

CASS COUNTY PLANNING COMMISSION AGENDA

Thursday, March 24, 2022 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 January 27, 2022

E. Public Hearing Items

F. New Business

Information/Update – Subdivision Ordinance

- Variances (pages 8-9)
- Farm Definition (page 18)
- Exemptions (pages 26-27)
- Deed Restrictions (pages 38-40)

G. Old Business

H. Adjournment

CASS COUNTY ORDINANCE NOTES REGARDING VARIANCES – 3-17-2022

NDCC 11-33.2-08. Board may adjust enforcement of resolution. [COUNTY SUBDIVISION REGULATION]

The board of county commissioners is authorized to adjust the application or enforcement of any provision of a resolution hereunder 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 general purposes of this chapter.

NDCC 2-04-07. Permits and variances. [AIRPORT ZONING]

Variances. Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use that person's property in violation of airport zoning regulations adopted under this chapter may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances must be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and this chapter; provided, that any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.

NDCC 40-47-04 [CITY ZONING]

3. The governing body of a city, a city zoning commission, and a board of adjustment shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the governing body, commission, or board.

- The term “variance” is not often used by the NDCC in the context of platting or zoning
- The NDCC law pertaining to subdivision regulations offers a functional basis for “variances” without using the term. **(11-33.2-08)**
- **11-33.2-08** names the board of county commissioners as the body to grant a variance and it specifies grounds for it:
 - Great practical difficulties
 - Unnecessary hardship
 - Injustice
 - Not contrary to the public interest
 - Not contrary to the general purposes of the chapter authorizing subdivision control
- **11-33.2-08** doesn't specify procedure, but a general principle of land use law is that the process used to establish an ordinance is the process needed to amend it.
- Any decision pertaining to property should have procedures to protect due process rights.
- Therefore, process logically should include:
 - Means to apply for a variance
 - Adequate notice of meeting for consideration of application
 - Opportunity to be heard at the meeting
 - Right to present evidence to make your case

- Prompt decision making
 - Record of the proceedings
 - Written decision based on the record with reasons and findings of fact
- While the details for procedure may not be spelled out in great detail, each application should be treated the same as the others. Writing out the procedure helps ensure that fairness.
- The draft procedures for variances are lengthy, and involve two hearings (one at the planning commission and one at the board of county commissioners meetings). Is it legal to only hold the hearing at the planning commission meeting and have the Board of County Commissioners agree or disagree with the planning commission recommendation.
- The draft ordinance establishes criteria which must be considered for approval of a variance. The NDCC doesn't spell out this kind of detail. Is there any legal reason why the ordinance cannot establish criteria for approval?
- What is the minimum amount of notice that should be used for variances? Does it need to be all property owners within a mile as the draft ordinance establishes? Could it be just to the applicant?

CASS COUNTY ORDINANCE NOTES REGARDING FARM DEFINITION – 3-17-2022

NDCC 11-33-02.1

"Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:

- (1) The production of timber or forest products; or
- (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.

NDCC 10-06.1-01

"Farming or ranching" means cultivating land for production of agricultural crops or livestock, or the raising or producing of livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit or horticultural products. It does not include production of timber or forest products, the growing or processing of marijuana under chapter 19-24.1, or a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services.

NDCC 42-04-01

"agricultural operation" means the science and art of producing plants and animals useful to people, by a corporation or a limited liability company as allowed under chapter 10-06.1, or by a corporation or limited liability company, a partnership, or a proprietorship, and includes the preparation of these products for people's use and the disposal of these products by marketing or other means. The term includes livestock auction markets and horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products, and farm production.

NDCC 57-02-01 GENERAL PROPERTY ASSESSMENT

"agricultural property" means platted or unplatted lands used for raising agricultural crops or grazing farm animals, except lands platted and assessed as agricultural property prior to March 30, 1981, shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals. Agricultural property includes land on which a greenhouse or other building is located if the land is used for a nursery or other purpose associated with the operation of the greenhouse. The time limitations contained in this section may not be construed to prevent property that was assessed as other than agricultural property from being assessed as agricultural property if the property otherwise qualifies under this subsection.

a. Property platted on or after March 30, 1981, is not agricultural property when any four of the following conditions exist:

- (1) The land is platted by the owner.
- (2) Public improvements, including sewer, water, or streets, are in place.
- (3) Topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops or graze farm animals.
- (4) Property is zoned other than agricultural.
- (5) Property has assumed an urban atmosphere because of adjacent residential or commercial development on three or more sides.
- (6) The parcel is less than ten acres [4.05 hectares] and not contiguous to agricultural property.

(7) The property sells for more than four times the county average true and full agricultural value.

b. Land that was assessed as agricultural property at the time the land was put to use for extraction of oil, natural gas, or subsurface minerals as defined in section 38-12-01 must continue to be assessed as agricultural property if the remainder of the surface owner's parcel of property on which the subsurface mineral activity is occurring continues to qualify for assessment as agricultural property under this subsection.

NDCC 47-10.1-01 AGRICULTURAL LAND OWNERSHIP BY ALIENS

"Agricultural land" means land capable of use in the production of agricultural crops, livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit and other horticultural products but does not include any land zoned by a local governmental unit for a use other than, and nonconforming with, agricultural use, but does not include any oil, gas, coal, or other minerals underlying the land, any interest in minerals, separate from the surface, whether acquired by lease or otherwise, or any easements or tracts of land acquired in connection with the extraction, refining, processing, or transportation of minerals.

"Interest in agricultural land" includes any leasehold interest.

NDCC 36-11-01.1. Livestock - Definition. As used in this chapter, "livestock" includes bison, cattle, goats, horses, mules, sheep, and swine.

