

**Interpretation of the Director
Under Seattle Municipal Code Title 23**

Regarding the Use of the

Property at

2031 Fairview Ave E, Slip O

**SDCI Interpretation No. 15-004
(SDCI Project No. 3022739)**

Background

This interpretation was requested by property owner Ann E. Prezyna, who is the owner of a floating home at the subject address. A Shoreline Notice of Violation (NOV) was issued requiring in part that an “accessory float” be removed from the property. Current regulations do not allow new floating structures accessory to a floating home, but do allow moorage of vessels. The question for interpretation is whether the floating object is a “float” accessory to the floating home or should be classified instead as a vessel.

Findings of Fact

1. The subject property is addressed in Seattle Department of Construction and Inspections (SDCI) records as 2031 Fairview Ave E, Slip O. According to records maintained by SDCI, including moorage site plans as recent as 1994, the property is described as Slip O, the north 6 feet of Lot 5 together with all of Lot 6 and the south 27 feet of Lot 7, Block 58, Lake Union Shore Lands Addition, together with additional portions of submerged land leased from Washington State Department of Natural Resources (DNR). The floating home on the property is registered under Department of Planning and Development (now SDCI) Project Application Number 3021119. No permit for an accessory floating structure was discovered in SDCI records.
2. The property is zoned SF 5000: Single-Family Residential, with a minimum lot size of 5000 square feet. The property is also located in the Urban Residential (UR) overlay zone of the Shoreline District, subject to applicable standards of Seattle Municipal Code (SMC) Chapter 23.60A, the Seattle Shoreline Master Program, including SMC Section 23.60A.520.
3. According to Ms. Prezyna in her Land Use Code Interpretation request, the floating object at issue, which she refers to as a vessel, is normally attached and tied to the floating home at Slip O of the floating moorage of The Lake Union Co-op, which is identified on the moorage site plans as Houseboat A. Although the floating object is normally attached to the floating home, it can be untied. The floating object, constructed in approximately 1995, is approximately 12 feet in length and 7 feet 3 inches in width and has flotation

provided by a Styrofoam float, according to information provided by Ms. Prezyna. According to Ms. Prezyna, it has an attached electric trolling motor and carries running lights, a battery, emergency oars, a boat hook, a horn, flares, and flotation devices. According to photographs provided by Ms. Prezyna, it is also capable of carrying a dining table and chairs, but at least one photo also shows the floating object without the table and chairs.

4. The Shoreline NOV, Case No. 1029814, was issued to Ms. Prezyna for an unauthorized accessory float on her property in violation of SMC Sections 23.60A.020 and 23.60A.202.D.5.e.
5. The State of Washington Department of Licensing (DOL) issued a Vessel Certificate of Ownership to Ms. Prezyna on August 20, 2001 and most recently issued a Vessel Registration Certificate for this floating structure on May 4, 2015. According to George Price, Policy and Legislative Analyst at the DOL, the DOL makes no determination when issuing a vessel registration certificate if the property owned by the applicant is technically a vessel. Mr. Price explained in an email to SDCI Senior Land Use Planner David Graves, "If someone wants to license their unit as a vessel, we do not question as long as they provide all necessary information." He further explained that, "If the person states the unit is a vessel and provides all necessary information we will license. No judgment."
6. The information required to receive a Vessel Registration Certificate from the DOL is found in Revised Code of Washington (RCW) 88.02.515, which provides as follows:

Application—Form and contents.

(1) The application for a certificate of title of a vessel must be made by the owner or the owner's representative to the department, county auditor or other agent, or subagent appointed by the director on a form furnished or approved by the department and must contain:

- (a) A description of the vessel, including make, model, hull identification number, and type of body;
- (b) The name and address of the person who is to be the registered owner of the vessel and, if the vessel is subject to a security interest, the name and address of the secured party; and
- (c) Other information the department may require.

(2) The application for a certificate of title must be signed by the person applying to be the registered owner and be sworn to by that person under penalty of the perjury laws of this state that:

- (a) The applicant is the owner or an authorized agent of the owner of the vessel; and
- (b) The vessel is free of any claim of lien, mortgage, conditional sale, or other security interest of any person except the person or persons on the application as secured parties.

(3) The application for a certificate of title must be accompanied by:

- (a) A draft, money order, certified bank check, or cash for all fees and taxes due for the application for the certificate of title; and
- (b) The most recent certificate of title or other satisfactory evidence of ownership.

