

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

**VILLAGE OF LOS RANCHOS DE ALBUQUERQUE,
A New Mexico Municipal Corporation,**

Petitioner,

v.

Case No.

**PALINDROME COMMUNITIES, LLC,
a Nevada limited liability company;
PALINDROME PROPERTIES GROUP, LLC,
a Nevada limited liability company;
TRAILHEAD AT CHAMIZAL, LLLP,
a New Mexico limited liability partnership,**

Respondents.

**VERIFIED COMPLAINT AND PETITION FOR A TEMPORARY RESTRAINING
ORDER, PRELIMINARY INJUNCTION, AND DECLARATORY AND INJUNCTIVE
RELIEF**

COMES NOW Petitioner Village of Los Ranchos de Albuquerque, by and through its attorneys of record, and for its Verified Complaint and Petition for a Temporary Restraining Order, Preliminary Injunction, and Declaratory and Injunctive Relief against Respondents Palindrome Communities, LLC, Palindrome Properties Group, LLC, and Trailhead at Chamizal, LLLP (“Petition”), states:

Introduction

This Petition concerns a mixed-use development known as the “Palindrome Project” located on the Southeast corner of the intersection at Osuna and Fourth Street in the Village of Los Ranchos de Albuquerque, New Mexico (“The Village”). The Palindrome Project sits within an area known as the “Village Center Zone.” The Village established a “Village Center Zone surrounding the Fourth Street/Osuna Boulevard/Chavez Road intersections” to “promote[] a more

viable commercial center for the Village while protecting the established neighborhoods abutting Fourth Street and Osuna.” Village of Los Ranchos de Albuquerque, N.M., Codified Ordinances § 9.2.14 VC. The Village and Respondent Palindrome Communities, LLC, executed a Purchase, Sale, and Development Agreement (“PSA” or “Agreement”) in which the Village agreed to bypass the ordinary process for approving plats and plans for major subdivisions by delegating decision-making authority away from the Planning and Zoning Commission (“Commission”) and the Board of Trustees (“Board”) to Village staff and without a requirement for public hearings. At the time of the Agreement, the Village owned the land, which it had acquired for an urban development project.

In September 2023, a citizen led non-profit organization called Friends of Los Ranchos (“FOLR”) filed an appeal under Rule 1-074 NMRA to the district court alleging that Petitioner’s approval of various planning and zoning decisions related to the Palindrome Project violated the Open Meetings Act (“Open Meetings Act”), NMSA 1978, §§ 10-15-1 to -4 (1974, as amended through 2013) and the Village’s ordinances. *See Friends of Los Ranchos Inc. v. Vill. of Los Ranchos de Albuquerque*, Second Judicial District Court, Case No. D-202-CV-2023-07688. On May 2, 2024, the Court, sitting as an appellate authority pursuant to Rule 1-074 NMRA, issued a Memorandum Opinion and Order (“Order”) invalidating certain approvals related to the Palindrome Project, specifically the preliminary plat, final plat, and site development plans, and further found the PSA’s approval process violated the Open Meetings Act. *See Exhibit A* (Memorandum Opinion and Order, *Friends of Los Ranchos Inc. v. Vill. of Los Ranchos de Albuquerque*, D-202-CV-2023-07688 (2d Jud. Dist. Ct. May 2, 2024)). On May 29, 2024, the Board voted at an open meeting to not appeal the Order. *See* May 29, 2024 Board Meeting Video,

Village of Los Ranchos de Albuquerque, (May 29, 2024), <https://www.youtube.com/live/t8dLrZ9zgdg>.

To date, Respondents have disregarded the district court’s binding Order (dated May 2, 2024) and the Village’s decision to not appeal the ruling by continuing to construct the Palindrome Project without a validly approved preliminary plat, final plat, and final site development plans. **Respondents, therefore, do not have legal authority to build the Palindrome Project.** Thus, the Village must pursue legal action to immediately stop the construction of the Palindrome Project until either (1) the court’s final order is reversed or (2) the Commission and Board approve the plat and plan applications pursuant to the Village’s ordinances and state statutes, including the Open Meetings Act.

