

CASS COUNTY PLANNING COMMISSION AGENDA
Thursday, February 28, 2019 at 7:00 a.m.

A. Call to Order

B. Roll Call

C. Determination of a Quorum

D. Approve Meeting Minutes of January 24, 2019

E. Public Hearing Items:

1. Hearing on an application requesting a Minor Subdivision Plat of **Ottis Subdivision** (Located in Normanna Township, A Part of the West 1/2 of Section 34, Township 137 North, Range 50 West of the 5th Principal Meridian, Cass County North Dakota)
2. Hearing on an application requesting a Minor Subdivision Plat of **BAF Subdivision** (Located in Berlin Township, A Part of the SW 1/4 Section 28, Township 141 North, Range 50 West of the 5th Principal Meridian, Cass County North Dakota)
3. Hearing on an application requesting a Minor Subdivision Plat of **Cornell First Subdivision** (Located in Cornell Township, A Part of the NE 1/4 of Section 1, Township 141 North, Range 55 West of the 5th Principal Meridian, Cass County North Dakota)
4. Hearing on an application requesting a Minor Subdivision Plat of **Schmitz Subdivision** and a **Variance** request to allow for a residential subdivision lot without transferring development rights as required by the Cass County Subdivision Ordinance Section 308 (Located in Kinyon Township, A Part of the NW 1/4 and NE 1/4 of Section 26, Township 143 North, Range 50 West of the 5th Principal Meridian, Cass County North Dakota): **CONTINUED**

F. New Business

1. 2019 Meeting Schedule
2. Discuss Cass County Subdivision Ordinance interpretations and future ordinance language updates
 - a. Interpretations document
 - b. Cass County Subdivision Ordinance “Subdivision” definition exemption requirements discussion.
 - c. Cass County Subdivision Ordinance Section 302.1, 302.4, 303, 303.4, 305.1.C - 21 day minimum to have application heard by Planning Commission

G. Old Business

H. Adjournment

**CASS COUNTY PLANNING COMMISSION
JANUARY 24, 2019**

1. MEETING TO ORDER

A meeting of the Cass County Planning Commission was called to order on January 24, 2019, at 7:00 AM in the Vector Control Conference Room with members present as follows: Todd Ellig, Kevin Fisher, David Gust, Ken Lougheed, Brad Olson, Keith Monson and Duane Breitling. Dr. Tim Mahoney was absent. Also present were County Planner Barrett Voigt; Assistant County Engineer Tom Soucy; Cass County landowner Paul Schulz; Brian Hoffart of Minnkota Power Cooperative; Todd Weber, Gill Township Supervisor and Steve Link, Pifer's Auction & Realty.

2. MINUTES, APPROVED

MOTION, passed

Mr. Gust moved and Mr. Olson seconded to approve the minutes of the October 25, 2018, meeting as presented. Motion carried.

3. NEW BUSINESS

a. Introduction of new County Planner, Barrett Voigt

Mr. Voigt introduced himself and gave a brief rundown of his background and previous experience.

b. Appointment of Keith Monson to the Road Advisory Committee

MOTION, passed

Mr. Ellig moved and Mr. Breitling seconded to appoint Mr. Monson to the Road Advisory Committee. Motion carried.

4. PUBLIC HEARING ITEMS

a. Subdivision application and variance request– Minor Subdivision in Warren Township

Mr. Lougheed opened the public hearing.

Mr. Voigt provided an overview of an application for a minor subdivision entitled Warren Substation Subdivision and variance request for a proposed electrical substation without transferring development rights as required by the Cass County Subdivision Ordinance Section 308. The said tract is located in part of the Northwest Quarter of Section 16, Warren Township.

Mr. Voigt stated that the land will be purchased by Minnkota Power Cooperative, Inc. in order to replace a substation located directly to the north of the property. Staff recommends approval with the following conditions:

1. Dedication of right of way at the following locations prior to recording the proposed certificate of survey:
 - a. North property line along County Highway 6: From statutory 33 feet of right of way line to 100-foot distance from property line,
 - b. West property line along County Highway 15: From 65-foot right of way line to 100-foot distance from property line.

2. Add dedication of right of way document numbers to proposed certificate of survey prior to recording.
3. Access approach on County Highway 6 is 262.2 feet east of County Highway 15 centerline.
4. Section 303.3 of the Subdivision Ordinance is met.

Brian Hoffart of Minnkota Power Cooperative, and landowner Paul Schulz were present to answer questions about the application and variance request. Mr. Hoffart stated that they were made aware of the need for the variance request as a result of discussion at the last Commission meeting in October when the original subdivision application was scheduled for a public hearing.

Discussion was held regarding the subdivision ordinance and the variance.

The public hearing was closed.

MOTION, passed

Mr. Ellig moved and Mr. Fisher seconded to approve the minor subdivision and variance request with the conditions outlined by the County Planner.

On roll call vote, the motion carried with Mr. Lougheed, Mr. Monson, Mr. Ellig, Mr. Breitling, Mr. Olson, and Mr. Fisher voting “Yes”; Mr. Gust voting “No”.

b. Subdivision application– Minor Subdivision in Lake Township

Mr. Lougheed opened the public hearing.

Mr. Voigt reviewed an application for a minor subdivision entitled Harbeke Subdivision. The said tract is located in part of the Northeast Quarter of the Southeast Quarter of Section 12, Lake Township.

Mr. Voigt reviewed that the applicant proposes to establish a two lot, one block subdivision that would encompass approximately 21 acres. Staff recommends approval with the following conditions:

1. A deed restriction be recorded that meets the requirements of Section 308 of the Cass County Subdivision Ordinance.
2. Section 303.3 of the Subdivision Ordinance is met.

The public hearing was closed.

MOTION, passed

Mr. Gust moved and Mr. Monson seconded to approve the minor subdivision with the condition outlined by the County Planner.

Motion carried.

c. Subdivision application– Minor Subdivision in Gill Township

Mr. Lougheed opened the public hearing.

Mr. Voigt reviewed an application for a minor subdivision entitled Hoffman Subdivision. The said tract is located in part of the Northwest Quarter of the West half of Section 11, Lake Township.

Mr. Voigt reviewed that the applicant proposes to plat one lot of approximately 10 acres for the purpose of allowing for the sale of the Lot and the construction of a single family residential structure. Staff recommends approval with the following conditions:

1. Section 303.3 of the Subdivision Ordinance is met.

Discussion was held regarding a shared driveway or widening the existing access versus adding an additional access. Mr. Weber from Gill Township reviewed the townships position that they have no significant issues with the subdivision.

The public hearing was closed.

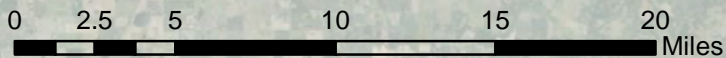
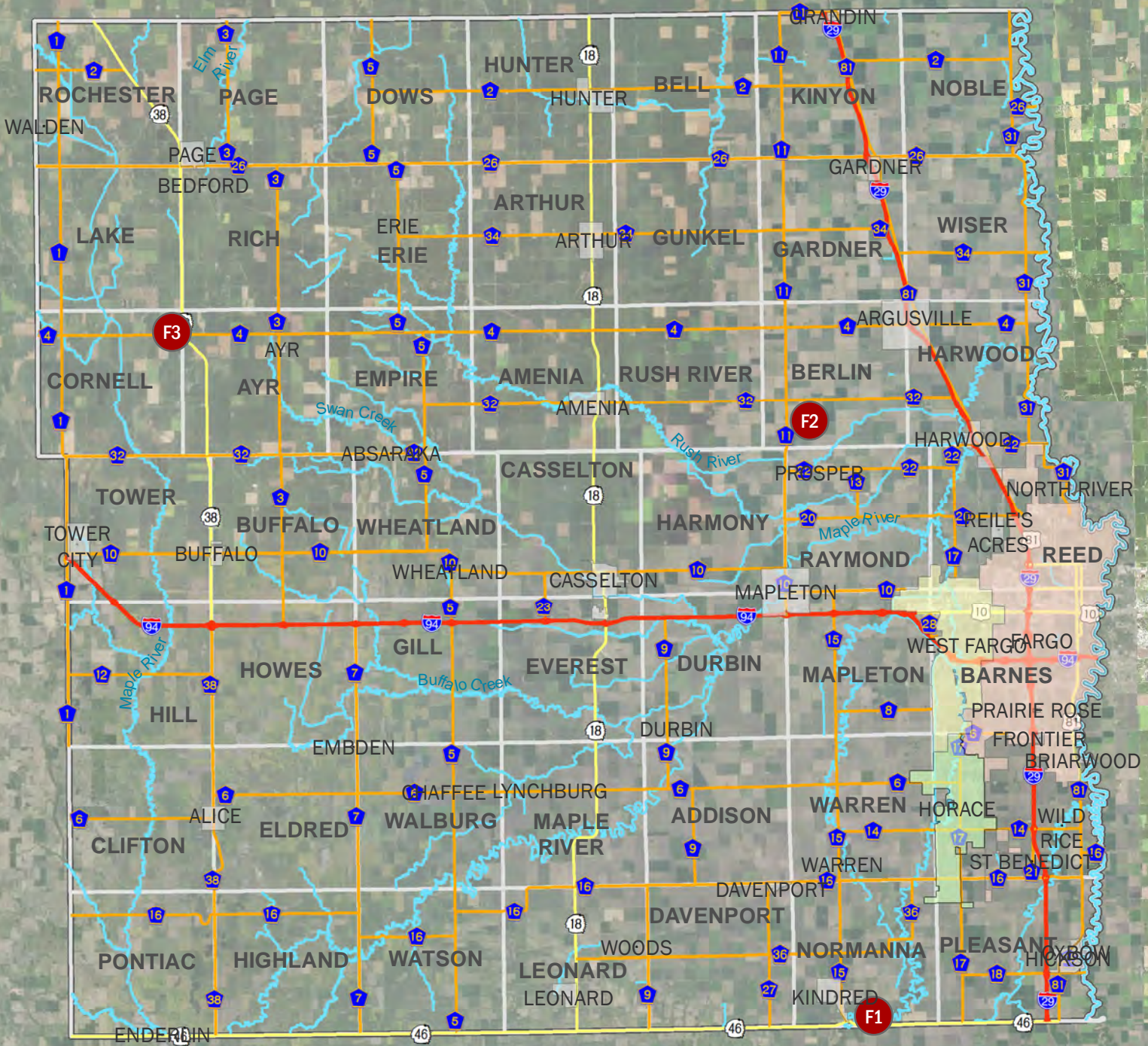
MOTION, passed

Mr. Gust moved and Mr. Ellig seconded to approve the minor subdivision with the addition of the deed restriction as required in the Cass County Ordinance.

