

**Billings County Zoning Meeting  
September 22, 2016**

**Members present:** John Tczap, Anita Kessel, Cathy Cerkoney, Joseph Kessel, Steven Klym, Connie Kasian and Karen Putnam.

**Others present:** Tax & Zoning Director Stacey Swanson, Deputy Tax & Zoning Director Juliana Pemberton, Roger Klym, Mildred Berdahl, Noreen Johnson, Lester Iverson, Patrick Marx, Jonathan Klym, John Hlebechuk, Gailand Kadrmas, Jim & Dona Lowman, Dale Baranko, Cody & Janell Tachenko, Leona Grishkowski, Martha Namyniuk, Rod Kadrmas, Darnyl Malkowski, Justin Stigen, James & Roxann Haag, Curtis Pavlicek, Louis Pavlichek, Phyllis Baranko, Orest Baranko, Kasey Malkowski, Florian Kuntz, Bernie Palaniuk, Loren Fiskowski, Donaven Palahniuk, Wendy Hart Ross, Lawrence Bender, Reid Buckley, Andrew Makee, Bobbi Strait, Melissa Sandry, Larry Ridl, Alicia Redmond, Debra Hlebechuk, Perry Redmond, Kathy Fisher Heidecker, Pat Rummel, Jason Bentz, Cody Cerkoney, Leonard Hibl, Julie Reis, Donald Stigen, Linda Weiss, Joshua Egly, Edwin Egly, Keri Rummel, Jason Downing, Sue Kadrmas, Glen Kadrmas, Tom Reichert, Karlene Chruszch, Angie Chruszch, Qwain Malkowski, Terry Gregory, Sy Romanyshyn, Bill Romanyshyn, Mike Kasian, Farren Richard, Autumn Richard, Tait Obritsch, Allan Marx, Roger Kessel.

The meeting was called to order by Chairman Tczap at 1:00pm.

Anita Kessel moved to approve the minutes from the August 18, 2016 regular zoning meeting. Steven Klym seconded. All voted aye.

Charlie Creek Wind Farm, LLC; c/o Orion Renewable Energy Group, LLC: Conditional Use Permit and Wind Energy Facility Siting Permit for a 383 megawatt (MW) total rated nameplate capacity Wind Energy Facility consisting of up to 114 wind turbines. The project is located in the northeast portion of Billings County near Highway 85 in townships 143-98, 143-99, 144-98, and 144-99, beginning approximately three miles north of S. Fairfield and extending to the county line one mile south of Highway 200.

The proposed Charlie Creek Wind Farm (CCWF) will span across 28,667 acres more or less and 92 parcels are included in the project pending easements and agreements. All parcels are zoned Agriculture. The individual parcels are described in the table and staff report.

Associated structures and improvements include a 230 kilovolt (kV) above ground transmission line, underground electrical collection system, underground communication cables, access roads, project substation, up to 3 meteorological data towers, and an operations and maintenance building. Temporary uses and structures include laydown and storage areas, turn out areas off of public roads, a concrete batch plant, crane paths, and temporary meteorological data towers.

Five Variances have been requested by Charlie Creek Wind Farm, LLC:

Application for a Variance of section 6.11.5(b)(1) of the Billings County Zoning Ordinance to construct and operate a wind energy facility within the 2640' (one-half mile) setback requirement from an occupied commercial building. One proposed wind turbine is sited in the NW1/4 of section 15-144-98 approximately 2000' from 813 123<sup>rd</sup> Ave SW.

Application for a Variance of section 6.11.5(b)(1) of the Billings County Zoning Ordinance to construct and operate a wind energy facility within the 2640' (one-half mile) setback requirement from an occupied dwelling. One proposed wind turbine is sited in the NW1/4NW1/4 of section 26-143-99 approximately 2340' from 1608 128<sup>th</sup> Ave SW.

