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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

DECLARATION OF MAXWELL BURKE
IN SUPPORT OF THE DEPARTMENT'S
MOTION FOR SUMMARY JUDGMENT

I, MAXWELL BURKE, make this declaration under penalty of perjury under the laws of the
State of Washington that the following is true and correct:

1. I am an Assistant City Attorney with the Seattle City Attorney's Office and represent
the City of Seattle in this matter. I have personal knowledge of the facts stated in this declaration and
am competent to testify about them.

2. Attached as **Exhibit A** are copies of excerpts from the Land Use Petition in *Schmautz*
v. City of Seattle, King County Superior Court No. 18-4-22844-1. Exhibit A includes highlighting
from me.

3. Attached as **Exhibit B** are copies of excerpts from the Land Use Petition in *Mahon v.*
City of Seattle, King County Superior Court No. 21-2-03466-3. Exhibit B includes highlighting from

DECLARATION OF MAXWELL BURKE - 1

Ann Davison
Seattle City Attorney
701 5th Avenue, Suite 2050
Seattle, WA 98104-7095
(206) 684-8200

1 me.

2 4. Attached as **Exhibit C** are copies of excerpts from the Land Use Petition in *Hoppe, et*
3 *al. v. City of Seattle*, King County Superior Court No. 22-2-05202-3. Exhibit C includes highlighting
4 from me.

5 DATED this June 16, 2025.

6
7 s/ Maxwell C. Burke
8 Maxwell C. Burke, WSBA #49806
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1 **CERTIFICATE OF SERVICE**

2 I certify that on June 16, 2025, I caused a true and correct copy of the foregoing document
3 and its subjoined exhibits to be served on the following in the manner indicated below:

4

R. Shawn Griggs 130 Nickerson Street, Ste. 201 Seattle, WA 98109 shawn@griggs-law.com Attorney for Plaintiffs	(XX) Via Email () U.S. Mail
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5
6
7

8 Dated this June 16, 2025.

9 s/ Eric Nygren
Eric Nygren

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EXHIBIT A

RECEIVED
18 SEP 12 PM 3:50
CITY OF SEATTLE
MAYOR'S OFFICE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

MICHAEL SCHMAUTZ,

Petitioner,

v.

CITY OF SEATTLE, a Washington municipal
corporation,

Respondent,

and

SDS LAKE UNION LLC, a Washington limited
liability company,

Other Necessary Party.

Case No.

LAND USE PETITION

COMES NOW, petitioner MICHAEL SCHMAUTZ, through the undersigned
attorney of record, R. Shawn Griggs, 1818 Westlake Avenue North, Suite 423, Seattle,
Washington 98109, and alleges as follows:

I. PARTIES

LAND USE PETITION - 1

Case No.

R. SHAWN GRIGGS
ATTORNEY AT LAW
1818 WESTLAKE AVENUE NORTH, SUITE 423
SEATTLE, WASHINGTON 98109
TELEPHONE (206) 745-3805
FACSIMILE (206) 745-3806

1. SDS Lake Union, LLC is identified as the tax payer of record associated with King
2. County parcel number 408880-4520, which is situated at 1109 North Northlake Way,
3. Seattle, Washington 98103. The project address identified in the Order is 1107 North
4. Northlake Way, Seattle, Washington 98103, which is an alternative address for the same
5. site. There are no additional persons to be made a party to this action under RCW
6. 36.70C.040(2)(b) through (d).

7. 3.6 The facts demonstrating that the petitioner has standing to seek judicial
8. review under RCW 36.70C.060 are as follows: as discussed in additional detail in
9. section IV of this petition, below, Mr. Schmautz is the owner of the floating on-water
10. residence identified as the "SUGAR PLUM" and which is directly impacted by the
11. Order. Mr. Schmautz is accordingly aggrieved and adversely affected by the land use
12. decision that is the subject matter of this petition. Specifically, (a) the Order has
13. prejudiced petitioner by determining that the SUGAR PLUM is not eligible for
14. verification as a floating on-water residence per SMC § 23.60A.203(D); (b) the asserted
15. interests of petitioner are the primary basis of the Order and therefore are among those
16. that the Hearing Examiner was required to consider when it issued the Order; (c) a
17. judgment in favor of the petitioner will eliminate the prejudice to petitioner caused or
18. likely to be caused by the Order; and (d) petitioner has exhausted all administrative
19. remedies to the extent required by law.

20. 3.7 Separate and concise statements of each error alleged to have been
21. committed are set forth in Sections IV and V, below.

22. 3.8 A concise statement of the facts upon which petitioner relies to sustain the
23. statement error is set forth in Sections IV and V, below.
24.

