

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 2023-013)	CONCLUSIONS OF LAW AND
Yingnan/DeLorenzo)	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 Appellants are Amy Song Yngnan and Andrew DeLorenzo. Their agent is Patrick Schneider of Foster Garvey, PC.
3. The project location is 23119 Lake Wenatchee Hwy, Lake Wenatchee, WA 98826. The legal description is MOUNTAIN PARK BLOCK 4 LOT 2 & VACATION 0.1400 ACRES. The parcel number is 27-16-14-700-050. The zoning district is Rural Residential Recreational (RRR).
4. The subject property was permitted for 2021/2022 as a short term rental.
5. Vacasa submitted a Short-Term Rental Renewal Application dated November 1, 2022, on behalf of the applicant, to continue use as a short-term rental. The Applicant was denied the permit renewal as they did not meet the renewal application deadline and their renewal extension request was denied.
6. Per CCC 11.88.290:
 - 6.1 (4)(B)(iv)- All permit renewal applications for permitting year 2023, and beyond, must be received by October 31st of the preceding year.
 - 6.2 (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.

7. On November 13, 2022, the applicant and Vacasa were sent section of CCC 11.88.290 pertinent to renewal and asked to reply with what the hardship was in not sending the application by the deadline.
8. On November 14, 2022, the applicant responded with their hardship reason.
9. On December 22, 2022, the Short Term Rental Renewal Extension Request with applicant's hardship attached, were reviewed and subsequently denied by the Interim Director. Notice was emailed to the applicant and Vacasa the same day and a copy was mailed via USPS to applicant.
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. It is alleged in the appeal documents that the Department refused to consider the facts and circumstance that led to the late submission. The Interim Director reviewed each submission and the associated perceived hardship. The code does not state each perceived hardship must be addressed in the departmental response.
12. On January 6, 2023, the administrative appeal (AA-23-013) was filed with Chelan County Community Development with the associated application fees paid January 9, 2023.
13. Per CCC 11.88.290(4)(8)(1)- 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.
14. The County mailed reminder postcards on August 30, 2022 fulfilling the obligation. The postcard for this rental was sent to 9768 Roche Pl, Wellington, FL 33414, which was the updated address provided by the owner on March 9, 2022. The postcard shows the renewal window was open September 1 – October 31.
15. Whether or not the applicant finds the process complicated, the timelines and processes are set by the code. The Community Development department 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, 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." 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."
16. The Applicant's appeal does not have the effect of allowing the continued operation without the necessary permit.

17. The renewal notice was sent to the Applicant at the correct address on file with Chelan County Community Development.
18. The renewal application deadline of October 31 is clearly stated in CCC 11.98.280(4)(B).
19. 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.
20. The County mailed reminder postcards on August 30, 2022 fulfilling the obligation. The postcard for this rental was sent to 9768 Roche Pl, Wellington, FL 33414, which was the address provided on the initial application. The County also provided a copy of the Affidavit of Mailing as well as the pertinent section of the mailing list in relation to this application.
21. Information on the Chelan County Short Term Rental web page has been and is consistent. Had Appellants gone to the Chelan County Short Term Rental web page, they would have found an abundance of information to include:
 - 21.1 The heading "Once I have my land use permit, what are the requirements to maintain it?" they would have found this:
 - 21.2 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.
 - 21.3 A permit expires annually on Dec. 31, regardless of when it was issued.
 - 21.4 Annual permitting fees are not pro-rated.
 - 21.5 Permit renewal applications for permitting year 2023 and beyond, must be received by Oct. 31 of the preceding year.
22. 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.
 - 22.1 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.
 - 22.2 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."
 - 22.3 RCW 49.76.115(3) states, in part, "...undue hardship means an action requiring significant difficulty or expense."
 - 22.4 RCW 43.10.005(1)(d) provides that undue hardship means action requiring significant difficulty or expense.
 - 22.5 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.
 - 22.6 WAC 162-22-075 provides that "an accommodation will be considered an undue hardship if the cost or the difficulty is unreasonable."
 - 22.7 WAC 458.57.135 provides that undue hardship means more than inconvenience.

