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## Conditional Use Permit (Type III) CUP-21-05

### STAFF REPORT

**Date Submitted:** November 2, 2021  
**Agenda Date Requested:** November 9, 2021  
**To:** John Day Planning Commission  
**From:** Nicholas Green  
Chief Planning Official

**Subject:** Conditional Use Permit (Type III Quasi-Judicial)  
**Location:** 845 1/2 NW Bridge St, John Day, OR 97845  
Map: 13S31E23CA Tax Lot(s): 3300 & 4200  
**Zoning:** Residential General (RG)  
**Type of Action Requested:** Conditional Use Permit for New Aquatics Center

[    ]	<b>Resolution</b>	[    ]	<b>Ordinance</b>
[ X ]	<b>Formal Action</b>	[    ]	<b>Report Only</b>

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### 1. BACKGROUND

The John Day/Canyon City Parks and Recreation District has applied to erect a new aquatics center at the 7<sup>th</sup> Street Sports Complex (upper Belshaw Field) located at 845 1/2 NW Bridge St, John Day, OR 97845 in John Day (Map No.13S31E23CA Tax Lots 3300 & 4200). The proposed development consists of an ADA-accessible, six-lane, 25-yard outdoor pool with spectator seating and space available to add a small warm water wading/therapy pool in the future; a lobby/office/mechanical facility with apx. 8,000 sf for Furniture, Furnishings and Equipment (FFE), and primary parking all sited on Tax Lot 4200 (10.89 acres); with overflow parking on Tax Lot 3300 (1 acre). Decorative concrete walks, trails, plantings and landscaping improvements will surround the site, which includes the option for a sports court adjacent to the lobby.

### 2. APPLICABLE CRITERIA

The City of John Day Development Code (the Code) governs the procedure for reviewing Conditional Use Permits. All land use and development permit applications and approvals, except building permits, shall be decided by using the procedures contained in Chapter 5-4 of the Code. The procedure “type” assigned to each application governs the decision-making process for that permit or approval.

An application for a new conditional use shall be processed as a Type III procedure, per Section 5-4.1.040 of the Code. The application shall meet submission requirements in Section 5-4.4.030, and the approval criteria contained in Section 5-4.4.040.

Alterations of an existing park are subject to current land use requirements and any accessory structures associated with the use are subject to conditional use review by the John Day Planning Commission. Conditional Use Permits must be approved by the Planning Commission through a Type III procedure as outlined in Section 5-4.4.

Staff has reviewed the application pursuant to the Code and the requirements for a conditional use permit. The application was deemed technically complete (ready for review) on October 18, 2021 (Exhibit A). The City must make a final decision, including a final city council decision on any appeal, within 120 days, or by February 17, 2021.

### **3. PUBLIC NOTIFICATION**

A pre-application neighborhood meeting was held by the Parks District staff on August 11, 2021, as required by Section 5-4.1.080 Neighborhood Meetings of the Code. The certification, attendance and minutes of the neighborhood meeting are enclosed (Exhibit B).

The City of John Day mailed public hearing notices to the applicant and property owners within 100-feet of the subject site on October 18, 2021. Notice of the hearing was printed in The Blue Mountain Eagle on October 20, 2021 as required by the Code (Exhibit C).

### **4. BURDEN OF PROOF**

The applicant has the burden of demonstrating that the proposal meets all applicable Code requirements. The applicant is also responsible for complying with building code requirements and applicable state or federal requirements. It is the Planning Commission's responsibility to interpret the Code based on findings of fact.

### **5. PLANNING COMMISSION AND CITY COUNCIL CONSIDERATIONS**

The Planning Commission's review must focus on the relevant code criteria and follow the public hearing requirements for a Type III procedure under section 5-4.1.040.

### **6. STAFF RECOMMENDATION**

Staff recommends that the Planning Commission **approve the request for conditional use permit CUP 21-05 as submitted, subject to any applicable public comments presented during the hearing.** It is the applicant's responsibility to demonstrate compliance with the conditions of approval.

### **7. APPROVAL CRITERIA AND FINDINGS**

John Day Development Code Section 5-4.4.040 Conditional Use Permits – Criteria, Standards and Conditions of Approval contains the applicable approval criteria for the conditional use permit application. The Planning Commission's evaluation of the project must focus on the relevant code criteria under Section 5-4.4.040 and follow the public hearing procedures for Type III (quasi-judicial) review under Section 5-4.1.040.

