

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by) FINDINGS, CONCLUSIONS,
Flamingo Links, LLC and Flint 2) AND DECISION
Properties, LLC to allow the)
construction of a retail building and)
related improvements, in the Light) FILE NO. Z17-257CUP3
Industrial zone, on property located at)
the intersection of Deer Heights Road)
and SR 2.)

SUMMARY OF PROPOSAL AND DECISION

Proposal: Flamingo Links, LLC and Flint 2 Properties, LLC (collectively the "Applicant") seek a conditional use permit in order to allow the construction of a 106,307 square foot retail building with 141,692 square feet of outdoor display/storage space and 471 parking stalls in a Light Industrial zone.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

**Applicant/
Owner:** Flamingo Links, LLC and Flint 2 Properties, LLC
c/o Dick Edwards
225 W. Main Ave., Ste. 200
Spokane, WA 99201

Agent: Dwight Hume
Land Use Solutions and Entitlement
9101 N. Mt. View Lane
Spokane, WA 99218

Property Location: The property is located the West Plains area at the northeast intersection of SR 2 and Deer Heights Road, in the City of Spokane, Washington. The properties making up the site are designated as Tax Parcel Nos. 25194.9064, 25194.9065, 25194.9042, and 25194.9043.

Zoning: The property is zoned LI (Light Industrial).

Comprehensive Plan Map Designation: The property is designated as Light Industrial.

Site Description: The development site is approximately 16.54 acres and is rectangular in shape. The site is relatively flat and is located adjacent to a state highway. The property is vacant, although it has been used for farming purposes. There are no wetlands, floodplains, or surface waters on the site.

Surrounding Zoning and Uses: The properties to the east and south are in the City of Spokane and are zoned Light Industrial. The properties to the north and west are in Spokane County and are zoned Rural Traditional. The properties to the north and east of the subject site are vacant. The majority of the property to the west is also vacant. There is one small multi-family structure on the northwest corner of the intersection of Deer Heights Road and SR 2. To the south, across the highway, there is an existing single-story strip mall. The rest of the property across the highway is vacant.

Project Description: The Applicant proposes to develop vacant land into roughly 106,300 square feet of indoor, retail space, approximately 141,690 square feet of outdoor display/storage space, and 471 parking stalls. In the Light Industrial zone, Retail Sales and Service uses occupying an area of more than 60,000 square feet require a Type III Conditional Use Permit.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (“SMC”) 17C.130, Industrial Zones; SMC 17C.320.080(E), Conditional Uses; and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: January 12, 2017
Posted: January 13, 2017

Notice of Application/Public Hearing: Mailed: April 12, 2018
Posted: April 12, 2018

Community Meeting: January 31, 2017

Public Hearing Date: May 24, 2018

Site Visit: May 31, 2018

SEPA: A Determination of Nonsignificance (“DNS”) was issued by the City of Spokane Engineering Department on May 3, 2018. The deadline to appeal the DNS expired on May 17, 2018. The DNS was not appealed.

Testimony:

Ali Brast, Assistant Planner
City of Spokane Planning & Development
808 West Spokane Falls Boulevard
Spokane, WA 99201

Todd Whipple
Whipple Consulting Engineers
21 S. Pines Rd.
Spokane Valley, WA 99206

Dwight Hume
Land Use Solutions and Entitlement
9101 N. Mt. View Lane
Spokane, WA 99218

Dick Edwards
Flamingo Links & Flint 2 Properties, LLC
225 W. Main Ave., Ste. 200
Spokane, WA 99201