Motion carried.

5. ADJOURNMENT

On motion by Mr. Gust, seconded by Mr. Ellig, and all voting in favor, the meeting was adjourned at 8:15 AM.



Agenda Items No.
F1. - Otis Substation
F2. - BAF Subdivision
F3. - Cornell First Subdivision



Cass County Planning Commission Staff Report

Entitlements Requested:	Minor Subdivision (1 Lots) of the West 1/2 of Section 34, Township 137 North, Range 50 West		
Title:	Ottis Subdivision	Date:	02-13-2019
Location:	West 1/2 of Section 34, Township 137 North, Range 50 West (5350 166th Ave SE, Normanna Township)	Staff Contact:	Barrett Voigt
Parcel Number:	55-0000-09828-020	Water District:	
Owner(s)/Applicant :	Mark & Joan Ottis/Cole A. Neset	Engineer/Surveyor:	Cole A. Neset
Status:	Planning Commission Hearing: February 28, 2019		

Existing Land Use	Proposed Land Use
Agriculture	Agriculture (Farmstead)

Proposal

The applicant is seeking approval of a minor subdivision entitled **Ottis Subdivision** to create one (1) Lot and one (1) Block for the purpose of selling the farmstead. Because the farmstead is under 10 acres the proposed sale of the land will not be exempt from the Cass County Subdivision Ordinance. The proposed lot is located at 5350 166th Ave SE, Normanna Township and is approximately 4.69 acres.

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

Agency Comments

County Engineer	I have no issues from the Cass County Highway Department.
Water Resource District	The Rush River Water Resource District has no comment to submit. The Southeast Cass and Maple River Water Resource Districts have no comment to submit.
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	Sprint is clear of these
AT&T	Barrett, AT&T is clear of this current work project
Xcel Energy	No comments were received prior to publishing the staff report.
Magellan Pipeline Company	Magellan pipeline Company has no assets in these Twp's. and will not be affected by these projects. Thanks.
Cass Rural Water	No Comment - simple sale
North Dakota Department of Transportation	No comments were received prior to publishing the staff report.
County Sanitarian	No comments were received prior to publishing the staff report.
Township Chairman	No comments were received prior to publishing the staff report.
The City of Fargo	The Otis Subdivision, located in Normana Township, is outside of the Fargo city limits and Fargo's ETJ.
The City of West Fargo	No comments were received prior to publishing the staff report.
Public Comment	No comments were received prior to publishing the staff report.

Staff Analysis

Surrounding Uses

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

Floodzone

The Sheyenne River is located more than 600 feet south of the property. According FEMA Firmette 38026400108, there is no digital data available for this area effective September 30, 1987. However, local data

shows that small portions of land on the east boundary of the property contain wetlands.



Land Development Rights

The subject quarter-quarter section currently has one (1) unplatted residential development. Section 308 of the Cass County Subdivision Ordinance states that every quarter-quarter section is granted one (1) Development Right to create a buildable lot with a minimum of 40 acres. Because the lot subdivision proposal is less than 40 acres, a transfer of development right is required along with a deed restriction.

Staff Recommendation

To accept the findings and recommendations of staff and recommend approval to the County Commission of the subdivision application as the proposal meets the goals and objectives of the Cass County Comprehensive Plan, the Cass County Highway Access Plan, the Flood Damage Prevention Ordinance, the Cass County Subdivision Ordinance, and all other applicable regulations, with the following conditions:

1. A deed restriction be recorded that meets the requirements of Section 308 of the Cass County Subdivision Ordinance.
2. A letter of verification from Normanna Township is received that verifies that the application complies with township zoning ordinance or 60 days lapse; whichever occurs first.
3. A document that provides evidence that an easement is established to provide access to the site.

Attachments

1. Location Map
2. Plat Document

Minor Subdivision

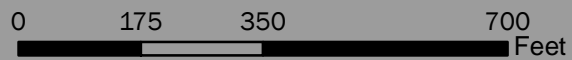
Ottis Subdivision

Normanna, Section 34 - Township 137 North - Range 50 West



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

Cass County Planning Commission
February 28, 2019



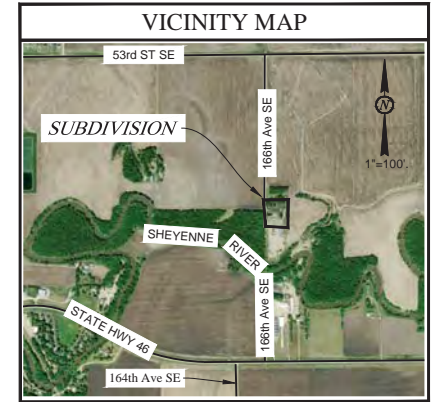
SE1/4 SE1/4

SW1/4 SW1/4

PLAT OF OTTIS

A MINOR SUBDIVISION

PART OF THE WEST 1/2 OF SECTION 34, TOWNSHIP 137 NORTH, RANGE 50 WEST
NORMANA TOWNSHIP, COUNTY OF CASS, STATE OF NORTH DAKOTA



OWNER'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS, THAT MARK & JOAN OTTIS, ARE THE OWNERS OF OTTIS SUBDIVISION DESCRIBED AS FOLLOWS;
PART OF THE W 1/2 OF SECTION 34, TOWNSHIP 137 NORTH, RANGE 50 WEST OF THE 5TH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LINE #	LENGTH	DIRECTION
L1	33.00'	N87°19'58"E
L2	86.45'	S55°50'22"E
L3	137.99'	S74°56'10"E
L4	89.55'	S87°54'58"E
L5	31.36'	S2°28'48"E
L6	110.11'	N88°32'46"W
L7	33.14'	N47°21'07"W
L8	60.27'	S84°57'09"W
L9	119.39'	N56°32'11"W
L10	33.00'	S87°08'11"W
L11	33.37'	N2°40'02"W
L12	33.00'	S87°04'10"W

COMMENCING AT THE NORTHWEST CORNER OF SECTION 34; THENCE S02°40'02"E ALONG THE WEST LINE OF SAID SECTION 34 A DISTANCE OF 2,637.50 FEET TO THE POINT OF BEGINNING; THENCE N87°19'58"E A DISTANCE OF 33.00 FEET; THENCE S55°50'22"E A DISTANCE OF 86.45 FEET; THENCE S74°56'10"E A DISTANCE OF 137.99 FEET; THENCE S87°54'58"E A DISTANCE OF 89.55 FEET; THENCE S02°28'48"E A DISTANCE OF 194.11 FEET; THENCE N86°29'48"E A DISTANCE OF 115.37 FEET; THENCE N02°28'48"W A DISTANCE OF 126.81 FEET; THENCE N25°22'24"W A DISTANCE 76.44 FEET; THENCE N03°01'18"W A DISTANCE 280.46 FEET; THENCE N01°50'43"W A DISTANCE OF 195.06 FEET; THENCE S87°04'10"W A DISTANCE OF 376.60 FEET; THENCE S87°04'10"W A DISTANCE OF 33.00 FEET TO THE WEST LINE OF SAID SECTION 34; THENCE S02°40'02"E ALONG SAID LINE A DISTANCE OF 377.25 FEET TO THE POINT OF BEGINNING. SAID TRACT OF LAND CONTAINS ±4.69 ACRES MORE OR LESS AND IS SUBJECT TO EASEMENTS AND RIGHTS OF WAY OF SIGHT AND RECORD.

TOGETHER WITH AN INGRESS/EGRESS EASEMENT COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 34; THENCE S02°40'03"E ALONG THE WEST LINE OF SAID SECTION 34 A DISTANCE OF 2,637.50 FEET TO THE POINT OF BEGINNING; THENCE N87°19'58"E A DISTANCE OF 33.00 FEET; THENCE S55°50'22"E A DISTANCE OF 86.45 FEET; THENCE S74°56'10"E A DISTANCE OF 137.99 FEET; THENCE S87°54'58"E A DISTANCE OF 89.55 FEET; THENCE S02°28'48"E A DISTANCE OF 31.36 FEET; THENCE N88°32'46"W A DISTANCE OF 110.11' FEET; THENCE N47°21'07"W A DISTANCE OF 33.14 FEET; THENCE S84°57'09"W A DISTANCE OF 60.27 FEET; THENCE N56°32'11"W A DISTANCE OF 119.39 FEET; THENCE S87°19'58"W A DISTANCE OF 25.46 FEET TO THE WEST LINE OF SAID SECTION OF 34; THENCE N02°40'06"W ALONG SAID LINE A DISTANCE OF 33.37' TO THE POINT OF BEGINNING.

