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BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

In the matter of the appeal of  
  
NOEL POVlsen and LYNN REED  
  
from a decision by the Director, Seattle  
Department of Construction and Inspections

Matter No. FOW 25-001

APPELLANTS' MOTION FOR  
SUMMARY JUDGMENT

**I. RELIEF REQUESTED**

Come now appellants Noel Povlsen and Lynn Reed, through the undersigned attorney of record and seeks summary judgment confirming that the floating residence situated at 4266 20<sup>th</sup> Avenue West, Seattle, Washington 98119, should be verified by the City of Seattle as a floating on-water residence pursuant to SMC § 23.60A.203.

**II. STATEMENT OF FACTS**

This appeal involves the application to verify a floating on-water residence submitted with respect a floating structure situated as 4266 20<sup>th</sup> Avenue West, Seattle, Washington 98119 ("LITTLE BLUE"). On information and belief, LITTLE BLUE has been moored within the City of Seattle since 1921, and it was designated and used as a floating home until 2012. Povlsen Declaration ¶2.

When appellants acquired LITTLE BLUE, it was moored at 2420 Westlake Avenue North #12, Seattle, Washington 98109. *Id.* Appellants acquired LITTLE BLUE from its former owners, Kevin and Jessica Vanderzanden, who were issued a Shoreline Substantial

1 Development Permit (Permit No. 3009553) to replace LITTLE BLUE with a newly  
2 constructed floating home in 2009. Griggs Declaration, Ex. F—G. Permit No. 3009553  
3 required that the existing floating home at that site (*i.e.*, LITTLE BLUE) be demolished. *Id.*  
4 Consequently, on May 13, 2010, the Vanderzandens gifted LITTLE BLUE to appellants.  
5 Griggs Declaration, Ex. B. Appellants thereafter relocated LITTLE BLUE to 2540 Westlake  
6 Avenue North, Seattle, Washington 98109, where it remained until December of 2012.  
7 Povlsen Declaration ¶3.

8 On May 15, 2012, Povlsen applied for a Shoreline Substantial Development Permit to  
9 relocate LITTLE BLUE to commercial moorage located at 1609 Fairview Avenue East,  
10 Seattle, Washington 98102. Griggs Declaration, Ex. C—D. LITTLE BLUE was moved to  
11 1609 Fairview Avenue East in December of 2012. Povlsen Declaration ¶3. And the  
12 Shoreline Substantial Development Permit authorizing that move (Permit No. 3012170) was  
13 approved on March 11, 2014. Griggs Declaration, Ex. C. In its written decision  
14 recommending issuance of Permit No. 3012170, the Department of Planning and  
15 Development (now SDCI) noted that “[t]he proposed float will be utilized as a workshop and  
16 office for the proposed marine sales and service use, minor vessel repair.” Griggs  
17 Declaration, Ex. D, p. 2, li. 6—8. LITTLE BLUE remained at 1609 Fairview Avenue East  
18 until December of 2021. Povlsen Declaration ¶6. It is currently moored at 4266 20<sup>th</sup> Avenue  
19 West, Seattle, Washington 98199.

20 In 2015, Seattle amended its Shoreline Master Program (“SMP”), which is now  
21 codified as Title 23.60A of the Seattle Municipal Code. The 2015 SMP revisions included  
22 provisions authorizing the verification of floating on-water residences (“FOWR”), which was  
23 a new designation established by amendment of the Shoreline Management Act in 2014. *See*

1 RCW 90.58.270(6). The 2015 SMP also required that floating homes become registered with  
2 the City within six months of its implementation. SMC 23.60A.202.G.1.

3 On September 1, 2024, appellants submitted an application to SDCI requesting that  
4 LITTLE BLUE be verified as a FOWR. SDCI denied that application on March 27, 2025 (the  
5 “Decision”). The sole basis cited for denying the application was that LITTLE BLUE is  
6 already established as a floating home and therefore ineligible to be verified as a FOWR.  
7 This appeal challenges that determination and seeks confirmation that LITTLE BLUE should  
8 be verified as a FOWR pursuant to SMC 23.60A.203.

### 9 **III. STATEMENT OF ISSUES**

10 1. Is LITTLE BLUE a floating home and therefore prohibited from being verified  
11 as a FOWR?

12 2. Should LITTLE BLUE verified as a FOWR per SMC 23.60A.203 because it (a)  
13 is designed or used primarily as a residence; (b) has detachable utilities; (c) was the subject of  
14 a lease, sublease, or ownership interest in a marina within the City of Seattle as of July 1,  
15 2014; and (d) was used as a dwelling unit within the City of Seattle prior to July 1, 2014?

### 16 **IV. EVIDENCE RELIED UPON**

17 This motion is based on the files of record herein, including without limitation, the  
18 original FOWR verification application for LITTLE BLUE and the Declaration of Noel  
19 Povlsen submitted to SDCI in connection therewith (both of which were submitted into the  
20 record at the time the appeal was filed), as well as the Declaration of R. Shawn Griggs filed  
21 herewith.

