

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by)
Cantu Investments LLC to construct a) FINDINGS, CONCLUSIONS,
33,600-40,000 square foot air supported) AND DECISION
structure for recreational sports and)
associated parking in a Heavy Industrial) FILE NO. Z21-014CUP3
zone)

SUMMARY OF PROPOSAL AND DECISION

Proposal: The Applicant, Cantu Investments LLC, is seeking a conditional use permit (CUP) to construct a 33,600-40,000 square foot (SF) air supported structure for recreational sports and associated parking in a Heavy Industrial (HI) zone. In the HI zone, retail sales and service uses that are larger than 20,000 square feet require a CUP from the Hearing Examiner.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant/ Cantu Investments LLC
Owner: Dan Cantu
524 W. Indiana, Suite A
Spokane, WA 99205

Property Location: The subject property is located at 3800 E Joseph. The site includes Tax Parcel Nos. 36341.1804, 36341.1802, and 36341.1801. The property is situated in Section 34, Township 26 North, Range 43 East, Willamette Meridian, in the City of Spokane, County of Spokane, State of Washington.

Zoning: The properties are zoned HI (Heavy Industrial). These properties were also zoned HI prior to 2006.

Comprehensive Plan Map Designation: The property is designated as Heavy Industrial in the City of Spokane Comprehensive Plan (CP).

Site Description: The site is 2.24 acres in size, includes three vacant parcels, and is located in the 4800 block of E Joseph, bound by Julia on the west and Myrtle on the east. Two parcels front along Columbia to the north. The applicant is in the process of vacating the public alley that separates the parcels.

Surrounding Conditions and Uses: The site and the properties directly to the north, west, and south are zoned HI. Adjacent properties to the east are zoned Light Industrial (LI). The surrounding properties are industrial in nature.

Project Description: The currently vacant property in an HI zone is proposed to be developed into a 33,600-40,000 SF air supported structure for recreational sports and associated parking. In the HI zone, retail sales and service uses with a floor area and outdoor sales and display and outdoor storage area of more than 20,000 square feet requires a Type III CUP.

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 21, 2021
Posted: January 21, 2021

Notice of Application/Public Hearing: Mailed: February 26, 2021
Posted: March 1, 2021

Community Meeting: February 5, 2021

Public Hearing Date: April 1, 2021

Site Visit: March 30, 2021

State Environmental Policy Act (SEPA): A Determination of Nonsignificance (DNS) was issued on March 17, 2021. The SEPA appeal deadline was March 31, 2021. No appeal was received.

Testimony:

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

Dan Cantu
Cantu Investments LLC
524 W. Indiana, Suite A
Spokane, WA 99205

Exhibits:

Staff Report, dated 03/23/21, including the following exhibits:

1. Application Materials, including:
 - A CUP Application
 - B General Application
 - C Environmental Checklist
 - D Trip Generation and Distribution Letter (TGDL)
 - E Site Plan
2. Community Meeting materials, including:
 - A Notice of Community Meeting for February 5, 2021
 - B Noticing Affidavits
 - C Notification Map Application
 - D List of Attendees

- E Meeting Recording
- 3. Predevelopment Conference Notes dated 11/19/20, including:
 - A Side Sewer Permits
 - B Project Drawings
 - C Building Department Predevelopment Notes dated 11/19/20
 - D Urban Forestry comments dated 11/19/20
- 4. Request for Agency Comments, including
 - A Washington State Department of Ecology (WSDOE)
 - B Washington State Department of Archaeology & Historic Preservation (WSDAHP)
 - C City of Spokane Engineering
 - D City of Spokane Traffic Engineering
 - E Spokane Tribe of Indians
- 5. Notice of Application & Public Hearing Materials, including:
 - A Title Company and Applicant Certification and Map
 - B Noticing Affidavits
- 6. Public Comments
- 7. DNS issued 03/17/21
- 8. Staff Presentation
- 9. Applicant's Revised Plans and Layout

FINDINGS AND CONCLUSIONS

To be approved, the proposed CUP must comply with the criteria set forth in SMC Sections 17G.060.170 and 17C.320.080(E). The Hearing Examiner has reviewed the proposed CUP 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 site is zoned HI. The Applicant proposes to construct a 33,600-40,000 SF air supported structure for recreational sports and associated parking on that site. The Staff has characterized this use as Retail Sales and Service. See Staff Report, p. 3. This determination is supported by the facts. *Testimony of D. Cantu*. In addition, Staff's interpretation of the zone code is entitled to due deference under the law.

Retail Sales and Service uses are allowed in the HI zone as a Limited/Conditional Use ("L/CU[6]"). See Table 17C.130-1. The limiting standards applicable to this proposal state that retail sales and service uses that are larger than 20,000 SF require a CUP. See SMC 17C.130.110(6). Because this proposal exceeds the 20,000 SF limit, a CUP is required for this proposal. See *id.*; see also Staff Report, p. 3.

The Hearing Examiner concludes that the proposal, subject to the conditions contained in this decision, is allowed under the land use codes. Therefore, 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 concludes, for the reasons that follow, that the proposed use is consistent with the goals and policies of the CP.

The area is predominated by large warehouse structures. See Staff Report, p. 3. The proposed air-supported structure, while unique, is generally compatible with the industrial buildings and uses in the vicinity. This is consistent with Goal LU 5, which seeks to promote development that is complementary and compatible with other land uses.

