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CHELAN COUNTY
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:

AA 2021-568

Latta

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**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION ON
ADMINISTRATIVE APPEAL**

I. FINDINGS OF FACT

1. An Administrative Appeal was submitted regarding the denial of a short-term rental permit as an existing non-conforming short-term rental.
2. The Appellant is Tom Latta, 9680 Dye Rd, Leavenworth, WA 98826. The Appellant's agent is Matthew S Hitchcock of Gatens Green Weidebach PLLC.
3. The subject property is currently used as an unpermitted short-term rental. The legal description is East Leavenworth Rd Block 5 Lot 20 and the parcel number is 24-17-12-543-260. The zoning district is Residential Low Density 12,000 (RL 12).
4. The applicant submitted an Existing Non-Conforming Short-Term Rental Application on November 26, 2021 to continue use as a short-term rental via property manager, David Cherepy of Destination Leavenworth. The Applicant was denied the permit as his property lies in the Urban Growth Area (UGA) of Leavenworth.
5. Pursuant to Chelan County Code Section 11.88.290 (2)(C)(iv), The board of Chelan County commissioners adopts the cities of Cashmere, Chelan, Entiat, Leavenworth, and Wenatchee land use regulations, development standards and land use designations, as they apply to short-term or vacation rentals of fewer than thirty consecutive nights or days, within the county adopted unincorporated urban growth area respecting each city as it is now or is hereafter amended for the cities of Cashmere, Chelan, Entiat, Leavenworth, and Wenatchee. Provided, that any city regulation requiring acquisition of a business license is not adopted nor incorporated as a county regulation and that instead a conditional use permit may be required, and the county's review procedures in this section must control.
 - 5.1 Upon the date of the adoption of this code on September 27, 2021, any existing short-term rentals within the exterior boundaries of any city's designated urban growth area (UGA) are required to have been in full legal compliance with any existing city codes adopted through prior resolution by the county as they applied to short-term rental uses within that UGA.

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- 5.2 If a short-term rental use is operating in violation of the existing county-adopted city codes for that UGA the rental must immediately cease all operation of that use on the date of adoption of this chapter. A property operating in violation of existing city UGA land use regulations has no legal existing nonconforming status as a short-term rental.
- 5.3 All existing nonconformance claims within a UGA will be subject to joint review by the county and the affected city.
- 5.4 New short-term rental applicants will be required to comply with the most current city regulations for short-term rental use for each city UGA, which are herein adopted and incorporated under subsection (2)(C)(iv) of this section upon adoption of this code chapter, including if any UGA code prohibits new or continued existing short-term rentals in those zones.
6. Code 11.88.290 Subsection (2)(C)(iv)(b) states: All existing nonconformance claims within a UGA will be subject to joint review by the county and the affected city. The Applicant's submission materials were scanned and sent to Lilith Vespier, AICP in Leavenworth for joint review on November 26, 2021.
7. A November 29, 2021 response from Lilith Vespier in Leavenworth was received. The City showed no record of the short-term rental in the UGA. It was further noted that because the home was built in 2002, short-term vacation rentals would not have been allowed prior to the city regulations limiting STR which became effective in 1989.
8. On November 29, 2021, a letter was sent to applicant notifying him of the denial of Existing Non-Conforming Status noting that short-term rentals are not allowed in the zone in which his rental is located.
9. On December 13, 2022, an appeal request was received from the Gatens Green Weidebach PLLC on behalf of applicant, with the associated application fees.
10. An appeal hearing was held January 5, 2022 during which the attorney for the Appellant presented a supplemental declaration of the Appellant. The hearing was continued to February 2, 2022.
11. The Hearing Examiner reviewed the declaration and noted that on page 4, item 29, the Appellant states that Destination Leavenworth had secured a Conditional Use Permit (CUP) that allowed continuing vacation rentals. After Planning Department staff research, no such CUP could be found by searching via parcel number, address, current owners' name, or previous owners' names.
12. While the County was researching the CUP, staff also found a code enforcement case regarding Appellant's property that was opened in 2017, CE 17-0060 for operating a vacation rental without a permit. Log notes on 6/5/2019 indicate the Appellant called code enforcement to check the status of the case and was told the county would enforce adopted UGA codes.
13. The Appellant may have been in operation since purchase, but he never established a legal non-conforming use as his operation was never legal under the then-existing code for Leavenworth UGA.

