Village of Corrales Governing Body Findings of Fact and Conclusions of Law and

Final Decision on Appeal of Denied Building Permit at 66 Bad Coyote Place

In anticipation of having Joanne step all over our procedural due process rights again in the vote Tuesday, we have decided to make our objections known publicly in advance.

We maintain our testimony from the appeal and will only object on the factual bases added in your written findings and conclusions, as well as the short comings of the appeal process. To summarize our objections: Your witnesses lied multiple times, this document perpetuates those lies and even adds false statements that were not part of the record. You did not provide a fair and full hearing, failed to seek the full truth in a continuation of this one-sided witch hunt and in so doing you have continued to violate our constitutional rights and we do not tolerate your attempts to do so.

Battershell v City of Albuquerque calls out procedural requirements for administrative hearings. Needless to say you didn't follow them very well and as a member of the bar Joanne has a duty under Rule Set 16 to do this. Specifically, we were never advised of the right to call witnesses, you interrupted our cross-examination of your unsworn lawyer after 2 questions and we were refused the ability to cross-examine his incompetent testimony further, resulting in his false testimony appearing in the record, and even into your findings document. Further, we were never notified in advance who the witnesses would be or that we would be allowed to directly cross examine. Battershell required you to communicate all these rights to us in advance, not when we got on the conference call.

From Yadon V. Quinoco Petro., Inc: Where administrative proceedings deprive a party of a fair and full hearing, with opportunity to cross-examine witnesses, inspect documents, offer evidence in explanation or rebuttal, and to be fully apprised of evidence, there is no hearing. Transcontinental Bus Sys., Inc. v. State Corp. Comm'n, 56 N.M. 158, 179, 241 P.2d 829, 842 (1952). Administrative adjudicatory proceedings must adhere to the fundamental principles of procedural due process and justice. Uhden, 112 N.M. at 530, 817 P.2d at 723; Battershell, 108 N.M. at 662-63, 777 P.2d at 390-91.

Findings

1. On July 21, 2021 the Village of Corrales Planning and Zoning Department approved a Building Permit for a Dwelling Unit at 66 Bad Coyote Place in the Village of Corrales submitted by Applicant/Appellant Kenneth Dehoff. (Appellant)

This is factually incorrect, the third set of plans was not approved until August 5th. They weren't even submitted until July 22nd and this was unrefuted in the appeal.

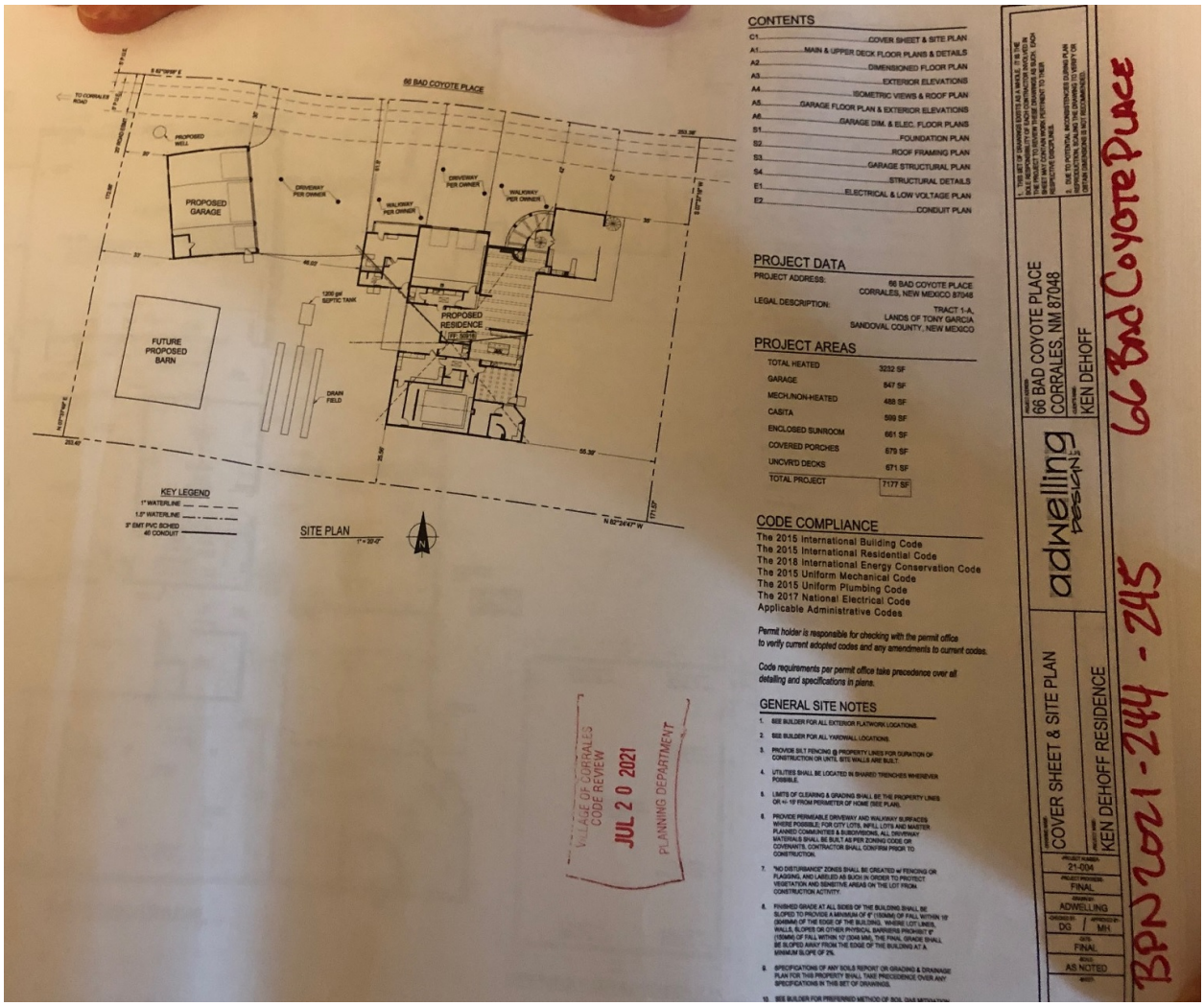
Aug 5th Memo to Laurie to approve our plans

