

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

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**A. Call to Order**

**B. Roll Call**

**C. Determination of a Quorum**

**D. Approve Meeting Minutes of February 28, 2019**

**E. Public Hearing Items:**

1. 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and NE 1/4 of Section 26, Township 143 North, Range 50 West of the 5th Principal Meridian, Cass County North Dakota): **Withdrawn**
2. Hearing on an application requesting a **Text Amendment** to amend Section 106.4, 302.1, 302.4, 303, 303.4, 305.1 of the Cass County Subdivision Ordinance (CCSO) relating to application requirements (Cass County).
3. Hearing on an application requesting a **Text Amendment** to amend Section 203 of the Cass County Subdivision Ordinance (CCSO) relating to subdivision ordinance exemptions (Cass County).

**F. New Business**

**G. Old Business**

**H. Adjournment**

**CASS COUNTY PLANNING COMMISSION  
FEBRUARY 28, 2019**

**1. MEETING TO ORDER**

A meeting of the Cass County Planning Commission was called to order on February 28, 2019, at 7:00 AM in the Vector Control Conference Room with members present as follows: Duane Breitling, Todd Ellig, Kevin Fisher, Tim Mahoney, Keith Monson, and Brad Olson. David Gust and Ken Lougheed were absent. Also present were County Planner Barrett Voigt; County Engineer Jason Benson; County State's Attorney Birch Burdick.

**2. MINUTES, APPROVED**

***MOTION, passed***

**Mr. Olson moved and Mr. Breitling seconded to approve the minutes of the January 24, 2019, meeting as presented. Motion carried.**

**3. OTTIS SUBDIVISION (Minor Subdivision)**

Mr. Voigt stated that an application was received by the Cass County Planning Office for approval of a minor subdivision to create one lot and one block for the purpose of selling a farmstead. The proposed lot is entitled Ottis Subdivision and is located in the West 1/2 of Section 34, Township 137 North, Range 50 West (5350 166<sup>th</sup> Ave SE, Normanna Township) and is approximately 4.69 acres.

Mr. Voigt stated that he was informed by the applicant that a new plat will be submitted where the southern border will be extended so that the access easement is delineated within a platted boundary.

Mr. Voigt recommends approval of the application under the conditions that a deed restriction is recorded that meets the requirements of the Cass County Subdivision Ordinance; either a letter of verification is received from Normanna Township verifying that the application complies with township zoning or 60 days lapse; and a new plat is received where the southern border is extended to delineate the access within the platted boundary.

Mr. Ellig opened the public hearing. Hearing no public comment, the public hearing was closed.

Dr. Mahoney arrived for the remainder of the meeting.

***MOTION, passed***

**Mr. Breitling moved and Mr. Fisher seconded to recommend approval of the subdivision application for Ottis Subdivision to the Cass County Commission, with the conditions outlined by the County Planner. Motion carried.**

**4. BAF SUBDIVISION (Minor Subdivision)**

Mr. Voigt stated that an application was received by the Cass County Planning Office for approval of a minor subdivision of a one lot, one block subdivision for the purpose

of establishing a farmstead and to construct a residential structure. The proposed lot is entitled BAF Subdivision and is located in the Southwest 1/4 Section 28, Township 141 North, Range 50 West (no address, Berlin Township) and is approximately 12.85 acres.

Mr. Voigt stated that a letter has been received from the Township Chairman verifying that the proposal meets township zoning requirements.

Mr. Voigt recommends approval of the application under the condition that a deed restriction is recorded that meets the requirements of the Cass County Subdivision Ordinance.

Mr. Ellig opened the public hearing. Hearing no public comment, the public hearing was closed.

***MOTION, passed***

**Mr. Olson moved and Mr. Breitling seconded to recommend approval of the subdivision application for BAF Subdivision to the Cass County Commission, with the conditions outlined by the County Planner. Motion carried.**

**5. CORNELL FIRST SUBDIVISION (Minor Subdivision)**

Mr. Voigt stated that an application was received by the Cass County Planning Office for approval of a minor subdivision to subdivide one lot for the purpose of separating a residential structure from a farmstead. The proposed lot is entitled Cornell First Subdivision and is located in the Northeast 1/4 of Section 1, Township 141 North, Range 55 West (2452 138<sup>th</sup> Ave SE, Cornell Township) and is approximately 3.01 acres.

Mr. Voigt stated that there is no zoning board in Cornell Township and the Township Chairman confirmed that the township approves of the application.

Mr. Voigt recommends approval of the application under the condition that a deed restriction is recorded that meets the requirements of the Cass County Subdivision Ordinance.

Mr. Ellig opened the public hearing. Hearing no public comment, the public hearing was closed.

