CITY OF YAKIMA

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NOTIFICATION OF HEARING EXAMINER DECISION

On February 27, 1992, the Yakima Hearing Examiner rendered his decision on the use interpretation concerning the Union Gospel Mission, UAZO Interp. #1-92. The request was reviewed at a public hearing held by the Hearing Examiner on February 13, 1992.

A copy of the Hearing Examiner's Findings and decision is enclosed. Any part of the Hearing Examiner's decision may be appealed. Such appeal 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.

For further information or assistance you may contact Joan Davenport, Supervising Associate Planner, City of Yakima Planning Division located on the 2nd floor of Yakima City Hall, (129 North Second Street), 575-6164.

Don S. Skone
Planning Manager

Date of mailing: 2/28/92

Request for Interpretation Re UNION GOSPEL MISSION as a Use in the Central Business District and Central Business District Support Zones.	)))))))	EXAMINER'S INTERPRETATION City No. UAZO-INTERP. #1-92 Examiner No. I92-5-2

Background. Mr. John Puccinelli, owner of a downtown restaurant, through his attorney has requested a use interpretation concerning the Union Gospel Mission. The City of Yakima referred the request for an interpretation to this Examiner.

Jurisdiction. YMC 15.22 governs interpretations by the Hearing Examiner. Section 15.22.030 permits the Examiner at his discretion to conduct a public hearing. Due to a request for public input and to present arguments directly to the Examiner, a public hearing was conducted February 13, 1992.

Decision. The combination of uses typified by the Yakima Union Gospel Mission shall be characterized as a "Mission," subject to Class 2 review in the Central Business District (CBD) and Central Business District Support (CBDS) zones.

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.

Analysis.

1. Factual Background. The Union Gospel Mission, (Mission herein) is interested in relocating, which has generated concern by potentially affected landowners as to the appropriate

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standard of legal review and the level of public comment required by the Urban Area Zoning Ordinance. The purpose of this interpretation is to review the nature of the activities conducted by the Mission, and determine whether those activities fit within any existing use classifications of the zoning ordinance. If not, then a new use will be established and defined, with a specified level of review.

The Mission is a non-profit corporation providing a range of services. It has served the Yakima area for 56 years and has always been located in downtown Yakima.

The Mission's primary purpose is the provision of spiritual and material support for those in need. In the past year it has served over 140,000 meals in-house; provided nearly 2,000 boxes of food to the community; provided clothing and other staples; as well as operating two dental clinics, a foot clinic, and providing showers and similar facilities. These services are all provided on a non-residential basis and constitute a substantial portion of the services provided by the Mission. The Mission also provides residential facilities. Within the existing facility typically 20 to 30 men and women are provided shelter in times of need. The Mission also provides spiritually oriented assistance to those having difficulty in coping with difficult situations, such as divorce, alcohol, drugs, etc.

The Mission also operates a youth center consisting of a 17,000 square foot building located at 4th and Spruce. The center provides programs for 50 to 70 children each day, including Girl Scouts, Boy Scouts, boxing, crafts, and basketball.

Information in other applications for relocation submitted by the Mission describe the proposed use as providing food and lodging facilities for homeless men and families; drug and alcohol rehabilitation; ministry, and related services. Proposed facilities have included a dormitory and family shelter, dining and

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kitchen facilities, auditorium, gymnasium, and maintenance/repair shops.

It is the residential aspect of the facility, providing temporary housing to the homeless, those in need, and those displaced by personal or natural disasters, which generates the most concern by potential adjacent property owners. The Mission provides a flexible response to community needs. Depending upon its prospective location, the residential aspect of the program could be significantly increased, as reflected in the evidence concerning the proposed Terrace Heights location, in which temporary residential facilities for perhaps 200 individuals were contemplated. As in any business, the current facilities obviously constrain the scope and extent of services which can be provided.

One of the Mission's primary objectives is to provide spiritually oriented assistance to help others help themselves. Accordingly, those receiving the benefit of temporary housing at the Mission are not allowed to stay in the Mission during the day, and are expected to use that time to seek employment and other assistance.

