STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT COURT

KENNETH AND KATHLEEN DEHOFF,

Plaintiffs-Appellants,

v. **No. D-1329-CV-2021-01548**

LAURIE STOUT in her role as Corrales Planning and Zoning Administrator, and the VILLAGE OF CORRALES GOVERNING BODY,

Defendants-Appellees.

APPELLEES' RESPONSE
TO STATEMENT OF APPELLATE ISSUES

COMES NOW Defendants-Appellees, Laurie Stout in her official capacity as the Village of Corrales Planning Administrator and the Village of Corrales governing body (hereinafter "Appellees") by and through their counsel of record New Mexico Local Government Law, LLC (Michael I Garcia, Esq. and Lea C. Strife, Esq.), and pursuant to NMRA 1-074(L), and files this Appellees' Response to Statement of Appellate Issues.

I. STATEMENT OF THE ISSUES

This matter arises as a result of the decision rendered by the Village of Corrales Village Council (governing body) on September 16, 2021 to deny the DeHoffs' preferred application for a building permit. Appellants contend that the governing body acted fraudulently, arbitrarily, capriciously, and otherwise not in accordance with law when they upheld the decision of the Planning Administrator, Laurie Stout, to deny the building permit which did not comply with the Village Zoning Code. Appellants argue that Ordinance 21-04, an ordinance updating the definition of "dwelling unit," is invalid and thus unenforceable due to an alleged failure to include an enacting clause or mayoral endorsement, an alleged failure to provide public notice, and an alleged conflict

with the Village's Comprehensive Plan. Next, Appellants state that the governing body's decision was not supported by substantial evidence because "all of [Appellants'] plan submissions meet the language and intent of the Dwelling Unit Definition." Appellants also contend that the Planning Administrator's application of the updated definition was an ultra vires act. Additionally, Appellants allege a due process violation, asserting no notice of the right to appeal was provided at any step in the Permitting process, and that "none of the Denial letters ever established any right for us to appeal [Laurie's] decisions[.]" **[Statement of Issues (SOI), 8]**. Finally, Appellants allege an equal protections violation, stating that another similarly situated house plan was approved while theirs had been denied.

II. SUMMARY OF THE PROCEEDINGS

On June 15, 2021, the Village of Corrales adopted Ordinance 21-04, which updated the Village Code Sections 18-29 and 18-203, the definitional sections of the Land Use Code, Chapter 18 **[RP 69-71]**.

On July 15, 2021, Kenneth and Kathleen DeHoff (Appellants) submitted a construction permit application to then-building official, Joseph Benney **[RP 2-3]**.

On July 19, 2021, Mr. DeHoff submitted building plans to the Planning Department which depicted a casita on the opposite side of the garage from the primary structure **[RP 17]**. The casita, according to the labels provided by Mr. DeHoff, contained a kitchen, bedroom, and bathroom.

The Planning Administrator notified Appellants by phone that the plans as submitted did not conform with the Village Code, as the plans violated Section 18-33(2)(a) in having more than one "dwelling unit" per lot **[RP 19]**.

Appellants e-mailed the Mayor, again submitting a drawing that depicted a home with two dwelling units joined by a common wall (the garage). Mr. DeHoff, in his e-mail, alludes that the drawing does not run afoul of the "one dwelling unit per lot" requirement because the casita does not have an oven or range **[RP 19-20]**.

On July 20, 2021, Mr. Benney and the Planning Administrator approved the building permit application pursuant to the modified floor plans submitted by Appellants because the prior casita was attached to the dwelling unit with a common heated hallway **[RP 1, RP 22]**.

On July 21, 2021, the Planning Administrator reached out to Appellants to request clarification regarding which floor plan submitted by Mr. DeHoff was to be considered. Her concern arose from the conflict between the approved plans **[RP 22]** and the testimony in the July 20, 2021 Council Meeting given by Mrs. DeHoff on the night of the 20th whereby she stated there would be a "kitchen in the casita" and a bedroom for a guest to stay, neither of which were reflected in the approved floor plan on the afternoon of the 20th **[RP 24-25]**.

