

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' OPPOSITION TO
THE CITY'S MOTION FOR
SUMMARY JUDGMENT

Appellants Noel Povlsen and Lynn Reed, through the undersigned attorney of record, submit this opposition to the Motion for Summary Judgment filed by the City of Seattle on May 19, 2025.

The substantive basis for the City's motion for summary judgment rests solely on the question of whether or not LITTLE BLUE was a legally established floating home on June 15, 2015. Consequently, this opposition addresses that question exclusively.

A. LITTLE BLUE ceased to be a floating home when the City of Seattle authorized its relocation to 1609 Fairview Avenue East on March 11, 2014.

In 2009, the City of Seattle authorized Kevin and Jessica Vanderzanden to construct a new floating home that would replace their current floating home. Griggs Declaration, Ex. F—G (Permit No. 3009553). In their permitting materials, the Vanderzandens stated their intent to demolish LITTLE BLUE to make way for its replacement. *Id.* But they did not do so. Instead, LITTLE BLUE was gifted to appellants, who ultimately relocated it to 1609 Fairview Avenue East, and permitted it as an office and workshop for marine sales and service use. Griggs Declaration, Ex. D.

1 Permit No. 3012170, which was issued on March 11, 2014, established LITTLE
2 BLUE as a floating office and workshop for marine sales and service use. Griggs
3 Declaration, Ex. D; *see also* SMC 23.42.102.B (use or development for which a permit was
4 obtained is deemed established.). Permit No. 3012170 therefore discontinued LITTLE
5 BLUE’s previously established use as a floating home. *See* SMC 23.60A.910 (definition of
6 existing use, which mandates that an existing use is considered discontinued when “[a]
7 permit to change the use of the structure or property has been issued and acted upon[.]”).
8 Consequently, and as a matter of law, LITTLE BLUE was not a legally established floating
9 home on June 15, 2015.

10 LITTLE BLUE was used as an office and workshop for marine sales and service use
11 subsequent to its relocation to 1609 Fairview Avenue East. Between 2012 and 2021,
12 LITTLE BLUE was the designated office and workshop for Povlsen Associates Limited, a
13 Washington corporation that did business under the trade name Liberty Dock Service.
14 Second Povlsen Declaration ¶¶2—4. It served as Noel Povlsen’s office during this period.
15 *Id.* ¶4. Records and files for Liberty Dock Service were stored on LITTLE BLUE. *Id.* Tools
16 and equipment were stored on LITTLE BLUE. *Id.* The NEVR DULL, a workboat used by
17 Liberty Dock Service, was moored to LITTLE BLUE. *Id.* And Povlsen continuously used
18 LITTLE BLUE as both an office and workshop in connection with his operation of Liberty
19 Dock Service until 2021. *Id.*

20 At the same time, Povlsen also allowed various individuals to reside on LITTLE
21 BLUE. Povlsen Declaration ¶7; Second Povlsen Declaration ¶6. These individuals – Victor
22 White and Rick Klu – were artists with limited financial resources who lived on LITTLE
23 BLUE for nominal rent. Second Povlsen Declaration ¶6. Both were friends of Povlsen who

1 used LITTLE BLUE as their primary residence. *Id.* LITTLE BLUE was ideally configured
2 for this ancillary use because it was originally designed as a floating home and contained the
3 amenities necessary for use as a dwelling unit. Povlsen Declaration ¶11; Second Povlsen
4 Declaration ¶7. And the dual use arrangement worked because of the long-term friendship
5 between appellants and both White and Klu. Second Povlsen Declaration ¶¶6—7. But
6 notwithstanding the fact that White and Klu used LITTLE BLUE as their primary residence
7 between 2012 and 2021, it never ceased functioning as the office and workshop for Liberty
8 Dock Service. *Id.* ¶7.

9 Notwithstanding the fact that it was a floating home when acquired, LITTLE BLUE
10 was legally established as a floating office and workshop in March of 2014 via Permit No.
11 3012170. Further, from 2012 onward, LITTLE BLUE was lawfully moored in commercial
12 moorage that did not qualify as a floating home slip. And, consistent with Permit No.
13 3012170, appellants used LITTLE BLUE as a floating office and workshop from 2012
14 onwards. Consequently, on June 15, 2015 (the effective date of the current SMP) LITTLE
15 BLUE was not a legally established floating home and did not occupy a legally established
16 floating home moorage. LITTLE BLUE therefore does not qualify as a floating home. *See*
17 SMC 23.60A.202.A.1—2.

