

**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 2023-007	)	<b>CONCLUSIONS OF LAW AND</b>
Hyatt Homes, LLC	)	<b>DECISION ON</b>
	)	<b>ADMINISTRATIVE APPEAL</b>

**I. FINDINGS OF FACT**

1. A request for an Administrative Appeal was submitted to appeal the denial of a renewal extension request for a short-term rental.
2. The Appellant is HYATT HOMES, LLC (Tracy & Lauren Hyatt), and their agent is Julie Norton, Ogden Murphy Wallace, PLLC.
3. The project location is 105 Wall St, Manson, WA 98831. The parcel number is 282231691010. The zoning district is Urban Residential 1 (UR1).
4. The subject property was permitted for 2021/2022 as a short term rental. The renewal application was not received timely.
5. The Applicant had been operating a short term rental on a provisional permit and had been sent notice of deficiencies that were not resolved. The Applicant submitted a Short-Term Rental Renewal Application dated December 16, 2022 to continue use as a short-term rental which was after the renewal deadline of October 31, 2022. The Applicant was denied the permit renewal as they did not meet the renewal application deadline and their renewal extension request was denied. The Applicant noted at time of submission they were sorry they were late and had thought the deadline was 12/31/22 like it was in 2021.
6. On December 13 and 16, 2022, the Applicant emailed requesting to change their contact email to TCHyatt@johnlscott.com. This request was completed. The email also stated they knew it was their responsibility to keep up on timelines, wanted to be compliant now, asked the County to submit a hardship for them, and that they were sorry they overlooked the deadline. Per their request the hardship extension request was submitted to the Interim Director for review.
7. On December 17, 2022, the Applicant emailed the County stating they had filled out the renewal for 2023 and stated they thought the renewal was December 31, 2022 "like it was last year." This email was sent as a response to an email from the County December 29, 2021 instructing the applicant on timelines to apply for an Existing Nonconforming STR permit.

8. The application attached to the Applicant's email was for the City of Chelan not Chelan County.
9. On December 22, 2022, the Interim Director reviewed and denied the request. The determination was sent to the applicant the same day.
10. On December 12, 2022, the County advised the Appellant that the email being used for notices were sent to TCHyatt@msn.com, the email provided on the application. Included in that email the County relayed that a reminder postcard had also been sent to the owners' Snohomish address. The County also noted that the renewal deadlines were set by the code, not the department and unless they were applying for a specific hardship the current permit would expire at the end of the year and not be renewed. Brief instructions on how to request a hardship were included.
11. Per CCC 11.88.290(4)(B)(iv)(a)- "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."
12. The statement in CCC 11.88.290(4)(B)(iv)(a) that the director may find a hardship does not mean the director must find a hardship. The decision is to be made at the director's discretion. The director exercised their discretion and made the determination to deny the request.
13. On December 22, 2022, the Applicant responded stating their understanding was they needed to appeal as well as "involve council."
14. On December 23, 2022 the Applicant sent an email stating they would put together a hardship letter over the holiday weekend to which the County responded on December 27, 2022 stating that the hardship denial was sent December 22, 2022, and that they had sent it to their work email as requested, but would then copy all of the Applicant's emails to assure receipt. A copy was also sent via USPS.
15. On December 27, 2022, the County also responded to the December 22, 2022 email from the Applicant regarding appealing the decision and letting the Applicant know the decision to appeal or not was theirs and provided the timeline that had already been provided in the denial notice. The County further let the Applicant know the Director's decision was made with the knowledge of the Board of County Commissioners. The Applicant was also reminded that operation after 12/31/22 was a code violation that may come with further penalty.
16. On December 27, 2022, the Applicant emailed regarding communication with them and the Fire Marshal noting wrong emails and notices. In communication initiated by the County, the email address provided on the application of TCHyatt@msn.com was used until they requested the change to TCHyatt@johnlscott.com on December 12, 2022. Postal mailings were sent to the address provided by the Applicant on their application, 14001 93<sup>rd</sup> Ave SE, Snohomish, WA 98296. The Applicant further requested to submit a hardship letter to Deanna Walter, our Interim Director, as well.