Verified Facts

1. Petitioner Village of Los Ranchos de Albuquerque is a municipal corporation formed under the laws of New Mexico.
2. The Village has a Mayor-Counsel form of government with a Mayor and a Board of Trustees elected by the voters. The Governing Body of the Village is composed of the Mayor and Trustees.
3. The Board enacted an ordinance creating the Village Center Zone, Section 9.2.14 (VC). The purpose of the Village Center Zone is to “promote[] a more viable commercial center for the Village while protecting the established neighborhoods abutting Fourth Street and Osuna.” Village of Los Ranchos de Albuquerque, N.M., Codified Ordinances § 9.2.14 VC.
4. The Village Center Zone ordinance created a Village Center Project Area (which was primarily owned by the Village) within the Village Center Zone. *See id.* Inside the Project

Area the Village “may control development parameters by . . . entering into development agreements.” *Id.*

5. On October 16, 2020, The Village and Respondent Palindrome Communities, LLC. executed a development agreement referred to herein as the PSA. *See Exhibit B* (PSA).

6. The PSA identifies “Palindrome Communities, LLC, a Nevada limited liability company and its successors and assigns.” *Id.* art. 1(e), p. 6.

7. The PSA authorized the Village to sell the property it owned within the Village Center Zone to Respondent Palindrome Communities, LLC. *See id.* art. 4, p. 10.

8. The Village owned eleven (11) lots that it agreed to convey to Respondent Palindrome Communities, LLC under the conditions imposed by the PSA. *See id.* art. 1(i), p. 6.

9. The PSA further provides that the purchase price of each parcel of land is one dollar (\$1.00). *See id.* article 5.2, p. 11.

10. As a condition of the sale, Respondent Palindrome Communities, LLC is required to obtain approvals from the Planning and Zoning Director, Village Administrator and Mayor. *See id.* art. 5., p. 11.

11. The PSA requires Respondent Palindrome Communities, LLC to, “at its own cost, with the assistance of the Village, . . . re-plat the entirety of the Property to accommodate the six-Phase/six-lot Development Timeline.” *Id.* art. 3.1, p. 7. Additionally, Palindrome Communities, LLC agrees to “make such applications in conformance with Village Code and prior to the submission of any plans and specifications required by the Development Timeline.” *Id.*

12. Respondent Palindrome Communities, LLC also agrees to “at its own cost, with the assistance of the Village, . . . submit any and all design and site plans, elevations and construction

specifications to the Planning and Zoning Director and Village Administrator in accordance with Section 9.2.14 of the Village Code of Ordinances.” *Id.* art. 3.3, p. 8.

13. The parties to the PSA admit that the development of the Project Area is “in the interest of the public health, safety, morals or welfare of the residents of the Village’s jurisdiction.” *Id.* Recitals, p. 5.

14. The PSA contains a provision that waives all personal liability against Petitioner and its employees and Respondent Palindrome Communities, LLC and its employees.

Notwithstanding anything to the contrary in this Agreement, the Village, nor Village’s Parties, nor the Developer or Developer’s Parties, will be personally responsible or liable for any undertaking or agreement contained in the Agreement, and the sole right and remedy of any party will be against the other party’s interest in the Property. No party or assignee or successor thereof will seek to obtain any judgment imposing personal liability against the Village, Village’s Parties, Developer, Developer’s Parties, or their successors or assigns, not execute upon any judgment or place any lien against any property other (sic) such party’s interest in the property.

Id. art. 14.3, p. 19 (emphasis added).

15. As a condition of receiving the benefit of the PSA, Respondent Palindrome Communities, LLC promised that it

will at all times during the term of this Agreement *at their own expense*, comply with all federal, *state*, county, *municipal* and other governmental statutes, ordinances, laws, standards, provisions, rules and regulations, now or hereafter enacted or amended, affecting the Property, or occasioned by or affecting the use thereof by Developer, including but not limited to the American with Disabilities Act.

