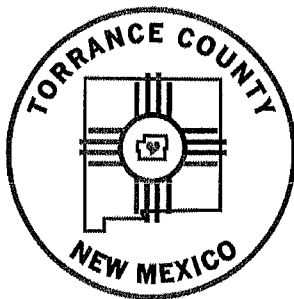


**TORRANCE COUNTY**  
**COMMISSION MEETING**  
July 13, 2020  
9:00 A.M.

**For Public View**  
**Do Not Remove**



## ***Torrance County***

BOARD OF COUNTY COMMISSIONERS (BCC)

**Ryan Schwebach**, Chair

**Kevin McCall**, District 1

**Javier Sanchez**, District 3

**Wayne Johnson**, County Manager

---

### **SPECIAL ADMINISTRATIVE MEETING AGENDA**

**WEDNESDAY, JULY 13, 2020 @ 9:00 AM**

- 1. Call to Order**
- 2. DISCUSSION**
- 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.

- 4. Adjourn**

**APPEAL  
PUBLIC HEARING  
JULY 13<sup>TH</sup>, 2020  
9:00 A.M.**

**HOMESTEAD ESTATES HOMEOWNERS ASSOCIATION  
APPEAL TO THE TORRANCE COUNTY PLANNING &  
ZONING BOARD  
APPROVAL OF A VARIANCE TO SETBACK FOR LOT 14,  
BLOCK 7, PHASE 1  
of the HOMESTEAD ESTATES SUBDIVISION BEING 45  
CARL CANNON ROAD**

# APPEAL

**HOMESTEAD ESTATES HOMEOWNERS ASSOCIATION  
APPEAL TO THE TORRANCE COUNTY PLANNING & ZONING BOARD  
APPROVAL OF A VARIANCE TO SETBACK FOR LOT 14, BLOCK 7, PHASE 1  
of the HOMESTEAD ESTATES SUBDIVISION BEING 45 CARL CANNON ROAD**

## List of Exhibits

**Appellant Exhibit 1:** Homestead Estates Appeal Application package submitted June 18, 2020.

**Staff Exhibit 1:** County application for Variance to Setback submitted to P&Z Board.

**Staff Exhibit 2:** Public Notice for June 3, 2020 P&Z Board meeting re: Variance for Setback.

**Staff Exhibit 3:** Written opposition letters received prior to P&Z Board meeting. Dennis Wallin, via email, and Ray Sharbutt, President Homestead Estates HoA.

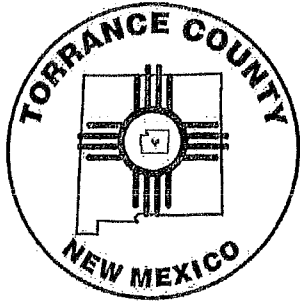
**Staff Exhibit 4:** Written opposition from Georgia Overlander, via email, received after June 3 P&Z Board meeting.

**Staff Exhibit 5:** Excerpt from the approved June 3 P&Z Board meeting minutes regarding the P&Z Boards review of the application for Variance.

**Staff Exhibit 6:** Public Notice for July 13 Special Meeting of the County Commission public hearing. Advertised in the June 26, 2020 edition of the Independent and mailings to the adjoining property owners and Homestead Estates HoA.

**APPELLANT**

**EXHIBIT 1**



TORRANCE COUNTY ZONING ACTION  
Application for Zoning Appeal

DATE RECEIVED 6-18-20  
TIME RECEIVED 9:35  
RECEIVED BY IG

Appellant: Homestead Homeowners Assn Phone 505509881

Mailing Address: P.O. Box 3773, Moriarty, NM 87035

Agent (if any): Ray Sharbutt Phone 505509881

Mailing Address: P.O. Box 3773

Reason for Appeal (Use additional sheets if necessary): See Attached  
Notice of Appeal

Signature:

Date: 6.11.2020

INSTRUCTIONS: Submit nine (9) copies of the appeal form and filing fee to the County Zoning Officer within thirty (30) days after a determination is made which is the subject of the appeal. Public Notice must be given by legal advertisement prior to the hearing. The appeal shall be decided by the Board of County Commissioners within thirty (30) days after the date of filing.

BOARD OF COUNTY COMMISSIONERS  
TORRANCE COUNTY  
ESTANCIA, NEW MEXICO

NOTICE OF APPEAL

THIS MATTER, is brought to the Board of County Commissioners, Torrance County, New Mexico, on Appeal from a Decision for Variance by the Torrance County Planning and Zoning Commission, heard in a limited public Hearing on Wednesday, June 3, 2020, at 9:30 AM, in the County Commission Chambers, Estancia, New Mexico. The P&Z Board approved the variance by a ~~3~~<sup>4</sup> for to ~~1~~<sup>1</sup> against decision. The Appeal is made by the Homestead Homeowners Association. The Board of Directors of the Homeowners Association, having attempted to oppose the actions of the Planning and Zoning Commission of Torrance County, and pursuant to Section 25, Torrance County Zoning Ordinance, Adopted by the Torrance County Board of County Commissioners, March 21, 1990, as amended May 11, 2016.

Torrance County filed a request for a variance for construction of an Emergency Management Building on Lot 14, Block 7, Homestead Estates Subdivision, May 11, 2020. County officials including Wayne Johnson, County Manager, and Matt Propp, Director of Public Health, informed the Commission that they would like to construct an Emergency Management Building with Federal Emergency Management Administration Funds for Management of the Torrance County Coronavirus vaccination and management program and for Emergency Relief in the event of severe Winter storms that resulted in the closure of Interstate 40, and left motorists stranded without shelter. The County sought a variance of the 15 foot setback from the

east property line between Lot 14 and Lot 15. There were no architectural diagrams, no engineering proposals presented by the County at the hearing. Presenting this proposal to the Planning and Zoning Commission was clearly premature. There has been no application to the HOA Architectural Committee as required by the HOA Covenants and the failure to provide architectural or engineering renderings makes a cogent consideration of the matter impossible.

The Homeowners of Homestead Estate oppose the Variance request for a number of reasons, including (1) the actions of the Torrance County Planning and Zoning Commission (hereinafter "P & Z") were an abuse of discretion, (2) the actions of the P & Z approved potential violations of the Covenants of the Homestead Estates, (3) the actions of the P & Z ignored the Rules of Parliamentary Procedure, (4) the actions of the P & Z failed to follow the evidence that was presented to the Commission, and (5) the actions of the P & Z were premature without sufficient necessary information. The decision of the P & Z was clearly in disregard of the evidence presented and showed that members were unduly influenced because the applicant was the County and the evidence was presented by the County Manager and other county employees..

The P & Z was presented with a restrictive Deed that very specifically limited the uses of the property. Homestead Estates, Inc. a New Mexico corporation had gifted Lot 14, Block 7, to Torrance County for the "limited purpose of constructing, maintaining and operating a Public Service Building facility, and for so long as Torrance County complies with the Covenants of the Homestead Estates Homeowners' Association." The Deed states that "Upon cessation as use as a Public Service Building, the land shall revert to Dennis K. Wallin, his successors or assigns. . . " At all times, pursuant hereto, the Public Service Building proposed, intended, constructed and



currently poorly maintained to deficient standards on Lot 14, Block 7, has been the Torrance County Volunteer Fire Department #5. There is no ambiguity in the use of the singular form of the word “Building” in the Deed conveying Lot 14, Block 7 to Torrance County. The fact that the County is in current violation of the Homeowners Association Covenants puts the County at risk of losing its interest in the property. It should be noted that Dennis Wallin submitted a letter to the P&Z Commission objecting to the granting of the variance on the grounds that the County had failed to maintain the property; had failed to create a “green zone” barrier between the property and adjoining residential lots; and failed to comply with the HOA covenants.

As stated, the Deed requires Torrance County comply with the Covenants of the Homestead Estates Homeowners’ Association. The Homeowners’ Association Covenants require that the owner of every lot in the subdivision must pay Annual HOA fees. Torrance County is currently five years in arrears in HOA fees and is not currently in good standing with the Homeowners’ Association. The Fire station has not maintained the grounds as required and as promised by Torrance County. Mr. Steven Guetschow, Planning & Zoning Director, provided an original plan that shows the green space that was promised to separate Volunteer Fire Station #5 from the residences in the neighborhood. Trees were initially planted, but only two trees are still alive at the Fire Station and one tree remains at Superior Ambulance. The Homeowners’ Association has mowed the fields around the Fire Station for at least the last five years, due to the County’s complete and utter disregard for its obligation to do so.

A question was raised, and acknowledged in Mr. Wallin’s letter to the Commission, that the word “facility” might mean more than one building. Mr. Wallin said in his letter, “This

variance does not comply with the covenants and, while it is arguable that a “facility” may be more than one building, I believe the former County Manager will confirm that the intent was a single building when the gift was made.” A “facility” pursuant to definition refers to “Something that is built or installed to perform a particular function.” Black’s Law Dictionary. The proposed Emergency Management Building is proposed to serve a completely separate and distinct purpose than Volunteer Fire Station #5. The County is still incorrect in trying to fit this square peg into a round hole by trying to force an Emergency Management Building into the property that was deeded to the County for the sole purpose of the Volunteer Fire Department. The Homeowners’ Association argues that the issue of whether the definition of facility may include one or more buildings is moot because the Deed is the controlling instrument in this case and the Deed specifically refers in the singular to “Building”. By trying to build a second building for a completely separate and distinct function than the original Volunteer Fire Station #5, the County is violating the Covenants of Homestead Estates and Mr. Dennis Wallin could presumably exercise the option that would cause Lot 14, Block 7 to revert to Mr. Wallin, his successors or assigns. Homestead Estates is not interested in losing the Volunteer Fire Station but would like to see Torrance County comply with the Covenants of the Homeowners’ Association, maintain Lot 14, maintain the green space and pay the homeowners fees that are currently in arrears.

The Homeowners’ Association presented the fact that it is unfair and inappropriate for Torrance County to bring a governmental building into the residential neighborhood of Homestead Estates when the Homeowners are responsible for all of the maintenance costs of the roads in the subdivision. The County representatives said that the reason that they wanted to

provide the Emergency facility for stranded motorists was because the City of Moriarty refused to open the Moriarty Civic Center until every private motel room in Moriarty was rented for the day. Chairman Ron Graham criticized the Homeowners' Association for not greeting the stranded motorists into their neighborhood to destroy the roads that they paid to maintain without saying anything about the County officials who acknowledged that one of the principle reasons for their request was because they could not successfully negotiate with officials of the City of Moriarty and it was easier to force their way into Homestead Estates. As the Board of Commissioners knows, the approval of a truck stop on Hwy. 41 by the City of Moriarty increased the traffic flow substantially in the area and has created a virtual traffic jam on Carl Cannon Road with semi-truck traffic. This has not only damaged the County road but there has been significant damages to private property along the roadway. Opening up an emergency shelter in the same area will increase traffic and cause significant property damage issues to the private property owners in the subdivision.

Torrance County Attorney Mr. John Buttrick posited that the Homeowners' Association had waived the issue of opposing the government building in the neighborhood by waiver of acquiescence in the acceptance of the Volunteer Fire Department. Several Commission members noted that Homeowners in the Homestead Estates had a separate building on their lots without acknowledging that the covenants and deeds in Homestead Estates mandated only one single family residence and permitted approved outbuildings to be built. That is not by any interpretation a "waiver of acquiescence."

