

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, DECISION ON
)	ADMINISTRATIVE
AA 24-027)	APPEAL
Evans)	

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on May 1, 2024, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, and Decision on Administrative Appeal as follows:

I. FINDINGS OF FACT

1. An Administrative Appeal was submitted to appeal the denial of an extension request for a Short-Term Rental Renewal Application.
2. General Information:
 - 2.1. Project Location: 37 US HWY 97A, Chelan, WA 98816.
 - 2.2. Parcel Number: 27-22-16-230-200.
 - 2.3. Legal Description: T 27N R 22EWM S 16; LOT B BLA 2013-307; LOT A BLA 2006-187; SWNW; 6.0600 ACRES.
 - 2.4. Owner: Dennis Evans Orchard LLC.
 - 2.5. Agent: Michael T Callan Of Peterson Russell Kelly Livengood PLLC.
 - 2.6. Zoning District: Special Use District (SUD).
 - 2.7. Existing Land Use & Site History: Historically the site was used for residential, wine production/storage/tasting room. The subject property was permitted as a short-term rental 2021-2023.
3. Extension Denial: January 10, 2024 (final version of denial).
4. Appeal Submitted: January 16, 2024
5. Notice of Public Hearing: February 24, 2024.
6. Public Hearing: May 6, 2024.
7. The Applicant submitted a Short-Term Rental Renewal Application dated December 7, 2023 to continue use as a short-term rental. The Applicant was denied the permit renewal as they did not meet the renewal application deadline and their renewal extension request was denied.
8. The property under review is located at 37 US HWY 97A, Chelan, WA 98816.
9. On December 7, 2023 Office Manager of Callan Cellars telephoned to inquire about renewal of STR permit. She was told the renewal window had closed October 31, 2023. When she asked if there was anything that could be done, she was instructed she could request a renewal extension and that

the determination was up to the Director's discretion. Staff sent email links to the Office Manager same day. Renewal Extension Request was submitted by Office Manager (Exhibit C).

10. December 7, 2023 a Short-Term Rental Permit Renewal Application was received from Lisa Callan via email by Community Development from Applicant (Exhibit E, pgs. 3-5).
11. Applicant submitted renewal application for Short-Term Rental permit dated 12/07/2023 which was after the renewal deadline of 10/31/23.
12. Per Chelan County Code 11.88.290 (4)(B)(iv)(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.
13. The Renewal Extension Request was reviewed by the Chelan County Department of Community Development Director and denied 12/28/23. Determination was sent to owner, applicant, and Office Manager via email the same day. Printed copies were also mailed via USPS to owner and applicant.
14. January 2, 2024 updated versions of the extension denial were sent to the same parties. This version included discussion of a second dwelling which the County believed existed on the property which would have required owner occupancy under the STR Code.
15. Mr. Callan provided information confirming that there was not a second dwelling on the property. He also objected to denial of the hardship request on the basis that the County erroneously believed there was a second dwelling on the property.
16. January 10, 2024 a second updated version of the extension denial was sent to the same parties as previous with the additions of Mr. G Evans and Mr. Callan.
17. While the second version of the denial included information about the second dwelling, the January 10 version clarified that the County confirmed there was no second dwelling and the basis for the denial was the Director's determination that the reasons provided did not constitute a hardship.
18. On January 17, 2023 Guy Evans delivered an appeal request for AA 24-027 and paid associated fees. Mr. Callan, partner in Callan Cellars, who is also an attorney, prepared the Appeal document.
19. Per CCC 11.88.290 (4)(B)(iv)- All permit renewal applications for permitting year 2023, and beyond, must be received by October 31st of the preceding year.
 - 19.1. (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.
20. Ms. Callan was the 'Local Contact' on the 2022 renewal for the 2023 operating year and the application was submitted timely for year 2023. Ms. Callan also paid the fees for that renewal timely. This indicates that the renewal timeline was known to her.
21. The statement in CCC 11.88.290 (4)(B)(iv)(a) that the director may accept does not translate to must accept. The decision is to be made at the director's discretion.
22. Between the date of the renewal extension request and the initial determination, several emails were exchanged to clarify information provided in the request as well as questions the Director posed after initial review (Exhibit E pgs. 8-14).