2. Appellant submitted a Building Plan for the dwelling unit on July 19, 2021that contained a primary dwelling unit with a "Casita" attached to the Garage of the Dwelling Unit. The Casita contained no interior connections to the rest of the Dwelling Unit or the Garage.

This is factually incorrect, I submitted my plans on July 16th. They were rejected by Laurie July 19th. I note that Laurie's definition of connected 'it means all rooms are a part of the same contiguous heated space, and are accessible through the same door' is not present in this document anywhere – why has this now become 'interior connection'? You lack consistency which is a violation of your governmental duty of care. And I note with humor that while you made such a stink about our Casita, you never said anything at all about our mechanical room, which also has no interior connections and is unheated. Arbitrary and capricious, even on our one plan set.

3. The first plan with the attached Casita was rejected because it created two separate dwelling units in violation of the Zoning Code, Ordinance 21-04

This finding is arbitrary, capricious and ignores the unrefuted substantial evidence we presented to the contrary. I possess the plans Joe stamped and signed on the 20th that confirms our home meets all building codes for a single farmily residence. This statement is in conflict with the facts presented and the fact that you would not seek evidence from one of the two approvers in this process, your building inspector, is testament to the deliberate bias of these proceedings.



4. Appellant submitted a second building plan that was not in compliance with the Zoning Code because it still created a second dwelling unit attached to the Garage with no interior connectivity to the primary dwelling unit.

The appeal presented unrefuted evidence that both submissions do not contain two complete, independent 5 element sets– that's your logic, not ours. You arbitrarily violate your own ordinance in applying unwritten inconsistent interpretive requirements to my plans different to those you applied to Chris Donaldson's plans or that house on West Ella or countless others - go check zillow.

5. The Appellant submitted a third building plan that was approved after he added a heated hallway from the former Casita adjacent to the Garage to the primary dwelling unit, creating an interior heated connection, and thereby eliminating the second dwelling unit.

There was no demonstrable legal standard presented in the appeal, nor in the record that explains how adding the door and a heated hallway 'eliminates' the second dwelling unit or otherwise

modifies its use in any way. Its just a door, heat and a hallway demanded for no rational, legal purpose. Taking your fantastical assertions to their absurd conclusion – if I had a fire wall between two dwelling units and added an expensive fire wall door, I'd still have two dwelling units, but now with a door between them. In our testimony we provided evidence that we were given the choice of building nothing at all, or building with Laurie's hallway - which would you have chosen.

4. The Appellant's Building Permit was issued on July 21, 2021and he paid the building permit and review fees on August 5, 2021.

