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## NOTIFICATION OF HEARING EXAMINER'S DECISION

July 13, 2015

On July 9, 2015 the City of Yakima Hearing Examiner rendered his decision on **APP#002-15 (CL2#019-14 & CL2#004-15)**. The appeal submitted by **William Brado and the Yakima Gateway Organization** is an appeal of the Administrative Official's Decisions for CL2#019-14, approving construction of a parking lot, and CL2#004-15, approving the construction of a new health care clinic for the Union Gospel Mission in the GC/M-1 zoning district. The appeal was reviewed at an open record public hearing held on June 17, 2015.

Enclosed is a copy of the Hearing Examiner's Findings and Decision. Any part of the Hearing Examiner's decision may be appealed to the Yakima City Council. Appeals shall be filed within fourteen (14) days following the date of mailing of this notice and shall be in writing on forms provided by the Planning Division. The appeal fee of \$340 must accompany the appeal application.

For further information or assistance you may contact Trevor Martin, Assistant Planner, at (509) 575-6162 or e-mail: [trevor.martin@yakimawa.gov](mailto:trevor.martin@yakimawa.gov).

Trevor Martin  
Assistant Planner

Date of Mailing: July 13, 2015

Enclosures: Hearing Examiner's Decision



presented by attorney Patrick Andreotti on behalf of Appellants William Brado and the Yakima Gateway Organization, by Appellant William Brado, and by Gary Rufener, Mina Kyle, Devin Gill, Jean Owens, Lynn Hartman, Charles Fields and Stephanie Beaman.

(4) Testimony in favor of the Respondent Applicant's position to the effect that the appeal should be denied and the decisions being appealed should be affirmed was presented by Respondent Union Gospel Mission's attorney James Carmody, Union Gospel Mission's Executive Director Rick Phillips, Dennis Michael Buehler, Ryan Crafts, Bertha Lopez, Calvin Friend, Alondra Garibay, Ed Kershaw, Bob Whitney, Manichanh Ratts, Marvin Lindley and Beth Klingele.

(5) Testimony in favor of the Respondent City of Yakima's position to the effect that the decisions being appealed should be affirmed was presented by Senior Assistant City Attorney Mark Kunkler and Supervising Planner Jeff Peters in addition to Assistant Planner Trevor Martin.

(6) Prior to the hearing, one anonymous written public comment was received in opposition to the parking lot application (*Exhibit B-6*), and two anonymous written public comments and a written comment from Appellants' attorney Patrick Andreotti were received in opposition to the health care clinic/residential dormitory application (*Exhibits C-6(a), page 1; C-6(b), page 1; & C-6(c)*). A petition signed by 227 people was submitted in part before the hearing and in part during the hearing which requested that the Union Gospel Mission abide by its 1994 agreement with local businesses and that the Union Gospel Mission and City work together to insure that the signers and their customers and visitors have safe and clean access to their property. (*Exhibits D-6 & E-13*). Additional exhibits submitted at the hearing and made a part of the record included three written public comments from Dennis O'Brill, Angel Gonzalez and Tracie Erie in opposition to the application (*Exhibits E-8, E-9 & E-10*); a Hearing Memorandum from Patrick Andreotti favoring the Appellants' position (*Exhibit E-11*); a Hearing Memorandum from Mark Kunkler opposing the Appellants' position (*Exhibit E-7*); a copy of the previous 1992 and 1995 decisions interpreting and approving the Union Gospel Mission's uses at 1300 North 1<sup>st</sup> Street (*Exhibits E-1, E-2, E-3 & E-4*); a May 30, 2015 letter from Bruce Smith explaining the intent of the 1994 agreement relative to access from Oak Street to the proposed parking area (*Exhibit E-5*); and a June 10, 2015, letter from Patrick Andreotti detailing Yakima Gateway Organization requests of the Union Gospel Mission (*Exhibit E-6*). The record was kept open until June 24, 2015, in order to allow the attorneys involved in this appeal to submit additional information and

case authorities. On that date Mr. Carmody submitted pertinent case authorities (*Exhibit E-14*) and Mr. Andreotti submitted pertinent ordinance provisions (*Exhibit E-15*) which were made a part of the record. The record of this consolidated appeal hearing was thereupon closed as of June 24, 2015.

(7) A review of the court cases and ordinance provisions submitted on June 24, 2015, revealed that the alternative events that constitute the issuance of a decision triggering the 21-day Land Use Petition Act (LUPA) appeal period in RCW 36.70C.040(3) are different from the singular event which constitutes a notice of a decision triggering the 14-day Class (2) decision appeal period specified by applicable City zoning ordinance provisions. (*Exhibits E-14 & E-15; YMC §15.16.030(B); & YMC §15.14.050*). Since the meaning of the requirement in YMC §15.14.050 that notice of a Class (2) decision be mailed “to other parties receiving initial notice” in addition to the applicant is not clarified by any other ordinance provision or Planning Division written policy or procedure, the three attorneys of record in this decision were invited by means of an interim decision dated July 1, 2015, to submit a brief position statement regarding the meaning of that phrase by July 7, 2015. (*Exhibit F-1*). They did so and their position statements are supplemental exhibits in the record. (*Exhibits F-2, F-3 and F-4*).

(8) After a de novo review pursuant to YMC §15.16.030(F) of all of the exhibits in the record, the video recording of the hearing and the City ordinance provisions, the State statutory provisions and the Washington court cases relevant to this appeal, this decision has been issued within ten business days of the date when the Hearing Examiner announced at the hearing that the record would be closed on June 24, 2015.

**B. Summary of Decision.** The Hearing Examiner denies the appeal of the CL2#019-14 parking lot decision and the appeal of the CL2#004-15 health care clinic/residential dormitory decision, affirms the CL2#019-14 decision and modifies the CL2#004-15 decision by adding a condition.

**C. Basis for Decision.** Based upon the Hearing Examiner’s most recent view of the site and nearby properties with no one else present on June 16, 2015; his consideration of

the staff report, exhibits, testimony and other evidence presented at the open record public hearing on June 17, 2015, as well as the additional Court case and City ordinance authorities submitted on June 24, 2015, and additional position statements submitted on July 7, 2015; and his consideration of the Yakima Urban Area Comprehensive Plan, the Yakima Urban Area Zoning Ordinance which is Title 15 of the Yakima Municipal Code (YMC) and other applicable Washington State Land Use Petition Act (LUPA) authorities; the Hearing Examiner makes the following findings:

## **I. FINDINGS RELATIVE TO THE JURISDICTION OF THE HEARING EXAMINER TO HEAR AND DECIDE THIS CONSOLIDATED APPEAL**

(1) YMC §1.43.080(A) empowers the Hearing Examiner to hear, make a record of, and decide matters prescribed by the Yakima Urban Area Zoning Ordinance, Title 15.

(2) YMC §15.14.070 provides that any decisions by the Administrative Official under Type (2) review may be appealed to the Hearing Examiner in accordance with YMC Chapter 15.16.

(3) YMC §15.16.030 specifies the details required for such appeals to the Hearing Examiner.

(4) The Hearing Examiner's jurisdiction to hear and decide this consolidated appeal of the decisions for CL2#019-14 and CL2#004-15 was not an issue in this proceeding, but the Applicant contends that the Hearing Examiner is required to affirm the decision for CL2#019-14 without a consideration of the Appellants' grounds for appeal due to the lack of a timely appeal. (*Exhibits E-14 & F-2*).

## **II. FINDINGS RELATIVE TO THE HISTORY OF THE APPROVALS OF THE UNION GOSPEL MISSION AT ITS CURRENT LOCATION**

(1) On February 13, 1992, after the City of Yakima (City) referred a request for a Use Interpretation to Hearing Examiner Philip Lamb, he held a public hearing regarding the request. (*Exhibit E-1, page 1*). The stated purpose of the interpretation proceeding which was assigned City file number INTERP. #1-92 was to determine whether the activities conducted by the Union Gospel Mission (UGM) fit within any existing land use classifications in the City's zoning ordinance and, if not, to establish and define a new land use with a specified level of review. (*Exhibit E-1, page 2*).

(2) On February 27, 1992, the Hearing Examiner issued a Use Interpretation which found that the nature of existing and proposed UGM activities included a range of services such as spiritual and material support for those in need, meals both on and offsite, clothing and other staples, dental clinics, a foot clinic, shower and similar facilities, residential facilities, a youth center, food and lodging facilities for homeless men and families, drug and alcohol rehabilitation, dormitory and family shelter, dining and kitchen facilities, auditorium, gymnasium and maintenance/repair shops. (*Exhibit E-1, pages 2-3*). The uses primarily reviewed by the Hearing Examiner to determine if the UGM activities were already a classified use included uses designated as community centers, halfway houses, detention centers, hospitals, group homes, high density multi-family dwelling units and boarding houses. The zoning districts considered for the appropriate location of an unclassified "Mission" use included the Central Business District (CBD) and Central Business District Support (CBDS) (Currently known as General Commercial (GC)) zoning districts. (*Exhibit E-1, pages 7-11*). The Hearing Examiner established a new use not previously classified as a use in the City's zoning ordinance which could be considered for location in two zoning districts as follows: "The combination of uses typified by the Yakima Union Gospel Mission shall be characterized as a 'Mission,' subject to Class 2 review in the Central Business District (CBD) and Central Business District Support (CBDS) zones." He defined the "Mission" use as follows: "Mission means a facility typically owned or operated by a public agency or non-profit corporation, providing a variety of services for the disadvantaged, typically including but not limited to temporary housing for the homeless, dining facilities, health and counseling activities, whether or not of a spiritual nature, with such services being generally provided to the community at large." (*Exhibit E-1, page 1*).

(3) On July 10, 1992, the City's Administrative Official issued a Class (2) use decision for City file number CL(2) #10-92 approving the proposed UGM "Mission" use at 1300 North 1<sup>st</sup> Street, subject to eight conditions. (*Exhibit E-2*).

