



## STAFF REPORT

October 29, 2008

**To:** Aubry Township Zoning Board  
**Fr:** Pamela Hayhow, Planner  
**Re:** Application No. AU-CU-2883

### APPLICATION INFORMATION

**Applicant:** Riverdale Pipeline, LTD

**Property Owner:** J.A. Tobin Construction Co.

**Requested Action:** Conditional Use Permit Renewal

**Purpose:** To allow continued operation of a gas gathering facility

**Legal Description:** Part of the NW Quarter of Section 3, Township 15, Range 24

**Site Address/Location:** Approximately 194th Street and Pflumm Road

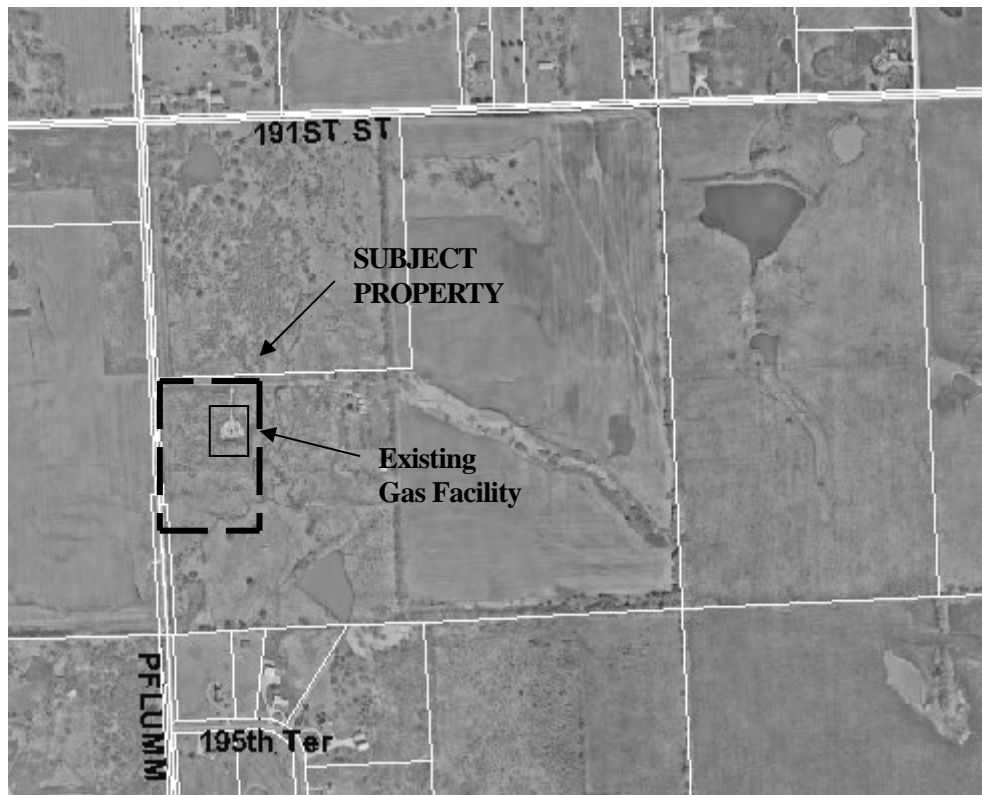
**Existing Land Use and Zoning:** RUR, Rural District, Agricultural/Gas Production

**Existing Improvements:** Existing compressor and pipeline interconnect.

**Site Size:** 1 acre (leased); 10 acre ownership parcel

### BACKGROUND INFORMATION

**Proposal:** Renewal of a Conditional Use Permit to allow the continued operation of a natural gas gathering facility. The facility consists of a dehydrator, gas enrichment equipment and a compressor equipped with a hospital grade muffler. The equipment is partially buried in a hillside to help muffle the sound. Also, there is a dehydrator which is approximately 20 ft. tall and placed on a concrete pad. The site is surrounded by thick tree growth on all sides. The existing hedge row along Pflumm Road blocks the view of the site from the road. A combination of design factors including site placement, tree cover, muted green paint color, sound attenuation panels, hospital grade muffler and a metal barrier wall have allowed for continuous operation of the facility at low sound levels coupled with minimal visual impact. Documented acoustical tests show the facility sound levels to be within the 50-dba limits previously set by the first CUP (see attached report from Acoustical Design Group Inc., dated October 16, 2008). Two propane tanks are on site for intermittent gas enrichment. The site is inspected one time per day and serviced on a scheduled basis.



