Supplemental Application for:

APPEAL

Yakima Urban Area Zoning Ordinance Chapter 15.16

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

☐ Of Subdivision Administrator's Decision ☐ Of SEPA Determination

☐ Other _____

Appeal of File Number: CL2#027-17 REF#002-17 SEPA#037-17

Date Action Taken: Decision Date: 02/23/18 Mailing Date: 02/26/18

1. Description of Action Being Appealed:

All aspects, findings, conclusions & decisions of the hearing examiner, including but not limited to his approval of the application for a Mission use, his findings/conclusions that such use will be compliant with the code and compatible with neighboring uses, and the nature and extent of the conditions that he imposes.

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

See attached.

RECEIVED

MAR 09 2018

CITY OF YAKIMA
PLANNING DIV.

CITY OF YAKIMA, WASHINGTON
CITY COUNCIL

In the Matter of an Application for a Class (2) Use Submitted for Type (3) Review by: Transform Yakima Together and Prodigy 3 LLC, property owner. For a Mission in an Existing Building in the Light Industrial (M-1) Zoning District at 1702 Englewood Avenue.	**CL2#027-17** **SEPA#037-17** **REF#002-17** **APPEAL OF HEARING EXAMINER'S DECISION**

1. INTRODUCTION

This "Appeal of Hearing Examiner's Decision" and the attached cover page "Appeal" form are submitted on behalf of multiple, below-identified appellant parties, by and through their attorneys of record – the law firm of Larson Berg & Perkins PLLC and lawyer D. R. (Rob) Case.

The "Hearing Examiner's Decision" is dated February 23, 2018, and it was mailed on February 26, 2018. Accordingly, filing of this appeal on the present date – March 9, 2018 – is timely. *See* YMC §15.16.050(A.1.). Concurrently with filing of this appeal, the applicable appeal fee of $340.00 will be paid via check.

///

///

///

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 457-1027 (fax)

2. APPELLANT PARTIES

The appellant parties on this appeal constitute property owners and/or users from the neighborhood surrounding the subject location (*i.e.* 1702 Englewood Avenue).

The following appellant parties offered written and/or oral testimony against the proposal during the public hearing before the hearing examiner on February 8, 2018:

Lisa Castillo;
Charles (a/k/a Ed) Brewer (and his spouse, Rebecca Brewer);
Sonia Garcia;
Kathy Clark (and her spouse, Steve Clark);
Jerry Maggard;
James Coleman;
Mike Alliston;
Ken Nass;
Darek Merrill; and
Steven Willett.

See Hearing Examiner's Decision, p.2 (reciting these names).

In addition, the following additional appellant parties have joined this appeal despite perhaps not having attended the February 8th public hearing:

Jimmy Palmer;
Ken Stahley;
Debra Erosa;
Jon's Golf & Ski;
Yeon Shin;
Premier Power Sports; and
Gary and Kathy Kreff.

These additional appellant parties are also property owners and/or users in the surrounding neighborhood. Most (or perhaps all) of them did not receive written notice of the February 8th public hearing because notice was only mailed to property owners and/or users located within three hundred feet of the subject location. Admittedly, three hundred feet is the

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 457-1027 (fax)

applicable metric for supplying written notice according to the Code. *See* YMC §15.14.040(D). However, the proposed use in question will have – and already has had, due to its current "temporary" status – adverse impact upon property owners and users situated more than three hundred feet from the subject location. This will be further explained below and is the reason that so many additional person and entities have joined this appeal and want to oppose the proposed use.

3. REQUEST FOR REMAND TO THE HEARING EXAMINER FOR ANOTHER FULL, PUBLIC HEARING

As this appeal progresses, it is likely that even more persons and entities will want to be added as appellant parties. Coupled with the fact that several of the currently-existing appellant parties did not receive written notice of the February 8th public hearing (as explained above), the appellant parties hereby request that the City Council remand this matter to the hearing examiner for another full public hearing (prior to any potential merits-based review by the City Council).

