



THE PLANNING & DEVELOPMENT DEPARTMENT APPEAL TO CITY PLANNING COMMISSION

Complete this form if you are appealing an **Administrative** decision to City Planning Commission.

APPELLANT CONTACT INFORMATION:

Appellants Name: John DeLago Telephone: 518-859-9318
Address: 60 W. 8th St. Apt 56 City New York
State: NY Zip Code: 10011 E-mail: jdchallenger@gmail.com

PROJECT INFORMATION:

Project Name: 1609 W. Kiowa STR-1259
Site Address: 1609 W. Kiowa, Colorado Springs, Co 80904
Type of Application being appealed: Denial of STR Renewal Permit Application
Include all file numbers associated with application: STR-1259
Project Planner's Name: Carli Hiben
Hearing Date: _____ Item Number on Agenda: _____

YOUR APPEAL SUBMITTAL SHOULD INCLUDE:

1. Completed Application
2. \$176 check payable to the City of Colorado Springs
3. Appeal Statement.
 - See page 2 for appeal statement requirements.

Submit all 3 items above to the Land Use Review office (30 S Nevada, Suite 105, Colorado Springs, CO 80903). Appeals are accepted for 10 days after a decision has been made. Submittals must be received no later than 5pm on the due date of the appeal. Incomplete submittals and / or submittals received after 5pm or outside of the 10 day window will not be accepted. If the due date for the submittal falls on a weekend or federal holiday, the deadline is extended to the following business day.

If you would like additional assistance with this application please contact the Land Use Review office at 385-5905.

APPELLANT AUTHORIZATION:

The signature(s) below certifies that I (we) is(are) the authorized appellant and that the information provided on this form is in all respects true and accurate to the best of my (our) knowledge and belief. I(we) familiarized myself(ourselves) with the rules, regulations and procedures with respect to preparing and filing this petition. I agree that if this request is approved, it is issued on the representations made in this submittal, and any approval or subsequently issued building permit(s) or other type of permit(s) may be revoked without notice if there is a breach of representations or conditions of approval.

John C. DeLago
Signature of Appellant

11/14/2021
Date

THE APPEAL STATEMENT SHOULD INCLUDE THE FOLLOWING

- If you are appealing a decision made Administratively the following should be included in your appeal statement:
1. Verbiage that includes justification of City Code 7.5.906.A.4
 - i. Identify the explicit ordinance provisions which are in dispute.
 - ii. Show that the administrative decision is incorrect because of one or more of the following:
 1. It was against the express language of this zoning ordinance, or
 2. It was against the express intent of this zoning ordinance, or
 3. It is unreasonable, or
 4. It is erroneous, or
 5. It is clearly contrary to law.
 - iii. Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.

CITY AUTHORIZATION:

Payment: \$ 176.00

Receipt No: 40359

Intake Staff: CBH

Assigned to: CBH

Date Application Accepted: 11-15-21

Appeal Statement: ✓

Completed Form: ✓

AUTHORIZATION TO REPRESENT APPELLANT

I am the Appellant submitting an appeal to the City of Colorado Springs Planning Commission of an Administrative Decision made by the Planning and Community Development Department on November 3, 2021.

I hereby authorize Jane B. Fredman, attorney, to be my representative in my appeal of the Administrative Decision. Her contact information is below.

Dated: 11/14/2021, 2021



John DeLago

Jane B. Fredman
Jane B. Fredman, LLC
13511 Northgate Estates Drive, Suite 250
Colorado Springs, CO 80921
(719) 434-5607
jane@fredmanlawco.com

**APPEAL STATEMENT OF JOHN DELAGO
TO THE CITY OF COLORADO SPRINGS PLANNING COMMISSION
SHORT TERM RENTAL PERMIT # STR-1259**

Dated: November 15, 2021

Appellant, John DeLago, respectfully submits this Appeal Statement in support of his appeal to the Colorado Springs Planning Commission to reverse the denial of his renewal application of the Short Term Rental Permit STR-1259 (the "Permit"), issued by the City's Planning and Development Department (the "Department") for use at the property located at 1609 W. Kiowa Street, Colorado Springs, CO 80904 (the "Property").

Mr. DeLago has another permit, STR-1636, for a separate residential unit on the Property. STR-1636 is not up for annual renewal until December 2021. It is not clear based on the November 3, 2021 email notice of its administrative decision to deny the renewal of the Permit whether the Department also deemed STR-1636 expired. To the extent STR-1636 is deemed expired under the same administrative decision issued by the Department on the Permit, Mr. DeLago requests this Appeal Statement to also apply to STR-1636. The Department has never issued a Notice and Order for STR-1636 under City Code Section 7.5.1005 for an alleged violation of City Code Section 7.5.1703 or Section 7.5.1704.

