

**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>
<b>AA 2023-010</b>	)	<b>CONCLUSIONS OF LAW AND</b>
<b>Morrison</b>	)	<b>DECISION ON</b>
	)	<b>ADMINISTRATIVE APPEAL</b>

**I. FINDINGS OF FACT**

1. This Administrative Appeal was filed to appeal the denial of a renewal extension request for a short-term rental.
2. The Appellants and property owners are Matthew Morrison, Beth Morrison and Amaris Harris.
3. The project location is 24624 Spur St., Plain, WA 98826. The legal description is Primitive Park No. 4 Block 6 Lot 24 0.2600 Acres. The parcel number is 261724793420. The zoning district is Residential Waterfront (RW).
4. The subject property was permitted for 2021/2022 as a short term rental. The renewal application was not received timely.
5. The Applicant attempted to submit a Short-Term Rental Renewal Application via email on November 3, 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 and their renewal extension request was denied. Additionally, they used a form for City of Chelan and not the correct form for Chelan County.
6. On November 3, 2022 the Applicant emailed stating they 'just realized' they were supposed to renew their STR permit for 2023 and asking what the county needed to do that.
7. On November 3, 2022, the County responded with the section of the STR code pertinent to renewals.
8. On November 3, 2022, the applicant admitted she remembered thinking the renewal had to be done by October 31 and stated "So obviously I'm a few days late" and asking what to do as it was an "honest mistake."
9. The City of Chelan short term rental permit renewal application was received by Community Development November 3, 2022 via email.

10. Chelan County Community Development staff responded it was added to the queue for processing noting that as it was late and there was the possibility of a late fee. The applicant had asked what the late fee would be and was responded to that the late fee, if used, would be double the regular permit fee. The applicant asked for a "little break" as it was only a few days late and noted she had been on a trip for the month of October.
11. Pursuant to the Chelan County Code, CCC 11.88.290(4)(B)(iv), October 31, 2022 was the deadline for renewal applications to be submitted.
12. The Applicant was educated on the process on how to apply for a hardship extension for renewal, as well as the fact Community Development staff had reviewed the submitted application and found the application submitted was for the City of Chelan, and not Chelan County. The correct application was emailed to applicant.
13. On December 5, 2022 the correct application was submitted.
14. On December 15, 2022, the applicant emailed to follow up on their updated submission and inquire about fees. The County responded that the County would not request fees until they received determination on whether the application would be granted a hardship extension. The applicant was reminded the hardship extension was at the Director's discretion. The County also advised that the 'attachment' sent as her application would not open and requested it be resent.
15. On December 15, 2022, an email from the applicant to the County was received asking if there were a reason her hardship application may not be approved and the County responded.
16. On December 22, 2022, the Interim Director reviewed and denied the request. The determination was sent to the applicant the same day.
17. 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."
18. The statement in CCC 11.88.290(4)(B)(iv)(a) that the director may accept permit renewal applications received after the deadline does not mean that the Director must accept the extension request. The decision is to be made at the director's discretion. The director exercised her discretion and made the determination to deny the request.
19. On December 22, 2022, the applicant emailed asking what they could do and that they felt the decision was unfair.
20. On December 23, 2022, the County received another email from applicant stating that they were shocked over the decision, going into more detail about the hardship, and stating they had spoken to the Interim Director. Applicant further stated they would be filing an appeal.
21. On December 23, 2022, an email from the Interim Director to staff documenting the phone call made by applicant to Interim Director asking for "grace" and "begging" for

reconsideration and stating to Interim Director “well, nobody would know if you helped me out.”

22. On December 26-27, 2022, emails were exchanged between the co-applicant and the County regarding the appeals process and timelines.
23. On January 5, 2023, the administrative appeal (AA-23-010) was received via email and filed with Chelan County Community Development with the associated application fees being paid same day.
24. To this date, the applicant has continued to advertise and accept reservations contrary to being informed the permit expired December 31, 2022. Exhibit N shows booking information from VRBO for the applicant’s property followed by a photo of the home from VRBO showing the address of 24624. The County went through a mock reservation process on 2-27-23 for the dates of March 8-15, 2023. In addition, when the applicant held a viable permit, they were permitted for a maximum occupancy of 6 persons, yet they are advertising the space can sleep 11, which is a further code violation. This is also advertised as a venue for parties, weddings, etc. for which they do not hold a Conditional Use Permit. However, a code violation is not before the Hearing Examiner at this time.
25. The applicant’s intent to appeal does not negate the requirement to cease operation without necessary permit.
26. To address the specific points made by the applicant in their appeal request not addressed above:
  - 26.1 The appeal application states they are certain they were never sent the renewal reminder. 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.
  - 26.2 The County mailed reminder postcards on August 30, 2022 fulfilling the obligation. The postcard for this rental was sent to 14070 117th Pl NE in Kirkland, which was the address provided on the short term rental application. If there were a change of address, it is the responsibility of the owner to notify the County of such. The County provided a copy of the Affidavit of Mailing, as well as the pertinent section of the mailing list in relation to this application.
  - 26.3 The application states the applicants did not realize the form initially submitted was for the City of Chelan and not Chelan County. The form identifies it is for the City of Chelan in both the form title as well as on the footer of page 2 and 3. The applicants also state the information on the incorrect form is exactly the same as the County form, however, it is not.
  - 26.4 The applicant states the County deposited their payment of \$250. The County did not. The incorrect payment amount was returned to the applicant via USPS on November 10, 2022. The County further educated the applicant that until a determination was made if the late submission would be accepted, payment would not be requested