17. On December 27, 2022, the Applicant emailed to state they would appeal, again asking about a hardship letter, when the 10 days to file the appeal began, and how to pay the appeal fee.
18. On December 28, 2022, the County responded to answer questions.
19. On January 4, 2023, the administrative appeal (AA-23-007) was received and filed with Chelan County Community Development with the associated application fees.
20. As of the date of the staff report, the Applicant has continued to advertise and accept reservations contrary to staff instruction that operation after 12/31/22 should cease. Exhibit Y shows a photo of the home from the assessor's page for reference, followed by booking information from VRBO for the Applicant's property.
21. Per Chelan County Code 11.88.290:
  - 21.1 (2)(E)(i)(g)- Any property owner claiming existing nonconforming status as a short-term rental within any Zip Code, subarea, or urban growth area shall resolve any existing county code violations on the property as required under subsection (4)(A)(ii) of this section and shall have complied with all other relevant provisions of this section and apply for and have received an initial short-term rental administrative land use permit and all required conditional use permits under subsection (4) of this section by December 31, 2022, or by failing to do so shall waive all claim to having existing nonconforming status.
  - 21.2 (2)(E)(ii)(c)- If the nonconforming short-term rental cannot comply with criteria, grace period, and timelines in subsection (2)(E)(i) of this section, it must cease operating no later than one year from the effective date of the ordinance codified in this section (September 27, 2021) and any issued county permit to operate as a short-term rental immediately becomes null and void, subject to appeal under Chapter 14.12 and Title 16.
  - 21.3 (5)(A)- ... Evidence of operation includes, but is not limited to, advertising, online calendars showing availability, guest testimony, online reviews, rental agreements, or receipts.
22. The Applicant's appeal does not have the effect of allowing the continued operation without the necessary permit.
23. To address the specific points made by the attorney in their appeal request not addressed above:
  - 23.1. The applicant had received a provisional STR permit, they had not ever been issued their final permit.
  - 23.2. The appeal application states that as per Chelan County Code 11.88.290(4)(B)(i)- The department shall by September 1st of each year, mail a renewal reminder notice to the permitted owner or operator, sent to the postal address or the email address on file reminding of the renewal requirement of the rental permit requirement.
  - 23.3 The County mailed reminder postcards on August 30, 2022 fulfilling the obligation. The postcard for this rental was sent to 14001 93<sup>rd</sup> Ave SE, Snohomish, WA 98296 which was the address provided on the short term rental application. The County is also provided a copy of the Affidavit of Mailing as well as the pertinent section of the mailing list in relation to this application.
  - 23.4 Reference to CCC 11.88.290(4)(B)(iv)(a)- responded to in item 16.

