

**CHELAN COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	FINDINGS OF FACT,
AA 24-257)	CONCLUSIONS OF LAW, AND
Lutes Appeal)	DECISION

THIS MATTER having come on for hearing in front of the Chelan County Hearing Examiner on August 21, 2024, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. FINDINGS OF FACT

1. On June 18, 2024 the property owner was issued a Citation for violation of Chelan County Code 11.88.290 Short Term Rental Regulations for operating without Short Term Rental (STR) Permit as required by code. Before the issuance of this Citation, Owners had been made aware that operation without the required permit was a violation of County code which could result in further enforcement action.
2. Property being reviewed is located at 3445 Wapato Lake Rd, Manson WA 98831; parcel 282123440100.
3. Previous owners had operated property as a rental prior to STR regulations. After the STR code passed, they applied for an STR permit and were issued a provisional permit which was not transferable. The property was sold to current owners at which point the provisional permit was canceled.
4. March 24, 2022 Staff sent a letter to the Applicants as a follow-up to a phone call the day prior regarding cancellation of the provisional permit (Exhibit B).
5. May 4, 2022 Code Enforcement Deputy Anderson sent a Notice of Violation to the Applicants for violation of STR regulations. The Notice was mailed to 3445 Wapato Lake Rd, Manson, WA 98831 (Exhibit C).
6. August 11, 2022 Code Enforcement sent a revised Notice of Violation to the Applicants at 2009 Talbot Rd. S., Renton, WA 98055, which is the mailing address provided by the Appellant. The same day, Code Enforcement Deputy Anderson posted the Notice on the door of the rental at 3445 Wapato Lake Rd, Manson, WA 98831(Exhibit D).
7. December 20, 2022 Applicants were sent a Notice and Order to Abate Violations (Exhibit E) for advertising and operating an STR in violation of CCC 11.88.290(5) which states:
 - 7.1. 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.
 - 7.2. Enforcement of this section will be in accordance with Title 16.
8. This December 20, 2022 Notice and Order was not appealed.
9. The current owners did apply for an STR permit in 2022 and were denied January 10, 2023 (Exhibit F).
10. Another application was received during the 2023 application acceptance window of June 1, 2023-July 31, 2023 which was denied August 1, 2023 (Exhibit G). This denial was appealed and the case heard

by the Hearing Examiner as AA 23-337 on October 18, 2023. The denial was affirmed October 20, 2023 (Exhibit H) and emailed to Applicant October 23, 2023.

11. The denial letters issued January 10, 2023 and August 1, 2023 both informed the Applicant/Appellant that operation without the required permit was a code violation (Exhibits F&G). The affirmation of the STR permit denial by the Hearing Examiner 10/20/2023 and sent to Applicants 10/23/2023 reinforced the fact that no permit was held by the Applicants (Exhibit H).
12. January 9, 2024 Community Development received a citizen complaint regarding the Applicant's continuing to rent their property at 3445 Wapato Lake Rd, Manson (Exhibit I). The complaint was forwarded to Code Enforcement the same day. Code Enforcement Deputy Anderson communicated with the Director and Assistant Director about the complaint and it was determined the Citation fines would begin the date the Hearing Examiner's final determination was sent to Applicants, October 23, 2023 (Exhibit J).
13. The County contracts with a third-party company, Deckard Technologies, who operate Rentalscape which monitors rental platforms for short term rental activity. Per the Rentalscape report, a listing for this property went live on Airbnb 11/25/2023 and was live until it was removed from 'live' status 1/16/2024 (Exhibit L).
14. January 11, 2024 the Citation for CE 22-0012 calculated as \$750 for the first violation day of rental after the Hearing Examiner's October decision and \$1500 for each of the 16 days after in the amount of \$24,750 was issued (Exhibit K). The Citation does note that the booking calendar was also showing an additional eight days of rental scheduled for after the Citation was issued for which the Applicant would also be fined if rental continued.
15. January 22, 2024 appeal request for Citation CE 22-0012 was received, file AA 24-032 opened, and accompanying fees were received by Community Development.
16. Per CCC 11.88.290(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. January 29, 2024 Staff checked the online presence for this property. The website, www.lakesedgechelan.com was active and had the contact phone number for one of the Applicants, 206-650-6576. While advertising for rentals, this same website also advertised for corporate events, family reunions, bridal showers, weddings and more for which they do not hold a Conditional Use Permit. The appellants have not been cited for lack of a CUP. There is also a Facebook account for the property, upon which is a post that is dated November 4, 2023 which states, "Hi All!! Running a winter special!! First three people who book a stay between now and February get one free night! Email lakesedgechelan@gmail.com or message to book!" (Exhibit M).
18. The Applicants previous appeal request also held the statement, "Any rentals that occurred previously were scheduled and took place during the STR appeal. We were informed that during the appeal 'enforcement of any notice and order of the administrator shall be stayed as to the appealing party during the pendency of any appeal under this title.'" With a reference to CCC 16.12.020.
19. Pendency of the previous appeal did not stay enforcement or allow continued operation without a permit, but this question is not at issue in this appeal.
20. The code does not state that continuance of the violation may continue or that enforcement can not proceed once the appeal at hand was complete. Chelan County Community Development did not issue the Citation until January 11, 2024 and only counted the booked days from October 23, 2023 to the date

