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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**

<b>IN THE MATTER OF:</b>	)	<b>FINDINGS OF FACT,</b>
AA 2022-128	)	<b>CONCLUSIONS OF LAW AND</b>
H4IT Properties, LLC	)	<b>DECISION ON</b>
	)	<b>ADMINISTRATIVE APPEAL</b>

**I. FINDINGS OF FACT**

1. The Applicant submitted an Administrative Appeal to appeal the denial of a short-term rental permit as an existing non-conforming short-term rental.
2. The Appellant/owners are H4IT PROPERTIES LLC, 23336 Lake Wenatchee Hwy., Lake Wenatchee, WA 98826. Their agent is Ben Kinney.
3. The subject property was most recently used by the previous owner as an unpermitted "lodging facility". The legal description is T 27N R 16EWM S 14 NENW 2.2200 ACRES in the RURAL RESIDENTIAL/RESOURCE 2.5 (RR 2.5) Zoning District. The Parcel No. is 27-16-14-210-100.
4. The applicant submitted an Existing Non-Conforming Short-Term Rental Application on December 31, 2021 to operate an established "lodging facility" purchased December 30, 2021. Applicant was denied the permit as the property's previous owners had not operated legally and had been told the property would not qualify for an Existing Non-Conforming Short-Term Rental permit as they were not operating a legally established rental.
5. Pursuant to Chelan County Code Section 11.88.290 (2)(E)(i) and (i)(d), (i)A short-term rental use shall be considered lawfully established and existing and allowed to continue to operate as a legally nonconforming use only if the owner proves in part the following:  
...(i)(d) That the short-term rental operator has obtained the required land use permits within the time requirements in subsection (4) of this section. The previous owners were not legally operating because it was not legal to operate a "lodging facility" without a CUP.
6. The previous owners had illegally operated the dwelling on this property as a "lodging facility" with no Conditional Use Permit. Zoning regulations were in place at this time for the RR 2.5 zoning district which prohibited the dwelling on this property to be used as a "lodging facility" without a Conditional Use Permit. They had also been told they did not qualify for an Existing Non-Conforming Short-Term Rental permit.

7. The subject property was subject to code violation enforcement action prior to the current owner's purchase of the property. This code violation against the property was resolved by a settlement agreement signed July 28, 2021 between the prior owners and Chelan County. The resolution of the code violation is not evidence that the Appellant is entitled to receive a short-term rental permit.
8. This settlement agreement sets forth in Recital D that the prior owners were admitting that the property was being used in a manner not authorized by the Chelan County Code and therefore, was in violation of the Chelan County Code and that this use was causing a nuisance as prohibited by the Chelan County Code.
9. Under the "Agreement" portion of the settlement agreement, the prior owner agrees that they will not operate the property as a short-term rental, lodging facility, bed and breakfast, or place of public and private assembly without first obtaining all required permits. Furthermore, paragraph 4 of the settlement agreement requires the prior owner to provide notice to any potential purchasers of the property, that the property may not be used as a short-term rental, lodging facility, bed and breakfast, or place of public and private assembly, without first obtaining any and all required permits "which may or may not be granted by the County."
10. The current owners chose to purchase this property while a moratorium was in effect prohibiting the issuance of new short-term rental permits.
11. It is undisputed that the property was not being used as a short-term rental at the time the current owners purchased the property.
12. H4IT Properties LLC became the owner of record December 30, 2021.
13. On December 31, 2021, materials were received for an Existing Non-Conforming Short-term Rental Permit from new owner, H4IT Properties LLC using the income and taxes paid information from the previous owners to certify that the rental qualified for the Existing Non-Conforming status.
14. Pursuant to CCC 14.98.1300, "Nonconforming" means a lot, use, building or structure which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails by reason of such adoption, revision or amendment to conform to the current requirements of the zoning district.
15. Monies earned and taxes paid for an illegal operation does not automatically qualify a new owner as legally operating.
16. Per Chelan County Code 11.04.020 District Use Chart, a Tier 2 lodging facility is allowed in the RR 2.5 zone as an Existing Non-Conforming that can prove they were legally operating between July 28, 2019 and August 25, 2020 and had a permit or if it qualifies as a New Short-Term Rental, meets the minimum parcel size of 2.5 acres and had a permit.
17. Chelan County Code Section 11.88.290 (2)(E)(i) and (i)(d), (i) states: A short-term rental use shall be considered lawfully established and existing and allowed to continue to operate as a legally nonconforming use only if the owner proves all the following: ... (i)(d) That the short-term rental operator has obtained the required land use permits within the time requirements

in subsection (4) of this section. The previous owners operated a “lodging facility” that was not legally established therefore the current owner cannot qualify for Existing Non-Conforming status.