*Aerial View of Subject Property*

**Zoning History:** A Conditional Use Permit (for 1 year) for a gas gathering facility was approved by the Board of County Commissioners on October 23, 1997, Resolution No. 108-97. On March 30, 2000, a continuation of the Conditional Use Permit for a gas gathering facility was approved by the Board of County Commissioners, pursuant to Resolution No. 023A-00. The term was set for 3 years. A conditional use permit was approved for an additional 5 year term by the Board of County Commissioners in 2003, Resolution No. 060-03. This term expired on August 7, 2008. A gas gathering facility has been in operation continually at this site since 1998.

It should be noted that the lease area for the facility has remained unchanged from 1998 but the parent parcel, property from which the facility leases, has been reduced from approximately 118 acres to a parcel size of 10 acres. The remaining 108 acres, to the east and south, are now under different ownership. Future development of either property will require platting.

This request also involves a reduction in the area of the CUP from approximately 1 acre to 1/2 acre. The reduced area matches the original area leased for this facility.

#### **MINIMUM INFRASTRUCTURE**

The *Johnson County Zoning and Subdivision Regulations* state that the minimum infrastructure requirements shall be guidelines for interpretation of the minimum infrastructure required for each conditional use.

- Water:** The property is located in WaterOne serve area. This facility does not require water service for this operation.
- Sewers:** The property is not located within an established sewer district. Wastewater disposal is not required for this project.
- Public Safety:** Police protection is provided by the Johnson County Sheriff's Department. Fire Protection is provided by South Johnson County Fire District. The nearest fire station is located at 191st and Lackman, approximately 1.5 miles to the west.
- Transportation:** Access to the property is from Pflumm Road, a Type 1 (CARNP), two lane, county-maintained, gravel road. There is an existing gravel driveway/roadway that provides direct access to the facility.

The gas gathering facility and its operation will not affect the infrastructure system. This is based on the minimal infrastructure needs of the facility and that a service vehicle will be traveling to the site approximately 5 times a week. The existing infrastructure system is sufficient to support the operation of the facility; therefore, the Minimum Infrastructure Requirements are satisfied.

## STAFF ANALYSIS

Gas gathering facilities are allowed uses in the RUR, Rural District provided a Conditional Use Permit is approved by the County.

The regulations, the *Rural Comprehensive Plan* and laws in Kansas indicate that consideration should be given to whether the proposed conditional use is in the interest of the public health, safety, morals, and the general welfare of the community. The conditional use permit application has been considered with regard to:

1. Whether the use would be consistent with the zoning and uses of nearby properties.

Property to the north, east, and west is zoned RUR, Rural District. These properties are generally large acreages, undeveloped, and used for agricultural purposes. There is a farm house with accessory buildings located on a 10 acre parcel on the southwest corner of 191<sup>st</sup> and Pflumm Road. Property immediately to the south is zoned RN-1, Residential Neighborhood One District. There are 18 parcels ranging in size from 2 to 10 acres, within an overall 80-acre residential subdivision. Additional residences have been developed on properties to the southeast and southwest along 199th Street, 191st Street, and Pflumm Road. Most of the residences in this area pre-date the construction of the gas gathering facility.

The lease area for the gas gathering facility is on the northern portion of a larger 10 acre property. The parent property is heavily wooded and contains a significant area which is shown as floodplain on the latest flood studies for Blue River. Two overhead transmission lines for KCP&L cross the southern portion of the parent parcel. The gas gathering facility is about 1,200 feet from the residences to the south along 195th Terrace. The facility is visually screened by heavy vegetation. Earth berms and have been constructed on the south and west to reduce noise projecting from the facility. A metal

fence/wall has been constructed along the south side of the compound. In addition, the compressor is enclosed on all four sides with sound attenuation panels. The proposed use is consistent with the zoning and uses of nearby properties. There have been no known complaints in the last 5 years from surrounding residents.

