

1
2
3
4
5
6
7
8
9
10
11
12
13

BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeal by

NOEL POVLSEN and LYNN REED,

Appellants,

From a decision by the SEATTLE
DEPARTMENT OF CONSTRUCTION AND
INSPECTIONS.

No. FOW-25-001

THE DEPARTMENT’S MOTION FOR
SUMMARY JUDGMENT

14
15
16
17
18
19
20
21
22
23

I. INTRODUCTION

This case is about Appellants’ attempt to reclassify their registered floating home as a floating on-water residence (“FOWR”). Appellants applied to the Seattle Department of Construction and Inspections to verify their registered floating home as a FOWR. The Department denied the application because the City’s Shoreline Master Program (“SMP”) and the Shoreline Management Act (“SMA”), Ch. 90.58 RCW, do not allow a registered floating home to be verified as a FOWR. Appellants have a history of misrepresenting the use and status of their floating home to the City. Appellants now want to reclassify their floating home as a FOWR, presumably because FOWR regulations are less restrictive than floating home regulations. The code does not allow that. To protect the fragile shoreline environment, the SMP and SMA require that the most restrictive regulation apply. Accordingly, the floating home regulations

1 must apply, and the Examiner should uphold the denial of FOWR verification.

2 II. FACTS

3 A. Appellants obtained the floating home as a gift in 2010 and registered it with the City as a floating home in 2015.

4 Appellant Noel Povlsen obtained the floating home as a gift in 2010. Declaration of Amy
5 Groesbeck, Ex. F.¹ Povlsen claims that people have continuously lived in the home, known as “Little
6 Blue,” since its construction in 1921. Appeal, Att. 2 at ¶ 2. Povlsen states that it has a kitchen, bathroom,
7 living room, and bed and that it “connects to City water via a quick-disconnect hose, City electricity via a
8 marine-grade shore power cord or metered electric and has an onboard holding tank for black water
9 waste.” *Id.* at ¶ 11; *see also* Appeal, Atts. 3–9 (photos of Little Blue).

10 Sometime after Little Blue was gifted to Povlsen, he relocated it from a moorage slip at 2420
11 Westlake Avenue North to a slip at “Commercial Marine” at 2540 Westlake Avenue North. Appeal, Att.
12 2 at ¶ 2. Aerial photos show the home was no longer at the 2420 Westlake Ave as of May 2011, Groesbeck
13 Decl., Ex. E, yet Povlsen declared under penalty of perjury that his moorage lease at Commercial Marine
14 began in January 2012, Appeal, Att. 2 at ¶ 3. Regardless, the floating home was located at Commercial
15 Marine through most of 2012 and was relocated at the end of 2012.

16 In 2012, Povlsen applied for a shoreline substantial development permit to move the floating
17 home to a commercial moorage at 1609 Fairview Avenue East. Groesbeck Decl., Exs. C, D. Povlsen
18 told the City that he “purchased” the structure that was “licensed KCA-265 by the King County
19 Assessor.” *Id.*, Ex. C. His application proposed using the structure as a workshop and office for marine
20 sales and services. *Id.* The City approved the shoreline permit in November 2012. *Id.*, Ex. D. Povlsen
21 relocated Little Blue to 1609 Fairview Avenue East in December 2012. Appeal, Att. 2 at ¶ 3. The
22

23 ¹ The 2010 Real Estate Excise Tax Affidavit for the floating home claims a tax exemption under WAC 458-61A-201, which concerns gifted real property.

1 Department has no evidence that Little Blue was used as a workshop and office for marine sales and
2 services. In fact, Povlsen declared under penalty of perjury that he leased Little Blue to residential
3 tenants for \$500 per month until 2021. *Id.* at ¶¶ 7–10.