All impacted property owners and users – not merely those situated within three hundred feet of the subject location – should have an opportunity to present evidence and testimony as part of the record. As things currently stand, many impacted property owners and users have not yet had the opportunity to present their testimony and evidence (because they are situated more than three hundred feet from the subject location and, thus, they did not receive written notice of the February 8th hearing).

Remanding this matter to the hearing examiner will not prejudice anyone's rights. The proposed use in question was previously granted "temporary" status, and on March 6th the City Council extended that "temporary" approval to and through June 30th. Accordingly, there is now additional time wherein a second, full public hearing can be held before the hearing examiner, so as to ensure that no impacted property owner and/or user is precluded from submitting evidence and testimony.[1]

---

[1] The Code contemplates that multiple public hearings before the hearing examiner may be appropriate in certain circumstances. *See e.g.*, YMC §15.15.040(D) (as to public hearings for Class (3) uses, saying that "[t]he hearing examiner shall hold at least one public hearing prior to rendering any decision", which thus contemplates that more than one hearing may be appropriate in certain circumstances).

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 457-1027 (fax)

4. OVERVIEW OF APPEAL ARGUMENTS

As stated above, the appellant parties request that the City Council remand this matter to the hearing examiner for another full public hearing (prior to any potential merits-based review by the City Council). In the event that such request is not granted, the appellant parties have set forth their substantive appeal arguments below in separate sections.

By way of overview, the appellant parties contend as follows:

- The Hearing Examiner's Decision is wrong on the law;
- The Hearing Examiner's Decision is wrong on the facts;
- The Hearing Examiner's Decision fails to account for all arguments offered against the proposed use during the February 8th public hearing;
- The Hearing Examiner's Decision imposes supposed "conditions" that are impractical and ineffective; and
- The Hearing Examiner's Decision generally reaches the incorrect conclusion (because the subject use cannot exist "in harmony" with the surrounding property owners and users).

///

///

///

///

///

///

///

///

///

///

///

///

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 457-1027 (fax)

5, THE HEARING EXAMINER'S DECISION IS WRONG ON THE LAW

Sparse as it is, the law cited within the Hearing Examiner's Decision is incomplete, misstated and misapplied. The only law cited by the hearing examiner (other than various citations to the Code) is two case law decisions that are cited on pages 24 and 25 of the Hearing Examiner's Decision.

The hearing examiner cites *Sunderland* for the following proposition: "where a standard of approval of a generally permitted use is general rather than specific as in the case of compatibility criterion, the burden is upon the one seeking to deny such use to show the use is not compatible." *See Hearing Examiner's Decision*, p.24, (citing, but not quoting, *Sunderland Family Treatment Services v. City of Pasco*, 127 Wn.2d 782, 903 P.2d 986 (1995)).[2] However, this proposition does not apply to the instant case. It does not apply because the proposed use in question must satisfy a Type (3) review. *See* YMC §15.02.020 (definition of "Mission"). The proposed use in question is not merely subject to "general" approval standards; it is subject to specific approval standards that the applicant bears the burden of showing have been satisfied. More generally, the concept of "compatibility criterion" is simply not addressed in *Sunderland* at all. The words "compatibility", "criterion" and their derivatives are not found in the *Sunderland* decision. *See Sutherland*, 127 Wn.2d 782-806.

The hearing examiner also cites *Maranatha Mining*, specifically for the following proposition: "community displeasure relative to a proposal that complies with all requisite policies and standards cannot be the sole basis for denial of a proposal." *See Hearing Examiner's Decision*, pp.24-25 (citing, but not quoting, *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 801 P.2d 985 (1990)). However, this proposition really only begs the question; it does not answer anything. It begs the question because, as the hearing examiner elsewhere acknowledges, "compatibility" with property owners and users in the surrounding neighborhood is required under the Code. *See Hearing Examiner's Decision*, p.15 (citing YMC §15.10.020(B)). Because compatibility is one of the requisite policies and standards, is it woefully circular and invalid for the hearing examiner to say that community displeasure is not a sufficient basis for denying the proposed use. Compatibility/incompatibility can only be

[2] As a typo, the hearing examiner mistakenly recites that the applicable Washington Reporter citation is "127 Wn.2d 783" when in fact it is "127 Wn.2d 782".