The most recent New Mexico appellate court decision discussing “waiver of acquiescence” in the context of subdivision covenants is *Heltman v. Catanach*, 148 N.M. 67, 229 P.3d 1239, 2010-NMCA016. The Court stated:

New Mexico courts have also recognized that a covenant should not be enforced by one who has acquiesced in prior violations of the covenant. *See Neff v. Hendricks*, 57 N.M. 440, 442–43, 259 P.2d 1025, 1026–27 (1953) (concluding that defendants had not waived by acquiescence their right to enforce the relevant covenants since prior violations had been minor and defendants had actively sought to enforce other violations of the restrictions). Waiver by acquiescence requires “a showing that the party presently trying to enforce the covenant had previously acquiesced in a violation of the same or a different covenant on another restricted lot.” Jay M. Zitter, Annotation, *Waiver of Right to Enforce Restrictive Covenant by Failure to Object to Other Violations*, 25 A.L.R. 5th 123, § 2[a] at 144 (1994). Relevant considerations, among others, include whether the party seeking to enforce the covenant had actual or constructive knowledge of the prior violations, the magnitude of the current violation as compared to prior violations, and whether the prior violations were temporary, occasional, or permanent. *Neff*.

In this case, the Homeowners’ Association did not acquiesce, but limited the violation by requesting concessions from Torrance County, including the green space that Torrance County failed to maintain, and by requesting that both the Volunteer Fire Department and Superior Ambulance refrain from engaging their emergency lights and sirens until their vehicles had reached the intersection of State Hwy. 41. The Homeowners’ Association has been diligent in protecting the clear meaning and intent of the original covenants and as the recent amendments to the covenants show, the HOA intends to continue to enforce the covenants. “Restrictive covenants have historically been used to assure uniformity of development and use of a residential area to give the owners of lots within such an area some degree of environmental

stability.” *Heltman*. When covenant provisions are unambiguous, the district court must “enforce the expressed intentions as set forth in covenants.” *Aragon v. Brown*, 2003–NMCA–126, ¶ 11, 134 N.M. 459, 78 P.3d 913. The covenant provisions for Homestead Estates are unambiguous and must be enforced.

The Homeowners’ Association noted that the Covenants required that all construction in the Homestead Estates must be approved by the Architectural Committee of the Homestead Estates and that plans had not been submitted by the County. Sharbutt asked the Commission to consider the fact that the County was planning to build a second county building on a one-acre lot with a single 1200 gallon septic system and the fact that a one-acre lot cannot handle a septic drain field for a public defending with an anticipated capacity of forty or more people for several days. The County responded that severe winter conditions that resulted in traffic closures of Interstate 40 were rare events that seldom occurred.

The Planning and Zoning Commission acted without due process for their own rules of procedure. The Commission published an incorrect phone number for neighbors affected by the proposed Variance, and neighbors who attempted to call in on the number provided including Georgia Overlander and Cynthia Marquez were denied the opportunity to speak and make their concerns known. Ray Sharbutt, President of the Board of Homestead Homeowners’ Association was also on a line that was blocked, called the County Assessors’ office, and the blockage continued, but Sharbutt who works in Estancia made the decision to attend the Hearing in person. The line at the meeting continued to show Ms. Overlander’s presence on the phone but she was never able to make a statement.

The Commission recognized the future promises made by County Manager Wayne Johnson to maintain the landscaping that has not been maintained since the Volunteer Fire Department Building was constructed on Lot 14, Block 7. One Commission member recognized the efforts of Mr. Johnson to maintain the grounds on various County buildings, but at no time did any Commission member ever acknowledge that Mr. Johnson had already accepted a position as County Manager in Sandoval County on May 26, 2020, and would not be present to keep any of the promises that he was making to the Commission on June 3, 2020.

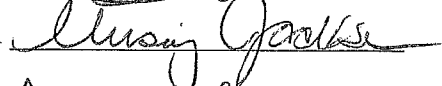
WHEREFORE, we the undersigned, interested parties, members of the Homeowners' Association, past and present, Appeal to the Board of County Commissioners of Torrance County to find an alternative location, better suited for the uses of an Emergency Management Building and not to further continue and ignore the Covenants of the Homestead Estates.

Signatures:

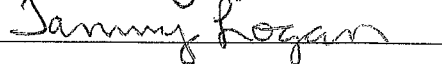
Ray Sharbutt, President Homeowners' Association



Chrissy Jackson, Secretary, Homeowners' Association



Tammy Logan, Treasurer, Homeowners' Association



Cruz Castro, Board Member, Homeowners' Association



Joel Lockwood, Architecture Committee, Homeowners' Association



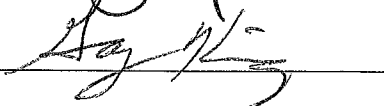
Jack Maddox, Architecture Committee, Homeowners' Association



Waylon Jackson, Past President, Homeowners' Association



Gary King, Past President, Homeowners' Association



~~Larry Sandy~~ <sup>AKS</sup> 505 33 Valley Irrigation  
~~Robert K. Smith~~ 14 Farmers Lane

~~Tom E. Christensen~~ #10 FARMERS LN.

~~Barbara Hunter~~ #10 Farmers Ln

~~Georgia Overlander~~ 06 Farmers Lane

~~Barbara DeLuxe~~ 01 Tumbleweed Drive

~~Just Herb~~

~~Pamela J Maddox~~ 5 Grubstake Ct

~~Crystal Castro~~ 17 Tumbleweed Drive

~~Jim Robinson~~ 72 Carl Cannon Ranch Dr

~~Maribeth Robinson~~ 72 Carl Cannon Ranch Rd

~~Rebecca Keeney~~ 26 Tumbleweed Dr.

~~Kyle Keeney~~ 26 Tumbleweed Dr.

~~ynthia Mays~~ 21 Valley Irrigation Rd

~~Erin Mays~~ 21 Valley Irrigation Rd

~~Barbara Juncos~~ 31 Valley Irrigation Rd

~~Bob Juncos~~ 31 Valley Irrigation Rd

Linda Baldwin 30 FARMERS LN.

Jamie Pebley 18 Farmers Ln.

Dan Pull 18 Farmers Ln.

Ashley ~~Smith~~ 28 Homestead Dr

Sharon Filledard 27 Carl Cannon Ranch

~~John Pull~~ 25 FARMERS LN

~~John Pull~~ 31 FARMERS LN

~~John Pull~~ 5 FRONTIER CT.

~~John Pull~~ 5 FRONTIER CT.

Gill Bailey 10 Fence Post

Gill Bailey 10 FENCE POST

Michael Bagrows 20 Fence Post

Jana Bagrows 20 Fence Post

~~John Pull~~ Former Member HOA

~~John Pull~~ 30 Fencepost Dr.

Elena Sharbutt 14 Turnbloomed.



**STAFF**  
**EXHIBIT 1**

Parcel ID# R002571001  
 Torrance County Planning & Zoning

**Application for Special Review and Approval**

Check One:  Establishment or Renewal of a Solid Waste District  
 Establishment of a Special Use District (\$1,500.00 filing fee)

For **Special Use** application review additional required information is described in the Torrance County Zoning Ordinance. You must submit **fifteen (15)** complete copies of your Special Use application package at the time of submission.

Modification of Land Use within a Special Use Zone District  
 \$200.00 filing fee  
 Renewable Conditional Use Permit \$200.00 filing fee  
 Variance for the Following Reason(s): \$200.00 filing fee

Please note that for a **Conditional Use Permit** or a **Variance** you must submit **ten (10)** complete copies of your application package at the time of submission.

<input type="checkbox"/> Area	<input checked="" type="checkbox"/> Setback
<input type="checkbox"/> Distance	<input type="checkbox"/> Off-Street Parking/Loading
<input type="checkbox"/> Use	<input type="checkbox"/> Dwellings per Lot
<input type="checkbox"/> Livestock Numbers	<input type="checkbox"/> Home Based Business

Applicant: TORRANCE COUNTY Telephone: 505-544-4700

Mailing Address: P.O. BOX 48 ESTANCIA, NM 87016

Agent (if any): \_\_\_\_\_ Telephone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Reason for requested Special Review and Approval (For Variances, include the exceptional conditions you believe justify the request): VARZANCE FOR SIDE SET BACK

Location of Property (Street Address and Legal Description of Property):  
45 CARL CANNON RANCH RD MORNINGTON, NM 87035 LOT 14, BLOCK 7 PHASE 1 HOMESTEAD ESTATES

Zoning of Property: RR Present Use: DIST 5 FIRE STATION

Instructions: In accordance with Section 26B and Resolution 2014-50, this application must be accompanied by the filing fee of \$200.00 (unless applying for a Special Use District). Also include 10 copies of an accurate sketch plan showing the location of the property in question; locations of structures on the property and adjoining properties; all abutting streets and alleys; proposed special exceptions; and north arrow. Please attach a copy of the Deed and Recorded Survey.

Applicant's Signature: \_\_\_\_\_

**CORRECTIVE**  
**WARRANTY DEED**



HOMESTEAD ESTATES, INC., a New Mexico corporation, whose address is Post Office Box 696, Moriarty, New Mexico 87035, for consideration paid, hereby grants and deeds to COUNTY OF TORRANCE, STATE OF NEW MEXICO, a governmental entity, all right, title and interest in the following described real estate in Torrance County, New Mexico, to wit:

Lot numbered fourteen (14) in Block numbered SEVEN (7), all in the Homestead Estates, a subdivision, as the same are shown and designated on the plat(s) of said subdivision filed in the Office of the Clerk of Torrance County, New Mexico.

For the limited purpose of constructing, maintaining and operating a Public Service Building facility, and for so long as Torrance County complies with the covenants of the Homestead Estates Homeowner's Association. Upon the cessation of use as a Public Service Building, the land shall revert to Dennis K. Wallin, his successors or assigns, or any action may be instituted for the recovery of the real estate conveyed herein pursuant to N.M.S.A. Section 47-1-47 (1978 ed.).

***THIS DEED IS RECORDED TO CORRECT AN ERROR IN THE LEGAL DESCRIPTION OF THE DEED RECORDED FEBRUARY 2, 2006 AS INSTRUMENT NUMBER 2060564 IN BOOK 308 AT PAGE 01485 IN THE RECORDS OF TORRANCE COUNTY, NEW MEXICO.***

**WITNESS** my hand and seal this 7<sup>th</sup> day of April, 2006.

  
DENNIS K. WALLIN  
Homestead Estates, Inc.

**ACKNOWLEDGEMENT**

STATE OF NEW MEXICO )  
COUNTY OF TORRANCE ) ss.

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of April, 2006 by Dennis K. Wallin.

My commission expires:

02-29-2007

  
Notary Public

State of New Mexico County of Torrance

I, hereby certify that this instrument was filed for record on 04/10/2006 A.D. at 11:10 AM and duly recorded as instrument # 2061671 in book 308 at page 04299 in the records of Torrance County, 1+ pages. Witness my hand and seal of Office, Under My Seal, County Clerk, Torrance County, N.M.

Deputy Clerk 

**Letter of Intent  
Variance to building setback  
from side boundary for proposed  
Emergency Management Shelter  
Lot 14, Block 7, Unit 1 Homestead Estates Subdivision  
Being 45 Carl Cannon Rd.**

**District Five Fire Station:** Moriarty. A lot in the Homestead Estates Subdivision fronting Carl Cannon Rd. west of the Pilot Truck Stop. Zoning is Rural Residential. A landscaped barrier between the public services buildings and the residential development is required at this location.