23. December 28, 2023 the Director exercised her discretion after complete review of the submitted extension request and supplemental information then made the determination to deny the late renewal as the reason given in the extension request was not deemed to rise to the level of hardship (Exhibit A pgs. 1-10.6).
24. The Director determined that the Office Manager's mistaken belief that renewal paperwork would be sent to their office was not a hardship. Because Ms. Callan had properly renewed the STR permit previously, the owners had knowledge of the renewal process.
25. As part of the Renewal Extension Request (Exhibit C), the Office Manager claimed they had not received the reminder postcard sent by the Department. She also admitted it was the STR operator's responsibility to research the renewal deadline.
26. Per CCC 11.88.290(4)(8)(1)- 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.
27. The County mailed reminder postcards on August 18, 2023 fulfilling the obligation. The postcard for this rental was sent to 75 US HWY 97A, Chelan, WA 98816 which was the address provided on the 2023 renewal application. The postcard shows the renewal window was open September 1 – October 31 (Exhibit D).
28. December 28, 2023 Mr. Callan requested via telephone review of CUP 03-007 as the information held within would shed light on some of the building permit concerns.
29. The Director reviewed CUP 03-007. The information held within did not change the determination to deny the extension for renewal as the base issue is the renewal application was received outside the renewal window of 9/1/2023-10/31/2023 and the information presented was not felt to rise to the level of hardship.
30. An updated determination was issued January 2, 2024 (Exhibit A pgs. 11-24).
31. January 5, 2024 Mr. Callan emailed stating the County should review again based on several bullet points (Exhibit E pgs. 72-73).
32. January 8, 2024 Staff responded the request would be taken to the Director and County counsel.
33. January 10, 2024 the Renewal Extension Request Updated-Second was issued to clarify that the information provided by the Applicants confirmed there was no second dwelling on the parcel (Exhibit A pgs. 31-34). Discussion of that issue in the updated denial was not the basis for the initial or updated denial. The sole basis for those denials was the Director's determination that the reasons provided did not constitute a hardship for purposes of issuing a late renewal.
 - 33.1. The Director confirmed in the Renewal Extension Request Updated-Second that the decision to deny the hardship request was based on the reasons provided in the renewal extension hardship request. Namely, that the Office Manager's mistaken belief that renewal paperwork would be sent to their office was not a hardship. Because Ms. Callan had properly renewed the STR permit previously, the applicant had knowledge of the renewal process.
34. 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 Renewal Application, the applicant, Lisa Callan, 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,
 - 34.1. The eighth acknowledgement states, "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.”

- 34.2. The ninth 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 between September 1 and October 31 each year I intend to keep the STR permit” (Exhibit E pgs. 3-5).
35. After due legal notice, an open record public hearing was held on May 6, 2024.
36. The following exhibits were admitted into the record:
 - 36.1. Ex. A. Denial of permit application renewal extension for Short-Term Rental dated December 7, 2022 (pgs. 1-10.6), updated Renewal Extension Determination dated January 2, 2024 (pgs. 11-24), and Renewal Extension Determination- Updated-Second dated January 10, 2024 (pgs. 25-29).
 - 36.2. Ex. B. AA 24-027 Application Materials
 - 36.3. Ex. C. Renewal Extension Request
 - 36.4. Ex. D. Copy of postcard that was mailed to permit holders with screen clipping of mailing list with this permit’s mailing information and mailing affidavit.
 - 36.5. Ex. E. Timeline of events and emails
 - 36.6. Ex. F. Miscellaneous Correspondence and Documents from Planning Staff File related to uses on the property.
 - 36.7. Ex. G. Staff Report.
 - 36.8. Ex. H. Remainder of the file of record.
 - 36.9. Ex. I. Applicant Appeal Letter dated April 24, 2024.
 - 36.10. Ex. J. Declaration of Guy Evans dated April 23, 2024 with Exhibits A-C.
 - 36.11. Ex. K. Declaration of Lisa Callan with Exhibits A-L.
 - 36.12. Ex. L. Declaration of Michael Callan with Exhibits 1-5.
 - 36.13. Ex. M. County response to Appeal dated April 26, 2024.
 - 36.14. Ex. N. Appellant Reply Letter dated April 30, 2024.
37. Appearing on behalf of the Appellant was Mike Callan, attorney at law. Mr. Callan was not sworn in as a witness but provided argument based upon exhibits in the record.
38. Mr. Callan indicated that the Appellant is not arguing lack of notice as a hardship. The Hearing Examiner understood this to mean that the Appellant had a full understanding as to the deadline for submitting the Renewal Application.
39. The Appellant was aware that the Renewal Application was due to be received by the county on or before October 31, 2023.
40. The Appellant did not timely file a STR Renewal Application.
41. The Appellant argued that after the county denied their request for a hardship extension, that the Appellant submitted a new reason to justify the hardship. That reason was an injury to a winery employee which is unrelated to the operation of the short-term rental.
42. The Appellant has submitted information that Lisa Callan was fully engaged in handling the on-the-job injury for their winery employee and could not file the Renewal Application.
43. The Appellant minimized the contact with the County by Danielle Ross, the tasting room manager for Callan Cellars, with the County by email dated December 7, 2023.

