

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF NAPA
The Honorable J. MICHAEL BYRNE, Judge Pro Temp
--oOo--

RECEIVED

FEB 20 2014

COUNTY OF NAPA
CLERK OF THE BOARD

NAPA COUNTY,

Plaintiff,

vs.

CARLICE, LLC, et al.,

Defendant.

No. 26-61207

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS
HAD AT TIME OF HEARING

--oOo--

Napa, California
Monday, April 15, 2013
9:30 o'clock a.m.

--oOo--

Transcribed by:

SUSAN L. STRAUB, CSR No. 7608

SUSAN L. STRAUB
CERTIFIED SHORTHAND REPORTER
105 Ventura Street
Vallejo, California 94590
(707) 246-8850

4 PAGE

5 APPEARANCES 4

6 PROCEEDINGS 5

7

8 --oOo--

9

10 PLAINTIFF'S WITNESSES:

11 DARRELL MAYES

12 Cross-Examination by Ms. Cunningham (Cont.) 6, 57

13 Redirect Examination by Ms. Gallagher 70

14 Recross-Examination by Ms. Cunningham 82

15 Further Redirect Examination by Ms. Gallagher 91

16 Further Recross-Examination by Ms. Cunningham 91

17 --oOo--

18 EXHIBITS

19 FOR IDEN. IN EVID.

20 FOR THE PLAINTIFF:

21 4 -- 1993 & 1995 Code Excerpts 71

22 5 -- Construction Application
Worksheet 75

23 6 -- Construction Permit 78

24 FOR THE DEFENDANTS:

25 B -- Letter dated 2/9/11 14

C -- Email dated 2/18/11 18

2

1 --oOo--

2 I N D E X (CONTINUED)

3 --oOo--

4

5 EXHIBITS

6 FOR IDEN. IN EVID.

7 FOR THE DEFENDANT:

8	D -- Wine Spectator article	
9	dated 12/31/02	22
10	E -- Letter dated 4/1/97	31
11	F -- Parcel Report	33
12	G -- Three photographs	39
13	H -- Letter dated 8/18/97	40
14	I -- Photograph	43
15	J -- Napa County Construction	
16	Permit	45
17	K - Page with 2 Photographs	47
18	L -- FEMA Guide	61
19	M -- Packet of six photographs	84

20

21 --oOo--

22

23 REPORTER'S CERTIFICATE 98

24

25 --oOo--

3

1

--oOo--
A P P E A R A N C E S
--oOo--

2

3

4	For the Plaintiff:	NAPA COUNTY COUNSEL
5		County of Napa
6		1195 Third Street, Room 301
7		Napa, California 94559
8		By: CARRIE GALLAGHER, ESQ.
9		Deputy County Counsel

8

9	For the Defendant:	GAW, VAN MALE
		Attorneys at Law

10

1000 Main Street
Napa, California 94559

11

BY: TERESA CUNNINGHAM, ESQ.

12

- and -

13

ROBYN CHRISTO, ESQ.
Attorneys at Law

14

15

16

17

--000--

18

19

20

21

22

23

24

25

4

9

1 MONDAY, APRIL 15, 2013

9:00 O'CLOCK A.M.

2

--000--

3

The above-entitled matter came on regularly

4

this day for hearing before the Honorable J. MICHAEL BYRNE,

5

Judge Pro Temp.

6

NAPA COUNTY COUNSEL, County of Napa, 1195

7

Third Street, Room 301, Napa, California 94559,

8

represented by CARRIE GALLAGHER, Deputy County Counsel,

9

appeared as counsel on behalf of the Plaintiff.

10

GAW, VAN MALE, Attorneys at Law, 1000 Main

11

Street, Napa, California 94559, represented by TERESA

12

CUNNINGHAM and ROBYN CHRISTO, Attorneys at Law, appeared as

13

counsel on behalf of the Defendant.

14 The Honorable J. MICHAEL BYRNE, Judge Pro
15 Temp, Presiding.

16 SUSAN L. STRAUB, CSR No. 7608, Certified
17 Shorthand Reporter for the County of Napa was duly present
18 and acting.

19 The following proceedings were then and
20 there had and taken, to wit:

21 P R O C E E D I N G S

22 --oOo--

23 THE COURT: Okay.

24 Let's go back on the record in County of
25 Napa versus Altamura.

5

♀
†

1 Let me get everybody's appearances.

2 Ms. Gallagher, you go first.

3 MS. GALLAGHER: Thank you, your Honor.

4 Carrie Gallagher, Deputy County Counsel on
5 behalf of the county.

6 MS. CUNNINGHAM: Teresa Cunningham, Robyn
7 Christo on behalf of the defendants.

8 THE COURT: All right.

9 MS. GALLAGHER: I believe, Mr. Mayes was
10 being cross-examined.

11 MS. CUNNINGHAM: Correct.

12 whereupon,

13 DARRELL MAYES

14 who, being previously sworn to tell the truth, the whole
15 truth, and nothing but the truth, was examined and
16 testified as follows:

17 THE COURT: Mr. Mayes?

18 THE BAILIFF: Have a seat there, sir.

19 CROSS-EXAMINATION (CONTINUED)

20 BY MS. CUNNINGHAM:

21 Q. Good Morning, Mr. Mayes.

22 A. Good morning.

23 Q. Since our last meeting together for the hearing,
24 have you reviewed any documents in preparation for your
25 testimony this morning?

6

1 A. I just skimmed over the file.

2 Q. And when you say the file, you pointed to something.
3 Tell me what file.

4 A. The building jacket that has all of the, you know,
5 permits, receipts and things like that, the job file.

6 Q. Did you talk with anybody other than counsel or
7 people that work for counsel, other than to alert staff
8 that you might be out of the office or anything?

9 A. No.

10 Q. You didn't talk to any county employees specifically
11 about the project or inspections of the project?

12 A. No specifics, no.

13 Q. The last time you were at the site was in November
14 of 2012?

15 A. When did you say again?

16 Q. November 2012, was that the last time that you were
17 at the site?

18 A. I believe so.

19 Q. Okay.

20 And how long were you there?

21 A. I am just guessing, I think we were there
22 approximately an hour.

23 Q. I don't want you to guess. If you don't know an
24 answer, simply tell me you don't know.

25 A. I don't know exactly.

7

♀

1 Q. That's fine. I just don't want a guess.

2 while you were there, did you personally
3 make any efforts to inspect the property?

4 A. Yes.

5 Q. And what did you do while you were there?

6 A. I was inspecting the winery for a TCO.

7 Q. Okay.

8 And what did you look at specifically in the
9 winery for a TCO?

10 A. I looked at -- I'm not sure I can say specifically
11 but I looked at all of the life safety issues and things
12 that we were going to need done prior to issuing a TCO.

13 Q. Okay.

14 Did you verify that there were two exits
15 from the cave?

16 A. No, I did not.

17 Q. Did you climb up on a ladder to test emergency
18 lighting to determine if it was working properly or
19 functioning properly?

20 A. I typically do that, yes. I think I did that at
21 this job.

22 Q. Okay.

23 Did you point out one of the emergency signs

25 inspection?

8

1 A. Yes.

2 Q. Okay.

3 Did you confirm with the owner that there
4 was about a half dozen minor things to do, or words to that
5 effect, with regards to the list of corrections that were
6 still pending?

7 A. I considered that correction list that we issued
8 minor items, yes.

9 Q. Did you have any discussion with Pete Minowa from
10 fire while were you present at the inspection in November?

11 A. Sure.

12 Q. Do you recall what that communication was about?

13 A. No. We discussed several things.

14 Q. What were you discussing, if you recall?

15 A. Condition of the cave -- excuse me, the winery.

16 Q. Okay.

17 A. Things that needed to be done. We pointed out -- we
18 looked at emergency lighting, exit lighting, things like
19 that.

20 Q. Was there any problem with the emergency lighting or
21 the exit -- strike that.

22 Was there any problem with the emergency
23 lighting?

24 A. It appeared that it was -- a couple of them were not
25 fully put together. I mean, the wiring was there, the box

9

1 was there, but they were not all working properly.

2 Q. Okay.

3 what about the emergency exit signs? Any
4 problems that you noted with regard to that list of items?

5 A. I don't recall the exit sign. I believe the exit
6 signs over door to out of the winery was working; but I
7 thought that there might be one that wasn't.

8 Q. Okay.

9 A. It was awhile ago.

10 Q. I'm sorry?

11 A. It was a while ago. I am trying to remember.

12 Q. Did you have an opportunity to go inside the cave?

13 A. We did.

14 Q. And did you have any discussion with the owners with
15 regard -- about your observations in terms of the interior
16 of the cave?

17 A. Well, I think that is the first time I noticed there
18 was a cave there. And so I think that we were discussing
19 things that would need to be done in order to get that
20 approved. One of them was get approval for the cave.

21 Q. Okay.

22 A. Through planning.

23 Q. Through planning.

24 A. Sure.

25 Q. And I don't want to rehash last week's testimony,

10

♀

1 but just to be clear, I remember your declaration said

2 something to the words of the affect, the caves were newly

3 discovered or words to that affect --

4 A. Uh-huh.

5 Q. -- it is your testimony or is your testimony that

6 you were not aware of the caves until most recently;

7 correct?

8 A. I believe so, on that first visit to the winery.

9 Q. Is it your testimony as a county official that the

10 county was unaware of the caves until November of 2012?

11 A. No, it's not.

12 Q. Okay.

13 Do you have any recollection, either from

14 review of documents or from direct communication with

15 county employees, when the county became aware of the

16 presence of the cave on the project site?

17 A. No.

18 Q. Have you endeavored to find any documents either in

19 the building file or planning file and/or any other county

20 file, electronic, paper or otherwise, as to when the county

21 became aware of the presence of the cave on the project

22 site?

23 A. The only thing I am aware of is the letter that was

24 dated -- I can't tell you the date of that letter, but I

25 can tell you that it was from Jeffery Reading that it

11

♀

1 wasn't part of the winery.

2 Q. And I think you are referring to the letter

3 addressed to Mr. Mackenzie as to the vesting issue that we

4 had talked about last week?

5 A. I believe so.

6 Q. That's what you are referring to?

7 A. I believe so, yes.

8 Q. Okay.

9 Did you have any other communication with
10 Mr. Altamura while you were at the project site in November
11 with regard to the list of corrections that you
12 specifically remember, as you sit here today?

13 A. I am sure I did. I can't remember specifics, like I
14 said. It took us about an hour.

15 Q. Who else was there with you?

16 A. I believe it was David Giudice, myself, Connor, Mr.
17 Altamura, Pete Minowa. I think they had their contractor
18 there.

19 Q. Mr. Abernathy?

20 A. Yeah, I believe so.

21 Q. Okay.

22 A. And I didn't talk to everybody that was there.
23 There might have been some other workers that were there.

24 Q. Okay.

25 Did you -- while you were there, did you

12

1 make an effort to check the emergency light system in the
2 cave?

3 A. I may have. I don't recall.

4 Q. You don't remember one way or another?

5 A. No.

6 Q. Did you check the ventilation system in the cave?

7 A. I don't believe there is a ventilation system in the
8 cave. No, I did not.

9 Q. Did you check the ventilation system in the winery?

10 This would be you, personally?

11 A. No.

12 Q. Did you make an effort to look at the electrical
13 panel -- circuit panel box in the winery?

14 A. I briefly looked at it and noticed a couple openings
15 that should be closed off. Other than that, that is all I
16 looked at it for.

17 MS. CUNNINGHAM: Your Honor, I will have
18 some documents that I would like to show the witness. I
19 will have them marked and then I have copies.

20 May I approach?

21 THE COURT: Of course.

22 MS. CUNNINGHAM: I think we are next in
23 order, so it would be Defendant's B.

24 THE CLERK: That's correct. This is exhibit
25 B.

13

1 (Letter was marked as Defendant's Exhibit
2 B for identification.)