NDCC 61-16.2-10 FLOODPLAIN MANAGEMENT

This chapter shall not apply to the following actions or construction, as long as the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained, and the cumulative effect of any such action or construction will not increase the water surface elevation of the base flood more than one foot [30.48 centimeters] at any point:

1. Ring dikes around individual farmsteads which are not constructed with tiebacks to existing roadways or dikes. For the purposes of this section, "ring dike" means an embankment constructed of earth or other suitable materials for purposes of enclosing a farmstead consisting of a farm dwelling and associated farm buildings.

NDCC 57-02-08 GENERAL PROPERTY ASSESSMENT

All property described in this section to the extent herein limited shall be exempt from taxation:

15.

a. All farm structures and improvements located on agricultural lands...

(1) This subsection must be construed to exempt farm buildings and improvements only, and may not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence.

(2) "Farm buildings and improvements" includes a greenhouse or other building used primarily for the growing of horticultural or nursery products from seed, cuttings, or roots, if not used on more than an occasional basis for a showroom for the retail sale of horticultural or nursery products. A greenhouse or building used primarily for display and sale of grown horticultural or nursery products is not a farm building or improvement.

(3) Any structure or improvement used primarily in connection with a retail or wholesale business other than farming, any structure or improvement located on platted land within the corporate limits of a city, any structure or improvement used by a manufacturing facility as defined in [section 19-24.1-01](#) , or any structure or improvement located on railroad operating property subject to assessment under chapter 57-05 is not exempt under this subsection. For purposes of this paragraph, "business other than farming" includes processing to produce a value-added physical or chemical change in an agricultural commodity beyond the ordinary handling of that commodity by a farmer prior to sale.

(4) The following factors may not be considered in application of the exemption under this subsection:

- (a) Whether the farmer grows or purchases feed for animals raised on the farm.
- (b) Whether animals being raised on the farm are owned by the farmer.
- (c) Whether the farm's replacement animals are produced on the farm.
- (d) Whether the farmer is engaged in contract feeding of animals on the farm.

b. It is the intent of the legislative assembly that this exemption as applied to a residence must be strictly construed and interpreted to exempt only a residence that is situated on a farm and which is occupied or used by a person who is a farmer and that the exemption may not be applied to property which is occupied or used by a person who is not a farmer. For purposes of this subdivision: For the purposes of this subdivision:

(1) "Farm" means a single tract or contiguous tracts of agricultural land containing a minimum of ten acres [4.05 hectares] and for which the farmer, actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, has received annual net income from farming activities which is fifty percent or more of annual net income, including net income of a spouse if married, during any of the three preceding calendar years.

(2) "Farmer" means an individual who normally devotes the major portion of time to the activities of producing products of the soil, with the exception of marijuana grown under chapter 19-24.1; poultry; livestock; or dairy farming in such products' unmanufactured state and has received annual net income from farming activities which is fifty percent or more of annual net income, including net income of a spouse if married, during any of the three preceding calendar years. For purposes of this paragraph, "farmer" includes a:

(a) "Beginning farmer", which means an individual who has begun occupancy and operation of a farm within the three preceding calendar years; who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products'

unmanufactured state; and who does not have a history of farm income from farm operation for each of the three preceding calendar years.

(b) "Retired farmer", which means an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which the person lives and for which the exemption is claimed.

(c) "Surviving spouse of a farmer", which means the surviving spouse of an individual who is deceased, who at the time of death owned and occupied as a farmer the residence in which the surviving spouse lives and for which the exemption is claimed. The exemption under this subparagraph expires at the end of the fifth taxable year after the taxable year of death of an individual who at the time of death was an active farmer. The exemption under this subparagraph applies for as long as the residence is continuously occupied by the surviving spouse of an individual who at the time of death was a retired farmer.

DUNN COUNTY

Farm - A zoned area of Dunn County containing at least forty (40) acres that is used for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include the production of timber or forest products, nor does the term include a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services. Concentrated feeding operations which are operated as a separate pursuit shall be deemed concentrated feeding operations and shall not be construed as farming or incidental to a farming operation.

WARD COUNTY

Agricultural Operation - the science and art of producing plants and animals useful to people, by a corporation or a limited liability company as allowed under North Dakota Century Code §10-06.1, or by a corporation or limited liability company, a partnership, or a proprietorship, and includes the preparation of these products for people's use and the disposal of these products by marketing or other means. The term includes livestock auction markets and horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products, and farm production. It also includes agritourism activities.

Agritourism Activity - any activity, including farming and ranching activities, or any historic, cultural, or natural attraction, that is viewed or enjoyed by members of the general public, for educational, recreational, or entertainment purposes, regardless of whether the member of the public pays to participate in the activity or to view or enjoy the attraction.

Farm - Is a zoned area of Ward County containing at least forty (40) acres, which is used for the growing of the usual farm products such as vegetables, fruit trees, and grain, and their storage on the area, as well as for raising thereon the usual farm poultry and farm animals, such as horses, cattle, sheep, and swine. The term farming includes the operating of such an area for one or more of the above uses, including dairy farms with the necessary accessory uses for treating or storing the produce; provided, however, that the operation of any such accessory uses shall be secondary to that of the normal farming activities, and provided further that farming does not include the commercial feeding of garbage or offal to swine or other animals.

Farming or Ranching - cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include (1) the production of timber or forest products; or (2) the provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.

Usage of “Farm” in Draft Cass Ordinance:

12. 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.

25. 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.

131. 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:

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.