Background

Mr. DeLago is a U.S. Army veteran who was stationed at Fort Carson from January 2014 to January 2017 and fell in love with the area, with the intention to return to Colorado Springs to live. Mr. DeLago purchased the Property on December 21, 2018 in his name, and the deed was recorded with the El Paso County Clerk and Recorder's Office on December 26, 2018. His intention in purchasing the Property was to remodel and use it as a short-term rental. He intends to own the Property as a long-term investment and did not purchase it with the intention to sell it as a short-term rental to a third party investor.

The Property is zoned R-2. Except for the denial of the Permit renewal that is the subject of this Appeal, the Department has never issued a notice of violation of STR code provisions against the Property or against Mr. DeLago, nor is there any evidence of complaints made to the City in connection with the short-term rental of the Property.

Mr. DeLago also holds other compliant STR permits for other investment properties in Colorado Springs. All of the STR permits are held in his name. He does not intend to sell the properties. If he decides to sell them, he understands they will not be sold with the STR permits, as the permits are held in his own name.

The Permit was issued in the name of John DeLago on October 31, 2019 and has remained in his name to the present. On September 1, 2020, Mr. DeLago recorded a deed to the Property from

himself to Modern Farmhouse, LLC, a Colorado single member limited liability company of which he is the sole member and manager, solely for the purpose of asset and liability protection. On October 20, 2020, Mr. DeLago submitted a renewal application for his Permit to the Department. The Department approved his Permit on October 28, 2020. After his Permit was renewed, Susanna Dalsing, the program coordinator for the STR program, transferred to a position in a different City department.

On December 31, 2020, Mr. DeLago received an email from Mitchel Hammes, Neighborhood Services Manager, that his Permit was set to expire that day. Mr. DeLago immediately emailed Susanna Dalsing, who informed him of her transfer and of a possible internal mix-up with his Permit. On January 4, 2021, Ashley George from City Code Enforcement emailed Mr. DeLago and told him that his Permit had been reviewed and everything was in order. Based on the written correspondence, and in reliance on other Department staff confirming the Permit was in order, Mr. DeLago proceeded to operate the Property under the renewed Permit. Mr. DeLago had no reason to believe title of the Property held in his LLC was a violation of the STR ordinance, since the Permit had been timely renewed and the Permit documents had again been reviewed and approved by another staff member over two months later.

On October 31, 2021, Mr. DeLago submitted the Renewal Application for his Permit, which was set to expire on November 30, 2021. On November 3, 2021, Carli Hiben, the current STR program coordinator, sent Mr. DeLago an email stating that because the Property transferred from his name to his solely-owned LLC, the Permit is considered to be expired pursuant to City Code Section 7.5.1702. Her email, which presumably is the "administrative decision" which triggers the right to appeal the Department's decision to the Planning Commission under City Code Section 7.5.906, also stated that Mr. DeLago is not eligible for a new non-owner occupied permit under City Code Section 7.5.1704 (C) because the Property is within 500 feet of other non-owner occupied short term rentals.

On November 5, 2021, a deed from Modern Farmhouse, LLC back to John DeLago was recorded with the El Paso County Clerk & Recorder under Reception No. 221205698. The Property is now titled under the name of John DeLago, who also holds the Permit. Now the title to the Property and the Permit is in the same name. The recorded deed was presented to Ms. Hiben on November 8, 2021 in an effort to informally resolve the administrative decision so an appeal would not be necessary, but the recording of the deed and the fact that ownership of the Property now matches the name on the Permit were ignored. This Appeal is now necessary, even though the administrative decision upon which the non-renewal of the Permit was based (the Property title and Permit name were different) has been remedied.

Basis for Appeal

Mr. DeLago appeals the Department's interpretation of City Code Section 7.5.1702 (B) and Section 7.5.1704 to deny the renewal of his Permit. Under City Code Section 7.5.906 (A) (4), the Department's interpretation of those sections is incorrect on the following grounds:

- (1) It was against the express language of this zoning ordinance;
- (2) It was against the express intent of this zoning ordinance;
- (3) It is unreasonable;
- (4) It is erroneous; and
- (5) It is clearly contrary to law.

Section 7.5.1702 (B) states:

7.5.1702: SHORT TERM RENTAL UNIT PERMIT REQUIRED:

B. The short term rental unit permit does not run with the property, but is issued to the specific owner of the property. The permit shall expire upon sale or transfer of the property. The permit shall not be transferred or assigned to another individual, person, entity, or address but may be managed by a third party on behalf of the owner.

