

**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 23-418	)	<b>DECISION ON ADMINISTRATIVE</b>
Conger	)	<b>APPEAL</b>

**I. FINDINGS OF FACT**

1. An Administrative Appeal was submitted to appeal the denial of the transfer of a short-term rental permit.
2. The Owners/Appellants Conger Leavenworth Properties, LLC. Their agent is Conner G. Spani of the Law Office of Conner G. Spani, PLLC.
3. The project location is 22709 SADDLE ST, PLAIN, WA 98826. The legal description is PRIMITIVE PARK NO 2 BLOCK 7 LOT 9 & LOT 10 BLA #1215 0.5500 ACRES. The zoning district is Rural Waterfront (RW).
4. The subject property was permitted for 2021/2022/2023 as a short-term rental. The property was sold by the Saunders to Conger Leavenworth Properties LLC and the sale closed on 6/28/2023. The new owner did not timely transfer the STR permit per STR Code requirements.
5. The Applicant submitted a request to transfer the Short-Term Rental permit for property purchased. The Hearing Examiner finds that it is undisputed that the purchase of the property by Appellant closed June 28, 2023. The written (email) transfer request was formally received on September 26, 2023. However, the Appellant called the County STR department on August 17, 2023, to inquire about transferring the STR permit and was told by STR staff that the request was after the transfer window date and could not be completed. Per Chelan County Code 11.88.290(4)(I), a transfer of an Existing Nonconforming STR permit can take place "...provided, that within thirty calendar days of closing the subject new owner has provided their contact name and registration information with the department." The transfer request was not made within this 30 day time frame.
6. The property under review is located at 22709 Saddle St. Plain, WA 98826.
7. The Appellant submitted a written transfer request via email September 26, 2023. Planning Department staff responded the next day (September 27, 2023) to Appellant noting the previous discussion on transferability and that the Department would not be able to accept the application.

8. The Appeal request was received October 6, 2023 from Appellant's agent, Mr. Spani, via email.
9. Although the Applicant has argued that the transfer request either occurred on August 15 or 16, 2023, and this request was denied, the appeal was not filed until October 6, 2023, by the Appellant's agent. The Hearing Examiner questions whether this appeal is timely if indeed a transfer request was made on August 15 or 16, 2023, and that request was denied. If this is the case, then the appeal period would start to run from the date of the County verbal denial. However, if the communication between the Appellant and STR staff on August 15, 16, or 17 (whichever date this contact occurred) was merely informational and not a true request to transfer, then the appeal period would not have started on that date.
10. The Hearing Examiner finds that the communications that occurred on either August 15, 16, or 17, with a telephone call from the Appellant to the STR staff was an information only call and not a formal request to transfer the STR permit. That formal request to transfer the STR permit did not occur until September 26, 2023. This request was denied by Chelan County on September 27, 2023. Therefore, this appeal is timely.
11. On June 16, 2023, Rob Saunders, the previous owner of the parcel in question, called and left a voicemail. Staff returned the call same day and spoke with Donna Marie who was inquiring what they would need to do as they were in the process of selling. Staff confirmed their STR permit was transferable and that per Chelan County Code 11.88.290 (4)(I), the responsibility falls on the new owner to notify the STR Department to transfer the permit into their name within 30 days of the property closing.
12. Chelan County STR department did not receive any communication from the Appellant prior to the closing of the sale regarding the transferability of the STR permit.
13. On August 17, 2023, Russell Anderson, STR Permit Tech and Code Enforcement Liaison, called Stephanie Gibbs, STR Permit Tech into his cubicle as he was on the phone with the new owner, Terri Conger. Staff confirmed to the caller they had spoken with previous owner and told them they were not responsible for transferring the STR permit out of their name and once property was closed, the new owner had 30 days to transfer STR permit to their name. The new owner stated they did not have the keys nor was she able to get into the property. Staff pointed out that was a civil matter or agreement they made with the sellers and that if the sellers misinformed them, they would need to take that up with the sellers. Staff indicated the current owner replied the sellers were an older couple and she would not take them to court. Assistant Director (AD) received a call from Appellant stating they had bought a property but did not take possession until September. She also noted the sale had closed in June. AD looked up the property and let Appellant know the STR was not eligible for transfer as it was out of the required timeline.
14. On September 26, 2023, the Appellant submitted application materials to transfer STR permit 000542 noting they had taken possession of the property 9/1/2023 and stating the transfer application was within the 30 day transfer window. The first email was sent at 11:06 am. Another email was sent by the Appellant at 11:14 am requesting the Department to please accept application for permit 000542 noting paperwork had been sent requesting a transfer but, with slightly different attachments.

