

37  
G

FILED

2016 MAR 21 PM 4:07

SCOTT G. WEBER, CLERK  
CLARK COUNTY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF CLARK**

EMERALD ENTERPRISES, LLC,  
JOHN M. LARSON,  
  
Appellants,

v.

CLARK COUNTY, a Washington state  
county,  
  
Respondent.

Case No:

**16-2-00585-7**

Notice and Order Nos.: N&O  
CDE2016-Z-001 and N&O  
CDE2016-B-001

**WRIT OF CERTIORARI  
OF EMERALD  
ENTERPRISES, LLC AND  
JOHN M. LARSON FROM  
ORDER OF THE HEARING  
EXAMINER**

COMES NOW, Emerald Enterprises, LLC and its sole owner, John M. Larson, *Pro Se*, and pursuant to CCC 32.08.040 files this appeal as a Writ of Certiorari from Notice and Orders CDE2016-Z-001 and CDE2016-B-001, served upon Appellants by Clark County Code Enforcement and enforced

Writ of Certiorari of Emerald Enterprises, LLC and John M. Larson from the Order of

1 pursuant to the adjudication and order of the Hearing Examiner for Clark  
2 County.

3  
4 **I. STATEMENT OF FACTS**

5 1. On September 8, 2014, Emerald Enterprises, LLC was issued a license by  
6 the Washington State Liquor and Cannabis Board (the "WSLCB") to sell  
7 marijuana at retail, pursuant to RCW 69.50.325.  
8

9 2. On November 17, 2015, the WSLCB approved a Change of Location for  
10 Emerald Enterprises, LLC to relocate to 9411 NE Highway 99, Suite 4 (the  
11 "Premises"). The WSLCB issued a marijuana retailer license, WSLCB  
12 License# 421326, for this location. (See attached as Exhibit A)  
13  
14

15 3. On October 2, 2015, Emerald Enterprises, LLC filed an application with  
16 Clark County for a Commercial Building Permit pursuant to obtaining a  
17 Certificate of Occupation to operate as a retail store. (See attached as Exhibit  
18 B)  
19

20 4. On December 2, 2015, permit number COM2014-00224 was issued  
21 allowing Emerald Enterprises, LLC to commence work on the Premises. (See  
22 attached as Exhibit C)  
23  
24

25 5. On December 9, 2015, the Premises was inspected by the fire marshal  
26 pursuant to all fire code regulations.  
27  
28

1 6. On December 15, 2015, after all other inspections were completed and  
2 signed, the Clark County Building Inspector completed an inspection of the  
3 Premises and signed the Commercial Occupancy Checklist. (See attached as  
4 Exhibit D)  
5

6 7. On December 23, 2015, Clark County issued a Certificate of Occupancy  
7 for the Premises. (See attached as Exhibit E)  
8

9 8. On December 23, 2015, Emerald Enterprises, LLC, doing business under  
10 its registered trade name "Sticky's" opened its doors to the public for business  
11 as a permitted retailer in Clark County.  
12

13 9. On January 13, 2016, in a letter dated January 11, 2016, Emerald  
14 Enterprises, LLC received a Notice and Order from Clark County Code  
15 Enforcement stating that Emerald Enterprises was in violation of Clark  
16 County Code for operating a marijuana dispensary. (See attached as Exhibit  
17 F)  
18  
19

20 10. On January 20, 2016, John M. Larson and Emerald Enterprises filed a  
21 timely appeal of the Notice and Order with the Office of the Hearing  
22 Examiner pursuant to CCC 32.08.040.  
23

24 11. On February 25, 2016, the appeal of the Notice and Order was heard by  
25 the Hearing Examiner. The Hearing Examiner upheld the violations and  
26  
27  
28

1 issued an order revoking the building permit. The Hearing Examiner further  
2 imposed fines under Title 32 for each violation (See attached as Exhibit G)

3  
4 12. On March 1, 2016, Clark County Code Enforcement issued a Final Order  
5 pursuant to the decision of the Hearing Examiner. The Final Order further  
6 stated that any appeal of the order of the Hearing Examiner must be filed  
7 within 20 days from the mailing of the final order by a Writ of Certiorari in  
8 Clark County Superior Court. (See attached as Exhibit H)  
9

10  
11 13. John M. Larson and Emerald Enterprises herein file this Writ of Certiorari  
12 as a timely appeal of the order of the Hearing Examiner.  
13

## 14 **II. STATEMENT OF THE CASE**

15 Emerald Enterprises, LLC is licensed as a marijuana retailer in the state of  
16 Washington (WSLCB License# 421326). See Exhibit A. Emerald  
17 Enterprises applied for a commercial permit and was issued a Certificate of  
18 Occupancy in Clark County to operate as a retailer. Emerald Enterprises has  
19 the legal right under RCW 69.50.325 to sell marijuana at retail. Despite state  
20 law permitting the retail sale of marijuana by a licensed marijuana retailer,  
21 Clark County has prohibited the operation of retail stores that sell marijuana.  
22 See RCW 69.50.325, Clark County Ordinance 2014-05-07<sup>1</sup>. The question  
23  
24  
25  
26  
27

28 <sup>1</sup> Ord. 2014-057-07 now codified, in relevant part, under CCC 40.260.115 and CCC 40.230.010

1 presented in this case is whether Clark County has the power to prohibit what  
2 state law allows.

### 3 III. STANDARD OF REVIEW 4

5 1. RCW 69.50.325(3) provides, in relevant part,

6 The\*\*\*sale of [marijuana] in accordance with the provisions of [RCW  
7 69.50] and the rules adopted to implement and enforce it [WAC 314-  
8 55], by a validly licensed marijuana retailer, shall not be a criminal or  
9 civil offense under Washington state law. (citations added for clarity)

10 2. Counties are prohibited under Article XI, §11 of the state Constitution  
11 from enacting ordinances that are in conflict in general state law.

