

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 23-001)	CONCLUSIONS OF LAW AND
JOHN W LINE & SCOTT SWIONTEK)	DECISION ON
)	ADMINISTRATIVE APPEAL

I. FINDINGS OF FACT

1. This matter is an Administrative Appeal of the denial of a renewal extension request for a short-term rental.
2. The Appellant and property owners are John W. Line & Scott Swiontek.
3. The property address is 149 Nevadelle Ln, Leavenworth, WA 98826. The parcel number is 25-18-19-340-200, and the legal description is T 25N R 18EWM S 19 LOT 1 SP 2017-004 LOT B BLA 2016-226 LOT D BLA 2001-054 LOT D SP 696 1.9600 ACRES. The zoning district is Rural Residential 5 (RR5).
4. The subject property was permitted for 2021-2022 as a short term rental.
5. As provided by the Chelan County Code, on August 30, 2022, Kirsten Ryles of the Chelan County Department of Community Development mailed the Short Term Rental Notice of Renewal (Exhibit B) to the property owners at the address of 1826 East Howell, Seattle, Washington. At this time, Mr. Line lived at this address and Mr. Swiontek stated in a November 17, 2022 email that this is the correct address for mail and communications regarding the Nevadelle Lane property.
6. Although co-owner, Scott Swiontek, moved out of the residence on or before March 28, 2022, this was still the address for co-owner John Line, and was the only address on file with the Chelan County Department of Community Development associated with the short-term rental located 149 Nevadelle Lane, Leavenworth.
7. According to a “final divorce order” submitted into the record by the Appellants, the Appellants John Line and Scott Swiontek were divorced on May 2, 2022.
8. The applicant submitted a Short-Term Rental Renewal Application dated November 16, 2022 to continue use as a short-term rental. The Applicant was denied the permit renewal as they did not meet the renewal application deadline of October 31, 2022. On December 22, 2022 their renewal extension request was denied.

9. Per Chelan County Code 11.88.290 (4)(B): “At their discretion the director may, upon showing of a hardship reason for applicant's delay, accept permit renewal applications received after October 31st, but before December 31st, of the same year and may assess double the normal fees for permitting, provided the short-term rental may not continue operation past December 31st until the permit application is approved and a permit issued.”
10. The initial extension request did not reflect a hardship for review and they were given an opportunity to submit information regarding the alleged hardship. In fact, Mr. Swiontek, in an undated letter to the County, called their failure to timely submit a renewal application as an “oversight.” The Applicant was notified that their renewal extension request did not include a hardship for consideration as required per CCC 11.88.290(4)(B)(iv)(a). An initial statement of hardship was submitted via email on November 17, 2022. The Applicant amended that request on November 21, 2022.
11. The Interim Director denied the request on December 22, 2022. The Director was granted discretion as to whether or not to approve a hardship request. The Director exercised her discretion and made the determination to deny the request.
12. On December 27, 2022, an appeal request was received from the Applicant (AA 23-001) with the associated fees being paid on January 3, 2023.
13. To address the specific points made by the applicants in their appeal request:
 - 13.1. The applicant states they showed clear intent to renew based on completing their fire inspection through the Fire Marshals' Office. Staff stated that the Fire Marshal is not part of Community Development and operates separately. The completion of the inspection would have only been reviewed upon review of a timely received renewal application as part of the review process. The Hearing Examiner finds that the Appellants did not intentionally fail to renew their short-term rental. However, the Appellants failed to comply with the clear time limits set forth within Chelan County Code 11.88.290(4)(B)(i-ii).
 - 13.2. Appellants’ claim that they did not receive the “Notice to Renew” from Chelan County is not a hardship because the time limits are clearly set forth within the Code.
 - 13.3. The Appellant’s not being aware of CCC 11.88.290(4)(B) is not a hardship as contemplated under the Chelan County Code. The Appellants are presumed to know the law.
 - 13.4. In the request for extension due to hardship, Mr. Swiontek submitted a letter referencing his divorce as a hardship.
 - 13.5. The Hearing Examiner finds that the divorce between Mr. Swiontek and Mr. Line was finalized on May 2, 2022, is not a hardship as contemplated by the Chelan County Code to justify an extension for their short-term rental renewal application. Approximately five months passed from the time the divorce was final and the due date for the renewal application.
 - 13.6. Additionally, Mr. Swiontek discussed his personal situation related to his divorce, moving to California, and seeking treatment from a mental health counselor. The Hearing Examiner finds that these particular claimed justifications do not apply to co-owner John Line. There is no allegation that Mr. Line was suffering from mental health issues that prohibited him from understanding the time limits for a short-term

rental renewal application. Additionally, the letter from Mr. Swiontek, which is admitted as Exhibit A to the record, specifically states: "It should be noted I still use 1826 Howell address for everything cabin-related and the address is valid". Again, Mr. Swiontek initially described the failure to timely submit the renewal application as an oversight.

