flood damage to structures and properties.
57. Floodplain. The area of inundation which functions as a storage or holding area for floodwater to a width required to contain a base flood of which there is a one percent (1%) chance of occurring in any given year. The floodplain also contains both the floodway and the flood fringe. The floodway is the channel of a water course and the adjoining land area which are required to carry and discharge the base flood. The flood fringe is the adjoining

area which may be covered by water of the base flood. The location of a floodplain shall be established in accordance with Section 612 of this Ordinance and may include an area of greater magnitude than the base flood if a greater flood hazard area is designated by a municipal ordinance.

58. **Free Standing Retail**. Single retail sales facility of up to twenty thousand (20,000) square feet in size that is situated independently on a lot and for which associated parking serves exclusively that facility.
59. Future Access Strip. A right-of-way reserved for the future improvement of a street.
60. Grading. Any stripping, cutting, filling, stockpiling of earth or land, including the land in its cut or filled condition.
Gross Floor Area. The total floor area of a building.
61. Half Street. A street of less than the required right-of-way and/or road width, such as a street built from the shoulder edge to the eventual centerline (See also Street).
62. Historic Feature. Any building, site, structure, object, district, or area that:
 - a. Is listed on the National Register of Historic Places.
 - b. Has received a Determination of Eligibility for the National Register from the National Park Service.
 - c. Which is listed on any officially adopted municipal register or inventory of historic features.
 - d. Which is listed on the State Historical Society of North Dakota 1990 North Dakota Comprehensive Plan for Historic Preservation: Archeological Component This term shall include the site, principal structures, accessory structures, yards, vegetation, fences, road alignments and signage associated with such features.
63. Homeowners' association (HOA). A group governing a subdivision through an association collecting monthly fees from all owners/members to pay for maintenance of common areas, handle legal and safety issues and enforce the covenants, conditions and restrictions set by the developer.
64. **Horizon Year**. The anticipated opening year of a development, assuming full buildout and occupancy.
65. Impervious Surface. A ground cover such as cement or asphalt through which water cannot penetrate.
66. **Improvement Construction Assurance**. The procedures, specified in Article V, by which a developer assures the construction of improvements required by this Ordinance.
67. Improvements. Physical changes to the land, including but not limited to, grading, paving, curbs, gutters, storm sewers and drains, improvements to existing watercourses, sidewalks, street signs, monuments, water supply facilities and sewage treatment facilities.
68. **Influence Area**. An area which contains 80% or more of the trips that will be attracted to a development site.
69. Intensive Vegetation Clearing. The complete removal of trees or shrubs in a contiguous patch, strip, row, or block.
70. Land Development. The subdivision of land.
71. Landscape Architect. A landscape architect registered by the State of North Dakota
72. Land Use. A description of how land is occupied or utilized.
73. **Level-of-Service**. A measure of the effect of traffic on the capacity of a road.

74. Lot. Any separately described area of land capable of having title conveyed.
75. Lot Area. The area contained within the property lines of the individual parcel of land, excluding space within the street right-of-way. The lot area includes the area of any utility easement or storm water management facility.
76. Lot, Buildable. A lot that meets zoning dimensional requirements in the district where it is located.
77. Lot Depth. The average distance between the street right-of-way and the rear lot line, measured perpendicular or radial to the right-of-way.
78. Lot Frontage. That side of a lot abutting on the street right-of-way and regarded as the front of the lot.
79. Lot, Legal. A designated parcel, tract, or area of land established by a plat or otherwise permitted by law at the time of its creation to be used, developed, or built upon as a unit.
80. Lot Line Marker. A metal plate or pin used to identify lot line intersections.
81. Lot of Record. A lot that has a clear description stemming from a document on file at the County Recorder's office.
82. Lot, Platted. Any recorded lot established by County Commission approval following a subdivision approval process.
83. Lot Width. The average distance between the side lot lines of a lot, measured parallel to the right-of-way.
84. Major Subdivisions. See Subdivision.
85. Mediation. A voluntary negotiating process in which parties in a dispute mutually select a neutral mediator to assist them in jointly exploring and settling their difference, culminating in a written agreement which the parties themselves created and consider acceptable.
86. Minor Subdivision. See Subdivision.
87. Mixed Use. A development that provides multiple compatible uses in close proximity to one another. And/or a land use pattern that seeks to increase concentrations of population and employment in well- defined areas with a mix of diverse and compatible land uses.
88. Mobile Home. A transportable, single-family dwelling intended for permanent occupancy, contained in one unit, or in two or more units, designed to be joined into one integral unit and capable of again being separated for repeated towing, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations and constructed so that it may be used without a permanent foundation. The term "manufactured home" may be used synonymously.
89. Mobile Home Lot. A parcel of land in a mobile home park, improved with necessary utility connections and other appurtenances necessary for the erection thereon of a single mobile home.
90. Monument. A concrete or stone monument used to identify street line intersections.
91. Municipal Governing Body. The Council in cities, the Board of Commissioners in townships, the Board of County Commissioners, or any other similar body with the final decision-making, budgeting, and appointing authority of a general-purpose unit of government.
92. Municipality. Any city, township, county, or other similar general-purpose unit of government.