CASS COUNTY ENGINEER

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

JASON BENSON, CASS COUNTY ENGINEER

CASS COUNTY PLANNING COMMISSION

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

KEN LOUGHEED, CHAIRMAN

ATTEST:

SECRETARY

CASS COUNTY BOARD OF COMMISSIONER'S APPROVAL

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

CHAD PETERSON, CHAIRMAN

ATTEST:

MICHAEL MONTPLAISIR, CASS COUNTY AUDITOR

NORMANNA TOWNSHIP

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

TYLER ODEGAARD, CHAIRMAN

ATTEST:

CLERK

BY:

MARK OTTIS

JOAN OTTIS

STATE OF _____)
)SS
COUNTY OF _____)

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

MY COMMISSION
EXPIRES: _____

NOTARY PUBLIC

SURVEYORS CERTIFICATE

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

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

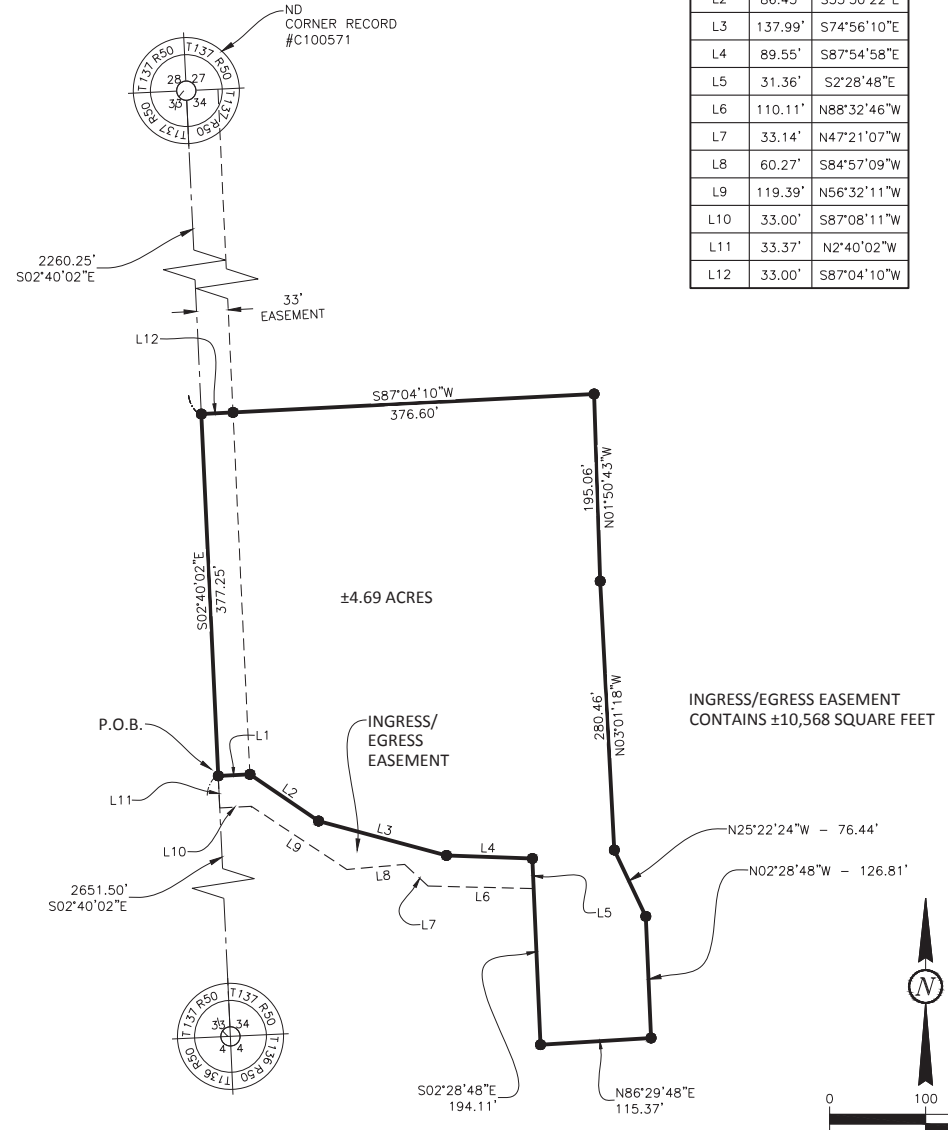
DATE

STATE OF _____)
)SS
COUNTY OF _____)

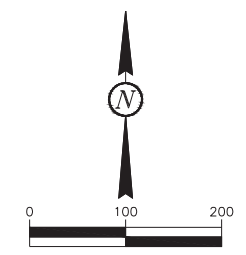
BE IT KNOWN ON THIS ____ DAY OF _____, 2019, BEFORE ME PERSONALLY APPEARED COLE A. NESET, NORTH DAKOTA REGISTERED LAND SURVEYOR, TO ME KNOWN TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THE EXECUTION OF THE SAME AS A FREE ACT AND DEED.

MY COMMISSION
EXPIRES: _____

NOTARY PUBLIC



INGRESS/EGRESS EASEMENT
CONTAINS ±10,568 SQUARE FEET



LEGEND

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





Cass County Planning Commission Staff Report

Entitlements Requested:	Minor Subdivision (1 Lots) of a part of the SW 1/4 Section 28, Township 141 North, Range 50 West		
Title:	BAF Subdivision	Date:	02-13-2019
Location:	SW 1/4 Section 28, Township 141 North, Range 50 West (No Address, Berlin Township)	Staff Contact:	Barrett Voigt
Parcel Number:	27-0000-01615-010	Water District:	
Owner(s)/Applicant :	Gladys L Rust/ Brandon Rust	Engineer/Surveyor:	KLJ
Status:	Planning Commission Hearing: February 28, 2019		

Existing Land Use	Proposed Land Use
Agriculture	Agriculture (Farmstead)

Proposal

The applicant is seeking approval of a minor subdivision entitled **BAF Subdivision** to subdivide a one (1) Lot, one (1) Block subdivision for the purpose of establishing a farmstead and to construct a residential structure. This proposal does not meet the exemption requirements of the Cass County Subdivision Ordinance (CCSO) because the proposal seeks to construct a dwelling unit. The proposed Lot is located at SW 1/4 Section 28, Township 141 North, Range 50 West (No Address, Berlin Township) and is approximately 12.85 acres.

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

Agency Comments

County Engineer

I have no issues from the Cass County Highway Department. However, I would recommend access to this property be off of 164th Ave SE due to the east/west ditch on 29th St SE being a major ditch for runoff to the Rush River during spring floods and larger summer rain events.

Water Resource District

The Rush River Water Resource District has no comment to submit. The Southeast Cass and Maple River Water Resource Districts have no comment to submit.

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

Sprint is clear of these

AT&T

Barrett, AT&T is clear of this current work project

Xcel Energy

No comments were received prior to publishing the staff report.

Magellan Pipeline Company

Magellan pipeline Company has no assets in these Twp's. and will not be affected by these projects. Thanks.

Cass Rural Water

No comments were received prior to publishing the staff report.

North Dakota Department of Transportation

No comments were received prior to publishing the staff report.

County Sanitarian

No comments were received prior to publishing the staff report.

Township Chairman

Verification that proposal meets township zoning requirements

The City of Fargo

The BAF Subdivision, located in Berlin Township, is outside of the Fargo city limits and Fargo's ETJ

The City of West Fargo

No comments were received prior to publishing the staff report.

Public Comment

No comments were received prior to publishing the staff report.

Staff Analysis

Surrounding Uses

The subject property is bound by agricultural production land north, west, and south of the property. Land that appears to be used as a farmstead is located east of the property.

Floodzone

FEMA Firmette 3806200001B, there is no digital data available for this area effective April 1, 1986. No wetlands or manmade features are present on the land.

Land Development Rights

The subject quarter-quarter section currently has no development. Section 308 of the Cass County Subdivision Ordinance states that every quarter-quarter section is granted one (1) Development Right to create a buildable lot with a minimum of 40 acres. Because the lot subdivision proposal is less than 40 acres, a transfer of a development right is required along with a deed restriction.

