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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of)
)
8 **Michael Schmautz**)
) No. S-16-005
9 From an Interpretation by the Director, Seattle)
Department of Construction and Inspection.) Declaration of Erin E. Ferguson in Support of
) City's Response to Appellant's Motion for
) Summary Judgment
)
)

I, ERIN E. FERGUSON, declare under penalty of perjury under the laws of the State of Washington that:

1. This declaration is based on my personal knowledge of the facts described below.
2. I am over eighteen years of age and am otherwise competent to testify regarding these matters.
3. I am employed as an Assistant City Attorney for the City of Seattle.
4. A true and correct copy of Senate Bill 6450, read for the first time on January 27, 2014, is attached hereto as EXHIBIT A.
5. A true and correct copy from the Department of Ecology approving the City's SMP update, dated June 1, 2015, is attached hereto as EXHIBIT B.

DATED this 8th day of December, 2016.

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per email
authorization
on 12/8/16.

By: Elizabeth Anderson for
Erin E. Ferguson
Assistant City Attorney

EXHIBIT A

SENATE BILL 6450

State of Washington 63rd Legislature 2014 Regular Session

By Senators Pedersen, Kohl-Welles, Pearson, Liias, Ericksen, and Kline

Read first time 01/27/14. Referred to Committee on Natural Resources & Parks.

1 AN ACT Relating to on-water dwellings; amending RCW 90.58.270; and
2 creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** (1) The legislature recognizes that all
5 Washington residents benefit from the unique aesthetic, recreational,
6 and economic opportunities that are derived from the state's aquatic
7 resources, including its navigable waters and shoreline areas. The
8 legislature also recognizes that, as affirmed in chapter 212, Laws of
9 2011, existing floating homes are an important cultural amenity and an
10 element of the state's maritime history and economy. The 2011
11 legislation, which clarified the legal status of floating homes, was
12 intended to ensure the vitality and long-term survival of floating home
13 communities.

14 (2) The legislature finds that further clarification of the status
15 of floating on-water residences that meet specific requirements and
16 share important cultural, historical, and economic commonalities with
17 floating homes, is necessary.

18 (3) The legislature, therefore, intends to: Preserve the existence
19 and vitality of current, floating on-water residences; establish

1 greater clarity and regulatory uniformity for these residences; and
2 respect the well-established authority of local governments to
3 determine compliance with regulatory requirements applicable to their
4 jurisdiction.

5 **Sec. 2.** RCW 90.58.270 and 2011 c 212 s 2 are each amended to read
6 as follows:

7 (1) Nothing in this (~~statute~~) section shall constitute authority
8 for requiring or ordering the removal of any structures, improvements,
9 docks, fills, or developments placed in navigable waters prior to
10 December 4, 1969, and the consent and authorization of the state of
11 Washington to the impairment of public rights of navigation, and
12 corollary rights incidental thereto, caused by the retention and
13 maintenance of said structures, improvements, docks, fills or
14 developments are hereby granted: PROVIDED, That the consent herein
15 given shall not relate to any structures, improvements, docks, fills,
16 or developments placed on tidelands, shorelands, or beds underlying
17 said waters which are in trespass or in violation of state statutes.

18 (2) Nothing in this section shall be construed as altering or
19 abridging any private right of action, other than a private right which
20 is based upon the impairment of public rights consented to in
21 subsection (1) (~~hereof~~) of this section.

22 (3) Nothing in this section shall be construed as altering or
23 abridging the authority of the state or local governments to suppress
24 or abate nuisances or to abate pollution.

25 (4) Subsection (1) of this section shall apply to any case pending
26 in the courts of this state on June 1, 1971 relating to the removal of
27 structures, improvements, docks, fills, or developments based on the
28 impairment of public navigational rights.

29 (5) (a) A floating home permitted or legally established prior to
30 January 1, 2011, must be classified as a conforming preferred use.

31 (b) A floating on-water residence that is permitted or legally
32 established prior to July 1, 2014, must be classified as a conforming
33 preferred use.

