

RESOLUTION NO. R-2015-

A RESOLUTION adopting findings of fact and conclusions of law supporting decision of City Council affirming in part and reversing in part Hearing Examiner's Interpretation, File No. INT#001-14, pertaining to the SCC Small Convenience Center Zoning District.

WHEREAS, the City Council has previously adopted a comprehensive land use regulatory ordinance governing land uses and establishing zoning districts within the City of Yakima, which comprehensive land use and zoning code is known as the Urban Area Zoning Ordinance ("UAZO") and is codified at Title 15 YMC; and

WHEREAS, on August 18, 2015, the City Council heard and considered an appeal of a hearing examiner interpretation, which interpretation is described as Interpretation File No. INT#001-14, and concerns the request for interpretation submitted by Yakima Neighborhood Health Services to determine whether its proposed use would be a use permitted within the SCC Small Convenience Center zoning district, and in particular, upon a parcel commonly known as the "Roy's Market" site located at 201 South 6th Street within the City of Yakima; and

WHEREAS, the City Council, having considered the files and records herein, together with the Interpretation decision of the hearing examiner, and the evidence and testimony of record and the evidence and testimony presented at the August 18, 2015 appeal hearing, hereby makes and enters the following

FINDINGS OF FACT

1. The City Council of the City of Yakima has previously adopted the Urban Area Zoning Ordinance as codified at Title 15 of the Yakima Municipal Code (YMC).
2. Title 15 YMC is a comprehensive land use regulatory ordinance which establishes a system and designation of zoning districts, and further defines and designates specific uses ("classified uses") which are allowed as a Class (1), Class (2) or Class (3) use within each zoning district, or which uses are prohibited in a particular zoning district. The classified uses permitted or prohibited in each zoning district are listed in Table 4-1 as set forth in YMC 15.04.030.
3. YMC 15.04.040 provides:

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.

4. Chapter 15.22 YMC sets forth the provisions and procedures relating to the hearing examiner's exercise of "interpretation" jurisdiction. Such jurisdiction includes determination of whether an unclassified use should be allowed as a Class (2) or (3) use within a zoning district or districts, clarification of existing procedures and definitions, and determinations of the precise location of zoning district boundaries. The specific provisions concerning "unclassified use" interpretations are stated in TMC 15.22.050, which provides in part:

The following conditions shall govern the hearing examiner in issuing use interpretations (see YMC 15.04.040):

A. No use interpretation shall vary the location or review requirements of any use listed in Table 4-1 or home occupation listed in Table 4-2.

B. 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 the particular district....

YMC 15.22.040 provides:

15.22.040 Notice of examiner's decision.

A. The hearing examiner shall mail a written copy of his interpretation to the applicant, the Yakima County planning department, the city of Yakima department of community and economic development, and their respective administrative officials. Such notice shall be provided within thirty days from the date of his receipt of an application for interpretation or such longer period of time as may be agreed to by the applicant.

B. The hearing examiner shall clearly state the analysis and reasons upon which any interpretation is based and, if the interpretation is a use interpretation, how the interpretation is consistent with the specific conditions established in YMC 15.22.050.

C. The department shall keep a copy of each interpretation on file and shall make a copy available for public inspection during regular business hours.

5. YMC 15.22.070 provides that the hearing examiner's decision on an interpretation may be appealed under Chapter 15.16 YMC. Appeals under Chapter 15.16 YMC are to the City Council.
6. YMC 15.16.040 provides in pertinent part that the "final decision of the hearing examiner on those applications listed in YMC 15.20.040(C)(1), and on appeals made under YMC 15.16.030, shall be final and conclusive unless it is appealed to

the legislative body by a person aggrieved, or by any agency of the city/county, affected by the decision....”

7. RCW 35.63.130 provides:

(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.