Factually incorrect and a lie added after the appeal. The plans were not approved until August 5th. We submit proof via email chain. The approval date fact was unrefuted in our appeal testimony and I add the email chain from August 5th when I had to poke Laurie to get it done.

5. This appeal to the Village of Corrales Governing Body was filed on _8/9__, and purports to appeal the denial of a building permit because Appellant's first two building plans with a second dwelling unit were rejected.

6. The Zoning Code at Section 21-04 and Section 18-33 specifically requires only one dwelling unit be allowed per residential lot.

7. Evidence was presented at the hearing that the basis of the rejection f the first two building plans was solely based upon the addition of a second dwelling unit to the residential lot at 66 Bad Coyote Place through the placement of a Casita abutting the wall of the garage of the dwelling unit with no internal connection between the two living areas of the home.

This is repetitive. The record clearly showed that the plans submitted were approved by Joe, responsible for the permit approval process. We also submitted evidence that Laurie's rejection was based on no evidence that we were building two dwelling units.

8. The Planning Director, Ms. Laurie Stout, established a policy to implement the intent of Ordinance 21-04 to approve portions of a dwelling unit physically separated from the primary area of the dwelling as long as there is only one primary entrance to the dwelling unit and the two parts of the building-are part of the same contiguous heated square footage

My IPRA request found no evidence of any discussion or review of Laurie's 'policy' by the governing body which is a violation of 3-21-6(B), and I repeat it is beyond zoning authority to

establish ANY requirements interior to a building envelope. We presented unrefuted evidence that the definition 'interpretation' came into existence July 21st just before 4:00 PM and no evidence to the contrary was presented.

9. One dwelling unit was approved by the Planning Department that had a separation of rooms and Ms. Stout presented unrefuted evidence that it was approved shortly after Ordinance 21-04 was passed and it was an inadvertent error. Finally, separated area did not contain a kitchen; while the Dehoff's submittals did.

This is another factually incorrect statement. Neither plan submission contained a kitchen. The first plan contained a casita kitchen and the submitted plans if you would've looked like Joe did, provide no energy source for preparing food, only 3 GFCI outlets on one 20 amp circuit, hence it has no permanent provisions for cooking. We do concur that Laurie's explanation provided no rational basis for approval of Chris' similarly situated casita and rejection of ours. Finally, the room label 'kitchen' or 'casita kitchen' is irrelevant since neither are in the dwelling unit definition.

10. Ms. Stout has consistently applied her interpretation of the requirements of 21-04 in all other cases in the same manner she did in Appellant's case.

Laurie perjured herself in declaring that she had denied a permit using her connected definition in April. IPRA recovered no such denial and we were instead provided a reference to Sue Gerber's permit which was reviewed on or about August 11th after our permit denials. We reassert that Laurie's definition of connected was novel and we provided unrefuted evidence that it was created on July 21st just before 4:00 PM, solely for our permit denial and was not at all consistent with any other permit reviews in Corrales EVER and the appeal demonstrated this factually.

11 The Zoning Code has consistently not allowed two dwelling units per lot in Corrales since at least 1987 and Ordinance 21-04 was simply a re-compilation of the requirement to make it more clear and enforceable.

A simple search of online real estate sites shows over 20 homes with casita, guest house, in law quarter for sale or recently sold and you have taken no enforcement action on those. You have waived your right to enforce the one dwelling unit per lot ordinance through long-standing acquiescence of this requirement. These denials stand as selective enforcement against us and is illegal.

12. The Comprehensive plan set out goals to evaluate and potentially change the one dwelling unit per lot requirement but neither the Ordinances nor the Comprehensive Plan were ever altered again. The intent has always been expressed in the Comprehensive Plan to retain the rural character of Corrales through continuing low density development.

Failure to follow the comprehensive plan is a matter of substantive due process violation. If the comprehensive plan needs to be changed there is a known process including public review to do this. But until that process occurs the comprehensive plan binds the actions of the community.

13. All witnesses were sworn in and cross examination was allowed.

Your village attorney acted as a witness when he testified regarding the construction particulars of our plans. He was never sworn in and the facts demonstrate his testimony was false, and as possessing no state construction credentials he acted as an incompetent witness and his testimony should be disregarded. The fact that his false assertion is in this document as a 'fact' demonstrates the materiality and impact of his false statement. I was rudely interrupted by Joanne after asking two questions to your lawyer and was not allowed to continue cross examination.

