

**CHELAN COUNTY  
LAND USE HEARING EXAMINER**

<b>IN THE MATTER OF</b>	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW, AND</b>
<b>AA 24-173</b>	)	<b>DECISION AND</b>
<b>Duffy Administrative Appeal</b>	)	<b>CONDITIONS OF APPROVAL</b>

THIS MATTER having come on for hearing in front of the Chelan County Hearing Examiner on July 17, 2024, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, and Decision as follows:

**I. FINDINGS OF FACT**

1. Community Development Staff found in March 2024 that the owner was operating a short-term rental (STR) without required permit. The owners had applied for and received an STR permit for the 2021 and 2022 operating years. The renewal for the 2023 operating year was not processed due to owner not meeting STR code compliance as they had not passed fire and life safety inspection from the Fire Marshal's office by 12/31/2022. This denial was sent January 13, 2023 and was not appealed.
2. The property being reviewed is located at 2505 Kinnikinnick Dr., Leavenworth. Parcel 27-18-31-519-025.
3. December 29, 2021 Applicants submitted application for an existing non-conforming STR permit. A provisional permit was issued (Exhibit D).
4. The existing non-conforming applications were required to submit a Fire & Life Safety Self-Inspection form which indicated the state of the property at application prior to inspection. The Applicant/Local Contact indicated there was a fire protection plan consistent with a Ready-Set-Go plan and that there was a floor plan indicating fire exits and escape routes (Exhibit D, pgs. 33-34). These items were provided as part of completing the STR application.
5. Per CCC 11.88.290 (3), further requirements included (among other items) a land line or VOIP phone, Property Management Plan with Good Neighbor Guidelines brochure to be in the rental and be prominently displayed within the common living area portion of the rental. These materials and the phone number for the VOIP line were provided in the application materials.
6. June 17, 2022 the provisional permit was converted to a final permit (STR 000463) which was emailed to travis@duffyandbradburn.com with a note to sign and return a copy to the STR department and that once the exterior signage requirement was met to please send a photo to prove compliance with the code.
7. August 15, 2022 the email from June 17, 2022 was re-sent noting the date it was originally sent and that we had not yet received a signed copy of the permit.
8. August 25, 2022 Applicant forwarded to the STR Staff the proof for their sign from Gibbs Graphics.

9. August 31, 2022 Staff responded that it looked great.
10. The CCC 11.88.290 (2)(E)(i)(c) which pertains to existing non-conforming STRs such as this states: That the short-term rental meets all requirements of subsection (3) of this section within one year of the effective date of the ordinance codified in this section; provided, that legally required health and safety provisions within subsection (3) of this section including garbage, consumer safety, fire safety and outdoor burning, and property management plan communications provisions are met within ninety days of the effective date of the ordinance codified in this section, except that in the Manson urban growth area, all provisions consistent with Section 11.23.040 as it existed on August 25, 2020, shall be met on the effective date of the ordinance codified in this section;
11. One year from the effective date of the STR regulation would have been September 26, 2022. The rental was not in compliance by this time as the fire inspection had not been completed and passed and the exterior STR sign was not yet in place. The fire inspection was scheduled for September 29, 2022.
12. September 29, 2022 Inspector from Fire Marshal's Office inspected the STR and the inspection was failed. The local contact signed off on the failed inspection indicating he was aware of the failure (Exhibit E).
13. October 27, 2022 Applicant submitted application to renew their STR permit within the required time frame of 9/1/2022-10/31/2022.
14. November 16, 2022 Staff emailed Applicant they were ready to process their renewal but found they had failed their fire inspection. Staff requested proof of a passed fire inspection in order to continue with the renewal.
15. Per CCC 11.88.290 (4)(A)(ii)-"... Existing properties claiming nonconforming short-term rentals may be issued a provisional short-term rental permit and may be provided the time of their respective grace period pursuant to subsection (2)(E)(i)(c) of this section, but no later than December 31, 2022, to address all violations. No provisional or other short-term rental land use permits shall be issued after that date until any violations are resolved."
16. Per CCC 11.88.290 (2)(E)(i)(g)- Any property owner claiming existing non-conforming status as a short-term rental within any Zip Code, subarea, or urban growth area shall resolve any existing county code violations on the property as required under subsection (4)(A)(ii) of this section and shall have complied with all other relevant provisions of this section and apply for and have received an initial short-term rental administrative land use permit and all required conditional use permits under subsection (4) of this section by December 31, 2022, or by failing to do so shall waive all claim to having existing non-conforming status.(emphasis added)
17. The rental was not in compliance by December 31, 2022 as it had not passed a fire inspection. Per item 16 above, the owners claim to existing non-conforming status was then waived.
18. January 10, 2023 Staff received a voicemail from Travis Bradburn requesting an extension for renewal. Staff explained that as a passed fire inspection was not provided within the codified timeline, it was doubtful an extension would be approved.
19. January 13, 2023 a Denial of Permit Renewal Application letter was sent via USPS to both owner and applicant as well as emailed to both duffyjake@msn.com and travis@duffyandbradburn.com. The