the Citation was issued- October 23, 2023 being the date the Hearing Examiner's determination was sent to the Applicants. There were an additional 8 days of booked time from the date of the Citation to the date this report was written.

21. On February 8, 2024 Code Enforcement was requested to follow up on the property to ensure compliance. At 5:00 pm no one was found onsite.
22. February 10, 2024 Code Enforcement followed up again and found six cars onsite. All parties were noted to be gone by February 12, 2024 at 9:00 am.
23. February 20, 2024 the County withdrew Citation CE 22-0012 per advice of Deputy Prosecuting Attorney Foster. A refund of the appeal fees was requested by the Lutes' and processed the same day (Exhibit N).
24. June 18, 2024 a Code Enforcement Code Violation Case Request Form was received by mail on this property for operating with out an STR permit, multiple noise complaints/party groups, and hosting weddings/large events without a permit. These violations were noted to have occurred June 12-14, 2024 and previous weekends (Exhibit J, pg 61-62). Code Enforcement went to property and found a group there who confirmed they had booked through AirBnB and confirmed they checked in on June 11th and were checking out June 14, 2024. Citation 22-0012-1 was issued for four days of operation at \$750/day as a first-time violation since previous case was withdrawn (Exhibit J, pg 54-56).
25. June 24, 2024 appeal request for first citation was received by the County. File AA 24-257 was started and receipt sent to owner for payment of appeal fees (Exhibit A). This first citation (22-0012-1) is the only citation at issue in this appeal.
26. June 25, 2024 a second citation, CE 22-0012-2, was issued to the owners for operating without STR permit as it was confirmed with renters they were renting from June 15 – 20, 2024. (Exhibit J, pg 63-66). This citation was for six days of operation at \$1500/day. This citation has not been appealed.
27. June 27, 2024 a third citation, CE 22-0012-3, was issued to the owners for operating without STR permit as it was confirmed with renters they were renting from June 23-26, 2024 at \$1500/day (Exhibit J, pg 67-70). This citation has not been appealed.
28. July 1, 2024 a fourth citation, CE 22-0012-4, was issued to the owners for operating without STR permit as it was confirmed with renters they were renting from June 26-July 1, 2024 at \$1500/day (Exhibit J, pg 71-74). This citation has not been appealed.
29. July 11, 2024 a fifth citation, CE 22-0021-5, was issued to the owners for operating without STR permit as it was confirmed with renters they were renting from July 7-10, 2024 at \$1500/day (Exhibit J, pg 75-78). This citation has not been appealed.
30. July 29, 2024 a sixth citation, CE 22-0012-6, was issued to the owners for operating without STR permit as it was confirmed with two more sets of renters they were renting from July 15-18, 2024 and July 21-25, 2024 at \$1500/day (Exhibit J, pg 79-82). This citation has not been appealed.
31. August 8, 2024 a seventh citation, CE 22-0012-7, was issued to the owners for operating without STR permit as it was confirmed with another set of renters they were renting from August 4-7, 2024. The Citation penalty was assessed at \$1500/day (Exhibit J, pg 87-90). This citation was mailed to the appellants on August 8, 2014 the affidavit of mailing contains a scrivener's error as to the date of mailing. It was mailed 08/08/2024. These most recent renters also told the Deputy that the house is rented for the rest of the summer. This citation has not been appealed
32. Although their website nor Facebook are openly accepting new bookings, the Lutes' continue to knowingly and willfully violate Chelan County code. The fact that many of the recent renters booked

