

**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 2023-014	)	<b>CONCLUSIONS OF LAW AND</b>
Subhash/McAndrew	)	<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 Appellants are Jay Subhash and Rebecca McAndrew, and their agent is Julie Norton, Ogden Murphy Wallace, PLLC.
3. The project location is 19652 Nason Rd, Lake Wenatchee, WA 98826. The parcel number is 26-17-03-785-055. The legal description is PINE RIVER RANCH NO 2 LOT 11 0.23 ACRES. The zoning district is Rural Residential Recreational (RRR).
4. The subject property was permitted for 2021/2022 as a short term rental.
5. Per CCC 11.88.290:
  - 5.1 (4)(B)(iv)- All permit renewal applications for permitting year 2023, and beyond, must be received by October 31st of the preceding year.
  - 5.2 (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.
6. 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.
7. 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.

8. The County mailed reminder postcards on August 30, 2022 fulfilling the obligation. The postcard for this rental was sent to 6716 Jones Ave NW, Seattle, WA 98117, which was the address provided on the initial application. The postcard shows the renewal window was open September 1 – October 31.
9. On December 22, 2022, the Short-Term Rental Renewal Extension Request with applicant's application attached were reviewed and denied by the Interim Director. Notice was emailed to applicant the same day and a copy was mailed via USPS to applicant.
10. On December 29, 2022, the applicants exchanged emails with Community Development staff about the appeal process.
11. On January 9, 2023, the administrative appeal (AA-23-014) was filed with Chelan County Community Development by the applicant's attorney with the associated application fees.
12. In researching this appeal, it was also found that the applicants had also not submitted the required proof of signage to be eligible for renewal. A notice of the requirement was sent out with their final permit June 29, 2022. However, this is not a part of this appeal.
13. Per Chelan County Code 11.88.290:
  - 13.1 (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.
  - 13.2 (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.
  - 13.3 (5)(A)- ...Evidence of operation includes, but is not limited to, advertising, online calendars showing availability, guest testimony, online reviews, rental agreements, or receipts.
14. The Appellant's appeal does not have the effect of allowing the continued operation without the necessary permit.
15. To address the specific points made by the attorney in their appeal request not addressed above:
  - 15.1. 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.
  - 15.2. The County mailed reminder postcards on August 30, 2022 fulfilling the obligation. The postcard for this rental was sent to 6716 Jones Ave NW, Seattle, WA 98117

- 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.
- 15.3 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:
- 15.3.1 The heading "Once I have my land use permit, what are the requirements to maintain it?" they would have found this:
- 15.3.2 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.
- 15.3.3 A permit expires annually on Dec. 31, regardless of when it was issued.
- 15.3.4 Annual permitting fees are not pro-rated.
- 15.3.5 Permit renewal applications for permitting year 2023 and beyond, must be received by Oct. 31 of the preceding year.
- 15.4 Whether or not the Appellant 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,
- 15.4.1 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."
- 15.4.2 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."
16. The renewal notice was sent to the Appellant at the correct address on file with Chelan County Community Development.
17. The renewal application deadline of October 31 is clearly stated in CCC 11.98.280(4)(B).
18. 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.
- 18.1 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.
- 18.2 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."
- 18.3 RCW 49.76.115(3) states, in part, "...undue hardship means an action requiring significant difficulty or expense."
- 18.4 RCW 43.10.005(1)(d) provides that undue hardship means action requiring significant difficulty or expense.

- 18.5 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.
- 18.6 WAC 162-22-075 provides that "an accommodation will be considered an undue hardship if the cost or the difficulty is unreasonable."
- 18.7 WAC 458.57.135 provides that undue hardship means more than inconvenience.
19. After due legal notice, an open record public hearing was held via Zoom video conference on March 15, 2023.
20. Admitted into the record were the following:
  - 20.1 Ex. A Denial of permit application renewal extension for Short-Term Rental dated December 22, 2022.
  - 20.2 Ex. B AA 23-014 Application Materials
  - 20.3 Ex. C November 22, 2022 email from Applicant with renewal application
  - 28.4 Ex. D Sample of postcard that was mailed to permit holders with screen clipping of mailing list with this applicant's mailing information and mailing affidavit
  - 20.5 Ex. E December 29, 2022 emails between applicants and staff
  - 20.6 Ex. F June 29, 2022 Final 2022 permit with notice of sign requirement
  - 20.7 Ex. G Staff Report
  - 20.8 Ex. H Supplemental Letter from Julie Norton dated March 14, 2023
  - 20.9 Ex. I Email from Chelan County Public Records Request dated January 5, 2023.
21. 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.
22. The Appellant 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.
23. 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. An existing STR permit will expire, pursuant to the Code, if a STR renewal permit application is not timely filed.
24. 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.
25. Inadvertently missing the renewal application deadline is not a hardship.
26. The Appellants argued that the County Code, as she reads it, provides that if you do not timely submit your STR renewal permit application that the STR is terminated on October 31<sup>st</sup> of the year the application was due. The Hearing Examiner does not accept this interpretation. The term of existing STR permits are set forth in the permit.

27. 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.
28. The Appellants also argued that because “hardship” is not defined in the Chelan County Code, any reason that the deadline for submission of the application permit for renewal is missed should constitute a hardship. The Hearing Examiner does not accept this definition of hardship.
29. The Appellant argues that the failure to receive the reminder postcard is a hardship. The Hearing Examiner does not accept this argument. First of all, there is an Affidavit of Mailing demonstrating proof of mailing of the reminder postcard. After mailing of this postcard to the last known address, the delivery of this notice is out of the control of the County. Also, the Appellants are given notice, not only within the Chelan County Code, but within the short term rental application that October 31<sup>st</sup> is the deadline to apply for a renewal of the short term rental permit.
30. The Appellants described their hardships as the birth of a child in March 2022, that they have other small children, some who were ill at times when they returned to school in the Fall of 2022, that Mr. Subhash was given notice that he may be laid off from his employment and that caused stress, and that Mr. Subhash had surgery on his torn achilles.
31. The Hearing Examiner finds that none of these are a contemplated hardship in submitting a timely renewal application.
32. 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.
33. Finally, the Appellants’ argue that it is possible that no STR permit holders received their postcard reminders of the renewal requirement. The Hearing Examiner does not accept this argument. Affidavits of Mailing are proof that the reminder postcards were mailed to last known addresses of STR permit holders.
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.

## 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 21 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.**