

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 2023-307)	CONCLUSIONS OF LAW AND
Boiroux)	DECISION ON
)	ADMINISTRATIVE APPEAL

I. FINDINGS OF FACT

1. An Administrative Appeal was submitted to appeal the denial of a request for an extension to file a STR renewal application and that the appeal of this decision was not filed on a timely basis pursuant to CCC 14.12.010.
2. The property location is 9241 Lone Pine Orchards Rd, Leavenworth, WA 98826. The Parcel No. is 24-18-08-685-010 and the legal description is LONE PINE ORCHARDS BLOCK 1 LOT 2 LOT B BLA 2009-130 LOT A CE 2008-05 1.44 ACRES and is located in the RW (Recreational Waterfront) Zoning District.
3. The Appellant/owner is Jacques R. Boiroux. His attorney is Thomas F. O'Connell of Davis, Arneil Law Firm.
4. The Applicant was originally permitted as an Existing Nonconforming STR. The Applicant was denied the permit renewal as they did not meet the renewal application deadline and their renewal extension request was denied January 3, 2023. Applicant's Attorney requested an appeal of the denial on February 13, 2023, but the request was returned to the attorney as the request was received after the allowed 10 business days to request the appeal had passed. The appeal was resubmitted July 20, 2023, by the attorney for the appellant.
5. The Applicant submitted a renewal application for a short-term rental permit dated 11/08/2022 which was after the renewal deadline of 10/31/22.
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. The Renewal Extension Request was reviewed by the Interim Director and denied 01/03/2023. The determination was sent to applicant 1/5/2023.
8. On 02/13/2023 an appeal request was received from the applicant's attorney but returned as it was past the allowable 10 business days from issuance of the determination.

9. On July 20, 2023, the appeal request was received from Applicant's attorney (AA 23-037) with a check for associated fees via courier. A receipt was returned the same day via email with confirmation that the hearing date was set for September 6, 2023 at 9:00 am PST.
10. 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.
11. The applicant had been issued a provisional permit under the Existing Nonconforming section of the STR code. They had paid the fees for the remainder of 2021 and all of 2022 when issued the provisional permit. The provisional permit allowed operation until staff could complete a full review of application materials and parcel. The STR permit was finalized August 1, 2022, and sent to the agent for signature with request for photo proof of signage when complete. The agent returned the signed permit and photo August 24, 2022.
12. During process, staff sent emails to PineRiverLodge2020@gmail.com as was listed on the original application for the owner, applicant, and local contact.
13. The County mailed reminder postcards per Chelan County Code 1.88.290 (4)(B)(i) on August 30, 2022, fulfilling the obligation. The postcard for this rental was sent to 2109 38th Ave E, Seattle, WA 98112 which was the address provided on the initial application. The postcard shows the renewal window was open September 1 – October 31.
14. On November 8, 2022, Applicant's agent emailed staff noting they had completed their fire inspection (a requirement for 2023 renewal) and were putting together renewal application and saw it was due October 31 and asking if there was a way to bypass the deadline. Staff had responded that per the code, any application submitted late would have to be reviewed by the Director.
15. The deadline is codified in Chelan County Code 11.88.290 (4)(B).
16. On November 8, 2022, a short-term rental permit renewal application was received by Community Development from Applicant. The renewal application changed contact email for Owner, Agent, and Local Contact to nkirshner@gmail.com. After that, emails were sent to the newly designated email address.
17. Per CCC 11.88.290 (4)(B)- Annual Renewal. Annual renewal of the short-term rental land use permit is required.
 - 17.1 (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.
 - 17.2 (ii) A permit expires on December 31st of each year, regardless of when it is issued.
 - 17.3 (iii) All annual permitting fees are not pro-rated.

- 17.4 (iv) All permit renewal applications for permitting year 2023, and beyond, must be received by October 31st of the preceding year.
- 17.4.1 (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.
- 17.4.2 (b) Permit renewal applications received after December 31st will not be accepted, and the short-term rental must immediately cease operations on January 1st of the following year. The owner and property lose any vesting to continue operation as a legally conforming or nonconforming short-term rental under this chapter. Expired short-term rentals under this subsection are then subject to the housing cap provisions of subsection (2)(B) of this section and must apply as a new short-term rental if all other provisions of this section allow, and consistent with the applicable district use chart.
18. The statement in CCC 11.88.290 (4)(B)(iv)(a) that the director may accept does not translate to must. The decision is to be made at the director's discretion. The director exercised their discretion and made the determination to deny the Agent's Renewal Extension Request.
19. On December 30, 2022, the Agent had indicated her father had not received the reminder postcard by September 1 and a Covid infection prevented him from passing the renewal task to her. The STR code specifies 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. It does not state it is to be received by September 1, nor does it state the County is responsible for assuring the reminder is received. It was mailed via USPS to the address specified on the application.
20. On January 3, 2023, the Short-Term Rental Renewal Extension Request with applicant's application attached was reviewed and denied by the then Interim Director. Notice was emailed to applicant on January 5th at the new email provided, nkirshner@gmail.com. A copy of the denial was mailed via USPS to applicant.
21. The appellant's counsel states in the appeal request "The Owner's agent first became aware of the application renewal deadline on or about November 8, 2022, 8 days after the application was due to the County." This information was on the original application which was signed by both Applicant and Agent.
22. Community Development followed the short-term rental code (11.88.290) and decisions made hold all applicants to the same standard. On page two of the short-term rental application version used, 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.”

