

**Final COPY**  
**Torrance County Board of Commissioners**  
**SPECIAL Commission Meeting**  
**July 13, 2020**  
**9:00 AM**

Commissioners Present:

**RYAN SCHWEBACH – CHAIR**  
**KEVIN MCCALL – MEMBER**

Others Present:

**WAYNE JOHNSON – COUNTY MANAGER**  
**JOHN BUTRICK – COUNTY ATTORNEY**  
**GENELL MORRIS – ADMINISTRATIVE ASSISTANT**

**1. Call Meeting to order**

**Chairman Schwebach:** Calls July 13, 2020 Special Commission Meeting to order at 9:08 AM and began Pledge of Allegiance

**2. DISCUSSION**

**Steve Guetschow – P&Z Coordinator:** Additional Exhibits were added 7 A-B-C with comment letters from Georgia Overlander, Cruz Castro and Chrisy Jackson. Exhibits by Applicant identified as exhibit #2.

**Wayne Johnson – County Manager:** Additional comment From Mr. Godet read; here to attach.

**Steve Guetschow – P&Z Coordinator:** P&Z application for a variance to setback in order to create a setback for a proposed building for less than 15ft which is the county minimum site setback requirement was approved by the board of 3 to 1. Ray Sharbutt on behalf of the Homestead Estates Homeowners Association made his application for appeal on June 18<sup>th</sup>, it has been properly published in The Independent newspaper, letters were sent to the adjoining property owners.

**Ray Sharbutt - Homestead Estates HOA President:** Sworn in by County Attorney John Butrick. Defers to Dennis Wallin.

**Dennis Wallin:** Sworn in by County Attorney John Butrick. Thank you for hearing this appeal. I think the Country has made a wrong minded decision. I gifted the property through Homestead Estates Inc, that the fire station sets on. This was done by a restrictive deed. The deed restriction states the county would comply with the Homestead Estates Covenants. The County's action in not complying will put a chilling effect on other subdivisions or other residents making gifts to the county. If, the county takes the position that it does not have to comply with the statutes

that every other citizen, governmental entity or municipalities complies with in the State of New Mexico. Let us assume that I wanted to make a gift to Torrance County, that the County has a need for a park. I am giving you the property for the park but its restricted, my gift to you is restricted by the language that this has to be used for a park. You decide no we are using it for a transfer station in that location. That will present an issue. I am against the action that the P&Z Board took: 1. It violates the restriction in the restrictive covenants by failing to take into consideration the covenants of the Homestead Estates Subdivision 2. The County failed to do the proper planning and failed to comply with its own ordinance. The Planning & Zoning Board failed to take into consideration the impact of the other properties in the areas, which it is required to do under your subdivision ordinance. Also, there is no indication on the record that the County considered water usage. Water usage is a requirement under the variance prevision in your ordinance. My brother and I developed the Homestead Estates in 1985. We put the covenants in place. Homestead Estates had the good fortune of having quality residents and you see the pride in the property. The residents have had to bear a lot in the last decade, with Pilot, parking, and traffic situation. Those of you that drive that road know exactly what I am talking about when it comes to the traffic situation. There should have been a traffic study. The County has wrapped this up with emergency services and we need that location because of emergencies on the interstate.

I have lived out here since 1981, within visual distance from I-40, I have driven that road literally twice a day 5-7 days a week. There are times we have weather emergencies and traffic backups. In that time maybe we have used an emergency shelter less than 10 times in the past 40 years.

What you have done by putting this emergency center right in the middle of the most congested area of this whole county, you have created a morass of vehicles. We already have that problem with the semi-trucks. You have created it in the driveway of the fire station and ambulance service. The very entities that need to respond to emergencies. There is not sufficient traffic planning or parking, this is the wrong location. There is plenty of good locations. I do not doubt you need a place to house the Emergency Manager and room for storage. There are better places to put it than in the driveway of the Fire Station and Ambulance service. I know there is funding available and understand the importance for governmental entities and you need to act quickly. Most times decisions made at the spur of the moment end up coming back to bit you.

The Homestead homeowners are going to talk to you about their covenants and what will be required. The subject I can talk to you about is whether or not you can comply with my deed. I am willing to litigate this matter because I think it is a hands down winner. The statute says that I can make a deed by restriction to the state or a municipality.

A municipality is defined in the municipal code to include counties. Throughout the statutes in New Mexico the term municipality is meant to apply governmental entities including counties. The site from the municipal code, Sec 3-1-2G; the definition section of the code, Municipal or Municipality means any incorporated city, town, or village. Whether incorporated under general acts, special act or special charter incorporated counties and H class counties.

I think will chill future donations to the county. I know for one that I would be hesitant, and I think it is legally wrong and think a court will agree with me. I think from you standpoint you are making a rushed to judgment in approving this. I was surprised that the board approved it. You may have questions concerning water.