email was recalled by Staff then re-sent. At 2:00 pm January 13, 2023, Travis Bradburn called about the denial, there are no other notes in phone log (Exhibit G).

20. February 9, 2023 Staff emailed duffyjake@msn.com and travis@duffyandbradburn.com noting the denial letter sent via USPS to 19823 23rd Ave NE, Woodinville, WA 98077 had been returned marked as insufficient address. The address should have been 19823 233rd Ave Woodinville, WA 98077. At 8:44 am this day Travis Bradburn called about the denial. Staff did ask if they would like the letter re-sent and the offer was declined as they had received the email version. Staff had asked if they wanted the check sent or shredded and they agreed to the shred.
21. February 13, 2023 2:09 pm Jake Duffy called stating he had not received the mail/email and that his dad was Bob Dodge.
22. February 16, 2023 Staff returned call and left voicemail.
23. The timeline to appeal the denial sent January 13, 2023 expired January 27, 2023. No appeal was received for the denial of renewal. At this time the owner and applicant were aware they no longer held a valid STR permit.
24. February 28, 2023 Inspector from Fire Marshal's Office inspected the STR and the inspection was passed. This result came after the required deadline of December 31, 2022 to be able to renew the STR permit for 2023 (Exhibit F).
25. Pursuant to CCC 11.88.290 (2)(E)(i)(G) the owner waived his right to existing non-conforming status when he did not meet the requirements of the STR code within the codified timeline to allow renewal. Again, the renewal denial was not appealed.
26. It was made clear by Staff that the property owner did not hold a valid permit to continue operation.
27. March 18, 2024, Community Development Staff discovered this unpermitted short-term rental as part of regular compliance review and reported it to Code Enforcement (Exhibit C, pgs. 5-25). To demonstrate operation without the required permit, Staff correlated dates showing as rented through the Rentalscape platform to customer reviews from the ads on AirBnB and VRBO (Exhibit I).
28. The customer service chats of both AirBnB and VRBO were contacted by Staff to clarify the timelines allowed for the respective platforms to leave reviews after a rental is booked and paid. (Exhibit I, pgs 8-21).
29. March 19, 2024 a Notice and Order to Abate Violations for operating a short-term rental without the required permit was mailed via Certified Mail to Jacob & Lexie Duffy at 19823 23rd Ave NE, Woodinville, WA 98077 (Exhibit B).
30. April 4, 2024 the certified mail was returned to Code Enforcement as 'refused.' Code Enforcement deputy then posted the Notice and Order on the door of the rental this day and took photo of posting (Exhibit C, pg. 31).
31. April 18, 2024 a request to appeal the Notice and Order to Abate Violations was received from Joseph A Brogan of Foster Garvey PC as Agent for Jacob & Lexie Duffy (Exhibit A).

