

FEB 14 2022

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 2021-575

Bernstein

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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 Aaron Bernstein, 557 Manson Blvd., Manson, WA 98831. The Appellant's agent is Julie K. Norton of Ogden Murphy Wallace, PLLC.
3. The subject property is currently used as an unpermitted short-term rental. The legal description is Manson Block 17 Lot 14 & Pt. Vac. St. S of Rd and the parcel number is 28-21-35-696-426. The zoning district is Urban Residential 2 (UR2).
4. The applicant submitted an Existing Non-Conforming Short-Term Rental Application on November 14, 2021 to continue use as a short-term rental. Applicant was denied the permit as he did not meet criteria for the classification.
5. Pursuant to Chelan County Code Section 11.88.290 (2)(E)(iii), Non-conforming short-term rental units in the Manson UGA: Where a short-term rental is located in the Manson UGA, only those short-term rentals that were properly registered as a vacation rental and meet criteria in Subsection (2)(E)(i), shall be considered legal non-conforming according to Chapter 11.88.290 CCC, provided the short-term rental is allowed a grace period of operation in which to fully attain compliance with all current rental standards as provided in Subsection (2)(E)(i).
6. Code 11.88.290 Subsection (2)(E)(i)(f) further states that if in Manson, the short-term rental was to have been properly registered as a vacation rental with Chelan County per CCC 11.23.040 as of August 25, 2020, or that the short-term rental owner held a vacation rental permit in the Manson UGA as of July 28, 2019 or in 2020 prior to August 25, 2020. This applicant was not.
7. A letter of denial was sent to applicant December 1, 2021 citing Chelan County Code (CCC) (2)(E)(i)(f), 'If located inside the Manson Urban Growth Area, documentary evidence that the short-term rental was properly registered as a vacation rental with Chelan County per CCC

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11.23.040 as of August 25, 2020, or that the short-term rental owner held a vacation rental permit in the Manson UGA as of July 28, 2019 or in 2020 prior to August 25, 2020. This documentary evidence also satisfies the requirements found in (2)(E)(i)(a) above provided failure to accurately represent and disclose a property's short-term rental history is grounds for immediate permit denial or revocation, and loss of all existing non-conforming status.'

8. The property was not properly registered as a vacation rental with Chelan County per CCC 11.23.040.
9. On December 14, 2021, the administrative appeal (AA-21-575) was filed with Chelan County Community Development with the associated application fees.
10. Chelan County Code Section 14.12.010: Administrative appeals:
  - 10.1 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.
  - 10.2 The notice of appeal shall contain a concise statement identifying:
    - 10.2.1 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.
11. After due legal notice, an open record public hearing was held via Zoom video conference on January 5, 2022. The hearing was subsequently continued to February 2, 2022.
12. Admitted into the record were the following:
  - 12.1 AA 21-575 Application Materials;
  - 12.2 Denial letter of permit application for Existing Non-Conforming Short-Term Rental dated December 1, 2021;
  - 12.3 Email from Donald Pierce dated December 30, 2021;
  - 12.4 February 1, 2022 letter from Julie Norton to the Hearing Examiner with attachments;
  - 12.5 Declaration of Kari Sorensen, Manson Community Council, dated February 2, 2022 with attachments;
  - 12.6 Email and letter from Kari Sorensen dated June 7, 2020 (presented by Appellant in responsive materials).
  - 12.7 February 7, 2022 letter from Julie Norton to the Hearing Examiner.
13. Not admitted into the record were the following documents submitted:
  - 13.1 Chelan County Assessor Records for property ID 48689.
14. Appearing on behalf of the Appellant was Julie Norton. Ms. Norton testified that she was the Appellant's attorney and was authorized to appear and speak on behalf of the Appellant's behalf. Ms. Norton's primary argument was that her client did not receive any notice that a permit was required and therefore, not reasonably be expected to have obtained a permit. She also argued that it was unfair because there was no phasing out of pre-existing uses. She

argued that the Applicant should be given an opportunity to cure and that his failure to obtain proper permitting should not be fatal to his attempt now to become a permitted short term rental. Ms. Norton agreed that there was no specific provision in the Chelan County Code to allow an opportunity for cure in this specific situation, but there were opportunities to cure in other situations.

15. Marcus Foster, Attorney for Chelan County, argued that the Appellant's ignorance of the valid law was no defense in this matter. Additionally, Mr. Foster indicated that sometime between 2008 and 2009, the County sent notice to Urban Growth Area property owners regarding the need for a vocational rental permit in the Urban Growth Area. The Appellant had several years to bring his property into compliance and failed to do so.
16. The Hearing Examiner kept the record open until 5:00 p.m. February 2, 2022 to allow the County to submit whatever evidence it desired regarding their claim that notice had been sent to Manson Urban Growth Area property owners regarding the new requirement for a vacation rental permit. The Hearing Examiner kept the record open until 5:00 p.m. on February 7, 2022 for the Appellant's response.
17. The Appellant takes issue with the declaration of Ms. Sorensen submitted by the County. Many of the Appellant's concerns regarding this declaration are correct. However, whether any notice to Manson Urban Growth Area property owners of the pending requirement for vacation rental permits was mailed to those property owners is ultimately irrelevant because the County code was, nevertheless, duly enforceable. The Appellant was not required to receive notice in order for the County code regulations to apply to his property.
18. The Appellant also claims that notwithstanding the Appellant operating a vacation rental without the required permit, that the Appellant's use should be considered a legal non-conforming use. The Appellant's argument that the Appellant's use of the property as a vacation rental began before the vacation rental permit in the Manson Urban Growth Area was required and has continued, consistently, throughout the moratorium imposed by Chelan County and the adoption of new Chelan County code regulations regarding short term rentals. The Hearing Examiner finds that the Applicant was required to obtain a vacation rental permit, and failed to do so.
19. In the February 7, 2022 letter to the Hearing Examiner, the Appellant's attorney request that the Hearing Examiner disregard a duly enacted provision of the Chelan County code and provided legal advice to the County commissioners. The Hearing Examiner respectfully declines this invitation.
20. 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)(E)(i)(f) states that if the property is located in Manson, the short-term rental was to have been properly registered as a vacation rental with Chelan County per CCC 11.23.040 as of August 25, 2020, or that the short-term rental owner

held a vacation rental permit in the Manson UGA as of July 28, 2019 or in 2020 prior to August 25, 2020.

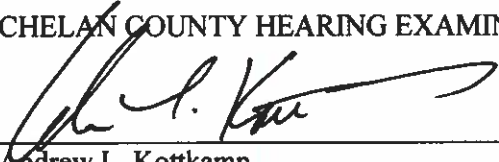
3. The property was not properly registered as a vacation rental with Chelan County per CCC 11.23.040.
4. The Appellant's ignorance of the duly enacted Chelan County regulations regarding vacation rental permits and the STR moratorium do not negate the Appellant's requirement to be in full compliance with the Chelan County code.
5. 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 December 1, 2021 is hereby **AFFIRMED** based on CCC 11.88.290 and Applicant's non-compliance with obtaining the required Vacation Rental permit in Manson to operate legally.

Dated this 14<sup>th</sup> day of February, 2022.

CHELAN COUNTY HEARING EXAMINER



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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.**