- 26.5 The applicant states they were told the appeal fee was \$594.50. The County informed the applicant the fee was \$580 and if they paid via debit or credit card there was a 2.5% convenience fee so the total would be \$594.50.
- 26.6 Information on the Chelan County Short Term Rental web page has been, and is, consistent. Had the applicant gone to the Chelan County Short Term Rental web page, they would have found an abundance of information to include:
- 26.6.1 The heading "Once I have my land use permit, what are the requirements to maintain it?" they would have found this:
- 26.6.1.1 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.
- 26.6.1.2 A permit expires annually on Dec. 31, regardless of when it was issued.
- 26.6.1.3 Annual permitting fees are not pro-rated.
- 26.6.1.4 Permit renewal applications for permitting year 2023 and beyond, must be received by Oct. 31 of the preceding year.
- 26.7 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."
27. The Applicant's appeal does not have the effect of allowing the continued operation without the necessary permit.
28. The renewal notice was sent to the Applicant at the correct address on file with Chelan County Community Development.
29. The renewal application deadline of October 31 is clearly stated in CCC 11.98.280(4)(B).
30. 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.

- 30.1 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.
  - 30.2 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.”
  - 30.3 RCW 49.76.115(3) states, in part, “...undue hardship means an action requiring significant difficulty or expense.”
  - 30.4 RCW 43.10.005(1)(d) provides that undue hardship means action requiring significant difficulty or expense.
  - 30.5 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.
  - 30.6 WAC 162-22-075 provides that “an accommodation will be considered an undue hardship if the cost or the difficulty is unreasonable.”
  - 30.7 WAC 458.57.135 provides that undue hardship means more than inconvenience.
31. After due legal notice, an open record public hearing was held via Zoom video conference on March 15, 2023.
32. Admitted into the record were the following:
- 32.1 Ex. A Denial of permit application renewal extension for Short-Term Rental dated December 22, 2022.
  - 32.2 Ex. B AA 23-010 Application Materials
  - 32.3 Ex. C November 3, 2022 email from applicant to County
  - 32.4 Ex. D November 3, 2022 email from applicant to County with renewal form
  - 32.5 Ex. E November 7-10, 2022 emails between applicant and County
  - 32.6 Ex. F December 5, 2022 email from applicant with corrected application
  - 32.7 Ex. G December 15, 2022 email from applicant to County
  - 32.8 Ex. H December 19, 2022 emails between County and applicant
  - 32.9 Ex. I December 22, 2022 email from applicant to County
  - 32.10 Ex. J December 23, 2022 email from applicant
  - 32.11 Ex. K December 26-27, 2022 emails between co-applicant and County
  - 32.12 Ex. L Sample of postcard that was mailed to permit holders with screen clipping of mailing list with this applicants mailing information and mailing affidavit
  - 32.13 Ex. M December 23-27, 2022 emails between Interim Director and Staff
  - 32.14 Ex. N Proof of continued STR operation by the applicant
33. Appearing and testifying at the hearing on behalf of the Appellants were Matt Morrison and Amaris Harris, co-owners of the subject property. Ms. Harris testified consistent with their appeal materials. The hardship claimed was that in 2022 her aunt died, she became separated from her husband, and had a baby. She admitted that in September 2022, her father, Matt Morrison, told her to make sure the short term renewal application was submitted. Ms. Harris testified that they made a mistake and agreed that it was the property owners responsibility to “figure out” when the renewal application was due.

34. The fact that the Appellant has submitted a purported renewal application three days late (November 3, 2022) is not a hardship as contemplated by the Code.
35. Ms. Harris stated that she never received the reminder postcard. However, pursuant to the Affidavit of Mailing admitted as Exhibit L, the reminder postcard was mailed on August 30, 2022.
36. No member of the public testified at the hearing.
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

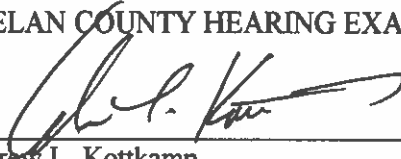
1. The Hearing Examiner has been granted authority to render this Decision.
2. Chelan County Code Section 14.12.010: Administrative appeals:
  - (1) An administrative appeal to the hearing examiner shall be filed with the department within ten working days of the issuance of the decision appealed, together 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, and a hardship has not been proven.

Dated this 17 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.**