

**SPECIAL MEETING MINUTES OF EDDY COUNTY COMMISSIONERS
AND EDDY COUNTY ZONING COMMISSION JOINT MEETING**

Eddy County Courthouse-Courtroom

March 6, 2026 8:00 A.M.

The Eddy County Special Commission Meeting and Eddy County Zoning Commission was called to order at 8:10 A.M. by Chairperson Dave Gehrtz and Zoning President Stuart Richter. Roll Call ECC: James F. Allmaras, Glenda Collier, Becki Schumacher, County Auditor, and State's Attorney Ashley Lies present. Roll Call Eddy County Zoning: Stuart Richter, Glenda Collier, Shauna Laber, Levi Rue, David Allmaras, Robert Hanson, Lucas Walter. The Transcript was also represented.

Zoning Commission President read opening statements regarding meeting.

Flickertail Wind, LLC presented their application and proposed amendments.

At 8:33 A.M., Public Testimony was opened. All in attendance were given the opportunity to give their testimony.

Flickertail Wind, LLC presented closing statements.

Shauna Laber made a motion, seconded by Lucas Walter to accept the proposed amendment changes as presented for recommendation to approve in Ordinance Section 2.2.20 Commission: The County Zoning Commission. 2.2.21 Conditional Use: Use of a special nature not automatically permitted in a zoning district and which requires review and approval by the Zoning County Commission after public hearing by the Zoning Commission. 2.2.68 Permitted uses: Those uses, buildings, or structures that comply with the provisions of specific zoning districts because of the similarities in nature and relationship to each other. Permitted uses are distinct from conditional uses that are authorized only if certain requirements of these provisions are met after a public hearing by the Zoning Commission and approval by the Zoning County Commission. 2.2.89 Zoning Commission: The Zoning Commission shall consist of seven (7) members: one (1) member of which must be City Commissioner of New Rockford and one (1) County Commissioner. The remaining members shall be appointed by the County Commissioners from the County at large. 6.3.8 Statement of findings. Upon the public notification and a public hearing, the Zoning County Commission shall determine whether the proposed site meets the requirements of these regulations. The Zoning County Commission may place conditions for approval of the site. 6.4.2 Site approval requirements. All site for salvage and junk yards require approval by the County Zoning Commission. 7.1 Organization. To administer this code, Eddy County is hereby invested in ~~two~~ three offices, that being the County Tax Director, ~~and~~ the Zoning Commission, and the County Commission.

All voting were in favor, no nay votes. Glenda Collier abstained. Motion carries.

Shauna Laber made a motion, seconded by Glenda Collier, to accept the proposed amendment changes, with modification as detailed in the State's Attorney's review for recommendation to approve the following. 7.2.6 Condition Use and Site Approval Permits. The County Tax Director shall issue a conditional use or ~~site approval~~ siting permit upon approval of the application by the ~~Zoning Commission and County Commission~~ subject to the applicable provisions of the ordinance. ~~Section 8.2~~ 7.2.7 Variances. The County Tax Director shall issue a variance upon the approval of the application by the ~~Zoning Commission and~~ The County Commission subject to the applicable provisions of the ordinance. 7.3.1.2 To hear and act on all applications for amendments to zoning districts and ~~take action~~ make recommendations for approval, denial or approval with modification. 7.3.2 Notice of Hearings. Any notice of hearing shall be given at least once per week for two consecutive weeks prior to the hearing in the official newspaper of the County. The Zoning Commission shall fix a reasonable date for hearing of applications for zoning district amendments, conditional use permits, site approval and plat applications and other matter before it, give public notice thereof in the official newspaper of the county and the nearest regularly published newspaper at least one week prior to the hearing. The notices shall give time and place of hearing and shall state the purpose of the hearing and that the applications and supporting documents for zoning district amendments and conditional use permits shall be available for public inspection by the County Auditor. 7.4.1.3 The County Commission is responsible for granting zoning district amendment, conditional use permits, siting permits, variances, and plat approval.

All voting were in favor. Motion carried.