7. In *Lozman v. City of Riviera Beach, Fla.*, 133 U.S. 735, 743 (2013) the U.S. Supreme Court ruled that a permanently moored houseboat was not a vessel. The underlying dispute involved unpaid dockage fees of approximately \$3,000. The City of Riviera Beach, Florida, asserted a maritime lien against the houseboat, which led to its sale at auction and ultimate destruction. The legal issue presented was whether the houseboat could be the subject of such proceedings which depended on whether the houseboat was or was not a "vessel". In this case, the United States Supreme Court agreed with a lower court in *Bernard v. Binnings Constr. Co.*, 741 F.2d 824, 828, n. 13, 832, n. 25 (C.A.5 1984) that, "the mere capacity to float or move across navigable waters does not necessarily make a structure a vessel." Additionally, the court stated, "We are willing to assume for argument's sake that sometimes it is possible actually to use for water transportation a structure that is in no practical way designed for that purpose." *Lozman* at 746. The Court rejected the notion that "the intent of the shipowner" has a bearing on whether or not a structure is a vessel. *Id.* at 745. The Court also ruled that, "in our view a structure does not fall within the scope of this statutory phrase [vessel] unless a reasonable observer . . . would consider it designed to a practical degree for carrying people or things over water." *Id.* at 741.
8. The Hearing Examiner of King County, Washington ruled in a factually similar Code Enforcement Appeal that, "The fact that it can be propelled through the water by means of an electric motor does not change its status as a float." Susan and Paul Gorman, at p. 5 of Report and Decision, available at:
http://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/code-enforcement/2015/E0600020_Gorman.ashx?la=en
9. SMC Section 23.60A.018 provides, in part, as follows:

Except as specifically provided otherwise, the regulations of this Chapter 23.60A do not apply to the operation of boats, ships and other vessels designed and used for navigation, other than moorage of vessels and uses on vessels unrelated to navigation
10. Section 23.60A.020 provides, in part, as follows:

A shoreline substantial development permit is required prior to undertaking any development
11. Section 23.60A.202.A.1 provides, in part, as follows:

Floating homes are allowed if they meet the standards in subsection 23.60A.202.A.1.a and 23.60A.202.A.1.b:

 - a. The floating home:
 - 1) Is legally established or has a building permit on the effective date of this ordinance; or
 - 2) Replaces a floating home legally established on the effective date of this ordinance and in compliance with subsection 23.60A.202.D.5 and the standards of this Section 23.60A.202; and

b. Occupies a floating home moorage that is legally established on the effective date of this ordinance, except as allowed under subsection 23.60A.202.B.2.

12. Section 23.60A.202.D.5.e provides, in part, as follows:

No new accessory floating structures are allowed. Accessory floating structures that have been continuously in use since March 1, 1977, may be maintained or replaced or relocated with the associated floating home but not expanded or transferred.

13. Section 23.60A.214 provides, in part, as follows:

B. As of the effective date of this ordinance, in addition to the structures allowed in subsection 23.60A.214.A, a vessel that meets the definition for vessel in Section 23.60A.942 may contain a dwelling unit if the vessel meets the following standards and is prohibited otherwise, except as allowed in subsection 23.60A.214.D:

1. Design. A vessel may be custom made or manufactured, and may be mono-hulled or multiple-hulled, and shall:
 - a. Be designed as a conventional recreational vessel exclusively of the types set out in this subsection
2. The vessel is safely operable and operates under self-propulsion integrated into the hull and steering that is sufficient to reasonably move the vessel. . . .

C. Determination and appeal for conventional recreational vessels containing dwelling units

1. In considering whether a vessel meets the design standards in subsection 23.60A.214.B.1.a, the following configuration and features shall be considered:
 - a. Hull shape: clearly defined bow, hull shaped to reduce resistance;
 - b. Deck gear: cleats, chocks, anchors, scuppers, and bulwarks;
 - c. Propulsion and steering system: inboard engine and transmission with propeller and rudder or inboard/outboard drive system; and
 - d. Helm station: layout of control and monitoring systems, and visibility for safe navigation.

14. Section 23.60A.912 defines “float” in part as follows:

“Float” means a floating platform similar to a pier that is anchored or attached to pilings.