3 BY MS. CUNNINGHAM:

4 Q. Mr. Mayes, I am handing you a document dated
5 February 9th, 2011.

6 THE COURT: February 9th?

7 MS. CUNNINGHAM: February 9, 2011.

8 THE COURT: Thanks.

9 MS. CUNNINGHAM: It's addressed to you and
10 it's from Enrique M. Rodriguez, Associate Construction
11 Analyst at the Building Standards Commission.

12 Can you take a moment and look at that
13 document.

14 (Witness reviewing document.)

14 THE WITNESS: Okay.

15 BY MS. CUNNINGHAM:

16 Q. Okay.

17 Do you recognize the document that I gave
18 you?

19 A. Yes.

20 Q. And just, also, for the record for purposes of
21 clarifying, page two of Exhibit B is your letter dated
22 December 15, 2010 addressed to the California Building
23 Standards Commission; correct?

24 A. Yes.

25 Q. And then attached on page three is Resolution 2010 -

14

1 143; correct?

2 A. Partially.

3 Q. And drawing your attention to page three of the
4 document, Exhibit B, the Resolution, specifically paragraph
5 one -- strike that. I'm sorry.

6 Page two, subpart (2), Winery Cave Contents.
7 Do you see that?

8 A. Where are you, I'm sorry?

9 Q. Page three of the Resolution. Right where your
10 figure was, down at the bottom, subpart (2), Winery Cave
11 Contents.

12 Quote, "Neither the 2010 California fire nor
13 Building Codes make any requirement in wine caves for smoke
14 removal, fire detection or fire suppression," paren,
15 "(beyond portable fire extinguishers and garden hoses),"
16 end paren, "regardless of the level of combustible

18 Do you see that quote that I just read?

19 A. Yes.

20 Q. So isn't it true that as of 2010, there were no
21 requirements for fire suppression for caves in Napa County?

22 A. No. We have an ordinance that requires fire
23 sprinklers in all assembly uses.

24 Q. What ordinance are you referring to?

25 A. I would have to go back and look. Sorry. Don't

15

♀

1 have it --

2 Q. Okay.

3 was that ordinance in effect in 1997 when
4 the caves were completed?

5 A. I don't know when the caves were permitted, but we
6 go by when they apply for a permit. That's when the code
7 would be applied for the caves. That definitely applies.
8 At the time -- the codes that are adopted at the time of
9 application are the codes that he would have to apply for.

10 Q. When was the winery permit issued?

11 A. The winery permit, I think, was back in '98, I
12 believe.

13 Q. If I told you '96?

14 A. It could be. That was a long time ago. Remember, I
15 wasn't here back then.

16 Q. No, I appreciate that. I'm just trying --

17 So it's your position, just generally
18 speaking, that at the time that the permit was -- is issued
19 that is the code in affect?

20 A. Those are the standards that you would be required

21 to follow, yes.

22 Q. And your testimony further, specifically with regard
23 to fire suppression equipment in the cave, is whatever
24 standard was in effect at the time the cave was constructed
25 would have been the applicable standard; is that fair?

16

1 A. Could you repeat that, please.

2 Q. Sure.

3 what standard would apply if the cave were
4 constructed in '96?

5 A. Those would be the '95 codes.

6 Q. Okay.

7 There is a reference in your testimony to a
8 "assembly areas." What did you mean by "assembly areas"?

9 A. Well, assembly areas are areas that you use for
10 amusement, entertainment, religion. Typically, places of
11 assembly that have drinking, eating, things like that,
12 dancing. You know, typically fit more people. That is
13 what an "assembly area use" is.

14 Q. And the assembly use is designated by the amount of
15 people, 50 or more?

16 A. I believe we have an ordinance, though, that
17 actually defines that a little bit more --

18 Q. Okay.

19 A. That talks about drinking and eating.

20 Q. Would that ordinance -- do you have a recollection
21 of what ordinance you are referring to?

22 A. No, not an ordinance number. I would have to have
23 the code book with me and show it to you.

24 Q. Would it be the county's position that that

25 ordinance number refers also to interior caves?

17

1 A. It would, certainly.

2 Q. And what would be the purpose of having that

3 ordinance refer to the interior of the cave?

4 A. Well, the codes are -- they step up in their
5 requirements as buildings are -- you know, the uses of
6 buildings are more intense, such as an assembly area.

7 So we are concerned with adding -- or excuse
8 me, inviting the public into a cave that did not comply
9 with what you would see in any assembly building because
10 the use is the same.

11 So we apply the assembly-use requirements
12 out of the Building Code also to wine caves.

13 MS. CUNNINGHAM: Okay.

14 Let's mark next in order as Exhibit C.

15 (Email was marked as Defendant's Exhibit
16 No. C for identification.)

17 MS. CUNNINGHAM: I would identify it for the
18 record as an email, page one of three. I am only producing
19 one; dated February 18, 2011 to Pete Minowa and James
20 Jeffery from Darrell Mayes.

21 Take a moment and look at that page for me,
22 sir.

23 (Witness reviewing documents.)

24 BY MS. CUNNINGHAM:

25 Q. Did you take a look at that already?

18

1 A. I'm not done.

2 Q. I'm sorry.

3 A. Thank you.

4 (Witness reviewing documents.)

5 THE WITNESS: What we have here --

6 MS. CUNNINGHAM: I don't have a question.

7 Just let me know when you're done.

8 THE WITNESS: I'm done.

9 MS. CUNNINGHAM: Okay.

10 BY MS. CUNNINGHAM:

11 Q. So --

12 A. But this doesn't apply to the permit we are talking
13 about though. This is not the --

14 Q. Do you want to go ahead and testify?

15 THE COURT: Wait for a question.

16 THE WITNESS: I apologize.

17 THE COURT: Okay.

18 BY MS. CUNNINGHAM:

19 Q. In part of the this email there is a response that
20 you offered; correct?

21 A. Yes.

22 Q. And you say that "In accordance with 1.19 and CFC
23 1.19, the standards from the California Building Standards
24 Commission that are effective at the time of the
25 application for the building permit is submitted, shall

1 apply to the plans and specs for and to the construction
2 performed under that permit"; correct?

3 A. Correct.

4 Q. Is that a statement of a general nature?

5 A. Yeah. Yeah.

6 Q. And so it dovetails into what we were earlier
7 talking about, to the extent that there is a permit, that
8 permit date triggers the Application of a particular
9 standard; correct?

10 A. Sure.

11 Q. All right.

12 And just to clarify, because I know you want
13 to say something; but this has to do with the yellow office
14 building down, lower end of the property; correct?

15 A. This one is for building permit number --

16 Q. Zero --

17 A. 068. B0700608. And I believe that is for that
18 building that you referred to.

19 Q. For the office building?

20 A. I believe so.

21 Q. But the standard -- the general standard that you
22 just articulated doesn't matter if it's an office building
23 or winery or some other part of the property, the standard
24 is that the standard that applies is that it's triggered by
25 the date of the permit.

20

♀

1 A. For example, the standard on this 07 permit, would
2 be required to comply with these standards, 07. Even
3 though there is a permit on that property, this building is
4 required to comply with 07.

5 Q. Because why?

6 A. Because of the time that he applied for the building

7 permit.

8 Q. Because of the time he applied for the permit.

9 Okay.

10 When you were in the cave, do you recall

11 seeing barrels in the cave?

12 A. Yes, Ma'am.

13 Q. Do you recall the height of the barrels?

14 A. Not completely, but I do feel I seen some that were

15 three and four barrel heights.

16 Q. Do you recall any information whether while you were

17 at the site inspection or thereafter, as to what the utmost

18 height of the cave interior was?

19 A. No, I didn't spend a whole lot of time with the cave

20 itself because I was there for the TCO for the winery

21 itself and I knew that I would have an opportunity to

22 comment on the cave once he applied for a permit for it.

23 Q. Okay.

24 Do you have any information of the ceiling

25 height of that cave at this point?

21

1 A. I haven't seen any plans. So, no, it would be a

2 guess.

3 Q. Do you have any information, factually, or from

4 other sources as to what the sidewall heights of this cave

5 was, either based on your observations or information --

6 A. It would just be a guess. I have seen no plans.

7 Q. Okay.

8 Do you recall the dimensions of the Barrels

9 that you saw?

10 A. I think they are just typical wine barrels.

11 Q. Okay.

12 A. I think they are, like, 50 gallons, but I am not
13 positive about that.

14 MS. CUNNINGHAM: Okay.

15 Mark next in order as D.

16 (Article was marked as Defendant's
Exhibit D for identification.)

17 BY MS. CUNNINGHAM:

18 Q. I am showing you a document. It's two pages. It's
19 a wine spectator article dated December 31, 2012, and the
20 same issue date entitled Napa Valley Wine Caves.

21 Just wanted -- take a moment to look at it
22 and I just have a couple questions to ask.

23 A. Did you mean to give me both copies.

24 Q. Oh, sorry. Thank you.

25 A. Uh-huh.

22

♀

1 (Witness reviewing documents.)

2 BY MS. CUNNINGHAM:

3 Q. Is there anything in the standards, that you are
4 aware of, that defines that a cave is considered a
5 structure?

6 A. well, if it's not in the Building Code -- the way
7 you use the Building Code, if it's not in the Building
8 Code, the word "structure" than you go to Webster's
9 Dictionary.

10 Q. Okay.

11 A. And that's something manmade, something built,
12 something put together.

13 Q. All right.

14 So to your knowledge, does the Building
15 Code -- let's just say currently so we are in the time
16 frame now, does the Building Code define caves at all in
17 the Building Code?
18 A. Yes.
19 Q. And where is it defined?
20 A. In Chapter 4.
21 Q. And what is the source of that definition? What is
22 the context of that definition?
23 A. I am not sure I understand your question.
24 Q. Does it have to do with cave construction? Does it
25 have to do with the portals? Does it have to do with the

23

1 interior of the caves?
2 A. It has to do with all of it; but it's Winery caves,
3 that particular section, I think it's 436. Again, too many
4 code numbers to remember them all; but, yes, they are
5 definitely in Chapter 4.
6 Q. And I think we saw part of that attached to the
7 ordinance in your letter to the Building Standards
8 Commission 436.4 talks about an amendment for a type three
9 cave and a definition of that.

10 Is that the similar chapter that you are
11 referring to?

12 A. Could you repeat that question, please.

13 Q. Sure.

14 You looked at the ordinance attached to
15 Exhibit B, as in boy, and you go to page three and,
16 actually, page four at the top, it says 15.12.060, and the

18 Is that the chapter and sections that you
19 are referring to?

20 A. Can you read that section over again, the County
21 Code Section.

22 Q. Sure. It's in your letter, the ordinance of
23 15.12.060 referring to the section at -- at the top of the
24 page, section 436.4, Limited Application, and then it goes
25 on to define type three winery caves.

24

1 Do you see that?

2 A. Well, I am not seeing it in my letter like you are
3 saying.

4 Q. Okay.

5 A. If you can help me out here.

6 MS. CUNNINGHAM: Can I approach?

7 THE COURT: Of course.

8 THE WITNESS: That's not my letter.

9 MS. CUNNINGHAM: It was in the ordinance.

10 THE WITNESS: I thought you just said it was
11 in my letter.

12 MS. CUNNINGHAM: The Resolution.

13 THE WITNESS: Oh, okay.

14 BY MS. CUNNINGHAM:

15 Q. So I'm just saying, is that 436.4 part of the
16 section that you are talking about?

17 A. Yes.

18 Q. Okay. That's all I want.

19 Do you recall when Chapter 4 was adopted by
20 Napa County?

21 A. During this code change cycle?

22 Q. During that -- so that was your letter of 2010, so
23 would it have been adopted for January of 2013?

24 A. I would have to go back and look to see the exact
25 date that this code adoption took place.

25

1 Q. Do you have an approximate year, without guessing,
2 as to when that code -- the adoption took place based on
3 the letters between you and the Building Standards --

4 A. I believe it was in 2010, I believe, was the year
5 that we --

6 Q. Well, you submitted your letter December 15th of
7 2010 to the California Building Standards Commission. They
8 responded that they acknowledge receipt in February of
9 2011. It's a tri-annual cycle; right?