23. After due legal notice, an open record public hearing was held via Zoom video conference on March 15, 2023.
24. Admitted into the record were the following:
- 24.1 Ex. A Denial of permit application renewal extension for Short-Term Rental dated December 22, 2022.
 - 24.2 Ex. B AA 23-013 Application Materials
 - 24.3 Ex. C November 1, 2022 email from Vacasa with renewal application
 - 24.4 Ex. D November 13-14, 2022 email between application and Community Development staff
 - 24.5 Ex. E Sample of postcard that was mailed to permit holders with screen clipping of mailing list with this applicants mailing information and mailing affidavit
 - 24.6 Ex. F Staff Report
 - 24.7 Ex. G January 6, 2023 email from Appellant's attorney to the County
 - 24.8 Ex. H January 6, 2023 appeal letter from Appellant's attorney with Exhibit 1
 - 24.9 Ex. I January 6, 2023 newspaper article
 - 24.10 Ex. J Land Use application dated January 6, 2023
 - 24.11 Ex. K March 14, 2023 email exchanged between Appellant and County.
25. Appearing and testifying at the hearing on behalf of the Appellant was Pat Schneider, attorney. Mr. Schneider presented legal argument consistent with his written materials. Mr. Schneider called as a witness Andrew DeLorenzo, the property owner and Appellant. It was admitted by Appellant's attorney that Mr. DeLorenzo was aware of the October 31st deadline, but alleges that he was one day late in submitting his renewal application because of circumstances beyond his control. Mr. DeLorenzo testified that he bought the property in 2015 as solely an investment property. The building that was on the site when the property was purchased was demolished and rebuilt to accommodate short term rentals. The property is not designed as a full time residence.
26. Mr. DeLorenzo testified that he has a property management company, Vacasa, that had the responsibility of timely submitting his renewal application. He stated that although they received the renewal reminder, that Hurricane Ian, which made landfall in South Florida in late September, 2022, required them to evacuate their home and go to Costa Rica and Texas. He stated that, without providing any detail, it was impossible for Vacasa to obtain his signature on the application before he evacuated or while he was in Costa Rica. He was then in Texas. He indicated that he called Vacasa on October 31st, but they could not get the application done on October 31st. However, it was completed on November 1, 2022, the day it was submitted.
27. The Hearing Examiner finds that the compelling circumstantial evidence is that there was plenty of time in which to complete this application prior to Hurricane Ian's evacuation requirement, and prior to October 31, 2022. This is because Mr. DeLorenzo stated that when he got ahold of Vacasa on October 31st, he was told they could not get the application completed on that day. However, it was completed the very next day. This leads the Hearing Examiner to believe that there was no more than a one day turnaround for Vacasa to complete the application and get it signed by Mr. DeLorenzo, and submitted to the County.
28. The Appellant argues that the hardship was caused by technical mishaps due to the hurricane. He also indicated he was laid off two times in 2022. There was some testimony regarding a

problem in paying for the renewal application at the time the original application was submitted. The Hearing Examiner finds that the Appellant, and their agent Vacasa, had all of August, the majority of September, and at least the last two weeks of October, 2022, in which to complete the process of preparing, signing, and submitting his renewal application.

29. Inadvertently missing the renewal application deadline is not a hardship.
30. Inconvenience in timely submitting the renewal application is not a hardship.
31. Confusion with the Chelan County Code or ignorance of the provisions in the Chelan County Code is not a hardship.
32. The Hearing Examiner further finds that Chelan County Code 11.88.290 is the controlling Code regarding short term rental permits, including, but not limited to, the renewal of those permits and consequences for not renewing those permits.
33. The Hearing Examiner finds that none of the claimed hardships are a contemplated hardship in submitting a timely renewal application.
34. Chelan County provided an Affidavit of Mailing stating that the reminder postcard was mailed on August 30, 2022 to the last known address of the Appellant provided to Chelan County.
35. 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.
36. The Hearing Examiner finds that this Appellant has not demonstrated a hardship
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.

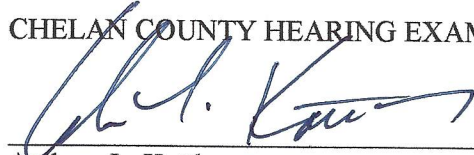
3. The Appellants failed to demonstrate hardship to justify the untimely submission of a short-term rental renewal application.
4. The term “hardship” is not defined in the Chelan County Code. The Hearing Examiner concludes that the term “hardship” means more than consequences caused by inadvertent failure to comply with the law, confusion, inconvenience, 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 22nd 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.