93. **Non-Site Traffic.** Vehicle trips passing within the study area as defined in the traffic impact study that do not enter or exit the site and are generally the result of through traffic and traffic generated by other developments.
94. **Off-Street Parking.** Parking spaces provided outside of the right-of-way of a street or highway.
95. **On-Street Parking.** Parking spaces provided within the right-of-way of a street or highway.
96. **Ordinance.** The Cass County Subdivision Ordinance, as subsequently amended.
97. **Parcel.** See Lot.
98. **Peak Hour.** The hour during which the heaviest volume of traffic occurs on a road.
99. **Pedestrian Way.** A right-of-way, publicly or privately owned, intended for human movement by walking or bicycling.
100. **Personal Services.** Establishments primarily engaged in providing services involving the care of a person per a person' personal goods or apparel. It includes uses such as barber shops, beauty salons, shoe repair shops and dry cleaners.
101. **Pervious Surface.** Ground cover through which water can penetrate at a rate comparable to that of water through undisturbed soils.
Plan. See Plat.
102. **Planning Commission.** See Cass County Planning Commission.
103. **Plat.** The map or plan of a subdivision, whether preliminary or final.
 - a. **Preliminary Plat.** A tentative drawing or map of a proposed subdivision meeting the requirements herein enumerated.
 - b. **Final Plat.** A drawing or map of a subdivision meeting all the requirements of the County and in such form as required by Cass County for the purpose of recording (See Certificate of Survey).
104. **Public Improvement.** Any improvement or other facility for which a governmental unit may ultimately assume responsibility for maintenance and operation.
105. **Public Meeting.** A forum held pursuant to Chapter 44-04-19 and Chapter 44-04-20 of the North Dakota Century Code.
106. **Public Utility.** Any person, firm, corporation, municipal department, or board duly authorized to furnish and furnishing, under public regulation, to the public, electricity, gas, heat, power, steam, telephone, telegraph, transportation, or water.
107. **Receiving Property.** A parcel that receives a transferred development right from a contiguous undeveloped quarter-quarter section or Legal Lot (See Sending Property) under common ownership, as specified in Section 308 of this Ordinance.
108. **Registered Engineer.** An individual licensed and registered as a professional engineer under the laws of the state of North Dakota.
109. **Registered Land Surveyor.** An individual licensed and registered as a professional land surveyor under the laws of the state of North Dakota.
110. **Restrictive Covenant.** A restriction on the use of land usually set forth in the deed.
Retention Basin. A reservoir designed to retain storm water runoff with its primary release of water being through the infiltration of said water into the ground.
111. **Reverse Frontage Lot.** A lot with front and rear street frontage, where vehicular access is prohibited to and from the higher intensity street.

112. **Right-of Way.** The total width of any land reserved or dedicated for public use to be occupied by a street, crosswalk, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, legal drains, flood diversion structures, flood diversion channels, shade trees, or for other special use.
- Road.** The surface of a street, drive, or alley available for vehicular traffic. (See also street)
113. **Runoff.** The surface water discharge and rate of discharge of a given watershed after a full rain or snow that does not enter the soil but runs off the surface of the land.
114. **Sedimentation.** The process by which soil or other surface material is accumulated or deposited by wind, water, or gravity.
115. **Sending Property.** A parcel that transfers its development right to a contiguous or eligible property under common ownership (see Receiving Property) as specified in Section 308 of this Ordinance.
116. **Service Street.** See Street, Alley (Service Street).
117. **Setback Line.** See Building Setback Line.
118. **Shared Parking.** When parking spaces are shared among different structures or uses or among mixed uses and can include properties with different owners.
119. **Shared Trips.** Vehicle trips entering and exiting the site which were using the facility on the adjacent streets and therefore did not generate new trips on the road.
120. **Shopping Center.** An area that is comprised of three (3) or more commercial establishments, the purpose of which is primarily retail sales, that has a combined gross floor area of twenty thousand (20,000) square feet or more, that is owned or managed as a unit.
121. **Sight Distance.** The length of road visible to the driver of a vehicle at any given point in the road when viewing is unobstructed by traffic.
122. **Site.** The existing lot of record proposed for a subdivision.
123. **Solid Waste.** Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities. The term does not include:
- a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; or
 - b. Solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended [Pub. L. 92-500; 86 Stat. 816; 33.
 - c. U.S.C. 1251 et seq.], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [68 Stat. 919; 42 U.S.C. 2011 et seq.].
124. **Staff.** The Cass County Planning and Highway Department staff.
125. **Steep Slope.** Lands having average slopes with a horizontal to vertical change of 11:1 (or steeper), slope to rise ratio, as measured over horizontal distances of fifty (50) feet or more.
126. **Storm Water Management Data.** The plan information, designed in accordance with Section 607 and 608 of this Ordinance, which identifies design and construction details for managing the quantity and quality of storm water runoff.

127. Storm Water Management Facilities. Those controls and measures (e.g., storm sewers, berms, terraces, bridges, dams, basins, infiltration systems, ditches, watercourses, legal drains, flood diversion structures, flood diversion channels, and floodplains) used to implement a storm water management program.
128. Street. A strip of land, including the entire right-of-way, publicly or privately owned, serving primarily as a means of vehicular and pedestrian travel, and furnishing access to abutting properties. This term shall include the terms avenue, boulevard, road, highway, freeway, parkway, lane, alley, viaduct, or any other way used for similar purposes. Streets shall conform to one of the following categories:
- a. Principal Arterial. An interregional road in the street hierarchy system which carries vehicle traffic to and from the region as well as any through traffic. This street may be a controlled access street.
 - b. Minor Arterial. The Minor arterial street system interconnects with the principal arterial system. It provides connections between boroughs, larger villages, major resort areas and other traffic generators which develop substantial volumes of traffic.
 - c. Collector. This classification includes streets that provide connections with local access and arterial streets. They may serve a traffic corridor connecting villages, small boroughs, shopping points, mining and agricultural areas on an intra-county or municipal basis.
 - d. Local Access. This classification provides direct access to adjacent land and includes connections to farms, individual residences, and commercial properties and to higher classes of highway systems.
 - e. Alley (Service Street). A service road that provides secondary means of access to lots. Alleys are on the same level as a local access street and are used in cases of narrow lot frontages. No parking shall be permitted, and alleys should be designed to discourage through traffic. AADT level corresponds to that of local access street.
 - f. Cul-de-sac. A street with a single means of ingress and egress and having a turnaround. The design of the turnaround may vary. Cul-de-sacs shall be classified and designed according to anticipated ADT level: A residential street will use the design standards of a local access street; a non-residential street will use the design standards for Commercial/Industrial streets.
 - g. Marginal Access Street. A service street that runs parallel to a higher- order street and provides access to abutting properties and separation from through traffic. Marginal Access Street may be designed as local access street or collector according to anticipated daily traffic.
 - h. **Divided Street**. A street in which the traffic directions are physically separated.
 - i. Stub Street. A short dead-end street which is a portion of a street which has been approved in its entirety. Stub streets may extend to a property line to permit connection of streets in adjoining subdivisions.
129. **Street Line**. The right-of-way line of any given street.
130. Street, private. A street not accepted for dedication by a municipality.
131. Structure. Any man-made object having an ascertainable stationary location on or in land or water, whether or not affixed to the land.