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1 party's contention and disclose that there is a genuine issue for trial." *Michael*, 165 Wn.2d at  
2 601-02.

3 The City bears the burden of establishing that LITTLE BLUE does not qualify as a  
4 FOWR. *See* SMC 23.60A.203(D)(4).

5 **B. LITTLE BLUE IS NOT A FLOATING HOME.**

6 A floating home cannot be verified as a FOWR. The SMP defines a FOWR as "any  
7 floating structure, other than a floating home, that is designed or used primarily as a  
8 residence, has detachable utilities, and is the subject of a lease or sublease at a marina, or  
9 whose owner or predecessor in interest had an ownership interest in a marina, as of July 1,  
10 2014." SMC 23.60A.912 (*emphasis supplied*). A floating home is "a structure designed as  
11 a dwelling unit constructed on a float that is moored, anchored or otherwise usually  
12 secured in waters, and is not a vessel, even though it may be capable of being towed." *Id.*  
13 To satisfy its burden and proof and uphold the Decision then, SDCI must establish, based  
14 on a preponderance of the evidence, that LITTLE BLUE is a floating home, as  
15 contemplated by SMC 23.60A.912 and SMC 23.60A.202.

16 **1. LITTLE BLUE's status as a floating home was terminated by Permit No.**  
17 **3012170.**

18 On both July 1, 2014 (FOWR qualification date) and June 15, 2015 (SMP  
19 amendment date), LITTLE BLUE was permitted and configured for use as a floating office  
20 and workshop and moored in commercial moorage. When relocated to 1609 Fairview  
21 Avenue East, LITTLE BLUE was converted from a floating home to a workshop and  
22 office. Griggs Declaration, Ex. D. Permit No. 3012170, which was issued by SDCI on  
23 March 11, 2014, legally established LITTLE BLUE's use as an office and workshop for

1 marine sales and service use. *Id.* Consistent with that designation, the plans for LITTLE  
2 BLUE's relocation reflect its internal configuration for marine sales and service use.  
3 Griggs Declaration, Ex. G. And SDCI knowingly allowed LITTLE BLUE to relocate to a  
4 marina that was not a floating home moorage and was not eligible to become one. Griggs  
5 Declaration, EX. C—D. Permit 3012170 therefore extinguished LITTLE BLUE's status as  
6 a floating home, as contemplated by SMC 23.60A.912 and SMC 23.60A.202, rendering it  
7 a floating structure that was subject to permitting requirements outside the regulatory  
8 framework applicable to floating homes. The Decision is therefore in error insofar as it  
9 relies on LITTLE BLUE's status as a floating home and should be reversed.

10       **2. *LITTLE BLUE was not legally established as a floating home and did not***  
11       ***occupy an established floating home moorage on June 15, 2015.***

12       Within six months of the implementation of the SMP, existing floating homes had  
13 to be registered with SDCI. And to qualify for registration, a floating home had to both be  
14 legally established and occupy an established floating home moorage on June 15, 2015.  
15 SMC 23.60A.202.A.1.a.1; SMC 23.60A.202.A.1.b. On June 15, 2015, LITTLE BLUE  
16 complied with neither of these provisions. For example, and as discussed *supra*, from  
17 March 2014, onward, LITTLE BLUE was permitted and therefore established as a floating  
18 office and workshop with a marine sales and service use designation. Griggs Declaration,  
19 Ex. C—D. Moreover, on June 15, 2015, LITTLE BLUE was moored in a commercial  
20 marina that did not qualify as an established floating home moorage site. *Id.*; Povlsen  
21 Declaration ¶3. Consequently, when the 2015 SMP amendments took effect, LITTLE BLUE  
22 did not meet the threshold qualifications for registration as a floating home, as articulated by  
23

SMC 23.60A.202.A.1. It is therefore not a floating home for present purposes and the Decision should be reversed accordingly.

**3. *LITTLE BLUE lacks the necessary characteristics of a floating home.***

The SMP further defines floating homes by imposing requirements on their construction and use. First and foremost, a floating home must be moored in a designated floating home moorage. SMC 23.60A.202.D.1. LITTLE BLUE has not occupied a floating home moorage site since it was moved to 1609 Fairview Avenue East in December of 2012. Griggs Declaration, Ex. C—D; Povlsen Declaration ¶6. A floating home must also be “connected to sewer service for all wastewater including black and grey water discharge.” SMC 23.60A.202.D.3. LITTLE BLUE is not connected to the sewer and has not been connected city sewer service since at least December of 2012. Instead, LITTLE BLUE has an onboard blackwater tank and discharges graywater into Lake Union as FOWRs do. Povlsen Declaration ¶11. Indeed, all of LITTLE BLUE’s utility connections are made via quick-connect disconnectors, as is required for FOWRs and as is atypical for floating homes. *See* SMC 23.60A.912 (FOWRs must have detachable utilities); Povlsen Declaration ¶11. LITTLE BLUE was therefore not physically configured as a floating home on June 15, 2015, when the current SMP took effect. Nor is it currently configured as a floating home. It is therefore not a floating home, as defined by SMC 23.60A.912 and SMC 23.60A.202, and the Decision should be reversed.