(4) On July 24, 1992, the Yakima Gateway Organization appealed the Administrative Official's decision for CL(2) #10-92 to the Hearing Examiner on the grounds that (i) the Administrative Official did not have authority to consider the UGM's application; (ii) the Administrative Official's refusal to consider comments was unlawful; (iii) the proposed use was incompatible with the uses surrounding it; (iv) the proposed use would adversely impact adjoining property values; and (v) the proposal lacked adequate parking. (*Exhibit A-1, page 2*).

(5) After conducting a public hearing over a period of four days, the Hearing Examiner on October 19, 1992, issued his decision regarding the appeal submitted by the Yakima Gateway Organization which upheld the Administrative Official's decision to allow UGM to locate at 1300 North 1<sup>st</sup> Street, subject to eight conditions. (*Exhibit E-3*).

(6) On June 8, 1995, at the request of UGM, the Hearing Examiner conducted a public hearing regarding a three-pronged application submitted by UGM and on June 9, 1995, he issued a second Use Interpretation which was assigned City file number Interpretation #2-95. It modified the conditions of the previous 1992 Use Interpretation and allowed the "Mission" use to also be considered a Class 2 use in the Light Industrial (M-1) zoning district. (*Exhibit E-4, pages 1, 3, 6 & 7*).

### **III. FINDINGS RELATIVE TO THE HISTORY OF BOTH OF THE APPLICATIONS AND DECISIONS SUBJECT TO THIS APPEAL**

(1) On December 2, 2014, the Union Gospel Mission (UGM) submitted an application which was assigned City file number CL2#019-14. It requested approval to construct a new paved parking lot 13,000-square-feet in size consisting of 32 standard parking spaces and 2 handicapped parking spaces. (*Exhibit B-1*).

(2) On December 18, 2014, a Notice of Application was mailed to the Applicant and to only three of the 21 landowners within 300 feet of the UGM site due to an error in the City's mailing system discovered on March 27, 2015. (*Compare Exhibit B-5(a), page 3, with Exhibit C-5(a), page 1; Exhibit B-5; Exhibit B-5(b); Exhibit A-1, page 2; Exhibit E-7, page 2*). Notices of Application and Notices of Decision are also routinely emailed to 21 City employees listed on the City's In-House Distribution E-mail List and three or four Planning Division staff members. (*Exhibits B-5(a), B-7(a), C-5(a), C-7(a), D-4(a)*).



approving UGM's parking lot should be withdrawn and that work should cease on the parking lot. His stated reasons for those assertions were that a court would decide that the rights of property owners were violated due to the City's failure to notify adjoining neighbors of the intent to approve the parking lot and that the decision should be considered null and void because it allowed access to the parking lot from Oak Street in violation of an agreement between UGM and business owners in the area. (*Exhibit D-1*).

(10) On March 30, 2015, a Stop Work Order was placed on the UGM parking lot project, which is still in place. (*Exhibit A-1, page 3*).

(11) On April 17, 2015, the City of Yakima issued a decision approving UGM's health care clinic/residential dormitory application CL2#004-15. (*Exhibit C-7*).

(12) On May 1, 2015, the City Planning Division received an Appeal from William Brado and Yakima Gateway Organization which appealed the decisions for both applications CL2#004-15 and CL2#019-14. (*Exhibit D-1*).

(13) On May 28, 2015, the City mailed a Supplemental Notice of Application and Appeal to the Applicant, the Appellants and the 21 landowners within 300 feet of the site. (*Exhibits D-4, D-4(a) & D-4(b)*). The stated intent of the Supplemental Notice of Application and Appeal was to cure the failure to provide Notice of Application and Decision for the first application, the CL2#019-14 parking lot application. It further gave notice that that decision had been appealed and had been consolidated with an appeal of the CL2#004-15 health care clinic/residential dormitory decision. (*Exhibit D-4, page 2*).

(14) On May 29, 2015, Appellants' attorney Patrick Andreotti by letter addressed to Joan Davenport, AICP Planning Manager, Director of Community Development at City Hall, asserted that the Supplemental Notice of Application and Appeal in file no. CL2#019-14 regarding UGM's parking lot application failed to cure the original defective notice because YMC §15.40.040(B) [*sic. YMC §15.14.040(B)*] and State and Federal constitutional due process provisions require that notice and an opportunity to be heard be given before the administrative decision is made. (*Exhibit D-5*).

(15) On June 17, 2015, the hearing was held for the consolidated appeals of both the CL2#019-14 parking lot decision and the CL2#004-15 health care clinic/residential dormitory decision pursuant to the Supplemental Notice of Application and Appeal. (*Exhibit D-4*). The testimony and written comments described in sections 2 through 6 of the Introduction to this Decision were submitted at the hearing. The Hearing Examiner announced that the record would be kept open until June 24, 2015, to allow for submittal

of additional information. Mr. Carmody submitted additional case authorities and Mr. Andreotti submitted additional ordinance authorities, whereupon the record was closed as of June 24, 2015. (*Exhibits E-14 & E-15*).

(16) A review of the additional case and ordinance authorities submitted by Mr. Carmody and Mr. Andreotti indicated that the meaning of the requirement in YMC §15.14.050 that notice of a Class (2) decision be mailed “to other parties receiving initial notice” could determine whether the Appellants timely filed their appeal to the Hearing Examiner. The three attorneys of record submitted position statements regarding the meaning of that phrase on July 7, 2015, as requested by an interim decision of July 1, 2015. (*Exhibit F-1, F-2, F-3 & F-4*).

#### **IV. FINDINGS RELATIVE TO THE ISSUE AS TO WHETHER THE APPELLANTS’ MAY 1, 2015, APPEAL OF THE JANUARY 20, 2015, PARKING LOT DECISION IN CL2#019-14 WAS TIMELY SO AS TO PERMIT THE HEARING EXAMINER TO CONSIDER THE STATED GROUNDS FOR THEIR APPEAL OF THAT DECISION**

(1) The Applicant correctly points out that Washington Courts follow a bright-line rule that will even time-bar Land Use Petition Act (LUPA) appeals from decisions that are “issued” without the requisite notice to property owners if the appeal to Court is not taken within the 21-day period following “issuance” of a “land use decision.” (*Asche v. Bloomquist, 132 Wn.App. 784, 133 P.3d 475 (2006)*).

(2) A decision is “issued” for LUPA appeal purposes at the latest when the local jurisdiction provides a copy of the decision to the appellant in response to what one Court referred to as a “public disclosure” request and what is commonly referred to as a “public records” request. (*Habitat Watch v. Skagit County, 155 Wn.2d 397, 120 P.3d 56 (2005)*). A decision can also be considered to be “issued” for LUPA purposes earlier than that such as either (i) on the date when a written decision or notice thereof is mailed to the appellants which did not occur as to the CL2#019-14 parking lot decision until May 28, 2015. (*Exhibits B-5(a) & D-4(a)*); (ii) on the date when a decision is made by an ordinance or resolution of a legislative body sitting in a quasi-judicial (appellate) capacity which is not applicable here; or (iii) on the date when a decision is entered into the

public record, which date was not submitted as evidence for this appeal hearing. (*RCW 36.70C.040(3) & (4)(a)-(c)*).

(3) Here the earliest date that the CL2#019-14 parking lot decision could have been “issued” for LUPA purposes was January 20, 2015, when it was mailed to only the Applicant, provided that only the Applicant was entitled to the Notice of Decision. (*Exhibit B-7(a); RCW 36.70C.040(4)(a)*). There were no parties of record who could be mailed the Notice of Decision because the only comment was anonymous without a return address. (*Exhibit B-6 & Exhibit List description of Exhibit B-6*). The next earliest date that the decision could have been “issued” for LUPA purposes was the date of a March 30, 2015, letter from Appellant William Brado addressing details of the decision which he had obtained in a manner and at a time which was not submitted as evidence for this appeal hearing. (*Exhibit D-1; RCW 36.70C.040(3) & (4)(c)*). But the Appellants claim that the YMC §15.14.050 requirement to mail the Notice of Application for Class (2) decisions to “other parties receiving initial notice” includes them as landowners within 300 feet of the development site who were entitled to be mailed the Notice of Application for the Class (2) parking lot use application per YMC §15.14.040(B), but who did not receive that Notice of Application because of an error in the City’s mailing system which was discovered on March 27, 2015. (*Exhibit C-7, page 7, Finding #7; Exhibit D-4; Exhibit D-5; Exhibit E-7, page 2; Exhibit D-1, page 5; & Exhibit E-11, pages 1-3*).

(4) The failure of Appellants to appeal the CL2#019-14 parking lot decision within 21 days of those possible dates of “issuance” for LUPA purposes is somewhat irrelevant because the Appellants still had to obtain a “land use decision” in order to file a LUPA appeal and still had to exhaust their administrative appeal remedies in order to have standing to pursue their LUPA appeal after filing it. (*RCW 36.70C.060(2)(d)*).

(5) A LUPA appeal must be filed within 21 days of the “issuance” of a “land use decision” which is defined in the State LUPA statutes as “a final determination by a local jurisdiction’s body or officer with the highest level of authority to make the determination, including those with the authority to hear appeals on (a) an application for a project permit.” (*RCW 36.70C.030(1); RCW 36.70C.020(2); RCW 36.70C.040(3)-(4)*). The final determination relative to a Class (2) use is made by the Yakima City Council. (*YMC §15.16.040(A)*). In order to obtain that final determination, first it is necessary to appeal the Administrative Official’s decision to the Hearing Examiner within “fourteen days following the mailing of the final decision by the administrative official or

designee.” (*YMC 15.16.030(A) & (B)*). The notice of a Class (2) decision is required to be mailed to the applicant and “to other parties receiving initial notice.” (*YMC §15.14.050*). The initial notice of a Class (2) application is required to be mailed to “all landowners within three hundred feet of the exterior boundaries of the development site.” (*YMC 15.14.040(B)*). Consequently, the first prerequisite for Appellants to be able to file a LUPA appeal is a timely appeal of the Administrative Official’s decision to the Hearing Examiner, and if unsuccessful at that level, then a timely appeal of the Hearing Examiner’s decision to the City Council. If unsuccessful at the City Council level, Appellants at that time would then be in a position to file a LUPA appeal of the City’s “final determination” as to the CL2#019-14 parking lot decision within 21 days of its “issuance” for LUPA purposes and to have standing so as to be able to thereafter pursue the LUPA appeal after having exhausted all of the City’s administrative appeal remedies applicable to Class (2) use decisions. (*RCW 36.70C.030(1)*; *RCW 36.70C.020(2)*; *RCW 36.70C.040(3) & (4)(a)-(c)*; *RCW 36.70C.060(2)(d)*).