132. Subdivision. A division of a lot, tract, or parcel of land, creating one or more lots, tracts, or parcels for the purpose, either 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. The following shall not be considered a subdivision and shall be exempt from the requirements of this Ordinance:
- a. A division of land pursuant to an allocation of land in the settlement of a decedent's estate or a court decree for the distribution of property.
 - b. A division of land for federal, state, or local government to:
 - i. Acquire right-of way for public use. Including but not limited to streets, crosswalks, railroad, electric transmission lines, oil or gas pipelines, water mains, sanitary or storm sewer mains, shade trees, legal drains, flood diversion structures, and flood diversion channels.
 - ii. Acquire land of flood prone properties for the purposes of a flood buyout.
 - iii. Acquire land for the purpose of public parks.
 - iv. Acquire land for the purpose of a drainage easement or storm water management facility.
 - c. A division of land into lots, tracts, or parcels of ten (10) acres or more in size for the purpose of agricultural use with no anticipation of dwelling unit construction and does not involve any new streets, easements, or accesses other than field accesses.
 - d. A division of land into cemetery plots; or
 - e. The combination or recombination of portions of previously subdivided and recorded lots if the number of lots is not increased.
 - f. A division of land involving a sale or transfer to an abutting property owner for the purpose of agricultural use.
 - g. The term "subdivision" shall be further defined into two classifications, which are as follows:
 - i. Minor Subdivision: A division of land into lots, tracts, or parcels not exceeding four (4) total buildable lots.
 - ii. Major Subdivision: A division of land into lots, tracts, or parcels exceeding four (4) lots.
133. Subject Tract. The site proposed for a subdivision.
134. **Substantially completed.** Where, in the judgment of the Planning Commission, at least ninety (90) percent (based on the cost of the required improvements for which financial security was posted) of those improvements required as a condition for final approval have been completed in accordance with the approved plan, so that the project will be able to be used, occupied, or operated for its intended use.
135. Surveyor. See Registered Land Surveyor.
136. Top of Bank. The elevation at which water overflows the natural banks of streams or the waters of the state and begins to inundate upland areas.
137. Tract. See Lot.
138. Trip. A single or one-directional vehicle movement.

139. **Unbuildable Site.** A portion of a tract of land which due to physical or environmental conditions cannot support or is inappropriate for construction of a road, structure, or any other man-made improvement. Examples include wetlands, sinkholes, landslides, floodways, endangered species habitats and hazardous waste dumps.
140. **Unbuildable Lot.** Those lots in a proposed subdivision or lots or parcels resulting from a subdivision of land that are restricted from development due to environmental conditions such as steep slopes, the presence of wetlands or waterways, or sending properties restricted from development because of Sections 307, 308 and 309 of this Ordinance.
141. **Variance.** A process for alleviating specific requirements imposed by this Ordinance and provided under Sections 305 and 904 of this Ordinance.
142. **Watercourse.** A permanent topographic feature, whether natural or man-made, that serves to gather and carry flowing surface water such as a permanent or intermittent stream, a river, creek, brook, run, or ditch; and which measured by the width of the channel during normal high water.
143. **Watershed.** All land and water within the confines of a drainage basin.
144. **Wetlands.** Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturate soil conditions, including swamps, marshes, bogs, and similar areas.

Section 3.04 Responsibility for Interpretation

- (a) In the event a question of interpretation arises concerning any provision or the application of any provision of this Ordinance, the County Planner, in consultation with the State's Attorney for Cass County as may be necessary, shall be responsible for such interpretation. Such interpretation shall look to the Cass County Comprehensive Plan and the overall purpose and intent of this Ordinance for guidance. The County Planner shall provide such interpretations in writing upon request. Records of all such interpretations shall be maintained at the County Planner's office for future reference. If any person having an interest in such an interpretation chooses to appeal such a decision, the matter may be referred to the Planning Commission to be reviewed. The Planning Commission shall make a recommendation to the Board of County Commissioners for a final decision on the appeal.

Article IV. Plat Approval Required

Section 4.01 Subdivision Review and Plat Approval Required

- (a) Within all of Cass County outside of any municipal boundary and *outside any extraterritorial boundary for subdivision or zoning control*, no subdivision of any lot, tract, or parcel of land shall be made; no street, road easement, sanitary sewer, water main, or other improvements in connection therewith shall be laid out, constructed, opened, or dedicated for public use or travel, or for the common use of occupants of buildings abutting thereon, except in accordance with a plat as reviewed and finally approved by the Board of County Commissioners. ***NDCC 11-33.2-12 (1), 11-33.2-11***
- (b) For the purposes of this ordinance, “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. ***NDCC 11.33.2-01***
- (c) Any exemptions from subdivision review established by this Ordinance or by North Dakota law may be executed so long as the following requirements are met:
 - 1. All applications that are exempt from subdivision review shall be reviewed and approved by the following Cass County departments administratively prior to transfer of title: Planning Office, Auditor, Recorder, Assessor, State’s Attorney and County Highway Department. These departments will require a commitment of title or an attorney’s opinion of title and written consent from all property owners and lienholders prior to approving the use of an exemption.
 - 2. All lots created through the use of an exemption shall comply with the zoning district requirements of the applicable jurisdiction.
 - 3. All development on lots created through the use of an exemption shall comply with the development standards of this ordinance.
- (d) Any exemptions used under this section shall be executed via a certificate of survey and a deed of transfer filed with the Recorder’s Office.
- (e) Any exemptions that do not meet all of the requirements of this Section shall be reviewed as subdivisions and subject to all the subdivision review provisions of this Ordinance.

Section 4.02 Exemptions from Subdivision Review

- (a) A division of land pursuant to an allocation of land in the settlement of a decedent’s estate or a court decree for the distribution of real property. ***Cass County Subdivision Ordinance Article II, Section 203, Definition of Subdivision***
- (b) A division of land for federal, state, or local government to:
 - 1. Acquire right-of-way for public use. Including but not limited to streets, crosswalks, railroad, electric transmission lines, oil or gas pipelines, water mains, sanitary or storm sewer mains, shade trees, legal drains, flood diversion structures, and flood diversion channels.
 - 2. Acquire land of flood prone properties for the purposes of a flood buyout.
 - 3. Acquire land for the purpose of public parks.