The express language of Section 7.5.1702 (B) is vague and ambiguous. In this circumstance, Mr. DeLago was in title to the Property when he originally applied for the Permit in October 2019. When Mr. DeLago deeded the Property to his solely owned LLC on September 1, 2020, he reasonably interpreted the language of "sale or transfer of the property" in Section 7.5.1702 (B) to mean a conveyance to a third party, not to his wholly owned LLC. And when he renewed the Permit in October 2020, the Department also interpreted the "sale or transfer" language in the same manner, such that a transfer to a solely owned single member LLC was allowed. There was no issue raised by the STR permit coordinator or the other Department staff who reviewed and re-reviewed his Permit (and told him everything was fine) that the deed to the LLC was deemed to be a "sale or transfer of the property."

The intention of Section 7.5.1702 (B) is to prevent the ownership and control of a short term rental property from being held by a new owner other than the actual STR permit holder. As the Planning Commission has heard in numerous prior appeals, the intention of an owner of an investment property to deed an STR property to a solely owned LLC is generally for asset and liability protection purposes and not to intentionally evade the STR ordinance so the property can be sold to a new owner with an intact STR permit. Mr. DeLago's deeding of the Property to his wholly owned LLC was for the express purpose of asset and liability protection. If he knew what would transpire with the Department's change of interpretation of Section 7.5.1702 (B) that occurred only this year, he never would have deeded the Property to his single member LLC.

Mr. DeLago has always been the holder of the Permit. If he sells the Property, the Permit will expire. A new owner will have to apply for a new permit and the City will be able to confirm the new owner is in compliance with the STR ordinance before issuing a new permit. Presumably,

the intent of Section 7.5.1702 (B) is not to put owners of non-owner occupied STR properties out of business by the Department's recent strict interpretation of this subsection.

The STR permit application requires the applicant to affirm the permit holder will be related to the STR property. As part of the Permit renewal application submitted in October 2020, Mr. DeLago signed the Short Term Rental License Annual Affidavit for non-owner occupied properties. The Affidavit required Mr. DeLago to affirm under penalty of perjury that he is the owner or **beneficiary** of the property. Mr. DeLago's affirmation was not a lie; as the sole member of the LLC, he was a beneficiary of the Property. The language of the Affidavit prepared by the Department and signed by renewal applicants supports the position that Section 7.5.1702 (B) was not drafted with the intention of prohibiting transfers of property title into a separate, wholly owned entity of the permit holder but rather, supports the clearer and more reasonable interpretation that a "transfer" means the sale to a third party unrelated to the permit holder. It is clear Mr. DeLago, as the holder of the Permit, is the beneficiary of the Property even when title was held in the name of his LLC.

The Department's attempt to go back and deem the previously approved and renewed Permit as expired after it has been in effect for over one year under the same circumstances is unreasonable, erroneous and contrary to law.

The Department is attempting to go back on its earlier approval and renewal of the Permit on the basis of a deed to a single member LLC owned by Mr. DeLago in September 2020, even though the circumstances remained unchanged from that date until November 3, 2021, when the Permit was deemed expired. The Department is attempting to make the expiration retroactive to September 2020, when the Property became titled in Mr. DeLago's LLC, despite the Department deeming the Permit in full compliance with all STR code provisions, as shown by the renewal of the Permit on October 27, 2020.

Ms. Hibben advised in writing that even though she cannot speak for other staff, they rely on a review of online assessor records to determine if there has been a transfer of ownership, and the assessor records will often take several months to update, so "staff was most likely unaware [at the time of the renewal in October 2020] of the transfer of title". However, the El Paso County Assessor's Office was contacted recently, and Mr. DeLago confirmed that his deed to Modern Farmhouse, LLC, was entered into the Assessor's database on September 16, 2020 and was available on the public online website on September 17, 2020. The information on the Property title held in the name of Mr. DeLago's single member LLC was publicly available to the Department, even before he submitted his renewal application a month later on October 20, 2020.

The Department is presumed to know the relevant facts supporting a renewal application. The Department is the entity drafting the policies and forms required to implement the STR ordinance. The STR program coordinator and subsequent staff members were aware of the facts supporting the Permit renewal application in 2020, or they had an obligation to inquire further before the Permit was renewed. Mr. DeLago relied on Department staff's decision to renew the Permit in October 2020. His interpretation of Section 7.5.1702 (B) to mean a sale or transfer to a third party, not to a wholly owned LLC, was reasonable. He even signed the Annual Affidavit under penalty of perjury that he was the owner or **beneficiary** of the property, and his affirmation was true. Now

Mr. DeLago is being told that his renewed Permit is in fact expired, effective as of the date the Property became titled in his LLC, which was before the Department renewed the Permit in October 2020. The Department is attempting to take back, over a year later, a validly approved and renewed Permit on which Mr. DeLago has relied, to his detriment. Fairness and equity require the Planning Commission to reject the Department's administrative decision and to allow the Permit to be renewed.

