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

1. Statement of the Issues;

Come Now Appellants Kenneth and Kathleen DeHoff representing themselves Pro Se for their Statement of Issues state: This is an action pursuant to NM Stat, §39-3-1.1 which allows Appellants, following the rules established by 1-074 NMRA, aggrieved by the decisions of Laurie Stout ('Laurie') in her role as Corrales Planning and Zoning Administrator and the Village of Corrales Governing Council ('The Council') acting as Zoning Authority as authorized by NM Stat, §3-21-1, to pursue an appeal in this court of those decisions rendered final in an appeal hearing September 16 2021.

Our building permit application was denied by Laurie in her official role as the Corrales Planning and Zoning Administrator and we seek a review of the record **<ROA00001-ROA000301>** ('RP') of this action to reverse her decision. In addition to the written documentation of the record, the record contains two media recordings **<June 15th, 2021 Regular Council Meeting.mp4>**('Adoption') and **<September 16th, 2021 Special Council Meeting.mp4>**('Appeal'). We have also submitted for the record details associated with statements made by Laurie during the Appeal **<IPRA Exhibit A- Exhibit E>**.
The reason given for Laurie's denial is stated in six different manners in the record, alleging that we planned in some fashion to build two dwelling units on our property, based on the new Dwelling Unit Definition introduced on June 15 2021 through adoption of Ordinance 21-04 **<RP69-RP71>.**
We rebut the assertion that our proposed home is two dwelling units under Corrales Village Code Chapter 18 (the 'Zoning Ordinance'). Our July 16 2021 plan submission should have been approved following Zoning Ordinance section 33 (2)(A) as a permissive use right. We submitted a total of 3 different versions of our application over 7 days resulting in two denials. Our plans were approved only after we were fraudulently coerced by Laurie to modify our plans to be in compliance with her personal definition of a Dwelling Unit,

which was undocumented, never-before seen and previously-unapplied, that requires ‘all rooms are part of the same contiguous heated space, and are accessible through the same door’ (‘Laurie’s Connected Interpretation’). We contend, and will show from facts of the record, that Laurie’s acts in this matter are in violation of several state laws and Corrales Village Code 2-81, violation of her oath of office. By deliberately supplanting the will of Appellees Dwelling Unit Definition, and by her unauthorized withholding of approval of our July 16 2021 permit application (the ‘Denial’) based on her personal dwelling unit definition, Laurie is in violation of NM Stat §3-21-10, NM Stat §3-21-1(A), and NM Stat §3-21-1(B)(2). And by formally adopting Laurie’s new dwelling unit definition per Conclusion1 and Conclusion 3 Findings of Fact **<RP82>**, Appellees The Council have violated NM Stat §3-21-10, NM Stat §3-21-1(A), and NM Stat §3-21-1(B)(2) as well as NM Stat §3-21-6(A) and NM Stat §3-21-6(B) and willfully violated their oaths of office in embracing Laurie’s illegal acts as legitimate.

We raise five material defects of law in the commission of the Denial that renders the final decisions of Appellees invalid and we associate these defects directly with our attacks on the applicable findings of fact (“Finding”) and conclusions of law (“Conclusion”) **<RP81-RP83>**.

Defect 1 of 5 – Ordinance 21-04 **<RP69-RP71>** is invalid and unenforceable. Recent modifications to the Zoning Ordinance made by adoption of Ordinance 21-04**,** relied on by Appellees as basis for our application Denial, are unenforceable because Ordinance 21-04 was adopted in violation of several state laws. This renders decisions after June 15 2021 based on this ordinance void. {Finding 12}

Defect 2 of 5 – The Denial of our permit application by Laurie was arbitrary, capricious, fraudulent, not in accordance with the law, and not supported by substantial evidence. {Finding 3, Finding 4(first), Finding 7, Finding 8, Conclusion 1, Conclusion 3, Conclusion 5}

Defect 3 of 5 –NM Stat §3-21-1(B)(2) and our civil rights under the New Mexico Constitution, Article II section 18 equal protection clause were violated as a result of the Denial. {Finding 9, Finding 10}

Defect 4 of 5 –Laurie’s personal dwelling unit definition is beyond the authority granted by the state to Appellees acting as Zoning Authority, and mandating conditions for approval of our application, including the addition of heat, hallway space and a door is an ultra vires act. {Finding 5(first)}

Defect 5 of 5 - Our civil rights were violated under the New Mexico Constitution, Article II Section 18 due process clause during the permit application Denial, as a result of a biased and improper appeal hearing and by the erroneous and false Findings of Fact document. {Conclusion 4}

2. Summary of the Proceedings;

June 15, 2021 Appellees considered **<Adoption>** and voted to adopt Ordinance 21-04 which clarified several Zoning Ordinance Section 29 definitions. The dwelling unit definition was changed to read: '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." ('Dwelling Unit Definition'). In the Record, Appellees never actually use this definition.

June 28, 2021 Chris Donaldson submitted and had his home building permit approved by Laurie for 100 Coyote Trail, Corrales. Chris Donaldson's plans include a home that was similarly situated to our denied permit – it included a casita that is connected to the house by a covered porch **<RP43-RP44>.**

July 16, 2021 We submitted our plans **<RP13>** in person to the Corrales Building Inspector.

July 19, 2021 Laurie issued her first Denial of our building permit application for a 3 bedroom home in two manners. First at 9:36 AM **<RP78>** when we called her and had a 5 minute conversation, she verbally assaulted us and stated that the only way we will ever get our permit is if we add a heated hallway from the casita to the rest of the house **<Appeal 48:40-49:30>**. Laurie asserted via email later that day 'it's a separate apartment with a kitchen that is attached to the garage but no connection to the rooms in the house' **<RP75>**.

July 20, 2021 we resubmitted our permit application, changing our home to a 2 bedroom home by removing the casita kitchen and the bedroom room labels and replacing them with office and workshop **<RP18>**. The Corrales Building Inspector approved these plans **<RP48><RP87>** but Laurie again Denied them and we were given only the text of Ordinance 21-04 as the justification for this Denial **<RP77>**.

July 21, 2021 We sent Laurie a certified letter requesting clarification for her two Denials relative to the Zoning Ordinance – to which she has never responded **<RP80>.**

July 21, 2021 Laurie emailed an explanation of both Denials **<RP73-RP74>** that stated her justification: "It was quickly made clear that an interpretation would have to be established right away to what 'connected' means. It means all rooms are part of the same contiguous heated space, and are accessible through the same

door" ('Laurie's Connected Interpretation'). The bulk of her explanation letter after this assertion concerns our comments at the July 20 Appellee Council Meeting, after the second denial and are irrelevant.

July 22, 2021 Laurie required on July 19 that we had to add a heated hallway between the sections of our home in order to receive a permit. Her mandated changes consisted of adding heat to unheated rooms, converting a utility room to a hallway, moving and redesigning our HVAC ducting, tiling the floor and adding a third door to our casita bedroom ('Laurie's Mandated Changes'). We submitted this third version including Laurie's Mandated Changes on July 22 2021.

August 5, 2021 The third plan submittal **<RP63>** was approved as confirmed by Laurie's Email **<RP85>**

August 8, 2021 We submitted a request for an appeal hearing

August 10, 2021 Sue Gerber's building permit application for a home extension that included an area that did not meet Laurie's Connected Interpretation was returned to her unsigned. During the Appeal Laurie twice falsely refers to this as a Denial occurring April 19 2021 **<IPRA Exhibit E><IPRA Exhibit B><Appeal 1:10:28-1:12:13><IPRA Exhibit D>**.