32. The appeal request was received well after the fourteen days from the issuance of the Notice (mailed 3/19/2024) as codified in CCC 16.12.010(1) making this request untimely. The appeal request was received within 14 days of the Notice being posted at the rental.
33. The County did not raise the timeliness of the appeal as an issue to be considered by the Hearing Examiner. The Chelan County Code requires that appeals be filed within 14 days from the “issuance” and not “receipt” of the Notice and Order. However, the Hearing Examiner may consider this issue sua sponte.
34. The Notice and Order to Abate Violations was issued on March 19, 2024, the date it was mailed to the property owner.
35. The property owners refusal to accept this mailing does not invalidate, or extend, the date of issuance.
36. April 22, 2024 Staff started the appeal process and mailed the receipt for fees paid, file number, date and time of the scheduled hearing, and information on the format of the hearing. Because of these actions the Hearing Examiner will consider the issues raised in the Appeal, and will not dismiss the Appeal based in the timelessness of the Appeal.
37. May 8, 2024 Staff offered potential dates for the hearing. Mr. Brogan noted he would prefer July 17, 2024 and that he would send materials July 10, 2024. Staff confirmed the date, recalled the email, added that hearings that day would begin at 1:00 pm and resent. Mr. Brogan confirmed.
38. An open record public hearing was held, after legal notice, on July 17, 2024.
39. Appearing on behalf of the Applicant was Joe Brogan, attorney for the property owner. Mr. Brogan testified that he was an agent authorized to appear and speak on behalf of the property owner and Applicant. Mr. Brogan argued consistent with the appeal materials. Mr. Brogan argued that the Duffy’s, at no time, intended to stop operating the short-term rental as a non-conforming use. He argued that in March of 2023 the property’s owner agent, Travis Bradburn, had COVID. He argued that Chelan County Code 11.88.290(4)(A)(ii) allows an extension for non-conforming short-term rentals. However, the Hearing Examiner finds that this Code provision sets an outside date of December 31, 2022. This date had passed by the time the County issued its denial of Permit Renewal Application on January 23, 2023. Additionally, the Hearing Examiner would find that at no time did the property owner request, in writing, an extension for time.
40. Mr. Brogan also argued that the property did eventually pass a fire inspection. Again, the Hearing Examiner reiterates his finding that at no time did the property owner request an extension pursuant to CCC 11.88.290(4)(A)(ii).
41. The Applicant focused their argument on the issue of the property owners non conforming short term rental use of the property. Mr. Brogan emphasized that there are no facts that the Applicant intentionally abandoned this non-conforming use. However, the Hearing Examiner finds that the Chelan County Code clearly states that the property owner failing to provide all information required by the Chelan Code shall act as a waiver of all claim to having existing non-conforming status.
42. The Hearing Examiner reiterates that the January 13, 2023 denial of permit renewal application was not appealed by the property owner.

43. The Hearing Examiner would reiterate that the property owners appeal of the Notice and Order to Abate Violations was also not timely filed. However, the untimeliness of this appeal is not the basis for the Hearing Examiners decision.
44. The following exhibits were admitted into the record:
- |        |       |   |
|--------|-------|---|
| 44.1.  | Ex. A | AA 24-173 Appeal Application materials  |
| 44.2.  | Ex. B | Notice and Order to Abate Violations  |
| 44.3.  | Ex. C | Code Enforcement case file CE 24-0035   |
| 44.4.  | Ex. D | 2021-2022 Permit Application  |
| 44.5.  | Ex. E | September 29, 2022 Fire Inspection  |
| 44.6.  | Ex. F | February 8, 2023 Fire Inspection  |
| 44.7.  | Ex. G | Denial of Permit Renewal Application  |
| 44.8.  | Ex. H | Communication Timeline and emails   |
| 44.9.  | Ex. I | Correlation of Rentalscape booking to customer reviews to demonstrate operation without STR permit. |
| 44.10. | Ex. J | Staff Report  |
45. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
46. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

## II. CONCLUSIONS OF LAW

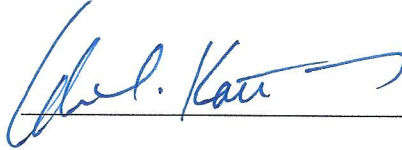
1. The Hearing Examiner has been granted the authority to render this decision.
2. The January 13, 2023 Denial of Permit Renewal Application was not appealed and is therefore final.
3. The Appellant has not satisfied their burden of proof to show that the Notice and Order to Abate Violations issued March 19, 2024, was issued in error.
4. The property owners failure to receive a renewed short-term rental permit is a waiver of the property owners non-conforming status pursuant to the Chelan County Code.
5. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

## III. DECISION

Based on the above Findings of Fact and Conclusions of Law, the notice and order issued March 19, 2024 is hereby **AFFIRMED** in all respects.

Dated this 24 day of July, 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.