18 **B. The registration erroneously issued by the City of Seattle in 2015 did not modify**
19 **LITTLE BLUE’s use or otherwise resurrect its status as a floating home.**

20 LITTLE BLUE ceased to be a floating home in March of 2014 pursuant to Permit No.
21 3012170. In its motion for summary judgment, the City asserts that the erroneous registration
22 of LITTLE BLUE in 2015 converted it back to a floating home. This assertion fails, however,
23 because floating homes cannot be legally established via the registration process detailed in

SMC 23.60A.202.G, and LITTLE BLUE was not subject to either a building permit or shoreline substantial development permit modifying its use subsequent to Permit No. 3012170. Consequently, the erroneous registration of LITTLE BLUE has no bearing on whether it is a floating home for present purposes.

Under Seattle’s Shoreline Master Program (“SMP”), new uses are established via the issuance of shoreline substantial development permits. SMC 23.60A.020. Floating homes in existence when the current SMP took effect are allowed only if (a) they were legally established or had a building permit in effect on June 15, 2015, and (b) the occupied a legally established floating home moorage on June 15, 2015. SMC 23.60A.202.A. It is uncontested that LITTLE BLUE fails both of these criteria. Moreover, the registration process detailed at SMC 23.60A.202.G supersedes neither the requirements of SMC 23.60A.202A nor the shoreline substantial development permit requirement imposed by SMC 23.60A.020. As a matter of law, then, registration of a structure per SMC 23.60A.202.G cannot itself legally establish LITTLE BLUE as a floating home under the SMP.

The City admits that LITTLE BLUE was erroneously registered as a floating home. It is uncontested that LITTLE BLUE was not legally established as a floating home and was not located in an established floating home moorage on June 15, 2015. Moreover, the registration application – most of which was completed by the City, not appellants – was approved notwithstanding the fact that it was unsigned by appellants and accompanied by a postcard from the King County Assessor that confirmed LITTLE BLUE was moored at 1609 Fairview Avenue East, not 2540 Westlake Avenue North. *See* Declaration of Amy Groesbeck, Ex. B, pp. 1, 3; *see also* Second Povlsen Declaration ¶9. The registration application for LITTLE BLUE was patently defective, and even a cursory review should have resulted in its rejection.

1 Regardless, the City asserts that appellants are none-the-less bound by the erroneously issued
2 registration because it is a land use decision that cannot be challenged at this point. That
3 assertion is incorrect.

4 The City's determination that LITTLE BLUE should be registered as a floating home
5 is not a land use decision, as contemplated by the Land Use Petition Act, RCW 36.70A
6 ("LUPA"). A land use decision is:

7 [A] final determination by a local jurisdiction's body or officer with the highest level
8 of authority to make the determination, including those with authority to hear appeals,
on:

9 (a) An application for a project permit or other governmental approval required by law
10 before real property may be improved, developed, modified, sold, transferred, or used,
11 but excluding applications for permits or approvals to use, vacate, or transfer streets,
parks, and similar types of public property; excluding applications for legislative
approvals such as area-wide rezones and annexations; and excluding applications for
business licenses;

12 (b) An interpretative or declaratory decision regarding the application to a specific
13 property of zoning or other ordinances or rules regulating the improvement,
development, modification, maintenance, or use of real property; and

14 (c) The enforcement by a local jurisdiction of ordinances regulating the improvement,
15 development, modification, maintenance, or use of real property.