10 A. Right.

11 Q. So it would not have gone into effect until the next
12 Building Code update, which would have been or should be
13 January of 2013; correct?

14 A. No.

15 Q. Okay.

16 So when would it have gone into effect?

17 A. I believe this code cycle went into effect sometime
18 in 2010.

19 Q. Okay.

20 Prior to the adoption of either the
21 resolution and/or the ordinance and your recollection is
22 that it with was about 2010, was there anything in the
23 Building Code for Napa County, specifically regulating

25 A. In the Building Code even, before this adoption

26

1 cycle, I believe, there was a chapter that also addresses
2 winery caves.

3 Q. Okay.

4 And what was the overall contents of the
5 winery caves as in that chapter; do you recall?

6 A. A lot of the same wording; but to sit here and pick
7 out changes, I would not be able to do that without the
8 book with me.

9 Q. Okay. That's fine.

10 So going back to Exhibit D, had you ever
11 seen that article before?

12 A. No.

13 Q. There is a quote on page two, or a sentence, it's
14 actually not a direct quote, but cave digging is regulated
15 by state mining laws, not Napa County strict Building
16 Codes, so only the cave entrance requires approval.

17 MS. GALLAGHER: I would object to hearsay.
18 She is reading from a newspaper article.

19 THE COURT: It would be hearsay if your
20 admitting it for the truth of the matter --

21 MS. CUNNINGHAM: No. I am just trying to
22 find out as to Mr. Mayes involvement with the county, is
23 that accurate that the county did not regulate the
24 construction of caves.

25 THE COURT: I will allow that question.

27

1 MR. CUNNINGHAM: Thank you.

2 THE WITNESS: No.

3 THE COURT: You can use that as a reference.

4 BY MS. CUNNINGHAM:

5 Q. That is not true?

6 A. That's not true.

7 Q. Where did the county regulate the construction of
8 caves?

9 A. Again, I only got here in 2007; but prior to that, I
10 am not familiar with it. But at that time, we were
11 regulating uses in caves, and that was prior to this code
12 cycle.

13 Q. Okay.

14 So let me ask a question again and I will be
15 very specific.

16 At the time of your arrival in 2007, are you
17 aware of any Napa county ordinance or standard that
18 regulated the construction of caves? Not the use and
19 interior, but the construction of caves?

20 A. Back when I first started?

21 Q. Yes.

22 A. We did regulate the construction of the portal and
23 the entrance only of the retaining wall holding that
24 portal.

25 Q. Okay.

28

♀

1 A. That is how it was done in the past until they went
2 -- because what they did, you were able to go through the

3 state of California, get your mining permit and you can

4 dig. But the moment that you wanted to put it to a

5 building use, that is when you came in and got a building

6 permit through the county.

7 Q. Do you have any facts that the Altamuras did not get

8 the proper federal or state mining permits for the

9 construction of the cave?

10 A. Not aware of that at all.

11 Q. Do you have any facts that the Altamuras, in 2000 --

12 in 1996 when the caves were constructed, were required to

13 get a permit under Napa County standards for the portals?

14 A. I am not even sure that is -- '96 is when it was

15 constructed.

16 Q. Okay.

17 would it make a difference if it's '97, '98?

18 A. well, I would have to look at the code back then.

19 Q. Okay.

20 A. Again, it was before I got here. I would have to

21 look at what the code was at the time it was applied. And

22 I know they haven't applied for the cave through the county

23 yet, so --

24 Q. And the reason you say that they haven't applied for

25 the cave through the county is because you saw no separate

29

1 use permit for the cave; right?

2 A. I have not.

3 Q. Have you seen any documentation other than Mr.

4 Reading's exchange with Mr. Mackenzie with regard to the

5 using or the abandonment of the second floor of the winery

6 and the use of the cave as part of the overall aggregate

7 square footage for the winery under the existing use
8 permit?

9 A. You will have to repeat that question.

10 Q. Sure. Sorry.

11 A. It's too long.

12 Q. I know. Let me break it down.

13 You have not seen a use permit for the cave
14 on the property.

15 A. No, I have not.

16 Q. Have you seen any communication between the county
17 and the property owner with regard to using the cave as
18 part of the winery permit?

19 A. Yes.

20 Q. And what communication have you seen?

21 A. I believe there was a letter from Jeff Reading from
22 years ago that I glanced at that mentioned that the cave
23 was not part of the winery.

24 Q. The letter that you are referring to is the February
25 19 -- excuse me, April 1, 1997 letter from Mr. Reading to

30

♀

1 Mr. Mackenzie, where he says in part, "I would note that no
2 caves were approved for winery use and, therefore, any
3 costs attributable to the caves cannot be used to reach
4 conclusions relative to vesting."

5 Is that the letter that you are referring
6 to?

7 A. I believe so.

8 MS. CUNNINGHAM: Let me put this in as next
9 in order.

10 MS. GALLAGHER: I think I have it in.
11 MS. CUNNINGHAM: You might have.
12 Since I read it, I WANT to make sure it's
13 covered.
14 THE COURT: This will be E?
15 THE CLERK: Yes.
16 THE COURT: All right.
17 (Letter was marked as Defendant's E for
identification.)
18 BY MS. CUNNINGHAM:
19 Q. This is the letter I was reading from, so is this
20 the letter that you are referring to?
21 A. I haven't read the whole letter, so I will have to
22 read it.
23 Q. How did you know the contents if you haven't read
24 it?
25 A. Discussions with counsel.

31

♀

1 Q. I don't want to know about discussions with counsel,
2 so I will stop you right there.
3 (Witness reviewing documents.)
4 THE WITNESS: Okay.
5 BY MS. CUNNINGHAM:
6 Q. You have had an opportunity to read that letter?
7 A. Yes.
8 Q. Would that document have been in your file?
9 A. No.
10 Q. Okay. And --
11 A. Excuse me, I'm sorry. This document may have made
12 it to the building file, I'm not sure. This is typically a
13 planning document that comes from the planning director. I

14 think -- yeah.

15 Q. So did you see Mr. Mackenzie's letter to Mr. Reading
16 that precedes that response of March 14th, 1997?

17 A. I do not believe so.

18 Q. So the only thing that you have seen with regard to
19 the use of the cave is what you have been told but had not
20 seen the April letter?

21 A. April 1, yeah.

22 Q. Correct.

23 A. '97.

24 Q. Had you been told anything else with regard to the
25 use of the cave as to the winery permit?

32

♀
†

1 And I am excluding communication with any
2 counsel or people that work for your attorney?

3 A. No.

4 Q. Do you know how many wine caves are in Napa County?

5 A. No, I do not.

6 Q. Have you made any effort to make a determination
7 from your agency's prospective or department's prospective?

8 A. I imagine somebody in my department does; but not me
9 personally, no.

10 Q. Not you personally. Okay.

11 I am going to show you a document.

12 MS. CUNNINGHAM: Let's mark this next in
13 order. It's a parcel report.

14 THE COURT: That will be Exhibit F.

15 MS. CUNNINGHAM: Let's mark this in order,
16 parcel report for 03307 0045 000.

Transcript of 4.15.13 Court Hearing_26-61207 from Susan Staub.CARL15.TXT
17 (Parcel Report was marked as Defendant's
18 Exhibit F for identification.)

19 MS. CUNNINGHAM: I will represent to you
20 that we had this printed as of April 13th from the county
21 website.

22 BY MS. CUNNINGHAM:

23 Q. Can you just take a look at that document?

24 A. Sure.

25 (witness reviewing documents.)

33

1 THE WITNESS: Okay.

2 BY MS. CUNNINGHAM:

3 Q. Okay. Look at page 4.

4 A. Okay.

5 Q. At the bottom portion of the document, there is a
6 reference "B," as in boy, "00 dash 00790, paren, (building,
7 electrical, plumbing, mechanical, agricultural)" -- excuse
8 me, -- "(agriculture, electric, new.)" End paren.

9 Do you see that?

10 A. Uh-huh.

11 Q. And the "app status - finalized"; do you see that?

12 A. Yes.

13 Q. Is that "application status"?

14 A. I believe so.

15 Q. Okay.

16 And then underneath that, is permit --

17 A. Excuse me. I misspoke.

18 We don't use that term during the
19 application process.

20 Q. Okay.

21 A. Typically, that would be an inspection that we
22 finalized.

23 Q. Meaning the inspection has been finalized?

24 A. Yes.

25 Q. Okay.

34

1 And then under the next box is "permit
2 activities."

3 Do you see that?

4 A. Uh-huh.

5 Q. And then "permit inspections."

6 Do you see that?

7 A. Yes.

8 Q. And then it says, "approved on 7/7/2000 for UFER
9 ground." And then it says "yes or no."

10 A. Uh-huh.

11 Q. "Not ready on 6/23/000 for final electrical meter
12 set."

13 A. Uh-huh.

14 Q. "Approved on 7/7/2000 for final electrical meter
15 set."

16 A. Uh-huh.

17 Q. Next line, "Approved on 7/7/2000 for permit final."

18 A. Uh-huh.

19 Q. What does that permit refer to; if you know?

20 A. It appears right here going back up to B0000790
21 "building, electrical, plumbing, agriculture, electric,
22 new," it's not real clear, but this appears to be for a new
23 agricultural electrical service panel.

24 Q. Okay.

25 A. And then down below it's your permit inspections.

35

1 Q. Okay.

2 A. That's why you don't see too many, because it's just
3 the meter itself. And that is why you have, you know, one,
4 two, three, maybe four inspections.

5 Q. Do you have any knowledge as to where that electric
6 meter inspection, where that electric meter is located in
7 the winery structure?

8 A. No. Not this one.

9 Q. Turning the page on page five of eight, there is
10 another entry B97-1309, "(building, electrical, plumbing,
11 mechanical agriculture, electric, new)" end paren.

12 A. Uh-huh.

13 Q. And then again, it has "app status - finalized" and
14 then "permit activities" and then it list under "permit
15 inspections," 4 different approvals.

16 Do you see that?

17 A. Uh-huh.

18 Q. All on 9/15 of '97, "rough electric, final
19 electrical meter set, final electrical and permit final";
20 correct?

21 A. Yes.

22 Q. Do you know what that refers to in terms of that
23 permit?

24 A. It appears to be for another meter.

25 Q. Do you know the location of that meter?

36

1 A. No. No.

2 Q. All right.

3 Going onto page seven of eight.

4 At the bottom of page seven of eight, there
5 is a reference to B98-000702T. "Building, electrical,
6 plumbing, mechanical, temporary power new."

7 Do you see that?

8 A. No.

9 Q. Page seven of eight?

10 A. I am on that.

11 Q. You don't see it.

12 A. Yes.

13 Q. And, again, that app status is finalized --

14 A. Yes.

15 Q. -- permit activities. I am skipping.

16 And then permitted section, it says,
17 "Approved on 8/28/98 for permit final."

18 Do you see that?

19 A. Yes.

20 Q. Do you know what that refers to in terms of that
21 building permit?

22 A. No. It appears to be for another --

23 THE COURT: 8/28. What was the year?

24 MS. CUNNINGHAM: 8/28/98 for permit final.

25 BY MS. CUNNINGHAM:

37

♀

1 Q. So you don't know what -- I will just refer to it as
2 702.

4 A. There is not a lot of information as far as notes,
5 but it says. "Building, electrical, plumbing, mechanical,
6 temporary power, new." So that tells me it's a temporary
7 power pole.

