

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, DECISION ON
)	ADMINISTRATIVE
AA 24-039; AA24-040)	APPEAL
Rowes Towing Service)	

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on May 15, 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. Notice and Orders to Abate Violations for Code Enforcement case CE 22-0052 and Citation CE 22-0052-1 for operating an illegal campground without a Conditional Use Permit in addition to violation for large amounts of junk, garbage, and hulk vehicles. These were not appealed. On January 8, 2024, a Citation was issued based on the Notice and Orders. This Citation was appealed on January 17, 2014.
2. General Information:
 - 2.1. Violation Location: 620 Gorge Rd, Chelan, WA 98816
 - 2.2. Parcel Number: 27-23-19-616-020
 - 2.3. Legal Description: HILLSIDE BLOCK 1 LOT 5 LOTS 3 4 5 & 10 BLOCK 1 9.0100 ACRES
 - 2.4. Owner: Jaro Inc C/O Rowes Towing Service
 - 2.5. Agent: JOAN K MELL of III BRANCHES LAW PLLC
 - 2.6. Zoning District: RR 5 (Rural residential/resource: one dwelling unit per five acres) and R-M (Multi-Family Residential)
 - 2.7. Existing Land Use & Site History: The only building permit issued to this parcel was in 1990, BP 900037 for a 40 x 54 Quonset Pole Building that was never finalized. This does not appear to be the building currently onsite. Currently the property appears to have items stored in the right of way, junk vehicles, garbage, and trailers being used for residences.
3. Citation Issued: 1/8/2024.
4. Appeal Submitted: 1/17/2024.
5. Notice of Public Hearing: 3/9/2024.
6. July of 2022 the first Notice of Violation was sent to property owner. On August 7, 2023, the property owner was issued a Notice and Order to Abate Violations of operating a campground/campsite/trailer park at 620 Gorge Rd, Chelan, WA 98816. This is in violation as this activity requires a Conditional Use Permit (CUP) per Chelan County Code 11.93.010. In addition, a large amount of junk, garbage, and hulk vehicles that can be seen from the public road are in violation

of Chelan County Code 11.88.100(1)-(2). The owner was given a list of corrective actions that were to be completed by September 1, 2023. A second Notice and Order was sent August 21, 2023, and the deadline for compliance was extended to September 30, 2024. This Notice did state that if the corrective action had not been completed by September 30, 2023, a Citation would be issued with fines for September 1-30, 2023. Neither Notice and Order was appealed As of January 3, 2024, a CUP had not been applied for and the other corrective actions were not complete. A citation was issued January 8, 2024, for the first month of violation after compliance deadline had passed.

7. Property being reviewed is located at 620 Gorge Rd, Chelan, WA 98816; parcel 272319616020.
8. A complaint was received by Community Development Department and Code Enforcement followed up.
9. In July, 2022 a Notice of Violation was sent to Jaro Inc, 620 George Rd, Chelan, WA 98816 for operating a campground/campsite/trailer park, as defined in Chelan County Code 14.98.355, on this property in violation of the requirement for a Conditional Use Permit (CUP) per Chelan County Code 11.93.010.
 - 9.1. Chelan County Code (CCC) 14.98.355 states “‘Campground’ means any parcel or tract of land under the control of any person, organization, or governmental entity wherein two or more recreational vehicle, recreational park trailer or other camping unit sites are offered for the use of the public or members of an organization.”
10. September 21, 2022, Mr. Rowe called the Sheriff’s Office requesting to speak with a sergeant stating he had received an envelope from Code Enforcement with a list of violations and wanted a sergeant to explain them all to him. Sgt. Huddleston advised Mr. Rowe he would have Code Enforcement call him (Exhibit C pgs. 4-5). Deputy Anderson called and attempted a conversation with Mr. Rowe, to which his reply was that his operation was grandfathered in. He asked for an explanation of what was wrong. Deputy Anderson and Deputy Bartlett visited Mr. Rowe at 620 Gorge Rd, Chelan and tried to explain the violations. Deputy Anderson noted that Mr. Rowe wanted to record the conversation but was unable to operate his phone to do so. Deputy Anderson tried again to talk to him, and he told him he was wrong and did not know what he was talking about. The deputies realized the conversation was not productive and left (Exhibit C, pg. 8).
11. September 23, 2022, the certified mail receipt for the July 2022 Notice of Violation was received by the County, signed by Mr. Rowe (Exhibit C, pgs. 6-7).
12. August 7, 2023, a Notice and Order to Abate Violations was sent to Jaro Inc c/o Rowes Towing Service, 620 Gorge Rd, Chelan, WA 98816 both via regular USPS mail and certified mail as well as sending certified mail to Jaro Inc, 134 Tarkas Ln, Victor, MT 59875 (Exhibit C, pgs. 8-11). The Montana address had been pulled from the Assessor’s records for the owner of the property (Exhibit C, pg.27-28). This Notice required the violations to be corrected by September 1, 2023. This Notice and Order was not appealed.
13. August 16, 2023, the certified and regular mail sent to 620 Gorge Rd, Chelan were returned. The certified envelope was marked ‘Not Deliverable as Addressed’ and the regular mailing was marked ‘No Mail Receptacle.’ This day the deputy also looked up the business in the Secretary of State Corporations and Charities database and found another address listed as PO Box 144, Chelan, WA 98816 (Exhibit C, pg. 3).
14. August 21, 2023, a Notice and Order to Abate Violations was sent to PO Box 144, Chelan, WA 98816 by certified mail. This Notice reviewed the campground/campsite/trailer park violation of the requirement for a Conditional Use Permit (CUP) violation had been ongoing since July 2022 and added that there was also a large amount of junk, garbage, and hulk vehicles which could be seen from the public road which was a violation of Chelan County Code 11.88.100 (1)-(2), that this was