44. The Hearing Examiner would note that in this email Ms. Ross Stated "I acknowledge that it was my responsibility to research the deadline and that I failed to do so in time." She further states "this was my mistake and not that of my bosses, Lisa and Mike Callan."
45. The Hearing Examiner would note that beginning December 7, 2023, Lisa Callan had regular contact with Chelan County regarding the denial of the hardship extension for filing the Short-Term Rental Renewal Application. At no time prior to April 12, 2024 was there any communication by the Appellant with the County that they were claiming as the hardship the injury to the winery employee. The Appellant first claimed this reason on April 12, 2024.
46. The Hearing Examiner finds it important that the appeal filed by Appellant, dated January 16, 2024 made no mention of any hardship related to Mrs. Callan's unavailability due to an employee injury. As the Appellant submitted in later documents, this employee injury incurred well before January 16, 2024 and certainly would have been known by the appellant on January 16, 2024. Yet Appellant makes no mention of this employee injury being a hardship in their appeal document.
47. The Hearing Examiner would note that the Appeal was filed by attorney Michael Callan, husband of Lisa Callan. There has been no indication that Mr. Callan was not aware of the injury to the winery employee, or his wife's unavailability to timely prepare the renewal application based upon her involvement with the winery employee's injury.
48. The Appellant did not provide any evidence as to why Mike Callan or Guy Evans, or any of their agents, could not have filed the STR Renewal Application prior to October 31, 2023.
49. Again, the Appellant is not arguing that they were unaware that the STR Renewal Application was due on October 31, 2023.
50. The Appellant requested that the Hearing Examiner either find that the employee injury was a hardship, or to remand the matter back to the County for a determination as to whether or not this reason was an adequate hardship.
51. Appearing on behalf of the County was Marcus Foster, Deputy Prosecuting Attorney. Mr. Foster indicated that the evidence is clear that Dennis Evans Orchard is the owner of the short-term rental and is responsible to renew the Short-Term Rental. It is the owner of the short-term rental who decides who will submit the renewal application. However, ultimately it is the responsibility of the STR owner to timely submit an STR Renewal Application.
52. The Hearing Examiner finds it significant that Danielle Ross in her email to the County dated December 7, 2023 identifies herself as the manager of the Short-Term Rental and that as manager she was to file the STR Renewal Application.
53. On the issue of whether or not the County's denial of the hardship extension request based on the Appellant simply missing the application deadline, the Hearing Examiner finds that the Appellant has not satisfied its burden of proof that the County issued this decision in error.
54. The Hearing Examiner finds and concludes as a matter of law that the County is not required to consider the Appellant's reason for a hardship extension that was first made known to the County four months after the Appellant's first contact with the County requesting an extension for a totally different reason, and three months after filing their appeal stating, in detail, grounds to reverse the County decision to deny the extension request.
55. Nevertheless, the Hearing Examiner will consider the Appellant's request for a hardship permit based upon the injury to the employee of the winery.
56. The Hearing Examiner finds that this reason is not a hardship as contemplated by the Chelan County Code. There were several people, other than Lisa Callan, that were aware of the deadline,

were presumably aware of Ms. Callan's distraction due to the employee injury and therefore could have easily filed the renewal application on a timely basis.

57. As indicated above, the Appellant is not arguing that they did not have notice as to the deadline for filing the renewal application. This would include not only Lisa Callan, but also Mike Callan and the owners and agents of Dennis Evans Orchard.
58. The Appellant has failed to demonstrate a hardship justifying an extension for filing a Short-Term Rental Renewal Application
59. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this Decision.
2. The Appellants admit that they had notice of the October 31, 2023 deadline to file a Short-Term Rental Renewal Application.
3. The Appellants admit that they missed this deadline.
4. The Appellants have failed to demonstrate any hardship justifying an extension for the filing of the Short-Term Rental Renewal Application.
5. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION

Based upon the above Findings of Fact and Conclusions of Law, the Hearing Examiner here by **AFFIRMS** Chelan County's **DENIAL** of the request for an extension for filing the Short-Term Rental Application, and further **DENIES** Appellant's new request for a Short-Term Rental Application extension based upon the claimed hardship of an injury to an employee of the winery owned by Mr. and Mrs. Callan.

Dated this 10 day of May, 2024.

CHELAN COUNTY HEARING EXAMINER



Andrew L. Kottkamp

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Chelan County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as "(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available" or if this

section does not apply, then pursuant to RCW 36.70C.040(3) (c) "...the date the decision is entered into the public record." Anyone considering an appeal of this decision should seek legal advice.

Chelan County Code Section 1.61.130 provides that any aggrieved party or agency may make a written request for reconsideration by the Hearing Examiner within ten (10) days of the filing of the written record of decision. The request for reconsideration shall be submitted to the Community Development Department. Reconsideration of the decision is wholly within the discretion of the Hearing Examiner. If the Hearing Examiner chooses to reconsider, the Hearing Examiner may take such further action deemed proper and may render revised decision within five (5) days after the date of filing of the request for reconsideration. A request for reconsideration is not a prerequisite to filing an appeal under Section 1.61.160.

The complete case file, including findings, conclusions, and conditions of approval (if any) is available for inspection during the open office hours at Chelan County Department of Community Development. Their address is 316 Washington Street, Suite 301, Wenatchee, WA 98801. Their telephone number is (509) 667-6225.