

CHELAN COUNTY

DEPARTMENT OF HEARING EXAMINER

**316 WASHINGTON STREET, SUITE 301
WENATCHEE, WASHINGTON 98801**

IN THE MATTER OF:)	FINDINGS OF FACT,
AA 2023-337)	CONCLUSIONS OF LAW AND
Lutes)	DECISION ON
)	ADMINISTRATIVE APPEAL

I. FINDINGS OF FACT

1. A request for an Administrative Appeal was submitted to appeal the denial of a short-term rental permit.
2. The Appellants are Michael P & Megan M. Lutes (aka Megan Fouty).
3. The project location is 3445 Wapato Lake Rd., Manson, 98831. The parcel number is 28-21-23-440-100. The zoning district is RR 2.5 (Rural Residential/Resource 2.5).
4. The subject property was used by the previous owner as a rental property prior to Short Term Rental (STR) regulation by Chelan County. The previous owner did have an STR Provisional Permit but was never issued a final permit.
5. The previous owner had applied for an Existing Nonconforming STR permit but sold the property before the permit was finalized. That Provisional Permit was revoked as the Provisional permits were not transferable. Appellant then applied in 2022 for a new STR permit and was denied for multiple reasons. This denial was not appealed.
6. The Applicant submitted a new application for short term rental permit dated 5/31/2023 to apply for a Tier 3 STR permit.
7. The parcel was found to be out of compliance with the Chelan County STR code, 11.88.290.
8. A letter with the determination of denial was sent to the Applicants on August 1, 2023.
9. On August 8, 2023, an appeal request was received from the Applicants for AA 23-337 and the appeal fee was paid 8/10/2023.
10. The appeal hearing was originally set for September 20, 2023, but later changed to October 4, 2023 per Appellant's request.
11. The previous owner, Karen and Randy Morrison, 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.

12. The Morrisons had the home built under permit 130143 as a Single-Family Residence (SFR) with 6 bedrooms.
13. The Morrisons sold the property to Appellants, Megan and Michael Lutes. The sale closed on 2/23/2022.
14. The first contact STR staff have recorded regarding the sale was 3/1/2022 at 2:48 pm when a rep from Vacasa left a voicemail stating there was a new homeowner and the sale had closed 2 weeks prior inquiring about transferability. Staff returned the call 3/2/2022 at 3:37 pm and left voicemail the permit was not transferable. The Vacasa rep called again at 3:46 pm asking if the provisional permit were really not transferable. Staff explained the process and reaffirmed that the permit was not transferable.
15. Appellant alleges in their appeal they relied on information from the County in the purchase of the property. The County provided evidence the County was not made aware of the sale until after it was final.
16. The Morrisons called March 4, 2022, stating they had sold the property and asked if it was transferable. Staff explained the process to the Morrisons and again reaffirmed that the permit was not transferable.
17. The Lutes' called and left a voicemail on March 7, 2022, to inquire and stated they had spoken to the STR permit tech the week prior and that they would be in that week to discuss.
18. On March 23, 2022, a call was made to Megan Lutes during which she asked if they could quit claim the deed back to the previous owner so the provisional would still be in their name. The STR Manager checked with then Director, Jim Brown, who said they could not go backward. If they had left the Morrisons on the title as part of the original deal that may have worked but once it was closed, the permit was negated since provisional permits are not transferable.
19. The appellant then applied for a new STR permit by submitting an application dated 6/12/2022. The application was denied as staff found evidence the property was still being operated without the required permit, the property did not meet the minimum lot size requirement in RR 2.5 zoning for the Tier 2 permit they applied (minimum lot size in this zoning is 2.5 acres for an STR and their lot per the Assessor's record is 2.17 acres). Only a limited administrative review was performed due to code violations making the application ineligible.
20. Through the course of meetings and emails, it was determined the Appellants needed to apply for two after-the-fact permits: One to convert the pool house/game room to an ADU and the other for the addition of two bathrooms that were not on the original plans.
21. On February 2, 2023, the Appellant emailed staff stating that they had finished the after-

the-fact permitting process for ADU address and access with Public Works. Staff responded on February 6, 2023 that what was completed was strictly for the access permitting and noted the building permits were a separate department and Appellant would need to work with Community Development for those issues.