8. Yakima Neighborhood Health Services (“YNHS”) is a charitable nonprofit corporation with offices at 12 South 8th Street, Yakima, Washington. YNHS submitted an application for land use review and a request for interpretation concerning a proposal to develop the Roy’s Market site. The proposal was to develop a resource service center providing a range of services for homeless and pre-homeless individuals, including case management, employment and job assistance, health care assessment, a dormitory for shelter or emergency housing for up to 50 persons, placement assistance for transitional or permanent housing, food services, provision of clothing and other staples, shower and similar facilities, drug and alcohol treatment, behavioral health services, respite care and transportation assistance. The application for land use review sought a Class (2) review for such uses as a “community center” or “mixed-use building” on the Roy’s Market site. The request for interpretation asked the hearing examiner to determine whether such proposed uses constituted a “community center” or “mixed-use building” as currently defined in YMC 15.02.020. If the hearing examiner determined that such proposed use was not a community center or mixed-use building, the request for interpretation asked that a new use classification be established for YNHS’ requested use pursuant to YMC 15.04.040. Pursuant to agreement between the City of Yakima and YNHS, it was determined that the request for interpretation should be processed first before any hearing was scheduled and conducted to consider YNHS’ Class (2) land use application.
9. The Roy’s Market site is currently zoned SCC Small Convenience Center. The Roy’s Market site consists of one parcel (Yakima County Assessor’s Parcel No. 191319-13473) approximately 29,657 square feet in size. The parcel is surrounded by R-1 Single-Family Residential and R-2 Two-Family Residential zoned properties. The purpose and intent of the SCC zoning district is set forth in YMC 15.03.020 as follows:

H. Small Convenience Center District (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.

10. Under the category of “Health and Social Service Facility” in Table 4-1, YMC 15.04.030, the following classified uses are not permitted in the SCC zoning district: group homes (six or fewer), adult family homes, boarding houses, halfway houses, group homes (more than six), and convalescent and nursing homes. Each of these prohibited uses contain a significant residential component.
11. On April 2, 2015, the hearing examiner conducted a public hearing, pursuant to duly published notice, to receive testimony and argument concerning YNHS’ request for interpretation. The hearing lasted approximately five (5) hours and the hearing examiner received testimony regarding the requested interpretation from several individuals. Additionally, Maud Scott presented testimony in opposition to the requested use and presented copies of written opposition to the proposal signed by approximately 300 persons residing in or around the Roy’s Market site.
12. At the April 2, 2015 interpretation hearing, and in briefs submitted during such hearing, the City of Yakima contended that the use proposed by YNHS constituted a “mission” use as formulated and defined in a 1992 Hearing Examiner Interpretation issued by Hearing Examiner Phil Lamb concerning a request for interpretation submitted by the Union Gospel Mission (UAZO INTERP. #1-92). The definition of “mission” formulated by the hearing examiner stated:

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 public at large.

The 1992 Interpretation further ruled that a “mission” would be allowed as a Class (2) use only within the CBD Central Business and CBDS Central Business Support (now the GC General Commercial) zoning districts. By a later Interpretation, the hearing examiner expanded the allowable zoning districts to include the M-1 Light Industrial zoning district (UAZA INTERP. #2-94).

13. Based on the above, the City of Yakima argued that the definition of “mission” served as precedent and that, given the similarity of uses between the services provided by the Union Gospel Mission and those services proposed by YNHS,

YNHS's proposed use constituted a mission and was not allowed in the SCC zoning district. In a table summarizing and comparing the services provided by the Union Gospel Mission and YNHS, the following was presented:

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
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 City Council finds that the types of services proposed by YNHS are so close to those provided by the Union Gospel Mission as to be virtually identical.

14. During the time the interpretation hearing was being scheduled and conducted, the City of Yakima Planning Commission was conducting hearings and public meetings on a proposed ordinance incorporating the hearing examiner's 1992

definition of “mission” use and designating such use as an allowable Class (2) use in the GC General Commercial, CBD Central Business and M-1 Light Industrial zoning districts.