the second Notice and that if the corrective actions were not completed by September 30, 2023 a Citation would be issued for the month of September at \$1500/day (Exhibit C, pgs. 29-33). This Notice and Order was not appealed.

15. August 23, 2023, the Notice sent certified August 21, 2023 was returned noting the PO Box was 'vacant.'
16. August 25, 2023, Deputy Chris Eakle served the August 21, 2023 Notice and Order to Abate Violations to Jan Rowe/Jaro Inc c/o Rowe's Towing Service at 620 Gorge Rd, Chelan, WA (Exhibit C, pgs. 34-35).
17. Under CCC 16.12.010(1), appeals must be filed within 14 days of the date of issuance. No appeal of either the Notice and Order was filed within that timeframe
18. On August 31, 2023, the Notice sent regular mail August 21, 2023, was returned noting the PO Box was 'vacant.'
19. October 10, 2023, Deputy Anderson revisited the site and took updated photos that showed the violation was ongoing (Exhibit C, pgs. 37-42).
20. On August 2, 2023, October 10, 2023, and January 31, 2024, Code Enforcement took date-stamped photos of the property (Exhibit C 53-68). These photos show numerous RVs with signs of habitation including what appears to be functional cars next to RVs in good repair, extended slide-outs, a makeshift structure near two of the RVs, insulation around the sides of the RVs, and a garbage bin. At least one of the RVs appears to be gutted. There are at least two boats, mattresses, and other junk piled around the property.
21. Deputy Anderson visited the property several times, including March 7th, 2024, and took photographs, and prepared a declaration summarizing his observations (Exhibit G AND G-A). These observations show the RVs are inhabited.
22. Mr. Rowe has not denied operation of a campground, but rather insists that the use is "grandfathered in." He has not provided evidence that the campground is a valid nonconforming use. He has not provided any competent evidence that the County has expressly approved this use.
23. On January 8, 2024 a Citation was issued for September 1-30, 2023 in the amount of \$45,000 and noted the next Citation would be issued January 31, 2024 for the month of October. This was sent via regular mail and certified mail to PO Box 144, Chelan, WA 98816 (Exhibit C, pgs. 43-45). Deputy Anderson also entered a Declaration of Service into the file (Exhibit C, pgs. 46-47).
24. January 17, 2024, Joan Mell, Attorney for the owner, sent an appeal of the January 8, 2024 citation via email (Exhibit A, pgs. 10-22). It was reported that a copy was also being mailed with a check. The mailed version with payment was never received.
25. On January 24, 2024 an amended Notice of Appeal was served to Community Development by E.C. Rodriguez (Exhibit A, pgs. 1-9) along with payment of the appeal fee.
26. Because the Amended Notice of Appeal was accompanied by the fee, the County considered this the only properly served appeal.
27. The Amended Notice of Appeal referred to an appeal of citations (plural) issued. The amended Notice of Appeal was accompanied by two copies of the January 8, 2024, citation (Exhibit A, pgs. 1-22). Staff were confused by this but filed appeals as requested.
28. Because the August 7 and August 21, 2023, Notice and Orders were not timely appealed, they are considered "committed" violation and, to the extent necessary, are affirmed in their entirety.