Shauna Laber made a motion, seconded by David Allmaras, to accept the proposed amendment changes, with the suggested edits from State's Attorney Lies to include the following. 8.1.3 Data submission requirements. Petitions for zoning district changes ~~and conditional uses~~ shall be submitted with the following information: 8.1.4 Deliberation and decision. Following the hearing, the County Commission, upon due deliberation, shall make a decision on the proposed amendment within 30 days after receipt of recommendation from the Zoning Commission. In making its findings, the ~~Zoning County~~ Commission shall ascertain that the proposal is consistent with this ordinance and other regulations of the County. Also approving 8.1.1 Public hearing notice. The Zoning Commission shall hold a public hearing, a notice of which shall be published at least once per week for two consecutive weeks prior to the hearing in the official newspaper of the County. The notice of hearing shall include the time and place of hearing; the description of the property by street address for platted lands and a clearly identifiable location for unplatted lands; the proposed use and requested zoning district change; and the time and place for public inspection of the documents in the County offices before the hearing. 8.1.2 Public Hearing. The Zoning Commission, at the hearing, shall listen to all persons who may speak in support of or in opposition to the proposal. Upon the completion of its review, the Zoning Commission shall recommend to approve, deny, or modify the petition. ~~The Zoning Commission may require additional information before it completes its findings and recommendations.~~

All voting were in favor. Motion carried.

Shauna Laber made a motion, seconded by Robert Hanson to approve the following with State's Attorney's revised and recommended changes to include the following. 8.2.2 Public Hearing notice. The Zoning Commission shall hold a public hearing, a notice of which shall be published at least ~~one once per~~ week for two consecutive weeks prior to the hearing in the official newspaper of the county. The notice of hearing shall include the time and place of hearing; the description of the property by street address

for platted lands and a clearly identifiable location for unplatted lands; the proposed use and requested zoning district change; and the time and place for public inspection of the documents in the County offices before the hearing. 8.2.3 Public Hearing. The Zoning Commission, at the hearing, shall listen to all persons who may speak in support of or in opposition of the proposal. Following the public hearing, the Zoning Commission shall make a recommendation to approve, deny, or approve with conditions. ~~Upon the completion of its review, the Zoning Commission shall approve, deny, or modify the petition. The Zoning Commission may require additional information before it completes its finding and recommendations.~~ In 8.2.6, Keep original language, no changes.

All voting were in favor. Motion carried.

Shauna Laber made a motion, seconded by Lucas Walter, to approve the following with State's Attorney's revised and recommended changes to include the following: 8.2.7.1 Prior to the decision on any conditional use, the Zoning County Commission may stipulate such conditions and restrictions upon establishment, location, construction, maintenance, and operation of the conditional use as deemed necessary to promote the public health, safety, and general welfare of the community, and to secure compliance with the standards and requirements specified in ECZO §8.2.6. In all cases in which conditional uses are granted, the Zoning County Commission shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therein are being and will be complied with. 8.2.7.2 No alteration of a conditional use shall be permitted unless approved by the Zoning County Commission. Where the Zoning County Commission has approved or conditionally approved an application for a conditional use, such approval shall become null and void within 12 months of the date of the Zoning County Commission action unless the use if commenced, construction is underway or the current owner possesses a valid building permit. 8.3.1 Public hearing notice. The Zoning Commission shall hold a public hearing, a notice of which shall be published at least ~~one~~ once per week for two consecutive weeks prior to the hearing in the official newspaper of the County. The notice of hearing shall include the time and place of hearing; the description of the property by street address for platted lands and clearly identifiable locations for the unplatted lands; the proposed use and requested zoning district change variance; and the time and place for public inspection of the documents in the County Offices before the hearing. 8.3.2 Public Hearing. The Zoning Commission at the hearing shall listen to all persons who may speak in support of or in opposition to the proposal. Following the public hearing, the Zoning Commission shall make a recommendation to approve, deny, or approve with conditions. ~~Upon the completion of its review, the Zoning Commission will approve, deny, or modify the proposal. The Zoning Commission may require additional information for it completes its findings and decision.~~

All voting were in favor. Motion carried.