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 457-1027 (fax)

assessed by receiving evidence and testimony from neighbors as to how the proposed use might impact them and/or has already impacted them.

This case is distinguishable from what occurred in *Maranatha Mining*. In *Maranatha Mining*, the Pierce County Council "based its decision on community displeasure and not on reasons backed by policies and standards as the law requires." *See Maranatha Mining*, 59 Wn. App. at 805. In the instant case, by contrast, the opponents are not asking for the Code's policies and standards to be disregarded. Rather, the opponents have substantiated that this proposed use – which is currently operating on a "temporary" basis – is not compatible with the neighborhood. Compatibility is one of the requisite policies and standards under the Code.

By his presentation, the hearing examiner seems to conclude that *Maranatha Mining* supposedly indicates that community displeasure is never relevant, but the decision does not go that far. In truth, the later-in-time decision of *Sutherland* from the Washington Supreme Court confirms that "opposition of the community may be given substantial weight". *See Sutherland*, 127 Wn.2d at 797. Opponents cannot rely merely on "inaccurate stereotypes and popular prejudices." *See id.*, at 794. But they most certainly can rely on "well founded fears" or actual past occurrences when, as here, a proposed use is already occurring on a "temporary" basis. *See id.*

It follows that the Hearing Examiner's Decision is wrong on the law. It suggests that the proposed use in question is only subject to general approval standards and that community opposition is wholly irrelevant. Neither point is correct. In truth, the proposed use in question is subject to specific approval standards and community opposition consisting of well-founded fears and/or actual past occurrences caused by the use in question are directly relevant.

///

///

///

///

///

///

///

///

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 457-1027 (fax)

6. THE HEARING EXAMINER'S DECISION IS WRONG ON THE FACTS

The Hearing Examiner's Decision correctly concedes that "some" instances of criminality and other rippling-outward adverse impacts suffered by neighbors is "clearly due to the presence of Camp Home in its current location". *See Hearing Examiner's Decision*, p.23. However, the decision incorrectly also concludes that "some of [those instances of criminality and other rippling-outward adverse impacts] was probably unrelated to Camp Hope." *Id.* (bracketed words inserted in lieu of original word "which"); *see also id.*, at p.25.

As a matter of fact, written and oral testimony offered by the opponents conclusively demonstrates that Camp Hope has resulted in numerous instances of trespass, vandalism, theft, unsanitary actions (*e.g.*, dumping of trash, not disposal of animal feces and human feces), harassment (*e.g.*, panhandling, intimidation and threats), drug activity, and other adverse impacts to the neighbors. The neighborhood has steadily deteriorated since Camp Hope was granted "temporary" approval. It is specifically because of Camp Hope that the neighborhood has deteriorated recently, and that it continues to deteriorate. No other cause exists. The hearing examiner is simply speculating, in favor of Camp Hope, in concluding that the drastic increase in crime and other adverse impacts is "unrelated to Camp Home" in any degree.

In the months that Camp Hope has been operating at this location, numerous police calls have been necessary in order to remove homeless criminals and vagrants from neighbors' premises. They have been found sleeping in yards, rummaging through trash cans, destroying property and openly defecating in the street. Notably, this has occurred during the time in which the operators of Camp Hope would be, logically, on their best behavior (because they need their "temporary" status transformed to "permanent" status). Yet, problem after horrible problem has occurred – and continues to occur.