1. residence verification was upheld. It is this portion of the Order that is the subject matter
2. of this petition.

3. 4.8 The Order does not fall within the type of actions that may be appealed to
4. the Shoreline Hearings Board.

5. 4.9 The Order is a "final determination by a local jurisdiction's body or officer
6. with the highest level of authority to make the determination, including those with
7. authority to hear appeals, on ...[a]n application for a project permit or other
8. governmental approval required by law before real property may be improved,
9. developed, modified, sold, transferred, or used" and therefore qualifies as a Land Use
10. Decision per RCW § 36.70C.020.

11. 4.10 This Action has been commenced, and all relevant parties served within
12. twenty-one days of the issuance of the Order in accordance with RCW § 36.70C.040.

13. **V. PETITION FOR REVIEW PURSUANT TO RCW §§ 36.70C.130(1)(B) (C)**
14. **AND (D)**

15. 5.1 Petitioner realleges the preceding paragraphs as though fully set forth
16. herein.

17. 5.2 Petitioner's application to the City sought verification of the "SUGAR
18. PLUM" as a floating on-water residence pursuant to SMC § 23.60A.203(D). This
19. application was assigned project number 3026812 by the City.

20. 5.3 The SUGAR PLUM meets all of the criteria for a floating on-water
21. residence that are articulated in SMC § 23.60A.912 and 23.60A.203. None-the-less the
22. City denied the application because it concluded that the SUGAR PLUM is a "vessel" (as
23. defined in SMC § 23.60A.942) and therefore ineligible for verification as a floating on-
24. water residence.

25. LAND USE PETITION - 7
26. Case No.

R. SHAWN GRIGGS
ATTORNEY AT LAW
1818 WESTLAKE AVENUE NORTH, SUITE 423
SEATTLE, WASHINGTON 98109
TELEPHONE (206) 745-3805
FACSIMILE (206) 745-3806

1.
2.
3. **VI. PRAYER FOR RELIEF**

4. WHEREFORE, petitioner prays for judgment against the City as follows:

5. 6.1 That – insofar as it relates to Project Number 3026812 -- the Order be
6. reversed pursuant to the Land Use Petition Act, RCW § 36.70C.005, *et seq.*, and the
7. watercraft identified as the “SUGAR PLUM” in petitioner’s application be verified as a
8. floating on-water residence pursuant to SMC § 23.60A.203.

9. 6.2 For an award of reasonable attorneys’ fees and costs incurred in this
10. action; and

11. 6.3 For such other and further relief as the court deems appropriate.

12. DATED this 12th day of September, 2018.

13. s/ R. Shawn Griggs

14. R. Shawn Griggs, WSBA #30710
15. Attorney for petitioner Michael Schmautz
16. 1818 Westlake Avenue North, Suite 423
17. Seattle, Washington 98109
18. Telephone: (206) 745-3805
19. Facsimile: (206) 745-3806
20. E-mail: shawn@griggs-law.com

EXHIBIT B

1.
2.
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7. IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8. IN AND FOR THE COUNTY OF KING
9.

10. MELVYN V. MAHON II,

11. Petitioner,

12. v.

13. CITY OF SEATTLE, a Washington municipal
corporation,

14. Respondent.
15.

Case No.

LAND USE PETITION

16. COMES NOW, petitioner MELVYN V. MAHON II, through the undersigned
17. attorney of record, R. Shawn Griggs, 130 Nickerson Street, Suite 201, Seattle,
18. Washington 98109, and alleges as follows:
19.

20. **I. PARTIES**

21. 1.1 Petitioner Melvyn V. Mahon II is an individual residing in the State of
22. Washington with a business address of 3815 South Othello Street, Suite 100-280, Seattle,
23. Washington 98118.
24.

25. LAND USE PETITION - 1
26. Case No.

R. SHAWN GRIGGS
ATTORNEY AT LAW
130 NICKERSON STREET, SUITE 201
SEATTLE, WASHINGTON 98109
TELEPHONE (206) 745-3805
FACSIMILE (206) 745-3806

1. P.O. Box 94729
2. Seattle, Washington 98124-4729

3. The land use decision under review is that certain Order of the City of Seattle Hearing
4. Examiner dated February 25, 2021 (the "Order"), a copy of which is attached to this
5. petition as Exhibit A.

