COMMUNITY DEVELOPMENT DEPARTMENT
Joan Davenport, AICP, Director

Planning Division
129 North Second Street, 2nd Floor Yakima, Washington 98901
Phone (509) 575-6183 • Fax (509) 575-6105
www.yakimawa.gov/services/planning

NOTICE OF APPEAL TO YAKIMA CITY COUNCIL

DATE: June 5, 2015

TO: Appellant and Parties of Record

FROM: Joan Davenport AICP, Community Development Director

SUBJECT: Notice of Appeal of the City of Yakima's Hearing Examiner's Decision regarding a Request for Interpretation and Unclassified Use Interpretation by Yakima Neighborhood Health Services (File Number: INT#001-14)

CITY FILE NUMBER: APP#003-15 & APP#004-15

TAX PARCEL NUMBER: 191319-13473

NOTICE OF APPEAL

The City of Yakima Department of Community Development has received two appeals regarding the City of Yakima's Hearing Examiner's Decision on a request for an Interpretation and Unclassified Use Interpretation by Yakima Neighborhood Health Services of a proposed Community Resource Service Center in the Small Convenience Center zoning district (City File Number INT#001-14). The first appeal, City File Number: APP#003-15, was filed by the City of Yakima Community Development Department 129 N. 2nd St. Yakima, WA 98901, while the second appeal, City File Number: APP#004-15, was filed by a private citizen Maud Scott 309 Union St. Yakima, WA 98901.

NOTICE OF AVAILABILITY OF APPEAL MATERIALS

Appellant and Parties of Record, please be advised that additional information, including the appeal applications, Notice of Appeal, and any written argument or memorandum of authorities accompanying the appeals may be obtained from the City of Yakima Planning Department upon request at, 129 North 2nd Street, Yakima, Washington, or found on the City of Yakima Planning website under Quick Links: http://www.yakimawa.gov/services/planning/

APPELLANT AND APPLICANT OPPORTUNITY TO SUBMIT WRITTEN ARGUMENT OR MEMORANDUM

Parties of record of appeals APP#003-15 and APP#004-15 wishing to respond to the filed applications may submit a written argument or memorandum to the legislative body no later than **5:00 p.m. Tuesday, July 7, 2015**. Please be advised that all written argument or memorandum must be submitted by the above date as the City of Yakima Community Development Department has provided for the maximum time allowed for submittal of written argument or memorandum in accordance with YMC 15.16(B)(2). In addition, all argument or

memorandum shall not include the presentation of new evidence and shall be based only upon the facts presented to the examiner.

Upon completion of the legal required timeframe to submit written argument or memorandum a public meeting before the Yakima City Council will be scheduled by the City of Yakima Clerk to hear the appeal.

NOTICE OF FUTURE ACTION ON APPEAL

Decisions and future notices will be sent to anyone who submits comments on these applications or requests additional notice.

Please reference file numbers (APP#003-15 & APP#004-15) or applicant's name (Yakima Neighborhood Health Services) in any correspondence you submit.

If you have any question on this proposal, please call Jeff Peters, Supervising Planner at (509) 575-6163.

Encl: Appeal Applications and submitted documents.

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CITY OF YAKIMA
PLANNING DIV.

LAND USE APPLICATION

CITY OF YAKIMA, DEPARTMENT OF COMMUNITY DEVELOPMENT
129 NORTH SECOND STREET, 2ND FLOOR, YAKIMA, WA 98902
VOICE: (509) 575-6183 FAX: (509) 575-6105

INSTRUCTIONS – PLEASE READ FIRST Please type or print your answers clearly.

Answer all questions completely. If you have any questions about this form or the application process, please ask a Planner. Remember to bring all necessary attachments and the required filing fee when the application is submitted. The Planning Division cannot accept an application unless it is complete and the filing fee paid. Filing fees are not refundable.
This application consists of four parts. PART I - GENERAL INFORMATION AND PART IV – CERTIFICATION are on this page. PART II and III contain additional information specific to your proposal and MUST be attached to this page to complete the application.

PART I – GENERAL INFORMATION

1. Applicant's Information:	Name:	Maud Scott
	Mailing Address:	309 Union St Yakima 98901
	City:	Yakima St: WA Zip: 98901 Phone: (509) -910-1838
	E-Mail:	maudscott@gmail.com
2. Applicant's Interest in Property:	Check One:	☐ Owner ☐ Agent ☐ Purchaser ☒ Other _____
3. Property Owner's Information (If other than Applicant):	Name:	
	Mailing Address:	N/A Per Jeff Peters Supervising Planner
	City:	St: Zip: Phone: ( )
	E-Mail:	

4. Subject Property's Assessor's Parcel Number(s):

5. Legal Description of Property. (if lengthy, please attach it on a separate document)

6. Property Address: 201 S. 6th St

7. Property's Existing Zoning:

☐ SR ☐ R-1 ☐ R-2 ☐ R-3 ☐ B-1 ☐ B-2 ☐ HB ☒ SCC ☐ LCC ☐ CBD ☐ GC ☐ AS ☐ RD ☐ M-1 ☐ M-2

8. Type Of Application: (Check All That Apply)

☐ Administrative Adjustment	☐ Environmental Checklist (SEPA Review)	☐ Easement Release
☐ Type (1) Review	☐ Right-of-Way Vacation	☐ Rezone
☐ Type (2) Review	☐ Transportation Concurrency	☐ Shoreline
☐ Type (3) Review	☐ Non-Conforming Use/Structure	☐ Critical Areas Review
☐ Preliminary Short Plat	☒ Appeal to HE / City Council	☐ Variance
☐ Final Short Plat	☐ Interpretation by Hearing Examiner	☐ Temporary Use Permit
☐ Short Plat Amendment	☐ Modification	☐ Overlay District
☐ Preliminary Long Plat	☐ Home Occupation	☐ Binding Site Plan
☐ Final Long Plat	☐ Comprehensive Plan Text or Map Amendment	☐ Planned Development
☐ Plat Alteration –Long Plat	☐ Short Plat Exemption:_____	☐ Other:_____

PART II – SUPPLEMENTAL APPLICATION, PART III – REQUIRED ATTACHMENTS, & PART IV – NARRATIVE

9. SEE ATTACHED SHEETS

PART V – CERTIFICATION

10. I certify that the information on this application and the required attachments are true and correct to the best of my knowledge.

Maud Scott
Property Owner's Signature

27 May 2015
Date

Applicant's Signature

Date

FILE/APPLICATION(S)#

DATE FEE PAID:	RECEIVED BY:	AMOUNT PAID:	RECEIPT NO:

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CITY OF YAKIMA
PLANNING DIV.