Dr. Mahoney inquired why a property owner would separate a residential structure from a farmstead. Mr. Voigt stated that a property owner would be required to plat property prior to sale in order to comply with the Cass County Subdivision Ordinance.

Dr. Mahoney asked if a property owner would separate the property and farm buildings in order to sell them separately. Mr. Fisher said yes, as it is otherwise difficult to secure financing. This type of separation is extremely common.

Mr. Breitling asked if there are three lots. Mr. Voigt said there are three existing Auditor's Lots, but only one lot will be platted; Auditor's Lots cannot be used for platting.

Mr. Ellig asked how a township can issue building permits if they do not have a zoning board. Mr. Voigt said some townships have relinquished their zoning authority.

County Engineer Jason Benson said townships are continuously encouraged to review the county’s model township zoning ordinance and to adopt and enforce zoning guidelines.

***MOTION, passed***

**Dr. Mahoney moved and Mr. Monson seconded to recommend approval of the subdivision application for Cornell First Subdivision to the Cass County Commission, with the conditions outlined by the County Planner. Motion carried.**

**6. SCHMITZ SUBDIVISION (Minor Subdivision)**

Mr. Ellig said the public hearing on the Schmitz Subdivision application will be continued until the March 28, 2019, meeting.

**7. 2019 MEETING SCHEDULE**

Mr. Voigt provided a memo outlining the 2019 meeting dates for the Cass County Planning Commission and requested feedback. Hearing none, the current meeting dates will remain in effect.

**8. CASS COUNTY SUBDIVISION ORDINANCE**

***Draft Judicial Interpretations document***

Mr. Voigt said he has identified multiple issues in the Cass County Subdivision Ordinance, some of which demand immediate attention. Edits are needed for liability purposes, to reduce redundancies, and to clarify conflicting language. After conferring with members of this commission, Mr. Voigt has drafted a Judicial Interpretations document for the ordinance with the goal of providing clear and transparent information to citizens. The ordinance could be edited to incorporate the interpretations, or the interpretations could be provided as a standalone document posted online.

***Subdivision definition exemption requirements***

Mr. Voigt stated that he received an inquiry about what the subdivision ordinance would require to purchase a small portion of agricultural land and combine it with a small agricultural lot. The subdivision ordinance specifies that a division of agricultural land must be 10 acres or more to be exempt from the subdivision ordinance requirements. The question was raised as to whether or not the ordinance should be amended to allow an exemption for comparable situations.

Mr. Ellig said a variance could be granted if the spirit of the ordinance is met. Mr. Voigt said a variance must be granted in tandem with a plat or certificate of survey, which can cost up to \$3,000.

Dr. Mahoney said it seems that amending the ordinance would be the least cost prohibitive option for landowners.

Mr. Fisher said the 10-acre agricultural use requirement may be tied to an outside intent, such as for tax purposes.

***MOTION, passed***

**Mr. Monson moved and Mr. Breitling seconded to recommend that the County Planner draft alternative language for subdivision exemption requirements in the Cass County Subdivision Ordinance, specifically pertaining to the exemption for agricultural land, and to bring proposed changes to the Cass County Planning Commission for review and approval.**

**Discussion: Mr. Ellig asked if the recommendation is to remove the 10-acre requirement. Mr. Benson said the 10-acre requirement was meant to prevent the development of residential lots without going through the platting process.**

**Mr. Breitling said perhaps language could be added to permit lot line adjustments.**

**Mr. Ellig said language could otherwise allow this board to consider or approve similar issues as they arise.**

**Motion carried.**

**Application hearing deadline**

Mr. Voigt stated that the subdivision ordinance requires that subdivision applications must be submitted a minimum of 21 days prior to being heard by the Planning Commission, and that this resulted in establishing a subdivision application deadline. As February was a short month, there were potential conflicts between the local ordinance deadline and the N.D.C.C. state statutory public hearing notification requirement. Mr. Voigt contacted the office of the Attorney General and the State's Attorney Office to seek clarification on state public hearing notification requirements. As a result, he was provided with an opinion from the Cass County State's Attorney Office that state statute public hearing notice requirements were not clear; however, full seven-day week periods were advised, which resulted in more expensive newspaper advertising fees.

Mr. Voigt stated that other similar planning entities do not impose deadline requirements in which applications must be reviewed, and Mr. Voigt would prefer to eliminate the 21-day requirement to ensure compliance with state statute and to allow more time for thorough staff analysis of applications.

***MOTION, passed***

**Mr. Breitling moved and Mr. Olson seconded to recommend that the County Planner draft alternative language for Final Plat Application requirements in the Cass County Subdivision Ordinance, specifically pertaining to the 21-day review requirement, and to bring proposed changes to the**

**Cass County Planning Commission for review and approval.  
Motion carried.**

Mr. Breitling left for the remainder of the meeting.