12 3. The courts in Washington state have repeatedly held that “conflict” with  
13 general state law is defined as an ordinance which “prohibits what state law  
14 permits”. *Bellingham v. Schampera* 57 Wn.2d 106, 111, 356 P.2d 292 (1960)  
15

16 4. In addition to general restrictions on ordinances in conflict with state law,  
17 the Uniform Controlled Substances Act RCW 69.50 contains a preemption  
18 statute in RCW 69.50.608, which provides,  
19  
20

21 The state of Washington fully occupies and preempts the entire field of  
22 setting penalties for violations of the controlled substances act. Cities,  
23 towns, and **counties or other municipalities may enact only those**  
24 **laws and ordinances relating to controlled substances that are**  
25 **consistent with this chapter [RCW 69.50]. Such local ordinances**  
26 **shall have the same penalties as provided for by state law. Local laws**  
27 **and ordinances that are inconsistent with the requirements of state**  
28 **law shall not be enacted and are preempted and repealed,**  
regardless of the nature of the code, charter, or home rule status of the  
city, town, county, or municipality. (emphasis added)

1 5. Clark County ordinances are enforced under the provision of CCC Title  
2 32. Violations of ordinances can be enforced as a civil penalty under CCC  
3 32.04.050 or as a criminal misdemeanor penalty under CCC 32.04.045.  
4

5 6. In *Dept. of Ecology v. Wahkiakum County* 184 Wn. App. 372, 337 P.3d  
6 364 (2014), The Court of Appeals reaffirmed and established a three part test  
7 to determine if ordinances are in conflict with state law. A county ordinance  
8 conflicts with state law if it:  
9

10 (a) prohibits what state law permits,  
11

12 (b) thwarts the purpose of a comprehensive regulatory scheme, or,  
13

14 (c) exercises power not conferred to local governments under the statutory  
15 scheme.

#### 16 IV. ARGUMENT

17 1. Emerald Enterprises argues that Ordinance 2014-05-07 is in direct conflict  
18 with state law because the county forbids what state law permits. *Shampera*,  
19 *supra*.  
20

21 2. Clark County Code Enforcement issued the Notice and Order for no other  
22 reason than because Emerald Enterprises exercised its right under RCW  
23 69.50.325 to sell marijuana at retail. Appellants have fully demonstrated by  
24 completing the permitting process and obtaining the required inspections and  
25 certificate of occupancy that the county imposes a civil penalty for no other  
26  
27  
28

1 cause than that Mr. Larson and his business Emerald Enterprises are  
2 exercising their right to sell marijuana at retail under the license granted  
3 pursuant to RCW 69.50.325. The county is therefore estopped from claiming  
4 otherwise. *Prima facia*, the ordinance, *as applied in this case*, sets a penalty  
5 for an act explicitly permitted under RCW 69.50, in direct violation of RCW  
6 69.50.608. The county deems the ordinance a “zoning” ordinance, but it  
7 matters not which police power is used to enact the ordinance. Plainly, the  
8 *effect* of the ordinance, as applied, is to forbid what state law explicitly allows.

9  
10  
11  
12 3. In bringing enforcement action against Emerald Enterprises under CCC  
13 Title 32, Clark County purports to set a penalty for an act that is explicitly  
14 permitted under state law and, more specifically, permitted under the  
15 controlled substances act, RCW 69.50. RCW 69.50.608 preempts the entire  
16 field for setting penalties under the controlled substances act. In creating a  
17 violation for an act explicitly permitted under RCW 69.50, Clark County  
18 creates the absurd scenario where it argues that, although it is entirely  
19 preempted from setting penalties under the controlled substances act, it may  
20 create a violation for an explicitly permitted activity and thereby penalize that  
21 activity. The courts in Washington State have repeatedly held that the rules of  
22 statutory construction dictate that statutes shall not be construed such that an  
23  
24  
25  
26  
27  
28

1 absurd result would be obtained. *State v. Stannard*, 109 Wn.2d 29, 36, 742  
2 P.2d 1244 (1987)

3  
4 4. RCW 69.50.608 provides that “\*\*\*Local laws and ordinances that are  
5 inconsistent with the requirements of state law\*\*\*are preempted and  
6 repealed.”

7  
8 5. Initiative 502, now Chapter 3, laws of 2013, was passed by voters in the  
9 state of Washington. Initiative 502 created a comprehensive regulatory  
10 scheme and granted all power to make and enforce rules for the retail sale of  
11 marijuana to the WSLCB. Initiative 502 conferred no power upon the county  
12 to regulate marijuana. In addition to the preemption arguments above, the  
13 county is also prohibited from passing or enforcing ordinances that violate the  
14 three part test established in *Ecology, supra*. Emerald Enterprises argues that  
15 the county violates all three parts of the three part test established in *Ecology*.  
16 While Emerald Enterprises acknowledges that the county retains its normal  
17 police powers (e.g. zoning, building safety), those powers do not allow the  
18 county to pass or enforce ordinances that are in conflict with state law. An  
19 outright prohibition on the sale of marijuana in the county through the use of a  
20 zoning ordinance is in conflict with state law, contrary to the comprehensive  
21 regulatory scheme enacted by Initiative 502, and therefore preempted and  
22 unenforceable. *Ecology*.  
23  
24  
25  
26  
27  
28



1                   **V. REBUTTALS OF CLAIMS MADE TO HEARING EXAMINER**

2           **A. COUNTY CLAIM THAT COWLITZ COUNTY SUPERIOR COURT**  
3           **ALREADY RULED ON THE ISSUES IN PRIOR CASE.**

4           1. Facts

5  
6           In *Emerald Enterprises, LLC and John M. Larson v. Clark County* (Cowlitz  
7           County Superior Court Case No. 14-2-00951-9)<sup>2</sup> heard in in Cowlitz County  
8           Superior Court on December 3, 2014, the judge granted partial summary  
9           judgment in favor of Clark County and against plaintiffs, John M. Larson and  
10          Emerald Enterprises, LLC. A partial excerpt from the transcript of the  
11          proceedings is attached as Exhibit I. In his judgment, the judge issued a ruling  
12          on 3 particular issues:

13          i) State law does not preempt local ordinances banning marijuana-related  
14          facilities, citing general presumption of constitutionality. Tr. at 43, lines 5-15.

