

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 2022-116
Sims-Kelly, LLC

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

I. FINDINGS OF FACT

1. The Applicant submitted an Administrative Appeal regarding the denial of a short-term rental permit as an existing non-conforming short-term rental.
2. The Appellant/owners are SIMMS-KELLY LLC, 9864 E Leavenworth Rd, Leavenworth, WA 98826. Their agent is Matthew S Hitchcock of Gatens Green Weidenbach PLLC.
3. The subject property is currently used as an unpermitted short-term rental. The legal description is EAST LEAVENWORTH BLOCK 6 LOT 9-10 0.5000 ACRES and is zoned Residential Low Density 12,000 (RL 12). The Parcel No. is 24-17-12-543-430.
4. The applicant submitted an Existing Non-Conforming Short-Term Rental Application on December 28, 2021 to continue use as a short-term rental via property manager, Kelly Pedferri of Leavenworth Properties. The Applicant was denied the permit as the property has a main dwelling and an ADU, the owner does not occupy either as required by CCC 11.88.200 and the property lies in the Urban Growth Area (UGA) of Leavenworth in area zoned RL 12 where short-term rentals are not allowed.
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.
6. As set forth in CCC 11.88.290(2)(C)(iv)(a), 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.

7. Pursuant to CCC 11.88.290(2)(C)(iv)(a)(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.
8. Pursuant to CCC 11.88.290(2)(C)(iv)(b), all existing nonconformance claims within a UGA will be subject to joint review by the county and the affected city.
9. Pursuant to CCC 11.88.290(2)(C)(iv)(c), 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.
10. Prior unpermitted, illegal use of the property is not proof of legal operation.
11. On February 22, 2022, application materials were scanned and sent to Lilith Vespier, AICP in Leavenworth for joint review.
12. On February 23, 2022, Chelan County Community Development received joint review response from Lilith Vespier, AICP concurring with County findings listed as the property being in RL 12 zone where STRs are not allowed, and having a main dwelling and ADU of which the owner lives in neither as permanent residence per CCC 11.88.200. Additionally listed is that the current owner purchased in 2011. As the UGA was formed in 1996, this use has never been an allowed activity since purchased.
13. On February 23, 2022 a letter was sent to applicant notifying of the denial of Existing Non-Conforming Status noting that short-term rentals are not allowed in the zone in which rental is located.
14. On March 8, 2022, the administrative appeal (AA 22-116) was filed with Chelan County Community Development with the associated application fees.
15. Chelan County Code Section 14.12.010: Administrative appeals:
 - (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.
 - (2) The notice of appeal shall contain a concise statement identifying:
 - (A) 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..

16. After due legal notice, an open record public hearing was held via Zoom video conference on April 20, 2022.
17. Admitted into the record were the following:
 - 17.1 AA 21-568 Application Materials;
 - 17.2 Denial letter of permit application for Existing Non-Conforming Short-Term Rental dated February 23, 2022; and all documents relied upon by the County in issuance of this denial;
 - 17.3 Email from Lilith Vespier, AICP with her determination;
 - 17.4 Noticing Documents;
 - 17.5 April 14, 2022 letter from Mr. Gatens;
 - 17.6 April 18, 2022 declaration from Sean Lynn;
 - 17.7 April 18, 2022 declaration of Daniel Eby, with exhibits;
 - 17.8 April 18, 2022 declaration from Camiekae Lynch; and
 - 17.9 Staff Report.
18. The declaration of Sean Lynn indicates that he is the owner of a vacation rental company and served on the short term rental task force. His opinion set forth in that declaration does not change the Hearing Examiner's interpretation of the Chelan County Code.
19. The declaration of Daniel Eby merely establishes that he and his business partner had been using the property as an unpermitted short term rental during their period of ownership.
20. The declaration of Camiekae Lynch establishes that she is one of the owners of a short term rental company in Leavenworth and that they had provided management services to the prior owner of the Appellant's property as a short term rental. This declaration confirms that the subject property had been illegally operating a short term rental within the Leavenworth Urban Growth Area.
21. Appearing at the hearing was Clay Gatens. Mr. Gatens stated he was the agent of the Applicant and property owner and was authorized to appear on their behalf. Mr. Gatens provided legal argument consistent with the appeal materials.
22. The Applicant's property is not entitled a short term rental permit based upon use as a bed and breakfast because one of the residential units on the property is not occupied by the property owner as their primary residence. The fact that there are two possible short term rental facilities on this property does not alter the Hearing Examiner's analysis. Whether there is one illegal short term rental being operated on the property or two, still renders the property to be in non-compliance, and therefore, is not a legal non-conforming use.
23. Pursuant to CCC 11.88.290(2)(C)(4)(1), if the short term rental is operated in violation of existing County-adopted City codes for that urban growth area, the rental must immediately cease all operations. The Applicant has failed to comply with this requirement.
24. The property does not satisfy the requirements of an accessory dwelling unit pursuant to CCC 11.88.200, as well as those requirements of the Leavenworth Municipal Code.

25. The property does not satisfy the requirements of CCC 11.88.210 regarding a bed and breakfast. The property does not satisfy the requirements of a bed and breakfast set forth within the Leavenworth Municipal Code.
26. 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. Pursuant to Chelan County Code Section 11.88.290 (2)(C)(iv), The board of Chelan County commissioners adopted 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.
3. Per Chelan County Code 11.88.290 (2)(C)(iv)(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.
4. Chelan County Code 11.88.200 states: The property owner (which shall include title holders and contract purchasers) shall occupy either the primary unit or the accessory unit as their permanent residence.
5. The property is in RL 12 zone where STRs are not allowed, and having a main dwelling and ADU, neither of which the owner lives in as their permanent residence per CCC 11.88.200. The current owner purchased the property in 2011. As the UGA was formed in 1996, a short term rental has never been an allowed use since purchased.
6. The Applicant's position is that the Chelan County Code allows illegal, non-conforming uses to be granted a short term rental permit under the current Chelan County Code.
7. The Hearing Examiner respectfully rejects this interpretation of the Chelan County Code. The Appellant's interpretation would lead to an absurd result, that being that persons using their property without permits, and within a zone in which the use is not even allowed, would somehow be allowed to obtain a short term rental permit under the new County code. If this interpretation were to be adopted, then any short term rental pre-existing the Chelan County code adoption of CCC 11.88.290 would qualify for a short term rental permit.
8. The Hearing Examiner cannot find that it was the intent of the Chelan County Board of Commissioners to allow a use that had been operating illegally, in a zone where such use was prohibited, to obtain a short term rental permit so that the property can continue in the zone where that use is prohibited.

9. 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 be **AFFIRMED** in all respects.

Dated this 29th day of April, 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.