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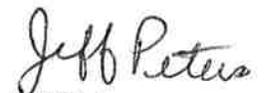
NOTIFICATION OF HEARING EXAMINER'S INTERPRETATION DECISION

May 15, 2015

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 interpretation and Unclassified Use of a proposed Community Resource Service Center in the Small Convenience Center Zoning District located at 201 South 6th Street. The application was reviewed at an open record public hearing held on April 2, 2015.

Enclosed is a copy of the Hearing Examiner's Findings and Interpretation 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 Jeff Peters, Supervising Planner, at (509) 575-6163 or e-mail: jeff.peters@yakimawa.gov


Jeff Peters
Supervising Planner

Date of Mailing: May 15, 2015

Enclosures: Hearing Examiner's Interpretation Decision

**City of Yakima, Washington
Office of the Hearing Examiner**

**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.**

**File No. INT#001-14
HEARING EXAMINER
INTERPRETATION**

**RECEIVED
MAY 13 2015
CITY OF YAKIMA
COMMUNITY DEVELOPMENT**

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

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

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.

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.

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

It 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.

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 Plan³, 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 an 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*.

[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

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

⁵ Ord. 2010-16

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 be 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

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

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 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.

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

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.

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

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

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

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.