

**CITY OF SPOKANE HEARING EXAMINER**

<b>Re:</b> Rezone and Conditional Use Permit ) Application by Land Use Solutions and ) Entitlement to rezone parcel 35221.0211 ) to develop a mini-storage facility at 4110 ) E. Sprague Avenue )	FINDINGS, CONCLUSIONS, AND DECISION  FILE NO. Z20-180CUP3
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**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** The Applicant, Land Use Solutions and Entitlement, seeks to rezone a 10.39-acre site located at 4110 E. Sprague Avenue from CB-55 to GC-55 and a Type III conditional use permit (CUP) to allow an existing building to be used for mini-storage.

**Decision:** Approved, with *revised* conditions.

**FINDINGS OF FACT**  
**BACKGROUND INFORMATION**

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

**Property  
Owner:** AREC 34 LLC  
2727 N Central Avenue  
Phoenix, AZ 85004

**Property Location:** The subject property is located at 4100 E. Sprague Avenue and is designated as Tax Parcel No. 35221.0211. The property is situated in the NE ¼ of Section 22, Township 25 North, Range 43 East, Willamette Meridian.

**Zoning:** The property is zoned Community Business (CB-55).

**Comprehensive Plan Map Designation:** The property is designated as General Commercial in the City of Spokane Comprehensive Plan (CP).

**Site Description:** The project proposal encompasses a single parcel addressed as 4110 E. Sprague. The site encompasses more than a half of a city block and contains the former K-Mart building (113,417 sq. ft.), as well as a smaller auto-related building (7,835 sq. ft.) and a paved parking lot.

**Surrounding Conditions and Uses:** The land to the north and west of the site is zoned General Commercial (GC-70). Community Business (CB-55) zoning is located directly west and east. Residential Single Family (RSF) zoning is located across Pacific Avenue to the south and one parcel of Residential High Density (RHD) adjoins the subject site at the southwest corner of 4110 E. Sprague Avenue. Areas east of Havana Street are located in the City of Spokane Valley.

Land uses to the north and east of the project site are commercial in nature and include retail sales & service as well as vacant land. A marijuana growing operation is located directly to the west and adjoins the subject site. A multi-family development is located on one parcel adjoining the subject site at the southwest corner of 4110 E Sprague Avenue. Single family uses are found to the south across Pacific Avenue. Land located to the east of Havana is located within the city limits of the City of Spokane Valley and is built out with a combination of commercial uses (fast food) and multi-family development, rail use, and residential low-density housing.

**Project Description:** This proposal includes two elements: (1) a rezone of the site; and (2) a conditional use permit. U-Haul proposes to rezone the property from Community Business (CB) to General Commercial (GC), in order to authorize U-Haul to use the former K Mart building as a mini-storage facility. The former K-Mart building exceeds the building length limitation for a mini-storage use in the CB zone. The GC zone does not contain the same restriction and, therefore, would permit the proposed use of the existing building. In addition, mini-storage facilities on sites that exceed 7 acres in size must obtain a Type III CUP. This site is 10.39 acres. As a result, U-Haul was required to apply for a CUP to authorize the proposed use.

There are several aspects of this project that are outside the scope of this decision. Most notably, the applicant will be required to submit change of use applications for the former K-Mart building and the former auto-related building. There is a separate permit process for the siting of the large propane tank and vehicle canopy associated with the U-Haul business, as well as for modifications to the parking area and other improvements to the site. These matters are outside the scope of this Type III decision and are subject to a separate review and approval process.

### **PROCEDURAL INFORMATION**

**Authorizing Ordinances:** Spokane Municipal Code (SMC) 17C.120, Commercial Zones; SMC 17C.320, Conditional Use Decision Criteria; SMC 17C.350, Mini-Storage Facilities; 17G.040.020 Design Review Criteria; and SMC 17G.060.170, Decision Criteria.

**Design Review Board Meetings:** May 14, 2020  
July 22, 2020

**Notice of Community Meeting:** Mailed: July 6, 2020  
Posted: July 6, 2020

**Notice of Application/Public Hearing:** Mailed: February 5, 2021  
Posted: February 5, 2021

**Community Meeting:** July 22, 2020

**Public Hearing Date:** March 18, 2021

**Site Visit:** March 18, 2021

**State Environmental Policy Act (SEPA):** A Determination of Nonsignificance (DNS) was issued by the City of Spokane on February 26, 2021. Any appeal of the DNS was due on March 12, 2021. No appeal was filed.

