



MEMORANDUM

Highway Department

Jason, Benson, P.E.
County Engineer

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

Blaine Laaveg
Superintendent

TO: Cass County Board of Commissioners
FROM: Grace Puppe, Cass County Planner
DATE: April 4, 2023
SUBJECT: Agenda Topic for the April 17, 2023 Commission Meeting: K&S Johnson Subdivision Application

The Cass County Planning Commission reviewed the application of the proposed subdivision located in Maple River Township, Section 13 at a Public Hearing on March 23, 2023. The intended purpose of the subdivision is to get a 911 address assigned for a single resident farmstead on the parcel.

The 10.7 acre lot was sold through a Quit Claim Deed on March 1, 2023 from Jane M. Piper Revocable Living Trust to Sarah & Kirk Johnson. Maple River Township issued a building permit for the property on August 1, 2022. With that application for building permit a copy of the minor subdivision plat was attached. This plat was not submitted to the Cass County Planning Department at that time.

On February 14, 2023 a minor subdivision application was submitted to the County in request of a 911 address. As part of the subdivision requirements a deed restriction is necessary as the parcel is less than 40 acres. The applicant submitted a variance request from the deed restriction requirement.

During the Planning Commission meeting there was discussion about the differences between the County Subdivision ordinance and the township zoning ordinances and what each is used to regulate.

Upon roll call vote with all in favor, motion carried to **deny** the variance from the deed restriction requirement by the Planning Commission.

The Planning Commission is recommending **denial** of the proposed plat entitlement request and Maple River Township has verified that the proposed subdivision meets township

zoning requirements. Therefore, the Planning Commission recommendation is forwarded to the Cass County Board of Commissioners for action.

SUGGESTED MOTION:

To accept the findings and recommendations of the Planning Commission and staff and recommend **denial** of the Final Plat with the variance request, as the proposal **does not meet** the goals and objectives of the Cass County Comprehensive Plan, the Cass County Highway Access Plan, the Flood Damage Prevention Ordinance, the Cass County Subdivision Ordinance, and all other applicable regulations.

Section 2.05 Variance

(a) Variance May Be Granted

Certain circumstances may exist or arise wherein practical difficulties, unnecessary hardship, or injustice 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. An application for a variance may be submitted prior to submitting a subdivision application in order to determine the feasibility of a potential subdivision plat.
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. However, if a variance application separate from a subdivision application is approved the amount of the fee may be applied as partial payment of the subdivision application fee.
4. An application is not considered complete until such fee has been paid.
5. After the County Planner determines that the application is complete, the completed application shall be transmitted to the Planning Commission.
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 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 a complete vote by the Board of County Commissioners 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 one or more of the following three criteria are true:
 - a. Literal enforcement of this Ordinance will result in great practical difficulties,
 - b. Literal enforcement of this Ordinance will result in unnecessary hardship,
 - c. Literal enforcement of this Ordinance will result in injustice,and, that such action shall not be contrary to the public interest and shall not be contrary to the general purposes of NDCC §11-33.2.
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.



Cass County Planning Commission Staff Report

Entitlements Requested:	Minor Subdivision (1 Lot) of a part of the SW 1/4 of Section 13, Township 138 North, Range 52 West		
Title:	K&S Johnson Subdivision	Date:	02/27/2023
		Update:	04/10/2023
Location:	SW 1/4 of Section 13, Township 138 North, Range 52 West (Maple River Township)	Staff Contact:	Grace Puppe
Parcel Number:	52-0000-08757-040	Water District:	Maple River Water District
Owner(s)/Applicant:	Kirk Johnson	Engineer/Surveyor:	KLJ
Status:	Planning Commission Hearing: March 23, 2023 County Commission Hearing: April 17, 2023		

Existing Land Use	Proposed Land Use
Agriculture	Agriculture
Proposal	

The applicant is seeking approval of a minor subdivision entitled **K&S Johnson Subdivision** to plat a one (1) Lot subdivision of approximately 10 acres. According to the applicant, the subdivision is requested to get a 911 address assigned for a single resident farmstead on the parcel.

