

**CITY OF OLYMPIA
OLYMPIA HEARING EXAMINER
STAFF REPORT
July 10, 2017**

Case: Hope Community Church Appeal, Case No. 17-2250

Appellant: Hope Community Church
2425 Black Lake Boulevard SW
Olympia, Washington 98512

Representative: Loren D. Combs, VSI Law Group, PLLC

Project Location: 2425 Black Lake Boulevard SW

Public Notification: Notice of the public hearing was mailed to parties of record and recognized neighborhood associations on June 29, 2017.

I. INTRODUCTION

Project Description and Context

Hope Community Church has appealed an administrative determination by the City of Olympia Community Planning & Development Department (CP&D) regarding the status of Conditional Use Permit (CUP) #05-1429. CP&D determined that the CUP has expired and new land use and conditional use permit approvals are required before the City can proceed with the review of engineering and building permit applications for the planned expansion of the church. The determination was issued on May 17, 2017 with a fourteen (14) day appeal period. The appellant's representative, Loren Combs of VSI law Group, filed an appeal of the decision on May 31, 2017.

The subject parcel is located at 2425 Black Lake Boulevard SW. The site is approximately 5.3 acres in size. The property is zoned Residential Multi-Family (RM-18). The properties to the north are zoned single family residential and developed with single family homes in the Westbrook Park subdivision. The properties to the east across Black Lake Boulevard are zoned Professional Office/Residential Multi-Family. Properties to the south are in the City of Tumwater and zoned Light Industrial. West of the subject parcel is undeveloped land zoned Residential Low Impact (RLI).



Background Information

On July 11, 2006 Hope Community Church submitted general land use and conditional use permit applications to the City to construct a 20,563 square foot multi-purpose building, with associated parking and other improvements. An environmental checklist was included with the application that describes the project as a phased project which “may be completed in one or more phases – anticipated completion within 7 years” (Attachment 8). The project was subject to a public hearing before the Olympia Hearing Examiner on May 14, 2008. The project description in the staff report states “the applicant is asking that construction of the new facility be phased over several years.” (Attachment 3). Condition 11 on page 20 of the staff report states “should applicant seek phasing of the development, all landscaping and frontage improvements must be installed as part of Phase 1.” The Hearing Examiner approved the project on July 22, 2008, subject to conditions. Condition 7 references and incorporates Condition 11 of the staff report.

In 2009-10, the church applied for and received approvals for building and engineering permits to construct 12,142 square feet of the project. This is described as Phase 1 on the site plan (Attachment 4). The church now plans to construct north and south additions totaling 8,278 square feet as Phase 2 of the project (Attachment 5).

On May 17, 2017 CP&D issued an administrative determination that the CUP had expired (Attachment 2). CP&D determined that new Land Use and CUP approvals are required before the City can proceed with the review and issuance of engineering and building permits for the remainder of the project. This is an administrative determination that may be appealed to the Hearing Examiner pursuant to the authority and requirements of Chapters 18.75 and 18.82 of the Olympia Municipal Code. An appeal must be filed within fourteen (14) days from the date of this letter. The letter must be accompanied by a \$1,000 appeal fee. An appeal was filed by the church on May 31, 2017.

CP&D made the administrative determination based on Olympia Municipal Code 18.72.140(B), which states that “unless exercised or otherwise specified, a conditional use permit shall be void one (1) year from the date a notice of final decision was issued. If exercised, a conditional use permit shall be valid for the amount of time specified by the Hearing Examiner.” While phasing is referenced in the staff report, the Hearing Examiner decision, and included in the project description in the SEPA environmental checklist for the project, a phasing plan and timeline were not addressed. The City does have an email record of an October 17, 2008 conversation between staff and the applicant in which an administrative revision to the CUP was offered as a process to approve a phasing plan for the project for up to ten years (Attachment 6). The City does not have any records indicating that the applicant applied for a CUP revision or that the required processing fee was paid. It is therefore the position of CP&D that the 2008 CUP approval has expired.

