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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 REPLY IN
SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT

I. INTRODUCTION

The City’s 2015 approval of Appellants’ request to register Little Blue as a floating home was a final land use decision. Appellants argue it was not and that it has no preclusive effect or bearing on Appellants’ request for FOWR verification. Appellants’ argument must be rejected because it is contrary to law. Appellants can no longer challenge the 2015 decision. Because Little Blue is a registered floating home, it cannot be a FOWR.

II. RECAP OF THE FACTS

Appellants have claimed Little Blue to be different things over the years, sometimes misleading or failing to inform the City about its true status.

Appellants state that Little Blue was “designated and used as a floating home” from 1921 until

1 at least 2012. Appellants' Motion at 1:17–19. Little Blue has been registered as a floating home with
2 King County for decades. *See, e.g.*, Griggs Decl. at ¶ 2 (identifying King County Assessor floating
3 home number 265 in at least 2008); *see* Ord. 113466, § 23.60.196.A.4 (ordinance requiring existing
4 floating homes have an assigned King County Assessor number in 1987).

5 In 2009, the City issued a shoreline permit allowing Little Blue's owners to build a new floating
6 home and requiring demolition of Little Blue. Griggs Decl., Ex. F. Little Blue was never demolished.
7 Instead, it was gifted to Appellants for free. *Id.*, Ex. B.

8 After receiving Little Blue in 2010, Appellants moved it to moorage known as Commercial
9 Marine. Appeal, Att. 2 (1st Povlsen Decl.) at ¶ 2. The Department has no record of Appellants' proposal
10 to move Little Blue to Commercial Marine, which makes sense because Little Blue was supposed to
11 be demolished.

12 However, in 2012, Appellants applied for a shoreline permit to move Little Blue to 1609
13 Fairview Avenue East and use it for marine sales and services. *See* Groesbeck Decl., Ex. C. The City
14 was apparently unaware of the 2009 permit condition requiring Little Blue's demolishment because
15 the City approved the 2012 permit application without mentioning the 2009 permit. *See id.*, Ex. D. The
16 2012 permit allowed Little Blue to be moved and used as an office and workshop for marine sales and
17 services.¹ *Id.* In his application materials, Appellant Povlsen listed several "intended" commercial uses
18 for Little Blue; residential use was not among them. *See id.*, Ex. C. In the approved plan set, Povlsen
19 declared under penalty of perjury that Little Blue had no housing units. *See* Griggs Decl., Ex. E at 1, §
20 3. That turned out not to be true. Appellants admit to renting Little Blue as a residence from 2012 to
21 2021. Appeal, Att. 2.

22
23 ¹ The City issued its written decision on the shoreline substantial development permit in November 2012, Griggs Decl.,
Ex. D, but the land use permit was not issued until March 2014, *id.*, Ex. C.

1 In December 2015, Appellants asked the City to register Little Blue as a floating home.
2 Groesbeck Decl., Ex. B. Appellants could have asked for FOWR verification at that time. *See*
3 Ord. 124750. The City approved Little Blue’s floating home registration and assigned it number 042.
4 Groesbeck Decl., Ex. B. The record does not reflect why, in light of the 2009 and 2012 permits, the
5 City approved floating home registration. The Department can only presume the 2015 reviewer was
6 unaware of those permits. The Department has no evidence, and Appellants have not provided any,
7 that anyone appealed the City’s 2015 approval. Groesbeck Decl. at ¶ 6.

8 In 2024, the Department discovered that Little Blue had been relocated to a dock in Salmon
9 Bay and was undergoing renovation. Groesbeck Decl. at ¶ 3. The Department had no record of the
10 relocation, *id.* at ¶ 6, even though the code requires plans of floating home relocations be filed with the
11 Department, SMC 23.60A.202.D.5.j. During the Department’s site visit in April 2024, the person
12 working on Little Blue said it was a floating home. *Id.* at ¶ 3. Around the same time, Appellants put
13 Little Blue up for sale for \$330,000, advertising it as a “Seattle Floating Home” with registration
14 number 042. *Id.*, Ex. G.

15 Soon after, the Department issued an NOV because Little Blue was out of compliance with
16 floating home regulations. *Id.*, Ex. I. The Department was particularly concerned that Little Blue was
17 not connected to sewer and, therefore, was dumping harmful contaminants (greywater) into the
18 waterway. *See* Groesbeck Decl., at ¶ 5; *id.*, Ex. I. Appellants admit that Little Blue is not connected to
19 sewer and dumps greywater into the waterway. Appellants’ Motion at 7:10–12.