15. On September 27, 2023 the Assistant Director (AD) forwarded emails to staff as a transfer was noted and requested they get the transfer completed within timeline. Staff replied to the AD that the Appellant was past the required transfer timeline as the Assessor's page showed the property transferred title 6/28/2023 and requested verification they would not be able to transfer the permit. AD replied to staff indicating they would check their email archive to see if the request had been requested earlier and missed. AD sent another email to staff that they had received a call in August from Appellant stating they had bought the property but did not take possession until September and asking about a transfer. AD had informed at that time they were past the transfer window so a transfer could not be completed. AD requested staff reach out to Appellant that as per the phone conversation they had with STR Manager in August, the transfer had to be reported within 30 days of closing and, as it was not, transferability was forfeit. They could apply for a Tier 1 permit if they chose to live onsite. Staff replied they remembered the Appellant as they had spoken with them on the telephone as well. The Appellant had indicated they owned the house but let previous owners stay in the house and collect money for rental. Appellant further stated they were not giving her the keys until September, but they actually owned the house starting 6/28/2023. Staff informed Appellant they could not transfer the permit. Appellant then asked to speak to their manager. AD replied they had told the owner the same and asked them to move forward. Staff emailed Appellant noting they had spoken with them as well as them having a conversation with STR Manager that the permit could not be transferred as they were outside the transfer window but could apply for a Tier 1 permit if they planned to live onsite and that the renewal application could not be accepted.
16. On October 6, 2023 the Appeal request for AA 23-418 was received via email from Appellant's attorney, Conner Spani noting "the appeal fee would be paid within the allowed 10 day window." On the same day, Appellant also called requesting to pay renewal/transfer fee for STR permit but was told they did not have a permit to renew and had missed the deadline to transfer. Appellant did not request to pay the appeal fee.
17. On October 9, 2023 the AD replied to Appellant's Attorney the request had been received and once payment was received a case number and hearing date would be assigned and noted per the appeal information, the fees also must be paid within the same 10 working day deadline for the appeal to be requested. Appellant called and paid an appeal fee for denial of STR permit transfer. AD emailed Appellant's attorney later same day noting the Appellant had called to pay fees and noted the case number and hearing date. Receipt for fees were attached. Appellant's Attorney had replied to acknowledge and asked what the deadline was to submit supporting documents for the appeal. AD replied that supporting documents could be submitted right up until the hearing noting that once any documents were submitted to the County they would be added to their file as well as forwarded to the Hearing Examiner to review.
18. After due legal notice, an open record public hearing was held via Zoom video conference on November 15, 2023.
19. Admitted into the record were the following:
  - 19.1 Ex. A Denial of STR Permit Transfer request.
  - 19.2 Ex. B AA 23-418 Appeal Application Materials
  - 19.3 Ex. C Communication and email timeline.
  - 19.4 Ex. D Staff Report
  - 19.5 Ex. E County Response to Appeal