[platting exemptions]

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

(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:

Proposed Definition:

Farm – land used primarily for the production of crops (excluding marijuana, but including vegetables and fruit) or livestock or poultry or milk, including residences for farmers and farm workers, and including buildings used primarily for farming or ranching operations.

CASS COUNTY ORDINANCE NOTES REGARDING EXEMPTIONS FROM PLATTING REVIEW REQUIREMENTS 3-17-2022

The basis for exemptions is the rationale that the NDCC authorizes Counties to establish requirements for the review and approval of all subdivisions as subdivisions are defined by the NDCC, but that Counties can choose to limit the scope of their regulation to less than all subdivisions as defined under the NDCC.

Four potential exemptions are related to agricultural land or farming:

(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.

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

(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.

(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.

The basic intent of these four exemptions are as follows:

- C allows splitting land used for agriculture to be split into smaller tracts as long as all parcels are at least ten acres in size and there is no need to for platting because not roads or easements are being created.
- F allows a tract of land to be split out and transferred to an abutting property-owner if the land is used for agriculture
- G is similar to C in that it allows land being used for agriculture to be split as long as the two resulting parcels will be used for agriculture but it adds more restrictions:
 - Only if the parent parcel is at least a quarter quarter (roughly 40 acres)
 - Only if in a zoning district that primarily for agricultural activity
 - Only if the parcels can be described by the aliquot system
 - Only if such a split had not previously occurred with the parent parcel
 - There will be no improvements to the land that are not related to agricultural use
- H allows a parcel in agricultural use that has a farmstead to on it to split out a part of the parcel that contains the farmstead from the rest of the parcel when certain restrictions can be met:
 - Only if the parent parcel is 40 acres in size (it should just say only if it's a quarter quarter)
 - Only if in a zoning district that primarily for agricultural activity
 - Only if the parcels can be described by the aliquot system
 - Only if such a split had not previously occurred with the parent parcel
 - There is no need for platting because no roads, easements or public spaces will be established

Key Observations:

1. The fundamental idea behind these exemptions seems to be to minimize complications and costs for agriculture.
2. A critical difference between C and G is that C could allow parcels that are not part of the aliquot system to be created. This suggests a greater level of description and perhaps a survey.
3. C could involve dividing larger tracts into smaller tracts more than once and still have all parcels at least ten acres in size. What would the point of that be? Has it ever happened?
4. F clearly is not a division based on the aliquot system and would likely require a greater level of description and perhaps a survey. Has it ever happened?
5. G and H intend that only a single division of land occurs without going through the plat approval process.

6. Keep in mind that if you applied G to a particular quarter quarter, you could not apply H to it because that quarter quarter would already have been split by an exemption
7. The difficulty with each of these is having a system for tracking exempt divisions of land.
8. Using divisions based on the aliquot system seem like a good way to keep the description simple and avoid surveying. Once you have to do surveying or create metes and bounds descriptions, the potential for error seems likely to increase.
9. I lean towards combining C & G, keeping G and H, but reviewing the language to ensure there is no opportunity for a second exempt land division for any of them.

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 (NDCC) §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 NDCC §40-47-01.1.
- (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 §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
 3. Make determinations regarding the interpretation of this Ordinance when it becomes necessary
 4. Carry out such activities as may be necessary to assist in the enforcement of this Ordinance
 5. Conduct such other business as may be authorized or directed by the Board of County Commissioners or the Planning Commission

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

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 Finance Director 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. **If an appeals fee is established by the Board of County Commissioners, the letter of appeal shall be accompanied by the fee so established.**

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 Finance Director shall transmit the letter of appeal to the Board of Adjustment.
5. The Finance Director 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 Finance Director 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 5,280 feet of the subject property at least 15 days prior to the said hearing. Where the subject property abuts a right-of-way, the 5,280-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.

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~~ **After the County Planner determines that the application is complete**, 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 5,280 feet of the subject property at least 15 days prior to the said hearing. Where the subject property abuts a right-of-way, the 5,280-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 5,280 feet of the subject property at least 15 days prior to the said hearing. Where the subject property abuts a right-of-way, the 5,280-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, 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~~ **After the County Planner determines that the application is complete**, the completed application shall be transmitted to the Planning Commission for their review and evaluation.
 6. ~~After acceptance by the County Planner~~ **After the County Planner determines that the application is complete**, 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 Finance Director.
 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 Finance Director) 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 Finance Director shall file a certified copy of the adopted amendment with the County Recorder. Immediately after the adoption of the amendment with any changes, the Finance Director 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 Finance Director. 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 NDCC §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 NDCC. 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 5,280 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~~ setback, size, and area requirements in the district where it is located, as well as the applicable floodplain regulations.
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. Access. A way or means of approach to provide physical entrance to a property.
10. 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.
11. AADT. Annual average daily traffic count.
12. 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.
13. Agriculture. See Agricultural Land.
14. Alley. A public right-of-way which affords a secondary means of access to abutting property (see also Street).
15. 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.
16. 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.
17. Applicant. A developer and/or landowner, as hereinafter defined, including heirs, successors, and assigns, who has filed an application for subdivision.
 18. 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.
 19. 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.
 20. **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.
 21. Block. A tract of land comprised of one or more lots which is entirely bounded by streets, public parks, cemeteries, railroads and/or watercourses.
 22. Board of County Commissioners. The Board of County Commissioners of Cass County.
 23. Borrow Pit. A pit or hole that has been excavated to provide earth that can be used as fill in another area.
 24. 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.
 25. 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.
 26. 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.
 27. Capacity. The maximum number of vehicles that can be expected to pass over a given section of roadway or on a specific lane.
 28. Cass County Planning Commission. The Cass County Planning Commission or, when authorized, the Planning Commission's staff.
 29. Cass County Subdivision Ordinance. See Ordinance.
 30. 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.
 31. Clear Sight Triangle. An area of unobstructed vision at a street intersection defined by a line of sight between points at centerlines.

