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COMMUNITY DEVELOPMENT

CHELAN COUNTY

DEPARTMENT OF HEARING EXAMINER

316 WASHINGTON STREET, SUITE 301
WENATCHEE, WASHINGTON 98801

BEFORE THE CHELAN COUNTY HEARING EXAMINER

IN THE MATTER OF:)	FINDINGS OF FACT
AA 2019-005)	AND DECISION ON
)	ADMINISTRATIVE APPEAL

FINDINGS OF FACT

1. An Administrative Appeal was submitted by Craig and Reava Davis, regarding file number AI 2019-001 regarding an interpretation of Chelan County Code Section 11.22.030(1) Peshastin Urban Growth Area (UGA) District Use Chart as it relates to short-term vacation rentals.
2. The property owners are Craig and Reava Davis, 18610 NW Bernina Ct., Issaquah, WA 98027 and 8211 Lynn St., Peshastin, WA 98847.
3. The agent for owners is Richard Llewelyn Jones, P.S., PO Box 1548, Snohomish, WA 98291.
4. The Administrative Interpretation application was received June 28, 2019.
5. The Administrative Interpretation Decision was made August 20, 2019.
6. The Administrative Interpretation was mailed on August 20, 2019.
7. On September 3, 2019, Craig and Reava Davis filed an Administrative Appeal request.
8. The Notice of Application and Public Hearing was issued October 15, 2019.
9. After due legal notice, an open record public hearing was held on December 4, 2019.
10. Staff recommended the Hearing Examiner affirm the interpretation that short-term (vacation) rentals are not defined in the Chelan County Code and a similar use is not listed within the Peshastin UGA District Use Chart and therefore, the use is not allowed within the Peshastin UGA.
11. Due to the Appellants' attorney's misunderstanding of the Hearing Examiner's prior ruling that the Appellants would be allowed to submit evidence at this hearing, the Hearing Examiner left the record open until December 18, 2019, for the Appellants to submit whatever additional written evidence they wished to submit.
12. The record closed on December 18, 2019, with the Hearing Examiner to make his decision within 10 working days of that date.

13. At the open record public hearing, the Appellants were represented by attorney Richard Jones.
14. Admitted into the record was the Appellants' attorney's letter dated November 27, 2019, along with Exhibits A through P, attached to the letter.
15. Prior to presenting evidence, the Appellants made the motion to continue the hearing due to claimed improper notice of the hearing and their claim that they were told that public testimony from the Appellants would not be allowed.
16. The Hearing Examiner denied this motion. The Hearing Examiner made it clear that his prior rulings indicate that the Appellants would be allowed to provide whatever testimony and evidence they wish to provide. However, the Hearing Examiner ruled that general testimony from the public, separate from that testimony from the public submitted by Appellants, would not be allowed because this matter was an appeal of a decision made by the County as requested by Appellants.
17. The Appellants made a motion that the public hearing be opened up so that general public testimony could be permitted. The Hearing Examiner denied this motion for previous reasons stated. This is a matter between the Appellants and the County regarding the Appellants' request for an administrative interpretation.
18. The Appellants made a motion to allow cross examination with County staff. The Hearing Examiner denied this request. Appellants did not submit any offer of proof as to what evidence this cross examination was to reveal.
19. The Appellants made a motion to continue the hearing due to outstanding discovery requests against the County. This request was denied. This matter has been pending for several months and Appellants desire to delay this hearing further was denied. Additionally, no offer of proof was submitted by Appellants.
20. Appellants called the following witnesses at this open record public hearing:
 - 20.1 Sean Lynn. Mr. Lynn does not own any short-term rentals, but he owns a vacation rental management company. Mr. Lynn's opinion is that short-term vacation rental use is the same as long-term residential use. He believes that short-term vacation rentals are not regulated by the County, agreeing that short-term vacation rentals are not outright permitted in the Peshastin Urban Growth Area. Mr. Lynn believes that Mr. Simon's 1991 memorandum attached as Exhibit "K" in Appellants' materials remains applicable today.
 - 20.2 Reava Davis. Ms. Davis is one of the Appellants. She and her husband own two short-term vacation rental properties in Peshastin. They also own a home in Peshastin. As property owners of their home, they have demonstrated a long-term commitment as residents of Peshastin. Ms. Davis testified they are members of the local church and they have been members of the Peshastin Community Counsel, and are otherwise engaged in the Peshastin community. Ms. Davis acknowledged their use of two properties as short-term vacation rentals. Ms. Davis provided no evidence the users of these short-term vacation rentals are actively involved in any Peshastin community organization, such as members of a church, or members of local social, civil, or charitable

organizations. She testified as to the lack of complaints regarding their short-term rental clients.

