

SKAGIT COUNTY HEARING EXAMINER

re: Appeal by Eric Battles & Emily
McLaughlin of Substantial Improvement
& Substantial Damage Cost
Determination in FLOOD-2006-0028

No.: APL 2026-0002

MOTION TO DISMISS

The Skagit County Department of Planning and Development Services respectfully requests this appeal be dismissed. The Department appropriately applied the floodway regulations after the Department of Ecology denied a waiver of the prohibition on residential structures.

I. STANDARD OF REVIEW

The hearing examiner can hear motions to dismiss on summary judgment.¹ To rebut the moving party's showing, "the nonmoving party must set out specific facts sufficiently rebutting the moving party's contentions and disclosing the existence of a material issue of fact."² The nonmoving party "may not rely on the allegations in the pleadings but must set forth specific facts by affidavit or otherwise that show a genuine issue exists."³ "An affidavit does not raise a genuine issue for trial unless it sets forth facts evidentiary in nature, *i.e.*, information as to what took place, an act, an incident, a reality as distinguished from supposition or opinion. Ultimate facts, conclusions of fact, or conclusory statements of fact are insufficient to raise a question of fact."⁴ The trier of fact must construe the evidence and consider the material facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party.⁵

¹ SCHE § 25; *ASARCO Inc. v. Air Quality Coal.*, 92 Wn.2d 685, 695–98 (1979).

² *Heath v. Uruga*, 106 Wn.App. 506, 513 (2001).

³ *Las v. Yellow Front Stores, Inc.*, 66 Wn.App. 196, 198 (1992).

⁴ *Curran v. City of Marysville*, 53 Wn.App. 358, 367 (1989) (citations and quotations omitted).

⁵ *Weatherbee v. Gustafson*, 64 Wn.App. 128, 131 (1992).

II. BACKGROUND

The Appellants purchased a home on the bank of the Skagit River. The December 2025 flood resulted in damage costing 75% of the assessed value.⁶ Ecology determined that the substantial improvements the Appellants' home required did "not meet [the] requirements of WAC 173-15-176 or RCW 86.16."⁷ This is because: "Flood depth exceed[ed] 3 feet and velocity exceed[ed] 3 feet/second. Topographic data shows evidence of active channel migration."⁸ The Appellants did not appeal Ecology's decision.⁹

Following this the County provided a "Site Assessment – Flood", which notified the Appellants that because Ecology did not decide to issue a waiver, that "Skagit County Code requires removal of the dwelling unit from the floodway."¹⁰ This document also directed the Appellants to SCC 14.34.190 for the non-residential uses allowed, and provided an except of the code allowing recreational vehicles in the dry season as a "common usage."¹¹

III. ARGUMENT

The state requires the County to adopt regulations prohibiting residential structures in the floodway,¹² and has done so since 1987.¹³ The County amended its Flood Damage Prevention Ordinance in 1989.¹⁴ Since then, any residence within the floodway, such as the Appellants, is a nonconforming use and structure.¹⁵ These are allowed to remain subject to certain conditions.¹⁶ But if a home suffers damage costing more than 50% of the assessed value to repair, then the right of the preexisting nonconforming residential structure and use is terminated unless Ecology

⁶ Exh. 6 at 1.

⁷ Exh. 3 at 4.

⁸ Exh. 3 at 4.

⁹ See <https://elaho2022.my.site.com/casemanager/s/case-search>.

¹⁰ Exh. 6 at 2.

¹¹ *Id.*

¹² RCW 86.16.041(1),(2)(a).

¹³ Laws of 1987, ch. 523, § 4.

¹⁴ Skagit County Ordinance No. 11888.

¹⁵ SCC 14.07.010(1).

¹⁶ See SCC 14.34.190; RCW 86.16.041(2).

provides a waiver.¹⁷ If Ecology does not provide a waiver, then the structure can only be reconstructed consistent with the floodway regulations, which precludes residential structure and uses.¹⁸

That is what happened here. The December 2025 flood caused 75% damage resulting in the cost of repair to be well above 50% of the assessed value, this resulting in ending the Appellant's right to maintain the nonconforming residential structure and use.

Because of the role of Ecology in mandating these regulations, and in making the final determination of whether the home could be repaired or rebuilt, the County's role is necessarily ministerial.¹⁹ In circumstances such as here, the County lacks any authority to allow "repair or replacement of a substantially damaged residential structure located in the regulatory floodway".²⁰

Because the County cannot modify or vacate Ecology's determination,²¹ the only action of the County that is appealable is whether the County followed that recommendation. Here, Ecology determined that a waiver was not warranted. The consequence of Ecology's decision is that the residential structure cannot be repaired or replaced. The County lacks authority to change that outcome, and thus followed the law when it issued the "Site Assessment – Flood".²² It is undisputable that the County adhered to its ministerial responsibilities. As such the Hearing Examiner should dismiss this appeal.

¹⁷ SCC 14.34.190(2)(b),(3); RCW 86.16.041(2)(a)(ii),(4)(a).

¹⁸ SCC 14.34.190(3)

¹⁹ See *Klineburger v. King Cnty. Dep't of Dev. & Env'tl. Servs. Bldg.*, 189 Wn.App. 153, 167–68 (2015)

²⁰ *Id.* at 167 (quoting WAC 173–158–076(1)).

²¹ See *id.* at 168.

²² Exh. 6 at 2.

IV. CONCLUSION

For the above stated reasons, the Hearing Examiner should dismiss this appeal.

DATED this 16th day of June 2026.

RICHARD A. WEYRICH
PROSECUTING ATTORNEY
FOR SKAGIT COUNTY



JASON C. D'AVIGNON, WSBA #44259
Civil Deputy Prosecuting Attorney
Attorney for Skagit County

CERTIFICATE OF SERVICE

I hereby certify that on June 16, I filed the foregoing document with the Skagit County Hearing Examiner via email to the Hearing Coordinator at HEhearings@co.skagit.wa.us and served, and/or otherwise provided, the document via that same email to:

- Pamela C. Herman, Hearing Coordinator, at pherman@co.skagit.wa.us
- Jane Koler, Attorney for the Appellants, at jane@jkolerlaw.com;

Dated this 16th day of June, 2026, at Mount Vernon, Washington.



JASON C. D'AVIGNON, WSBA #44259
Civil Deputy Prosecuting Attorney