

March 20, 2019

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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CORRECTED¹ REPORT AND DECISION

SUBJECT: Department of Local Services file no. **ENFR180589**

CHARLES EMIG

Code Enforcement Appeal

Location: 23218 212th Avenue SE, Maple Valley

Appellant: **Dr. Charles Emig**
23218 212th Avenue SE
Maple Valley, WA 98038
Telephone: (425) 432-1204

King County: Department of Local Services
represented by **Holly Sawin**
35030 SE Douglas Street Suite 210
Snoqualmie, WA 98065
Telephone: (206) 477-0291
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal in part, grant appeal in part

¹ The compliance deadlines listed under the Decision section has been corrected to reflect 2019 dates, not 2018 dates as incorrectly listed before.

EXAMINER PROCEEDINGS:

Hearing Opened: March 5, 2019
Hearing Closed: March 5, 2019

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, the examiner hereby makes the following findings, conclusions, and decision.

FINDINGS AND CONCLUSIONS:

Overview

1. This case involves an appeal of a Department of Local Services (Department) notice and order asserting that Charles Emig was parking or storing vehicles on non-impervious surfaces. We find four of the vehicles in violation. We conclude that the requirement that vehicles be parked on impervious surface applies even to those vehicles not visible from the road, but conclude that the access route to those impervious parking spaces need not itself be impervious. We close with some thoughts about future iterations of this dispute.

Background

2. Today's case is not the first code enforcement complaint involving the Emig property. Several complaints been filed. One advanced to the point that the Department issued an August 2007 notice and order (2007 Order). Because neither party submitted that 2007 Order for the record, we cannot read its exact wording. As discussed below, the 2007 Order apparently involved (1) unpermitted cargo containers, (2) inoperable vehicles, and operable vehicles parked on non-impervious surfaces, and (3) debris. Ex. D6.
3. The Department later determined that the cargo containers had been permitted. Dr. Emig removed some debris and inoperable vehicles. As to the operable vehicles, Dr. Emig added about 1,000 ft.² of gravel in late 2007/early 2008 and moved some vehicles either onto those areas or onto areas he had graveled in approximately 1982. Ex. A3. The Department took pictures, determined the matter sufficiently resolved, and issued a Compliance Certificate in February 2008 (2008 Certificate). Exs. D7 & D6.
4. The current dispute arose in July 2018, when the Department received a complaint involving debris, inoperable vehicles, operable vehicles parked on non-impervious surface, and illegal occupancy. Given that it had no permission to enter the site and the site is heavily wooded, the Department could not verify most of those allegations.² Its

² Dr. Emig questioned how the Department obtained its evidence. The examiner excludes unconstitutionally obtained evidence. Exam. R. XII.B.1. Here, the Department's evidence came entirely from what the officer observed from the public right-of-way and what anyone could observe looking at publicly available mapping aerials. The Department's evidence is admissible, just somewhat constrained.

September 2018 notice and order was solely for operable vehicles parked on non-impervious surfaces. Ex. D2. Dr. Emig timely appealed. Ex. D3. We went to hearing two weeks ago.

5. Unless directed to by law—and no special directive applies to today’s case—the examiner does not grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. Ours is a true de novo hearing. For those matters or issues raised in an appeal statement to an enforcement action, the Department bears the burden of proof. KCC 20.22.080.G; Exam. R. XV.E.2.

Analysis

6. The 2007 Order and 2008 Certificate raise the specter of *res judicata*, a generic term that typically encompasses both claim preclusion and issue preclusion. *Bunch v. Nationwide Mut. Ins. Co.*, 180 Wn. App. 37, 43, 321 P.3d 266 (2014). Although the elements of each preclusion type is a little different, both doctrines are “designed to prevent repetitive litigation of the same matters.” *Id.* at 44. Where an earlier complaint resulted in a formal Order, we have barred either an appellant (where an earlier order was not successfully appealed or resolved) or the Department (where it previously issued a compliance certificate) from revisiting the earlier violation in a later action.
7. Comparing the 2007 and 2017 aerials, at least one motorhome that the Department argued at hearing needs to be moved to gravel was on the property in its current location in 2007. *Compare* Ex. D9 at 001 (long “motor home”) with Exs. A1 & A2. In addition to conventional vehicles (discussed below), we identify only one smallish-white trailer as clearly brought in after the 2008 status quo was adjudged in compliance. Ex. D9 at 002 (“motor home” next to the “*”); Ex. D7 at 001. Dr. Emig agrees that this new trailer is not parked on impervious surface.
8. As to the conventional vehicles, it was difficult to follow the testimony and match these to the videos and photos. As best we can decipher, in addition to (a) the white trailer, the three vehicles in violation (and not covered by the 2008 Certificate) are (b) his son’s inoperable vehicle, (c) an operable Caravan parked on non-impervious surface, and (d) an operable blue Chevy pickup parked on non-impervious surface. Dr. Emig proposes to remove his son’s vehicle, and to either remove the Caravan and pickup, put these on a pre-existing gravel pad closer to the road, or drive them a few feet, put in a gravel parking pad, and drive them back on the new pad.
9. Dr. Emig noted that it would require adding less than a 1,000 ft.² of gravel to make parking pads for those vehicles. He could do this once the ground dries up enough in July that he could get a gravel truck in without mucking things up. Given that he added approximately 1,000 ft.² of gravel in 2007, he could add up to 1,000 ft.² now and stay under the permit threshold.³ He makes two arguments. First, only vehicles visible from