15          ii) The controversy is not merely a political controversy and is in fact a  
16          justiciable controversy. Tr. at 44, lines 18-25.

17          iii) That plaintiffs, John M. Larson and Emerald Enterprises, LLC had  
18          suffered real injury and that plaintiffs had a legitimate fear of invasion of  
19          licensing right, two of the three prongs of the test required for an injunction.  
20          Tr at 45, lines 11-20. Nevertheless, the injunction was not granted because  
21          the judge ruled that plaintiffs had not satisfied all three prongs of the test for  
22          an injunctions, namely, that the plaintiffs had not demonstrated the had an  
23          equitable right to the necessary land use permits. Tr at 43, lines 16-25, *et seq.*

24  
25  
26  
27          <sup>2</sup> *Emerald Enterprises, LLC and John M. Larson v. Clark County*, (Cowlitz County  
28          Superior Court Case No. 14-2-00951-9) is now pending appeal in the Washington  
        State Court of Appeals, Division II (Case No. 47068-3). Further proceedings  
        are stayed pending the result of *MMH v. Fife* also before the Court of  
        Appeals, Division 2.

1 2. Claim

2 The County in the present case, before the Hearing Examiner, characterized  
3 the ruling of Cowlitz County Superior Court as a broad ruling encompassing  
4 all of the same issues in the present code enforcement case.  
5

6 3. Argument

7 Appellants here argue that the ruling and judgment of Judge Evans in the case  
8 in Cowlitz County Superior Court is to be narrowly construed to apply only to  
9 the issues that were dispositive in that case, as stated *supra*. Namely, the  
10 Court found that the ordinance was not unconstitutional per se. However, the  
11 court did not address circumstances at issue in the present case. The present  
12 case is distinguished from the Cowlitz case because the issue in the present  
13 case is a code enforcement situation where Appellants have fully complied  
14 with all building safety and fire code regulations, including obtaining all the  
15 required building permits, as well as a certificate of occupancy as a general  
16 retailer. *Prima facie*, the code, as enforced prohibits and assesses a penalty  
17 against Appellants for engaging in the precise activity which the state licensed  
18 and permitted Appellants to engage in within the state of Washington. By  
19 fining Appellants 500 dollars per day, the County sets a penalty for an activity  
20 explicitly permitted under RCW 69.50. RCW 69.50.608 preempts the entire  
21 field for setting penalties for activities covered under RCW 69.50. Section  
22 608 additionally requires that local ordinances must be consistent with state  
23 law. *Bellingham v. Schampera* further bolsters Appellants claim that the  
24 County, as applied in the present case, is prohibiting what state law allows.  
25 As the County is not alleging that Appellants are in violation of county code  
26 for any other reason, the County is therefore estopped from claiming any other  
27 purpose for the ordinance than that it prohibits what state law allows.  
28

1 Furthermore, zoning power derives from the police power. art. XI, § 11  
2 clearly states that counties may only pass ordinances under the police (*ergo*  
3 zoning) power that do not conflict with state law. Thus the Cowlitz county  
4 case is distinguished because it dealt with the presumption of constitutionality  
5 of an ordinance in general, whereas the present case is one of the  
6 constitutionality of the ordinance *as applied* to the specific circumstances at  
7 issue. RCW 69.50.325, RCW 69.50.608, and the Ordinance all operate *In*  
8 *pari materia*. In statutory construction, no section is superfluous and must be  
9 read together with the rest of the statute and those statutes on the same subject  
10 matter. It is absurd indeed to argue that the ordinance has any other purpose  
11 to that to prohibit what state law allows, *as applied* to the present case.  
12

## 13 VI. REQUEST FOR RELIEF

14 Appellants, Emerald Enterprises, LLC and John M. Larson pray the Court  
15 grant certiorari to review the proceedings and order of judgment of the  
16 Hearing Examiner in the present case. Appellants Emerald Enterprises and  
17 John M. Larson further pray the court to grant the following relief:  
18

- 19 1. To enter judgment in Appellants favor that the ordinance, *as applied*,  
20 violates Appellants rights granted under state statute RCW 69.50.325.  
21
- 22 2. To enter judgment in Appellants favor that the ordinance as codified  
23 under CCC 40.230.010, *as applied*, is preempted by RCW 69.50.608 and is  
24 therefore unenforceable.  
25  
26  
27  
28

1 3. To enter judgment reversing the order of the Hearing Examiner revoking  
2 the building permit of Emerald Enterprises, LLC and John M. Larson.

3  
4 4. To enter judgment reversing the finding and order of the Hearing  
5 Examiner that Emerald Enterprises obtained a building permit and certificate  
6 of occupancy based on misrepresentation.

7  
8 4. To enter judgment reversing the order of the Hearing Examiner and to  
9 enjoin Clark County from levying fines or other penalty under CCC Title 32  
10 pursuant to the Notice and Order.

11  
12 5. To remand the proceeding back to the Hearing Examiner to enter an  
13 appropriate order.