When the actual record is considered (including the transcript of all oral comments by the opponents during the February 8th public hearing), it is clear that the proposed use is not compatible with neighboring property owners and uses. "Compatibility" means that the proposed use would exist "in harmony" with the neighbors. *See* YMC §15.02.020 (definition of "compatibility"). It should go without saying that trespassing, vandalizing, stealing, not properly disposing of feces, etc., are not harmonious actions. Those sort of actions are the direct opposite of harmonious.

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 457-1027 (fax)

The hearing examiner's conclusions are contrary to the substance and weight of the evidence and testimony. For example, he concludes that the proposed use "will be compliant and compatible . . . in the sense that it will not generate noise levels, light, odor or fumes that would constitute a nuisance". *See Hearing Examiner's Decision*, p.8. In truth, excess noise has already occurred and continues to occur, as intoxicated and/or mentally disturbed homeless people routinely yell at neighbors as they (the homeless people) walk to and from the Mission. Odor and fumes also plague the neighborhood due to the Mission, as opponent Kathy Clark testified (regarding the usage of porta-potties and the unsanitary failure to properly dispose of human and animal feces).

As previously stated above, "opposition of the community may be given substantial weight". *See Sutherland*, 127 Wn.2d at 797. Here, the opponents are not relying on mere stereotypes and popular prejudices. Quite the contrary, they have offered testimony and evidence of actual past occurrences, ongoing occurrences, and well-founded fears that things will only get worse if the proposed use becomes "permanent".

How much criminal activity should the neighbors be forced to endure from this Mission? How much drug activity should they be forced to endure? How many threatening instances toward adults and children, such as at the nearby park or Lincoln Center development, should they be forced to endure?

The hearing examiner concedes that the neighbors have been adversely impacted, and that they will continue to be adversely impacted (at least in some degree). Transform Yakima Together also concedes that problems will be chronic. To call this "compatible" is, frankly, absurd.

This particular use cannot be validly evaluated simply by looking at the four corners of the subject location. The Mission results in homeless foot traffic throughout the day over many blocks, as people wander to and from the Mission periodically. The effects of the Mission "ripple out" throughout the neighborhood, both within a three hundred foot radius and beyond. Admittedly, the hearing examiner imposes various "conditions" that are, supposedly, supposed to mitigate these adverse, ripple-out effects. But those conditions are impractical and ineffective (which will be separately addressed below). Regardless, the hearing examiner is plainly wrong on the facts in concluding that this use – however it might be "conditioned" – is

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 457-1027 (fax)

or could be harmonious with the neighborhood. The actual track record of this Mission confirms that it is not harmonious with the neighborhood, and there is no reason to expect that it would somehow become more harmonious if the use is allowed to become "permanent". Likewise, there is no factual basis for the hearing examiner to conclude that the drastic increase in crime, drug activity and other adverse activity is somehow not due to the Mission. The drastic increase occurred after the Mission was granted "temporary" status. It is fundamentally due to the Mission, nothing else.

It follows that the Hearing Examiner's Decision is wrong on the facts. The decision downplays the evidence and testimony of adverse impacts, falsely concludes that some unspecified reason other than the Mission is the cause of the adverse impacts, and erroneously says the Mission can exist in harmony with the neighbors that it is actually harming on a daily basis. The City Council should review the entire record (including transcript from the February 8th public hearing), hold its own public hearing so as to allow additional public comment from the impacted neighbors, and ultimately conclude that this Mission is simply not compatible with the neighboring property owners and users.

7. THE HEARING EXAMINER'S DECISION FAILS TO ACCOUNT FOR ALL ARGUMENTS OFFERED AGAINST THE PROPOSED USE

The hearing examiner claims that the issue of "compatibility" was supposedly "the only development requirement which is disputed by testimony and written comments submitted". *See Hearing Examiner's Decision*, p.11. This is not accurate.