29. Because the January 24, 2024, appeal was the only properly served appeal, and it contained two copies of the January 8 Citation, the appeal of that Citation is the only item being appealed to the Hearing Examiner.
30. The January 25, 2024, the certified mailing of the January 8, 2024 Citation was returned marked as 'Return to Sender- Deceased.'
31. The zoning of the property is split with the majority being Rural Residential/Resource (RR5) and the rest being Multifamily Residential (RM). Under the District Use Chart at CCC 11.04.020, the RR5 zone is blank for the use of campgrounds as well as wrecking yards, indicating it is not an allowed use in that zone. The portion of the parcel that is zoned RM is also in the Urban Growth Area (UGA) of the City of Chelan. Per the Chelan Municipal Code 17.24.010 the permitted use in the RM zoning is the same as in the RL zoning which does not include campgrounds or wrecking yards (Exhibit D, pgs. 1-3).
32. As Mr. Rowe had previously stated he was 'grandfathered' into the uses on the property. Staff researched to see if a CUP had been granted for any of these uses. The only CUP issued for this property was CUP 1641 in 1989 (Exhibit F). This CUP was for an expanded wrecking yard. The application was approved with several conditions. Those of interest in this matter pertain to fencing which shall be "...maintained at all times and all fencing shall be site obscuring except on the South side," and "All vehicles unable to be moved under their own power shall be stored and kept behind the fences or within buildings."
33. The photographs taken by Code Enforcement deputies show clearly that items stored are not behind an obscuring fence of any repair.
34. In review of the Chelan County Graphic Information Systems mapping (GIS), the Applicants storage and use of their parcel appears to have exceeded the parcel boundaries and lapses over into the right-of-way as well as adjacent parcels (Exhibit D, pgs. 1-3). The file for CUP 1641 has papers that refer to leasing land from the Chelan PUD (Exhibit F, pg. 51).
35. On February 5, 2024, Staff contacted the real estate office of the Chelan County PUD and spoke with Vicki Griffin. She stated they show no leases with this applicant since 1995.
36. Jaro Inc, the entity listed as owner of the parcel had been previously filed with the Washington Secretary of State under UBI# 600 511 668 to 620 E Iowa St, Chelan, WA 98816 starting in 1983. That filing went inactive in 2005, was reinstated in 2007 then was dissolved in 2011 due to the entity failing to file an annual list of officer/license renewal within the prescribed time. Jaro, Inc did not effectively exist until it was again registered with the Washington Secretary of State under UBI# 604 979 798 in 2022. The Nature of Business listed is "ANY LAWFUL PURPOSE, ANY LAWFUL PURPOSE HOLDING REAL ESTATE." The activity on the property that has been ongoing since 2022 is not lawful (Exhibit E, pgs. 1-5).
37. After due legal notice, an open record public hearing was held on May 15, 2024.
38. The following exhibits were admitted into the record:
 - 38.1. Ex. A. AA 24-039 and AA 24-040 Application Materials (amended and original),
 - 38.2. Ex. B. Citation CE 22-0052-1
 - 38.3. Ex. C. Code Enforcement printout for CE 22-00052
 - 38.4. Ex. D. Parcel maps and screen shot of District Use Chart
 - 38.5. Ex. E. Business information from Washington State Secretary of State
 - 38.6. Ex. F. CUP 1641
 - 38.7. Ex. G. Declaration of Bruce Anderson
 - 38.8. Ex. G-A. Updated site photos taken March 7, 2024,