Id. art. 15.1(a), pp. 19-20 (emphasis added).

16. In the PSA the Petitioner and Respondents also agree that Respondent Palindrome Communities, LLC

will have the right to contest appropriate legal proceedings, *without cost or expense to the Village*, the validity of any law, ordinance, order, rule, regulation or requirement affecting Developer’s use and/or occupancy of the Property. If

compliance by Developer may legally be held in abeyance during the contest without subjecting the Village or Developer to any liability whatsoever for failure to comply, Developer may postpone compliance until conclusion of the proceedings.

Id., art. 15.1(b), p. 20.

17. On July 29, 2022, the P&Z Director and the Village Administrator approved Palindrome Communities, LLC's preliminary plat. *See* Exhibit A, p. 4.

18. On August 19, 2022, the Village Administrator approved Palindrome Communities, LLC's final plat. *See id.* pp. 4-5.

19. On February 15, 2023, the P&Z Commissioner and the Village Administrator approved Palindrome Communities, LLC's site development plans (SDP 23-01, SDP 23-02, and SDP 23-03). *See id.* p. 5.

20. On May 2, 2024, the district court sitting as an appellate authority found that the Village's approval of Palindrome Communities, LLC's preliminary plat, final plat, and site development plans were invalid because approval authority was delegated away from the Commission and Board and public hearings did not occur in violation of Sections 9.1.7, 9.1.8, 9.2.2 and 9.2.25 of the Village's Ordinances and the Open Meetings Act. *See id.* pp. 9-16. Specifically, the district court held:

a. "The P&Z Director and Village Administrator lacked the legal authority to approve Palindrome's preliminary plat and final plat and the approval of Palindrome's preliminary plat and final plat should have occurred in an open public meeting." *Id.* p. 9.

b. "The P&Z Director and Village Administrator lacked the legal authority to approve Palindrome's site plans and the approval of Palindrome's site plans should have occurred in an open public meeting." *Id.* p. 13.

c. “The Village improperly delegated final action to the P&Z Director and Village Administrator.” *Id.* p. 14. And,

d. “Section 9.2.14(VC) does not support a deviation from the Village Code[.]”
Id.

21. On May 10, 2024, Mayor Pro-Tem Franklin Reinow sent a letter to Respondents’ counsel, stating:

This is to advise you that based upon the ruling by Judge Barela Shepherd invalidating certain approvals for the project, the Village of Los Ranchos hereby requests that construction on the Project Site be discontinued until further written notice from the Village. For the number of days that construction is discontinued pursuant to this letter, the completion deadlines for Phases 1, 2, and 3 as set out in Exhibit B to the Development Agreement will be similarly extended.

Exhibit C (May 10, 2024 Letter from Mayor Pro-Tem Reinow to Respondents’ counsel).

22. On May 29, 2024, Palindrome Communities, LLC filed a Motion for Reconsideration pursuant to Rule 1-060 NMRA. *See Exhibit D* (Palindrome Motion for Reconsideration, *Friends of Los Ranchos Inc. v. Vill. of Los Ranchos de Albuquerque*, D-202-CV-2023-07688 (2d Jud. Dist. Ct. May 28, 2024)).

23. Also on May 29, 2024, the Board voted not to appeal the ruling in *Friends of Los Ranchos Inc. v. Vill. of Los Ranchos de Albuquerque*, Second Judicial District Court, Case No. D-202-CV-2023-07688. *See* May 29, 2024 Board Meeting Video, Village of Los Ranchos de Albuquerque, (May 29, 2024), <https://www.youtube.com/live/t8dLrZ9zgdg>.

24. On June 6, 2024, Mayor Pro-Tem Reinow sent a letter to Respondents’ counsel informing them that the Village is ready to commence the approval process for the preliminary plat, final plat, and site development plans. *See Exhibit E* (June 6, 2024 Letter from Mayor Pro-Tem Reinow to Respondents’ counsel).