Applicable Regulations

Regulations applicable to this proposal include:

- OMC 18.72 – Administration
- OMC 18.75 – Appeals/Reconsideration
- OMC 18.82 – Hearing Examiner

II. STAFF ANALYSIS

The burden of proof and standards for granting an appeal are set forth in Olympia Municipal Code (OMC) 18.75.040.F:

Standard of Review. In reviewing a decision including a recommendation of the Design Review Board, the Examiner shall give substantial weight to the recommendation of the Board. With regard to decisions of city

staff, the Examiner shall accord due deference to the expertise and experience of the staff rendering such decision. The Examiner shall only grant the relief requested by an appellant upon finding that the appellant has established that:

- 1. the staff engaged in unlawful procedures or failed to follow a prescribed procedure;*
- 2. the staff's decision was an erroneous interpretation of the law;*
- 3. the decision is not supported by substantial evidence within the context of the whole record;*
- 4. the decision is a clearly erroneous application of the law to the facts;*
- 5. the decision is outside the authority or jurisdiction of the decision-maker;*
- 6. the decision violates the constitutional rights of the party seeking relief; or*
- 7. the decision is clearly in conflict with the City's adopted plans, policies or ordinances.*

Basis of Appeal

1. Item 1 of the Appeal statement claims the appellant is being harmed by the City's decision as follows:

- **The decision will require the church to submit a new CUP application and go through a new CUP approval process, which will require considerable time, money and effort to complete, and which could result in new or more onerous conditions of approval.**

Staff Response:

Land use approvals have time limits because regulations may change over time. The record is clear that phasing was discussed as an element of the project. However, staff does not believe the intent was to have an open ended phasing timeline. The Olympia Municipal Code states the Hearing Examiner has the authority under OMC 18.72.140(B) to specify an amount of time during which a conditional use permit is valid. Since staff does not have this authority, the administrative determination regarding the expiration of the CUP was made.

2. Item 2 of the Appeal states how and why the appellant believed the city staff erred in making its decision:

- **The issue of phasing was discussed with staff and presented to the hearing examiner. The staff report states in the description of the project that it is intended to be phased over several years. A condition of approval describes project phasing in terms of the timing for construction of landscaping and frontage improvements.**
- **The Religious Land Use and Institutional Persons Act prohibits any government from implementing a land use regulation in a way that imposes a substantial burden on religious exercise unless the burden satisfies strict scrutiny.**

Staff Response:

Staff agrees the record clearly shows phasing was discussed at several stages of the project review process. What is not clear is a timeline or time limit to cover the duration of phasing. CUPs are valid for one year or the amount of time specified by the hearing examiner. The time limit provisions for CUPs apply to all land use conditional uses, not just to religious institutions.

3. Item 3 asks the appellant, if successful on appeal, to describe the action they wish the Hearing Examiner to take and how this action would eliminate or reduce harm to the appellant:

- **Revise the determination and rule that the CUP allows phasing and has not expired. If necessary, set a deadline for submission for a building permit for the remaining improvement covered by the CUP.**

Staff Response:

Authority to specify an amount of time during which a CUP is valid rests with the Hearing Examiner. A timeline was not established in the hearing examiner decision for the project. If the administrative determination is overturned, clarity would be provided by setting a deadline for completion of the remainder of the project.

III. CONCLUSION

The record shows phasing was an element of the project proposal and was discussed during the CUP review and approval process. The Hearing Examiner did not set a time limit for phasing and completion of the project. Staff does not have that authority and therefore determined, based on the project history and record, the CUP had expired.

IV. RECOMMENDATION

Uphold the administrative decision has expired, or set a deadline for phasing and completion of the project pursuant to the authority provided in OMC 18.72.140(B).

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Date Issued: June 30, 2017

V. ATTACHMENTS

2. Administrative Determination
3. Appeal Application with CUP Staff Report and Hearing Examiner Decisions
4. Site Plan for First Phase
5. Site Plan for Second Phase
6. Email dated 11-13-2008
7. Email dated 3-19-2009
8. SEPA Checklist for CUP Application