2. Zoning Ordinance. In prior applications the Mission has been treated by both City and County Planning staff as a "community center." Under this recognized use category in the zoning ordinance, the Mission received approval in 1986 to relocate in the Holtzinger Building, near its present location. At that time the zoning ordinance treated a community center as a Class 2 use in the CBD zone.

In 1991 the County processed an application by the Mission to relocate in Terrace Heights as a community center, which is a Class 2 use in that Light Industrial zone due to the floodplain.

The zoning ordinance designates certain uses in UAZO Table 4-1. The table also specifies which of three levels of review apply to a given use.

Class 1 uses are permitted in a zone, provided that the

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standards for that zoning district are met. Class 2 uses are generally permitted in a given zone, but compatibility between a Class 2 use in the surrounding environment cannot be determined in advance and occasionally a Class 2 use may be incompatible at a particular location. Class 2 uses are reviewed by an Administrative Official, with an opportunity for comment by landowners within 300 feet. Class 2 uses can be forwarded for Class 3 review at the discretion of the Administrative Official, or his or her decision can be appealed to the Examiner for Class 3 review (YMC 15.04.020), which results in a public hearing.

Class 3 uses are generally not permitted in a particular zone, but may be allowed by the Hearing Examiner after Class 3 review and public hearing. The Examiner may approve, deny, or conditionally approve the proposed use in order to promote compatibility with the intent and character of the zoning district and the objectives and development criteria of the Yakima Urban Area Comprehensive Plan (YMC 15.04.020).

Any use which is not listed in Table 4-1 is an unclassified use and shall be permitted only in those zoning districts so designated by the Hearing Examiner, in which case it shall be allowed only as a Class 2 or Class 3 use (YMC 15.04.040). The Interpretations chapter of the zoning ordinance governs this determination by the Hearing Examiner. The following conditions concerning use interpretations are imposed by YMC 15.22.050: No use interpretation shall vary the location or review requirements of any use listed in Table 4-1. Furthermore, no use interpretation shall permit any use in any zoning district unless evidence is presented which demonstrates that it will comply with the intent and development standards established for that particular zone.

The Examiner's interpretation may be appealed, in this instance to the City Council, pursuant to YMC 15.22.070 and YMC Ch.15.16.

Both of the prior Mission applications afforded a chance for

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public participation and review, so the issue of the applicable standard of review was not squarely met. After approving the Holtzinger Building as a Class 2 use in the CBD under the community center classification, the Urban Area Zoning Ordinance was amended by the City and the County to designate community centers as a Class 1 use in the downtown zones (CBD and CBDS). Documentary evidence of the reason for the amendment is not part of this record, nor is there any oral evidence in the record from any of the elected officials involved. Any conclusions concerning legislative intent based upon recollections of this Examiner or Planning staff are too speculative to base an imputation of legislative intent by others.

The Terrace Heights application in 1991 was also treated as a community center; because a floodplain in an industrial zone was involved, it was subject to Class 2 review. By stipulation the Mission agreed to a public hearing in order to expedite processing of the application, given the likelihood of appeal in any event. As reflected in this Examiner's decision denying the application, it was recognized at that time that there was room for argument as to whether it was a "community center" or a "halfway house," which is a Class 3 use in the M-1 zone at issue there. See Examiner No. 091-1-40, pg. 10. After noting that it could be treated as a community center, a Class 2 use in that zone, or as a halfway house, a Class 3 use in that zone, this Examiner at page 11 stated:

> For purposes of analysis under the zoning ordinance this will be treated as a Class 3 land use, meaning that it is subject to the highest level of review under the ordinance. . . . Whether categorized as a Class 2 or a Class 3 use, the Examiner is obligated to determine that the use is consistent not only with the intent of the zone but also that it complies both with the Urban Area Zoning Ordinance and the comprehensive plan. (See YCC 15A.04.020(2) and (3).)

Id. at p.11. The application was denied because it did not comply with the zoning ordinance and comprehensive plan, regardless of whether it was a Class 2 or Class 3 use. It was unnecessary to

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decide the class of use.

