

**CITY OF JOHN DAY
CITY COUNCIL MINUTES
JOHN DAY, OREGON**

January 5, 2022

COUNCILORS PRESENT:

Paul Smith, Council President
Heather Rookstool
Elliot Sky (virtual)
David Holland
Gregg Haberly

COUNCILORS ABSENT:

Shannon Adair
Ron Lundbom, Mayor

CITY STAFF PRESENT:

Nicholas Green

CITY STAFF (VIRTUAL):

Aaron
Garrett Chrostek, BLJ

GUESTS PRESENT (IN-PERSON):

Charlene Morris
John Morris
Bob Pereira
Lisa Weigum
Russ Young
Rhiannon Bauman
Jeanette Radinovich
Ron Lundbom
Larry Lent
John Rowell
Sherrie Rininger
Rich Lallatin
Chris Labhart
Brady Dole
James Jaynes
Tom Olson
Marsha Christiansen
Michael Christiansen
Kimberly Hernandez

GUESTS PRESENT (VIRTUAL):

Jim Spell
Frances Preston
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+5416204163
Adam Hofpar
Lisa Holland
Amanda Mas.
Dusty Williams
Mindy Winegar
Tirza Shaffer
Zach Williams

Agenda Item No. 1— OPEN AND NOTE ATTENDANCE

Council President Smith called the hearing to order at 6:00 p.m., noting everyone was present except Mayor Lundbom and Shannon Adair, who were absent and excused.

Action Item No. 4— APPEAL HEARING – CONDITIONAL USE PERMIT (TYPE III) CUP-21-05

Council President Smith read the script for the appeal hearing. This is the time and place for a public hearing on the appeal of Application No. CUP-21-05, a Type III (Quasi-Judicial) application by the John Day/Canyon City Parks and Recreation District to erect a new aquatics center at the 7th Street Sports Complex (upper Belshaw Field) located at 845 1/2 NW Bridge St, John Day.

The John Day Planning Commission through a Type III procedure as outlined in John Day Development Code (“the Code”) Section 5-4.4, approved the application as submitted by the Applicant following a public hearing held on November 9, 2021. Mr. John Morris, 60016 Hwy 26, John Day, a participant in the hearing, timely filed a Notice of Appeal.

The City Council shall hear the matter on the record as outlined in development code section 5-4.1.040(F)(4). Participants will be granted the right to present argument, but not to introduce additional evidence. In considering the appeal, the City Council need only consider those matters specifically raised by the appellant but may consider other matters if it so desires. Decisions on appeal to the City Council shall be based on standards and criteria in the Code.

The hearing is now called to order.

Council President Smith stated the public hearing will be conducted as follows:

- 1) Staff will give their report and answer any questions from the Council.
- 2) Following the staff report, I will open the hearing for public testimony. We will hear from the appellant, Mr. Morris, first. We will then hear from any other parties to the hearing before the Planning Commission that was held on November 9th.
- 3) After the opportunity for public testimony, the Council may have additional questions for staff.
- 4) Council will then determine:
 - a. whether to continue the hearing for additional oral testimony, in which case the record will be left open until the date of the continued hearing;
 - b. whether to leave the record open for additional written testimony, in which case the record shall be left open for at least seven days after the hearing; or
 - c. close the record and issue a final written order, which either approves, denies, or approves with specific conditions the Application, and that explains the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts presented.

Councilor Smith asked the audience, when you testify, please state your name and address for the record. Please keep your testimony concise and relevant to the applicable approval criteria. All testimony shall be directed towards the Council and not to other members of the audience.

The applicable criteria are listed in the staff report. These are the criteria the City Council must use to make its decision. Failure to raise an issue with sufficient specificity to afford the City Council and all parties an opportunity to respond to an issue may preclude an appeal to the Land Use Board of Appeals

No councilor declared a conflict of interest or ex-parte contact when asked. Councilor Holland and Councilor Sky indicated they attended the pre-application neighborhood meeting hosted by the Parks & Recreation District as they are property owners within 100-feet of the project, but neither felt this impaired their ability to hear this matter and declared no conflict.

