

PROPOSED EDDY COUNTY ZONING ORDINANCE AMENDMENTS

Proposed by Flickertail Wind:

Ordinance Section	Original Ordinance Text	Proposed Amendments (additions <u>blue/deletions blue</u>)	Rationale for Proposed Amendments	State's Attorney Review
2.2.20	Commission: The Zoning Commission.	Commission: The <u>County Zoning</u> Commission.		Approve changes.
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 Commission after public hearing.	Conditional use: Use of a special nature not automatically permitted in a zoning district and which requires review and approval by the <u>Zoning County</u> Commission after public hearing.		Approve changes.
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 and approval by the Zoning Commission.	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 and approval by the <u>Zoning County</u> Commission.		Approve changes.
2.2.89	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.	<u>Zoning Commission:</u> 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.		Approve changes.
6.3.8	Statement of findings Upon the public notification and a public hearing, the Zoning Commission shall determine whether the proposed site meets the requirements of these regulations. The Zoning Commission may place conditions for approval of the site.	Statement of findings Upon the public notification and a public hearing, the <u>Zoning County</u> Commission shall determine whether the proposed site meets the requirements of these regulations. The <u>Zoning County</u> Commission may place conditions for approval of the site.		Approve changes.
6.4.2	Site approval requirements All sites for salvage and junk yards require approval by the County Zoning Commission	Site approval requirements All sites for salvage and junk yards require approval by the County <u>Zoning</u> Commission		Approve changes.
7.1	To administer this code, Eddy County is hereby invested in two offices, that being the County Tax Director and the Zoning Commission.	To administer this code, Eddy County is hereby invested in two <u>three</u> offices, that being the County Tax Director, and the Zoning Commission, <u>and the County Commission</u>		Approve changes.

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7.2	County Tax Director			
7.2.6	Conditional Use and Site Approval Permits. The County Tax Director shall issue a conditional use or site approval permit upon approval of the application by the Zoning Commission and County Commission subject to the provisions of Section 8.2.	Conditional Use and Site Approval Permits. The County Tax Director shall issue a conditional use or <u>site approval siting</u> -permit upon approval of the application by the Zoning Commission and or County Commission subject to the provisions of Section 8.2.	Minor proposed edits to align with later provisions.	Conditional 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 provisions of 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 County Commission subject to provisions of Section 8.3.	Variances. The County Tax Director shall issue a variance upon the approval of the application by the Zoning Commission and or County Commission subject to provisions of Section 8.3.	Minor proposed edits to align with later provisions.	Variances. The County Tax Director shall issue a variance upon the approval of the application by the Zoning Commission and County Commission subject to provisions of Section 8.3.
7.3.1.2	To hear and act on all applications for amendments to zoning districts and take action for approval, denial or approval with modification.	To hear and act on all applications for amendments to zoning districts and take action <u>make recommendations</u> for approval, denial or approval with modification.		Approve changes.
7.3.2	Notice of Hearings 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 matters 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.	Notice of Hearings The Zoning Commission shall fix a reasonable date for hearing of applications for zoning district amendments, conditional use permits, site siting permit approval and plat applications and other matters 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 as specified in the applicable provisions of the ordinance. 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.		Approve changes.
7.4	County Commission			
7.4.1	Duties 7.4.1.3. The County Commission is responsible for granting zoning district amendments, conditional use permits, variances and plat approval.	Duties 7.4.1.3. The County Commission is responsible for granting zoning district amendments, conditional-use permits, <u>siting permits,</u> variances and plat approval.	Proposed revisions to align with Zoning Commission making CUP decisions and County Commission making siting permit decisions.	Keep original language, but add in siting permits. Want to have all decisions made by County Commission. 7.4.1.3. The County Commission is responsible for granting zoning district amendments, conditional use permits, <u>siting permits,</u> variances and plat approval.