³ The normal requirement that any grading requires a permit is tempered by the exception that no permit is required where grading produces less than 2,000 ft.² of impervious surface since January 1, 2005. KCC 16.82.051.C.2. As Dr. Emig added about 1,000 ft.² in late 2007/early 2008, he could add up to 1,000 ft.² impervious surface in the future without needing a grading permit.

the road must be parked on impervious surface. Second, if he has to add parking pads, he should not have to gravel the access route to those parking pads; doing so would put him over the grading permit threshold.

10. These two arguments turn largely on KCC 21A.18.110.I, which requires:

All vehicle parking and storage for single detached dwellings must be in a garage, carport or on an approved impervious surface. Any impervious surface used for vehicle parking or storage must have direct and unobstructed driveway access.

11. As to Dr. Emig’s first argument, there is a requirement that *wrecked, dismantled or inoperative vehicles* are prohibited unless the “vehicle or vehicle part is completely enclosed within a building in a lawful manner where it is not visible from the street or from other public or private property.” KCC 23.10.040.A. However, that store-indoors requirement is an additional requirement for an *inoperable* vehicle. This is the provision that makes Dr. Emig’s son’s inoperable vehicle a violation, even though it rests on a gravel surface. While operable vehicles need not be enclosed in a building, there is no exception to the impervious parking surface requirement for vehicles not visible to the public. Every outdoor-stored vehicle must be both operable and parked on an impervious surface.
12. As to the second argument, Dr. Emig correctly points out that the code does not specify that the driveway access itself be impervious. That would not be dispositive, if other code provisions clarified that “driveway” meant an imperviously-surfaced driveway and then applied that requirement to our situation. Our initial reading was that this was so. On closer review, we conclude it is not.
13. KCC 21A.18.110 specifically governs offstreet parking. In addition to the block-quoted subsection I., subsection E. requires driveways providing ingress and egress between off-street parking areas and abutting streets “be designed, located and constructed” per the Road Standards. KCC 21A.18.110.E. Although the Road Standards themselves only “apply prospectively to all newly constructed or modified” roads, KCC 14.42.030.A, unless his parking pad abuts a pre-existing driveway, he would essentially be creating a “new” access route, which we assumed would need to be impervious.
14. However, on a broader read, the trigger for when the parking and circulation chapter’s requirements apply is:

Before an occupancy permit may be granted for any new or enlarged building or for a change of use in any existing building, the use shall be required to meet the requirements of this chapter. In addition, K.C.C. 21A.18.110 I. and J.⁴ establish residential parking limitations applicable to existing, as well as new, residential uses.

⁴ Subsection I. is the block-quoted provision on the top of this page. Subsection J. is a vehicle limitation inapplicable to RA-zoned property like Dr. Emig’s.

Therefore, the trigger for parking and circulation requirements other than subsection I. is a new residential use (like a new, enlarged, or changed building), not simply a new driveway servicing an existing building or use.

15. Moreover, even if a new access route otherwise had to be designed and constructed in conformity with the Road Standards, the Road Standards themselves explicitly do not try to “govern design or location of driveways on private property except where they connect to the road right-of-way.” R.S. § 3.01. Subject to certain exceptions, “Driveways may be surfaced as desired by the owner.” R.S. § 4.02. Thus, while the parking spaces themselves must be impervious (whether or not visible from the street) and must have unobstructed driveway access, Dr. Emig’s access route itself need not be impervious.