(6) It can be seen from this analysis that the determination of whether the Appellants’ grounds for appeal of the CL2#019-14 parking lot decision are properly before the Hearing Examiner for consideration depends upon the City ordinance provisions relative to the 14-day appeal period for Class (2) decisions rather than the different State statutory provisions relative to the 21-day appeal period for LUPA appeals. In this regard, the City and the Applicant agree with the Planning Division’s interpretation that the Appellants’ May 1, 2015 appeal was untimely because it was not within 14 days of the mailing of the January 20, 2015 Notice of Decision for the CL2#019-14 parking lot decision which was properly mailed only to the Applicant since the only “party of record” commented without providing a name or return address. (*Exhibits B-6, F-2 & F-4*; *YMC 15.02.020*). The Appellants on the other hand take the position that their appeal was timely because notice of a Class (2) decision must be given to all the parties who initially were mailed the notice of the application, namely to “all landowners within three hundred feet of the exterior boundaries of the development site,” which here did not occur until the Supplemental Notice of Application and Appeal was mailed on May 28, 2015, after their appeal was filed. (*Exhibit F-3*; *YMC 15.14.040(B)*).

(7) The differing views of the timeliness of the Appellants’ administrative appeal of the CL2#019-14 parking lot decision stems from a differing view as to the proper construction or meaning of the phrase in *YMC §15.14.050* that requires the findings and decision to be mailed to the applicant and to “other parties receiving initial notice.”

(*Exhibits F-2, F-4 & F-3*). Both the Appellants and Applicant argue that their different interpretations are clear from the language used in YMC §15.14.050, and all three of the attorneys have presented persuasive arguments in support of their respective positions. However, none of the position statements regarding the meaning of the pertinent phrase in YMC §15.14.050 addressed the effect that YMC §16.07.020, YMC §16.05.010(A) and YMC §16.01.050 may have upon its relevance in addressing this issue. YMC §16.07.020 requires a Notice of Decision to be mailed to the applicant, parties of record and parties who were provided a Notice of Application. YMC §16.05.010(A) requires the Notice of Application to be mailed to the applicant's designated contact person and to the owners of property within three hundred feet of the development site. YMC §16.01.050 states that Title 16 shall govern in the case of conflicts between Title 16 and other ordinances.

(8) The Hearing Examiner initially considered the meaning of the phrase in YMC §15.14.050 to be important enough to issue an interim decision requesting additional argument regarding its meaning. (*Exhibit F-1*). These Title 16 ordinance provisions that were reviewed near the end of the Hearing Examiner's ten-business-day time limit for issuing this decision (from June 24, 2015, when the record was closed) may have an important bearing upon the relevance of YMC §15.14.050. But rather than delay issuance of this decision to obtain argument from the three attorneys of record prior to making a determination as to the relevance of YMC §15.14.050, the Hearing Examiner finds that Appellants' appeal to the Hearing Examiner of the CL2#019-14 parking lot decision was timely filed without the need to determine the meaning or relevance of YMC §15.14.050.

(9) Regardless of the correct construction or the relevance of the language of YMC §15.14.050, here the City, with the consent and cooperation of the Applicant, itself effectively tolled the time period for the Appellants' appeal by issuing and mailing its supplemental notice of appeal. (*Exhibit D-4; Exhibit E-7, page 3, 3<sup>rd</sup> paragraph*). The Hearing Examiner agrees with the approach that was taken by the City (i) because the City's administrative appeal ordinance provisions do not express the same purposes as the LUPA statutory provisions to provide "timely judicial review" (*RCW 36.70C.010*) and to "prevent parties from delaying judicial review at the conclusion of the local administrative process." (*Exhibit 14, Habitat Watch v. Skagit County, supra at page 406*); (ii) because of the fact that the disputed language in YMC §15.14.050 is susceptible to two reasonable meanings, one of which would result in a finding that the time period for Appellants' administrative appeal to the Hearing Examiner had not yet passed by May 1, 2015, due to the manner of mailing the Notice of Decision for the CL2#019-14 parking

lot decision; and (iii) because of issues regarding the relevance of the phrase in YMC §15.14.050 in view of the provisions of YMC §16.07.020, YMC §16.05.010(A) and YMC §16.01.050. (*Exhibits D-4, D-4(a) and D-4(b)*).

**V. FINDINGS RELATIVE TO THE FIRST STATED GROUND FOR APPEAL TO THE EFFECT THAT APPLICATIONS CL2#019-14 AND CL2#004-15 ARE REQUIRED TO BE REVIEWED AS CLASS (3) RATHER THAN AS CLASS (2) USE APPLICATIONS FOR THE FOLLOWING REASONS STATED IN APPELLANTS' "REASON FOR APPEAL"**

**"(a) Applications CL2#004-15 and CL2#019-14 are required to be reviewed as Class 3 Land Use Applications:**

In 1992, the City Hearing Examiner approved a Union Gospel Mission ('UGM') application to locate its facility at its present location, 1300 North 1<sup>st</sup> Street. The Hearing Examiner's Decision was appealed to the Yakima City Council by the Yakima Gateway Organization ('YGO'). To resolve the YGO appeal, UGN [*sic. UGM*] and YGO entered into a 'Settlement Agreement Re: Union Gospel Mission Relocation' ('Settlement Agreement') pursuant to which, in exchange for withdrawal of the YGO appeal, UGM agreed to substantial conditions and restrictions beyond those imposed in the Hearing Examiner's Decision.

The Settlement Agreement was filed with the City August 2, 1994.

Section 2 of the Settlement Agreement specifically dealt with future development at the Mission site. Pursuant to Section 2(a), YGO specifically agreed to development as shown on a schematic plan attached to the Agreement. Section 2(b) specifically required future development in excess of that which was shown on the schematic plan attached to the Settlement Agreement would be subject to Class 3 review which would be requested by both UGM and YGO at the time of application for such future development.

Neither the parking lot subject to Application CL2#019-14 or the present application CL2#004-15 are improvements which were contemplated in the Settlement Agreement and are, therefore, subject to Class 3 review.

UGM breached the Settlement Agreement by filing the above-numbered applications as Class 2 land use applications. The City abetted that breach of the

Agreement by processing and entering decisions on the two (2) applications as Class 2 applications.

The Settlement Agreement and its Class 3 review provisions are specifically enforceable as between the members of YGO and the UGM. Although the City itself was not a party to the Settlement Agreement, the permits the City issued for location and construction of Mission facilities were possible only because of the terms of the Settlement Agreement. The City is required to review the above-numbered applications as Class 3 land use applications.

The Decisions in both CL2#004-15 and CL2#019-14 must be reversed and the applications remanded for processing and reviewed as Class 3 land use applications.”

(1) No evidence was presented at the hearing to contradict the Appellants’ initial assertions relative to this ground for appeal regarding events in 1992 and 1994. Specifically, City Hearing Examiner Philip Lamb’s appeal decision approved an application of the Union Gospel Mission (UGM) to locate its facility at its present location at 1300 North 1<sup>st</sup> Street in 1992. (*Exhibit E-3*). The Hearing Examiner’s Decision was appealed to the Yakima City Council by the Yakima Gateway Organization (YGO). In order to resolve the YGO appeal, UGM and various members of YGO entered into a private agreement between themselves entitled “Settlement Agreement Re: Union Gospel Mission Relocation” (Settlement Agreement) prior to Council action. In exchange for withdrawal of the YGO appeal, UGM agreed to substantial conditions and restrictions beyond those imposed in the Hearing Examiner’s decision. (*Exhibit E-4, page 3, 1<sup>st</sup> paragraph; Exhibit C-6(c) attachment*). Nor was any evidence submitted to contradict the fact that the Settlement Agreement was filed with the City on August 2, 1994; that Section 2 of the Settlement Agreement specifically dealt with future development of the site; and that the parties specifically agreed to development as shown on a schematic plan that was not attached to the copy of the agreement submitted for the record of this appeal. (*Exhibit C-6(c) attachment, page 1 & absence of a page 6*).

(2) Appellants’ assertion that the parking lot use requested by application CL2#019-14 and the health care clinic/residential dormitory uses requested by application CL2#004-15 are not the type of improvements contemplated in the Settlement Agreement were not disputed. But Appellants’ assertions that Section 2(b) of the Settlement Agreement applied to future improvements outside the M-1 zone and was breached by filing the CL2#019-14 and CL2#004-15 applications as Class (2) use

applications were disputed by the attorney who drafted the agreement. (*Testimony of James Carmody*).

(3) The reference in Section 2(b) of the Settlement Agreement to only the M-1 zoning district would support the interpretation that UGM and YGO agreed to jointly request that the “Mission” use be designated as a Class (3) use in the M-1 zone subject to an exception allowing for Class (2) review of the potential future uses shown on the schematic plan within the M-1 zoning district. (*Exhibit C-6(c) attachment, page 1*). Section 2(b) of the Settlement Agreement does not contain an agreement to jointly request that the “Mission” use be designated as a Class (3) use in the CBD (Central Business District) or in the CBDS, now GC (Central Business District Support, now General Commercial) zoning districts. Therefore, the wording of the Settlement Agreement, even if it were enforceable against the City, would not clearly and unambiguously require that approval of the health care clinic/residential dormitory uses in the GC zoning district be remanded for Class (3) review. In any case, the proper construction of any ambiguity in that Section 2(b) of the Settlement Agreement would be for a Court rather than the Hearing Examiner to decide.