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8.1	Zoning District Amendments			
8.1.1	Public hearing notice. The Zoning Commission shall hold a public hearing, a notice of which shall be published at least one week 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.	Public hearing notice. The Zoning Commission shall hold a public hearing, a notice of which shall be published at least <u>once per one</u> week <u>for two consecutive weeks</u> 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.	Revisions in this section proposed to align with zoning ordinance amendment requirements in NDCC Ch. 11-33 and to omit references to other types of approvals (e.g., conditional uses), which appear to be unintentional.	Approve changes. Want two weeks' notice for all hearings.
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 approve, deny or modify the petition. The Zoning Commission may require additional information before it completes its findings and recommendations.	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 <u>recommend to</u> approve, deny or modify the petition. The Zoning Commission may require additional information before it completes its findings and recommendations.		Approve changes. Want to make it clear Zoning only makes recommendations.
8.1.3	Data submission requirements. Petitions for zoning district changes and conditional uses shall be submitted with the following information: * * *	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 Zoning Commission, upon due deliberation, shall make a decision on the proposed amendment within 30 days after the hearing. In making its finding, the Zoning Commission shall ascertain that the proposal is consistent with this ordinance and other regulations of the County.	Deliberation and decision. Following the hearing, the Zoning County Commission, upon due deliberation, shall make a decision on the proposed amendment within 30 days after the hearing. In making its finding, the Zoning County Commission shall ascertain that the proposal is consistent with this ordinance and other regulations of the County.		

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8.2	Conditional Use Permits			
8.2.2	Public hearing notice. The Zoning Commission shall hold a public hearing, a notice of which shall be published at least one week 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.	Public hearing notice. The Zoning Commission shall hold a public hearing, a notice of which shall be published at least one week 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 <u>use and requested zoning district change</u> ; and the time and place for public inspection of the documents in the County offices before the hearing.	Revisions in this section proposed to align with the Zoning Commission making the final decision on CUP applications and to remove references to other types of approvals (e.g., zoning district change).	Public hearing notice. The Zoning Commission shall hold a public hearing, a notice of which shall be published at least <u>once per one week for two consecutive weeks</u> 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; <u>the proposed use and requested zoning district change</u> ; 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 to the proposal. 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 findings and recommendations.	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. <u>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 findings and recommendations.</u>		Approve changes.
8.2.5	Deliberation and decision. Following the hearing, the Zoning Commission, upon due deliberation, shall make a decision on the proposed amendment within 30 days after the hearing. In making its finding, the Zoning Commission shall ascertain that the proposal is consistent with this ordinance and other regulations of the County.	Deliberation and decision. Following the hearing, the Zoning Commission, upon due deliberation, shall make a decision on the proposed <u>amendment conditional use</u> within 30 days after the hearing. In making its finding, the Zoning Commission shall ascertain that the proposal is consistent with this ordinance and other regulations of the County.		Deliberation and decision. Following the hearing, the Zoning Commission, upon due deliberation, shall make a <u>decision recommendation</u> on the proposed <u>amendment conditional use within 30 days after the hearing</u> . In making its finding, the Zoning Commission shall ascertain that the proposal is consistent with this ordinance and other regulations of the County.
8.2.6	Standards. No application for conditional use shall be recommended for approval unless the Zoning Commission finds that all of the following conditions are present: ***	Standards. No application for conditional use <u>shall be recommended for approval approved</u> unless the Zoning Commission finds that all of the following conditions are present: ***		Keep original language.