- 38.9. Ex. H. Supplemental Staff Report,
 - 38.10. Ex. I. Miscellaneous Documents from the County Regarding CUP 1443 and CUP 1629
 - 38.11. Ex. J. Appellant Motion for Scheduling Conference or Continuance Dated March 13, 2024,
 - 38.12. Ex. K. County Response to Appellant's Motion Dated March 14, 2024,
 - 38.13. Ex. L. January 31, 2024, Video Taken by Chelan County Representatives,
 - 38.14. Ex. M. March 14, 2024, Hearing Examiner Decision on Appellant's Motion,
 - 38.15. Ex. N. Appellant Brief Dated April 10, 2024,
 - 38.16. Ex. O. Jan Rowe Declaration Dated April 9, 2024, with Exhibits A-L,
 - 38.17. Ex. P. Supplemental Declaration of Jan Rowe Dated May 6, 2024, with Attachments,
 - 38.18. Ex. Q. County Hearing Brief Dated August 15, 2024 (Misdated actual date is April 15, 2024)
 - 38.19. Ex. R. Declaration of Marcus Foster Dated April 15, 2024, with Exhibits A, B, C, D.
39. Appearing and testifying on behalf of the Appellant was attorney Joan Mell. Appearing on behalf of Chelan County was deputy prosecuting attorney Marcus Foster.
40. Both Ms. Mell and Mr. Foster agreed that all of the exhibits referenced in Exhibit 45 were the exhibits submitted to the Hearing Examiner prior to this open record public hearing and were properly admitted into the record.
41. Attorney Joan Mell was sworn in as a witness. She testified that she is the attorney for Rowes Towing Inc. Her presentation raised three issues:
- 41.1. That the appeal was timely pursuant to the medical condition of Mr. Rowe as set forth in his supplemental declaration. She indicated that his medical condition prevented him from timely filing an appeal to the Notice and Orders to Abate Violation.
 - 41.2. She argued that the trailer court was a legal nonconforming use. However, the appellant failed to demonstrate that the use as an RV campground/trailer court, was in any way legal at the time that it started. The appellant failed to satisfy its burden of proof that the RV campground/trailer court had received any permit from Chelan County authorizing this use.
 - 41.3. Finally, Ms. Mell argued that there was not "junk" on the property. She indicated that there was storage of business equipment for the appellant's business that's conducted on the shores of Lake Chelan. However, the appellant did not provide any evidence that the appellant has received a permit to allow storage of business equipment on the subject property.
42. The Hearing Examiner would note that Mr. Rowe's health condition set forth in his supplemental declaration, resulted in his hospitalization after the appeal period for the Notice and Orders to Abate Violation had already run. There was no evidence as to why the Appellant failed to timely file an appeal of the Notice and Orders to Abate Violations. The appellant admits that the appeal of the Notice and Orders was not timely and at the hearing they indicated they were asking for an extension. There's no legal authority for the Hearing Examiner to grant an extension of the time to appeal a Notice and Order to Abate Violations, and even if there is any authority, the Hearing Examiner finds that the appellant unreasonably delayed the filing of the Appeal of the Notice and Orders to Abate Violations.

43. The Hearing Examiner would note that Ms. Mell indicated that she was contacted by Mr. Rowe while he was in the hospital as to her representing him. Nevertheless, no appeal was filed until January 24, 2024. Again, this appeal is only for the citation that was issued.
44. Ms. Mell argued that the County did not respond to her request for information and therefore could not file an appeal. The Hearing Examiner finds that the appellant clearly could have timely filled an appeal challenging the Notice and Orders to Abate Violation, without having received any requested information from the County.
45. The Appellant claimed defenses of laches and estoppel. The Hearing Examiner finds and concludes as a matter of law that the Hearing Examiner does not have authority to grant equitable relief.
46. Testifying at the hearing was appellant Jan Rowe. Mr. Row testified that he believed that the trailers have been lawfully placed on the property and that he had an understanding that the use as a RV campground/trailer court was lawful. He assumed that the prior owner of the property had complied with the law. He provided testimony about testing by the Department of Health. However, the Hearing Examiner finds that any involvement with the Department of Health testing of water is not persuasive proof that the RV campground/trailer court was an approved/permitted use by Chelan County.
47. Appearing on behalf of Chelan County was deputy prosecuting attorney Marcus Foster. Mr. Foster did not provide sworn testimony but provided argument based upon the evidence admitted into the record. The County argued, and the Hearing Examiner Finds, that the Conditional Use Permit for the wrecking yard in no way approved an RV campground and or trailer park on the subject property. The Conditional Use Permit that was issued for the property was very clear that all items lawfully on the property as part of the wrecking yard Conditional Use Permit, had to be stored behind the fence.
48. Based upon the evidence submitted, the Hearing Examiner, to the extent necessary, finds that all of the violations set forth within the notice and orders to abate violations dated August 7, 2023 and August 21, 2023, existed at the time the Notice and Orders were issued and existed as of the date of the hearing.
49. The only challenge submitted by the Appellant as to the citation was that the amount was "extreme." This was stated at the very end of the Appellant's rebuttal at the hearing. The Hearing Examiner finds that the Appellant has not sustained its burden of proof that the citation was issued in error.
50. 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 Notice and Orders to Abate Violations dated August 7, 2023, and August 21, 2023 were not timely appealed and therefore the violations contained therein are found to exist.
3. The only item subject to this appeal was the citation issued on January 8, 2024.
4. The Appellant has failed to satisfy its burden of proof that the citation was improperly issued.


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**, in all respects, Chelan County's Citation issued January 8, 2024.

Dated this 24 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.