

The Frontier and Holt County
Independent

Board Of Adjustments Deny Permit

Nov 11, 2020



BOARD OF ADJUSTMENTS - Jim Hubel and Barb Steskal of the Holt County Board of Adjustments listened to testimony at the Thursday, Oct. 29 meeting.

The Holt County Board of Adjustments met last Thursday, Nov. 5 at the supervisors chambers to make a decision on the construction permit of the KXL Pipeline. The board was to decide to either vote to concur or reject that the stipulations have been met that TC Energy has complied with the stipulations set by the Holt Board of Supervisors, reject or the board can ask for stipulations to be set on the granting of the building application permit. The board in essence denied the construction permit with the addition of variances for KXL to agree to before they would allow the permit.

KXL response was “We’re disappointed with today’s decision but remain committed to this project. A vote in our favor would have cleared the way for our crews to improve many of the county’s roads, as well as fund a large portion of the cost to replace the Stuart-Naper Bridge. We will continue the process of attaining our pipeline construction permit in court, which will unfortunately cost the county significant time and resources.”

The board met with council, Holt County Attorney Brent Kelly was in attendance at the meeting. After some discussion the board decided to add stipulations or add a variance for the pipeline company to follow. The board was told by Kelly that they may ask for a variance but that KXL did not have to agree to the variance but you could throw it out there and see what KXL thinks.

Barb Steskal with the Holt County Board of Adjustments produced a list that the board used as guidance for the variance. The variance stated:

1. No permit will be issued until the US Corps of Engineer's regulation review that is currently in progress is complete and the KXL Pipeline is found to be in compliance with the Clean Water Act.

2. No permit will be issued until condemnation of the easement (eminent domain) is wholly resolved, up to and including any appeals to the US Supreme Court and all funds have been allocated and paid to the land owners.
3. No permit will be issued until there is a proven plan designed to enable the successful and timely "cleanup" of a spill of the pipeline contents into the Ogallala Aquifer as well as all the creeks, streams and rivers the pipeline crosses or any creeks, streams and rivers those crossed drain into, an escrow account will be deposited in a bank in Holt County and shall be replenished by the pipeline if funds are drawn for such a cleanup to ensure the same monetary protection in the event of a subsequent spill. At the end of life of the pipeline, funds shall be returned to the pipeline only after pipeline removal and restoration.
4. There are funds in escrow to clean up a spill and pay for all loss of production for as long as clean up continues.
5. As a spill could result in damages to water and land in several states, relief from liability to any land owner, township, the county and the State of Nebraska needs to be resolved before any permit can be issued to preserve the economy of Holt County and the State of Nebraska. To replace the liability insurance landowners lose with construction of a pipeline, no permit will be issued until the landowners, the townships of Holt County, Holt County and the State of Nebraska are provided liability insurance for the duration of the pipeline operation and such insurance being provided by the pipeline. Proof of such liability insurance will be registered with the Holt County, Nebraska Board of Supervisors.
6. All PPE for any possible content contact will be provided to the First Responder units that serve the county. Any and all initial and continuing training deemed necessary by the First Responder units will be funded by the pipeline. The information of all possible contaminants, PPE and training must be completed before any content is moving through the pipeline. First Responders who serve the county must be informed of all the contents of the product in the

pipeline at any given time. When the makeup of the contents is altered, the First Responders need to be informed 24 hours before such alteration, giving them time to review necessary methods needed to respond to any call involving the contents of the pipeline.

7. There is currently no means to detect a slow leak of the pipeline contents. Therefore, testing of the wells, creeks, streams and rivers in Holt County at regular intervals (such as quarterly) by a certified lab to check for BTX with the cost of such testing to be borne by the pipeline. If suspected contamination of the same is suspected by owners or operators of the land, or by agronomists, veterinarians or medical personnel, they may request and be granted the testing of the water by a certified lab with the costs to be borne by the pipeline.

8. There should be funds in escrow to be used for the removal of the pipeline and reclamation of the easement and any other lands disturbed during removal of the pipeline.

9. The crossing of established pastures, irrigated parcels and land that would be economically or operationally hindered by the crossing is prohibited; the pipeline must be diverted to a perimeter of said parcel.

10. The pipeline must not cross any tilled land as tiling is a major investment in the land. There are no guarantees that a "fix" to a tilled field would be sufficient. To that end, even if the landowner has not disclosed the tiling of a field, if a field is found to be tilled during construction of the pipeline, the pipeline must be diverted around said field.

11. The pipeline must not cut through established shelterbelts as that lessens the effectiveness of the shelterbelt to livestock and soil erosion.

12. All pipe, new and stored, must be inspected and found to be free of defect before being laid.

13. If the pipeline used the local electric companies for any phase of construction or operation, the local electric company needs to ensure the Holt County Board of Supervisors that their policy reflects that any reduction of service necessary will reduce electricity to the pipeline before any reduction for agriculture is required.

14. Clean up of any spill on land must ensure the land is not littered with "filler" such as concrete or rock and must be restored with soil consistent with pre-spill soil along the pipeline easement.

15. There are funds in escrow to fund any increased costs in law enforcement during the construction of the pipeline, including security deemed necessary by the county for any work camps or temporary residences of pipeline construction personnel as well as costs associated with any increase in crime.

16. Reclamation of the easement and any lands disturbed by a spill shall be considered complete only upon inspection and approval by the Natural Resource District ensuring such reclamation has been successful restoring the topsoil, under-lying soil and native grasses and plants. Further, the Holt County Weed Board will inspect the land during reclamation to ensure noxious weeds are eradicated by the reclamation. Any wells necessary for reclamation of plants would require approval in the manner all wells of the county are regulated, and need to be approved before construction of the pipeline.

17. The easement agreements will be changed from a Perpetual Easement to an easement with a sunset not to exceed 20 years. The easement may not be sold to any entity not wholly owned by citizens of the United States of America, or to any individuals not citizens of the United States of America.

18. The pipeline, or the easement, must not be used to transport any water from the Ogallala Aquifer to outside the State of Nebraska, or to transport any water to a holding area that could then allow said water to be transported outside the State of Nebraska.

19. The pipeline cannot employ and must guard against and be liable for any instrument or technology (ie. robotics) that could place dangerous and explosive devices into the pipeline, including any terroristic attacks using the pipeline.