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8.2.7.1	Prior to the decision on any conditional use, the Zoning Commission may stipulate such conditions and restrictions upon the 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 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.	Prior to the decision on any conditional use, the <u>Zoning County</u> Commission may stipulate such conditions and restrictions upon the 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 <u>Zoning County</u> 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 Commission. Where the Zoning 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 Commission action unless the use is commenced, construction is underway or the current owner possesses a valid building permit.	No alteration of a conditional use shall be permitted unless approved by the <u>Zoning County</u> Commission. Where the <u>Zoning County</u> 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 <u>Zoning County</u> Commission action unless the use is commenced, construction is underway or the current owner possesses a valid building permit.		
8.3	Variances			
8.3.1	Public hearing notice. The Zoning Commission shall hold a public hearing, a notice of which shall be published at least one week 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; and the time and place for public inspection of the documents in the County Offices before the hearing.	Public hearing notice. The Zoning Commission shall hold a public hearing, a notice of which shall be published at <u>least</u> one week 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.	Revisions in this section proposed to align with the Zoning Commission making the final decision on variance requests and to remove references to other types of approvals (e.g., zoning district change).	Public hearing notice. The Zoning Commission shall hold a public hearing, a notice of which shall be published at least <u>once per one week for two consecutive weeks</u> 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 <u>use and requested zoning district change variance</u>; 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. Upon the completion of its review, the Zoning Commission will approve, deny or modify the proposal. The Zoning Commission may require additional information before it completes its findings and decision.	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 will approve, deny or modify the proposal. The Zoning Commission may require additional information before it completes its findings and decision.		Approve changes.

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8.3.3	<p>Data submission requirements. Petitions for variances or special use permits shall be submitted with the following information:</p> <p>8.3.3.1. A legal description of the area proposed to be rezoned and the names and addresses of all owners of property lying within such area. ***</p> <p>8.3.3.3. A site plan showing the existing buildings and uses and the requested changes. ***</p>	<p>Data submission requirements. Petitions for variances or special use permits shall be submitted with the following information:</p> <p>8.3.3.1. A legal description of the area proposed to be rezoned <u>subject to the variance request</u> and the names and addresses of all owners of property lying within such area. ***</p> <p>8.3.3.3. A site plan showing the existing buildings and uses, <u>along with a description of</u> and the requested changes <u>variance</u>.</p>		Approve changes.
8.3.3.1	A legal description of the area proposed to be rezoned and the names and addresses of all owners of property lying within such area.	A legal description of the area proposed to be rezoned <u>subject to the variance request</u> and the names and addresses of all owners of property lying within such area.		Approve changes.
8.3.3.3	A site plan showing the existing buildings and uses and the requested changes.	A site plan showing the existing buildings and uses, <u>along with a description of</u> and the requested changes <u>variance</u> .		
8.3.4	In making it's finding, the Zoning 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.	<u>Within 30 days of receipt of the recommendation from the Zoning Commission, the County Commission shall make a decision on the conditional use permit application and may approve, deny, or approve with conditions.</u> In making it's finding, 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.		Approve changes.
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:	Standards. No application for variance or special-use permits shall be approved unless the Zoning Commission finds that all of the following are present:		Approve changes.
8.3.8	Hardship Variances In addition to the five (5) authorized variances in Section 8.3.7, the Zoning Commission may consider an application for variance for any other reason after taking into consideration the following matters:	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:		Approve changes.
8.4	Action of the Zoning Commission	Action of the Zoning Commission Zoning Ordinance Amendments	Revised heading to better align with provisions.	Approve changes.

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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 one week before the hearing in the official newspaper of the County.	Notice of public hearing. Notice of hearing shall include time, place and purpose of such hearing and shall be published at least <u>once per one week for two consecutive weeks</u> before the hearing in the official newspaper of the County.	Revisions to this section proposed to align with the zoning ordinance amendment requirements of NDCC Ch.11-33.	Approve changes.
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:	Standards. No application for variance or special-use permits shall be approved unless the Zoning Commission finds that all of the following are present:		Approve changes.
8.4	Action of the Zoning Commission	<u>Action of the Zoning Commission Zoning Ordinance Amendments</u>	Revised heading to better align with provisions.	Approve changes.
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 one week before the hearing in the official newspaper of the County.	Notice of public hearing. Notice of hearing shall include time, place and purpose of such hearing and shall be published at least <u>once per one week for two consecutive weeks</u> before the hearing in the official newspaper of the County.	Revisions to this section proposed to align with the zoning ordinance amendment requirements of NDCC Ch.11-33.	Approve changes.
8.4.4	Public hearing. At the public hearing before the Zoning Commission, any person may express opposition or support for the amendment at such hearing.	Public hearing. At the public hearing before the Zoning Commission, any person may express opposition or support for the amendment at such hearing. <u>Following the public hearing, the Zoning Commission shall make a recommendation to approve, deny or modify the proposed amendment.</u>		Approve changes.
8.4.5	Denial of application. 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.	Denial of application. 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. <u>Deliberation and decision. Upon receipt of the recommendation from the Zoning Commission, the County Commission shall make a decision to approve, deny, or approve with modifications the proposed amendments in accordance with NDCC Ch. 11-33.</u>		Change to approve in 30 days. <u>Deliberation and decision. 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 amendments in accordance with NDCC Ch. 11-33.</u>

