

STATEMENT OF FACTS

Appellants own and operate Altamura Winery (Winery) on that real property located in Napa County identified at 1701 Wooden Valley Road, Napa (Property). On March 1, 1995, the Napa County Planning Commission granted a Use Permit (number 93433-UP) which established fifty thousand (50,000) gallons per year Winery on the Property. The Use Permit was limited to the Winery within a two-story building with an outdoor crushing and work area. Any changes in use or changes in construction are subject to the approval of the County.

Appellants, applied for a building permit to construct the Winery, storage, dwelling and a garage on the Property in 1997. The building permit was issued, expired, and re-issued multiple times since 1997. The last re-issuance was in 2012 under building permit number B98-00096 (Building Permit). Appellants have not obtained final inspections for permit number B98-00096 and a Certificate of Occupancy has not yet been issued for the buildings on the Property associated with this permit.

Over the years, County staff had multiple conversations with Appellants and their representatives regarding the California Building Code and Napa County Code violations on the Property. On June 17, 2010, County staff issued a Notice and Order regarding the expired permits on the Property. The Notice and Order required Appellants to reactivate the permits within 30 days from the date of the Notice.

On August 2, 2011, County Counsel sent Appellants a letter stating that the building permits for the Property had become null and void pursuant to Napa County Code Section 15.04.070. County Counsel requested that Appellants reactivate permit number B98-00096 by August 12, 2011. County Counsel also informed Appellants that no building or structure should be used or occupied until the Building Official issues a Certificate of Occupancy.

On August 23, 2011, County staff met with Appellant Frank Altamura to discuss the code violations on the Property. Mr. Altamura was informed that he needed to reactive the permits and apply for a Temporary Certificate of Occupancy to operate the Winery for production purposes only. Mr. Altamura was informed that no building or structure should be used or

occupied until issued a Certificate of Occupancy.

On or about September 22, 2011, Appellants provided a request for a Temporary Certificate of Occupancy and reactivated the building permit. However, Appellants never followed through with the necessary approvals from the various Divisions in the County therefore, the Temporary Certificate of Occupancy was not issued.

On August 8, 2012, County staff met with Appellants' representative to discuss the County Code violations. Appellants' representative was informed that a Temporary Certificate of Occupancy had not been issued and although the building permit was re-activated, Appellants had not requested inspections, and therefore it once again expired.

On September 12, 2012, County staff conducted a site inspection at the Property and documented multiple County Code violations. Specifically, an unauthorized Type 3 Cave being used for wine tasting and Winery associated storage. In addition, the Winery was in operation and being occupied.

On September 18, 2012, County staff met with Appellants' representatives regarding the County Code violations. Appellants were informed that they once again needed to reactive the building permit, submit a Temporary Certificate of Occupancy for production purposes only, address the Notice of Violation that will be issued for the use of the Type 3 Cave and the Winery, and obtain a Use Permit modification if Appellants wanted to use the Cave for Winery purposes.

On September 19, 2012, County staff issued a Notice of Violation for the unauthorized Cave and the occupancy of the Winery in violation of the Use Permit and Napa County Code. Appellants' were directed to promptly cease all public visitation and wine tasting as well as remove all Winery associated storage within the Cave. In addition, Appellants' were informed that occupancy of the Winery could not occur until a Certificate of Occupancy was granted by the Chief Building Official.

On September 19, 2012, Appellants' representative submitted a request for a Temporary Certificate of Occupancy for the Winery. On September 24, 2012, the Chief Building Official

responded to Appellants' representative outlining the procedures for obtaining the Temporary Certificate of Occupancy.

On November 8, 2012, County Counsel sent Appellants' representative a letter stating that Appellants do not have a Certificate of Occupancy for the Winery and the Winery could not be occupied for any purpose at all. County Counsel informed Appellants that if they occupied the Winery without a Certificate of Occupancy, utilized the Cave without a Use Permit Modification, and failed to pursue the request for a Temporary Certificate of Occupancy for production purposes only, the County would seek injunctive relief from the Superior Court.

On November 21, 2012, County Staff conducted a site inspection of the first floor Winery portion of the building based on the request for a Temporary Certificate of Occupancy. County staff observed the use and occupancy of the Winery and the Cave. County staff observed safety hazards in the Winery and the Cave.

The Chief Building Official determined that the Winery portion of the building was not safe for occupancy due to the fermentation tanks not being seismically anchored, the lack of compliant exiting signs, and multiple electrical hazards, and if occupied, there would be a danger to human life or public welfare. On November 26, 2012, the Chief Building Official provided Appellants' representative with a list of corrections/additional information that was required prior to issuance of the Temporary Certificate of Occupancy.

