

**BEFORE THE HEARINGS EXAMINER  
FOR CLARK COUNTY, WASHINGTON**

In the Matter of Emerald Enterprises  
LLC and John M. Larson,<sup>1</sup>  
Appellants

**FINDINGS AND FINAL ORDER**  
Notice and Order Nos. N&O CDE2016-Z-001  
and N&O CDE2016-B-001

**I. BACKGROUND INFORMATION**

**Site Location:** 9411 NE Highway 99, Vancouver, Washington (#82 SEC 2 T2N R1EWM) (the “site”).

**Description of Alleged Violations:**

1. Operation of a marijuana retail dispensary in the General Commercial (GC) Zoning District in violation of Clark County Code 40.230.010. (N&O CDE2016-Z-001); and
2. Revocation of tenant improvement permit COM2015-00224, issued in error based on incorrect information supplied to the County by permit applicant. (N&O CDE2016-B-001)

**Appeal Proceedings:** The County issued N&O CDE2016-Z-001 on January 11, 2016. (Exhibit 3). The County issued N&O CDE2016-B-001 on February 4, 2016. (Exhibit 6). The Appellant filed an appeal of N&O CDE2016-Z-001 on January 20, 2016. (Exhibit 4). Respondent did not file a separate appeal of N&O CDE2016-B-001. However the County agreed to allow consideration of both N&Os under the original appeal and waived any jurisdictional objections. (Pridemore testimony).

**II. ORDER**

1. N&O CDE2016-Z-001, alleging that Appellants are operating a marijuana retail dispensary in the General Commercial (GC) Zoning District in violation of Clark County Code 40.230.010, is affirmed.
2. N&O CDE2016-B-001, alleging that Appellants obtained tenant improvement permit COM2015-00224 and occupancy approval by Director based on misrepresentation is affirmed.
3. Commercial Building Permit COM2015-00224 is revoked and the Appellants are ordered to immediately cease the sale of marijuana and marijuana infused products on the site.
4. Appellants are ordered to pay a monetary penalty of \$1,500 pursuant to CCC 32.08.070(2).<sup>2</sup>

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<sup>1</sup> The County issued the N&Os to Emerald Enterprises, the permit applicant and business owner, and Nicholson Properties LLC, the property owner. John M. Larson and Emerald Enterprises filed an appeal of the N&Os. Nicholson Properties LLC did not file an appeal.

5. If the appellants do not comply with paragraph II.3, then, pursuant to CCC 32.04.050, the appellants shall pay to Clark County a civil penalty of \$250 per violation per day for each day thereafter until the County Enforcement Coordinator finds the Property complies with the Code.

### III. SUMMARY OF PROCEEDINGS

1. Pursuant to Clark County Code (“CCC”) 32.08.040, Joe Turner, the County’s duly authorized Hearing Examiner (the “examiner”), held a hearing regarding an appeal of the N&Os on February 25, 2016.
2. Clark County was represented by County Code Enforcement Coordinator Kevin Pridemore, County deputy prosecuting attorney Bill Richardson, County Permit Services Manager Chuck Crider, and County Lead Building Inspector Mark Hess. At the hearing the County submitted: an updated Chronology and updated Notes (Replacing existing Exhibits 1 and 2); recent photos of the site (Exhibit 14A);<sup>3</sup> the appellants’ September 17, 2014, complaint filed with the Cowlitz County Superior Court in *Emerald Enterprises and John Larson v. Clark County*, (Case No. 14-2-00951-9) (Exhibit 14B); the December 14, 2014, summary judgment order of the Cowlitz County Superior Court (Case No. 14-2-00951-9) (Exhibit 15); and the July 2, 2015, Court of Appeals ruling staying the appeal in *Emerald Enterprises and John Larson v. Clark County*, (Case#47068-3-11) (Exhibit 16). John and Jeremy Larson appeared on behalf of the appellants, Emerald Enterprises LLC and John M. Larson. At the hearing the appellants submitted a Hearing Statement. (Exhibit 17). All testimony was under oath.

### IV. FINDINGS

1. The site is zoned GC (General Commercial). (Exhibit 7).
2. Nicholson Properties LLC owns the site. (Exhibit 7). Emerald Enterprises LLC leases a portion of the site, Suite 4 (the “premises”), from Nicholson Properties LLC. John Larson applied for all permits for tenant improvements on the site on behalf of Emerald Enterprises. (Exhibits 8(a), (c), and (d)). John M. Larson is the sole owner of Emerald Enterprises LLC. (Exhibit 4(a)).
3. On September 8, 2014, the Washington State Liquor and Cannabis Board (the “WSLCB”) issued Emerald Enterprises LLC a license to sell marijuana at retail. (Exhibit 4(b)). On November 17, 2015, the WSLCB approved a change of location for Emerald Enterprises LLC to relocate to the premises. (Exhibit 4(b)). The WSLCB issued Emerald Enterprises LLC marijuana retailer license #3421326 under the

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<sup>2</sup> 3 days x \$250/day x two violations = \$1,500.