The site is owned and the business will be operated by a local company. The development of this project is, therefore, supported by Policy ED 3.5, which supports opportunities to expand and increase the number of locally owned businesses in Spokane.

The project will result in additional recreational opportunities. See *id.* This is consistent with policies such as PRS 2.3, which encourages the development of recreation amenities that enhance the local economy. These amenities include things like “sports complexes,” “sports fields,” and other “recreational opportunities.” See CP, Chapter 12, p. 12-6. Other policies related to recreation also support the project, such as PRS 5.1, which seeks to improve recreational opportunities accessible to all citizens; and PRS 5.5, which promotes the development of indoor recreational opportunities.

The project includes sufficient parking to support the proposed use. See Staff Report, p. 3. In this way, the project is consistent with Policy LU 5.3, which seeks to ensure that off-street parking does not adversely impact the surrounding area.

For these reasons, among others identified by Staff, 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 February 9, 2021, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 4. No departments or agencies reported that concurrency could not be achieved. See Staff Report, p. 3. There is no evidence in this record suggesting that the concurrency standards will not be satisfied. As a result, the Hearing Examiner concludes that this criterion for approval of a CUP is satisfied.

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 given its physical characteristics. The site is currently vacant and is generally flat. See Staff Report, p. 3; see also Exhibit 1C (Environmental Checklist ¶ B(1)). The shape and size of the property easily

accommodate the proposed use. See e.g. Exhibit 9. There is nothing about the shape, size, or topography of the property that makes the proposed use unsuitable.

There are no known environmental constraints. See Staff Report, p. 3; see also Exhibit 1C (Environmental Checklist). The property is located in the Aquifer Sensitive Area and the Aquifer Critical Recharge Area, but that does not preclude the proposed use. It does mean that the provisions of SMC 17E.010 must be honored, however. See Staff Report, p. 3.

There are no known places or objects of cultural, historic, or archaeological significance. See Exhibit 1C (Environmental Checklist ¶ B(13)). Nonetheless, the Spokane Tribe and WSDAHP have both requested that an Inadvertent Discovery Plan (IDP) be prepared for this site. See Staff Report, p. 3. As a result, an IDP is required under the project conditions. See Condition 4.

The site is suitable for the proposed development according to all City departments and agencies that commented. See Staff Report, p. 3. Any other comments specific to the site will be managed during the permitting process. See *id.*

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 environmental review process, completed pursuant to SEPA, demonstrates that the project will not have significant environmental impacts.

The Applicant prepared an environmental checklist, pursuant to SEPA, for this project. See Exhibit 1C (Environmental Checklist attached to CUP Application). 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 surface waters, such as wetlands or streams, on the site. See Exhibit 1C (Environmental Checklist ¶ B(3)(a)(1)). The property does not lie within a 100-year floodplain. See Exhibit 1C (Environmental Checklist ¶ B(3)(a)(5)). No waste materials will be discharged into the ground or into surface waters. See Exhibit 1C (Environmental Checklist ¶¶ B(3)(a)(6), B(3)(b)(2) & B(3)(c)(2)). No other 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 1C (Environmental Checklist ¶ B(7)(a)). No threatened or endangered species were identified on the site. See Exhibit 1C (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)).

The SEPA checklist was analyzed and was issued a DNS on March 17, 2021. There were no comments on the DNS, and no appeals of the DNS were filed. As a result, the proposed development is not subject to challenge under SEPA.

Subject to the conditions contained in this decision, the Hearing Examiner finds the application will not have a significant impact on the environment or the surrounding properties. Therefore, this criterion is satisfied.

6. *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)(1).*

Staff noted that the proposed air-supported structure will look similar to other large warehouse structures in the area. See Staff Report, p. 4. The building, for example, will have a dome shape and no windows. The unusual look and feel of the structure will, in the Hearing Examiner's estimation, blend well with other industrial structures. Staff also emphasized that the proposed use will not adversely impact the industrial character of the area, now or in the future. See *id.* The Hearing Examiner is inclined to defer to Staff's judgment on this issue, as well as its application of the code to this unique proposal. On this record, the Hearing Examiner doubts that the project will have any material impacts on the neighboring uses. Given the foregoing, the Hearing Examiner finds this criterion met.

DECISION

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

1. The project will be developed in substantial conformance with SMC 17C.130, Land Use Standards, Industrial Zones, to maintain compatibility with, and limit any negative impacts to surrounding areas.
2. An additional 6 feet of public right-of-way must be dedicated, to the City of Spokane, on the west side of Myrtle Street, to accommodate Myrtle Street Right-of-Way improvements.
3. A one-time grade and oiling of Joseph Ave and Columbia Ave will be required for dust control at the time of construction or as determined by the Development Services Staff. During building plan review a paving waiver will be required to be signed.
4. An Inadvertent Discovery Plan shall be prepared for the site. The Applicant shall prepare construction crews for the possibility of encountering archaeological material during ground disturbing activities.
5. If any artifacts or human remains are found upon excavation, the Spokane Tribe and the Planning Department should be immediately notified and the work in the immediate area cease.
6. 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.

7. 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.

8. 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 29th day of April, 2021.



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. 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 29, 2021. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS MAY 24, 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.