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BOARD OF SUPERVISORS' MEETING

July 11, 2017

FILE NUMBER:	CDEF 2014-031
PROPERTY OWNER:	Jeremy McLain
TYPE OF APPLICATION:	Recovery of Administrative Abatement Costs

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County of Lassen
Department of Planning and Building Services

• Planning • Building Permits • Code Enforcement • Surveyor • Surface Mining

June 30, 2017

Maurice L. Anderson, Director
707 Nevada Street, Suite 5
Susanville, CA 96130-3912
Phone: 530 251-8269
Fax: 530 251-8373
email: landuse@co.lassen.ca.us
website: www.co.lassen.ca.us

TO: Board of Supervisors
Agenda Date: July 11, 2017

FROM: Maurice L. Anderson, Director

SUBJECT: Public hearing to consider the recovery of administrative abatement costs for the abatement of a severely fire damaged residential structure located at 206 Fir Street, Westwood, CA (APN: 125-162-17); and with the recovery of abatement and administrative costs as provided in chapter 1.18 of the Lassen County Code. This property is owned by Jeremy McLain. The associated code enforcement file number CDEF 2014-031. The abatement was executed due to the owner's failure to secure, repair, or remove the structure.

Action Requested

1. Conduct Public Hearing
2. Receive report from staff; and
3. Adopt a resolution directing staff to execute and record the amendment to the lien on said property, with the Lassen County Recorder.

Summary

On April 26, 2016, the Board of Supervisors, through Resolution No. 16-021, ordered the execution of abatement of a "Public Nuisance" at the above referenced property. Resolution No. 16-021 also directed that an abatement lien be recorded to recover the costs incurred by Lassen County to that point. Said lien was recorded on September 20, 2016, as Instrument Number 2016-04374. Because the physical abatement of the nuisance had not been completed on April 26, 2016, Resolution No. 16-021 further directed staff to present an amendment of the lien to the Board for consideration at a future public hearing, once the abatement had been fully completed. The abatement was completed on June 1, 2017, by Womack Construction (see photos pg. 3)

As stated above, the abatement has now been completed in full, and a resolution directing recordation of an amendment to the lien is enclosed for consideration by the Board. This hearing is to determine if said amendment will be recorded to recover the full cost of abatement incurred by Lassen County, in accordance with the procedure detailed at Lassen County Code Chapter 1.18 (Abatement of Civil Nuisances; attached).

Financial Impact

As ordered by the Board, a lien (detailed above) in the amount of \$9,001.94, has already been recorded against the property. Since recording the lien, the Public Works Department entered into a contract with Womack Construction to perform the physical abatement of the property. An invoice (enclosed as Exhibit A of proposed resolution) for the physical costs of the abatement in the amount of \$21,828.00 has been submitted for payment by Womack Construction. If approved by the Board, the abatement lien, recorded as Instrument Number 2016-04374, would be amended to amount of \$30,829.94, which incorporates the additional costs of the physical abatement (\$9,001.94 + \$21,828.00= \$30,829.94)

Lassen County Code Section 1.18.080 allows the County to recover costs of abatement, including, but not limited to, the cost of prior time and expenses associated with preparing the matter for a hearing, attorneys' fees and the cost of workers and material necessary to physically abate the violation. As authorized by the Government Code Section 25845, Lassen County is empowered to recover the costs through recordation of a lien.







RESOLUTION NO. _____

**RESOLUTION
DECLARING ASSESSMENT OF COST**

WHEREAS, Assessor's Parcel Number: 125-162-17 is a lot owned by Jeremy McLain located at 206 Fir Street Westwood, California; and

WHEREAS, on April 26, 2016, the Board of Supervisors conducted a noticed public hearing whereat evidence was presented regarding a public nuisance at said property; and

WHEREAS, on April 26, 2016, the Board of Supervisors, through Resolution No. 16-021, ordered the execution of abatement of a "Public Nuisance" at the above referenced property; and

WHEREAS, Resolution No. 16-021 also directed that an abatement lien be recorded to recover the costs incurred by Lassen County to that point (\$9,001.94); and

WHEREAS, Resolution No. 16-021 further directed staff to present an amendment of the lien to the Board for consideration at a future public hearing, once the abatement had been fully completed; and