2. Whether the use is compatible with the character of the neighborhood.

The character of the area surrounding the facility is not well defined and consists of a mixture of agricultural and residential uses. The immediate area, north of the half section line could best be described as rural or agricultural: large acreages (greater than 10 acres), undeveloped and used for agricultural purposes. The area to the south of the half section line has more of an exurban-residential character: single-family residences developed on smaller 2 to 5 acre tracts. The gas gathering facility is located approximately 300 feet from Pflumm Road, 1,200 feet from the nearest residence and is screened from view by heavy vegetation. The use is comparable with agricultural use and remains compatible with the character of the neighborhood.

3. Suitability of the property for uses to which it has been restricted.

The property is zoned RUR and is largely limited to agricultural uses and residences on 10 acre or larger parcels due to the lack of sanitary sewers and other public facilities necessary for development. Additional constraints to development for other uses include the existing overhead electrical transmission lines and floodplain. The property is well suited for the gas gathering use and has been since its construction in 1998.

4. Extent of detrimental effects to nearby parcels should the Conditional Use Permit be approved.

The detrimental effects to nearby parcels would be primarily from noise created by the compressor and other mechanical equipment. The compressor has a hospital grade muffler and the compressor facility is located within an approximately 12-15 foot tall enclosure. The sides of the enclosure are covered with sound attenuation panels. The south half of the enclosure, directly over the compressor, has metal roof panels. Staff is of the opinion that the noise effects of the facility have been mitigated.

5. Length of time the property has remained vacant as zoned.

The compressor and pipeline interconnect facility were constructed in 1998 and are the only existing improvements on the property. A Conditional Use Permit was first issued in 1997 (1 year term), then renewed in 2000 (3 year term), and again in 2003 (5 year term). Construction materials and unused equipment previously kept within the lease area have been removed in accordance with the stipulations of the previous CUP renewal, however, there is a portable storage building which needs to be removed prior to the issuance of the zoning permit associated with this request.

6. Relative gain to the public health, safety, and welfare as opposed to the hardship imposed upon the landowner by denying the request.

Provided that the facility continues to meet reasonable noise and appearance controls similar to those required by the first CUP, there would be no gain to the public welfare by denying this use. The

hardship imposed upon the owner by denying the request would be that they would not be able to continue the operation of the facility at this location.

A building permit was issued on 4/21/98 for electrical service for this facility and was inspected on 5/6/98. Given that the site is well buffered from the existing residences and a letter was provided by the applicant outlining the role of the KCC as a regulatory agency for this site, it would appear that denying the request would cause more hardship for the owner than benefit to the general public welfare.

7. Whether the use is in keeping with the Comprehensive Plan.

The Rural Comprehensive Plan: A Plan for the Unincorporated Area of Johnson County (Plan) indicates this site is in a Rural Policy Area. The Plan indicates that agricultural and residential uses on tracts no smaller than 10 acres would be the standard, appropriate land uses and densities in the Rural Policy Area. The Plan does not specifically address the location of gas gathering facilities. Although the parent parcel was reduced in size, the 10 acre area is in keeping with the Comprehensive Plan.

ZONING AND SUBDIVISION REGULATION STANDARDS

Article 23 Sec. 6 (C) establishes that the granting of the requested CUP shall not be recommended unless the Zoning Board first makes a finding that the following conditions are met:

