

**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 2022-300

Icicle Bunk, LLC

(Applicant/Appellant)

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

**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 Applicant and Appellant/owner is Icicle/Bunk LLC. Its agent is Gatens, Green & Weidenbach, PLLC.
3. The subject property is currently used as a provisionally permitted short-term rental pending full review. The site address is 12 NORLING LN, LEAVENWORTH, WA 98826. The Legal Description is T 24N R 17EWM S 14 SENE 1.1300 ACRES. The Parcel No. is 24-17-14-140-350. The zoning district is RW.
4. The applicant submitted an Existing Non-Conforming Short-Term Rental Application on December 29, 2021 to continue use as a short-term rental (STR). The Applicant was issued a provisional permit pending full review. The final STR permit was denied based on the parcel having a main dwelling and an ADU and the owners not living onsite per Chelan County Code (CCC) 11.88.200, and only being able to operate one short-term rental per parcel per CCC 11.88.290.
5. On December 29, 2021, materials were received for an Existing Non-Conforming Short-term Rental Permit and Provisional Permit issued.
6. On July 13, 2022 a letter denying final permit for Existing Non-Conforming status was sent to Applicant.
7. On July 26, 2022, the administrative appeal (AA-22-300) was filed with Chelan County Community Development with the associated application fees.
8. The notice of public hearing was provided on August 26, 2022.
9. CCC 11.88.290 (4)(D)(ii) states: Application for or issuance of any provisional short-term rental permit does not guarantee future issuance of a short-term rental administrative land use

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permit under subsection (4) of this section. The provisional permit is intended to be temporary and is only in effect while the department reviews all permits applications for compliance with all Chelan County regulations, including this chapter, for the 2021 and 2022 permit years before issuance or denial of issuance of a short-term rental administrative land use permit. This single (4)(D)(ii) provision ceases to exist on December 31, 2022.

10. This parcel holds two dwellings, a larger main dwelling referred to as Icicle Haus in online listings, and a smaller dwelling referred to as Bunk Haus in online listings.
11. CCC 11.88.200(5) in reference to ADUs 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. This property is owned by Icicle/Bunk LLC with Robert Wilbur as the Registered Agent. Further, Robert L Wilbur and Brenda F Wilbur are then listed as Governors. None of the owners/agents/governors of the LLC physically live on the property. The address for the Wilburs is listed on their application as being in Coupeville, WA. The LLC is listed as having the 12 Norling Lane, Leavenworth, WA address.
12. CCC 11.88.290 (3)(A)(ii) states: A short-term rental owner may operate only one short-term rental per parcel as designated on their permit application form, which may be in either the primary dwelling or the accessory dwelling unit but not both. The owners have been renting both dwellings.
13. 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.
14. After due legal notice, an open record public hearing was held via Zoom video conference on September 7, 2022.
15. Admitted into the record were the following:
  - 15.1 AA 22-300 Application Materials;
  - 15.2 Denial letter of permit application for Existing Non-Conforming Short-Term Rental dated July 13, 2022;
  - 15.3 Staff Report;
  - 15.4 Appeal materials from Applicant;
  - 15.5 Administrative Appeal Brief submitted by Appellants' attorney dated September 2, 2022;
  - 15.6 Declaration of Clay Gatens, dated September 2, 2022 with exhibits A and B;
  - 15.7 Declaration of Kenneth Hursh, dated September 1, 2022;



- 15.8 Declaration of Robert Wilbur, dated September 1, 2022 with exhibits A, B, C, D, E, F, and G.
16. Appearing at the hearing on behalf of the Appellant was Clay Gatens. Mr. Gatens stated that he is the attorney for the Applicant/Appellant and property owner. Mr. Gatens was not sworn in as a witness. Mr. Gatens presented argument consistent with his written materials.
  17. Mr. Gatens argued that the use of the Appellant's property is a legal non-conforming use under Washington State common law, as well as Chelan County Code 11.97. He argued that the accessory dwelling unit uses for the two units on the property was established before 2007 and that they are exempt from the requirements under CCC 11.88.200(5).
  18. The Hearing Examiner finds that while the Appellants' argument in this respect may have been correct prior to the adoption of CCC 11.88.290, the Hearing Examiner finds that the provisions of CCC 11.88.290 control the Appellants' request for a short term rental permit.
  19. The Hearing Examiner finds that two accessory dwelling units/short term rental are not allowed and that for a accessory dwelling unit to be used as a short term rental, not only must the applicant comply with all of the requirements of CCC 11.88.290, but they must also comply with the requirements of CCC 11.88.200(5).
  20. Additionally, the Appellant makes the argument that the Applicant's use of the property as a short term rental is not subject to the requirements of CCC 11.88.290(3)(A)(ii). This provision prohibits more than one short term rental on a single parcel. The Hearing Examiner finds that this provision does apply to the Applicant's short term rental permit application and their property.
  21. The Chelan County Code is very clear that multiple short term rental units are not allowed on a single parcel. Because the Applicant is requesting more than one short term rental unit on the same parcel, this application does not comply with CCC 11.88.290. The application was properly denied.
  22. The Hearing Examiner notes that exhibit A in the Declaration of Robert Wilbur, while being a business license issued by the State of Washington, is a business license issued to Robert L. Wilbur and Brenda T. Wilbur and not Icicle/Bunk, LLC.
  23. The records of the Washington State Secretary of State, of which the Hearing Examiner can and does take judicial notice, lists a separate legal entity of Icicle/Bunk, LLC, UBI No. 604 220 159. The nature of this business is listed as lodging, real estate/vacation rental. This record indicates that the Washington LLC was formed on January 29, 2018. Therefore, the Applicant/Appellant could not have owned this property before this date of formation.
  24. The Chelan County denial of permit application dated July 13, 2022 was issued to Icicle/Bunk, LLC.
  25. The Applicant/Appellant did not dispute that they do not reside at 12 Norling Lane, Leavenworth, WA, and that they are operating two short term rentals on the same parcel.
  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. CCC 11.88.290 (4)(D)(ii) states: Application for or issuance of any provisional short-term rental permit does not guarantee future issuance of a short-term rental administrative land use

permit under subsection (4) of this section. The provisional permit is intended to be temporary and is only in effect while the department reviews all permits applications for compliance with all Chelan County regulations, including this chapter, for the 2021 and 2022 permit years before issuance or denial of issuance of a short-term rental administrative land use permit. This single (4)(D)(ii) provision ceases to exist on December 31, 2022.

3. CCC 11.88.200(5) in reference to ADUs 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.
4. CCC 11.88.290 (3)(A)(ii) states: A short-term rental owner may operate only one short-term rental per parcel as designated on their permit application form, which may be in either the primary dwelling or the accessory dwelling unit but not both.
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 be **AFFIRMED** based on the Applicants not occupying the unit as their permanent residence and the Applicant renting more than one STR per parcel.

Dated this 14 day of September, 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.**