<sup>3</sup> The record includes two documents labeled “Exhibit 14:” photos of the site dated September 25, 2016 and the appellants’ September 17, 2014, complaint filed with the Cowlitz County Superior Court in *Emerald Enterprises and John Larson v. Clark County*, (Case No. 14-2-00951-9). The examiner refers to these Exhibits as Exhibit 14A (photos) and 14B (Superior Court complaint).

registered trade name “Sticky’s.” The license lists the premises as the business location. (Exhibit 4(i)).

4. On September 17, 2014, the appellants filed in Cowlitz County Superior Court a “Complaint for Declaratory and Injunctive Relief” arguing that Clark County’s prohibition on the retail sale of recreational marijuana conflicts with state law and is unconstitutional. (Exhibit 14B).
5. On September 24, 2015, John Larson on behalf of Emerald Enterprises LLC submitted an application for a commercial building permit for tenant improvements to an existing commercial building on the site. The appellants described the proposed use as “General retail business moving into existing retail space/location. Business will sell novelties, crafts, collectibles, and general merchandise.” ((Exhibit 8(c)). John Larson filled out the building permit application. (John Larson testimony). The appellants’ September 22, 2015, Fee Waiver application described the business as “Retail General. Retail business novelties.” (Exhibit 8(d)). During the building inspection process the appellants told Mr. Hess they intended to sell collectibles and antiques. (Hess testimony).
6. The County would have denied the appellants’ building permit application if the appellants had disclosed that they intended to operate a retail marijuana facility on the site, because CCC 40.260.115.B(4) prohibits retail marijuana facilities in unincorporated Clark County. (Crider testimony).
7. On December 2, 2015, the County issued Commercial Building Permit COM2015-00224 allowing tenant improvements to the premises. (Exhibit 8(a)). As part of the tenant improvements the appellants replaced the existing sheetrock cover on the interior walls within the premises with oriented strand board (“OSB”). The appellants told Mr. Hess the OSB walls were needed for additional security. Mr. Hess also noted numerous security cameras within the premises while he was conducting his inspections. (Hess testimony). The County issued a Certificate of Occupancy for a “Specialty Retail Center” on the site on December 23, 2015. (Exhibit 8(q)).
8. On December 17, 2014, the Cowlitz County Superior Court issued an order granting the County’s motion for summary judgment and dismissing the appellants’ complaint with prejudice. (Exhibit 15). The Superior Court held that “[s]tate law does not preempt or otherwise conflict with CCC 40.260.115.B(4).” (p. 4 of Exhibit 15). The appellants appealed the Superior Court decision to the Washington Court of Appeals. The Court of Appeals stayed the appeal pending the Court of Appeals’ decision in *MMH v. City of Fife*, COA No. 46723-2-II. (Exhibit 16). The Court of Appeals heard oral arguments in *MMH v. City of Fife* on January 16, 2016. (John Larson testimony and Exhibit 17).
9. On December 23, 2015, Emerald Enterprises LLC, dba Sticky’s, began offering marijuana for sale to the public from the premises. (Exhibit 4(e)). On January 4, 2016 the County observed that the premises were being used for marijuana sales “Sticky’s Pot Shop.” (Exhibits 10 and 11).

10. On January 11, 2016 the County issued N&O CDE2016-Z-001, ordering Emerald Enterprises LLC and Nicholson Properties LLC to cease all sales of marijuana and products containing marijuana within ten (10) days from the date of the N&O. (Exhibit 3).
11. On January 20, 2016 the appellants filed an appeal of N&O CDE2016-Z-001. (Exhibit 4).
12. On February 4, 2016 the County issued N&O CDE2016-B-001, revoking tenant improvement permit COM2015-00224 “[d]ue to incorrect information supplied to the County during permit process.” (Exhibit 6).
13. The appellants did not file an appeal of N&O CDE2016-B-001. However the County agreed to waive any jurisdictional issue and allow the examiner to consider appeals of both N&O CDE2016-B-001 and N&O CDE2016-Z-001. (Pridemore testimony).
14. As of the date of the hearing, Sticky’s Pot Shop remained open and was offering the sale of marijuana from the tenant space on the site. (Exhibit 14A).

## V. CONCLUSIONS

1. CCC 40.260.115.F requires approval of a Type II permit to operate a retail recreational marijuana facility in the GC zone.
2. CCC 400.510.020 sets out the procedures for review and approval of a Type II permit. This section requires, among other things, a pre-application conference, filing of a Type II application, public notice and opportunity to comment, and a final decision that is subject to *de novo* appeal to the Hearing Examiner.
3. CCC 40.260.115.B(4) prohibits approval of recreational marijuana-related permits until such time that marijuana is no longer listed as a federally controlled substance in accordance with 21 U.S.C 812(c).
4. CCC Table 40.230.010-1(21)(e) prohibits marijuana related facilities in the GC zone.
5. RCW 69.50.325(3) provides, in relevant part:

There shall be a marijuana retailer's license to sell marijuana concentrates, useable marijuana, and marijuana-infused products at retail in retail outlets, regulated by the state liquor and cannabis board and subject to annual renewal. The possession, delivery, distribution, and sale of marijuana concentrates, useable marijuana, and marijuana-infused products in accordance with the provisions of this chapter and the rules adopted to implement and enforce it, by a validly licensed marijuana retailer, shall not be a criminal or civil offense under Washington state law. Every marijuana retailer's license shall be issued in the name of the applicant, shall specify the location of the retail outlet the licensee intends to operate, which must be

within the state of Washington, and the holder thereof shall not allow any other person to use the license.