Shauna Laber made a motion to recommend for approval the amendment changes as presented in the following. David Allmaras seconded the motion. 8.3.3 Data submission requirements. Petitions for variances ~~or special use permits~~ shall be submitted with the following information: 8.3.3.1 A legal description of the area ~~proposed to be rezoned~~ subject to the variance request and names and addresses of all owners of property lying within such area. ***

8.3.3.3 A site plan showing the existing buildings and uses, along with a description of and the requested changes variance. 8.3.4 Within 30 days of receipt of the recommendation from the Zoning Commission, the County Commission shall make a decision on the variance petition and may approve, deny, or approve with conditions. In making its findings, the Zoning County Commission shall ascertain that the

request for variance is consistent with the County land use plan and meets all requirements of this ordinance and other regulations of the County. 8.3.5 Standards. No application for variances ~~or special use permits~~ shall be approved unless the Zoning Commission finds that all of the following are present: 8.3.8 Hardship Variances. In addition to the five (5) authorized variances in Section 8.3.7, the ~~Zoning County~~ Commission may consider an application for variance for any other reason after taking into consideration the following matters: 8.4. ~~Action of the Zoning Commission~~ Zoning Ordinance Amendments. In discussion, Levi Rue in regards to 8.3.5 he had concerns with wording, SA Lies asserted that 8.3.5 is under the variances subject matter.

All voting were in favor. Motion carried.

Shauna Laber made a motion, seconded by Glenda Collier to approve the following amendment changes with State's Attorney's recommended changes to include the following. 8.4.3 Notice of Public Hearing. Notice of hearing shall include time, place, and purpose of such hearing and shall be published at least once per one week for two consecutive weeks before the hearing in the official newspaper of the County. 8.4.4 Public Hearings. At the public hearing before the Zoning Commission, any person may express opposition or support for the amendment at such hearing. Following the public hearing, the Zoning Commission shall make a recommendation to approve, deny, or modify the proposed amendment. 8.4.5 ~~Denial of application~~ Deliberation and Decision ~~An application for an amendment to the zoning district map or conditional use permit which has been denied by the Zoning Commission shall not be made for a period of one year from the date of such denial, unless the new application is substantially different from the denied application. Upon receipt of the recommendation from the Zoning Commission, the County Commission shall make a decision within 30 days to approve, deny, or approve with modifications the proposed amendment in accordance with NDCC Ch. 11-33.~~

All voting were in favor. Motion carried.

Shauna Laber made a motion, seconded by Stuart Richter to approve the proposed amendments with State's Attorney Ashley Lies' suggested changes as presented in the following: 10.1.1 Purpose: The purpose of the wind energy facilities ordinance (WEF Ordinance) is to provide a regulatory framework for the siting, construction, and operation of wind energy facilities in the County, subject to reasonable restrictions, which will preserve the safety and well-being of the residents, while allowing equitable and orderly development of wind energy facilities. 10.1.2 Regulatory framework. 10.1.2.1 Zoning. Wind Energy facilities may be constructed within the Agricultural Zoning District of the county, subject to the restrictions and conditions of the WEF Ordinance. 10.1.2.2 A different existing use or an existing structure on the same parcel shall not preclude the installation of a wind energy facility of such parcel. Wind Energy facilities that are constructed and installed in accordance with the provision of the WEF Ordinance shall not be deemed to constitute expansion of a nonconforming use or structure. 10.1.2.3. Definition. For purpose of this WEF Ordinance, a wind energy facility is a set of devices whose primary purpose is to produce electricity by means of any combination of collecting, transferring, or converting wind generated energy. A wind energy facility generally includes one or more wind turbine(s) and other associated facilities, including but not limited to electrical collection lines, communication lines, access roads, meteorological towers, aircraft detection lighting systems and related equipment, operations and maintenance facility, substation, facilities to enable interconnection to the electric grid, including but not limited to a transmission line, and other associated facilities. In discussion, Levi Rue asked the change in 10.1.2.1, does the language put them in the permitted, special or conditional use category. State's Attorney Lies advised that question is addressed in 10.1.2.4. No call for action.