32. 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.
33. 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.
34. County. The County of Cass, North Dakota.
35. County Commission. See Board of County Commissioners.
36. County Planning Commission. See Cass County Planning Commission.
37. Dedication. The deliberate appropriation of land by its owner for general public use.
38. Deed. A written instrument whereby an estate in real property is conveyed.
39. **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.
40. Density. The number of buildable lots permitted per acre, exclusive of street rights-of-way.
41. 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.
42. Detention Basin. A reservoir which temporarily contains stormwater runoff and releases it gradually into a watercourse or stormwater facility.
43. 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.
61. Gross Floor Area. The total floor area of a building.
62. 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).
63. 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.
64. 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.
65. **Horizon Year**. The anticipated opening year of a development, assuming full buildout and occupancy.

66. Impervious Surface. A ground cover such as cement or asphalt through which water cannot penetrate.
67. **Improvement Construction Assurance**. The procedures, specified in Article V, by which a developer assures the construction of improvements required by this Ordinance.
68. 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.
69. **Influence Area**. An area which contains 80% or more of the trips that will be attracted to a development site.
70. Intensive Vegetation Clearing. The complete removal of trees or shrubs in a contiguous patch, strip, row, or block.
71. Land Development. The subdivision of land.
72. Landscape Architect. A landscape architect registered by the State of North Dakota
73. Land Use. A description of how land is occupied or utilized.
74. **Level-of-Service**. A measure of the effect of traffic on the capacity of a road.
75. Lot. Any separately described area of land capable of having title conveyed.
76. 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 stormwater management facility.
77. Lot, Buildable. A lot that meets zoning dimensional requirements in the district where it is located.
78. 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.
79. Lot Frontage. That side of a lot abutting on the street right-of-way and regarded as the front of the lot.
80. 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.
81. Lot Line Marker. A metal plate or pin used to identify lot line intersections.
82. Lot of Record. A lot that has a clear description stemming from a document on file at the County Recorder's office.
83. Lot, Platted. Any recorded lot established by County Commission approval following a subdivision approval process.
84. Lot Width. The average distance between the side lot lines of a lot, measured parallel to the right-of-way.
85. Major Subdivisions. See Subdivision.
86. **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.
87. Minor Subdivision. See Subdivision.
88. 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.
89. 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.
90. 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.
 91. Monument. A concrete or stone monument used to identify street line intersections.
 92. 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.
 93. Municipality. Any city, township, county, or other similar general-purpose unit of government.
 94. **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.
 95. Off-Street Parking. Parking spaces provided outside of the right-of-way of a street or highway.
 96. On-Street Parking. Parking spaces provided within the right-of-way of a street or highway.
 97. Ordinance. The Cass County Subdivision Ordinance, as subsequently amended.
 98. Parcel. See Lot.
 99. **Peak Hour**. The hour during which the heaviest volume of traffic occurs on a road.
 100. Pedestrian Way. A right-of-way, publicly or privately owned, intended for human movement by walking or bicycling.
 101. **Personal Services**. Establishments primarily engaged in providing services involving the care of a person per a person's personal goods or apparel. It includes uses such as barber shops, beauty salons, shoe repair shops and dry cleaners.
 102. **Pervious Surface**. Ground cover through which water can penetrate at a rate comparable to that of water through undisturbed soils.
Plan. See Plat.
 103. **Planning Commission**. See Cass County Planning Commission.
 104. 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).
 105. Public Improvement. Any improvement or other facility for which a governmental unit may ultimately assume responsibility for maintenance and operation.
 106. Public Meeting. A forum held pursuant to NDCC §44-04-19 and §44-04-20
 107. 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.

108. 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**.
109. Registered Engineer. An individual licensed and registered as a professional engineer under the laws of the state of North Dakota.
110. Registered Land Surveyor. An individual licensed and registered as a professional land surveyor under the laws of the state of North Dakota.
111. Restrictive Covenant. A restriction on the use of land usually set forth in the deed.
112. Retention Basin. A reservoir designed to retain stormwater runoff with its primary release of water being through the infiltration of said water into the ground.
113. Reverse Frontage Lot. A lot with front and rear street frontage, where vehicular access is prohibited to and from the higher intensity street.
114. 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.
115. Road. The surface of a street, drive, or alley available for vehicular traffic. (See also street)
116. 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.
117. Sedimentation. The process by which soil or other surface material is accumulated or deposited by wind, water, or gravity.
118. 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.
119. Service Street. See Street, Alley (Service Street).
120. Setback Line. See Building Setback Line.
121. **Shared Parking**. When parking spaces are shared among different structures or uses or among mixed uses and can include properties with different owners.
122. **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.
123. **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.
124. 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.
125. Site. The existing lot of record proposed for a subdivision.
126. 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.].
127. Staff. The Cass County Planning and Highway Department staff.
128. 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.
129. Stormwater 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 stormwater runoff.
130. Stormwater 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 stormwater management program.
131. 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.
132. **Street Line.** The right-of-way line of any given street.
133. Street, private. A street not accepted for dedication by a municipality.
134. Structure. Any man-made object having an ascertainable stationary location on or in land or water, whether or not affixed to the land.
135. 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 stormwater 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.