Supplemental Application for:

APPEAL

Yakima Urban Area Zoning Ordinance Chapter 15.16

- ☐ Of Administrative Official's Decision
- ☒ Of Hearing Examiner's Decision
- ☐ Of Subdivision Administrator's Decision
- ☐ Of SEPA Determination
- ☐ Other _____

Appeal of File Number: 004-15 **Date Action Taken:** 27 May 2015

1. **Description of Action Being Appealed:** attached Statement

2. **Reason for Appeal**: Describe the specific error(s) or issues(s) upon which the appeal is based, including an explanation of why the decision is not consistent with the Yakima Urban Area Plan, The Yakima Urban Area Zoning Ordinance, or other provisions of law. (Reference the section, paragraph, and page of the provision(s) cited.) (Attach if lengthy)

attached Statement

CITY OF YAKIMA
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NOTIFICATION OF APPEAL

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CITY OF YAKIMA
PLANNING DIV

May 13, 2015 HEARING EXAMINER'S INTERPRETATION DECISION

On May 13, 2015 the City of Yakima Hearing Examiner rendered his decision on **INT#001-14**. The application submitted by Yakima Neighborhood Health Services is a request for an interpretation and Unclassified Use of a proposed Community Resource Center in the Small Convenience Center Zoning District located at 201 South 6th Street.

According to: City of Yakima, Findings of Fact, Conclusions & Recommendation for REQUEST FOR UNCLASSIFIED USE INTERPRETATION YAKIMA MUNICIPAL CODE # 15.04.040: I. DESCRIPTION OF REQUEST

The Hearings Examiner was "Specifically, to differentiate the use of a Community Center from that of a Mission use (Mission) (presently defined by City of Yakima Interpretations INT#1-92, and INT#2-95), interpretation of a Mixed Use Building, and establishment of a "Community Resource Service Center" definition and land use category.

Pursuant to YMC#15.22.040 (B), the Hearings Examiner did **NOT** "clearly state the analysis and reasons upon which any interpretation is based and, if the interpretation is a use interpretation, how the interpretation id consistent with the specific conditions in YMC #15.22.050."

Appellants:

Maud Scott

Maud Scott
27 May 2015

Phyllis Musgrove

Phyllis J. Musgrove
27 May 2015

LAND USE APPLICATION

CITY OF YAKIMA, DEPARTMENT OF COMMUNITY DEVELOPMENT
129 NORTH SECOND STREET, 2ND FLOOR, YAKIMA, WA 98902
VOICE: (509) 575-6183 FAX: (509) 575-6105

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PLANNING DIV

INSTRUCTIONS – PLEASE READ FIRST Please type or print your answers clearly.

Answer all questions completely. If you have any questions about this form or the application process, please ask a Planner. Remember to bring all necessary attachments and the required filing fee when the application is submitted. The Planning Division cannot accept an application unless it is complete and the filing fee paid. Filing fees are not refundable.
This application consists of four parts. PART I - GENERAL INFORMATION AND PART IV – CERTIFICATION are on this page. PART II and III contain additional information specific to your proposal and MUST be attached to this page to complete the application.

PART I – GENERAL INFORMATION

1. Applicant's Information:	Name:	Community Development Dept, City of Yakima
	Mailing Address:	129 North 2nd Street
	City:	Yakima St: WA Zip: 98901 Phone: (509) 576-6417
	E-Mail:	
2. Applicant's Interest in Property:	Check One:	☐ Owner ☐ Agent ☐ Purchaser ☒ Other City-Agency
3. Property Owner's Information (If other than Applicant):	Name:	Sung Cho and OK Chu Lee
	Mailing Address:	201 South 6th Street
	City:	Yakima St: WA Zip: 98901 Phone: ( )
	E-Mail:	

4. Subject Property's Assessor's Parcel Number(s): 191319-13473

5. Legal Description of Property. (if lengthy, please attach it on a separate document)
Lots 13 through 16, Block 133, Yakima,

6. Property Address: 201 South 6th Street, Yakima, WA 98901

7. Property's Existing Zoning:
☐ SR ☐ R-1 ☐ R-2 ☐ R-3 ☐ B-1 ☐ B-2 ☐ HB ☒ SCC ☐ LCC ☐ CBD ☐ GC ☐ AS ☐ RD ☐ M-1 ☐ M-2

8. Type Of Application: (Check All That Apply)

☐ Administrative Adjustment	☐ Environmental Checklist (SEPA Review)	☐ Easement Release
☐ Type (1) Review	☐ Right-of-Way Vacation	☐ Rezone
☐ Type (2) Review	☐ Transportation Concurrency	☐ Shoreline
☐ Type (3) Review	☐ Non-Conforming Use/Structure	☐ Critical Areas Review
☐ Preliminary Short Plat	☒ Appeal to HE / City Council	☐ Variance
☐ Final Short Plat	☒ Interpretation by Hearing Examiner	☐ Temporary Use Permit
☐ Short Plat Amendment	☐ Modification	☐ Overlay District
☐ Preliminary Long Plat	☐ Home Occupation	☐ Binding Site Plan
☐ Final Long Plat	☐ Comprehensive Plan Text or Map Amendment	☐ Planned Development
☐ Plat Alteration –Long Plat	☐ Short Plat Exemption:	☐ Other:

PART II – SUPPLEMENTAL APPLICATION, PART III – REQUIRED ATTACHMENTS, & PART IV – NARRATIVE

9. SEE ATTACHED SHEETS

PART V – CERTIFICATION

10. I certify that the information on this application and the required attachments are true and correct to the best of my knowledge.

Joe Cavaos, Acting City of Yakima Community Development Department — 5/27/15
~~Property Owner's Signature~~ Date

Applicant's Signature — Date

FILE/APPLICATION(S)# APP# 003-15

DATE FEE PAID:	RECEIVED BY: CMellinger	AMOUNT PAID:	RECEIPT NO:

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CITY OF YAKIMA
PLANNING DIV.

Supplemental Application for:

APPEAL

Yakima Urban Area Zoning Ordinance Chapter 15.16

☐ Of Administrative Official's Decision ☒ Of Hearing Examiner's Decision

☐ Of Subdivision Administrator's Decision ☐ Of SEPA Determination

☒ Other Appeal of Interpretation

Appeal of File Number: INT #001-14 **Date Action Taken:** May 12, 2015

1. **Description of Action Being Appealed:** (See attached)

2. **Reason for Appeal**: Describe the specific error(s) or issues(s) upon which the appeal is based, including an explanation of why the decision is not consistent with the Yakima Urban Area Plan, The Yakima Urban Area Zoning Ordinance, or other provisions of law. (Reference the section, paragraph, and page of the provision(s) cited.) (Attach if lengthy)

(See attached)

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CITY OF YAKIMA
PLANNING DIV.

1. **Description of Action Being Appealed**.

The Community Development Department of the City of Yakima, pursuant to the provisions of YMV 15.16.030(A), hereby appeals the Hearing Examiner Interpretation in File No. INT#001-14, dated and issued May 12, 2015, and published May 15, 2015. The Hearing Examiner Interpretation is captioned as flows:

> "Request for Interpretation and Unclassified Use Interpretation by:
>
> Yakima Neighborhood Health Services,
>
> Of a Proposed Community Resource Service Center in the Small Convenience Center Zoning District."