**9. OTHER BUSINESS**

Deed restriction requirement

Mr. Ellig asked what purpose deed restrictions serve as required in the Cass County Subdivision Ordinance.

Mr. Benson said the purpose of deed restrictions is to keep agricultural areas agricultural, and to ensure that large residential areas are within or near cities that can support the required infrastructure. It also supports growth in smaller communities for residents who do not wish to live in large cities.

**10. ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:02 AM.

Minutes prepared by Brielle Edwards, HR Assistant



## Cass County Planning Commission Staff Report

<b>Entitlements Requested:</b>	Cass County Subdivision Ordinance (CCSO)Text Amendment		
<b>Title:</b>	§106.4, §302.1, §302.4, §303, §303.4, §305.1 CCSO Text Amendment	<b>Date:</b>	03-11-2019
<b>Location:</b>	N/A	<b>Staff Contact:</b>	Barrett Voigt
<b>Owner(s)/Applicant :</b>	Cass County	<b>Engineer/Surveyor:</b>	N/A
<b>Status:</b>	Planning Commission Hearing: March 28, 2019		

### Proposal

The County Planner is seeking approval of a text amendments of §106.4, §302.1, §302.4, §303, §303.4, §305.1 of the Cass County Subdivision Ordinance (CCSO) for the purpose of eliminating conflicts between county ordinance and North Dakota Century Code (N.D.C.C.) §11-33.2-05 county subdivision regulation of public hearing requirements as well as reducing public hearing notification cost inefficiencies.

### Staff Analysis

During the month of February, Planning Department staff identified a potential conflict between local CCSO §302.1, §302.4, §303, §303.4, §305.1 and N.D.C.C. §11-33.2-05 due to the short number of days in the month.

The CCSO required that any application submitted to the County Planner be provided twenty one (21) days prior to the next scheduled Planning Commission meeting. This requirement results in the establishment of an application deadline 21 days prior to any Planning Commission Meeting. In addition, N.D.C.C. §11-33.2-05 requires notification of a public hearing once a week for two (2) consecutive weeks. Given the limited number of days of February, staff was tasked to meet the application deadline of the local newspaper to request that a notification be published for subdivision application Planning Commission hearing requests in order to fulfill the N.D.C.C. §11-33.2-05 requirements and only pay the standard fee for the service. However, if staff were to pursue conventional practice and meet the newspaper deadline to acquire a standard fee for notification services, the last notification (2nd notification) would then be published during the week of the meeting and only 4 days prior to the public hearing.

To seek clarification on the state statute notification requirements, Planning Department staff contacted the office of the North Dakota Attorney General and the State’s Attorney office. Both offices concluded that it was

inconclusive whether publishing an advertisement 4 days prior to the Planning Commission meeting would suffice to meet state statute requirements of “once a week.”

To proactively avoid issues of litigation in the future and to always ensure that staff always pay the standard rate for newspaper notification publication, staff requests a text amendment to the CCSO to eliminate the 21 day requirement and allow staff the authority to establish the application deadline.

**Text Amendment Proposal:**

Staff proposes the following text amendments in underlined and strikethrough font to §106.4, §302.1, §302.4, §303, §303.4, §305.1 of the CCSO:

**106.4.** The Cass County Planning Office shall serve as the administrative officer of the Planning Commission and be authorized to process, review, report, recommend and provide notice for all applications described within this ordinance.

The Cass County Planning Office may establish:

1. Deadlines for receipt of complete applications
2. Dates of regular meetings
3. The scheduling of staff reviews and staff reports
4. All required steps in the application process (including public hearings and reviews by other agencies)
5. Required time-frames for action by review and decision-making bodies.

**302.1. Application Requirements.** All Preliminary Plat Applications shall include the following ~~and shall be submitted at least twenty one (21) days~~ prior to the next regularly scheduled Planning Commission meeting.

**302.4. Planning Commission Action.** The County Planner will schedule the Preliminary 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.

~~In general, the County Planner will schedule the Preliminary Plat application for action at the first Planning Commission meeting which is at least twenty one (21) days following filing. However, a~~ A municipality may request the Planning Commission to delay action on the application up to ninety (90) days from the date of filing to allow for the submission of its comments to the Planning Commission. The Preliminary Plat will, therefore, be considered at a public meeting by the Planning Commission in accordance with a schedule that allows time for review of the Plan by the municipality.



