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Committee formed to look at pipeline zoning regs

By Melanie Wilkinson News Editor

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YORK – The York County Planning Commission has formed a special committee to specifically look at zoning regulations for pipelines.

The commission appointed the committee from among its own members, says York County Commissioner Chairman Kurt Bulgrin.

Jenni Harrington was named the chairman of that committee.

At this time, the county's comprehensive plan is being updated (which is done every 10 years or so) and the zoning regulations will also be considered.

A number of local landowners have asked the county to look at creating specific zoning regulations for pipelines as none currently exist.

The conversation was started because of the possibility the Keystone XL pipeline might be constructed through the county.

Commissioner Bulgrin addressed the issue this past week, after a landowner asked about the planning commission's progress.

Whatever is developed by the planning commission must eventually come to the county board for consideration. The matter will also have to be discussed in a public hearing before any action may be taken.

A group of concerned landowners have already brought a proposal to the planning commission regarding regulations they would like to see included in the zoning guidelines.

The 17-page document addresses many issues related to oil pipelines. Within the document, it acknowledges that any existing such pipelines would not be subject to these regulations, should they be passed.

Within the regulations is a definition of "major oil pipeline," which says that it pertains to a "pipeline that is larger than 20 inches in diameter, intended to transport crude oil of any type including conventional oil, bitumen or tarsands."

The draft asks for there to be pre-construction filing requirements. Included in those requirements would be that the pipeline owner submit all state and federal approval documents, material safety data sheets regarding the product to be transported, a list of all the proposed county road crossings, the federal emergency response plan and a county-specific spill response plan, a county-wide economic risk analysis, a county-wide economic benefit analysis, a county-wide water risk analysis, a county carbon pollution estimate, a county-wide water testing schedule, a list of proposed haul routes in the county, and voluntary submittal of other information that would assist the planning and zoning commission in the evaluation.

The proposed regulations also call for pipeline owners/operators to file with the county “the location of the pipeline right-of-way or easement area.” The requirement also calls for a “notice of location” to be delivered to each affected property owner along the proposed route. The proposed regulation also says that “no construction or installation of the pipeline shall occur until the GIS/GPS mapping notice of location has been filed with the county and delivered to the property owners.”

It also proposes that prior to construction, all affected property owners will have to be contacted by the applicant’s project manager or a designated agent to review the timing of construction and discuss site-specific issues and implementation of mitigation and reclamation measures.

The proposed regulations also call for the submission of plans showing the dimension and location of the pipeline, related items or facilities within the right-of-way or easement, and all proposed lift stations and other types of pipeline-related structures. It also calls for the submission of cross-section drawings for all public right-of-way and easement crossings, the design capacity of the proposed transmission facility, changes in flow and the proposed maximum operating pressure.

The proposed regulations call for the payment of a one-time permit review fee of \$15,000. The resolution says the fee is “fair and reasonable to offset the county review of the application, organization and holding of public consulting with third parties and other additional costs incurred related to the pipeline project. Such payments are necessary and reasonable for the county to promote the health, convenience, order and welfare of the present and future inhabitants of York County including providing adequate light and air, protecting the tax base and protecting property against blight and depreciation.”

The lengthy document also addresses proposed requirements after a pipeline is built.

The proposed regulation says that “once installation of the pipeline is complete, the pipeline owner will deliver to the county board of commissioners, within six months of completion, an ‘as-built’ map that will show exactly where the pipeline is located, in addition to any other facilities.”

The proposed regulations call for appearances before the commissioners, including a public hearing.

In order for a pipeline owner to receive its county permit, the proposed regulations say “the applicant has the burden of proof to establish that the proposed pipeline complies with all laws and regulations and that it is the least disruptive to the property owners of York County when taking into consideration all economic, environmental and social impacts.”

If the zoning regulations were passed as submitted, it would also address “confidential information.”

The regulations read that the applicant “shall identify any information within its application that it considers confidential business information, provide an explanation that describes the confidentiality and request that it be treated as confidential. The county board will determine whether or not such information is public information or confidential. The county may release confidential information subject to protective order.”