20. Appearing and testifying at the hearing on behalf of the Appellants were Conner Spani and Terri Conger. Mr. Spani did not provide any testimony, but instead provided argument based upon the record.
21. Ms. Conger testified that she is the Appellant and owns the property in question. She asked that she be allowed an exception to the rules. She stated that at the time she bought the property was a very difficult time for her and was stressful. **She stated that the property sale closed on June 28, 2023**, but she did not take possession until either August 31, 2023 or September 1, 2023. She stated that she called Chelan County on August 16, 2023, to tell the County of the transfer. She agrees that the County advised her that the request to transfer the STR permit was not timely. She stated that the Saunders were still operating the property as a STR between the closing date and the time she took possession, and that they received all of the income from the STR operation. She stated that in her mind she did not think that she owned the property until August 31, 2023. She had no access to the property until that point. She explains that she made an innocent mistake. **She admitted that it was her responsibility to know when to make the transfer**. She stated that she did not read the Chelan County Code in detail prior to closing the sale. She stated she did “look around” the Code. It was only after the appeal was filed that she spent time looking at the Chelan County Code.
22. Mr. Spani argued that while June 28, 2023, was the closing date, because possession was not allowed until September 1, 2023, that the Appellant only had legal title, but not equitable title. He claims that his client had ignorance of the provisions of Chelan County Code 11.28.290 and even if she had reviewed the specifics of this statute, the Code is difficult to read and understand and that the operative sentence within the Code is not grammatically correct and does not make sense to him. Mr. Spani conceded that he is basically making a hardship argument for equitable relief.
23. The Hearing Examiner does not have jurisdiction to grant relief in equity.
24. Ms. Conger did make a point of saying that the County’s response to her in the August 2023 telephone call was that she could sue the sellers. The County disputes this. The County wanted to call a witness regarding this issue. The Hearing Examiner finds that even if the County did tell the Appellant that an available option was to bring litigation against the seller of the property, that this is not material to the Hearing Examiner’s determination of the issue in this case. Mr. Spani went on to say that his client was told that she could not appeal the County’s decision, but of course even if this is true, this is incorrect because she did file an appeal after she filed her formal request to transfer the permit. Finally, Mr Spani testified that the terms “subject new owner” and “department” as used in the Chelan County Code is confusing. However, the Hearing Examiner notes that all these discussions occurred after the time to request the STR permit transfer had expired.
25. The Hearing Examiner finds that the Chelan County Code 11.88.290(4)(I) is not confusing and is easily understood.
26. While it is true that CCC 11.88.290 has many provisions, CCC 11.88.290(4)(I) is short and straightforward. This Code provision is very clear that a short term rental permit is only transferable to a new owner upon compliance with sections 11.88.290(4)(I)(i-iv).
27. CCC 11.88.290(4)(I)(ii) clearly states that the new owner has 30 days from the date of closing to provide their contact name and registration information to the Department. The

Hearing Examiner does not accept the Appellant's characterization as the term "Department" in this provision to be vague. The Hearing Examiner finds that the Appellant was not confused by this term because she called the short-term rental department in August of 2023, to inquire about the transferability of the STR permit.

28. In any event, the Appellant and her attorney admit that the Appellant did not review the County Code, CCC 11.88.290, except in a very cursory manner, either prior to her purchase or within the 30 day STR permit transfer window.
29. The Hearing Examiner finds that the term "closing" is not vague and confusing as used in this provision of the Chelan County Code. This provision clearly relates to the transfer of property from one owner to a new owner. That transfer is formerly completed when the transaction is closed. The closing of a sale is entirely separate from the possession of the property after closing. The Hearing Examiner finds that possession may occur either before or after closing depending upon the agreement between the seller and the buyer as set forth in a purchase and sale agreement. Generally speaking, the term "closing" is defined in a purchase and sale agreement. However, the purchase and sale agreement for the transaction between the Appellant and the sellers was not provided to the Hearing Examiner. In any event, this definition is not controlling as to the definition of the term "closing" as used in the Chelan County Code.
30. The Hearing Examiner finds that as used in CCC 11.88.290(4)(I)(ii) the term "closing" means the date that all documents transferring the property from seller to buyer are recorded and that sales proceeds are made available to the seller.
31. The Hearing Examiner finds that based upon the Appellant's admissions and the County's investigation, the closing of the transaction between the Appellant and the Saunders (the sellers) occurred on June 28, 2023.
32. 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. The Appellants have timely filed their appeal.
3. Closing as used in CCC 11.88.290(4)(I)(ii) means the date that all documents transferring the property from seller to buyer are recorded and that sales proceeds are made available to the seller.
4. The Applicants do not meet criteria to continue operating a STR as the applicant did not meet the codified requirement to transfer the STR permit within 30 days of closing.
5. 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 27, 2023, is hereby **AFFIRMED** based on the fact the Applicants failed to transfer the STR permit within 30 days of closing.

Dated this 17 day of November, 2023.

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.**