15. Section 23.84A.002 defines “accessory structure” as follows:

“Accessory structure” means a structure that is incidental to the principal structure.

16. Section 23.60A.942 defines “vessel” as follows:

“Vessel” means ships, boats, barges, or any other floating craft that are designed and used for navigation and do not interfere with the normal public use of the water, including historic ships that do not have means of self-propulsion and steering equipment and house barges.

Conclusions

1. According to the site plan and records maintained by SDCI, there is evidence that the floating home addressed as 2031 Fairview Ave E, Slip O is a permitted floating home. There is no evidence, however, of a permit for a float accessory to the floating home, according to the site plan or SDCI records (Finding of Fact No. 1).
2. The floating structure accessory to the floating home addressed as 2031 Fairview Ave E, Slip O most closely meets the definition of “float.” It is a floating platform and is normally attached to the floating home. The floating home is attached to pilings. (Findings of Fact Nos. 3 and 14). Together with the definition of “accessory structure,” a structure incidental to the principal structure is an accessory floating structure (Finding of Fact No. 15). The accessory floating structure does not appear to be designed for navigation, which is part of the definition of a vessel (Finding of Fact No. 16). Thus, it is most appropriately classified as an accessory floating structure rather than a vessel.
3. While the accessory float is not a dwelling unit or a vessel containing a dwelling unit, Section 23.60A.214 describes the requirements to determine whether a floating structure is a vessel containing a dwelling unit, as opposed to a floating home or floating on water residence. Residential use on a vessel is regulated differently than residential use on a floating structure. The definition of “vessel” speaks of “craft that are **designed** and used for navigation,” and the standards of Section 23.60A.214 elaborate on what it means for a craft to be designed for navigation, including the nature of the hull, and integration of the propulsion system into the hull. Although the limitation on “accessory floating structures” is not as explicit about how these are to be distinguished from vessels, we believe that the same considerations apply. Since Section 23.60A.214 was developed to address a similar issue, to determine the difference between a vessel that is also used as a residence and other types of floating residences that are not classified as vessels, it is applicable by analogy to determining whether any other floating object, including the subject accessory float, has the characteristics of a vessel.
4. According to Section 23.60A.214, a vessel must be mono-hulled or multiple-hulled, operate under self-propulsion integrated into the hull with steering that is sufficient to reasonably move the vessel, contain a clearly defined bow and hull shaped to reduce resistance, include on the deck cleats, chocks, anchors, scuppers, and bulwarks, and at the helm a layout of control and monitoring systems, and visibility for safe navigation (Finding of Fact No. 13). The subject float lacks a clearly defined bow or hull shaped to reduce resistance. Photographs of the accessory float show that the floating object does not feature rake, slant, or a v-shape on its front, but instead features squared-off sides

that are indistinguishable from legally existing accessory floats at floating home moorages.

5. The Vessel Certificate of Ownership and Vessel Registration Certificate issued to the owners of the floating object do not confirm or verify that the object is a vessel. The DOL does not make a judgment when issuing these documents as to whether the license is for a vessel or floating structure. The DOL does not inspect or question an application as long as all the necessary information for the registration is provided (Finding of Fact No. 5).
6. The installation and use of an electric trolling motor attached to the floating object does not confirm or verify that the structure is a vessel. The United States Supreme Court has ruled that, "the mere capacity to float or move across navigable waters does not necessarily make a structure a vessel." (Finding of Fact No. 7). The Hearing Examiner in King County agreed, ruling that, "The fact that it can be propelled through the water by means of an electric motor does not change its status of a float." (Finding of Fact No. 8). Based on the available information about the subject floating object, it is neither designed for navigation nor operated in a manner typical of a vessel.

Decision

The object attached to the floating home addressed as 2031 Fairview Ave E, Slip O is a float accessory to the floating home. It most closely meets the definitions of float and accessory structure. It also lacks most of the characteristics and requirements of a vessel as described in the code section applicable to vessels containing a dwelling unit. The existence of a Vessel Registration Certificate from the DOL and an attached electric trolling motor do not by themselves demonstrate the existence of a vessel. The mere capacity to float or move across navigable waters does not necessarily make an object a vessel. A permit must be obtained to allow the accessory float to remain in place or the accessory float must be removed.

Entered this 29th day of February, 2016.

Signature on File

David G. Graves, Senior Land Use Planner
Department of Planning and Development