(4) Even if Appellants’ construction of Section 2(b) of the Settlement Agreement were to be accepted by a Court, it is clear that any joint request by the UGM and YGO of the Hearing Examiner to designate the “Mission” use as a Class (3) use in the M-1 zone and/or in any other zone was denied by the Hearing Examiner in his Interpretation #2-95 issued on June 9, 1995. (*Exhibit E-4*). Even though the hearing for the interpretation process was conducted on June 8, 1995, after the Settlement Agreement was filed with the City on August 2, 1994, the Hearing Examiner in his decision unequivocally classified all “Mission” uses as Class (2) uses in the M-1 (Light Industrial) zoning district despite whatever requests were presented to do otherwise. (*Exhibit E-4, page 1 & page 3, section 7; Exhibit E-4, page 6, Conclusion #2*). He did not purport to adopt any of the Settlement Agreement provisions or declare them to be binding on the City. To the contrary, he enumerated independent reasons why it would be appropriate to delete the bus stop requirement that the UGM and YGO agreed to jointly request of the Hearing Examiner and City Council per Section 11 of their Settlement Agreement. (*Exhibit C-6(c) attachment, page 3, section 11*). Specifically, he explained that both UGM and YGO were jointly requesting that it be deleted due to the fact that it could become a gathering place for loiterers and the fact that there was already a bus stop on Oak Street adjacent to the site. He expressly found that the City of Yakima was not a party to that Settlement

Agreement and that his deletion of the bus stop was based upon the joint request of UGM and YGO rather than a determination on his part that the City was bound by the terms of the Settlement Agreement. (*Exhibit E-4, page 3*).

(5) If there was any breach of the Settlement Agreement regarding the joint request described in Section 2(b) of the Settlement Agreement, it occurred when the Class of use was assigned to the “Mission” use in the M-1 zoning district by the Hearing Examiner after a public hearing in 1995. The public hearing was conducted as a result of the referral by the Planning Division of a consolidated request for a Use Interpretation and for approval of a Class (2) use application per YMC §15.14.020(A) & (C). The specific purpose of the referral was for the Hearing Examiner to determine whether the “Mission” use should also be allowed in the M-1 zoning district and, if so, whether UGM’s Class (2) use application for the expansion of its activities into that zoning district should be granted. (*Exhibit E-4, pages 2-3*).

(6) Furthermore, if there was a breach of the agreement to make the joint request described in Section 2(b) of the Settlement Agreement in 1995 when the Class of use of the “Mission” use in the M-1 zoning district was being determined through a public hearing process, the breach was solely a matter between the parties to the Settlement Agreement. The failure of the parties to make such a joint request for either of the two decisions here under review would also be solely a matter between the parties to that agreement. The specific performance of a private agreement is a matter for a Judge rather than a Hearing Examiner to decide. But it is clear for our purposes here that the City did not abet any breach of the Settlement Agreement by processing these two UGM applications as Class (2) uses in accordance with the 1992 and 1995 decisions of its Hearing Examiner and the terms of its zoning ordinance provisions giving precedential effect to such decisions. (*YMC §15.22.040(C)*).

(7) The Appellants’ attorney, Mr. Andreotti, correctly recognized that enforcement of the private Settlement Agreement would have to be by way of a Court action rather than in an administrative appeal proceeding before a Hearing Examiner. (*Exhibit E-6, page 2*). Whether the requirement in Section 2(b) of the Settlement Agreement to jointly request that the “Mission” use be classified as a Class (3) use was satisfied or breached during the 1995 public hearing before the Hearing Examiner is not in the record and would in any event be an issue for a Court to determine in addition to the correct construction of the language of the agreement in this regard. Even if that section of the Settlement Agreement is still specifically enforceable, the bottom line is that it is still

only an agreement to jointly request a result that the City is not obligated to accommodate because, as the Appellants concede, the City was not a party to the agreement. (*Exhibit C-6(c) attachment, page 1*). Moreover, the City did not here receive such a joint request to elevate the level of review beyond that prescribed by its Hearing Examiner.

(8) The Appellants' assertion that the City is required to review these two applications as Class (3) land use applications because the permits the City issued for location and construction of UGM facilities were made possible only because of the terms of the Settlement Agreement is purely speculative so far as the evidence, or lack thereof, in this record is concerned. No evidence was presented in this proceeding to suggest that the City Council would have reversed the Hearing Examiner's decision and denied UGM's application if YGO had followed through with its appeal. (*Video recording of June 17, 2015, public hearing & all exhibits submitted*). The record does not rule out the possibility that the City Council might have affirmed the approval of UGM's "Mission" use with or without conditions similar to the Settlement Agreement if it had been given the opportunity. Development Agreements can be presented to the City Council for its approval, whereupon the City Council can designate an authorized representative to sign them and to make sure they are recorded. But here YGO chose for its own reasons which are not in the record to enter into a Settlement Agreement with UGM and withdraw its appeal before the City Council issued a decision. (*Exhibit E-4, page 3*). If the reason were relevant, the Hearing Examiner would note that the provisions in Section 18 relative to nondisclosure of the names of the YGO members who signed the agreement suggest a desire on their part to preserve their privacy. (*Exhibit C-6(c) attachment, page 4*).

(9) Regardless of YGO's reasons for withdrawing its appeal to the City Council relative to the approval of the current UGM uses at the current location as Class (2) uses, the provisions of Section 2(b) of the Settlement Agreement clearly do not require the City to now review these two CL2#004-15 or CL2#019-14 applications as Class (3) land use applications or require a reversal and remand of either of those decisions for processing and review as a Class (3) land use application. The City is not bound to honor, approve or otherwise implement the terms of the private Settlement Agreement between UGM and YGO or to even accept or agree to any joint request that those parties may make pursuant to that agreement, particularly where the request for a different level of review for UGM uses would at the present time be contrary to the most recent and the only determinations that have ever been made as to the appropriate level of review for such uses. (*Exhibit E-7, page 5; Testimony of James Carmody and Mark Kunkler*).

**VI. FINDINGS RELATIVE TO THE SECOND STATED GROUND FOR APPEAL TO THE EFFECT THAT THE DECISION ON APPLICATION CL2#019-14 IS VOID FOR THE FOLLOWING REASONS STATED IN APPELLANTS' "REASON FOR APPEAL"**

“(b) The Decision on Application CL2#019-14 is void:

The UGM expansion contemplated by Application CL2#004-15 required additional on-site parking.

UGM sought approval for this additional on-site parking through Application CL2#019-14.

As noted above, the City improperly reviewed this application as a Class 2 land use application rather than a Class 3 application.

In addition, the City failed to comply with its own requirements for Class 2 land use review. YMC 15.14.040(B), governing the notice requirements for Class 2 review, provides:

‘Notification of adjacent property owners. When the administrative official’s preliminary decision is to approve the application, or approve with conditions, the administrative official shall, within 5 days, forward a notice of application to all landowners within 300 feet of the exterior boundaries of the development site....’

The 4/17/2015 Decision on this application, Finding 7, acknowledges the City failed to give adequate notice of the parking lot application but finds the Decision ‘was not appealed.’ The fact that Decision was not appealed is not surprising since the adversely affected property owners had no notice of either the application or the Decision.

In Prekeges vs. King County, 98 Wn.App. 275, 281, 990 P.2d 405 (1999), the Court specifically held:

‘One purpose of specific statutory requirements for public notice of an impending land use decision is to insure that the decision makers receive enough information from those who may be affected by the action to make an intelligent decision.’

In Prosser Hill Coalition vs. Spokane County, 176 Wn.App. 280, 291, 309 P.3d 1202 (2013), the Court recognized defective notice undermines the information gathering process and further recognized and held the proper remedy for effective [sic. defective] notice was a remand to the decision maker for hearing after appropriate notice.

Limitations of RCW Chap. 36.70C are inapplicable in this situation. Because affected property owners had no notice of the application or Decision, they could not and were not required to file a LUPA appeal within the time permitted by statute.

The Decision on the parking lot application, CL2#019-14, is void for failure to provide notice required by the City's own code. The matter must be remanded for processing after appropriate notice.

Because the UGM expansion contemplated by Application CL2#004-15 cannot be approved without adequate parking, that Decision must also be reversed and remanded to the Planning Department.”

(1) The evidence in the record is to the effect that there are currently 125 paved parking spaces for the facility. The 1995 Hearing Examiner decision required 82 parking spaces, the dental clinic added in 2012 requires 10 parking spaces, the new health care clinic would require 20 parking spaces and the new residential uses would require 20 parking spaces for a total of 132 parking spaces. Therefore, seven more paved parking spaces are required for the health care clinic and all of the 18 residential dormitory units described in the CL2#004-15 application. Appellants' assertion to the effect that the health care clinic and all of the residential dormitory units proposed by application CL2#004-15 required additional on-site parking spaces for which UGM sought approval through CL2#019-14 is not disputed. With the approval and construction of the 34 additional paved parking spaces proposed in application CL2#019-14, the UGM facility would have 159 paved parking spaces, 27 more paved parking spaces than would be needed for the existing and proposed uses. (*Exhibit C-1, page 2; Exhibit C-7, page 3*).

(2) For the reasons set forth in the Findings relative to the first stated ground for appeal in Section V above, the City did not improperly review this application as a Class (2) rather than a Class (3) application.