- 1) *Is in harmony with the general purpose and intent of the regulations.*  
The use is in harmony with the general purpose and intent of the regulations, which allow gas well drilling and production facilities in the Rural District, provided a CUP is granted.
- 2) *Will not impair the adequate supply of light and air to adjacent property.*  
The use will not impair the supply of light or air to adjacent property.
- 3) *Will not increase hazards from fire or other dangers.*  
Any facility which handles natural gas presents a potential for fire and explosions. An inspection performed in 2003 by Shafer, Kline & Warren found the facility to be operating in accordance with Federal Department of Transportation standards for natural gas pipelines, or other such industry or engineering standards. The facility is checked daily and the equipment constantly monitored with personnel kept on-call if issues arise.
- 4) *Will not increase traffic on streets beyond their capacity.*  
The use will not increase traffic on adjacent streets beyond their capacity. A memo from Public Works is attached which states the need to remove hedgerow material from the sight visibility triangle along Pflumm Road on either side of the driveway into the facility (see attached).
- 5) *Will not increase potential for flood damages to adjacent property or lead to additional public expense for flood protection, rescue or relief.*  
The facility has limited areas of impervious surface, concrete equipment pads, and will not increase potential for flood damages to adjacent properties or affect to the floodplain.

- 6) *Will not otherwise unduly impair the public health, safety, comfort, morals, or general welfare of the inhabitants of the County, or otherwise create a nuisance or nuisance-like situation.*

The potential of the use to impair the public safety and welfare is directly related to the fire and explosion hazard, as addressed above.

- 7) *Will not pollute the air, land, or water.*

The use should not pollute air, land, or water.

**Public Works Department Staff:** Memo attached.

**Environmental Department:** No past or pending investigations.

**Sheriff's Department:** No comments.

**City of Overland Park:** No comments.

## **RECOMMENDATION**

Planning staff recommends approval of the renewal of the Conditional Use Permit to allow continued operation of a gas gathering facility, subject to the following stipulations:

1. That the term of the permit shall not exceed a period of 10 years commencing from the date of approval by the Board of County Commissioners.
2. The applicant shall perform acoustical testing, the cost of which shall be incurred by the applicant, every 2 years for the term of the CUP and shall provide copies of the test results to the Planning Department. The noise level tested shall be measured along the property lines of the ownership parcel (10 acres).
3. That the noise levels produced by the compressor and other mechanical equipment shall not exceed 50 dba measured along the property lines of the ownership parcel (10 acres).
4. Future development of any of the properties in the NW quarter of this section shall require platting, including the requirements for right-of-way dedication, if any.
5. That the expansion of the facility, including equipment and/or uses not indicated herein, shall require a new Conditional Use Permit.
6. That the applicant shall remove all above and below ground equipment from the site at the termination of the permit, if not renewed, or if the facility ceases operation for a period of six months or longer, at the expense of the applicant and at no expense to the County.
7. That the compressor and other mechanical equipment that produces noise shall remain enclosed inside the existing enclosure.
8. That the compressor enclosure be adequately maintained and repaired when necessary and that the exterior and interior wall panels are kept in good condition to ensure high acoustic capacity and thereby keep noise/sound at or below the prescribed 50dba level.

9. A zoning permit shall be obtained in accordance with Article 5 of the Zoning and Subdivision Regulations. Prior to the issuance of the required zoning permit, the portions of the hedgerow along Pflumm Road located within the sight visibility triangle at the driveway into the facility shall be cut down and/or removed and an existing temporary storage building on the site shall be removed.

**Reasons for Recommendation:**

1. The use is consistent and compatible with the surrounding zoning and uses provided the concerns with respect to noise have been adequately addressed and verification that noise has not been a problem during the last 5 years of operation.
2. If operated and maintained in accordance with appropriate stipulations, the use has minimal detrimental effects (noise) to nearby properties.
3. Development within the surrounding area has not changed from the time the CUP was originally approved for the use.
4. The use is not inconsistent with the Comprehensive Plan.
5. With appropriate stipulations, the proposed use will not adversely affect the public health, safety or welfare.
6. The proposed conditional use permit satisfies the "Standards for Issuance of CUP" [Article 23 Sec. 6 (C)]."

Attachments: Applicant's Narrative  
Site Development Plan  
Vicinity Map  
Previous BOCC Resolution #060-03  
Sound Report Dated 10/16/08  
Sound Report Dated 06/17/03  
Public Works Memo