

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 2023-343)	CONCLUSIONS OF LAW AND
Moser)	DECISION ON
)	ADMINISTRATIVE APPEAL

I. FINDINGS OF FACT

1. An application for an Administrative Appeal with fees was submitted on August 9, 2023, to appeal the Notice and Order to Abate Violations CE 23-0079 issued on July 26, 2023.
2. The property location is 23120 Lake Wenatchee Hwy Lake Wenatchee, WA 98826. The Parcel No. is 271614700070 and the legal description is Mountain Park Block 5 Lot 4 L 4 & 5 & W 1/2 14 & 15 Blk 5, 0.2800 acres, and is located in the RRR zoning district.
3. The Appellant/owner is Douglas J. Moser and the agent is Carina Moser.
4. Upon regular review of short term rental (STR) platforms, short-term rental staff (Staff) discovered an STR operating without the required permit. This was relayed to Code Enforcement staff. Code Enforcement Deputy Z. Wenzel served the applicant via Certified Mail with the Notice and Order to Abate Violations to cease operation and cease advertising immediately and notify Code Enforcement these things had been completed. Notice that operation had been ceased was received by Deputy Wenzel from C. Moser on August 8, 2023. The applicant is appealing the Code Enforcement action and requesting she be able to apply under the Existing Nonconforming (Grandfathered) status.
5. On July 26, 2023, Chelan County Community Development staff (Staff) reported to Chelan County Code Enforcement deputies that 23210 Lake Wenatchee Highway, Lake Wenatchee, WA 98826 was operating a short term rental without the required permit.
6. On July 26, 2023, a Notice and Order to Abate Violations was issued by Code Enforcement.
7. Per Chelan County Code 11.88.290 (4)(A)(i)- On or after September 27, 2021, and except as provided in subsection (4)(D)(i) of this section, no short-term rental owner or operator may advertise, offer, operate, rent, or otherwise make available or allow any other person to make available for occupancy or use as a short-term rental without a valid short-term rental administrative land use permit issued by the director or a conditional use permit approved by the hearing examiner pursuant to this chapter and Chapter 14.10. All dwelling units on a single parcel shall be reviewed concurrently in the same application, and the dwelling to be used as a short-term rental shall be clearly identified.

8. On August 8, 2023 the appellant called Code Enforcement Deputy and advised they had corrected code violations.
9. On August 9, 2023, staff received appeal request application from appellant for AA 23-343.
10. The Appellant indicates in the appeal application they had no knowledge of the permit requirement as they had not been made aware. Along with the appeal request application letter, appellant sent a Short Term Rental Permit Application stating they were requesting the appeal to be accepted under the “grandfathered” allowance since they allege to have been in operation prior to the permit requirement.
11. The request of the appellant to be able to have a STR permit application considered under the “grandfathered” allowance is in violation of Chelan County Code 11.88.290 (4)(D)(i)-
 - 11.1 Existing Nonconforming Short-Term Rentals. Beginning on September 27, 2021, and by December 31, 2021, all existing short-term rentals operating as of dates established in subsection (2)(E) of this section and subject to the provisions of subsection (2)(E) of this section wishing to operate as a short-term rental for the remainder of 2021 shall pay a fee equal to one-quarter of the annual permit fee established for their tier per the table in Chapter 3.24, and register on a department registration provisional self-certification form. This self-certification form serves as the first provisional short-term rental permit application. Those owners and properties failing to register within this time period shall not be considered as an existing and nonconforming short-term rental use for 2021 under this section and shall forfeit any claim of continuing existing nonconforming short-term rental use status for 2022 and beyond under this section, and any short-term rental that occurred during this period is considered to have been in violation of this chapter, subject to appeal provisions under Chapter 14.12 and Title 16.
12. On August 10, 2023, 1:09 pm, Staff emailed Appellant to acknowledge timely receipt of appeal request on August 9, 2023, and requested to clarify the appeal request. Staff recognized the end of the application window was the end of business on August 11, 2023 and noted that if the appellant had not provided further clarification, the appeal would be filed as originally presented.
13. On August 14, 2023, 8:33 am Staff emailed appellant with assigned case number AA 23-343 and attached receipt for the same.
14. On August 22, 2023, 8:46 am Staff emailed the Notice of Application Not Accepted to appellant for Short Term Rental Permit Application. A copy of the Notice was also emailed via USPS same day. In addition to the zip code being over the allowable cap, the application was also received outside the allowable annual application window of June 1 – July 31. Code sections applicable to the application for an STR permit:
 - 14.1 CCC 11.88.290 section (2)(B)(ii)(a) New Tier 2 and 3 short-term rentals cannot be located where short-term rentals make up more than the maximum share of the total housing stock in residential zoning districts listed in the table below. This is the maximum share of short-term rentals in residential zones within Zip Codes, Zip Code subareas, or within urban growth areas where the use is expressly allowed. Leavenworth subareas are identified based on the boundaries in subsection (2)(B)(ii)(b) of this section. If the share equals or exceeds this level, no new short-term rentals are allowed until the total number falls below this maximum limit.

- 14.2 Per CCC 11.88.290 (4)(D)(v)(a) After the 2022 permitting year, permit applications for subsequent years are only accepted on the published dates allowing permit submission. The number of permit applications accepted shall not exceed the number of short-term rentals allowed per the applicable housing cap within each Zip Code and urban growth area as provided in subsection (2)(B) of this section.
- 14.3 Per CCC 11.88.290 (4)(D)(v)(c) A completed permit application does not guarantee that the applicant will receive a permit to operate a short-term rental. Application acceptance only guarantees participation in the permit application process and a review for subsequent permitting under the regulations in existence at time of acceptance.
15. 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.
16. After due legal notice, an open record public hearing was held via Zoom video conference on September 6, 2023.
17. Admitted into the record were the following exhibits:
 - 17.1 Ex. A: AA 23-343 application materials;
 - 17.2 Ex. B: Notice and Order to Abate Violations dated July 26, 2023;
 - 17.3 Ex. C: Violation packet prepared by Short Term Rental Staff;
 - 17.4 Ex. D: Emails between Staff and Appellant;
 - 17.5 Ex. E: Staff Report.
18. The Appellant did not appear at the hearing.
19. The Appellant received prior legal notice of the date, time and manner of the hearing.
20. The Hearing Examiner finds that the Appellant did not provide evidence demonstrating that the Notice and Order to Abate Violations issued May 24, 2023, was issued in error.
21. 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. The Notice and Order to Abate Violations issued by Chelan County on July 26, 2023 regarding property located at 23120 Lake Wenatchee Hwy, Lake Wenatchee, WA 98826, was properly issued.
4. 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 Notice and Order of CE 23- 0079 be upheld for not obtaining the needed short-term rental permit.

Dated this 8 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.