The proposed ownership and maintenance responsibility of the subdivision will be private. The subdivision will use a new 45th St SE access, ditches for storm sewer conveyance, rural water, and on-site septic systems for wastewater treatment.

Agency Comments	
County Engineer	No issues, owner should look to build in the SW portion of this lot to avoid flood issues along the Maple River.
Water Resource District	No comments were received prior to publishing the staff report.
Cass County Electric Cooperative	No comments were received prior to publishing the staff report.
Century Link	No comments were received prior to publishing the staff report.
Sprint	No comments were received prior to publishing the staff report.
AT&T	No comments were received prior to publishing the staff report.
Xcel Energy	No comments were received prior to publishing the staff report.
Otter Tail Power Company	No comments were received prior to publishing the staff report.

Magellan Pipeline Company	No comments were received prior to publishing the staff report.
NuStar Energy	No comments were received prior to publishing the staff report.
Cass Rural Water	No comments. The site has water service.
North Dakota Department of Transportation	No comments were received prior to publishing the staff report.
County Sanitarian	No issues.
Township Chairman	The proposed subdivision meets township zoning and floodplain requirements.
The City of Fargo	No comments were received prior to publishing the staff report.
The City of West Fargo	No comments were received prior to publishing the staff report.
Public Comment	No comments were received prior to publishing the staff report.

Staff Analysis

Land Use and Surrounding Uses

The subject property is bound by agricultural production land on the west. The Maple River borders the east of the property with Township Road 45th St SE to the south.

Floodzone

According to the FEMA Flood Map Service Center, this property is currently unmapped and not Special Hazard Flood Area has been identified. In addition, wetlands are present on the proposed subdivision Lot. The proposed Western Cas FIS map shows Special Hazard Flood Area Zone X and Zone A.

Land Development Rights

Section 5.04 (e) of the Cass County Subdivision Ordinance states that every quarter-quarter section is granted one (1) Development Right to create a buildable lot with a minimum of 40 acres. Because the lot subdivision proposal is less than 40 acres, a transfer of a development right is required along with a deed restriction.

Staff Recommendation

To accept the findings and recommendations of the Planning Commission and staff and recommend **denial** to the County Commission of the subdivision application with variance request as the proposal **does not meet** the goals and objectives of the Cass County Comprehensive Plan, the Cass County Highway Access Plan, the Flood Damage Prevention Ordinance, the Cass County Subdivision Ordinance and all other applicable regulations.