Exhibits

1. Planning Services Staff Report (with revised page 2 submitted at hearing)
2. Application, including:
 - 2A General application
 - 2B Conditional Use Permit application
 - 2C Notification Map application
 - 2D Preliminary Site Plan dated 03-08-18
 - 2D-1 Preliminary Site Plan dated 08-25-17
 - 2D-2 Preliminary Site Plan dated 04-03-17
 - 2E Overall Preliminary Site Plan dated 04-03-17
 - 2F Supplemental Information Retail CUP in L1 Zone
3. Spokane Transit comments
4. Spokane Tribe of Indians comments
 - 4A Response from agent dated 05-11-18
5. Transportation TIA comments
 - 5A Summary of Comments dated 04-05-18, on revised application
 - 5B Additional comments outside of scope of this CUP and SEPA dated 04-05-18
 - 5C Greg Figg, WSDOT, dated 03-30-18 and
 - 5D Inga Note dated 03-29-18
 - 5E Kevin Anderson, City of Airway Heights, dated 03-29-18
 - 5F Inga Note dated 09-07-17
 - 5G Greg Figg, dated 09-06-17 and city staff
 - 5H Ali Brast dated 09-06-17
 - 5I WCE, TIA Response Letter dated 08-10-17
 - 5J WCE, Traffic Impact Analysis dated 08-10-17
 - 5K WCE, Traffic Impact Analysis dated 04-03-17
 - 5K-1 CD with full Traffic Impact Analysis reports
 - 5L WSDOT and City dated 05-05-17, submitted to applicant
 - 5M Inga Note dated 05-05-17
 - 5N Greg Figg, WSDOT, dated 05-04-17
 - 5O Ali Brast dated 04-26-17
 - 5P Ali Brast, Inga Note, Greg Figg, Kevin Edwards dated 04-13 thru 04-24-17
 - 5Q Gregg Figg, Inga Note, Ali Brast, Kevin Edwards dated 04-13 thru 04-24-17
 - 5R Greg Figg, Tami Palmquist, Kevin Edwards dated 03-21 thru 04-13-17
6. Intersection Control Analysis (ICA) comments
 - 6A Glenn Wagermann, WSDOT dated 02-21-18
 - 6B WCE ICA submittal letter dated 01-15-18
 - 6B-1 WCE ICA entire submittal dated 01-15-18
 - 6C WCE ICA submittal dated 08-10-17
7. Notice map
8. Address listing
9. Title Company and Applicant Certification
10. Notice of Community Meeting

11. Notice of Application and Public Hearing
12. Affidavit of mailings
 - 12A Community Meeting 01-12-17
 - 12B Combined Application and Hearing dated 04-12-18
13. Affidavit of posting
 - 13A Community Meeting dated 01-13-17
 - 13A-1 Sign Posting dated 01-13-18, with copy of sign
 - 13B Combined Application and Hearing dated 04-12-18
14. Determination of Nonsignificance (DNS) issued on 05-03-18
15. Environmental Checklist undated and unsigned received on 03-16-18
 - 15A Environmental Checklist signed and dated 08-31-17
 - 15B Environmental Checklist signed and dated 04-04-17
16. Community Meeting report dated 02-03-17
17. Community Meeting Notice and Site Plan
18. Letter dated 01-06-17 to Dick Edwards from Ali Brast

re: community meeting instructions
19. Letter dated 04-25-17 to Dick Edwards from Ali Brast

re: technically incomplete
20. Letters dated 06-09-17 to/from Dwight Hume and Ali Brast requesting an extension
21. Letter dated 09-08-17 to Dick Edwards from Ali Brast

re: technically incomplete
22. Letters dated 11-02-17 to/from Dwight Hume and Ali Brast requesting an extension
23. Letters dated 02-26-18 to/from Dwight Hume and Ali Brast requesting an extension
24. Letter dated 03-16-18 to Interested Parties from Ali Brast

re: requesting comments

 - 24A Letter dated 04-10-17 to Interested Parties from Ali Brast

re: requesting comments
25. Letter dated 04-05-18 to Dwight Hume from Ali Brast

re: Notice of Application and Public Hearing Instructions.
26. Public Comments
 - 26A Gregg Longmeier dated 01-26-17, concerns re traffic and access
 - 26B Peter R. Thompson dated 01-23-17, concerns re traffic and access
- A Exhibits received at the hearing:
 - A-1 Hardcopy of Planning's PowerPoint presentation
 - A-2 Draft Development Agreement

FINDINGS AND CONCLUSIONS

To be approved, the proposed conditional use permit must comply with the criteria set forth in Spokane Municipal Code sections 17G.060.170 and 17C.320.080(E). The Hearing Examiner has reviewed the proposed conditional use permit and the evidence of record with regard to the application and makes the following findings and conclusions:

1. *The proposal is allowed under the provisions of the land use codes. See SMC 17G.060.170(C)(1).*

The project site is zoned LI ("Light Industrial"). The Planning Department has concluded that the proposed use is best characterized as a "Retail Sales and Service" use. See Exhibit 1. The uses allowed in the industrial zones are shown on Table 17C.130-