15. On May 12, 2015, the hearing examiner issued his Interpretation (File No. INT#001-14). The Interpretation concluded that YNHS’ proposed use did not constitute a “community center” or “mixed-use building” as those terms and uses are defined and classified in Table 4-1. While noting that the uses and services proposed by YNHS were similar to those offered and performed by the Union Gospel Mission, the hearing examiner failed and refused to apply the previously established definition of “mission,” holding that such was a legislative function beyond his jurisdiction under RCW 35.63.130(1). Instead, the hearing examiner concluded that he could exercise his unclassified use jurisdiction to allow the YNHS proposed use as a Class (3) use on the Roy’s Market site, and that such decision would apply only to that parcel and not to any other SCC zoning district within the City of Yakima.
16. The hearing examiner concluded that his decision was consistent with the purpose and intent of the SCC zoning district, despite having previously concluded that the “residential component” of the YNHS proposal rendered such use inconsistent with the classified “community center” use in the SCC zoning district. The hearing examiner also concluded that the YNHS proposed use was consistent with the City’s Comprehensive Plan, despite evidence in the record that stated:

The subject [YNHS] proposal, regardless of use, meets the goals and policies of the City of Yakima Comprehensive Plan (as more fully described above in Comprehensive Plan and Applicable Goals and Policies): 3.3.1, 3.12, 3.12.3, and 3.12.4, however, the subject proposal **does not meet goals and policies: 3.3, 3.3.2, 3.4, 3.4.3, 3.4.4, 3.6, 3.6.1, 3.6.2, 3.6.3, 3.6.5, 3.8, 3.8.1, 3.8.2, 3.8.5, 3.8.6, 3.8.7, 3.12.1, 3.12.2, 3.12.5, 3.12.7, and 3.12.8.**

The City Council finds that the YNHS proposed use is not consistent with the City’s Comprehensive Plan.

17. On August 4, 2015, the City Council adopted Ordinance No. 2015-022 which codified the definition of “mission” as follows:

“Mission” means a facility typically owned or operated by a public agency or non-profit corporation, providing a variety of services for the disadvantaged, typically including but not limited to temporary housing for the homeless, dining facilities, health and counseling activities, whether or not of a spiritual nature, with such services being generally provided to the public at large. Mission uses shall be Class (2) uses within the GC General Commercial, CBD

Central Business District, and M-1 Light Industrial zoning districts as set forth in Table 4-1, YMC 15.04.030, and subject to a Type (3) review as set forth in Chapter 15.15 YMC with a development agreement incorporating applicable development standards and mitigations imposed by the hearing examiner. Effective as and from August 24, 2015, any modification of an existing mission use shall be subject to the modification procedures and provisions of Chapter 15.17 YMC; provided, that any proposed modification that does not meet the criteria in YMC 15.17.040 for administrative review and approval shall be subject to a Type (3) review with a development agreement incorporating applicable development standards and mitigations imposed by the hearing examiner.

Section 3 of Ordinance No. 2015-022 amended Table 4-1 to provide that the mission use is allowed only in the GC General Commercial, CBD Central Business District and the M-1 Light Industrial zoning districts. The City Council finds that the types of services proposed by YNHS constitute a mission use as defined under both the 1992 hearing examiner interpretation and the definition adopted and codified in Ordinance No. 2015-022.

18. The City of Yakima and Maud Scott each appealed the hearing examiner's decision, which appeals were timely presented. On August 18, 2015, pursuant to notice duly published, the City Council held and conducted an appeal hearing. While YNHS contended that the Interpretation proceedings before the hearing examiner were quasi-judicial (which characterization was opposed by the appellant City of Yakima), there was no objection to any member of the City Council hearing and deciding the case. After hearing and considering all documents and testimony of record, together with the evidence and testimony presented at the August 18, 2015 appeal hearing, the City Council, by a vote of 4-3, granted the appeals submitted by the City of Yakima and Maud Scott, by which action the issues assigned as error in the hearing examiner's Interpretation (File No. INT#001-14) are reversed.

19. To the extent any Finding of Fact set forth above is deemed to be a Conclusion of Law, such item shall be deemed a Conclusion of Law without derogation of any other Finding of Fact⁸⁸.