4. Acquire land for the purpose of a drainage easement or storm water management facility.

Cass County Subdivision Ordinance Article II, Section 203, Definition of Subdivision

- (c) A division of land into lots, tracts, or parcels of ten acres or more in size for the purpose of agricultural use with no anticipation of dwelling unit construction and does not involve any new streets, easements, or accesses other than field accesses.

Cass County Subdivision Ordinance Article II, Section 203, Definition of Subdivision

- (d) A division of land into cemetery plots. *Cass County Subdivision Ordinance Article II, Section 203, Definition of Subdivision*
- (e) The combination or recombination of portions of previously subdivided and recorded lots if the number of lots is not increased.

Cass County Subdivision Ordinance Article II, Section 203, Definition of Subdivision

- (f) A division of land involving a sale or transfer to an abutting property owner for the purpose of agricultural use.

Cass County Subdivision Ordinance Article II, Section 203, Definition of Subdivision

- (g) A division of one parcel of land from a working farm or ranch for the agricultural purpose only meeting the following criteria:

1. The parent parcel is located in a zoning district with the primary purpose of promoting or maintaining farming and the normal incidents of farming as the dominant use in the district.
2. The parent parcel is at least a quarter quarter in size.
3. No previous division of the parent parcel [after date] was created on the basis of an exempted subdivision. All future divisions of either parcel shall be reviewed as subdivisions and subject to all requirements of this Ordinance pertaining to subdivision of land.
4. The new parcel and the parent parcel can both be described by the aliquot quarter section after the division.
5. The new parcel will not require any improvements not related to agricultural uses.
6. The division does not create of any part of one or more new streets, public easements or any other rights of way, whether public or private, for access to or from any such lot, tract, or parcel and which would not require the creation of new or enlarged parks, playgrounds or open spaces.
7. Only one new parcel can be created out of the parent parcel.

Based on Williams County Subdivision Ordinance Article IV, Section 4-1-3, Exemptions from Subdivision Review-Agriculture Exemption

- (h) A division of one parcel of land on which is located the farmstead from a working farm or ranch for the purpose of residing in and maintenance of an existing farmstead meeting the following criteria:

1. Only one new parcel can be created.
2. The parent parcel is located in a zoning district with the primary purpose of promoting or maintaining farming and the normal incidents of farming as the dominant use in the district.
3. The parent parcel is at least 40 acres in size and is described by the aliquot quarter section or as a Government Lot.
4. The new parcel is not more than 10 acres in size.

5. The new parcel and the parent parcel can both be described by the aliquot quarter section after the division.
6. All future divisions of either parcel shall be reviewed as subdivisions and subject to all requirements of this Ordinance pertaining to subdivision of land.
7. The division does not create of any part of one or more new streets, public easements or any other rights of way, whether public or private, for access to or from any such lot, tract, or parcel and which would not require the creation of new or enlarged parks, playgrounds or open spaces.

Based on Williams County Subdivision Ordinance Article IV, Section 4-1-3, Exemptions from Subdivision Review-Farmstead Exemption

Article V. Minor Subdivisions

Section 5.01 Minor Subdivision Sketch Plan Content

- (a) An individual seeking to divide land within the subdivision jurisdiction of Cass County may provide a sketch plan to the County Planner in order to verify the process and application requirements needed for plat review. It is recommended that a meeting be scheduled with the County Planner to discuss the review process and proposed division of land.
- (b) The sketch plan should include at least the following information.
 1. Name and address of the landowner, and the developer (if different than the landowner).
 2. Name of the individual and firm that prepared the sketch plan. The sketch plan may be prepared by the landowner or developer, but must meet the following requirements.
 3. Location map with labels showing the location of the land proposed to be platted and the sections adjacent to it.
 4. Existing parcel boundaries accurately labeled with the names of adjacent property owners and adjacent plats.
 5. Existing zoning of the land proposed to be platted and the land within 1,320 feet of it.
 6. Location map showing significant natural and manmade features (existing major buildings, bodies of water or wetlands, utilities, tree lines or groups of trees, excavations) on the land proposed to be platted and the land within 1.320 feet of it.
 7. Location of 100 year floodplain, floodway, and major drainage patterns on the land proposed to be platted and within 1,320 feet of it.
 8. Proposed lot layout in relationship to existing streets and drainageways drawn to approximate scale.
 9. Proposed land use(s) and their location in relationship to the proposed lot layout.
 10. Proposed methods for water supply and sewage treatment.

Section 5.02 Minor Subdivision Final Plat Content

- (a) Final plats shall be prepared by an engineer, a surveyor, or a landscape architect licensed in North Dakota.
- (b) Final plats must include the following information in order to be approved by the Cass County Board of County Commissioners and filed at the Cass County Recorder's Office.
 1. Lot lines, with accurate bearings and distances and lot areas for all lots. Curve segments shall be comprised of central angle, radii, and arc distances and also include arc, chord, bearing and distance for non-tangent curves. Along existing street rights-of-way, the description may utilize the existing deed lines or road centerlines; along all proposed street rights-of-way, the description shall be prepared to the right-of-way lines. **NDCC 40-50.1-01 (3)**
 2. Complete description of the right-of-way lines for all new streets. This description shall include distances and bearings with curve segments comprised of central angle, radii, and arc distances and also include arc, chord, bearing and distance for non-tangent curves. **NDCC 40-50.1-01 (1),(3)**
 3. Easements and the purpose of each must be clearly stated. Easement dimensions must be sufficient to accurately describe their extent and boundaries. **NDCC 40-50.1-01 (10)**
 4. Lot numbers and block designations. **NDCC 40-50.1-01 (2)**
 5. Final street names. **NDCC 40-50.1-01 (1)**
 6. Identification of any lands to be dedicated, reserved, donated or granted for public use or for donation to any individual, religious society, corporation, or limited liability company. **NDCC 40-50.1-05**
 7. Any plat which includes lands abutting upon any lake, river, creek, or stream must show a contour line denoting the present shoreline, water elevation, and the date of survey. If any part of a plat lies within the one hundred year floodplain of a lake, river, or stream as designated by the department of water resources or a federal agency, the mean sea level elevation of that one hundred year flood must be denoted on the plat by numerals. Topographic contours at a two-foot contour interval referenced to mean sea level must be shown for the portion of the plat lying within the floodplain. All elevations must be referenced to a durable benchmark described on the plat with its location and elevation to the nearest hundredth of a foot, which must be given in mean sea level datum. **NDCC 40-50.1-01 (11); NDCC 11-33.2-12.1**
 8. The names and adjacent boundary lines of any adjoining platted lands must be dotted on the plat. The designations and adjacent boundary lines of any unplatted parcels must be dotted on the plat. **NDCC 40-50.1-01 (8)**
 9. The location and material of all permanent monuments and lot line markers, including a note that all monuments and lot line markers are set or indicating when they will be set.
 10. Certificate, signature, and seal of the surveyor, to the effect that the survey is correct and certificate, signature and seal of the surveyor, engineer, or landscape architect that prepared the plat indicating that all other information shown on the plat is accurate.
 11. A statement, duly acknowledged before an officer authorized to take acknowledgement of deeds and signed by the landowner, to the effect that the subdivision shown on the plat is the act and the deed of the owner, that all those signing are all the owners of the property shown on the survey and plat and that they desire the same to be recorded as such. This