**Site conditions:**

Homestead Estates is an upper level residential subdivision with high property values. Conditions of approval of this site included planting a natural visual and sound reduction barrier between the fire station and ambulance station on the adjoining lot 15 from the rest of the subdivision. This barrier was once completed but was not maintained and must be replanted. A stipulation noted on the conveying document requires adherence to the Homestead Estates homeowner's association covenants in regard to lawn maintenance and solid waste accumulation. The western side of the lot adjoins a parcel on which an electrical switching station is located. The two 25' wide utility easements crossing the subject lot on the west side of the existing fire station and the location of the liquid waste system behind the fire station limit the location of the proposed shelter to the space available on the east side of the fire station. The proposed location the building and the site conditions are depicted on the landscape plan, drawn in 2013, included in this package. The surveyor's monuments found on the eastern boundary of lot 14 when the plan was drawn are now missing. The County must hire a surveyor to perform a "stake boundary" survey to replace the missing monuments to obtain more accurate dimensions of the space before planning and construction can commence. The original "to scale" landscape plan is missing and due to copier "stretch" the space dimensions cannot be accurately scaled from the plan. Field measurements to the estimated boundary location indicate the available space is sufficient for the proposed building if a non-conforming setback is approved.

**Purpose of the request:**

The Torrance County Zoning Ordinance, Section 6-J, General Provisions, Setbacks, requires front and rear building setbacks to be 25' and side setbacks to be 15' from the property line, right of way line, or roadway easement.

The proposed 40'x60' building will be oriented north to south on the narrow axis dimension. Field measurements from the estimated location of the eastern boundary of Lot 14 to the east wall of the existing structure indicate an approximate 70' dimension. A dimension of 68" was used as preliminary design safety factor for determining maximum width of the proposed building. This dimension, if correct, and a side setback is held to 10' will yield an 18' separation between the two buildings. The more restrictive occupancy based on the use is an assembly area for less than 300 people without a stage. This occupancy group requirement for a building separation of less than 20' entails utilizing a 1 hour firewall rating on the western wall of the proposed building. To achieve the highest fire safety factor for the buildings and the pedestrian walk between the buildings, the space between the buildings must be kept to greatest distance

possible. The 10' setback from the property boundary is the minimum dimension needed to avoid encroaching upon the 6' utility easement, that parallels the boundary, with the exterior concrete landings for the doorways and pads for the HVAC unit.

**Site considerations:**

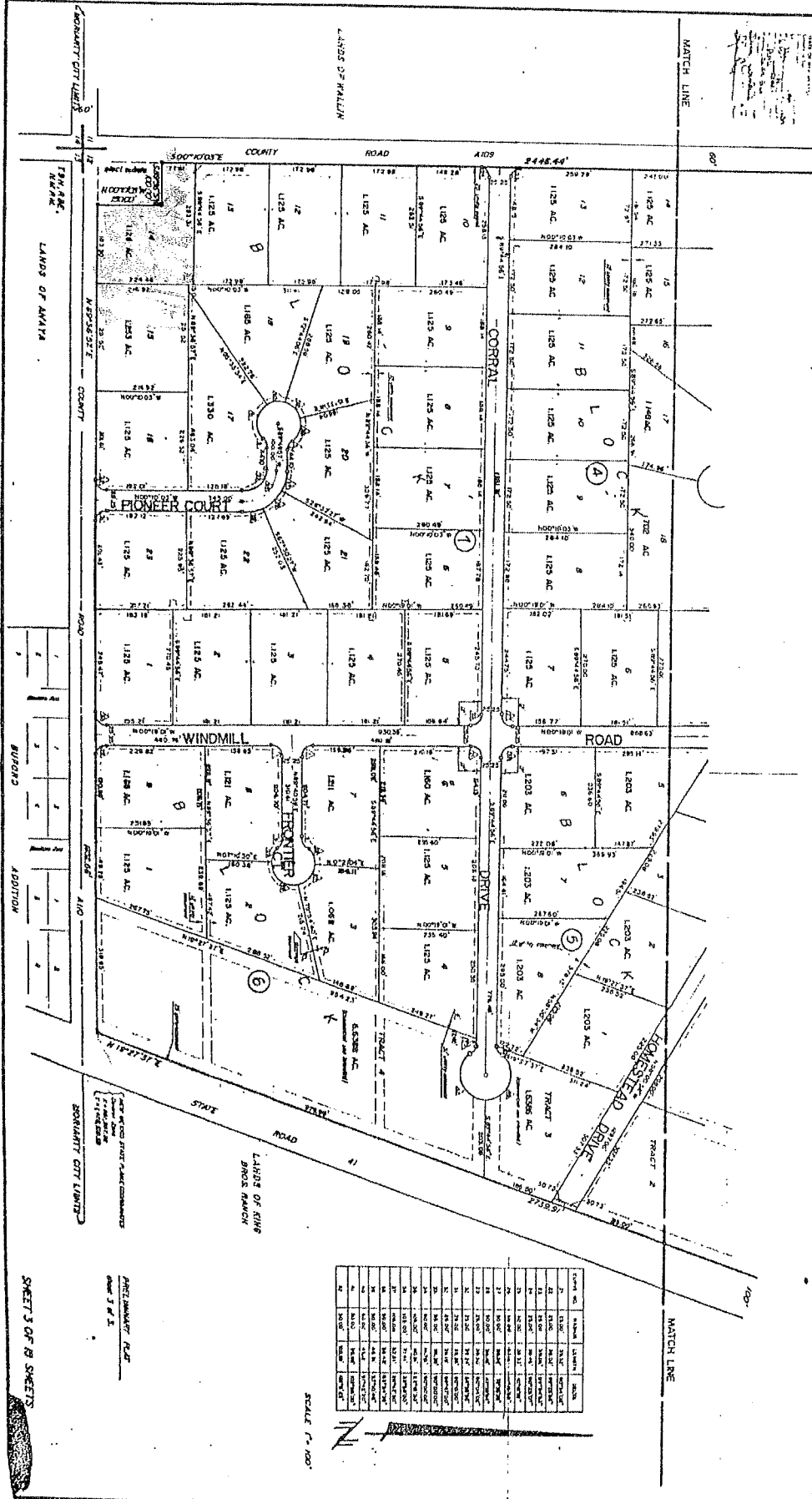
The subject parcel lies outside of the Special Flood Hazard Area, Zone "A" according to FHBM panel number 3501330001 B. Representatives of the Department of Health with whom the Torrance County Emergency Manager is working, feel this site is the optimum location for the proposed shelter due to the proximity of the ambulance service facility, fueling stations, restaurants, and Interstate 40 access. Limited off street parking will be provided at the front of the building for handicapped spaces and behind the fire station for regular parking. When the shelter facility is not activated, the building will provide storage and an office space for the emergency manager. The assembly area within the building can also be used for meetings by emergency services personnel and the Homestead Estates Home Owner's Association.

# PLAT OF THE HOMESTEAD ESTATES

A SUBDIVISION LOCATED WITHIN THE S. 1/2 OF SECTION 12, T9N, R8E  
 N.M.P.M., TORRANCE COUNTY, NEW MEXICO

**CORRECTIVE REPEAT**

RECORD NO. 100-100-100-100  
 DATE OF RECORDING: 10/10/1991  
 BY: [Name]



TRACT NO.	ACREAGE	REMARKS
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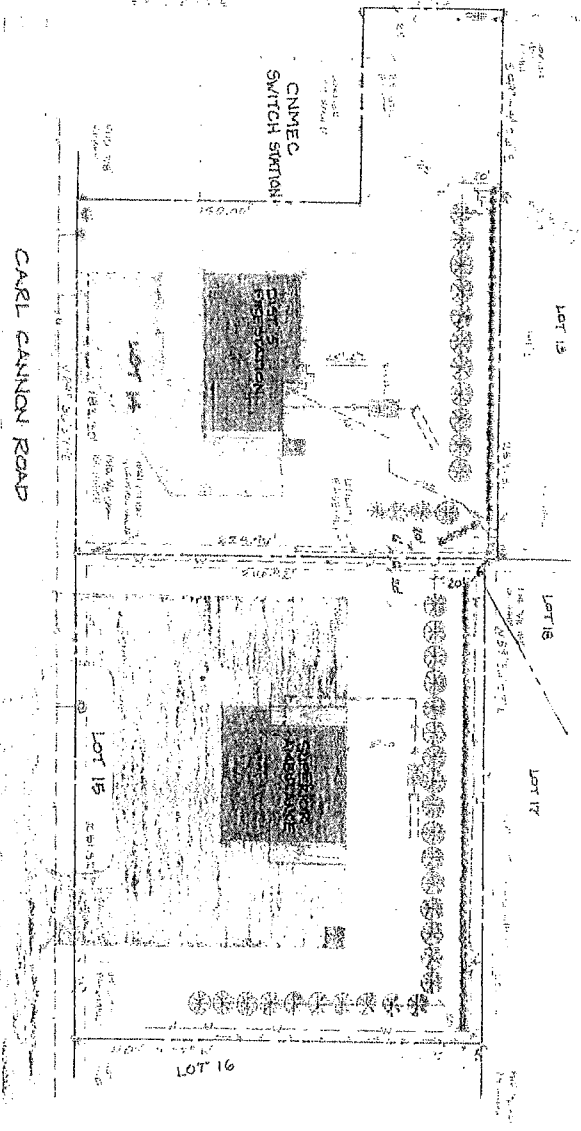
SCALE 1" = 100'

SHEET 3 OF 8 SHEETS

PREPARED BY: [Name]

DATE: 10/10/1991

VALLEY IRRIGATION ROAD



PROPOSED LANDSCAPE PLAN FOR DISTRICT FIVE FIRE STATION & SUPERIOR AMBULANCE

**KEY TO SYMBOLS**

- [R] REFRIGERATOR
- [S] TWO COMPARTMENT SINK
- [C] 24" HANDICAPPED LAVATORY
- [T] HANDICAPPED TOILET/GRAB BARS
- [W] ELECTRIC WATER HEATER
- [E] EXTERIOR CONCRETE SERVICE ENTRANCE
- [M] ELECTRICAL METER
- [F] FURNACE
- [RA] REFRIGERATED AIR UNIT

