CASS COUNTY PLANNING COMMISSION AGENDA
Thursday, May 24, 2018 at 7:00 a.m.

1. Call to Order
2. Roll Call
3. Determination of a Quorum
4. Approve Meeting Minutes of April 26, 2018
5. Public Hearing Items:
   a. Subdivision Ordinance amendments
6. New Business
7. Adjournment

People with disabilities who plan to attend the meeting and need special accommodations should contact the Highway Department at 298-2370 prior to the meeting to make arrangements.
CASS COUNTY PLANNING COMMISSION
APRIL 26, 2018

1. MEETING TO ORDER
A meeting of the Cass County Planning Commission was called to order on April 26, 2018, at 7:00 AM in the Vector Control Conference Room with members present as follows: Todd Ellig, Kevin Fisher, David Gust, Ken Lougheed, Tim Mahoney, Keith Monson, Arland Rasmussen, and Mark Wentz. Also present was County Planner Hali Durand, and Joel Quanbeck of KLJ.

2. MINUTES, APPROVED
   MOTION, passed
   Dr. Mahoney moved and Mr. Wentz seconded to approve the minutes of the January 25, 2018, meeting as presented. Motion carried.

3. SUBDIVISION ORDINANCE AMENDMENTS
Ms. Durand said she was asked by this commission to draft a document to simplify the platting process for straightforward cases that meet certain criteria. Ms. Durand provided suggestions to update the Subdivision Ordinance to address the issue, including the removal of the definition of a lot split; updating subdivision exemptions; and requiring a certificate of survey in lieu of a plat for single lot divisions.

The purpose of the update is to simplify the process and cut down on the time and expense required for landowners under the current system. Ms. Durand worked with the Cass County State's Attorney Office for legal guidance in the update in order to maintain compliance with all state and local laws.

Ms. Durand said in order to change the Subdivision Ordinance this commission would have to recommend changes to the county commission. The county commission would then be required to have two readings to enact the changes.

Ms. Durand said the rest of the ordinance changes can be discussed at a subsequent meeting, to allow the group to study the suggestions more closely and ask questions.

4. MURCH SUBDIVISION (Minor Subdivision), Final plat approved
Mr. Lougheed opened the public hearing.

An application for a Minor Subdivision (plat) was received by the Cass County Planning Office for approval of a tract of land located in part of the Southeast Quarter of Section 26, Township 143 North, Range 52 West of the 5th Principal Meridian, to plat one lot for future residential development. The said tract contains 5.71 acres of land, more or less. The ownership and maintenance responsibility of the subdivision will remain private. The subdivision will use private gravel roads, ditches for storm sewer conveyance, rural water, and an onsite septic sewer system for waste water treatment. The existing land is and will remain Agricultural.
Ms. Durand recommends approval of the Final Plat as presented as it meets all required regulations, with the inclusion of a Deed Restriction of land up to 80 acres. There are no immediate plans to build on the lot.

The public hearing was closed.

MOTION, passed
Mr. Gust moved and Mr. Ellig seconded to recommend approval to the Cass County Commission of the Final Plat for Murch Subdivision (Minor Subdivision) as presented. Motion carried.

5. COMPREHENSIVE PLAN UPDATE
Joel Quanbeck of KLJ was present to provide a presentation on the Cass County Comprehensive Plan. Mr. Quanbeck said there will be a future public hearing on the draft plan.

6. ADJOURNMENT
On motion by Mr. Rasmussen, seconded by Mr. Monson, and all voting in favor, the meeting was adjourned at 8:38 AM.

Minutes prepared by Brielle Edwards, HR Assistant
1. REMOVE THE LOT SPLIT DEFINITION

Lot Split. Division of a lot created by a previous subdivision into two parts in which at least one part will not be a buildable lot according to applicable zoning regulations and in which no existing easements or accesses are affected and no new easements or accesses are required.

2. UPDATE THE SUBDIVISION EXEMPTIONS

The following shall not be considered a subdivision, and shall be exempt from the requirements of this Ordinance:

A. a division of land which may be ordered or approved court or affected by testamentary or intestate provisions; 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 use as right of way for public facilities which do not involve any new streets or easements of access; A division of land for federal, state, or local government to acquire street right of way;

C. a division of land made to correct errors in prior divisions pursuant to Chapter 40-50.1 North Dakota Century Code;

As per NDCC 40-50.1-06.
Correction of plats — “...If any part of any platted addition, outlot, or parcel of ground, in any jurisdiction, is found to be inadequately or erroneously described in the plat, or if the plat is in error or is deficient as to marked or scaled distances, angles, or descriptions, or has other defects which make it incorrect or deficient, the governing body of the jurisdiction, by resolution, may declare it necessary to correct the plat or plats or to replat the property.”...

Subdivision Ordinance Section 105.3
For any change in a map of an approved or recorded subdivision plat, if such change affects any street layout shown on such map, or area reserved thereon for public use, or any lot line, or vacates any portion of said plat, such parcel shall follow the same procedures, rules and regulations as an original subdivision plat.”...

D. 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;

E. a division of land into lots, tracts, parcels in which one lot, tract, or parcel has existing a single family residential dwelling and the other lot(s), tract(s), or parcel(s) is/are also exempt by the previous stated exemptions; or

F. a lot split as defined in this Ordinance.

G. a division of land into cemetery plots; or

H. the combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased.

3. REQUIRE A CERTIFICATE OF SURVEY IN LIEU OF A PLAT FOR ONE LOT DIVISIONS

In order to transfer real property the document effecting the transfer needs to be one that the auditor will certify and the county recorder will file. As long as the new parcel can be taxed (the purpose of the auditor’s certificate) and recorded, the County can lawfully require a certificate of survey as part of its subdivision ordinance.