The Hearing Examiner Interpretation described above is hereafter referred to as the "YNHS Interpretation Decision."

2. Reasons for Appeal: *Describe the specific error(s) or issues(s) upon which the appeal is based, including an explanation of why the decision is not consistent with the Yakima Urban Area Plan, The Yakima Urban Area Zoning Ordinance, or other provisions of law. (Reference the section, paragraph, and page of the provision(s) cited.)*

A. **The Hearing Examiner erred in construing and applying the provisions of YMC 15.04.040.**

At the top of page 9 of the YNHS Interpretation Decision, the Hearing Examiner quotes the terms of YMC 15.04.040, which reads:

> **15.04.040 Unclassified uses.**
>
> Any use not listed in Table 4-1 is an unclassified use and shall be permitted only in those districts so designated by the hearing examiner. Any unclassified use permitted in a particular zoning district shall be allowed only as a Class (2) or (3) use. The hearing examiner shall follow the provisions of YMC Chapter 15.22 when determining which zoning districts are appropriate for a particular unclassified use.

The plain language of the code provision quoted states that any interpretation of a particular unclassified use "shall be permitted only in those *districts so designated by the hearing examiner*....The hearing examiner shall follow the procedures of YMC Chapter 15.22 when determining which *zoning districts* are appropriate for a particular unclassified use."

The Hearing Examiner erred by holding that any unclassified use interpretation issued by a Hearing Examiner would apply only to the specific location of the proposed use and not

throughout all other areas of the City carrying the same zoning district designation. (*YNHS Interpretation Decision*, pages 9, 10.)

B. <u>The Hearing Examiner erred by ruling that nothing in the Yakima Municipal Code requires the development of a new use definition for a previously unclassified use</u>.

The Hearing Examiner states at page 9 of the YNHS Interpretation Decision that "nothing in the ordinance requires the development of a new use definition for hitherto unclassified use...." On the contrary, YMC 15.04.040 requires the Hearing Examiner to define and describe a "particular unclassified use" when considering the use and the zoning districts in which such use will be permitted. A "particular unclassified use" requires a description to make it "particular" and to distinguish it from other existing defined uses.

All of the "permitted land uses" listed in Table 4-1 (YMC 15.04.030) for "Health and Social Service Facility" have a specific definition found in Chapter 15.02 YMC – except for "Treatment Center for Drug and Alcohol Rehabilitation," which is extensively regulated by state law (*see, e.g.*, Chapter 71.12 RCW).

C. <u>The Hearing Examiner erred by failure to give precedential effect to previous interpretation decisions</u>.

The Hearing Examiner cites the 1992 and 1995 Hearing Examiner Interpretations pertaining to the Union Gospel Mission's current location on North 1st Street. The 1992 Interpretation created a new definition of "mission use" and ruled that such use would be permitted as a Class (2) use in the CBD Central Business District and the then-CBDS Central Business District Support (now GC General Commercial) zoning districts. The 1995 Interpretation extended the permitted "mission use" to the M-1 Light Industrial zoning district. However, the Hearing Examiner ruled that these prior Interpretations do not have precedential effect. YNHS Interpretation, pages 9, 10.

As discussed above, YMC 15.04.040 is the legislative direction providing that the Hearing Examiner shall have jurisdiction to make "unclassified use" determinations, which shall have application and effect in the "zoning districts" determined to be appropriate by the Hearing Examiner. YMC 15.22.040(C) mandates that City's Community Development Department "shall keep a copy of each interpretation on file and shall make a copy available for public inspection during regular business hours." One of the primary reasons the Interpretation Decisions must have precedential effect is that, per YMC 15.04.040, the Interpretation Decision shall apply to each zoning district determined to be appropriate by the Hearing Examiner. Thus, if a new applicant decides to locate a "mission" anywhere else in the GC, CBD and/or M-1 zoning districts, there is no need to seek a "new" use interpretation. The use interpretation has already been made, and the new applicant

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would be entitled to present and process a Class (2) permit application for the new mission use in the GC, CBD or M-1 zoning districts.

D. The Hearing Examiner erred by finding that his function was "legislative" and that he had no jurisdiction to define a new use or designate appropriate zoning districts.

This is a key error. At pages 9 and 10 of the YNHS Interpretation, the Hearing Examiner declares his "unclassified use jurisdiction" as having area-wide effect, and, and as such, is "legislative" – a function not available to the Hearing Examiner per RCW 35.63.130(1). However, this section actually provides (emphasis added):

> (1) As an alternative to those provisions of this chapter relating to powers or duties of the planning commission to hear and report on any proposal to amend a zoning ordinance, the legislative body of a city or county may adopt a hearing examiner system under which a hearing examiner or hearing examiners may hear and decide applications for amending the zoning ordinance when the amendment which is applied for is not of general applicability. In addition, the legislative body may vest in a hearing examiner the power to hear and decide those issues it believes should be reviewed and decided by a hearing examiner, including but not limited to:
>
> > (a) Applications for conditional uses, variances, subdivisions, shoreline permits, or any other class of applications for or pertaining to development of land or land use;
> >
> > (b) Appeals of administrative decisions or determinations; and
> >
> > (c) Appeals of administrative decisions or determinations pursuant to chapter 43.21C RCW.
>
> The legislative body shall prescribe procedures to be followed by the hearing examiner.
>
> (2) Each city or county legislative body electing to use a hearing examiner pursuant to this section shall by ordinance specify the legal effect of the decisions made by the examiner. The legal effect of such decisions may vary for the different classes of applications decided by the examiner but shall include one of the following:
>
> > (a) The decision may be given the effect of a recommendation to the legislative body;
> >
> > (b) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative body; or
> >
> > (c) Except in the case of a rezone, the decision may be given the effect of a final decision of the legislative body.
>
> (3) Each final decision of a hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision. Such findings and conclusions shall also set forth the manner in which the decision would carry out and conform to the city's or county's comprehensive plan and the city's or county's development regulations. Each final decision of a hearing examiner, unless a longer period is mutually agreed to in writing by the applicant and the hearing examiner, shall be rendered within ten working days following conclusion of all testimony and hearings.

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First, the "unclassified use" jurisdiction authorizes the Hearing Examiner to make amendments to the zoning code so long as those amendments are "not of general applicability." The creation of a definition of for an "unclassified use" and designation of the specific zoning districts where such use can be permitted as a Class (2) or Class (3) use applies only in the specific zone(s) designated by the Hearing Examiner. The Hearing Examiner would not have jurisdiction to create a new use that applied in all zoning districts of the City.

Second, pursuant to YMC 15.04.040 and Chapter 15.22 YMC, the legislative body of the City has delegated this specific authority to the Hearing Examiner. It was error for the Hearing Examiner not to exercise this authority.