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. That the forgoing recitals are true and correct.
2. That notice of the hearing has been given as required by Board Resolution No. 16-021.
3. That the sum of \$9,001.94 as administrative costs of abatement has been assessed against Assessor's Parcel Number: 125-162-17 as Instrument Number 2016-04374.
4. That the Director of The Planning and Building Services Department, through contract with Womack Construction completed the abatement on June 1, 2017, and an invoice (Exhibit A) for the physical costs of the abatement in the amount of \$21,828.00 has been submitted for payment by Womack Construction
5. That it is found and ordered that recorded lien (Instrument Number 2016-04374) assessed against Parcel Number: 125-162-17 as more particularly described in Exhibit "B", shall be amended to the sum of \$30,829.94, which incorporates the total physical and administrative costs incurred by the abatement.

6. Notice of this resolution shall be given to Jeremy McLain as follows:

1. First class mail.
2. Certified mail
3. Posting this resolution on the property.

The forgoing resolution was adopted at a regular meeting of the Board of Supervisors of the County of Lassen, State of California, held on the 11th day of June 2017, by the following vote:

AYES: _____

NOES: _____

ABSENT: _____

Chairman of the Board of Supervisors,
County of Lassen, State of California

ATTEST:
JULIE BUSTAMANTE
Clerk of the Board

BY _____
MICHELE YDERRAGA, Deputy Clerk of the Board

I, MICHELE YDERRAGA, Deputy Clerk of the Board of the Board of Supervisors, County of Lassen, do hereby certify that the foregoing resolution was adopted by the said Board of Supervisors at a regular meeting thereof held on the _____ day of _____, 2017.

Deputy Clerk of the County of Lassen Board of Supervisors

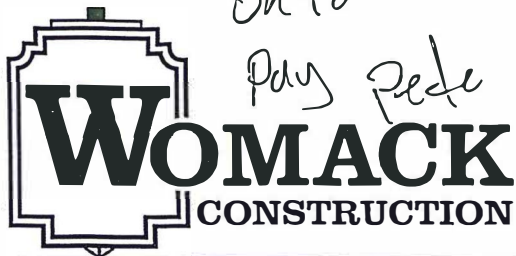


EXHIBIT A

Invoice

461 Firehouse Road
Lake Almanor, CA 96137
530-596-3364

Date	Invoice #
6/4/2017	6829

Bill To
Lassen County Department of Public Works 707 Nevada Street, Suite 4 Susanville, CA 96130

Ship To
206 Fir Street Westwood, CA 96137

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
2017-0414	Due on receipt	blw	6/1/2017	Our Truck		
Quantity	Item Code	Description			Price Each	Amount
1	2.0	This Final Invoice is for Demo 206 Fir Street, Westwood, CA . Construction Contract 2017-0414 <div>RECEIVED JUN 07 2017 LASSEN COUNTY DEPT. OF PUBLIC WORKS RECEIVED JUN 07 2017 Lassen County Department of Planning and Building Services</div>			21,828.00	21,828.00
Thank you for your business.					Total	\$21,828.00

EXHIBIT (B)

LEGAL DESCRIPTION

**LOT 206 IN BLOCK 52, AS SHOWN ON THE MAP OF WESTWOOD SUBDIVISION
UNIT NO. 1, FILED JUNE 24 1957, IN THE OFFICE OF THE LASSEN COUNTY
RECORDER IN BOOK 3 OF MAPS, AT PAGE 71.**



County of Lassen
Department of Planning and Building Services

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June 30, 2017

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website: www.co.lassen.ca.us

Zoning & Building
Inspection Requests
Phone: 530 257-5263

NOTICE OF PUBLIC HEARING
LASSEN COUNTY BOARD OF SUPERVISORS

The Lassen County Board of Supervisors solicits the aid of public agencies and the general public in consideration of the following item:

Property Owner: Jeremy McLain

File: CDEF 2014-031

Project: Public hearing to consider the correctness and reasonableness of an amendment to the lien recorded on September 20, 2016, as an instrument number 2016-04374, to recover the costs incurred in the execution of abatement of a "Public Nuisance". Recordation of said lien ordered by the Lassen County Board of Supervisors on April 26, 2016, through Resolution No. 16-021. Amendment of said lien being necessary to recover total costs of abatement.