1 and include "Retail Sales and Service." See SMC 17C.130.100. The table provides that Retail Sales and Service is a Limited/Conditional Use in the LI zone. See Table 17C.130-1. It should be noted that a Retail Sales and Service use is permitted in the LI zone "...if the floor area plus outdoor sales and display and outdoor storage area is not more than sixty thousand square feet per site." See SMC 17C.130.110(5). If the total area exceeds 60,000 square feet, however, a conditional use permit must first be obtained. See *id.*

The Hearing Examiner concludes that the proposed Retail Sales and Service use is allowed in the LI zone, so long as the conditional use permit criteria and other development standards are satisfied. Therefore, this criterion is fulfilled.

2. *The proposal is consistent with the Comprehensive Plan designation and goals, objectives, and policies for the property. See SMC 17G.060.170(C)(2).*

The property is designated as Light Industrial under the Comprehensive Plan. Uses typical on Light Industrial property includes limited commercial activities. See CP, Land Use, Table LU 2, p. 3-41. The property is also zoned LI. The zone code authorizes Retail Sales and Service on the property, provided a conditional use permit is obtained. Thus, both the Comprehensive Plan and the implementing zoning embody the intent to allow the proposed use in this location.

The Applicant is proposing an agricultural and outdoor retail center, including a building, outdoor display and storage, and a parking area. See Exhibit 2D. Various goals and policies of the Comprehensive Plan support the proposal.

Goal ED 3 of the Comprehensive Plan seeks to foster a strong, diverse, and sustainable economy that provides a range of employment and business opportunities. See CP, Goal ED 3, p. 7-9. Policy ED 3.1 promotes economic growth by supporting the formation, retention, expansion, and recruitment of businesses. See CP, Policy ED 3.1, p. 7-9. Policy ED 3.2, meanwhile, encourages economic diversity through the development of a mix of large and small businesses which provide a healthy balance between producing goods and providing jobs. See CP, Policy ED 3.2, p. 7-9. The approval of a new agriculture and outdoor retail center is consistent with all of the foregoing objectives.

The Hearing Examiner agrees with the Staff that the proposal is specifically supported by Goal LU 5, which promotes development "...in a manner that is attractive, complementary, and compatible with other land uses." See CP, Goal LU 5, p. 3-26. The proposed retail use is consistent with other commercial uses in the area. No evidence was presented at the hearing which suggested that the proposed use was not compatible with surrounding properties. Although the proposed use is retail rather than industrial, the nature of the business fits well within an industrial area and is complimentary with those types of uses. *Testimony of D. Edwards & D. Hume.* The property is also being developed in a way that is consistent with other properties in the vicinity. See *id.*

The Hearing Examiner also agrees with the Staff that the project is consistent with a number of other goals and policies of the Comprehensive Plan. See Exhibit 1, p. 3. The Staff's analysis of those goals and policies is incorporated by reference.

The Hearing Examiner concludes that the proposal is consistent with the goals and policies of the Comprehensive Plan. Therefore, this criterion is satisfied.

3. *The proposal meets the concurrency requirements of Chapter 17D.010 SMC. See SMC 17G.060.170(C)(3).*

The decision criteria for Type III decisions (such as a conditional use permit) mandate that all proposals must satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on April 10, 2017 and again on March 16, 2018, the Planning Department sent out requests for comments on the application to all City departments and outside agencies with jurisdiction. See Exhibits 24A & 24. The comments on the project were extensive. See e.g. Exhibits 3-6. Nonetheless, the City staff confirmed that "...there were no departments or agencies that reported that concurrency could not be achieved." See Exhibit 1, p. 3. In addition, there was no testimony at the public hearing suggesting that the concurrency standards would not be satisfied.

The Hearing Examiner finds that the project satisfies the concurrency requirements of the municipal code. Therefore, this criterion for approval of the conditional use permit is met.

