

Grievance to the Eddy County Commission

To: Eddy County Commission

From: Larry Danduran

Date: 08/20/2025

Subject: Violation of North Dakota Century Code § 11-33-08 and Eddy County Zoning Ordinance § 7.3.3

Dear Commissioners,

I am submitting this grievance regarding the actions of the Eddy County Zoning Board at its regular meeting held on July 8, [year].

According to **North Dakota Century Code § 11-33-08**, after the adoption of a proposed resolution by a zoning board, a **public hearing must be held**, and citizens must be provided the opportunity to be heard. Furthermore, the **Eddy County Zoning Ordinance § 7.3.3** clearly states that *“All meetings shall be open to the public and any person may testify for or against a resolution.”*

Prior to the July 8th meeting, Chairman Stu Richter announced publicly that **no one would be allowed to testify to the board**. Despite this, a motion was made by Shauna Labor to adopt the state minimum requirements, which was seconded and passed—without providing the public any opportunity to testify, as both state law and county ordinance require.

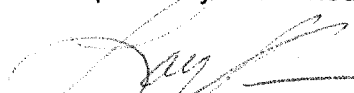
This action represents a clear violation of both the North Dakota Century Code and Eddy County’s own zoning ordinance. The failure to allow public testimony undermines the due process rights of citizens, erodes public trust, and sets a precedent of noncompliance with established law.

I respectfully request that the Eddy County Commission:

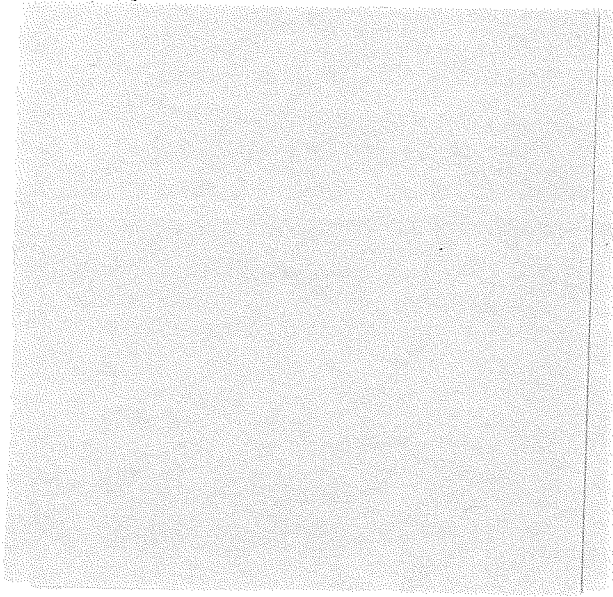
1. Formally acknowledge this violation of NDCC § 11-33-08 and Eddy County Zoning Ordinance § 7.3.3.
2. Direct the Eddy County Zoning Board to schedule a proper public hearing on the matter in compliance with state law and county ordinance.
3. Ensure that all future meetings fully comply with statutory and ordinance requirements for public participation.

The integrity of zoning decisions depends on adherence to the law and the inclusion of public voices in the process. I urge the Commission to take immediate corrective action.

Respectfully submitted,

 8/20/25

Larry Danduran



To: Eddy County Board of Commissioners

Eddy County Zoning Board

Date: August 7, 2025

Subject: Grievance Regarding Eddy County Zoning Ordinance – Wind Turbine Setbacks (NDCC 11-33-10)

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 recently adopted zoning ordinance establishing wind turbine setbacks from non-participating property lines. Specifically, the ordinance mandates a setback of 1.1 times the turbine height from non-participating property lines, which I believe imposes significant and unreasonable restrictions on my property rights and those of other non-participating landowners. Additionally, I raise concerns about potential conflicts of interest that may have compromised the impartiality of the decision-making process.