statement must be dated following the last change or revision to said plat. This statement shall be of the form shown in Figure X. **NDCC 40-50.1-01 (1)**

Figure X.

CERTIFICATE OF OWNERSHIP, ACKNOWLEDGMENT OF PLAN, AND OFFER DEDICATION
<u>INDIVIDUAL</u>
STATE OF NORTH DAKOTA COUNTY OF CASS
On this, the _____ day of _____, 20____, before me, the undersigned officer, personally appeared _____ who being duly sworn according to law, deposes and says that he is the * _____ of the property shown on this plan, that he acknowledges the same to be his act and plan, that he desires the same to be recorded and that all streets and other property identified as proposed public property (excepting those areas labeled "NOT FOR DEDICATION") are hereby dedicated to the public use.
** _____
*** _____
My Commission Expires _____, 20_____
* Identity Ownership or Equitable Ownership
** Signature of the Individual
*** Signature and Seal of Notary Public

Section 5.03 Minor Subdivision Procedures for Plat Review

- (a) Pre-Application Sketch Plan Review. An individual seeking to divide land within the subdivision jurisdiction of Cass County shall provide a sketch plan to the County Planner in order to verify the process and application requirements needed for plat review. It is recommended that a meeting be scheduled with the County Planner to discuss the review process and proposed plans. Such a meeting and/or review shall be considered confidential between the applicant and county staff. However, any documents submitted to the County relative or resulting from this meeting are subject to North Dakota Open Records Laws pursuant to NDCC 44-04.

It is recommended that the applicant submit at least the information noted in Section 4.01 (b). Materials submitted, provided or discussed by the applicant for or during the pre-application review shall not satisfy any portion of the materials needed to complete a subdivision application. Any advice or assistance provided by county staff shall not be considered the County's final response. The Board of County Commissioners has the final authority on all matters relating to subdivision plat application, review, and approval.

(b) Final Plat Application – Minor Subdivision. An application for Final Plat Approval for a Minor Subdivision may be submitted without a preliminary plat review and approval. Regardless of the results of a sketch plan review, submission of a final plat does not guarantee the final plat will be approved with or without changes. A final plat application shall be accompanied by all required documents and the required filing fee. Required final plat application documents include:

- 1) An application form (obtained from the County Planning Office) completely and properly executed with all information legible and bearing all required signatures.
- 2) A final plat containing all required information
- 3) A filing fee consisting of a check or money order draw to the Cass County Highway Department.
- 4) One copy of all supplemental information not included on the final plat.
- 5) An attorney's opinion of title or similar document.

County staff shall have 7 days from the date of submission of an application to check the documents to determine if on their face they are in proper form and contain all the information required by this Ordinance. If defective, the application may be returned to the applicant with a statement that the application is incomplete; otherwise the application shall be deemed accepted as of the date of submission.

(c) Final Plat Review. Upon acceptance of the final plat application, the following steps will be completed as part of the plat review process:

- 1) A copy of the completed application documents will be sent by certified mail to the relevant township soliciting comments
- 2) Copies of the completed application documents will be distributed to each of the following, when relevant, for review and comment:
 - a. Cass County Engineer
 - b. Cass County Planning Commissioners.
 - c. Water Resource District.
 - d. Electric company.
 - e. Telephone company.
 - f. Gas Company.
 - g. Cass Rural Water Users.
 - h. North Dakota Department of Transportation (if the subject site abuts a State road).
 - i. County Sanitarian.
 - j. Adjoining municipality (if site is located within one (1) mile of a municipal or ET boundary).

- 3) The County will notify the applicant or representing agent and all land owners within a minimum of 1,000 feet of the proposed final plat that the application is under review and will be considered by the Planning Commission at a public hearing on a specified date.
 - 4) The County Planner will schedule the Final Plat application for action at a regularly scheduled public meeting within ninety (90) days of the first public meeting of the Planning Commission after the date of filing.
 - 5) The County Planner will prepare a report of findings pertaining to the consistency of the proposed plat with this Ordinance and noting any comments or concerns raised by the relevant township or other reviewing parties.
- (d) Planning Commission Action. At a regularly schedule Planning Commission meeting, following the closure of the relevant public hearing, the Planning Commission shall consider the reported findings and received public comment and shall make a determination if the requested plat is consistent with this Ordinance. The Planning Commission shall take an action to recommend denial of the application, approval of the application, or approval of the application with conditions.
- (e) Notification of Commission Action. Within fifteen (15) consecutive days after the meeting at which the Final Plat application is reviewed, the county staff shall send written notice of the Planning Commission’s action to the following:
- 1) Landowner or his agent.
 - 2) Applicant.
 - 3) Firm that prepared the plan.
 - 4) Township Chairman.
- (f) If the application is disapproved, the staff will notify the above individuals, in writing, of the defects in the application and will identify the requirements which have not been met; citing the provisions of the statute or ordinance relied upon.
- (g) Compliance with Planning Commission Action. If the Planning Commission conditions its Final Plat approval upon receipt of additional information, changes and/or notifications, such data shall be submitted and/or alterations noted on two (2) copies of the Plan to be submitted to the county staff for approval.
- (h) Board of County Commissioners Action. No plat shall be finally approved or disapproved by the Board of County Commissioners until the following has been met:
- 1) Receipt of recommendation by the Planning Commission. The recommendations by the Planning Commission shall not be binding on the Board of County Commissioners.
 - 2) Receipt of **written** recommendation by the board of township supervisors of the township in which the proposed subdivision is located or more than 60 days have lapsed since notification to the relevant township without receipt of a recommendation by the board of township supervisors. If no **written** recommendation was received within the 60 period, the Board of County Commissioners may take action on the final plat. The recommendations of the board of township supervisors shall not be binding on the Board of County Commissioners.