22. STR staff emailed the Appellants in appreciation for their efforts in bringing the property into compliance and reminded Appellants of the most recent denial stating they were ineligible to reapply until all code violations were corrected, including any permitting that needed to be finalized/inspected.
23. On March 7, 2023, staff emailed Appellant that the Fire Marshal had expressed some concerns over the property and was requesting a meeting. The meeting was scheduled for April 6, 2023, and was later rescheduled to April 20, 2023, and held via ZOOM.
24. On April 20, 2023, Appellant emailed staff with their recap. STR staff replied April 24, 2023, with specifics for the new STR application window, and that if there were still issues on the parcel they would have 30 days to resolve and reminding them not to operate or advertise in the interim, gave the STR code definition of proof of operation, and mentioned applying for a CUP for events.
25. Appellant replied on April 25, 2023, that they were going to work on the action items and they were going to the property to move some things in preparation to move in. Staff had previously instructed the Appellants that if there were a main dwelling and an ADU, the owner had to live in one dwelling or the other as their permanent residence. Further, if they wanted to qualify for a Tier 1 permit, they would not only have to live onsite but would have to be personally present any time there were renters.
26. A building permit tech with the County reached out on May 23, 2023, to clarify bedroom count and septic requirements and to inquire about notice to title. The Appellant responded with a question about the STR permit and building staff redirected Appellant to speak with STR staff for questions on the STR. STR staff replied that as long as there were still deficiencies on the property, the STR permit would not be approved. STR staff reiterated that since there had been issues with not meeting timelines in correcting deficiencies in time, County staff was clear in the timeline to aid in avoidance of repeating the issue.
27. STR staff emailed Appellant on May 24, 2023, that an advertisement for the Appellant's property had been found on Airbnb. The Community Development Director then emailed the Appellant regarding noncompliance and reminded them there were still permits pending in the system that were lacking septic information and had unpaid fees. These were the after-the-fact permits for the ADU and the addition of bathrooms. Due to the lack of these permits, an application for a new STR could not be approved. The next day, the Appellant questioned the email sent by the Director and asked if they could just resubmit their previous STR application and if they had to pay fees again.
28. Application fees are collected for each application that goes through full review. 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 and (vi)- All application fees are nonrefundable.

29. The email timeline demonstrates significant communication between all parties. Rather than dealing with individual departments or division on issues specific to them, the Appellants often copied multiple staff and divisions on communications not pertinent to them. Staff frequently told Appellants' they were only responding specific to STR or Building or Planning or Public Works but the multiple cc's continued. The County had difficulties trying to parse the multiple issues with the applications since communications needed to be addressed by multiple departments.
30. The Appellant then applied for a new STR permit on May 31, 2023. The application was denied for several reasons all detailed in the denial letter dated August 1, 2023. That denial is the subject of this appeal.
31. The timeline of emails between staff and Appellant from 3/9/2022 to 9/7/2023 demonstrates the level of communication between Appellant and staff as well as providing instruction on how to move forward.
32. Videos taken from a staff site visit are part of the file of record and admitted into the record at the hearing in this appeal.
33. As of the date of this decision, the Appellant had applied for the two required after-the-fact permits for the ADU and added bathrooms, but neither was ever paid for or picked up. They have both since expired.
34. The County addressed other specific statements the Appellant made in the appeal application letter:
 - 34.1. The appellant states the property was built to rent and that the previous owners had a permit to rent. The building permit for the main dwelling was for a single family dwelling, the permit did not indicate commercial use. The only permit to rent the previous owners held that was issued by the County was the Provisional Permit issued in 2021 which was later revoked when the sale was finalized.
 - 34.2. The Appellant states part of the denial was based on them applying as a Tier 3 which is not allowed in their zoning and that staff directed them to apply as Tier 3. During a ZOOM call, the Appellant met with representatives from STR, Building, Planning, and the Director. There was much discussion around the various tier levels of STR permit. Staff reiterated several times the only tier they would qualify for would be Tier 1 owner occupied. They were told they could live in the ADU and rent the main dwelling or live in the main dwelling and rent the ADU. Appellant expressed concern over the decreased occupancy level of that tier and the need to have as many occupants as possible. Staff did indicate that the highest occupancy would be a Tier 3 and also reiterated several times that Appellant would not qualify for other tiers.
 - 34.3. The Appellant states they would modify their application to a Tier 1. A Tier 1 application would also likely be denied based on violations on the parcel such as the added bathrooms without permit and the conversion of the pool house to an ADU. These permits were applied for but never paid for or picked up.