Presumably for a variety of reasons that decision was not appealed to the Yakima Board of County Commissioners. It does not have much precedential value, because it does not have even the stature of a trial court decision, but it does reflect that there has been some ongoing confusion as to the type of use involved and the appropriate level of review. Because it was at least a Class 2 use in that zone the application did receive public review.

This zoning ordinance, and specifically its Table of Uses with related definitions, is the best guide to resolution of this problem. There are zoning cases on the books dealing with categorization of missions, halfway houses, and community centers, but they are all unique to the specific zoning ordinance involved. As an example, a Pennsylvania case determined that a land use defined as a "community center" also included a "halfway house," which apparently was not otherwise dealt with in the zoning ordinance. The court ruled that a halfway house, used to educate young people and their parents to the dangers of drug use and abuse, counseling and advising drug users and former addicts, and for referring such people to outside sources of medical, legal, and spiritual aid and to employment and recreational communities was a "community center or similar use" as set forth in the local zoning ordinance. Swift v. Zoning Hearing Board of Abington Township, 328 A.2d 901, 16 PA. CMWLTH. 356 (1974). That case is distinguishable from our situation in that our zoning ordinance defines both halfway house and community center.

In a New Jersey will contest case the definition of mission came up. That court cited with approval an old Connecticut case in which the court stated:

> By universal acceptance the word "missionary," whether as a noun or adjective, embraces, not only the conception of a religious, charitable, or educational work or worker, but also such a work done through philanthropic motives, for the welfare of others too poor, too unappreciative, or too indifferent to do it themselves, and by persons

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> supported or means furnished in part at least by some agency of which those for whom the work is done do not form a sustaining part.

Fidelity Union Trust Co. v. Job Haines Home for Aged People, et al., 14 A.2d 490, 127 N.J. EQ. 518 (1940).

That definition, however stilted, clearly describes this Mission's activities. That definition, and a description of this Mission's activities, also describe a use different from either a community center or a halfway house.

This ordinance defines community center as meaning:

> A facility owned and operated by a public agency or non-profit corporation, provided that the principal use of the facility is for public assistance, community improvement, or public assembly.

YMC 15.02.020, p.9.

That definition, without reference to other provisions of the ordinance, would include all government facilities, including juvenile detention facilities, jails, office buildings, schools, and hospitals, all of which nevertheless have their own listing in Table 4-1.

Halfway house is defined as meaning:

> A home for juvenile delinquents and adult offenders leaving correctional and/or mental institutions; or a rehabilitation center for alcohol and/or drug users; which provides residentially oriented facilities for the rehabilitation or social adjustment of persons who need supervision or assistance in becoming socially reoriented but who do not need institutional care.

YMC 15.02.020, p.11.

This Mission does some of that. It does some of the community center activity also. But it is not just a community center, it is not just a halfway house. It is a combination of uses, for which this ordinance does not provide much guidance in evaluating. Reviewing the various uses listed in Table 4-1 is helpful. Community centers are lumped with meeting halls and fraternal organizations, and treated as a Class 1 use in this zone, as compared to halfway houses which are treated as a Class 3 use.

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Detention centers are a Class 3 use in CBD and CBDS, as are hospitals. The Mission's activities do not rise to the level of a detention center or hospital, but they are more intensive than a group home, which is a Class 1 use. Group homes are defined as:

> A place for handicapped, physically or developmentally disabled adults, or dependent or predelinquent children, providing special care in a homelike environment.

YMC 15.02.020, p.11.

High density multi-family dwelling units are typically a Class 1 use in the CBD, and a Class 3 use in the CBDS, whereas the same density of dwelling units in a planned residential development are treated as Class 2 uses in both zones. Boarding houses are a Class 1 use in CBD, and a Class 2 in CBDS, as are retirement homes. Boarding houses are defined as:

> An establishment providing both lodging and meals for not more than 10 persons residing in the facility on a permanent or semi-permanent basis.

YMC 15.02.020, p.6.

The Mission's level of activity is clearly more than a boarding house with 10 or fewer people.