20 In response to the NOV, Appellants claimed for the first time ever that Little Blue is a FOWR.
21 *See* Groesbeck Decl., Ex. J. Appellants applied for FOWR verification in September 2024. Groesbeck
22 Decl. at ¶ 17. As part of the application, Povlsen declared that he leased Little Blue to residential tenants
23 from 2012 to 2021. Appeal, Att. 2. Nothing in Povlsen’s 2024 declaration suggests that Little Blue was

1 used as a marine office and workshop during that period. Indeed, Appellants’ Motion asserts that Little
2 Blue “is designed and was used primarily as a residence.” Appellants’ Motion at 8:5–6 (emphasis
3 added). Yet now, attempting to discredit Little Blue’s 2015 registration as a floating home, Povlsen’s
4 new declaration emphasizes Little Blue’s alleged used as a marine office and workshop while it was
5 moored at 1609 Fairview Avenue East from 2012 to 2021. *See* 2nd Povlsen Decl. at ¶¶ 2–4.

6 In March 2025, the Department denied Appellants’ FOWR verification application because
7 Little Blue is registered as a floating home. Groesbeck Decl., Ex. K. Appellants have since admitted
8 that a floating home cannot be verified as a FOWR. Appellants’ Motion at 5:6.

9 III. ARGUMENT

10 A. Appellants may not collaterally attack the City’s 2015 approval of floating home 11 registration for Little Blue.

12 The primary remaining legal issue in this matter is whether Appellants may collaterally attack
13 the City’s 2015 approval of Appellants’ request to register Little Blue as a floating home. Appellants
14 argue the approval was not a land use decision under LUPA and “therefore should not be given
15 preclusive effect under LUPA.” Appellants’ Opposition at 6:11–13. Appellants are wrong—the 2015
16 floating home registration was a final land use decision that may no longer be challenged directly or
17 collaterally. *See Habitat Watch v. Skagit Cnty.*, 155 Wn.2d 397, 407, 411 (2005).

18 The code provision on floating home registration states in full:

- 19 1. The owner of each floating home that is allowed under subsection 23.60A.202.A is
20 required to obtain from the Director a registration number within six months of the
21 effective date of this ordinance and to pay a one-time fee established by the Director
22 to recover the reasonable costs of the program for issuing registration numbers. The
23 Director shall determine whether a floating home meets the standard in subsection
23.60A.202.A before issuing a registration number. The owner shall display the
registration number on the landward side of the floating home in numbers at least 3
inches high in a location legible from the pier, or if public access to the pier is not
available then on a side visible from the water.

2. Failure to obtain or correctly display a registration number is a violation of

1 this Chapter 23.60A that is subject to the enforcement process in Chapter 23.90 and
2 does not forfeit the owner's right to maintain a floating home.

- 3 3. If an owner disputes the Director's denial of registration of a floating home, the
4 owner may appeal the Director's determination to the hearing examiner, in
5 conformance with the hearing examiner rules, within 30 days of date the Director's
6 determination was mailed. The appeal shall be conducted de novo, and the City shall
7 have the burden of showing by a preponderance of the evidence that the decision of
8 the Director was correct. Nothing in this Section 23.60A.202 precludes the City
9 from enforcing this code under Chapter 23.90 if there is no timely appeal to the
10 hearing examiner or following a decision of the hearing examiner upholding the
11 City's denial of floating home registration.

12 SMC 23.60A.202.G. While subsection 3 allows appeals of *denials* of floating home registration to the
13 Hearing Examiner, the code is silent about the process for appealing *approved* floating home
14 registrations. An approved registration is not appealable to the Shoreline Hearings Board. *See*
15 SMC 23.60A.071 (allowing appeals to the board of shoreline substantial development permits,
16 shoreline conditional use permits, and shoreline variances with 21 days of decision).

17 An appeal of an approved floating home registration must be brought under LUPA. Generally,
18 LUPA provides the exclusive means of judicial review of land use decisions. RCW 36.70C.030(1). An
19 appeal must be brought within 21 days of the decision. RCW 36.70C.040(3). LUPA defines a "land
20 use decision" in relevant part as follows:

21 a final determination by a local jurisdiction's body or officer with the highest level of
22 authority to make the determination, including those with authority to hear appeals, on:

23 (a) An application for a project permit or other governmental approval required
by law before real property may be improved, developed, modified, sold,
transferred, or used, 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; [and]

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

....

1 RCW 36.70C.020(2) (emphasis added). As explained below, approval of floating home registration
2 falls under either definition prong.

