State of New Mexico
County of Sandoval
Thirteenth Judicial District

Kenneth and Kathleen DeHoff,
Appellants

vs. No. D-1329-CV-2021-01548

Laurie Stout in her role as Corrales Planning and Zoning Administrator
and
The Village of Corrales Governing Council
Appellees

Certificate of Completion of Briefing

I hereby certify that on December 31 2021 we did provide our 10 page response to Appellee's Response which is included here as an attachment and that we have now completed our briefing per NMRA 1-074(O) and the case is now ready for a decision by the court. We are also transmitting a copy of this by US Mail to Appellee.

Kenneth DeHoff

December 31, 2021

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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.

APPELLANT'S RESPONSE TO STATEMENT OF APPELLEE RESPONSE

Comes Now Appellants Kenneth and Kathleen DeHoff representing themselves Pro Se respond to Appellee's Response to our previously submitted Statement of Issues. We disagree with both the factual and legal bases presented by Appellees. Whether through indifference, incompetence or malfeasance, Appellees have repeatedly presented a false factual narrative in the denial, in the appeal and now in our district court appeal. This results in depriving us of our due process rights by establishing a process that is fundamentally unfair by depriving those in judgement of all true, provable facts. We are confident in the Record Proper and ask the court to see through Appellee's Veil of Incompetence that is again present in this document. Given our constraint of a 10 page response, we can correct and challenge only the most egregious statements and conclusions from this document. We classify our responses either as a **(Correction)** for factual mis-statements as found in the record or **(Challenge)** when we feel a rebuttal for an argument needs to be made. We include only the Appellee's Response statement extracts we are responding to.

I. STATEMENT OF THE ISSUES

…

II. SUMMARY OF THE PROCEEDINGS

…

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]**.

(Correction) This narrative is false. Our first application (RP13) was submitted July 16, not July 15 and was denied July 19 (RP75) and no reference to 18-33(2)(a) was ever stated in any denial. The room labels are "casita, casita kitchen, bedroom and bathroom". Our second application (RP18) was submitted July 20, denied and returned to us July 20 4:08 PM (RP77) 1 1/2 hours prior to our comments at Appellee's council meeting - and the room labels read "shop, office and bathroom".

(Challenge) This document uses the term 'kitchen' 14 times to assert that we had proposed two dwelling units only because we used the 'casita kitchen' label on a room. We refute all 14 uses at once. In the appeal we challenged the legitimacy of the Corrales Zoning Ordinance Chapter 18 because it does not allow for 'two kitchens' per NM Stat §3-21-1(F) (RP58). Appellee's response to this was that a second kitchen does not by itself infer a second dwelling unit, "it can be a part of a separate suite" (Appeal 54:08-54:55). This position during appeal by Appellees is in clear conflict with this document's repeated assertion that only because we have a room labelled 'casita kitchen', (with no permanent provisions for cooking), we have a second dwelling unit. Further we point out that Appellee's Dwelling Unit Definition does not include the term 'kitchen' rendering all 14 uses

of this term in this document as continued violation of their own ordinance. Finally we point to the obvious fact that we resubmitted our plans on July 20 (RP18) without any ' casita kitchen' reference and this plan was still denied (RP77) per findings of fact 4(first) 'because it still created a second dwelling unit attached to the Garage with no interior connectivity to the primary dwelling unit' (RP81).

…

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]**.

(Correction) This narrative is false and in conflict with Findings of Fact 4(first) as previously noted. Mr Benney approved our second application on July 20 (RP48-49,RP87) but it was denied by Laurie and returned to us just after 4:00 PM (RP77) . The reference to the 'common heated hallway' convolutes our second application of July 20 with our third application of July 22. Our July 22 Application (RP63) was not approved until August 5 (RP85) that included Laurie's Mandated Changes. Note (RP49,RP87) the July 20 approved permit is for our two bedroom submission that does not contain Laurie's Mandated Changes. Then note (RP48) Laurie's Hand-written modification on the permit changing it to three bedrooms. Appellees apparently did not want to redo their paperwork.

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]**.

(Correction) This narrative is false. Our first denial occurred July 19 and the second denial July 20. Our second submission on July 20 (RP18) was denied (RP77) and returned to us before Appellee's council meeting. We cannot guess at what Appellees are saying here. We had no plans submitted for review on July 21 (RP53) and if our second plans had been

approved as stated, we would not be here now. Also, Laurie's recall of statements we made July 20 at the council meeting are incomplete, out of context and not properly in the record.

(Challenge) If Appellees allow Joe Benney testimony into the record who quit because of the appalling treatment he was compelled to apply to us at Laurie's direction, we will be happy to add our council meeting comments.