14. Chelan County Code Section 14.12.010: Administrative appeals.
 - 14.1 An administrative appeal to the hearing examiner shall be filed with the department within ten working days of the issuance of the decision appealed, together with the applicable appeal fee.
 - 14.2 The notice of appeal shall contain a concise statement identifying:
 - 14.2.1 The decision being appealed; (B) The name and address of the appellant and his/her interest(s) in the application or proposed development; (C) The specific reasons why the appellant believes the decision to be erroneous, including identification of each finding of fact, each conclusion, and each condition or action ordered which the appellant alleges is erroneous. The appellant shall have the burden of proving the decision is erroneous; (D) The specific relief sought by the appellant; (E) The appeal fee.
15. After due legal notice, an open record public hearing began via Zoom video conference on January 5, 2022. At the January 5, 2022 hearing, the Appellant submitted a supplemental declaration, which had not been provided to Chelan County. Chelan County requested, and the Hearing Examiner ordered, that the hearing be continued to February 2, 2022 to give the County an opportunity to respond to the supplemental declaration, should the County so desire.
16. On January 25, 2022, Chelan County submitted a revised staff report. Staff noted that although the supplemental declaration of Mr. Latta indicated that the Appellant's agent had secured a Conditional Use Permit for a vacation rental on the Appellant's property, Chelan County Planning Staff researched this issue and no such Conditional Use Permit could be found by searching for the parcel number, the address, the current owner's name or the previous owner's names.
17. However, while researching the Conditional Use Permit, staff found a code enforcement case that was opened in 2017, CE 17-0060, for operating a vacation rental without a permit. The log notes on June 5, 2019 indicated that the Appellant had called Code Enforcement to check on the status of the case and was told that the County would enforce the adopted Urban Growth Area codes.
18. On February 1, 2022, the Appellant, through their attorney, submitted a supplemental letter regarding this appeal.
19. Admitted into the record were the following:
 - 19.1 Letter indicating applicant was not eligible for Existing Non-Conforming status;
 - 19.2 Email from Lilith Vespier, AICP with her determination;
 - 19.3 Memorandum-Public Record dated July 11, 2016 relating the history of STRs in Leavenworth;
 - 19.4 AA 21-568 Application Materials;
 - 19.5 Email from Mike Worden dated January 4, 2022;
 - 19.6 Original Staff Report;
 - 19.7 Supplemental Staff Report;
 - 19.8 AA 21-568 Appeal Materials;
 - 19.9 February 1, 2022 Supplemental Letter from Appellant's Attorney to Hearing Examiner.

20. Speaking as Appellant's agent was Matthew Hitchcock. Mr. Hitchcock had previously made a motion to continue the hearing until a public records request made by the Appellant could be resolved. The Hearing Examiner denied this request. At the February 2, 2022 hearing, Mr. Hitchcock requested that the record be left open until such time as the public records request had been resolved, the Hearing Examiner denied this request as well.
21. At the February 2, 2022 hearing, Appellant's counsel agreed that, like the County, the Appellant could not locate any Conditional Use Permit granting permission for a vacation rental on the Appellant's property. However, the Appellant went on to argue that because the Appellant's use was not permitted, and therefore, illegal, by the Appellant's interpretation of the Chelan County Code, this allowed Appellant's property to become eligible for non-conforming status and issued short term rental permit.
22. The Hearing Examiner rejects this interpretation of the Chelan County Code. The Hearing Examiner rejects the interpretation to the extent that the Appellant's argue that because their prior, unpermitted, illegal use of the property as a short-term rental/vacation rental allows the property to now be eligible as a non-conforming use and eligible for a STR permit from Chelan County.
23. Illegal, non-conforming uses are not eligible to receive a short term rental permit from Chelan County on the basis of the property being, in the past, used illegally as an unpermitted short term rental.
24. It is only possible for legal non-conforming uses to be eligible for short term rental permits under the current Chelan County Code.
25. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this Decision.
2. Chelan County Code 11.88.290 Subsection (2)(C)(iv)(b) states: All existing nonconformance claims within a UGA will be subject to joint review by the county and the affected city.
3. The City showed no record of a legal, permitted, short-term rental of the Appellant in the UGA. As the home was built in 2002, it would not have been allowed prior to the city regulations limiting STR which became effective in 1989.
4. The Appellant's unpermitted short-term rental property is not eligible for a short-term rental permit pursuant to CCC 11.88.
5. The Appellant's request for a short-term rental permit is inconsistent with the provisions of the Chelan County Code.
6. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

III. DECISION

WHEREFORE, based upon the above Findings of Fact and Conclusions of Law, the Hearing Examiner finds that the denial dated November 29, 2021 is hereby **AFFIRMED** based on the fact the Applicant did not qualify for this status based on CCC 11.88.290 and joint review with Leavenworth and finding short-term rental business activity is not allowed in the zone in which his property is located, Further, the appellant was never legally operating and thus does not qualify for the existing non-conforming status.

Dated this 14th day of February, 2022.

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.