Staff Recommendation

To accept the findings and recommendations of staff and recommend approval to the County Commission of the subdivision application as the proposal meets the goals and objectives of the Cass County Comprehensive Plan, the Cass County Highway Access Plan, the Flood Damage Prevention Ordinance, the Cass County Subdivision Ordinance and all other applicable regulations, with the following conditions:

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

Attachments

1. Location Map
2. Plat Document

Minor Subdivision

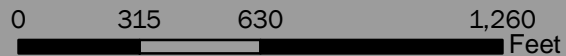
BAF Subdivision

Berlin, Section 28 - Township 141 North - Range 50 West



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

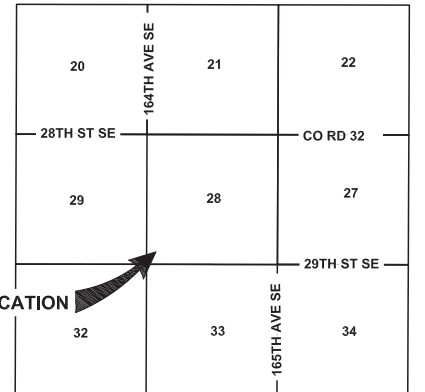
Cass County Planning Commission
February 28, 2019



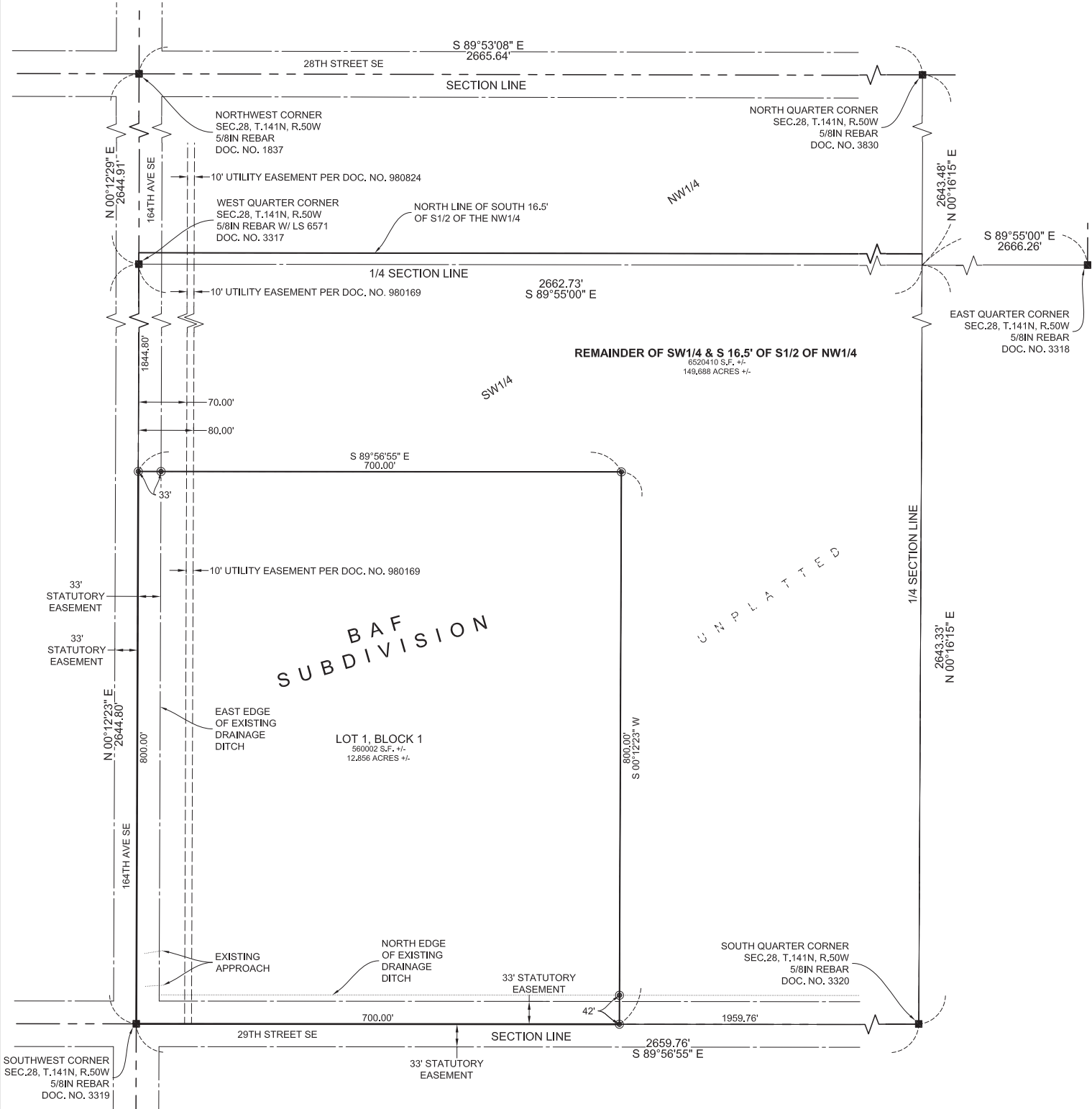
BAF SUBDIVISION

(A MINOR SUBDIVISION)

A PART OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 141 NORTH, RANGE 50 WEST, FIFTH PRINCIPAL MERIDIAN, BERLIN TOWNSHIP, CASS COUNTY, NORTH DAKOTA



VICINITY MAP
NO SCALE



PARENT TRACT

A TRACT OF LAND LOCATED IN PART OF THE SW 1/4 AND S 1/2 OF THE NW 1/4 OF SECTION 28, TOWNSHIP 141 NORTH, RANGE 50 WEST, OF THE 5TH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA, DESCRIBED AS FOLLOWS:

THE SOUTHWEST QUARTER AND THE SOUTH 16.50 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 28.

SAID TRACT CONTAINS 7080412 SQUARE FEET, OR 162,544 ACRES, MORE OR LESS, AND IS SUBJECT TO ANY EASEMENTS, RESERVATIONS, RESTRICTIONS, AND RIGHTS OF WAY OF RECORD.

LOT 1, BLOCK 1, BAF SUBDIVISION

A TRACT OF LAND LOCATED IN PART OF THE SW 1/4 OF SECTION 28, TOWNSHIP 141 NORTH, RANGE 50 WEST, OF THE 5TH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 28; THENCE NORTH 00 DEGREES 12 MINUTES 23 SECONDS EAST (ASSUMED BEARING), ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 800.00 FEET; THENCE SOUTH 89 DEGREES 56 MINUTES 55 SECONDS EAST, PARALLEL WITH THE SOUTH LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 700.00 FEET; THENCE SOUTH 00 DEGREES 12 MINUTES 23 SECONDS WEST, PARALLEL WITH SAID WEST LINE OF THE SOUTHWEST QUARTER, A DISTANCE OF 800.00 FEET TO SAID SOUTH LINE OF THE SOUTHWEST QUARTER; THENCE NORTH 89 DEGREES 56 MINUTES 55 SECONDS WEST, ALONG SAID SOUTH LINE OF THE SOUTHWEST QUARTER, A DISTANCE OF 700.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 560002 SQUARE FEET, OR 12,856 ACRES, MORE OR LESS, AND IS SUBJECT TO ANY EASEMENTS, RESERVATIONS, RESTRICTIONS, AND RIGHTS OF WAY OF RECORD.

OWNER'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS, GLADYS L. RUST, WHOSE ADDRESS IS 225 13TH AVE W, APT 1024, WEST FARGO, NORTH DAKOTA, IS THE OWNER OF A TRACT OF LAND LOCATED IN PART OF THE SW 1/4 AND S 1/2 OF THE NW 1/4 OF SECTION 28, TOWNSHIP 141 NORTH, RANGE 50 WEST, OF THE 5TH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA, DESCRIBED AS "PARENT TRACT" LISTED ABOVE:

GLADYS L. RUST
LANDOWNER

STATE OF)
COUNTY OF)SS

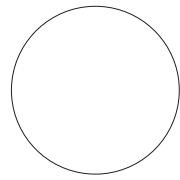
ON THIS _____ DAY OF _____, 2019, BEFORE ME A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED _____, KNOWN TO ME TO BE THE SAME PERSON WHO IS DESCRIBED IN THE FOREGOING PROPRIETOR'S CERTIFICATE, WHO EXECUTED THE SAME AND ACKNOWLEDGED THAT SHE EXECUTED THE SAME.

NOTARY PUBLIC
CASS COUNTY, NORTH DAKOTA

SURVEYOR'S CERTIFICATE

I, CHRIS INGERSOLL, REGISTERED LAND SURVEYOR, UNDER THE LAWS OF THE STATE OF NORTH DAKOTA, DO HEREBY CERTIFY THAT THIS PLAT IS A TRUE AND CORRECT REPRESENTATION OF THE SURVEY OF SAID SUBDIVISION; THAT THE DISTANCES SHOWN ON SAID PLAT ARE CORRECT; THAT THE MONUMENTS FOR THE GUIDANCE OF FUTURE SURVEYS HAVE BEEN LOCATED OR PLACED IN THE GROUND AS SHOWN.

DATE THIS _____ DAY OF _____, 2019.



CHRIS INGERSOLL
REGISTERED LAND SURVEYOR
NORTH DAKOTA NO. 8887

STATE OF)
COUNTY OF)SS

ON THIS _____ DAY OF _____, 2019, BEFORE ME A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED _____, KNOWN TO ME TO BE THE SAME PERSON WHO IS DESCRIBED IN THE FOREGOING SURVEYOR'S CERTIFICATE, WHO EXECUTED THE SAME AND ACKNOWLEDGED THAT HE EXECUTED THE SAME.

NOTARY PUBLIC

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

JASON BENSON, CASS COUNTY ENGINEER

ATTEST: _____
SECRETARY

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

KEN LOUGHEED, CHAIRMAN

ATTEST: _____
SECRETARY

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

SCOTT SAEWERT, CHAIRMAN

ATTEST: _____
CLERK

CASS COUNTY BOARD OF COMMISSIONERS' APPROVAL
APPROVED BY CASS COUNTY, NORTH DAKOTA, THIS _____ DAY OF _____, 2019.