The applicable code criteria are provided below in *italics* typeface; staff's findings follow each code provision in regular typeface. The findings, which are based on information submitted by the applicant, are preliminary. The plans, exhibits, and narrative submitted by the applicant and used in making the findings are attached to this report and include:

- Application and Narrative (Exhibit A)
- Certification of Pre-Application Neighborhood Meeting (Exhibit B)
- Legal Proof of Public Hearing Notice (Exhibit C)
- Aquatics Center Design Review Sheets (Exhibit D)
- Aquatics Center Site Plans (Exhibit E)
- Aquatics Center Concept Plan and Architectural Narrative (Exhibit F)

All of the above documents are hereby incorporated and made part of the public record.

The application and staff report findings may be modified based on factual information entered into the public hearing record before the close of the record. Members of the public who have questions about the proposal or who would like to submit oral or written testimony are encouraged to appear at the public hearing or provide written testimony before the close of the hearing. Testimony should respond directly to the following criteria.

#### ***5-4.4.040 Conditional Use Permits – Criteria, Standards and Conditions of Approval***

*The City shall approve, approve with conditions, or deny an application for a conditional use or to enlarge or alter a conditional use based on findings of fact with respect to each of the standards and criteria in A-C.*

##### *1. Use Criteria*

- 1. The site size, dimensions, location, topography and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, noise, vibration, exhaust/emissions, light glare, erosion, odor, dust, visibility, safety, and aesthetic considerations.*

**Findings:** The size of the property is nearly 12 acres. Several design criteria were adjusted based on feedback from the neighborhood meeting, including enhanced setbacks, improved landscape screening for adjacent neighbors, and additional on-site parking for the facility. The proposed development is universally accessible and includes ADA features such as a 2% maximum grade for the building approach, which is finished with concrete and includes ADA loading and unloading areas at the front of the parking lot. See Exhibits C-E for additional detail.

- 2. The negative impacts of the proposed use on adjacent properties and on the public can be mitigated through application of other code standards, or other reasonable conditions of approval.*

**Findings:** Adjacent property owners were notified of the application, and no public comments were received concerning potential negative impacts of the proposal following the neighborhood meeting. Staff believe the applicant has met or exceeded the criteria of the code for mitigating negative impacts.

3. *All required public facilities have adequate capacity or are to be improved to serve the proposal, consistent with City standards.*

**Findings:** The site design for the utilities is enclosed as Exhibit C, which shows connections to existing utilities and other site enhancements. The location includes conduit for future utility placement and is adequate to meet the needs of the proposal.

4. *A conditional use permit shall not allow a use that is prohibited or not expressly allowed under Article 5-2; nor shall a conditional use permit grant a variance without a variance application being reviewed with the conditional use application.*

**Findings:** The proposed structure is consistent with Article 5-2. "Parks and Open Space" is an allowed use in the Residential General (RG) zone subject to approval of a conditional use permit and is permitted outright when designated on an adopted Specific Area Plan. However, as the size of the facility as an Accessory Structure (with a permitted use) is taller than 14 feet and larger than 1,000 sf, therefore, the application requires a CUP-review and approval by the Planning Commission as required by Section 5-2.2.020 Residential Districts - Allowed Land Uses.

The aquatics center location was included in the Comprehensive Plan Text Amendments and Development Code Amendments related to the John Day Innovation Gateway Plan, approved previously by the planning commission and approved by the City of John Day city council via Ordinance No. 19-177-01 adopted November 12, 2019. The aquatics center was also described in detail in the aquatics center feasibility study presented to the John Day city council following their passage of Resolution No. 19-809-10, A Resolution of City of John Day Authorizing City to Apply for a 2019 Oregon Parks and Recreation Department Planning Grant for Purposes of Development of Facilities Plan for a new Aquatic and Recreation Center in City; and Authorizing the Mayor to Sign the Application on Behalf of City; and in conjunction with the planning commission's review and city council's approval of Ordinance No. 21-190-01, An Ordinance Amending the City of John Day Comprehensive Plan to Adopt the Recreation Economy for Rural Communities (RERC) Plan (Type IV Procedure) AMD-21-01, adopted on February 23, 2021. Collectively, these documents constitute a Specific Area Plan for the proposed aquatics center.