(3) Appellants' assertions are undisputed to the effect that (i) YMC §15.14.040(B) requires a Notice of Application for a Class (2) use to be mailed to all landowners within 300 feet of the exterior boundaries of the development site within five days after a preliminary decision is made to approve the application (*Exhibit A-1, pages 2 & 9; Exhibit E-7, page 2*); (ii) Finding #7 of the April 17, 2015 decision approving the health care clinic/residential dormitory uses per CL2#004-15 acknowledges a previous failure to give adequate notice of the parking lot application. (*Exhibit C-7, page 7*); (iii) the *Prekeges* case held that one purpose of specific statutory requirements for public notice

of an impending land use decision is to insure that the decision makers receive enough information from those who may be affected by the action to make an intelligent decision; and (iv) the *Prosser Hill Coalition* case recognized that defective notice undermines the information gathering process and held that the proper remedy for defective notice was a remand to the decision maker for hearing after appropriate notice. (*Exhibit E-11, pages 2-3; Exhibit 14, Prosser Hill Coalition v. Spokane County, supra at pages 283-284 & 292-293*).

(4) The Hearing Examiner need not decide whether the CL2#019-14 parking lot decision would have been void for failure to provide the initial Notice of Application and/or Notice of Decision required by the City's zoning ordinance because the City subsequently cured its defective notice by issuing a Stop Work Order on the parking lot, consolidating the CL2#019-14 parking lot decision with the CL2#004-15 health care clinic/residential dormitory decision for review and appeal, and mailing a Supplemental Notice of Application and Appeal to all parties entitled thereto. (*Exhibits D-4, D-4(a) & D-4(b); Exhibit E-7, page 5; & Exhibit F-4, pages 3-4*).

(5) Absent the steps taken to cure or remedy the failure to mail the original Notice of Application to all landowners within 300 feet of the exterior boundaries of the UGM development site, a Court could find that the original Notice of Application for the proposed parking lot did not substantially comply with the ordinance requirements. The Notice of Application was mailed to three of the 21 owners of adjacent parcels. (*Compare Exhibit B-5(a) with Exhibit C-5(a)*). Mailing of the Notice of Application for a Class (2) application to all landowners within 300 feet of the site is important because it is the only type of notice that those landowners are given regarding their opportunity to submit comments regarding Class (2) applications. The Notice of Application for a Class (2) application is neither published in the newspaper nor posted on the property. (*Table 11-2 in YMC Chapter 15.11, YMC §15.14.040(B) & YMC §16.05.010*). By way of comparison with the facts in Washington cases, posting a sign on a nearby road which was not the most heavily traveled nearby road and stating in the notice that the site was north and west of the wrong nearby road did not substantially comply with ordinance requirements even though the notice was also mailed to property owners within 400 feet of the site. (*Prosser Hill Coalition v. County of Spokane, supra at pages 290-292; Exhibit E-7, page 3; Exhibit E-11, page 2; & Exhibit E-14, page 2*). Publishing of a proper notice of application in one newspaper instead of two newspapers and posting the notice seven days less than required did not substantially comply with ordinance

requirements even though the notice was also mailed to the property owners within 500 feet. (*Exhibit 14, Prekeges v. King County, supra at pages 280-281*).

(6) Despite the defects in the mailing of the initial Notice of Application on December 18, 2014, the mailing of the Supplemental Notice of Application and Appeal for the CL2#019-14 parking lot application on May 28, 2015, constituted substantial compliance with the applicable Notice of Application requirements because it advised of: (i) the December 2, 2014 date of the application; (ii) the May 28, 2015 date of the Notice of Application; (iii) a brief description of the proposed 34-space parking lot project, including its location at 1300 North 1<sup>st</sup> Street in Yakima, Washington and its City file number CL2#019-14; (iv) the location where the application and any studies could be reviewed at the City of Yakima Planning Division on the 2<sup>nd</sup> floor of City Hall at 129 North 2<sup>nd</sup> Street in Yakima, Washington, including the City website information that could be found under Quick Links: <http://www.yakimawa.gov/services/planning/>; (v) the June 16, 2015, date as the last day for submission of written comments prior to the hearing and the date of the public appeal hearing on June 17, 2015 when comments also could be submitted; (vi) a statement of the right of any person to comment on the application before or during the hearing and thereby be entitled to receive any future notices and decisions; (vi) the June 17, 2015 date, the 9:00 a.m. time, and the Yakima City Council Chambers location at 129 North 2<sup>nd</sup> Street in Yakima Washington for the public appeal hearing which was scheduled at the time of the Notice of Application for a date more than 15 days from the date of the Notice; and (vii) additional information about the purpose of the Notice and the details of the consolidated appeal hearing determined to be appropriate by the Director of Community Development.

(7) The information set forth in the City's Supplemental Notice of Application and Appeal was the information required for a Notice of Application by YMC §16.05.010 and YMC §16.05.020; for a Notice of Public Hearing by YMC §16.05.050; and for a Notice of Appeal of a Class (2) use decision by YMC §15.14.070 and YMC §15.16.030(D) with one exception. Even though the Notice of Application did not specifically state the date of the December 15, 2014, notice of completion for the application (*Exhibit B-2*) as required by YMC §16.05.020(A), the Supplemental Notice of Application and Appeal stated the physical address where the files and additional information relative to both CL2#019-14 and CL2#004-15 were available for public review. (*Exhibits D-4, D-4(a) and D-4(b)*).

(8) Mr. Andreotti argued by letter of May 29, 2015, that notice and an opportunity to be heard must be provided before rather than after the administrative decision is made. (*Exhibit D-5*). However, even the initial Notice of Application is required to be mailed after a preliminary decision to approve the application has already been made by the Administrative Official under YMC §15.14.040(B).

(9) The fact that a final decision rather than a preliminary decision approving the application had been made before the Supplemental Notice of Application and Appeal was mailed does not prevent that Notice from serving the intended purpose for a Notice of Application which is to afford the recipients an opportunity to submit written comments about the application. Here no written comments from the public in addition to the original anonymous written comment of January 2, 2015 (*Exhibit B-6*) were received by the 19<sup>th</sup> day of the comment period. Only a letter of May 29, 2015, on behalf of the Appellants from Mr. Andreotti was received which asserted that a Notice of Application cannot be provided after the decision is made. (*Exhibit D-5*). Here the recipients of the Supplemental Notice of Application and Appeal were afforded an additional opportunity to comment that is not normally afforded for Class (2) applications. They were also afforded the opportunity to either submit written comments or live testimony about the parking lot application at the hearing on the 20<sup>th</sup> day of the comment period. (*Exhibit D-4, page 2*).

(10) Curing the defective notice in the manner selected by the City with the Applicant's concurrence is much preferable to a subsequent remand for that purpose either by the Hearing Examiner, the City Council or a Court with the attendant unnecessary delay and expense which that would entail. The Notice of Application after such a remand would also be mailed after a final CL2#019-14 parking lot decision had already been made.

(11) In order to assure that any comments submitted at the hearing relative to the CL2#019-14 parking lot decision had been considered and given the same effect as after a remand of the decision, the Hearing Examiner asked the three Planning Division representatives who attended the entire hearing whether any of the comments submitted during the hearing would cause the Planning Division to change anything in its CL2#019-14 parking lot decision. The response was that no comments were presented at the hearing to cause the Planning Division to change or modify its parking lot decision. (*Testimony of Jeff Peters*).

(12) The evidence presented at the hearing by way of written comments or testimony of any significance relative to the parking lot decision involved the terms of the private Settlement Agreement between UGM and YGO which arguably included more limitations upon the access to the parking lot from Oak Street than was required by the City's decision in CL2#019-14. (*Video recording of the hearing and all exhibits submitted*). Mailing of the Notice of Decision for this Hearing Examiner decision in accordance with the applicable zoning ordinance requirements will cure and remedy any arguable deficiencies in the January 20, 2015 notice of the CL2#019-14 parking lot decision and will commence the 14-day time period for a further appeal to the Yakima City Council by any aggrieved person(s) or by any agency of the City/County affected by this decision.

(13) Even though the proper remedy for notice defects that are not in substantial compliance with the notice requirements is to remand the matter for processing with proper notice (*Prosser Hill Coalition v. County of Spokane, supra at pages 283-284 & 292-293*), and even if the CL2#019-14 parking lot decision would have been void for failure to mail the Notice of Application thereof to all landowners within 300 feet of the UGM site on December 18, 2014, here the parking lot work was subsequently ordered to be stopped and the defect in the mailing of the Notice of Application was cured on May 28, 2015. The defect in the mailing of the notice was cured and remedied by the mailing of the Supplemental Notice of Application and Appeal to all persons entitled thereto, including the landowners within 300 feet of the development site. (*Exhibits D-4, D-4(a) and D-4(b)*).

(14) The actions on the City's part to cure the defects in the December 18, 2014, mailing of the Notice of Application for the CL2#019-14 parking lot decision substantially complied with all Notice of Application and Notice of Appeal ordinance requirements without the need for a remand of the decision. These steps on the City's part accomplished substantially the same notice and provided substantially the same opportunity to be heard regarding the application that a remand of the matter would accomplish. This is true even though it was mailed after the January 20, 2015 decision was issued because remand of the matter would also involve the mailing of a second Notice of Application after the January 20, 2015 decision had already been made. This is also true whether it allowed a 19-day comment period during which no additional public comments were received about the CL2#019-14 parking lot decision or whether it allowed a 20-day comment period for submission of either written or verbal comments at

the hearing which did not provide any basis for changing or modifying that decision. The City's timely steps to cure and remedy notice issues before the hearing, which should be encouraged, avoided the unnecessary delay and expense that a remand of the matter would entail.

(15) Since there is no need to remand the CL2#019-14 parking lot decision to the Administrative Official to re-process that application with proper notice, the CL2#004-15 health care clinic/residential dormitory decision which requires additional paved parking spaces need not be reversed and remanded to the Administrative Official to await re-processing that application. However, in the event that the CL2#019-14 parking lot decision is appealed to the Yakima City Council and in recognition of the fact that the CL2#004-15 health care clinic/residential dormitory decision is a separate decision that could possibly be partially completed or modified or completed with other provisions for seven parking spaces elsewhere or completed while an appeal is pending or otherwise considered separately from the CL2#019-14 parking lot decision, the following condition will be added to the CL2#004-15 health care clinic/residential dormitory decision:

“f. Additional parking spaces of the number and type specified by YMC Chapter 15.06 are required for those uses that are approved and constructed pursuant to this decision.”