Shauna Laber made a motion to amend her initial motion to above that not voted on, to include the changes in 10.1.1, 10.1.2.2, 10.1.2.3, and 10.1.2.4. The requirements of this WEF ordinance shall apply to all wind energy facilities with one or more wind turbines rated at 100 kilowatts nameplate capacity or larger constructed after the effective date of this ordinance. No operation of an existing wind energy facility shall be allowed without full compliance with this ordinance and a ~~its~~ wind energy facility siting permit, and no modification or alteration of an existing wind energy facility shall be allowed without issuance of a new wind energy facility siting permit pursuant to 10.1.3. For avoidance of doubt, a siting permit pursuant to this WEF Ordinance is the only zoning permit required for a wind energy facility and the conditional use permit and variance provisions of Sections 8.2 and 8.3 do not apply except standards in 8.2.6.1 through 8.2.6.6 and 8.3.5.1 through 8.3.5.4. 10.1.3.1 No work, except for wind monitoring, soil testing, and other survey work may commence to construct a wind energy facility until a county wind energy facility siting permit ("permit") has been issued by the County Commission. The prospective permittee shall submit an application for said permit to the County Zoning Commission. The application shall be signed by an authorized representative of the prospective permittee, include a fee of ~~\$1,000 plus \$250 for each proposed wind turbine up to a total amount of no more than \$10,000.00~~ and the following information. ***Stuart Richter seconded the motion. 10.1.3.1.6 A fee of \$1,000 plus \$250 for each proposed wind turbine up to a total of no more than \$10,000.

All voting were in favor, no nay votes. Glenda Collier abstained. Motion carries.

Ten-minute recess.

Shauna Laber made a motion, seconded by Lucas Walter, to approve the proposed amendments with State's Attorney Ashley Lies' suggested revisions as presented: 10.1.3.2 Public Hearing. Upon receipt of the application, the Zoning Commission and any experts it may retain, shall review the application, and in its discretion, may hold a public hearing on the application within 45 days from receipt of the application, providing at least 15 days published notice once per week for two consecutive weeks prior to the hearing in the official newspaper of Eddy County and mailing written notice to property owners within 500 feet of the proposed wind energy facility. The Zoning Commission shall listen to all persons who may speak in support of or in opposition to the application. At the conclusion of 43.10.1.4 public hearing, the Zoning Commission shall make a recommendation to approve, deny, or approve with conditions. 10.1.3.3 Deliberation and decision. Upon receipt of the recommendation from the Zoning Commission, the County Commission shall make a decision on the siting permit application within 30 days and may approve, deny, or approve with conditions and issue a permit. If the Zoning Commission finds that the prospective permittee will comply with all requirements, it may, within 30 days, issue a permit. 10.1.3.4 Demonstration of compliance. The permit issued pursuant to 10.1.3.3 shall include the following condition: be contingent upon the permittee's final demonstration of compliance with the requirements of the permit following completion of construction of the wind energy facility. Within 90 days of completion of wind energy facility construction, the permittee shall submit to the Zoning Commission an updated and final USGS topographical map, or survey if available, providing all information pursuant to 10.1.3.1.2 and demonstrating actual compliance with the requirements and conditions of the permit.

All voting were in favor, no nay votes. Glenda Collier abstained. Motion carries.

Shauna Laber made a motion, seconded by Stuart Richter to approve the proposed amendments with State's Attorney Ashley Lies' suggested revisions as presented: 10.1.4.10: the permittee ~~shall~~may place overhead feeder lines on public rights-of-ways, if public rights-of-ways exist or the permittee may place feeder lines on private property. A change of routes may be made as long as the feeders remain on public rights-of-ways and approval has been obtained from the governmental unit responsible for the affected rights-of-ways. When placing feeders on private property, the permittee shall place the feeder in accordance with the easement negotiated with the affected landowner. 10.1.5 The following setbacks and separation requirements shall apply to all turbines in a wind energy facility: Subsections 10.1.5.1 through 10.1.5.3 replace with: Areas less than one and on-tenths times the height of the turbine from the property line of a nonparticipating landowner and less than three times the height of the turbine or more from an inhabited rural residence of a nonparticipating landowner, must be excluded in the consideration of a site for a wind energy conversion area, unless a variance is granted. The County Commission may grant a variance if an authorized landowner, and affected parties with associated wind rights file a written agreement expressing the support of all parties for a variance to reduce the setback requirements in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in 45 NDCC Chapter 17-04. For purposes of this subsection, "height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when in its highest position. ~~10.1.5.1 Each wind turbine shall be set back from the nearest occupied dwelling, commercial building, or publicly used structure or facility at a distance not less than 1,400 feet. 10.1.5.2 Each wind turbine shall be set back from the nearest public road or above ground communication or electrical line at a distance not less than 200 feet, determined at the center of existing right-of way. 10.1.5.3 Each wind turbine shall be set back from the wind energy facility perimeter at a distance not less than two and one half times the rotor diameter of the wind turbine. A variance may be granted if an authorized representative or agent of the permittee and those affected parties on adjoining properties with associated wind rights sign a formal and legally binding agreement expressing all parties' support for a variance that waives or reduces the setback requirement.~~ In discussion, Levi Rue asked if it would be a time to include a mile set back in this section to help avoid other townships taking their Zoning back.