Admittedly, "compatibility" is the dominate issue. However, other issues were also raised by the opponents during the February 8th public hearing. For example, opponent Mike Alliston raised and challenged the issue of adequacy of existing "sidewalks", which is a development requirement pursuant to YMC §15.05.020(J). The development requirement of "sitescreening" was also raised and challenged, which the hearing examiner actually acknowledges (*see Hearing Examiner's Decision*, p.10) thereby contracting his own contention that compatibility was the only standard raised and challenged.

The City Council should review the entire record (including the transcript from the February 8th public hearing), and should reject the Hearing Examiner's Decision on the basis (if

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 457-1027 (fax)

not for other reasons, too) that it fails to properly acknowledge and address all development standards that the opponents raised and challenged at the February 8th public hearing.

8. THE HEARING EXAMINER'S DECISION IMPOSES SUPPOSED "CONDITIONS" THAT ARE IMPRACTICAL AND INEFFECTIVE

Because of the voluminous evidence and testimony of adverse impacts already suffered by the neighbors, the hearing examiner imposes various "conditions" that are intended to supposedly mitigate the adverse rippling-out impacts caused by the Mission. However, those conditions are generally impracticable and ineffective.

For example, the hearing examiner imposes the following condition:

> [Transform Yakima Together] must take reasonable steps within its power to enforce in the patrolled area as to any residents of the Mission, any visitors of residents of the Mission and any persons who are denied admission to the Mission are as follows:
>
> (a) No littering;
>
> (b) No loitering except at TYT or Service Provider facilities;
>
> (c) No panhandling, and no asking for money or items except at Service Provider facilities;
>
> (d) Language must be appropriate at all times;
>
> (e) Pets must be on a leash and behave non-aggressively at all time and the person in control of a pet is responsible for cleaning up and disposing of animal waste in a garbage container;
>
> (f) Only public restrooms outside the facility can be used unless the restroom at a business is being used by a customer of the business;
>
> (g) The use of alcohol and/or illegal drugs is strictly prohibited within the areas designated by TYT; [and]
>
> (h) Threatening behavior and/or violence is prohibited at all times.

See Hearing Examiner's Decision, p.22 (underscore emphasis added); *see also id.*, at p.30. First and foremost, a condition that calls for "reasonable steps" and/or action "within the power" of the applicant is too vague to actually be enforceable or meaningful. What exactly constitutes a "reasonable step" to make sure that no homeless person engages in, for example, threatening behavior toward the neighbors? Transform Yakima Together claims that it "has a

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 457-1027 (fax)

good set of rules and will not tolerate violations of the rules." *See e.g., Hearing Examiner's Decision*, p.20. Presumably, one of those rules would be that the homeless people are not supposed to threaten the neighbors. If so, then will Transform Yakima Together have discharged its "reasonable steps" obligation if it communicates the rules to the homeless people? Needless to say, this would be absurd. Threatening behavior is already against the law, irrespective of any "rules" that Transform Yakima Together might dream up. Nonetheless, the homeless people who frequent the Mission have been threatening the neighbors with frequency. Alternatively, maybe the idea is that Transform Yakima Together is supposed to enforce its rules via the periodic patrols it is supposed to make of the neighborhood. However, patrols would not prevent threatening behavior, for example, from occurring in the first instance; they would mostly only respond to threatening behavior after a complaint has been lodged by a neighbor.[3]

Likewise, how would Transform Yakima Together ensure that none of its homeless people urinate and/or defecate on the street or in neighbors' yards? Are the patrols supposed to prevent this? If so, it is obvious that the patrols cannot do so, as the neighbors have offered testimony and evidence of homeless people from the Mission urinating and defecating throughout the neighborhood despite patrols supposedly already occurring. Of course, this multi-part "condition" does not require Transform Yakima Together to actually prevent any sort of bad act by its homeless residents. No, it only requires "reasonable steps" and actions "within the powers" of Transform Yakima Together, which is too vague to actually be enforceable or measurable as a condition.