136. Subject Tract. The site proposed for a subdivision.
137. **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.
138. Surveyor. See Registered Land Surveyor.
139. 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.
140. Tract. See Lot.
141. Trip. A single or one-directional vehicle movement.
142. **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.
143. 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 or wetlands or waterways, or sending properties restricted from development because of Sections 307, 308 and 309 of this Ordinance.
144. Variance. A process for alleviating specific requirements imposed by this Ordinance and provided under Sections 305 and 904 of this Ordinance.
145. 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.
146. Watershed. All land and water within the confines of a drainage basin.
147. 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 organized township or** any municipal boundary and outside the authority of 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, 11-09.1-05*
- (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 stormwater 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 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 scheduled 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 and 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 day 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 5.02 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 man-made 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 5.03 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)**

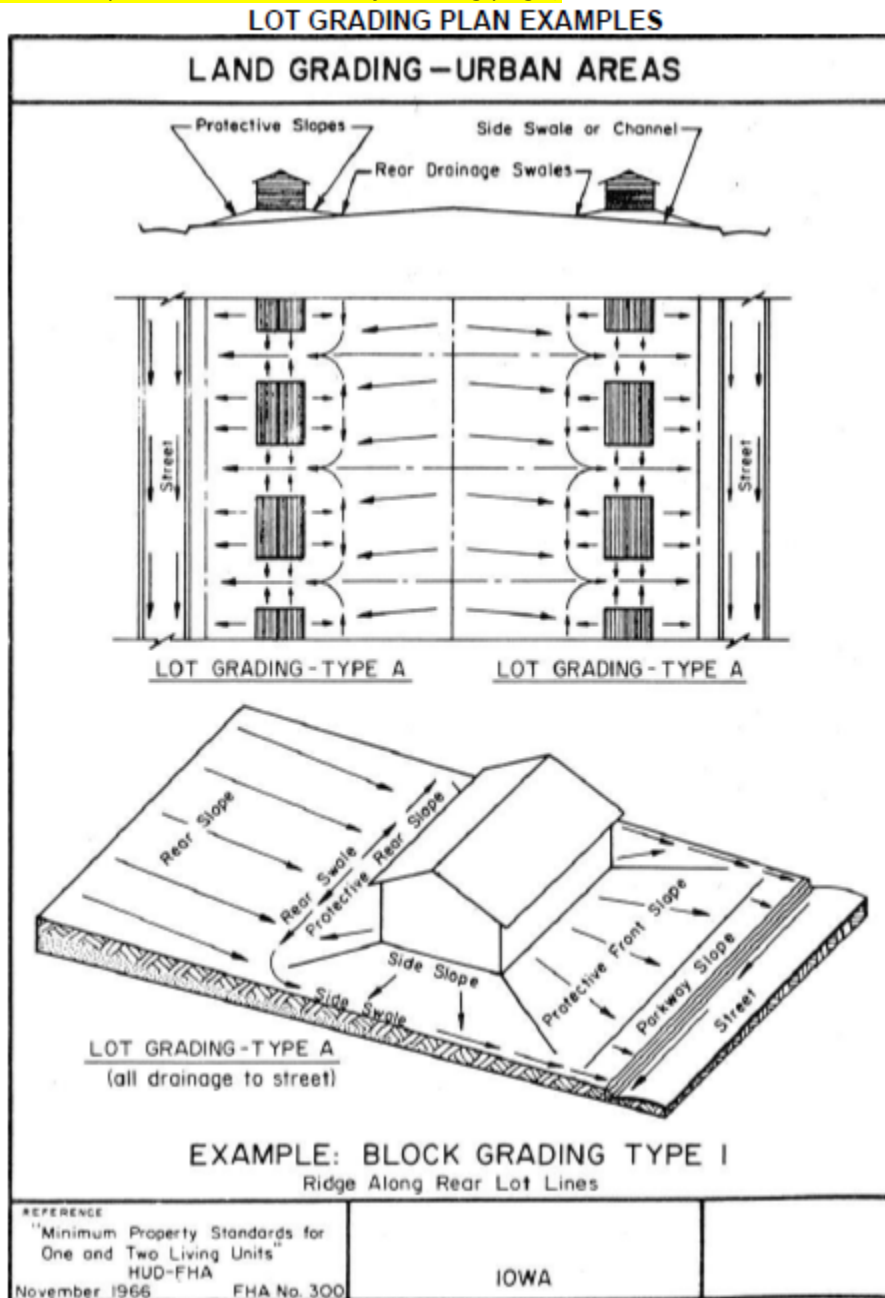
Figure X.