## 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.~~

### **303.4.**

**Planning Commission Action.** 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.

~~In general, the County Planner will schedule the Final Plat application for action at the first Planning Commission meeting which is at least twenty one (21) business days following filing. However, a A municipality may request the Planning Commission to delay action on the application up to ninety (90) days from the date of filing to allow for the submission of its comments to the Planning Commission. Final Plat approval will be effective for ninety (90) days from the date of the Planning Commission's action on the Final Plat, unless the Planning Commission grants a variance by extending the effective time period of the approval. Within this time period the applicant must meet all conditions of approval, if any; certify plans as specified in this Ordinance; and record plans as specified in this Ordinance.~~

### **305.1.**

**Application Requirements.** All requests for variances shall be made in accordance with the following procedure:

A. All requests for a variance shall be made in writing and shall accompany and be a part of the application for development. The request shall state in full the grounds and facts of unreasonableness or hardship on which the request is based, or the alternative standard proposed to provide equal or better results, the section or sections of this Ordinance which are requested to be waived and the minimum modification necessary. The request shall be accompanied by a plan prepared at least to the minimum standards of an area sketch plan (*see Section 401*).

B. Should a revision to a submitted plan require a variance which was

not apparent at the time of initial plan submission, the request for a variance shall be submitted in accordance with subsection (A) above, at the time of submission of the revised plans.

- C. Requests for variances shall be considered by the Planning Commission at a public meeting ~~which is at least twenty-one (21) days~~ after the submission of the variance request. However, a municipality may request the Planning Commission to delay action on the variance to allow time for the municipality to submit comments to the Planning Commission.

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Staff Recommendation

To accept the findings and recommendations of staff and recommend approval to the County Commission of the text amendment application as the proposal meets the goals and objectives of the Cass County Comprehensive Plan and the Cass County Subdivision Ordinance and all other applicable regulations.

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## Cass County Planning Commission Staff Report

<b>Entitlements Requested:</b>	<b>Cass County Subdivision Ordinance (CCSO) Text Amendment</b>		
<b>Title:</b>	<b>CCSO §203 Text Amendment</b>	<b>Date:</b>	03-11-2019
<b>Location:</b>	N/A	<b>Staff Contact:</b>	Barrett Voigt
<b>Owner(s)/Applicant :</b>	Cass County	<b>Engineer/Surveyor:</b>	N/A
<b>Status:</b>	Planning Commission Hearing: March 28, 2019		

### Proposal

The County Planner is seeking approval of a text amendment of §203 of the Cass County Subdivision Ordinance (CCSO) for the purpose of expanding the list of exemptions of the CCSO to allow for the exemption of lot line adjustment development for property with agricultural uses.

### Staff Analysis

Planning Department staff was notified of a potential development scenario whereby a small parcel with agricultural use was proposing to acquire additional agricultural land under 10 acres for the purpose of adjusting a lot line so that the parcel would be more parallel to the street frontage of the property. Under the current exemption standards found under the “Subdivision” definition in §203 of CCSO, this scenario would not be exempt from the CCSO because it does not meet exemption criteria of exemption “C” where 10 acres or more of lot size would be required in order for the development to be exempt from the CCSO requirements.

This development proposal seems like it should be exempt because it is similar to the language proposed in the exemption list of the CCSO and is supported by other language in the CCSO and the Cass County Comprehensive & Transportation Plan. The following sections of the CCSO and comprehensive plan support the addition of language to the exemption of the development proposal mentioned above:

- Section 102 of the CCSO states that the ordinance shall in no way prohibit or prevent the use of land or buildings for farming or any of the normal incidents of farming. Thereby providing the intent that agricultural land uses are supported by the ordinance.
- The Cass County Comprehensive & Transportation Plan states that township zoning ordinances should be created for townships to preserve agricultural land.

- The implementation plan of the comprehensive plan provides the following implementation statement to preserve rural heritage, “Protect the County’s valuable farmland, agricultural traditions, and existing rural character.”
- The comprehensive plan also states that to embrace the vision of the community that, “The basis of many county policies need to remain agriculturally focused, with an eye towards the primary sector economy, as well as emerging technologies.”

This development proposal was presented to the Planning Commission on February 28, 2019. Staff advised the Planning Commission that the intent of the CCSO and comprehensive plan is to promote agricultural uses and that feedback was solicited in regards to a text amendment update to allow an exemption for agricultural land lot line adjustment. Staff received feedback from the Planning Commission that support was provided for a text amendment proposal.

**Text Amendment Proposal:**

Staff proposes the following text amendment addition in underlined font to §302 of the CCSO:

**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.
- F. Property line adjustment for agricultural lands. Agricultural land that does not exceed 15% of the lot, plot, parcel or legal lot area may be acquired, sold, or transferred between abutting agricultural lands for the purposes of a property line adjustment.

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**Staff Recommendation**

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To accept the findings and recommendations of staff and recommend approval to the County Commission of the text amendment application as the proposal meets the goals and objectives of the Cass County Comprehensive Plan and the Cass County Subdivision Ordinance and all other applicable regulations.

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