On September 3, 2021, the Village Administrator contacted Appellants and offered to discuss options with Appellants regarding the building permit approval to find other acceptable alternatives to the approved building plans **[RP 72]**.

On August 8, 2021, the DeHoffs appealed the building permit application denial of the plan that created two dwelling units joined by a common wall. On September 16, Appellants had a hearing before the Village Council to appeal the "denied" building permit applications, seeking Council action to invalidate its own Village Code **[RP 49-64; Sept 16 Special Council Meeting]**. The approved building permit was not appealed. The Planning Administrator explained that the original drawing as submitted on July 15 was denied because

the casita "touched the garage, it was not a part of the house. You couldn't go into the primary entrance of the house and get to that area." **[TR 17:10-17:16].**

The Village Council affirmed the Planning Administrator's denial of the original plan submitted on July 15 and issued their Findings of Fact and Conclusions of Law on October 12, 2021, reasserting that the original plan as submitted constituted two dwelling units pursuant to the definitions set forth in Ordinance 21-04, which thereby violated §18-33(2)(a) and the modified plans ameliorated that concern **[RP 81-83]**.

On October 19, 2021, Appellants filed the instant appeal.

III. ARGUMENT

Appellants pro se have made several legal arguments that properly fit under the Rule 1-074 standard of review of whether a decision was according to law. The Village therefore sets forth the legal rules applicable to their arguments first, then addresses the substance of those arguments below.

A. Standard of Review

1. Review of the Administrative Decision.

Administrative decisions are reviewed under an administrative standard of review which limits reviewing courts to determining whether the administrative agency acted fraudulently, arbitrarily or capriciously, whether the agency's decision is supported by substantial evidence, or whether the agency acted in accordance with the law. *Paule v. Santa Fe County Bd. of County Com'rs*, 2005-NMSC-021, 138 N.M. 82, 117 P.3d 240. As such, the party seeking to overturn an administrative entity's decision must establish that there is no substantial evidence in the record to support the decision. *Gallup Westside Development, LLC v. City of Gallup,* 2004-NMCA-010, 135 N.M. 30, 84 P.3d 78. "The determination of whether a decision is arbitrary, capricious and unreasonable is not a question separate and apart from whether the decision is supported by

substantial evidence." *Board of Educ. v. New Mexico State Bd. of Educ.*, 1975-NMCA-057 ¶ 2, 88 N.M. 10, 536 P.2d 274 (Ct. App. 1975). "Substantial evidence is such relevant evidence that a reasonable mind would find adequate to support a conclusion." *Landavazo v. Sanchez*, 1990-NMSC-114, ¶ 7, 111 N.M. 137. "Evidence is substantial even if it barely tips the scales in favor of the party bearing the burden of proof." *Id.* "The question is not whether substantial evidence exists to support the opposite result, but rather whether such evidence supports the result reached." *Las Cruces Prof'l Fire Fighters v. City of Las Cruces*, 1997-NMCA-044, ¶ 12, 123 N.M. 329. Reviewing courts "resolve[ ] all disputes of [the] facts in favor of the successful party and indulge[ ] all reasonable inferences in support of the prevailing party." *Id.* Further, reviewing courts "will not reweigh the evidence nor substitute our judgment for that of the fact[-]finder." *Id.* See also Rule 1-074 NMRA 20201 and NMSA 1978, Section 39-3-1.1(D), stating that

> [i]n a proceeding for judicial review of a final decision by an agency, the district court may set aside, reverse or remand the final decision if it determines that:
>
> (1) the agency acted fraudulently, arbitrarily or capriciously;
> (2) the final decision was not supported by substantial evidence; or
> (3) the agency did not act in accordance with law.

Accordingly, a reviewing court will affirm an administrative decision that is supported by substantial evidence, is not fraudulent, arbitrary or capricious, and is otherwise according to law.