September 16, 2021 Appeal hearing for July 19 2021 building permit Denial. **<RP3>.**

Defect 1 of 5 – Ordinance 21-04 is invalid

Ordinance 21-04 is in violation of NM Stat, §3-17-4(B). The mayor never endorsed the Ordinance.

Ordinance 21-04 is in violation of NM Stat, §3-17-2. There is no enacting clause in the Ordinance.

Ordinance 21-04 is in violation of NM Stat, §3-21-5(A). The Ordinance is in direct conflict with the Corrales Village Comprehensive Plan adopted April 2009 **<Appeal 44:28-46:47>** and the assertion of the Ordinance preamble that declares compatibility with the comprehensive plan is false.

Appellees violated NM Stat, §3-17-3(A) in failing to include the subject matter in the Albuquerque Journal notice of hearing **<RP79>**

Defect 2 of 5 – The Denial was arbitrary, capricious, fraudulent, not supported by substantial evidence and contrary to the law

Arbitrary and Capricious

In the course of proceedings we have received 6 arbitrary reasons why our building plans were Denied. None of these reasons reference any Zoning Ordinance chapter or section. The actual Dwelling Unit Definition has never been applied by Appellees in our Denials, in the Appeal or in the Findings of Fact and all 6 reasons for

Denial have been applied only to us, as confirmed by Laurie in the appeal hearing **<Appeal 1:13:00-1:13:25>.** On July 19 2021 Laurie asserted we were building an apartment **<RP75-76>.** On July 20 2021 the Building Inspector stated that we were in violation of Ordinance 21-04 **<RP77>.** On July 21 2021 Laurie stated our July 20 2021 submission constituted a duplex-type dwelling and that our rooms were not connected **<RP73-RP74>**. On September 3 2021 we were informed that we were building two dwelling units by the village administrator and Appellee's Lawyer **<RP72>.** In the appeal September 16 2021 we were told that we were building a townhome with a firewall by both Laurie and Appellee's Lawyer **<Appeal 54:55-55:45>.** The October 9 2021 Findings of Fact **<RP81-RP83>** assert our rooms are not 'interior connected'.

The contested area of our plans consists of 4 rooms in 600 square feet **<RP13>**. The rooms are labelled casita, casita kitchen, bedroom and bathroom. During the appeal we testified our home configuration to be in compliance with the Dwelling Unit Definition and our assertions were unrefuted **<Appeal 38:45-40:40>**. During the Denial, during the Appeal and in the findings of fact, our compliance with the actual language of the Dwelling Unit Definition is not refuted. Laurie's Denials of July 19 and 20 2021 relied only on Laurie's Connected Interpretation in determining that we intended to build two dwelling units. She asserted that because our casita is not attached to our home by a heated hallway, the casita is a separate dwelling unit **<Appeal 9:21-9:45>.**

On July 20 2021 we resubmitted an alternative set of plans. The physical characteristics of the contested area were the same but we changed the use. The casita, casita kitchen were changed to a workshop and the bedroom was changed to an office and our total bedroom count was reduced from 3 to 2 **<RP18>**. Our assertion during the appeal was unrefuted, that this alternative plan serves only living and sanitation uses and is not independent from the rest of the house and the building Inspector approved this plan version **<RP48><RP87>** but Laurie Denied this second application **<RP77>.**

Inspection of both our July 19 and July 20 2021 plan submissions **<RP13><RP18>** shows the arbitrary and capricious application of Laurie's Connected Interpretation: Our Laundry, utility and mechanical rooms, pantry and 3 season porch are all unheated and the mechanical room has no interior door, hence our home, even after applying Laurie's Mandated Changes, is still not contiguously heated nor accessible through one door. These other gaps to Laurie's Connected Interpretation have never been raised by Appellees as an issue.

Fraudulent

Laurie stated in her clarification letter to us on July 21 2021 her rationale for denial as an interpretation she created **after** Ordinance 21-04 adoption June 15 2021 of the word 'connected' "It was quickly made clear that an interpretation would have to be established right away to what 'connected' means." **<RP73>**. Under Cross Examination, Laurie was asked whether Laurie's Connected Interpretation had ever been used to deny a permit, and when. Laurie stated that she withheld approval for another permit based on her interpretation 'around the

same time as ours' **<Appeal 1:10:28-1:12:13>.** When we re-asked when this other denial occurred she responded by stating the date April 19 2021 twice, in conflict with her written statement of July 21 **<RP73>**. Our public records request **<IPRA Exhibit C>** identified no such denial has ever taken place. Further, the permit she referred to was in her possession in August and never in April according to the applicant, Sue Gerber **<IPRA Exhibit D>**. These facts of the record render Laurie's answer to our cross examination as false testimony given under oath regarding material facts of the appeal, hence these statements are perjurious and invalidates all of Laurie's testimony.

During the appeal, Appellee's Lawyer was never sworn in he and made several false assertions in direct attack against us **<Appeal 52:25-58:08>**. He asserted Ordinance 21-04 contains an enacting clause, and that the mayor properly endorsed it, both false statements. Appellee's Lawyer also falsely asserted our home possessed a fire wall and that all homes require this **<Appeal 54:55-55:45>** and in the findings of fact this is repeated as Conclusion 5 **<RP82>**. We attempted to cross examine but were rebuked twice by the mayor and prevented from challenging his false and improper assertions **<Appeal 53:30-53:36><Appeal 1:15:20-1:15:40>.** His fire wall assertion was improper because this assertion had not been raised by Laurie in either Denial and the appeal was for review of a zoning issue hence the hearing had no subject matter jurisdiction to hear planning or platting evidence. Appellee's lawyer possesses no state construction credentials hence was not competent to raise this, a violation of rule set 16-804(C) and (F) and no competent, certified or licensed construction official was present.

Appellees introduced another reason for the Denial that Laurie did not use during the actual Denials – after the appeal hearing – an 'interior connection' requirement is only found in the Findings of Fact **<RP81-RP83>**, constituting another violation of the New Mexico Constitution Article II Section 18 Due Process Clause, specifically the need for notice and meaningful opportunity to respond.

Not in accordance with the law

During the appeal we addressed the legislative intent from the public record of the adoption **<Adoption>** of Ordinance 21-04 and our unrefuted testimony established that Laurie's Connected Interpretation is not included in Ordinance 21-04. Our unrefuted testimony **<Appeal 34:05-37:05>** documented that 'connected' in ordinance 21-04 is a long-standing administrative construction, and that Laurie specifically used the long-standing administrative construction of 'connected' multiple times in the adoption hearing establishing that Laurie's Connected Interpretation did not exist nor was ever considered prior to Ordinance 21-04 adoption**.** As a clear indicator of legislative intent we discussed the directive comments made by the Mayor and Laurie that Ordinance 21-04 does not change any existing policies of the village **<Adoption 1:14:23-1:15:05><Adoption 55:31-55:49>**.

Not Supported by Substantial Evidence

We provided unrefuted testimony in the appeal that all of our plan submissions meet the language and intent of the Dwelling Unit Definition. The Denial and appeal findings of fact never challenge this but instead add Laurie's Connected Interpretation, Firewall Existence and no 'interior connections' as excuses to deny our permit, all of which we discredit which leaves only our unrefuted claims intact.