- 20.3 Craig Davis. Mr. Davis is one of the Appellants. Mr. Davis agreed with his wife's testimony. He stated that he and his wife have lived in Peshastin for the past two year's full time. He indicated that in 2017, he received a notice of violation and letter to stop short-term rentals on their property in Peshastin. Mr. Davis testified that they disagreed, and apparently, the short-term vacation rentals of their property have continued. He testified as to the mixed community response in Peshastin to their short-term vacation rentals. He stated that their short-term vacation properties are rented by the house and not by the room. He indicated that they do not provide breakfast, or other food services, for the clients who purchase the use of these short-term vacation rentals. He testified that neither he nor his wife live on either of these short-term vacation rental properties.
- 20.4 Richard Llewelyn Jones. Mr. Jones is the Appellants' attorney. Mr. Jones argued that consistent with his letter dated September 27, 2019, the Appellants' primary argument is that a single family residence is the same as a short-term vacation rental.
21. The Hearing Examiner finds that the evidence before the Hearing Examiner clearly indicates that the purpose of a single family residence is materially different than the purpose of a short-term vacation rental.
22. As the Appellants clearly demonstrated by the testimony of Mr. and Mrs. Davis, they, as full time residents of Peshastin, engage in materially different and additional activities related to the Peshastin community, from those who spend one or two nights in their vacation rental properties.
23. It is important to the Hearing Examiner that Chelan County has distinguished that short-term vacation rentals of the nature of bed and breakfast use, are different from single family residential use, even though a bed and breakfast may be utilized within a single family residence. In other words, short-term rentals such as a bread and breakfast are a different use than long-term residence in a single family residence.
24. The County's primary argument is that because short-term vacation rentals are not a specifically permitted, conditional or an accessory use within the applicable zoning district in the Peshastin Urban Growth Area, where these vacation rental properties are located, that the use must be analyzed according to similar uses and if there are no similar uses then the use is not permitted.
25. The Appellants' position is that a single family residence may be used in a variety of ways, including long-term or short-term rental.
26. The Hearing Examiner specifically finds there is a material difference between the purpose and use of a short-term vacation rental and long-term occupancy of a single family residence.
- 26.1 Long-term occupancy in a single family residence allows, and gives, the occupier incentive to become a part of the community, to become part of the

local civic, religious and charitable organizations, as well as schools. Long-term occupants are generally employed in the area, further demonstrating their commitment to the health and vitality of the area. The Hearing Examiner takes judicial notice of these facts.

- 26.2 Users of a short-term, transient, vacation rental, who are in the area for a matter of two to three days, generally over a weekend, demonstrates that their purpose in visiting this house, is not to become part of the community, but instead to engage in short-term uses, such as recreational and tourist activities, activities generally associated with a vacation, or time away from their permanent residence, travelling, sight-seeing, or otherwise engaging in transient activities consistent with a short visit to a town where the vacation rentals are located.
27. In response to the Hearing Examiner's decision to keep the record open until December 18, 2019, for additional written testimony evidence from the Appellant, the following additional materials were submitted:
 - 27.1 December 16, 2019 letter signed by multiple individuals described as "property owners, short-term rental owners, and professional managers of Chelan County."
 - 27.2 November 22, 2019, letter from Joanne Moody and Nevile Moody to Emily Morgan, Chelan County Community Development.
 - 27.3 Undated letter from Lisa Ravenel.
 - 27.4 Document entitled "Public Records Request Response I" dated December 13, 2019.
 - 27.5 Document entitled "Public Records Request Response II", dated December 13, 2019.
 - 27.6 Email from Appellants' attorney to the Hearing Examiner, copied to Chelan County, attaching the document entitled "Public Records Response I – 12/13/19".
28. The Hearing Examiner acknowledges that Chelan County is in the process of developing specific regulations for short-term vacation rentals for countywide application. However, this is evidence that short-term vacation rentals are not defined, permitted, or accessory or conditional uses within the zoning district applicable to this application. This is evidence that short-term vacation rentals are different from long-term occupancy of a residence.
29. A bed and breakfast use is somewhat similar to a short-term vacation rental use. However, there are material differences that with the primary difference that with a bed and breakfast the owner of the house is present during the vacation rental and separate rooms may be rented to separate persons. Regarding short-term vacation rentals, the owner is not present in the same house where the rental is occurring, and the house is rented in its entirety.
30. The Chelan County Code definition of Rural Tourism, Recreational, is most similar to that of short-term vacation rentals. The definition of Rural Tourism, Recreational,

relates to uses involving visits to rural settings or rural environments for the purpose of participation in or experiencing activities, events or attractions, not readily available in urbanized areas. While this use is not exactly on point with a use of a short-term vacation rental, they are materially similar because a short-term vacation rental is primarily utilized for tourism and recreational purposes.

30. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

CONCLUSIONS OF LAW

1. The Hearing Examiner has authority to render this Decision.
2. Chelan County 11.22.030(1) provides, in relevant part, that in relation to the District Use Chart, the purpose of this chart is to determine if specific use is allowed in each district. Further, this section provides that no use "shall" be allowed in a Use District that is not listed in a Use District and that is not listed in the Use Chart as permitted, accessory, or conditional use, unless the administrator determines that an unlisted use is similar to a use that is already enumerated in the Use Chart.
3. A short-term (vacation) rental is not listed within Chelan County Code Sec. 11.22.30(2) District Use Chart.
4. Short-term (vacation) rental is not defined within Chelan County Code Chapter 4.98.
5. The Hearing Examiner concludes that the uses in the Chelan County Code are not similar to a short-term (vacation) rental. Those are bed and breakfasts, single family residences, and boarding/lodging houses.
6. Bed and breakfast facilities are materially dissimilar from short-term (vacation) rentals because rooms may be individually rented out and the property is owner occupied.
7. The Hearing Examiner concludes that recreation/tourist use is most similar to a short-term (vacation) rental.
8. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

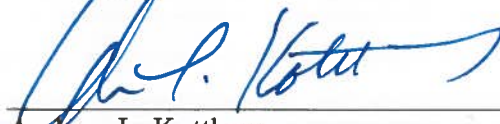
DECISION

WHEREFORE, the Hearing Examiner having rendered Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that the Administrative Interpretation dated August 20, 2019 is **AFFIRMED** in all respects.

Dated this 31st day of December, 2019.

CHELAN COUNTY HEARING EXAMINER



Andrew L. Kottkamp

This decision is subject to appeal pursuant to the Chelan County Code. Appeals must be timely filed. Anyone considering an appeal of this decision should seek immediate legal advice.