**Testimony:**

Melissa Owen, Assistant Planner  
City of Spokane Planning & Development  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

Dwight Hume  
9101 N. Mt. View Lane  
Spokane, WA 99218

Matt Schaub  
U-Haul Co. Inland NW  
1616 S. Rustle Road  
Spokane, WA 99224

**Present but did not testify:**

Tami Palmquist, Principal Planner  
City of Spokane Planning & Development  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

Jessica Brooks and Andrew Lasich  
U-Haul Co. Inland NW  
1616 S. Rustle Road  
Spokane, WA 99224

Virginia Ramos  
Did not provide an address when asked.

**Exhibits:**

1. Vicinity Map
2. Zoning Map
3. Land Use Map
4. Application Materials, including:
  - a. General Application
  - b. Authorization Letters
  - c. Type III Conditional Use Application
  - d. Type III Rezone Application
  - e. Site Plans
5. SEPA Checklist dated 10/01/20
6. DNS dated 02/26/21
7. Request for Agency Comments, including:
  - a. Request for Additional Information packet including comments:
    - i. Melissa Owen – City of Spokane Planning Comments
    - ii. Dean Gunderson – City of Spokane Design Review Board
    - iii. Joelle Eliason – City of Spokane Engineering Comments
    - iv. Dave Kokot – City of Spokane Fire Review
    - v. Katie Kosanke – City of Spokane Urban Forestry
    - vi. Washington State Department of Ecology (WSDOE) letter dated 12/11/2020
  - b. Technically Complete Letter Packet with additional comments:
    - i. Dave Kokot – City of Spokane Fire Review
  - c. WSDOE letter dated 02/18/2021 (submitted during public comment period)
8. Noticing Documents, including:
  - a. Combine Notice of Application/SEPA/Hearing
    - i. Public Notice Sign/Posting/Mailing instructions

- ii. Public Notice Letter with Map
    - iii. Parcel List
    - iv. Affidavits
    - v. Title Company Certification
  - b. Copy of email to East Central Neighborhood representatives and Spokane Public Library
- 9. Design Review Documents, including:
  - a. Collaborative Workshop Comments
  - b. Final Recommendations
- 10. Community Meeting Documents, including
  - a. Public Notice Sign/Posting/Mailing instructions
  - b. Public Notice Letter
  - c. Community Meeting Summary – no attendees
  - d. Affidavits
  - e. Notification Map Application, map, and parcels
- 11. Predevelopment Conference Notes
- 12. Staff Presentation
- 13. Applicant’s Letter to the Hearing Examiner

### **FINDINGS AND CONCLUSIONS**

To be approved, the proposal must comply with the criteria set forth in SMC Section 17G.060.170 and 17C.320.080(F). The Hearing Examiner has reviewed the proposed Rezone and CUP and the evidence of record with regard to the applications 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 applicant has proposed to use the former K-Mart building as a mini-storage facility. The project site is zoned Community Business (CB), a commercial category. Mini-storage facilities are permitted in the CB zone. See Table 17C.120-1 (Commercial Zones Primary Uses). However, the former K-Mart building exceeds the building length and height allowances for Mini-Storage within the CB zone. See Exhibit 1, p. 2; see also Table 17C.350.040. To overcome such limitations, the applicant has proposed to change the zoning of the site to General Commercial (GC), another commercial category. Like the CB zone, mini-storage facilities are allowed in the GC category. See Table 17C.120-1 (Commercial Zones Primary Uses). However, the GC category does not contain the length and height limitations of the CB category, enabling the applicant to use the existing building as proposed. The GC category also allows larger, industrial uses as well as greater floor area and lot coverage before a VCUP is required. See Exhibit 1, p. 5; see also Table 17C. 350.040.

Mini-storage uses are permitted on sites less than 7 acres in both the current CB zone and the proposed GC zone. See Table 17C.120-1 (Commercial Zones Primary Uses). For sites over 7 acres, however, a CUP must be obtained to operate mini-storage facilities in either zone. See SMC 17C.350.030. Because this site is 10.39 acres in size, the proposal requires a Type III CUP.

The Hearing Examiner concludes that the proposal is allowed under the land use codes, so long as the conditional use and other development standards are satisfied. As a result, this criterion is satisfied.