18. On March 1, 2022, a letter was sent to the applicant notifying them of the denial of Existing Non-Conforming Status noting that the property has previous code violations which were received on or before August 25, 2020 thus rendering it unable to be considered to have been operating as legally non-conforming per Chelan County Code 11.88.290 (2)(E)(ii)(e), Any short-term rental property that has an unresolved written notice of violation for short-term rental use, received on or before August 25, 2020, or that operated as a short-term rental contrary to the August 25, 2020, Chelan County short-term rental moratorium Resolution 2020-86, or subsequent rental moratorium Resolutions 2020-104 and 2021-20, or upon permit application is found to have an existing zoning, land use, or building permit violation, shall not be considered a legally nonconforming use as follows:
  - 18.1 Moratorium Violation. Short-term rental properties in violation of the moratoria resolutions in this subsection (2)(E)(ii)(e) are not subject to a grace period for continued operation and must immediately cease all short-term rental uses of the property on the effective date of adoption of this code.
  - 18.2 Unresolved Written Notices of Violation or Other Violations. An existing short-term rental property found to have existing zoning, land use, or building permit violation must resolve violations according to the time periods of subsection (4)(A)(ii) of this section.
  - 18.3 Under either case in subsection (2)(E)(ii)(e)(1) or (2) of this section, the short-term rental property is subject to all provisions of Title 16; provided, that the appeal provisions of Chapter 14.12 and Title 16 apply.
19. On March 8, 2022 an appeal request and applicable fees were received from Ben Kinney on behalf of H4IT Properties LLC.
20. 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..

21. After due legal notice, an open record public hearing was held via Zoom video conference on May 4, 2022.
22. Admitted into the record were the following:
  - 22.1 AA 22-128 Application Materials;
  - 22.2 Denial letter of permit application for Existing Non-Conforming Short-Term Rental dated March 1, 2022;
  - 22.3 Staff Report;
  - 22.4 June 10, 2020 SEPA checklist prepared by Chelan County;
  - 22.5 STR location maps dated March, May and August of 2020, prepared by BERK.
23. Appearing on behalf of the Applicant was Julie Norton. Ms. Norton stated that she was the attorney for the Appellant and property owner. She did not provide sworn testimony. The position of the Appellant is as set forth in the appeal materials. Ms. Norton stated that the settlement agreement cured all the prior code violations. She argued that because the settlement agreement was made during the moratorium when no person could obtain permits, that therefore, her clients are entitled to a permit. The Hearing Examiner was not convinced by the Appellant's argument in this respect.
24. The Hearing Examiner finds that the requirements for a short-term rental permit as currently set forth under the Chelan County Code have not been met.
25. The settlement agreement between the prior owners and the County cannot be construed as binding the County to grant a short-term rental permit upon the application by a new owner after the moratorium has been lifted.
26. Staff indicated that although not part of the denial of the short-term rental permit, if a conditional use permit had been requested, that it would have been staff's position that the conditional use permit would not be authorized by the Chelan County Code because the lodging facility would not meet lot size requirements, and due to the number of bedrooms in the structure, it would be more correctly be characterized as a lodging facility. However, as stated, this was not part of the decision making process by the County in denying the short-term rental permit application.
27. 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)(E)(i) and (i)(d), (i)A short-term rental use shall be considered lawfully established and existing and allowed to continue to operate as a legally nonconforming use only if the owner proves all the following: ... (i)(d) That the short-term rental operator has obtained the required land use permits within the time requirements in subsection (4) of this section. The previous owners were not legally operating because it was not legal to operate a "lodging facility" without a CUP. The previous owners operated a "lodging facility" that was not legally established therefore the current owner cannot qualify for Existing Non-Conforming status.

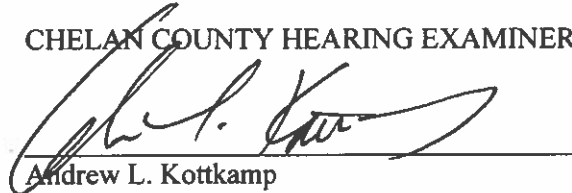
3. Per Chelan County Code 11.04.020 District Use Chart, a Tier 2 lodging facility is allowed in the RR 2.5 zone as an Existing Non-Conforming that can prove they were legally operating between July 28, 2019 and August 25, 2020 and has a permit or if it qualifies as a New Short-Term Rental, meets the minimum parcel size of 2.5 acres, and has a permit.
4. This applicant does not qualify as Existing Non-Conforming and the parcel does not meet the minimum size of 2.5 acres so would also not qualify for a New Short-Term Rental permit.
5. To the extent that the Appellant is arguing that the prior, unpermitted and illegal use of the property as a lodging facility justifies the granting of a short-term rental permit, the Hearing Examiner rejects this argument as not supported by 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 be **AFFIRMED** based on the applicant not qualifying for this status based on CCC 11.88.290 and that one cannot prove legal operation with records from an operation that was not legal.

Dated this 11th day of May, 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.**