6. 3.5 The facts demonstrating that the petitioner has standing to seek judicial
7. review under RCW 36.70C.060 are as follows: as discussed in additional detail in
8. section IV of this petition, below, Mr. Mahon is the owner of the floating on-water
9. residence that is the subject of this land use petition (the "FOWR") and which is directly
10. impacted by the Order. Mr. Mahon is accordingly aggrieved and adversely affected by
11. the land use decision that is the subject matter of this petition. Specifically, (a) the Order
12. has prejudiced petitioner by determining that the FOWR is not eligible for verification as
13. a floating on-water residence per SMC 23.60A.203(D); (b) the asserted interests of
14. petitioner are the primary basis of the Order and therefore are among those that the
15. Hearing Examiner was required to consider when it issued the Order; (c) a judgment in
16. favor of the petitioner will eliminate the prejudice to petitioner caused or likely to be
17. caused by the Order; and (d) petitioner has exhausted all administrative remedies to the
18. extent required by law.

19. 3.6 Separate and concise statements of each error alleged to have been
20. committed are set forth in Sections IV and V, below.

21. 3.7 A concise statement of the facts upon which petitioner relies to sustain the
22. statement error is set forth in Sections IV and V, below.

23. 3.8 The relief requested by petitioner, specifying the type and extent of relief
24. requested, is set forth in Section VI, below.

1. Seattle, Washington 98118, on or about August 8, 2020. The City assigned this
2. application project number 3036825-AN.

3. 4.4 On or about September 23, 2020, the City of Seattle processed the
4. application for project number 3036825-AN by issuing a denial of the request for floating
5. on-water residence verification. A true and correct copy of the letter sent to Mr. Mahon
6. by the City is attached hereto as Exhibit B.

7. 4.5 Mr. Mahon appealed the denial of floating on-water residence verification
8. to the Seattle Hearing Examiner pursuant to the provisions of SMC 23.60A.203(D)(4).

9. 4.6 The Seattle Hearing Examiner resolved the appeal on the basis of cross
10. summary judgment motions filed by the City of Seattle and Mr. Mahon. The Hearing
11. Examiner's Order was dated February 25, 2021, and is attached hereto as Exhibit A. As
12. the Order notes, the appeal – designated as case number S-20-005 – was resolved in favor
13. of the City, and the denial of floating on-water residence verification was upheld. That
14. Order is the subject matter of this petition.

15. 4.7 The Order does not fall within the type of actions that may be appealed to
16. the Shoreline Hearings Board.

17. 4.8 The Order is a “final determination by a local jurisdiction's body or officer
18. with the highest level of authority to make the determination, including those with
19. authority to hear appeals, on ...[a]n application for a project permit or other
20. governmental approval required by law before real property may be improved,
21. developed, modified, sold, transferred, or used” and therefore qualifies as a Land Use
22. Decision per RCW 36.70C.020.

water residence pursuant to SMC 23.60A.203 therefore contradicts the plain language of the Shoreline Management Act.

5.9 Accordingly, under RCW 36.70C.130(1)(c), the Order “is not supported by evidence that is substantial when viewed in light of the whole record.” Further, under RCW 36.70C.130(1)(d), the Order is a “clearly erroneous application of the law to the facts.” Moreover, the Order is “an erroneous interpretation of the law” as contemplated by RCW 36.70C.130(1)(b).

VI. PRAYER FOR RELIEF

WHEREFORE, petitioner prays for judgment against the City as follows:

6.1 That the Order be reversed pursuant to the Land Use Petition Act, RCW 36.70C.005, *et seq.*, and the FOWR be verified as a floating on-water residence pursuant to SMC 23.60A.203(D).

6.2 For an award of reasonable attorneys' fees and costs incurred in this action; and

6.3 For such other and further relief as the court deems appropriate.

DATED this 16th day of March, 2021.

s/ R. Shawn Griggs

R. Shawn Griggs, WSBA #30710
Attorney for petitioner Melvyn V. Mahon II
130 Nickerson Street, Suite 201
Seattle, Washington 98109
Telephone: (206) 745-3805
Facsimile: (206) 745-3806
E-mail: shawn@griggs-law.com

EXHIBIT C

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6. IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
7. IN AND FOR THE COUNTY OF KING

8. HENRY GARRETT HOPPE and RUSSELL
9. STEBBINS,

10. Plaintiffs/Petitioners,

11. v.

12. CITY OF SEATTLE, a Washington municipal
corporation,

13. Defendant/Respondent,

14. and

15. SHEP SALUSKY,

16. Other Necessary Party.
17.

Case No.

LAND USE PETITION, OR
ALTERNATIVELY, COMPLAINT
FOR DECLARATORY RELIEF

18. COMES NOW, petitioners/plaintiffs Henry Garrett Hoppe and Russell Stebbins,
19. through the undersigned attorney of record, R. Shawn Griggs, 130 Nickerson Street, Suite
20. 201, Seattle, Washington 98109, and alleges as follows.