*B. Site Design Standards. The Site Design Review approval criteria (Section 5-4.2.060) shall be met. The Planning Official may waive the application requirements for the Site Design Review upon determining that the Conditional Use Permit application provides sufficient information to evaluate the proposal.*

**Findings:** The CUP application provides sufficient information to evaluate the proposal.

*C. Conditions of Approval. The City may impose conditions that are found necessary to ensure that the uses is compatible with other uses in the vicinity, and that the negative impact of the proposed use on the surrounding uses and public facilities is minimized. These conditions include, but are not limited to, the following:*

1. *Limiting the hours, days, place and/or manner of operation;*

**Finding:** The Applicant will determine operating hours for the aquatic center, which are expected to be consistent with the hours of operation of the 7<sup>th</sup> Street Sports Complex. Their proposal is to construct a seasonal pool that will operate at least 90 days per year.

- 2. Requiring site or architectural design features which minimize environmental impacts such as noise, vibration, exhaust/emissions, light, glare, erosion, odor and/or dust;*

**Finding:** Not required unless it is recommended by the commission.

- 3. Requiring large setback areas, lot area, and/or lot depth or width;*

**Finding:** Not required unless it is recommended by the commission.

- 4. Limiting the building or structure height, size, lot coverage, and/or location on the site;*

**Finding:** The size, lot coverage, and location of the structure is limited to what is proposed in the application.

- 5. Designating the size, number, location and/or design of vehicle access points or parking and loading areas;*

**Finding:** ADA accessible parking and loading is available at the front entrance. Fire and emergency vehicle access is sufficient and the design will allow safety vehicles to drive up to the main entrance.

- 6. Requiring street right-of-way to be dedicated and street(s), sidewalks, curbs, planting strips, pathways, or trails to be improved.*

**Finding:** The Parks District has acquired the adjacent lot for expanded parking. Facilities located on that lot will be removed prior to construction of the parking areas. Overflow parking has already been installed and is currently in use.

- 7. Requiring landscaping, screening, drainage, water quality facilities, and/or improvement of parking and loading areas;*

**Finding:** Existing site conditions and proposed landscaping are enclosed with the application.

- 8. Limiting the number, size, location, height and/or lighting of signs;*

**Finding:** Monument signs may be installed at each entrance and may be lit using standard landscape lighting.

- 9. Limiting or setting standards for the location, design, and /or intensity of outdoor lighting;*

**Finding:** Typical outdoor landscape lighting and seasonal lighting may be used to accentuate the aquatics center and surrounding landscape improvements, including the trail system.

- 10. Requiring berms, screening or landscaping and the establishment of standard for their installation and maintenance;*

**Finding:** Screening is included for the neighbors north of the aquatics center and is already in place for the remaining residential properties surrounding the park.

*11. Requiring and designating the size, height, location and/or materials for fences;*

**Finding:** Fences proposed are six-foot tall; black vinyl-coated decorative fencing (continuous along the lawn and pool deck).

*12. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources, and/or sensitive lands.*

**Finding:** Existing trees, landscaping and paths will be preserved to the greatest extent possible. Additional landscaping is proposed to be added around the facility. No historic resources, cultural resources or sensitive lands are disturbed as part of this application and the facility is not located within a regulated special flood hazard area.

*13. Requiring dedication of sufficient land to the public, and/or construction of pedestrian/bicycle pathways in accordance with adopted plans, or requiring the recording of a local improvement district non-remonstrance agreement for the same. Dedication of land and construction shall conform to the provisions of Chapter 5-3.1, and Section 5-3.1.030 in particular;*

**Finding:** Not applicable, these parcels are publicly owned lands under the management and ownership of the Applicant.

*14. Establish a time table for periodic review and renewal, or expiration, of the conditional use to ensure compliance with conditions of approval; such review may be subject to approval by the Planning Official or Planning Commission through a Type II Administrative Review or Type III Quasi-Judicial process at the discretion of the decision making body.*

**Finding:** The City reserves the right to review the conditional use permit as needed in order to ensure compliance with conditions of approval.

*15. Other Conditions of Approval*

**Finding:** Not required unless it is recommended by the commission.

## **8. PLANNING COMMISSION MOTION**

After hearing the applicant's presentation and any public testimony, the Planning Commission must allow the applicant an opportunity to rebut any opposing testimony. Then the Commission will close the hearing and deliberate. The following motion is suggested:

"I move to approve the Conditional Use Application CUP-21-05 based on the findings and subject to the conditions of approval contained in the staff report."

*The staff report may be amended during the course of the hearing.*

Respectfully submitted this 2nd day of November, 2021,



Nicholas Green  
Chief Planning Official

Attachments:

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- Certification of Pre-Application Neighborhood Meeting (Exhibit B)
- Legal Proof of Public Hearing Notice (Exhibit C)
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