Third, the municipal code at YMC 15.22.070 has made the interpretation decision an "administrative" function, subject to appeal to the City Council. The City Council makes the final determination whenever a timely appeal is filed. This factor has been held by courts to constitute a lawful delegation of authority to a hearing examiner. *See, e.g., West Slope Community Council v. City of Tacoma,* 18 Wash. App. 328, 569 P.2d 1183 (1977); *State ex rel. Morrison v. Seattle,* 6 Wash. App. 181, 492 P.2d 1078 (1971).

D. <u>The Hearing Examiner erred by failing to construe and apply the existing definition of "mission" to the YNHS proposed use</u>.

The Hearing Examiner failed and refused to apply the existing definition of "mission" to the use proposed by YNHS. (*YNHS Interpretation Decision*, page 14, first full paragraph). The similarities of use between the Union Gospel Mission and the proposed YNHS use are shown on the following chart:

Comparison of Uses Mission Versus Proposed YNHS Neighborhood Resource Service Center (NRSC)		
USES	**NRSC**	**MISSION**
Clothing and Other Staples	X	X
Shower and Similar Facilities	X	X
Transitional Housing	X	X
Meals / Food	X	X
Drug and Alcohol Treatment	X	X

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Dormitory / Shelter	X	X
Dining and Kitchen Facilities	X	X
Employment Assistance and Outreach	X	X
Behavioral Health	X	X
Nutrition	X	X
Maternity Support Services	X	
Respite Care	X	X
Permanent Housing Assistance	X	X
Warming Shelter	X	X
Transportation Assistance	X	

The evidence and testimony in the record establish that the YNHS proposal is a mission use. It was error by the Hearing Examiner to refuse to adequately consider and apply the existing definition of "mission" to the YNHS proposal.

E. <u>The Hearing Examiner erred by failure and refusal to conclude that the YNHS proposal was a mission use</u>.

The Hearing Examiner appropriately analyzed existing municipal code definitions of "community center" and "mixed-use building." These definitions are already included within the Yakima Municipal Code, Chapter 15.02 YMC, and listed as specific permitted land uses in Table 4-1. However, as shown above, the Hearing Examiner failed and refused to adequately analyze and apply the existing definition of "mission" to the YNHS proposed use. Had he done so, the only appropriate conclusion would have been to find and hold that such use constitutes a mission, which is not allowed in the SCC zoning district – or any other zoning district except the GC, CBD and M-1 zoning districts.

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G. <u>The Hearing Examiner erred by improperly spot-zoning the Roy's Market site</u>.

Despite the Hearing Examiner's reluctance to undertake "legislative" jurisdiction, his decision had the effect of creating an improper "spot zone" of the existing Roy's Market parcel. *See, YNHS Interpretation Decision,* page 13 and footnote 7. The Hearing Examiner's decision states that, contrary to YMC 15.04.040, the "unclassified use" interpretation will only apply to specific proposals submitted for a specific location, and will not apply in other SCC zoning districts throughout the City. *Id., at* footnote 7.

The YNHS proposal seeks to establish a mission use located on a single parcel. The subject parcel is zoned SCC Small Convenience Center. The Hearing Examiner does not define the "new use," but only states that the SCC zoning district – at this single location – can support the YNHS proposed use. This constitutes a spot zone. As summarized by an article published by the Municipal Research & Services Center (MRSC):

> The basic definition of spot zoning in Washington was outlined in *Narrowsview Preservation Association v. City of Tacoma*, 84 Wn.2d 416 (1974), in which the court said:
>
> > We have recently stated that illegal spot zoning is arbitrary and unreasonable zoning action by which a smaller area is singled out of a larger area or district and specially zoned for use classification totally different from and inconsistent with the classification of the surrounding land, not in accordance with a comprehensive plan.
>
> The reasons for invalidating a rezone as an illegal spot zone usually include one or more of the following: (1) the rezone primarily serves a private interest, (2) the rezone is inconsistent with a comprehensive plan or the surrounding territory, or (3) the rezone constitutes arbitrary and capricious action.

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The record before the Hearing Examiner is replete with discussion and evidence that allowing the YNHS proposed use is incompatible with the SCC zoning district and the goals and policies of the City's Comprehensive Plan. The proposed use constitutes a use classification "totally different from and inconsistent with the classification of the surrounding land" (which is zoned R-1 and R-2), constitutes a new use classification primarily serving a private interest, and constitutes arbitrary and capricious action.

While the Hearing Examiner noted the importance of the "Health and Social Service" category in Table 4-1 when analyzing the question of whether the YNHS proposal constituted a "community center" and/or "mixed-use building" within the SCC zoning district (YHNS Interpretation Decision, pages 5-8), he failed to consider other uses not permitted in the SCC zoning district. These unpermitted uses include group homes (six

residents or fewer), adult family homes, boarding house, halfway house, group homes (more than six residents), convalescent homes and nursing homes. All of these uses include a residential component, and none are permitted in the SCC zoning district. These factors show clear legislative intent that such uses – and uses such as the fifty-bed facility proposed by YNHS – are not to be permitted in the SCC zoning district. The Hearing Examiner erred by failure or refusal to consider clear legislative intent established for the SCC zoning district, and failed to consider the development standards for the SCC zoning district, all as required by YMC 15.22.050.

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City of Yakima, Washington
Office of the Hearing Examiner

Request for Interpretation and Unclassified Use Interpretation by	)	**File No. INT#001-14**
Yakima Neighborhood Health Services,	)	**HEARING EXAMINER INTERPRETATION**
Of a Proposed Community Resource Service Center in the Small Convenience Center Zoning District.	)	

I. Introduction and Procedural Background

Yakima Neighborhood Health Services ("YNHS") proposes to use property at 201 South 6th Street to provide a specific set of services to a clientele that comprises "homeless" and "pre-homeless" persons. The subject property has been assigned to the Small Convenience Center (SCC) zoning district. The proposal includes the renovation of an existing structure on the property that has principally been used as grocery store or market since the 1920s, and was being used for such purposes at the time the property was zoned SCC.

YNHS is a member of the Homeless Network of Yakima County, which is an association of some forty emergency housing providers, service providers, community leaders and other interested persons who are concerned about addressing the emergency, transitional and permanent needs of the homeless. The Homeless Network has prepared a strategic plan to address problems associated with homelessness in Yakima County. YNHS has developed plans for a "Community Resource Service Center" facility on the subject property that would be used for certain activities that are part of the strategic plan. The proposed use includes activities that have similarities to activities conducted at the Union Gospel Mission (UGM) facility located on South First Street in Yakima. The UGM facility was the subject of considerable land use review and formal land use ordinance interpretation in the 1990s. In 1992, the City's Hearing Examiner issued an unclassified use interpretation (UAZO INTERP. #1-92) that described the array of activities at the UGM facility as a "Mission Use." This interpretation will be referred to as the "1992 interpretation." That interpretation addressed both the nature of the UGM's activities and the level of public review to be conducted in project review. Because of the similarity of some of the uses proposed at the YNHS's proposed Community Resource Service Center to the activities

included in the described Mission Use, City Planning Officials are concerned that the YNHS's proposal is in fact a proposal for a Mission Use, and such a use was determined by the Hearing Examiner to only be appropriate in the Central Business District zoning district. If this is the case, the YNHS proposed use would not be permissible in the SCC and so could not be permitted at the proposed location.