It was reasonable for Mr. DeLago to rely on the Department's review of the Permit renewal application and decision to renew the Permit made by the Department in October 2020, which occurred when the Property was titled in his solely owned LLC. Now the same Department is going back on its prior decision and attempting to revoke his Permit retroactively, which is unfair and unreasonable.

Section 7.5.1704 of the STR ordinance provides the review criteria used by the Department to issue an STR permit. The administrative decision (Ms. Hiben's November 3, 2021 email to Mr. DeLago) states that a new non-owner occupied permit will not be available any longer for the Property under Section 7.5.1704 (C), which restricts a non-owner occupied STR from being within 500 feet of another non-owner occupied STR.

Section 7.5.1707 sets forth the procedure for handling violations of the STR ordinance, including without limitation, violations of the Rules and Regulations set forth in Section 7.5.1706, which provide for noise control, parking, large events, etc. For a violation of the STR ordinance that disturbs the neighborhood, the Department can issue a 10-day notice to show cause for a hearing before the Planning Commission. If the permit holder fails to remedy the violation before the hearing, the Planning Commission can revoke or suspend the license. The permit holder found to be in violation can appeal the permit suspension or revocation. Yet, Mr. DeLago was not given the same opportunity to remedy his alleged violation of the "transfer" language in Section 7.5.1702 (B) before being thrust into appealing the revocation of his Permit, even though there is no material or detrimental impact to the neighborhood as a result of the Property being held in the name of his single member LLC. At best, Mr. DeLago's misinterpretation of Section 7.5.1702 (B), as alleged by the Department, is a technical violation that has already been remedied. Violators of the STR ordinance for conduct that causes negative impact and harm to neighborhoods are treated more fairly and reasonably by the Department than those in Mr. DeLago's position. Mr. DeLago can only be accused of not having the intuition in 2020 to realize the Department's interpretation of Section 7.5.1702 (B) would change in 2021, before he applied to renew his Permit this year.

Subsection (G) of Section 7.5.1707, Permit Suspension and Revocation, states:

G. Suspension or revocation on non-renewal of a permit may be in addition to any remedy provided for in this chapter, including but not limited to, the remedies provided in section 7.5.1005 of this article. (emphasis supplied)

City Code Section 7.5.1005 provides a menu of remedies available to the Department in abatement of zoning violations, including taking no action, informal contact, agreement to abate, notice and order, all the way up to criminal prosecution. The Department has the discretion on which action to take for a zoning violation. Despite the variety of options available under the City Code, the Department has, starting this year, consistently jumped to the extreme and punitive remedy of

revoking all non-owner occupied permits where the permit holder has innocently transferred its property to the permit holder's wholly owned LLC for purposes of asset and liability protection, without even attempting to remedy the situation by requiring the permit holder to transfer title back to the permit holder's name. In Mr. DeLago's situation, the Property is now titled in his name, along with the Permit, so there is no reason for the City to take the punitive step to revoke his Permit. The intention of the "sale or transfer of the property" language in Section 7.5.1702 (B), which is to ensure the same person responsible on the STR permit is the same as the property owner, has been met. There is no reason for the Department to now deny the renewal of his Permit, and therefore, the Planning Commission must reverse the administrative decision and allow the renewal of Mr. DeLago's Permit.

There is no detriment to the community if the administrative decision is overturned and Mr. DeLago is allowed to renew his Permit. The Property and the Permit are now in Mr. DeLago's name. Yet, Mr. DeLago will suffer substantial harm if the Appeal is denied, as he will lose his significant investment in Colorado Springs over a technicality that has no impact on the neighborhood in which the Property is located. If the Appeal is upheld, the Colorado Springs community will gain sales tax income and will be supported in its position as a premier recreational and tourist destination from Mr. DeLago's well-managed, highly-rated STR property that is used frequently by Colorado Springs residents and tourists alike. The burden placed on Mr. DeLago if his Appeal is denied is considerable, yet at the same time, there is no benefit to the community if the Appeal is denied.

For these reasons, Mr. DeLago respectfully requests the Planning Commission to reverse the Department's administrative decision to deny the renewal of his Permit, and to direct the Department to renew his Permit.



**City of Colorado Springs
Planning Department
Fee Receipt**

[Return to Fee Calculator](#)

<u>Application</u>	<u>Department</u>	<u>Amount</u>	<u>Applicant</u>	<u>AnnexDisc</u>
Appeal of Administrative Decision	Land Use Review	\$176.00		
Total Fees		<u>\$176.00</u>		

Intake Staff:	
Date:	11/15/2021
Planner:	Carli Hiben <i>CBH</i>
Receipt Number:	40359
Check Number:	1323
Amount:	\$176.00
Received From:	Jane Fredman STR Appeal (STR-1259)