On December 12, 2012, County staff met with Appellants' representative to discuss the additional items needed for the Temporary Certificate of Occupancy. In addition, Appellants' representative was informed that a Use Permit modification was needed if Appellants planned to use the Cave for Winery purposes.

On March 6, 2013, County staff contacted the Winery requesting a tasting and tour and was informed that tastings take place Monday through Friday and will occur in the Cave. The cost for a tasting is \$25 per person. On March 11, 2013, County staff contacted the Winery to arrange a wine tasting for March 12, 2013. County staff was informed that the Winery was bottling on March 12 so there would be no tastings that day. County staff arranged the wine

tasting for Friday March 15, 2013 at 11:00 a.m. On March 15, 2013, at approximately 11:00 a.m., County staff participated in a wine tasting on the Property inside the Cave.

On March 20, 2013, County filed a civil complaint for preliminary and permanent injunction to abate a public nuisance, civil penalties and attorney's fees. On March 21, 2013, County filed an ex parte application for a temporary restraining order and order to show cause regarding preliminary injunction. On March 21, 2013, the Court heard County's ex parte application and issued a temporary restraining order requiring Appellants' to immediately cease all use and occupancy of the Cave on the Property for any and all Winery related purposes. The Court set the preliminary injunction hearing for April 3, 2013, which was rescheduled for April 9, 2013.

On April 9, 2013, the Court heard comments from counsel, testimony from the Deputy Director of Planning John McDowell and testimony from the Building Official Darrell Mayes. The Court further continued the hearing to April 15, 2013. On April 15, 2013, Darrell Mayes continued testifying on behalf of the County. After his testimony was completed, the parties settled the issues pertaining to the Winery outside the court room. The settlement was entered as a stipulation on the record. Appellants agreed to cease all wine tastings at the Winery until the code violations are corrected and the County Chief Building Official issues a certificate of occupancy. Appellants' agreed to cease all use and occupancy of the Winery until the code violations are corrected and the County Chief Building Official issues a Temporary Certificate of Occupancy for wine production purposes only, or a Certificate of Occupancy. The temporary restraining order for the Cave was extended until the issues were resolved by the Court and the parties at the next hearing date. In addition, other deadlines were agreed upon and imposed by the Court. The hearing was continued to April 18, 2013.

On April 18, 2013, the parties informed the Court that they had not reached a settlement regarding the Cave issue, so the Preliminary Injunction as to the Cave only was set for May 20, 2013. On May 20, 2013, the Court heard comments from counsel, testimony from Frank Altamura, Malcolm MacKenzie, Building Inspector David DeLong, and the County Assessor

John Tuteur. After hearing closing arguments, the Court continued the matter to May 23, 2013 for an oral ruling. On May 23, 2013, the Court stated on the record that County sustained its burden of proof and it was clear that there was not a Certificate of Occupancy for the Cave. The Court stated that the Appellants did not have a vested right to continue operating without a Certificate of Occupancy and that all businesses must have a Certificate of Occupancy. The Court entered a Preliminary Injunction, ordering the Appellants to cease all use and occupancy of the Cave on the Property until the County Building Official issues a Certificate of Occupancy.

On June 4, 2013, the parties entered into settlement negotiations. As a result of those negotiations, the parties agreed to modify the Preliminary Injunction for the Cave. The Stipulation to Modify the Preliminary Injunction was signed by the parties on June 4, 2013 and became an order for the Court on June 11, 2013.

B. Cave

Pursuant to the Stipulation to Modify the Preliminary Injunction, on June 19, 2013, the Appellants applied for a Use Permit Modification so that the Cave could be recognized as part of the Use Permit for the Winery. In addition, on that same day Appellants applied for a building permit for the plumbing, electrical and mechanical within the Cave. On September 20, 2013, the County approved the Use Permit Modification to include the Cave in the Winery's Use Permit. As for the building permit, multiple inspections occurred and the permit was finalized. Therefore, the County issued a Certificate of Occupancy for the Cave on February 28, 2014.