8 Q. Okay.

9 Is there any significance to the absence of
10 the word "agricultural" -- or "agriculture" that were on
11 790 and 1309 as a caption, but not on 702?

12 A. Well, the only thing I can guess --

13 Q. I don't want you to guess. If you don't know, you
14 don't know.

15 A. This is typically for a power pole for construction.

16 Q. Okay.

17 A. That is what that typically is for.

18 Q. When you were in the cave, did you make any effort
19 to check the electrical, plumbing or mechanical in the cave
20 yourself?

21 A. No.

22 Q. Did you instruct any inspector to do the same to
23 inspect the plumbing, electrical or mechanical while you
24 were in the cave?

25 A. Not in the cave. We were there for the winery

38

1 building.

2 Q. Did you make any effort to inspect the electrical
3 panel outside the cave portal between the winery in the
4 cave while you were on site in November of 2012?

5 A. I believe there was an electrical panel in between
6 the winery building in the cave. I think the only thing I

7 really noticed on that was there were a couple plugs
8 missing, some openings.

9 MS. CUNNINGHAM: Okay.

10 I will mark some photos next.

11 So G will be three photos.

12 THE COURT: G1, 2 and 3.

13 (Three photographs were marked as
14 Defendant's Exhibit G for
identification.)

15 BY MS. CUNNINGHAM:

16 Q. And if you look at those photos, they are photos
17 that depict the electrical panel and then closer views of
18 the circuits with a close-up shot as the last photo.

19 Can you just take a look at those photos for
20 me and tell me when you are done?

21 (Witness reviewing photographs.)

22 THE WITNESS: Done.

23 BY MS. CUNNINGHAM:

24 Q. Are those the panels -- the panel that you recall
25 looking at while you were at the property?

39

1 A. I don't think I -- I don't recall looking at -- this
2 look like the one, but it looks different than when I seen
3 it.

4 Q. Okay.

5 A. When were these pictures taken? There is no date on
6 them.

7 Q. I will represent to you that they were taken within
8 the last two weeks, certainly within the last week?

9 A. Oh, then they have changed; since I have seen them.

10 Q. Okay. But do you recall whether or not that

11 location was similar to the location that you observed?

12 A. I can't tell the location. This is a meter on the
13 wall. That is all I am looking at.

14 MS. CUNNINGHAM: All right.

15 Let's mark next in order, Exhibit H.

16 (Letter was marked as Defendant's Exhibit
17 H for identification.)

18 BY MR. CUNNINGHAM:

19 Q. I will give you a document that we have marked as
20 Exhibit H. It was previously identified as Exhibit G in
21 the defendant's opposition to the Temporary Restraining
22 Order. It's a correspondence dated August, 18, 1997 from
23 Frank and Karen Altamura to the Department of Conservation
24 Development and Planning.

25 It's a one-page cover letter and then

40

♀

1 attached is a February 28th, 1997 letter or memo to Roger
2 Wing, CPA, from Frank and Karen Altamura, Altamura Winery.
3 And that document that is attached is four pages.

4 Can you take a moment and look at that
5 document?

6 A. Sure.

7 (Witness reviewing document.)

8 THE WITNESS: Okay.

9 BY MS. CUNNINGHAM:

10 Q. Okay.

11 Have you ever seen the document that I have
12 presented to you as Exhibit H?

13 A. No, I have not.

14 Q. The August 18th, '97 or the February 28th, '97
15 memorandum?

16 A. No, Ma'am.

17 Q. If you look at page two of Exhibit H, the February
18 28, '97 memorandum, the memo line is, "Actual costs to date
19 for development and construction of Altamura Winery at 1700
20 Wooden Valley Road, Napa, California, with an APN No. 033
21 070 031.

22 Do you have any information in your file
23 that the APN number changed on this property with the
24 suffix ending 031 to, actually, 045 to present?

25 A. I have no knowledge.

41

1 Q. Do you see the section captioned "winery
2 electrical"?

3 A. Yes.

4 Q. Do you have anything in your file that shows that
5 there was a subcontractor, Ron Adams Electrical, out at the
6 property and who installed the 800 AMP panel for a
7 three-phase transformer?

8 A. I don't have knowledge of that.

9 Q. Okay.

10 Do you have any information in your file
11 that house of lights installed the cave lights at some
12 point in time after -- on or after October '96?

13 A. I would have to, again, look in the records. I
14 can't recall.

15 Q. Okay.

16 And, again, Ron Adams Electrical doesn't

17 ring any bells to you with regard to the subcontractor?

18 A. No.

19 MS. CUNNINGHAM: I will mark next in
20 order -- I apologize to counsel. I only have an original
21 that we blew up. I will make copies available.
22 We will mark this next in order.

23 THE COURT: I.

24 ///

25 (Photograph was marked as Defendant's
Exhibit I for identification.)

42

♀

1

2 BY MS. CUNNINGHAM:

3 Q. I will represent to you, sir, that was a picture
4 taken on or about -- processed on or about April 1999, as
5 you see at the top of the document the date stamp. And the
6 bottom portion shows the photograph of the slab with the
7 rebar in the foreground and the cave and the retaining wall
8 in the background.

9 Do you see that?

10 A. Uh-huh.

11 Q. And off to the left, if you look, it looks like
12 there may be a temporary power pole there.

13 Do you see that?

14 A. Yes.

15 Q. It's somewhat feign?

16 A. Yes. To the right of that modular building.

17 Q. Yes.

18 And off the temporary power pole there
19 appears to be a line, that goes from the temporary power
20 pole at height, all the way -- if you follow it, all the

21 way to the inside of the cave interior.

22 Do you see that?

23 A. I can't say that the line you are looking at right

24 here goes all the way to that temp pole. I can see it

25 right here really well, it comes down to here. I don't see

43

1 it after that.

2 Q. Okay.

3 I am following it into that direction of the

4 cave portal.

5 Do you see that?

6 A. I see this, but don't know where it originates.

7 Q. Okay. Fair enough.

8 Have you talked to Dave DeLong?

9 A. I talk to him everyday at work.

10 Q. Have you talked to him specifically about whether or

11 not he inspected plumbing, electrical or mechanical at the

12 time the caves were constructed or thereafter?

13 A. I may have asked him if he inspected anything -- any

14 plumbing, electrical, mechanical in the cave.

15 Q. Okay.

16 And if you may have asked him that, did he

17 provide a response?

18 A. He doesn't recall.

19 Q. Okay.

20 A. At that time.

21 Q. And do you recall whether or not Mr. DeLong knew if

22 there was anybody else who would have made a similar

23 inspection with him on or about that time frame?

24 A. I didn't have that conversation with him.

25 Q. Okay.

44

+

1 Did you endeavor to find out what other
2 county employees or inspectors were out at the property on
3 or about the time that the caves were constructed?

4 A. Can you repeat that.

5 Q. Sure.

6 Did you personally endeavor to find out what
7 inspectors were out at the property during the time the
8 caves were constructed?

9 A. Not at the time the caves were constructed. I
10 looked on the records that we have to see what inspectors
11 were out there, and it appeared they were all out there at
12 the winery and the retaining wall; the winery building
13 itself and the retaining wall. But other than that, no.

14 MS. CUNNINGHAM: Let's mark this next in
15 order.

16 (Permit was marked as Defendant's Exhibit
17 J for identification.)

18 MS. GALLAGHER: I can't read it.

19 MS. CUNNINGHAM: If you can get me a better
20 copy, that would be great.

21 MS. GALLAGHER: I don't know -- I don't even
22 know what permit it is.

23 BY MS. CUNNINGHAM:

24 Q. I will give you a construction permit from Napa
25 County. It's a two-page document.

45

+

1 (Witness reviewing documents.)

2 MS. CUNNINGHAM: And just for the record, I
3 am showing counsel the original document because the copy
4 is light. If the witness needs to see the original, we can
5 look at that as well.

6 MS. CUNNINGHAM: So if you'll look at page
7 two, Mr. Mayes, of the construction permit, the far right
8 column under Inspector Notes. If you go down, maybe, three
9 boxes.

10 THE COURT: What is the date -- do we have a
11 date on it?

12 Can anybody figure out a date?

13 MS. CUNNINGHAM: Issue date 10/7/98. I am
14 looking at the top right-hand corner of the first page.

15 BY MS. CUNNINGHAM:

16 Q. Do you see that?

17 A. This is the B9800096 permit.

18 Q. Okay.

19 If you look at the Inspector Notes for a
20 minute for me.

21 A. Issue date, October --

22 Q. The 7th.

23 A. 7th of '98.

24 Q. Okay.

25 So if you look at the Inspector Notes and I

1 am looking three down.

2 A. Right here.

3 Q. And I read the words, temporary -- t-e-m-p, power --

4 A. We are on two different --

5 Q. No. This one. "Temp power at permanent location"
6 with an initial, 12/18 of '08.

7 Do you see that?

8 A. I see temporary power. It's tough to say that word
9 has "permanent" but I guess you can maybe guess that.

10 Q. Do you see the location?

11 A. And '08.

12 Q. 12/18/08?

13 A. That is what it looks like.

14 Q. Does that lead you to believe that there was an
15 inspection, at least of the electrical, by December of '08.

16 THE COURT: '08 or '09?

17 MS. CUNNINGHAM: Of '08.

18 THE WITNESS: I would think maybe this
19 temporary power was being placed on the winery in '08. I
20 think that is what that would mean.

21 MS. CUNNINGHAM: Okay.

22 (Two photographs were marked as
23 Defendant's Exhibit K for
identification.)

24 ///

25 BY MS. CUNNINGHAM:

1 Q. I will show you a document marked as Exhibit K.

2 The top photograph has a Napa County,
3 California building sticker. That top part reads, in part,
4 "the building division has approved the installation of the
5 electrical service to current Building Code standards and
6 authorizes PG&E to connect to their system." And then

7 handwritten notations.

8 Do you see that?

9 A. Yes.

10 Q. Do you know what date that is?

11 A. Well, I am going to -- it says 12/18. Is that a 6?

12 Is that an 8? That's tough to see.

13 Q. Do you recognize the inspector's name?

14 A. Yes.

15 Q. Who is that?

16 A. John Hammond.

17 Q. John Hammond.

18 If you go back to the construction permit.

19 Sorry. Exhibit --

20 A. J.

21 Q. J.

22 Is that Mr. Hammond's initials under the

23 section that we talked about in the inspector's notes?

24 A. It appears to be.

25 Q. And the permit number on the photograph is B9 -- I

48

1 can't tell what it is. 000 --

2 A. B9800096 would probably be there building permit.

3 It says permit that they have for the winery building.

4 Q. Okay.

5 Do you have any information, as you sit here

6 today, that the temporary power that was initially

7 installed on the property, was finalized for -- finalized at

8 some point in time by the county?

9 A. The temporary power pole looks like it was removed

11 Q. Okay.

12 Do you have any information that the caves
13 were not included within that inspection?

14 A. No. Other than there was no permit for it.

15 Q. And, I'm sorry, you said other than there was no
16 permit for it?

17 A. Yes. We shouldn't have been in the cave inspecting
18 anything because there was no permit for it back in '98.

19 Q. Your position is that there was no permit for the
20 cave --

21 A. For the use of the cave, yes, in '98, the date of
22 this -- the tag that you are showing me.

23 Q. But you also indicated -- well, I will get to that
24 in a minute.

25 As a matter of course, have you found that

49

♀

1 your file -- your file for the Building Department is
2 100-percent accurate at all times?

3 A. Say that again, please.

4 Q. Have you found, since you have been here in 2007,
5 that your files for the building department are 100-percent
6 accurate?

7 A. I can't say that I have noticed some mistakes.

8 Q. Okay.

9 Have you noticed any omissions in the file
10 that pertains to the Altamura wine project?

11 A. I haven't noticed any.

12 Q. Have you noticed any documents are missing?

13 A. It's tough to know if documents are missing if they

14 are not there.