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	

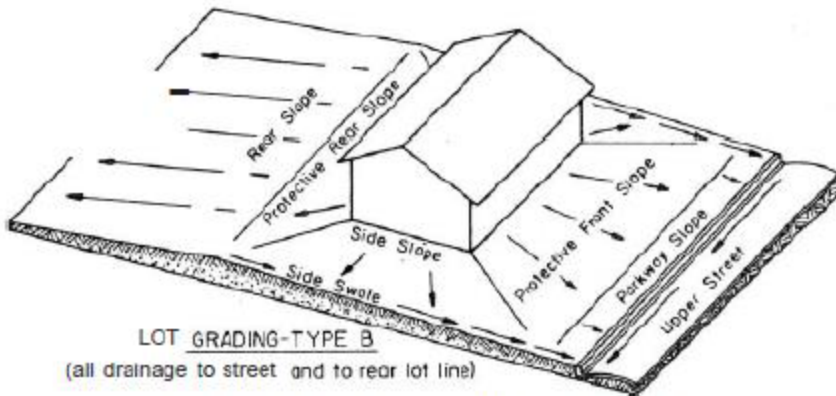
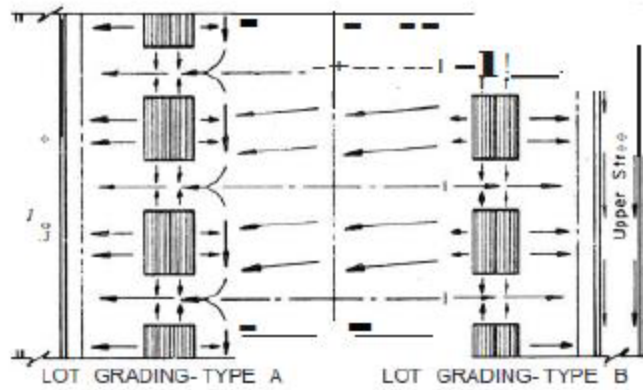
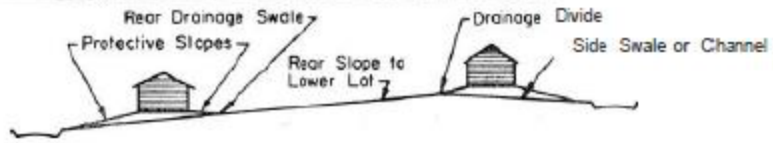
Section 5.04 Minor Subdivision Development Standards

- (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 stormwater conveyance pursuant to this Ordinance. 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 one 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 **(see examples below and on the following page).**



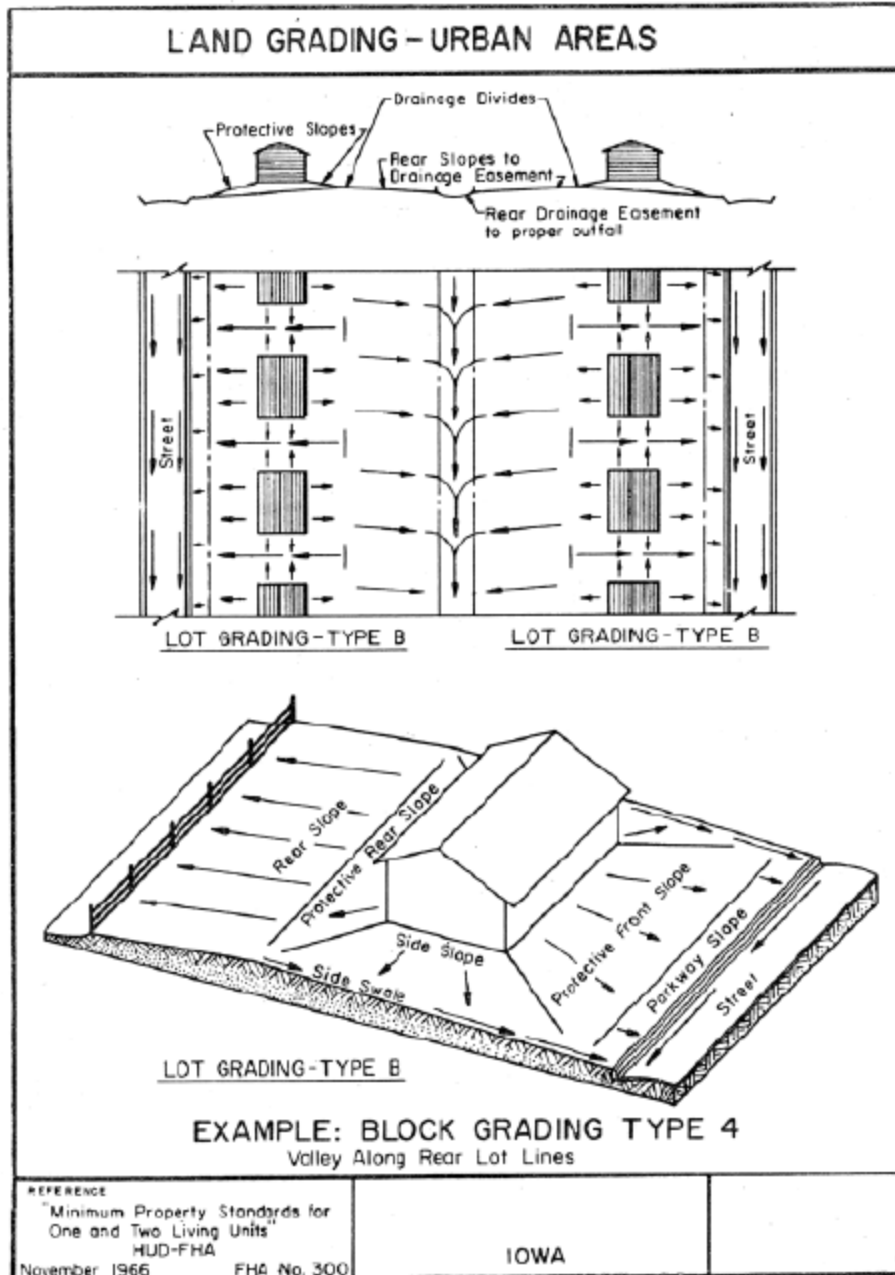
LAND GRADING - URBAN AREAS



LOT GRADING-TYPE B
(all drainage to street and to rear lot line)

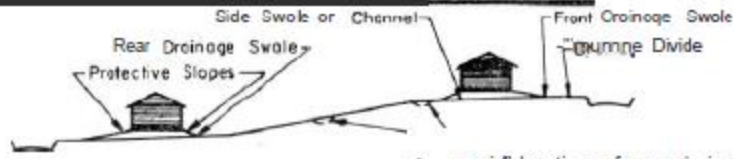
EXAMPLE: BLOCK GRADING TYPE 2 Gentle Cross Slope

