

The Carmel Pine Cone – December 30, 2016

P.B. short-term rental case headed to Appeals Court

By KELLY NIX

THE PEBBLE Beach residents who sued Monterey County last January, challenging the county's rules prohibiting them from using their oceanfront home for short-term rentals and weddings, may have lost their case in Monterey County Superior Court, but Judge Thomas Wills' decision was so critical of the county, the Lewises are probably optimistic that their appeal to the California 6th District will prevail.

Wills ruled in September, and the appeal was filed this week.

William and Duncan Lewis brought suit against the county following the county's determination — after an administrative hearing on the matter — that they had violated county ordinances by renting out their multimillion dollar house on a short-term basis. The county fined the couple \$100,000.

The Lewises asked Wills to overturn the decision and the fines, and to declare that the county's short-term rental rules in their neighborhood were invalid.

But in an eight-page decision filed Sept. 7, Wills said the county's ordinances regulating such rentals are valid, and he upheld the earlier administrative hearing officer's determination that the Lewises had violated the ordinances. He also said the Lewises "are not allowed to engage in short-term rentals or commercial use of the property for weddings" without a county permit.

"The threshold issue is whether the county ordinances, in fact, prohibit the short-term rental of the property for vacation and wedding events in the coastal zone where the property in question is located," Wills wrote. "Not a question simply answered, but the court has concluded that such activities are prohibited without a permit."

The Lewises, for years, had rented out their six-bedroom, seven-bath house on 17 Mile Drive overlooking the 14th Tee of the Pebble Beach Golf Links until an "inland property owner on the other side of Highway 1," according to the Lewises' attorney, Mark O'Connor, complained to the county about the rental. The rental on the property known as "Woods Hole" went for \$1,550 per night. The Lewises live on the property in a separate house.

In his decision, however, Wills was also highly critical of the county, calling its complicated set of land use ordinances and regulations "a byzantine collection of less than clear, ad hoc provisions apparently drafted or adopted with little regard for the ordinance scheme's internal consistency."

In the same footnote, Wills also said the court had "expended inordinate judicial resources divining the county's statutory intent," and said the county's rules are "unnecessarily close to the brink of requiring persons of ordinary intelligence necessarily to guess at its meaning."

He also noted the ambiguity in the county's ordinance, saying it implies "that there are some uses which may be allowed without the necessity of a permit, though it does not directly so state. Other sections do state that there are some uses for which no permit is required. They are not all readily found."

Ultimately, Wills determined that the county ordinances are valid and that the Lewises had violated the rules. The county considers short-term rentals those that span for fewer than 30 days.

"Once it is determined that transient rental here without a permit was proscribed, there is clearly evidence that there was a violation by [the Lewises] and that evidence is substantial, supporting the hearing officer's decision," Wills said.

In their lawsuit, the Lewises said they'd rented out the home on a short-term basis with the "knowledge and consent" of the county, which collected hundreds of thousands of dollars from them in occupancy taxes over the years.

They alleged that the county's prohibition of transient rentals along the coast amounted to discrimination, since the county permits inland property owners in the unincorporated areas to rent out their homes on a short-term basis.

The Lewises also argued that, since short-term rentals weren't explicitly prohibited, they were allowed, but Wills upheld the validity of a provision in the county code that makes all land uses in the Lewises neighborhood illegal unless they're explicitly allowed — a catchall provision that may defy common sense, but which Wills said has been upheld by California courts.

In his decision, Wills also cited the 1991 landmark case, *Ewing v. City of Carmel-by-the-Sea*. In that case, Carmel resident John W. Ewing challenged the constitutionality of the town's rules prohibiting short-term rentals for fewer than 30 consecutive days, claiming it violated his constitutional right to free association and unduly burdened his right to use his home. In a 1991 decision, justices with the 6th District Court of Appeal upheld the ban, ruling that prohibiting short-term rentals was a valid exercise of a town's police power and did not violate a homeowner's property rights.