- 3) The receipt of a Final Plat meeting all conditions established by the Planning Commission and all necessary information and materials prepared in accordance with this Ordinance.
- 4) In determining whether a plat shall be finally approved or disapproved, the Board of County Commissioners shall inquire into the public use and interest proposed to be served by the subdivision. It shall determine if appropriate provisions are made for the public health, safety, and general welfare, for open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and school grounds, but its determination is not limited to the foregoing. The Board of County Commissioners shall consider all other relevant facts and determine whether the public interest will be served by the subdivision. If it finds that the proposed plat makes appropriate provisions for the public health, safety, and general welfare and for such open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and school grounds, and that the public use and interest will be served by the platting of such subdivision, and that the proposed plat complies with this Ordinance, such plat shall be finally approved with such conditions as the Board of County Commissioners may deem necessary. If it finds that the proposed plat does not make appropriate provisions, or that the public use and interest will not be served, or that the proposed plat does not so comply with this Ordinance, then the Board of County Commissioners shall disapprove the proposed plat. Dedication of land to any public body may be required as a condition of subdivision approval and shall be clearly shown on the final plat.
 - (i) Final Plat Recordation. Upon approval and certification of a final plat by the Board of County Commissioners, the applicant shall record the approved final plat in the office of the Cass County Recorder of Deeds.

Section 5.04 Minor Subdivision Development Standards

- (a) Lot Requirements. The lots of the Minor Subdivision shall meet all applicable yard and size requirements of the relevant zoning regulations, except that under no circumstances shall the minimum lot size be less than the minimum lot size required by the County Sanitarian.
- (b) Access and Easements. Access to the lots of the Minor Subdivision shall be determined by issuance of an access permit by the Cass County Highway Department. A single access point granting access to more than one lot is acceptable if appropriate easements across one lot to additional lots or parcels is provided.
- (c) Drainage and Floodplain:
 - 1) All developments with one (1) to four (4) buildable lots may construct and utilize open ditches for storm water conveyance pursuant to this Ordinance. (1) Ditches within the proposed subdivision and along all roads providing access to three (3) or more buildable lots shall have a minimum ditch grade of not less than two and half tenths of one percent (0.25%) with inslope no steeper than five (5) horizontal to one (1) vertical (5:1) and backslope side slopes no steeper than four (4) horizontal to one (1) vertical (4:1) and a minimum ditch bottom of five (5) feet.

- 2) Existing section line ditches within the proposed subdivision shall have a minimum ditch grade of not less one tenth of one percent (0.1%) with inslope no steeper than five (5) horizontal to one (1) vertical (5:1) and backslope side slopes no steeper than four (4) horizontal to one (1) vertical (4:1) and a minimum ditch bottom of five (5) feet. This standard may extend to the section lines ditches outside of the proposed subdivision at the discretion of the County Engineer.
 - 3) Lot grading plans that meet the requirements of the County Engineer shall be submitted (*examples will be inserted here*).
 - 4) All necessary drainage easements shall be provided on the plat.
 - 5) Proposed drainage shall demonstrate no adverse impact on surrounding land and drainage systems.
 - 6) All proposed developments, except those in townships with adopted flood plain management regulations, shall be built pursuant to the Cass County Flood Damage Ordinance #1998-2, as it presently exists or may hereafter be amended.
- (d) Lot Density Restrictions. For the purpose of encouraging orderly and economically-feasible growth, preventing new developments from creating economic strains on county residents, protecting the county's valuable farmland and agricultural traditions, promoting development that will more easily convert to an urban environment and implementing the goals and objectives established by the Cass County Comprehensive Plan (2005) the following lot density restriction is established. This density restriction 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. Except as noted in the exemptions below, no subdivision of land shall exceed one (1) buildable lot per quarter-quarter section (40 acres).
- 1) If the development has followed the transfer of development rights pursuant to this Ordinance and in accordance with all other required provisions of this Ordinance; or
 - 2) If the subdivision will be built to full urban design standards and the strictest requirements outlined within Article VII of this Ordinance; including but not limited to 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.
- (e) Watercourse Setback Requirements.
- 1) Purpose. In order to minimize the potential for slumping, bank failures, landslides, other environmental impacts, and the associated damage to structures and property certain requirements are established by this ordinance for all proposed subdivisions adjacent to blue line perennial watercourses, as identified on the most recent version of a 1:100,000 or 1:24,000 USGS quadrangle.