2. Review for the Validity of Ordinances.

Generally, "the law presumes that public officials perform their duties until the contrary is shown." *City of Alamogordo v. McGee*, 1958-NMSC-078, 64 N.M. 253, ¶ 15, quoting *Herrera v. Zia Land Co.*, 51 N.M. 390, 185 P.2d 975. Moreover, "[t]he application of the presumptions of regularity and validity of the acts of officers of a municipal corporation has been uniform and is to be found in a multitude of decisions on almost every point presented by the ramification of the law relating to them." *Id.,* ¶ 16, citing *McQuillan on Corporations* (Rev. Ed.), 633. "There is a

presumption that a municipal ordinance is valid; and that presumption stands until it is clearly established that such ordinance is invalid." *Id*. at 17. "It is fundamental that an ordinance as well as a statute is presumed to be valid and that one who attacks it has the burden of coming forward with evidence of its invalidity." *City of Lovington v. Hall,* 1961-NMSC-021, ¶ 4, 68 N.M. 143, 359 P.2d 769 (S. Ct. 1961). Case law supports that public officials need only demonstrate substantial compliance with statutory procedures. See *Hawthorne v. City of Santa Fe*, 88 N.M. 123, 537 P.2d 1385 (1975), *Miles v. Bd. of County Com'rs of County of Sandoval*, 1998-NMCA-118, 125 N.M. 608, 964 P.2d 169, and *City of Alamogordo v. McGee*. Particularly, if "[t]he purpose of the statute has been met…that is all that is required" in order to demonstrate substantial compliance. *Hawthorne* at 8.

3. Review regarding Ultra Vires actions.

The definition of ultra vires is set forth in Black's Law Dictionary as "[u]nauthorized; beyond the scope of power allowed or granted by a corporate charter or by law." (11th ed. 2019). As retold in New Mexico case law in the context of planning and zoning, "[a] decision of a zoning body which is not within the authority granted and does not reasonably relate to the objectives of zoning is ultra vires and unenforceable." *Bogan v. Sandoval County Planning & Zoning Comm'n*, 1994-NMCA-157, ¶ 18, 119 N.M. 334, 340, 890 P.2d 395, 401. "[I]mproper performance of an activity authorized by law is, despite its impropriety, still 'authorized' within the meaning of the ... governmental function test. An agency's violation of a regulatory statute that requires the agency to perform an activity in a certain way cannot render the activity ultra vires, as such a conclusion would swallow the ... rule by merging the concepts of negligence and ultra vires." *VanderVossen v. City of Espanola*, 2001-NMCA-016, ¶ 19, 130 N.M. 287, 293, 24 P.3d 319, 325. "Therefore, mere negligence or mistake resulting in a violation of regulatory ordinance…does not make [the agency's] decision an ultra vires act." *Id.* Thus, one must evaluate whether the action in question

is within the scope of the power granted to the Planning Administrator, and later the Planning and Zoning Commission in ratification of the action taken in order to determine its correctness in the face of statutory authority and those powers granted by Village ordinance.

4. Due Process

"The first step in a procedural due process claim is to identify the state-created substantive right at stake and determine whether this right triggers procedural due process protections, while the second step is to determine how much process is due to avoid an erroneous deprivation[.]" *Starko, Inc. v. Gallegos,* 2006-NMCA-085, ⁋ 18, 140 N.M. 136, 140 P.3d 1085. "Generally, due process requires notice and some kind of hearing prior to the state acting to deprive a person of a protected interest." *Id.* citing *Yount v. Millington*, 117 N.M. 95 at 101, 869 P.2d 283 at 289. More specifically, "[b]y 'procedural due process' [the Court] mean[s] the … element of the due process provisions of the Fifth and Fourteenth Amendments which relates to the requisite characteristics of proceedings seeking to effect a deprivation of life, liberty, or property." *Reid v. New Mexico Bd. of Examiners of Optometry*, 1979-NMSC-005, ¶ 6, 92 N.M. 414, 415–16, 589 P.2d 198, 199–200. Procedural due process "may be described as follows: one whom it is sought to deprive of such rights must be informed of this fact (that is, he must be given notice of the proceedings against him); he must be given an opportunity to defend himself (that is, a hearing); And the proceedings looking toward the deprivation must be essentially fair." *Id.* "In other words, a state cannot deprive any individual of personal or property rights except after a hearing before a fair and impartial tribunal." *Id.* Thus, the appropriate standard of review is first whether there is a state-created substantive right at stake, and if so, whether such a right triggers procedural due process protection. If such a protected right exists, then one must evaluate whether the facts support or refute the claim that such protections were not provided – that is, whether the individual denied was provided notice

of the denial, an opportunity to attend a hearing, and whether the proceedings were "essentially fair."