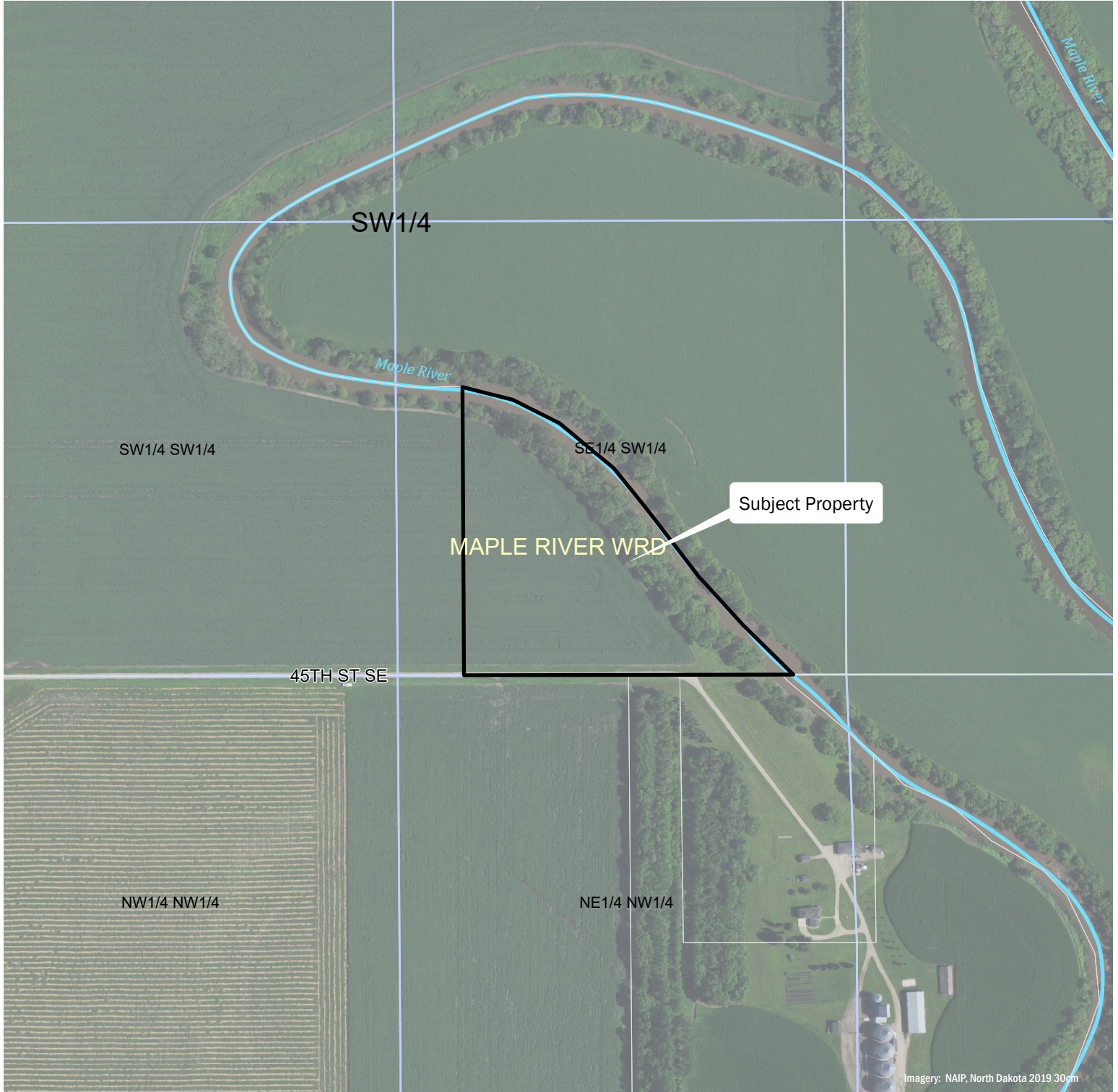
Attachments

1. Location Map
2. Plat Document
3. Variance Request
4. Township Building Permit Information

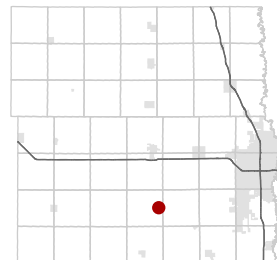
Minor Subdivision

K&S Johnson Subdivision

Maple River Twp, Section 13 - Township 138 North - Range 52 West



Cass County Planning Commission