President Smith asked if any member of the audience wish to challenge the ability of any Councilor to hear this matter. *None appearing.*

Councilor Smith asked Mr. Green to review the staff report, which he did. He asked Council to include the Planning Commission's written order signed by Chair Ken Boethin as an exhibit into the official record.

Council President Smith provided an opportunity for Mr. Morris to speak first, as the appellant, followed by other participants at the Planning Commission hearing held November 9th.

Mr. John Morris and his wife, Charlene Morris, then presented their argument, which began at 6:23 p.m. They then read verbatim from their written testimony submitted to the council. After reading his written testimony, Mr. Morris requested the record remain open for an additional 10 days to wait for clarification from the State Historic Preservation Office (SHPO) with regard to inquiries he made into this project.

Council President Smith recessed for 5 minutes at 7:22 p.m. Public testimony resumed at 7:27 p.m.

Councilor Smith asked if any participants at the November 9, 2021 planning commission hearing wished to speak.

Mr. James Jaynes requested to address Council, though not a participant in the prior hearing. Garrett Chrostek, City's land use legal counsel, recommended Council allow for public testimony from non-participants but that they can limit the amount of time or if something has been previously said they just indicate they agree with the prior statements.

Mr. Jaynes (133 NW Canton Street) then provided testimony related to the post-card survey sent by the Parks & Recreation District, which is unrelated to the land use hearing, noting its instructions were confusing. He stated he thought they had voted on this aquatics center and elected not to participate in the aquatics center. He said a lot of people feel this way and he just needs to ask if this aquatics center will be another failure like the greenhouse. He was hoping the council could shed some light on it to take the confusion out of what's going on.

Mr. John Rowell (309 NW 5th Street) claimed that John Morris was cut off by Chairman Boethin in the (Nov. 9, 2021) meeting.

Mr. Jim Spell (314 E. Main) stated he testified at the Nov. 9 hearing, staff adequately addressed each criteria and stated how those criteria had been met, and my statement then, and now, is that I am satisfied these code criteria have been met.

Mr. Morris interrupted the council out of order to make a point of order about the proceedings, noting there were two meetings, one neighborhood meeting (pre-application) and one hearing, and that testimony needed to be directed toward the project, not statements about people dying or falling into the river.

Mr. Chrostek recommended Council allow opportunity for public comment from online participants.

Frances Preston (Prairie City) asked that when someone who is a moderator other than Mr. Green speaks that they identify themselves.

Mr. Smith stated his name, and asked callers to identify themselves by name if they have comments.

Mr. Russ Young (86 Puppy Creek Lane), Parks and Recreation District board member, stated he felt the board acted in good faith, and submitted this application in accordance with an interagency agreement between John Day, Parks & Rec, the County and other stakeholders with an interest in the pool. This application only allows the voters to vote on whether they want a pool. It doesn't guarantee there will be one. He noted there is a significant amount of taxpayer money available (from the state) to help fund the facility, but if the application does not go forward, that money will not be available. The board wishes to give the voters in the District an opportunity to vote on whether they wish to have a pool, and that's why they submitted this application.

Marsha Christiansen (Pine Creek Road) said she felt Mr. Morris spoke for a lot of people in Grant County.

Council President Smith asked for an additional testimony. *None appearing.*

Councilor President Smith asked Mr. Morris if there was any additional comments from the appellant. Mrs. Morris stated they are requesting the record remain open.

Council President Smith asked staff if they had anything additional to add. Green clarified that there has been a lot of comment about City of John Day projects. An application needs to stand on its own merits. There's not a nexus between this project and the John Day River, the greenhouse, other bridges, or any other city projects. It is unfair to the applicant to address these issues in testimony as they are unrelated to the applicant's proposal. He also clarified that the neighborhood meeting is required to be held *pre-application*. Testimony that the city staff instructed the applicant prior to the application is entirely correct because that is what the code requires.

Smith asked if members of the council had any other questions of staff. Councilor Rookstool asked if Mr. Chrostek had anything to add as part of staff's comments. Mr. Chrostek noted the request was made to keep the record open. His advice was to grant the request. He suggested it remain open for a period of seven (7) days for anyone to submit written testimony, and an additional seven (7) days after that for the appellant to submit their rebuttal argument, then council could reconvene and make a decision. Chrostek clarified the minimum is seven calendar days, not business days.