**VII. FINDINGS RELATIVE TO THE THIRD STATED GROUND FOR APPEAL TO THE EFFECT THAT THE CL2#004-15 DECISION MUST BE REVERSED AND REMANDED FOR A DETERMINATION OF COMPATIBILITY FOR THE FOLLOWING REASONS STATED IN APPELLANTS' "REASON FOR APPEAL"**

“(c) Compatibility:

Whether the present application is properly reviewed as a Class 2 or a Class 3 application, compatibility review is required. YMC 15.04.020(B) and (C).

The City's Decision on this application notes the compatibility requirement for a Class 2 review but does not address compatibility issues in the Decision or findings.

Compatibility was a hotly contested issue at the initial hearings on location of the UGM on North 1<sup>st</sup> Street. Some of the compatibility issues were addressed in the

Settlement Agreement with the imposition of additional conditions to mitigate some impacts of the Mission on surrounding businesses. Those conditions include:

Section 3 of the Agreement required the Mission to provide a restroom to the general public 24-hours per day, 7 days per week. This restroom facility is not presently provided with resulting, anticipated adverse effects on surrounding property.

Section 6 of the Agreement provided UGM would provide a reading/day room between the hours of 7:00 a.m. and 8:00 p.m. Clients would be allowed to stay on the UGM property as long as they adhere to UGM rules. This facility does not appear to have been maintained, if it was ever provided with the result that Mission residents and clients for other services are out on North 1st Street and surrounding areas most or all of the day.

Section 10 of the Agreement provided the Mission would provide two (2) scheduled shuttles per day offering transportation for clients to designated spots in the City for a minimum of one (1) year. The shuttle service was not continued with the result that there is now a steady stream of pedestrians, clients and residents of the Mission, moving up and down North 1st Street on both sides of the street, interfering with businesses in the area and their customers.

Section 12 of the Agreement provided a minimum of one (1) uniformed night security guard would be provided by UGM to make hourly patrols of the property and stay in radio communication with the Yakima Police Department. This has not been done.

Section 15 of the Agreement limited occupancy of the facility to 260 residents, unless otherwise reduced by the City of Yakima Fire Code provisions. It is unknown what the current number of residents of the facility is or what the total number of residents would be if the proposed expansion is approved. The total number of residents must, however, be limited to 260 consistent with the Agreement.

The starting point of any compatibility review for expansion of UGM facilities and operations must be a determination of whether or not UGM has complied with the conditions pursuant to which it began operations on North 1st Street, and whether or not those conditions were, in fact, adequate to render the Mission and its operations compatible with surrounding land uses.

The compatibility of expanded facilities and operations of UGM must also be viewed in light of the effect the current operations have had on property values in the neighborhood.

An example of the impact on values is the former Red Lion Inn property, Parcel No. 181313-11001. At the 1992 hearing, substantial testimony and evidence was submitted in behalf of Red Lion that the location of the Mission would have a devastating impact on their business and property values.

In 2005, the property sold for \$3,911,000.00 (Excise Tax Receipt No. 374046). In 2012, the property sold at a trustee's sale following foreclosure of a Deed of Trust for \$2,000,000.00 (Excise Tax Receipt No. E001954). In 2013, the property sold for \$1,500,000.00 (Excise Tax Receipt No. 433294), approximately 38% of its 2005 value.

The 4/17/2015 Decision must be reversed and remanded to the Planning Department for determination about UGM's compliance with the original conditions imposed as well as a specific evaluation of or if additional conditions are required to insure the compatibility of current and expanded Mission operations with the existing businesses on North 1st Street."

(1) Appellants correctly assert that the present applications require compatibility review whether they are Class (2) uses or Class (3) uses under YMC §15.04.020(B) or YMC §15.04.020(C). Under those provisions, both Classes of uses must be compatible with the intent and character of the district and the policies and development criteria of the Yakima urban area comprehensive plan. The purpose of the zoning district development standards is to achieve, or at least promote, compatibility of Class (2) uses by objective and uniform standards prescribed by the City's legislative policy-making body rather than by subjective and unpredictable opinions held by different Administrative Officials, Hearing Examiners or City Councils. (*YMC §15.05.010, YMC §15.06.010, YMC §15.07.010, YMC §15.08.010 & RCW 15.09.010*).

(2) Against this backdrop mandating the consideration of the compatibility of UGM's existing and proposed uses in the context of the intent and character of the M-1 (Light Industrial) and GC (General Commercial) zoning districts and the comprehensive plan policies and development criteria, the City's decisions in CL2#019-14 and in CL2#004-15 speak for themselves as to the many factors they consider and address in detail regarding the compatibility of the uses they approve.

(3) The CL2#019-14 parking lot decision contains a consideration of the nature of the proposal which is to construct a 34-space 13,000-square-foot paved parking area next to UGM's existing facility similar to other paved parking on its site. The decision contains (i) a consideration of the intent of the General Commercial comprehensive plan

designation to include retail and service uses; (ii) a consideration of the applicable comprehensive plan goals and policies that are consistent with the existing UGM use and its request for additional parking; (iii) a consideration of the intent of the M-1 zoning district which is in part to minimize conflicts between uses in the M-1 district and surrounding uses and also to avoid generating noise levels, light, odor or fumes that would constitute a nuisance or hazard per YCC §15.03.020; (iv) a consideration of the zoning classifications of the surrounding properties which are the same as the two zoning classifications of the UGM site; (v) a consideration of the specific zoning ordinance requirements that apply to the parking lot application, including landscaping of the parking area, sidewalk installation along Oak Street, installation of lighting for the parking lot that will be directed to reflect away from adjacent properties, construction of the driveway to the parking lot, sitescreening that is already provided for the parking lot, the proper width for the access aisles next to the two accessible parking spaces, paving of the undeveloped property so as to reduce airborne particulate levels of dust and installation of a stormwater collection system to filter surface runoff. (*Exhibit B-7; YMC §15.06.090(A); YMC §12.05.010; YMC §15.06.100; YMC §15.06.065(E); YMC §15.06.065(G); YMC Chapter 15.07; YMC Chapter 8.64; YMC §15.06.065; & YMC §12.03.010*).

(4) The CL2#019-14 parking lot decision also contains a consideration of the fact that a parking lot by itself, without being part of a “Mission” use, would be an outright permitted Class (1) use in the M-1 zoning district. It finally imposes conditions requiring the construction of a sidewalk on the south side of Oak Street along the UGM frontage and requiring eight-foot-wide access aisles next to the two nine-foot-wide accessible parking spaces. A large part of the CL2#019-14 parking lot decision in some way addresses factors relating to the compatibility of the parking lot with the intent and character of the M-1 zoning district and with the policies and development criteria of the comprehensive plan. (*Exhibit B-7*). No testimony or written comments submitted at the hearing detailed any basis for finding the parking lot to be incompatible with the intent and character of the M-1 zoning district or the policies and development criteria of the comprehensive plan. Appellants’ main contention regarding the compatibility of the parking lot as approved was the failure of the access from Oak Street to be limited in the way that they contend was the intent of the Settlement Agreement, which interpretation was disputed by UGM.

(5) The CL2#004-15 health care clinic/residential dormitory decision likewise contains a consideration of the nature of the proposal which is to construct inside the exterior boundaries of its existing facility (i) a new 3,585-square-foot health care clinic connected to its existing dental clinic which will consist of a reception office, administration area, waiting room, assessment/vitals lab, exam rooms, dispensary, storage area and other support facilities and also (ii) 18 second-floor-level residential dormitory units above the health care clinic and dental clinic that will accommodate 10 women in 5 units and 28 men in 13 units with other support facilities and improvements. The decision also considers in great detail the factors to be considered relative to compatibility and the manner in which they apply to specific features of the health care clinic and the residential dormitory units. (*Exhibit C-7; YMC 15.06.090(A), YMC §15.06.100; YMC §15.06.065(E); YMC §15.06.065(G); YMC Chapter 15.07; YMC Chapter 8.64; YMC §15.06.065; and YMC §12.03.010; comprehensive plan Goal 3.10, Goal 3.16, Policy 3.16.1 & Policy 3.16.2*). The decision indicates (i) that the additional dormitories are intended to provide better separation of single men from families; (ii) that the installation of a sidewalk along Oak Street would be deferred for a time during which the installation of a fence was recommended in accordance with the suggestion of UGM; and (iii) that the access to the parking lot from Oak Street must be gated with an automated access for use exclusively by delivery, maintenance and operations of the Union Gospel Mission and not by UGM clients. (*Exhibit C-7, page 7; Exhibit C-7, page 8, condition 1(c)*).

(6) The record confirms Appellants' contention that compatibility was a hotly contested issue at the initial hearings on the location of the UGM at its current North 1<sup>st</sup> Street site. Prior to the Administrative Official's Class (2) decision in CL(2)#10-92 on July 10, 1992, a total of 796 letters had been submitted for the record, 329 letters in opposition and 467 letters in favor. (*Exhibit E-2, page 2*). Some of the compatibility concerns listed in that decision were expressed by those in opposition to the decisions in this consolidated appeal, though there was considerably less opposition to the current applications and decisions than expressed by the 329 letters submitted and four days of testimony presented in 1992. (*Exhibit E-2, page 3*). The conditions required by the 1992 decision greatly contributed to the compatibility of UGM's existing facility with the surrounding area. (*Exhibit E-2, page 4*). They were the result of a thorough and expert consideration of the compatibility of the "Mission" use at the current 1300 North 1<sup>st</sup> Street location for at least 21 pages of the Hearing Examiner's appeal decision issued on October 19, 1992. (*Exhibit E-3, pages 12-33*). His interpretations of the "Mission" use as compatible at its current location in Interp. #1-92 and Interpretation #2-95 also exhibit a

thorough understanding and consideration of the UGM uses and their compatibility in comparison with other uses in the area and in the same zoning districts. (*Exhibit E-1 and E-4*). His compatibility analysis is equally applicable to the decisions involved in this consolidated appeal because the current applications will not significantly change the UGM uses that have for the most part been in place since 1996.