14  
15 6. To enter judgment granting Emerald Enterprises and John M. Larson any  
16 further relief as the Court may deem equitable.

17  
18  
19 RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of March 21, 2016.

20  
21  
22 

23 Appellant  
24 Owner – Emerald Enterprises, LLC

25 JOHN M LARSON

26 Print Name

27 9411 NE Highway 99, Suite 4  
28 Vancouver, WA 98665  
509-952-1602

Writ of Certiorari of Emerald Enterprises, LLC and John M. Larson from the Order of

Exhibit A



STATE OF WASHINGTON

# BUSINESS LICENSE

Domestic Limited Liability Company

Unified Business ID #: 603 344 428  
Business ID #: 1  
Location: 4  
Expires: 10-31-2016

EMERALD ENTERPRISES LLC  
STICKY'S  
9411 NE HIGHWAY 99 STE 4  
VANCOUVER WA 98665 8969

TAX REGISTRATION

MARIJUANA RETAILER #421326

REGISTERED TRADE NAMES:  
STICKY'S

This document lists the registrations, endorsements, and licenses authorized for the business named above. By accepting this document, the licensee certifies the information on the application was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

*Vicki Smith*  
Director, Department of Revenue

STATE OF WASHINGTON  
LIC NO. 603 344 428 1 4  
EMERALD ENTERPRISES LLC  
STICKY'S  
9411 NE HIGHWAY 99 STE 4  
VANCOUVER WA 98665 8969  
TAX REGISTRATION  
MARIJUANA RETAILER #421326  
EXPIRATION DATE  
10-31-2016  
421326

*Vicki Smith*  
Director, Department of Revenue

DETACH THIS SECTION FOR YOUR FILES

# Exhibit B

## Commercial Building Permit Application

Revised 08/13/2010



proud past, promising future

CLARK COUNTY WASHINGTON

Permit Number: \_\_\_\_\_  
Shell: \_\_\_\_\_

Applicant Name: Emerald Enterprises, LLC		Applicant Phone: 509-952-1602		Applicant E-Mail: jmlarson47@yahoo.com	
Applicant Fax:		Applicant Address: 1205A Westbrook Loop, Yakima, WA 98908			
Contact Person: John Larson		Contact Phone: 509-952-1602		Contact Email: jmlarson47@yahoo.com	
Contact Fax:		Contact Address: 1205A Westbrook Loop, Yakima, WA 98908			
Owner Name: Drake Nicholson Owner, Nicholson Properties, LLC		Owner Phone: 360-943-9712		Owner Address: 1802 Black Lake Blvd SW, Suite 301 Olympia, WA 98512	
Contractor/Builder Name: N/A		Contractor Phone: N/A			
Contractor License Number N/A		Certified Erosion Control Person N/A		Erosion Control Person Contact Phone: N/A	
Site Plan Review/Final Site Plan Number			Project Name: Business Move-In to Existing Space		
Current Zone: GC Use Table: 40.230.010(3)(c)			Project Valuation: \$2700.00		
Describe Proposal & Use: General retail business moving into existing retail space/location. Business will sell novelties, crafts, collectibles, and general merchandise					
<b>Application Type:</b> <input type="checkbox"/> New Building <input type="checkbox"/> Shell Only <input checked="" type="checkbox"/> Tenant Improvement <input type="checkbox"/> Portable Structure <input type="checkbox"/> Addition <input type="checkbox"/> Interior Only <input type="checkbox"/> Landlord Improvement <input type="checkbox"/> Other: _____		<b>Utilities:</b> <input checked="" type="checkbox"/> Sewer (District) <u>CPW</u> <input type="checkbox"/> Well <input checked="" type="checkbox"/> Water District <u>CPA</u>		<b>Restaurant use:</b> Current Seating _____ Proposed Seating _____ <u>N/A</u>	
				Existing Sq Ft: <u>3200</u> Proposed: 1 <sup>st</sup> Story: <u>3160</u> 2 <sup>nd</sup> Story: _____ Additional: _____ Carport: _____ Garage: _____ Deck/Porch: _____ Is there an elevator Y/N _____	
<b>Do you need other permits? (Separate Application Required)</b> <input type="checkbox"/> Mechanical (furnace, gas piping, woodstove, heat pump) <input type="checkbox"/> Plumbing (water service, moving fixtures, lawn sprinklers) <input type="checkbox"/> Signs <input type="checkbox"/> Retaining Walls <input type="checkbox"/> Trash Enclosures <input type="checkbox"/> Out Buildings			<b>Type of Heat:</b> <input checked="" type="checkbox"/> Electric <input type="checkbox"/> Natural Gas <input type="checkbox"/> Other		# of Buildings: _____ # of Units: _____ # of Stories: _____ <input type="checkbox"/> Basement Finished <input type="checkbox"/> Basement Unfinished
Previous Tenant: Video Business Opportunitites, Inc			Proposed Use: General Retail Store (selling novelties, craft collectibles and other general merchandise)		
Name of Tenant / Business or Project Name: Emerald Enterprises, LLC - Business Move-In					
Property Address and Suite Number: 9411 NE Highway 99, Suite 3, Vancouver, WA 98661				Parcel Number: 145005000	
Will proposal affect existing parking or access? No. Existing parking and access are more than sufficient for current/proposed use.					
A free two-hour consultation with plans examiners is available prior to submitting your commercial building plans. Contact Lou Malattia at (360)397-2375 extension 4086 for an appointment.					
Applicant/Authorized Signature <u>JM Larson</u>				Date <u>9-24-15</u>	



POOR QUALITY ORIGINAL

Exhibit



P.O. Box 9810  
Vancouver, Wa  
98666-9810  
1300 Franklin Street  
Phone: 360-397-2375