Mrs. Morris interrupted to state she did not understand what Mr. Chrostek had said. Green rephrased Mr. Chrostek's statement. Mr. Morris requested any of the written reports be sent to him, as the appellant, as they come in, so he has a chance to respond, object, or "whatever." He said this whole process has been time consuming and difficult and he needs time to reply.

Councilor Smith asked staff for clarification. They suggested argument be submitted via email to the City. He then asked council how they wish to proceed.

Council deliberated, with Councilor Sky and Rookstool in favor of leaving the record open. Councilor's Haberly, Holland and Smith were not.

Councilor Rookstool moved to leave the hearing open until January 12, and to allow Mr. Morris to provide rebuttal until January 19. Mr. Chrostek made technical tweaks to the motion, indicating the submittals would be due by 5:00 p.m. on the applicable date, transmitted to the Mr. Green as the Planning Official, who will ensure it gets dispersed accordingly. Mr. Smith asked if there was a second to the motion, as amended. Councilor Sky seconded. Smith called for the question. Sky and Rookstool voting affirmative, Holland, Smith and Haberly voting nay. Motion doesn't pass.

Councilor Holland moved to affirm the Conditional Use Permit CUP-21-05 based on the findings and subject to the conditions of approval contained in the staff report. Councilor Haberly seconded. Smith called for the question. Mr. Chrostek strongly inserted his advice to do the continuance. He stated he understands wanting to be economical with time, but he doesn't want to go through this process again, so that is his recommendation. Sky asked if that recommendation changed anyone's minds. Rookstool said obviously not. Smith called for the question. Sky interrupted the voting and asked if council could continue deliberating. Chrostek recommended the council break up the motion to deal with the continuance and then deal with the date the deliberations would occur. Sky and Rookstool argued in favor of the continuance. Sky stated when he was listening to the evidence that has been brought forward thus far, it did not really change his opinion that the application seemed to be appropriate and meets the requirement and could move forward. He saw the continuation as an ability for people to comment generally and to provide input, but there wasn't a lot within what was already presented that would leave a lot of doubt in his mind that the application already submitted is appropriate. He wants to provide opportunity for additional public comment but doesn't necessarily feel he needs more evidence to make a decision unless the other councilors need more time. Rookstool commented that the 15 pages of comment submitted alleges false statements were said but she did not yet feel confident in saying let's shut this down, and we just got the testimony yesterday. She said she needed more time and felt the community needed more time to evaluate the allegations of false statements, and the additional 14 days would be adequate to perform additional due diligence. Holland stated he felt the application adequately addressed the criteria in the code, and he was not persuaded by the appellant's arguments, especially those related to the Planning Official instructing Ms. Weigum on how to submit the application, which is part of his job. He does not see any reason not to approve. Haberly concurred. Smith stated he is torn two ways. He has reviewed materials extensively and it appears to him all criteria have been met. On the other hand, he asked if the continuance served a better understanding of this matter. He told Councilor Sky he is listening to the attorney but at the same time, is not seeing anything as far as criteria that need to be met. Mr. Young asked if, as the applicant, they can intervene. Smith stated they were in the middle of a motion. Young said he wasn't sure what they were in the middle of, and Smith agreed. **Smith reiterated the motion and again called for the question. Holland, Haberly and Smith voted in favor. Rookstool and Sky opposed. Smith asked to let the record show the vote passed 3-2.**

Sky asked to put on record that his Nay vote for that motion does not mean he is against the proposal or the application. Ms. Weigum thanked the council and the public and appellant and reiterated the board's interest in receiving community feedback as the Parks & Recreation District board. She stated they will happily accept community feedback at their board meetings at any time, or via email.


Mr. Chrostek reminded council the code expressly requires the decision be in writing, which will need to address the arguments raised by Mr. Morris as those are obviously not reflected in the staff report submitted seven days before this. Staff stated they would draft the final written order for approval at the January 11, 2021 council meeting.

Council adjourned the hearing at 8:11 p.m.

Respectfully Submitted:

Nicholas Green, City Manager

ACCEPTED BY THE CITY COUNCIL ON FEBRUARY 22, 2022.



Ron Lundbom, Mayor