**Chairman Schwebach:** You mentioned the current fire station is not abiding by the covenants?

**Dennis Wallin:** I misspoke, brief history in 2006 Joy Ansley the County Manger at the time was in need of a Fire Station for district 5. There was also discussion of having a Sheriff's substation in northern Tarrant County. Joy will confirm what I am telling you. I originally prepared a deed for the county for a fire station, because of the discussion of the Sheriff's station, Joy asked if I could change it to public service building. There was also an agreement that the county would care for the property. Its beautiful building but the weeds have not been maintained. Mr. Marcus cut the weeds on the county property and the lot adjacent to it because it was a fire hazard. The county agreed to develop a tree line, a breaker, it was planted and was never maintained most have since died. It was disappointing that the county did not take more pride in this building. When I say Homestead gifted the property, I saw a benefit to the homeowners and the value of my lots. I would do it again but not if the county takes the view that the P&Z Board took. Thank You. **Commissioner McCall:** Would you discuss the water usage.

**Dennis Wallin:** The fire station is on Homestead Water Company, which my brothers and I own, never has Homestead Water been approached, about water for this building, whether there is water available and if it can be done. I am not stating we cannot, but the county needs to comply with the counties own Ordinance. The County is in a big rush to get money, this location is inappropriate.

**John Butrick – County Attorney:** Is it your testimony that the current use is as a public service facility?

**Dennis Wallin:** I think that is a legal opinion that someone would have to give.

**John Butrick – County Attorney:** Is that your opinion?

**Dennis Wallin:** I think Fire Station is a public service. The property was meant for a fire station and a sheriff's satellite office. It was always implied it would be one building. The sheriff's office planned to be in the fire station building.

**Chairman Schwebach:** What you are testifying Mr. Wallin, is that he original deed and the gift, the intent was fire department/ sheriff's office, one building. You amended the deed to accommodate a sheriff's office which has not happened.

**Dennis Wallin:** That is correct. The sheriff's office was just in discussion.

**Commissioner McCall:** Is it a restrictive deed because in your covenants it is supposed to be residential only? Therefore, the fire station and Superior Ambulance Service is not residential?

**Dennis Wallin:** No, we went to through the process and did the re-zoning. The restrictive deed is 1. that I wanted it used for a specific purpose and 2. The Homeowners Association did not want to see any type of commercial building development on Homestead Estates, we sold the lots based on the fact that this was a residential development. I wanted the Homestead Homeowners Association to have a say and if something were to change. The county would have to comply with the covenants of the Homestead Homeowners Association. It is not difficult, you submit architectural drawings and plans, they meet on them quickly. If it is a reasonable request, they are reasonable minded people.

**Steve Guetschow – P&Z Coordinator:** Sworn in by County Attorney John Butrick. Regarding the landscape plan, I drew the one in your packet, exhibit with our application to the P&Z Board in 2011. The existing green barrier was allowed to decay. When Mr. Gastelum was Fire Marshall until 2008, he use to water the tree line. The original agreement between the County had to occur prior to that in 2005 or 2006. The trees were mostly gone, and irrigation was decayed when I drew the landscape plans. The Fire Marshall at that time was presenting the plans to the Edgewood Soil and Water Conservation District Office, in order to get some trees, they had available, unfortunately that was never followed through.

**Commissioner McCall:** I would like to see the trees replaced. Is the county on the hook for the water usage through Homestead Estates?

**Steve Guetschow – P&Z Coordinator:** Yes, it goes through a meter.

**Ray Sharbutt - Homestead Estates HOA President:** There are currently 2 trees alive 1 behind the fire station and ambulance Service. Ernest Marquez and I mowed the grass around the fire station for years, we have not mowed this year. I you would like to take a drive round the fire station you will see what needs to be done. The Ambulance service has mowed their grass this year. I was speaking with Steve and told him I had mowed the grass the last 3 years, Ernest Marquez mowed years before, I was not going to mow it and Steve made a comment that I need a vendors license to mow the grass/weeds. Ernest Marquez is the nearest neighbor and on the board of Homestead Estates for many years and has a statement.

**Ernest Marquez:** Sworn in by County Attorney John Butrick. I am the neighbor north of the Fire Station and proud of my property. The Fire station has been having issues with old furniture stacked outside for about a year, with a stove in

the back its an eye sore. I am afraid of what this new building will bring to us. Will it be another eye sore that no one cares for. I am opposed to that.

**Chairman Schwebach:** You are the president of the Homeowners Association?

**Ernest Marquez:** Not currently but have been on the board for many years.

**Ray Sharbutt - Homestead Estates HOA President:** Introduced Joel Lockwood Chairman of the Architectural Committee.

**Joel Lockwood – Chairman of the Architectural Committee:** Sworn in by County Attorney John Butrick. I have been a resident of Homestead Estates in Torrance County since 1986, a charter member of the Homeowners Association and served since the beginning as the Chairman of the Architectural Review Committee. The purpose of the Architectural Review Committee 1. We survey the subdivision and look for issues with compliance to our covenants. 2. We are the group that reviews construction projects within the subdivision. It is a requirement in our Covenants, if a property owner wished to do a construction project, before they begin, they must supply us with plans and details of that project for our review to ensure the compliance of the covenants. I sent a written request to the County Manager when I heard about this project, that we be given the plans and details so we can do our process so they can begin their process. It is my opinion, in relation to the variance, you have gotten a head of the process. The variance is necessary for your project, but it is not the first step in the process. The first step is that you should provide to us the plans and the details so we can do our assessment of compliance to the covenants. Once we do this, we send out letters stating we have reviewed your plans to be in compliant with our covenants and you are now allowed to proceed. It is in my opinion that taking the action to get this variance you have superseded the beginning steps of the process. Because of the requirement of our committee to review a compliance of our property owners to the covenants. If we do not take a step back and begin the process properly, then I may be forced to report to the Board of Directors of the Homeowners Association that you are in violation of our covenants. I would prefer to avoid that.