MARY SCHERLING, CHAIRWOMAN

ATTEST: _____
MICHAEL MONTPLAISIR, CASS COUNTY AUDITOR

NOTE:
SURVEY IS BASED ON A LOCAL SITE, US SURVEY FEET. DISTANCES SHOWN ARE GROUND DISTANCES.

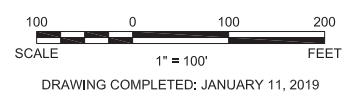
SAID TRACT OF LAND IS SUBJECT TO ANY EASEMENT RESTRICTIONS OR RESERVATIONS, EITHER EXISTING OR OF RECORD.
BEARINGS AND DISTANCES MAY VARY FROM PREVIOUS PLATS DUE TO DIFFERENT METHODS OF MEASUREMENT.

LEGEND
■ FOUND MONUMENT - AS DESCRIBED
◎ 5/8IN REBAR AND LS 8887 CAP SET

FLOOD PLAIN STATEMENT:
THERE ARE NO PUBLISHED FEMA FLOOD PLAIN MAPS FOR BERLIN TOWNSHIP, CASS COUNTY, NORTH DAKOTA.

ENGINEER:
KLJ
3203 32ND AVE S, SUITE 201
FARGO, ND 58103

CLIENT:
BRANDON RUST
3577 8TH ST E
WEST FARGO, ND 58078





Cass County Planning Commission Staff Report

Entitlements Requested:	Minor Subdivision (1 Lots) of a part of the NE 1/4 of Section 1, Township 141 North, Range 55 West		
Title:	Cornell First Subdivision	Date:	02-19-2019
Location:	NE 1/4 of Section 1, Township 141 North, Range 55 West (2452 138th Ave SE, Cornell Township)	Staff Contact:	Barrett Voigt
Parcel Number:	31-0000-02701-050	Water District:	
Owner(s)/Applicant :	Feder Properties LLP/Shawn Thomasson, Moore Engineering, Inc.	Engineer/Surveyor:	Moore Engineering, Inc.
Status:	Planning Commission Hearing: February 28, 2019		

Existing Land Use	Proposed Land Use
Agriculture	Residential

Proposal

The applicant is seeking approval of a minor subdivision entitled **Cornell First Subdivision** to subdivide a one (1) Lot for the purpose of separating the residential structure from the farmstead. The proposed lot is located at 2452 138th Ave SE, Cornell Township and is approximately 3.01 acres.

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

Agency Comments

County Engineer	I have no issues from the Cass County Highway Department.
Water Resource District	The Rush River Water Resource District has no comment to submit. The Southeast Cass and Maple River Water Resource Districts have no comment to submit.
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	Sprint is clear of these
AT&T	Barrett, AT&T is clear of this current work project
Xcel Energy	No comments were received prior to publishing the staff report.
Magellan Pipeline Company	Magellan pipeline Company has no assets in these Twp's. and will not be affected by these projects. Thanks.
Cass Rural Water	No Comment – Water Service currently supplied by Cass Rural Water District
North Dakota Department of Transportation	Jessica, Thanks for the information and allowing me to review the subdivision of property as noted on your attachments. As far as the NDDOT is concerned the subdivided property already has access from ND Highway 38 so I see no problems with the proposal. If you have any further questions feel free to contact me. Thank you! Troy Gilbertson, NDDOT Highway Maintenance Coordinator, Fargo
County Sanitarian	No comments were received prior to publishing the staff report.
Township Chairman	We do not have a Zoning Board in Cornell Township , therefore I will assume this is all you need from me
The City of Fargo	The Cornell First Subdivision, located in Cornell Township, is outside of the Fargo city limits and Fargo's ETJ.
The City of West Fargo	No comments were received prior to publishing the staff report.
Public Comment	No comments were received prior to publishing the staff report.

Staff Analysis

Surrounding Uses

The subject property is bound by agricultural production land on the north, west, and east. Land that appears to be used for a farmstead is located south of the property. Cornell Township verified by correspondence that no zoning ordinances exist for the township.

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, no wetlands or other notable features are present on the proposed subdivision Lot.

Land Development Rights

The subject quarter-quarter section currently has one (1) unplatted residential development and a partial unplatted farmstead development that is located on the quarter-quarter line. Section 308 of the Cass County Subdivision Ordinance states that every quarter-quarter section is granted one (1) Development Right to create a buildable lot with a minimum of 40 acres and to allow for development that was legally permitted prior to the adoption of the CCSO. Because the lot subdivision proposal is less than 40 acres, a transfer of a development right is required along with a deed restriction. In addition, interpretation of CCSO Section 308 has determined that partial developments are not one (1) complete development and are not factored into the transfer of development rights evaluation.

Staff Recommendation

To accept the findings and recommendations of staff and recommend approval to the County Commission of the subdivision application as the proposal meets the goals and objectives of the Cass County Comprehensive Plan, the Cass County Highway Access Plan, the Flood Damage Prevention Ordinance, the Cass County Subdivision Ordinance, the Township Zoning Ordinance, and all other applicable regulations, with the following conditions:

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

Attachments

1. Location Map
2. Plat Document

Minor Subdivision

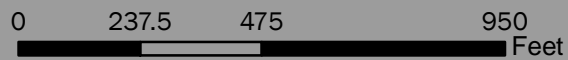
Cornell First Subdivision

Cornell, Section 1 - Township 141 North - Range 55 West

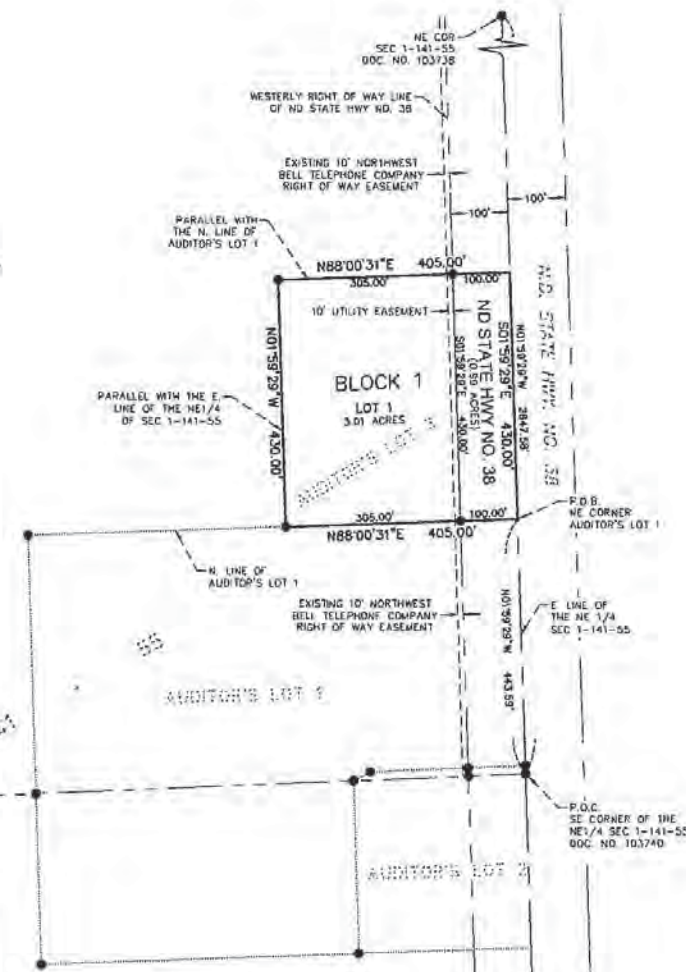


Maps and data are to be used for reference purposes only and Cass County, ND, is not responsible for any inaccuracies herein contained. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, use or misuse of the information herein provided.

Cass County Planning Commission
February 28, 2019



**PLAT OF
CORNELL FIRST SUBDIVISION
(A MINOR SUBDIVISION PLAT)
AUDITOR'S LOT 3 IN THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP
141 NORTH, RANGE 55 WEST OF THE 5TH PRINCIPAL MERIDIAN
CASS COUNTY, NORTH DAKOTA.**



- EASEMENTS OF RECORD**
1. CASS COUNTY ELECTRIC RIGHT OF WAY EASEMENT, DOCUMENT NO. 705689
 2. CASS RURAL WATER USERS, INC., RIGHT OF WAY EASEMENT, DOCUMENT NO. 838607

- LEGEND**
- IRON MONUMENT FOUND
 - P.O.C. POINT OF COMMENCEMENT
 - P.O.B. POINT OF BEGINNING

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

SIGNED: _____
KEN LOUGHEED, CHAIRPERSON

ATTEST: _____
DEANN BUCKHOUSE, SECRETARY

CASS COUNTY COMMISSION APPROVAL
APPROVED BY CASS COUNTY, NORTH DAKOTA, THIS _____ DAY OF _____, 2019.