In a roll call vote on the motion, it was Levi Rue, Stuart Richter, Shauna Laber, David Allmaras, Robert Hanson, and Lucas Walter voting aye, Glenda Collier abstaining. Motion carries.

Shauna Laber made a motion, seconded by Lucas Walter to approve the proposed amendments with State's Attorney Ashley Lies' suggested revisions as presented: 10.1.6 Remove ~~Minimum ground clearance. The blade tip of any wind turbine shall, at its lowest point, have ground clearance of no less than 75 feet.~~ 10.1.6 Renumbered. 10.1.7 Renumbered.

All voting were in favor, no nay votes. Glenda Collier abstained. Motion carries.

Shauna Laber made a motion to approve the following proposed amendments: 3.2 Amendments. The County Commission may, from time to time, amend, supplement, or repeal any part of these regulations after a public notice and hearing. The hearing must be held by the Zoning Commission. 9.0 Article 9 Permit Fee Schedule: Application for Zoning Amendment \$1,000. Glenda Collier seconded the motion. In discussion, Levi Rue recommended that the proposed \$1,000 was a big price increase, costs were discussed as well as special meeting versus regular meetings. Shauna then amended her motion to include that proposed costs would be \$500.00. Glenda Collier seconded the amended motion.

All were in favor. Motion carries.

Levi Rue made a motion to approve for recommendation a new section reading that: Aircraft detection lighting system (ALDS) requirements cannot be waived. There was no second to the motion. Motion does not proceed.

There was no motion to recommendation to move forward the changed in 10.1.7.

In a new section to be determined, a new amendment proposed by Zoning to have language for how/when an application can be withdrawn. Shauna Laber made a motion to approve for recommendation: Application Withdrawal. Any application filed under Sections 8, 10, or 11 may be withdrawn upon written request by the applicant at any time prior to the submission of any public hearing notice for advertisement; provided that the request for withdrawal shall be honored only with the consent of either Zoning Commission or the Board of County Commissioners, whichever body has advertised the hearing. If an application is withdrawn in this time frames, the applicant shall receive all of their application fee back except \$500. David Allmaras seconded the motion. In discussion, it was discussed that whoever (Eddy County Commission/Eddy County Zoning Commission) has advertised the hearing would have the authority to handle the withdrawal.

All were in favor. Motion carries.

Eddy County Zoning Commission meeting adjourned at 10:58 A.M.

Another short recess before the Eddy County Commission meeting Continued.

James F. Allmaras made a motion to approve all of the recommendations made by the Eddy County Zoning Commission. There was no second.

James F. Allmaras made a motion to approve all of the recommendations that Zoning made except those in Section 10. Glenda Collier seconded the motion. All were in favor. Motion Carries.

James F. Allmaras made a motion to accept all of the other recommendations made by Zoning that included section 10. Dave Gehrtz seconded the motion. With a majority vote, motion carries. Glenda Collier abstained from voting.

State's Attorney Lies read the resolution. Resolution was signed.

Eddy County Commission Special meeting adjourned at 11:10 A.M.

/s/ Stuart Richter

Approve: Stuart Richter, Zoning Commission President

/s/ Bobbie Indergaard

Attest: Bobbie Indergaard, County Auditor