

**SKAGIT COUNTY
OFFICE OF THE HEARING EXAMINER**

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

APL 2026-002

*of Administrative Decision FLOOD-
2026-0028*

**ORDER ON DEPARTMENT'S MOTION TO
DISMISS**

The Hearing Examiner recieved a Motion to Dismiss,¹ and a Response² and a motion hearing was held on 7/16/26.

With the authority pursuant to SCRE §§6, 7, and 25; the Hearing Examiner hereby finds and orders:

LAW

The SCHE allows issues to be decided by pre-hearing motions, and case law allows for a quasi-judicial administrative body, like the Hearing Examiner to dispose of issues via summary judgment.³ It is common practice and a reasonable one to adopt Washington standards and case law to establish the standards the Hearing Examiner uses in weighing and ruling on a motion for summary judgment.

¹ Ex. 22

² Ex. 23

³ SCHE §25; ASARCO Inc. v. Air Quality Coal., 92 Wn. 2d 685, 695-98, 601 P.2d 501 (1979).

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."⁴ 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."⁵ "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."⁶

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.⁷ If the moving party is a Respondent and meets this initial showing, then the inquiry shifts to the party with the burden of proof at trial. If, at this point, the non-moving party fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial, then the motion to dismiss should be granted.⁸

FINDINGS

The Appellant did not contest the facts put forward by the County.

The uncontested facts put forward by the county do meet the legal requirements under both RCW 86.16.041 and SCC 14.34.190 for the County to make the decision it did.

The Motion is being denied on a very specific narrow legal ground that the motion is predicated on: the County argues that the County is not the final decision maker and acts only in a ministerial capacity. This is not literally correct, though it may be *de jure* correct.

While it is correct that the County cannot approve a waiver without the Department of Ecology's approval, it is at the request of local government that the Department of Ecology makes its recommendation.⁹ And while the County may request and may rely on the

⁴ Heath v. Uraga, 106 Wn. App. 506, 513, 24 P.3d 413 (2001).

⁵ Las v. Yellow Front Stores, Inc., 66 Wn. App. 196, 198, 831 P.2d 744 (1992).

⁶ Curran v. City of Marysville, 53 Wn. App. 358, 367, 766 P.2d 1141 (1989) (citations and quotations omitted).

⁷ Weatherbee v. Gustafson, 64 Wn. App. 128, 131, 822 P.2d 1257 (1992).

⁸ Young v. Key Pharmaceuticals, Inc., 112 Wn.2d 216, 225, 770 P.2d 182, 187 (1989).

⁹ Ex. 4; and Klineburger v. King County Dept. of Development and Environmental Services Bldg., 189 Wn. App. 153 at 165-166, 356 P.3d 223 (2015)

Department of Ecology's expertise to make their ultimate determination, it is the County's responsibility to make the final determination and enforce it, even if by engaging with the Department of Ecology's subject matter expertise and legal authority the Department's decision becomes a foregone conclusion because no waiver is possible. That is the law, and that the County has to make its decision in that context does not make it merely ministerial.

But more importantly, the limited question of the appeal is whether "...the Department erred when it did not make a determination that the Appellants possessed a pre-existing non-conforming right to keep their house which overrode the Department of Ecology recommendation."¹⁰ This motion attacked a different question, which is that the County made an incorrect decision based on the physical facts and the statutory law. The question at hand is sidestepped by this motion as it does not address the presupposition of the appeal. Even if assuming all the facts put forward by the County in the light most favorable to the Appellant, and even if after looking at those facts and the law put forward in the Motion, the hearing examiner were to find the County met its burden, there would still remain the underlying question of appeal.

ORDER

The motion is denied.

SO ORDERED this 16th day of July 2026.



Rajeev D. Majumdar
Skagit County Hearing Examiner

¹⁰ 2nd Post Conference Order at §4(a), *entered* 5/8/26