

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

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 RESPONSE TO
APPELLANTS’ MOTION FOR
SUMMARY JUDGMENT

I. INTRODUCTION

The Examiner must reject Appellants’ attempt to collaterally attack a final land use decision approving registration of Little Blue as a floating home. Appellants admit that a “floating home cannot be verified as a FOWR.” Appellant Motion at 5:6. That admission is fatal to Appellants’ case. Appellants cannot genuinely dispute that Little Blue is a registered floating home. In 2015, the City approved Appellants’ request to register Little Blue as a floating home. Appellants did not appeal that decision, so it became final. Because Little Blue is a registered floating home, it “cannot be verified as a FOWR,” and the Department’s decision to deny FOWR verification was lawful. The decision must be affirmed.

II. RESPONSE FACTS

The Department's Motion provides much of the history of this case. Appellants' Motion includes other facts, some of which are highlighted and contextualized here.

First, Appellants state that Little Blue has been moored in Seattle since 1921 and "was designated and used as a floating home until 2012." Appellants' Motion at 1:18–19. So by 2012, Little Blue had been used as a floating home for almost a century.

Second, Appellants admit that the City issued a shoreline permit in 2009 that required Little Blue to be "demolished." *Id.* at 2:3. That permit requirement obviously was not followed.

Third, Appellants admit that Little Blue "has not been connected [to] city sewer service since at least December of 2012." *Id.* at 7:10–11. Rather, it has an "onboard blackwater tank and discharges graywater into Lake Union" *Id.* at 7:12–13. Floating homes must connect to sewer service for all wastewater. SMC 23.60A.202.D.3.

Finally, Appellants' Motion completely omits the fact that the City approved Appellants' request to register Little Blue as floating home number 042 in December 2015. At that time, Appellants could have applied for FOWR verification, but they chose floating home registration. They never appealed the approval of floating home registration. The Department has no record that Appellants sought any City approval related to Little Blue after December 2015 until September 2024, when Appellants requested FOWR verification in response to a notice of violation.

III. ARGUMENT

Appellants admit that a "floating home cannot be verified as a FOWR." Appellant Motion at 5:6. They quote the FOWR definition in the code, which expressly states that a FOWR is not a floating home. *Id.* 5:6–10 (quoting SMC 23.60A.912). And, as argued in the Department's Motion, the code provides no process to verify a registered floating home as a FOWR. This makes sense. The SMP

1 requires application of the “most restrictive” shoreline regulations, SMC 23.60A.014.A, and floating
2 home regulations are more restrictive than FOWR regulations, *compare* SMC 23.60A.202, *with*
3 SMC 23.60.203. Significantly, the SMP requires sewer service connection for floating homes but not
4 for FOWRs.

5 Appellants cannot genuinely dispute that Little Blue is a registered floating home. In December
6 2015, Appellants sought floating home registration even though they could have applied for FOWR
7 verification. The City approved Appellants’ registration request. Appellants never appealed that decision,
8 so it is final.

9 The Examiner must reject Appellants’ collateral attack on the City’s 2015 approval of floating
10 home registration. Appellants’ Motion completely fails to acknowledge that approval. Still, Appellants
11 argue that Little Blue “did not meet the threshold qualifications for registration as a floating home” in 2015
12 and that it is “therefore not a floating home for present purposes” Appellants’ Motion at 6:21–7:1.
13 Appellants’ argument constitutes a collateral attack on a final land use decision—namely, the City’s 2015
14 approval of floating home registration for Little Blue. A land use decision, *even an incorrect one*, becomes
15 final if it is not timely appealed.¹ *See Habitat Watch v. Skagit Cnty.*, 155 Wn.2d 397, 407 (2005). Once
16 final, the decision can no longer be directly challenged or collaterally attacked via challenge of a different
17 government decision. *Id.* at 411. Accordingly, Appellants are barred from arguing that Little Blue is not a
18 registered floating home.

19 Next, the Examiner must reject Appellants’ argument that the 2012 shoreline permit, which
20 approved using Little Blue as a marine workshop and office, “extinguished LITTLE BLUE’s status as a
21 floating home.” Motion at 6:5–6. By that same logic, the 2015 floating home registration extinguished
22

23 ¹ The City’s 2015 decision was incorrect because in 2009 the City required that Little Blue be demolished. Appellants and
their predecessors did not comply with that requirement. In any event, the Department accepts that the 2015 decision is
final and that Little Blue may continue to exist as a floating home so long as it complies with floating home regulations.

1 Little Blue’s alleged status as a workshop and office and affirmed its century-long status as a floating
2 home. Moreover, the Department has no evidence that Little Blue was ever used as a marine workshop
3 and office. In fact, Appellant Povlsen declared under penalty of perjury that he leased Little Blue to
4 residential tenants from 2012 until 2021. Appeal, Att. 2 at ¶¶ 7–10. And last year, Appellants put Little
5 Blue up for sale, advertising it as a “Seattle Floating Home” with registration number 042. Groesbeck
6 Decl., Ex. G.

7 Finally, Appellants’ argument that Little Blue satisfies the FOWR verification criteria is irrelevant
8 because Little Blue is a registered floating home, and a floating home cannot be verified as a FOWR.

9 IV. CONCLUSION

10 Little Blue has been a floating home for over a century and has been registered as such with King
11 County for decades. More importantly, it has been registered as a floating home with the City since 2015.
12 That material fact cannot be genuinely disputed. Appellants admit that a floating home cannot be verified
13 as a FOWR. Thus, the Department was correct to deny FOWR verification for Little Blue.

14 DATED this June 9, 2025.

15 ANN DAVISON
16 Seattle City Attorney

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

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

CERTIFICATE OF SERVICE

I certify that on June 9, 2025, I caused a true and correct copy of the foregoing document to be served on the following in the manner indicated below:

R. Shawn Griggs 130 Nickerson Street, Ste. 201 Seattle, WA 98109 shawn@griggs-law.com Attorney for Plaintiffs	(XX) Via Email () U.S. Mail
---	--

Dated this June 9, 2025.

s/ Eric Nygren
Eric Nygren
Legal Assistant