SIGNED: _____
MARY SCHERLING, CHAIRPERSON, BOARD OF COUNTY COMMISSIONERS

ATTEST: _____
MICHAEL MONTPLAISIR, CASS COUNTY AUDITOR

CERTIFICATE
SHAWN M. THOMASSON, BEING DULY SWORN, DEPOSES AND SAYS THAT HE IS THE PROFESSIONAL LAND SURVEYOR WHO PREPARED AND MADE THE ATTACHED PLAT OF "CORNELL FIRST SUBDIVISION", A PLAT OF AUDITOR'S LOT 3 IN THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 141 NORTH, RANGE 55 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA, ACCORDING TO DOCUMENT NO. 1552568, ON FILE AND OF RECORD IN THE OFFICE OF THE RECORDER, SAID CASS COUNTY. THAT SAID PLAT IS A TRUE AND CORRECT REPRESENTATION OF SAID SURVEY; THAT ALL DISTANCES ARE CORRECTLY SHOWN ON SAID PLAT; THAT MONUMENTS HAVE BEEN PLACED IN THE GROUND AS INDICATED FOR THE GUIDANCE OF FUTURE SURVEYS AND THAT SAID SUBDIVISION IS DESCRIBED AS FOLLOWS:

THAT PART OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 141 NORTH, RANGE 55 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA, DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND IRON MONUMENT WHICH DESIGNATES THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 1; THENCE NORTH 01 DEGREE 59 MINUTES 29 SECONDS WEST ON A RECORD BEARING ALONG THE EAST LINE OF SAID NORTHEAST QUARTER FOR A DISTANCE OF 443.59 FEET TO THE NORTHEAST CORNER OF AUDITOR'S LOT NO. 1, ACCORDING TO DOCUMENT NO. 1528064, RECORDED DECEMBER 20, 2017, ON FILE AND OF RECORD IN THE OFFICE OF THE RECORDER, SAID CASS COUNTY; THE POINT OF BEGINNING; THENCE SOUTH 88 DEGREES 00 MINUTES 31 SECONDS WEST ALONG THE NORTH LINE OF SAID AUDITOR'S LOT NO. 1 FOR A DISTANCE OF 405.00 FEET TO A FOUND IRON MONUMENT; THENCE NORTH 01 DEGREE 59 MINUTES 29 SECONDS WEST, PARALLEL WITH THE EAST LINE OF SAID NORTHEAST QUARTER FOR A DISTANCE OF 430.00 FEET TO A FOUND IRON MONUMENT; THENCE NORTH 88 DEGREES 00 MINUTES 31 SECONDS EAST, PARALLEL WITH THE NORTH LINE OF SAID AUDITOR'S LOT NO. 1 FOR A DISTANCE OF 405.00 FEET TO THE EAST LINE OF SAID NORTHEAST QUARTER; THENCE SOUTH 01 DEGREE 59 MINUTES 29 SECONDS EAST ALONG SAID EAST LINE FOR A DISTANCE OF 430.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 4.00 ACRES, MORE OR LESS, SUBJECT TO THE RIGHTS OF THE PUBLIC IN NORTH DAKOTA STATE HIGHWAY NO. 38 AND FURTHER SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS OF WAY OF RECORD, IF ANY.



SHAWN M. THOMASSON
PROFESSIONAL LAND SURVEYOR
NO PLS #5900

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS _____ DAY OF _____, 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED SHAWN M. THOMASSON, PROFESSIONAL LAND SURVEYOR, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME AS HIS FREE ACT AND DEED.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

DEDICATION

I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT I AM THE OWNER OF THE LAND DESCRIBED IN THE PLAT OF "CORNELL FIRST SUBDIVISION", A PLAT OF AUDITOR'S LOT 3 IN THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 141 NORTH, RANGE 55 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA, ACCORDING TO DOCUMENT NO. 1552568, ON FILE AND OF RECORD IN THE OFFICE OF THE RECORDER, SAID CASS COUNTY. THAT WE HAVE CAUSED IT TO BE PLATTED INTO LOTS AND BLOCKS AS SHOWN BY SAID PLAT AND CERTIFICATE OF SHAWN M. THOMASSON, PROFESSIONAL LAND SURVEYOR AND THAT THE DESCRIPTION AS SHOWN IN THE CERTIFICATE OF THE REGISTERED PROFESSIONAL LAND SURVEYOR IS CORRECT. WE HEREBY DEDICATE THE 100.00 FOOT WIDE HIGHWAY AND THE 10.00 FOOT WIDE UTILITY EASEMENT SHOWN ON SAID PLAT TO THE USE OF THE PUBLIC.

OWNER: FEDER PROPERTIES, L.L.P.

JEROME D. FEDER, MANAGING PARTNER

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS _____ DAY OF _____, 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED JEROME D. FEDER, MANAGING PARTNER, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEDICATION AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN THE NAME OF FEDER PROPERTIES L.L.P.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

CORNELL TOWNSHIP REVIEW

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

SIGNED: _____
DALEN GRIEGER, CHAIRPERSON

ATTEST: _____
VERA GRIEGER, TREASURER

COUNTY ENGINEER REVIEW

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

SIGNED: _____
JASON BENSON, CASS COUNTY ENGINEER



Item: F.1.

MEMORANDUM

**Highway
Department**

Jason Benson, P.E.
County Engineer

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

Blaine Laaveg
Superintendent

TO: Cass County Planning Commission

FROM: Barrett Voigt, Cass County Planner

DATE: February 19, 2019

SUBJECT: Planning Commission Meeting Dates

Please find the proposed Planning Commission Meeting dates for calendar year 2019:

2019 Meeting Schedule

Planning Commission Meetings
January 24
February 28
March 28
April 25
May 23
June 27
July 25
August 22
September 26
October 24
December 12

Commission meetings are held the fourth Thursday of each month at 7:00 o'clock a.m. in the Vector Conference Room at the Cass County Highway Department Complex, 1201 Main Avenue West, West Fargo, ND 58078 (unless otherwise stated), with the exception of the months of November and December. November and December meetings are combined and held the second Thursday of December. Meetings may be cancelled and special meetings may be called when deemed necessary.

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

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

Draft Judicial Interpretations of Subdivision Ordinance by the Planning Commission

Cass County Subdivision Ordinance Sections Reviewed and Interpreted:

Section 308

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:

- A. Land that has an existing dwelling, either residential or agricultural. In these situations, the Development Right has been used.
- B. Land that has an existing commercial use or other non-agricultural use.
- C. Land that is not under complete and common ownership.
- D. 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.
- E. Land not having a suitable building site due to natural features, such as but not limited to wetlands, floodplains, high water and steep slopes.
- F. Land that does not have a conforming building site without a variance issued by the applicable township.
- G. Land deemed as unbuildable based on the applicable townships ordinances and/or regulations.

Section 308.1.

Using Transferred Development Rights.

- A. Development Rights can be used to increase a permitted density on contiguous land that is under common ownership. 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).
- B. For each development right that is transferred, the said receiving property and subdivision is entitled to an increase of one (1) additional buildable lot.

- C. All lots permitted through transferred development rights are subject to meet all applicable regulations of this Ordinance.
- D. All lots permitted through transferred development rights shall be contiguous and preferably orientated in such a manner to allow for the maximum agricultural use of the surrounding land.
- E. If a Development Right is being transferred, the owner of the 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.

Section 309.3

The Deed Restriction as it related to the transfer of development rights as outlined in Section 308 of this Ordinance requires the following:

- A. The restriction shall limit any further residences, divisions or nonagricultural development on the quarter-quarter section or Legal Lot. The restriction shall be on a form provided by the County Planner (see Appendix 14) and shall include the following information:
 - (1) Record Fee Owner(s) legal name.
 - (2) Legal Description of Restricted Parcel.
 - (3) Agreement Description stating the following:
 - (a) The land meets the criteria established in Section 308 of this Ordinance.
 - (b) A legal description of the receiving property on the adjacent quarter-quarter section or Legal Lot.
 - (c) The Deed Restriction shall limit any further residences, divisions or nonagricultural development on the quarter-quarter section or Legal Lot in accordance with Section 309 of this Ordinance.
 - (d) Date and signature of Fee Owner(s).
 - (e) Date and signature of Notary Public.
 - (f) Date and signature of County Engineer.

Interpretations Made:

A. Development Rights Land Parcel Minimums

1. Section 308 is interpreted that the land parcel minimum for 1 development right is allowed by right for every 40 acres of tracts of land 40 acres or more under common ownership (A full $\frac{1}{4}$ $\frac{1}{4}$ section or subdivided lot and/or tax parcel \geq 40 acres). When the 1 development right is allowed by right, there is no implementation of the transfer of development rights and therefore deed restrictions do not occur.

40 acre minimums are required for 1 development right, because it allows for the minimum transfer of 1 development right on the proposed parcel if an additional 40 acres is not available from transfer elsewhere.

