



# Commerce City

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## Council Communication

File Number: CU-120-21

**Agenda Date:** 3/1/2021

**Version:** 1

**Status:** ATS Review

**In Control:** City Council

**File Type:** Conditional Use  
Permit

CU-120-21: Conditional Use Permit and Development Plan for Crystal Packaging, Inc. at 9155 Boston Street for operations including existing/modified tank farm exceeding 48,000 gallon aboveground capacity; chemical manufacturing/blending; storage and processing of hazardous materials; petroleum product manufacturing; and an existing/modified rail spur.

### Summary and Background Information:

Crystal Packaging Inc., the applicant, on behalf of Boston Henderson, LLC, property owner, is requesting approval of Conditional Use Permit and associated Development Plan. The property at 9155 Boston Street is approximately 6.94 acres in size and is currently zoned Heavy Intensity Industrial (I-3). The existing 71,000 square foot building and associated above-ground storage tank farm with 62 tanks totaling over 2 million gallon capacity was developed under Adams County jurisdiction in 1983. The property was annexed and zoned I-3 in 2008 as part of the Northern Enclave annexations. With annexation and zoning, the property and use became legal non-conforming. Crystal Packaging, Inc., as part of an Asset Purchase Agreement in 2018, leased the property and assumed the operations on site (Rocky Mountain Petroleum). Due to required exterior changes, including some required by the South Adams County Fire Department for explosion-proof pumps on one tank and the rail spur interface, a Conditional Use Permit was subsequently required for Crystal Packaging, Inc. The five operations that require a Conditional Use Permit in the I-3 zone are:

#### *1. A tank farm operation exceeding 48,000 gallon above-ground capacity*

The existing tank farm has approximately 2.01 million gallon capacity in over 60 tanks. The applicant requests to continue this use and allow up to a 2.5 million gallon capacity. The increase in capacity would include one additional 5,000 gallon tank shown in the Development Plan. Otherwise, increased capacity would be primarily in replacing tanks on a 1:1 basis as they age. Each replacement tank might be slightly larger capacity, allowing for business growth in the existing tank farm.

#### *2. Chemical product processing and blending*

The operations do not include raw chemical manufacturing but do utilize chemical blending techniques on site. These operations occur in the building and include the blending and production of windshield wiper fluid, soaps, detergents, and other sanitation materials. There is an emphasis on environmentally-friendly and organic

products in this facility.

### *3. Storage and processing of hazardous materials*

This use is part of the overall blending operations. Although the majority of the materials that Crystal Packaging uses and stores do not meet the threshold of hazardous due to the volume stored, some do meet the threshold and others have the potential to do so. In particular, methanol is stored in quantity so as to be deemed hazardous and requires an H-3 occupancy per the 2018 International Building Code as adopted by the City. Other materials, if packaged differently, would meet that threshold. The CUP would allow for these operations, and all such operations would still require review and conformance with fire and state codes and regulations.

### *4. Petroleum product manufacturing and blending*

This use is also part of the overall blending operations. Raw petroleum products are not manufactured, refined, or stored on site, but such products are used in the blending and manufacture of products on site. The products also include the former Rocky Mountain Petroleum operations such as traditional and synthetic oil products.

### *5. Existing/modified rail spur*

The existing rail spur to the south of the site requires a CUP in the I-3 zone. Potential future expansion of the rail spur to the west side of the site is proposed. This expansion would require coordination with the railroad as well.

The associated Development Plan includes site improvements such as landscaping along 92nd Avenue and Boston Street and screen fencing to the north of the building for an outdoor storage area. Screen fencing at the northwest corner of the site is also along 92nd Avenue and Boston Street and screen fencing at the northwest corner of the site is proposed to help screen the tank farm area. One additional 5,000 gallon tank is proposed in the existing tank farm, on the east side of the tank farm. No changes to the access points, parking areas, or the existing building area are proposed. The operator maintains an emergency response plan that includes incidences such as spills or fire. They also coordinate directly with South Adams County Fire Department regarding all uses on site.

Based on a review and analysis of DRT and Planning Commission, the request for Conditional Use Permits and associated Development Plan approval meets the CUP and Development Plan approval criteria, subject to four (4) conditions:

A. The applicant shall install all proposed site improvements associated with the Conditional Use Permit within 12 months of approval of this CUP. These improvements include, but are not limited to, new construction of tanks, fencing, and landscaping as identified in the concurrently approved Development Plan.