REFERENCE "Minimum Property Standards for One and Two Living Units" HUD-FHA November 1966 FHA No. 300	IOWA	
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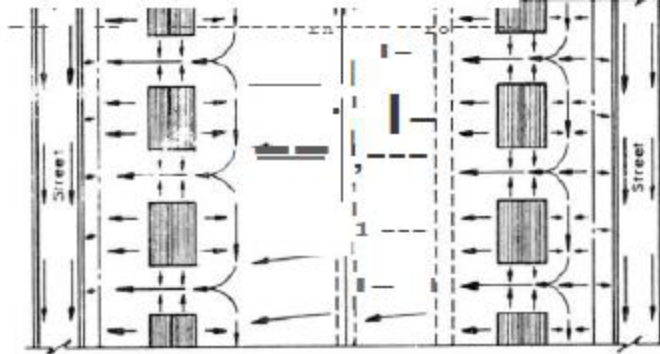


Source: Iowa Department of Soil Conservation, *Guidelines for Soil and Water Conservation in Urbanizing Areas*

LAND GRADING - URBAN AREAS

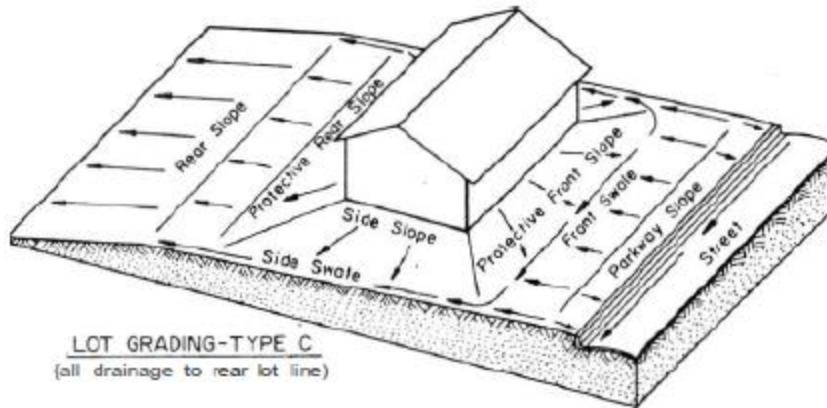


→.....on i-f locations of rear drainage easements to proper outfall



LOT GRADING -TYPE A

LOT GRADING -TYPE C



LOT GRADING -TYPE C
(all drainage to rear lot line)