**John Butrick – County Attorney:** The letter we received From Mr. Sharbutt dated May 21<sup>st</sup> He wrote as President of the Board of Directors Homestead Estates Homeowners Association. He is speaking about this structure. He states, I spoke with Mr. Guetschow this afternoon and Steve said he would forward those plans to me. I have forwarded the plans for the construction to our Architectural Committee. And later in the letter states. Please inform the Planning and Zoning Commission that the plans for the Emergency Management Building are pending before the Architectural Committee of the Homeowners Association. Mr. Lockwood, did you receive those plans from Mr. Sharbutt?

**Joel Lockwood – Chairman of the Architectural Committee:** No, I did not. I do not recall seeing that letter.

**John Butrick – County Attorney:** This is a statement from Mr. Sharbutt said these plans were submitted to the Architectural Committee, the covenants of the Homeowners Association state; The Architectural Control Committee shall approve or disapprove all plans and requests within 30 days after submission. Such decision written shall be written and delivered in person or by certified mail. In the event the Architectural Committee fails to take action within 30 days, (no later than May 21<sup>st</sup>) after the request has been submitted approval will not be required and this article will have been deemed to have been fully compliant.

**Joel Lockwood – Chairman of the Architectural Committee:** That is correct, I have not received any information beyond the things that I have heard so far. We have not received the information we need to do our review.

**John Butrick – County Attorney:** It is your testimony since you have not received any plans you have not submitted a letter to the county in response to any plans?

**Joel Lockwood – Chairman of the Architectural Committee:** That is correct.

**Ray Sharbutt - Homestead Estates HOA President:** Are there any Architectural plans for the building?

**John Butrick – County Attorney:** I am speaking of the plans Mr. Guetschow provided to you and you stated in your letter you provided to the architectural plans.

**Ray Sharbutt - Homestead Estates HOA President:** Mr. Guetschow have you provided me with any architectural plans?

**Wayne Johnson – County Manager:** Sworn in by County Attorney John Butrick. There are no finished plans. That is one of the reasons why we're going forward with this process for determining whether or not we can have a variance of 15 ft. That is a material change to the plans. The countries position on this is that our zoning and even the deed restriction is in place for us to go forward with this building. What was not in place was weather not we could have a variance, expand this building by 15ft. This is the reason we began this process, prior to submitting the plans to the Architectural Control Committee because we could not create plans on a width of a building that we did not know. There are some rough sketched location on the lot, Mr. Guetschow has drawn up that we provided to Mr. Sharbutt.

**Ray Sharbutt - Homestead Estates HOA President:** Mr. Lockwood, did you receive what Mr. Johnson described?

**Joel Lockwood – Chairman of the Architectural Committee:** Yes, I did.

**Ray Sharbutt - Homestead Estates HOA President:** Mr. Lockwood, would you be able to render a decision based on what you received?

**Joel Lockwood – Chairman of the Architectural Committee:** What I received as described are initial drawings and a good description of the concept of what they intend to do. However, it is not sufficient information for our committee to review.

**Ray Sharbutt - Homestead Estates HOA President:** Mr. Lockwood, did you consider when you received those, that that was the beginning date?

**Joel Lockwood – Chairman of the Architectural Committee:** No, that was not the beginning date in my opinion and that is why I sent a letter to the County Manager asking for detailed plans. Once I received those then the 30 days would begin.

**Commissioner McCall:** Today is an appeal on the variance of the setback. I hear you but the issue is the variance.

**Ray Sharbutt - Homestead Estates HOA President:** The variance was filed with Planning & Zoning, it was not applied, thought out, or considered properly. We are asking the Board of County Commissioners to use a little common sense to apply some business sense, rule of law. Let us step back and look at this properly. Torrance County had not submitted architectural plans as Mr. Johnson said, that is the first step. Torrance County had not considered the impact of subdivision water use as Mr. Wallin said. Torrance County had not considered the impact on the environment as is required by the Torrance County Ordinances. No one has contacted the New Mexico Environment Department on the impact on water or septic system.

The initial discussion was an Emergency Management Building, then there was discussion that they wanted to bring stranded motorists into this building. There is a septic system on a 1.2-acre lot this cannot sustain 50-100 people. Torrance County has never complied with the prior agreement to maintain the green space. Ruben Gastelum planted and watered the trees. Now Torrance County is 5 years in the rears on homeowners fees and does not have a vote pursuant to bylaws of the association. They are not a member in good standing.

The Panning & Zoning Board says it does not care if Torrance County government keeps its word to the taxpayers and residents or if they follow the ordinances. They are not tasked to follow the covenants of Homestead Estates. Ordinances are the only reason Planning & Zoning exists. The Covenants belong to the owners of the lots of Homestead Estates. They are enforceable in a court of law. The Homestead Estates Homeowners have filed this appeal, 40 members past and present of the homeowners association signed the notice of appeal. Torrance County received that restrictive lot by a gift/deed from Dennis Wallin and Homestead Estates at no cost. Why not simply act in good faith in the interest of the citizens and the taxpayers of Torrance County.