Defect 3 of 5 – Equal Protection Violation

On June 28th, 2 weeks after the adoption of Ordinance 21-04 and 3 weeks prior to our permit Denial, Laurie approved Chris Donaldson's permit application **<RP43-RP44>.** Chris' approved permit included a casita similarly situated to ours – a covered porch connects the casita with the house. In cross examination of this approval **<Appeal 1:12:13-1:12:49>** Laurie provided no rational basis for the approval of one and the rejection of the other and Laurie agreed with us that Laurie's Connected Interpretation has not been applied previously **<Appeal 1:13:00-1:13:25>** while improperly introducing the Lawyer's false firewall argument as rationalization. With no state construction industry division credentials Laurie is not competent to establish whether or not we are building a fire wall. Laurie doesn't know what a fire wall is or isn't and her comments equating our home to a duplex or triplex any other multiple-unit constructions are based on her incompetence and are absurd. We assert that Laurie lied when she testified she had withheld approval of Sue Gerber's permit since April 19 2021 **<Appeal 1:10:28-1:12:13>** because she did not similarly withhold approval of Chris Donaldson's application on June 28 2021 - and also because Sue states clearly she submitted in August, not april **<IPRA Exhibit D>.**

Defect 4 of 5 – Ultra Vires Act

Our unrebutted testimony of the first Denial states that Laurie profanely required that we had to provide a heated hallway between sections of our home as the only way she would grant our building permit **<Appeal 48:40-49:30>**. July 21 2021, the day after our second denial, Laurie emailed her clarification email to us**.** She asserts, in writing, the same requirement we had been given verbally - that we had to comply with Laurie's Connected Interpretation in order to receive her approval, regardless of whether our casita satisfied the actual language of the Dwelling Unit Definition – the contiguous heated space and accessible through the same door were the only requirements we had to meet to gain her approval. There were only two paths available to us – comply or never build. We testified in the appeal **<Appeal 41:50-43:33>** that Laurie's Mandated Changes along with Laurie's Connected Interpretation are in violation of NM State law since her assessment that we are building two dwelling units is false, there can be no valid claim of public good in the record. In addition, Zoning Authority explicitly granted by the state does not include the ability to restrict or regulate our rights to house floorplans of our choosing or to mandate heating requirements.

Defect 5 of 5 – Procedural Due Process Violations

In the Denial

In reference to the Denials of July 19 and July 20 2021: After the two Denials, we were left with no possible choices other than abandon construction altogether or build the house with Laurie's Mandated Changes. Note that neither the July 19 2021 denial, the July 20 2021 Denial, nor Laurie's clarification letter of July 21 2021 ever mention any specific defect relative to the Zoning Ordinance. And our permit application, and none of the Denial letters ever established any right for us to appeal her decisions and the Mayor ignored our request when we asked her directly how to officially appeal this decision **<RP75-RP76>**. The essential elements of procedural due process are absent in these Denials: the principle of fundamental fairness, notice, opportunity for hearing, confrontation and cross-examination, discovery, notification of basis of decision. It was on our own initiative after August 5th to pursue justice for ourselves that we discovered our right of appeal.

In the Appeal

We raise significant procedural and factual issues from the appeal. The essential elements of procedural due process were absent in our appeal: the principle of fundamental fairness, notice, confrontation and cross-examination, discovery, notification of basis of decision.

We were actively misled about the appeal, and we were never told of our rights in the appeal until we logged on. The village building inspector, the first approver of all permit applications was not called, Appellees relied on 'expert' testimony from their unqualified lawyer and we were not allowed to cross-examine his 'expert' testimony resulting in false inadmissible evidence beyond the appeal's subject matter jurisdiction being introduced. The Denials prior to the appeal said nothing about us having a fire wall or missing 'interior connections', so our prepared statement was not able to address these new attacks against us.

In the Findings of Fact Document

The aggregate effect of all Finding of Fact Document errors constitutes a violation of our Procedural Due Process Rights by establishing provably false statement as statements of fact. The document captures the false and inadmissible evidence of Appellees, establishing Appellee's clear bias in the proceedings.

Finding 1 falsely declares we received our permit July 21 2021. It was received August 5 2021. Application was submitted July 22 2021. **<RP53>**

Finding 2 falsely declares we submitted our permit on July 19 2021. It was submitted July 16 2021

Finding 4(second) falsely asserts we received our permit July 21 2021. It was received August 5 2021. Application was submitted July 22 2021.

Finding 5(second) does not include the date of August 8 2021 when we filed our appeal.

Finding 9 falsely asserts our plans include a kitchen. This was unrefuted during the appeal. Our plans include a casita kitchen which we testified was consistent with the dwelling unit definition prior to June 15 2021 as it has no 'permanent provisions for cooking' as seen plainly in our plans **<RP13>** it has no cooking appliances nor any energy source for cooking. And since the Dwelling Unit Definition does not contain the term 'kitchen' this is an immaterial and irrelevant statement and every use of the term 'kitchen' by appellees is a failure to abide by their own Zoning Ordinance Dwelling Unit Definition.

Finding 13 is false. Appellee Lawyer was never sworn in and we were blocked from cross examination of his false testimony by the mayor **<Appeal 1:15:20-1:15:40>**.

Finding 14 is false. We requested 25 minutes for testimony uninterrupted. We were significantly interrupted AND held to the 25 minute limit **<Appeal 22:35-23:15><Appeal 46:45-46:58>** resulting in having to abbreviate the content of our testimony while our attempts to interrupt false testimony were prevented by the Mayor **<Appeal 53:30-53:36>**

Disposition of the Agency;

On October 18 2021 we received The Council's findings of fact in the mail. Within the findings of fact they affirm both of Laurie's decisions. First, to deny our July 16 2021 application on the argument that we were attempting to build two dwelling units and second, to affirm the approval of our third plan submission that included Laurie's fraudulently mandated changes.

3. Arguments of the Defects

Defect 1 of 5 – Ordinance 21-04 is invalid {Finding 12}

Standard of Review – Actions were not in accordance with the law NMRA 1-074(R)(4),

Examination of Ordinance 21-04 confirms the mayor never endorsed it which renders it invalid per NM Stat §3-17-4(B) and there is no enacting clause per NM Stat §3-17-2 which also renders Ordinance 21-04 invalid. City of Albuquerque v. Water Supply Co., 24 N.M. 368, 174 P. 217, 5 A.L.R. 519 allows an alternative mechanism for Mayoral Endorsement, confirming this statute to be mandatory, not directory. During the appeal Appellee's Lawyer falsely stated Ordinance 21-04 to be properly endorsed and we were not allowed to rebut **<Appeal 1:15:20-1:15:40>.** Regarding the lack of an enacting clause, while we can identify no precedent for this we argue the statute is mandatory per NM Stat §12-2A-4. We argue by STATE V. LINDWOOD, 1968-NMCA-063, 79 N.M. 439, 444 P.2d 766 (Ct. App. 1968), the interpretation of 'shall' rests in the materiality of the directed action to the goals of the statute. The specific manner of language of enacting an ordinance in this case is material to the statute's intent of proper adoption of Ordinances, hence mandatory. To allow non-compliance with any section of NM Stat §3-17 would result in passage of arbitrary ordinance form, language and process,

clearly inconsistent with the intent of NM Stat §3-17 to provide for orderly and consistent review and passage of ordinances. The consequences of non-compliance, Ordinance 21-04 is illegal per NM Stat §3-17-1.