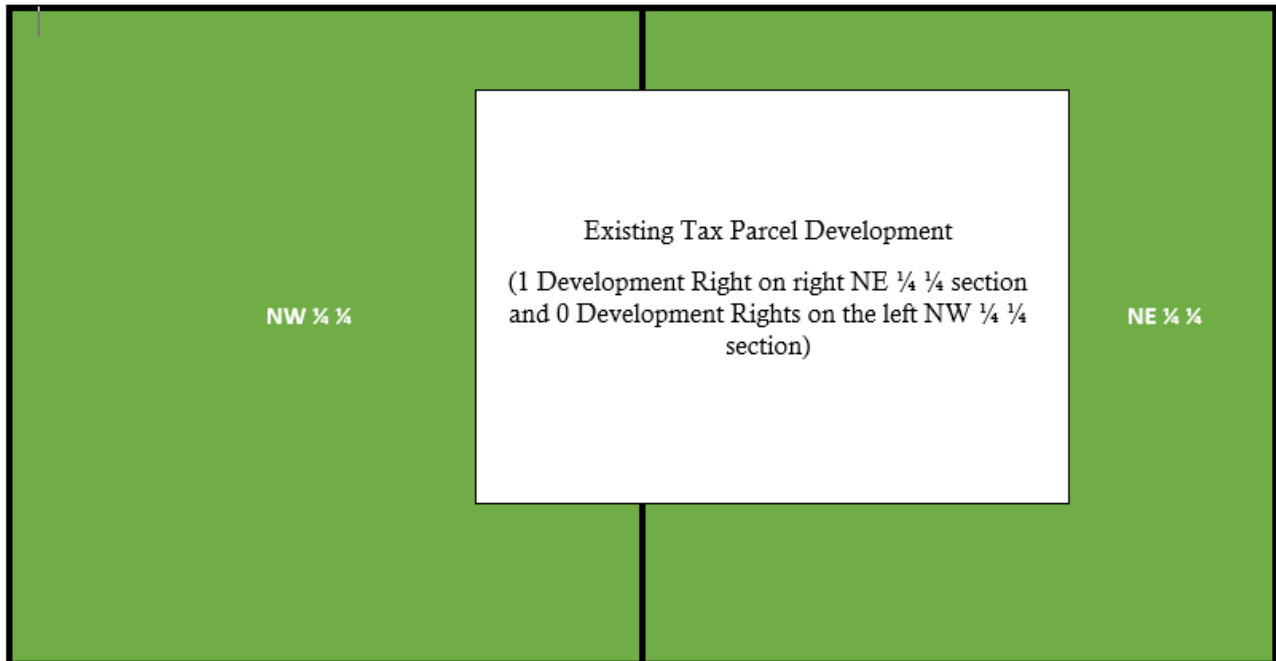
In the scenario where there are only 40 acres available and a development right needs to be transferred to allow for the 2nd development, the remainder of the 40 acre parcel can be deed restricted to satisfy the transfer of a development right requirements. For more information, please see the diagram below:

$\frac{1}{4}$ $\frac{1}{4}$ Section



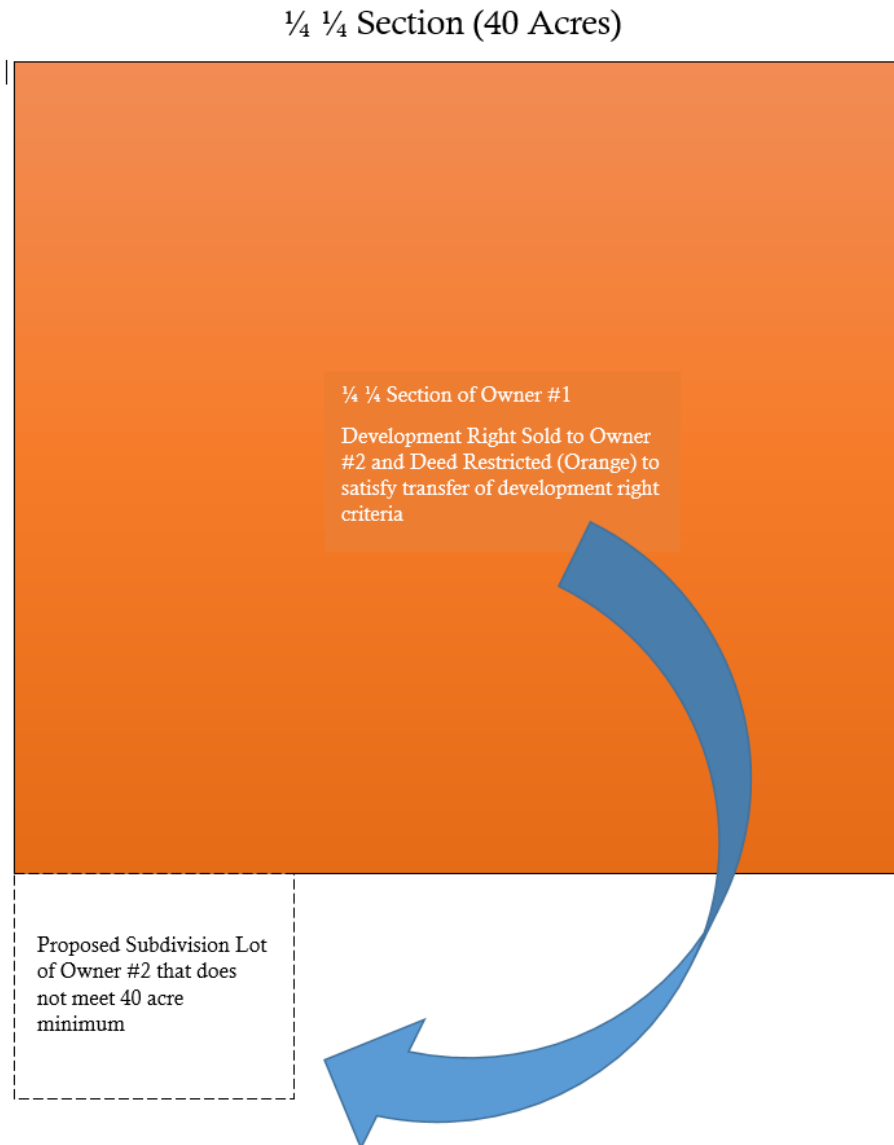
- a. If a ¼ ¼ section of land ownership acreage is being evaluated for the number of development rights available, publicly owned lands in the ¼ ¼ section will not detract acreage from cumulative acreage total counts.
- b. Legal lot acreage determinations will be based on pre-existing established tax parcels and their corresponding Personal Identification Number. Common ownership with separate tax parcel PIN numbers will not be aggregated and evaluated as 1 parcel.
- c. The sale of a subdivision parcel to another owner detracts from the net land availability for development under common ownership
 - i. After a subdivision lot is platted and is sold to a different owner, the available developable land under common ownership is now the net difference between the remaining land under common ownership in a quarter section and the lot parcel (land under common ownership in quarter section – platted Lot sold/transferred to different ownership = land under common ownership available for development).
- d. A tax parcel with a development (for example a farmstead tax parcel in the northern ½ of a ¼ section) that is located on a ¼ ¼ section line will only be counted as 1 development if 50% or more of the area of the tax parcel boundary are located within the ¼ ¼ section in question. For more information, please see graphic below:

Half of ¼ Section



B. Deed Restriction Interpretations

1. Section 308 C. is interpreted to allow the owner of a land tract less than 40 acres to purchase development rights from a different land owner in the form of a private contract from a parcel of land ≥ 40 acres or more that abuts the proposed site or $\frac{1}{4}$ $\frac{1}{4}$ section that the proposed lot is located on. After the purchase of development rights has been made, the property that sold the purchased development rights can be deed restricted and the development right transferred to a property that does not have the minimum 40 acres available to deed restrict. For more information, please refer to the illustration below.

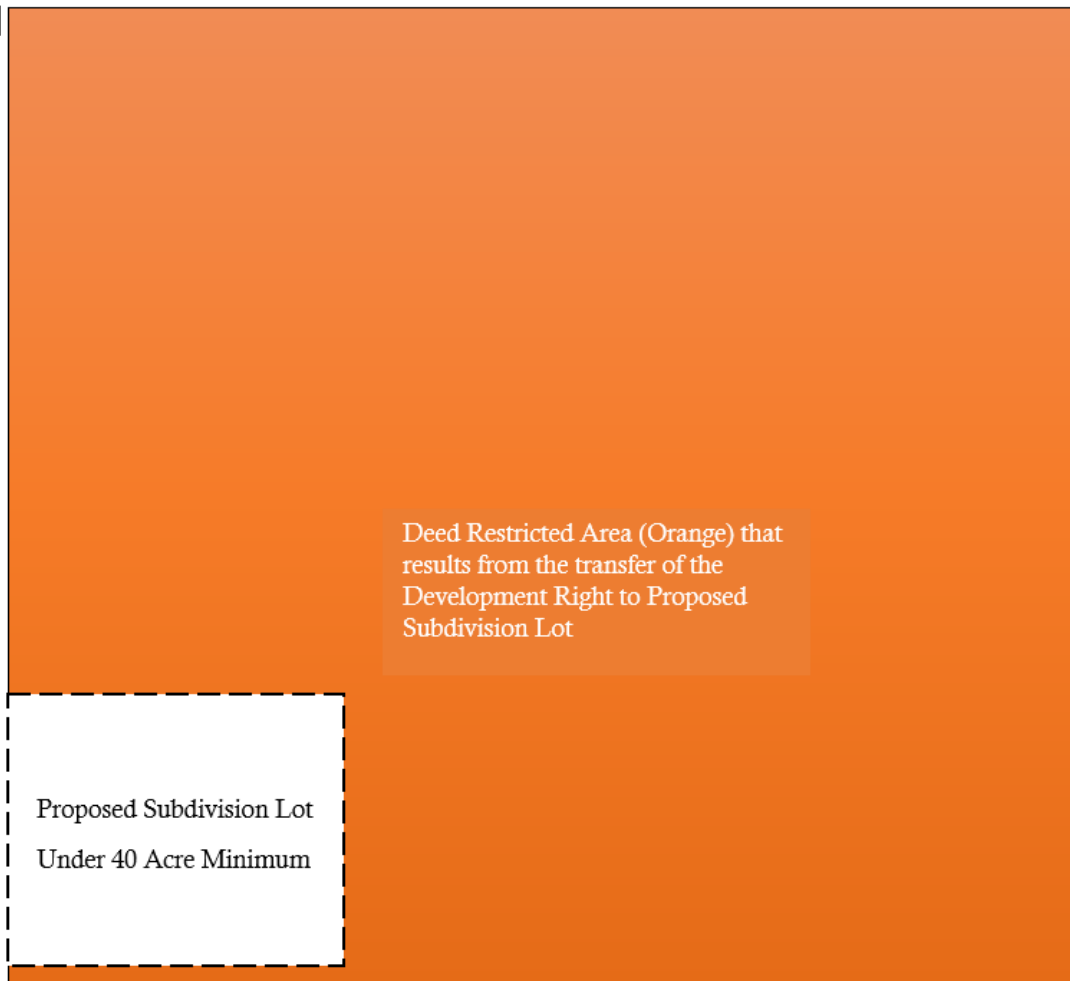


2. Section 308 is interpreted that if the proposed division and sale of a land parcel under 40 acres from a land parcel 40 acres or greater under common ownership, needs to be subdivided and deed restricted if the proposal does not meet exemption

requirements listed under the Subdivision definition paragraph. This is for 2 reasons:

