

**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

Hearing Examiner Files:
FOW-25-001

Department Reference
#3042273-AN

**ORDER ON SUMMARY
JUDGMENT CROSS
MOTIONS**

A structure named Little Blue is moored at 4266 20th Avenue West. Applicants Noel Povlsen and Lynn Reed requested that the Department of Construction and Inspections classify Little Blue as a “floating on-water residence” or FOWR. The Department determined that because Little Blue is a registered floating home, it is not a FOWR, and denied the application. The Applicants appealed and the parties filed summary judgment cross motions.¹

Little Blue has long been registered with the King County Assessor as a floating home.² In 2009, the Department issued a shoreline permit allowing Little Blue’s owners to build a new floating home and requiring Little Blue’s demolition.³ However, instead of demolishing it, its owners gifted Little Blue to the Applicants,⁴ who moved it.

In 2012, the Applicants applied for a shoreline permit to move Little Blue and use it as an office and workshop for marine sales and services, which the Department approved.⁵ The application did not identify residential use and the approved plan set did not contain housing units,⁶ but the Applicants rented Little Blue as a residence from 2012 through 2021.⁷ In 2015, the Applicants requested Little Blue’s registration as a floating home. The Department approved the registration, assigning Little Blue Registration Number 042.⁸

¹ Prehearing Order (April 22, 2025).

² Griggs Decl., ¶¶ 2-3 and Exs. A-B.

³ Griggs Decl., Ex. F (“Shoreline Substantial Development Application to allow a 1,525 sq. ft. two-story floating home with rooftop deck in an environmentally critical area. Existing floating home to be demolished. Existing 940 square foot float to remain.”).

⁴ Griggs Decl., Ex. B.

⁵ Griggs Decl., Exs. C and D; Groesbeck Decl., Exs. C and D.

⁶ Griggs Decl., Ex. E; Groesbeck Decl., Ex. C.

⁷ Appeal, Att. 2.

⁸ Groesbeck Decl., Ex. B.

In 2024, the Department discovered Little Blue had been relocated.⁹ Though relocation notification is required, the Department has no record of notice.¹⁰ Also, the Applicants had put Little Blue up for sale for \$330,00, advertising it as “grandfathered Floating Home” under Seattle City Code, with its City Floating Home Registration Number and County Floating Home Number.¹¹ The Department issued a Notice of Violation, asserting Little Blue was not complying with floating home regulations as it was not connected to sewer and was dumping greywater into the waterway.¹²

In response, the Applicants asserted that Little Blue is a FOWR and applied for verification.¹³ The Department denied the request, holding Little Blue is a floating home, defined as a “structure designed as a dwelling unit constructed on a float that is moored, anchored or otherwise usually secured in waters, and is not a vessel,” though it may be towable.¹⁴ The Applicants appealed to the Hearing Examiner.

The Hearing Examiner has jurisdiction over FOWR verification denials.¹⁵ A FOWR verification denial appeal is “conducted de novo,” with the Department having the burden of showing by a preponderance of the evidence that its decision “was correct.”¹⁶ Summary judgment may be granted when no material fact is disputed and the moving party demonstrates it is entitled to legal judgment.¹⁷

Established floating residences are protected,¹⁸ but as new uses, they are disfavored. “New over-water residences, including floating homes, are not a preferred use and should be prohibited.”¹⁹ Consistent with these policies, legally established floating homes are allowed.²⁰ However, they must be registered with the City, moored at floating home moorages,²¹ and connected to sewer for black and grey water discharge.²²

The code treats FOWRS differently from floating homes. Like floating homes, established FOWRS are protected, but new FOWRS are disfavored.²³ However, unlike floating homes, a FOWR need not be at a floating home moorage, is not subject to the residential building code, and does not require sewer service. Instead, black water is stored and pumped out, with greywater dumped into the waterway.²⁴

⁹ Groesbeck Decl., ¶ 3.

¹⁰ Groesbeck Decl., ¶ 6; SMC 23.60A.202(D)(5)(j).

¹¹ Groesbeck Decl., ¶ 10 and Ex. G.

¹² Groesbeck Decl., ¶ 5 and Ex. I; Applicants’ Motion, p. 7:10-12.

¹³ Groesbeck Decl., Ex. J and ¶ 17.

¹⁴ Department Denial (March 27, 2025); SMC 23.60A.912.

¹⁵ SMC 23.60A.203(D)(4) (“If an owner disputes the Director’s denial of verification as a floating on-water residence, the owner may appeal the Director’s determination to the hearing examiner....”).