EXAMPLE: BLOCK GRADING TYPE 3

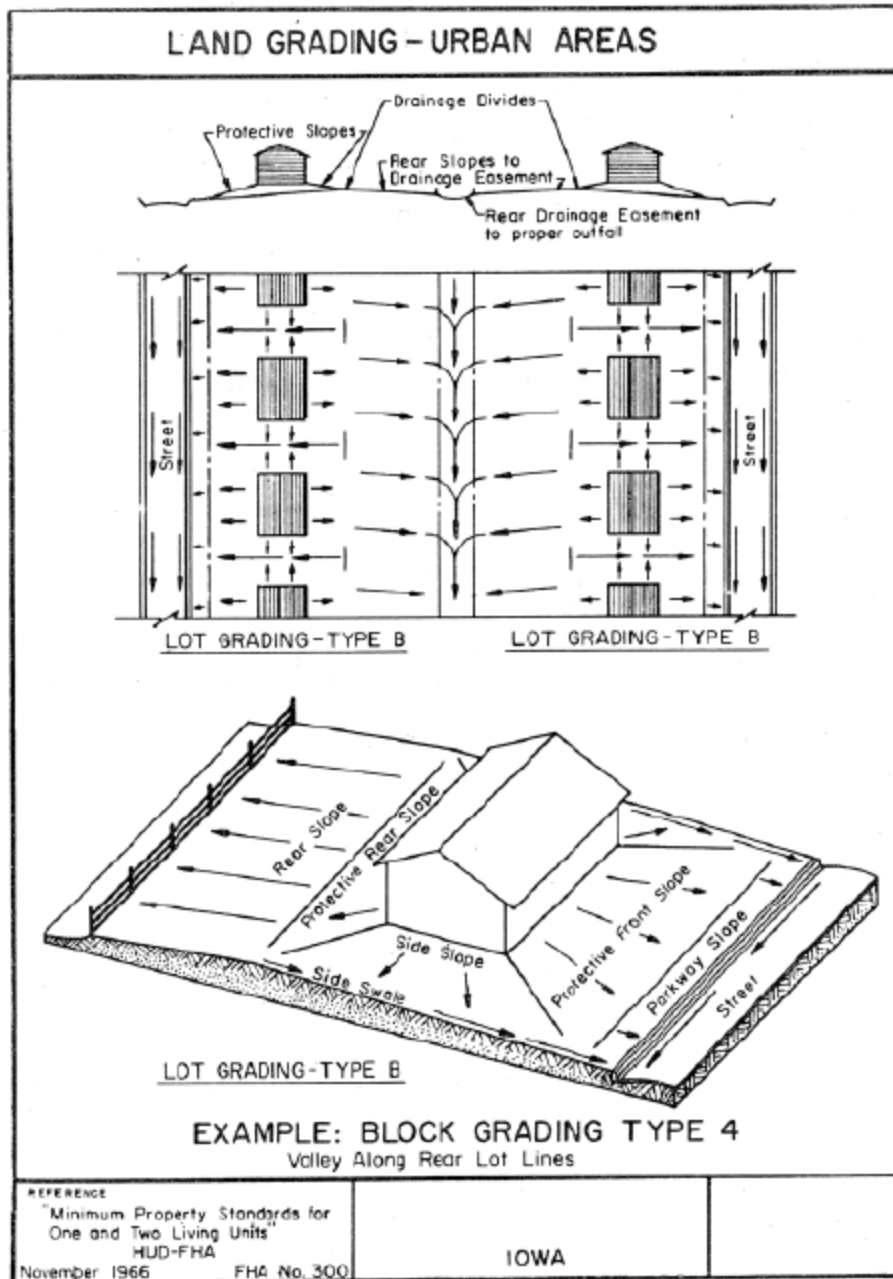
Steep Cross-Slope

REFERENCE

Minimum Property Standards for
One and Two Living Units
HUD-FHA
November 1966

FHA No. 300

IOWA



Source: Iowa Department of Soil Conservation, *Guidelines for Soil and Water Conservation in Urbanizing Areas*

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 floodplain 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 [2005 Cass County Comprehensive Plan](#) and supported in the [2018 Cass County Comprehensive Plan](#) 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 [or government lot \(40 acres\)](#).

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, stormwater facilities, street lights, street trees, street signs, sidewalks, bike paths and park dedications.

(e) Development Rights. Except as noted below, every quarter-quarter section or existing legally subdivided lot or "legal lot" as of [\(the effective date of Subdivision Ordinance #2006-1\)](#) is granted one (1) Development Right to create a buildable lot. Development Rights can be used, held or transferred to contiguous properties under common ownership. Development Rights may not be transferred if the land has any one of the following characteristics:

1. Land that has an existing dwelling, either residential or agricultural. In these situations, the Development Right has been used.
2. Land that has an existing commercial use or other non-agricultural use.
3. Land that is not under complete and common ownership.
4. Land that does not have a suitable building site due to a covenant, easement, conservation easement or deed restriction, unless and until such time as said covenant, easement or restriction is dissolved or rescinded.
5. Land not having a suitable building site due to natural features, such as but not limited to wetlands, floodplains, high water and steep slopes.
6. Land that does not have a conforming building site without a variance issued by the applicable township.
7. Land deemed as unbuildable based on the applicable townships ordinances and/or regulations. 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, stormwater facilities, street lights, street trees, street signs, sidewalks, bike paths and park dedications.

- (f) Development Rights Transferable. Development rights can be used to increase the density permitted on contiguous land under common ownership when platted to meet all applicable requirements of this Ordinance. The development right of a property may be transferred to another eligible property. The maximum number of development rights that can be transferred onto a quarter- quarter section or Legal Lot is eleven (11), therefore limiting each quarter-quarter section or Legal Lot to a maximum of twelve (12) buildable lots (i.e., one permitted existing buildable lot per quarter- quarter section or Legal Lot and up to eleven (11) additional transferred developable rights). Each development right that is transferred provides the receiving property with one additional buildable lot. In order to transfer a development right, the owner of the sending property must submit the following materials to the County Planner during the subdivision and platting process:
1. A copy of the Deed Restriction, as outlined in Section 309 of this Ordinance, expressing that a development right has been transferred to the proposed building site from a contiguous quarter-quarter section or Legal Lot under common ownership.
 2. A map showing the location of the proposed building site's quarter-quarter section or Legal Lot (the receiving property) and the quarter-quarter section or Legal Lot from which the development right was transferred from (the sending property) on a standard 8 ½ by 11 inch sheet of paper.
- (g) Deed Restrictions. The transfer of development rights as regulated in this Ordinance requires the sending property to be deed restricted, limiting future development on the sending property until such time as:
1. The deed restricted property is completely within the extraterritorial (ET) boundaries of an incorporated city of Cass County, or
 2. The deed restricted property is completely annexed by an incorporated city of Cass County, or
 3. The deed restricted property is platted as a major subdivision to be built to full urban design standards and the strictest requirements 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.

When one of these three circumstances exist the deed restriction on the land will be retired and the property will follow the necessary procedures for development of the applicable incorporated city.

The deed restricted property shall limit any further residences, subdivisions, or nonagricultural development on the sending property, and shall be on a form provided by the County Planner and shall include the following information:

1. Record Fee Owner(s) legal name
2. Legal description of the deed restricted property
3. Agreement description stating the following:
 - a. The land meets the criteria established by this Ordinance for sending properties
 - b. The legal description of the receiving property on the adjacent quarter-quarter section or legal lot
 - c. The described sending property cannot be developed by subdivision or construction of any further residences or nonagricultural structures or uses
 - d. Date and signature of Fee Owner(s)
 - e. Date and signature of Notary Public
 - f. Date and signature of County Engineer

(h) 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:
 - i. Stairways, lifts, and landings.
 - ii. 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.
 - iii. 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:

- i. Intensive vegetation clearing shall not be allowed.
- ii. Vegetation previously disturbed or disturbed during the construction of the development or dwellings shall provide native riparian vegetation cover.
- iii. Replacement of native riparian vegetation with non-native species shall not be allowed.
- iv. 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:
 - 1. 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.
 - 2. 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.
 - 3. The removal of vegetation shall be limited to an area less than forty-nine (49) square feet for stairway and lift 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.
 - 4. 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.
 - 5. The screening of structures, vehicles or other facilities as viewed from the watercourse, assuming summer leaf-on conditions, is not substantially reduced.
 - 6. Along rivers, existing shading of water surfaces is preserved.
 - 7. 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:
 - i. Stairways, lifts, and landings.
 - ii. 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.
 - iii. Bike paths, walking trails, or other multi-use paths.
 - iv. 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.

(i) **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.

(j) 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.