To promote resolution of this matter, YNHS agreed to submit a request for an unclassified use interpretation in accordance with YMC 15.04.040. The application materials for the unclassified use interpretation were submitted on October 22, 2014. In addition, YNHS puts forth that, notwithstanding the planning officials' concerns, the Community Resources Service Center maybe fairly interpreted to be either a "Community Center" or a "Mixed-Use Building." Both terms are defined in the zoning ordinance (YMC 15.02.020) and both uses are permissible in the SCC, subject to Class 2 project permit review as a Community Center and Class 1 project permit review as a Mixed-use Building. On this basis, YNHS submitted a combined application for an interpretation pursuant to Chapter 15.22 YMC and for Class 2/1 project permit review of the Community Resource Service Center. YNHS agreed to a deferral of action on the project permit review until the interpretation process is completed.

Contemporaneously with the interpretation proceeding, the City of Yakima Planning Commission has been conducting a review of potential changes to the zoning ordinance to address the Mission Use concept discussed in the 1992 interpretation. The Planning Commission proceedings generated substantial public interest. In this context, City planning officials urged that an opportunity for public comment also be provided in the interpretation process. YNHS concurred with the public comment solicitation. Written public comment on the interpretation issued was invited, and a public hearing was convened on the evening of April 2, 2015 at the Yakima Convention Center.

In accordance with the agreement of the attorneys for the City and YNHS, each filed post-hearing briefs to address legal issues presented in the interpretation process, and each also filed reply briefs. Briefing was completed on April 28, 2015.

II. Scope of the Proceeding

Interpretations are governed by Chapter 15.22 YMC. The purpose of the chapter is "to define the responsibilities, rules and procedures for clarifying the text of [the zoning ordinance], the zoning map that it incorporates, and the rules and regulations adopted pursuant to it."YMC

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15.22.010. Interpretations are undertaken based on the submission of a request that is distinguishable from an application for project permit review, which relates to issuance of a land use permit or license. YMC 16.02.060. Clarification of the text of the ordinance through the interpretation may facilitate land use permitting or licensing, but the permitting or licensing is undertaken separately.

For present purposes, the interpretation process requires the consideration of a series of questions. A threshold question is whether the proposed use is properly interpreted as one of the classified uses included in Table 4-1, Permitted Land Uses incorporated into the zoning ordinance as part of YMC 15.04.030. The request indicates that proposed use is either a "Community Center" or a "Mixed-use Building." If the use is not a classified use in Table 4-1, the next question is whether it is nevertheless governed by the 1992 interpretation that identified the use at the UGM facility as a "Mission Use." If the YNHS proposed use is neither a classified use or subject to the Mission Use limitations, then the question whether the use is permissible in the zoning district and what level of review should be required.

Much of the public comment received in writing and at the April 2, 2015 public hearing may be fairly characterized as being directed at support or opposition to a potential land use permit or license, rather than meaning of the provisions of the ordinance, or the proper characterization and assignment of an unclassified use. The primary thrust of the comments related to the consequences of the presence of homeless persons in the vicinity of the subject property, the public interest in pursuing the proposed use as part of the overall Homeless Network strategy, and the role the planned facility would play in either alleviating or making worse the various concerns. While this emphasis is understandable, it is germane to the Chapter 15.22 process principally to the extent that it illuminates the meaning of the terms in the ordinance. In the case of an unclassified use interpretation, the comment may be relevant to the level of review the unclassified use is to receive during actual permitting or licensing review.

III. The Proposed Use

The proposed use has been characterized in slightly different ways in the various filings by the City and YNHS. For purposes of a request for interpretation, the starting point for describing the proposed use is that description provided by the requester, YNHS. In its post-hearing brief, YNHS describes the activities proposed for the property to be

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> providing resources, services and assistance to the homeless population in the immediate geographic area. The services and assistance include case management, employment and job assistance resources, health care assessment, education and referral; emergency housing (shelter) and placement assistance for transitional and permanent housing; drug, alcohol and mental health referrals; food service; and other related services.

YNHS POST-HEARING MEMORANDUM at 1. YNHS also describes the proposed use as the combining of provided at another current "Resource Center," which services include

> [Providing] assistance and resources to pre-homeless and homeless individuals and families[,]...basic needs assistance, case management, housing placement and services (transitional and permanent housing), job assistance, consumer counseling, health care evaluation and referral, food service and outreach services[,]

together with emergency shelter facilities not currently being provided. Id. at 5. Providing these services is characterized as an integral part of the larger continuum of care provided by Homeless Network members, and a single point of access to a larger array of services. Id. at 6. The shelter facility would have up to fifty beds. Other components of the facility indicated on the Schematic Floor Plan include a reception area, an office, storage, a kitchen, a dining area, showers and a laundry area within a 13,325 square foot building. [Hearing Exhibit C-2].

IV. Is The Described Use a "Community Center" as Defined in the Zoning Ordinance?

"Community Center" means "a facility owned and operated by a public agency or nonprofit corporation, provided the principal use of the facility is for public assistance, community improvement, or public assembly." YMC 15.02.020. Language in ordinances is to be given its plain meaning. *Sleasman v. City of Lacey*, 159 Wn.2d 639, 643, 151 P.3d 990 (Wash. 2007) (Local ordinances interpreted the same as statutes); *Dept. of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 10, 43 P.3d 4 (Wash. 2002). In *Campbell & Gwinn*, the Supreme Court held that "plain meaning" is derived from what the Legislature has said in its enactments, but that meaning is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question. It is not simply a matter of looking at a dictionary.

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There appears to be no dispute as to YNHS's status as a non-profit corporation. The plain meaning the provisional language is not so easily disposed of, however. Public assistance may generally defined as "government aid to needy, aged, or disabled persons and to dependent children." The various dictionary definitions available on-line generally characterize the assistance as food or financial assistance. The only other reference to public assistance in the YMC is in the context of financial assistance. YMC 7.04.090.D. City staff is clearly not comfortable that "public assistance" as the term is used in the Community Center definition was intended to include "emergency shelters for homeless individuals." CITY OF YAKIMA'S REBUTTAL BRIEF at 7-9. In addition, "community improvement" is not defined and seemingly can only be ascribed some plain meaning in the broader context of the zoning ordinance.