As another example, the hearing examiner imposes a "condition" that supposedly requires Transform Yakima Together

> to have the training and the ability to promptly respond to [neighborhood complaint] calls at any time of the day or night and every day of the week, and will need to have set procedures in place to do so.

---

[3] Transform Yakima Together touts that it has "a Good Neighbor Policy that is signed by every resident when they check in stating that they will respect the neighboring properties and businesses." *See e.g., Hearing Examiner's Decision*, p.18. However, past and ongoing occurrences in the neighborhood confirm that the residents do not actually respect the neighboring properties and businesses. The mere signature of a homeless person – many of whom labor under mental problems and substance abuse – is not worth much. More generally, problems occur as homeless people wander toward the Mission each day. Having them sign something after they check in will not prevent or cure the bad acts they engaged in prior to checking in.

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 457-1027 (fax)

See Hearing Examiner's Decision, p.21 (bracketed words added in lieu of original word "such"); *see also id.*, at p.30. Well, what will constitute a "prompt" response? Is 30 minutes a prompt response time, or will a response within an hour be considered prompt? Needless to say, when an instance of violence, theft or public defecation is occurring, 30 minutes is a very long time. More generally, the opponents have offered testimony and evidence that they have repeatedly called Transform Yakima Together over the past several months when the Mission's residents have been acting in bad ways, and many of those calls have gone unanswered and/or un-responded to by Transform Yakima Together. Thus, Transform Yakima Together's current training and staffing are insufficient, and yet this condition does not provide any stated or measurable metric for improved training and staffing. This condition just says "set procedures" need to be in place, but it provides no consequence for those procedures being insufficient or not followed.

With respect to patrols of the impacted area, the hearing examiner imposes a "condition" that calls for patrols

> as frequently as experience shows is needed in order to develop the trust of the residents and business owners in the area from Lincoln Avenue to Fruitvale Boulevard and from North 16th Avenue to North 20th Avenue including the Lincoln Center commercial development west of North 20th Avenue.

See Hearing Examiner's Decision, pp.23-24 (underscore emphasis added); *see also id.*, at p.31. Again, this is too vague to be meaningful. What if Transform Yakima Together concludes that once-per-week is sufficient for the patrols, yet the neighbors believe and know that a much greater frequency is necessary? Who gets to set the actual standard? What consequence is there for Transform Yakima Together disregarding the neighbors' input? It seems that Transform Yakima Together would have carte blanc because the hearing examiner explicitly indicates that the condition for neighborhood patrols is subject to "as staffing and funding allows". *See Hearing Examiner's Decision*, p.31. In other words, if and when Transform Yakima Together concludes that it no longer has the staffing and/or funding to do the patrols – such as when it starts to make the necessary improvements and alterations to its building, which will be labor-intensive and expensive – Transform Yakima Together could conceivably fully dispense with the neighborhood patrols and yet not violate this supposed "condition". This is

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 457-1027 (fax)

totally inappropriate. Specific staffing levels and dollar-figure budgeting for the patrols should be expressly required, so as to make this a measurable condition of real consequence rather than just pie-in-the-sky fluff.[4]

As a final example, the hearing examiner imposes a "condition" that Transform Yakima Together have

> monthly or other periodic meetings where residents and business owners know they can express their concerns and perhaps influence operational decisions regarding the Mission.