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 Hearing Examiner agrees with the Staff's conclusion that the "rezone of a parcel to General Commercial and the adaptive reuse of an existing large commercial building for internal mini-storage is consistent with multiple comprehensive plan goals and polices..." See Staff Report, p. 6.

For example, the redevelopment project is well designed and compatible with surrounding uses and building types, consistent with Policy LU 5.5. See CP, Chapter 3, p. 3-28. The project results in the "reuse of an underutilized commercial development site consistent with commercial zones and sensitive to the surrounding residential and commercial area." See Exhibit 1, p. 6. The project puts existing commercial buildings to productive use, stimulates growth, and encourages a healthy mix of businesses, all in furtherance of the economic development goals and policies of the CP. See CP, Chapter 7, ED 2.2, ED 3.1, & ED 3.2, pp. 7-8 & 7-9. In short, the Hearing Examiner agrees the Staff's analysis with respect to the relevant goals and policies of the CP.

Based upon the foregoing, the Hearing Examiner concludes that the project is consistent with the goals and policies of the CP. 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 CUP) mandate that all proposals satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on December 1, 2020, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 1, p. 6.

The City received comments from various departments and agencies. See e.g. Exhibit 7(a)-(c). However, none of those comments indicated that concurrency could not be achieved. See *id.*; see also Exhibit 1, p. 6. In addition, a review of the record confirms that there is no substantive evidence that the project transgresses any concurrency requirements. 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 SMC. Therefore, this criterion for approval of the CUP 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 concludes that the property is suitable for the proposed use, considering the physical characteristics of the site. The size is more than adequate to support the proposed use. See Exhibit 5 (Environmental Checklist ¶ A(11)). The site includes more than sufficient

area to support parking for customers and rental vehicles. The existing structures appear to be suitable for the proposed uses as well. The site is already built out and has been historically used for a relatively intense retail/commercial purposes. If anything, the proposed uses will be less intense and lower impact than the most recent uses of the site. *Testimony of D. Hume.*

The site is regular in shape. The site is also relatively flat. See Staff Report, p. 6. The applicant is not proposing any changes to the topography. See *id.* There is no proposal to excavate any portion of the site. See Exhibit 1, p. 6. The proposed modification of the existing K-Mart Building is primarily interior to the structure for the purpose of creating internal mini-storage. See *id.* Exterior modifications including landscaping will bring the building and site into greater conformance with commercial zoning and land use standards in addition to requirements for mini-storage. See *id.*

There are no surface waters on this site. See Exhibit 5 (Environmental Checklist ¶ B(3)(a)(1)). No evidence was introduced regarding other water-related conditions, such as high groundwater. In addition, there is no evidence in the record suggesting that drainage characteristics of the site are problematic. However, Engineering recommended that existing stormwater facilities on-site be inspected, cleaned, and repaired as needed. See Exhibit 1, p. 7; see also Exhibit 7. That said, code requirements for which engineering has review authority, including stormwater, will be addressed outside of the Type III application process. See *id.*

There are no known cultural or historic resources on this site. See Exhibit 5 (Environmental Checklist ¶ B(13)(a)-(b)). Neither the Spokane Tribe of Indians or the Washington Department of Archeology and Historic Preservation (WSDAHP) submitted comments for this proposal. See Staff Report, p. 6. Finally, because excavation is not proposed as part of this project, the risk of impacting archaeological or cultural resources is low. See *id.* In any event, the project conditions require the applicant to follow the usual protocols should any such resources be discovered at the site. See Condition 15.

Based upon the foregoing, the Hearing Examiner concludes that the site is suitable for the proposed use. Therefore, this criterion for approval 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 location of the proposed mini-storage is already a fully developed commercial property. There is a large commercial building (the former K-Mart), a smaller commercial building, and a large, paved parking lot on the site. The proposal to re-purpose the former K-Mart building does not introduce new or unique environmental impacts to this property or its immediate surroundings. The proposed use is also lower intensity than the most recent use of the site, and will likely have less impact on neighboring properties as well. *Testimony of D. Hume.*

The potential impacts to the neighbors will also be mitigated to a material degree. For example, the access to the site from Pacific will be restricted to fire-access only. This will eliminate the impacts of regular traffic on the residential properties to the south. *Testimony of D. Hume.* There will be no storage of vehicles or equipment on the south side of the building (i.e. between the building and the residential areas to the south). See Condition 9. In addition, screening

landscaping improvements will provide a buffer between the residential areas and the proposed use. See e.g. Conditions 4, 5 & 11.