Application for a Variance of section 7.3.6 of the Billings County Zoning Ordinance to increase the length of time allowed for a conditional use permit application from 1 year to a maximum of 2 ½ years.

Application for a Variance of section 5.6 of the Billings County Zoning Ordinance Hillside and Ridgeline Overlay District requirements for all project components except for the operations and maintenance building.

Application for a Variance of section 6.11.6 of the Billings County Zoning Ordinance to reduce the minimum ground clearance requirement for the lowest point of a wind turbine blade from 75' to 72'.

Director Stacey Swanson introduced the Application for a Conditional Use Permit and Wind Energy Facility Siting Permit and Variances and stated that she provided aerial digital photos and the company provided maps for the board.

Andrew Makee from Orion Renewable Energy Group, went over the proposal and the history of the company, and introduced Project Developer Reid Buckley and Attorney Lawrence Bender who is assisting the company with the application process.

Andrew stated that for each turbine, there would be an access road and underground collector to an above ground station. There would be permanent MET towers to monitor the wind resources to ensure that the turbines are working to their best capacity. He felt there would be long term revenue to landowners and estimated a total annual tax to the county of \$400,000 per 100 megawatts. There would be an estimated 200 workers during construction and 6-10 permanent employees. Andrew then discussed the setback requirements and stated that the company would use the most restrictive setback ordinance between Billings County and the Public Service Commission. The CCWF has a list of potential turbines, but has not made a decision on specific models for the project. He went over the PSC's required certifications and FAA standards. He then stated that he would take questions from the board and public.

The board questioned the number of permanent employees and Andrew stated that there would be one employee for every 10-12 turbines, he stated that there is no larger plan at this time to move project south. Questions then ensued regarding emergency procedures if a turbine needed to be shut down and Reid Buckley answered that the technology in a turbine can shut itself down or may be turned off remotely. The turbines would be monitored 24/7 but not staffed full time. Questions ensued regarding an emergency response plan and reclamation procedure timeframes. The board questioned the noise from a wind farm and PSC ordinance requires no higher than 50 decibels from 100 feet from a residence.

Discussion then ensued regarding lighting and the fact that aircraft detection lighting systems have not been commercially used yet and the FAA will have final say on the type of lighting required as the structures will be 500 feet tall. Steve Klym asked what impact this project would have on the design of the Highway 85 expansion and they stated it would not have impact.

Discussion then moved to bonding for the project. Reid Buckley stated that he felt day one should not be bonded and a proper amount would need to be agreed on. He brought up salvage value and stated that there was a ready market for the towers and blades. He stated that if a bond would be important to the county, they would and would like to see it as a modest amount. PSC has a reclamation bond after 10 years. There was a question regarding the life expectancy of the wind farm and Reid stated roughly 25 years.

Zoning Director Stacey Swanson then asked for comments or questions from the public, beginning with a roll call of individuals that lived within 500' & 1320' of the project and then from other Billings County residents/landowners and others present. The following is an overview of those questions, comments and concerns:

- Discussion regarding decommissioning of the turbines. PSC's statute states that the PSC may require a bond after 10 years. The bond would require removing the structures and reclaiming the land down to 4 feet below preconstruction. Went over the maps and how many non-resident agreements had been signed and 12 residents, although 3 of those did not sign a turbine agreement. Discussed the county being already 50% federal and whether this is right for the county as there is a need for people in the county.
- Concerns regarding the fire response on a 500' structure. The first response is the turbine crew and prior to construction they would work with Billings County Emergency Management to come up with a plan. Discussion ensued regarding the blades icing up and what happens to the ice that sloughs.
- Concerns regarding the amount of people who were absentee landowners who lived out of State and signed lease agreements.
- Concerns regarding spacing and lights required by FAA and home valuations in the area.
- Question regarding decommissioning if another company takes over. Stated that that company would then be responsible.
- Concerns regarding ground nesting birds. The company stated that they have met with Game & Fish, who were supposed to attend this meeting, but were not in attendance. The company stated G & F found no impact to threatened or endangered species.
- Comment regarding some individuals signed easements to allow their neighbors, but did not want the wind farm.