4. *If approval of a site plan is required, the property is suitable for the proposed use and site plan considering the physical characteristics of the property, including but not limited to size, shape, location, topography, soils, slope, drainage characteristics, the existence of ground or surface water and the existence of natural, historic or cultural features. See SMC 17G.060.170(C)(4).*

The Hearing Examiner finds that the property is suitable for the proposed use given its physical characteristics. The property is approximately 16.54 acres of vacant, flat ground. See Exhibit 15 (Environmental Checklist ¶¶ A(7)(b) & B(1)(a)). The development site is rectangular and is situated adjacent to a state highway. There is nothing about the size, shape, location, slopes or topography that is problematic in terms of its development potential. There are no wetlands, floodplains, or surface waters on the site. See Section 5 below. No groundwater was encountered during geotechnical investigations of the site. See Exhibit 15 (Environmental Checklist ¶ A(14)(b)(1)). There is no other information in this record suggesting that groundwater conditions make the site unsuitable for the proposed development. There was no evidence that the soil conditions were problematic for drainage purposes. Storm water runoff from the site will be conveyed to catchments or pond areas for treatment and discharge to the underlying soils in accordance with the SRSM. See Exhibit 15 (Environmental Checklist ¶ B(3)(c)(1)).

According to the Applicant, there are no known places or objects of cultural, historic, or archaeological significance. See Exhibit 15 (Environmental Checklist ¶ B(13)(a)-(b)). Nonetheless, the Spokane Tribe of Indians characterized the property as a "high risk area" and recommended a cultural survey be completed before any ground disturbing activity took place. See Exhibit 4. Upon receipt of the Spokane Tribe's recommendation, the Applicant's agent requested additional information from the

Spokane Tribe that supported its request for further investigation. See Exhibit 4A. This was understandable, since the Spokane Tribe's letter failed to identify any specific facts or information to support its recommendation. The Spokane Tribe did not respond to the agent's request for an explanation. *Testimony of D. Hume.*

Despite the paucity of evidence supporting a cultural survey, the future retailer at the site decided to proceed with a cultural survey and that investigation is already underway. *Testimony of D. Edwards.* The results of the survey will be known to the developer by the time any ground disturbing activity takes place. An inadvertent discovery condition should be sufficient to address any other resources that may be discovered during the building process.

The Hearing Examiner concludes that the property is suitable for the proposed use, given the conditions and characteristics of the site. As a result, this criterion is satisfied.

5. *The proposal will not have a significant adverse impact on the environment or the surrounding properties, and if necessary conditions can be placed on the proposal to avoid significant effect or interference with the use of neighboring property or the surrounding area, considering the design and intensity of the proposed use. See SMC 17G.060.170(C)(5).*

The environmental review process, completed pursuant to the State Environmental Policy Act, demonstrates that the project will not have significant environmental impacts. To the extent certain impacts occur or may occur, those impacts can be addressed adequately through appropriate mitigation measures.

On or about March 16, 2018, the Applicant (through its agent) prepared a SEPA checklist for this project. See Exhibit 15 (Environmental Checklist). The checklist supports the conclusion that this project will not have significant impacts on the environment or the surrounding properties.

For example, there are no wetlands or streams on the property. See Exhibit 15 (Environmental Checklist ¶ B(3)(a)(1)-(2)). No threatened or endangered species were identified on the site. See Exhibit 15 (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)). The property does not lie within a floodplain. See Exhibit 15 (Environmental Checklist ¶ B(3)(a)(5)).

No waste materials will be discharged into the ground or into surface waters as a result of this project. See Exhibit 15 (Environmental Checklist ¶¶ B(3)(a)(6) & B(3)(c)(2)). No environmental hazards (e.g. exposure to toxic chemicals, risk of fire or explosion, hazardous wastes, etc.) are anticipated to arise due to this project. See Exhibit 15 (Environmental Checklist ¶ B(7)(a)).

The project will not be a significant source of light or glare. The lighting of parking lots, signage, and landscaping will be focused downward and shielded in order to prevent light or glare from reaching neighboring properties. See Exhibit 15 (Environmental Checklist ¶ B(11)(a)). Light from the project will not be safety hazard or interfere with views. See Exhibit 15 (Environmental Checklist ¶ B(11)(b)).

Based on the SEPA checklist and other information, the Planning and Development Department of the City of Spokane, as lead agency, issued a Determination of Non-significance (“DNS”) for the project. See Exhibit 14. The DNS was issued on May 3, 2018. See *id.* Any appeal of the DNS was due 14 days later, on May 17, 2018. See *id.* No appeal of the DNS was filed.