- 34.4. Appellant states that although there are two addresses listed for them, they have proven they physically live onsite at 3445 Wapato Lake Rd. Staff responds that to qualify for a Tier 1 permit, but per CCC 11.88.290 (2)(A)(i)- a Tier 1 rental is defined as Owner-occupied short-term rentals where either (a) rooms are rented and the owner is personally present at the dwelling during the rental period, or (b) the short-term rental is located within the same parcel as the owner's principal residence and the owner is personally present at the dwelling during the rental period, or (c) the entire dwelling is rented no more than fifteen total days in a calendar year; provided, that an on-site qualified person is there during the owner's absence. Portions of calendar days shall be counted as full days. The Appellant's application lists them as the owner with a mailing address in Renton but also lists them as the applicant with the mailing address of the rental. The appellants have not demonstrated that they in fact meet the requirements of CCC 11.88.290(2)(A)(i).
- 34.5. Items 4-8 listed on the Appellant's statement- whether clerical errors or an oversight by the Applicant, were all documented as deficiencies in the application.
- 34.6. Appellant notes staff requested proof of \$500,000 in liability insurance which they provided. The Appellant did provide such proof but what was asked for and is required by code is \$1 million dollars in liability insurance.
- 34.7. Septic information. Staff had told the Appellant that while the 6-bedroom septic would meet criteria for the STR, it did not meet the Health Department requirement as the number of bedrooms exceeded the six covered by the current septic system.
- 34.8. Appellant submitted a document labeled Proposal for Next Steps County Settlement which outlines their timeline of events.
- Appellant notes that in March 2022 they were told to apply for a CUP for Places of Public and Private Assembly. As the Appellants continued to advertise hosting events and groups, Staff let them know they would need a CUP to host events, and that the CUP would be in addition to a required STR permit.
 - In May of 2022, Appellant had applied for and attended a Pre-Application meeting regarding having a Guest Inn or Bed & Breakfast (B&B). No final CUP application for either function was filed with Community Development. Operating a Guest Inn would require a CUP; operating a B&B renting 3 or fewer rooms is an allowed use in their zoning. Each of these two uses has its own set of requirements under the Chelan County Code. Any permitting for these uses would require resolution of any outstanding code violations.
 - Appellant states the pool house cannot be an ADU as it does not have a full kitchen as it lacks an oven. To qualify as an ADU, the dwelling must have facilities for sleeping, sanitation, food storage & preparation. This could be as simple as a mini fridge and a microwave with a sink.
 - Appellant states their family will live in the primary bedroom and rent the other five. Staff was made aware the Appellants have two children. People of any age are considered in the occupancy of an STR and the maximum occupancy per bedroom is two persons.
- 34.9. The Appellant proposed they operate as a Guest Inn. This use requires a CUP that was never applied for. This use is also out of the purview of the STR

program and not what this appeal is based upon.

- 34.10. The Appellant proposed they operate as a B&B. This is an allowed use in this zoning designation. This use is also out of the purview of the STR program and not what this appeal is based upon.
- 34.11. The Appellant proposed they operate as an STR and cites RCW 20 64.37 as well as personal home rentals from Department of Revenue and defines STR tier levels as:
- Tier 1: owner occupied and up to 12 guests
 - Tier 2: non-owner occupied and up to 12 guests
 - Tier 3: non-owner occupied and up to 16 guests
- 34.12 This is in conflict of CCC 11.88.290(2)(A)(i-iii) for Short Term Rentals which this department abides by and defines the permit tiers as:
- Tier 1. Owner-occupied short-term rentals where either (a) rooms are rented and the owner is personally present at the dwelling during the rental period, or (b) the short-term rental is located within the same parcel as the owner's principal residence and the owner is personally present at the dwelling during the rental period, or (c) the entire dwelling is rented no more than fifteen total days in a calendar year; provided, that an on-site qualified person is there during the owner's absence. Portions of calendar days shall be counted as full days.
 - Tier 2. Short-term rentals at a dwelling that is not owner occupied or Tier 3 short-term rental.
 - Tier 3. Short-term rentals may be either non-owner occupied, or owner occupied, and exceed occupancy limits applicable to Tier 1 and Tier 2 units as identified in subsection (3) of this section. No short-term rental may operate as a Tier 3 short-term rental without meeting all Tier 3 provisions as applicable to their property under the requirements found within this chapter.
- 34.13 The occupancy of each tier per CCC 11.88.290 (3)(B)(ii)(a-b):
- Overnight Occupancy. The owner or operator must limit overnight occupancy to no more than two persons per bedroom, not to exceed:
 - Tier 1: a total of eight persons including children.
 - Tier 2: a total of twelve persons including children.
 - Tier 3: a total of sixteen persons including children.
 - Daytime Occupancy.
 - Tier 1: At no time shall the total number of persons at a short-term rental exceed eight persons, including children, but excluding the owner.
 - Tier 2: At no time shall the total number of persons at a short-term rental exceed twelve persons, including children.
 - Tier 3: At no time shall the total number of persons at a short-term rental exceed sixteen persons, including children, but excluding the owner, if one resides on the property.
 - (c) For purposes of subsections (3)(B)(ii) and (iii) of this section occupancy after ten p.m. and before seven a.m. is considered overnight occupancy and all rental use must fully comply with the overnight occupancy limitations found within this section.
- 34.14 In the case of owner-occupied properties, the owners and their live-in family/partners/children are included in the overnight occupancy. The appellant's operation must comply with the Chelan County Code.