25. To date, Respondents have continued to engage in construction activities on the Palindrome Project inside the Village Center Project Area. *See Exhibit F* (Affidavit of Rebecca Velarde, dated May 29, 2024).

Argument

As explained below, an immediate injunction is necessary to protect the health, welfare and safety of the residents in the Village. Respondents should not be allowed to contravene the district court's binding ruling and the Village's ordinances by continuing with construction of the Palindrome Project without a lawful approval of the preliminary plat, final plat, and site development plans. Good government dictates that the Project should be stopped while the Village undertakes its required process for the approval of plat and plans that are necessary for the completion of the Palindrome Project.

I. Respondents Are Subject To Petitioner's Planning And Zoning Authority.

"Zoning and planning constitute two different methods of control by local public bodies to assure that land use will not adversely affect the general health, safety, and public welfare." *Vill. of Los Ranchos de Albuquerque v. Shiveley*, 1989-NMCA-095, ¶ 16, 110 N.M. 15, 791 P.2d 466. New Mexico law grants municipalities the power to "adopt regulations governing the subdivision of land within the planning and platting jurisdiction of the municipality." *Id.* ("The approval of a subdivision plat is done pursuant to a municipality's planning authority."); *see* NMSA 1978, § 3-19-6(A) (1975).

By statute subdivision regulations ensure "(1) the harmonious development of the municipality and its environs; (2) the coordination of streets within the subdivision with existing or planned streets or other features of the master plan or official map of the municipality; (3) adequate open space for traffic, recreation, drainage, light and air; and (4) the distribution of

population and traffic which tend to create conditions favorable to the health, safety, convenience, prosperity or general welfare of the residents of the municipality”. NMSA 1978, §§ 3-19-6(A)(1) to (4) (1975). “In order to acquire the advantage of lot subdivision, the property owner must comply with reasonable conditions imposed by the municipality[.] Such conditions can relate to design, the dedication of land, improvements and restrictive use of the land.” *Shiveley*, 1989-NMCA-095, ¶ 16.

Additionally, New Mexico law authorizes municipalities to regulate zoning “for the purpose of promoting health, safety, morals or the general welfare.” NMSA 1978, § 3-21-1(A) (2019). This includes the ability to “regulate and restrict within its jurisdiction . . . location and use of buildings.” NMSA 1978, § 3-21-1(A)(5) (2019). Municipalities may also “regulate or restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land[.]” NMSA 1978, § 3-21-1(B)(2) (2019). “Restrictions upon the use of one’s property are imposed by state and local governments pursuant to police power. The United States Supreme Court has long held that governments may, pursuant to policy power, adopt zoning ordinances that regulate the manner in which real property may be used.” *Brazos Land, Inc. v. Bd. of Cnty. Com’rs of Rio Arriba County*, 1993-NMCA-013, ¶ 29, 115 N.M. 168, 858 P.2d 1095.

Consistent with this authority, the Village has enacted the following ordinances to regulate the development of major subdivisions like the Palindrome Project. First, Sections 9.1.7 and 9.1.8 VC set forth the procedures for the approval of preliminary and final plats for both minor and major subdivisions. The ordinances require approval by the Village’s P&Z Commission and the Board. *See, e.g.*, Village of Los Ranchos de Albuquerque, N.M., Codified Ordinances §§ 9.1.7(C)(3) VC, 9.1.8(A)(4) VC. Second, Section 9.2.2(D)(3) VC reserves to the Board “final action on applications for major subdivision approval, zoning map and code changes and site

development plans.” *Id.* § 9.2.2(D)(3) VC. Third and lastly, Section 9.2.25(E)(4)(a) VC requires Commission and Board approval for the site development plans for major subdivisions. *Id.* § 9.2.25(E)(4)(a) VC.