# PERMIT Commercial Building Permit

## COM2015-00224

File No.: FIL-0114674  
Fire District: 6  
Received: 10/2/2015  
Notified: 12/2/2015  
Issued: 12/2/2015  
Expires: 12/2/2017  
Finalized:  
Status: APR

**INSPECTION REQUEST LINE: Bldg. 360-397-2477 Fire - 360-397-2186 ext 3395**

Applicant:	<b>EMERALD ENTERPRISES 1205A WESTBROOK LOOP YAKIMA WA 98908</b>	Phone:	<b>509-952-1602</b>
Owner:	<b>NICHOLSON PROPERTIES LLC 1802 BLACK LAKE BLVD SW SUITE C OLYMPIA WA 98512</b>	Phone:	<b>360-943-9712</b>
Financing Lender:			
Bonding Firm:			

Team:	PRSRV	Inspector 1:	20	Inspector 2:		Project Name:	EMERALD ENTERPRISES	Project #:	FIL-0114674
Parcel #:	1450050000								
Site Address:	9411 NE HIGHWAY 99 4 VAN 98665								
Scope of Work:	BMIO	Review Type:				Cross Reference:	COM2005-00237		

Project Description:  
**FEE HOLIDAY - MOVE IN PLUS - 1780' RETAIL STORE ADD WALLS TO CREATE OFFICE & STORAGE- GC ZN- ELEC HT - CRWWD/CPU - SEP PLB/MEC/SGN PERMITS REQ - NO OCC UNTIL ALL COND MET**

License Type:	License #:	Expire Date:	Phone:
License Type:	License #:	Expire Date:	Phone:

**\*\*\*\*\*Be Advised\*\*\*\*\***

- 1.) This permit is valid for 2 years (24 months) from issuance date. Work must be completed within permit period. Inspections do not extend the permit period. I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.  
CODE: 20 Ed. I.R.C.
- 2.) All pertinent inspections need to be approved prior to Occupancy Permit by the Clark County Building Division. Hazel Dell Sewer District issues sewer connection permits and does their own inspections. The City of Vancouver, Clark County, Battle Ground, Camas, Ridgefield, and other purveyors charge a system development charge, but the connection permit is obtained through the County Building Department.
- 3.) Verify that all required permits have been obtained. (Example - Plumbing, Sewer Connection, Mechanical, Fire Suppression, Road Approach, and Sign Permits.)
- 4.) Clark County Fire Marshal requirements must be met for final Occupancy Permit. (Example - sprinkler permits, fire hydrants, final inspections done by Fire Marshal's Office.)
- 5.) Final approval from the water & sewer purveyor. (Example - the City of Vancouver, PUD Water, Clark Regional Wastewater District, BG City, Clark County Sewer District, Camas, Ridgefield, Washougal, Yacolt.)
- 6.) It is the responsibility of the contractor to obtain all required signatures on the Yellow Commercial checklist in order to receive Final Occupancy.

POOR QUALITY ORIGINAL

DEPARTMENT OF COMMUNITY DEVELOPMENT



proud past, promising future

CLARK COUNTY WASHINGTON

Commercial Occupancy Checklist

Exhibit D

MOVE IN ONLY

All the agency's listed below must contain an authorized signature or an attached letter of approval on the appropriate agency's letterhead in order to qualify for final occupancy. Signatures may be obtained in any order; however, the Building Inspector will retrieve all permit cards, this checklist, and related documents. Prior to occupying the building, the Building Division must issue a certificate of occupancy. It is the responsibility of the applicant to follow through & obtain the final occupancy.

PROJECT NAME: EMERALD ENTERPRISES

ACTIVITY #: COM2015-00224

ADDRESS: 9411 NE HWY 99 STE 4

FILE #: 114674

Clark Regional Wastewater District  
8000 NE 52nd Ct Van 750-5876

Mr. L.M. [Signature] 12/2/15  
Authorized Signature Date

Print Name Marie LaManna

Clark County Fire Marshal's Office  
1300 Franklin Street, 3rd Floor 397-2186

[Signature] 12/10/15  
Authorized Signature Date

Print Name Susan Anderson

Clark County Building Inspector  
1300 Franklin, 3rd Floor 397-2375 ext. 2477

[Signature] 12/15/15  
Authorized Signature Date

Print Name [Signature]

MOVE IN ONLY PROCESS:

Applicant is to obtain all signatures on this card. Building Safety Inspector will be the last inspection. The Inspector will bring this signature card, permit card and any other documentation back to the office and return to Permit Services to process the Certificate of Occupancy.

The Certificate of Occupancy will be sent via email to the applicant or contact person listed below:

CONTACT PERSON EMAIL ADDRESS: J.M. LARSON 17@YANHO.COM  
Name: JOHN LARSON Phone Number: 360-942-1602



# EXHIBIT E

## *Certificate Of Occupancy*

Clark County Department of Community Development  
Building Safety Program

This certificate is issued pursuant to Washington State Building Code requirements certifying that at the time of issuance this structure was in compliance with the various ordinances of Clark County regulating building construction and use.