3 **1. Floating home registration approval is a land use decision under**
4 **RCW 36.70C.020(2)(a).**

5 Floating home registration approval meets the land use decision definition in
6 RCW 36.70C.020(2)(a), which provides in relevant part: “An application for a project permit or other
7 governmental approval required by law before real property may be improved, developed, modified,
8 sold, transferred, or used” First, floating home registration is a government approval required by
9 law. *See* SMC 23.60A.202.G.1. Second, such registration is required before real property—
10 specifically, a floating home moorage—may be used. SMC 23.60A.202.B.4 (“Floating home moorages
11 shall not provide moorage to floating homes that do not display a registration number issued under
12 subsection 23.60A.202.G.”); *see also* SMC 23.60A.912 (“‘Floating home moorage’ means a residential
13 use consisting of a waterfront facility for the moorage of one or more floating homes and the land and
14 water premises on which the facility is located.”).

15 Appellants argue that floating home registration does not meet RCW 36.70C.020(2)(a)’s land
16 use decision definition because “[f]loating homes, floating on-water residences, and house barges are
17 personal property” and because floating home registration is “not a condition precedent to rebuilding,
18 replacing, repairing, or remodeling a floating home.” Appellants’ Opposition at 5:17–20. This
19 argument is irrelevant given SMC 23.60A.202.B.4, which plainly concerns real property use and which
20 Appellants ignore.

21 But even if SMC 23.60A.202.B.4 is ignored, Appellants’ argument is wrong. Floating homes
22 are real property, not personal property. *See* WAC 458-61A-102(18); WAC 458-61A-105. That is why
23 Appellants filed a real estate excise tax affidavit when they received Little Blue. *See* Griggs Decl.,
Ex. B. A floating home is deemed real property under law likely because it generally stays in one

1 location. *See* RCW 90.58.270(5)(b)(ii). Also, contrary to Appellants’ assertion, the Department may
2 condition approval of a floating home remodel or replacement on the applicant registering the floating
3 home under SMC 23.60A.202.G. *See, e.g.,* SMC 23.60A.012 (“No development shall be undertaken
4 ... unless the Director has determined that it is consistent with ... the regulations of this Chapter
5 23.60A. This restriction applies even if no shoreline substantial development permit is required.”);
6 SMC 23.60A.020.B.3 (“The Director may attach conditions to the approval of exempted developments
7 as necessary to assure consistency of the project with ... Chapter 23.60A.”); SMC 23.60A.030.A.3
8 (allowing conditional approval of a shoreline permit if the development or use meets the standards of
9 Chapter 23.60A). Accordingly, even if SMC 23.60A.202.B.4 did not exist, floating home registration
10 would still be a land use decision under RCW 36.70C.020(2)(a).

11 **2. Floating home registration approval is a land use decision under**
12 **RCW 36.70C.020(2)(b).**

13 Floating home registration approval also meets the land use decision definition in
14 RCW 36.70C.020(2)(b), which, again, provides: “An interpretative or declaratory decision regarding
15 the application to a specific property of zoning or other ordinances or rules regulating the improvement,
16 development, modification, maintenance, or use of real property.” First, floating home registration is
17 an interpretative or declaratory decision regarding specific property. Second, when the Department
18 approves floating home registration, it determines that the floating home “meets the standard in
19 subsection 23.60A.202.A.” SMC 23.60A.202.G.1. That in turn means that the home is subject to
20 provisions governing floating homes and floating home moorages, which plainly concern the
21 improvement, development, modification, maintenance, and use of real property. *See*
22 SMC 23.60A.202. So, for example, Little Blue cannot be moored (i.e., *used*) at Salmon Bay Boat Yard
23 because Little Blue is a registered floating home.

Appellants’ argument regarding RCW 36.70C.020(2)(b) is conclusory. *See* Appellants’

1 Opposition at 6:5–8. The Examiner should reject it. *Cf. Holland v. City of Tacoma*, 90 Wn. App. 533,
2 537–38 (1998) (“Passing treatment of an issue or lack of reasoned argument is insufficient to merit
3 judicial consideration.”).