B. In no case shall the total storage tank capacity in the outdoor tank farm exceed 2,500,000 gallons.

C. All new or replaced storage tanks in the outdoor tank farm shall be colored beige or tan

D. Any changes to the Emergency Response Plan shall be provided to the City's Police Department no later than 90 days after a change is made.

*Please see attached Planning Commission minutes for detailed background and discussion and the Development Review Team recommendation.*

**Applicable Decision Criteria (for zoning application):** Council will consider the related applications following a consolidated public hearing in a quasi-judicial proceeding. Approval of each is recommended to be contingent on approval of the other. Council may approve, approve with conditions (recommended), or deny the applications.

**- Criteria for a Conditional Use Permit approval:** A conditional use permit process allows for special consideration of certain specified uses that may or may not be compatible with an area, depending on the specifics of the particular project. Per LDC 21-3230(3), Council may only approve the conditional use permit application if:

(a) All of the following criteria are met:

(i) The proposed use will not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, either as they presently exist or as they may exist in the future as a result of the implementation of provisions and policies of the comprehensive plan, this land development code, or any other plan, program or ordinance adopted by the city;

(ii) Any adverse effect has been or will be mitigated to the maximum extent feasible, including but not limited to sufficient landscaping and screening to ensure harmony for adjoining uses;

(iii) The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features;

(iv) The proposed use will be adequately served by and will not impose an undue burden on any of the existing improvements, facilities, and services of the city or its residents. Where any such improvements, facilities, utilities or services are not available or are not adequate to service the proposed use in the proposed location, the applicant shall, as a part of the application and as a condition of approval, be responsible for establishing an ability, a willingness, and a binding commitment to provide such improvements, facilities, utilities and services in sufficient time to serve the proposed use;

(v) The applicant has provided adequate assurances of continuing maintenance;

(vi) There is no evidence to suggest that the use violates any federal, state, or local requirements; and

(b) One of the following criteria is met:

(i) There is a community need for the use at the proposed location, given existing and proposed uses of a similar nature in the area and of the need to provide and maintain a proper mix of uses both within the city and the immediate area of the proposed use; or

(ii) The use complies with the general purposes, goals, objectives, policies, and standards of the comprehensive plan and all other plans or programs adopted by the city.

**- Criteria for Development Plan approval:** A development plan provides the final details for site design, including landscaping, architecture, civil engineering, and public improvements. Per LDC 21-3212(5), Council may only approve the development plan application if the development plan:

(a) Complies with city standards;

(b) Is consistent with any previously approved subdivision plat, rezoning concept plan, or other plans or land use approvals;

(c) Provides adequate mitigation for any significant adverse impacts resulting from the use; and

(d) Creates a positive precedent for the future cumulative development of the immediate area.

**Staff Responsible (Department Head):** Jason Rogers, Community Development Director

**Staff Member Presenting:** Stacy Wasinger, City Planner

**Financial Impact:** N/A

**Funding Source:** N/A

**Staff Recommendation:**

On February 2, 2021, the Planning Commission held a public hearing, took testimony, and voted (5 to 0) to forward the Conditional Use Permit and associated Development Plan request to City Council with a recommendation for approval with conditions, subject to the findings of fact.

Planning Commission recommended conditions:

- A. The applicant shall install all proposed site improvements associated with the Conditional Use Permit within 12 months of approval of this CUP. These improvements include, but are not limited to, new construction of tanks, fencing, and landscaping as identified in the approved Development Plan dated 11/12/19.
- B. Tanks within the existing fenced tank farm area may be repaired or replaced without revision to this Conditional Use Permit, subject to the following:
  - a. In no case shall the total storage tank capacity on the property exceed 2,500,000 gallons.
  - b. All new or replaced storage tanks shall be colored beige or tan.
- C. Any changes to the Emergency Response Plan shall be provided to the City's

Police Department no later than 90 days after a change is made

Alternative: If City Council determines not to approve the applications as recommended, one option would be for City Council to approve the request without conditions; a second option would be for City Council to deny the applications.

**Suggested Motions:**

**- To adopt the findings and recommendations of the Planning Commission: I**

move to adopt the findings and recommendations of the Planning Commission in Case CU-120-21.

**-To approve the Conditional Use Permit as recommended:** I move to enter the findings and to approve the Conditional Use Permit in Case CU-120-21, as reflected in the permit document in the packet.

**- To approve the Development Plan (only if CUP approved):** I move to find that the criteria for approval of a development plan are satisfied and to approve the Development Plan associated with Case CU-120-21, as shown in the packet.