The issue of greatest concern regarding this proposal is traffic. The proposed center will add a fair amount of traffic to an already busy corridor. *Testimony of T. Whipple.* That does not mean, however, that the traffic arising from this proposal will create significant environmental impacts that cannot be adequately mitigated. On the contrary, there was a very robust debate between the project engineer and city and state officials regarding the proper approach to take in light of the traffic concerns. See *id.* Extensive analysis and discussions took place before the parties reached a consensus on the proper approach under the circumstances. See *id.*; see also Exhibits 5, 5A-5R, 6, & 6A-6C. The agreed mitigation measures, including the installation of a two-lane roundabout at the intersection of SR 2 and Deer Heights Road, have been incorporated into a Development Agreement as well as into the conditions of approval. The Hearing Examiner concludes that the traffic impacts have been properly addressed.

There will certainly be some impacts from the construction work on the site, such as vehicle emissions, soil erosion, noise, and dust. These kinds of impacts can be mitigated through proper construction management and are temporary in nature. See e.g. Exhibit 15 (Environmental Checklist ¶¶ B(1)(f) & B(2)(c) (discussing mitigation measures during construction activities)). Once the project is completed, these impacts will cease.

There is no substantive evidence that the project should not be permitted due to environmental impacts. The SEPA process clearly supports the premise that the project will not have significant impacts on the environment. Further, there was no testimony or evidence at the public hearing establishing that there were significant impacts overlooked in the SEPA review.

For the foregoing reasons, the Hearing Examiner concludes that the project will not have significant impacts on the environment, which cannot be adequately addressed through mitigation. Therefore, this criterion for approval of the conditional use permit is satisfied.

6. *For a conditional use permit for a retail sales and service use in an industrial zone, the use shall serve primarily other businesses and the use will contribute to the enhancement of the industrial character of the area and further the purpose of the industrial zone. See SMC 17C.320.080(E).*

The Applicant has proposed to develop the property with retail building with a large outdoor storage/display area and parking area. The retail use will be an agricultural and outdoor retail center. As the Staff noted, there are “a number of other existing retail uses in the vicinity that this proposed use would compliment.” See Exhibit 1, p. 5. For example, there is a Wal-Mart, a cinema, and other commercial services to serve workers and residents of the Airway Heights/Spokane area. See Exhibit 2F. That aside, the land to the

east and south of the site is zoned Light Industrial. However, that land is not developed with industrial uses. The properties in the immediate vicinity of the site contain some residential uses, some commercial uses, and a significant amount of vacant land. The Hearing Examiner agrees with Mr. Hume that this code provision was really intended to protect developed industrial areas from the encroachment of incompatible uses. *Testimony of D. Hume.* Those are not the conditions being faced in this case.

Nonetheless, if LI-zoned properties nearby are developed with industrial uses, the proposed agriculture and outdoor center will fit in well with the more intense uses which might be developed in an industrial zone. The business will sell a range of items on a regional basis, including equipment related to agriculture. There will be a large, outdoor display area, which also will compliment the industrial character of the area, should that character actually develop nearby. Thus, the Hearing Examiner agrees with the Staff that this particular retail use will not adversely impact any existing or future industrial uses. See Exhibit 1, p. 5. The Hearing Examiner concludes that this criterion is satisfied.

DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the proposed conditional use permit subject to the following conditions:

1. Approval is for a conditional use permit to allow the construction of a retail building with an outdoor display/storage area and parking lot in a Light Industrial zone. The project will be constructed substantially as set forth in the plans and application on file in the Planning Department.
2. The project will be developed in substantial conformance with SMC 17C.130, Land Use Standards, Industrial Zones, to maintain compatibility with and limit the negative impacts on surrounding areas.
3. A boundary line adjustment will be required to be completed prior to the submittal of any building permit applications.
4. Per the City of Spokane Traffic Engineers, the developer has agreed to a voluntary mitigation project at US 2/Deer Heights Road. A two-lane roundabout will be constructed at the intersection and the City of Spokane has agreed to reimburse the developer for a portion of the roundabout cost. The City has advised that the details of this arrangement will be memorialized in a separate Development Agreement. The developer stipulated that the Staff's recommended mitigation measures would be incorporated into the Development Agreement. As of the date of this decision, the Development Agreement was still in draft form. See Exhibit A-2.
5. It is anticipated that the West Plains Impact Fees will be adopted in early summer, 2018. Any building permits submitted after the adoption of those impact fees will be subject to such fees.
6. If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians and the City of Spokane Planning & Development Services shall be immediately

notified and the work in the immediate area cease. Pursuant to RCW 27.53.060 it is unlawful to destroy any historic or prehistoric archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from the Washington State Department of Archaeology & Historic Preservation before excavating, removing or altering Native American human remains or archaeological resources in Washington.