4 **3. Appellants’ argument regarding LUPA conflicts with positions taken by**
5 **Appellants’ counsel in other cases.**

6 Appellants’ argument—that floating home registration approval is not a land use decision under
7 LUPA—conflicts with positions taken by Appellants’ counsel, Shawn Griggs, in other cases. On behalf
8 of other clients, Griggs has filed at least three LUPA actions against the City challenging FOWR
9 verification denials. Burke Decl., Exs. A, B, C. And in each of those cases, he alleged that such denial
10 was a land use decision. *Id.* He did not assert then, as he does now on behalf of Appellants, that FOWRs
11 are “personal property” because doing so might undermine his allegation that the denial was a land use
12 decision. Regardless, there is no good reason floating home registration should be treated differently
13 from FOWR verification under LUPA, particularly when denials of each are subject to the same
14 administrative appeal process. *See* SMC 23.60A.202.G.3; SMC 23.60A.203.D.4. The Examiner should
15 reject Appellants’ disingenuous argument and find that the 2015 approval of Little Blue’s floating home
16 registration was a final land use decision under LUPA and can no longer be challenged.

17 **4. Little Blue’s floating home registration is final even outside of LUPA.**

18 Even if Little Blue’s floating home registration was not a land use decision under LUPA, it was
19 a final government decision that Appellants may no longer challenge. The City approved Little Blue’s
20 registration in December 2015, and Appellants did not formally challenge it until at least September
21 2024, when they applied for FOWR verification. Whatever appeal period may have applied to Little
22 Blue’s registration, it has long since passed. Appellants do not propose an appeal period alternative to
23 LUPA’s 21-day period, instead arguing that the City’s registration decision should be given no
preclusive effect at all. *See* Appellants’ Opposition at 7. Thus, under Appellants’ interpretation, anyone

1 with standing may challenge a floating home registration indefinitely. That cannot be. There must be a
2 limit to when a government decision may be challenged. *Cf. Skamania Cnty. v. Columbia River Gorge*
3 *Comm'n*, 144 Wn.2d 30, 49 (2001) (stating in a non-LUPA case that Washington and federal courts
4 recognize “a strong public policy supporting administrative finality in land use decisions.”); *Campeau*
5 *v. Yakima HMA, LLC*, 3 Wn.3d 339, 346 (2024) (“The purpose underlying statutes of limitations is to
6 protect against (1) litigating stale claims, (2) loss of evidence, and (3) fading memories.”). The
7 Examiner should reject Appellants’ very belated collateral attack on Little Blue’s floating home
8 registration.

9 **B. Little Blue may not be verified as a FOWR even under Appellants’ argument.**

10 Appellants’ argument that the 2012 shoreline permit precludes floating home registration
11 applies equally to FOWR verification. Appellants argue that the 2012 shoreline permit “established
12 LITTLE BLUE as a floating office and workshop for marine sales and service use.” Appellants’
13 Opposition at 2:1–2. Appellants then assert that Little Blue was used as an office and workshop “from
14 2012 onwards” and, thus, was not a legally established floating home in 2015, as required by
15 SMC 23.60A.202.A. *Id.* at 3:9–17. They also claim that floating home registration could not modify
16 the established use. *Id.* at 7:17–20. They say that “new uses are established via the issuance of shoreline
17 substantial development permits.” *Id.* at 4:5–6. Yet Appellants believe that Little Blue may now be
18 verified as a FOWR.

19 Appellants’ argument is nonsensical. First, the *facts* emphasized by Appellants do not support
20 verifying Little Blue as a FOWR. If Little Blue was legally established as an office and workshop with
21 no approved housing unit from 2012 onwards, it could not have been legally established as a FOWR.
22 *See* SMC 23.60A.912 (a FOWR is “designed or used primarily as a residence”); SMC 23.60A.203.B
23 (a FOWR must have been legally established by July 1, 2014). Second, Appellants’ *legal* theory does

1 not support FOWR verification. If new uses may only be “established via the issuance of shoreline
2 substantial development permits,” as Appellants suggest, then FOWR verification may not modify the
3 office and workshop use established by the 2012 shoreline substantial development permit. In short,
4 Little Blue may not be verified as a FOWR under Appellants’ argument.

5 IV. CONCLUSION

6 For 15 years, Appellants have been able to use and derive revenue from a floating home that
7 was gifted to them even though it should have been demolished. Over those years, they misled or failed
8 to inform the City about the true status of their floating home, known as Little Blue. Now Appellants
9 want to sell Little Blue as a registered “Seattle Floating Home” for \$330,000, but they want to avoid
10 restrictive floating home regulations, which might complicate their plans. Appellants have been caught
11 in a trap of their own making. They asked for and received approval of floating home registration in
12 2015. They never appealed that decision, so it is final and may no longer be challenged. Because Little
13 Blue is a registered floating home, it cannot be a FOWR. The Examiner must affirm the Department’s
14 denial of FOWR verification.

15 DATED this June 16, 2025.

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be served on the following in the manner indicated below:

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Dated this June 16, 2025.

s/ Eric Nygren
Eric Nygren