4 In December 2015, Noel Povlsen and Lynn Maxine Povlsen submitted a floating home
5 registration form to the City.² Groesbeck Decl., Ex. B. They declared on the form that the floating home
6 was assigned King County Assessor number 265 and was moored at 2540 Westlake Avenue North,
7 i.e., Commercial Marine, *id.*, even though it was actually moored at 1609 Fairview Avenue East.
8 Nonetheless, the City approved the floating home registration under SMC 23.60A.202.G and assigned
9 registration number 042 to the home. *Id.* The Department has no record that Appellants appealed the
10 City’s approval of the floating home registration. Groesbeck Decl. at ¶ 6.

11 **B. The Department issued a notice of violation in 2024 because the floating home was not in a**
12 **floating home moorage and was not connected to sewer.**

13 In April 2024, Amy Groesbeck, a shoreline analyst at the Department, was doing a routine
14 survey of floating residences in the Salmon Bay area when she saw a floating structure undergoing
15 renovation at Salmon Bay Boat Yard. *Id.* at ¶ 3. She visited the boatyard on April 17, 2024 and observed
16 mostly interior work underway on the floating structure. *Id.*; *see also id.*, Ex. A (photos from April 17
17 inspection). A person doing the work told her that the structure was a floating home, and he showed her
18 the King County Assessor’s plaque bolted to the exterior of the home, which had the number 265. *Id.*
19 The home did not display a floating home registration number assigned by the City. *Id.*

20 Groesbeck subsequently determined that the structure was registered with the City as floating
21 home number 042. *Id.* at ¶ 6. The Department had no record of the floating home moving to a new moorage
22 after it was registered. *Id.*

23 _____
² The Department assumes that Lynn Maxine Povlsen and Appellant Lynn Reed are the same person.

1 Around June 2024, Appellants listed the floating home for sale. *Id.*, Ex. F. It was advertised as
2 a “Seattle Floating Home” with registration numbers 042 and 265. *Id.* Salmon Bay Boat Yard was
3 listed as the home’s moorage. *Id.*

4 On June 11, Groesbeck conducted a second inspection of the floating home and confirmed it
5 was not connected to sewer service. *Id.* at ¶ 11. That same day, she contacted the real estate agent for
6 the home, who confirmed that the floating home’s City registration number was 042 and that the home
7 was mooring long-term at the Salmon Bay Boat Yard. *Id.* at ¶ 12. Groesbeck then contacted Appellant
8 Lynn Reed, who said that Little Blue moved from the Fairview Avenue dock in 2021 when the dock
9 owner passed away and the property was sold. *Id.* Groesbeck informed Reed that floating homes are not
10 allowed at the Salmon Bay Boat Yard and that all floating homes are required to have sewer service
11 connection. *Id.*

12 After further investigation and internal Departmental discussions, Groesbeck issued a notice of
13 violation (“NOV”) for the floating home. *Id.* at ¶¶ 13–15. The NOV listed two violations:

- 14 1. Prohibited moorage of Floating Home 042 at location which is not an established
15 floating home moorage site (SMC 23.60A.202A, SMC 23.60A.202B).
- 16 2. Floating home 042 is not lawfully connected to sewer service for all wastewater
17 including black and grey water discharge (SMC 23.60A.202D).

17 *Id.*, Ex. I.

18 **C. Appellants sought to verify their registered floating home as a FOWR; the Department**
19 **denied FOWR verification.**

20 In July 2024, Appellants’ attorney requested a Director’s Review of the NOV. *Id.*, Ex. J. He
21 claimed that the structure was incorrectly identified as a floating home and that it was a FOWR per
22 SMC 23.60A.912 and SMC 23.60A.203. *Id.*

23 In September, Appellants applied to the Department to verify their floating home as a FOWR.
Groesbeck Decl. at ¶ 17. The Department paused review of the verification application until the

Director’s Review went to the front of the queue to be processed. *Id.* at ¶ 19. Appellants and their attorney did not contact Groesbeck while the application was on hold. *Id.*

On February 18, 2025, Appellants filed a lawsuit against the City in King County Superior Court, case no. 25-2-05212-5 SEA. The lawsuit claims damages under RCW 64.40.020 and seeks a writ of mandamus under RCW 7.16.150. The lawsuit is active.