- 2) Setbacks. Applicants proposing subdivisions adjacent to blue line perennial watercourses, as identified on the most recent version of a 1:100,000 or 1:24,000 USGS quadrangle, shall delineate building control lines on the recorded plat limiting certain activities and land uses in these designated areas.
- 3) Building Control Lines. Except when using the Alternate Method of establishing the Minimal Disturbance Zone Setback of this Ordinance, all subdivisions shall provide the following building control lines, measured horizontally and perpendicular from the centerline of the watercourse towards the proposed development, regulating the use and activities within these building control lines in accordance with Minimal and Limited Disturbance Zone Requirements of this Ordinance:
 - a) Minimal Disturbance Zone Setback: three hundred and fifty (350) feet for the Red and Wild Rice rivers. All other blue line perennial watercourses Minimal Disturbance Zone Setback may be based on the three hundred and fifty (350) foot setback or be equal to vertical difference between the top of bank and the river bottom (plus any additional flood plain elevation requirements) multiplied by eight (8).
 - b) Limited Disturbance Zone Setback: beginning at the outer edge of the Minimal Disturbance Zone Setback and extending one hundred (100) feet.
- 4) Alternate Method of establishing Minimal Disturbance Zone Setbacks. As an alternative to using the established Minimal Disturbance Zone Setback along the blue line perennial watercourses, an applicant may request to use a site specific Minimal Disturbance Zone Setback, determined as a result of a detailed geotechnical investigation. The investigation must be performed by a registered professional engineer and testing firm acceptable to the County Engineer. Sufficient number of soil borings must be performed and at appropriate locations to provide a representative sampling of the site. The soils report and determination shall use accepted engineering/ASTM evaluation methods including, but not limited to, triaxial shear test in a supersaturated condition. Borings must be of sufficient depth to allow evaluation of the soils within the Upper Brenna Formation. Report recommendations shall use a minimum 1.3 factor of safety. The County reserves the right for the County Engineer or Planning Commission to reject proposed alternate building control lines.
 - a) The alternate Minimal Disturbance Zone Setback shall meet the requirements set forth in Minimal Disturbance Zone Setback Requirements of this Ordinance.
 - b) The Limited Disturbance Zone Setback Requirements shall apply to all subdivisions employing the alternate method of establishing the Minimal Disturbance Zone Setback.
- 5) Minimal Disturbance Zone Setback Requirements. All property within the minimal disturbance zone setback shall conform to the following regulations:
 - a) No permanent structures shall be allowed except the following:
 1. Stairways, lifts, and landings.
 2. Roads, bridges, trails, storm drainage, stormwater management facilities, and utilities are permitted within the minimal disturbance zone provided that an alternatives analysis has clearly demonstrated that no other feasible alternative exists and that minimal disturbance will take place. These structures shall be located, designed, constructed and maintained to provide maximum erosion protection, to have the least adverse effects on wildlife, aquatic life and their

habitats and to maintain hydrologic processes and water quality. Following any disturbance, the impacted area shall be restored.

3. Bike paths, walking trails, or other multi-use paths.

- b) No additional fill shall be allowed, except fill required to plant new trees or vegetation pursuant to the Vegetation Standards of this Ordinance
- c) No grading shall be allowed, except grading for bank restoration in areas experiencing bank slumping.
- d) No excavating shall be allowed, except excavating required to plant new trees or vegetation pursuant to the Vegetation Standards of this Ordinance.
- e) On-site septic systems and drain fields shall not be permitted.
- f) Irrigation systems shall not be permitted.
- g) Vegetation Standards. Alterations of vegetation and topography shall prevent erosion into public waters, fix nutrients, preserve watercourse natural aesthetics, preserve historic values, prevent bank slumping and protect fish and wildlife habitat. Removal or alterations of vegetation is allowed according to the following standards:
 - 1. Intensive vegetation clearing shall not be allowed.
 - 2. Vegetation previously disturbed or disturbed during the construction of the development or dwellings shall provide native riparian vegetation cover.
 - 3. Replacement of native riparian vegetation with non-native species shall not be allowed.
 - 4. Limited clearing of trees and shrubs and cutting, pruning and trimming of trees to accommodate the placement of stairways and landings, access paths and watercraft access areas, as well as providing a view to the watercourse from the principal dwelling unit or dwelling site, provided that:
 - a. The removal of vegetation shall be limited to a width less than six (6) feet to provide the placement of a stairway or path access to watercourse for residential lots. The removal of vegetation shall be limited to a width less than ten (10) feet to provide the placement of a stairway or path to provide access to watercourse for commercial properties or public open-space recreational properties.
 - b. The removal of vegetation shall be limited to a width less than six (6) feet for facilities such as ramps, lifts or mobility paths for physically challenged to achieve watercourse access on residential lots. The removal of vegetation shall be limited to a width less than ten (10) feet for facilities such as ramps, lifts or mobility paths for physically handicapped persons to achieve watercourse access for commercial properties or public open-space recreational properties.
 - c. The removal of vegetation shall be limited to an area less than forty-nine (49) square feet for stairway and life landings on residential lots. The removal of vegetation shall be limited to eighty-one (81) square feet for landings used for commercial properties or public open-space recreational properties.

- d. Limited pruning of trees limbs to afford a view of the watercourse from the principal dwelling unit or dwelling site shall be permitted and shall be performed in conformance with good nursery and landscape practices. The complete removal of trees or intensive vegetation clearing to afford a view of the watercourse shall not be permitted.
- e. The screening of structures, vehicles or other facilities as viewed from the watercourse, assuming summer leaf-on conditions, is not substantially reduced.
- f. Along rivers, existing shading of water surfaces is preserved.
- g. The above provisions are not applicable to the removal of trees, limbs or branches that are dead, diseased, or pose safety hazards.

6) Limited Disturbance Zone Setback Requirements. All property within the limited disturbance zone setback shall conform to the following regulations:

- a) No permanent structures shall be allowed except the following:
 - 1. Stairways, lifts, and landings.
 - 2. Roads, bridges, trails, storm drainage, stormwater management facilities, and utilities are permitted within the minimal disturbance zone provided that an alternatives analysis has clearly demonstrated that no other feasible alternative exists and that minimal disturbance will take place. These structures shall be located, designed, constructed and maintained to provide maximum erosion protection, to have the least adverse effects on wildlife, aquatic life and their habitats and to maintain hydrologic processes and water quality. Following any disturbance, the impacted area shall be restored.
 - 3. Bike paths, walking trails, or other multi-use paths.
 - 4. One accessory building not to exceed one hundred and twenty (120) square feet.
- b) No additional fill shall be allowed.
- c) No grading shall be allowed, except grading for bank restoration in areas experiencing bank slumping.
- d) On-site septic systems and drain fields shall not be allowed.
- e) Irrigation systems shall not be allowed.

(f) Vegetative Buffer Requirements.