The City Council provided for the differing levels of review of uses in the various zoning districts as laid out in Table 4-1 in recognition that

> [There] are some uses that are consistent with the intent and character of the zoning district; some uses that may be consistent if careful site design neutralizes the adverse characteristics of the use or site; and other land uses that, regardless of site design, are not consistent with the intent or character of the district.

YMC 15.04.010. Table 4-1 organizes uses into broad categories such as "Agricultural," "Community Services," "Health and Social Services" and "Residential." This at least suggests something of the understanding the City Council had of the meaning of the terms employee in use classifications. Based on these broad groupings, Community Services appear to be intended to be separable from Health and Social Services. In this regard, Community Centers are grouped together with Meeting Halls and Fraternal Organizations under the broader heading of Community Services. In contrast, uses that involve some social service (e.g. drug and alcohol rehabilitation; special needs group homes; halfway houses), including some sort of residential support for the person being provided the services are included under Health and Social Services. This indicates that "public assistance" and "community improvement" refer to something different from "residential social services." The City notes that in the 1992 Hearing Examiner consideration of the classification of the UGM, he also discussed the distinction between the UGM use and Community Center uses based on residential considerations. That distinction is consistent with the indications of legislative intent in the organization of Table 4-1.

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That distinction also comes with a difference in result. Community Centers are generally subject to Class 2 review in all districts where they are permitted. As noted by YNHS, that includes all districts other than the AS and industrial districts. Social services uses with a residential component or potential residential component are more often than not either Class 3 uses or not permitted in most of the zoning districts in Table 4-1. This appears to be the case even if it is posited that there is a substantial public benefit from the social services, just as is arguably the case that there is a substantial public benefit in the Homeless Network's homelessness reduction goals.[2]

In appears, therefore, the Community Center definition does not plainly include the residential social services-oriented elements of the Community Resource Service Center use based on the "public assistance" element. Rather, in the context of the zoning ordinance as a whole (with its broad categorizations of uses), it does not appear that City Council intended that such residential social services uses would be included within the definition of a public assistance-purposed Community Center.

The same general considerations bear on the intent underlying "community improvement." in the Community Center definition. Community Centers are grouped in Table 4-1 with Meeting Halls and Fraternal Organizations under the broader heading of Community Services. Again, based on the array of uses in the Community Services grouping, the concept appears to be distinguished from residential social services. Neither the City nor YNHS have offered any alternative analysis based on dictionary definitions, the American Planning Association's Planners Dictionary or Black's Law Dictionary. YMC 15.02.020. Neither has the City provided examples of land uses that do constitute "community improvement" oriented Community Centers, though some public testimony did refer to the Southeast Yakima Community Center in the context of the use interpretation.

Some additional indication of legislative intent can be inferred from the zoning ordinance purpose to implement the *Yakima Urban Area Comprehensive Plan (YUACP).* YMC 15.01.030 provides:

> The purpose of this title is to implement the Yakima urban area comprehensive plan and promote the general health, safety and welfare of present and future

[2] The Homeless Network's 10-year strategic plan for ending homeless has been adopted both by the City of Yakima and Yakima County.

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inhabitants of the Yakima urban growth area. The goals and policies of the urban area comprehensive plan will be used for interpretation and implementation.

In its Housing Element, the *YUACP* notes the interconnection of the plan with the City of Yakima's Consolidated Plan[3], contains a five-year strategy for the provision of affordable housing for Yakima Urban Area residents. *YUACP* at p.V-2. In turn, the Consolidated Plan's strategy for "[Encouraging strong neighborhood associations to represent neighborhood Residents" sets objectives to

- Support the efforts of residents to obtain resources that enhance neighborhoods, such as creating daycares and community centers.
- Support policies and activities that connect neighborhoods to community resources.

This connection again indicates that "community improvement" is conceptually different from providing residential social services.

Collectively, these considerations do not substantiate the treatment of the proposed use as a Community Center use.

V. Is the described use a "Mixed-use Building" as defined in the zoning ordinance?

"Mixed-use Building" means a building in a commercial district or planned development used partly for residential use and partly for a community facility or commercial use. YMC 15.02.020. The proposed location for the Community Resource Service Center is clearly within a commercial district. The SCC district is expressly designated as a Commercial District in YMC 15.03.010. However, the terms "residential use" and "community facility" raise similar "plain meaning" questions as those bearing on the "public assistance" and "community improvement" elements of the Community Center definition. The intent underlying the use of the residential use term must be understood in the context of the provisions within which it appears and related provisions of the ordinance. The Mixed-use Building use is included in among and array of "dwelling" uses. This generally does not suggest that residential use as the term is used was intended to include social service-based emergency shelter use. This may be in contrast to transitional housing services that are integral to the Homeless Network Ten-year Plan

[3] In order to receive formula allocations of the certain federal funds (e.g. Community Development Block Grants), the United States Department of Housing and Urban Development requires the creation of a 5-year Consolidated Plan. Consolidated Plan (2010-2014) at p. *ii*.

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[Hearing Exhibit B-2]. Once again, there are a grouping of residential social service uses addressed directly in Table 4-1 under the Health and Social Services heading in contrast to the dwelling unit emphasis of uses under the Residential Use Heading.

YNHS has suggested that in as much as the Mixed-use Building definition was adopted into the zoning ordinance following the 1992 interpretation, it amounted to a recognition that there are mixed use facilities in commercial districts. This assertion in itself presents some logical difficulties, but more importantly, the definition refers to "planned developments." A specific provision for planned developments was added to the zoning ordinance in 1998.[4] That provision provided for mixed use planned developments. The 1998 ordinance was superceded by the current planned development ordinance in 2008. A planned development is "intended to provide flexibility in design and building placement, promote attractive and efficient environments that incorporate a variety of uses, densities and/or dwelling types, provide for economy of shared services and facilities, and economically utilize the land, resources, and amenities." YMC 15.28.010. The term "community facility" read in this context appears to be related to the use by community residents. In any case, emergency shelter does not fall plainly within the meaning of "community facility" in the context of the Mixed-use Building definition. Looking more deeply into the background of the planned development reference, it appears that the Mixed-use Building definition was not adopted until 2010.[5]

In short, there is no indication that the City Council intended that the residential use or community facility provisions were intended to include use for emergency residential shelter or the delivery of general public assistance services. On this basis, the described Community Resource Service Center use is not a Mixed-use Building use.

VI. Applicability of the "Mission Use" description in the 1992 Hearing Examiner Interpretation to the proposed Community Resource Services Center use.

As discussed above, the emergency shelter use does not fall within the uses that have been classified in Table 4- 1"to establish the degree to which [the] use is permitted in each district and establish the appropriate type of review for [the] use in terms of the specific standards and requirements of each district." YMC 15.04.010. As an unclassified use, the proposed facility is subject to review in accordance with YMC 15.04.040, which provides

[4] Ord. 98-63

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> Any use not listed in Table 4-1 is an unclassified use and shall be permitted only in those districts so designated by the hearing examiner. Any unclassified use permitted in a particular zoning district shall be allowed only as a Class (2) or (3) use. The hearing examiner shall follow the provisions of YMC Chapter 15.22 when determining which zoning districts are appropriate for a particular unclassified use.