(7) The proposed parking lot and health care clinic/residential dormitory uses will likely increase the compatibility of UGM's use by providing a paved rather than dirt parking area with lighting and storm drainage and utilization of interior space within the facility to improve the ability to provide quality health care and residential facilities in order to better serve people who would be in dire need of that type of assistance. Members of the public who expressed opposition to those proposed uses at the hearing were mainly objecting to the inappropriate conduct of homeless people who were unwilling to abide by the rules of conduct that are required to be a client of UGM. Some of the main objections can generally be summarized as follows:

(a) Some homeless people who walk to and from or loiter in the vicinity of the UGM site use business and residential properties as restrooms or subject property owners to theft, vandalism or other criminal acts without any consequences, and cause customers of businesses and renters of residential property to avoid the area with an attendant significant loss of income and decrease in property values.

(b) As asserted by the petition submitted to the Planning Division that is signed by 227 people (*Exhibits D-6 & E-13*), the UGM operations would be more compatible if UGM were to comply with the Settlement Agreement provisions filed with the City in 1994, including the provision prohibiting all access to the parking lot from Oak Street except for utilities.

(8) On the other hand, members of the public who testified in favor of the additional UGM uses indicated that UGM clients likely are not the ones causing problems for nearby businesses and residents. They emphasized the valuable services that UGM provides for disadvantaged individuals in our area. Those services include temporary housing, meals, job skills classes, dental and medical treatment, addiction recovery programs, catering, recycling and referrals to other local service providers. It does so through volunteers and donations rather than tax dollars. Improving the UGM health care clinic with the additional parking spaces needed for that use will allow UGM to provide better health care services to the community without exacerbating the

problems detailed by those who testified in opposition to the proposed uses. The UGM has been complying with all of the provisions of the Settlement Agreement and will continue to do so, although there is a difference of opinion as to the intended meaning of several of the provisions. Some of the main points expressed by members of the public who testified in support of the approval of the UGM parking lot, health care clinic and residential dormitory uses can be summarized as follows:

(a) The fact that people who create problems for businesses or residences are not residents of UGM is apparent from the host of activity that takes place on North 1<sup>st</sup> Street after 9:00 p.m. when UGM residents are in bed. There have been 30 to 40 homeless people living along the river for many years who have always walked up and down North 1<sup>st</sup> Street. Many of them have mental problems which sometimes lead to inappropriate conduct. Many homeless people are war veterans who are suffering from the effects of traumatic stress syndrome. Some people from other areas become homeless here when they are released from the County jail. Disadvantaged people from other areas are never bussed or invited to the UGM, but are instead referred to resources in their local area. UGM does not condone criminal activity and works closely in cooperation with law enforcement and responds promptly to complaints from property owners about criminal conduct of people in the vicinity. Exclusively through donations and the efforts of numerous volunteers without any federal, state or local tax dollars, the UGM helps many adults and youth change their lives and become productive citizens who would otherwise likely end up either dead or in prison. Decreases in business profits and property values along North 1<sup>st</sup> Street over the years have been due to factors other than UGM such as the impoverished nature of much of that area which has attracted impoverished individuals for various reasons over the years and such as the fact that development of the downtown mall, the convention center and a variety of tourist attractions resulted in the location of new national chain restaurants, hotels and other businesses there for the convenience of their customers rather than on North 1<sup>st</sup> Street.

(b) Specifically with regard to the effect of the proposed health care clinic on the type of concerns expressed by the opponents at the hearing, that clinic will not affect the number of people coming to the UGM, but will allow UGM to have a better facility to better provide services that it has been providing for years. Only about 10% of the health care clinic patients are homeless. Medical care is provided to most homeless individuals by government programs. About 90% of

the UGM's patients are hard-working low-income people who drive to and from their appointments. They are typically uninsured people who would not be able to access medical care except by using hospital emergency rooms which are unable to provide the primary and preventative medical care needed and which are sometimes so expensive that the only alternative is bankruptcy.

(c) Specifically with regard to compliance with the Settlement Agreement, UGM has complied with all of the provisions of that agreement and will continue to do so. For example, UGM has two day rooms, public restrooms and a park in the back surrounded by six-foot-high walls that are accessible from the south side of the building. UGM has a night watchman who checks the property. UGM will not have more than the 260 residents specified in the agreement even with the proposed residential dormitory units that are primarily intended to provide separation between single men and families. An average of 128 residents stay at UGM which includes about 40 in men's programs, 20-25 in women's shelter housing, 5-10 immobile seniors and 25-30 physically or mentally handicapped residents. The largest number of residents that UGM has ever housed is 214. The additional 18 dormitory units for 38 residents, even if they were all additional residents, would not exceed the 260 maximum number in the agreement. The Settlement Agreement allows access to the parking lot from Oak Street for the delivery of services and not for access by UGM clients. The proposed parking lot area has historically been used for the storage of materials. UGM clients have not been allowed access to that area. It was not intended that access to that area from Oak Street be limited to access for utilities only. The Settlement Agreement provides that the UGM will provide a half-hour time slot at the beginning of each monthly Board meeting for YGO members to attend in order to facilitate communication and allow the two organizations to work more closely together, but no YGO member has ever appeared at a Board meeting to discuss any concerns.

(9) Appellants' assertion that requirements of their private Settlement Agreement would mitigate some of the UGM impacts on surrounding businesses are properly addressed in a specific performance action in a Court rather than in this proceeding because its requirements are in addition to the standards in the City's zoning ordinance and because the intended meaning of several of the requirements is disputed. The requirements of that agreement are private commitments between the UGM and YGO which are not binding upon the City. Insofar they exceed the standards set forth in the City's zoning ordinance, the City would be reluctant to impose them absent a joint

request which was never submitted for the CL2#019-14 or CL2#004-15 applications.

(10) The Settlement Agreement requirements in addition to those required by City ordinances may be enforceable by a Court action as mentioned in Mr. Andreotti's letter to Mr. Phillips. (*Exhibit E-6, page 2; Exhibit C-6(c) attachment, page 4, section 19*). Insofar as Mr. Phillips and Mr. Carmody both testified that all of the requirements of the agreement have been and will be complied with, another alternative to confirm whether that is the case would be for YGO members to take advantage of their contractual right per Section 5 of the Settlement Agreement to attend Board meetings to ask questions, make requests or otherwise open avenues of communication in the interest of working closer together to find solutions to concerns. (*Exhibit C-6(c) attachment, page 2*).

(11) The only direct evidence that was submitted at the hearing regarding the issue of UGM's compliance with the 14 conditions of the decisions pursuant to which it began operations on North 1<sup>st</sup> Street was to the effect that it did comply with those conditions. (*Exhibit A-1, page 10, last paragraph*). Additional conditions have been imposed on UGM's operation by the two decisions subject to this consolidated appeal which promote the compatibility of the parking lot and health care clinic/residential dormitory uses. (*Exhibit B-7, page 7; Exhibit C-7, pages 7-8*).

(12) There was testimony at the hearing to the effect that new development in the City such as construction of the convention center was the cause of the decrease in the value of the Red Lion Inn property rather than the commencement of the UGM operations at 1300 North 1<sup>st</sup> Street in 1996. Since the value of the Red Lion Inn in 1996 was not submitted into evidence, it cannot be determined from the evidence in the record whether its value decreased from 1996 to 2005. If it did not, it would be reasonable to conclude that the decrease in value between 2005 and 2013 was due to factors other than the UGM operations, including perhaps even worsening economic conditions in addition to new development elsewhere in the City.

(13) For these reasons, the decision in CL2#004-15 need not be reversed and remanded to the Planning Division for a determination regarding UGM's compliance with the original conditions imposed as well as a specific evaluation as to whether additional conditions are required to insure the compatibility of current and expanded UGM operations with the existing businesses on North 1<sup>st</sup> Street.

**VIII. FINDINGS RELATIVE TO THE FOURTH STATED GROUND FOR APPEAL TO THE EFFECT THAT THERE ARE SPECIFIC DEFECTS IN CERTAIN FINDINGS AND CONCLUSIONS IN THE CL2#004-15 DECISION FOR THE FOLLOWING REASONS STATED IN APPELLANTS' "REASON FOR APPEAL"**

“(d) Specific Defects in the 4/17/2017 Decision:

Without waiving any of the foregoing objections to the validity of the 4/17/2015 Decision, the following-described Findings, Conclusions and portion of the Decision are erroneous and require reversal of the Decision:

Finding 3: The finding the application is subject to Class 2 is erroneous as noted above. Class 3 review is required.

Finding 4: The 1990 [*sic.*, 1992] Decision and the Settlement Agreement limit the total number of residents at the facility to 260. This includes not merely UGM clients, but also UGM staff residing on the premises. There must be specific evidence and a specific finding the increased residential facilities will not increase the capacity of the UGM facility to house more than 260 residents.

Findings 7-11: As noted above, the Decision authorizing expanded parking facilities is void for failure to give required notice.

In addition, Finding 11 permitting use of the Oak Street access for “delivery, maintenance and operations of the Union Gospel Mission” is contrary to the Settlement Agreement. Settlement Agreement, Section 4, provides:

‘Access [*sic.* *Client access*] to the property, current and future, shall be restricted to the south side [*sic.* *southside*] alley entrance designated by the [*sic.*] Hearing Examiner. The 1<sup>st</sup> [*sic.* *First*] Street entrance will be for administrative and staff [*sic.*, *purposes*] only, [*sic.* .] [*sic.* *There shall be no*] access [*sic.* *from Oak Street except*] for delivery or services to the subject property.’