- 34.15 The Appellant further postulated that the only requirement for the previous owners to be issued a final permit was a fire inspection. That is incorrect. The property only had a provisional permit and had not undergone full review for a final permit by the time the property was sold to the Appellant.
- 35.16 The Appellant also proposed to potentially operate for events only and state their understanding is they would not need any rental permits and would only need applicable event permitting. This is out of the STR purview. They would need to address this possibility with the Planning Department.
- 34.17 The Appellant concluded with a statement they would like to understand their options. Department staff were very communicative as to resolutions for deficiencies which have, for the most part, gone unheeded.
35. The STR application that the Appellants have initialed and signed more than once state in part in the acknowledgments on page two that:
- 35.1. I acknowledge and certify that this short-term rental location is compliant with all items in subsection 3 of CCC 11.88.290 and will obtain Fire & Life Safety inspections as required.
- 35.2. I certify that I am the property owner, or authorized agent of the property owner, and I have familiarized myself the short term rental code of Chelan County with respect to making this application and that I possess full legal authority and rights necessary to exercise control over the subject property. I further certify that this application has been made with the consent of the lawful property owner(s) if applicant different than owner.
- 35.3. I acknowledge and understand that any violation of Chelan County building or zoning regulations, as well as any violation of any provisions of a short-term rental permit is subject to enforcement pursuant to CCC, Title 16. Enforcement actions may be brought against the owner of the vacation rental home for the conduct constituting the violation.
36. Had the Appellants read what they initialed as acknowledged and also familiarized themselves with the STR code as they attested, the deficiencies found by staff would have been understood by the Appellants (Megan Lutes is an attorney) and the Appellants would have had knowledge of the clear approval criteria.
37. Per CCC 11.88.290 (4)(J)- Approval Criteria.
- (i) To receive approval or renewal, an owner must demonstrate to the satisfaction of the director that all approval criteria listed below have been satisfied:
 - (a) The short-term rental is located in a base or overlay zone that allows its use pursuant to this section.
 - (b) The short-term rental is consistent with density, location, and occupancy limitations of this section.
 - (c) The short-term rental is consistent with short-term rental standards of this section.
 - (d) The short-term rental is consistent with all applicable health and safety requirements of this section.
 - (e) The short-term rental is not the subject of current or outstanding code violations per Title 16.
 - (f) The short-term rental is considered non-conforming and is in full compliance with subsection (2)(E) of this section.