**DOOR SCHEDULE**

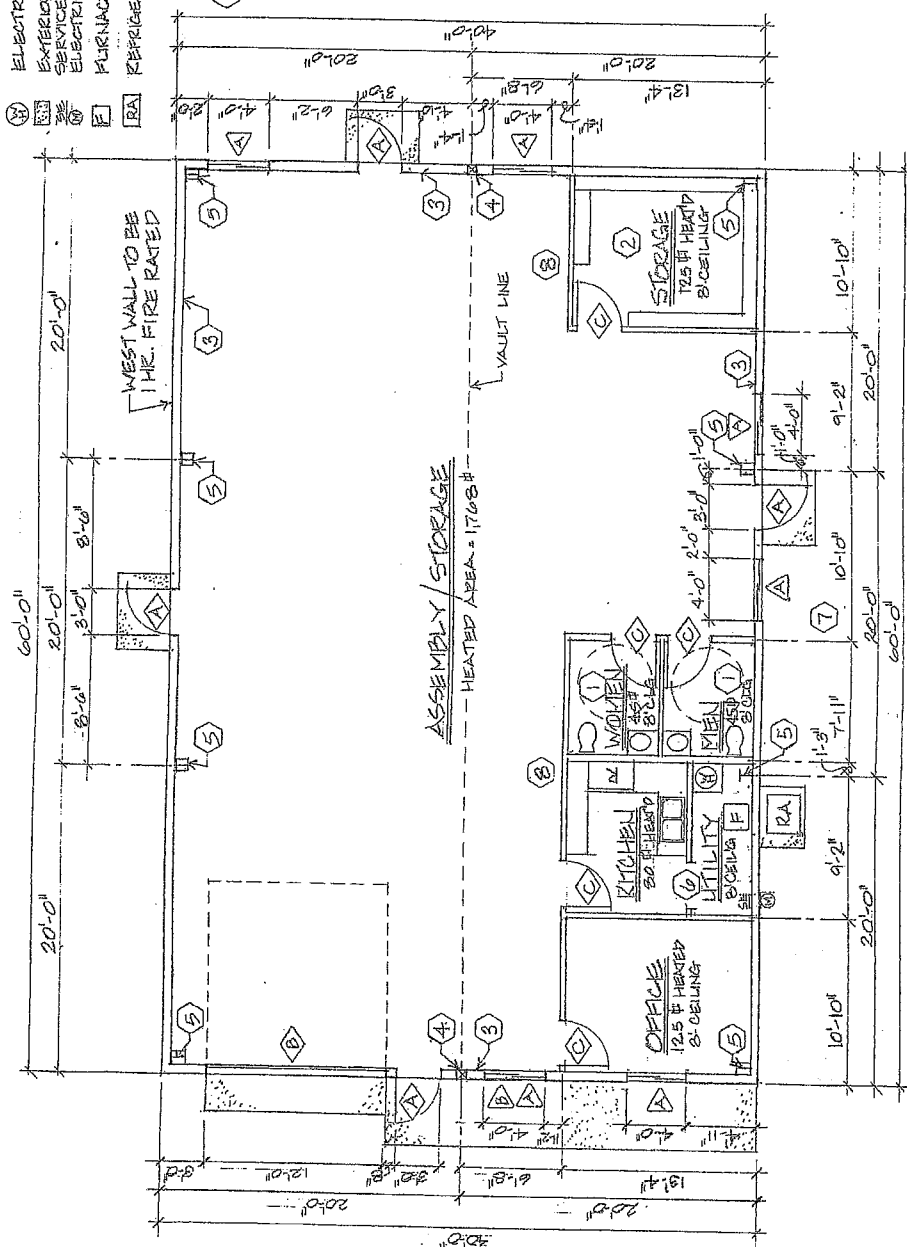
- A. 30"x80" 1 HR. METAL DOOR w/PANIC HARDWARE.
- B. 12"x12" OVERHEAD GARAGE DOOR.
- C. 36"x80" INTERIOR SOLID CORE DOOR.

**WINDOW SCHEDULE**

- A. 4'-0" HORIZONTAL SLIPER
- B. 4'-0" CLEERSTORY

**KEYED NOTES**

1. PUBLIC RESTROOM ADA COMPLIANT FIXTURES, GRAB BARS @ SIDE & BACK OF TOILET
2. DRY STORAGE AREA w/ SHELVING.
3. INTERIOR WALL SHEATHING TO 12'-0" HEIGHT
4. WIDE SPAN COLUMN - SEE STRUCTURAL DRAWINGS.
5. BEARING WALL COLUMNS - SEE STRUCTURAL DRAWINGS.
6. ELEVATE WATER HEATER ABOVE A FLOOR DRAIN. INSTALL SHUT OFF VALVES AT SUPPLY WATER LINE.
7. EAST SIDE BUILDING SETBACK 10'-0" FROM PROPERTY BOUNDARY. A 6'-0" UTILITY EASEMENT EXISTS INSIDE THE EASTERN BOUNDARY. 15'-0" MIN. BUILDING SEPARATION.
8. INTERIOR WALL FRAME 2x4 DIMENSIONAL LUMBER OR 2x6 AT PLUMBING WALLS.



**FLOOR LAYOUT** 1/2" = 1'-0"  
 NOT FOR CONSTRUCTION PURPOSES.  
 DESIGN LAYOUT ONLY.



TORRANCE COUNTY  
 EMERGENCY MANAGEMENT  
 STORAGE BUILDING & EMERGENCY SHELTER  
 LOT 14 PHASE 1 HOMESTEAD ESTATES  
 CARL CANNON RD. #45



R003676301

17-  
R002571501

27-  
R002570801

R003676401

R002571401

11  
1-047-053

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R002571301

VALLEY IRRIGATION RD

R003676501

47-

R002571001

35-

R002571101

9N8E

C002424901

45-

CARL CANNON RANCH RD

R003685801

14  
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BROADWAY AVEN

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AS CANYON DRIVEN -  
TOMESHEAD -  
U.P.D.F.

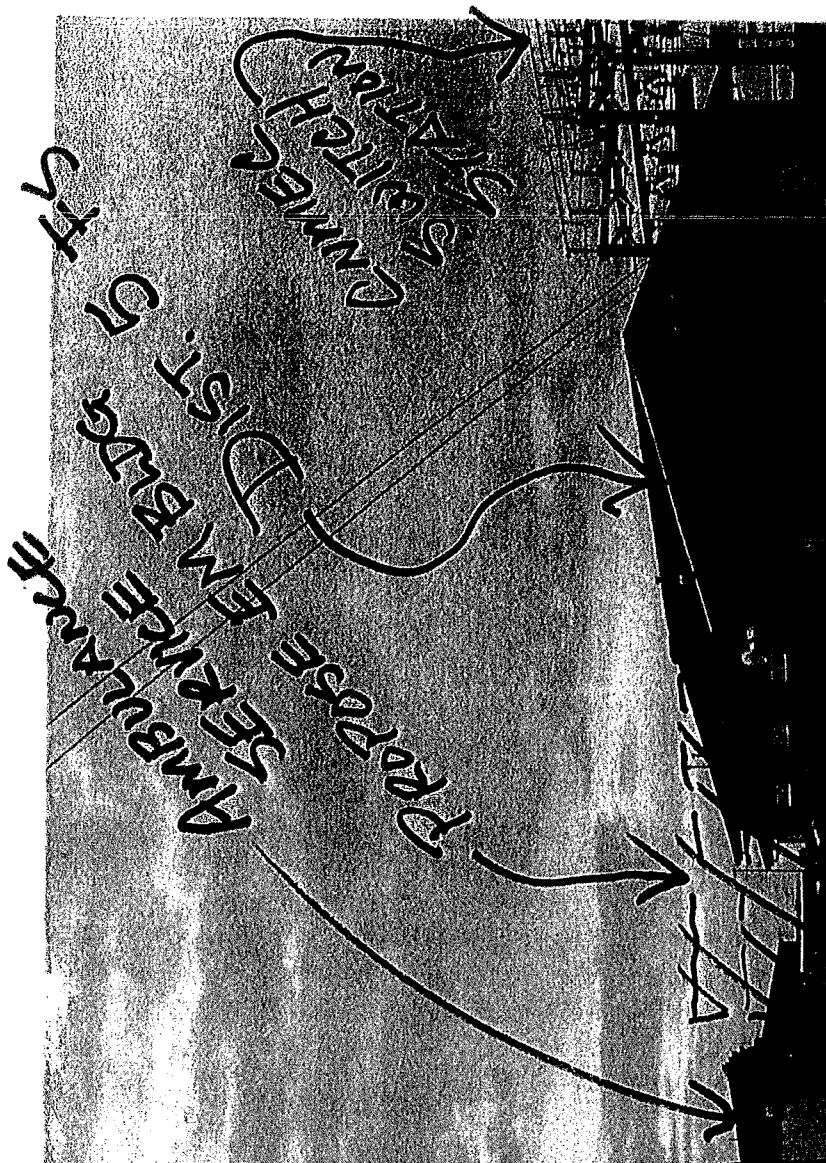
AD + UP SITE  
APPROX  
AD

PROPOSED  
10'-0" SET BACK

X X X



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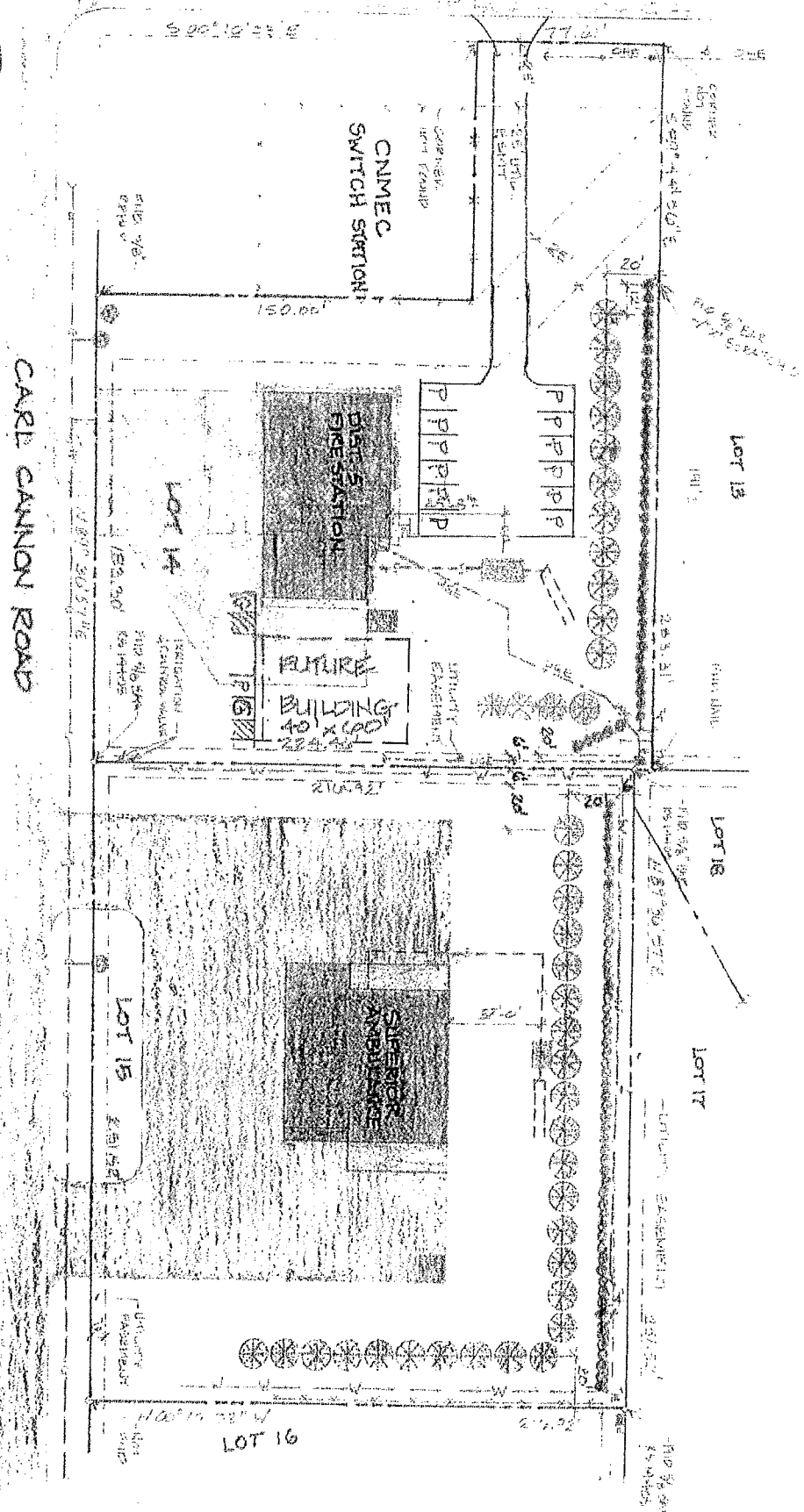


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05/11/2020 07:14

VALLEY IRRIGATION ROAD



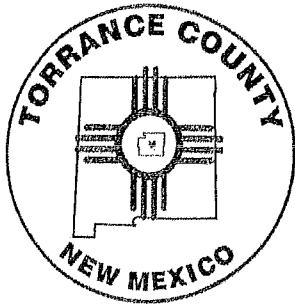
**PROPOSED LANDSCAPE PLAN FOR DISTRICT FIVE FIRE STATION & SUPERIOR AMBULANCE**

SCALE: N.T.S.