FILE NUMBER: **FILE-0114674** PERMIT NUMBER: **COM2015-00224**

USE CLASSIFICATION: **Specialty Retail Center**  
OCC GROUP: **M**  
CONST TYPE: **VB**  
OWNER OF PROPERTY: **Nicholson Properties LLC**  
BUILDING ADDRESS: **9411 NE Hwy 99 Ste. 4**  
BUSINESS NAME: **EMERALD ENTERPRISES**  
RESTRICTIONS: **NONE**  
STATUS: **Final**  
COMPLETE: **12/23/2015**

**SECTION 14.14.1**  
BUILDING OFFICIAL

*[Signature]*  
Post in a conspicuous place. Not to be removed except by the Building Official



proud past, promising future

**CLARK COUNTY**  
WASHINGTON

# EXHIBIT F

N&O# CDE2016-Z-001

## NOTICE AND ORDER

Name:	Emerald Enterprises	Nicholson Properties LLC
Address:	1205 A Westbrook Loop Yakima, WA 98908	1802 Black Lake Blvd SW Suite C Olympia, WA 98512

## NOTICE

You are notified pursuant to Clark County Ordinance No. 1977-12-51 and amendments thereto, that an investigation of the herein described premises has revealed the following violations of the Clark County Code:

1. Operation of a marijuana retail dispensary in the General Commercial (GC) Zoning District. This is a violation of Clark County Code 40.230.010.

## LEGAL DESCRIPTION OF VIOLATION

Location: 9411 NE Highway 99

Also known as: #82 SEC 2 T2N R1EWM .67A

## ORDER

**YOU ARE HEREBY ORDERED TO CEASE ALL SALES OF MARIJUANA AND PRODUCTS CONTAINING MARIJUANA WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE AND ORDER.**

### PENALTY

A penalty of \$250.00 per day for each violation will be assessed, beginning ten (10) working days from the date this Notice and Order is served, until the herein mentioned corrections have been made. In addition, a criminal citation may be ordered if this violation is not abated. **THE VIOLATION(S) WILL NOT BE CONSIDERED TO HAVE CEASED UNTIL THIS DEPARTMENT HAS BEEN NOTIFIED AND AN INSPECTION HAS BEEN MADE TO VERIFY THE CORRECTION.** Call Code Enforcement at 397-2408 ext. 4104 for an inspection.

If all or a portion of the above mentioned penalty is not paid, the unpaid amount of the penalty will be charged as a lien against the herein described property and/or as a joint and separate personal obligation to you.

### FINAL ORDER

This order shall become final unless, no later than ten (10) working days after this Notice and Order is serviced, any person aggrieved by this order requests an appeal before the Hearing Examiner. All appeals must be in writing and received by the Code Enforcement Office within the ten (10) working day period.

### APPEAL

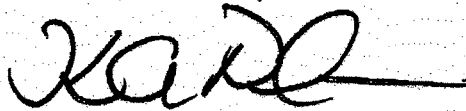
If you wish to appeal, you must write to the Hearing Examiner, c/o Clark County Code Enforcement, P.O. Box 9810, Vancouver, Washington 98668-9810, within the time frame given above. **PENALTIES CONTINUE DURING THE APPEAL PERIOD IN AN AMOUNT NOT TO EXCEED THREE (3) TIMES THE DAILY PENALTY AND MAY BE IMPOSED BY THE EXAMINER AT THE HEARING IF YOU ARE FOUND IN VIOLATION. FAILURE TO APPEAL WILL CONSTITUTE A WAIVER OF ALL RIGHTS TO AN ADMINISTRATIVE DETERMINATION OF THE MATTER.**

The appeal must contain the following:

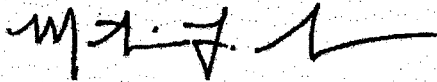
1. The number of this "Notice and Order" and the name to which it is addressed and the names of all appellants participating in this appeal.
2. A brief statement of the reasons for the appeal.
3. Your name and mailing address, and, if you wish, your telephone number, and any facts claimed to support the contentions of the appellant.

The appeal will be heard within sixty (60) days of receipt of the written appeal. You will be notified at least ten (10) days before the hearing date.

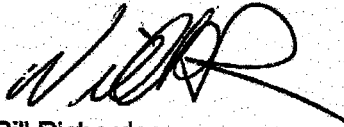
ORDERED this 11th day of January, 2016.



Kevin A. Pridemore  
Code Enforcement Coordinator



Marty Snell  
Director of Community Development



Bill Richardson  
Deputy Prosecuting Attorney

cc: Paul Scarpelli, Code Enforcement Manager  
Sticky's Pot Shop

KP/MS/BR/kp

N&Ostickys.spr

# Exhibit G

## 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.

---

<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.

4. Appellants are ordered to pay a monetary penalty of \$1,500 pursuant to CCC 32.08.070(2).<sup>2</sup>
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)).

---

<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).

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 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. (Cridler 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

---

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

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.

---

Joe Turner, AICP  
Clark County Hearing Examiner



proud past, promising future

CLARK COUNTY  
WASHINGTON

COMMUNITY DEVELOPMENT  
Code Enforcement

# Exhibit H

March 1, 2016

File #CDE2016-001

Emerald Enterprises  
1205 A Westbrook Loop  
Yakima, WA 98908

Nicholson Properties LLC  
1802 Black Lake Blvd SW Suite C  
Olympia, WA 98512

Re: Final Order for Sticky's Pot Shop at 9411 NE Highway 99, Vancouver, Washington

Dear Property Owner/Occupant:

Enclosed with this letter is a copy of the Examiner's Findings and Final Order. In summary, you have been fined \$1500 and your Building Permit is revoked. The business and the property owner are jointly liable for the penalty, along with any penalties that accrue in the future.

If you choose to comply with the Examiner's Findings and Final Order, please contact Clark County to arrange payment of \$1500 to satisfy the current penalty. Please also cease and desist any business until you have obtained a valid Building Permit. This "cease and desist" request is not limited to marijuana sales and is intended to include any sales. You may contact Clark County Permitting to discuss the process for a new Building Permit.

If you choose to challenge the order, you have 20 days from the date of this letter to file a Writ of Certiorari with the Clark County Superior Court. CCC 32.08.050(2). During that time period penalties will continue to accrue at \$500 per day. Additionally, Clark County may choose to file a Notice and Order if you continue to do any business without a valid Building Permit.