- 23.5 Information on the Chelan County Short Term Rental web page has been and is consistent. Had they gone to the Chelan County Short Term Rental web page, they would have found an abundance of information to include:
- 23.5.1 The heading "Once I have my land use permit, what are the requirements to maintain it?" they would have found this:
  - 23.5.2 Community Development will by Sept. 1 of each year, mail a renewal reminder notice to the permitted owner or operator, sent to the postal address or the email address on file, reminding them of the renewal requirement.
  - 23.5.3 A permit expires annually on Dec. 31, regardless of when it was issued.
  - 23.5.4 Annual permitting fees are not pro-rated.
  - 23.5.5 Permit renewal applications for permitting year 2023 and beyond, must be received by Oct. 31 of the preceding year.
- 23.6 Whether or not the applicant finds the process complicated, 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. On page two of the short term rental application (both new and renewal), the applicant initialed the acknowledgements and signed at the bottom under the statement " I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true, correct, and complete.". Of those,
- 23.6.1 The twelfth acknowledgement states- "I certify that I am the property owner, or authorized agent of the property owner, and I have familiarized myself the rules and regulations of Chelan County with respect to making this application."
  - 23.6.2 The fifteenth acknowledgement states- "I acknowledge and agree that my short term rental permit expires each year on December 31 and that I am required to apply for renewal no later than October 31 of the preceding year."
24. The renewal notice was sent to the Applicant at the correct address on file with Chelan County Community Development.
25. The renewal application deadline of October 31 is clearly stated in CCC 11.98.280(4)(B).
26. 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.
- 26.1 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.
  - 26.2 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."
  - 26.3 RCW 49.76.115(3) states, in part, "...undue hardship means an action requiring significant difficulty or expense."
  - 26.4 RCW 43.10.005(1)(d) provides that undue hardship means action requiring significant difficulty or expense.
  - 26.5 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.
- 26.6 WAC 162-22-075 provides that "an accommodation will be considered an undue hardship if the cost or the difficulty is unreasonable."
- 26.7 WAC 458.57.135 provides that undue hardship means more than inconvenience.
27. After due legal notice, an open record public hearing was held via Zoom video conference on March 1, 2023.
28. Admitted into the record were the following:
- 28.1 Ex. A Denial of permit application renewal extension for Short-Term Rental dated December 22, 2022.
  - 28.2 Ex. B AA 23-007 Application Materials
  - 28.3 Ex. C December 31, 2021 email from applicant to County
  - 28.4 Ex. D June 29, 2022 email from County to applicant
  - 28.5 Ex. E August 16, 2022 email from County to applicant
  - 28.6 Ex. F October 27, 2022 email from County to applicant
  - 28.7 Ex. G November 29, 2022 email from County to applicant
  - 28.8 Ex. H December 8, 2022 email from applicant to County
  - 28.9 Ex. I December 12, 2022 10:44am email from County to applicant
  - 28.10 Ex. J December 12, 2022 11:36am email from applicant to County
  - 28.11 Ex. K Failed fire inspection dated July 26, 2022
  - 28.12 Ex. L December 12, 2022 12:18pm email from County to applicant
  - 28.13 Ex. M "Passed" fire inspection
  - 28.14 Ex. N December 12 & 16, 2022 email from applicant to County
  - 28.15 Ex. O December 17, 2022 email from applicant to County
  - 28.16 Ex. P December 22, 2022 email from County to applicant
  - 28.17 Ex. Q December 22, 2022 email from applicant to County
  - 28.18 Ex. R December 23, 2022 email from applicant to County
  - 28.19 Ex. S December 27, 2022 10:52am email from County to applicant
  - 28.20 Ex. T December 27, 2022 11:10am email from County to applicant
  - 28.21 Ex. U December 27, 2022 2:20pm email from applicant to County
  - 28.22 Ex. V December 27, 2022 2:23pm email from applicant to County
  - 28.23 Ex. W December 28, 2022 email from County to applicant
  - 28.24 Ex. X An Affidavit of Mailing of reminder notice from Chelan County to Appellant.
  - 28.25 Ex. Y Proof of continued STR operation by the applicant and Affidavit of Mailing.
29. Appearing and testifying on behalf of the Appellant was Julie Norton. Ms. Norton testified that she was the attorney for the Appellant. Ms. Norton testified consistent with her submitted materials in support of the appeal. The Hearing Examiner admitted into the record to this hearing all testimony of Ms. Norton that was in the hearing of AA 2023-0006 that was conducted immediately prior to the hearing on this matter.
30. Ms. Norton emphasized her position that the failure to obtain the required license cannot terminate a non-conforming use. Ms. Norton argued that there is no evidence that her client abandoned the short-term rental use on the Appellant's property.
31. The Hearing Examiner does not accept the argument of Appellant's counsel that in this circumstance, the Appellant's failure to timely renew their license cannot, as a matter of law,

terminate their rights to act as a short term rental. The Hearing Examiner finds that the Chelan County Code is very clear as to the deadline for the STR renewal applications to be received by Chelan County.

- 32 The Hearing Examiner also finds that the Chelan County Code is very clear that it in order to operate a short term rental, a permit must be held by the STR property owner. If the Hearing Examiner were to accept the Appellant's legal position that would render the requirement for a STR permit unnecessary.
- 33 Inadvertently missing the renewal application deadline is not a hardship.
- 34 The Hearing Examiner finds that the preponderance of the evidence, including circumstantial evidence, demonstrates that the Appellants simply missed the deadline for filing their renewal for their short-term rental renewal application.
- 35 The Hearing Examiner finds that this Appellant has not demonstrated a hardship.
- 36 Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.
37. 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. The term "hardship" is not defined in the Chelan County Code. The Hearing Examiner concludes that the term "hardship" means more than consequences caused by inadvertent failure to comply with the law, confusion, or ignorance of the law.
5. Future consequences of failing to timely submit an STR renewal application do not constitute a hardship in failing to timely submit an STR renewal application.

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 dated December 22, 2022 is hereby **UPHELD** based on the fact the Applicant did not timely file a request for a Short-Term rental renewal.

Dated this 9 day of March, 2022.

CHELAN COUNTY HEARING EXAMINER



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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.**