Therefore, the Village’s ordinances required Respondents to obtain Commission and Board approval of the plats and site development plans for the Palindrome Project *before* commencing construction. In *Friends of Los Ranchos Inc. v. Village of Los Ranchos de Albuquerque*, the court found the Village violated Sections 9.1.7, 9.1.8, 9.2.2, and 9.2.25 VC because Respondents’ preliminary plat, final plat, and site development plans were not approved by the Commission or Board at public hearings. *See* Exhibit A.

B. State Law Empowers Municipalities to Enforce Their Planning And Zoning Ordinances.

State law confers broad powers to municipalities to enforce their ordinances. For example, under NMSA 1978, Sections 3-21-10(A) and (B) (1965), a municipality “may institute *any appropriate action or proceeding*” to stop the “unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use” of any “building, structure or land,” and “restrain, correct or abate” any violations of the municipality’s ordinances. (emphasis added).

Similarly, Section 9.1.13 of the Village’s ordinances provide that,

[c]onstruction which violates any provision of this Article is strictly prohibited and no building permit shall be authorized, except in those cases where modifications or exceptions have been granted through the variance procedure by the Commission prior to start of construction. Violations without authorization by the Commission *shall be cause for legal action by the Village* to have the construction violation stopped, corrected and/or removed and a penalty assessed.

Village of Los Ranchos de Albuquerque, N.M., Codified Ordinances § 9.1.13 (emphasis added).

Thus, the Village may bring this action to stop Respondents from proceeding with construction without the lawful and valid approval of a preliminary plat, final plat, and final site plans for the Palindrome Project.

C. The *Res Judicata* Doctrine Bars Respondents From Arguing That The Preliminary Plat, Final Plat, And Final Site Plans Were Validly Issued.

Under the *res judicata* doctrine (also known as issue or claim preclusion), Respondents are precluded from relitigating whether the Village lawfully approved Respondents' preliminary plat, final plat, and site development plans for the Palindrome Project. The *res judicata* doctrine "is designed to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, prevent inconsistent decisions, and encourage reliance on an adjudication." *Computer One, Inc. v. Grisham & Lawless, P.A.*, 2008-NMSC-038, ¶ 31, 144 N.M. 424, 188 P.3d 1175 (internal citations and quotations omitted).

A party asserting *res judicata* or claim preclusion must establish that (1) there was a final judgment in an earlier action, (2) the earlier judgment was on the merits, (3) the parties in the two suits are the same, and (4) the cause of action is the same in both suits.

Potter v. Pierce, 2015-NMSC-002, ¶ 10, 342 P.3d 54. These elements are easily met in this case.

First, the Memorandum Opinion and Order in *Friends of Los Ranchos Inc. v. Village of Los Ranchos de Albuquerque* is a "final order" under Rule 1-074 NMRA. *See* Exhibit A. That Rule states, "[t]he district court, in its appellate capacity, shall issue a written decision, which may include . . . (2) reversing the decision under review, with a statement of the basis for the reversal as provided under Paragraph R of this rule[.]" Rule 1-074(T) NMRA. The Rule further provides that a party may file a "motion for rehearing . . . within ten (10) days after filing of the district court's *final order*." Rule 1-074(U) NMRA (emphasis added). Lastly, "[a]n aggrieved party may seek further review of an order or judgment of the district court in accordance with Rule 12-505

NMRA of the Rules of Appellate Procedure.” Rule 1-074(V) NMRA. Second, the Memorandum Opinion and Order was decided on the merits in accordance with the procedure laid out in Rule 1-074 NMRA. The Court’s final order “concerns the Board’s decision to uphold the approval of Palindrome’s site plans, preliminary plat, and final plat[.]” Exhibit A, p. 1. Third, the parties in this suit and in *Friends of Los Ranchos Inc. v. Village of Los Ranchos de Albuquerque* are the same because Palindrome Communities, LLC is a real party in interest in that case (and is also named here). Fourth and finally, this injunction action and the Rule 1-074 appeal in *Friends of Los Ranchos Inc. v. Village of Los Ranchos de Albuquerque* concern the same issue—whether the Village lawfully approved the Palindrome Project. For these reasons, the *res judicata* doctrine applies in this case.