- 13.7 Mr. Swiontek, in Exhibit A, also states the financial hardship that will occur if they are not able to rent their property as a short-term rental. The Hearing Examiner finds that the Chelan County Code related to the hardship exemption is not satisfied by this type of after the fact financial hardship. There is no indication that the hardship includes financial loss that would result in a bankruptcy or other undue hardship on either of the Appellants. There is no claim of hardship in submitting a renewal application. In fact, Appellants stated they were able to submit the renewal application almost immediately after they realized it was late.
- 13.8 In the supplemental letter to the Hearing Examiner dated January 26, 2023, the Appellant, Scott Swiontek, raised the following additional occasions for their hardship:
 - 13.8.1 Concerns regarding the legitimacy of the affidavit of mailing. Mr. Swiontek claims that they did not receive the mailing from Chelan County. The Hearing Examiner finds that this mailing was sent to the correct address. Also, while Civil Rules do not expressly apply to this situation, the Hearing Examiner does take note that CR 5(b)(2)(A) provides that in the civil litigation context, that service by mail is deemed complete the third day after the papers are placed in the mail. The Hearing Examiner further finds it interesting that the Appellants' state they lost the post card and therefore did not know of the renewal application deadlines. Nonetheless, they did submit a renewal application in November 2022.
- 13.9 The Hearing Examiner finds that the preponderance of the evidence, including circumstantial evidence, demonstrates that the Appellants mistakenly missed the deadline for filing their renewal for their short-term rental renewal application. Mr. Swiontek's divorce and his mental health issues did not cause the Appellant to fail to meet the renewal application deadline.
- 13.10 The Hearing Examiner finds that this Appellant has not demonstrated a hardship.
- 13.11 The renewal notice was sent to the correct address on file with Chelan County Community Development to John Line, co-owner of the subject short-term rental. It is important that Mr. Line does not claim any hardship in his failure to timely submit the renewal application, other than claiming the notice was not received.
- 13.12 The renewal application deadline of October 31 is clearly stated in CCC 11.98.280(4)(B).
- 13.13 The Hearing Examiner has reviewed law in Washington regarding hardship and how it is defined. The Hearing Examiner recognizes that "hardship" is not defined by the Chelan County Code. The Hearing Examiner further recognizes that none of these references specifically apply in this matter. The Hearing Examiner sets forth these definitions of hardship simply as a demonstration of the degree of the hardship that must be demonstrated in these particular legal situations.

- 13.13.1 WAC 82-56-020 regarding an employer approving unpaid leave, is not required if there is undue hardship and undue hardship means an action requiring significant difficulty or expense.
- 13.13.2 Washington Pattern Instruction (WPI) 330-36, regarding a jury instruction of undue hardship in employment discrimination cases states that “an accommodation is an undue hardship if the cost or difficulty is unreasonable.”
- 13.13.3 RCW 49.76.115(3) states, in part, “...undue hardship means an action requiring significant difficulty or expense.”
- 13.13.4 RCW 43.10.005(1)(d) provides that undue hardship means action requiring significant difficulty or expense.
- 13.13.5 Admission to Practice Rule 11(i)(5), provides that mandatory continuing legal education waivers of MCLE requirements is allowed if undue hardship, such as serious illness, extreme financial hardship, disability, or military service that effect a lawyer’s ability to meet the education or reporting requirements.
- 13.13.6 WAC 162-22-075 provides that “an accommodation will be considered an undue hardship if the cost or the difficulty is unreasonable.”
- 13.13.7 WAC 458.57.135 provides that undue hardship means more than inconvenience.
- 13.14 The postcard for this rental was sent to 1826 E Howell St., Seattle, WA 98122, which was the address provided on the short term rental application. The Appellant confirmed that this was the correct address for all mailings related to the Nevadelle Lane property.
- 13.15 Review of the perceived hardships was duly performed by the Interim Director. The Code does not state each perceived hardship must be addressed in departmental response.
- 13.16 Whether or not the applicant finds the timeline onerous, the timelines and processes are set by the Code. Community Development followed the Code and a decision was made holding all applicants to the same standard.
- 14. After due legal notice, an open record public hearing was held via Zoom video conference on December 7, 2022.
- 15. Admitted into the record were the following:
 - 15.1 Ex. A: Denial of permit application renewal extension for Short-Term Rental dated December 22, 2022;
 - 15.2 Ex. B: Sample of postcard that was mailed to permit holders;
 - 15.3 Ex. C: AA 23-001 Application Materials.
 - 15.4 Ex. D: Staff Report.
- 16. Appearing at the hearing on behalf of the Appellants were Scott Swirotek and John Line. Mr. Swirotek and Mr. Line testified consistent with their written materials.
- 17. No members of the public testified at the hearing.

18. Near the end of the hearing, staff indicated that they would submit a Declaration of Mailing into the record by 5:00 p.m. on the day of the hearing. The Hearing Examiner granted this request and kept the record open until 5:00 p.m. Friday, January 27, 2023 for the Appellant to submit whatever rebuttal materials they wished to submit.
19. Those rebuttal materials were sent January 26, 2023 and included an email from Mr. Swiontek and Mr. Line, as well as a change of address form for Mr. Swiontek dated March 28, 2022, and the aforementioned final divorce order dated May 2, 2022. Those items were admitted into the record.
20. 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 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.
3. The Appellants failed to demonstrate hardship to justify the untimely submission of a short-term rental renewal application.
4. 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 is **AFFIRMED**.

Dated this 31st day of January, 2023.

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.