Under NDCC 47-19-02(6) a plat signed by a land surveyor registered in this state can be recorded without acknowledgment. In addition, NDCC 43-19.1-30 makes it unlawful to record a plat, map, survey or other land surveying document not prepared by a professional surveyor. Since your plan contemplates using a surveyor, we would be compliant with these requirements.

Additionally, the surveyor will know to create a document with a recordable description so that the document can be certified by the county auditor as something that will fit on the tax rolls (NDCC 11-18-02 among other places).

Since your plan contemplates using a surveyor to create a survey that is recordable and will fit on the tax rolls, I think it would be lawful for the county to enact these amendments to the subdivision ordinance.
The reasoning in the AG’s opinion is that the subdivision statutes in 11-33.2 require a survey and auditor’s plats found in 57-02-39 do not. The auditor’s plat is for tax purposes and not for transferring real property. Thus, the auditor’s plat would not comport with the statutory authority that the county has to regulate subdivisions.

The AG opinion can be found at https://attorneygeneral.nd.gov/sites/ag/files/Legal-Opinions/02-L-52.pdf.~ Tristan Van de Streek, Cass County legal department

4. UPDATE SECTION 307 LOT DENSITY RESTRICTIONS, SECTION 308 DEVELOPMENT RIGHTS, AND SECTION 309 DEED RESTRICTIONS

Subdivision Ordinance Section 306 Minor Subdivision Plans
On a subject tract for subdivision meetings the conditions for a minor subdivision which a proposed development does not exceed one (1) buildable lot per quarter-quarter section (40 acres) as outlined in Section 307 of this Ordinance or up to four (4) buildable lots using the transfer of development rights as outlined in Section 308 of this Ordinance and following the regulations outlined within Section 306 of this Ordinance will be allowed to be submitted as a Minor Subdivision Plan.

Subdivision Ordinance Section 307 Lot Density Restrictions
For the purpose of encouraging orderly and economically-feasible growth, preventing new developments from creating economic strains on county residents, protecting the county’s valuable farmland and agricultural traditions, promoting development that will more easily convert to an urban environment and implementing the goals and objectives established by the Cass County Comprehensive Plan (2005) the following lot density restriction is established. This density restriction will promote small, truly rural developments that will mesh more easily with existing agricultural land and activities and will encourage larger urban style subdivisions to develop in the urban fringe and other areas with supportive infrastructure. Developments built beyond the density restriction will be constructed with full supportive urban infrastructure, ensuring developments that will more easily transition into an urban development upon annexation without extensive and costly infrastructure upgrades.

Except as noted in the exemptions below, No subdivision of land shall exceed one (1) buildable lot per quarter-quarter section (40 acres) four (4) buildable lots per quarter section unless one of the following conditions are met:

A. If the development has followed the transfer of A development right has been transferred pursuant to Section 308 of this Ordinance and in accordance with all other required provisions of this Ordinance; or

B. # The subdivision will be built to full urban design standards and the strictest requirements outlined within Article VI of this Ordinance; including but not limited to paved roads with curb and gutter, a paved access road, municipal sewer system, public water supply system with functioning fire hydrants, storm water facilities, street lights, street trees, street signs, sidewalks, bike paths and park dedications.

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 industrial 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.

308.1. Using Transferred Development Rights

A. Development rights can be used transferred to increase a permitted lot density on a quarter section of land contiguous land that is under common ownership. The maximum number of development rights that can be transferred onto a quarter section of land or Legal Lot is eleven (11) twelve (12) development rights, therefore limiting each quarter section or Legal Lot to allowing a maximum of sixteen (16) buildable lots (i.e., one four (4) permitted existing buildable lot development rights per quarter section or Legal Lot and up to eleven (11) additional twelve (12) transferred developable rights) for one section of land.

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 8.5 by 11 inch sheet of paper.

SECTION 309  Deed Restriction
The following section outlines the requirements, procedures and implications of the Deed Restriction as it relates to the transfer of development rights in Section 308 of this Ordinance.

309.1. The transfer of development rights as outlined in Section 308 of this Ordinance requires the sending property to be deed restricted limiting future development on said property until said property is no longer under the jurisdiction of the county based on one of the following scenarios occurs at which point the Deed Restricted property will be expired:

A. The Deed Restricted property is completely within the extraterritorial (ET) boundaries of an incorporated city of Cass County.

B. The Deed Restricted property is completely annexed by an incorporated city of Cass County.

C. The subdivision will be built to full urban design standards and the strictest requirements outlined within Article VI of this Ordinance; including but not limited to paved roads with curb and gutter, a paved access road, municipal sewer system, public water supply system with function fire hydrants, storm water facilities, street lights, street trees, street signs, sidewalks, bike paths and park dedications.

At which point the Deed Restricted property is completely annexed or within the ET boundaries of an incorporated city of Cass County the restriction on the land will be retired and the property will follow the necessary procedures for development of the applicable incorporated city.

309.2. The Deed Restriction shall limit any further residences, divisions, or nonagricultural development on the quarter-quarter section of Legal Lot. The restriction shall be on a form provided by the County Planner. such property except for the following provisions:

A. At such time, the Deed Restricted property is completely within the extraterritorial (ET) boundaries of an incorporated city of Cass County.

B. The property is completely annexed by an incorporated city of Cass County.

C. The subdivision will be built to full urban design standards and the strictest requirements outlined within Article VI of this Ordinance; including but not limited to paved roads with curb and gutter, a paved access road, municipal sewer system, public water supply system with function fire hydrants, storm water facilities, street lights, street trees, street signs, sidewalks, bike paths and park dedications.

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.