15 Q. Has anyone told you that the county has misplaced
16 the retaining wall permit and the accompanying files,
17 including plans and specs and engineered drawings for the
18 the retaining wall?

19 A. I don't recall.

20 Q. You don't recall being told that?

21 A. I don't recall, no.

22 Q. Okay. Do you have any information as to the source
23 of the temporary power?

24 A. What temporary power.

25 Q. The photographs that I showed you showing a

50

♀

1 temporary power pole, you don't have any personal knowledge
2 about what happened during that time because you weren't
3 here; correct?

4 A. Correct.

5 Q. Okay.

6 At the time of the inspection in April --
7 April 2, 2013, had you had a discussion with Mr. Giudice
8 before that inspection occurred that morning with regard to
9 application of standards for wine tanks?

10 A. I'm sorry, you are going to have to repeat that
11 question.

12 Q. Sure.

13 Prior to the inspection of the property on
14 April 2, 2013, had you had a discussion with Mr. Giudice
15 with regard to what standard would apply to the Altamura
16 wine tanks?

17 MS. GALLAGHER: I will object as to

18 relevance.

19 THE COURT: Why do we?

20 MS. CUNNINGHAM: Because my understanding is
21 that the county is taking the position that the wine tanks
22 are unsafe and have to be secured and I wanted to know what
23 discussions he had with Mr. Giudice with regard to
24 application of standards because I will further ask him if
25 the information transmitted at the meeting have now been

51

♀

1 revised.

2 THE COURT: I will allow that.

3 MS. CUNNINGHAM: Thank you.

4 BY MS. CUNNINGHAM:

5 Q. Are you aware that there was an inspection on the
6 property on April 2nd, 2013?

7 A. Only, April 2nd?

8 Q. Yes. Tuesday, April 2nd.

9 A. April 2nd, 2013?

10 Q. Yes, just this past month?

11 A. I believe so.

12 Q. And before -- do you recall being told that Mr.
13 Giudice was going to be at that inspection with Mr. Minowa,
14 Mr. Galambos and representatives of the owners?

15 A. I think he mentioned that they were going out there.

16 Q. Did you have a discussion with Mr. Giudice with
17 regard to the wine tanks specifically?

18 A. I may have.

19 Q. Do you recall what those discussions were, either
20 generally or specifically?

21 A. It must have been general.

22 Q. Do you recall advising Mr. Giudice what standard to
23 apply for the inspection of the wine tanks?

24 A. I don't believe so.

25 Q. Do you recall instructing Mr. Giudice that the '98

52

♀

1 standard applied?

2 A. I don't recall, no.

3 Q. Do you recall making any inquiry to determine
4 yourself what standard applied for the wine tanks at the
5 property?

6 A. Sure.

7 Q. Okay.

8 what did you determine?

9 A. Well, are we talking about the winery's tanks --

10 Q. Yes.

11 A. -- in the winery?

12 Q. Yes.

13 A. Can you repeat the question.

14 Q. Did you have a discussion with Mr. Giudice as to
15 what standards you would apply with regard to the wine
16 tanks in the winery?

17 A. I don't recall having that conversation with him
18 that day.

19 Q. Are you aware that Mr. Giudice presented to the
20 owners that day, a '98 standard?

21 A. He may have. I wasn't out there.

22 Q. Do you know why he would have given the owners the
23 '98 standard?

24 A. No.

25 Q. Do you know when the tanks were manufactured?

53

1 A. No.

2 Q. Did you know anything about the tanks?

3 A. Other than that they were there --

4 Q. Other than the casual observations that you saw?

5 A. Yeah.

6 Q. Do you have any discussions with anyone else with
7 regard to what standards applied for the wine tanks?

8 A. We discussed -- sometimes when you go back in old
9 records, you have to do a little digging and ask questions
10 to decipher what codes they were under at that time.

11 So we may have had discussions trying to
12 decipher what code they were on -- under.

13 Q. And did you come up with a determination yourself as
14 to the county's position as to what California Building
15 Code standard applied to the wine tanks at the Altamura
16 property?

17 A. We made a determination that they were under the '95
18 codes.

19 Q. What was the factual basis for that determination?

20 A. The codes that were adopted at time they applied for
21 their permits.

22 Q. And, specifically, do you recall what the '95
23 standard requires for tanks?

24 A. Not without looking at it.

25 Q. I think I have it. I will pull it in a minute.

54

1 Do you have any information from any other
2 source, including government sources, that strapping of
3 wine tanks is contraindicated?

4 A. I'm sorry.

5 Q. That any other agency has indicated that strapping
6 of tanks is not a safe protocol?

7 A. No. I haven't heard that at all.

8 Q. Okay.

9 I am going to show you a document.

10 THE COURT: Ms. Cunningham, are you moving
11 into another subject?

12 MS. CUNNINGHAM: Do you want to take a
13 break? Now is a good time.

14 THE COURT: Let's take a ten-minute break.
15 You can step down and take a few minutes.

16 MS. CUNNINGHAM: Thank you, your Honor.

17 THE COURT: Okay.

18 (Recess taken.)

19 THE COURT: Okay.

20 Let's go back on the record.

21 Everyone is present and we will continue
22 with Mr. Mayes' testimony.

23 Go ahead, Ms. Cunningham.

24 ///

25 CROSS-EXAMINATION (CONTINUED)

1 BY MS. CUNNINGHAM:

2 Q. Mr. Mayes, we are back on the record.

4 Building Code, Chapter 16, do you recall what the
5 definition of a non-building structure is?

6 A. Yes.

7 Q. And what is that definition?

8 A. Oh, how about a bridge. A bridge is a structure but
9 not a building.

10 Q. Okay. Give me another example if you have one.

11 A. Okay. Monuments. I don't know. Anything that is
12 not a building, anything man-made is a structure.

13 Q. Would a wine tank be a non-building structure under
14 Chapter 16 of the 1994 Uniform Building Code?

15 A. Well, you can either consider it that or equipment.

16 Q. Okay?

17 A. And to me that is equipment.

18 Q. Okay.

19 And if it was equipment, what standard would
20 apply to a wine tank to support the county's position that
21 the tank needs to be strapped or otherwise braced or
22 bolted?

23 A. The California Building Code standards, in absence
24 of that, then we ask for the manufacturer's installation
25 instructions and listing.

56

1 Q. Okay.

2 So you refer back to the California Building
3 Code, and if that is not applicable, then in lieu of that,
4 you just want manufacturing information?

5 A. Yes.

6 Q. And what is the purpose of seeking the manufacturing

7 information?

8 A. If it's not in the Building Code because the
9 Building Codes addresses anchorage of equipment, and those
10 tanks are equipment and we want to know --

11 Q. Okay.

12 A. -- because, typically, there are different times of
13 tanks, but some are shown and are required to be hard-wired
14 to the building itself, not extension cords. Whenever you
15 have equipment hard-wired it needs to be anchored down.

16 Q. Do you recall seeing the wine tanks at the winery on
17 your visit?

18 A. At the winery, yes.

19 Q. And did you make any assessment whether or not those
20 tanks were above ground, below ground hard-wired, or
21 anything in between?

22 A. Yes.

23 Q. And what was your assessment at the time based on
24 your observation?

25 A. If I recall, I thought they had -- they are not all

57

♀

1 the same, the tanks that are out there. I thought I saw
2 one that had wheels on it.

3 Q. Okay.

4 A. My main concern was to get the information that is
5 from the manufacturer's that require they either be
6 portable or not.

7 Q. Okay.

8 A. I made the assumption by looking at the tanks that
9 they are the hard-wired type, which hard-wired type then

10 would be equipment that requires to be anchored.

11 Q. would that assumption change if you were presented
12 facts that the tanks as located in the property were made
13 -- manufactured off site, transmitted or transported on
14 site and sit on steel rests with legs?

15 A. Posts, yes.

16 Q. Posts.

17 A. Typically, those poles have anchored bolt patterns,
18 typically.

19 Q. Do you recall seeing those steel posts when you were
20 there?

21 A. I recall that there was more than one type of tank
22 and I believe I saw a set that had wheels on it that I
23 thought -- I wasn't sure if that was -- those wheels were
24 put there the manufacturer or not. I don't know.

25 And then I thought I saw some of the tanks

58

♀

1 that had legs with the bolt pattern. And that is typically
2 what I see more. The legs with the bolt pattern on the
3 bottom. I don't typically see the wheels.

4 Q. Would it be your position then that the section
5 under Chapter 16, specifically, section 1632, non-building
6 structures under the '94 Uniform Building Code is not
7 applicable to the Altamura wine tanks as you observed at
8 the property?

9 A. I could not say it not applicable.

10 Q. Okay.

11 And what would you need to determine whether
12 the '94 Uniform Building Code applied?

13 A. 1994 -- excuse me. I believe it's the '95 Building

14 Code that we are on.

15 Q. I am looking at the '94 that your office provided.

16 A. I don't think so. 1995.

17 Q. Okay.

18 So would you have -- do you have the
19 position -- you said it was equipment. The tanks are
20 equipment under your review.

21 A. Yes. I think they are hard-wired equipment, yes.

22 Q. Okay. And do you have a position that the section
23 1632.4 tanks with supported bottoms, do you have an opinion
24 as to whether or not those tanks that you saw were -- fall
25 within the section 1632.4?

59

♀

1 A. Again, what we are after is building safety. And so
2 if the tanks are shown -- when I get there and I see bolt
3 patterns on the legs, bolt pattern means anchorage and they
4 are hard-wired type then that's equipment and they need to
5 be anchored down.

6 Absent of that, if you have installation
7 instructions front he manufacturer that show otherwise, we
8 would accept that.

9 Q. Okay.

10 There are exemptions under the Uniform
11 Building Code, generally speaking; are there not?

12 A. Exceptions? Yes.

13 Q. Work exemptions from permitting?

14 A. Yes.

15 Q. And depending on a particular section, it may r may
16 not have an exemption.

18 exemption provided under 106, the Uniform Building Code
19 would apply to the wine tanks as it's defined for water
20 tanks?

21 A. No.

22 Q. And why not?

23 A. They are not water tanks.

24 Q. Okay.

25 Are there any other exemptions that you are

60

♀

1 aware of under the Uniform Building Code for the wine
2 tanks?

3 A. No.

4 Q. Are there any particular sections in the Uniform
5 Building Code that specifically discuss wine tanks as
6 defined other than as a non-building structure?

7 A. No.

8 MS. CUNNINGHAM: Let's mark next in order,
9 as Exhibit L, it's a multiple document titled Reducing the
10 Risk of non-structural Earthquake Damage - a Practical
11 Guide, FEMA E-74 January 2011.

12 (FEMA Guide was marked as Defendant's
13 Exhibit L for identification.)

14 BY MS. CUNNINGHAM:

15 Q. I just want to know -- take a look at that for a
16 minute and tell me if you have ever seen that document
17 before.

18 (Witness reviewing documents.)

19 THE WITNESS: I have not seen this document
20 before.

21 BY MS. CUNNINGHAM:

22 Q. Okay.

23 Go to --

24 MS. GALLAGHER: I am going to object to this
25 line of questioning as relevance. We are not here to

61

1 decide what code section applies to these tanks. It's not
2 even at issue.

3 MS. CUNNINGHAM: Well, we are talking about
4 tank, not caves; and I want to know, he has made an opinion
5 that tanks are equipment as opposed to non-building
6 structures. He has also made an opinion that the Uniform
7 Building Code may not apply if there were manufacturing
8 information.

9 So in light of that if he is asking for
10 manufacturing or installation information, I think I have
11 the right to ask him about anchoring and/or the results of
12 anchoring in emergency situations such as earthquakes,
13 because he early testified it's about public health and
14 safety.