Of note, ANY FURTHER OPERATION OF A BUSINESS OUT OF THE SUBJECT FACILITY WILL BE PRESUMED TO BE IN VIOLATION OF THE CODE AND EXAMINER'S ORDER, IF YOU DO NOT FIRST CONTACT CLARK COUNTY CODE ENFORCEMENT FOR AN INSPECTION TO ENSURE CODE COMPLIANCE.

If you have any questions regarding this letter, Please contact us at 360-397-2408 ext 4104.

Sincerely,

Paul Scarpelli  
Code Enforcement Manager

cc: Jim Muir, Chief Building Official  
Jon Dunaway, Fire Marshal  
Bill Richardson, Deputy Prosecuting Attorney

# Exhibit I

1 that money will probably be funneled right into  
2 education.

3 So, what we're doing is basically funding the  
4 black market with this ban. That's what -- that's what  
5 they're actually doing, because they can go in any  
6 place. They don't follow the law, they don't have any  
7 laws. But the prime -- one of the primary goals of I-  
8 502 was to make sure things were so structured and  
9 regulated that the younger adults had way less ability  
10 to actually acquire the product, marijuana, with that  
11 regulation. So, basically, if you enforce the ban,  
12 you've just sold it to -- you've just told the black  
13 market: Go ahead and sell to kids. That's what you've  
14 effectively done.

15 THE COURT: All right, thank you.

16 I just wanted to just take a moment to read  
17 Mr. Larson's Supplemental Memorandum. I'm just going to  
18 glance over it, so that I have an opportunity to look at  
19 that before I give you my decision.

20 (Court reviews Memorandum.)

21 THE COURT: Okay, thanks very much. I appreciate  
22 everybody's good help and professional manner in  
23 presenting the arguments, and that was very -- very nice  
24 and helpful to the Court, so I appreciate that.

25 So, here we have competing Motions for Summary

1 Judgment. Mr. Larson argues that State law preempts the  
2 County Ordinance, and the County Ordinance can't stand  
3 as it's unconstitutional; that the -- further argues  
4 that the Board is trying to -- Board of County  
5 Commissioners -- is trying to enforce Federal law and  
6 that they can't do that, they're not an arm of the  
7 government -- Federal government, and that they need to  
8 abide by the State law and they can't pass something in  
9 conflict with the State law. The County, in turn,  
10 argues that several -- several different arguments, all,  
11 so let me just address those in turn.

12 So, I think those cases where we were talking  
13 about the personal water craft, the dog cases, the RV  
14 case, the smoking case, the fluoridation case, and the  
15 Wahkiakum County case, which we've talked about a lot  
16 here today, are very instructive as to the issue of  
17 preemption. The one thing I think that's important with  
18 the *Ecology* case, on its surface, I think it -- it -- it  
19 rings very true, and it seems like it's very analogous  
20 to the situation at hand here. I think in -- it's  
21 common for courts to distinguish between cases which, on  
22 their face, seem to be very similar.

23 I think in this case, the Ecology Department  
24 and Wahkiakum County case can be distinguishable,  
25 although they are very similar in some regards. I think

1 the underlying statutes and the purposes of those  
2 statutes are -- are fairly distinct, and I think it  
3 makes the -- the ruling in *Ecology* not -- not binding in  
4 this actual scenario.

5 So, with regard to Mr. Larson's Motion to --  
6 that State law preempts the County Ordinance, I am  
7 ruling against that, I'm denying that Motion; and, I am  
8 granting that the County's Motion, and agreeing that the  
9 State law does not preempt the County Ordinance,  
10 starting with the proposition that there is a  
11 presumption of constitutionality of local ordinances and  
12 that there's broad authority under the State  
13 Constitution, I think it's Article XI or IX, I get my  
14 Roman Numerals mixed up, so -- Section 11, to regulate  
15 health, safety and welfare.

16 I'm sensitive to the fact of Mr. Larson's  
17 argument where they say: Look, here's a license, and you  
18 know what? We can pretty much shut you down no matter  
19 what with a land use -- a land use permit granting or  
20 denying, which is very similar to the, you know, the  
21 personal water craft case where they said, you know, we  
22 can give you a license but we're gonna get you on the  
23 registration requirements. I'm sensitive to that, of  
24 what seems just like, kind of, fancy language. Fancy  
25 lawyer language that says, look, you can do something,

1 but not really.

2           However, notwithstanding that concern, I think  
3 there is -- I think that the -- the County Ordinance, it  
4 does not occupy, basically, the same field of -- of --  
5 of authority as does the State law. I think they can be  
6 harmonized. There is some -- there is clear indication  
7 in the 502 that there is kind of that concurrent  
8 jurisdiction, concurrent authority and power to -- to  
9 regulate -- regulate the sale and production and  
10 processing of marijuana. I think you take that into  
11 account with the AGO opinion, Attorney General's opinion  
12 that sets forth kind of a precedent that the Executive  
13 Branch of government needs -- needs to follow, or is  
14 encouraged to follow.

15           So -- so -- so, I'll deny Mr. Larson's Motion  
16 for Summary Judgment on preemption and I'll grant the  
17 County's Summary Judgment on -- on the preemption.

18           The -- as far as the justiciable controversy,  
19 the -- as far as the -- and I don't know if this  
20 matters, as far of the ultimate ruling, but my sense  
21 there is that it is justiciable controversy. It's not  
22 solely a political controversy. I think it can be  
23 resolved with a decision related to the  
24 constitutionality of the local Ordinance, so I deny the  
25 County's Summary Judgment Motion on that -- on that



1           portion.