**C. LITTLE BLUE IS A FOWR.**

LITTLE BLUE satisfies all of the criteria necessary to be verified as a FOWR. A FOWR must: (a) be designed or used as a residence; (b) have been used as a dwelling unit within the City prior to July 1, 2014; (c) have detachable utilities; and (d) have been the

1 subject of a lease or sublease at a marina, or whose owner or predecessor in interest had an  
2 ownership interest in a marina, as of July 1, 2014. SMC 23.60A.912, 23.60A.203(B). Each  
3 of these criteria is addressed below.

4 **1. *LITTLE BLUE is designed or used primarily as a residence.***

5 Notwithstanding its legally established use as an office/workshop, LITTLE BLUE is  
6 designed and was used primarily as a residence. It contains a bathroom and sleeping area  
7 leftover from its former life as a floating home. Povlsen Declaration ¶11. It also has a  
8 break room/kitchen area that qualifies as a food preparation area and is considered evidence  
9 of a dwelling unit under the SMP. *Id.*; see also SMC 23.60A.908 (definition of dwelling  
10 unit). And, as Mr. Povlsen’s declaration and the attached photographs confirm, LITTLE  
11 BLUE was actually used primarily as a residence for extended periods following  
12 termination of its floating home status. For example, Victor White’s tenancy spanned from  
13 December 2012 until March 2013. Povlsen Declaration ¶7. Artist Rick Klu resided on  
14 LITTLE BLUE from July 2013 until March 2015, and then again in 2020—2021. *Id.* And  
15 Don Peterson resided on LITTLE BLUE intermittently between 2015 and 2020. *Id.*  
16 LITTLE BLUE is therefore considered to be both designed primarily as a residence and was  
17 used as a residence, qualifying it for verification as a FOWR pursuant to SMC 23.60A.912  
18 and SMC 23.60A.203.

19 **2. *LITTLE BLUE was used as a dwelling unit within the City of Seattle prior***  
20 ***to July 1, 2014.***

21 As discussed *supra*, LITTLE BLUE was used as a residence by artists Victor White  
22 and Rick Klu for substantial periods between December 2012 and July 1, 2014. LITTLE  
23 BLUE was therefore “occupied as living accommodations independent from any other



household[,]” as contemplated by SMC 23.60A.908 (definition of dwelling unit). The residential use by White and Klu therefore satisfies the requirement that LITTLE BLUE be used as a dwelling unit within the City of Seattle prior to July 1, 2014. The Decision should therefore be reversed and LITTLE BLUE verified as a FOWR pursuant to SMC 23.60A.203.

**3. *LITTLE BLUE has detachable utilities.***

LITTLE BLUE is attached to city water and electricity via quick-connect attachments. Povlsen Declaration ¶11. Moreover, LITTLE BLUE is not connected to city sewer. *Id.* All utilities are therefore detachable (in contrast to the requirements of a floating home, which must be permanently attached to utilities) in satisfaction of this element of the FOWR verification criteria. LITTLE BLUE should therefore be verified as a FOWR pursuant to SMC 23.60A.203.

**4. *LITTLE BLUE was the subject of a lease or sublease at a marina as of July 1, 2014.***

In December of 2012, appellants moved LITTLE BLUE to 1609 Fairview Avenue East, Seattle, Washington, 98102, and it remained there until December of 2021. Povlsen Declaration ¶6. During that period, LITTLE BLUE was the subject of a moorage lease agreement with Don Peterson, the marina owner. *Id.* ¶¶6, 10. Indeed, rent due to Peterson was offset from time to time to account for Peterson’s personal use of LITTLE BLUE as a residence. *Id.* ¶10. LITTLE BLUE was therefore the subject of a lease or sublease at a marina as of July 1, 2014, in satisfaction of this requirement for FOWR verification.

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**VI. CONCLUSION**

Summary judgment should be granted in favor of appellant because SDCI is unable to meet its burden of proof and establish that LITTLE BLUE does not qualify for verification as a FOWR. The uncontroverted facts establish that LITTLE BLUE is not a floating home, and has not been a floating home since well before July 1, 2014. Moreover, LITTLE BLUE satisfies each of the four qualifying criteria for FOWR status. Accordingly, appellant requests that the Hearing Examiner grant summary judgment in its favor, reverse the Decision, and confirm LITTLE BLUE's eligibility for verification under SMC § 23.60A.203.

RESPECTFULLY SUBMITTED this 19th day of May, 2025.

s/ R. Shawn Griggs  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of May, 2025 a true and correct copy of the foregoing was sent via e-mail to:

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