

LAW OFFICES OF:
EWING & ASSOCIATES

MIKE EWING
ISABELLE BROWN
ANDRE M. ROSS

POST OFFICE BOX 400
995 SOUTH MAIN STREET
LAKEPORT, CALIFORNIA 95453-0400

TELEPHONE (707) 263-6400
FACSIMILE (707) 263-7047

www.lakeportlawyers.com

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Via E-Mail Transmission To: Carolyn.Purdy@lakecountycal.gov
Originals By Hand Delivery to Board of Supervisors' Chambers

Board of Supervisors
County of Lake
255 N. Forbes Street
Lakeport, California 95453

Re: Appellant: James Kenly Stiritz for Property Owners Wendy A. Fetzer and Walter A. Niesen
Property: 7180 Bartlett Springs Road, Upper Lake, CA [A.P.N. 027-135-03] (the "Property")
Matter: Appeal of Community Development Department ("CDD") NON/OTA 16-0187

To the Honorable Members of the Lake County Board of Supervisors:

This appeal has been filed with your Board by local business owner Mr. James Kenly Stiritz d/b/a Precious Forest Weddings & Retreats on his own behalf and on behalf of property owners Ms. Wendy A. Fetzer and Walter A. Niesen. Mr. Stiritz is a former owner and master -tenant of the above identified Property which is the subject of the CDD's NON/OTA 16-0187 (the "NON/OTA"). Ms. Fetzer and Mr. Niesen are the current record owners of the Property. Ms. Fetzer and Mr. Niesen have each provided their own declarations under penalty of perjury submitted herewith for this appeal. [See attached Exhibit "I"]

This appeal is directed at the "code enforcement" aspect of the CDD's recent actions, and omissions, in relation to the Property and Mr. Stiritz' ongoing business operations. This appeal is not directed at any aspect of those legal issues or concerns which may exist, or which may arise at some future point in time, in relation to Mr. Stiritz' ongoing planning and permitting process regarding the Property. In a nutshell, this appeal challenges, under the facts specific to this action, the legal procedures used by the CDD's Code Enforcement staff to effectively shut down Mr. Stiritz' ongoing business operations thereby placing his entire investment in extreme economic jeopardy and those policies and procedures which have since emerged regarding the subject NON/OTA which render it extremely difficult, if not impossible, for a party to respond in an efficient manner to what has become an expensive, impracticable and unduly burdensome regulatory framework.

This appeal can and should, for the reasons stated herein and at the upcoming hearing, be adjudicated in a summary manner without requiring Code Enforcement staff to present any purported evidence obtained from the Property by and through staff's use of the Inspection Warrant (the "Warrant") [See Exhibit "B"] which was relied upon by Code Enforcement staff in order to gain physical access to the Property. In this matter, the enclosed Affidavit in Support of Inspection Warrant (the "Affidavit") [See Exhibit "A"] used by Code Enforcement staff simply failed to comply with the substantive and unambiguous requirements of Code of Civil Procedure § 1822.51 [See Exhibit "G"] in that the Affidavit fails to reflect that "consent to inspect has been sought" by CDD staff and likewise fails to state that "consent to inspect has been refused."

The declarations submitted by Ms. Fetzer and Mr. Niesen reflect that at no time did CDD staff request a “consent to inspect” the Property from the property owners, and that “consent to inspect” was never refused by the owners of the Property. The Affidavit also does not incorporate any written “requests for permission to inspect”. [See Exhibit “J” at Page 8: *People v. Wheeler* (1973) 30 Cal.App.3d 282, 299]

As a result, the Warrant itself was obtained unlawfully and is defective thereby rendering the 400 or so photographs taken of the Property by Code Enforcement staff on October 26, 2016, and any other purported evidence gathered by any other enforcement officials at that time, objectionable, inadmissible and ultimately subject to a motion to suppress. Thus, this NON/OTA action should be summarily dismissed without prejudice to any further lawful code enforcement actions on the part of CDD staff.

This particular issue, i.e. whether and how the County of Lake’s Code Enforcement staff can and should properly and lawfully execute their legitimate code enforcement powers, is of fundamental importance in a rural county like Lake County where both law enforcement and code enforcement resources are stretched paper-thin by virtue of geography and demographics. [See Exhibit “K” Re: *Mona Allen et al v. County of Lake et al* U.S.D.C. Northern California Case No. 14-CV-03934 and *Rattanaovong v. Lake County et al* Lake County Superior Court Civil Case No. CV 413923.] A public entity’s failure to abide by the law in its execution of legitimate police powers can unnecessarily expose an entity to enforcement failures and litigation risks.

Mr. Stiritz is the owner/operator of a family-oriented camping and retreat business (“Precious Forrest”) which hosts private weddings, receptions and other meetings and events throughout a good portion of the calendar year. Precious Forest has been in business in its current format since approximately 2010. Mr. Stiritz has remained in regular contact with CDD staff, and with CDD’s former Community Development Director Mr. Richard J. Coel, with respect to various issues and concerns raised by the County of Lake over time in relation to zoning, planning, permitting, public safety, fire safety and code enforcement.