The fact that you did not have Joe Benney testify to the facts at the appeal demonstrates the biased and offensively prejudicial nature of the council. And to top it off, rather than get from Joe, a licensed, qualified building inspector, what my house is or isn't, you relied on false testimony from your incompetent lawyer witness.

14. A the conclusion of the presentation of evidence and argument neither party requested more time to present further argument or testimony.

Factually incorrect. I requested 25 minutes uninterrupted testimony time, I was interrupted for over 10 minutes, given a 5 minute warning and no opportunity to extend. I was forced to abbreviate my testimony.

Conclusions of Law

1. Substantial evidence in the record supports that the Zoning Code interpretation of Ms. Laurie Stout was reasonable, complied with the intent of the Code and as adopted by the Governing Body.

No evidence at the appeal was presented of the governing body's intent and an IPRA revealed no record of the governing body reviewing, discussing or in any way adoping Laurie's 'policy'. And the record of June 15th shows no Inkling of this intent during the hour long discussion before adoption of 21-04. This statement puts the governing body in violation of NMSA 3-21-6(B).

2. Insufficient evidence was presented by Appellant as to why the proposed building of two dwelling units would have been legal under the Zoning Code.

This is an irrelevant statement.

3. The Governing Body adopts Ms. Stout's method of applying the one dwelling unit requirements of the Zoning Code by requiring connected heated space between two parts of a dwelling unit to prevent the building of two or more dwelling units per lot.

In adopting Ms Stout's method the governing body acts ultra vires along with Ms Stout and is culpable for consequences

4. Appellant received an approved building permit and paid his fees to build a home on 66 Bad Coyote Lane and the rejection of two building plans before the third was approved did not constitute a denial of a building permit.

NMSA 3-21-9 states simply 'a person aggrieved by a decision'. There are two documented denial decisions in the record and the 3rd approval was compelled upon us through violation of our constitutional rights. We now have an injured floor plan, increased cost for building our home because of the illegal actions of the governing body. The two denials are legitimate and are curable only through approval of what was submitted, not by approval of an alternative set of plans.

5. The two proposed building plans that were rejected as creating two dwelling units constituted separate dwelling units prohibited by the Zoning Code even though they were connected by an adjoining wall with a Garage of the dwelling unit. **No legal difference existed between the proposals and adjoined townhomes which would be prohibited under the Zoning Code.**

Again your lack of consistency but I appreciate the acknowledgement that my home was 'connected by' which is consistent with your ordinance language. My home plans have now been referred to as an apartment, a duplex and now a Townhome, each requiring vastly different construction techniques and methods.

Joe should have been there, he would have told you this is an incredibly naïve and legally incorrect statement.

There are significant legal differences between a townhome and a single family residence. Let's talk about that unsworn testimony declaring that my house contains a fire wall – that's the term Randy used that JoAnne wouldn't allow me to cross examine. This factually false statement, whether through willful ignorance, professional incompetence or deliberate malfeasance, is a violation of Randy's duties under rule set 16.

New Mexico Residential Building Code (NMRBC) R302.2 defines a townhouse fire wall, as constructed of essentially two independent 1-hr fire resistant walls. My house only complies with NMRBC R302.6 dwelling garage separation which is much less stringent – it is not even fire resistant per NMRBC R302.3 which is the legal requirement for a two family dwelling unit. In addition to this, the NEC legal requirements for Townhomes and 2 Family Dwellings that are not satisfied by our plans include: 215.1, 240.24(b), 210.25(a),210.25(b). Go look those up - Joe

did. Joe or any competent, licensed building inspector could have told you this if you had asked, but instead you asked Laurie and Randy who are neither competent, or licensed, building inspectors. Our home plans were never fit for purpose as a multiple unit dwelling unit.

Decision

The Governing Body of the Village of Corrales hereby denies the Appeal of by Kenneth Dehoff of his request to build two dwelling units on his single lot at 66 Bad Coyote Place and affirms the grant of the building permit for one dwelling unit.

Appellant may appeal this Decision of the Governing Body within 30 days of the entry of this Decision.

PASSED, APPROVED, AND ADOPTED by the Governing Body of the Village of Corrales, New Mexico, this 12th day of October, 2021.

I'm so glad to see you added the NMSA-required Endorsement that you did NOT have on 21-04 which still render 21-04 invalid.

APPROVED:

_____

JoAnne D. Roake, Mayor

ATTEST:

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Aaron Gjullin, Village Clerk