On March 27, the Department issued a letter to Appellants denying FOWR verification. Groesbeck Decl. at ¶ 21. The denial letter states in relevant part:

The City approved your application (3022402-AN) to verify the floating residence as a floating home on December 7, 2015, and your floating home was assigned registration #042. A FOWR cannot also be a floating home. *See* SMC 23.60A.912. And the Shoreline Master Program (SMP) does have a process for re-registering floating homes as FOWRs.

Nor would such a process make sense given the SMP’s purpose. The SMP “shall be liberally construed to give full effect to the objectives and purposes of RCW 90.58, the State Shoreline Management Act.” *See* SMC 23.60A.014.A. The primary purpose of the SMA is to protect fragile shoreline areas. Thus, the “most restrictive” standard in the SMP applies to a proposal. Floating home regulations are more restrictive and protective of the shoreline than FOWR regulations. Therefore the floating home regulations (SMC 23.60A.202) apply to your floating home.

Id., Ex. K.

Appellants appealed the FOWR verification denial to the Examiner.

III. ARGUMENT

A. Legal standards.

An appeal of FOWR verification denial “shall be conducted de novo, and the City shall have the burden of showing by a preponderance of the evidence that the decision of the Director was correct.” SMC 23.60A.203.D.4.

Summary judgment is appropriate when (1) there is no genuine issue of material fact; and (2) the moving party can show that when the law is applied to those facts, the party is entitled to judgment on the claim or claims. HE Rule 3.17(k).

1 **B. The SMA and SMP are supposed to protect the fragile shoreline environment.**

2 At its outset, the SMA declares that “the shorelines of the state are among the most valuable and
3 fragile of its natural resources and that there is great concern throughout the state relating to their
4 utilization, protection, restoration, and preservation.” RCW 90.58.020. Thus, shoreline uses “shall be
5 designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology
6 and environment of the shoreline area and any interference with the public’s use of the water.” *Id.* Prior to
7 adoption of the SMA, shorelines across the state were much more vulnerable to human development. *See*
8 *id.*; *Buechel v. State Dep’t of Ecology*, 125 Wn.2d 196, 203 (1994).

9 To regulate shoreline uses and carry out the SMA’s purpose, local jurisdictions like Seattle must
10 develop shoreline master programs consistent with the SMA. *See* RCW 90.58.080. The express intent of
11 Seattle’s SMP is to (1) protect the ecological functions of the shoreline areas; (2) encourage water-
12 dependent uses; (3) provide for maximum public access to, and enjoyment of the shorelines of the City;
13 and (4) preserve, enhance, and increase views of the water. SMC 23.60A.002. Uses that are not
14 water-dependent are generally discouraged in shorelines. *See* WAC 173-26-201(2)(d). Under the SMP,
15 residential uses are explicitly *not* “water-dependent.” SMC 23.60A.944.

16 Importantly, the SMA and SMP “shall be liberally construed to give full effect to the objectives
17 and purposes” for which they were created. RCW 90.58.900; SMC 23.60A.014.A. Thus, whenever two
18 or more SMP standards could arguably apply to a given proposal, the “*most restrictive applies.*” *See* SMC
19 23.60A.014.A (emphasis added).

20 **C. The City strictly regulates floating homes and floating home moorages.**

21 The City has regulated floating homes for decades. For example, since at least 1968, the City has
22 required that floating homes connect to water service and public sewers. *See* Ord. 96821, §§ 1.080–1.110.³

23

³ City ordinances can be viewed here: <https://clerk.seattle.gov/search/ordinances/> (last accessed 5/19/2025).