Petitioner anticipates Respondents will argue that the decision in *Friends of Los Ranchos Inc. v. Village of Los Ranchos de Albuquerque* from the district court is not “final” because they have moved for reconsideration under Rule 1-060 NMRA and intend to appeal. See **Exhibit D**. This argument is unavailing because Rule 1-060(B) NMRA specifically provides that “[a] motion brought under this paragraph does not affect the finality of a judgment or suspend its operation.” Respondents may also argue that the decision is not final because they intend to appeal. This is not the law in New Mexico.

[A] judgment otherwise final remains so despite the taking of an appeal unless what is called an appeal actually consists of a trial de novo; finality is not affected by the fact that the taking of the appeal operates automatically as a stay or supersedeas of the judgment appealed from that prevents its execution or enforcement, or by the fact that the appellant has actually obtained a stay or supersedeas pending appeal.

Brunacini v. Kavanaugh, 1993-NMCA-157, ¶ 34, 117 N.M. 122, 869 P.2d 821.

A trial *de novo* and *de novo* appellate review are not the same. See e.g., *Matheny v. Clark*, No. A-1-CA-39275, 2024 WL 774634, *1, fn. 1 (Ct. App. Feb. 26, 2024) (nonprecedential)

(explaining that a “trial de novo” is a “new trial on the entire case—that is, on both questions of fact and issues of law—conducted as if there had been no trial in the first instance[.]” whereas “de novo review” is “an appeal in which the appellate court uses the trial court’s record but reviews the evidence and law without deference to the trial court’s ruling.”) (internal citations and quotations omitted). Here, the district court, sitting as an appellate authority, applied the legal standard required by Rule 1-074(R) NMRA. *See* Exhibit A, p. 7. That is,

(1) whether the Board acted fraudulently, arbitrarily, or capriciously; (2) whether based upon the whole record on appeal, the decision of the Board is supported by substantial evidence; (3) whether the action of the Board was outside the scope of its authority; or (4) whether the action of the Board was otherwise not in accordance with law.

Id. An appeal of the district court’s ruling is subject to Rule 12-505 NMRA. Under this Rule, the Court of Appeals “conducts the same review of an administrative order as the district court sitting in its appellate capacity, while at the same time determining whether the district court erred in the first appeal.” *Benms v. New Mexico Dep’t of Pub. Safety*, 2022-NMCA-050, ¶ 6, 517 P.3d 273. For appeals that involve “administrative rulings regarding statutory construction[.]” the Court of Appeals “appl[ies] a de novo standard of review.” *Id.* This analysis demonstrates that if the Court of Appeals grants Respondents’ petition for a writ of certiorari, it will not conduct a trial *de novo*.

In summary, the Order in *Friends of Los Ranchos Inc. v. Village of Los Ranchos de Albuquerque* is final for purposes of *res judicata*. Respondents’ motion for reconsideration does not alter the finality of the judgment and if they do file a petition for a writ of certiorari to the Court of Appeals, review must be granted before the merits of the appeal are reached. *See* Rule 1-060(B) NMRA. Thus, the *res judicata* doctrine precludes Respondents from arguing that the Village’s prior approvals were lawful because this issue has already been adjudicated.

Granting a temporary restraining order and/or preliminary injunction at this stage—that is, where a district court has already issued a final order pursuant to Rule 1-074 NMRA—balances the public interest in ensuring that a largescale construction project does not proceed without lawful authority (to protect the health, welfare, and safety of the community) with Respondents’ right to seek appellate review. And although appeals often take several months to years, the appellate process in this case should move more quickly because the avenue for appeal is through a petition for writ of certiorari and the public interest warrants expedited review.

Therefore, Petitioners in this case are merely asking for this Court to enjoin Respondents from engaging in construction activities on the Palindrome Project until the construction is properly approved and Open Meetings Act violations are cured or the Order is overturned on appeal.

