

To: Eddy County Board of Commissioners

Eddy County Zoning Board

Date: August 11, 2025

Subject: Grievance Regarding Wind Turbine Setback Ordinance, Wind Rights, and Conflicts of Interest

Dear Members of the Eddy County Board of Commissioners,

As an aggrieved landowner in Eddy County, I am filing this formal grievance pursuant to North Dakota Century Code (NDCC) 11-33-10 to object to the current proposed zoning ordinance establishing wind turbine setbacks and the elimination of the 75-foot minimum blade clearance from the ground. The ordinance's setback of 3 times the turbine height (approximately 1950 feet for a 650 ft tall turbine with a 534-foot rotor diameter) fails to protect the wind rights of non-participating landowners and exacerbates turbulence impacts due to the removal of the blade clearance requirement. Additionally, I raise concerns about potential conflicts of interest and lack of public engagement that compromised the fairness of the decision-making process.

Impact on Wind Rights and Turbine Wake Effects

During the June 11, 2025, public zoning meeting at Brown Memorial, Mr. Derrick Braaten, a land rights attorney, testified that wind turbine turbulence, or wake effects, extend 8 to 11 rotor diameters beyond a turbine. This is supported by the Duke University paper, *Wind Turbine Wakes, Wake Effect Impacts, and Wind Leases*, which states: "Experts agree that downwind wake effect from an individual commercial wind turbine can persist for a minimum distance of eight to ten times the turbine's rotor diameter"

(<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1192&context=delpf>). For a turbine with a 534-foot rotor diameter, this translates to a wake effect extending approximately 4272 ft to 5874 feet (8 to 11 rotor diameters).

The proposed Eddy County setback of 3 times the height or 1950 feet for a 650 foot tall turbine is significantly less than the 4272 to 5874 feet based on rotor diameter needed to mitigate wake effects, resulting in the following harms:

- **Diminished Wind Rights:** The wake effect disrupts airflow on my property, severely reducing the potential for future wind energy development. This effectively diminishes my wind rights, as turbulence from an upwind turbine would impair the productivity of any turbine on my land.
- **Financial Burden:** The loss of wind resource potential devalues my property, limiting opportunities for leasing or developing wind energy projects. This constitutes an unfair restriction on my property rights and future economic opportunities.
- **Comparison to Other Jurisdictions:** The Duke University paper notes that jurisdictions like Minnesota, with a setback of five times the rotor diameter (approximately 2,670 feet for a 534-foot rotor diameter), still fail to fully protect downwind properties. Eddy County's proposed setback of 3 times the height or 1950 ft for a 650 ft turbine is even less protective, exacerbating the impact on non-participating landowners.

Concerns Regarding Elimination of Blade Clearance

The ordinance's elimination of the 75-foot minimum blade clearance from the ground further aggravates the impact on non-participating properties. Lower blade heights increase the intensity and proximity of wake turbulence, as lower-altitude winds are more disrupted. This change:

- **Increases Turbulence on Adjacent Properties:** Without the 75-foot clearance, turbines generate quicker and more severe turbulence closer to the ground, further encroaching on my property's wind resources and exacerbating the loss of wind rights.
- **Compounds Financial Harm:** The intensified turbulence reduces the usability of my land for wind or other development, further diminishing its value and potential.

Conflicts of Interest and Procedural Deficiencies

I am deeply concerned that the decision-making process for this ordinance was compromised by conflicts of interest and a lack of public engagement, undermining the ordinance's alignment with the public interest as required by NDCC 11-33-06:

- **Undue Influence:** The NR Transcript 6/9/2025 edition printed an article "NRABC, PRC Wind Announce \$22 million benefit agreement" the week of the June 11th public meeting stating that the NRABC and PRC Wind had a \$22 million letter of intent if the project was fulfilled.
- **Undue Pressure:** PRC's Mr McGiffert during the June 11th public meeting stated for all boards to hear that "a one mile setback would cancel the project".
- **Conflicts of Interest:** It was recently discovered that zoning board members Mr. Richter and Mr. Hanson, along with Commissioner Gertz, have signed land lease agreements with Flickertail Wind: Records Instrument #113709, #116247, #209051, #214311, #113921, #116179, where one such agreement shows Requirements of Governmental Agencies:

3.4 Requirements of Governmental Agencies. Tenant shall comply in all material respects with all valid federal, state, and local laws and regulations applicable to the Windpower Facilities, but shall have the right, in its sole discretion and at its sole expense, in its name or in Landlord's name, to contest the validity or applicability of any law, ordinance, order, rule or regulation of any governmental agency or entity. Tenant shall control any such contest and Landlord shall cooperate with Tenant in every reasonable way in such contest, at no out-of-pocket expense to Landlord.