Forward-Looking Thoughts

16. Dr. Emig noted that his longer-run plans involve retiring and simplifying, for example cleaning out the airstream trailers filled with his veterinarian-related practice items and then selling the airstreams. Graveling a parking pad for vehicles not currently parked on impervious surface would only be his interim solution. That will probably not end the dispute in the near term. The Department expressed some frustration, because it has received many complaints on this property, complaints beyond just vehicles. The Department expects the complaints to continue. We offer two observations, one for Dr. Emig, and one for would-be complainants.
17. We decide only the issue in front of us today, an issue limited to vehicles currently on the property. Retaining large amounts of vehicles and mobile homes may continue to draw neighbor complaints to the Department. Nothing we say today means that Dr. Emig will not need to respond to later code enforcement complaints. Therefore, there are choices for Dr. Emig to make.
18. The Department has here, and likely will continue to, follow constitutional limitations in its evidence gathering. Based on those constraints, the Department could not establish most of the allegations raised by the complainant(s). Barring changes to the Emig property, it is not clear what else the Department could do, unless a complainant steps forward and offers legally-obtained evidence and testimony (subject to cross-examination). The dispute seems past the point that a complainant can remain anonymously on the sidelines and expect the Department successfully to carry all the water. Therefore, there is a choice for the complainant(s) to make as well: accept the status quo for a while or decide the problem is significant enough now to participate publicly.

DECISION:

1. We DENY IN PART and GRANT IN PART Dr. Emig’s appeal.
2. By **May 17, 2019**, Dr. Emig shall remove the son’s inoperable vehicle from the property.

3. As to the white trailer, Caravan, and blue Chevy pickup, by **July 31, 2019**, Dr. Emig shall remove these from the property, drive them to a pre-existing gravel area, or put a gravel parking pad under them.
4. The Department shall not assess penalties against Dr. Emig or the subject property if those actions are completed by the above deadlines. If not, the Department may assess penalties retroactive to today.

ORDERED March 20, 2019.



David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County's final decision for this type of case. This decision shall be final and conclusive unless proceedings for review of the decision are timely and properly commenced in superior court. Appeals are governed by the Land Use Petition Act, Chapter 36.70C RCW.

MINUTES OF THE MARCH 5, 2019, HEARING IN THE APPEAL OF CHARLES EMIG, DEPARTMENT OF LOCAL SERVICES, PERMITTING DIVISION FILE NO. ENFR180589

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin, Dr. Charles Emig, and Diana Kramer.

The following exhibits were offered and entered into the record:

Department-Offered Exhibits

Exhibit no. D1	Department of Local Services, Permitting Division staff report to the Hearing Examiner
Exhibit no. D2	Notice and order, issued September 4, 2018
Exhibit no. D3	Appeal, received September 27, 2018
Exhibit no. D4	Photographs of subject property, dated August 2, 2018 and November 28, 2018,
Exhibit no. D5	Aerial photographs of subject property, dated 2017
Exhibit no. D6	Compliance certificate of case no. E0500710, dated February 7, 2008
Exhibit no. D7	Photographs of subject property, dated January 30, 2008
Exhibit no. D8	Codes cited in the notice and order
Exhibit no. D9	Aerial photographs of subject property with mark ups, dated 2017

Appellant-Offered Exhibits

- | | |
|----------------|---|
| Exhibit no. A1 | Aerial photograph of subject property, dated 2007 |
| Exhibit no. A2 | Aerial photograph of subject property, dated 2017 |
| Exhibit no. A3 | Graph of gravel coverage on subject property |
| Exhibit no. A4 | Department of Assessments parcel information, dated September 17, 2018 |
| Exhibit no. A5 | RCW 36.70A.020 |
| Exhibit no. A6 | Letter from Permitting to Charles Emig with appeal receipt, dated October 2, 2018 |
| Exhibit no. A7 | Video of property |

DS/ld

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **ENFR180589**

CHARLES EMIG
Code Enforcement Appeal

I, Liz Dop, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **CORRECTED REPORT AND DECISION** 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 March 20, 2019.



Liz Dop
Legislative Secretary

Deraitus, Elizabeth

Department of Local Services

Emig, Charles Dr.

Hardcopy

Kramer, Diana

Hardcopy

LaBrache, Lisa

Metropolitan King County Council

Lux, Sheryl

Department of Local Services

Sawin, Holly

Department of Local Services

Williams, Toya

Department of Local Services