7. Map TR 12 in the City's Comprehensive Plan identifies 12th Avenue between Deer Heights Road and Flint Road as an Urban Major Collector. The developer shall dedicate 65' of right-of-way along the northern boundary of parcel 25194.9065 for the future 12th Avenue extension. The entire right-of-way must be within the Spokane city limits. The roadway is anticipated to carry two travel lanes, a center turn lane, and bike lanes. However, the design of the bike lanes may be modified as described in Condition No. 9 below. Depending on the number and location of access points, the design may allow for periodic left turn pockets rather than a continuous center turn lane. Additional width for drainage facilities and sidewalk may be needed on the south side, but can be placed in an easement. The developer will be eligible for a credit against future transportation impact fees for the right-of-way dedication.

8. The proposed roundabout calls for two entry lanes, one exit lane, and one future westbound right bypass lane for the north leg of Deer Heights Road. Map TR 5 of the City's Comprehensive Plan shows that Deer Heights Road will have bike lanes. From US 2 to the south access drive, the curb-to-curb width needs to accommodate two southbound lanes and two northbound lanes. The curb-to-curb width may also need to accommodate one or two bike lanes, depending upon the location and design of the bike lanes on Deer Heights Road determined by the City engineers, as discussed in Condition No. 9 below. Additional width may be needed for the splitter island approaching the roundabout and will be determined during the design phase.

9. The developer shall construct a bike lane(s) on Deer Heights Road from the south access drive to 12th Avenue. The bike lane(s) shall be installed in accordance with the Comprehensive Plan and the bike plan for the area, with design adjustments as deemed appropriate under the circumstances by the City engineers. Given that Deer Heights Road was recently constructed with curbs, gutters, and sidewalks, and in light of the limited road width available to accommodate bike lanes, the City of Spokane will consider the option of permitting the installation of a bike lane(s) alongside the travel corridor as an alternative to including the bike lane(s) in the roadway. City engineers will consult with the developer regarding the bike lane design. However, City engineers retain the discretion to determine the final design of the required bike lane(s).

10. Additional dedication of right-of-way for the roundabout may be needed from parcel 25194.9064, just outside of the CUP boundary, for street, turn lane, and pedestrian connectivity. The amount of needed ROW will be determined through the roundabout design process.

11. Construct a 12' shared-use path along the north side of US 2 along the project frontage. This pathway is included in the City's Comprehensive Plan on Map TR 5 and page 4-67. For this phase of the development the pathway should start at the Lucas Drive access point and continue through the intersection of Deer Heights Road.

12. All on-site access for driveways and travel lanes must be included in the identified CUP boundary to be completed as part of this development. An agreement will be required for all shared uses between parcels.

13. Any proposed access across parcel lines will need to have the appropriate easement in place.

14. Any stormwater crossing parcel lines must have the appropriate shared maintenance agreements and easements in place.

15. Per WSDOT, the developer has agreed to a voluntary mitigation project at US 2/Deer Heights Road. A two-lane roundabout will be designed and constructed by the developer at the US 2 and Deer Heights Road intersection in conformance with the traffic study. The proposed roundabout calls for two entry legs, one exit lane, and one future westbound right bypass lane for the north leg of Deer Heights Road. Right of way dedications may be needed from the property owner for the construction of the roundabout.

16. WSDOT approves the placement of one private access point on US 2 to be located directly across from Lucas Drive. This access point will allow right-in, right-out, and left-in, but left-out movements will be prohibited (additional turning movement restrictions may be imposed at this driveway in the future if needed to maintain the operational safety of US 2). The developer shall propose channelization on US 2 as part of the design to prevent the left-out movement.

17. Per WSDOT, an informational community meeting shall be held prior to the construction of the roundabout to inform the public of the final design, construction timeline, and lane restrictions.