Location: 206 Fir Street Westwood, CA 96137

A.P.N.: 125-162-17

The Board of Supervisors will hold a public hearing at 10:00 a.m. on Tuesday, July 11, 2017, in the Board Chambers, 707 Nevada Street, Susanville. All interested persons are invited to attend the meeting and be heard, or to submit comments to the Department of Planning and Building Services, 707 Nevada Street, Suite 5, Susanville, CA 96130.

For the County of Lassen,

Julie Bustamante,
Lassen County Clerk

km MLA:km
CDEF2014-031\ctpcph

Distribution: Supervisor Pyle; County Counsel; Property Owner; County Fire Warden/CAL FIRE; Lassen County Sheriff; Co. Assessor's Office; Environmental Health Department; Westwood Fire Protection District; property owners within 300 feet.

NOTE: Anyone wishing to challenge in court an action on the project described above may be limited to raising only issues raised at the public hearing described in this notice or in written correspondence delivered at, or prior to, said public hearing.

McLain Abatement (206 Fir Street Westwood, CA) APN: 125-162-17



Lassen County Code							
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[Title 1 GENERAL PROVISIONS](#)

Chapter 1.18 ABATEMENT OF CIVIL NUISANCES

Note

* Prior ordinance history; Ord. 497.

1.18.010 Purpose.

The purpose of this chapter is to remove conditions of property hereinafter described and declared to be public nuisances which have a blighting influence on properties in the vicinity and/or are detrimental to the health, safety and welfare of the residents of the county. (Ord. 467-T § 5, 1995).

1.18.020 Condition creating public nuisance.

The following condition is declared to be a public nuisance:

Any nuisance heretofore or hereafter defined as a nuisance by any ordinance of the county, section of the Lassen County Code, resolution of the board of supervisors, or statutes of the state of California. A public nuisance is further described as any accumulation of trash, refuse, waste, junk (except as otherwise permitted), debris, garbage, rubbish and related matter, which by reason of its character and location is unsightly and interferes with the reasonable enjoyment of property by neighbors, or which detrimentally affects property value in the surrounding neighborhood or community, or which would materially hamper and interfere with the prevention or suppression of fire upon the premises or which may be detrimental to the health, safety and welfare of persons in the vicinity. (Ord. 467-T § 5, 1995).

1.18.030 Exception.

No agricultural activity, operation or facility, or appurtenances thereof, as such are defined in California Civil Code Section 3482.5, is subject to this chapter. (Ord. 467-T § 5, 1995).

1.18.040 Director of community development.

The director of community development is designated to enforce this chapter. Whenever a public nuisance as defined herein exists anywhere within the unincorporated limits of the county of Lassen, the director of community development may declare such condition to be a public nuisance. The director of community development may exercise such powers that may be necessary or convenient to carry out and effectuate the purposes and provisions of this chapter. The director of community development may appoint and delegate the duties of such officers, agents and employees as the director deems necessary. (Ord. 467-T § 5, 1995).

1.18.050 Duty to abate.

No person or entity shall cause, permit, maintain, conduct or otherwise allow a public nuisance as defined in this chapter to exist within the unincorporated limits of the county of Lassen. It shall be the duty of every owner, occupant and person that controls any land or interest thereon within this jurisdiction to remove, abate and prevent the reoccurrence of the public nuisance upon such land. (Ord. 467-T § 5, 1995).

1.18.060 Procedure for abating public nuisances generally.

(a) Whenever the community development director determines that a public nuisance exists, the community development director or his or her designee may order the public nuisance to be abated. If the condition(s) continue, the community development director may set the matter for hearing. If the matter is set for hearing, the community development director or his or her designee shall post the property upon which the public nuisance exists and shall mail notices to those persons known to be in possession of the property and to persons shown on the last equalized county tax roll to be the owners of the property at least ten days prior to the hearing. Both the mailed and posted notice shall be in substantially the following form:

NOTICE TO ABATE NUISANCE

The owner(s) and occupants of real property described on the latest equalized Lassen County tax roll as A. P. No. _____ and having a street address of _____ is (are) hereby notified to appear before a hearing officer of the County of Lassen at (insert place) _____ on _____ 20__, at the hour of ____ o'clock ____m., to show cause, if any there be, why the use of said real property should not be found to be a public nuisance and abated pursuant to the Lassen County Ordinance Code. After hearing, if a violation is found to exist, the cost of abating such violation, including, but not limited to, the cost of the hearing officer, the cost of prior time and expenses associated with bringing the matter to hearing, the cost associated with any appeals from the decision of the hearing officer, the cost of judicially abating the violation, the cost of men and material necessary to physically abate the violation, and the cost of securing expert and other witnesses will become a lien against the subject property and also assessed against the property in the same manner as taxes. The abatement lien to be recorded shall have the same force and effect as an abstract of judgment which is recorded pursuant to a money judgment obtained in a court of law. If you fail to appear at the hearing or if you fail to raise any defense or assert any relevant point at the time of hearing, the County will assert, in later judicial proceedings to enforce an order of abatement, that you have waived all rights to assert such defenses or such points.

In preparing for such hearing, you should be aware that after an initial showing by the Code Enforcement Officer you will have the opportunity to prove that no public nuisance exists on your property. In this connection, you should be prepared to introduce all evidence to demonstrate that the use of the property is not public nuisance as defined in the Lassen County Ordinance Code. A copy of the ordinance relating to abatement hearings is enclosed to assist you in the preparation of your presentation.

Your failure to show that no public nuisance exists subsequent to an initial showing by the Code Enforcement Officer may result in an administrative decision ordering the abatement of uses on your property which are found to be a public nuisance and may also result in a later judicial order to the same effect. If the hearing officer finds that your property is in violation of the Lassen County Ordinance Code, the County will contend that you are bound by such finding at any subsequent judicial action to enforce any abatement order.

IMPORTANT: READ THIS NOTICE CAREFULLY. FAILURE TO APPEAR AND RESPOND AT THE TIME SET FORTH IN THIS NOTICE WILL LIKELY RESULT IN ADMINISTRATIVE ABATEMENT AND TERMINATION OF USES OF YOUR PROPERTY

WHICH THE DIRECTOR OF COMMUNITY DEVELOPMENT CONTENDS ARE IN VIOLATION OF THE LASSEN COUNTY ORDINANCE CODE.

Dated: _____

LASSEN COUNTY COMMUNITY DEVELOPMENT DIRECTOR

By: _____

Enclosure: Property Maintenance Ordinance

(b) At the time and place set for the hearing, the hearing officer shall review the community development director's decision ordering cessation of the alleged public nuisance to determine whether such decision conforms to law and is supported by substantial evidence. The hearing officer shall hear testimony and receive written or documentary evidence relating to the alleged violation. The hearing officer shall tape record the hearing and shall preserve all photographs and other documentary evidence introduced at the time of the hearing. Within thirty days after the hearing is closed, the hearing officer shall render his or her decision relating to the existence or nonexistence of the alleged public nuisance. The decision shall include a statement of the costs incurred by the county in abating the violation, if a violation is found to exist, and shall also include a demand that administrative costs of abatement incurred to date be paid to the county within twelve days. The decision shall contain findings of fact and conclusions of law. A copy of the decision shall be mailed by certified mail to the owner of the parcel which is subject to the hearing, the occupant of such parcel and the appellant.

(c) The decision of the hearing officer shall be final. The hearing officer shall notify the clerk of the board of supervisors of his or her decision, the date upon which the decision became final and the last date upon which an appeal may be made. If the board of supervisors does not receive an appeal within twelve days of receipt of the hearing officer's decision, it shall be deemed to have ratified and adopted the hearing officer's decision. If it is the decision of the hearing officer that a public nuisance exists, the owner of the property shall be responsible for paying all of the county's administrative abatement costs, including but not limited to, those cost items set forth in the notice required by subsection (a) of this section.

(d) Within the twelve-day period referred to in subsection (c) of this section, the owner or occupant of the property, the director of community development or any other interested person may appeal the decision of the hearing officer to the Lassen County board of supervisors if such individual or entity does all of the following:

(1) Delivers a written appeal specifically setting forth the grounds for appeal to the clerk of the board of supervisors within the twelve-day appeal period; and

(2) Within fifteen days of being notified by the clerk of the board of supervisors, the appellant shall deposit with the clerk of the board an amount of money equal to the estimated cost of transcribing the oral proceedings before the hearing officer and the cost of duplicating seven copies of the administrative record, including all exhibits introduced at the hearing. The appellant shall be responsible for the cost of the appeal and record; provided, however, that: (i) if the appellant is not the owner of the property, and the board upholds the appeal and finds that a zoning violation exists, the costs of the appeal shall be paid by the property owner; and (ii) if the appellant is the owner of the property and the board upholds the appeal and finds that no violation exists, then the costs of the appeal shall be borne by the county.