March 23, 2023

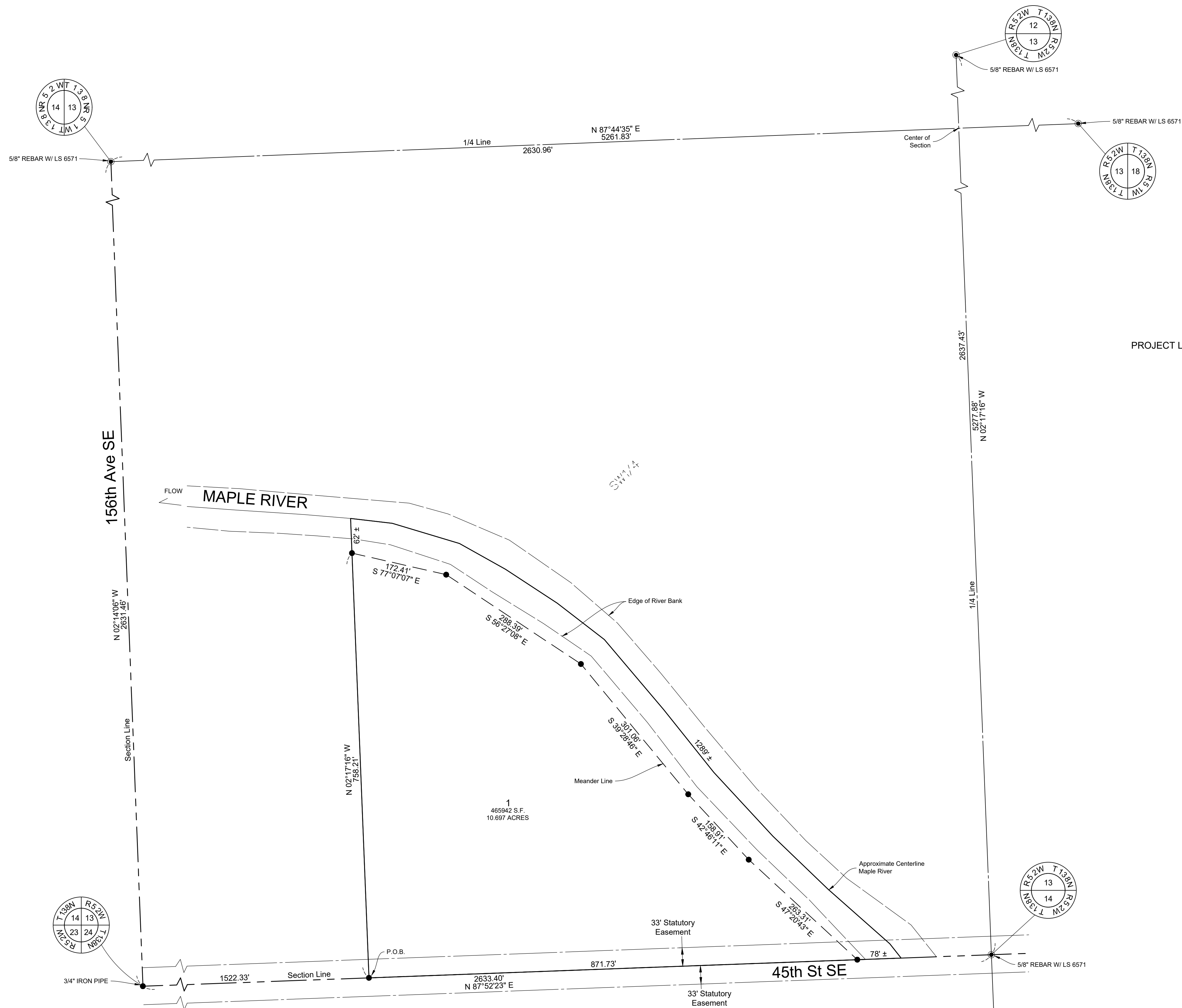


Maps and data are to be used for reference purposes only and Cass County, ND, is not responsible for any inaccuracies herein contained. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, use or misuse of the information herein provided.