1 The City's first SMP, incorporated into the code in 1977, included floating home regulations and
2 considered floating homes "preferred" and "water dependent" uses. *See* Ord. 106200, § 21A.71. Also in
3 1977, floating homes were made subject to the building code, including requirements for fire protection
4 and utility connections. *See* Ord. 106350, ch. 74. In 1987, the City overhauled its SMP and updated and
5 expanded the floating home regulations. *See* Ord. 113466, § 23.60.196. Floating homes were no longer
6 considered preferred or water-dependent uses. *See id.* The new code required, among other things, that
7 existing floating homes have an assigned King County Assessor number and be "established by that
8 number as existing at an established moorage in Lake Union or Portage Bay as of the effective date of this
9 Chapter." *Id.*, § 1.23.60.196.A.4. That requirement was in place until 2013. *See* Ord. 124105, Ex. A, §
10 23.60.194.A.4.

11 In 2013, the City revamped its SMP again, moving the floating home section to new
12 SMC 23.60A.202. *See* Ord. 124105 (adopted January 29, 2013). That section continues to be the main
13 SMP regulation of floating homes and floating home moorages. A floating home is allowed if it (a) was
14 legally established or had a building permit by January 29, 2013 and (b) occupies a floating home moorage
15 that was legally established by the same date. *See* SMC 23.60A.202.A.1.⁴ All other floating homes are
16 prohibited. In other words, new floating homes (other than replacements) are forbidden. This aligns with
17 the state's priorities: "New over-water residences, including floating homes, are not a preferred use and
18 should be prohibited." WAC 173-26-241(j)(iv)(A).

19 The code requires that floating homes be registered with the City and that the registration number
20 be displayed on the outside of the home. SMC 23.60A.202.G. Also, floating homes shall be moored at
21 floating home moorages. SMC 23.60A.202.D. Floating home moorages are highly regulated. *See*
22 SMC 23.60A.202.B. A site plan must be filed with the Department for any proposal to relocate a

23 ⁴ SMC 23.60A.202.A.1 also allows replacements of legally established floating homes.

1 floating home. SMC 23.60A.202.

2 Significantly, floating homes “shall be lawfully connected to sewer service for all wastewater
3 including black and grey water discharge.” SMC 23.60A.202.D.3. Floating homes and floating home
4 moorages also must comply with certain requirements of the Seattle Residential Code. *See* Seattle
5 Residential Code section R332.

6 **D. The City’s FOWR regulations are less restrictive than its floating home regulations.**

7 The City did not have distinct FOWR regulations until 2015. Instead, for decades the City
8 regulated most floating residences as floating homes or “house barges.” In 1987, the updated SMP stated
9 in relevant part: “Floating structures, including vessels which do not have a means of self-propulsion and
10 steering equipment and which are designed or used as a place of residence, shall be regulated as floating
11 homes pursuant to this chapter.” Ord. 113466, § 23.60.090.F. Then, in 1992, the City adopted house barge
12 regulations that were less restrictive than floating home regulations, but the City prohibited the
13 establishment of new house barges—only house barges that existed as of 1990 were allowed. *See*
14 Ord. 116051.

15 In 2014, the state legislature recognized FOWRs as lawful shoreline uses: “A floating on-water
16 residence legally established prior to July 1, 2014, must be considered a conforming use” RCW
17 90.58.270(6)(a). The state defines a FOWR as follows:

18 a vessel or any other floating structure *other than a floating home*, as defined under
19 subsection (5) of this section: (i) That is designed or used primarily as a residence on the
20 water and has detachable utilities; and (ii) whose owner or primary occupant has held an
ownership interest in space in a marina, or has held a lease or sublease to use space in a
marina, since a date prior to July 1, 2014.

21 RCW 90.58.270(6)(b) (emphasis added).

22 The City adopted its first FOWR regulations in April 2015. *See* Ord. 124750. Like the state
23 definition, the code definition for a FOWR excludes floating homes: “‘Floating on-water residence’ means

1 any floating structure, *other than a floating home*, that is designed or used primarily as a residence, has
2 detachable utilities, and is the subject of a lease or sublease at a marina, or whose owner or predecessor in
3 interest had an ownership interest in a marina, as of July 1, 2014.” SMC 23.60A.913 (emphasis added).