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10.1.1	Purpose. The purpose of the 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.	Purpose. The purpose of <u>the wind energy facilities ordinance (WEF Ordinance)</u> 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.	Proposed clarification of ordinance reference (i.e., WEF Ordinance).	Approve changes.
10.1.2	<p>Regulatory framework</p> <p>10.1.2.1. Zoning. Wind energy facilities may be constructed within the County, subject to the restrictions and conditions of this ordinance.</p> <p>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 or a part of such facility on such parcel. Wind energy facilities that are constructed and installed in accordance with the provisions of this ordinance shall not be deemed to constitute expansion of a nonconforming use or structure.</p>	<p>Regulatory framework</p> <p>10.1.2.1. Zoning. Wind energy facilities may be constructed within the <u>Agricultural Zoning District of the</u> County, subject to the restrictions and conditions of this <u>WEF Ordinance</u>.</p> <p>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 or a part of such facility on such parcel. Wind energy facilities that are constructed and installed in accordance with the provisions of this <u>WEF Ordinance</u> shall not be deemed to constitute expansion of a nonconforming use or structure.</p> <p><u>10.1.2.3. Definition. For purposes 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.</u></p> <p>10.1.2.4. The requirements of this <u>WEF Ordinance</u> 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</p>	<p>Proposed revisions to clarify the zoning district in which WEF are authorized, subject to compliance with the WEF Ordinance.</p> <p>Addition of WEF Ordinance reference.</p> <p>Proposed addition of wind energy facility definition.</p>	<p>Concern: What if the land isn't just agricultural. Now we've created another issue again. Accept other changes.</p> <p><u>10.1.2.1. Zoning. Wind energy facilities may be constructed within the Agricultural, Commercial, and Industrial Zoning Districts of the County, subject to the restrictions and conditions of this WEF Ordinance.</u></p>

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	<p>10.1.2.3. The requirements of this 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 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.</p>	<p>10.1.2.4. The requirements of this <u>WEF Ordinance</u> 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 <u>a its</u> 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. <u>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.</u></p>	<p>Proposed revisions to renumber provision, add WEF Ordinance reference, and clarify that Sections 8.2 and 8.3 do not apply to a wind energy facility.</p>	<p>Approve changes.</p> <p>This conflicts with the proposed change to 5.1.3.17 made by the Zoning Commission below. Both cannot be approved.</p>
10.1.3	<p>10.1.3.1. Application for permit. 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, and the following information:</p> <p style="text-align: center;">* * *</p>	<p>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, and the following information:</p> <p style="text-align: center;">***</p> <p><u>10.1.3.1.6. A fee of \$1,000 plus \$250 for each proposed wind turbine up to a total amount of no more than \$10,000. Additionally, the applicant shall pay the County's reasonable, documented costs of processing the siting permit application, including but not limited to attorney's fees, notice publication fees, and notice mailing fees.</u></p>	<p>Moved the filing fee from subsection 10.1.3.1 to a new subsection and added authorization for County to recover other reasonable, documented costs of processing the application.</p>	<p>Approve changes, but don't want other fees included.</p> <p><u>10.1.3.1.6. A fee of \$1,000 plus \$250 for each proposed wind turbine up to a total amount of no more than \$10,000.</u></p>