- Concerns regarding government subsidies for wind farms and nonpayment if the turbine is out of commission.
- Concern regarding an individual who worked for the company who made comments when coming around to get lease agreements signed telling individuals that their neighbor supported when they may not have.
- Discussion regarding potential for bald eagles and wildlife being killed.
- Two landowners involved in the project voiced support due to the increased tax base being able to support good roads and schools, and discussed private property rights. Also stated that it wouldn't affect ranching and the appreciation of the setbacks.
- Discussion regarding the difference between an oil well ¼ mile from a house and a 500' tower ¼ mile from a house and the visual impact.
- A public request to have the public have a show of hands who was for and against. The majority in attendance raised their hands in opposition.
- Concern regarding air med helicopter and whether it could land in that area.
- Discussion regarding optimal wind conditions which the company stated would start generating power when wind is blowing at 7 mph and stop somewhere around 50-55 mph.
- Individuals who were part of the Brady 1 and 2 projects in Stark County were present and stated that the estimated cost to take a turbine down is closer to \$500K than \$100K. Also stated that many for sale signs are up around the Stark county projects.
- Theodore Roosevelt National Park Superintendent Wendy Ross was present and stated that the park service did a visual analysis and determined that if conditions were optimal, the wind farm would be able to be seen from 36 miles away and that over 5,000 acres would have visual impacts in the South Unit and over 400 acres in the North Unit. She expressed her hope that they could use lighting that would not impact the park night skies.
- Discussion ensued regarding taxes and the state valuation, distribution and cost of the structures installed.
- Andrew explained the presented photo simulations of the project which were made to scale, and used the largest possible turbines.

The board recessed for 10 minutes for zoning members to review the maps and photos.

When the board reconvened, a comment from the public was raised on potential conflict of interest of zoning board members. Zoning Director Swanson shared correspondence from the North Dakota Association of Counties on North Dakota Century Code Section 44-04-22 which states as follows:

**44-04-22. Conflict of interest law.**

A person acting in a legislative or quasi-legislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal or pecuniary interest in a matter before that board, council, commission, or other body, must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.

Director Stacey Swanson then went over her staff report and the Billings County Zoning Ordinance which is available for review by contacting the Tax & Zoning office.

Zoning Board members Anita Kessel and Joe Kessel recused themselves from the zoning board vote due to a direct and substantial interest in the project.

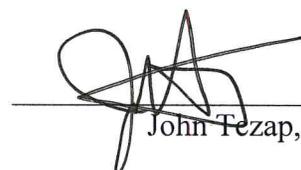
Chairman Tczap asked for a motion to approve the Conditional Use Permit and Siting Permit and variances with conditions as set forth in the staff report. No motion was made. Chairman Tczap then asked for the motion to approve again. No motion was made.

Steven Klym moved to adjourn. Meeting adjourned at 4:45pm.

*Note: The application will continue to the Board of County Commissioners without a recommendation from the Zoning Board.*



