

2. SPECIAL USE PERMIT NO. 2009-47 - Vicinity of the southeast corner of 93<sup>rd</sup> Street and Nieman Road

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**GENERAL COMMENT: A valid protest petition has been received for this application, encompassing 50 percent of the protest area.**

1. APPLICANT: Southern Star Central Gas Pipeline is the applicant for this request.
2. REQUESTED ACTION: The applicant is requesting approval of a special use permit, for a five-year period of time, to allow a utility structure.
3. LOCATION: The subject property is located in the vicinity of the southeast corner of 93<sup>rd</sup> Street and Nieman Road.
4. EXISTING ZONING: This property is currently zoned R-2, Two-Family Residential District.
5. NEIGHBORHOOD CHARACTERISTICS: The subject property is the open space and amenity tract for the Southdale Homes Association. The properties to the north and south are zoned R-3, Garden Apartment District, for homes in Southdale. To the west across Nieman Road is property zoned R-1, Single-Family Residential District, for the Westridge Middle School. To the northwest of the site is Congleton Industrial Park, which is zoned M-1, Light Industrial District. U.S. 69 Highway runs along the east side of the Southdale neighborhood.
6. CONFORMANCE WITH THE COMPREHENSIVE PLAN: The Future Development Plan identifies this area as appropriate for medium-density residential uses. The Comprehensive Plan contains separate goals for public and semi-public land uses, which include utility installations. Policy 2.5 regarding locational criteria for utility structures indicates that locations should be chosen and sites designed in such a manner to minimize the impact on adjacent properties. The applicant is proposing to fully screen the utility site from view, which in staff's opinion, meets the requirement of minimizing the impact on adjacent properties.
7. ANALYSIS: The applicant is requesting special use permit approval to allow a new utility structure in a fenced enclosure. The site is located on an existing Southern Star interstate natural gas line easement and will serve as a metering station for Kansas Gas Service to tap into the regional supply line. When selecting a site for this type of installation, the utility company has indicated that four criteria have to be met: 1) location on the Southern Star pipeline, 2) close proximity to Kansas Gas Service's line, 3) adequate area for the size of the enclosure, and 4) access to the site.

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According to the applicant, this is the only location that meets their locational criteria. This application is the result of the 95<sup>th</sup> Street bridge replacement that will be undertaken with improvements to U.S. 69 Highway. Currently, Kansas Gas Service's line is located on the bridge, but the line will not be replaced on the new bridge. Instead, the line is being re-routed to run north from 95<sup>th</sup> Street along the west side of Nieman Road, where it will ultimately tie into Southern Star's interstate line at the proposed metering station.

Access to the utility enclosure is provided by a concrete and asphalt driveway off the east side of Nieman Road. The metering station will be enclosed by an eight-foot tall wood privacy fence with masonry columns. Security measures, consisting of barbed wire, will be installed on the interior of the enclosure just below the top of the fence so that it is not visible from the outside. Landscaping is proposed on the west side of the enclosure along Nieman Road, and existing trees and landscaping on the other sides of the enclosure will help mitigate its appearance. One tree is proposed to be removed with the placement of the utility structure and enclosure. A small valve appurtenance will be above ground to the east of the enclosure in the "panhandle" of the special use permit area. The valve will be surrounded by bollards to protect it from lawn mowers and maintenance equipment.

Because a portion of the proposed enclosure extends outside of the western edge of the current utility easement, Southern Star needs additional easement from the Southdale Homes Association. Staff understands that the two parties were not able to come to an agreement, and Southern Star filed condemnation proceedings with the Johnson County District Court on January 21, 2010, to secure the additional easement. On February 8, 2010, the Johnson County District Court found in favor of Southern Star's petition for eminent domain to acquire the additional easement that is needed. The court ruled that Southern Star has the power of eminent domain and that the taking of the easement is necessary for the lawful corporate purposes of Southern Star. The next step is for the judge to select three appraisers to assess the value of the property being condemned, and in approximately 30 to 45 days, a hearing will be held where the amount will be determined that Southern Star is to pay the homes association.