¹⁶ SMC 23.60A.203(D)(4).

¹⁷ Hearing Examiner Rules of Practice and Procedure 3.17(k).

¹⁸ RCW 90.58.270(1-3), 2011 and 2014 Findings.

¹⁹ WAC 173-26-241(3)(j)(iv)(A).

²⁰ SMC 23.60A.202(A)(1).

²¹ SMC 23.60A.202(G) and (D).

²² SMC 23.60A.202(D)(3).

²³ RCW 90.58.270(5-6), 2011 and 2014 Findings; WAC 173-26-241(3)(j)(iv)(A).

²⁴ Groesbeck Decl., ¶ 5; SMC 23.60A.203.

To establish a FOWR, the Department must “verify” the use.²⁵ Verification is available to some, but not all, residential units which float. For example, “[a] house barge authorized under Section 23.60A.204 may submit verification and be regulated as a floating on-water residence rather than a house barge.”²⁶ No such FOWR verification process is afforded for floating homes. Consistent with this structure, the definition of a FOWR excludes floating homes. A FOWR is “any floating structure, **other than a floating home**, that is designed or used primarily as a residence....”²⁷

Little Blue has been registered with the King County Assessor as a floating home since at least 2010, when gifted to the Applicants.²⁸ In 2015, the City code had a floating home registration process and a FOWR verification process. The Applicants chose to register Little Blue as a floating home with the City. And, up until the Notice of Violation, the Applicants have publicly held out Little Blue as a floating home.

The Department determined that there is not a code process for changing a floating home designation to a FOWR designation. This follows shoreline environmental protection policies, which while protecting existing floating residential uses, are restrictive on allowing new over water residential uses which are not connected to sewer and stormwater infrastructure. The approach the Department took follows the general shoreline rule that the “most restrictive” regulations apply.²⁹

The Department correctly interpreted the code as not including a process for reclassifying a floating home to the more permissive FOWR classification.³⁰ With no disputed material fact, the Department is entitled to summary judgment.

²⁵ SMC 23.60A.203(D).

²⁶ SMC 23.60A.203(D)(3).

²⁷ SMC 23.60A.912, emphasis added; RCW 90.58.270(6)(b).

²⁸ Groesbeck Decl., Ex. F.

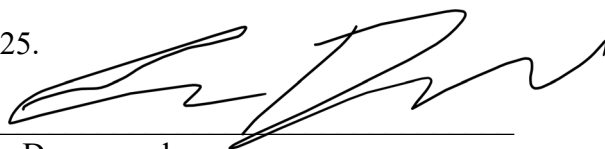
²⁹ SMC 23.60A.014.A (“The standard in this Chapter 23.60A that is most restrictive applies”).

³⁰ The Applicants assert the Department’s 2015 floating home registration decision was not a final land use decision under the Land Use Petition Act, Ch. 36.70C RCW as Little Blue should be considered personal property, not real. This is inconsistent with the state’s characterization. *See* WAC 458-61A-102(18); WAC 458-61A-105. The Department provided evidence of past LUPA appeals of similar decisions filed by opposing counsel to exemplify past legal treatment as a land use dispute. The Applicant moved to strike. The Department objected. The materials were provided not as evidence, but to document the presence of superior court litigation where the LUPA appeal structure was used for these case types. Parties may bring to the Examiner’s attention legal positions taken by counsel in similar matters. Though not precedential or authoritative, there is no prohibition on their provision. The motion to strike is denied. However, the Examiner’s decision was based on the code structure, so the question of the finality of the 2015 decision and its preclusive effect under LUPA did not have to be addressed.

ORDER

The Department's summary judgment motion is granted and its decision upheld. The Applicants' summary judgment motion is denied. The hearing scheduled for July 29, 2025 is stricken.

Entered June 23, 2025.



Susan Drummond
Deputy Hearing Examiner

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on the date below I sent true and correct copies of this **ORDER ON SUMMARY JUDGMENT CROSS MOTIONS** to each person below in **POVLSEN/REED**, Hearing Examiner File **FOW-25-001** in the manner indicated.

Party	Method of Service
Authorized Representative Shawn Griggs shawn@griggs-law.com	<input type="checkbox"/> U.S. First Class Mail <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Department Legal Counsel, City Attorney's Office Maxwell Burke maxwell.burke@seattle.gov	<input type="checkbox"/> U.S. First Class Mail <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

Dated: June 23, 2025

/s/ Angela Oberhansly
Angela Oberhansly
Legal Assistant