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	<p>10.1.3.2. Public hearings. 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 notice 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.</p> <p>10.1.3.3. Deliberation and decision. If the Zoning Commission finds that the prospective permittee will comply with all requirements, it may, within 30 days after the hearing, issue a permit.</p> <p>10.1.3.4 Demonstration of compliance. The permit issued pursuant to 10.1.3.3 shall 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 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.</p>	<p>10.1.3.2. Public hearings. Upon receipt of the application, the Zoning Commission and any experts <u>(including legal counsel)</u> 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 <u>at least one week</u> 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. <u>At the conclusion of the public hearing, the Zoning Commission shall listen to all persons who may speak in support of or in opposition to the application. Following the public hearing, the Zoning Commission shall make a recommendation to approve, deny, or approve with conditions.</u></p> <p>10.1.3.3. Deliberation and decision. <u>Upon receipt of the recommendation from the Zoning Commission, the County Commission shall make a decision on the siting permit application and may approve, deny, or approve with conditions. If the Zoning Commission finds that the prospective permittee will comply with all requirements, it may, within 30 days after the hearing, issue a permit.</u></p> <p>10.1.3.4 Demonstration of compliance. The permit issued pursuant to 10.1.3.3 shall <u>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.</u> Within 90 days of <u>completion of</u> 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.</p>	<p>Proposed revisions to add clarification regarding experts, align hearing notice and process with other sections of zoning ordinance, and clarify that the Zoning Commission makes a recommendation.</p> <p>Proposed revisions to clarify that the County Commission makes a decision on a WEF siting permit application.</p> <p>Proposed revisions to clarify intent of provision.</p>	<p>Approve, but with some corrections. Change to two weeks publication like everything else.</p> <p>public hearing on the application within 45 days from receipt of the application, a notice of which shall be published at least once per one week <u>for two consecutive weeks</u> prior to the hearing in the official newspaper of the County and by mailing written notice to property owners within 500 feet of the proposed wind energy facility. <u>The Zoning Commission shall listen to all persons who may speak in support of or in opposition to the application. At the conclusion of the public hearing, the Zoning Commission shall make a recommendation to approve, deny, or approve with conditions.</u></p> <p>10.1.3.3. Deliberation and decision. <u>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 after the hearing, issue a permit.</u></p> <p>10.1.3.4 Demonstration of compliance. The permit issued pursuant to 10.1.3.3 shall <u>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.</u> Within 90 days of <u>completion of</u> 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.</p>

Ordinance Section	Original Ordinance Text	Proposed Amendments (additions <u>blue/deletions blue</u>)	Rationale for Proposed Amendments	State's Attorney Review
10.1.4	<p>General requirements for wind energy facilities ***</p> <p>10.1.4.10. The permittee shall place overhead feeder lines on public right-of-ways, if public right-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 right-of-ways and approval has been obtained from the governmental unit responsible for the affected right-of-ways. When placing feeders on private property, the permittee shall place the feeder in accordance with the easement negotiated with the affected landowner.</p>	<p>General requirements for wind energy facilities ***</p> <p>10.1.4.10. The permittee <u>shall may</u> place overhead feeder lines on public right-of-ways, if public right-of-ways exist, or the permittee may place feederlines on private property. A change of routes may be made as long as the feeders remain on public right-of-ways and approval has been obtained from the governmental unit responsible for the affected right-of-ways. When placing feeders on private property, the permittee shall place the feeder in accordance with the easement negotiated with the affected landowner.</p>	Proposed revision to clarify permittee may use either public right-of-way or private land.	Approve changes.
10.1.5	<p>Setbacks. The following setbacks and separation requirements shall apply to all wind turbines in a wind energy facility:</p> <p>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.</p> <p>10,1,5,2. Each wind turbine shall be set back from the wind energy facility perimeter at a distance not less than two and one halftimes 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.</p> <p>10.1.5.3. 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 the existing right-of-way.</p>	<p>Setbacks. The following setbacks and separation requirements shall apply to all wind turbines in a wind energy facility:</p> <p><i>[Subsections 10.1.5.1 through 10.1.5.3 replaced with:]</i></p> <p><u>Areas less than one and one-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 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 it its highest position.</u></p>	Previously adopted setback revisions incorporated to address any potential concerns regarding prior amendment process.	Approve changes.