34 (c) For the purposes of this subsection:

35 (i) "Conforming preferred use" means that applicable development
36 and shoreline master program regulations may only impose reasonable
37 conditions and mitigation that will not effectively preclude

1 maintenance, repair, replacement, and remodeling of ((existing))
2 floating homes ((and)), floating ((home)) on-water residences, and
3 associated moorages by rendering these actions impracticable.

4 (ii) "Floating home" means a single-family dwelling unit
5 constructed on a float, that is moored, anchored, or otherwise secured
6 in waters, and is not a vessel, even though it may be capable of being
7 towed.

8 (iii) "Floating on-water residence" means a vessel that is
9 registered under chapter 88.02 RCW and: (A) Is used as a residence on
10 the water and has detachable utilities; (B) whose owner or primary
11 occupant has held a lease or sublease to use space in a marina as their
12 primary residence since a date prior to July 1, 2014; and (C) is either
13 capable of propulsion and steering or is without a means of self-
14 propulsion and steering equipment or capability, but is capable of
15 being towed.

--- END ---

EXHIBIT B



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

June 1, 2015

The Honorable Edward B. Murray
City of Seattle
PO Box 94749
Seattle, WA 98124-4749

Re: Final Ecology Approval of City of Seattle Comprehensive Shoreline Master Program Update

Dear Mayor Murray:

The Washington State Department of Ecology (Ecology) is pleased to announce final approval of the City of Seattle's (City) Shoreline Master Program (SMP) Comprehensive update. Congratulations to you, the City Council, your staff, and the Seattle community for completing the comprehensive update of your SMP. We know this has been a long and challenging process. We appreciate your commitment to comprehensive land-use planning for Washington's unique and valuable shorelines.

As you know, the following correspondence regarding the recent SMP comprehensive update took place between Ecology and the City:

- August 2, 2013 – Ecology accepted your complete locally-adopted SMP to Ecology (Ordinance No. 124105).
- June 5, 2014 – Ecology conditionally approved the City's SMP comprehensive update with specific required and recommended changes.
- July 3, 2014 – Your office sent a letter acknowledging receipt of Ecology's conditional approval and describing the anticipated next steps in the City's consideration of the changes.
- April 29, 2015 – The City submitted a final approved Ordinance that incorporates 19 of Ecology's Required Changes and proposed alternative language for the remaining 11 required changes (Ordinance No. 124750). The Ordinance also incorporates 77 of Ecology's recommended changes and proposed alternative language for the remaining changes. In addition, the ordinance rejected three of the 109 recommended changes.



The Honorable Edward B. Murray
June 1, 2015
Page 2

Upon review, Ecology finds the City's proposed alternative provisions to be consistent with the purpose and intent of the changes originally proposed by Ecology and with the policy of RCW 90.58.020 and the applicable rules.

Ecology, therefore, approves the City's SMP comprehensive update, together with the revisions specified above. This action represents Ecology's final decision and there shall be no further modifications to the City's proposal.

The effective date of the City's SMP comprehensive update is 14 days from the date of this letter, Ecology's final approval letter. This 14-day period was established by legislative action in 2011, and is intended to provide lead time for the City to prepare to implement the new SMP.

Ecology is required to promptly publish notice that your SMP has received final approval. The notice, in the form of a legal ad, will begin a 60-day appeal period. We will provide a copy of the legal ad to the City for its records.

Finally, please integrate the revisions contained in this correspondence into the City's SMP, and forward two clean hard copies and one digital copy of the approved SMP to Ecology within 30 days.

Thank you again for your significant work and leadership in completing this SMP update. If you have any questions, please contact our regional Senior Planner, Joe Burcar, at Joe.Burcar@ecy.wa.gov or by phone at (425) 649-7145.

Sincerely,



Maia D. Bellon
Director

Enclosures

By Certified Mail [7012 1010 0003 3028 3966]

cc: Tim Burgess, Seattle City Council President
Ketil Freeman, City of Seattle
Margaret Glowacki, City of Seattle
Diane Sugimura, City of Seattle
Joe Burcar, Ecology
Erik Stockdale, Ecology