

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 22-046)	CONCLUSIONS OF LAW AND
Olsen)	DECISION ON
)	ADMINISTRATIVE APPEAL

I. FINDINGS OF FACT

1. The Applicant submitted a request for an Administrative Appeal to appeal the denial of a short-term rental permit as an existing non-conforming short-term rental.
2. The Appellants are Randal & Denise Olsen, 3642 Ridgeview Blvd., Wenatchee, WA 98801. Their agents are Clay Gatens and Matthew Hitchcock of Gatens Green Weidenback, PLLC.
3. The subject property is currently used as an unpermitted short-term rental. The legal description is CASCADE CREST DIV 2 LOT 17 0.4600 ACRES and is located in the Residential Single Family (RS) Zoning District. The Parcel No. is 23-20-16-529-170.
4. The applicant submitted an Existing Non-Conforming Short-Term Rental Application to continue use as a short-term rental. Applicant was denied the permit as the property lies in the Urban Growth Area (UGA) of Wenatchee in RS zoning where short-term rental (transient rental) use is not allowed.
5. Chelan County Code Section 10.14.020 specifically adopts all City of Wenatchee land use regulations, development standards, and land use designations as applied to the unincorporated City of Wenatchee Urban Growth Area.
6. 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.
 - 6.1 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.

- 6.1.1 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.
 - 6.1.2 All existing nonconformance claims within a UGA will be subject to joint review by the county and the affected city.
 - 6.1.3 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.
- 7. Application materials were received for an Existing Non-Conforming Short-term Rental Permit. They were incomplete and inconsistent.
 - 8. On January 13, 2022 a letter denying Existing Non-Conforming status was sent to applicant.
 - 9. On January 27, 2022, the administrative appeal (AA-22-046) was filed with Chelan County Community Development with the associated application fees.
 - 10. The property in question is located at 3642 Ridgeview Blvd., Wenatchee, WA 98801.
 - 11. 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. Wenatchee declined joint review but did provide comment.
 - 12. A comment from Wenatchee provided by Stephen Neuenschwander, states that within the Wenatchee UGA, short-term rentals are regulated as transient rentals as defined by WCC 10.08.135. Transient rentals, as a standalone use, are not allowed in any of the zoning districts within the unincorporated UGA. The only way for an STR to be legal in the UGA is for it to have been reviewed and approved as a B&B which requires an onsite owner or manager to occupy the property full time and meet other criteria.
 - 13. This is not an owner-occupied property and is not in a zone where this is allowed per WCC 10.10.020. The Appellant's past use of the property as a transient/short term rental was a prohibited use by the City of Wenatchee, and was there for a prohibited use under the Chelan County Code pursuant to CCC 10.14.020.
 - 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 was held via Zoom video conference on March 16, 2022.
16. Admitted into the record were the following:
- 16.1 Denial letter of permit application for Existing Non-Conforming Short-Term Rental dated January 13, 2022;
- 16.2 AA 22-046 Application Materials;
- 16.3 Comment by Stephen Neuenschwander, City of Wenatchee Department of Community Development;
- 16.4 January 27, 2022 appeal letter submitted by Matthew Hitchcock, agent of property owner;
- 16.5 March 15, 2022 letter from Matthew Hitchcock to the Hearing Examiner;
- 16.6 Staff Report.
17. Appearing at the hearing for the Appellant and property owner was Clay Gatens. Mr. Gatens stated that he was the agent of the Appellant and property owner and authorized to appear and speak on their behalf. Mr. Gatens provided legal argument consistent with the original appeal letter, as well as the March 15, 2022 letter from Mr. Hitchcock.
18. Providing testimony was the Appellant, Denise Olsen. Ms. Olsen testified that she is one of the property owners. Ms. Olsen testified that she had asked her real estate agent if any permits were required to operate a short-term rental. Her real estate agent said they were not. She testified that the City told her that there were no regulations regarding transient rentals and gave her permission to continue use. She stated that her bookkeeper also called the County and the City and was not told that the use was prohibited.
19. The hearsay testimony regarding the bookkeeper, while admitted into evidence, is given no weight by the Hearing Examiner.
20. Ms. Olsen's testimony regarding her conversations with the City, also have limited weight. They are not controlling in this decision. There is no written proof of these conversations that were created at the time the conversations allegedly took place. For example, there is no writing from Ms. Olsen to the City confirming what the City told her.
21. To the extent that the Appellant is requesting the Hearing Examiner to make a decision upon equitable relief such as waiver, laches, or estoppel, the Hearing Examiner does not have the authority to order equitable relief.
22. The Hearing Examiner has previously found in other appeals of administrative decisions denying short-term rental permits, the Chelan County Code was not written so as to allow continued uses that are illegal and prohibited in the particular zone. Because this short-term

rental was being illegally operated (in that it was a prohibited use in the particular zone), this interpretation applies to this Appellant's situation.

23. Uses that are not permitted outright or allowed with a conditional use permit, are prohibited uses under the Wenatchee Municipal Code, as adopted by the Chelan County Code for Urban Growth Areas.
24. The Appellant's argue that they could not obtain a permit from the City of Wenatchee or Chelan County because no permit was available. This is strong evidence that the use was prohibited under the Wenatchee Municipal Code as adopted by the Chelan County Code for Urban Growth Areas.
25. The Hearing Examiner disagrees that was the intent of the Chelan County Board of Commissioners in adopting CCC 11.88.290, to grant a short-term rental permit for a use that has been historically operated illegally, to obtain a short-term rental permit so that the use can continue in a zone where that use is prohibited and where the result of granting the STR permit not only condones the past illegal use but allows the illegal use to continue.
26. No member of the public testified.
28. 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. Applicant's permit is not allowed because the Wenatchee City Code does not permit short-term rentals in the UGA.
4. The Appellant's unpermitted short-term rental property is not eligible for a short-term rental permit pursuant to CCC 11.88, and CCC 10.14.020.
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 January 13, 2022 is hereby **AFFIRMED** because the applicant does not qualify for this status based on CCC 11.88.290 and comment from Wenatchee finding short-term rental business activity is not allowed in the RS zone in which the property is located.

Dated this 23rd day of March, 2022.

CHELAN COUNTY HEARING EXAMINER

A handwritten signature in black ink, appearing to read "Andrew L. Kottkamp", is written over a horizontal line.

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.