NM Stat §3-21-5 requires zoning law to conform to the comprehensive plan and Ordinance 21-04 is in conflict with the comprehensive plan, rendering it invalid. During testimony we documented the specific gaps between Ordinance 21-04 and the comprehensive plan **<Appeal 44:28-46:47>** Specifically, the language of Ordinance 21-04 that changes Zoning Ordinance section 29 to add the statement "An accessory building or structure shall not be used as a second or independent dwelling unit" is in violation of Policy 2.3.1(C) on page 26 that establishes a need to provide criteria to support densities greater than 1 dwelling unit/lot – such as an accessory dwelling units would provide. Nowhere in the Comprehensive Plan is there a call to eliminate Accessory Dwelling Units. Thus this conflict between the documents directly challenges Finding 12 which provides only a vague excuse for Appellee's false assertion in the preamble.

NM Stat §3-17-3 requires "Notice by publication of the title and subject matter of any ordinance proposed for adoption." Examination of the legal notice **<RP79>** shows it contains no subject matter notification and in the pale attempt to appear to comply with NM Stat §3-17-3 they pay lip-service to the wrong standard: "General Summary of Subject Matter of the ordinance" of NM Stat §3-21-14 vs the required "Subject Matter" standard of NM Stat §3-17-3. In MILES V. BOARD OF COUNTY COMM'RS, 1998-NMCA-118, 125 N.M. 608, 964 P.2d 169 ('Miles') the discussion of notice minimum requirements for a county zoning ordinance are discussed at length. The county zoning notice ordinance NM Stat §3-21-14 is similar to the Municipal Ordinance version NM Stat §3-17-3, however it requires a less rigorous notification standard. Instead of requiring publishing 'of the subject matter', the county zoning statute requires only a 'general summary of the subject matter' be published. The challenged notification in Miles 'general summary of the subject matter' is illustrated in paragraph {3} and is far more extensive than the Ordinance 21-04 notice which leads to the logical conclusion that the more detailed standard of 'of the subject matter' notice would not have been satisfied by the paragraph {3} illustration in 'Miles'. Thus the Ordinance 21-04 notice, in not meeting even the 'general summary of the subject matter' standard meets no standard at all, resulting in having failed to inform us when we read it that Appellees had intended to make major land use changes that would apply to us.

These four defects, taken as a whole serve to cloud the intent of The Council's will to comply with New Mexico State Law in the passage of Ordinance 21-04 and the predictable response of substantial compliance is invalid – "a statute's mandatory language cannot be lightly dismissed" *Stennis v. City of Santa Fe*, 2010-NMCA-108, ¶ 10, 149 N.M. 92, 244 P.3d 787.

Defect 2 of 5 – the Denial is flawed {Finding 3, Finding 4(first), Finding 7, Finding 8, Conclusion 1, Conclusion 3, Conclusion 5}

Arbitrary and Capricious

Standard of Review – The agency acted fraudulently, arbitrarily and capriciously NMRA 1-074(R)(1)

We use TBCH, Inc. v. City of Albuquerque, 117 N.M. 569, 572, 874 P.2d 30, 33 (Ct. App. 1994) ('TBCH') to deliver our argument. To summarize TBCH proceedings similar to ours: The attack against TBCH was taken by Albuquerque by a recently introduced arbitrary interpretation of the term 'covered' in their ordinance to mean 'completely and opaquely covered', and in our case the attack is taken against us by Corrales by the recently introduced arbitrary interpretation of the term 'connected' to mean 'connected by contiguous heated space accessible through one door'. In TBCH the court determined the legislative intent was clear in the plain language of the ordinance and that interpretation was not allowable, hence ruling against Albuquerque's interpretation. TBCH paragraph {8} states "Legislative intent is determined primarily by the language of the act and statutory construction is proper only in the case of ambiguity." The court also identified that the recently introduced interpretation of "completely and opaquely covered" to be in conflict with Albuquerque's long-standing administrative construction and enforcement of the term 'covered'. In our case we contend the same plain language defense of the unambiguous Dwelling Unit Definition, rendering no opportunity to apply Laurie's Connected Interpretation**.**

Similarly to TBCH's recent introduction of their interpretation, Laurie's Connected Interpretation was introduced recently, July 21 2021 two days after its initial use against us. Neither Albuquerque's or Corrales' interpretations are long-standing administrative constructions and hence not afforded persuasive weight. Similarly to Albuquerque's inconsistent enforcement problem, the substance of Laurie's Connected Interpretation is inconsistent with Corrales' long publicly visible history of allowing casitas, guest houses, in law quarters, workshops and sheds to be built, bought, sold and used with no enforcement. TBCH paragraph {10} finally asserts as we do that if Appellees the Council intended for their unwritten intent to be followed, it could have easily made that intent known by writing it into the ordinance. We find it not credible that a mere month after Appellees adopted their clarified Dwelling Unit Definition, that it would require any interpretation at all to fully capture legislative intent. This argument directly challenges and negates Finding 3, Finding 4(first), Finding 7, Finding 8, Conclusion 1 and Conclusion 3 **<RP81-RP83>** by disallowing Laurie to apply any additional interpretive modifications to the Dwelling Unit Definition.

Analysis of the Dwelling Unit Definition, interpreted using Laurie's Connected Interpretation in place of 'connected', reveals absurd results and we demonstrate this was not the criteria Laurie used to Deny our application. Our argument relies on one logical principle: in order to declare something a dwelling unit, Appellees must show that all components of the interpreted Dwelling Unit Definition are true. We decompose

the Interpreted Dwelling Unit Definition into 7 requirements to illustrate we do not meet this interpretation in any circumstance and provide the analysis in Table 1. To summarize the 7 components (1 – a single unit)(2 – connected by contiguous heated space)(3 – accessible through one door)(4 – intended to be occupied)(5 – is independent)(6 – provides all occupational uses)(7 – is a valid construction). We also argue based on simple logic there exists no possibility for this interpreted definition to render the result of us having proposed two dwelling units. Similarly, applying the interpretation to our home including Laurie's Mandated Changes still returns the result 'not a dwelling unit'.

Laurie's Dwelling Unit Interpretation Analysis

Definition Requirement	House as a whole	Casita without House	House without Casita	House/Casita with Mandated Changes
1. Single Unit	Meets	Meets	Meets	Meets
2. Contiguous Heated Space	**Does Not Meet**	Meets	**Does Not Meet**	**Does Not meet**
3. Same Door	**Does Not Meet**	Meets	**Does Not Meet**	**Does Not meet**
4. Intended for Use	Meets	Meets	Meets	meets
5. Independent	Meets	**Does Not Meet**	**Does Not Meet**	meets
6. All Occupational Uses	Meets	**Does Not Meet**	Meets	meets
7. Valid Structure	Meets	Meets	Meets	meets
Assessment	**Not Dwelling**	**Not Dwelling**	**Not Dwelling**	**Not Dwelling**

Table 1 Lauries Dwelling Unit Interpretation Analysis

As applied to us, in order to declare we are building two dwelling units, Laurie did not interpret. She had to redefine a dwelling unit by eliminating (5 – Independent) and (6 – All Occupational Uses) from the Dwelling Unit Definition and then arbitrarily ignore our unheated rooms and mechanical room with an exterior door. Laurie's Connected Interpretation is not an interpretation at all but rather a complete rewrite of the month-old Dwelling Unit Definition which rendered moot the will of Appellee's Dwelling Unit Definition in violation of NM Stat §3-21-6(A) and NM Stat §3-21-6(B). Laurie's definition reads: A Dwelling Unit is a single unit with all rooms part of the same contiguous heated space, and are accessible through the same door intended, or designed to be built, used, rented, leased, let or hired out to be occupied. A dwelling unit may be a mobile home, modular home, manufactured home or site-built house. It may also be a unit of an apartment, townhouse or other such multiple-unit residential structure, where allowed by zoning code ("Laurie's Dwelling Unit Definition"). Laurie stated her version of this definition during the appeal **<Appeal 9:21-9:45>.**