Having made the above Findings of Fact, the City Council hereby adopts the following

CONCLUSIONS OF LAW

1. The City Council has jurisdiction to decide and determine all matters and issues herein.

2. The appellants each have standing to present their appeals pursuant to YMC 15.16.040.
3. The appeals filed by each appellant herein were timely filed and in conformity with the requirements of Chapter 15.16 YMC and Chapter 16.08 YMC.
4. Pursuant to RCW 35.63.130, the delegation of authority to the hearing examiner to exercise interpretation and unclassified use jurisdiction, as well as jurisdiction to interpret zoning district boundaries, all as set forth in YMC 15.04.040 and Chapter 15.22 YMC, constitutes a lawful delegation of limited legislative jurisdiction, which is to be given the effect of an administrative decision subject to appeal to the City Council for final determination. The delegation of authority is limited to: interpretation of existing provisions, procedures, definitions; determinations of locations of zoning boundaries; and definition of new “unclassified uses” with designation of the appropriate zoning district(s) for such new uses. Such determination of new use and the appropriate zoning district for such use constitutes a land use decision with precedential effect which becomes final unless timely appealed to the City Council for final determination. The delegation of legislative authority to accomplish such unclassified use jurisdiction is limited to (a) defining with particularity the new use, (b) basing the interpretation upon evidence that the new use is consistent with the intent and purpose of the designated zoning district and Comprehensive Plan, (c) requiring that the new use does not vary the location or review requirements of any use listed in Table 4-1 or home occupations listed in Table 4-2; (d) limiting the authority by requiring that any new use be only a Class (2) or (3) use in the designated zoning district(s); and (e) limiting the hearing examiner's authority by giving it the effect of an administrative decision subject to appeal to the City Council for final determination. Under the unclassified use jurisdiction, the hearing examiner would not have authority to establish a new use that applied in every zoning district within the City of Yakima. It was error for the hearing examiner to conclude that he did not have authority to exercise the unclassified use jurisdiction set forth in YMC 15.04.040 and Chapter 15.22 YMC.
5. The 1992 and 1995 Interpretations issued in UAZO INTERP. #1-92 and UAZA INTERP. #2-94 pertaining to the Union Gospel Mission were properly decided by the hearing examiner, were never appealed, and thus had precedential effect when considering future requests for similar uses. It was error for the hearing examiner to fail or refuse to consider such precedential interpretations.
6. The plain wording of YMC 15.04.040 defines the purpose and scope of the hearing examiner's interpretation and unclassified use jurisdiction:

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**.

(Emphasis added.) The designation of a “particular unclassified use” requires the hearing examiner to establish a definition of such use. It was error of the hearing examiner to fail or refuse to create such definition in this case.

The designation of the new use shall apply in those “zoning districts” so designated by the hearing examiner. It was error of the hearing examiner to rule in this case that any interpretation regarding the YNHS proposed use would apply only to the Roy’s Market property and not throughout the SCC “zoning districts” of the City.

7. Because the interpretation and unclassified use jurisdiction is a limited delegation of legislative authority, to be given the effect of an administrative decision, it was error for the hearing examiner to construe his interpretation as a quasi-judicial land use decision limited to specific parties and a specific parcel of property. There was no land use application submitted concerning development of a specific project, but only a request that the hearing examiner exercise his interpretation authority to consider whether the YNHS proposed use fit within the definition of an existing use classification, and, if not, whether the hearing examiner could exercise his unclassified use jurisdiction to define a new use that would be allowed within, and be consistent with the intent and purpose of, the SCC zoning districts of the City. The City Council concludes that the interpretation and unclassified use jurisdiction of the hearing examiner constitutes a limited legislative delegation and function, to be given the effect of an administrative decision, and is not a quasi-judicial land use decision.
8. The hearing examiner erred by failing or refusing to make findings based on evidence that the YNHS proposed use was consistent with all SCC zoning districts within the City.
9. The hearing examiner properly exercised his interpretation authority by finding and concluding that the YNHS proposed use was not a “community center” or “mixed-use building” as currently defined in Title 15 YMC. It was error by the hearing examiner to fail or refuse to analyze the existing definition of “mission” as applied to the YNHS proposed use.
10. The hearing examiner stated in his Interpretation that the use proposed by YNHS “has similarities to the activities conducted by the Union Gospel Mission,” but failed

and refused to examine, analyze and discuss those similarities and to apply the existing definition of mission. This was error by the hearing examiner.