15 THE COURT: I don't think he -- well, you
16 want to clarify his opinion as to whether it's public
17 safety is his opinion or code requirement on equipment, I
18 will let you ask that.

19 MS. CUNNINGHAM: Okay.

20 THE COURT: And based on what he has to say,
21 you can test his expert opinion, but the document doesn't
22 do anything.

23 MS. GALLAGHER: I guess my objection to

24 relevance is we are here about whether a certificate of
25 occupancy was issued or not, not whether tanks need to be

62

♀

1 strapped down.

2 We are getting into an area that is not
3 before the Court.

4 MS. CUNNINGHAM: well, I think counsel has
5 raised the issue that the temporary certificate of
6 occupancy has not been issued and, in part, the temporary
7 restraining order asked for a list and the county has
8 identified a list of what they believe to be public health
9 and safety issues, including the alleged failure of the
10 owner to deal with the tanks.

11 And I think I have the right to ask the
12 witness as the county representative, both what the
13 statutory basis is for the public health and safety issues
14 as well as what, under the TCO, is necessary to satisfy the
15 county's concern. And that is what this area of
16 questioning is and it's limited and will elicit.

17 THE COURT: I think we are getting far
18 afield. I will allow you to ask a few questions but we are
19 -- I tend to agree with Ms. Gallagher. We are getting a
20 little
21 far afield, but I will allow it. We will have a record and
22 maybe it can lead to resolution of the case.

23 MS. CUNNINGHAM: Thank you, your Honor.

24 ///

25 BY MS. CUNNINGHAM:

63

♀

1 Q. Is the county's concern with regard to the tanks
2 based on the failure of the owner to secure an appropriate
3 strapping or security method based on statute or Building
4 Code?

5 A. It's all based on building safety and the Building
6 Code.

7 Q. Would it be fair to say that the county's concern,
8 as you said, based on safety.

9 Your concern is that in an emergency
10 situation, such as an earthquake, the tanks were to fall
11 over, it could cause harm to the safety of the occupants,
12 employees or patrons; correct?

13 A. Correct.

14 Q. Do you have any information, as the county
15 representative, that strapping of certain tanks, would be
16 dangerous in emergency situations would cause more harm
17 than not strapping of those tanks?

18 A. I haven't seen anything like that, no.

19 Q. Okay.

20 Look at page 6-191. This is the only part
21 of the document I am going to show you.

22 (Witness reviewing document.)

23 MS. CUNNINGHAM: Let me know when you finish
24 reading it.

25 BY MS. CUNNINGHAM:

1 Q. Have you had an opportunity to look at 6-191?

2 A. I am finishing reading the seismic mitigation

4 Q. On 6-192?

5 A. Yes.

6 Q. Okay.

7 (Witness reviewing document.)

8 THE WITNESS: Okay.

9 BY MS. CUNNINGHAM:

10 Q. Have you seen any similar studies --

11 A. No.

12 Q. -- as related in this document?

13 A. No.

14 Q. Have you made any considerations with regard to any
15 outside sources about tanks that have a relatively low
16 aspect ratio?

17 A. I'm sorry. Can you repeat that.

18 Q. Have you, as a county official, made any
19 considerations for wine tanks that are considered having a
20 low aspect ratio?

21 A. No.

22 Q. Let me segway back quickly, and I am almost done
23 with the cave issue.

24 Are you aware of any public safety or
25 welfare issues with regard to the interior of the cave?

65

♀

1 A. I can't answer that until I completely inspect that
2 cave. We haven't done that. There is no permit out there.
3 We haven't been out there to inspect the cave.

4 Q. While you were there in or about November of 2012,
5 did you not personally go into the cave?

6 A. Yes, I did.

7 Q. And you didn't do any type of observation that would
8 be considered an inspection?

9 A. No. It was not an official inspection of the cave,
10 no.

11 Q. Did anybody else, to your knowledge, also on
12 November of 2012, do an official inspection of the cave?

13 A. What day?

14 Q. November 2012 when you were out there?

15 A. While we will were out there?

16 Q. Yeah.

17 A. We were not called out there for a cave inspection;
18 so. No.

19 Q. And you said an "official" inspection?

20 A. We were not called out there for an inspection. All
21 inspections are required to be called in and scheduled.
22 And they did call in and schedule an inspection to look at
23 the winery.

24 Q. Okay.

25 Do you have any information that the owners

66

♀

1 called last week to have the J-box inspected?

2 A. Yes.

3 Q. And do you have any information that your office
4 indicated that they would not be coming out to inspect the
5 J-box.

6 A. Our policy is when you get a correction notice, call
7 us back when all the corrections are done. We don't go out
8 there piecemealing. So, yes.

9 Q. So it was your instruction --

10 A. It was my instruction that unless they had
11 everything on the correction notice complete, that we would
12 not go out there. And we were told that the tanks were not
13 anchored; nor did we have any information from the
14 manufacturer.

15 Q. So until you get both of those factors to your
16 satisfaction, you are not intending to go out for another
17 inspection?

18 A. We don't go out on a correction notice if all of the
19 corrections are not made.

20 Q. Okay.

21 So going back to the cave, is it the
22 county's position that there has been no official
23 inspection of the cave; correct?

24 A. To the best of my knowledge.

25 Q. So would it be fair to say that you don't have any

67

♀

1 information as to what, if any, public safety or welfare
2 issues are or exist, if at all, with regard to the cave,
3 absence the fact that you don't have a permit; is what you
4 said?

5 A. Any building, any structure, anything that is being
6 occupied or used without a permit, I assume that safety
7 violations have been made; and, also when I was in there,
8 the arrangement of the barrels looked unsafe to me. That
9 is the only thing I observed in the cave.

10 Q. What was it about the barrel arrangement that looked
11 unsafe to you?

12 A. It appeared they were haphazardly scattered. They
13 were some, I think, four barrels high. Some looked like --

14 they were just -- certain areas of the exit ways were
15 skinnier than they should be. Things like that.

16 Q. And I think I asked you earlier, you didn't take any
17 measurements with regard to the interior cave dimensions;
18 right?

19 A. No.

20 Q. If I told you that the ceiling height in the cave
21 was approximately 12-feet high and sidewalls were
22 approximately eight-feet high, does that sound similar to
23 what your observation was?

24 A. I don't recall looking at the height of the cave.

25 Q. You recall you said four barrels high and I think

68

1 your testimony this morning was that they were average-size
2 wine barrels.

3 If they were four barrels high, would that
4 be approximately ten-feet high in terms of wine barrels?

5 A. I would just be guessing. I don't know the
6 measurements of those barrels.

7 Q. Do you recall seeing those barrels on racks, on
8 wooden racks?

9 A. I think some were and some weren't.

10 Q. Okay.

11 There is a photograph I think I showed you
12 with the winery panel. Let me go back a second.

13 It's Exhibit K. And at the bottom there is
14 a picture of certain barrels and the cave entrance.

15 Do you see that?

16 A. I do see that.

17 Q. Does that refresh your recollection as to how the
18 barrels were stacked at the time you saw it?

19 A. No, it doesn't.

20 Q. So it looked different to you during the time of
21 your visit?

22 A. Yes.

23 MS. CUNNINGHAM: Your Honor, at this
24 point -- I don't have any -- one more.

25 BY MS. CUNNINGHAM:

69

9

1 Q. Have you made any inquiry into what type of
2 ventilation or mechanical system is used in the winery --
3 A. We do that at the time of permit, when we do a plan
4 review that is when we look at that.

5 Q. And to your knowledge, no plan review has been done
6 yet?

7 A. Not for the cave, no.

8 MS. CUNNINGHAM: All right.

9 No further questions.

10 Thank you.

11 THE COURT: Redirect?

12 MS. GALLAGHER: Yes, your Honor.

13 REDIRECT EXAMINATION

14 BY MS. GALLAGHER:

15 Q. You testified that you applied the current code
16 cycle on the project the date that the project comes in?

17 A. The date that it's applied for.

18 Q. Let's assume that the caves were built in 1996.

19 A. Okay.

20 Q. What code cycle would you have applied for the

21 electrical plumbing and mechanical in the cave?

22 A. In '96?

23 Q. Yes.

24 A. Can you repeat your question, please.

25 Q. If the cave was built in '96 --

70

1 A. If it was built in '96.

2 Q. -- what code cycle would you have applied for the
3 electrical, plumbing and mechanical --

4 A. The code at that time would have been the '95 code,
5 and the '93 electrical, and '90 -- the other code books,
6 and the plumbing and mechanical and the building are the
7 '95.

8 MS. GALLAGHER: Your Honor, can I have an
9 Exhibit marked?

10 THE COURT: Of course. What is your next
11 number? I think you are at 3.

12 THE CLERK: 4.

13 THE COURT: 4? Okay.

14 (Code excerpts were marked as Plaintiff's
15 Exhibit No. 4 for identification.)

16 MS. GALLAGHER: Mr. Mayes, I am going to
17 hand you our Exhibit No. 4.

18 (Witness reviewing documents.)

19 BY MS. GALLAGHER:

20 Q. Can you state for the record what I just handed you
21 as Exhibit No. 4?

22 A. You handed me code sections in the 1995 California
23 Mechanical Code, 1995 California Plumbing Code. And you

24 have also the Uniform Administrative Code for Business for

25 the National Electric Code, 1993 addition. California

71

♀

1 Building Code, volume 1, 1995 and volume 2, also, from

2 1995.

3 Q. Okay.

4 The National Electrical code, 1994 addition.

5 A. Yes.

6 Q. Section 301.

7 Do you have that in front of you?

8 A. I am getting to it. Section what?

9 Q. 301.

10 A. Okay. Permits required.

11 Q. Is this a true and correct copy of section 301 of

12 the 1993 National Electrical Code?

13 A. It appears to be, yes.

14 Q. Does section 301 require electrical -- a permit for

15 electrical systems when you install, alter repair or

16 replace?

17 A. Yes.

18 Q. Within a structure?

19 A. Yes.

20 Q. Looking at the Mechanical Code, 1995 Mechanical

21 Code, section 112.

22 A. Uh-huh.

23 Q. Is this a true and correct copy of the 1995

24 Mechanical Code, section 112?

25 A. Yes.

72

♀

1 Q. Does the section require a permit for mechanical
2 system?

3 A. Section 112 of the Mechanical Code requires permits,
4 yes.

5 Q. Is that a permit for a building or a structure?

6 A. It's for any mechanical system.

7 Q. The 1995 California Plumbing Code, section 103.1, is
8 that a true and correct copy of the Plumbing Code, section
9 103.1?

10 A. Yes.

11 Q. Does this section regulate plumbing for each
12 building or structure?

13 A. Yes.

14 Q. Is a permit required to install plumbing in a
15 separate building or structure?

16 A. Yes.

17 Q. For the California Building Code in 1995, section
18 106; is this a true and correct copy of section 106?

19 A. Yes.

20 Q. Is a permit required for any building or structure
21 when erected, constructed, enlarged, altered, repaired
22 moved, improved, removed, converted for each building or
23 structure?

24 A. Yes.

25 Q. Are these the codes that you are relying on when you

1 testified that permits were required from the county for
2 the work done in the cave?

3 A. Yes.

4 Q. Is the cave considered a structure?

5 A. Yes.

6 Q. Did Mr. Altamura or any of his representatives apply
7 for an electrical, plumbing, mechanical, or building permit
8 for the work done in the cave?

9 A. No.

10 Q. For the 2010 code, today's standard, would you
11 require electrical, plumbing, building, mechanical permits
12 for the work that has already been done in the cave?

13 A. Yes.

14 Q. Do you personally do inspections in response to
15 building permit applications?

16 A. On occasion, yes. Not typically. I have inspectors
17 typically go out on a daily basis to do inspections.

18 Q. Do you rely on your inspectors to make a
19 determination whether to issue a Certificate of Occupancy?

20 A. Yes.

21 Q. You spoke -- you testified that you spoke to one of
22 your inspectors, Dave DeLong regarding his inspection on
23 this property; correct?