Ordinance Section	Original Ordinance Text	Proposed Amendments (additions <u>blue/deletions blue</u>)	Rationale for Proposed Amendments	State's Attorney Review
10.1.6	Minimum ground clearance. The blade tip of any wind turbine shall, at its lowest point, have ground clearance of no less than 75 feet.	Removed.	Prior blade clearance provision removal incorporated to address any potential concerns regarding prior amendment process.	Approve changes.
10.1.6 [Renumbered]	Restoration of property. Within 180 days of termination or abandonment of leases or easements for a wind energy facility in the County, the permittee shall cause, at its expense, the removal of all structures to a depth of four feet below pre-construction grade and to replace the surface.	No change (only renumbered).		Approve changes.
10.1.7 [Renumbered]	Transfer of wind energy facility siting permit. In the event of a change in ownership or controlling interest in a wind energy facility and the transfer of the permit, any successors and assigns of the original permittee shall comply with the requirements and conditions of such permit for the duration of operation of a wind energy facility. Within 30 days of such change in ownership or controlling interest of any entity owning a wind energy facility, the parties to the transaction shall notify the Commission in writing and provide information pursuant to 10.1.3.1.1. The notification shall be signed by the authorized representatives or agents of both the original permittee and the entity to which the permit is being transferred.	No change (only renumbered).		Approve changes.

Proposed by Zoning:

Ordinance Section	Original Ordinance Text	Proposed Amendments (additions <u>blue/deletions blue</u>)	Rationale for Proposed Amendments	State's Attorney Review
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.			Amendments The County Commission may, from time to time, amend, supplement or repeal any part of these regulations after a public notice and hearing. <u>The hearing may be held by the Zoning or County Commission.</u>
5.1.3.17	5.1.3 Conditionally permitted uses * * *	5.1.3.17 Wind Energy Conversion Facilities	Proposed by Zoning. Specifically allow WECF as a conditional use in agriculturally zoned areas.	If this section is approved, the Board cannot approve Flickertail's proposed amendments in 10.1.2.3.
7.3.2	Notice of Hearings 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 matters 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.			Notice of Hearings <u>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 matters 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.</u> 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.
8.1.1	Public hearing notice The Zoning Commission shall hold a public hearing, a notice of which shall be published at least one week 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.			Public Hearing Notice The Zoning Commission shall may hold a public hearing, a notice of which shall be published at least <u>once per one week for two consecutive weeks</u> 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.
9.0	Application for zoning amendment \$100			Application for zoning amendment \$1,000 <i>(This would cover the cost of the initial meeting and any hearing we would be required to have.)</i>

Ordinance Section	Original Ordinance Text	Proposed Amendments (additions <u>blue/deletions blue</u>)	Rationale for Proposed Amendments	State's Attorney Review
10.1.4	New Section	Aircraft Detection Lighting System (ADLS) requirements cannot be waived.	Proposed by Zoning. Concerns with waiver being granted to allow turbines to have standard red lights instead of ADLS when in proximity to airports.	
10.1.7	Restoration of property Within 180 days of termination or abandonment of leases or easements for a wind energy facility in the County, the permittee shall cause, at its expense, the removal of all structures to a depth of four feet below pre-construction grade and to replace the surface.	Add in language about how all structures shall be removed to ensure fiberglass is not spread on lands, potentially causing issues with haying, grazing, and other environmental impacts.	Proposed by Zoning. Currently do not have language for how structures are to be removed. Concerns with them being felled and spreading fiberglass on lands.	
TBD	New Section	Any application filed under Sections 8, 10, or 11 may be withdrawn upon written request by the applicant 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 the Zoning Commission or the Board of County Commissioners, whichever body has advertised the hearing.	Proposed by Zoning. Currently do not have language for how/ when an application can be withdrawn. Discussion should also include how the application fee is returned (in whole, less fees, etc.)	