Marcia Lamb, Secretary



John Tczap, Chairman

**2016-25**  
**Charlie Creek Wind Farm**  
**Parcels included in Zoning Application**

Parcel Number	Owner Name	Legal Description	Parcel Acreage
18 0000 00724 000	KADRMAS GLEN	LOTS 1,2, S1/2NE1/4 LESS 1.92 ARW 6-142-98	159.4
23 0000 01053 000	GREGORY TERRY & JOY	E1/2SW1/4, LOTS 3-4 18-143-98	148.36
23 0000 01054 000	GREGORY TERRY & JOY	SE1/4 18-143-98	160
23 0000 01055 000	ARMBRUST LEON & LAURA	NE1/4 19-143-98	160
23 0000 01056 000	ARMBRUST LEON & LAURA	FRACTIONAL W1/2 19-143-98	296.96
23 0000 01077 001	PAVLICEK CURTIS & PAVLICEK LOUIE	S1/2S1/2NW1/4 29-143-98	40
23 0000 01077 002	PAVLICEK CURTIS & PAVLICEK LOUIE	S1/2 29-143-98	320
23 0000 01081 000	KADRMAS GLEN & SUSAN	E1/2SW1/4, LOTS 3 & 4 30-143-98	149
23 0000 01083 000	FISHER KATHRYN	ALL OF FRACTIONAL 31-143-98	618.8
23 0000 01084 000	RIDL LARRY R.	N1/2 32-143-98	320
24 0000 01099 000	CHIMNEY BUTTE LAND CO. LLLP	ALL OF FRACT. LESS 8.27 ARW, LESS 134.67 AC TRACT & 7.37 AC PRIVATE EASMT, 4-143-99	489.85
24 0000 01106 000	CHIMNEY BUTTE LAND CO. LLLP	N1/2 LESS 4.91 ARW 9-143-99	320
24 0000 01107 000	KESSEL PATRICK & SHIRLEY FAMILY TRUST	S1/2 LESS 12.01 ARW 9-143-99	320
24 0000 01109 000	MARX PATRICK	SE1/4 LESS 2.51 ARW 10-143-99	160
24 0000 01115 000	HECKER RAYMOND	SW1/4 LESS 1.61 ARW 13-143-99	160
24 0000 01117 000	GREGORY TERRY & JOY	E1/2, SW1/4 LESS 5.72 ARW 14-143-99	480
24 0000 01118 000	MARX PATRICK	NW1/4 LESS 2.52 ARW 14-143-99	160
24 0000 01119 000	MARX PATRICK	NE1/4W1/2 LESS 1 ACRE IN NW1/4 LESS 9.43 ARW, LESS 40 ACRES IN SW1/4, 15-143-99	439
24 0000 01119 001	MALKOWSKI KASEY & DARNYL	SE1/4 15-143-99	160
24 0000 01120 000	KESSEL PATRICK & SHIRLEY FAMILY TRUST	E1/2NE1/4 LESS 8.54 ARW 16-143-99	80
24 0000 01121 000	KESSEL ANITA FAYE RLT	W1/2NE1/4 LESS 1.27 ARW 16-143-99	80
24 0000 01122 000	MALKOWSKI ROGER & KATHLEEN	SW1/4 LESS 1.02 A. IN SW1/4 16-143-99	160
24 0000 01123 000	MUELLER CHISSEY A. & DOELZ EUNICE A.	SE1/4 LESS 7.66 ARW & .96 A. 16-143-99	160
24 0000 01124 000	KESSEL ANITA FAYE RLT	ALL LESS 7.08 ARW 17-143-99	640
24 0000 01130 000	KNUDTSON HAROLD	E1/2 LESS 8.01 ARW 21-143-99	314
24 0000 01131 000	MUELLER CHISSEY A. & DOELZ EUNICE A.	W1/2 LESS 1.02 A IN NW1/4 21-143-99	320
24 0000 01132 000	KNUDTSON HAROLD	NW1/4 LESS 22 ACRES & 3.96 ARW 22-143-99	138
24 0000 01133 000	MALKOWSKI KASEY & DARNYL	E1/2 LESS A 2 ACRE TRACT IN NESE 22-143-99	318