1. LILAC BUSHES - LOT 13-14  
 2. ASPEN & PINE TREES - LOT 14-15  
 3. BIRCH TREES - LOT 15-16  
 4. WATER METERS  
 5. BIRCH TREES - LOT 15-16  
 6. ASPEN  
 7. CONIFERS  
 8. PINE  
 9. BIRCH  
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 16. PINE  
 17. BIRCH  
 18. PINE

# **STAFF**

# **EXHIBIT 2**



# Torrance County

Planning & Zoning

PO Box 48

205 S 9<sup>th</sup> Street

Estancia, NM 87016

(505) 544-4391 Main Line (505) 384-5294 Fax

[www.torrancecountynm.org](http://www.torrancecountynm.org)

May 18, 2020

To whom it may concern:

This letter is to inform you that Torrance County has applied for a Variance to the county minimum 15 foot side setback regulation for a proposed Emergency Shelter to be located at the parcel addressed 45 Carl Cannon Ranch Rd., being Lot 14, Block 7, Phase 1 of the Homestead Estates Subdivision.

This action item will come before the Torrance County Planning & Zoning Board at their next meeting on June 3, 2020. The meeting will begin at 9:30 a.m. and will be held at the Torrance County Administrative Offices, 205 S 9<sup>th</sup> Street, Estancia, NM.

Please plan to attend, have a representative attend in your place, or send a letter marked Attention: Planning & Zoning Director to the above address if you would like to voice an opinion in support of or in opposition to this application.

Due to the Governor's Public Health Order the public is encouraged *not to attend* the meeting in person. The public may attend via teleconference by dialing 505-544-4339 and entering conference id 546375. Please make comment only during the comment phase of each item, see meeting format (re: items 3 and 4 appear on page 3). Please be courteous to other callers by not attempting to speak while others comment. Everyone who wishes to comment will be given the opportunity to do so.

The public may also attend via Zoom using the following information:

Torrance County is inviting you to a scheduled Zoom meeting.

Topic: Planning & Zoning Meeting

Time: Jun 3, 2020 09:30 AM Mountain Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/82381274812>

Meeting ID: 823 8127 4812

One tap mobile

+16699006833,,82381274812# US (San Jose)

+12532158782,,82381274812# US (Tacoma)

Dial by your location

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

Meeting ID: 823 8127 4812

Find your local number: <https://us02web.zoom.us/j/kdI6CiQM1e>

If you have any questions or concerns, please contact me at (505) 544-4391 or email [sguetschow@tcnm.us](mailto:sguetschow@tcnm.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Guetschow". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Steve Guetschow

Planning & Zoning Coordinator



# TORRANCE COUNTY

NOTICE OF ACTION ON LOT 14 HOME-STEAD ESTATES

FOR VARIANCE TO SETBACK FOR NEW BUILDING

THE COUNTY ZONING BOARD HAS SCHEDULED A PUBLIC MEETING ON (DATE/TIME)

JUNE 3, 2020 9:30 AM

THE COUNTY HAS SCHEDULED A PUBLIC MEETING ON (DATE/TIME)

THE COUNTY HAS SCHEDULED A PUBLIC HEARING ON (DATE/TIME)

AT THE COUNTY ADMINISTRATIVE BUILDING  
FOR INFORMATION CALL (505) 544-4391 OR FAX (505) 384-5294

THIS SIGN SHALL BE POSTED

FROM 5/11 TO 6/4

IT IS ILLEGAL FOR AN UNAUTHORIZED PERSON TO REMOVE OR TAMPER WITH THIS SIGN

*POSTED  
CALL  
CANNON RD*

*AS  
CALL  
LOT  
DIST*

05/11/2020 07:05

# TORRANCE COUNTY

NOTICE OF ACTION ON LOT 14  
HOMESTEAD ESTATES  
FOR VARIANCE TO SETBACK FOR  
NEW BUILDING

THE COUNTY ZONING BOARD HAS SCHEDULED A PUBLIC MEETING ON (DATE/TIME)  
JUNE 3, 2020 9:30 AM

THE COUNTY HAS SCHEDULED A PUBLIC MEETING ON (DATE/TIME)

THE COUNTY HAS SCHEDULED A PUBLIC HEARING ON (DATE/TIME)

AT THE COUNTY ADMINISTRATIVE BUILDING  
FOR INFORMATION CALL (505) 544-4391 OR FAX (505) 384-5294

THIS SIGN SHALL BE POSTED 05/11/2020 07/12/20  
FROM 5/11 TO 6/14

IT IS ILLEGAL FOR AN UNAUTHORIZED PERSON TO REMOVE OR TAMPER WITH THIS SIGN

*Handwritten notes:*  
- "CARRIED FORWARD" written vertically on the right side.  
- "NOTED RELOCATION" written diagonally across the middle.  
- "LOT 14" written vertically on the right side.  
- "5/11" and "6/14" written near the bottom dates.

**STAFF**  
**EXHIBIT 3**

## Steven Guetschow

---

**From:** Dennis Wallin <wallin@spencelawyers.com>  
**Sent:** Tuesday, June 2, 2020 1:03 PM  
**To:** Steven Guetschow  
**Cc:** Ray Sharbutt  
**Subject:** Torrance County request for variance at Lot 14, Blk 7, Homestead Estates

Steve – when I gifted the above lot to Torrance County for purposes of constructing a fire station, the County agreed to maintain the lot, comply with the subdivision covenants, and create a green zone between the commercial lots and the residential lots. In fact, I believe you went so far as to diagram the proposed green zone for the County, but unfortunately the County never followed through. The County has never consistently maintained the lot, allowing weeds to accumulate to the point that it has created an eyesore. This is really disappointing because the fire station is a nice looking building, but the rest of the lot has been ignored. Due to the County's failure to properly maintain the lot or create the agreed upon green zone, I want to register my objection to the lot line variance requested.

In addition, the deed contemplated only one building on the lot and required compliance with the Homestead Estates Homeowner's Association covenants. This variance does not comply with the covenants and, while it is arguable that a "facility" may be more than one building, I believe the former County Manager will confirm that the intent was a single building when the gift was made. If the County fails to consider the HOA covenants, I may consider asking the court for relief from the deed and have the property transferred back. I don't want to do this because I always believed that a fire station at that location was a benefit to the community. But I don't want the County thumbing its nose at the HOA and its obligations pursuant to the gift/deed.

I ask that you read this email into the record at tomorrow's P&Z meeting.

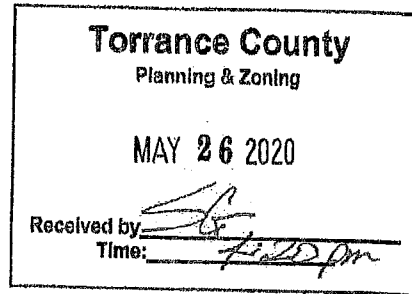
Thank you,

Dennis

**RAY SHARBUTT**  
**President, Board of Directors**  
**Homestead Estates Homeowner's Association**  
P.O. Box 3773, #14 Tumbleweed  
Moriarty, New Mexico 87035  
(505) 550 - 9881

May 21, 2020

Mr. Wayne Johnson,  
Torrance County Manager  
Mr. Steven Guetschow  
Torrance County Planning & Zoning



Mr. Johnson and Mr. Guetschow,

Last week, May 11, 2020, a sign was posted by the Planning and Zoning Department, Torrance County, at the Torrance County Volunteer Fire Department, on Carl Cannon Drive, Lot 14 Homestead Estates. I have spoken with both of you regarding the proposed Emergency Management Building that Torrance County is planning to build on Lot 14 with the Volunteer Fire Department #5.

I am attaching a copy of the Amended Covenants of Homestead Estates Homeowner's Association. The Covenants require that all structures receive approval of the Architectural Committee of the Homeowner's Association. (See Page 2, Covenants) The scheduled P & Z Commission Hearing appears to be premature because the County has not submitted plans and received approval from the Homeowner's Association Architectural Committee.

I spoke with Mr. Guetschow this afternoon and Steve said that he would forward those plans to me. I have forwarded the plans for the construction to our Architectural Committee. Also, in reviewing the past due accounts, it has come to our attention that the County is Five years in arrears in Homeowner's Fees to Homestead Estates Homeowner's Associations. We would also like to see the Volunteer Fire Department begin actively implementing a program to insure that the promised green space around Lot 14, Block 7, is properly maintained and that the grounds are kept in adherence to the Covenants of the Homeowner's Association regarding lawn maintenance and solid waste accumulation. I am attaching a copy of the Amended Covenants for your information. Please inform the Planning and Zoning Commission that the plans for the Emergency Management Building are pending before the Architectural Committee of the Homeowner's Association

  
Ray Sharbutt

THE HOMESTEAD ESTATES AMENDED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION made on the date hereinafter set forth by the  
HOMESTEAD ESTATES HOMEOWNERS ASSOCIATION, a nonprofit corporation  
hereinafter referred to as the "Declarant".

Torrance County  
Planning & Zoning  
MAY 26 2020  
Received by [Signature]  
Time: 4:20 PM

WITNESSETH:



WHEREAS, Declarant is the owner of certain property in the County of  
Torrance, state of New Mexico, which is more particularly described as:

That portion of the South one-half portion of Section 12,  
Township 9 North, Range 8 East, Torrance County New Mexico,  
which lies west of State Road No. 41, and containing 147.1382  
acres.

AND WHEREAS, Declarant will convey the said property subject to  
certain protective covenants, conditions, restrictions, liens, and charges as  
hereinafter set forth

NOW THEREFORE, Declarant hereby declares that all the properties  
described as THE HOMESTEAD ESTATES, shall be held, sold and conveyed subject to  
the following easements, reservations, restrictions, covenants, and conditions which  
are for the purpose of protecting the value and desirability of, and which shall run  
with, the real property and be binding on all parties having any right, title or interest  
in the described properties, or any part thereof, their heirs, successors and assigns,  
and shall insure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

Section 1. Properties shall mean and refer to that certain real property  
herein above described, and such additions thereto as may hereafter be brought  
within the jurisdiction of the within Declaration by action of the Declarant or by  
annexation.