5. Equal Protection

To establish an equal protection claim for a class of one a plaintiff must show that he was treated differently from others who were similarly situated without a rational basis for the difference in treatment. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). Here Appellants argue that they were treated differently than another homeowner who allegedly had a separate dwelling unit. Nevertheless, Appellants fail to show that they were similarly situated, where the other building permit application made no mention of a kitchen and would not have been considered a separate dwelling unit under the new definition enacted in the Village Zoning Code. The differences in Appellants' application and the one they cite show that they were not similarly situated and that there was a rational basis for treating them differently **[RP 48, 57]**.

B. The Village's Decision was supported by substantial evidence in the form of Mrs. DeHoff's testimony that the casita contained a kitchen, making it a second dwelling unit on the property, which was prohibited by the Village Code.

Appellants contend that the Planning Administrator acted in a fashion that violated each of the provisions set forth in Rule 74; Appellants raise each issue independently. However, the standard as to whether a decision rendered by an agency is arbitrary or capricious, while iterated above, is repeated in relevant part here, "[t]he determination of whether a decision is arbitrary, capricious and unreasonable is not a question separate and apart from whether the decision is supported by substantial evidence." *Board of Educ. v. New Mexico State Bd. of Educ.* Reviewing courts "resolve[ ] all disputes of [the] facts in favor of the successful party and indulge[ ] all reasonable inferences in support of the prevailing party." *Las Cruces Prof'l Fire Fighters v. City of Las Cruces*. Additionally, reviewing courts "will not reweigh the evidence nor substitute our

judgment for that of the fact[-]finder." *Id.* Therefore, we must address Appellants' arguments pertaining to Rule 74 review as a whole

Appellants claim that Ordinance 21-04 "cannot apply to our circumstance" **[TR 31:19-31:33]** and that applying "Section 18[-33 of the Corrales Village Code] was arbitrary and capricious…the casita with a casita kitchen with no appliances which was consistent with the prior Section 18" **[TR 32:02-32:33]**. Curiously, Appellants simultaneously argue that their original plan was "in compliance with the Dwelling Unit Definition" and "compliance with the actual language of the Dwelling Unit Definition is not refuted." **[SOI 5]**. Appellants mistakenly assert that they are in compliance with the updated definitions set forth by Ordinance 21-04, while ignoring the plain language of the definitions. Moreover, Appellants seem to conflate compliance with the superseded ordinance as compliance with the existing, enforceable Zoning Code. The definition at issue is as follows:

> *Dwelling Unit* means a single unit with connected rooms intended, or designed to be built, used, rented, leased, let or hired out to be occupied, providing complete independent living facilities for one or more persons, including permanent provisions for each and every one of the following uses: living, sleeping, eating, cooking and sanitation. A dwelling unit may be a mobile home, modular home, manufactured home or site-built house. It may also be an independent unit of an apartment, townhouse or other such multiple-unit residential structure, where allowed by Zoning Code. Recreational vehicles, travel trailers or converted buses, whether on wheels or a permanent foundation cannot be a dwelling unit.