21. **I. PARTIES**

22. 1.1 Petitioner/plaintiff Henry Garrett Hoppe is individual residing in the State
23. of Washington with an address of 3708 60th Avenue SW, Seattle Washington 98116.
24.

25. LAND USE PETITION/ COMPLAINT
FOR DECLARATORY RELIEF - 1

26. Case No.

R. SHAWN GRIGGS
ATTORNEY AT LAW
130 NICKERSON STREET, SUITE 201
SEATTLE, WASHINGTON 98109
TELEPHONE (206) 745-3805
FACSIMILE (206) 745-3806

1. situated. This is the project address specified in the Application. There are no additional
2. persons to be made a party to this action under RCW 36.70C.040(2)(b) through (d).

3. 3.6 The facts demonstrating that the petitioners have standing to seek judicial
4. review under RCW 36.70C.060 are as follows: as discussed in additional detail in
5. section IV of this Petition/Complaint, below, petitioners jointly own a floating on-water
6. residence that is directly impacted by the Order. Petitioners are accordingly aggrieved
7. and adversely affected by the land use decision that is the subject matter of this
8. petition/complaint. Specifically, (a) the Order has prejudiced petitioners by determining
9. that they are barred from submitting an application to verify their floating on-water
10. residence in accordance with Seattle's Shoreline Master Program, SMC 23.60A.203; (b)
11. the asserted interests of petitioners are the primary basis of the Order and therefore are
12. among those that the City was required to consider when it issued the Order; (c) a
13. judgment in favor of the petitioners will eliminate the prejudice to petitioners caused or
14. likely to be caused by the Order; and (d) petitioners have exhausted all administrative
15. remedies to the extent required by law.

16. 3.7 Separate and concise statements of each error alleged to have been
17. committed are set forth in section V of this Petition/Complaint, below.

18. 3.8 A concise statement of the facts upon which petitioners rely to sustain the
19. statement error is set forth in section IV of this Petition/Complaint, below.

20. 3.9 The relief requested by petitioners, specifying the type and extent of relief
21. requested, is set forth in Section VII of this Petition/Complaint, below.

22. **IV. STATEMENT OF FACTS**

1. 4.18 The City of Seattle issued the Order returning petitioners' application on
2. March 22, 2022. As detailed in the Order, the City refused to consider the merits of the
3. Application, citing the provision of Director's Rule 9-2020.

4. 4.18 The Order does not fall within the type of actions that may be appealed to
5. either the Seattle Hearing Examiner or the Shoreline Hearings Board.

6. 4.19 The Order is "[a]n interpretative or declaratory decision regarding the
7. application to a specific property of zoning or other ordinances or rules regulating the
8. improvement, development, modification, maintenance, or use of real property" and
9. therefore qualifies as a Land Use Decision per RCW 36.70C.020.

10. 4.20 This action has been commenced, and all relevant parties served within
11. twenty-one days of the issuance of the Order in accordance with RCW 36.70C.040.

12. **V. FIRST CAUSE OF ACTION: PETITION FOR REVIEW PURSUANT TO**
13. **RCW 36.70C.130(1)(B) AND (D)**

14. 5.1 Petitioners reallege the preceding paragraphs as though fully set forth
15. herein.

16. 5.2 The Vessel qualifies as a floating on-water residence pursuant to the
17. provisions of RCW 90.58.270(6)(b).

18. 5.3 The Application sought verification by the City that the Vessel qualifies as
19. a floating on-water residence under Seattle's SMP in accordance with SMC
20. 23.60A.203(D).

21. 5.4 Verification of the Vessel as a floating on-water residence by the City of
22. Seattle is a prerequisite to petitioners' ability to expand, rebuild, or replace it within
23. Seattle.

1. Rule 9-2020, or otherwise) to be in contravention of RCW 90.58.270(6) and otherwise
2. erroneous as a matter of law;

3. 7.3 For an award of reasonable attorneys' fees and costs incurred in this
4. action, as provided by applicable law; and

5. 7.4 For such other and further relief as the court deems appropriate.
6.

7. DATED this 11th day of April, 2022.
8.

9. /s/ R. Shawn Griggs

10. R. Shawn Griggs, WSBA #30710
11. Attorney for petitioners Henry Garrett
12. Hoppe and Russell Stebbins
13. 130 Nickerson Street, Suite 201
14. Seattle, Washington 98109
15. Telephone: (206) 745-3805
16. Facsimile: (206) 745-3806
17. E-mail: shawn@griggs-law.com