See Hearing Examiner's Decision, p.24 (underscore emphasis added); *see also id.*, at p.31. Again, this is a meaningless condition in reality. The neighbors do not want to merely "express their concerns". Nor is that any part of the applicable policies and standards under the Code. Rather, the neighbors are entitled to harmony and compatibility. As written, this condition does not require Transform Yakima Together to take any action in response to whatever concerns the neighbors might raise. This "condition" speaks somewhat optimistically about the neighbors "perhaps" influencing Transform Yakima Together, but in effect Transform Yakima Together could simply attend the periodic meetings, let the neighbors vent and never give any thought or take any action in response to what the neighbors say, report and suggest.[5]

Rather than these impractical and ineffective conditions, real measurable and consequential conditions should be imposed. For example, Transform Yakima Together should be required to staff its 24-hour telephone hotline with an actual person at all times who is required to answer each and every telephone call (without missing any calls) and to take appropriate responsive action within the patrolled area within five minutes at the longest. Moreover, whenever neighbor concerns are raised at the monthly community meetings, Transform Yakima Together should be required to propose and implement a specific

---

[4] Transform Yakima Together claims it will "patrol the neighborhood regularly" and will "have service crews walk the neighborhood and regularly pick up trash." *See e.g.*, *Hearing Examiner's Decision*, p.18. It is notable that Transform Yakima Together refuses to provide any quantification of what constitutes "regularly" for either. Transform Yakima Together is purposefully being vague so as to give the illusion that something significant will occur while reserving the discretion to basically do little if anything.

[5] Notably, at the public comment hearing that Transform Yakima Together held on Monday, March 5th, many neighbors raised many complaints about actual past and/or ongoing occurrences, and Andy Ferguson (the operator of Transform Yakima Together) offered nothing concrete as to any of those complaints – he typically responded by saying something along the lines of "thank you for sharing" or "I understand".

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 457-1027 (fax)

responsive action for each such concern within one week time and to then report back to the neighbors at the next monthly meeting as to whether that responsive action succeeded. Transform Yakima Together should be required to perform neighborhood patrols several times per day, including during the totality of the 30 minutes after it releases its residents each morning, during the totality of the 30 minutes after it closes its doors each night, before and after each meal service, and also prior to the start of school each day, over all school recess periods, and at the conclusion of school each day. Given the size of the patrol area and the number of homeless people at the Mission, at least two patrol vehicles should be required to be used at each of these times. The boundaries of the patrol area should also be expanded, at least for once- or twice-per-day into the expanded patrol area (such as along Fruitvale Boulevard and along Lincoln Boulevard).

Other, better conditions are also appropriate, and all conditions should have objective measurable metrics rather than being based on vague standards such as "reasonable steps". This is another good reason for remanding this matter for another full hearing before the hearing examiner. The issuance of the Hearing Examiner's Decision was the first time that the opponents learned of the specific "conditions" that the hearing examiner was going to impose. Now that they have seen and evaluated those conditions, the opponents want and need to offer additional input. Rather than having the City Council be the first recipient of the opponents' input on these conditions, it would make more sense for another full hearing to occur before the hearing examiner (prior to any potential merits-based review by the City Council).

///

///

///

///

///

///

///

///

///

///

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 457-1027 (fax)

9. THE HEARING EXAMINER'S DECISION GENERALLY REACHES THE INCORRECT CONCLUSION (BECAUSE THE SUBJECT USE CANNOT EXIST "IN HARMONY" WITH THE SURROUNDING PROPERTY OWNERS AND USERS)

The most critical fact for analyzing this proposed permanent use is that the Mission has been operating at the subject location for several months on a "temporary" basis. This provides an objective track record as to how the Mission has impacted, and would continue to impact, the surrounding property owners and users. That track record is quite dismal. Moreover, things are not getting better; they are actually getting worse. This is the reality despite Transform Yakima Together presumably being on its best behavior, because it hopes to transition from "temporary" to "permanent" status.

The opponents are not relying on mere stereotypes or prejudices. Rather, they are relying on their own documented experiences with the people this Mission has attracted, and would continue to attract, to the neighborhood. The opponents are relying on their own documented experiences with Transform Yakima Together, which talks a good game vis-à-vis a 24-hour complaint hotline, neighborhood patrols and monthly community meetings, but which does not come close to following through on any of its assurances. The opponents are not speculating that the Mission would be incompatible with the neighborhood; they know firsthand that it actually is incompatible.