- 1) Purpose. A vegetative buffer is a strip of undisturbed native vegetation, either original or reestablished, that borders streams, rivers, ponds and lakes, wetlands, and seeps. These vegetative buffer areas filter excess sediment, provide flood protection, reduce storm runoff velocities, protect channel bank areas from scour and erosion, stabilize riverbanks and provide shade to cool adjacent water.
- 2) A vegetative buffer shall be required along all blue line perennial watercourses and wetlands as identified on the most recent version of a 1:100,000 or 1:24,000 USGS quadrangle map based on the following requirements.
 - a) In areas where a floodway profile has been computed as part of an approved flood study, the buffer zone shall be the width of the floodway plus at least fifty (50) feet perpendicular from the edge of the floodway on each side of the waterway.
 - b) In areas where a floodway profile has not been computed as part of an approved flood study, the buffer zone shall be at least fifty (50) feet perpendicular from the top of bank on each side of the waterway.
 - c) When a delineated wetland extends beyond the edge of the required buffer zone width, the buffer zone shall be adjusted so that the buffer zone consists of the extent of the delineated wetland plus twenty five (25) feet extending perpendicular beyond the wetland edge.
 - d) When a vegetative buffer is established parallel to contour lines along the watercourse and at increased widths for areas of steeper slopes, the minimum required width may be reduced in accordance with the following table:

Buffer Reduction Table	
Percent Slope	Width of Buffer
0%-2%	Subtract 15 feet
3%-5%	Subtract 10 feet
6%-10%	Subtract 5 feet
11%-14%	No change

- 3) The vegetative buffer zone width shall be adjusted to meet the following requirements:
 - a) All vegetative buffer zone widths shall be adjusted if the following slopes are present within the vegetative buffer zone:

Slope-Width Table	
Percent Slope	Width of Buffer
15%-17%	Add 10 feet
18%-20%	Add 30 feet
21%-23%	Add 50 feet
24%-25%	Add 60 feet

- b) If the proposed or existing land use or activity involves the storage of hazardous substances or petroleum facilities, the buffer zone width shall also be adjusted to include an additional one hundred and fifty (150) feet plus any additional distance required based on the Slope-Width Table.
 - c) If the proposed or existing land use or activity involves animal feeding operations, the buffer zone width shall also be adjusted to include an additional two hundred and fifty (250) feet, plus any additional distance required based on the Slope-Width Table.
 - d) If the proposed or existing land use or activity involves solid waste landfills or junkyards, the buffer zone width shall also be adjusted to include an additional three hundred (300) feet, plus any additional distance required based on the Slope-Width Table.
- 4) Management of the vegetative buffer zone includes specific limitations on alteration of the natural conditions pursuant to the minimal and limited disturbance zone setbacks of this Ordinance.
 - 5) Stream banks and other areas within the vegetative buffer zone must be left in a stabilized condition upon completion of the development activities. The vegetative condition of the entire streamside vegetative buffer zone must be monitored and landscaping or stabilization performed to repair erosion, damaged or removed vegetation, bare ground, or other problems identified. Only native riparian vegetation may be used in conjunction with stabilization activities.
 - 6) All vegetative buffer zones must be protected during development activities. Prior to the initiation of development activities, ensure adequate visibility of the water quality buffer zones by staking and flagging. Vegetative buffer zones, except vegetative buffer zones that are completely within the limited or minimal disturbance zone setbacks, shall be surveyed and iron pins set in the ground on side lots lines.
- (g) Erosion and Sedimentation Requirements.
- 1) Purpose. In order to minimize erosion and sedimentation, certain requirements shall apply to all sites disturbing one or more acres of land by grading or excavation. The following standards are intended to ensure conformance with requirements established by the ND Department of Environmental Quality.
 - 2) No changes shall be made in the contour of the land; no grading, excavating, removal, or destruction of topsoil, trees, or other vegetative cover of the land shall be commenced within a proposed subdivision tract until such time that a plan for minimizing erosion and sedimentation control has been reviewed by the ~~Planning Commission~~ and the County Engineer.
 - 3) The following measures are effective in minimizing erosion and sedimentation and shall be included where applicable in the control plan using the ND Department of Transportation Erosion and Sediment Control Handbook, as it presently exists or may hereafter be amended.
 - a) Stripping of vegetation and grading shall be kept to a minimum;
 - b) Development plans shall preserve significant natural features, cut and fill operations shall be kept to a minimum and plans shall conform with the topography so as to create the least erosion potential and adequately handle the volume and velocity of surface water runoff.
 - c) Whenever feasible, natural vegetation shall be retained, protected and supplemented.

- d) The disturbed area and the duration of exposure shall be kept to a practical minimum.
 - e) Disturbed soils shall be stabilized by permanent vegetation and/or by engineered erosion control and drainage measures as soon as practicable in the development process.
 - f) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development.
 - g) Provisions shall be made to effectively accommodate the increased runoff caused by changed soil and surface conditions during and after development. Where necessary the rate of surface water runoff will be mechanically retarded.
 - h) Sediment in the runoff water shall be trapped until the disturbed area is stabilized by the use of debris basins, sediment basins, silt traps, or similar measures.
 - i) Basin and perimeter controls shall be established at the commencement of work on the site.
 - j) Storage piles shall be protected and stabilized within thirty (30) days.
 - k) Earth or paved interceptors and diversions shall be installed at the top of cut or fill slopes where there is a potential for erosive surface runoff.
- 4) In order to prevent pollution of any watercourse and to reduce erosion of soil, sediment control devices shall be installed prior to any grading, filling, or excavation. Such devices shall be designed to retain sediment on the site or flowing adjacent to the site.
 - 5) Within thirty (30) days after completion of grading, all surfaces disturbed by vegetation removal, grading, haul roads, or other construction activity that alters natural vegetative cover, are to be revegetated to control erosion, unless covered with impervious or other improved surfaces authorized by approved plans. Erosion controls may include any combination of approved engineering or vegetative measures using the North Dakota Department of Transportation (NDDOT) Erosion and Sediment Control Handbook, as it presently exists or may hereafter be amended.
 - 6) Within thirty (30) days after completion of grading, all surfaces disturbed by vegetation removal, grading, haul roads, or other construction activity that alters natural vegetative cover, are to be revegetated to control erosion, unless covered with impervious or other improved surfaces authorized by approved plans. Erosion controls may include any combination of approved engineering or vegetative measures using the North Dakota Department of Transportation (NDDOT) Erosion and Sediment Control Handbook, as it presently exists or may hereafter be amended.