D. This Court Should Grant A Temporary Restraining Order And Preliminary Injunction Under Rule 1-066 NMRA.

To obtain a temporary restraining order and/or preliminary injunction pursuant to Rule 1-066 NMRA, Petitioner must show that:

- (1) the plaintiff will suffer irreparable injury unless the injunction is granted;
- (2) the threatened injury outweighs any damage the injunction might cause the defendant;
- (3) issuance of the injunction will not be adverse to the public's interest;
- and (4) there is a substantial likelihood plaintiff will prevail on the merits.

Nat'l Tr. for Historic Pres. v. City of Albuquerque, 1994-NMCA-057, ¶ 21, 117 N.M. 590, 874 P.2d 798. These elements are met in this case.

First, Petitioner will be irreparably harmed if Respondents are able to continue with construction without a lawful approval. “An irreparable injury is an injury which cannot be compensated or for which compensation cannot be measured by any certain pecuniary standard.”

State ex rel. State Highway & Transp. Dep't of N.M. v. City of Sunland Park, 2000-NMCA-044, ¶

19, 129 N.M. 151, 3 P.3d 128 (internal citations and quotations omitted). “It is settled that a given piece of property is considered to be unique, and its loss is always an irreparable injury.” *Amkco, Ltd., Co. v. Welborn*, 2001-NMSC-012, ¶ 10, 130 N.M. 155, 21 P.3d 24 (internal citations and quotations omitted). Planning and zoning restrictions protect the health, welfare, and safety of the public. *Vill. of Los Ranchos de Albuquerque v. Shiveley*, 1989-NMCA-095, ¶ 16. Indeed, the Village is granted “broad power to . . . institute any appropriate action to prevent and abate violations[]” to avoid the loss of use of property. *Cerrillos Gravel Prod., Inc. v. Bd. of Cnty Com’rs of Santa Fe County*, 2005-NMSC-023, ¶ 11, 138 N.M. 126, 117 P.3d 932. If an injunction is not granted, the Village will be deprived of the opportunity to enforce its ordinance against Respondents by ensuring that the Palindrome Project is properly approved for the development of a unique property within the Village.

Second, the threatened injury to the Village far outweighs any damage the injunction may cause to Respondents. The Order in FOLR’s litigation invalidated the approval of the Palindrome Project. This means that a massive development is proceeding within the Village limits without a lawful approval. By law, the Village must re-start the approval the process because the Open Meetings Act prohibits the Village from retroactively approving the preliminary plat, final plat, and final site plans for the Palindrome Project. *New Mexico State Inv. Council v. Weinstein*, 2016-NMCA-069, ¶ 88, 382 P.3d 923 (“We also emphasize that the ratification of the settlement agreements at the May 2015 meeting does not operate retroactively to make the settlement agreements valid as of the date they were originally signed.”). This means that the Palindrome Project must be approved through the process set forth in Sections 9.1.7, 9.1.8, 9.2.2, and 9.2.25 VC if it is to be completed. If Respondents resist the Village’s efforts to comply with the district court’s Order, as they have so far, “[t]he Village has the power to pursue an action against

defendants for the alleged violations of its ordinance.” *Shiveley*, 1989-NMCA-095, ¶ 20. Moreover, the Commission and Board zoning decisions concerning the Palindrome Project may be quasi-judicial in nature, which requires impartiality to all parties who participate. *Benavidez v. Bernalillo Cnty. Bd. of Cnty. Com’rs*, 2021-NMCA-029, 493 P.3d 1024. The approval process will look like a sham if Respondents are able to continue with construction. The Village cannot rubberstamp the Palindrome Project. It must conduct a thorough review because the Project was never properly approved.