The terms of the ordinance contemplate the designation of districts in which a particular unclassified use will be allowed, and the level of review in permitting such a use. The key question arising as a result is whether this ordinance empowers the Hearing Examiner to determine in one instant all of the zoning districts in which an unclassified use would be permissible. This is what the City argues is the consequence of the 1992 interpretation. However, YMC 15.22.050.B provides for the affirmative determination, based on evidence, that a use will comply with the intent for the particular district before a district will be designated for the use.

Although nothing in the ordinance requires the development of a new use definition for hitherto unclassified use, the Hearing Examiner adopted a definition in the 1992 interpretation:

> 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.

The Hearing Examiner further designated the CBD and the then-CBDS zoning districts as districts in which the defined use was permitted, subject to Class 2 review. If the interpretation was to have area-wide effect, then the defined use would presumptively not be permitted in other districts. However, in a 1995 interpretation regarding the same use and property, the Hearing Examiner simply added another designated zoning district (M-1 in that case) based on a determination that other uses similar to the "Mission Use" were allowed in the district. UAZO Interpretation #2-95 at 3.

The Hearing Examiner's objective in defining the Mission use was to promote public input prior to a use approval to "help government recognize and balance various viewpoints." 1992 Interpretation at 9. This definition turned on a determination that UGM included a

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[5] Ord. 2010-16

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combination of uses. 1992 Interpretation at 7. Put another way, the definition was useful to the Hearing Examiner in filling the procedural gap for an unclassified use zoning district designation. It was not intended as a creation of a new land use classification.

Creation of a new land use classification of a "Mission" that applies across the board sounds very much like a legislative determination. An action is legislative if it declares or prescribes a new law, policy, or plan. *Phoenix Development, Inc. v. City of Woodinville*, 256 P.3d 1150, 171 Wn.2d 820 (Wash. 2011). A hearing examiner is not empowered to hear and decide applications for amending the zoning ordinance when the amendment which is applied for is of general applicability. RCW 35.63.130(1). Determinations of general applicability are viewed to be legislative. *Pentagram Corp. v. City of Seattle*, 622 P.2d 892, 895, 28 Wn.App. 219 (Wash.App. Div. 1 1981) ("The power to be exercised is legislative in its nature if it prescribes a new policy or plan; whereas, it is administrative in its nature if it merely pursues a plan already adopted by the legislative body itself, or some power superior to it.").

City staff accurately points out that copies of interpretations are required to compiled and made available for public inspection. This is offered to suggest the legislative nature of interpretations under Chapter 15.22 YMC. However, in light of the limitations on hearing examiner authority under state law, this provision may be construed as simply providing an accessible record of the lawful basis for a requesting person's actions under the zoning ordinance. This would be particularly true for an unclassified use interpretation.

On this basis, the determination of zoning districts in which an unclassified use may be permitted cannot have the effect of legislation, but rather must be determined in each case based on some evidence. YMC 15.22.050.B. YNHS was not party to the 1992 or 1995 determination regarding uses or level of review of the UGM project. Therefore, 1992 Interpretation's definition and designation of zoning districts is not binding on the designation of zoning districts in which the unclassified aspects of "Community Resource Services Center" might be permitted.

VII. Application of Unclassified Use Zoning District Designation Criteria.

The proposed unclassified use is specific to the SCC zoning district. The key consideration in the unclassified use interpretation process is in YMC 15.22.050, which provides that "no use interpretation shall permit any use in any zoning district unless evidence is presented which demonstrates that the use will comply with the intent and development standards established for the particular district." The intent statements in the zoning ordinance "serve as a

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guide to the administration and interpretation of" the zoning ordinance. YMC 15.01.030. In the 1992 interpretation, the Hearing Examiner declared that the UGM use was consistent with the intent and development regulations of the CBD district without reference to any specific evidence demonstrating "compliance." The interpretation relied instead on a comparison of the activities at the UGM to classified uses that were permissible in the CBD district. In effect, a showing of consistency was construed as demonstration of compliance. Consistent with this approach, YNHS in its application materials and briefing enumerate the uses in the SCC which it views as comparable to the Community Services Resource Center. If this comparison approach is treated as the necessary demonstration of compliance with the zoning district intent, and all other the proposed activities do not include uses that are prohibited, then the requirement of YMC 15.22.050 could be met by the comparison.

City staff's view is that the proposed use constitutes a "Mission" use that is not currently allowed in the SCC district. As discussed above, the 1992 interpretation is not controlling with respect to its definition of Mission use, nor as a limitation on districts in which a use might be authorized based on the unclassified use ordinances. However, this does not dispose of the matter of demonstration of compliance with the intent of the SCC district. In this regard, City staff compares the proposed use, in part, to social services uses specifically prohibited in the SCC.

> The purpose and intent of the small convenience center district is to:
>
> 1. Provide areas for commercial activities outside the downtown commercial district that meet community retail shopping and service needs; and
> 2. Accommodate small commercial centers, generally two to five acres in size, where most of the commercial uses have located in a coordinated manner around a common parking lot and one major commercial approach driveway.
>
> Small convenience centers serve the day-to-day convenience shopping and service needs of the surrounding neighborhood and should be designed to minimize undesirable impacts of the center on the neighborhood it serves. Uses in this district should be retail or personal service establishments dealing directly with the consumer, the primary occupants usually being such uses as a supermarket, fast food restaurants and drug store.

YMC 15.03.020.H. It is not clear whether an unclassified use must be demonstrated to comply with some or all of the elements of the intent statement to be permitted. Based on YMC 15.03.020.B standing alone, the purpose/intent of the district might be presumed only to provide areas of a certain size for commercial activities outside the downtown commercial district that meet community retail shopping and service needs, and to accommodate small commercial

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centers to serve the surrounding neighborhood with minimum undesirable impacts on the neighborhood. Further, uses should be consumer-oriented retail or personal service establishments.[6]

However, the zoning ordinance is designed to be flexible and intentionally increases the potential uses or choices available to individual property owners. This flexibility is balanced by procedures and standards based on the Yakima urban area comprehensive plan designed to guard against and mitigate undue adverse impacts and to protect individual neighborhoods and the community's general welfare. YMC 15.010.30. Table 4-1 provides for a variety of uses in the SCC district that presumably serve the greater community as well as the neighborhood in which an SCC district might be located. Such uses include community college facilities, museums and zoos, vocational and business schools, various amusement and recreation uses, drug and alcohol treatment centers, and public facilities. Various kinds of dwellings are also permissible in the SCC. The various uses also are subject to either Class 2 or Class 3 review for the most part. These kinds of uses are not clearly retail or personal service oriented. This arguably shades the idea of "compliance."

