

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 2023-006)	CONCLUSIONS OF LAW AND
Manson 580, LLC)	DECISION ON
)	ADMINISTRATIVE APPEAL

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 MANSON 580, LLC (Ron & Diana Gustafson), and their agent is Julie Norton, Ogden Murphy Wallace, PLLC.
3. The project location is 580 Ivan Morse Rd., Manson, WA 98832. The parcel number is 282125410050. The zoning district is Agricultural Commercial (AC) and Rural Residential 5 (RR5).
4. The subject property was permitted for 2021/2022 as a short term rental. The renewal application was not received timely.
5. The applicant submitted a Short-Term Rental Renewal Application dated November 17, 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, and their renewal extension request was denied. The Applicant noted at the time of their renewal submission that they knew they were late and asked for leniency.
6. Per Chelan County Code 11.88.290 (4)(6)- 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.
7. Planning Department staff informed Applicant of the above clause in response to request for leniency.

8. On November 22, 2022, the Applicant emailed Community Development following up on submission and stating they had read the portion of the STR code referring to demonstration of hardship. On November 23, 2022, Planning Department staff responded describing the process and advising the Applicant that if the hardship request were denied, their application fees (to include any late fees sent) would be refunded.
9. The extension request indicating hardship was submitted for review. A statement of hardship was submitted via USPS dated 11/28/22. The hardship request was denied by the Interim Director on 12/22/22.
10. The statement in CCC 11.88.290(4)(B)(iv)(a) that the director may approve a hardship extension does not mean she must approve a hardship extension. The decision is to be made at the director's discretion. The director exercised her discretion and made the determination to deny the request.
11. On January 4, 2023 an appeal request was received from the applicant's attorney (AA 23-006) with the associated fees.
12. The Hearing Examiner addresses points made by the Appellant in their appeal request in their hardship letter below:
 - 12.1 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.
 - 12.2 The County mailed reminder postcards on August 30, 2022 fulfilling the obligation. The postcard for this rental was sent to 1205 NE 88th St., Seattle, WA 98115 which was the address provided on the short term rental application. The County is also providing as Exhibit C a copy of the Affidavit of Mailing as well as the pertinent section of the mailing list in relation to this application.
 - 12.3 The appeal application states that Gustafson sent his renewal application November 17, 2023 and "promptly reached out to the County about the renewal but was advised the renewal untimely and would be rejected without extension."
 - 12.4 The applicant emailed on November 17, 2022 (Exhibit D) then again on November 22, 2022 (Exhibit E). The County responded November 23, 2023 with what to include in a hardship letter (Exhibit F). The County response does not indicate the request would be "rejected without extension."
 - 12.5 Reference to CCC 11.88.290(4)(B)(iv)(a)- responded to in Finding of Fact No. 10.
 - 12.6 The applicant noted they Googled for the renewal deadline. Had they gone to the Chelan County Short Term Rental web page, they would have found an abundance of information to include:
 - 12.6.1 The heading "Once I have my land use permit, what are the requirements to maintain it?" they would have found this:
 - 12.6.2 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.
 - 12.6.3 A permit expires annually on Dec. 31, regardless of when it was issued.
 - 12.6.4 Annual permitting fees are not pro-rated.

- 12.6.5 Permit renewal applications for permitting year 2023 and beyond, must be received by Oct. 31 of the preceding year.
- 12.7 Whether or not the applicant finds the process complicated is not a hardship, and 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."
- 12.7.1 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."
- 12.7.2 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."
13. The renewal notice was sent to the Applicant at the correct address on file with Chelan County Community Development.
14. The renewal application deadline of October 31 is clearly stated in CCC 11.98.280(4)(B).
15. 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.
- 15.1 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.
- 15.2 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."
- 15.3 RCW 49.76.115(3) states, in part, "...undue hardship means an action requiring significant difficulty or expense."
- 15.4 RCW 43.10.005(1)(d) provides that undue hardship means action requiring significant difficulty or expense.
- 15.5 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.
- 15.6 WAC 162-22-075 provides that "an accommodation will be considered an undue hardship if the cost or the difficulty is unreasonable."
- 15.7 WAC 458.57.135 provides that undue hardship means more than inconvenience.
16. After due legal notice, an open record public hearing was held via Zoom video conference on March 1, 2023.
17. Admitted into the record were the following:

- 17.1 Ex. A Denial of permit application renewal extension for Short-Term Rental dated December 22, 2022.
 - 17.2 Ex. B AA 23-006 Application Materials
 - 17.3 Ex. C Declaration of Mailing of reminder postcard from Chelan County to Appellant.
 - 17.4 Ex. D November 17, 2022 email from applicant to County
 - 17.5 Ex. E November 22, 2022 email from applicant to County
 - 17.6 Ex. F November 23, 2022 email from County to applicant
 - 17.7 Ex. G December 1, 2022 email from applicant to County
 - 17.8 Ex. H December 22, 2022 email from County to applicant
18. Appearing and testifying on behalf of the Appellant was Julie Norton. Ms. Norton testified consistent with the Appellant's submissions. 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.
 19. 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. CCC 11.88.290(4)(B)(iv).
 20. 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.
 21. The Hearing Examiner finds that the Appellant's claimed hardship, as stated by Appellant's attorney, "Gustafson inadvertently failed to commence filing of their 2023 STR permit renewal application for 2023 until November 17, 2022 (just 17 days after the deadline)." *January 4, 2023 appeal letter from Appellant's attorney to the Hearing Examiner.*
 22. Inadvertently missing the renewal application deadline is not a hardship.
 23. 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.
 24. The Hearing Examiner finds that this Appellant has not demonstrated a hardship.
 25. 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



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.