By comparison, nearly all retail uses are Class 1 in both zones. Hotels, for instance, have almost identical activities to the Mission, and are treated as a Class 1 use. This is consistent with the definition of Central Business District, which:

> is to preserve the Central Business District of the City of Yakima as the region's center of commerce, industry, recreation and culture. This District is characterized by very intensive development and a variety of land uses including retail sales and service establishments, high density residential development, financial institutions, professional buildings and government offices.

YMC 15.03.030.10.

The definition of the CBD Support District is expanded to accommodate both wholesale and retail activities, with some high density residential development (YMC 15.03.020.11). Given the focus of the zones, it is appropriate that retail uses be Class 1.

Although similar, the Mission's activities are not typically

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thought of as a traditional retail use. It has been suggested that it is the type of user of the Mission, rather than the type of activities, which is at the root of the problem and that this has been treated not as a question of the appropriate land use but as to who uses the land. Stereotypes, prejudices, and public perceptions as to the type of clientele utilizing the Mission's services are in fact a central part of the controversy. This city has a legitimate public interest in fostering a downtown environment in which retail uses can co-exist, peacefully and prosperously, with necessary public and social services. No retail area can long survive, regardless of the opinions of store owners, if the public has a perception that an area is unsafe or for some reason undesirable. It is government's obligation to develop rational regulations which recognize and balance the legitimate constitutional and legal expectations of the whole community.

Determining that the Mission is a specific type of use subject to public input prior to its approval simply creates a process by which the public can help government recognize and balance various viewpoints. Class 2 review means, in the terms of this ordinance, that the use is generally permitted but on occasion may be incompatible. That can be said for practically any use in any area. Table 4-1 indicates that many activities are subject to some level of public review before being located in the downtown business zones. This includes higher density planned residential developments, which under the explicit definition of the downtown zones is encouraged to be downtown. The point of public review is not to discriminate or to provide a means to discriminate. In any subsequent review of the Mission, the burden on both the public and the government will be to review the application in a principled manner, without succumbing to bias or prejudice, with the decision based upon objective reasoning and logical conclusions. As recognized by the Yakima Urban Area Comprehensive Plan, public preference is to be considered, but public preference alone can

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rarely, if ever, be the sole determinant for locating unpopular or locally undesirable land uses.

An argument has been raised that substantial deference should be paid to the staff determination, by both the City and the County, that the Mission should be treated as a community center. This of course is the typical rule of administrative law. Mall, Inc. v. Seattle, 108 Wn.2d 369, 739 P.2d 668 (1987), was cited at the hearing as illustrative. In that case an administrative determination had been appealed to the Hearing Examiner, who upheld the administrative determination. On appeal to the trial court, that court upheld the Hearing Examiner. The Washington Supreme Court in upholding the lower decision ruled that considerable judicial deference should be given to the construction of an ordinance by those officials charged with its enforcement, meaning in that instance the administrative official and the Hearing Examiner.

While this Examiner will certainly appreciate any deference he may ever receive in the future from any judge, this Examiner is so low on the totem pole that there is no one else to defer to. As reflected above, the issue has been in controversy for some time, has never been clearly resolved, and accordingly the City Planning Department when they received a request for interpretation forwarded it directly to the Examiner. Staff has never had to deal with the issue head-on before, simply because the ordinance provisions applicable at the time always accorded public review. In the first instance, Holtzinger, the Mission got what they requested, with no public outcry. In the second, Terrace Heights, they failed after stipulating to a public hearing, and did not appeal. For all practical purposes the issue is a matter of first impression now, and the staff is following the method set forth in the ordinance to obtain an interpretation.

The activities encompassed by the Mission are consistent with the intent and development standards of both the Central Business

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District and Central Business District Support zones. Class 2 review is appropriate in order to determine, based upon a specific factual circumstance, if there are any issues which present compatibility concerns. Defining the Mission as a Class 2 use has the effect of creating a presumption that the use is permitted, but permits some public review.

DATED this 27th day of February, 1992.

PHILIP A. LAMB
Hearing Examiner

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