Laurie's Dwelling Unit Definition is apparent in our first Denial. It was also referenced directly in the Finding of Fact Finding 4(first) on our second Denial of July 20 2021. Our application resubmission was our attempt to understand the Dwelling Unit Definition as written and comply with both its language and Laurie's verbal

directions. Recall at this point we were only given verbal direction to comply with adding a heated hallway between the sections of the house and Laurie's assertion was: we were building an apartment with a kitchen with no connection to the rooms in the house. While our casita kitchen has no 'permanent provisions for cooking', compliant with the pre June-15 2021 AND post June 15 Zoning Ordinance definitions of dwelling unit, we removed it because it included 'kitchen' in the label and because Laurie had implicated it. And we removed the bedroom from that area leaving us with only utility space. The remaining component of Laurie's assertion – 'no connection to the rooms in the house' we did not address and our second submission on July 20 2021 was denied for that sole rationale and Finding 4(first) states this clearly: "it still created a second dwelling unit attached to the garage with no interior connectivity to the primary dwelling unit". It was not denied because it was independent and provided all five occupational uses from the Ordinance 21-04 Dwelling Unit Definition, but only because it failed to satisfy the Contiguous heated space and Same door requirements of Laurie's Dwelling Unit Definition or the new 'interior connections' interpretation. This logic is consistent in both denials, which implicates that under Laurie's Dwelling Unit Definition, ANY room of a home, not connected by contiguous heated space accessible through the same door can now, subject to Laurie's discretion, be declared an independent dwelling unit – a clearly absurd result and is a materially different definition from the Ordinance 21-04 Dwelling Unit Definition. Laurie's dwelling unit definition renders illegal many otherwise legitimate floorplan design choices such as pool houses, outdoor enclosed patios or outside-access sheds and is ambiguous enough to grant unfettered governmental discretion, in effect authorizing Laurie's capriciousness. In proving the logic of Laurie's Dwelling Unit Definition to be arbitrary and capricious, we have also established that Laurie's Mandated Changes to 'eliminate' a second dwelling unit that never existed is abuse of her discretion granted to Appellees by NM Stat §3-21-1 and as such renders her enforcement via Denial of our application in violation of NM Stat §3-21-10.

During the appeal and in Conclusion 5 we find an additional rationale for the Denial that had not been shared with us before this moment, rendering it inadmissible and it is based on a false assertion. Appellee's Lawyer testified that our home was built with a fire wall which defined our home as a townhome **<Appeal 54:55-55:45>**. This absurdly false claim was not present in either of Laurie's Denials, but it was repeated in Conclusion 5 when Appellees assert "No legal difference existed between the proposals and adjoined townhomes which would be prohibited under the Zoning Code.". Corrales Village Code has no restrictions of, or definition of fire walls, so we use the New Mexico Residential Code 2015 referenced on the building application to define a fire wall. Our home is designed to the standard defined by New Mexico Residential Building Code R302.6 for single family dwelling units and this can be seen plainly on all our plan drawings – the wall Appellee Lawyer refers to, between the casita and the garage, is simply a "2x6 wall"**,** exactly like all our other exterior walls, plainly observable on our plans **<RP13>**. Townhomes can only be joined together by a common wall that is compliant with New Mexico Residential Building Code R302.2 which calls out the

engineering specifics of two independent fire resistant walls built together, requiring specific engineered plans. If we had planned to build a fire wall we would have had to submit specific drawing details in our application and no fire wall plans or references are part of the record. Thus the inadmissibly stated fire wall assertion is proven false and Conclusion 5 invalidated. Enforcement of construction methods occurs under the Corrales Village Code Chapter 8 and our Denial is pursued by Appellees under Chapter 18, hence this evidence is beyond the subject matter jurisdiction for this action rendering all fire wall references inadmissible – as well as being false. Approval of our plans by Appellee's Building Inspector **<RP48><RP87>** factually establishes in the record that we are compliant with all construction rules mandated by Appellees.

Fraudulent

Standard of Review – The agency acted fraudulently, arbitrarily and capriciously NMRA 1-074(R)(1)

During the appeal we asked Laurie whether we were the only ones to have plans denied because of her Dwelling Unit Definition. She stated falsely that we were not the only ones and then told a lie regarding the origins and nature of Laurie's Dwelling Unit Definition which she testified, under oath, started April 19 2021 **<Appeal 1:10:28-1:12:13>.** This provably false assertion renders Laurie's entire testimony invalid, but it served to prejudice The Council against us as the assertion is found as Finding 10. We also heard from Laurie that Laurie's Dwelling Unit Definition was well considered in ongoing conversations with Appellee's Lawyer beginning April 19 2021. However our IPRA Request **<IPRA Exhibit E><IPRA Exhibit C>** establishes there was no discussion at all with anyone of Laurie's Dwelling Unit Definition until August 11 2021, 3 days after we filed our appeal. There is no assertion in the record of any review of Laurie's Dwelling Unit Definition by Appellees The Council and we concur there was none. That Finding 8 declares Laurie's Dwelling Unit Definition as valid village policy is in violation of NM Stat, §3-21-6 (B) which requires any changes to the ordinance to be reviewed properly in public. The last question we asked Laurie was whether Laurie's Dwelling Unit Definition had ever been used to deny a permit and she confirmed it had not been **<Appeal 1:13:00-1:13:25>.** Our cross examination of Laurie, ad-hoc as it was, served to establish in the record that Laurie's Dwelling Unit Definition is a fraudulent creation, illegitimate policy and is applied to us uniquely.

The next component of fraud is in the testimony of Appellee's lawyer asserting that our home is built with a fire wall **<Appeal 54:55-55:45>**. As previously discussed, this is a false, inadmissible assertion. Related assertions in the appeal from Laurie and Appellee's Lawyer that equate our home to a Duplex, Triplex, or other multiple dwelling unit buildings must be addressed. These assertions come from the incompetence of both witnesses and their lack of any credentials to declare any such characteristic of building plans. They don't know what a fire wall is so all witness testimony declaring we are building a fire wall is either spoken from incompetence or malfeasance and since we were never allowed to challenge the source of the assertion, fraudulent.

Finally, the introduction of ‘interior connection’ as yet another version of Appellee’s rationale for denial only in the Finding of Fact with no basis in the record renders it inadmissible and the fact that it was introduced only in the Findings of Fact exacerbates the case against Appellees as being arbitrary and capricious in the Denial and constitutes another procedural due process violation.

That these many materially inadmissible and fraudulent statements are included in the findings of fact renders the full testimonial record of Appellees including the Findings of Fact void, leaving no substantial evidence on which to Deny and only our unrefuted testimony as evidence to affirm that we planned a single dwelling unit.