This neighborhood is suffering due to the Mission. Crime is going up, drug activity has increased and the homeless people are sleeping in people's yards and defecating on people's business properties. There is no reason to expect things to improve. The neighbors' complaints have fallen deaf ears, both with Transform Yakima Together and with the hearing examiner.

This appeal is not an anti-homeless submission. Nor is it a not-in-my-backyard type submission. This appeal is based on reality, fact and law. The law says that compatibility is required, that compatibility means harmony, and that the neighbors' well-founded fears and actual experiences should be given substantial weight. The facts confirm that since this Mission began temporary operations, harmony has disappeared and been replaced with discord, violence and all other variety of bad behavior. The reality is that this Mission is not, and under the weak supposed "conditions" never will be, compatible with the neighborhood.

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 457-1027 (fax)

Homelessness is a serious problem and solutions must be attempted. But no one deserves to have his/her neighborhood destroyed in favor of a homeless mission. The subject location may be technically zone light industrial (M-1), but it is comprised of small businesses, homes and a nearby walking trail, park and school. This location has proved to be a terrible location for the Mission in terms of how it impacts the neighbors. The neighbors' rights are supposed to matter, too. Quite specifically, whether the Mission is harmonious and compatible with the neighbors is an express standard and policy under the Code.

Future-looking, pie-in-the-sky "Good Neighbor Policies" do not change the actual reality: this Mission has degraded the neighborhood and would continue to do so. The promised 24-hotline, neighborhood patrols and monthly community meetings have either not materialized or have been wildly inadequate. The "conditions" imposed by the hearing examiner are, as shown above, vague and unmeasurable to the point of being fictitious.

The appellant parties implore the City Council to make an honest assessment of the entire record, including the transcript from the February 8th public hearing. The Mission should not be granted permanent status at this location. A different location should be used, such as the property at or behind the former K-Mart which is not surrounded by small businesses and homeowners like the subject location. The neighbors at the subject location have already suffered enough. And suffer they have. They should not be forced to suffer any longer. Evaluated honestly against the Code and the factual record – including the Mission's period of "temporary" operation – this Mission is not proper at the subject location.

///

///

///

///

///

///

///

///

///

///

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 457-1027 (fax)

10. CONCLUSION

The appellant parties ask the City Council to remand this matter for another full hearing before the hearing examiner (prior to any potential merits-based review by the City Council). Given the type of use in question, adverse impacts will be (and have been) suffered by property owners and users from a broader neighborhood than merely those located within three hundred feet of the subject location to whom written notice of the hearing was actually mailed. Those additional property owners and users should have an opportunity to add to the record (prior to any appeal). Moreover, the Hearing Examiner's Decision was the first time that any opponents learned of the type of "conditions" that he was going to impose, and the opponents should have an opportunity to weigh in on those conditions (prior to any appeal).

If the City Council decides to not remand this matter, then the appellant parties ask the City Council to hold a public hearing of its own, to receive additional evidence and testimony, and to ultimately reject and overrule the Hearing Examiner's Decision (or at worst to impose more realistic and measurable "conditions"). The Hearing Examiner's Decision is wrong on the law, wrong on the facts, fails to account for all arguments presented against the proposed use (such as the challenge of sidewalks and sitescreening standards), imposes "conditions" that are impractical and ineffective, and generally reaches the wrong conclusion (because the proposed would not be, and has already demonstrated itself to not be, "compatible" with neighboring property owners and users).

DATED AND RESPECTFULLY SUBMITTED this 9th day of March, 2018.

LARSON BERG & PERKINS PLLC
Attorneys for Appellant Parties

By: _____
D. R. (ROB) CASE (WSBA #34313)

LARSON BERG & PERKINS PLLC
105 North 3rd Street
P.O. Box 550
Yakima, WA 98907
(509) 457-1515
(509) 457-1027 (fax)