In the recent past, both Mr. Coel and other members of CDD staff have discussed requests, provided instructions, enforced limitations, set deadlines and, at times, have actively responded to and/or temporarily accommodated business specific needs, concerns and limitations. Mr. Stiritz has, on several occasions, relied upon the guidance and instructions of Mr. Coel and/or CDD staff in the course of trying to maintain a successful tourism-oriented business through very difficult times economically. Mr. Stiritz has, on a number of occasions, had to scramble in order to fully respond to the County of Lake’s legitimate regulatory and administrative concerns. That process has, at times, encountered road-blocks which have subsequently been overcome through a process of clear communication and voluntary cooperation. That process continues.

As of February 13, 2017, Mr. Stiritz has timely submitted to CDD’s Planning Division, c/o Planner Mark Roberts, approximately eighty-six (86) pages of requested planning and permitting documentation including drawings, plans and the work product of a number of licensed and/or professional service providers. The planning and permitting process is ongoing and will hopefully result in a timely and successful resolution of all of the County’s legitimate concerns. The simultaneous maintenance of this fatally flawed NON/OTA action, and the CDD’s stubborn and repeated refusal to evaluate voluntary compliance or, alternatively, agree to dismiss this fatally flawed NON/OTA action, are causing real economic injury and harm to the appellants’ economic interests. In addition, the CDD’s new policies and procedures that appear to be

emerging in relation to this fatally flawed NON/OTA action, and perhaps others, are particularly harmful to the CDD's historically positive reputation as a law abiding and cooperative regulatory authority.

To date, this particular NON/OTA action has required a substantial investment of CDD staff time and resources. The ongoing planning and permitting process regarding the Property and Mr. Stiritz' Precious Forest operations is similarly time consuming, costly and, at times, overwhelmingly complicated.

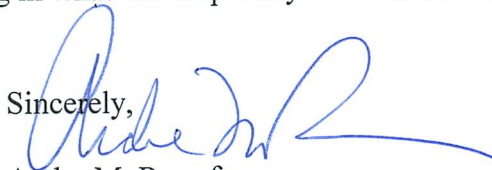
On behalf of himself and Ms. Fetzer and Mr. Niesen, Mr. Stiritz hereby respectfully requests that this NON/OTA action be summarily dismissed without prejudice to any further lawful code enforcement actions concerning the Property in the future.

In addition, Mr. Stiritz hereby respectfully requests that your Board require the CDD, and its Director, to the maximum extent allowed for under governing ordinances and statutes, to expedite and lawfully facilitate efficient forward progress on Mr. Stiritz' pending MUP 15-03 use permit application.

And finally, and in order to bolster the County of Lake's public image and facilitate its lawful administration of its code enforcement and planning and permitting authority, counsel hereby respectfully request that your Board initiate a formal process pursuant to which the CDD, and its Director, shall be required to develop additional internal policies and procedures as may be needed which will: 1.) afford all citizens in the County of Lake who are candidates for receiving their own NON/OTA actions with constitutionally sufficient due process and privacy protections, and 2.) afford all citizens in the County of Lake with a clear, practicable and efficient procedure whereby a party may voluntarily establish their compliance with a NON/OTA previously issued before incurring the substantial costs of appealing such actions.

Mr. Stiritz is looking forward to participating in what will hopefully be a constructive public hearing of this appeal on February 28, 2017. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andre M. Ross", with a stylized flourish extending to the right.

Andre M. Ross for
EWING & ASSOCIATES

- Encl: Exhibit "A" - Penhall Affidavit in Support of Inspection Warrant W010-16;
Exhibit "B" - CDD Inspection Warrant dated October 25, 2016;
Exhibit "C" - CDD NON/OTA dated October 26, 2016;
Exhibit "D" - COL Building Regulations cited in CDD NON/OTA (10 Pages);
Exhibit "E" - California Health & Safety Code § 17920.3 (3 Pages);
Exhibit "F" - California 2013 Residential Building Code cited to in NON/OTA 16-0187;
Exhibit "G" - California Code of Civil Procedure § 1822.5 and Gov. Code § 800;
Exhibit "H" - Chronology of communications exchanged Re: NON/OAT 16-0187;
Exhibit "I" - Declarations of Property Owners Wendy A. Fetter and Walter A. Nielsen;
Exhibit "J" - Excerpts of Current Inspection Warrant Cases: *Camera v. Municipal Court* (1967) 87 U.S. 523, *People v. Wheeler* (1973- First District) 30 Cal.App.3d 282, *Greaves v. Waters* (1985) 175 Cal.App.3d 413, *People v. Lepeilbet* (1992- Third District);
Exhibit "K" - Pages 1-2 of Amended Order for Pretrial Preparation in *Mona Allen v. County of Lake et al* U.S.D.C. Northern California Case No. 14-CV-0394 THE and Notice of Further Case Management in *Rattavong v. Lake County et al* Lake County Superior Court CV 413923;