The Applicant prepared an environmental checklist, pursuant to SEPA, for this project. See Exhibit 5 (Environmental Checklist). The checklist supports the conclusion that this project will not have significant impacts on the environment or the surrounding properties. For example, no part of the site has been classified as a critical area. See Exhibit 5 (Environmental Checklist ¶ B(8)(h)). The property does not lie within a 100-year floodplain. See Exhibit 5 (Environmental Checklist ¶ B(3)(a)(5)). No threatened or endangered species were identified on or near the site. See Exhibit 5 (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)). No waste materials will be discharged into the ground or into surface waters. See Exhibit 5 (Environmental Checklist ¶¶ B(3)(a)(6), B(3)(b)(2) & B(3)(c)(2)). And the project will not be a significant source of light or glare. See Exhibit 5 (Environmental Checklist ¶ B(11)).

A DNS was issued on February 26, 2021. See Exhibit 6. The DNS was not appealed. As a result, the City's determination that the project does not result in significant environmental impacts is not subject to challenge.

For the foregoing reasons, the Hearing Examiner concludes that the project will not have significant impacts on the environment that cannot be adequately addressed through mitigation. The project is compatible with the surrounding uses and zones. Therefore, this criterion for approval of the CUP is satisfied.

*6. The Hearing Examiner does not have authority to change the minimum standards for landscaping and screening a mini-storage facility.*

As proposed by Staff, Condition 11 requires the Applicant to extend the "solid surface fence/wall" along Pacific, at a minimum height of six (6) feet, and to install landscaping outside the wall on the street side (i.e. between the wall and Pacific).

The Applicant requested that this condition be eliminated for several reasons. The Applicant pointed out that the setbacks to the former K-Mart building well exceed the current minimums. *Testimony of D. Hume*. The Applicant has already expended significant resources to replace and improve the landscaped area between the building and the residential areas to the south. See *id.* The existing wall is old and in disrepair, and should be removed rather than extended. See *id.* Extensive rehabilitation would be required to extend the wall and make it safe. *Testimony of M. Schaub*. The wall is only four feet in height, and would have to be extended both vertically and laterally to satisfy the proposed condition. *Testimony of D. Hume*. The wall also provides cover for transients and invites graffiti. See *id.*; *Testimony of M. Schaub*. The Applicant suggested that, under the circumstances, screening with only landscaping would be a much better option. See *id.*

The City responded to the Applicant's request by pointing to specific code requirements for screening. *Testimony of M. Owen*. Condition 11 was proposed in order to ensure that the project complied with the minimum standards applicable to mini-storage facilities. See *id.* In addition, Staff noted that the specific terms of Condition 11 derive from a proposal made by the Applicant during design review. See *id.* That said, Staff's concern was not strict adherence to this one approach, but to ensuring compliance with the applicable codes. See *id.*

Given the foregoing, the question before the Hearing Examiner is whether he has discretion, given the language of the municipal code, to eliminate or modify Condition 11 in the manner suggested by the Applicant.

The municipal code contains explicit language requiring a fence or a wall at all mini-storage facilities. Specifically, the relevant portion of the code states:

*A solid wall, a screening fence or a combination of both achieving a perimeter screening to a minimum of six feet in height is required and shall be located so that a minimum of seventy-five percent of the landscaping area is outside the fence.*

See SMC 17.350.040(C)(2). In addition, specific, exterior design requirements apply to mini-storage facilities that are located “adjacent to or across a right-of-way from a residentially zoned or developed property.” See SMC 17C.350.040. The code identifies certain “architectural features” that are considered the “minimum standards.” See SMC 17C.350.040(A). Among other things, those minimum standards are requirements for fencing, which provide:

*... Fencing is required to be low-maintenance material and articulation at intervals no greater than twenty feet. Chain-link fencing is not permitted.*

See SMC 17C.350.040(A)(6) (setting minimum standards for mini-storage facilities).

The Hearing Examiner concludes that he lacks the authority or discretion to approve the project with only landscaping screening, as suggested by the Applicant. The code clearly requires the installation of a fence or wall to screen the proposed use from adjacent residential uses. The fence/wall must be at least six feet high and composed of an acceptable material. And the screening must be accomplished in conjunction with the required landscaping.