Staff has heard from concerned members of the homes association regarding the need for the facility in this location, the size of the enclosure, the possible odor from the facility, and the proposed fencing materials.

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The solid fence being proposed screens views into the site, but a concern has been raised that the solid fencing does not allow visibility across the homes association open space area. Wrought iron fencing has been suggested by members of the homes association.

For the information of the City Council, because Southern Star is an interstate provider, they fall under the jurisdiction of the Federal Energy Regulatory Commission (FERC). The authority of local jurisdictions is limited with regard to the requirements placed on this type of utility location.

TRAFFIC IMPACTS: The proposed driveway will be used relatively infrequently and is located so that it will not cause any significant traffic impacts.

8. STAFF RECOMMENDATION: Because the proposed utility facility is needed to serve a large number of households in this vicinity of the metro area and the applicant worked to conceal the facility from view, the staff recommended approval of Special Use Permit No. 2009-47, for a five-year period of time, subject to the stipulations approved by the Planning Commission. Staff also indicated support for the wrought iron fencing proposed by the neighbors for the enclosure about the utility facility, should that be the preference of the Planning Commission.
9. PLANNING COMMISSION RECOMMENDATION: The Planning Commission considered this item at a public hearing on January 25, 2010. Two members of the Southdale Homes Association spoke in opposition to the proposal. Their concerns included the odor they observed from other Southern Star locations in the metro area, the impact on the homes association amenities, the size of the facility and its long-term maintenance, and public safety. They indicated that if the facility had to be sited at this location that they would prefer wrought iron fencing to allow visibility across the amenity tract to prevent teenagers from loitering unobserved on the homes association property.

The Planning Commissioners asked a number of questions regarding the work and activity that would go on at this location, as well as questions regarding details of the enclosure itself. In response to questions from the Planning Commission, the applicant indicated that there would be no moving parts in the enclosure, and the only odor that should be noticeable may occur when work is being done. There may be some noise in the pipes, as the gas goes from high pressure to low pressure. In response to

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the homes association members observation of odor at other Southern Star facilities, the applicant responded that those facilities date back to the 1950s and that the newer equipment that will be utilized at this location does not allow seepage from the pipes.

When debating the type of fencing that would be appropriate at the application site, several Planning Commissioners expressed the opinion that wrought iron fencing should only be used if the barbed wire is removed, the metal shed inside the enclosure is upgraded, and landscaping is added around the enclosure to soften the views of the pipe from outside the enclosure. The Planning Commissioners voicing support for the application indicated that their support would be with increased landscaping, a picture frame-style wood fence with the proposed masonry columns, and that the wood portions of the fencing should be stained.

The Planning Commission voted 11 to 0 to recommend approval of Special Use Permit No. 2009-47, for a five-year period of time, subject to the following stipulations:

- a. The development shall be in accordance with Exhibit "A" (Site Plan), and Exhibit "B" (Building Elevations), which are filed in the office of the Planning Commission Secretary at City Hall and which are incorporated by reference as if set out in full herein. In addition, the development shall follow and comply with all regulations and standards of the City of Overland Park, unless specifically exempted by the Governing Body.
- b. Maintenance of all fencing and landscaping installed by the utility company around the utility structure shall be the responsibility of the utility, unless written acceptance of such responsibility is provided from the homes association.
- c. The applicant shall keep the name and contact information of the individual(s) responsible for maintenance of the enclosure and landscaping on file with the City of Overland Park Planning & Development Services Department.
- d. The number, location and geometrics of all driveways and parking areas are subject to review and approval by the Planning and Development Services Department.

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- e. Prior to publication of the special use permit ordinance, the applicant will have obtained, to the satisfaction of the City Attorney's Office, the legal right to place the facility on the subject property.