

**CHELAN COUNTY**

**DEPARTMENT OF HEARING EXAMINER**

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

<b>IN THE MATTER OF:</b>	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW AND</b>
AA 23-405	)	<b>DECISION ON ADMINISTRATIVE</b>
Phelps	)	<b>APPEAL</b>

**I. FINDINGS OF FACT**

1. An Administrative Appeal was submitted appealing the denial of an application for a short-term rental permit.
2. The Owners/Appellants are Donald and Judy Phelps.
3. The project location is 1110 WAPATO LAKE RD. The legal description is T 28N R 21EWM S 36 PARCEL 3 SS#2532 5.5300 ACRES. The Parcel Number is 28-21-36-100-070. The zoning district is COMMERCIAL AGRICULTURAL (AC).
4. The subject property had applied for an existing nonconforming STR permit but did not meet qualification criteria. A new application for an STR permit was submitted in 2022 and was denied as they needed a CUP in the AC zoning to get a STR permit. The Applicants reapplied in 2023 for the 2024 operational year and were denied for renting without the required permit.
5. The Applicant initially applied for an existing Nonconforming Short Term Rental permit but did not qualify. That decision was not appealed.
6. The Applicant then applied as a new Short Term Rental permit in 2022 and was denied as the zoning in which this parcel is located requires a CUP before a STR can be issued.
7. On May 23, 2023 the Code Enforcement Liaison found proof of operation as a short-term rental. They emailed the Applicant and directed them to cease operation or the violation would be directed to Code Enforcement for follow up.
8. On May 24, 2023 the Code Enforcement Liaison emailed in follow up to conversation that the listings needed to be taken down and they could not rent until they had both a CUP and an STR permit. It was reiterated that further operation could lead to fines. The Applicant had tried to call the Director of Community Development but had not reached them. The Director emailed reiterating the requirements. Applicant then emailed stating the previous direction from STR Staff was unclear and requested grace to continue operation while they pursued CUP which they would apply for and that they had taken down their listing. The Director

replied that they had read the email previously sent from Staff and it was very clear that a CUP was needed and had directed them to speak with a Planner and no grace period could be offered at that time.

9. On June 27, 2023 the CUP application was submitted to Chelan County Planners.
10. On July 7, 2023 the Planning staff let the Applicant know their CUP was then in public noticing and was scheduled for the Hearing Examiner August 2, 2023. Planning Staff also reiterated to Applicant they would need to apply for their STR permit. The Applicant then emailed STR staff to inquire on how to apply for a STR permit asking if they could use the old application from 2021. STR staff let Applicant know they would need to apply as New and provided a link to the forms and list of required materials.
11. The CUP application was approved by the Hearing Examiner on August 3, 2023. Condition of Approval No. 3 in this decision required the Applicant to obtain a short-term rental permit.
12. The STR staff emailed the Applicant that they had not received the STR application. The Applicant replied it had been sent and tracking showed it had been received by the County noting they had addressed it to particular staff's attention. The Applicant also requested STR staff to see if notice of affidavit had been received. STR staff confirmed with noticing staff it had been received.
13. On August 7, 2023 STR staff again found the Applicant renting without required permits and initiated Code Enforcement who sent a Notice and Violation letter 8/10/2023.
14. The Applicant admits in their appeal request item 1 that they allowed a rental in August (Exhibit B, pg. 1).
15. Per CCC 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 and (4)(D)(v)(d)- An application must be deemed complete before a permit is issued. Any applicant who does not complete the required application forms, complete any required inspections or other processes contained within this chapter, and fully submit any required supplemental information or who within thirty calendar days of notification fails to correct any application documentation submission deficiencies as requested by the department by any required deadlines, including submitting a complete application for any required conditional use permits, or who upon application review is found to have knowingly provided false information, or if the applicant or property is found to be out of compliance with this or other titles of Chelan County land use or development codes, is therefore ineligible for a short-term rental permit. The applicant shall not receive any further processing of their application. Once denied, the applicant shall not be eligible for rental permit application until such time as the owner can show compliance with Chelan County regulations, and then must reapply to restart the process.

16. On September 25, 2023 a denial letter for the STR application was sent citing reasons for denial to include citations of CCC 11.88.290 (Exhibit A).
  - 16.1 (4)(H)(v)- Owner Responsibility. It is the owner's responsibility to ensure that the short-term rental is and remains in substantial compliance with all applicable codes regarding fire, building and safety, health and safety, and other relevant laws.
  - 16.2 (4)(J)(i)(c)- The short-term rental is consistent with short-term rental standards of this section.
  - 16.3 (4)(J)(i)(e)- The short-term rental is not the subject of current or outstanding code violations per Title 16.
  - 16.4 (5)(A)- Within Chelan County jurisdiction, a short-term rental must not operate without an approved and valid short-term rental permit. Evidence of operation includes, but is not limited to, advertising, online calendars showing availability, guest testimony, online reviews, rental agreements, or receipts.
17. On September 25, 2023 the Applicant was denied a Short Term rental permit for violation of CCC 11.88.290.
18. On September 28, 2023, this administrative appeal (AA 23-405) was filed with Chelan County Community Development by the Applicant via email. On September 29, 2023 the Applicant paid the fees.
19. After due legal notice, an open record public hearing was held via Zoom video conference on November 1, 2023.
20. Admitted into the record were the following:
  - 20.1 Ex. A Denial of Short-Term Rental Permit.
  - 20.2 Ex. B AA 23-405 Appeal Application Materials
  - 20.3 Ex. C Code Enforcement violation materials and associated emails
  - 20.4 Ex. D Timeline of emails between the Applicant and staff (both STR and Planning).
  - 23.5 Ex. E Staff Report.
  - 23.6 Ex. F 10/26/23 letter from the Appellant.
21. Appearing and testifying at the hearing on behalf of the Appellants were Don and Judy Phelps. Mr. Phelps testified that he was one of the property owners and the Appellant. His testimony indicated that he believed the Code provided that he either needed to get a conditional use permit or a short-term rental permit, but not both.
22. Mrs. Phelps also testified that she was a co-owner and Appellant. She indicated that they had been operating the short-term rental since 2020. She stated that they had not been told that they needed a short-term rental permit. The Hearing Examiner would find that this testimony is contradicted by written evidence provided by Chelan County. Mrs. Phelps testified that they generally stopped renting the property in May of 2023, but they did allow a rental to occur in August of 2023.

23. 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 Applicant caused themselves to be ineligible for a STR permit by operating without the required permits per CCC 11.88.290.
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 denial dated September 25, 2023 is hereby **AFFIRMED** based on the fact the Applicants are ineligible for a STR permit by operating without the required permits per CCC 11.88.290.

Dated this 8 day of November, 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.**