24 0000 01133 002	MALKOWSKI KASEY & DARNYL	SW1/4 LESS A 2.875 ACRE TRACT LESS 2.22 ARW 22-143-99	157.13
24 0000 01138 000	CHUPPE GREGORY ET AL	E1/2 24-143-99	320
24 0000 01139 000	CHUPPE GREGORY ET AL	W1/2 LESS 3.22 ARW 24-143-99	320
24 0000 01140 000	REDMOND PERRY & ALICIA	ALL 25-143-99	640
24 0000 01143 000	MALKOWSKI ROGER & QWAIN	SW1/4NW1/4, W1/2SW1/4 26-143-99	120
24 0000 01143 001	MALKOWSKI QWAIN	NW1/4NW1/4 26-143-99	40
24 0000 01144 000	MALKOWSKI KASEY & DARNYL	NE1/4 27-143-99	160
24 0000 01145 000	MALKOWSKI QWAIN	20 A. IN SW1/4SW1/4 LESS 2.51 ARW 27-143-99	20
24 0000 01146 000	MALKOWSKI KASEY & DARNYL	SE1/4 27-143-99	160
24 0000 01147 000	MALKOWSKI QWAIN	E1/2NE1/4, SE1/4 28-143-99	240
24 8929720	ND STATE LAND DEPT	ND05T1430N0990W	159.46
24 8929984	ND STATE LAND DEPT	ND05T1430N0990W	638.48
28 0000 01242 000	TACHENKO CODY J & JANELL	LOTS 1-4 LESS 2.62 ARW 5-144-98	201.06
28 0000 01243 000	TACHENKO CODY J & JANELL	S1/2N1/2, S1/2 LESS 2.63 ARW 5-144-98	477.37
28 0000 01246 000	TACHENKO CODY J & JANELL	SE1/4NW1/4, E1/2SW1/4, SE1/4, LOTS 6,7 LESS 3.11 ARW 6-144-98	347.28
28 0000 01247 000	TACHENKO TERRY D. & TERRI L.	NE1/4 LESS 1.62 ARW 7-144-98	160
28 0000 01248 000	TACHENKO CODY J & JANELL	SE1/4, E1/2W1/2, LOTS 1-4 LESS 1.49 ARW 7-144-98	454.96
28 0000 01249 000	TACHENKO TERRY D. & TERRI L.	ALL 8-144-98	640
28 0000 01250 000	TACHENKO TERRY D. & TERRI L.	N1/2 9-144-98	320
28 0000 01251 000	TACHENKO TERRY D. & TERRI L.	SW1/4 9-144-98	160
28 0000 01252 000	TACHENKO TERRY D. & TERRI L.	SE1/4 LESS 2 ACRES 9-144-98	158
28 0000 01264 000	TACHENKO CODY J & JANELL	NW1/4 LESS 8 ACRES LESS 8.48 ARW LESS 2.94 ARW 15-144-98	152
28 0000 01267 000	TACHENKO TERRY D. & TERRI L.	SW1/4 LESS .46 ARW LESS 2.18 ARW 15-144-98	160
28 0000 01270 000	TACHENKO TERRY D. & TERRI L.	NW1/4 16-144-98	160
28 0000 01271 000	TACHENKO TERRY D. & TERRI L.	ALL 17-144-98	640
28 0000 01272 000	TACHENKO CODY J & JANELL	ALL OF FRACTIONAL 18-144-98	615.44
28 0000 01273 000	TACHENKO TERRY D. & TERRI L.	ALL OF FRACTIONAL LESS 4.82 ARW 19-144-98	616.32
28 0000 01274 000	HURT FLOYD R & MURIEL E TRUST	E1/2 LESS 2.51 ARW 20-144-98	320
28 0000 01275 000	HURT FLOYD R & MURIEL E TRUST	ALL LESS 6.67 ARW, LESS 4.27 ARW 21-144-98	640
28 0000 01294 000	HURT FLOYD R & MURIEL E TRUST	NW1/4 LESS 2.51 ARW 28-144-98	160
28 0000 01297 000	KUNTS FLORIAN J & DEBORAH K	ALL OF FRACT. LESS 4.82 ARW 30-144-98	616.64