**Steve Guetschow – P&Z Coordinator:** In Mr. Sharbutt comment that I had told him in order to mow that lawn he needed to get a vendors number; he had taken

that out of context. I told him if you have a vendors number then bill the county for the time spent mowing the land.

**Wayne Johnson – County Manager:** Matt Propp Emergency Manger is on the line to give an overview on this project.

**Matt Propp - Emergency Manger:** Sworn in by County Attorney John Butrick. This project fell into our laps in a hasty fashion, amidst all the current COVID issue. We are outing a lot of context on the winter storms. That is not the priority of the shelters intention. Our intention for the winter storms is to continue to build the relationship with the City of Moriarty to get shelter sites up faster.

In this current public health crisis, we were approached by the Department of Health and the state asking what we have as non-congregant sheltering in Torrance County? One of the things I wanted to point out as to why we are looking to the Northern part of the County, first every County does a (THIRA) threat hazard assessment. The biggest parts of the THIRA occurs in the northern part of the county. We do have locations in place in the southern part of the county, example the Tajique Community Center, we just recently used for shelter operations for this current wildfire. Next, we are part of a public health district including Torrance County, Edgewood and extending north. The Moriarty area sits in the middle of the public health district. I understand Santa Fe County residents do not pay into Torrance County taxes and I understand the need to do the right thing by the taxpayers. I have a priority to everyone, that's citizens of Torrance County, citizens passing through our county, anyone in our country falls into our priority. Having a site on the northern end, is what that plan is supposed to look like, when talking about the public health district.

The intention of this project was not to house 50-100 people. Our anticipation would be no more than 10 people in this shelter at a given time. We have looked at traffic plans as to how we can avoid bringing vehicles into the subdivision, possibly have people brought in by van.

When we had the last P&Z meeting, I took the concerns that the Homeowners Association and resident have and have been in discussions with Department of Health, State and up to FIMA. We are working on an agreement with FIMA to be able to purchase a building in a commercial area.

I am trying to be your advocate and trying to find a site that is beneficial for everyone. When this project was brought to us by the state, we were given a quick timeline. We looked at sites that were available for immediate use, in the event we had to do this. The only site we found was next to district 5.

I have no background in planning & zoning or in architecture. Those process are above my head. We want to be good community partners. I take pride in appearance in my department and my area.



**Ray Sharbutt - Homestead Estates HOA President:** My understanding was the discussion was the building would provide emergency shelter for 50-60 people, when did that number change?

**Matt Propp - Emergency Manger:** At that time, I was looking at worst case scenario, if we had to open the building under a crisis what would that max number look like. My realistic view is no more than 10-20 people at any given point. I do still have to maintain occupancy based on fire code and public health code. The idea being if we have to capture people quickly, we have a place.

**Ray Sharbutt - Homestead Estates HOA President:** Why is the Moriarty Civic Center not the better location?

**Matt Propp - Emergency Manger:** It is the best-case scenario; the problem is the City of Moriarty's requirement to fill all hotels before we open a shelter. A bigger issue is before we start to set up a shelter, we have to have our staff in there. We are still negotiating through those things to try and get it changed. My hope is that every party involved sees the same goal, which is to get the right things done for the community as cooperating entities. We need to have something readily available to get a few people out of the elements before we can get that shelter going.

**John Butrick – County Attorney:** In the infrequent instant that this would be use for a COVID patient and or who needs the shelter because of the travel etc., would it no longer be your office/storage space, or would you be using it at that time?

**Matt Propp - Emergency Manger:** We Would move the vehicles and trailers out of the bay areas and move over to the Civic Center. The building would be the Emergency Management Building with the capability of housing people in need. As far as COVID, we are not taking about placing symptomatic patients at this shelter. If you look at the non-congruent sheltering plan that CDC, DOH and FIMA have created, this is for people that have had an exposure that don't have a place to safely be housed or keep them out of an area that has a huge family and need a 7-14 day quarantine without putting anyone else at risk. This benefits the county as a whole, if they do not have a place to go, they will be loose and wondering the general population of Torrance County.

**Ray Sharbutt - Homestead Estates HOA President:** Helping hands day care across Hwy 41, less than ½ a mile from that site. Have you informed Jody King of your proposal?

**Matt Propp - Emergency Manger:** I have not, but we have the same individuals at Pilot and restaurants in Moriarty, we have people all over the county potentially exposed. Having people at a facility is the safest approach. Having her across Hwy 41 is no risk to that facility.

**Wayne Johnson – County Manager:** This is a very narrow quasi-judicial hearing. We are here to consider whether it is appropriate or not for the county to extend 15

ft. into the buffer. This is the variance at question. A lot of the information brought up is not pertinent to that decision.

