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CITY OF YAKIMA
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July 1, 2015

Rosalinda Ibarra
Yakima City Planning Division
129 North 2nd Street
Yakima, WA 98901

HAND-DELIVERED

Re: Hearing Examiner's Interim Decision: APP#002-15, CL2#019-14 & CL2#004-15
– In The Matter of the Appeals of Two Class (2) Use Approvals Issued to the
Union Gospel Mission Submitted by William Brado and the Yakima Gateway
Organization.

Dear Rosalinda,

Enclosed is the Hearing Examiner's Interim Decision regarding the above-entitled
matter. If you have any questions, please give me a call. Thank you.

Yours very truly,



KEVIN R. RICHARDSON

Legal Secretary to
GARY M. CUILIER

KRR: krr
Enclosure

cc: Karri Espinoza, Yakima County Planning Division, w/ Enclosure
Pat Spurgin, City of Yakima Pro Tem Hearing Examiner, w/ Enclosure

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City of Yakima, Washington
Hearing Examiner's Interim Decision

July 1, 2015

In the Matter of the Appeals of Two)
Class (2) Use Approvals Issued to the)
Union Gospel Mission Submitted by:)
)
William Brado and the)
Yakima Gateway Organization)
)
Relative to Construction of Additional)
Parking, Health Care Clinic Facilities)
And Residential Dormitory Units at)
The Existing Union Gospel Mission)
Site Located at 1300 North 1st Street)

APP#002-15
CL2#019-14
CL2#004-15

A. Request that Attorneys Mark Kunkler, Patrick Andreotti and James Carmody Provide Additional Information to be Included in the Record:

This request is being directed and delivered by the Hearing Examiner to the three attorneys of record in this proceeding for the following reasons:

(1) The issue in this appeal of whether there has been substantial compliance with the Notice of Application requirements for the decision in CL2#019-14 need not be decided unless the appeal of that decision is properly before the Hearing Examiner.

(2) Case authorities submitted by the parties, including those submitted on June 24, as applied to the facts of appeal CL2#019-14, indicate that a LUPA appeal at this point would be time-barred as it was not commenced within 21 days from the date when the Appellants received the decision or actual notice thereof in one of the manners

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specified in RCW 36.70C.040(3). (*Exhibit D-1, Mr. Brado's letter of March 30, 2015*). Appellants have instead taken steps to exhaust their intra-agency administrative appeal remedies by filing an appeal to the Hearing Examiner on May 1, 2015, which has City ordinance requirements for notice of a Class (2) decision that are different than those specified in the LUPA statute. The intra-agency administrative appeal of the CL2#019-14 decision would not be time-barred if the mailing of the notice of the City's Class (2) decision only to the Applicant on January 20, 2015, failed to satisfy the requirements of YMC §15.14.050 prior to the filing of the appeal. (*Exhibit B-7(a) and B-7(b)*). There were no parties of record entitled to the Notice of Decision because the only comment was anonymous with no return address. (*Exhibit B-6 and Exhibit List description*). Whether the May 1, 2015, appeal was within 14 days "following the mailing of the final decision" per YMC §15.16.030 depends upon the meaning of the phrase "other parties receiving initial notice" per YMC §15.14.050. That determination requires an interpretation of whether the phrase is intended to refer to "parties of record" who learn of the proposal and comment before the Notice of Application is mailed or to all of the "landowners" within 300 feet of the exterior boundaries of the development site who are entitled to the Notice of Application per YMC §15.14.040(B) even if they fail to submit any comments.

(3) Hoping to be apprised of some other more definitive ordinance provision or written policy or procedure, a phone call was made on June 29 pursuant to Hearing Examiner Rule 3.3(C) to Planning Division Assistant II Lisa Maxey who was unable to answer the question. But a response of Community Development Director Joan Davenport on June 30 by phone indicated that there is no other written clarification of the meaning of YMC §15.14.050, just a long-standing administrative interpretation consistent with the comparable provision for notice of Class (3) decisions. The basis for the interpretation will be provided here so that any of the three attorneys of record who are able and willing to do so may present a brief one or two page position statement either rebutting or supporting that Planning Division interpretation which is based on the following factors: (i) YMC §15.14.050 specifies "parties" rather than "landowners"; (ii) the only definition of "parties" in the zoning ordinance is the definition of "parties of record" in YMC Chapter 15.02; (iii) Table 11-2 in YMC §15.11.090 distinguishes between "parties of record" and "property owners"; (iv) YMC §16.07.020 is more general than provisions specifically applicable to certain classes of uses; and (v) parties of record can learn of proposed projects and submit comments before the Notice of Application is mailed, in which case they will receive that notice as well as the Notice of

Decision.

(5) For the reasons detailed here, any of the three attorneys of record in this appeal are invited to submit a one or two page position statement as soon as possible by delivering it to the other two attorneys involved and the Planning Division. Since the decision in this matter must be issued within 10 business days of June 24, 2015, when the record was closed, it will be issued within the earlier of: (i) within two days after delivery of all three position statements or (ii) by Thursday, July 9, 2015, based on any position statements that are delivered by 4:30 p.m. on Tuesday, July 7, 2015, which are the only ones that will be accepted into the record as additional exhibits.

(6) Any procedural questions regarding this interim decision should be directed to Lisa Maxey or Rosalinda Ibarra at the Planning Division phone number who will either answer the question or obtain the answer to the question.

DATED this 1st day of July, 2015.



Gary Cuillier, Hearing Examiner

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