4 The code section on FOWRs, SMC 23.60A.203, is less robust than the section on floating homes
5 and moorages. Relevant here, unlike floating homes, FOWRs do not need to be located at floating home
6 moorages, are not subject to the Residential Code, and do not need sewer service. Blackwater is supposed
7 to kept on site and then pumped out as needed, and greywater may be dumped into the waterway. *See*
8 Groesbeck Decl. at ¶ 5.

9 The code requires that FOWRs be verified with the City. SMC 23.60A.203.D. Notably, the code
10 states that a “house barge authorized under Section 23.60A.204 may submit verification and be regulated
11 as a floating on-water residence rather than a house barge,” SMC 23.60A.203.D.3, but there is no process
12 for verifying and regulating a registered floating home as a FOWR.

13 **E. The Department lawfully denied verifying the registered floating home as a FOWR.**

14 The Department correctly determined that Little Blue is a floating home. Little Blue has had a
15 floating home registration number from the King County Assessor since at least 2010, when it was gifted
16 to Povlsen. Groesbeck Decl., Ex. F. At that time, the code required a King County Assessor registration
17 number for every floating home subject to the City’s floating home regulations. Ord. 124105, Ex. A, §
18 23.60.194.A.4. In 2015, the code had a process for floating home registration and a process for FOWR
19 verification. That same year, Appellants chose to register Little Blue as a floating home, not as a FOWR.
20 They did not appeal the City’s approval of the floating home registration, so it is final. *See Habitat Watch*
21 *v. Skagit Cnty.*, 155 Wn.2d 397, 407 (2005) (even incorrect land use decisions are final if not timely
22 appealed). And last year, Appellants advertised Little Blue as a “Seattle Floating Home” with registration
23 numbers 042 and 265. Those material facts cannot be genuinely disputed.

1 Because Little Blue is a registered floating home, the Department lawfully denied verification of
2 the home as a FOWR. While the code allows an authorized house barge to be reclassified as a FOWR,
3 there is no process to verify and regulate a registered floating home as a FOWR. This makes sense. A
4 FOWR, by definition, is not a floating home. SMC 23.60A.913. FOWR regulations are less restrictive
5 than floating home regulations—in particular, FOWRs do not need to be moored at a floating home
6 moorage, do not need to connect to sewer service, and are not subject to the Residential Code.
7 Appellants’ attempt to reclassify their floating home underscores the fact that FOWR regulations are less
8 restrictive—Appellants apparently want greater flexibility than the floating home regulations allow. But
9 the code expressly requires that the “most restrictive” regulations apply. SMC 23.60A.014.A. This
10 requirement is meant to protect the fragile shoreline environment. Accordingly, Little Blue must continue
11 to be subject to floating home regulations, and the Department’s denial of FOWR verification was lawful.

12 IV. CONCLUSION

13 The Department lawfully denied Appellants’ application for FOWR verification because the SMA
14 and SMP do not allow a registered floating home to be verified and regulated as a FOWR. Appellants may
15 continue to rent or sell Little Blue as a floating home in the City subject to floating home regulations.

16 DATED this May 19, 2025.

17 ANN DAVISON
18 Seattle City Attorney

19 By: s/ Maxwell Burke
20 Maxwell C. Burke, WSBA #49806
21 Assistant City Attorney
22 maxwell.burke@seattle.gov
23 Seattle City Attorney’s Office
701 Fifth Avenue, Suite 2050
Seattle, WA 98104
(206) 684-8200
Attorneys for Respondent City of Seattle

1 **CERTIFICATE OF SERVICE**

2 I certify that on May 19, 2025, I caused a true and correct copy of the foregoing document to
3 be served on the following in the manner indicated below:

4 R. Shawn Griggs
5 130 Nickerson Street, Ste. 201
6 Seattle, WA 98109
7 shawn@griggs-law.com

8 Attorney for Plaintiffs

(**XX**) Via Email
() U.S. Mail

9 Dated this May 19, 2025.

10 s/ Eric Nygren
11 Eric Nygren
12 Legal Assistant
13
14
15
16
17
18
19
20
21
22
23