

Judge Oks Trinitas use until Feb. 21

By Sean Janssen

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A federal judge ruled Wednesday to allow use of Trinitas golf course until Feb. 21.

Judge Ronald Sargis, for the U.S. Bankruptcy Court for the Eastern District of California in Modesto, temporarily granted a motion to stay his Dec. 16 ruling that golf operations must cease Friday at the embattled 18-hole course near Wallace.

Sargis expressed annoyance that his hand had been essentially forced in the matter when a filing for both the stay and a new trail on claims the course should be permitted as agritourism came much later than he anticipated. The motions were filed Dec. 29 and not immediately set for hearing, Sargis noted in his tentative ruling released Tuesday night. The court had to accelerate the hearing to hold it prior to Friday's deadline.

"The only reason I'm doing (this) is for Judge (Lawrence) O'Neill, that you not interrupt his schedule," Sargis said, adding he wished to make it clear the motion for stay would not stand on its merits.

O'Neill is the District Court judge tasked with hearing an appeal to the agritourism case decision, filed by course owners Michael and Michelle Nemees. Sargis said he expected that without the temporary stay, the Nemees' attorneys would have rushed to force an emergency hearing by O'Neill before Friday to grant such a motion. Sargis also rejected the motion for a new trail Wednesday, deeming the arguments of San Andreas attorney Ken Foley, representing the Nemees on the matter, unconvincing in that regard.

Foley, who appeared via teleconference at the hearing, said the 56-page ruling seemed to focus too much on the folly of building a \$7 million golf course to support a fledgling olive farm.

"The point is, is a golf course any different than a \$10 million cross-country skiing track or a horseback riding venue?" Foley said. "Whether they took an absurd \$7 million investment or they took \$70, I don't think makes any difference....it's pretty obvious that the court didn't think much of the development plan for this golf course but that's not the point."

The three-day trail in October centered on whether a 2005 addition to the county code providing for agritourism on agricultural-zoned land permitted a golf course. Calaveras County supervisors ruled in a 2009 3-2 split vote that it did not, while the Nemees have argued their interpretation of the code is incorrect and county officials misled them while constructing the project.

Calaveras County Counsel Janis Elliott said the process worked as designed. The Nemees got an unfavorable decision from the planning department, appealed it to the planning commission and then the Board of Supervisors, then took it to court.

“To argue violation of due process, in my opinion, is just ridiculous,” Elliott said.

In addition to citing an alleged violation of due process in the agritourism suit, the Nemees cite it in a \$12 million civil rights suit against the county and former Planning Department officials. The next hearing in that case is set for Feb.22.

Had Sargis not granted the temporary stay Wednesday, it is unclear whether the county would have enforced the halt of golf at Trinitas.

“The county has no intention of doing anything until there’s a final decision,” Elliott told the court.

“I’m not sure you can just ignore it because there’s an appeal that’s been filed,” Sargis replied.

Elliott said she anticipated the district court would not take long in handling the appeal.

Before concluding the hearing, Sargis warned that a similar delay ought not to be expected Feb.9 when he hears a motion for relief from stay by the Stockton-based Community Bank of San Joaquin, which seeks to foreclose on the property. The judge said he will rule on the merits of that particular motion at that hearing.