6. The Cowlitz County Superior Court held that CCC 40.260.115.B(4) is constitutional and can be read in harmony with the licensing provisions of RCW 69.50. (Exhibit 15). The examiner has no jurisdiction to reconsider that determination in this proceeding. The examiner is bound by the Superior Court's decision.
7. The examiner finds that the appellants are operating a marijuana retail facility on the site without required permits and approvals and in violation of the regulations of the GC zone. This is a violation of CCC 40.230.010, 40.260.115.B(4) and 40.260.115.F. Therefore N&O CDE2016-Z-001 should be affirmed.
8. The examiner finds that the County's enforcement process does not conflict with RCW 69.50.325(3). The County is not sanctioning the appellants for "The possession, delivery, distribution, and sale of marijuana concentrates, useable marijuana, and marijuana-infused products in accordance with the provisions of [state law]." The County is sanctioning the appellants for violating the County zoning code by operating a prohibited use in the GC zone.
9. CCC 32.12.020(1) authorizes the director to "[p]ermanently revoke any permit issued by the county for (iv) discovery of a director that a permit was issued in error or on the basis of incorrect information supplied to the county."
10. In this case the County issued Commercial Building Permit COM2015-00224 based on statements in the application that the premises would be used for "General retail business moving into existing retail space/location. Business will sell novelties, crafts, collectibles, and general merchandise." (Exhibit 8(c)). If the appellants had disclosed their actual intent to operate a retail marijuana facility, the County would have denied the permit.
  - a. The appellants clearly intended to operate a retail marijuana business on the site. The appellants applied for and obtained approval from the WSLCB to locate the appellants' retail marijuana business on the site on November 17, 2015. The appellants concealed that intent from the County, indicating that they intended to "[s]ell novelties, crafts, collectibles, and general merchandise" on the site, because they knew the County would deny their permits if they disclosed their actual intent.
11. Therefore the examiner finds that, because Commercial Building Permit COM2015-00224 was issued on the basis of incorrect information supplied by the appellants, the permit should be revoked and N&O CDE2016-B-001 should be affirmed.
12. CCC 32.08.070(2) provides:

Enforcement of any notice and order of a director issued pursuant to this title shall be stayed during the pendency of any appeal under this title, except when a director determines that the violation will cause immediate and irreparable

harm and so states in the notice and order issued. Mitigation measures may be imposed by the hearing examiner or the planning director during the pendency of an appeal in superior court to minimize the impact of the alleged violation. Penalties assessed in the notice and order will continue to aggregate during the appeal period unless the appellant prevails on appeal. The aggregated penalty shall not exceed three (3) times the amount of the daily penalty as determined by the Table [32.04.050](#) for any single violation from its inception through the date the hearings examiner renders its final decision.

13. There is no evidence in the record that the violations in this case will cause immediate and irreparable harm. The County did not address this issue at the hearing or in its briefings. Therefore the timely filing of an appeal of this Final Order in Clark County superior court will automatically stay enforcement of the N&Os at issue in this decision. The County did not request the imposition of any mitigation measures during the pendency of an appeal in superior court to minimize the impact of the alleged violation.
13. The monetary penalties assessed in the N&Os will continue to accrue during the appeal. The Code expressly provides “The aggregated penalty shall not exceed three (3) times the amount of the daily penalty as determined by the Table 32.04.050 for any single violation from its inception through the date the hearings examiner renders its final decision.” The examiner has no authority to change the plain language of the Code to limit monetary penalties during further appeals after the examiner renders his final decision.
14. In this case the appellants did not prevail on appeal and the violations continued during the appeal process. The appellants were operating a retail marijuana facility on the site as of the date of the hearing in this appeal. Therefore the examiner must impose a cumulative penalty of \$1500.<sup>4</sup>
  - a. The County only requested \$750 in cumulative penalties in its hearing memo. However the County issued two N&Os in this case. Each N&O imposed a separate \$250 daily penalty and the daily penalties accrue automatically, up to three times the daily penalty. The director can choose to reduce or waive the accumulated penalties pursuant to the settlement provisions of CCC 32.08.080. However the examiner must impose the monetary penalties required by the Code.

Dated this \_\_\_ day of March 2016.

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Joe Turner, AICP  
Clark County Hearing Examiner

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<sup>4</sup> Three days x \$250/per day x two violations = \$1,500.