24 A. Yes.

25 Q. Is it your understanding that Dave DeLong never went

74

1 in or inspected the cave in this case?

2 A. Yes. That is what he indicated to me.

3 Q. Do you recall speaking with Rich -- district
4 attorney investigator Rich Garcia in March of this year
5 regarding his experience with wine tasting in the cave?

6 A. Yes.

7 Q. Did you rely on Mr. Garcia's observation to
8 determine that the cave was being used for tasting?

9 A. Yes.

10 Q. You testified earlier that you climbed on the ladder
11 during your inspection in November of 2012.

12 when you climbed on that ladder, was that in
13 the cave or the winery?

14 A. I believe it was in the winery.

15 Q. When you inspected the emergency lighting and the
16 emergency exit signs, was that also in the winery?

17 A. Yes, that is what I was out there for.

18 Q. So in November 2012, you were not called out there
19 to inspect the cave?

20 A. No.

21 MS. GALLAGHER: I would like to mark this as
22 Exhibit 5.

23 (Application was marked as Plaintiff's
Exhibit No. 5 for identification.)

24 BY MS. GALLAGHER:

25 Q. Mr. Mayes, I am to going to and you Petitioner's

75

♀

1 Exhibit 5.

2 Can you state for the record what this
3 exhibit is?

4 A. It's a building permit application worksheet.

5 Q. And what is -- what number is this building permit
6 application?

7 A. That looks -- it's B9896. They didn't put all of
8 the zeros in there like it should be. It's B9800096.

9 Q. And who is the owner listed on this building permit?

10 A. Frank Altamura.

11 Q. Can you state what the work description is?

12 A. Winery and dwelling.

13 Q. In your opinion, does this building permit
14 application, this 1998 building permit application include
15 the cave?

16 A. No.

17 Q. Would you expect the cave to be listed on here if it
18 did include the cave?

19 MS. CUNNINGHAM: Objection, calls for
20 speculation. Lacks foundation.

21 THE COURT: Based on the form of the
22 question, I will allow that.

23 ///

24 BY MS. GALLAGHER:

25 Q. What do you require on building permit applications

76

♀

1 as a description of the work?

2 MS. CUNNINGHAM: Objection, irrelevant as to
3 time.

4 THE COURT: He can give his opinion. I know
5 he wasn't working at that time. He can give his opinion.

6 BY MS. GALLAGHER:

7 Q. As the building official, what do you require on
8 building permit applications for the work description?

9 MS. CUNNINGHAM: Same objection.

10 THE WITNESS: What we require on the
11 application or the plan?

12 BY MS. GALLAGHER:

13 Q. On this application, what would you require as the

14 work description?

15 A. I would require them to describe the building that
16 the permit this for.

17 THE COURT: This is '96?

18 MS. GALLAGHER: '98.

19 BY MS. GALLAGHER:

20 Q. So that is the current practice; correct?

21 A. Correct.

22 Q. Based on your opinion, would that be the same
23 practice as back in 1998?

24 A. Yes. It's been that way for many years.

25 THE COURT: This includes diagrams?

77

1 THE WITNESS: Yes.

2 THE COURT: So diagrams are with it?

3 THE WITNESS: Well, she asked all, so that's
4 why I wanted to say "application" or "plans."

5 THE COURT: Okay. Go ahead.

6 BY MS. GALLAGHER:

7 Q. Have you reviewed the plans for this project?

8 A. I certainly have.

9 Q. Do the plans for this winery and dwelling include
10 drawings for a cave?

11 A. No, it does not include drawings for a cave.

12 Q. So is the your understanding that the cave is not
13 included in the 1998 permit?

14 A. Very clear it was not.

15 MS. GALLAGHER: I would like to mark this as
16 Exhibit no. 6.

Transcript of 4.15.13 Court Hearing_26-61207 from Susan Staub.CARL15.TXT
17 (Construction Permit was marked as
18 Plaintiff's Exhibit No. 6 for
identification.)

19

20 BY MS. GALLAGHER:

21 Q. Can you state the permit number on this construction
22 permit?

23 A. This would be 9800072.

24 Q. Can you state what this permit is for?

25 A. The retaining wall and a temporary -- it looks like

78

1 it's a temporary power pole for retaining wall
2 construction, which is typical on a job site.

3 Q. So what would that temporary pole be used for?

4 A. For construction activities.

5 Q. And in this particular permit, what does the work
6 description state?

7 A. Again, it's a temporary pole for retaining wall
8 construction, so they can have -- they need to work out
9 there and have power.

10 Q. Okay.

11 You testified earlier that there were
12 additional permits for agricultural electrical meters.

13 Can you describe what agricultural
14 electrical meters are?

15 A. Typically, in agricultural meters for like
16 irrigation purposes and things and like that.

17 Q. Are these agricultural electrical meters associated
18 with caves?

19 A. No.

20 Q. In your review of the building cold file, did you

21 see any permit associated with the cave?

22 A. No.

23 Q. Have you received any details from Mr. Altamura

24 regarding the wine tanks on the property?

25 A. No.

79

1 Q. Are you able to make an official determination on

2 what /may or may not be needed today?

3 A. Yeah. Right now they need to be anchored unless

4 they can supply me with installation instructions from the

5 manufacturer that they don't require it.

6 Q. Have you requested that information?

7 A. Yes.

8 Q. Have you received that information?

9 A. No.

10 Q. Do you have safety concerns with the cave given that

11 it has not been officially inspected?

12 A. Yes.

13 Q. What are those concerns?

14 A. I am concerned for the general welfare of the public

15 that they are inviting in, you know, in the event of an

16 earthquake. You know, the barrels weren't situated in a

17 fashion that I thought was safe.

18 I couldn't tell if there was ventilation in

19 there to have the public in there. I couldn't tell if the

20 required secondary exit was in there. There were a lot of

21 things I couldn't see because of the disarray, state that

22 he the cave was in when I was there.

23 Q. Mr. Mayes, if you can look at the 1995 Building Code

25 A. Uh-huh.

80

1 Q. Can you read section 109.1?

2 A. "No building or structure shall be used or occupied
3 and no change in the existing occupancy classification of a
4 building or structure or portion thereof shall be made
5 until a building official has issued a Certificate of
6 Occupancy therefore has provided herein."

7 Q. The requirement that the building official has to
8 issue a Certificate of Occupancy, is that the same
9 requirement today as it was in 1995?

10 A. Yes.

11 Q. So, is it your opinion that the cave cannot be
12 occupied until you have officially issued that certificate
13 occupancy pursuant to this code section?

14 A. Yes.

15 Q. Do you have the same opinion regarding the winery?

16 A. Yes.

17 Q. In section 109.4, do you have the authority to issue
18 a certificate -- a temporary Certificate of Occupancy for
19 the winery?

20 A. For portions of the winery, yes.

21 Q. Are you relying on section 109.4?

22 A. Yes.

23 Q. Is that the same as the current -- the 2010 Building
24 Code section today?

25 A. Yes. There would be slight changes, but the content

81

1 is the same.

2 MS. GALLAGHER: No further questions, your
3 Honor.

4 THE COURT: Any recross?

5 MS. CUNNINGHAM: I do, quickly.

6 RECROSS-EXAMINATION

7 BY MS. CUNNINGHAM:

8 Q Did you read the report of Richard Garcia?

9 A. No. I did not read the report.

10 Q. Were you aware that Mr. Garcia, on behalf of -- do
11 you know who Mr. Garcia is?

12 A. I do.

13 Q. Did you read his declaration?

14 A. No, I did not.

15 Q. Were you advised -- I just want to know yes or no.

16 Were you advised as to the contents of his
17 observation or his declaration?

18 A. When?

19 Q. At any time.

20 A. Yes.

21 Q. And you are aware that he is a district attorney
22 investigator?

23 A. Yes, I am.

24 Q. And you are aware that he made a trip to the winery?

25 A. Yes, I am.

82

♀

1 Q. And have you read his investigation report dated on
2 or about March 15th, 2013?

3 A. I haven't read it.

4 Q. Have you been provided any information out of his
5 report?

6 A. It depends on how you mean how it was provided. He
7 told us that he was there and had a drink, that information
8 what provided.

9 Q. When you say, he told "us."

10 Did you have communication directly with Mr.
11 Garcia with regard to his site visit?

12 A. Yes.

13 Q. Okay.

14 And did Mr. Garcia tell you that he took
15 photographs while he was out there?

16 A. I don't recall. It was in a meeting with me, Garcia
17 be some other county staff.

18 Q. Do you recall being provided any photographs that
19 Mr. Garcia took on his site visit?

20 A. I don't recall if he took any pictures or not.

21 Q. I will make a representation to you that county
22 counsel has filed a declaration with Mr. Garcia's report
23 attached, including color photographs, taken on or about
24 March 15th.

25 MS. CUNNINGHAM: Let me mark this group

83

♀

1 defendant's next in order. I will just mark them globally.

2 THE COURT: Are you at M?

3 MS. CUNNINGHAM: Yes, your Honor.

4 THE CLERK: M as in Mary.

5 (Photographs were marked as Defendant's
6 Exhibit M for identification.)

7 THE COURT: How many pictures do we have?

8 MS. CUNNINGHAM: Six.

9 THE COURT: Okay. M1 through 6.

10 BY MS. CUNNINGHAM:

11 Q. These are the photographs that county counsel has
12 provided with Mr. Garcia's declaration in part.

13 would you just take a look at those
14 photographs.

15 A. Uh-huh.

16 were these taken inside Altamura's cave?

17 Q. I can make a representation to you that Mr. Garcia
18 indicated that he took them the day of his inspection and
19 unfortunately, he is not here, but we have his declaration
20 and his investigation report.

21 A. Okay.

22 Q. So, specifically, if you look, the condition
23 reflected in the photographs in March of 2013, are they
24 different than the condition that you saw when you were
25 there in November of 2012?

84

1 A. Quite a built different.

2 Q. Quite a bit different in a good way or quite a bit
3 different in a bad way? Got a ask that question.

4 A. Even in this photo, I see an exit way blocked, and I
5 seen a lot of that when I was out there.

6 See these storage boxes here in the exit way
7 heading out to that exit? You can't have that.

8 Q. Okay.

9 other than that photo, is there anything in

11 A. At this point, they are three high and on a rack.

12 Q. Is that in violation of any building standards?

13 A. I would have to take a closer look at the racks to
14 make sure that -- this is very similar to what other
15 wineries do, three high on a rack.

16 Q. Is that a concern in terms of public safety and
17 welfare with regard to any applicable standards?

18 A. Yes.

19 Q. And what standards are You concerned about?

20 A. California Building Code standards.

21 Q. Which chapter?

22 A. Which chapter?

23 Q. Or which section?

24 A. There is a chapter 16 having to do with anchorage of
25 non-building structures. You have got the electrical code

85

1 that also talks about anchorage of equipment. There is a
2 lot of that language that comes out of a lot of the codes,
3 not just the building code.

4 Q. Okay.

5 A. Because we are enforcing the building, plumbing,
6 mechanical, electrical, all of those.

7 Q. But with regard to the barrels, would the barrels be
8 violative to the Plumbing Code?

9 A. Not necessarily a Plumbing Code. If you get your
10 barrels stacked to high, you are not only in violation of
11 the Building Code, but the Fire Codes for height, because
12 then you have to start anchoring them once they get a
13 certain height.

14 Q. Do you know what that maximum height is before it
15 violates the Fire Code?

16 A. I would have to guess.

17 Q. You can give us an estimate.

18 A. I could give you an estimate, but that is guess.

19 Q. Okay.

20 Anything else with regard to the barrel
21 height that concerns you as depicted in the photographs
22 that Mr. Garcia provided?