28 0000 01298 000	SIMNIONIW DIXIE	ALL OF FRACT. LESS 3.22 ARW 31-144-98	616.76
28 0000 01299 000	SIMNIONIW DIXIE	ALL 32-144-98	640
28 8942861	ND STATE LAND DEPT	ND05T1440N0980W	319.07
28 8942903	ND STATE LAND DEPT	ND05T1440N0980W	319.75
29 0000 01312 000	SCHNEIDER GREGORY	LOTS 1, 2, S1/2NE1/4, SE1/4 LESS 1.61 ARW 1-144-99	341.41
29 0000 01313 000	TACHENKO CODY J & JANELL	W1/2 FRACT. LESS 5.35 ARW 1-144-99	341.75
29 0000 01314 000	TACHENKO S & V FAMILY TRUST/LE	LOTS 1,2, S1/2NE1/4, SE1/4 LESS 26.90(HWY 85) LESS .51 ARW 2-144-99	342.12
29 0000 01324 000	TACHENKO S & V FAMILY TRUST/LE	ALL LESS 30.63 (HWY 85) LESS .52 ARW 11-144-99	640
29 0000 01325 000	TACHENKO CODY J & JANELL	NW1/4 LESS 1.61 ARW 12-144-99	160
29 0000 01326 000	TACHENKO CODY J & JANELL	ALL LESS .21 ARW 13-144-99	640
29 0000 01327 000	TACHENKO S & V FAMILY TRUST/LE	E1/2, NW1/4 LESS 7.60 ARW 14-144-99	480
29 0000 01327 001	HAAG JAMES & ROXANN	A 109.20 ACRE TRACT IN THE SW1/4 14-144-99	109.2
29 0000 01328 000	KLATT LEO & LORETTA	ALL LESS 23.86 ARW 15-144-99	640
29 0000 01331 000	KESSEL JOSEPH & JOANN	ALL LESS .06 ARW 21-144-99	640
29 0000 01331 001	KESSEL JOSEPH & JOANN	E1/2 LESS 2.5 HWY ARW 22-144-99	320
29 0000 01331 002	KESSEL JOSEPH & JOANN	W1/2 LESS 2.5 HIWAY ARW 22-144-99	320
29 0000 01332 000	HAAG JAMES & ROXANN	ALL 23-144-99	640
29 0000 01333 000	HAAG JAMES & ROXANN	SW1/4 24-144-99	160
29 0000 01333 001	KADRMAS ROQUE D & KAREN	SE1/4 24-144-99	160
29 0000 01333 002	KADRMAS ROQUE D & KAREN	S1/2NE1/4 24-144-99	80
29 0000 01333 003	HAAG JAMES & ROXANN	NW1/4 24-144-99	160
29 0000 01333 004	HAAG JAMES & ROXANN	N1/2NE1/4 24-144-99	80
29 0000 01334 001	KADRMAS ROQUE D & KAREN	NW1/4S1/2 LESS 1.61 ARW 25-144-99	480
29 0000 01336 000	HAAG JAMES & ROXANN	NE1/4 26-144-99	160
29 0000 01336 001	HAAG JAMES & ROXANN	A 11.68 ACRE TRACT IN THE NW1/4 26-144-99	11.68
29 0000 01336 002	KADRMAS ROQUE D & KAREN	NW1/4 LESS 11.68 ACRES 26-144-99	148.32
29 0000 01337 000	KADRMAS ROQUE D & KAREN	S1/2SW1/4 26-144-99	80
29 0000 01337 001	KADRMAS ROQUE D & KAREN	N1/2S1/2 26-144-99	160
29 0000 01344 000	CHIMNEY BUTTE LAND CO. LLLP	ALL LESS 7.18 ARW 33-144-99	640
29 0000 01345 000	O'BRIEN TIM & KAREN	NE1/4 34-144-99	160
29 0000 01346 000	CHIMNEY BUTTE LAND CO. LLLP	S1/2 LESS 1.79 ARW; LESS 6.84 ACRES TOWER SITE 34-144-99	313.16
29 0000 01347 000	KADRMAS ROQUE D & KAREN	ALL 35-144-99	640
29 8943784	ND STATE LAND DEPT	ND05T1440N0990W	478.84