Mr. Sharbutt and Mr. Lockwood have mentioned in their testimony that we should have gone to the Architectural Control Committee before coming to the county's Planning & Zoning for the variance. I do not think there is proper or improper way to present this. We are 2 different agencies. The Homeowners Association is a privately run entity without any statutory authority, all civil authority. We agreed on the deed restriction, to abide by the Homeowners Association rules, but to say we are in violation of the Homeowners Association by bringing this question before the Planning & Zoning Committee and appeal is inaccurate at best. The county's intent from the beginning was to determine the size of the building that would go on the lot. We are of the position and the opinion that the building itself is pre-zoned and accepted by both the Homeowners Association and the deed restriction. Only a court of law can determine whether the covenants were violated, or a deed restriction was violated. Mr. Wallin by his own admission in his earlier testimony before the Planning & Zoning Board mentioned you could determine that the language implied more than one building. He also stated that the Sheriff's Office was contemplated as part of that location, which implies because there is no room for them at the current district 5 location, either an expansion or a separate building is needed. If we are going to build a building/shelter for emergency services that would house a small amount of people. You are not looking at a large amount of traffic and it's a lower intensity use.

The covenants state only residential properties can be built within the Homestead Estates Subdivision. There are both a fire station and ambulance service that are in direct violation of the covenants, nowhere in the covenants does it state there is an exception for emergency services, or are these lots exempted from that provision. The only commercial property allowed is along Hwy 41 per there covenants. I believe there is an anti-donation problem with the county paying dues to the Homeowners Association and receiving nothing in return. We do not use the roads, we use Carl Canyon Road, this is a county maintained and owned road. I do not believe we legally can be a member of the Homeowners Association and pay dues. I think there is sufficient legal background to say that if we are not receiving something from an organization, we cannot pay them.

As for the water issue, we have not developed that because the plans have not been developed. We need the variance to plan the building to be able to provide the architectural drawings to the Architectural Control Committee so they can make determinations and/or suggestion per the Homeowners Association rules, which we fully intend to comply with. There is nowhere in statute or in Homeowners Association rules and regulations that we have to go to the association before we bring it to the governing authority. We are the regulatory authority for the land use

within Torrance County. We do not as a body or as a government control covenants. Those are private agreements between landowners that are enforced by the Homeowners Association. They chose not to enforce the provision, the provision that requires only residents or residential use within Homestead Estates Subdivision.

With regards to water, we do not know the size of the building, so we do not have a good idea of what the water requirements are. We are current with our payments to the water association. We would probably use the max amount of people to determine the water usage in worst case scenario. This would be for both the septic system and water. We would approach the water association at that time to see if they can provide water for 50-60 people over a short period of time. If that answer is no, then we will have to rethink our plans. This is all part of the process that we are walking through as county and to be good neighbors.

No, we have not contacted the environment department on this, again what size is the building?

Stranded Motorist – I do not recall in about 8 years in Bernalillo County and a 1 ½ years here, a single instance the shelter had to be activated or housing people in Torrance County. It is an infrequent event. Concerns over traffic – we do not use Homestead Estates road and the pilot is generating more traffic than we ever would even if we are sheltering. 12 empty spaces 99% of the time is not a traffic hazard. I believe Torrance County Planning & Zoning has made the right decision. They made it based upon our subdivision ordinance, need in the county, and based on the specific question on whether or not a variance will be allowed. Unfortunately, everyone in this room opposing this project, is trying to use this process to stop it. You should consider whether or not it is appropriate for the building to move into the buffer zone, and that is it. If it is inappropriate to place the shelter where we would like to place it based on demographic data access to the freeway, requirements that we do not set, that is a policy decision that is within your preview as Commissioners but isn't appropriate for this forum.

Mr. Sharbutt asked that we act in the interest of residents, I agree and believe this Commission does that on a regular basis. We also have to act based on our responsibilities as a governmental entity. Whether we like it or not or whether there are residents or not, if there are events that effect this area along the freeway during the winter and during this COVID crisis, we still have a responsibility to provide shelter and keep people safe, short term.

The way you deploy emergency equipment is to not pick the central location in the county, its to identify the location at greatest risk. Estancia, Encino, or Willard is not the place at greatest risk, it is the northern part of the county. Mr. Propp mentioned there are other opportunities and options if there is something like a fire that we are currently undergoing and still part of. We have other facilities in

different parts of the county, but the northern part has the most risk. We are still looking for a property that could be better, I do not want to build a building if we do not have to, it is cheaper and quicker to remodel. We will continue to look unless this becomes our only option.

We have to work through the process, that means their process and your process. The chilling effect – Someone wishing to give property to the county for legitimate public purposes and concerns over deed restrictions. I do not believe we would be in violation. The county is trying to follow both its own Ordinances, the process of Homestead Estates and the agreement that we made. (Regardless what your decision is here today whether to grant the variance or not, we are going to try and proceed with this project, because we believe it complies with the directive and restriction itself.) I do not want anyone thinking Torrance County will ignore its own laws or agreements.

The green space agreement to my knowledge, the county never signed a document stating we have to maintain or install it. We agreed verbally. We also intend to restore the green space. We need to be good neighbors; part of this outcry is because we have not been. Mr. Sharbutt in his appeal stated, the county is dedicated to fixing all our facilities and maintain them properly. He pointed out that I was leaving but that responsibility does not rest on one person, it rests with the Commission and the county as a whole. I believe this Commission is interested in making sure that we are good neighbors and we maintain our properties appropriately. Whether its this building or District 5. This does not have a direct bearing on if the building can invade a variance of 15 ft into the buffer zone.

Which is what you are here to decide. We have had little to none of that testimony except that it would affect the health, safety, welfare, or quality of life of any of the surrounding residents if granted the variance. How would that affect them?