Section 2. Lot shall mean and refer to any plot of land shown upon any  
recorded subdivision map (plat) of the properties.

Section 3. Owner shall mean and refer to the record owner whether one  
or more persons or entities, of a fee simple title to any Lot which is part of the  
Properties, including contract sellers, but excluding those having such interest merely  
as security for the performance of an obligation.

1 of 9 [Signature]

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ARTICLE II  
ARCHITECTURAL CONTROL

No building, fence or structure of any kind shall be erected, placed, altered or permitted to remain on any lot on the properties until the building plans specifications and plot showing the nature, kind, shape, height, materials and location of such construction have been submitted to and approved in writing as to quality of workmanship and materials, and as to the location of the building with respect to existing buildings, topography, and finished ground elevation by a committee appointed by the board of directors of the Homestead Estates Homeowner's Association in accordance with its bylaws and operating procedures.

The Architectural Control Committee shall exercise its best judgement to see that all improvements, construction, fencing, landscaping and alterations on lands within the properties conform to and harmonize with the existing surroundings and structures. Expansion of size of a dwelling unit shall be permitted when determined to be consistent with the architectural character of the community and which will not be a hazard or intrude upon the privacy of others. Under no circumstances is barbed wire or chicken wire allowed to be constructed for peripheral fencing.

The Architectural Control Committee shall approve or disapprove all plans and requests within thirty (30) days after submission. Such written decision shall be delivered in person or by certified or registered mail addressed to the party submitting the same at the address provided in the submission by that party. In the event that the Architectural Control Committee fails to take action within thirty (30) days after the requests have been submitted, approval will not be required, and this Article will be deemed to have been fully complied with. In the event that the Architectural Control Committee disapproves a plan or request, the reasons for the said disapproval shall be clearly stated in writing to the applicant. The decision of the Architectural Control Committee may be appealed by the property owner within thirty (30) days to the Board of Directors. The Board of Directors shall respond within thirty (30) days and shall be final and conclusive.

The Architectural Control Committee shall not be liable in damage to any person submitting requests for approval or to any owner within the properties by any reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such request.

2 of 9 

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All plans, specifications or plot plans, which must be submitted for approval hereunder shall be submitted to said committee at the following address.

The Homestead Estates Homeowners Association  
P.O. Box 2522  
Moriarty, NM 87035

or to such address as may hereafter be given in writing to the owners or contract purchasers by said committee.

### ARTICLE III USE RESTRICTIONS

Section 1. Single Family Residences. All the lands contained in the HOMESTEAD ESTATES, Torrance County, New Mexico, shall be used only for single family residential purposes with the exception of the property adjacent to State Road 41 designated on the plat as Tracts, 1, 1A, 2, 3, & 4 and lots 11A, 12A, 13A and 14A of Block 3. No structure shall be more than two stories in height above grade. The ground floor heating living area, exclusive of terraces, porches and garage, shall have a minimum living area of 1,200 square feet for a single story dwelling. For a two story dwelling the ground floor heated living area, as defined above, shall not be less than 750 within the entire dwelling area containing a total of not less than 1,400 square feet. All new residential construction and/or remodeling on the property shall be completed not later than eighteen months after commencement of construction. No structures of a temporary character, trailer, basements, tent, shack, garage, barn, or other out-building shall be used on any portion of the properties at any time as a residence, either temporarily, or permanently.

Section 2. Type of Construction. All dwelling units in the property shall be site built. No residential structure of any type shall be moved onto any lot within the property. No mobile homes or manufactured housing shall be permitted on the property. Any changes to dwelling units or additions of storage buildings must be submitted to the Architectural Control Committee. The committee may consider and approve a prefabricated out building if it is consistent with the architectural character of the community.

Section 3 Further Division of Property. No lot affected hereby shall be further subdivided with the exception of Tracts 1, 1A, 2, 3, and 4 immediately adjacent to State Road 41.

3 of 9 *JB*

TORRANCE COUNTY  
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Section 4 Livestock and Pets. No animals, poultry or livestock of any kinds shall be raised or bred on any of the lots, except that a property owner may have two horses or one

cow for each acre contained in his or her lot, and except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purposes. There is not sufficient grazing on any single lot to sustain any animal such as horse, cows, or goats. Sufficient supplemental feed shall be provided to such animals to sustain health. Failure to do so shall indicate noncompliance of these covenants. All animals must be fenced in the yard, kept in the home, or under the physical control of the property owner.

Waivers to this section (i.e. 4-H or FFA projects) may be granted on a case-by-case basis, according to the following procedure. Requests for waiver to this section shall be referred to the Architectural Control Committee for consideration. Such request shall include a detailed description of the proposed use of the property relating to livestock or pets. The Committee, after due consideration will make a recommendation to the Board of Directors as to whether such waiver shall be granted. Upon receiving this recommendation, the Board shall give notice to the membership of the request for waiver. If requested, the Board may call a special membership meeting for the purpose of discussing the waiver. If no requests are received within 10 days, the Board may allow or deny the request at any Board meeting.

Section 5 Signs Except as provided in paragraph B below no advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on said property, nor shall said property be used in any way or for any purpose which m endanger the health or unreasonably disturb any other lot owner or resident thereof. However, one "for sale" or "for rent" sign of not more than five foot square may be allowed per lot. This section does not apply to security monitoring signs.

Section 6 Equipment and Storage All equipment, garbage cans, service yards, or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring lot owners and streets. All rubbish, trash, or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. All woodpiles should be neatly stacked.

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Book 311 Page 3618  
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BY GENELL

Section 7 Unsightly Objects Refuse piles or other unsightly objects and material shall not be allowed to be placed or to remain upon the premises or easements. The Architectural Control Committee or designee may contact Torrance County Zoning after a written notice is provided to the owner without appropriate action.

Section 8 Commercial Enterprises

- A. The HOMESTEAD ESTATES is a residential neighborhood and not intended as a commercial area. However, home occupations that meet the requirements set forth below may be operated within the property.
1. Not more than the immediate members of a family residing on the premises shall be regularly employed at the residence.
  2. There shall be no change in the outside appearance of the building or premise nor other visible evidence of the conduct of the home based business.
  3. The use of the residence for the home based business shall be clearly incidental and subordinate to the main residential use of the property and not more than 20% of the floor area of the dwelling shall be used for the home business.
  4. No additional structures shall be required to conduct the home based business.
  5. No equipment or process shall be utilized in the home based business that interferes with the existing use of the property in the adjacent areas, nor causes a nuisance to the adjacent areas.
  6. No traffic shall be generated by the home based business in greater volumes than normally expected of a residence.
  7. Parking for any customer shall be provided off street, on the lot.
- B. No manufacturing or commercial enterprises shall be conducted or maintained upon, in front of, or in connection with any lot or lots, except for Tracts, 1, 1A, 2, 3, and 4 immediately adjacent to State Road 41 which are expressly reserved for commercial development.

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Section 9 Commercial Vehicles Except for Tracts 1, 1A, 2, 3, and 4, no commercial type vehicle and trucks shall be stored or parked on any lot except in a closed garage, except while engaged on a transport to or from residence. For the purpose of this covenant, a one ton or smaller vehicle commonly known as a pickup truck will not be deemed as a commercial vehicle.

Section 9A. Travel Trailers, Motor Homes, Boats, SUV's and RV's. Preferred method of storage is in a garage, barn, or outbuilding. If this is not possible the unit should be parked as inconspicuously on the owner's lot as possible. Parking on the road way or in front of the home is prohibited.

Section 10 Nuisances No noxious or offensive activity shall be carried out upon any lot, nor shall anything be done which may be or become an annoyance or nuisance to the neighbor.

Section 11 Used Automobiles and Vehicles of Any Kind All unused automobiles or vehicles of any kind except as herein above provided shall not be stored or parked upon any lot except in a closed garage. Unused vehicles shall not be parked upon any residential street.

Unused vehicles shall be defined as any vehicle which has not been driven under its own propulsion for one week or longer. A written notice describing unused vehicles shall be sent to owners by the Homestead Association Board or designated representative. If such vehicles have not been removed within seventy two hours, the Association will have the right to contact Torrance County Zoning and Enforcement to have vehicle removed at owner's expense.

Waivers to this section may be granted on a case by case basis, according to the following procedure. Requests for waivers to this section shall be referred to the Architectural Control Committee for consideration. Such request shall include a detailed description of the vehicle, the amount of time requested, and the reason for the request. The committee after due consideration will make a recommendation to the Board of Directors as to whether such waiver shall be granted. Upon receiving this recommendation, the Board shall give notice to the membership of the request for waiver. If requested, the Board may call a special membership meeting for the purpose of discussing the waiver. If no requests are received within ten days, the Board may allow or deny the request at any Board meeting.

Section 12. Utility Location. There is an existing CO2 pipeline crossing the northerly one-third of the subdivision. The Texas-New Mexico pipeline maintains and operates this line. Access cannot be denied on those lots which are thusly affected. Care should be taken by the homeowner when fencing his lot that a gate for access to the pipeline at points of entry and exit be provided. The pipeline company has the right to cut the fence at the homeowner's expense if a gate has not been provided for maintenance and access to the pipeline. Gates should be at least sixteen feet wide to permit entry of heavy equipment.

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ARTICLE IV  
HOMEOWNER'S ASSOCIATION

Section 1. Homeowner's Association. The owners of lots within THE HOMESTEADS ESTATES subdivision shall constitute the Homeowner's Association.

Section 2. Board of Homeowners. The Board of Directors of the Homestead Estates Homeowner's Association will act in accordance with their bylaws and regulations.

Section 3. Regular Meetings The Homestead Estates Homeowner's Association shall conduct regularly scheduled meetings to conduct business as provided in the bylaws of the association. At a minimum, the association shall have an annual meeting, the purpose of which is to air grievances by any homeowner, and to enforce these covenants.

Section 4. Maintenance of Roads. All lot owners shall be responsible for maintenance of roadways and parks within the subdivision, until formal dedication and acceptance procedures have been made with Torrance County or the City of Moriarty. Maintenance shall be on a proration basis. All maintenance costs shall be borne equally between current lot owners. It shall be the

responsibility of the Homeowner's Association to determine maintenance schedules of roadways and parks therein.

Section 5. Mandatory Membership. Ownership of a lot in THE HOMESTEAD ESTATES subdivision shall constitute mandatory membership in the Homeowner's Association with no severability allowance contained herein.

Section 6. Multiple Lots. Members who own more than one developed lot in Homestead Estates will be billed one Homeowner's Association membership fee for each developed lot. Members who own more than one undeveloped lot in Homestead Estates will not be billed a Homeowner's Association membership fee, but will be billed one road fee regardless of the number of undeveloped lots that are owned. Members who pay only one road fee will have only one vote in the Homeowners Association.

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TORRANCE COUNTY  
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BY JENSELL

ARTICLE V  
GENERAL PROVISIONS

Section 1. Modifications. These restrictions and covenants may be modified or amended by the vote of seventy-five percent (75%) of the owners of the lots in the HOMESTEAD ESTATES in good standing.