18. The developer shall install a bus stop and shelter pad to be placed on the Deer Heights Road frontage. The developer shall coordinate with STA during the site design process in order to fulfill this condition.

19. This approval does not waive the applicant's obligation to comply with all of the requirements of the Spokane Municipal Code, including the International Codes, as well as requirements of City Departments and outside agencies with jurisdiction over land development.

20. This project must adhere to any additional performance and development standards documented in comments or required by the City of Spokane, the County of Spokane, the State of Washington, and any federal agency.

21. Spokane Municipal Code section 17G.060.240 regulates the expiration of this approval, and Table 17G.060-3 sets forth the time frame for the expiration of all approvals.

22. Prior to the issuance of any building or occupancy permits, the applicant shall submit evidence to this file that the property owner has signed and caused the following statement to be recorded with the Spokane County Auditor's Office.

COVENANT

Development of this property is subject to certain conditions on file with the City of Spokane Planning Department and the Office of the City of Spokane Hearing Examiner. The property may not be developed except in accordance with these conditions. A copy of these conditions is attached to this Covenant.

This statement shall be identified as a Covenant. The owner's signature shall be notarized.

23. This approval is subject to the above-stated conditions. By accepting this approval the applicant acknowledges that these conditions are reasonable and agrees to comply with them. The filing of the above required covenant constitutes the applicant's written agreement to comply with all conditions of approval. The property may not be developed except in accordance with these conditions and failure to comply with them may result in the revocation of this approval.

RECOMMENDATION RE: DEVELOPMENT AGREEMENT

Pursuant to SMC 17A.060.050(B), if a development agreement is proposed in conjunction with a land use application, the "review body for the underlying application shall not make a final decision on that portion of the application related to the development agreement but shall make a recommendation of approval or denial of the development agreement to the city council."

In accordance with this provision, the Hearing Examiner reviewed the Development Agreement and the record in this case in order to prepare this recommendation. The Development Agreement was submitted in draft form. However, the parties represented at the hearing that there was consensus as to the substantive elements of the agreement, and that only minor or technical changes were anticipated prior to its finalization and execution. The parties are committed to work together to complete the Development Agreement and present it to the City Council in final form.

The Hearing Examiner hereby recommends approval of the Development Agreement, substantially in the form submitted and included in the record as Exhibit A-2. The Hearing Examiner acknowledges that minor adjustments may be made to the form of the Development Agreement. The Hearing Examiner further acknowledges that the Applicant and the City of Spokane may make technical or engineering-related changes to the development plans, such as modifying the design of the bike lanes. If substantive or material changes are made to the Development Agreement or to the project, however, the city council may consider remanding the matter back to the Hearing Examiner for further review pursuant to SMC 17A.060.050(B).

DATED this 14th day of June, 2018.



Brian T. McGinn
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Appeals of decisions by the Hearing Examiner are governed by Spokane Municipal Code 17G.060.210 and 17G.050.

Decisions by the Hearing Examiner regarding conditional use permits are final. However, pursuant to SMC 17A.060.050(B), if a development agreement is proposed in conjunction with a land use application, the "review body for the underlying application shall not make a final decision on that portion of the application related to the development agreement but shall make a recommendation of approval or denial of the development agreement to the city council." Thus, the Hearing Examiner is charged to make a *decision* on the conditional use permit and a *recommendation* regarding the associated development agreement.

When a development agreement is proposed in conjunction with a land use application under chapter 17G.060 SMC, the usual appeal procedures are modified. As an exception to the appeal procedures of SMC 17G.060.210, any appeal of a land use application processed together with a development agreement shall be heard by the city council in conjunction with the council's consideration of the development agreement. See SMC 17A.060.050(B). Further appeals after final action by the city council of a land use application processed in conjunction with a development agreement shall be governed by chapter 36.70C RCW. *See id.*

The Hearing Examiner's decision and recommendation may be appealed by filing a written appeal to the city council. **THE WRITTEN APPEAL MUST BE FILED AND THE CITY OF SPOKANE MUST BE SERVED WITHIN FOURTEEN (14) DAYS OF THE DATE OF THE DECISION AND RECOMMENDATION.** The date of the decision and recommendation is June 14, 2018. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS JUNE 28, 2018, AT 5:00 P.M.**

Pursuant to RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.