



## King County

### Metropolitan King County Council

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January 31, 2019

### MEMORANDUM ORDER ON RECONSIDERATION

*Re: Emmert/File no. ENFR150873*

In our January 15, 2019, decision we wrote:

13. While an appellant may not challenge findings or requirements that it could have challenged during the appeal period for a notice and order, KCC 23.32.120.A, the Order only established that Appellants created over the permit-requiring threshold of 2,000 ft.<sup>2</sup> of new impervious surface without the required grading permit. Ex. 5 at 001. The 5,463 ft.<sup>2</sup> was a *new* estimate the Department offered post-Order, and thus is fair game. We are not barred from considering Appellants' evidence and argument on the limited question of *how much* over 2,000 ft.<sup>2</sup> of impervious service was added post-2014 permit. That the violation was likely not as extensive as the Department today asserts gives us something to hang our hat on for finding that the penalties for violation (2) are "excessive under the circumstances." KCC 23.32.110. We shave off \$3,000 from the \$5,850 for violation (2).

The Local Services Department (Department) filed a timely motion for reconsideration, not challenging our \$3,000 penalty reduction, but challenging the finding we based that reduction on. The Department asserts that Appellant's account at hearing—that a Department official authorized more extensive impervious surface—is incorrect. In its request, the Department provided new evidence. Appellant filed a response and objected to the Department's new evidence. The Department requested a reply. Appellant objects to allowing the Department a reply.

We do not need a reply, nor does our decision on reconsideration turn on any new evidence. Instead, we confine our review to two pages already in the record. These were the two pages that we based our finding that the impervious service the Emmerts added, post-permit, was "likely not as extensive" as the Department's estimate. They are:

Rod Dembowski District 1  
Jeanne Kohl-Welles District 4  
Pete von Reichbauer District 7

Larry Gossett District 2  
Dave Upthegrove District 5  
Joe McDermott District 8

Kathy Lambert District 3  
Claudia Balducci District 6  
Reagan Dunn District 9

- Page 3 of Exhibit 11, *Exhibit A-Flow Control BMP Site*, shows an approval date of 4-29-14. It depicts a hang glider-shaped, crosshatched section of “Proposed Gravel.” This portion of the map is identical on *all* the versions of that *Exhibit A-Flow Control BMP Site* map we have reviewed prehearing, at the hearing, and post-hearing. So there is no dispute that the hang-glider area was slated for gravel surface. Thus, the hang glider area counts as part of the legal, impervious surface baseline.
- Exhibit 9 shows the blue area the Department used to calculate its estimated 5,463 ft.<sup>2</sup> of new impervious surface.

Comparing these two documents, on Exhibit 9, the Department recognized only a narrow, purely rectangular strip running along the north side of the building (and just south of the blue area) as being previously-approved impervious surface. That does not fully account for a portion of the hang glider-shaped, “Proposed Gravel” area angling north and east on Exhibit 11. By counting a portion of the hang-glider as part of the blue, supposedly newly-graveled, area, the Department appears to have overstated the extent of the newly-added impervious surface.

That was the beginning and end of our January assessment that the violation was “likely not as extensive” as the blue area depicted. Nothing in any of the recent filings changes that. As in January, we refrain from offering any estimate on exactly how much of the blue area overlays the hang glider.

This is our last word on the matter. It shall be final and conclusive unless proceedings for review are timely and properly commenced in superior court. In our January 15 decision, our boilerplate appeal language inadvertently referenced chapter 7.16 RCW. That was our error. The Land Use Petition Act, Chapter 36.70C RCW, with its filing deadlines and requirements, is the controlling reference.

/DS

**Rod Dembowski** District 1  
**Jeanne Kohl-Welles** District 4  
**Pete von Reichbauer** District 7

**Larry Gossett** District 2  
**Dave Upthegrove** District 5  
**Joe McDermott** District 8

**Kathy Lambert** District 3  
**Claudia Balducci** District 6  
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January 31, 2019

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KING COUNTY, WASHINGTON**

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**CERTIFICATE OF SERVICE**

SUBJECT: Department of Local Services, Permitting Division file no. **ENFR150873**

**PATRICIA EMMERT**  
Civil Penalty Waiver Appeal

I, Liz Dop, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **MEMORANDUM ORDER ON RECONSIDERATION** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED January 31, 2019.



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Liz Dop  
Legislative Secretary

**Bond, David**

Department of Local Services, Permitting Division

**Breazeal, Jeri**

Department of Local Services, Permitting Division

**Deraitus, Elizabeth**

Department of Local Services, Permitting Division

**Emmert, Patricia/Thomas**

Hardcopy

**Gill, Douglas Jr.**

Swigart & Gill Law Offices PS

Hardcopy

**Lux, Sheryl**

Department of Local Services, Permitting Division

**Williams, Toya**

Department of Local Services, Permitting Division