



**COMMUNITY DEVELOPMENT DEPARTMENT**

**Planning Division**

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**NOTICE OF APPEAL AND PUBLIC HEARING**

**DATE:** May 22, 2015

**TO:** Appellant & Parties of Record

**FROM:** Joan Davenport, Community Development Director

**SUBJECT:** Notice of Appeal of Class (2) Land Use Application Decision.

**File Number(s):** APP #002-15

**Tax Parcel Number(s):** 18131311504

**Location:** 1300 N. 1<sup>st</sup> St., Yakima, WA

An appeal of the Class (2) Land Use Application Decision for the Yakima Union Gospel Mission (File CL2#004-15 & CL2#019-14) was received on May 1, 2015. In accordance with Yakima Municipal Code 15.16.030, a public hearing regarding this appeal will be held before the Hearing Examiner on **Wednesday, June 17, 2015 at 9:00 a.m.** in the Yakima City Council Chambers, 129 North 2<sup>nd</sup> Street, Yakima, WA. Any person desiring to express their views on this matter is invited to attend the public hearing or to submit written comments. Following the public hearing, the Hearing Examiner will issue a written decision within ten business days of the public hearing. If you have any questions on this proposal, please contact Trevor Martin, Assistant Planner at (509) 575-6162 or by e-mail at [trevor.martin@yakimawa.gov](mailto:trevor.martin@yakimawa.gov).



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

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

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

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

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

UGM breached the Settlement Agreement by filing the above-numbered applications as Class 2 land use applications. The City abetted that breach of the Agreement by processing and entering decisions on the two (2) applications as Class 2 applications.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Requested Relief:

Appellants request:

1. The Decision in Application CL2#019-14 be determined to be void for lack of adequate notice.
2. Applications CL2#019-14 and CL2#004-15 be reversed and remanded to the City Planning Department for processing as Class 3 land use applications as required by the Settlement Agreement pursuant to which the UGM was permitted to locate at its present site.
3. The Decision on Application CL2#004-15 be reversed and remanded with specific directions to the Planning Department any Decision approving the application specifically include the conditions contained in the Settlement Agreement, and access to the facility from Oak Street be specifically prohibited in addition to any other conditions imposed to insure compatibility.

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(c) Compatibility:

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

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

Compatibility was a hotly contested issue at the initial hearings on location of the UGM on North 1<sup>st</sup> Street. Some of the compatibility issues were addressed in the Settlement Agreement with the imposition of additional conditions to mitigate some impacts of the Mission on surrounding businesses. Those conditions include:

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

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

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

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

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

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

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

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

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

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

(d) Specific defects in the 4/17/2015 Decision:

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

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

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

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

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

"Access to the property, current and future, shall be restricted to the south side alley entrance designated by the Hearing Examiner. The 1<sup>st</sup> Street entrance will be for administrative and staff only, access for delivery or services to the subject property."

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