(e) In the event of an appeal to the board of supervisors, the board shall decide the appeal based solely on the administrative record prepared by the hearing officer. The board shall review the record and then adopt, reject or modify the decision of the hearing officer.

(f) In the event of an appeal to the board of supervisors, the board shall decide the appeal within ninety days after receipt of the administrative record. Notice of the board's decision shall be mailed to the property owner and those persons receiving notice pursuant to subsection (a) of this section.

(g) If a final decision of the hearing officer or the board of supervisors finds that a violation exists, the owner of the property shall be responsible for paying all of the county's administrative abatement costs, including, but not limited to, those cost items set forth in the notice required by subsection (a) of this section. Costs of abatement shall become a lien against the property as is authorized by the government code and the following paragraph:

The board's final decision shall also order that abatement costs that have been incurred to date shall be assessed against the property as provided by Government Code Section 25845(b) and that an abatement lien will be recorded as is authorized by Government Code Section 25845(c). The notice of abatement lien shall be substantially in the form set forth in Section 1.18.080. If the abatement has not yet been completed, the notice shall so state and shall also indicate that the lien is a partial lien and that additional abatement costs will be incurred in the future. It is the intent of the board of supervisors that abatement costs incurred after the filing of the notice of abatement lien relate back to the date upon which the lien was recorded for purposes of priority; however, in order to preserve its rights, after all abatement costs have been incurred and the abatement is complete, the community development department shall cause a supplemental notice of abatement lien to be recorded. The supplemental notice shall contain all of the information required for the original notice and shall also refer to the recordation date and the recorder's document number of the original notice.

(h) Decisions of the hearing officer or board of supervisors shall order abatement within a time certain. The order may be recorded by the community development director. In the event of such recordation and in the further event that the violation is corrected, a notice as such correction shall be recorded. The community development director is authorized to prepare and record a notice of correction. Correction of the violation shall not excuse the property owner's liability for costs incurred during the administrative abatement process. The county may, in its discretion commence a judicial action to enjoin a violation of this chapter without the necessity of first going through the administrative procedures set forth herein. (Ord. 467-T § 5, 1995).

1.18.070 Alternative to hearing officer.

If hearing officers are unavailable, for any reason, the director of community development shall schedule the abatement hearing before the board of supervisors. Should the board of supervisors conduct the initial abatement hearing all provisions contained in this chapter shall apply. The decision of the board shall be final. (Ord. 467-T § 5, 1995).

1.18.080 Abatement costs.

Record of Cost for Abatement.

(1) The code enforcement officer shall keep an account of the cost of abating or remedying each violation and shall render an itemized report in writing to the board of supervisors showing the costs of abatement.

(2) The director of community development shall cause the matter to be set for hearing before the board of supervisors to determine the correctness and reasonableness of such costs and any administrative costs.

(3) Notice of the hearing shall be given in the same manner as set forth in Section 1.18.060.

(4) Report—Hearing Proceedings. At the time and place fixed for receiving and considering the report, the board of supervisors shall hear and pass upon the report of such costs of abatement, together with any objections or protests. Thereupon, the board may make such revision, correction or modification in the report as it may deem just, after corrected or modified, shall be confirmed. The decision of the board on all protests and objections which may be made shall be final and conclusive.

(5) Assessment of Costs Against Property—Lien. The total cost for abatement as so confirmed by the board of supervisors, shall constitute a special assessment against the respective lot or parcel of land to which it relates and, upon recordation in the office of the county recorder of a notice of lien, shall constitute a lien on the property for the amount of such assessment.

(6) After such confirmation and recordation, a certified copy of such decision shall be sent to the county auditor-controller's office, whereupon it shall be the duty of the auditor-controller to add the amount of the respective assessments to the next regular tax bills levied against the respective lots and parcels of land for county purposes, and thereafter the amounts shall be collected at the same time and in the same manner as ordinary property assessments are collected, and shall be subject to the same penalties and the same procedure under foreclosure and sale in case of delinquency as provided for ordinary property assessments; or

(7) After such recordation, such lien may be foreclosed by judicial or other sale in the manner and means provided by law.