The Agreement as written contains a typographical error. The phrase ‘delivery or services’ was intended to be “delivery of services” and it was understood and agreed by all parties to the Agreement the only access to the UGM facility from Oak Street would be for delivery of utility services such as sewer, water and electricity. No vehicular or pedestrian access from Oak Street was to be permitted.

Any approval of the additional parking must specifically preclude any access from Oak Street.

Finding 12: The recommendation that a 6-foot fence be installed along the entire length of the Union Gospel Mission abutting Oak Street should be a requirement, not a recommendation.

Conclusion 1: The Conclusion the proposed expansion of facilities and services is “compatible with adjoining land uses” is unsupported by evidence in the record or Findings in the Decision and must be reversed.

Decision, Section C: For the reasons stated above, the Decision must be reversed in its entirety.”

(1) The Finding in decision CL2#004-15 that it is subject to Class (2) review is not erroneous as indicated by the Findings set forth above in Section V of this decision. Class (3) review is not required.

(2) The CL2#004-15 application requested five dormitory units to house two women each, eleven dormitory units to house two men each and two dormitory units to house three men each for a total of 38 residents. The testimony at the hearing was to the effect that the average occupancy of the UGM facility is 128 residents, that the most residents that UGM has ever housed is 214 and that the intent of the additional dormitories is to provide better separation of single men from families. Even if all 38 residents were additional residents, UGM would still have less than 260 residents. As previously stated, YGO has the contractual right to monitor compliance with Section 15 of its Settlement Agreement by attending Board meetings per Section 5 thereof if it wishes to do so. (*Exhibit C-1, page 2; Exhibit C-7, page 3; Testimony of Rick Phillips*).

(3) The CL2#019-14 parking lot decision is not void for failure to give required notice because of the steps taken by the City prior to the June 17, 2015 hearing to substantially comply with all of the City’s Notice of Application requirements for Class (2) uses which are analyzed in detail in the Findings set forth in Section VI of this decision.

(4) Appellants’ assert that Finding 11 of the CL2#004-15 decision which restricts the parking lot allowed by CL2#019-14 to use for delivery, maintenance and operations of the UGM by way of an automated access gate and prohibits use by clients is contrary to Section 4 of the Settlement Agreement because that section was intended to provide that there shall be no access from Oak Street except for delivery of utility services to the subject property rather than what it says: “There shall be no access from Oak Street

except for delivery or services to the subject property.” Appellants’ assertion would require proof of an unintended mistake in the way the contract reads, a construction of the phrase “delivery of services” and an answer to the question of where other than from Oak Street are delivery or service vehicles allowed to access the UGM site if client access is restricted to the southside alley entrance and the First Street entrance is for administrative and staff purposes. (*Exhibit C-7, pages 7-8; Exhibit C-6(c) attachment, page 2*).

(5) Whatever the assertions may be in this regard, it would be for a Court to decide if the language in Section 4 of the Settlement Agreement is ambiguous and, if so, to evaluate the live testimony of witnesses who profess to recall its intended meaning. If the meaning is determined to be as asserted by Appellants, perhaps the circumstances would lead a Court to specifically enforce that provision in addition to what the City has required at the suggestion of the Applicant. The Settlement Agreement is similar to private covenants against property which impose requirements in addition to what the City requires and which the City likewise does not enforce. The requirement of an automated gate to the parking lot to assure use only for delivery, maintenance and operations of UGM in Finding 11 and Condition 1(c) of the CL2#004-15 decision was added at the suggestion of the UGM. (*Exhibit C-7, pages 7-8*). Many of the Findings in Section V of this decision relative to the terms of the Settlement Agreement that purport to classify the “Mission” use as a Class (3) use are equally applicable to the terms of the Settlement Agreement that purport to specify the type of access to the UGM parking lot.

(6) Appellants’ assertion that the recommendation for a 6-foot fence along the Oak Street frontage in the CL2#004-15 decision should be a requirement is similar to the access limitations for the parking lot. The UGM already satisfies the City’s requisite sitescreening requirements along Oak Street. The fence recommendation was also only included in the decision at UGM’s request as a temporary feature pending installation of a sidewalk. (*Exhibit C-7, page 7, Finding 12; Exhibit A-1, page 13, 2<sup>nd</sup> paragraph*).

(7) For these reasons, the CL2#004-15 decision is not required to preclude all access from Oak Street to the UGM parking lot.

(8) Conclusion 1 of the CL#004-15 health care clinic/residential dormitory decision to the effect that those uses are compatible with adjoining land uses is supported by evidence in the record and Findings in the decision and need not be reversed. A large part of that eight-page decision addresses in some way the compatibility of those uses “with the intent and character of the district and the policies and development criteria of

the Yakima urban area comprehensive plan.” (YMC 15.04.020(B)). Many of the Findings in Section VII of this decision are applicable to Appellants’ assertions relative to this stated ground for appeal.

**IX. FINDINGS RELATIVE TO THE FIFTH STATED GROUND FOR APPEAL TO THE EFFECT THAT APPELLANTS’ REQUESTED RELIEF SHOULD BE GRANTED IN THE FOLLOWING SPECIFIC WAYS AS SET FORTH IN APPELLANTS’ “REASON FOR APPEAL”**

“(e) Requested Relief:

Appellants request:

The Decision in Application CL2#019-14 be determined to be void for lack of adequate notice.

Applications CL2#019-14 and CL2#004-15 be reversed and remanded to the City Planning Department for processing as Class 3 land use applications as required by the Settlement Agreement pursuant to which the UGM was permitted to locate at its present site.

The Decision on Application CL2#004-15 be reversed and remanded with specific directions to the Planning Department any Decision approving the application specifically include the conditions contained in the Settlement Agreement, and access to the facility from Oak Street be specifically prohibited in addition to any other conditions imposed to insure compatibility.”

(1) The Hearing Examiner declines to decide that the decision in the CL2#019-14 parking lot decision is void for lack of adequate notice for the reasons detailed in the Findings set forth in Section VI of this decision.

(2) The Hearing Examiner declines to reverse and remand the CL2#019-14 parking lot decision and the CL2#004-15 health care clinic/residential dormitory decision for processing as Class (3) land use applications, declines to find that the Settlement Agreement requires that result and declines to find that UGM was permitted to locate at its present site because of the Settlement Agreement. This request is denied for the reasons detailed in the Findings set forth in Section V of this decision.

(3) The Hearing Examiner declines to reverse and remand the CL2#004-15 health care clinic/residential dormitory decision with specific directions to the Planning Division to specifically include in any decision approving the application the conditions contained in the Settlement Agreement and the condition that access to the facility from Oak Street be specifically prohibited in addition to any other conditions imposed to insure compatibility. This request is denied for the reasons detailed in the Findings set forth in Sections V, VII and VIII of this decision.

## CONCLUSIONS

Based upon the foregoing Findings, the Hearing Examiner reaches the following Conclusions:

(1) The Hearing Examiner has jurisdiction under YMC §15.16.030(F) to affirm, reverse, wholly or in part, or modify a Class (2) decision that is appealed, and to that end is vested with all the powers of the officer from whom the appeal is taken.

(2) Public notice requirements have been satisfied for this consolidated appeal and for the decisions being appealed.

(3) Both of the decisions in CL2#019-14 and in CL2#004-15 have been properly reviewed and decided as Class (2) uses rather than Class (3) uses.

(4) The defects in the mailing of the Notice of Application and arguably in the Notice of Decision for the Administrative Official's CL2#019-14 parking lot decision were cured and remedied with the requisite mailing of a Supplemental Notice of Application and Appeal which substantially complied with the notice requirements for said Administrative Official's decision whether it allowed 19 days for written comments to be submitted or 20 days for written comments and/or live testimony to be submitted.

(5) In the event that the CL2#019-14 parking lot decision is appealed to the Yakima City Council and in recognition of the fact that the CL2#004-15 health care clinic/residential dormitory decision is a separate decision that could possibly be partially completed or modified or completed with other provisions for seven parking spaces elsewhere or completed while an appeal is pending or otherwise treated separately from

the CL2#019-14 parking lot decision, the following condition will be added to the CL2#004-15 health care clinic/residential dormitory decision:

“f. Additional parking spaces of the number and type specified by YMC Chapter 15.06 are required for those uses that are approved and constructed pursuant to this decision.”

(6) Compatibility of the existing and proposed UGM uses have been considered thoroughly by three Class (2) administrative proceedings and four public hearings before the City’s Hearing Examiner and have been conditioned as a result of said proceedings to satisfy the Class (2) use requirement for compatibility with the intent and character of the district and the policies and development criteria of the Yakima urban area comprehensive plan.

(7) Neither the requirements of the 1994 private Settlement Agreement nor the joint requests of the UGM and YGO submitted pursuant to that agreement are binding upon the City even though they may be considered as appropriate regarding issues of compatibility. Issues of interpretation and enforcement of the terms of that agreement by an action for specific performance of the terms are properly determined by a Court rather than a Hearing Examiner.

(8) None of the Appellants’ asserted grounds for appeal warrant the reversal and/or remand of either of the decisions in CL2#019-14 or in CL2#004-15 for the reasons set forth in the Findings for this decision.

(9) Any of the Findings set forth in this decision that constitute Conclusions are intended to be considered as Conclusions to the same extent as if they were included within this section of this decision.

(10) This decision may be appealed within the time and in the manner required by applicable City ordinances.

## DECISION

This consolidated appeal which is being processed under City of Yakima file number APP#002-15 is **DENIED**; the decision which is being appealed and which was

issued under City of Yakima file number CL2#019-14 is **AFFIRMED**; and the decision which is being appealed and which was issued under City of Yakima file number CL2#004-15 is **MODIFIED** to include the following additional condition:

- f. Additional parking spaces of the number and type specified by YMC Chapter 15.06 are required for those uses that are approved and constructed pursuant to this decision.

**DATED** this 9<sup>th</sup> day of July, 2015.

  
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**Gary M. Cuillier, Hearing Examiner**