The Applicant has presented logical and persuasive reasons why the mini-storage standards are not especially suited to this particular property or location. It may be true that a different approach would be better in this specific case. However, the Hearing Examiner does not have discretion to change the minimum standards that were adopted by the local legislature. The Hearing Examiner only has the authority delegated to him by the City Council. That authority does not include the discretion to make an exception to the screening requirements. See e.g. *Chausee v. Snohomish County Council*, 38 Wn.App. 630, 638, 689 P.2d 1084 (1984) (holding that the Hearing Examiner did not have authority to exempt a landowner from the duly adopted road standards).

The Hearing Examiner did, however, revise Condition 11 to more generally require compliance with the landscaping and screening standards, rather than specifically requiring the Applicant to extend/improve the existing wall. The Hearing Examiner believes a more general condition will provide the Applicant and the City with the option to discuss alternative approaches that may be less burdensome or more beneficial, while still satisfying the minimum requirements of the code.

### **DECISION**

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



1. The project will be developed in substantial conformance with SMC 17C.110.500, Land Use Standards, Commercial Zones, Commercial Design Standards and SMC 17C.350 Mini-storage Facilities to maintain compatibility with, and limit the negative impacts on surrounding residential and commercial areas.
2. The project will be developed in substantial conformance with the plans on record and comments received on the project from City Departments and outside agencies with jurisdiction.
3. The project will be developed in substantial conformance with the City of Spokane Design Review Board recommendations dated July 22, 2020, with the exception of recommendations that are contrary to land use standards such as recommendations related to specific tree species within the right-of-way and graphics that may represent signage, etc. The project will be reviewed for compliance with all applicable codes at the time of permit.
4. The project will be developed in substantial conformance with SMC 17C.200.040, Land Use Standards, Landscaping and Screening - Site Planting Standards and in compliance with comments from Urban Forestry.
5. Enhancement to landscaping and screening along E. Sprague and E. Pacific Avenues are required to meet standards found in Section 17C.200 SMC and 17C.350.040 SMC.
6. Per comments from engineering, existing stormwater facilities on-site should be inspected, cleaned, and repaired as needed.
7. The project shall comply with SMC Chapter 17E.010 Critical Aquifer Recharge Areas-Aquifer Protection.
8. No outdoor mini-storage is being considered under this CUP/Rezone process. Any future outdoor mini-storage use will need to be processed as a new type III Conditional Use Application including Design Review Board review.
9. No outdoor storage of vehicles, equipment, or other materials is permitted along the south side of the building.
10. Mini-storage access onto E. Pacific Avenue (a local street) is prohibited. Access to/from Pacific Avenue may only be used for fire access pursuant to Section 17C.350.040(A)(5) SMC.
11. *The Applicant shall install a screening wall or fence (or an appropriate combination of both) and landscaping along the Pacific frontage in accordance with the standards set forth in SMC 17C.350.040, which sets forth design requirements for mini-storage facilities.*
12. The project shall comply with applicable sign codes including signs for mini-storage is required.
13. The project shall comply with WSDOE Letters (December 11, 2020; February 18, 2021).
14. The project shall comply with City noise standards stated in SMC 10.08D, Public Disturbance Noise. The City's quiet hours are from 10 pm to 7 am. This is important due to Residential uses in the area. In addition, the WASDOE has standards that apply to environments within which maximum permissible noise levels are established.

15. If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians and the Planning Department should 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 WSDAHP Preservation before excavating, removing or altering Native American human remains or archaeological resources in Washington.
16. Adhere to any additional performance and development standards documented in comments or required by City of Spokane, Spokane County, Washington State, and any Federal agency.

### **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.

17. SMC 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.
18. 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.

DATED this 2<sup>nd</sup> day of April, 2021.



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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 rezones and conditional use permits are final. They may be appealed by any party of record by filing a Land Use Petition with the Superior Court of Spokane County. **THE LAND USE PETITION MUST BE FILED AND THE CITY OF SPOKANE MUST BE SERVED WITHIN TWENTY-ONE (21) CALENDAR DAYS OF THE DATE OF THE ISSUANCE OF THE DECISION.** Pursuant to RCW 36.70C.040(4)(a), the date of the issuance of the decision is three days after a written decision is mailed by the local jurisdiction. This decision was mailed on April 5, 2021. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS APRIL 29, 2021, AT 5:00 P.M.**

In addition to paying any Court costs to appeal the decision, the ordinance requires payment of a transcript fee to the City of Spokane to cover the costs of preparing a verbatim transcript and otherwise preparing a full record for the Court.

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