We have failed to communicate with the Homeowner Association in the area. If we had more time, we could have worked better with them to get it done.

We are here today because of my commitment to follow our ordinance; with that I urge you to uphold the 4-1 decision of the Planning & Zoning Board and allow the Variance.

On a side note: We will follow the process of the Homeowners Association, we will provide the drawings as soon as they are available to us and we would ask them to fast track them and we will abide by any of the architectural control and architectural standards. Regardless of your decision today, we will move forward, replant the trees, and make sure we are mowing our own lawn instead asking the neighbor to come do it for us.

**Dennis Wallin:** I am very proud of what Wayne Johnson has done in the 1 ½ years that he has been the Torrance County Manager. This county has made great strides. Nothing I say is a reflection on Wayne Johnson.

This is all about a variance. That is what you are here for and tried to address. Here is the problem, you did not follow the process. Your ordinance says: you have to consider water usage. You take into consideration the effect on surrounding properties. That means you have to do sufficient studies for traffic, environmental, septic, that is what you would require everyone to do and the county has to do it. They did not do it. I am hearing Wayne say the county has an obligation to live up to the Restrictive Covenants, the deed, the restrictions in the deed and I appreciate that. You do not go to the document that says this only applies to residential, you go to the deed that says irrespective of that, we acknowledge we have an obligation to live up to the covenants. Look at your own ordinance as to when you can grant a variance.

**Chairman Schwebach:** At what point were you aware of the building?

**Dennis Wallin:** Notification from Planning & Zoning.

**Chairman Schwebach:** That was at the point the variance the county was applying for the 15 ft variance. Is that when you and other homeowners were made aware of that.

**Dennis Wallin:** Yes, I got appropriate notice.

**Chairman Schwebach:** Prior to that you did not have notice or were aware of the county's talks about installing a building at District 5.

**Dennis Wallin:** No

**Commissioner McCall:** What is your argument against the setback rule in this case? I am hearing that we are supposed to uphold or deny the variance in the setback rule and all I hear is were against it but what is the argument that the setback rule should not apply.

**Dennis Wallin:** When you consider a variance by the county you have certain bullet points you have to address, among those is the affect on surrounding property owners. My objection is what is going to be if you grant this variance you have to take that into consideration. That includes environmental, traffic, water usage. Your record is devoid of any traffic study, environmental study, or any water usage plan. Those are required before you grant a variance. This is not debatable as a matter of process. As far as being against or for an emergency shelter, I appreciate what Mr. Propp is doing. But I can give you the phone number of a gentleman who owns a shopping center with an empty McDonald and Subway, Charlie Bates 259-1417. I guarantee you; you will find a property in the right location that is more fit for this particular use.

**Ray Sharbutt - Homestead Estates HOA President:** September of 2006, Mr. Johnson it is not just a verbal agreement. The green space is an act of the County Commissioners and if the variance is granted it will intrude on the green space. That will be in violation of the act.

**Chairman Schwebach:** This commission is here to determine whether or not the variance for the setback of this building should be allowed to continue. Mr. Johnson in the county's line of thinking when this project started in your logical first step, would a variance be granted? We have heard Mr. Wallin speak about not looking into water use, and traffic and other studies. Was that going to be done later before this building goes up will that be done.

**Wayne Johnson – County Manager:** I believe it will have to. In our defense, we had water available on the site, now whether or not the water association proceeded and allowed us to go forward is a different issue. If they can not provide us with water than the project is done. I was not looking at that as a major impediment, till it got to that point. It was to go through to find out the scale of the building we could build. If you deny this today, we could only build a building that is 15 ft shorter. The counties position is we are complying.

**John Butrick – County Attorney:** I defer to Mr. Guetschow as the Planning & Zoning Director to speak about the ordinance and the steps and timing of when thing need to be done.

**Chairman Schwebach:** I feel my questions have been answered.

**Commissioner McCall:** I would like more elaboration to address the issue of what Mr. Wallin stated.

**Steve Guetschow – P&Z Coordinator:** Variance setback covered in Section 22 A: The zoning board may approve a variance from the strict application of area, dimension, distance, setback, off street parking, off street loading requirements of this ordinance in the case of exceptional physical conditions where the strict applications of the requirements of this ordinance would result in a practical difficult or unnecessary hardship that would deprive the owner of reasonable use land or building. B. goes through the application process. C. is the posting of signs. D. is water use. A proposed land use must comply with Section 23 pertaining to water usage. E. requirements, zoning board may impose any necessary requirements improving a variance to ensure that the requested variance 1. will cause no significant hazard, annoyance or inconvenience to the owners or occupants of nearby property and 2. Will not significantly change the character of the neighborhood or reduce the value of nearby property.

As Mr. Johnson testified Torrance County is trying to follow the law, we have to follow it just as any citizen does as Mr. Wallin stated. If this were an application for any member of the public that wanted to put a building within that 15 ft setback, they would have to do this same process of getting the county variance for a setback. That was what we have done prior to putting their building plans and applying for building permits and a land development permit. We have not gotten to that stage yet. Under the county regulations 19.F. this was to open the way for the building we want to put there. To make sure we could go with a 40 ft wide

building, this would require a 10 ft setback from the side property line and would ensure we would have more than 15 ft building separation. As a multi occupancy building, between store building and an assembly area, we have to go with the worst-case scenario. An assembly area for 300 or less people, under the Unified Building Code, you have to have 1-hour separation if you are less than 22 ft but more than 15 ft. If those buildings are closer than 10 ft than we have to raise the hour fire protection of that wall. That is what this application is about.