C. Winery Building Temporary Certificate of Occupancy

On April 9, 2013, Chief Building Official Darrell Mayes testified at the Preliminary Injunction hearing. Mr. Mayes stated that he could issue a Temporary Certificate of Occupancy for a small portion of the Winery. (4/9/13 Transcript p. 61) Mr. Mayes indicated that Temporary Certificate of Occupancies are typically for wine production only, "and, usually, when we ask, when an Applicant asks us for a TCO, we ask them to show us on a floor plan the area that they are asking for a TCO. And, typically, on a TCO, all we can do is issue that for production purposes only." (4/9/13 Transcript p. 62) Mr. Mayes testified that there were eight

outstanding items that needed to be completed prior to him issuing a Temporary Certificate of Occupancy for a portion of the Winery. (4/9/13 Transcript p. 59)

On April 29, 2013, the County issued a Temporary Certificate of Occupancy for the ground floor (wine production only) of the Winery/Storage/Residential Building. On August 8, 2013, County Counsel informed Appellants' former counsel that the Winery's Temporary Certificate of Occupancy had expired. Counsel was informed that if Appellants' intended to continue to utilize the ground floor of the Winery/Storage/Residential Building for winery production only, they would need to request an extension of the Temporary Certificate of Occupancy. On August 21, 2013, County Counsel informed Appellants' new counsel that the County had not yet received an extension request for the Temporary Certificate of Occupancy. On August 22, 2013, Appellants submitted a written request for an extension of the Temporary Certificate of Occupancy for the ground floor of the Winery/Storage/Residential building. On August 23, 2013, County Counsel confirmed receipt of the request for an extension of the Temporary Certificate of Occupancy. The Building Official was under the impression that an oral extension was granted for a 90 day extension of the Temporary Certificate of Occupancy.

On October 26, 2013, the Temporary Certificate of Occupancy for the ground floor of the Winery/Storage/Residential building expired. On November 13, 2013, the Building Official informed the Appellants that the Temporary Certificate of Occupancy for the bottom floor of the Winery expired on October 26, 2013. Pursuant to Napa County Code section 15.08.070(B) temporary occupancy of a structure shall be permitted for a maximum of one hundred and eighty days. Unfortunately, one hundred and eight days had passed and the Building Official was unable to grant any further extensions. Therefore, the Building Official notified the Appellants that they must immediately cease the use of the Winery until they received a final Certificate of Occupancy.

D. Winery Building Certificate of Occupancy

On March 28, 2013, County staff conducted a site visit at the Property to discuss the driveway requirements necessary for the Winery Temporary Certificate of Occupancy and a final Certificate of Occupancy. County staff explained to Appellants that the driveway, as it exists in

its current state from Wooden Valley Road to the Winery site would be acceptable for a Temporary Certificate of Occupancy for the purpose of winery production only, no tours and tastings. However, for the Engineering Division to sign off on the Building Permit and final Certificate of Occupancy the driveway shall be constructed to meet the most current version of the Napa County Road and Street Standards.¹ County staff explained to Appellants that if the road standards of the 1998 Building Permit apply and are installed, and if Napa County issues a Certificate of Occupancy; any future modification to the Winery's Use Permit would trigger the Engineering Division to review the driveway in terms of complying with the latest version of the Napa County Road and Street Standards.

On April 9, 2013, Chief Building Official Darrell Mayes testified at the Preliminary Injunction hearing that he did not feel that allowing the public to come in to a building that is not finished was safe. (4/9/13 Transcript p. 63) Therefore, he requires "that the building be complete with all of its life-safety issues taken care of prior to the permanent certificate of occupancy for the safety of the public." (Id.) When asked what it would take for the Building Official to issue a Certificate of Occupancy, Mr. Mayes stated that "all of the requirements from all of the [commenting] agencies would need to be met and we would do a final inspection to make sure they were all met and then we could do a certificate of occupancy." (4/9/13 Transcript p. 69) Mr. Mayes testified that the winery portion of the building was close to being finished but the second floor of the building was not complete. (4/9/13 Transcript p. 70-71)

On April 15, 2013, Chief Building Official Darrell Mayes testified at the continued Preliminary Injunction hearing. Mr. Mayes stated that when an applicant applies for a building permit, they are required to include a work description and describe the building that the permit is for. (4/15/13 Transcript p. 77)

On or about September 5, 2013, County staff met with Appellants. Appellants were informed that the application for the Use Permit Modification would trigger the County to apply

¹ After further discussions with County staff on April 1, 2013, it was decided that the Winery project shall be held to the standards from the date of the application for building permit in 1998. The Road and Street Standards in 1998 are consistent with the driveway conditions as provided in an interoffice memo from Public Works to Planning dated February 9, 1995. (Decl. Galambos §4)

the most current version of the Napa County Road and Street Standards as was explained to him on March 28, 2013.

On September 10, 2013, County staff met with Appellant Frank Altamura and his engineering consultant at the Winery project site. County staff reviewed the driveway with respect to the required improvements and the existing constraints that would meet the necessary criterion for a road modification under the Napa County Road and Street Standards.