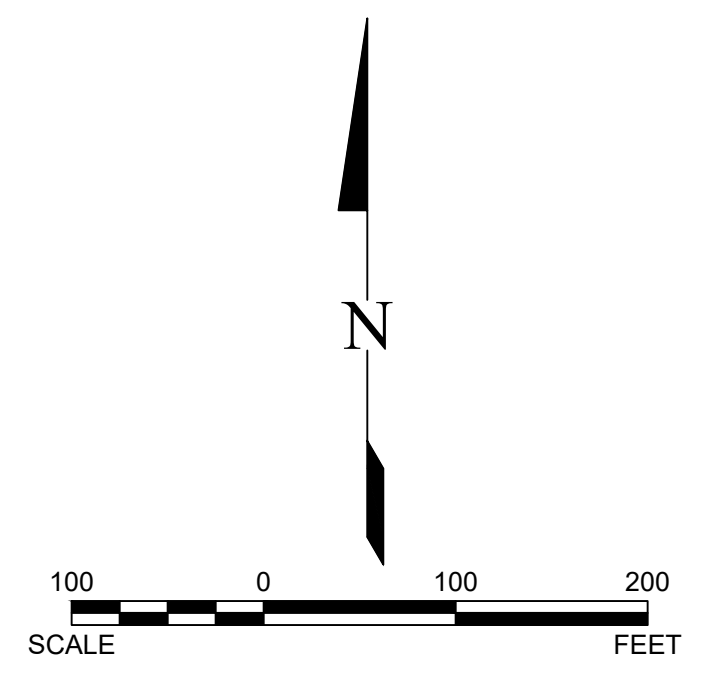
K & S JOHNSON SUBDIVISION

BEING A PLAT FOR MINOR SUBDIVISION OF PART OF THE SW1/4, SECTION 13, TOWNSHIP 138N, RANGE 52W, CASS COUNTY, NORTH DAKOTA.



LEGEND

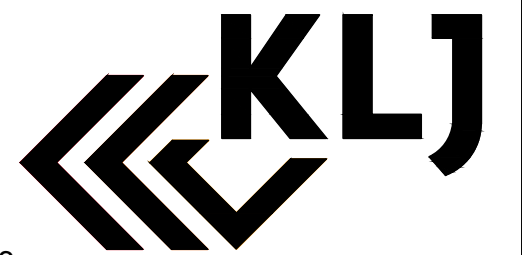
●	IRON MONUMENT FOUND - AS DESCRIBED
○	CALCULATED CORNER
—	SECTION LINE
- - -	1/4 LINE
— · — · —	EDGE OF WATER
- - - · - - -	MEANDER LINE
— · — · — · —	PROPERTY BOUNDARY
300.40'	MEASURED DISTANCE
$N 87^{\circ}02'05'' E$	MEASURED BEARING



PRELIMINARY PLAT

SHEET 1 OF 2

2/16/2023



VARIANCE APPLICATION



Cass County Planning Department
 1201 Main Ave W
 West Fargo, ND 58078
 701-298-2375

FOR OFFICE USE ONLY

PC Meeting Date	
PC Meeting Decision	
CC Meeting Date	
CC Meeting Decision	

Please fill out the following information.

PROPERTY OWNER

APPLICANT (IF DIFFERENT THEN OWNER)

Name: <u>Kirk & Sara Johnson</u>	Name: <u>Same</u>
Address: <u>613 Cottonwood Dr. Casselton, ND 58012</u>	Address: _____
Phone: <u>701-941-0895</u>	Phone: _____
Email: <u>Kljohns072@outlook.com</u>	Email: _____

SUBJECT PROPERTY

Legal Description: SW 1/4 Sec. 13, 138-52 Maple River Township
 Parcel ID Number: 52-0000-08757-040
 Address: To be determined.
 Current Zoning Classification Ag.

Description of requested variance and applicable conditions/circumstances justifying request
 (continue on separate sheet, if necessary):

The sale of parcel is final August of 2022 without Deed Restriction. Maple River Township provided a building permit at that time. Maple River Township has determined the project met their criteria of no more than 4 dwellings per quarter section. The township board met and approved the building permit. The township criteria and Counties are the same. Please proceed without the Deed Restriction.