Objection to Wind Turbine Setback Ordinance

The current setback requirement of 1.1 times the turbine height—approximately 715 feet for a 650-foot-tall turbine—severely restricts the use and development potential of non-participating properties. For example, a turbine placed 715 feet from my property line creates a restricted zone extending 1,235 feet onto my land due to the state’s requirement under NDCC 49-22-09(2) that structures must be at least three times the turbine height (1,950 feet) from the turbine. This restriction prohibits non-participating landowners from constructing or expanding buildings without seeking a variance, which may not be granted. Such limitations:

- **Impose a Financial Burden:** The restricted zone reduces the usable area of my property, limiting options for future development, such as residential, agricultural, or commercial projects. This diminishes the property’s market value and appeal to future buyers.
- **Undermine Property Rights:** By prioritizing the interests of wind project participants, the ordinance unfairly encumbers non-participating landowners, effectively creating a de facto easement on their property without consent or compensation.
- **Lack Fair Consideration:** The ordinance fails to balance the needs of wind energy development with the rights of non-participating landowners to freely use and enjoy their property.

To ensure fairness, I propose that setbacks be measured from property lines to the turbine base in a manner that prevents any overlap of restricted zones onto non-participating properties. For a 650-foot turbine, a setback of at least 1,950 feet from non-participating property lines would comply with state law and protect adjacent landowners from undue restrictions.

3. **Public Engagement:** Hold public hearings to allow non-participating landowners and township representatives to voice concerns and contribute to zoning decisions. Ensure all future meetings related to the wind project are transparent and inclusive.
4. **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, ensuring zoning decisions align with the public interest.

Conclusion

The current wind turbine setback ordinance unfairly restricts the property rights of non-participating landowners and was adopted through a process potentially tainted by conflicts of interest. I urge the Eddy County Board of Commissioners and Zoning Board to address these issues promptly to restore fairness, transparency, and trust in the zoning process. I am prepared to provide additional information or participate in public hearings to support this grievance.

Thank you for your attention to this matter. I look forward to your response and a resolution that upholds the rights of all Eddy County residents.

Sincerely,

Printed Name: Jesse Schuster Michelle Schuster

Signature

Address

Phone

Eddy County

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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.

To: Eddy County Zoning Board and Relevant Authorities

Date: August 13, 2025

Subject: NDCC 11-33-10 Wind Turbine Setback Resolution and Request for Hearing

Dear Members of the Eddy County Commission Board and Relevant Authorities,

As an aggrieved landowner in Eddy County, I am writing to formally object to the wind turbine setback provisions recently adopted, specifically the requirement that setbacks be measured from non-participating rural residences rather than property lines. This regulation imposes significant restrictions on property rights and creates undue financial and developmental burdens for landowners. Additionally, I am concerned about recently revealed potential conflicts of interest that may have influenced the decision-making process surrounding this resolution. I respectfully request a thorough review of the resolution and the zoning board's decision-making process to ensure fairness and impartiality.

Concerns Regarding Setback Measurement from Residences

The current proposed regulation mandates a setback of three times the height of a wind turbine from non-participating rural residences. For example, a 650-foot turbine requires a setback of 1,950 feet from a residence. While this may appear reasonable at first glance, it severely limits landowners' ability to develop or expand their property. Any addition or modification to an existing residence, such as building an extension or a new structure, could violate the setback requirement, necessitating a variance that may not be approved. This restriction not only hampers current landowners' ability to utilize their property fully but also diminishes the property's value and flexibility for future owners.

Measuring setbacks from residences rather than property lines creates an unpredictable and restrictive framework. Property lines are fixed and clearly defined, providing a consistent basis for zoning regulations. In contrast, measuring from residences introduces variability, as the location of a home can change with new construction or modifications. This approach effectively encumbers large portions of a landowner's property, limiting its potential for agricultural, residential, or other uses. To protect property rights and ensure flexibility, I strongly advocate for amending Eddy County's Zoning Ordinance to measure setbacks from property lines instead of residences.

Potential Conflicts of Interest

I am deeply concerned that the decision to adopt the current setback regulation may have been influenced by conflicts of interest among zoning board members and county officials. During the June 11th 2025 public meeting Mr McGiffert, PRC Wind VP, expressly commented that a mile setback from a residence would cancel the project. Recently it has come to light that Zoning Board members Mr. Stuart Richter and Mr. Hanson, along with Commissioner Gertz, had signed land leases with Flickertail Wind, LLC, which included governance and confidentiality clauses. This was not addressed in the original SA Lies determination on conflict of interest decision. These individuals, as participants in the Flickertail Wind Farm project, were reportedly receiving stipends and promises of future financial payouts tied to wind turbine development on their