On or about September 13, 2013, Appellants requested an exception to the Road and Street Standards being imposed on the road to the Winery. On September 16, 2013, the County granted the exception and found that the proposed roadway decision would provide the same overall practical effect of a road meeting the Road and Street Standards. The Engineering Division made specific recommendations for the road improvements, fire access road, and site improvements which were adopted by the Use Permit Modification. The plans were to be submitted with the Building Permit. The Engineering Division stated that “[a]ll permits necessary to complete the improvements from other departments, divisions, or entities with approving authority of the work shall be obtained prior to granting of final occupancy from the Engineering Division.

On September 20, 2013, the County approved the Use Permit Minor Modification subject to multiple conditions. The Use Permit Minor Modification clarified that the second story of the main winery building was converted to a residence and therefore the original Use Permit no longer entitles winery-related activities to occur within the second story. Use Permit Minor Modification requires that Appellants comply with all applicable building codes, zoning standards, and requirements of County Divisions, Departments and Agencies, including but not limited to, Engineering Services Division memorandum dated 9/16/13, Environmental Health Division memorandum dated 9/18/13, and the Building Division memorandum dated 8/28/13. The Use Permit Minor Modification states that all project improvements, including compliance with applicable codes, conditions, and requirements of all departments and agencies with jurisdiction over the project, shall be completed prior to granting of a Certificate of Final

Occupancy by the County Building Official, which, upon granting, authorizes all use permit activities to commence.

On November 14, 2013, County Counsel informed Appellants counsel that in order to finalize the Building Permit, all items included in the Building Permit need to be completed. County Counsel requested that Appellants provide a status update on the remaining items in the entire building. Specifically, County Counsel stated there had not been any recent inspections of the second floor of the building.

On November 19, 2013, Appellants' Counsel informed County Counsel that the final inspection of the winery building was completed and that all issues had been addressed for issuance of the final Certificate of Occupancy. On November 20, 2013, County Counsel responded that the building inspector went out to the Property and signed off on the ceiling/sheet rock only. Appellants' counsel was informed that (1) the final inspection for the entire building had not occurred; (2) all work under the permit must be completed in order for the final inspection to occur and the certificate of occupancy to be issued; and (3) until the work on the permit is completed and a certificate of occupancy is issued, the winery building cannot be used or occupied.

On or about November 21, 2013, Appellants counsel requested that a Certificate of Occupancy be issued for the bottom floor of the building, only a portion of the construction authorized under the Building Permit. That same day, County Counsel provided Appellants with an option of separating the residential portion of the building from the Building Permit so that the 1998 permit could be finalized and the residential portion can be finished at a later date. After multiple correspondences between counsels regarding the request, on January 6, 2014, the Building Official informed Appellants that the County can not issue a Certificate of Occupancy for a portion of a building while other work under the Building Permit remains incomplete. The Building Official suggested that the Appellants modify the building permit to delete the portion of the work that is not yet completed in the second floor residence. Once the permit is modified, County staff will inspect the building and issue a Certificate of Occupancy providing that the building conforms with the code and the approved plans. Appellants could obtain a new permit

for the residential portion of the building. County staff explained multiple times that the work description in the Building Permit must be completed, inspected and finalized by each Division prior to the Certificate of Occupancy being issued. County staff has also explained that the plans can be amended and the Building Permit modified to reflect the actual work that has been completed on the Property.

To date, the driveway improvements have not been installed. Accordingly, and in compliance with the Use Permit conditions, the Engineering Division cannot approve the issuance of a final Certificate of Occupancy for the Winery until the improvements have been installed and inspected to the satisfaction of the Engineering Division.

In addition, the final inspections for Environmental Services, Planning, Engineering Services and Fire have not been requested or performed and are required for the Building Division to be able to issue a Certificate of Occupancy. The Building Division has completed its final inspection for the bottom floor of the building which contains the Winery; however, the second floor residence is unfinished and will need to be completed pursuant to the plans submitted for the issued Building Permit. Although construction of the building shell and the winery floor is substantially complete, the second floor residence, which is contained entirely within the building shell, is not complete. Any portions of the building that are not finished and have not been inspected are considered a danger to any occupants of the building. In addition, any building that does not have a Certificate of Occupancy and is being occupied illegally or improperly is deemed unsafe under the California Building Code.

On January 10, 2014, Appellants filed a Notice of Intent to Appeal the Building Official's decision to the County Board of Supervisors. The hearing for the appeal has been scheduled for March 18, 2014 at 9:35 a.m. On or about February 11, 2014, Appellants filed a Motion to Dissolve the Preliminary Injunctions, which is set to be heard by the Court on March 14, 2014 at 8:30 a.m. On March 14, 2014, the Court denied Appellants Motion to Dissolve the Preliminary Injunction.