Section 2. Title other than by gift or purchase. Should any mortgage, deed of trust, or interest in a Real Estate Contract be foreclosed or otherwise terminated according to its terms on any property within THE HOMESTEAD ESTATES, the title so acquired and the person, persons, or entity who through such action becomes the owner(s) of such property, shall be subject to and be bound by all the restrictions and covenants contained herein.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by proceeding at law or in equity against any person or persons in violation thereof, to enforce the covenants, or to recover damages, or both. The Board of the HOMESTEAD ESTATES HOMEOWNERS ASSOCIATION, or the owner of any lot shall have the right to bring an action to enforce or prevent violation of these covenants and to recover damages, reasonable attorney's fees and any other costs incurred in connection therewith. Failure to enforce any covenant contained herein shall not be construed to be a waiver thereof. Any charges provided for in these covenants or incurred by the Homeowners Association pursuant to these covenants, shall constitute a lien upon the property so affected, subject to all the rights and remedies provided by law for enforcement of such liens.

Section 4. Severability. Invalidation of any one of these covenants by a court of competent jurisdiction shall in no way affect any other provisions of the covenants which shall remain in force and in effect. Acquiescence in any violation of the covenants shall not be deemed a waiver of the right to enforcement against the violator, or other, the conditions so violated or any other conditions of these covenants.

Section 5. Propose Changes. If these proposed amended covenants of THE HOMESTEAD ESTATES are approved by seventy-five (75) percent of the owners of lots in the Homestead Estates, with good standings, the amended covenants shall replace the original covenants for all purposes in the future.

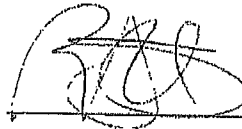
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TORRANCE COUNTY  
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BY GENELL

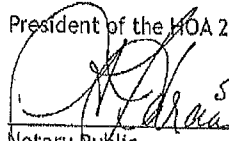
STATE OF NEW MEXICO )  
 )ss  
COUNTY OF TORRANCE )

I Chrissy Jackson, Secretary of THE HOMESTEAD ESTATES HOMEOWNERS ASSOCIATION, hereby certify that upon a ballot taken of the Homeowners Association, on October 20, 2019, of seventy-five (75) percent of the lots owners of the Homestead Estates in good standing, voted to amend the original covenants filed on record with the Clerk of Torrance County, New Mexico as provided herein.



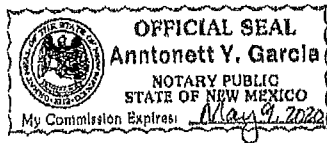
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Ray Sharbutt  
President of the HOA 2019



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Notary Public



My commission expires:  
May 9, 2020

TORRANCE COUNTY  
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10/24/2019 03:52:14 PM  
BY GENELL

**STAFF**  
**EXHIBIT 4**

## Steven Guetschow

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**From:** Georgia Overlander <go2overlander@gmail.com>  
**Sent:** Wednesday, June 3, 2020 8:26 AM  
**To:** Steven Guetschow  
**Subject:** P&Z Variance for 45 Carl Cannon Ranch Rd.

As a resident of the Homestead Estates Subdivision, I would like to submit these comments about the proposed Variance for a proposed Emergency Shelter at 45 Carl Cannon Ranch Road.

The county has not lived up to previous agreements for maintaining the grounds of the Fire Station. A line of trees was not maintained and left to die for lack of water.

The county does not maintain Carl Cannon Ranch Road. For most of the year, severe potholes exist.

State and county governments are always obtaining monies for buildings which are not maintained. The proposed building is not going to be used very often and the grounds will not be taken care of.

The septic system is small and will not be able to handle an emergency situation where many individuals inhabit the building for several days in case of a snow storm or a fire in the mountains.

In cases where the building is used for a shelter, where will vehicles be parked? The drawing only shows 12 designated parking spaces. Who will clear the lot of snow?

Georgia Overlander 505 832-4558 [go2overlander@gmail.com](mailto:go2overlander@gmail.com)



**STAFF**  
**EXHIBIT 5**

**TORRANCE COUNTY PLANNING & ZONING BOARD**

**MINUTES**

Commission Chambers Administrative Offices 205 S 9th Street Estancia New Mexico 87016

**REGULAR MEETING**

**June 3, 2020**

**ATTENDANCE**

Attendees had the option of attending in person, via teleconference call, or via Zoom video conferencing.

In attendance were: Chairman Ron Graham, Vice Chairman Harlan Lawson, Board Members Gail Langell, Catherine Lynch and Jim Frost, Alternate Board Member Art DuCharme, County Attorney John Butrick, Planning & Zoning Director Steve Guetschow, and Planning & Zoning Clerical Assistant Don Goen.

**CALL TO ORDER**

Chairman Ron Graham called the meeting to order at 9:33 a.m. The Pledge of Allegiance was recited.

**PUBLIC COMMENT**

Chairman Graham initiated the public comment phase explaining the 2 minute time limitations. Mr. Guetschow explained that no one had signed up.

**APPROVAL OF AGENDA**

Chairman Graham presented the meeting agenda and asked for a motion to approve the agenda. Mrs. Langell and Mrs. Lynch made a motion to approve. Mr. Frost seconded.

County Attorney John Butrick reminded Mr. Graham to perform a roll call vote.

Chairman Graham began the roll call vote with Gail Langell: Aye, Jim Frost: Aye, Catherine Lynch: Aye, Harlan Lawson: Aye, Chairman Graham: Aye. All in favor. Motion carried.

**APPROVAL OF MINUTES**

Chairman Graham presented the minutes of the May 6, 2020 Planning & Zoning Board Meeting. Mrs. Lynch made a motion to approve the minutes of the May 6, 2020 meeting, Mr. Lawson seconded.

Chairman Graham began the roll call vote with Gail Langell: Aye, Jim Frost: Aye, Catherine Lynch: Aye, Harlan Lawson: Aye, Chairman Graham: Aye. All in favor. Motion carried.

## Action Items:

### 1. Variance for Set Back

Applicant: Dusty & Andrea Dennisson  
Agent: Self  
Site: A Certain Tract of Land known as "PLAYGROUND" in NE4, NE4, NE4 of Section 10, T.7N., R.8E., NMPM Antelope Springs Ranches Plat of said subdivision part insert "A" recorded on Jan 27, 1961 known as 5 Buck Rd  
Zone: Preplatted Lands District (PL1)

**Chairman Graham** introduced the item. **Mr. Guetschow** explained that Action Items 1 & 2, the first being a Variance for Set Back, the second a Conditional Use Permit, have similar documentation so the Board may want to hear both at the same time and then make separate motions on each item. The **Board** approved the recommendation. **Mr. Dustin Dennisson** and **Mrs. Andrea Dennisson** came forward and were sworn. **Mr. Dennisson** explained that they had received a Notice of Violation for operating a commercial business in a residential zone, building set back, and not obtaining a land development permit. The applications today were part of the process to become compliant with current Ordinance. The business had been operating at this location since 2003. He explained the history, purpose, and location of the building which had been erected on the property line. The building provided secure storage for small equipment. Usually there were no employees at the site but materials and equipment were stored there. They made an effort to keep the site clean and organized. He requested a variance for setback for the building and a Conditional Use for continued operation of the business at the present location. **Chairman Graham** asked for comments in favor of, or opposition to the item. Hearing none he asked Staff for comment. **Mr. Guetschow** explained that the applications were included in the package. He referred to photo one which showed that public notice had been posted at the site. He referred to photo two which showed from the north/south road, the view of Buck Road. The location was part of the Antelope Springs subdivision. Buck Road was not kept up beyond the Dennisson property and was a right of way. The photos showed that as Mr. Dennisson testified, the site was clean and orderly. Photo two also showed the neighbor's house to the west of the site and this was about where Buck Road ended. The next photo showed the building in question that was erected on the property line without a building permit. This was the building the required the variance for setback. If the Variance was granted a Land Development permit would be necessary to complete that section of the Notice of Violation. The development permit could not be processed without the Board first granting a variance. Without the variance the building would have to be moved and as was shown in the photos the building was on a slab. Having to move the building would impose a burden on the Dennisson's. Given the population base and the use of the road from neighboring properties he felt granting the variance would be appropriate. **Mrs. Dennisson** explained that the neighbor's house in the previous photo was vacant. **Chairman Graham** asked the Board for questions or comments. **Chairman Graham** asked how far the road was from the property line. **Mr. Guetschow** explained that he thought the right of way was fifty feet and that their property line was the edge of the right of way. It was not an easement where the property line would be the middle of the road way.

**Mrs. Langell** asked how far the setback was supposed to be. **Mr. Guetschow** explained that as Buck Road was the front of the property per ordinance the setback was twenty five feet. Per County ordinance set back from front and back was twenty five feet minimum and fifteen feet minimum from the side. **Mr. Lawson** asked when Buck Road became a County road. **Mr. Dennisson** explained that to his knowledge it was not a county road and was not maintained by the County. **Mr. Guetschow** explained that it was not a County maintained road. **Mr. Lawson** asked if it was not a County road why the setback would apply. **Mr. Guetschow** explained that the right of way was granted by the plat of record for the Antelope Springs subdivision and that it made no difference whether the road was maintained by the County or not. It was still a public right of way. **Mr. Lawson** asked who lived across the road. **Mr. Dennisson** explained no one, and that he owned property across the road as well. **Mr. Lawson** asked how much land the Dennisson's had across the road. **Mr. Dennisson** explained 5 acres. In reference to Chairman Graham's question when they first moved there Buck Road was a two track road that they had built up to a one lane to improve access to their property. It was about 25 feet from the center of the road to the building in question with ten to fifteen feet from the shoulder to the building. **Mrs. Lynch** asked how close the nearest occupied dwelling was. **Mr. Guetschow** explained that it was a sparsely populated area and it was probably a half mile to the nearest neighbor. **Mr. Dennisson** confirmed that it was at least that far. **Chairman Graham** asked for a motion. **Mr. Guetschow** explained that it had to be specified which application the motion was requested for.

**Chairman Graham** requested a motion for variance. **Vice Chairman Lawson** made a motion to approve **Action Item 1 for a Variance on Setback**. **Mrs. Lynch** seconded.

**Chairman Graham** began the roll call vote with **Gail Langell: Aye, Jim Frost: Aye, Catherine Lynch: Aye, Harlan Lawson: Aye, Chairman Graham: Aye. All in favor. Motion carried.**

## **2. Conditional Use for Home Business & Material Storage**

Applicant: Dusty & Andrea Dennisson  
Agent: Self  
Site: A Certain Tract of Land known as "PLAYGROUND" in NE4, NE4, NE4 of Section 10, T.7N., R.8E., NMPM Antelope Springs Ranches Plat of said subdivision part insert "A" recorded on Jan 27, 1961 known as 5 Buck Rd  
Zone: Preplatted Lands District (PL1) )

**Chairman Graham** asked for clarification on the second motion. **Mr. Guetschow** explained it would be for a five year renewable Conditional Use. If the holder of the Conditional Use moved the Conditional Use was not transferrable. If someone bought the property they would not be able to continue business operations from that location without obtaining a Conditional Use of their own.

Chairman Graham requested a motion for a Conditional use. Mrs. Langell made a motion to approve Action Item 2 for a Conditional Use. Mr. Lawson seconded.

Chairman Graham began the roll call vote with Gail Langell: Aye, Jim Frost: Aye, Catherine Lynch: Aye, Harlan Lawson: Aye, Chairman Graham: Aye. All in favor. Motion carried.