**Chairman Schwebach:** Is it Planning & Zoning's responsibility when the variances arise to contact the Homeowners Association or Covenants to get their prior approval for any variances?

**Steve Guetschow – P&Z Coordinator:** Any application that comes before P&Z to be decided by that board, whether is land use or subdivision regulation, the adjoining property owners and 100 ft across the road have to be notified, by ordinance. Public notice signs are posted at the property, on all public roadways and letters have to go to the adjoining property owners.

**Chairman Schwebach:** I understand what you are referring to. Is it Planning & Zoning's purpose to say, yes, the land use is appropriate, and the building is approved by an ordinance or the Homeowners Association?

**Steve Guetschow – P&Z Coordinator:** No

**Wayne Johnson – County Manager:** You have the public side of things, which we are engaged in here, which is applying the law. Then the Private side, which are the covenants, the homeowners abide by when they buy a lot. The County through Planning & Zoning, Sheriff's Office, Clerk's Office the Road Department do not enforce those. They are a private actions, that would be taken up in court. If they are wishing to enforce the covenants.

Under the previous Ordinance Section 5 Interpretation – Interpretation of Ordinance A. no structure shall be constructed placed or maintained and no land use commenced or continued within the jurisdiction of this ordinance except as authorized by this ordinance and amendments thereto the provisions of this ordinance are held to be minimum requirements to carry out the purposes of the ordinance and are not intended to interfere with any other laws Covenants or Ordinance. Whenever any provisions of this Ordinance are more or less restrictive and any other laws Covenants or Ordinance then whichever are more restrictive shall govern. However, the County shall not enforce private Covenants. Unless such private Covenants are incorporated into an approval of a subdivision by the County Commission.

**John Butrick – County Attorney:** Can you give a detailed location of where we looked at?

**Wayne Johnson – County Manager:** I do not have a list; I do not see that it has a bearing on this proceeding. That only goes as to if the Commission directed or will

direct us to proceed for this project in this location or not to. The Commission Can add it to the next agenda and direct me not to proceed with this project.

**John Butrick – County Attorney:** The Commission is not the arbiter of the deed or the HOA Covenants. The purpose of this meeting is to approve or not approve prior action of the Planning & Zoning Board approval of the Variance. The Planning & Zoning Board did their job, they reviewed that Ordinance and made a decision. The Covenants of the Homestead Estates Association do not allow anything but a residential area in the current location of the fire station?

**Ray Sharbutt - Homestead Estates HOA President:** That is not correct, the homeowners accepted the fire station and ambulance service.

**Commissioner McCall:** Did you change your covenant at that point?

**Ray Sharbutt - Homestead Estates HOA President:** They were amended this year.

**John Butrick – County Attorney:** Is there anything in those covenants that make a change or options?

**Ray Sharbutt - Homestead Estates HOA President:** There is not.

**John Butrick – County Attorney:** Is your testimony that there is no option to put anything other than a residential home on that lot?

**Ray Sharbutt - Homestead Estates HOA President:** That is correct.

**John Butrick – County Attorney:** Is your testimony by that letter of the law or the covenant. What has the county been in violation of in the Homeowners Association since 2006, when they deeded or in 2008 when the construction occurred?

**Ray Sharbutt - Homestead Estates HOA President:** There was an acquiescence by the board to both the volunteer fire department and Superior Ambulance, those were specific wavers of acquiescence. They were limited.

I am a newcomer, I moved into Homestead Estates in 2004. Mr. Lockwood moved there in 1986 after Mr. Wallin opened Homestead Estates in 1985. Mr. Lockwood is the institutional member of the association. Mr. Lockwood was present at the board of directors meeting when there was a waiver by the board on the record. I would ask Mr. Lockwood to respond to your question. We have the minutes and can provide them to you.

**Joel Lockwood – Chairman of the Architectural Committee:** At the time the fire station issue came up, there was an annual meeting where all the residents attended, and we had a quorum. There is a provision. I am unsure if having a variance to the covenants is documented. I know of at least one instance where a variance was approved. In my capacity in the Architectural Committee, we can recommend to the Board of Directors, that if someone wants to do something that is not quite in line with our covenants and therefore a variance might be appropriate. Example: at one point in time the covenants prohibited livestock



within the subdivision with the exception of 2 horses. We raised show steers for 4H and FFA projects. I went to Nick Wallin asking for a variance to the covenants, to have 2 steers in place of having 2 horses and was approved.

When the fire station came up that was also addressed by the Homeowners Association. We went through the process and was approved.

**John Butrick – County Attorney:** In article 3 Section 1,8,9,9A, and 11 of the covenants, also in Mr. Sharbutt's testimony on June 3<sup>rd</sup> before the Planning & Zoning Board, talking about the residential requirements. The Covenants provide various wavers and options to other things for instance a pre-fabrication building option in article 3 section 2. A 4H, FFA waver to what kind of animals can be on property in Article 3 section 4.

**Joel Lockwood – Chairman of the Architectural Committee:** Yes, those are partial of the recent changes made to the covenants. I am referring to back in the time frame when the fire station was being considered.