With respect to any injuries Respondents may suffer while the Village cures the Open Meetings Act violation, Respondents may appeal the district court’s Order that invalidated the approvals by seeking expedited review to the Court of Appeals—which inexplicably they have not done—and it may participate in the curing process. But more important, Palindrome has already secured the ownership and/or benefit of a multi-million-dollar parcel of property for a payment of one dollar (\$1.00) per acre, for which it has waived its ability to recover any damages from the Village. The consideration afforded to Respondents in the PSA more than compensates them for any inconvenience and delay caused by the Village’s efforts to comply with the village Ordinances and the State’s transparency laws.

Additionally, Respondents promised to comply with all state and municipal laws related to the property under development. *See* PSA Ex. B, Article 15.1, at p. 19. To the extent Respondents argue that enjoining construction is inequitable, Respondents assumed the risk of commencing with construction while FOLR’s appeal was pending. Under NMSA 1978, Section 3-21-8, Respondents had the opportunity to stay construction until the appeals resolved (“An appeal shall stay all proceedings in furtherance of the action appealed unless the officer, commission or committee from whom the appeal is taken certifies that by reason of facts stated in the certificate,

a stay would cause imminent peril of life or property.”). Respondents were required to comply with the law, including the Villages ordinances and state law (i.e., the Open Meetings Act) from the moment the PSA was executed.

Third, issuing the injunction benefits the public because it ensures the Palindrome Project is vetted through a transparent and public process that comports with the Village’s planning and zoning laws. The proper approvals are inherently necessary to protect the health, welfare, and safety of the community. Indeed, the only way to remedy the injury caused to the Village by continued construction of an unapproved project is to halt construction while the approval process proceeds. This is fair to Respondents because they can assert their right to an appeal (and seek expedited review) and participate in the curative process. Respondents will have a fair opportunity to resubmit the plats and plans that were disapproved in FOLR’s litigation against the Village. Thus, the good government approach to solving this problem is to stop construction while the approval process plays out.

Fourth, Petitioner will succeed on the merits. As explained previously, the *res judicata* doctrine applies to this case. The district court has already determined that the Village’s approval of the Palindrome Project is invalid due to the lack of authority of “staff” to approve the plats and plans and because the approvals did not occur in public hearings in violation of the Open Meetings Act. Respondents and the Village had a fair opportunity to litigate the issues in that case and lost. The Village has accepted responsibility for the error and is acting in good faith to remedy the violation. Respondents, on the other hand, are acting with defiance while they proceed with construction and delay asserting their appellate rights.

For these reasons, the Court should grant a temporary restraining order and preliminary injunction under Rule 1-066 NMRA in favor of Petitioner. The Court should also enter a

declaratory judgment finding that Respondents' continued construction of the Palindrome Project in the Village Center Zone violates the Village's Ordinances.

Respectfully submitted,

THE WARD LAW FIRM

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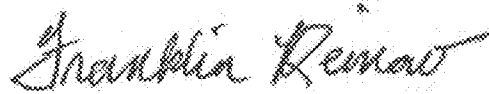
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Ranchos de Albuquerque*

VERIFICATION

I, Franklin Reinow, Mayor Pro-Tem of the Village of Los Ranchos de Albuquerque, state that I have read the foregoing Verified Petition for a Temporary Restraining Order, Preliminary Injunction, and Declaratory and Injunctive Relief against Respondents Palindrome Communities, LLC, Palindrome Properties Group, LLC, and Trailhead at Chamizal, LLLP, know the contents thereof, and affirm under penalty of perjury under the State of New Mexico that the statements therein are true and correct and to the best of my knowledge.



.....
Franklin Reinow

Certificate of Service

In accordance with Rule 1-066 NMRA, undersigned counsel certifies that, on June 6, 2024, Petitioner's counsel emailed notice of Petitioner's intent to seek a temporary restraining order to Marcus Rael, counsel of record for Respondents in *Friends of Los Ranchos Inc. v. Village of Los Ranchos de Albuquerque*, Second Judicial District Court, Case No. D-202-CV-2023-07688. Counsel for Petitioner also spoke by phone to Mr. Rael and notified him of the intent to seek a Temporary Restraining Order on June 6, 2024.

/s/ Vincent J. Ward