and confidentiality clauses:

9.2 Confidentiality. The parties acknowledge that prior to the execution of this Agreement, neither party may require the other party to maintain the confidentiality of any negotiations or the terms of the Agreement. After the Effective Date, however, both parties shall maintain in confidence, for the benefit of the other party, all information pertaining to the financial terms of or payments under this Agreement. Neither party will use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of the other party. Notwithstanding the foregoing, each party may disclose such information to such party's lenders, attorneys, accountants and other advisors; any prospective purchaser or lessee of the such party's interests in the Premises; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided the party making such disclosure advises the party receiving the information of the confidentiality of the information. The provisions of this Section 9.2 shall survive the termination or expiration of this Lease.

Participants in the project are receiving, according to the agreement, stipends and promises of future turbine payouts.

(b.) "Participation Payment" means an amount equal to \$10.00 per acre per year of the Premises for the first Lease Year. Participation Payments will increase annually by One and one-half percent (1.5%) for subsequent Lease Years.

These financial ties create a clear monetary conflict of interest, as their decisions may prioritize personal gain over the welfare of non-participating landowners.

- **Potential Bias:** Ms. Shauna Laber, a zoning board member, is employed by Otter Tail Power Company, which owns multiple wind energy projects in North Dakota. PRC Wind, developer of Flickertail Wind, publicly stated that setbacks exceeding the state minimum would jeopardize the project. Ms. Laber's employment raises questions about her impartiality, as her professional interests may align with the wind industry.
- **Lack of Public Engagement:** Non-participating landowners and township representatives were not allowed to speak or be included on the agenda during several county and commissioner meetings where the wind project was discussed. This exclusion violates the principles of transparency and public participation required for fair zoning decisions under NDCC 11-33-06.

Requested Actions

In accordance with NDCC 11-33-10, I respectfully request the following:

1. **Review and Amendment of the Setback Ordinance:** Revise the ordinance to require a minimum setback of 10 times the rotor diameter (approximately 5,600 feet for a 563-foot rotor diameter) from non-participating property lines to protect wind rights and mitigate wake effects.
2. **Reinstatement of Blade Clearance:** Restore the 75-foot minimum blade clearance from the ground to reduce the intensity of turbulence impacting adjacent properties.
3. **Investigation of Conflicts of Interest:** Investigate the financial and professional ties of Mr. Richter, Mr. Hanson, Commissioner Gertz, and Ms. Shauna Laber to ensure impartiality in zoning decisions. If conflicts are confirmed, exclude these individuals from future decisions related to the wind project.
4. **Public Hearings:** Conduct public hearings to allow non-participating landowners and township representatives to provide input on the setback ordinance and wind rights, ensuring transparency and inclusivity.
5. **Moratorium on Wind Project Approvals:** Impose a temporary moratorium on Flickertail Wind project approvals until the ordinance is revised and conflicts of interest are addressed.

Conclusion

The current wind turbine setback ordinance, with its inadequate 3 times the height setback and elimination of the 75-foot blade clearance, fails to protect the wind rights of non-participating landowners and imposes significant financial burdens. These issues, compounded by potential

conflicts of interest and a lack of public engagement, undermine the fairness of the zoning process. I urge the Eddy County Board of Commissioners and Zoning Board to address these concerns promptly to ensure equitable zoning practices that uphold the rights of all residents.

Thank you for your attention to this grievance. I look forward to your response and a resolution that protects the wind rights and property interests of non-participating landowners. I am available to provide additional information or participate in public hearings to support this grievance.

Sincerely,
David Fite



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(701) ██████████

Aggrieved Landowner in the Flickertail Wind footprint, Eddy County, North Dakota

References:

1. *Wind Turbine Wakes, Wake Effect Impacts, and Wind Leases*, Duke University, <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1192&context=delpf>.
2. *Wind Rights & Solar Access Laws*, Duke University.
3. Testimony of Mr. Derrick Braaten, Land Rights Attorney, Eddy County Public Zoning Meeting, June 11, 2025, <https://braatenlawfirm.com/derrick-braaten/>.

11-33-10. 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 such resolution or amendment, petition for a separate hearing thereon before the board of county commissioners. The petition shall be in writing and shall specify in detail the ground of the objections. The petition shall be filed with the county auditor. A hearing thereon 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 thereon. The board of county commissioners, at its next regular meeting, shall either rescind or affirm such 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 any citizen.