16 RCW 36.70C.020 (2). The registration scheme for floating homes specified in SMC
17 23.60A.202.G fails each of these criteria. Floating homes, floating on-water residences, and
18 house barges are personal property. Under the SMP, failure to register a floating home does
19 not forfeit the owner's right to maintain it. SMC 23.60A.202.G.2. Registration is not a
20 condition precedent to rebuilding, replacing, repairing, or remodeling a floating home. *See*
21 SMC 23.60A.202.D.5 (requirements for rebuilding, replacing, repairing, or remodeling a
22 floating home); *contrast* SMC 23.60A.203.C.2.a (verification a prerequisite to any work to
23 expand, rebuild, or replace a floating on-water residence), SMC 23.60A.204.C.2.a

1 (verification a prerequisite to any work to expand, rebuild, or replace a house barge).
2 Consequently, an application for floating home registration under SMC 23.60A.202.G is not
3 “[a]n application for a project permit or other governmental approval required by law before
4 real property may be improved, developed, modified, sold, transferred, or used ...” RCW
5 36.70C.020(2)(a). Nor does approval or denial of floating home registration constitute “the
6 application to a specific property of zoning or other ordinances or rules regulating the
7 improvement, development, modification, maintenance, or use of real property.” RCW
8 36.70C.020(2)(b). And finally, a registration decision does not constitute “enforcement by a
9 local jurisdiction of ordinances regulating the improvement, development, modification,
10 maintenance, or use of real property.” RCW 36.70C.020(2)(c). The floating home
11 registration process detailed at SMC 23.60A.202.G cannot result in a land use decision, as
12 contemplated by RCW 36.70C.020(2)(c), and therefore should not be given preclusive effect
13 under LUPA.

14 Nor is the erroneous registration decision otherwise given preclusive effect as a matter
15 of law. Res judicata applies to quasi-judicial land use decisions. *Hilltop Terrace*
16 *Homeowner’s Association, et al. v. Island County, et al.*, 121 Wn.2d 22, 31, 891 P.2d 29
17 (1995). For res judicata to apply, however, it must be established that the subject matter and
18 cause of action are the same. *See e.g., Rains v. State*, 100 Wn.2d 660, 663, 674 P.2d 165
19 (1983) (elements of res judicata). Moreover, a “substantial change in circumstances or
20 conditions relevant to the application or a substantial change in the application itself” will
21 preclude application of res judicata. *Hilltop Terrace*, 121 Wn.2d at 33. Res judicata is
22 plainly inapplicable in this case. The registration process specified by SMC 23.60A.202.G is
23 a ministerial function and not quasi-judicial. Moreover, there is no identity of subject matter

1 and action; the registration evaluated whether LITTLE BLUE was issued a KCA number and
2 was located in an established floating home slip, but the present matter is premised on
3 permitting and use issues that are far broader than the scope of inquiry contemplated by SMC
4 23.60A.202.G. Those permitting and use issues also constitute a substantial change in
5 circumstances or conditions relevant to the question of whether LITTLE BLUE is a floating
6 home under SMC 23.60A.202 or a floating on-water residence under SMC 23.60A.203.
7 Moreover, the present application for verification as a floating on-water residence is
8 fundamentally different from the registration application, which also precludes application of
9 res judicata. The City's registration decision is not the type of determination that is given
10 preclusive effect as a matter of law. And even if it was, the substantial differences in the
11 subject matter, scope of inquiry, and circumstances pertaining to the present application all
12 preclude application of res judicata in this case. Consequently, the City's 2015 registration of
13 LITTLE BLUE as a floating home has no bearing on its legal status under SMC 23.60A.202
14 or SMC 23.60A.203.

15 The 2015 registration of LITTLE BLUE as a floating home should be given no
16 preclusive effect under either LUPA or the common law doctrine of res judicata. Moreover,
17 the City lacked the authority to change the use previously established by Permit No. 3012170
18 via the registration process specified by SMC 23.60A.202.G. The current use of LITTLE
19 BLUE was legally established by Permit No 3012170 in March of 2014, and no subsequent
20 permit or action by either the City or appellants has modified that use. LITTLE BLUE is
21 therefore not a floating home and should be eligible for verification as a floating on-water
22 residence under SMC 23.60A.203. The City's motion for summary judgment should
23

1 therefore be denied and this matter should be remanded to SDCI for verification of LITTLE
2 BLUE as a floating on-water residence.

3 RESPECTFULLY SUBMITTED this 9th day of June, 2025.

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

10 I hereby certify that on this 9th day
11 of June, 2025 a true and correct copy of
12 the foregoing was sent via e-mail to:

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