Not in accordance with the law

Standard of Review – Actions were not in accordance with the law NMRA 1-074(R)(4)

We examine the text of Ordinance 21-04 using HIGH RIDGE HINKLE JOINT VENTURE V. CITY OF ALBUQUERQUE, 123 N.M. 229, 938 P.2d 204 (S. Ct. 1997) (“High Ridge Hinkle”) to drive our argument that our home plans are consistent with the legislative intent of The Council and that Laurie’s Dwelling Unit Definition and the findings of fact interpretation of ‘interior connected’ are not consistent with the intent of The Council, hence Laurie’s Connected Interpretation and Laurie’s Mandated Changes are not in accordance with the Dwelling Unit Definition of Zoning Ordinance section 29. High Ridge Hinkle paragraph {5} limits the mechanisms available to determine legislative intent and ‘assertion of legislators’ is not on this list: 1) the ‘plain language’ of an ordinance is the primary indicator; 2) the court will not read into a statute language that is not there, particularly if it makes sense as written; 3) the court gives persuasive weight to long-standing administrative constructions of statutes; 4) where several sections of a statute are involved, they must be read together. We start by reading the several sections of Ordinance 21-04 together. Its title states ‘to provide clarity’ as the objective and missing from the title are any indications of any new policy or land use restrictions to occur. Turning next to the preamble which establishes the rationale for the ordinance, nowhere in the preamble do the terms ‘heated’, ‘contiguous’, or ‘same door’ occur. There is no assertion in the preamble of any legitimate zoning concern per NM Stat §3-21-1(A) to be served regarding any enforcement around these terms. Finally in the body of the ordinance, again no mention is made of policy changes, and the terms ‘heated,’ ‘contiguous’ and ‘same door’ never appear. The text of The Dwelling Unit Definition included in Ordinance 21-04 makes sense as written, includes its definition of ‘connected’ as the long-standing, visible Corrales interpretation of ‘connected’ and the entire definition makes sense when read as a part of the whole Ordinance 21-04 hence the new Dwelling Unit Definition is unambiguous and its intent is clear.

We examine next the testimony provided June 15 2021 by Appellees in their public hearing held before voting to adopt Ordinance 21-04 < **Adoption**>. We begin by noting the insertion of the long-standing administrative construction of 'with connected rooms', Laurie's only requested change, into the ordinance. She stated this was from the existing definition of dwelling unit. **<Appeal 9:21-9:45>.** If, as Laurie had stated during cross examination **<Appeal 1:10:28-1:12:13>**, that she and Appellee's Lawyer had been working to craft a replacement definition of 'connected' since April 19, why did she not mention this or offer her result at that time? When directly challenged on the new definition, Laurie quoted the long-standing administrative construction of 'connected'. Vanessa Szanto had asked how an elderly parent would be able to live with her. Laurie's response was "someone can have a separate suite for their loved ones, it's just connected to their existing house, it's just not going to be a separate dwelling unit" **<Adoption 2:01:26-2:05:29>**, never mentioning Laurie's Dwelling Unit Definition. And both Laurie **<Adoption 55:31-55:49>** and the mayor **<Adoption 1:14:23-1:15:05>** asserted that the definition clarifications did not constitute new policy, in conflict with Finding 8 as well as Conclusion 3 mentioning Laurie's new policy **<RP81-RP83>**.

In the entire hearing of adoption of Ordinance 21-04, the concepts of mandatory heating requirements, contiguous floor space requirements or unique door configurations were never raised by Laurie, Appellee's lawyer or Appellees The Council. The lack of discussion of these topics is consistent with the ordinance text and hence legislative intent is clear from both the whole ordinance text and the legislative hearing of June 15 2021 – neither Laurie's Dwelling Unit Definition or 'interior connections' are included within the intent of Ordinance 21-04. In UNITED STATES BREWERS ASS'N V. DIRECTOR OF N.M. DEP'T OF ALCOHOLIC BEVERAGE CONTROL, 1983-NMSC-059, 100 N.M. 216, 668 P.2d 1093 (S. Ct. 1983) paragraph {9} "Statements of legislators, after the passage of the legislation are generally not considered competent evidence to determine the intent of the legislative body enacting a measure. ".

This argument serves to clearly discredit Conclusion 1 and Conclusion 3 and Finding 8 and also invalidates Laurie's Dwelling Unit Definition as valid policy and since it was applied under color of law in our Denial, in the appeal and per the findings of fact, it is fraud. This makes Appellee's assertion that Laurie's Dwelling Unit Definition is adopted as valid policy an admission of violation of NM Stat §3-21-6(B). Thus Conclusion 1 and Conclusion 3 and Finding 8 demonstrates an improper government action by Appellees at a minimum and both conclusions are invalidated. We also cite STATE EX REL. VAUGHN V. BERNALILLO COUNTY BD. OF COUNTY COMM'RS, 1991-NMCA-151, 113 N.M. 347, 825 P.2d 1257 (Ct. App. 1991) Paragraph {6} that directs the courts "because zoning statutes and ordinances are in derogation of the common law, they are to be strictly construed"…"a reviewing court may not read into the law language that is not there, particularly if it makes sense as written" and Paragraph {11} directs further "Courts will not follow incorrect administrative interpretations"…."Strictly construing the express language of the foregoing provisions as we are bound to do,

we hold that the Board was without authorization …" which clearly directs the court to disallow Laurie's Dwelling Unit Definition from being applied.

Not Supported by Substantial Evidence

Standard of Review – The decision is not supported by substantial evidence NMRA 1-074(R)(2)

During the appeal we testified that our home plans are not two independent dwelling units based on the Ordinance 21-04 Dwelling Unit Definition. This assertion is not rebutted and the fact that our plans are approved by the Village Building Inspector **<RP48><RP87>** establishes this as fact in the record. Instead, Appellees Denials relied on novel attacks based on Laurie's Dwelling Unit Definition, declaration of existence of a fire wall and our failure to meet their new 'interior connection' interpretation as their material reasons. Given that Laurie's Dwelling Unit Definition is absurd, illegally applied and fraudulently misrepresented, and Fire Wall existence is false and inadmissible and the 'interior connections' interpretation is also inadmissible and as absurd as Laurie's Dwelling Unit Definition, there remains no additional admissible evidence to declare our home to be two separate dwelling units and only our unrefuted assertion that our home meets the language and intent of The Dwelling Unit Definition is intact. GALLUP WESTSIDE DEVELOPMENT, LLC V CITY OF GALLUP, 2004-NMCA-010, 135 N.M. 30, 84 P.3d 78 ('Gallup') establishes a very low bar precedent for establishing the existence of substantial evidence: "Substantial evidence supporting administrative agency action is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.". Due to the absurd and fraudulent inadmissible nature of all contrary evidence, there remains no relevant evidence to declare we ever intended to build two dwelling units.

Defect 3 of 5 – Equal Protection Violation {Finding 9, Finding 10}

Standard of Review – Actions were not in accordance with the law per NMRA 1-074(R)(4)

We follow Olech v. Village of Willowbrook, 138 F. Supp. 2d 1036 (N.D. Ill. 2000) ('Olech') to establish the violation of our equal protection right. In Olech, plaintiffs had been required to grant a 33 foot easement in order to connect to the city water supply, while the community at large was only required to provide a 15 foot easement. In finding for the Olechs the US Supreme Court utilized a two part test in finding for the plaintiffs as a 'class of one'. The first test: were those similarly situated treated differently and the second test: is there a rational basis for the different treatment. We apply these two tests to our Denial to demonstrate we were treated differently to those similarly situated for no rational reason.