§18-29. Relevant to the discussion at hand is the second definition amended by Ordinance 21-04, where "*[k]itchen* means any room used, intended or designed to be used for cooking or the preparation of food." Appellants arrive at the conclusion that the casita identified in the original plan is not a "dwelling unit" because the kitchen has no appliances. The presence of appliances, however, does not dictate whether a kitchen is considered a kitchen under the Village Code. Moreover, they seem to fixate unnecessarily on the Planning Administrator's attempt to clarify the

area of non-compliance in the original plans. The Planning Administrator correctly identified – based on Appellants' own plans and labels and the DeHoffs' own testimony that the casita would contain a kitchen – the necessary elements of a second dwelling unit: a bedroom (for living and sleeping), bathroom (for sanitation), kitchen (for eating or cooking), and a large unidentified area (for additional living space). Appellants mistakenly believe that "connected rooms" was intended to mean "sharing a wall." But as the Planning Administrator testified during the September 16 hearing, such a literal application leads to absurd results. "A duplex, a triplex, and a fourplex 'are connected'" and would thus be permitted **[TR 8:22-8:30]**. However "the Village still has 'one dwelling unit per lot' as a staple in our comprehensive plan and our ordinances in all zones." **[TR 8:34-8:40]**, referring to §18-33(2)(a), §18-34(2)(a), §18-35(2)(a), and §18-37(3)(a) of the Village Code. Applying the plain meaning of the "dwelling unit" definition to all proposed building permit applications would lead to a direct conflict with the Village Comprehensive Plan and Village Code. Accordingly, the Planning Administrator interpreted the meaning of "connected rooms" as the Council intended in enacting the definitional update with Ordinance 21-04. This interpretation gave rise to what Appellants call "Laurie's Connected Interpretation" **[SOI 4]**. "Where an ordinance is ambiguous, however, courts must look beyond the plain language." *Lantz v. Santa Fe Extraterritorial Zoning Auth.,* 2004-NMCA-090, ¶ 7, 136 N.M. 74, 94 P.3d 817, citing *TBCH, Inc. v. City of Albuquerque*, 117 N.M. 569, 572, 874 P.2d 30, 33. "Because this is an administrative appeal, the second applicable rule is that we 'give persuasive weight to long-standing administrative constructions of statutes by the agency charged with administering them.'" *Lantz*, ¶ 7, quoting *High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1998-NMSC-050, 126 N.M. 413, 970 P.2d 599. "There are numerous decisions, in zoning and other areas of law, that do not include a long-standing requirement, but still allow a reviewing court to give some deference to

an agency's interpretation of its own ordinance." *Alba v. Peoples Energy Resources Corp.,* 2004-NMCA-084, ⁋ 22, 136 N.M. 79, 94 P.3d 822. And "[t]hird, to the extent that multiple sections of the ordinance come into play, we consider the relevant sections together 'so that all parts are given effect.'" *Lantz*, ⁋ 7, citing *High Ridge Hinkle*, 1998-NMSC-050, ¶ 5. That is to say, the Planning Administrator has deference to apply the definition of "dwelling unit" as closely to the plain language of the definition without running afoul of the Village Code, thereby creating a uniform interpretation of "connected" rooms. The Planning Administrator, moreover, provided to the Appellants this interpretation in writing on July 21 along with a detailed explanation regarding the nature of how the casita was not appropriately connected. The Planning Administrator continued to apply this interpretation to each version of the building permit plans submitted by Appellants **[RP 24-25]**.

The record reflects that the Planning Administrator's action in denying the original building permit application with the casita, kitchen, and bedroom was not arbitrary or capricious, and was supported by the Village Code. Appellants take issue with the denial of the "second drawing" submitted, stating that the permit application "with office and workshop" labels was denied with "only the text of Ordinance 21-04 as the justification for this Denial." **[SOI 3]**. Appellants go on to state that "her explanation letter after this assertion concerns our comments at the July 20 Appellee Council Meeting after the second denial and are irrelevant" **[SOI 4]**. Appellants, however, ignore the fact that the comments at the July 20 meeting were commentary from Mrs. DeHoff, testifying that the area in question was still a "casita" with a "kitchen" as identified by Mrs. DeHoff, and a bedroom **[RP 73-74]**, which conflicted with the "office and workshop" plans submitted and preliminarily approved by the Building Official, Mr. Benney. **[RP 1; SOI 3]**. Accordingly, substantial evidence supports the denial of the initial application.

C. The Planning Administrator's Interpretation of the Ordinance was Appropriate and Denial of the Initial Application was in Accordance with Law.