Based on these considerations, the district intent statement should not be treated as a rigid standard in applying YMC 15.22.050. Elements of the proposed use that are comparable to the uses described in the intent statement and those reasonably comparable to permitted classified uses are consistent with the necessary demonstration requirement.

This brings the matter back to the differing views of comparability of the activities in the proposed use to intended and permissible uses in the SCC. Comparability would seem to be a matter of degree, both in terms of character and impact. The only social service use permitted in the SCC district is drug and alcohol rehabilitation. The proposed use use includes drug and alcohol treatment referral activity as part of the Homeless Network's "continuum of care" objectives for pre-homeless and homeless individuals. Other intake or first referral services are very much personal in scale, though noncommercial. Office uses and dining facilities included in the permitted uses and the proposed uses. There is not significant dispute about these types of uses.

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[6] It is worth noting that the previous market use of the subject property predated the zoning ordinance. The property does not conform to the target size for convenience centers, being significantly undersized at about 2/3 of an acre. In

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The principal issue continues to be the emergency shelter element of the proposed use and its location immediately adjacent to R-1 and R-2 neighborhoods. Part of the intent of the SCC is to "minimize undesirable impacts of the center on the neighborhood it serves." This necessarily implicates the consideration of the surrounding neighborhood in determining compliance with the intent of the SCC district.[7] The City staff notes that, based on the intent statement for the R-1 zoning district, YMC 15.03.030.B, the immediately adjacent R-1 and R-2 neighborhood in this case should be protected from encroachment from potentially incompatible uses, and that the intent of the limited permissibility of residential-oriented social services furthers that purpose.

A great quantity of public comment was received at the public hearing on the interpretation request, and a great many comments expressed concern about both current neighborhood safety in the vicinity of the subject property and unpleasant interactions that occur from time to time with nonresidents coming into the neighborhood (lewd conduct, public drunkenness, etc). Many commenters believe such interactions are increasing in the vicinity and that the proposed use would only further increase the incidence of unpleasant or dangerous contacts with homeless individuals attracted to the proposed facility, with a concomitant decline in the neighborhood character. Washington law has long recognized that general local displeasure with a proposed use cannot be the sole basis for rejecting it. *Sunderland Family Treatment Services v. City of Pasco*, 903 P.2d 986, 127 Wn.2d 782 (Wash. 1995); *Maranatha Mining, Inc. v. Pierce County*, 59 Wash.App. 795, 805, 801 P.2d 985 (1990) (reversing denial of unclassified use permit to operate a surface mine and asphalt pit based on local "community displeasure" as beyond the police power.) See also *Hansen v. Chelan County,* 913 P.2d 409, 81 Wn.App. 133 (Wash.App. Div. 3 1996), in which the court determined that the effect of a proposed use on its neighbors will not support a denial of a special permit unless the effect is greater than that of uses permitted in the district without special permit. Nevertheless, the public comments were in many cases based on experience in the vicinity of the project. If the current neighborhood problems are exacerbated by the proposed use, the result would not be consistent with neighborhood protection objectives in the district intent statement.

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this sense, the current use itself does not comply with the specific provisions of the SCC purpose and intent statement.

[7] Some of the concern by the City staff and some commenters regarding the interpretation request is that it could lead to similar project proposals at other SCC locations. As has been noted, however, each unclassified use interpretation

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YNHS representatives and several other commenters noted that purpose of the continuum of care concept, including the Community Resource Service Center, is intended to help address and ameliorate the very homelessness-related neighborhood problems complained of. Some testimony was offered that shelter facilities have improved neighborhood conditions in other areas. The Homeless Network strategy notes that there are currently shelter facilities (such as at the UGM) that some persons decline to use for various reasons including distance from other Continuum of Care services nearby the subject property. The proposed shelter, it is suggested, would be more likely to be used, thus leading to fewer individuals "on the street" in the vicinity. The YNHS and its fellow members of the Homeless Network also expect to improve the efficiency of the services coordinated through the Continuum of Care system, since the proposed use would provide for more efficient and effective delivery of the services they provide, based in part on proximity of the subject property to other properties linked to it through the 10-year Strategy. Thus if such strategies are effective, the impacts from the shelter would be comparable to other higher intensity residential uses or accommodations permitted in the SCC district.

However, it is not incumbent on the adjacent neighborhoods to bear the risk of uncertainty of success. In fact, placing such a burden would not be consistent with the SCC intent. The proposed residential social services use will be consistent with the district intent only if the designation is conditioned to assure that incompatibility issues are addressed. Such conditioning is consistent with the zoning ordinances flexibility goals. YMC 15.01.030.

The risk of neighborhood incompatibility in and of itself does not result in the proposed residential social service use being inconsistent with the district intent. As with other uses where there is a risk of incompatibility with residential areas, certain uses are "required to undergo extensive public review and ...have all necessary performance or design standards assigned to them as necessary to mitigate potential impacts to adjacent residences." YMC 15.02.030.B. This is accomplished by requiring Class 3 Review for uses that "are generally incompatible with adjacent and abutting property because of their size, emissions, traffic generation, neighborhood character or for other reasons." YMC Class (3) may be permitted by the Hearing Examiner "when he determines, after holding a public hearing, that the use complies with provisions and standards; and that difficulties related to the compatibility, the provisions of

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is a discrete adjudication and does not create a new land use classification. In addition, any future requests for

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public services, and the Yakima urban area comprehensive plan policies have been adequately resolved." See the definition of Class 3 uses in YMC 15.01.020. Class 3 review provides a forum for that resolution. This is similar to the "balancing" goals recited in the 1992 interpretation.

VIII. Conclusion

For the reasons discussed above, YNHS's proposed Community Resources Service Center activities taken together do not constitute either a Community Center use or a Mixed-use Building use. While the proposed use has similarities to the UGM "Mission" use discussed in the 1992 interpretation, that interpretation did not establish an new classified use, and the designation of zoning districts for the UGM use did not circumscribe all districts in which such similar uses could be established. Unclassified use

The proposed Community Resources Service Center activities taken together comprise an unclassified use, subject to the applicable provisions of YMC 15.04.040 and Chapter 15.22 YMC. If the use is conditioned to assure the protection of adjacent residential neighborhoods and the consequential comparability of the proposed use to other permitted uses in the SCC district, then it will be consistent with the intent of the SCC district as indicated by the specific district intent statement when considered in light of the listing of permissible uses in that district in Table 4-1. To assure that appropriate conditions and standards are in place to assure the compatibility of the proposed unclassified use with the adjacent R-1 and R-2 neighborhoods and conformity of the use with the goals and policies of the *YUACP,* it is designated for Class 3 review on the subject property.

DATED THIS 12TH DAY OF MAY, 2015.

PATRICK D. SPURGIN
HEARING EXAMINER *PRO TEM*

interpretation would require consideration of the specific circumstances of the affected neighborhood.

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