…

III. ARGUMENT

…

A. Standard of Review

1. Review of the Administrative Decision.

…

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

(Challenge) Appellee's citation is case law of rules of evidence when appealing a judicial hearing with an insufficient evidence claim. As this is a quasi-judicial review, this direction to the court is not applicable and we are sure Appellees are aware of the distinctions.

…

2. Review for the Validity of Ordinances.

…

3. Review regarding Ultra Vires actions.

…

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.

(Challenge) At 9:36 AM July 19 Laurie stated to us that we needed to add a heated hallway between our Casita and the Laundry Room and threatened "If you don't do it you'll never get your fucking permit" (Appeal 48:40-49:30). This is an ultra vires act.

4. Due Process

…

5. Equal Protection

…

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.

…

§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.

(Correction) we arrive at the conclusion that our casita is not a dwelling unit because it does not meet the Dwelling Unit Definition. The use of the term 'kitchen' is irrelevant.

…

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).

(Challenge) Appellees have expanded their definition of kitchen to now also include 'eating'. Appellees have no legal basis for this extension of their own definition – and the term 'kitchen' remains a red herring since it is not a component of the Dwelling Unit Definition

and no version of our plans includes permanent provisions for cooking or eating in the casita. The absurdity of Appellee's manipulation of definitions could render any room where a microwave can be placed a kitchen or anywhere food can be consumed a dining room, clearly in conflict with Appellee's Dwelling Unit Definition that requires 'permanent provisions for…..' eating, cooking, sleeping, living and sanitation.

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]**.

(Challenge) New Mexico Residential Building Code identifies requirements for construction of multi-dwelling unit buildings, and we meet none of these as evidenced by the record (RP13) and our July 20 Approval by the building inspector (RP48). We do concur with Apellee's argument and cite STATE V. MUNOZ, 1990-NMCA-109, 111 N.M. 118, 802 P.2d 23 (Ct. App. 1990) which describes a Carlsbad duplex, establishing the cited duplex to be a single family building, with legal authority of that building vested solely to one owner. Fortunately for us, our appeal does not rest on the answer to this thorny question.

We do not propose two dwelling units, but we believe the concept of a 'two bedroom single family duplex' would have to be permitted within the law and by extension a 'four bedroom single family triplex' must be similarly allowed. The Zoning Ordinance can legitimately prevent the use of a structure as a multi-family dwelling, but there are no provisions within NM Stat §3-21-1 (1-5) to in any way restrict construction methods and floorplans, nor does the Zoning Ordinance Dwelling Unit Definition which we read as the minimum requirements necessary to declare something a dwelling unit. And we point to NM Stat §3-21-1(G) that provides a definition of multigenerational household as an enforcement mechanism for use of such a structure, giving Appellees the legitimate ability to restrict the use of a structure to a single family per NM Stat §3-21-1(5). Finally, in Paragraph {3} note the 'common interior door', which describes a duplex with contiguous heated space accessible through the same door (Laurie's Connected Interpretation) - affirming as we stated in our Statement of Issues

Page 20, Laurie's Mandated Changes do not serve her intent of eliminating a dwelling unit which again nullifies Finding of Fact 5(first) (RP81). If it was a dwelling unit before (which its not), adding the door didn't change anything.

…

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."

(Challenge) The definition of connected is unambiguous– "Joined or fastened together" and is a long-standing administrative construction within Corrales.

…

…

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

…

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

…

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]**.

(Correction) NM Stat §3-17-4(B) requires: "Within three days after the adoption of an ordinance or resolution, the mayor shall validate the ordinance or resolution by endorsing "Approved" upon the ordinance or resolution and signing the ordinance or resolution." . The endorsement does not exist on the ordinance. NM Stat §3-17-4(B) states "The enacting clause of a municipal ordinance shall be: "Be it ordained by the governing body of the ..... (here insert name of municipality)."" which does not exist on the ordinance and is

also in violation of Corrales Village code 2-61 stating in part "Ordinances…shall contain an enacting clause" – nothing about 'enacting language'.

…

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

…

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[.]"

(Correction) Zoning Authority is not broad per Mechem – it is explicitly and narrowly defined by NM Stat §3-21-1 (1-5) to regulate only those few enumerated items, of which mandating heating requirements and contiguous room requirements and door configurations or other construction methods are not included.

…

IV. CONCLUSION

…

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.

(Correction) This narrative is false. Our application (RP63) with Laurie's Mandated Changes to include a heated hallway between the casita and our laundry room home was submitted July 22 and not approved until August 5th (RP85). This submission came after two prior rejections based on Appellee's improper assertion that we are building two dwelling units. The above narrative continues to obscure the fact that both our July 19 and July 20 applications meet the definition and intent of Appellee's Dwelling Unit Definition and

through extensive and repeated acts of malfeasance by Appellees these two applications were denied.

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V. STATEMENT OF PRECISE RELIEF SOUGHT

…

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December 31 2021