When it comes to public road impacts, the regulations call for the applicant, in coordination with a county representative, to conduct a pre-construction survey of roadways, bridges and drainage pipes along routes that would be used as haul roads (during construction).

It also suggests the pipeline owner be responsible for restoring the roads and bridges to pre-construction conditions – which would be determined by the county representative. It also says that the pipeline owner would have to pay a one-time road survey application fee of \$5,000 and an annual renewal fee of \$500 per roadway crossed by the pipeline. “This fee shall be paid every year that any portion of the pipeline or related facilities are located in the county.”

The proposed regulation additionally addresses distances that a pipeline may be installed from private structures. The proposed wording says that “in no event can a major oil pipeline pass within 100 feet of an occupied residence.”

And if the pipeline passes within a distance of between 101 feet to 250 feet of an occupied residence or agricultural building, the pipeline owner “shall coordinate construction work schedules with the affected residential owners prior to the start of construction; it shall maintain access to all residences at all times (unless it is unfeasible, which has to be agreed upon by the private property owner and it would have to be for a minimum amount of time).

The regulations also call for the installation of temporary safety fencing to minimize hazards caused by an open trench and heavy equipment. The pipeline owner would also be required to notify affected residents no less than 24 hours before disrupting utilities.

The proposed regulations also call for “final grading and top soil replacement, installation of permanent erosion control structures and repair of fencing and other structures in residential areas with 10 days after backfilling the trench or after any subsequent repair work.”

Included is a provision that if “a water well, or water supply, be damaged (diminishment in quantity or quality) by pipeline installation or operations, a comparable water supply will be immediately provided to the owner of the well and the well shall be restored or replaced at the pipeline owner’s expense.”

The water issue is vastly addressed by the proposed regulations, reading that “in no event can a major oil pipeline pass through soils with permeability rates” determined by the U.S. Geological Society; “in no event can a major oil pipeline pass within 1,000 feet of a water well; in no event can a major oil pipeline pass through any

water source designated as sole source aquifer by the EPA or a sensitive waterway or area such as a wellhead protection area.”

It says further that “baseline water testing for both domestic and livestock water wells within 1,000 feet of the proposed pipeline will be conducted at the expense of the applicant prior to the construction with the results delivered to the county. In subsequent years, the pipeline owner/operator will reimburse the county for any water testing done by the county or third party for purposes of measuring against the baseline. In the event any water well of any kind is found to be compromised by a spill, the pipeline owner shall provide an alternative water supply.”

It is being proposed that if a pipeline owner wants to locate additional pipelines within an existing easement, “a new easement or right-of-way agreement must be negotiated with the property owner per additional pipeline.” The same holds true if the use of the pipeline ever changes in its lifetime.

Also included are proposed detailed requirements related to emergency services and spill response. If passed, the zoning regulations would include stipulations that local fire departments and rescue services would receive a copy of the project description and site plan from the company. The plan “shall include a description of the numbers, locations and training of personnel necessary to respond to a worse case discharge in York County. The plan shall also include all material safety data sheets for all substances approved under tariff for shipment in the pipeline.”

The regulations also say that “all spill response equipment must be located within the county borders or within 30 minutes of any potential spill site.” And the company would be required to provide constant contact information throughout the life of the pipeline.

When it comes to variances, the proposed regulations address these issues. The proposal says that some variance can be allowed to the pipeline applicant in “extraordinary” circumstances. Requests for variances will come with a \$350 fee.

The proposed zoning regulations also call for many stipulations when it comes to abandonment of the pipeline. If a pipeline is abandoned, the owner/operator would have to notify the county and then physically dismantle all components within 180 days (an extension could be granted, but the regulations call for that to be no longer than one year).

When it comes to indemnification, the proposal says that the county and property owners should be held harmless “from any and all liability, loss, damage, cost, expense and claim of any kind arising out of (directly or indirectly) the installation, construction, operation, use, location, testing, repair, maintenance, removal, or abandonment of the pipeline.” That would be the case (should the regulation be passed) for everyone except those who would damage the pipeline “through intentional bad acts.” However, property owners would still be required to comply with the Nebraska One-Call Notification System Act.