

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 2022-406)	CONCLUSIONS OF LAW AND
Icicle/Bunk, LLC)	DECISION ON
)	ADMINISTRATIVE APPEAL

I. FINDINGS OF FACT

1. The Appellant submitted an application for a short-term rental permit as authorized by the Chelan County Code, CCC 11.88.290.
2. Pursuant to 11.88.290(4)(D)(ii) a provisional permit allowing operation of a short-term rental was issued. This section states that a provisional permit is only in effect while the department reviews the permit application. This code provision allowing provisional permits expires December 31, 2022. On July 13, 2022, Chelan County issued its denial of the Appellant's application for a short-term rental permit.
3. Therefore, the provisional permit necessary expired as of the date of this denial.
4. The Appellant/owner is Icicle/Bunk LLC, c/o Robert and Brenda Wilbur. Its agent is Clay Gatens of Gatens, Green & Weidenbach, PLLC.
5. The Appellant appealed the County's denial of their permit application.
6. This appeal was given File No. AA22-300. The Hearing Examiner affirmed the County's denial of the permit application by decision dated September 14, 2022. The Hearing Examiner understands that this decision has been appealed.
7. Despite not having any permit whatsoever, including a provisional permit, to operate a short-term rental in Chelan County, the Appellant herein continued to rent their property as a short-term rental, in direct violation of CCC 11.88.290.
8. On September 27, 2022, Chelan County issued Notice and Order of Violation under File CE 22-0056. This Notice and Order was served on Appellant on September 27, 2022.
9. On October 7, 2022, (the Appellant's lawyer's appeal letter sets forth 2021), Appellant submitted an Administrative Appeal to appeal the Notice and Order to Abate Violations CE 22-0056.

10. The Hearing Examiner understands that the Appellant continues to operate this short-term rental without any permit, provisional or otherwise.
11. The Appellant argues that the “stay” provisions on CCC 16.12.020(3) operates to stay the enforcement of CE 22-0056 during the pendency of the appeal, and allows them to continue operating a STR without any required permits.
12. Chelan County Code Title 16 is entitled “enforcement and violations.”
13. CCC 16.12.020(3) states, in relevant part, “Enforcement of any Notice and Order (*emphasis added*) of the Administrator shall be stayed as to the appealing party during the pendency of any appeal under this Title . . .”.
14. Pursuant to the terms of CCC 16.12.020(3) this provision only applies to a stay of the corrective actions and penalties as set forth in the Notice and Order of Violation.
15. Appellants argue that this code provision operates as a stay that prevents Chelan County from taking any action to stop the Appellants from operating their short-term rental without any permit whatsoever. This argument fails.
16. CCC 16.12.020(3) is not a provision that somehow provides that the Appellants may legally operate a short-term rental without any authorization under the Chelan County Code, simply because there is an appeal of a Notice and Order under CCC 16.12.020(3).
17. The subject property has a history as a rental, and is currently used as short-term rental, but does not currently hold a permit to do so. 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.
18. Upon follow-up of a complaint on September 27, 2022, it was found the Applicant was still operating the rentals without permits.
19. Code Enforcement served the Appellant with the Notice and Order to cease operation, cease advertising, and notify Code Enforcement these things has been completed on or before October 12, 2022. The Appellant refused to comply.
20. Per CCC 11.88.290 (5)-Enforcement:
 - 20.1 (A) Within Chelan County jurisdiction, a short-term rental must not operate without an approved and valid short-term rental permit. Evidence of operation includes, but is not limited to, advertising, online calendars showing availability, guest testimony, online reviews, rental agreements, or receipts.
 - 20.2 (B) Enforcement of this section will be in accordance with Title [16](#).
21. 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.

22. After due legal notice, an open record public hearing was held via Zoom video conference on December 7, 2022.
23. Admitted into the record were the following exhibits:
 - 23.1 AA 22-406 Application Materials;
 - 23.2 Notice and Order to Abate Violations dated September 27, 2022;
 - 23.3 Staff Report;
 - 23.4 Advertisement for Appellant's property on "Bunk Haus";
 - 23.5 October 7, 2021 (sic) Notice of Appeal filed by Appellant's attorney;
 - 23.6 November 29, 2022 Complaint form;
 - 23.7 Complaint printout with details;
 - 23.8 September 27, 2022 Notice and Order to Abate Violations;
 - 23.9 December 6, 2022 letter from Clay Gatens to the Hearing Examiner;
 - 23.10 December 7, 2022 supplemental declaration of Clay Gatens with attachments;
 - 23.11 Chelan County noticing documents.
24. 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.
25. CCC 16.12.030(1) sets forth what is contained within a final order of the Hearing Examiner.
26. The Hearing Examiner specifically finds that violation of the Chelan County Code 11.88.290, has occurred. The Appellants are operating a short-term rental without any permit, provisional or otherwise, issued by Chelan County.
27. Simply appealing a Hearing Examiner's decision or Notice and Order to Abate Violations does not provide permission or authorization for the Appellant to operate their short-term rental facility.
28. The provisional permit granted to the Appellant pursuant to CCC 11.88.290(4)(D)(ii) expired by the terms of this Chelan County Code on the date of the County's denial of the permit application. It is as of the date of this denial that the County concluded its review of the Applicant's permit application.
29. 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. Simply appealing a Hearing Examiner's decision or Notice and Order to Abate Violations does not provide permission or authorization for the Appellant to operate their short-term rental facility.
4. The provisional permit granted to the Appellant pursuant to CCC 11.88.290(4)(D)(ii) expired by the terms of this Chelan County Code on the date of the County's denial of the permit application. It is as of the date of this denial that the County concluded its review of the Applicant's permit application.
5. The Appellant is required by Chelan County Code to have a valid permit during times of operation.
6. The Appellant is operating a STR in violation of the Chelan County Code.
7. CCC 16.12.020 does not allow an appellant of a Notice and Order to operate a short-term rental.
8. 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 violation be **UPHELD** based on the Applicants not having an STR permit and continuing to operate as a STR in direct violation of the Short Term Rental Code, 11.88.290.

Dated this 19 day of December, 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.