23. The application was signed by both owner and Agent.
24. On July 20, 2023, the Attorney for the Appellant resubmitted the appeal request from February 13, 2023, via email.
25. After due legal notice, an open record public hearing was held via Zoom video conference on September 6, 2023.
26. Admitted into the record were the following exhibits:
 - 26.4 Ex. A AA 23-307 Application Materials;
 - 26.5 Ex. B Denial of STR Renewal Extension Request;
 - 26.6 Ex. C Email timeline and emails between staff, Applicant and Agent;
 - 26.7 Ex. D Initial appeal request from Appellant’s attorney (2/13/2023) which was denied;
 - 26.8 Ex. E Sample of postcard that was mailed to permit holders with screen clippings of mailing list with this Applicant’s mailing information and mailing affidavit.
 - 26.9 Ex. F Original 2021 Application Materials
 - 26.10 Ex. G Staff Report.
 - 26.11 Ex. H Declaration of Kirsten Ryles dated September 6, 2023.
 - 26.12 Ex. I Appellant’s Memorandum to Supplement Record dated September 12, 2023.
27. Appearing and testifying on behalf of the Appellant was Tom O’Connell. Mr. O’Connell indicated that he was the agent and the attorney for the Appellants.
28. Mr. O’Connell’s primary argument is that since his client did not receive what he argues is the mandatory notice to file their STR permit renewal application, all time limits, including time limits to file an appeal, were no longer enforceable. Mr. O’Connell further argued consistent with the written materials on file. Specifically, he indicated that there was no credible evidence that the renewal reminder had ever been mailed. He indicated that a request for public records disclosure answered by the County, did not include any proof of mailing from the County to the Appellant of this renewal reminder. Later, a Declaration of Mailing was provided by the County stating under oath that the renewal notice reminder had been mailed to the Appellant at their last known address.
29. The position of the County, simply stated, is first the Appellant did not timely file their appeal and therefore, this should end the matter and the appeal should be denied. Secondly, the County would argue that the renewal reminder notice was mailed, and the STR renewal application was not timely filed.
30. The Hearing Examiner noted at the hearing that the renewal date is clearly stated in the Chelan County Code, as well as within the acknowledgement and certification section of the short-term rental permit application signed by the Applicant’s agent on November 7, 2022.
31. The Appellant also argues that the County should be equitably estopped from arguing the timeliness of the appeal because of actions taken by the County in a Superior Court proceeding related to this matter.

32. The Hearing Examiner finds that the Hearing Examiner has not been granted authority to render decisions requesting equitable relief.
33. The County requested the opportunity to call Kirsten Ryles as a witness. The Hearing Examiner denied this request but kept the record open until September 8, 2023, to allow the County to submit additional written evidence or testimony as they deemed fit. The Hearing Examiner kept the record open until September 15, 2023, for the Appellant to submit whatever rebuttal testimony they wished to submit.
34. On September 6, 2023, the County submitted the Declaration of Kirsten Ryles. This was admitted into the record.
35. On September 15, 2023, the Appellant submitted Appellant's Memorandum to Supplement Record. This was also admitted into the record.
36. The Hearing Examiner finds that the County mailed a short-term rental renewal reminder notice to the Appellant's last known address before September 1, 2023.
37. The Hearing Examiner finds that the Appellant failed to timely submit a short-term rental permit renewal application.
38. The Hearing Examiner finds that the County properly denied the Appellant's request for an extension to file their STR renewal application because the Appellant did not provide adequate reasons for their failure to timely file a short-term rental permit application.
39. As stated above, the County's decision in denying the renewal extension request was dated January 3, 2023, and was sent to the Applicant on January 5, 2023.
40. This means that an appeal of this decision was required to be made within ten days of the issuance of the decision. Even accepting the position that the "issuance" of the decision was its mailing date on January 5, 2023, this would mean that the appeal must be filed by January 15, 2023.
41. As stated above, the original appeal was not filed until February 13, 2023. This appeal was not timely filed.
42. The appeal was refiled on July 20, 2023. This appeal was not timely filed.
43. The Hearing Examiner finds that the Appellant did not timely appeal the County's denial of the Appellant's short-term rental permit renewal application.
44. 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. Short-Term rentals must not operate without a STR permit per CCC 11.88.290(5)(A) and CCC 11.88.290(4)(A).
3. Per CCC 11.88.290 (4)(B)- Annual Renewal. Annual renewal of the short-term rental land use permit is required. (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.
 - (ii) A permit expires on December 31st of each year, regardless of when it is issued.
 - (iii) All annual permitting fees are not pro-rated.

- (iv) All permit renewal applications for permitting year 2023, and beyond, must be received by October 31st of the preceding year.
- (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.
- (b) Permit renewal applications received after December 31st will not be accepted, and the short-term rental must immediately cease operations on January 1st of the following year. The owner and property lose any vesting to continue operation as a legally conforming or nonconforming short-term rental under this chapter. Expired short-term rentals under this subsection are then subject to the housing cap provisions of subsection (2)(B) of this section and must apply as a new short-term rental if all other provisions of this section allow, and consistent with the applicable district use chart.
4. Even if the County fails to send the STR renewal reminder notice, the application and appeal time limits stated in the Code remain valid and in full force and effect.
5. The statement in CCC 11.88.290 (4)(B)(iv)(a) that the director may accept does not translate to must. The decision is to be made at the director's discretion. The director exercised their discretion and made the determination to deny the Agent's Renewal Extension Request.
6. The Hearing Examiner has not been granted authority to grant equitable relief.
7. 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 appeal of renewal denial is untimely based on Chelan County Code 14.12.010. The Hearing Examiner further finds that the denial of the STR renewal application extension request was proper based on CCC 11.88.290.

Dated this 27 day of September, 2023.

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.