11. Having considered the record herein and compared the type of services proposed by YNHS with the types of services contained in the definition of mission as established in the 1992 hearing examiner's Interpretation, the City Council concludes that the services proposed by YNHS substantially conform to the type of services included within such definition of mission, and that the use proposed by YNHS constitutes a mission use. As a mission use, the YNHS proposed use is not allowed in the SCC zoning district.
12. Despite professing knowledge that the Yakima Planning Commission was engaged in proceedings leading to the codification of the hearing examiner's 1992 definition and decision regarding mission uses, the hearing examiner erred by ignoring such proceedings and proceeded to issue his interpretation decision without deferring to the then-existing legislative process.
13. Despite the directives in YMC 15.04.040 and Chapter 15.22 YMC, the hearing examiner erred by holding that the YNHS proposed use would be allowable as a Class (3) use only on the Roy's Market site. Such interpretation constitutes an illegal spot zone.
14. By adoption of Ordinance No. 2015-022 on August 4, 2015, the City Council has rendered moot the hearing examiner's determination that he lacked jurisdiction to consider the definition of mission as established by the 1992 hearing examiner's interpretation. The City Council's legislation adopted and codified a definition of mission and limited the mission use to the General Commercial, Central Business District and M-1 Light Industrial zoning districts. The City Council concludes that the type of services proposed by YNHS constitutes a mission use under the terms of the definition adopted pursuant to Ordinance No. 2015-022, and that such use is not allowed in the SCC zoning district, and not allowed upon the Roy's Market site.
15. The City Council concludes that the hearing examiner's Interpretation in the above-referenced case should be reversed, and that such reversal is in the best interests of the residents of the City of Yakima and will promote the general health, safety and welfare.
16. To the extent any Conclusion of Law set forth above is deemed to be a Finding of Fact, such item shall be deemed a Finding of Fact without derogation of any other Conclusion of Law.

Having set forth the above Findings of Fact and Conclusions of Law, the City Council hereby issues its

DECISION

1. The Findings of Fact and Conclusions of Law set forth above are hereby adopted by the City Council as its Findings of Fact and Conclusions of Law herein.
2. The Interpretation in File No. INT#001-14 issued May 12, 2015 by Hearing Examiner Patrick D. Spurgin is hereby affirmed in part and reversed in part as follows:
 - (a) The Interpretation is AFFIRMED insofar as it interprets the classified uses of “community center” and “mixed-use building” and holds that the proposed use of YNHS is not a community center or mixed-use building as defined at YMC 15.02.020.
 - (b) The Interpretation is REVERSED insofar as it holds that a hearing examiner exercising interpretation authority and unclassified use jurisdiction pursuant to YMC 15.04.040 and Chapter 15.12 YMC cannot exercise legislative authority to accomplish the purposes of such codes, in accordance with the lawful delegation of limited legislative authority, to be given the effect of an administrative decision, granted by the City Council in such codes and the provisions of RCW 35.63.130.
 - (c) The Interpretation is REVERSED insofar as it holds that a hearing examiner’s interpretations and unclassified use determinations apply only to the specific parties requesting the interpretation and/or determination and the specific parcel or project giving rise the request for interpretation and/or unclassified use determination.
 - (d) The Interpretation is REVERSED insofar as it holds that the YNHS proposed use will be allowed as any class of use within the SCC zoning district.
3. The proposed use submitted by YNHS constitutes a mission under the definition adopted pursuant to Ordinance No. 2015-022 and pursuant to the hearing examiner’s 1992 Interpretation in UAZO INTERP #1-92, and is not permitted or allowed in the SCC Small Convenience Center zoning district of the City of Yakima, and in particular, is not permitted or allowed on the Roy’s Market site.

IT IS HEREBY ADJUDGED AND RESOLVED BY THE CITY COUNCIL OF THE CITY OF YAKIMA this 1st day of September, 2015.

ATTEST:

Micah Cawley, Mayor

Sonya Claar Tee, City Clerk