2                       As far as the injunction, I'll deny the  
3           request for the -- all three prongs are not there,  
4           basically. All three prongs are not there. It's not  
5           clear to me that Mr. Larson has a clear legal or  
6           equitable right to that land use permit. That still  
7           remains to be seen, which it puts him in a problematic  
8           position in that he's not even able to apply, at this  
9           point; but, I think that there's enough ambiguity or  
10          lack of clarity to -- to -- to not find that.

11                     I think there is actual and sustainable injury  
12          to Mr. Larson. He -- he's ready to go; he's ready to  
13          sell a product and he can't. Other -- other -- other  
14          companies in the City of Vancouver are, and they're  
15          earning money, and he's not. I think he has a fear of  
16          invasion of his licensing right; but, that being said, I  
17          don't think all three elements are met to address the  
18          injunction. So -- so, I'll deny the injunction which  
19          Mr. Larson is requesting to prohibit that law from being  
20          applied.

21                     As far as the Federal preemption, I don't  
22          reach that issue today due to the Court's ruling. And I  
23          think, also, that when you take a look at that 69.50  
24          language that I think when you read that one section, I  
25          think it's .602, that the County can only pass drugs

1 laws consistent with the Chapter, I think that's an  
2 overly simplistic reading of -- of -- of the statute. I  
3 think that it's more nuanced than, so I don't think that  
4 argument carries the day.

5 And I think it's interesting that under that  
6 RCW that 70.105? .106 that was handed to the Court --  
7 70.105.204 obviously very clear preemption language  
8 which was not included anywhere within 502 or any of the  
9 other related statutes that have been cited by the  
10 parties.

11 As to the Legislative acquiescence, I tend to  
12 agree that there's probably not a hard and fast time  
13 rule. I think under -- given the circumstances here,  
14 that the presump -- or the assumption of  
15 constitutionality, the AGO opinion, a Bill being  
16 presented after the AGO opinion being presented and not  
17 passing or not getting out of committee, and then the  
18 local jurisdiction has kind of -- I don't know if  
19 they're jumping on the bandwagon, but prohibiting the  
20 sale or land use permit for marijuana producers, and  
21 added to that the Legislature amending other parts of I-  
22 502, I think that gives, at least, a [inaudible] claim  
23 that there's Legislative acquiescence, that they had an  
24 opportunity and they didn't take action on that. And  
25 there could be a whole host of reasons why, but those

1 are some indications that they -- they acquiesced.

2 So, I'm -- I'm not declaring the Clark County  
3 Ordinance invalid and I'm not declaring it  
4 unconstitutional. I think on its face there is a  
5 presumption of constitutionality and I think that  
6 carries.

7 Do the parties need any clarification? I know  
8 that you've covered a lot of ground in your briefing and  
9 a lot of ground in your arguments, and I may not have  
10 covered them all.

11 MR. WENDT: Your Honor, just as the prevailing  
12 party, we did not come prepared with an Order  
13 recognizing all that the different arguments that may or  
14 may not carry the day. I'm happy to prepare that Order  
15 and have it --

16 (Plaintiff exits the courtroom.)

17 THE COURT: And, just for the record, the record  
18 should note that Mr. Larson gathered his things and left  
19 the courtroom at just this moment.

20 MR. WENDT: So, what I would just like to do to --  
21 in preparing the Order and have it filed for tomorrow is  
22 just tick through the number of issues and just confirm  
23 my understanding as to what was granted and denied.

24 THE COURT: Sure, that's probably a good idea.

25 MR. WENDT: So, with respect to the very first issue

1 as to whether or not there was jurisdiction for failure  
2 to serve the AG, that was rescinded, so the Court did  
3 not reach that particular issue.

4 THE COURT: Correct.

5 MR. WENDT: With respect to the justiciable  
6 controversy, you have denied the County's Motion on that  
7 basis?

8 THE COURT: That's correct.

9 MR. WENDT: And with respect to whether or not State  
10 law preempts the County's authority to prohibit  
11 marijuana-related business, the answer to that question  
12 is: No, you have granted the State's Motion for Summary  
13 Judgment on that matter?

14 THE COURT: Correct. Clary County's -- State's.

15 MR. WENDT: Oh, I'm sorry. Clark County.

16 THE COURT: It's okay.

17 MR. WENDT: Whether or not State law conflicts with  
18 the County's authority to prohibit marijuana-related  
19 business, the answer to that question is: No, it's  
20 consistent with the preempted --

21 THE COURT: Right --

22 MR. WENDT: -- matter.

23 THE COURT: -- right, that's related, correct.

24 MR. WENDT: Yeah, you have -- did the -- did Your  
25 Honor enter a ruling with respect to whether or not the

1 Ordinance serves a legitimate purpose?

2 THE COURT: I didn't say it out loud, but it's  
3 written down, so I can tell you what I was thinking.

4 MR. WENDT: Okay.

5 THE COURT: I'm granting the County's Summary  
6 Judgment -- its Motion on that, that in that although I  
7 have some misgivings about government protecting  
8 citizens from what -- I guess when a law is written,  
9 we're all presumed to know what the law is and then for  
10 government to come in and say, well, I really, really,  
11 really need to protect you from this law, I have some --  
12 I have some misgivings about that; but, I think that  
13 given, kind of, the deference that's given to the  
14 Legislative actions, and sometimes we question why  
15 Legislatures do what they do, and it seems kind of crazy  
16 on its face, there's -- there's a basis. I think it's a  
17 rational basis to -- to protect employ -- government  
18 employees and potential citizens who are involved in the  
19 business from -- from that Federal prosecution; and,  
20 yes, and that it's helping underscore and prohibit  
21 illegal activities under Federal law.

22 MR. WENDT: Then --

23 THE COURT: Illegal activities.

24 MR. WENDT: -- the County had also moved for  
25 Summary Judgment -- that Summary Judgment you granted