Kirk J. Johnson
 Signature of Applicant

Kirk Johnson
 Print Name

3/13/23
 Date

Permit No. 29

Maple River TOWNSHIP
PERMIT

Building(); Zoning Change(); Conditional Use(); Site Approval()

This permit is issued to:

Name of applicant: Kirk and Sara Johnson

Mailing Address: 1613 Cottonwood Dr
Casselton ND 58012

Phone Numbers: work 701-941-0895; home 701-799-7555; cell _____

If applicant is a business or organization; Title of authorized agent: NA

Subject Property is located in: ~~5000~~ Sec 13 (quarter) of Section SW 1/4

Subject Property address: 45th St. SE, Mapleton ND 58059

For the purpose of: building a new residence + shop/garage

Applicant has() or has not () met all the requirements of Maple River Township
Township Zoning Regulations.

Applicant is required to meet these conditions: _____

And to insure that all construction and uses will conform to Maple River Township
and State building codes and ordinances.

Maple River Township reserves the right to enter subject property to gather information
pertinent to this permit and to ensure compliance with any conditions.

8.11.12
Date

Scott Sacawa
Chairperson of Township Supervisors

MAPLE RIVER TOWNSHIP APPLICATION

Kirk and Sara Johnson
613 Cottonwood Dr
Casselton, ND 58012
(701-941-0895)

We, the undersigned, do hereby submit an application to the Township, to take such action as may be required by law to establish a permit as requested on the described subject property pursuant to the Township Zoning Ordinance of Cass County, North Dakota. We understand that approval may not be granted until all criteria has been satisfied.

Zoning Map Change

Conditional Use Permit

Appeal

Property Owner Information	Representative Information (if applicable)
Name (<i>printed</i>): <u>Kirk and Sara Johnson, from the Jane M Piper Revocable Trust</u>	Name (<i>printed</i>): _____
Address: <u>613 Cottonwood Dr Casselton ND 58012</u>	Address: _____
Primary Phone: <u>701-941-0895 (Kirk's cell)</u>	Primary Phone: _____
Alternative Phone: <u>701-799-7555 (Sara's cell)</u>	Alternative Phone: _____
Email: <u>Kljohnso72@outlook.com</u>	Email: _____

Location of property involved in the application decision (attach map as applicable)	
Zoning District of Property:	<u>Currently agricultural (10.69 acres of the 135 acres are proposed to become residence property)</u>
Section, Township, Range:	<u>SW ¼ Sec. 13, 138-52</u> Total Acres: <u>10.69 acres</u>
Address of property:	_____

Purpose/reason for requested permit (attach additional pages as necessary)
<u>Kirk and Sara Johnson have purchased 10.69 acres of the SW ¼ Sec. 13, 138-52 Maple River Twp for the intended purpose of building a rural residence. The parcel has been surveyed and a copy of the minor sub-division plot is attached.</u>
<u>The parcel is intended to have a residence house and a shop / garage out building constructed on the property.</u>

Acknowledgement: We hereby acknowledge that we understand the rules and regulations of this submittal and that the above information is true and complete to the best of our knowledge.

Owner Signature	07/25/22 Date
Representative Signature	Date

Office Use Only
Date Filed: _____
Fee Received: _____

Note: A nonrefundable filing fee, made payable to Township, must be accompanied with the application at time of submittal.



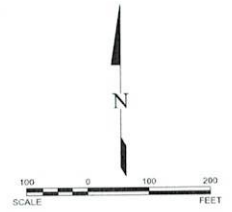
A MINOR SUBDIVISION PLAT FOR KIRK JOHNSON

SE1/4SW1/4, SECTION 13, TOWNSHIP 138N, RANGE 52W, CASS COUNTY, NORTH DAKOTA.



OWNER
KIRK JOHNSON
413 COTTONWOOD DR
CASSELTON, ND 58012
PH: 701.941.0895

ENGINEER / SURVEYOR
KLJ ENGINEERING LLC
300 23RD AVENUE E. SUITE 100
WEST FARGO, ND 58078
PH: 701.232.5353
www.kljeng.com



SHEET 1 OF 2

7/13/2022

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