- (g) The short-term rental has not been transferred in violation of subsection (4)(I) of this section.
- 37.1 This criteria has not been satisfied.
38. After due legal notice, an open record public hearing was held via Zoom video conference on October 18, 2023.
39. Admitted into the record were the following:
- 39.1 Ex. A AA 23-337 Appeal Materials.
 - 39.2 Ex. B August 1, 2023 denial of STR Permit Application.
 - 39.3 Ex. C Email timeline between staff and Appellant.
 - 39.4 Ex. D Emails between staff and Appellants.
 - 39.5 Ex. E Videos from site visit.
 - 39.6 Ex. F May 31, 2023 STR application materials.
 - 39.7 Ex. G Proof of rental operation October 10, 2023.
 - 39.8 Ex. H Staff Report.
40. Appearing and testifying on behalf of the Appellants were Mike Lutes and Megan Lutes, aka Megan Fouty. Prior to the commencement of the hearing in this matter, the County Deputy Prosecuting Attorney, Marcus Foster, indicated that the Appellants had communicated a desire to continue the hearing and that the County objected to any further continuance. Mike Lutes stated that the Appellants were ready to proceed on this date.
41. Mike Lutes testified that he was one of the Appellants and property owners. He stated that they bought the house to be used as a short-term rental. He stated, without any corroborating evidence, that the County told them that the permit held by prior owners of the property was transferable. The Hearing Examiner finds that the overwhelming evidence is that the County consistently told the Appellants, and the predecessors in ownership of the property, that the provisional permit was not transferable.
42. Mr. Lutes said that they planned to turn some of the bedrooms into offices, and that there were no full kitchens in one of the buildings, so it should not be characterized as an accessory dwelling unit. However, as set forth above, the Appellants did apply for a permit to change the designation of that portion of the property as an accessory dwelling unit, however, that permit was never picked up by the Appellants and that permit has since expired. Mr. Lutes stated that there have been no physical changes in the home since it had been used as a short-term rental for the past seven years.
43. Megan Lutes, also known as Megan Fouty, testified that the Appellants were told that the property could be rented and that the provisional permit could be transferred. Again, the Hearing Examiner finds that the overwhelming evidence is that the Appellants were not told that the provisional permit could be transferred. Ms. Lutes went through some of the Findings of Facts set forth in the staff report and indicated in her testimony her disagreement with some of those representations within the staff report. Ms. Lutes stated that they were simply trying to find a path forward and had tried to accomplish all that the County requested them to accomplish. Much of her testimony did not relate to specific findings. She stated that the "ADU" rooms are not rented. She said that they are currently not renting the property and that the County has not proven that their permit should be denied.

44. In the end, Ms. Lutes stated that they just wanted to keep renting the property as a short-term rental as it has in the past and were asking for grace.
45. The Hearing Examiner finds that the Chelan County Code is very clear that in order to operate a short term rental, a permit must be held by the STR property owner.
46. The Appellants' property is 2.3 acres. The minimum lot size for a Tier 2 STR is 2.5 acres.
47. The clear evidence is that the Appellants were advertising their property to rent as a short-term rental without having all required permits.
48. The Chelan County Code is very clear regarding minimum lot sizes for a Tier 2 short-term rental.
49. The Appellants applied for a Tier 3 permit. A Tier 3 permit is not allowed in the RR2.5 zoning district where the Appellants' property is located.
50. The Appellant did not apply for a Tier 1 permit.
51. Minimum lot sizes for new short-term rentals are the minimum necessary and are not subject to reduction pursuant to CCC 11.95, 11.97, 11.98, or administrative modification.
52. The County properly denied the short-term rental permit application dated May 31, 2023.
53. Chelan County staff accurately represented the provisions of the Chelan County Code related to short-term rentals in communications with the Appellants.
54. The factual representations set forth within the August 1, 2023, Determination of Denial issued by Chelan County has been proven by a preponderance of evidence
55. 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 parcel remains deficient in meeting the requirements of the STR permit for which the Appellants applied.
4. The after-the-fact permits for the conversion of the game room/pool house to an ADU and the addition of two bathrooms are now both expired.
5. The septic capacity has not been satisfied by the Chelan Douglas Health District.
6. The property is listed on both Airbnb and VRBO in violation of Chelan County Codes.
7. Provisional STR permits are not transferable.
8. The minimum lot size for a Tier 2 STR is 2.5 acres.
9. The Appellant has the burden of proof to demonstrate that the County administrative decision was in error.
10. The May 31, 2023, short-term permit application was properly denied by Chelan County.
11. The factual representations set forth within the August 1, 2023, Determination of Denial issued by Chelan County has been proven by a preponderance of evidence.
12. The Appellant has not proven that the August 1, 2023, Determination of Denial issued by Chelan County was issued in error.
13. The Hearing Examiner does not have authority to render equitable relief.
14. 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 August 1, 2023 is hereby **UPHELD** based on the fact the parcel is out of compliance with the Chelan County STR code, 11.88.290.

Dated this 20 day of October, 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.