**John Butrick – County Attorney:** Your testimony would be, the county as the landowner would be under the current covenants as well?

**Joel Lockwood – Chairman of the Architectural Committee:** Yes

**John Butrick – County Attorney:** In Section 11 of article 3, there is also a waver that may be granted regarding used automobiles and vehicles of any kind. I say this to point out to the Commission that there are wavers and options and potential changes/exceptions that can be made to the covenants.

**Joel Lockwood – Chairman of the Architectural Committee:** We are in agreement.

**John Butrick – County Attorney:** There is no such waver or option or acceptance language in article 3 section 1 regarding single family residence. I want to read to you from NMSA 1978 Section 47-16-18; Enforcement of Covenants despite resolutions subsection A: Each association and each lot owner and the owners tenants, guests and invitees shall comply with the Homeowners Association Act and the association communities documents. There is no exception in there. Under your testimony, it seems to me that the testimony is that the violation was in place from the beginning from 2006 and/or 2008.

**Ray Sharbutt - Homestead Estates HOA President:** Mr. Lockwood's testimony states, there was a specific waver by the Homeowners Association during an annual meeting.

**Chairman Schwebach:** I feel I have enough information to move forward and make a decision. I have no more questions.

**Commissioner McCall:** No more questions.

### 3. APPROVALS

**PLANNING & ZONING:** Motion to approve variance to setback for Lot 14, Block 7, Phase 1 of the Homestead Estates Subdivision being 45 Carl Cannon Road.

**Chairman Schwebach:** We are here to conduct a hearing for the appeal for Planning & Zoning, we were asked to make a motion to approve variance setback of lot 14 Block 7 Phase 1 of the Homestead Estates Subdivision, 45 Carl Cannon Rd. Based on the information presented, I do believe Planning & Zoning has conducted themselves in good faith and the County of Torrance has moved forward with the decisions and the will of the Commission in a proper fashion. I make a motion to uphold the decision of Planning & Zoning.

**Commissioner McCall:** Seconds the motion. As Mr. Johnson stated he did not get direction for the Commission to look into putting the building at that location. It is important to say that this Commission can also stop it at a directive of our administration to look at other places. In today's hearing and facts, I feel Planning & Zoning Board has upheld our law and will stand behind them. In today's facts the Homeowners Association has many avenues for this project to be shut down.

**Chairman Schwebach:** I agree with what Commissioner McCall has said. I believe our Planning & Zoning Board has acted in good faith in accordance with our law. This variance is what came to the attention of the homeowners, that is when you became aware of this and did not care for it. I do not feel this hearing is the place to address it. I have learned there are several things the county needs to address; I do not like the fact that we are not considered a good neighbor or taking care of our existing properties. My intent when we were looking at this building was for the purpose, wellbeing, and safety of the citizens of this county. Today is the first day I have been made aware of some of these other concerns. If the county were not the entity that was attempting to build this building, I would make the same decision. Because we are the entity that is proposing to build this building the county needs to address whether or not we want to do this, and we cannot do this in this hearing. As Chair I will put it on the next meeting to discuss this. I will hear and listen as a Commissioner to this as an agenda item and discuss the matter. This would be the proper course of action.

There is a motion and a second, any further discussion? None

Commissioner Schwebach voters yes; Commissioner Sanchez is absent;  
Commissioner McCall votes yes; **MOTION CARRIED**

**Wayne Johnson – County Manager:** It is not my practice to not inform my Commissioners of what is going on, however for them to act as they did in a quasi-judicial manner, prohibited me from having discussion with them about the project and whether we could move forward with it. We will have it on the agenda as an approval item for the July 22<sup>nd</sup> Regular Commission Meeting. At that point, the Commission can direct us in this matter.

**Chairman Schwebach:** At this point we can now get all the information and talk to you directly, yes I was made aware that this was being appealed, I did not talk to anyone or look into this because I had to maintain the integrity of this Commission. At this point a decision had been made, we are now in the public realm as to if we should do this? The Commission may have not made the right decision in picking that piece of property, we will discuss at a later date.

**Commissioner McCall:** We were not brought up to speed because we needed an unbiased opinion. Now is time to hear the issues, I was struggling to hear the issues knowing the motion was on the setback rule. I am your Commissioner, you are my district, I will listen and in no way was going against you.

**John Butrick – County Attorney:** We want to be open with you but unfortunately, we could not for this hearing, but we can discuss this from here on out. We thank you for your time.


#### 4. Adjourn


**Chairman Schwebach:** Motions to adjourn Commission Meeting

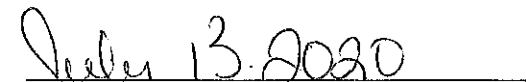
**Commissioner McCall:** Seconds the motion.

**All in favor: MOTION CARRIED**

Meeting adjourned at 11:43 AM

  
\_\_\_\_\_  
Ryan Schwebach – Chairman

  
\_\_\_\_\_  
Genell Morris – Admin Assistant

  
\_\_\_\_\_  
Date

The Video of this meeting can be viewed in its entirety on the Torrance County NM website. Audio discs of this meeting can be purchased in the Torrance County Clerk's Office and the audio of this meeting will be aired on out local radio station KXNM.