Concerns Regarding Conflicts of Interest

I am deeply concerned that the decision-making process for this ordinance may have been influenced by conflicts of interest among key zoning board members and county commissioners. Specifically:

- **Zoning Board Members and Commissioner Involvement:** Mr. Richter, Mr. Hanson, and Commissioner Gertz have signed land lease agreements with Flickertail Wind, the developer of the proposed wind project. These agreements include governance and confidentiality clauses. As well as already paid stipends and promises of future turbine-related payouts. Their financial interests in the project create a clear conflict of interest, as their decisions may prioritize personal gain over the public's welfare.
- **Employment-Related Bias:** Ms. Shauna Laber, a member of the zoning board, is employed by Otter Tail Power Company, which owns multiple wind energy projects in North Dakota. PRC Wind, the developer of Flickertail Wind, has publicly stated that setbacks exceeding the state minimum would jeopardize the project. Ms. Laber's employment with a company invested in wind energy raises questions about her impartiality, as her professional interests may align with those of the wind industry.
- **Lack of Transparency:** The Eddy County Zoning Ordinance is intended to "protect the public health, safety, morals, comfort, convenience, prosperity, and general welfare of Eddy County residents" (Eddy County Zoning Ordinance). However, the process for adopting the setback ordinance lacked transparency and 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 undermines the ordinance's stated purpose and raises doubts about the fairness of the process.

These conflicts of interest and procedural deficiencies violate the principles of impartial governance and may contravene NDCC 11-33-10, which requires zoning decisions to be made in the public's best interest.

Requested Actions

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

1. **Review and Amendment of the Setback Ordinance:** Conduct a comprehensive review of the wind turbine setback ordinance to address its impact on non-participating landowners. Amend the ordinance to require setbacks of at least three times the turbine height (e.g., 1,950 feet for a 650-foot turbine) from non-participating property lines to prevent restrictions on adjacent properties.
2. **Investigation of Conflicts of Interest:** Investigate the financial and professional ties of Mr. Richter, Mr. Hanson, Commissioner Gertz, and Ms. Shauna Laber to determine whether their involvement in the decision-making process compromised impartiality. If conflicts are confirmed, take appropriate action to ensure future decisions are made by impartial parties.

lands. Such financial interests may have compromised their ability to make impartial decisions regarding the setback resolution, particularly given the reported reduction of setbacks from one mile to approximately 1,400 feet in 2017, which facilitated the Flickertail Wind Farm project.

The involvement of board members with direct financial ties to the project raises serious questions about the integrity of the zoning process. Fair and transparent decision-making is essential to uphold public trust and protect the rights of all landowners, not just those participating in wind energy projects. I urge the Eddy County Commission Board to investigate these potential conflicts of interest and ensure that future decisions are made by individuals free of financial incentives tied to specific projects.

Requested Actions

To address these concerns, I respectfully request the following actions:

1. **Amend ECZO:** Revise the setback regulation to measure distances from property lines rather than residences, thereby preserving landowners' rights to develop their property without undue restrictions.
2. **Review Conflicts of Interest:** Conduct a thorough investigation into the involvement of Zoning Board members Mr. Richter, Mr. Hanson, and Commissioner Gertz in the Flickertail Wind Farm project, including their financial interests and the impact on their decision-making impartiality.
3. **Reassess Zoning Decisions:** Re-evaluate the 2017 zoning board decision to reduce setbacks from one mile to 1,400 feet, for undue pressure from wind interests and that it prioritized the interests of all county residents, not just wind project participants. Investigate why the County auditor at that time seconded the motion made by zoning board member Ms Collier.

Conclusion

The current ECZO setback resolution unfairly restricts the property rights of non-participating landowners and may have been influenced by conflicts of interest within the zoning board. By measuring setbacks from property lines and ensuring impartial decision-making, Eddy County can create a fairer and more equitable framework for wind energy development that respects the rights of all landowners. I urge the county commission board and relevant authorities to take immediate action to address these concerns and restore public confidence in the zoning process.

Thank you for your attention to this matter. I look forward to your response and am available for further discussion or to provide additional information as needed.

Sincerely,

Printed Name: David + Renee Schnidt

Signature: David + Renee Schnidt

Address:

Phone:

Eddy:

11-33-10. Separate hearings.

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