23 A. These pictures?

24 Q. Yes.

25 A. No.

86

1 Q. Okay.

2 This Construction Application Worksheet,
3 Exhibit 5, that is in front of you.

4 Under the "use," far left column, middle the
5 page, there's the word "winery" and "dwelling" written on
6 that.

7 Do you see that?

8 A. Let me get to that.

9 Q. Exhibit 5.

10 A. Got it. Go ahead.

11 Q. Far left column. See where it says "Use" and words
12 "winery" and "dwelling" written on it?

13 A. Yes.

14 Q. There was More under the use permit than just a
15 winery and a dwelling; wasn't there? There was a crush
16 pad?

17 A. This is a construction application worksheet for

18 when they get their permit. This is not a use permit.

19 They are separate.

20 Q. So it wouldn't have the full description of the use

21 permit reflected in the construction application worksheet;

22 correct?

23 A. We require the use description to be on the building

24 permit and that plans and that is what we are doing here.

25 Q. But the use description doesn't necessarily match

87

1 the use permit scope; correct?

2 A. I wouldn't say word for word, but I mean they are

3 tied together.

4 Q. Doesn't the use permit for the Altamuras provide --

5 A. A use permit.

6 Q. Hold on. Let me finish.

7 A. Go ahead.

8 Q. Doesn't the use permit for the Altamuras indicate a

9 use for a crush pad?

10 A. I would have to look at the use permit. Again, that

11 is done quite a bit prior to the building permit. They go

12 to planning sometimes years, maybe two years, sometimes

13 even more, before they need a building permit.

14 So that is a process that is done even

15 before they apply for a building permit.

16 So what we do, is when they apply for a

17 building permit, then that also gets routed back to the

18 planning department. So they look at the use on my

19 building permit application and make sure it matches with

20 the use on their use permit.

21 Q. So has anyone endeavored to make that comparison as
22 to whether the use permit language matches your building
23 permit language that is reflected, in part, on the
24 Construction Application worksheet?
25 A. Personally, I have not.

88

1 Q. Okay.

2 A. And this is back in '96, so I don't know.

3 Q. Okay. I am still confused, and I apologize, on the
4 issue of cave in comments.

5 I thought you testified that the county did
6 not regulate the construction of caves, only the presence
7 of plumbing, mechanical and electrical; is that true?

8 A. Not necessarily.

9 Q. Okay.

10 when the caves were constructed --

11 A. Right.

12 Q. -- what standards, if any, applied to the
13 construction of the cave?

14 A. When you are drilling the cave, you go get a permit
15 through the state of California. I am not sure -- but it's
16 for mining and they can get that and drill there cave.

17 But then when they want to use that cave and
18 construct the retaining that goes to the face of that cave,
19 then the construction standards at the time they apply
20 would be through the California Building Code.

21 Q. Okay.

22 A. And all of the codes therein, such as plumbing,
23 electrical, mechanical.

24 Q. I'm sorry, I didn't mean to interrupt.

25 So you mean for the cave portal and plumbing

89

1 mechanical and electrical?

2 A. I am not sure I understand your question.

3 Q. It's not for the construction because the county
4 didn't regulate the mining --

5 A. The construction activities we did. The drilling of
6 the cave, we did not.

7 Q. You did not. Okay.

8 THE COURT: You are talking about the
9 construction as to a particular.

10 THE WITNESS: Yes.

11 THE COURT: Okay.

12 THE WITNESS: Without that, it's just a
13 plain hole in the wall. You have to make it safe and do a
14 retaining wall and portal and go in and do shock treatment
15 and supports through that cave. You don't regulate the
16 cave itself, just when they go to use it.

17 BY MS. CUNNINGHAM:

18 Q. Were you aware of any ventilation system in the
19 winery?

20 A. I didn't do the plan review. I assume it's there.

21 Q. And you don't know any specifics about it?

22 A. No.

23 MS. CUNNINGHAM: No further questions.

24 Thank you very much.

25 THE COURT: Any further redirect?

90

1 MS. GALLAGHER: Just one, your Honor.

2 THE COURT: Nobody has just one.

3 FURTHER REDIRECT EXAMINATION

4 BY MS. GALLAGHER:

5 Q. For the retaining wall permit that you have on file,
6 did that include any plumbing, electrical --

7 A. No.

8 Q. -- activities in the cave?

9 A. No.

10 MS. GALLAGHER: No further questions.

11

12 THE COURT: All right.

13 Ms. Cunningham, anything further?

14 FURTHER RECROSS-EXAMINATION

15 BY MS. CUNNINGHAM:

16 Q. Do you still have the retaining wall permit?

17 A. I imagine we do in our records.

18 Q. Do you have any as to the plans and specs submitted
19 by Forsythe, the engineer?

20 A. I believe those are the only plans I have seen.

21 Q. Okay.

22 A. That are on the table there.

23 MS. CUNNINGHAM: I will look at them in a
24 minute.

25 Thank you.

91

7

1 THE COURT: Anything further?

2 MS. GALLAGHER: No.

3 THE COURT: Thank you.
4 You can step down.
5 THE COURT: It's about five to 12:00. If
6 you have somebody quick, we can do it. If it's going to
7 take a while, let's break for lunch.
8 MS. GALLAGHER: I think just 1:30 is fine.
9 THE COURT: All right.
10 we will see everybody at 1:30.
11 MS. CUNNINGHAM: Thank you.
12 (Lunch recess taken.)
13 THE COURT: Okay.
14 I think we can go back on the record.
15 we have got everybody present.
16 MS. GALLAGHER: Do you mind if we just step
17 outside and talk for a few minutes?
18 THE COURT: Productive talk?
19 MS. GALLAGHER: Productive talk.
20 THE COURT: Sure. If we can get this case
21 settled, I'm also in favor of that.
22 How much time do you want? Do you want me
23 to just recess for a period of time?
24 MS. CUNNINGHAM: Five to seven minutes.
25 (Recess taken.)

92

1 THE COURT: Let's go back on the record.
2 Counsel, parties are present.
3 MS. GALLAGHER: Thank you, your Honor.
4 I believe we have reached an agreement, so I
5 am just going to read it into the record; and Ms.
6 Cunningham can correct me if I misunderstood our

7 off-the-record agreement.

8 So today we are agreeing to part of the
9 preliminary injunction to cease wine tasting at the winery
10 until the code violations are corrected and the county
11 building official issues a certificate as to the occupancy
12 of the winery.

13 Also, to cease all use and occupancy of the
14 winery until the code violations are corrected and the
15 County Chief Building Official issues a Temporary
16 Certificate of Occupancy for wine production purposes only,
17 or a Certificate of Occupancy for the winery.

18 We have agreed to those two main points, but
19 then we carved out a few exceptions.

20 So the TRO that you issued on March 21st,
21 2013 regarding the case will be extended to our next court
22 hearing date.

23 The defendant's have agreed to obtain the
24 TCO for the winery by April 29th, 2013.

25 The defendants have agreed to provide the

93

♀

1 tank attachment details to the county by April 18th, 2013.
2 The county has agreed to respond to the tank attachment
3 information by April 23rd regarding the installation of
4 anchoring. That would be done by April 26th, 2013.

5 And the ultimate goal, as I said, would be
6 for the TCO to be issued by April 29th. Both parties are
7 agreeing to that.

8 The defendants can go into the winery and
9 the cave to maintain the wine through April 29th, 2013.

Transcript of 4.15.13 Court Hearing_26-61207 from Susan Staub.CARL15.TXT
10 And I believe that's our agreement.

11 MS. CUNNINGHAM: That's correct.

12 There are additional components of the
13 agreement that will necessitate defendants additional time
14 to talk to outside consultants and subcontractors.

15 We would ask the Court to have a return
16 status on Thursday of this week with regard to this issue
17 should we not be able to informally submit anything in
18 writing.

19 THE COURT: I am going to be here on
20 Thursday. I have a 10:30, but I will have them wait. I
21 understand --

22 MS. GALLAGHER: Can we come at 10:00.

23 THE COURT: Does that work?

24 MS. CUNNINGHAM: Yes.

25 THE COURT: You are just going to tell me

94

♀

1 yay or nay; right?

2 MS. CUNNINGHAM: Yes.

3 THE COURT: It will probably take you a few
4 minutes to do that.

5 MS. GALLAGHER: Yes.

6 THE COURT: And then we will set it if it
7 has to be set for further hearing.

8 MS. GALLAGHER: If we have to set it for
9 further hearing on the cave issue, we can set it on
10 Thursday, if that's okay.

11 THE COURT: Do we have dates?

12 MS. GALLAGHER: We will work out some
13 mutually convenient dates and talk to the Court on Thursday

14 about those dates.

15 THE CLERK: Your Honor, what courtroom on
16 Thursday?

17 THE COURT: I am going to be in Department
18 O. I won't have a record, but I am going to be here.
19 Let's put it in Department O so I won't have to open up
20 another courtroom.

21 And if counsel doesn't mind, do you want a
22 court reporter present for that?

23 MS. CUNNINGHAM: I will have Sue available
24 for us. THE COURT: We can do it in one --

25 THE CLERK: Department N may be open.

95

1 THE COURT: We could do Department N or
2 Department O for the settlement. We will just go in there
3 and do it.

4 MS. CUNNINGHAM: That's fine.

5 MS. GALLAGHER: And, your Honor, I would
6 like this to be a signed order. I know we are making an
7 order on the record and that should be reflected in the
8 minute order.

9 THE CLERK: I didn't quite get everything
10 you read, so you will have to give me a copy of your notes.

11 MS. GALLAGHER: You will not be here to sign
12 it until Thursday, so the minute order should be
13 sufficient.

14 MS. CUNNINGHAM: I am understanding it's a
15 formal order subject to the Court adopting it or approving
16 it.

17 THE COURT: I can sign it on Thursday.
18 MS. GALLAGHER: I wish I could do it right
19 now, but I can't. I don't think I could get it to you by
20 5:00.
21 THE COURT: Okay.
22 MS. GALLAGHER: I could try but --
23 THE COURT: Let's go off the record.
24 MS. GALLAGHER: Okay.
25 (Off the record discussion.)

96

1 THE COURT: Okay.
2 We will make the settlement order, as agreed
3 by counsel, to become the order of the Court as of now.
4 MS. GALLAGHER: Thank you, your Honor, for
5 your patience.
6 MS. CUNNINGHAM: Thank you, your Honor for
7 your patience and thank the staff.
8 THE COURT: I would just as soon you resolve
9 it rather than me make a decision in the case. I am always
10 in favor of that.
11 See you Thursday.

12
13 (Whereupon, the proceedings were concluded.)
14
15
16

17 --000--
18
19
20

21

22

23

24

25

97

1 STATE OF CALIFORNIA)
2 COUNTY OF NAPA) ss.

3

4 CERTIFICATE OF SHORTHAND REPORTER

5 I, SUSAN L. STRAUB, CSR No. 7608, a duly
6 qualified and acting Official Shorthand Reporter of the
7 Superior Court of the State of California, in and for the
8 County of Napa, do hereby certify:

9 That I acted as the Certified Shorthand
10 Reporter in the Matter of NAPA COUNTY vs. CARLICE, LLC, NSC
11 NO. 26-61207.

12 That I took down in shorthand writing the
13 testimony and proceedings had therein.

14 That thereafter I transcribed the same into
15 typewriting.

16 That the foregoing pages comprise a full, true
17 and correct transcript of proceedings had.

18 Dated this 31st day of January, 2014.

19

20

21

22

23

SUSAN L. STRAUB, CSR No. 7608
Official Shorthand Reporter
County of Napa,

Transcript of 4.15.13 Court Hearing_26-61207 from Susan Staub.CARL15.TXT
24 State of California

25

--oOo--

98

♀