On June 28 2021, 2 weeks after the adoption of Ordinance 21-04, Chris Donaldson applied for and received a building permit for a single family residence at 100 Coyote Trail, Corrales. As a part of his application his home includes a section referred to as a casita. It is accessible from the house via a covered porch **<RP43-**

RP44>. We declared in the appeal that we are similarly situated to Chris Donaldson **<Appeal 37:45-38:45>**. Both casitas are in A-1 zoned property hence bound by the same Zoning Ordinance requirements. There are no material differences between our casitas in terms of the Dwelling Unit Definition – neither fully satisfy the notions of independence or satisfy all occupational uses. Finding 9's reference to a kitchen is inappropriate as previously noted and irrelevant since the Dwelling Unit Definition does not contain the term 'kitchen'. Nor are the two submissions different in terms of Laurie's Dwelling Unit Definition – both would fail. So we have established that both are similarly situated which meets Olech's first test. We further assert that we are similarly situated not just to Chris Donaldson but to the entire community of Corrales. We proved during the appeal that we are the only individuals ever in the history of Corrales to have Laurie's Dwelling Unit Definition applied to them, with Laurie concurring in cross examination **<Appeal 1:13:00-1:13:25>.** These facts firmly establish our assertion that we have been treated materially differently to those similarly situated in the entire history of Corrales.

The Rational Basis Test is the least challenging of three possible equal protection tests. In Docket S-1-SC-38151 dated August 2 2021 the New Mexico Supreme Court entered a relevant opinion to inform how this test should occur. In paragraph {32} they state "[a challenger] must demonstrate that the classification created by the legislation is not supported by a firm legal rationale or evidence in the record". For our purposes of this decision we equate rational basis with firm legal rationale or firm legal evidence in the record. When we cross examined Laurie during the appeal and asked why Chris Donaldson's casita was approved and ours wasn't **<Appeal 1:12:13-1:12:49>,** she stated it was a mistake she wished she could take back. She did not assert any firm legal rationale or point to any firm legal evidence in the record but rather implicated her own arbitrary incompetence as the basis of decision. Given Laurie was the author of Ordinance 21-04 and drove its passage less than 2 weeks prior to this 'mistake', it strains the credibility of the witness – which was already incredible – to believe she simply slipped up. Olech demands there be no rational basis for different treatment and in this case there is none as clearly stated by Laurie, hence we meet Olech's second test.

Some courts require a third test in an Olech defense – 'ill will'. We provide evidence that demonstrates Laurie's actions of 'ill will'. On July 19 2021 our initial conversation with Laurie, as we testified at the appeal was a verbal assault **<Appeal 48:40-49:30>** and after delivering her ultimatum to include Laurie's Mandated Changes to us, she refused to talk to us again**.** We documented this at the time via an email to the Mayor of Corrales along with our concerns **<RP15>**. In Laurie's testimony at appeal she acknowledged that she actively avoided any communication with us until July 21 2021 when she would only communicate via email**.** We sent her a certified letter requesting clarification of her denial on July 21 2021 **<RP80>** that she never responded to, and finally, her willingness to provide perjurous testimony in the appeal, taken in context of these other behaviors demonstrates a clear animus towards us and we would contend meets the third Olech test, 'Ill Will'. We concur in Finding 9 that Laurie had no rational basis for treating ours and Chris Donaldson's applications

differently and Finding 10's assertion of consistency in 'all other cases' is correct only due to the technicality that there are zero 'all other cases', in effect rendering both Findings in our favor.

We also state that the inconsistent application of regulation via enforcement of Laurie's Dwelling Unit Definition on us solely to be in violation of NM Stat §3-21-1(B)(2) that requires regulation within the same zone to be uniform. ALBUQUERQUE COMMONS P'SHIP V. CITY COUNCIL OF ALBUQUERQUE, 2006-NMCA-143, 140 N.M. 751, 149 P.3d 67 discusses the uniformity requirement of NM Stat, §3-21-1(B)(2) at length in paragraph {52}. "The uniformity requirement does not prohibit a different classification within a district, as long as it is reasonable and based upon the public policy to be served.". And in SMITH V. BERNALILLO COUNTY BD. OF COUNTY COMMISSIONERS, 2005-NMSC-012, 137 N.M. 280, 110 P.3d 496 paragraph {33} states "Owners have a right to use their property as they see fit, within the law, unless restricted by regulations that are clear, fair and apply equally to all.". Laurie's Dwelling Unit Definition is not clear, not fair and not equally applied hence is a violation of our property ownership right.

Defect 4 of 5 – Ultra Vires Act {Finding 5(first)}

Standard of Review – Actions were outside the scope of authority of the agency NMRA 1-074(R)(3)

We establish that Laurie's Mandated Changes were illegal, following Mechem v. City of Santa Fe, 96 N.M. 668, 671-72, 634 P.2d 690, 693-94 (1981) ('Mechem') holding a "City obtains its authority to zone from Sections 3-21-1 through 3-21-26" and "[i]t has no zoning authority beyond that provided by statute".
All assertions by Appellees in the record are that our plans are in some fashion in violation of the Zoning Ordinance and Ordinance 21-04 is repeatedly used in the Findings of Fact as justification. Per Mechem, Zoning Authority is restricted by NM Stat §3-21-1 to 26. The scope and limitations of zoning authority is documented by NM Stat §3-21-1 (A)(1-5). NM Stat §3-21-1(A) asserts zoning actions must demonstrably address health, safety, morals or the general welfare ahead of the implementation of any action. In application of Mechem to our denials we document that Laurie's Mandated Changes applied to our home plans fails the NM Stat §3-21-1(A) Test and additionally, Laurie's Dwelling Unit Definition is not within the scope of permissible regulations or restrictions within NM Stat §3-21-1 (A)(1-5).

In Finding 5(first) Appellees assert that Laurie's Mandated Changes 'eliminates' the second dwelling unit. As we have previously stated, because the assertion that we intended a second dwelling unit is proven false, her action to mandate changes is rendered fraudulent. Additionally, 'elimination' is a false assertion even if we had proposed two dwelling units. Appellee's assertion of 'elimination' is not based on any facts or rational basis or logic within the Dwelling Unit Definition or within the record. Putting a door between two dwelling units is a common architectural practice and in no way relieves either dwelling unit of its status. Consider the popular practice nation-wide of converting garages to accessory dwelling units – the door from house to garage does not

prevent this conversion, the same goes for multi-family Duplexes with a fire wall door through their fire wall. Hence the door and heated hallway in Laurie's Mandated Changes targets a non-existent issue, does not serve to change any dwelling units' status hence Laurie's Mandated Changes serves no NM Stat §3-21-1 (A) objective, hence Finding 5(first) is a false statement.

The second element of zoning authority scope in NM Stat, §3-21-1 (A)(1-5) is directly observable. None of 1 through 5 can be construed to permit a zoning authority to infringe upon our property rights associated with developing a floorplan that meets our individual lifestyle, specifically the right to construct non-contiguous and unheated rooms. We assert both as property rights and no testimony in the record has shown how asserting our property rights infringes on any rights of our neighbors. NM Stat §3-21-1 is violated by Laurie, mis-using the authority delegated to Zoning Authorities by NM Stat §3-21-1 to 26 without valid justification, hence she is in violation of her oath of office to uphold the laws of New Mexico.

Per Mechem, since Laurie's Mandated Changes do not serve NM Stat §3-21-1 (A) objectives and the actions are not explicitly authorized under NM Stat, §3-21-1 (A)(1-5) and Laurie's Dwelling Unit Definition is not within her delegated authority to adopt , Mechem concludes in stating a zoning act that is beyond the authority of a zoning authority and does not serve the objectives of zoning is an ultra vires act. We have demonstrated both hence Laurie's Mandate is Ultra Vires.