previously does not alleviate the Lutes' duty to abide by the Chelan County STR code and not operate without the required permit.

33. An open record public hearing was held, after legal notice, on August 21, 2024.
34. Appearing on behalf of the Appellant was Megan Fouty. Ms. Fouty stated that the property is under contract to be sold but at this time she and her ex-husband are still the title owners of the property.
35. Ms. Fouty's testimony was consistent with her prior written materials. She indicated that prior owners had used the property as a short-term rental. She indicated that he and her ex-husband had complied with all County requirements but that their permits were denied for various reasons. She did not profess any confusion with the restrictions set forth within the December 20, 2022 Notice and Order to Abate Violations. She indicated she had received legal advice from private council indicating that enforcement is abated if an appeal is filed. Ms. Fouty claimed that the enforcement procedures against her were a result of racism within Chelan County.
36. The Hearing Examiner would note and specifically find that the enforcement measures against Ms. Fouty were due to the fact that the property she owned continued to be rented as a short-term rental in violation of the Notice and Order to Abate Violations, and after having received seven (7) citations for continued short-term rental of the property without the required permit.
37. The Appellant continued to rent the property she owned in Chelan County as a short-term rental, without first obtaining the required permits and after being put on notice that rental of this property without permits would result in citations that would include fines.
38. The following exhibits were admitted into the record:
 - 38.1. Ex. A AA 24-257 Application Materials
 - 38.2. Ex. B March 24, 2022 Letter to Applicants
 - 38.3. Ex. C May 4, 2022 Notice of Violation
 - 38.4. Ex. D August 11, 2022 Notice of Violation
 - 38.5. Ex. E December 20, 2022 Notice and Order to Abate Violations
 - 38.6. Ex. F January 10, 2023 Permit Application Denial
 - 38.7. Ex. G August 1, 2023 Permit Application Denial
 - 38.8. Ex. H October 20, 2023 Hearing Examiner Determination on appeal of August 1, 2023 Permit Application Denial
 - 38.9. Ex. I January 9, 2024 citizen complaint and communication regarding fines for January 11, 2024 citation
 - 38.10. Ex. J Code Enforcement case file CE 22-0012 Complaint Printout with Details
 - 38.11. Ex. K January 11, 2024 Citation
 - 38.12. Ex. L Rentalscape booking information
 - 38.13. Ex. M Online presence with Facebook and Lake's Edge Tuscan Lodge website
 - 38.14. Ex. N Cancellation of AA 24-032 and fee refund for same
 - 38.15. Ex. O Communication Timeline and Emails
 - 38.16. Ex. P Staff Report

38.17. Ex. Q Remainder of Staff File

39. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
40. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW

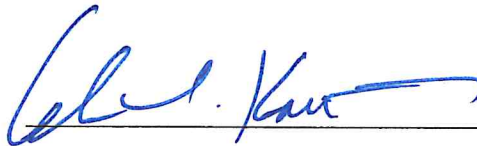
1. The Hearing Examiner has been granted the authority to render this decision.
2. The Appellants have willfully violated the Chelan County Code by renting their property as a Short-Term-Rental without the required permit.
3. The Citation at issue in this appeal was lawfully issued pursuant to the Chelan county Code and the penalty amount is reasonable and in an amount authorized by the Chelan County Code.
4. 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 Citation CE 22-0012-1 issued June 18, 2024 is hereby **AFFIRMED** in all respects.

Dated this 22 day of August, 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.