(8) Such notice of lien for recordation shall be in a form substantially as follows:

NOTICE OF LIEN

(Claim of County of Lassen)

Pursuant to the authority vested by the provisions of Chapter 1.18 of the Lassen County Code, A Code Enforcement Officer of the County of Lassen (or his designated agents) did, on or about the ____ day of _____, 20__, cause of the use of the premises hereinafter described to be brought into compliance with the provisions of the Lassen County Code in order to abate a public nuisance on said real property; and the Board of Supervisors of the County of Lassen did, on the ____ day of _____, 20__, assess the cost of such rehabilitation, repair or demolition upon said real property hereinafter described; and the same has not been paid nor any part thereof; and that said County of Lassen does hereby claim a lien to such rehabilitation, repair, or demolition and administrative costs in the amount of said assessment, to wit: The sum of \$_____; and the same shall be a lien upon said real property until the same has been paid in full and discharged of record.

The real property hereinbefore mention, and upon which a lien is claimed, is that certain parcel of land being in the County of Lassen, State of California, and more particularly described as follows:

Dated: This ____ day of _____, 20__.

Code Enforcement Officer
County of Lassen California

(Ord. 467-T § 5, 1995).

1.18.090 Hearing procedures.

(a) Fairness of Hearings. Hearings required in this chapter shall be conducted in a manner suitable to ensure fundamental fairness to all parties concerned, limited by the need to secure relevant information necessary to render a decision without unnecessary delay.

(b) Evidentiary Rules. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be considered if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs.

(c) Speaker's Presentation.

(1) Each speaker shall approach the microphone and give his or her full name and address for the record.

(2) Each speaker's presentation shall be to the point and shall be as brief as possible; visual and other materials may be used as appropriate, but, if used, shall become part of the public record and the property of the county. The board of supervisors may establish a time limit for presentations; provided, however, that at least five minutes shall be allowed for each speaker. Speakers shall, at the discretion of the hearing officer, be allowed to speak for longer than five minutes if that speaker represents a group of individuals, the remainder of which choose not to speak. Speakers with lengthy presentations are encouraged to submit them in writing. There shall be no limitations upon the length of written statement.

(3) Subject to the hearing officer's right to accept a motion to conclude the taking of all testimony or to close the public hearing when a reasonable opportunity to present all questions and points of view has been allowed, any person wishing to speak shall be heard. Except for rebuttal allowed, each speaker shall speak only once.

(4) Witnesses shall be sworn and subject to cross-examination through the hearing officer.

(d) Submission of Additional Written Evidence and Argument. At any time before or after the hearing up to the point the hearing is closed any interested party may submit written evidence or argument. Except for the receipt of written argument, no ex parte communications, either direct or indirect, shall be received by the board of supervisors during the period of a continuance or after the public hearing has been closed.

(e) Order of Proceeding at Hearing. The hearing shall ordinarily proceed in the following order:

(1) Department of community development staff's presentation shall proceed first. It should include identification of the file and property, a summary of the history and matters at issue, a staff analysis of the legal and factual issues involved, permitted uses to which the property was and is subject, an accounting of enforcement costs relating to the property, and a recommended decision.

(2) A presentation by or on behalf of the property owner shall next proceed.

(3) Tenants or other occupants of the subject property shall speak third.

(4) Individuals owning property immediately contiguous to the subject property shall speak fourth.

(5) Other interested parties shall speak fifth.

(6) The property owner shall be entitled to rebuttal.

After all of the testimony is taken, the hearing officer shall close the public hearing unless it is necessary to continue the hearing for the receipt of additional evidence. During the course of the hearing, the hearing officer may question any witness and may allow cross examination of any witness. (Ord. 467-T § 5, 1995).

1.18.100 Remedies cumulative.

Nothing in this chapter shall prevent the appropriate authorities of the county of Lassen from pursuing any civil, criminal or administrative remedy deemed necessary or appropriate to gain compliance with the applicable provisions of this code. The provisions of the chapter are to be supplementary and complementary to all of the provisions of this code, state law, and any law cognizable at common law in equity, and nothing herein shall be read, interpreted or construed in any manner so as to bar or limit the county from seeking any remedy to which it may otherwise be entitled. (Ord. 467-T § 5, 1995).

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