Defect 5 of 5 – Procedural Due Process Violations {Conclusion 4}

Standard of Review – Actions were not in accordance with the law per NMRA 1-074(R)(4)

In the Denial

We do not find any precedent that fits our circumstance but STATE EX REL. BATTERSHELL V. CITY OF ALBUQUERQUE, 1989-NMCA-045, 108 N.M. 658, 777 P.2d 386 (Ct. App. 1989) ('Battershell') is frequently cited to establish the minimum Procedural Due Process Requirements that must be present in some form in an administrative action. Simply stated on July 19 and July 20 2021 we received no procedural due process whatsoever and were bullied by Appellees. In the appeal we discussed the specific mechanisms of both denials **<Appeal 48:40-50:40>.** The record shows we received no notice of the basis of the Denials based in the Zoning Ordinance, we were never afforded any meaningful opportunity to respond and were in fact actively blocked from responding by Laurie and the mayor. All other expectations of discovery, review of evidence, cross examination – these were never on the table in any form, nor were civility, decency or professionalism.

The first Denial between the phone call and Laurie's email clearly established an ultimatum, constituting in our minds a complete taking of our property rights – we could not build and as the record shows, we tried multiple times that day to get her on the phone and she refused to answer or respond to voice mail requests to return our calls. And our escalation to the mayor explicitly asking how to appeal was ignored **<RP75-RP76>**.

After our second denial of our changed use-case plans there was again no notice of any specific defects, nor any opportunity given to question or appeal meaningfully. We were defeated and faced Laurie's statement of ultimatum – "if you don't do it you'll never get your fucking permit" **<Appeal 48:40-49:30>** and we submitted our third plan with Laurie's Mandated Changes July 22 2021.

It was not until after we received our approved permit on August 5 2021 that we pursued justice for ourselves. It was in this process that we discovered the rights we are now asserting. Conclusion 4 is invalid due to the extortion we experienced through Laurie's unauthorized Denial based on her illegal redefinition of the Dwelling Unit Definition and her ultra vires act to force us to comply with Laurie's Mandated Changes in order to receive our permit to cure falsely and improperly charged zoning ordinance defects which did not exist. The harm in this action occurred July 19 2021 and persists. Laurie's illegal behavior is directly responsible for our second and third permit applications and our July 16 2021 application remains unapproved. ELDORADO AT SANTA FE, INC. V. COOK, 1991-NMCA-117, 113 N.M. 33, 822 P.2d 672 (Ct. App. 1991) states the precedent for Laurie's crimes, based in their case solely on lack of proper notice: "failure to follow statutory procedures violated petitioner's due process rights and no subsequent act could correct the defect".

In the Appeal

Again following Battershell, we contend the minimum expectations of a fair hearing were not met resulting in an unfair appeal hearing in violation of our procedural due process right. We were told informally by the clerk that we would be allowed to read a written statement – so this is all we prepared for. The Zoning Ordinance section 49 covering appeals does not document any procedural expectations of the appeal hearing so we are left to consider only Battershell to indicate what should be expected as a minimum. We read Battershell to require 1) that all witnesses must be sworn; 2) that cross examination of all witnesses must be allowed; 3) that notice of the mechanisms of the appeal be provided in advance; 4) that we have the right to introduce evidence including calling witnesses; 5) the proceedings must adhere to the fundamental principles of justice and procedural due process.

All Witnesses must be sworn. Appellee's Lawyer was never sworn and we were told during the hearing by the witness that he was not a witness **<Appeal 1:13:34-1:13:52>**. However Appellee's lawyer provided false

testimony at least three times during the appeal that became part of the findings of fact which is an act of a witness.

That cross examination of all witnesses must be allowed. Under the guise of providing his ‘opinion’, Appellee’s Lawyer testified falsely that we were building a fire wall **<Appeal 54:55-55:45>**. In preventing us from objecting **<Appeal 53:30-53:36>** to or cross examining Appellee’s lawyer **<Appeal 1:15:20-1:15:40>** the appeal violates this requirement.

That notice of the mechanisms of the appeal be provided in advance. Simply put we received no formal communication documenting our rights in appeal. We were told we would only be allowed to read a written statement – and our statement was cut off before complete.

That we have the right to introduce evidence including calling witnesses. This was never offered, hence we never pursued it. We would have called the other approver in the denial, Joe Benney Building Inspector that approved our permit on July 20 **<RP48><RP87>**.

The Proceedings must adhere to the fundamental principles of justice and procedural due process. Both witnesses provided false testimony multiple times, the hearing only pursued the Zoning Denier’s testimony, never interested in the Planning side’s input (the building inspector that approved our permit), we were not even allowed to finish our testimony resulting in being forced to abbreviate our comments.

These items taken together clearly demonstrate the hearing lacked fundamental fairness resulting in our procedural due process rights being violated.

We go beyond the proven lack of procedural due process and declare Appellees to be biased in this appeal hearing. We refer to the collection of all issues previously discussed, on the record, taken together demonstrate bias per REID V. NEW MEXICO BD. OF EXMRS., 1979-NMSC-005, 92 N.M. 414, 589 P.2d 198 (S. Ct. 1979) {7} states: “The inquiry is not whether the Board members are actually biased or prejudiced, but whether, in the natural course of events, there is an indication of a possible temptation to an average man sitting as a judge to try the case with bias for or against any issue presented to him” . The indications are clear in the wanton violation of our procedural due process rights led by a professional lawyer/mayor and reliance on false testimony that we were never going to get a fair hearing and we assert the erroneous nature of the Findings of Facts **<RP81-RP83>**and its fraudulent assertions confirms this.

In the Findings of Fact

We summarize the disposition of our arguments against the Findings of Fact Document:

Finding 1, Finding 2, Finding 4(second),Finding 13, Finding 14 are factually false statements observable in the record **<RP53>**

Finding 3, Finding 4(first), Finding 7, Finding 8, Conclusion 1, Conclusion 3, Conclusion 5 are all negated due to the use of fraudulent, arbitrary assertions of unwritten requirements that were unique to our permit application, under the guise of the Zoning Authority of Appellees

Finding 5(first), conclusion 4 are negated as being ultra vires mandates placed on our plans for approval

Finding 9, Finding 10 are negated as an illegal attack on our equal protection rights and violation of state law

Finding 12 is negated along with the other statutory defects of Ordinance 21-04 rendering it invalid

Finding 5(second), Finding 6, Finding 11 we have no quarrel with as they are of no consequence.

Conclusion 2 is irrelevant since we presented no evidence that we sought to build two dwelling units.

Based on the record, substantial evidence exists that Appellees have with deliberation and purpose, repeatedly violated New Mexico State Laws and the New Mexico Constitution in the act of Denying our permit. The extent of malfeasance in these proceedings is breathtaking and requires all fraudulent evidence including everything tainted by the misrepresentations of Appellees be removed and their decision reversed. In the event the court requires a rehearing we request that it be moved to a venue external to the Village of Corrales who have proven they are biased and willing to violate New Mexico State Law in order to prevent our home from being built.

3. Statement of Relief;

We request a rapid review and determination of this case based solely on the record and that any request for hearing be denied – the record is clear and complete.

We request that the decision of Appellee Laurie Stout on July 19 2021 and affirmed October 12 2021 by Appellees The Council that declared our home non-compliant with the Corrales Zoning Ordinance be reversed and that our original plans as submitted on July 16 2021 be acknowledged as a legitimate single dwelling unit design and we be allowed to modify our home back to this intent.

We request Just Compensation in the amount of $6,500 for the costs incurred to modify our home to comply with Laurie's Mandated Changes and Just Compensation in the amount of $9,000 for the costs to be incurred to return our home to their July 16 2021 intent by removing the hallway and door of Laurie's Mandated Changes.