- a. Section 307 restricts the lot size of one development to 40 acres or less
- b. 40 acre minimums are required for a parcel to enjoy one (1) Development Right by right without the need to transfer development rights. Therefore, if a proposed lot for sale does not meet the 40 acre minimum land area requirement, it may not utilize a Development Right by right and would require a transfer of a Development Right from the remaining $\frac{1}{4} \frac{1}{4}$ area or an abutting $\frac{1}{4} \frac{1}{4}$ section or existing legal lot that exceeds 40 acres in size.
 - i. e.g. An undeveloped $\frac{1}{4} \frac{1}{4}$ section with a proposal to subdivide 1 Lot for sale for a residential structure will require a deed restriction from the remainder of the $\frac{1}{4} \frac{1}{4}$ section. Please see illustration for more information below:

$\frac{1}{4} \frac{1}{4}$ Section



3. Section 309.3 is interpreted to allow the applicant of a subdivision application the flexibility to either deed restrict the remaining $\frac{1}{4} \frac{1}{4}$ section the proposed lots occupy or abutting 40 acre $\frac{1}{4} \frac{1}{4}$ section per Development Right



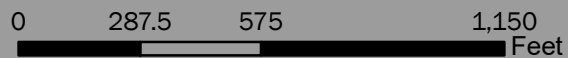
Item F.2.

Raymond, Section 8 - Township 140 North - Range 50 West



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

Cass County Planning Commission
February 28, 2019



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 acquire street right of way
- 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.

February

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6	7 Planning Commission Application Due Date	8	9
10	11 Public Hearing Advertisement Choice #1	12	13	14	15	16
17	18 Public Hearing Advertisement Choice #2	19	20	21	22	23
24	25 Public Hearing Newspaper Advertisement Choice #3	26	27	28 Planning Commission Meeting		

SECTION 303

Final Plat Application.

An application for Final Plat Approval can be submitted only after the following, when required as noted, have been completed.

The receipt of an unconditional Preliminary Plat approval in accordance with Section 302 of this Ordinance, when a Preliminary Plat approval is required.

Final Plats may be filed with the County Planner on any business day; however, the Planning Commission will officially review the plan at a particular meeting only if the Plan was filed at least twenty one (21) days prior to that meeting.

The Final Plat may be submitted in sections, each section covering a reasonable portion of the entire proposed subdivision as shown on the approved Preliminary Plat; provided that each section, except for the last section, shall contain a minimum of twenty five (25) percent of the total number of lots as depicted on the approved Preliminary Plat unless the Planning Commission specifically approves a lesser percentage for one or more sections.

The Planning Commission may accept a Final Plat modified to reflect a change to the site or its surroundings which occurs after the Preliminary Plat review. The Planning Commission shall determine whether a modified Final Plat will be accepted or whether a new Preliminary Plat shall be submitted.

facilities. As a condition of final approval of plats, the board of county commissioners may require that the subdivider make and install such public improvements at the subdivider's expense and that the subdivider execute a surety bond or other security to ensure that the subdivider will so make those improvements within such time as the board of county commissioners shall set.

4. Provisions for release of a surety bond or other security upon completion of public improvements required to be made by the subdivider.
5. Provisions for encouraging and promoting flexibility, economy, and ingenuity in the location, layout, and design of subdivisions, including provisions authorizing the board of county commissioners to attach conditions to plat approvals requiring practices which are in accordance with modern and evolving principles of subdivision planning and development, as determined by the board of county commissioners.

11-33.2-05. Public hearing - Notice.

After the filing of the proposed resolution, the county planning commission shall hold a public hearing thereon, at which the proposed resolution shall be submitted for discussion, and parties in interest and citizens shall have an opportunity to be heard. Notice of the time, place, and purpose of the hearing shall be published once each week for two consecutive weeks in the official newspaper of the county, and in such other newspapers published in the county as the county planning commission may deem necessary. Said notice shall describe the nature, scope, and purpose of the proposed resolution and shall state the times at which it will be available to the public for inspection and copying at the office of the county auditor.

11-33.2-06. Publication of resolution - Effective date.

Following the public hearing, the board of county commissioners may adopt the proposed resolution, with such changes as it may deem advisable. Upon adoption of the resolution, the county auditor shall file a certified copy thereof with the recorder. Immediately after the adoption of any resolution, the county auditor shall have notice of that fact published for two successive weeks in the official newspaper of the county and in other newspapers published in the county as the board of county commissioners may deem appropriate. The notice shall describe the nature, scope, and purpose of the adopted resolution and shall state the times at which it will be available for public inspection and copying at the office of the recorder. Proof of publication shall be filed in the office of the county auditor. If no petition for a separate hearing is filed pursuant to section 11-33.2-07, the resolution or amendment thereto shall take effect upon the expiration of the time for filing said petition. If a petition for a separate hearing is filed pursuant to section 11-33.2-07, the resolution or amendment shall not take effect until the board of county commissioners has affirmed the resolution or amendment in accordance with the procedures set out in section 11-33.2-07. The resolution may be amended or repealed by the board of county commissioners by following the same procedures as in the case of adoption of a resolution.

11-33.2-07. Separate hearings.

Any person aggrieved by any provision of a resolution adopted hereunder, or any amendment thereto, may, within thirty days after the first publication of the notice of adoption of the resolution or amendment, petition for a separate hearing before the board of county commissioners. The petition shall be in writing and shall specify in detail the ground or grounds of objection. The petition shall be filed with the county auditor. A hearing on the petition shall be held by the board no sooner than seven days, nor later than thirty days after the filing of the petition with the county auditor, who shall notify the petitioner of the time and place of the hearing. At this hearing, the board of county commissioners shall consider the matter complained of and shall notify the petitioner, by registered or certified mail, what action, if any, it proposes to take. The board of county commissioners, at its next regular meeting, shall either rescind or affirm the resolution or amendment. The provisions of this section shall not operate to curtail or exclude the exercise of any other rights or powers of the board of county commissioners or of any citizen.

INTEROFFICE MEMORANDUM

TO: BIRCH BURDICK

FROM: SHERALYNN TERNES

SUBJECT: ADEQUATE NOTICE FOR PUBLIC HEARING

DATE: 2/12/19

CC: BARRETT VOIGT

QUESTION PRESENTED

Whether a second public advertisement in the Fargo Forum on Monday, February 25, 2019, is adequate notice to comply with the North Dakota Century Code for a hearing set for Thursday, February 28, 2019.

ANALYSIS

“Notice of the time, place, and purpose of the hearing shall be published once each week for two consecutive weeks in the official newspaper of the county.” N.D.C.C. § 11-33-08.

In *Bigwood v. City of Wahpeton*, the city code included a section stating “[n]otice of said hearing shall be published once a week for two (2) successive weeks prior to the time set for said hearing in the official newspaper of the city.” 1997 ND 124, ¶ 12, 565 N.W.2d 498. The City published notice in the city paper on January 24 (Wednesday) and January 31 (Wednesday) for a hearing held on February 5 (following Monday). The plaintiffs argued the City did not provide adequate notice of the hearing. The North Dakota Supreme Court held the notice was adequate. “Notice published in the official city newspaper is valid even though the notice is not in strict compliance with the city’s ordinance.” *Id.* at ¶ 20. “Provided the notice follows the legislative dictates and gives ‘average reader reasonable warning that property in which the reader has an interest may be affected by the proposed zoning legislation, and affords that person an opportunity by the exercise of reasonable diligence to determine whether such is the fact,’ the notice will be sufficient.” *Id.*

In *Bigwood*, even though the City did not publish notice two full weeks prior to the hearing, the Court held the notice was sufficient. However, the City did publish each of the two weeks prior to the week of the hearing.

CONCLUSION

There is no clear answer. Notice published on February 25, 2019 may be adequate under the Court's analysis in *Bigwood*. However, to avoid any potential litigation issues, I recommend publishing the notice on February 14, 2019 and again on February 21, 2019. If the recommendation is followed, notice will be published once each week for two consecutive weeks prior to the hearing, complying with N.D.C.C. § 11-33-08.