The Record reflects that Ordinance 21-04 was passed June 15, 2021 and was in effect at the time of the original permit application **[RP 3, dated 7/15/2021; RP 69-70]**. Moreover, there is testimony from the Planning Administrator explaining that "one dwelling unit per lot" is a characteristic of the Village embedded in the Code and Comprehensive Plan **[TR 8:34-8:40]**. Appellants themselves provide the letter from the Planning Administrator requesting clarification for which plan they are proposing to build, as well as explaining the defect in the original plan as it pertains to the Village Code **[RP 24-25]**. Appellants claim "The village code provides no mechanism to reject a 'Casita or Apartment or duplex'" while simultaneously demonstrating an understanding of the Village Code's restriction on multiple dwelling units per lot (pursuant to §18-33(2)(a) and others) by stating "[m]y casita/workshop area is not a dwelling unit because it is not a single unit[.]" **[RP 13, 15]**. There is ample evidence throughout the Record that Appellants were made aware of the defect in the original building permit application, and that both Planning Administrator and Village Administrator attempted to work with Appellants to get an acceptable building permit approved, and in fact such a single dwelling unit plan was submitted and approved **[RP 72-74]**. The Village Council heard the Appellants' appeal of the original building permit application denial on September 16 and upheld the Planning Administrator's decision to deny the permit based on the evidence presented at the hearing **[RP 81-83]**. Appellants have failed to demonstrate a lack of substantial evidence in the record to support the conclusion reached by either the Planning Administrator or the Village Council in upholding the denial of the original permit submission. An agency is entitled to "a reasonable interpretation of its own ordinance." *Filippi v. Bd. of Cty. Comm'rs of Torrance Cty.*, 2018-NMCA-050, ¶ 21, 424 P.3d 658. The Planning Administrator therefore reasonably interpreted and applied the updated definition of "dwelling

unit" pursuant to Ordinance 21-04 to Appellants' building permit application, and that there is substantial evidence in the record to support this conclusion.

D. Ordinance 21-04 was a Validly Enacted Ordinance and Complied with the Notice Requirements of Due Process.

Appellants assert next that Ordinance 21-04 was an invalid, unenforceable ordinance because "[t]he mayor never endorsed the Ordinance;" "[t]here is no enacting clause in the Ordinance;" that it "is in direct conflict with the Corrales Village Comprehensive Plan" and that "[a]ppellees violated NM §3-17-3(A) in failing to state the subject matter…in the Albuquerque Journal notice of hearing[.]" **[SOI 4]**.

The record, however, refutes these alleged defects. Specifically, page 71 contains the Mayoral endorsement and Clerk's certification of Ordinance 21-04; the Ordinance also contains the enacting language, "PASSED, APPROVED, AND ADOPTED by the Governing Body of the Village of Corrales, New Mexico, this 15th day of June, 2021." **[RP 70]**. The language of the Public Notice for the adoption of Ordinance 21-04 states "A general summary of the subject matter of the Ordinance is contained in its title" which reads that the purpose is to "AMEND THE DEFINITIONS OF ACCESSORY STRUCTURES, ACCESSORY USE, KITCHEN, AND DWELLING UNIT." **[RP 79]**. This summary is precisely what Ordinance 21-04 accomplished, rather than Appellants' assertion that it was "a new policy of outlawing accessory dwelling units[.]" **[SOI 4]**.

Moreover, as the Planning Administrator testified in the September 16 appeal hearing, the Village has a long history of promoting a one dwelling unit per lot **[TR 8:30-8:41]**. The Comprehensive Plan, adopted in 2006, supports this testimony. Policy 2.3.1 iterates that the "Village should require the residential dwelling unit density to be one-acre net and two-acre net to preserve the lifestyle, character, and environment of Corrales." **[Village Comprehensive Plan,**

page 25]. Consequently, Ordinance 21-04, as a factual matter, cannot be "in direct conflict with the Corrales Village Comprehensive Plan" nor a violation of §3-21-5(A). "There is a presumption that a municipal ordinance is valid; and that presumption stands until it is clearly established that such ordinance is invalid." *City of Alamogordo v. McGee*, ¶ 17. This presumption of validity is entwined with the doctrine of substantial compliance. "Substantial compliance is a doctrine of statutory interpretation that examines whether an actor follows a statute sufficiently so as to carry out the intent for which the statute was adopted and in a manner that accomplishes the reasonable objectives of the statute." *Stennis v. City of Santa Fe*, 2010-NMCA-108, ¶ 17, 149 N.M. 92, 244 P.3d 787 (internal quotation marks and citation omitted). Thus, even if Appellants were correct that some part of the process had been missed, the presumption is in the favor of the Ordinance's validity, and it is the Appellants' burden to demonstrate a lack thereof. They have not met this burden and in fact Appellants received all process as required by law.

Appellees respectfully direct the Court to §3-17-3(A), which provides that "[n]otice by publication of the title and subject matter of any ordinance proposed for adoption by the governing body of any municipality must take place at least two weeks prior to consideration of final action[.]" Subsection B states that notice "shall be published one time as a legal advertisement in a newspaper of general circulation in the municipality." Lastly, Subsection C dictates that "[c]opies of a proposed ordinance shall be available to interested persons during normal and regular business hours of the municipal clerk upon request and payment of a reasonable charge beginning with the date of publication and continuing to the date of consideration[.]" Evidence of not only substantial compliance, but strict compliance, exists in the actual publication on May 31, 2021 **[RP 79]**.

E. The Decision of the Planning Administrator was Within the Scope of her Duties as Planning Administrator and was therefore not Ultra Vires.

The Planning Administrator has deference, as mentioned above, to reasonably interpret an otherwise ambiguous Ordinance. Appellants state that "her assessment that we are building two dwelling units is false" **[SOI 8]**. The record demonstrates the defect in the original building plan submitted to the Planning Department, particularly that the Appellants themselves refer to the second dwelling unit as a casita – which by definition is "[a] small house or residence; *esp.* a cabin or bungalow. Later also: a residential style of guest accommodation[.]" (Oxford English Dictionary). Generally, a planning and zoning authority is granted broad regulatory authority. "For the purpose of promoting health, safety, morals or the general welfare, a ... municipality ... may regulate and restrict within its jurisdiction the[ ]height, number of stories and size of buildings and other structures[.]" *Mechem v. City of Santa Fe*, 1981-NMSC-104, ¶ 19, 96 N.M. 668, 671, 634 P.2d 690, 693. Nowhere do Appellants show how the Planning Administrator acted outside the scope of her duties by applying the Village Zoning Code to their building permit application. To the contrary, it was her duty to render a decision on their application which complied with the Village Code and Comprehensive Plan to uniformly regulate the buildings within the Village. Appellants' mere disagreement with her decision does not make it ultra vires.

IV. CONCLUSION

In concluding, it is worth noting that Appellants are appealing the denial of something they said they did not want—a separate dwelling unit. If indeed they did not want a separate dwelling unit, their arguments then lead to the question of what they did want. If all they wanted was an attached room that was not a dwelling unit, the Village approved that application. So at least two alternatives are possible: Appellants indeed wanted a separate dwelling with a kitchen and other

aspects of a house, which the Village Zoning Code did not permit; and if they did not, their appeal is moot because they now have what they were seeking via the permit issued on July 20, 2021.

For the reasons described above, it is clear—especially when considering undisputed facts with deference to the agency and all reasonable inferences in support of the agency—that the Governing Body's decision in this matter is supported within the record by substantial evidence and in accordance with the law. For these reasons, this Court should affirm the Governing Body's ruling in this matter.

V. STATEMENT OF PRECISE RELIEF SOUGHT

WHEREFORE, the Village of Corrales respectfully requests that this Court enter an Order dismissing these proceedings with prejudice, affirming the Governing Body's decision, and awarding any other relief this Court deems just and proper.

Respectfully Submitted,

NEW MEXICO LOCAL GOVERNMENT LAW, LLC

*/s/ Cori Strife*_____

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing pleading was electronically filed and served through the Odyssey e-filing system and sent via email and U.S. Mail to the following this 29th day of December, 2021:

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