**3. Variance for Set Back**

Applicant: Torrance County  
Agent: Self  
Site: The parcel addressed 45 Carl Cannon Ranch Rd., being Lot 14, Block 7, Phase 1 of The Homestead Estates Subdivision  
Zone: Rural Residential District (RR)

Chairman Graham introduced the item. He explained that County Manager Wayne Johnson would be representing the County. Mr. Guetschow requested the county representatives state their names for the record. He had requested County Emergency Manager Matt Propp be present. He had been getting the State and Federal approvals for the building. County Manager Wayne Johnson stated his name for the record. He explained that he was going to have Emergency Manager Matt Propp explain the project, location, and where the funding might come from.

County Attorney John Butrick asked Mr. Guetschow to swear in County Manager Wayne Johnson and Emergency Manager Matt Propp for the record.

County Manager Wayne Johnson and County Emergency Manager Matt Propp were sworn in. County Manager Wayne Johnson explained this project came about because of the covid emergency. The potential funding, which may not be granted, from the federal government would allow a shelter to be built. The shelter would have limited purpose. The federal money would be potentially for covid patients. Once the covid crisis passed, the County intended to use the building for an emergency shelter for things like weather events. Highway closures in Albuquerque or Santa Rosa could cause visitors to congregate in the Moriarty area. The current arrangement was to use the Moriarty Civic Center but the City of Moriarty would not allow the Civic Center to open until all the hotels in Moriarty had reached full capacity. Often by the time full capacity occurred it was often too late for the County to prepare for an event. Having to wait had caused problems in the past with County response to an event. The County did not anticipate the shelter being utilized more than a few times a year. By "utilized" he meant even standing it up. That didn't mean the building wouldn't have visitors a few times a year. He did not anticipate that it would be needed more than once every couple of years because [weather] events didn't happen that often. When it did, the County really needed the space for visitors. That was the background of the overall project. The foreground was the county had the opportunity to acquire the funding to build the shelter. The building would benefit the community overall, and wouldn't have a significant impact on the property in regards to traffic or anything in that area. A shelter would fit within the current use of the property.

**Mr. Propp** explained that as County Manager Wayne Johnson had alluded to, this project had come to the forefront during the covid epidemic. The County had actually been considering a shelter for quite some time. The winter storms were one thing that they would typically highlight. There were any number of events, wild fires, and other events that may cause an evacuation. At present, the infrastructure was not present in the County to adequately shelter people if needed. Winter storms had been a problem for the County. The County has an agreement with the City of Moriarty to be able to house people. Part of that agreement was 100% occupancy of the hotels before the county could stand up a shelter. There were two issues from the emergency management stand point. The first was anyone who did not have the means to get in to a hotel. Travelers may have an unfortunate circumstance that had pushed them across the country and may not have the means to purchase a hotel room. The second was the volunteers that actually stood the shelters up. Many volunteers were members of the community who were older. He didn't like the idea of them driving in a winter storm at 12:00am or 1:00am in the morning to first set up a shelter for use by those that were stranded. The idea would be that in the future this shelter could be used to house those who were stranded. A plan was being discussed for parking in an alternate location and a van provided to transport those in need to the shelter. Even with that, huge numbers were not anticipated in the shelter. A point to highlight to the community was the County was not suggesting three hundred or four hundred people be brought into the neighborhood along with their vehicles. Numbers would be between ten and twenty people. Right now the intent of the shelter in the covid crisis was twofold. One was for emergency responders to have a safe quarantine site if needed. If they were exposed to a patient with the virus and it was felt the risk of infection was high, the County did not want them going home to their families and potentially infecting them as well. The object would be to get the responders that were exposed in to the shelter. There was no risk to the community by doing so. They would be enclosed in the building. Ventilation systems were included in the plans to make sure to account for all that. The second part would be people in the community that were exposed, lived with people that were high-risk, and had no place to go. The County wanted to maintain the level of decline and spread in the community. One of the ways this could be done was if someone were to contract the virus, this would give them the opportunity for a safe place to stay and not potentially infect others. When not in use as a shelter the building would be used to store equipment related to emergency management. Right now two of the projects that Mr. Propp worked on heavily, one of which was emergency sheltering. That included responding to fires, winter storms, hazardous materials event, whatever the case may be. Second was communications. A portable communications trailer was being built that the county could use in the event of an emergency. These things can't be stored outside. Right now the emergency management department does not have an indoor location to store any of these items. 95% of the time this building's use will be to keep those items out of the weather and safe from the elements. Ideally, the County wants to be a good partner in the community and the neighborhood. This would be a new building in the community which opened up them for events in the community. In regards to the design of the building, the County wanted to keep it in spec with the fire station that was currently on site, maintain a consistent appearance, and was acceptable to the community. **Mr. Guetschow** explained that the building would occasionally be used for emergency management meetings with other firefighting and emergency agencies.

**Mr. Propp** agreed. He explained that he was going to return to the pressing need at the moment. One of the items the County had been looking at was how to obtain funding for this facility. Direction had been given to the emergency managers in every County in the state to come up with a plan for how to do first responder quarantine, and community member quarantine as previously discussed. A survey of the County had been done to ascertain the buildings available to the County. There was not a lot of opportunity for our own community members. That stemmed the County to push for federal funding in order to make this project happen. Pushing for federal funding was not a process we were accustomed to in terms of development. He was thankful **Planning & Zoning Director Steve Guetschow** offered to assist, to ensure all aspects of the development were compliant with County ordinance with attention to State regulations. If it seemed that the project was rushed, it was because there was a time frame with the federal government for the funding source. **County Manager Wayne Johnson** emphasized how important it was for a County to follow its own process. There were times when a project needed to be pushed along but ensured that public process would be followed in this case, not build the structure and then ask forgiveness. Process was why we were here today, to ask for a Variance. As part of that process the County had found out and the HOA had brought up the fact that the County had been a little deficient in some of the responsibilities agreed to in the past. He didn't think that was an unusual condition for the County and many of its buildings. One of the things he had been working on was fixing maintenance problems. There had been a lot of deferred maintenance. The administrative building parking lot was an example which had been largely corrected. Fire Station 5 was no exception to that rule. The County had allowed a landscape buffer to deteriorate that at one point was carefully maintained. This issue would be corrected whether or not the facility was built. He assured that the County was going to live up to its agreements with the community and the HOA. The intent was to be as good a neighbor as possible while serving the public at large. The health, safety, and welfare of the residents of Torrance County was our charge. This shelter would help the County to achieve that. Helping people in distress, be it weather events, fire events, or other crisis, was also part of the County mandate. The shelter would help the County to effect that. It was the hope that this shelter would not be needed for an emergency but it was important that the County be prepared to respond should the need arise. To be properly prepared, a facility like this was needed and located in an area that was most likely to have problems. In this case, the I-40 corridor was where something would most likely occur. Mr. Propp had worked with DHSEM and the State to identify areas where they would want to see a shelter of this type. The area most likely to need this type of service was Moriarty, and the hope was to never have a need to use it. The County intent was to be a good neighbor, to follow the rules, but we also needed to expedite the process and be ready to start building as quickly as possible. This included making the building presentable and fitting in with the character and architecture of the other two buildings that were side by side, Superior Ambulance and Station 5. **Chairman Graham** asked if there was anyone to speak in favor of the item. Hearing none he asked if there was anyone to speak in opposition to the item. **Mr. Ray Sharbutt** came forward and was sworn. He explained that he had been on hold on the call in number for about twenty minutes along with Georgia Overlander and were not connected. **County Manager Wayne Johnson** apologized and explained that the wrong meeting number had been published. This had been brought to his attention and had been corrected.

In the meantime, Georgia Overlander had connected via audio only on Zoom. **Mr. Sharbutt** explained that he did not see the letter from Dennis Wallin in the package. **Mr. Guetschow** explained that the letter had been received yesterday afternoon via email. **Mr. Sharbutt** asked that the letter be read in to the record. **Mr. Guetschow** explained that he would when Mr. Sharbutt had completed his testimony. **Mr. Sharbutt** explained that he needed to refer to the letter. **Mr. Guetschow** acknowledged and explained that yesterday afternoon an email had been received from Dennis Wallin. He confirmed that the Board members had been provided a copy and that they also had Mr. Sharbutt's letter from the HOA.

**Mr. Guetschow** read the following letter from Dennis Wallin into the record:

Steve – when I gifted the above lot to Torrance County for purposes of constructing a fire station, the County agreed to maintain the lot, comply with the subdivision covenants, and create a green zone between the commercial lots and the residential lots. In fact, I believe you went so far as to diagram the proposed green zone for the County, but unfortunately the County never followed through. The County has never consistently maintained the lot, allowing weeds to accumulate to the point that it has created an eyesore. This is really disappointing because the fire station is a nice looking building, but the rest of the lot has been ignored. Due to the County's failure to properly maintain the lot or create the agreed upon green zone, I want to register my objection to the lot line variance requested. In addition, the deed contemplated only one building on the lot and required compliance with the Homestead Estates Homeowner's Association covenants. This variance does not comply with the covenants and, while it is arguable that a "facility" may be more than one building, I believe the former County Manager will confirm that the intent was a single building when the gift was made. If the County fails to consider the HOA covenants, I may consider asking the court for relief from the deed and have the property transferred back. I don't want to do this because I always believed that a fire station at that location was a benefit to the community. But I don't want the County thumbing its nose at the HOA and its obligations pursuant to the gift/deed.

I ask that you read this email into the record at tomorrow's P&Z meeting.

Thank you,

Dennis

**Mr. Sharbutt** referenced the corrected warranty deed. He quoted from paragraph 2: "For the limited purpose of constructing, maintaining, and operating a Public Service Building facility." He explained that everything in that phrase was in the singular. He continued to quote: "for so long as Torrance County complies with the covenants of the Homestead Estates Homeowners Association." He had received the packet from County Manager Wayne Johnson. He had informed County Manager Wayne Johnson that he would forward the packet to their architectural committee. He thought County Manager Wayne Johnson had received a letter from Joel Lockwood. Their architectural committee had 30 days to review. Nothing was approved until the architectural committee had approved it. Due to this, he had informed County Manager Wayne Johnson that, in his opinion, this hearing was premature. He referred to a plat in the packet that showed a green space. He made reference to the Pilot Truck Terminal project and that it had been a contentious issue with the Homestead Homeowners Association.



Based on memory, the terminal had not complied with their agreement for paving Carl Cannon Road and had changed the traffic pattern. This had resulted in damage to Carl Cannon Road. The sign at the Pilot that read "Truck Entrance" had been placed there by the HOA. The HOA had taken responsibility for, and was proud of the way the roads were maintained within the Homestead Estates. The HOA maintained these roads without outside assistance. He asked how many covenant protected communities there were in Torrance County. He thought there may be three or four. He speculated how many active HOA's there might be in Torrance County. He was only aware of one. **Mr. Guetschow** explained there were two or three that were still active. **Mr. Sharbutt** explained that he thought none were as active as the Homestead Homeowners. The HOA maintained their roads and had active meetings. He explained that the HOA objected to the shelter being placed at the site. He speculated that heavy traffic would be generated in the neighborhood when the roads were at their worst. He had sent letters to every home owner in Homestead Estates and none had expressed interest in having a second building at the site. He explained that the Fire Station and Superior Ambulance do not maintain their lots. He explained that for the last three years he personally had mowed the Fire Station lot. The previous weekend he had spoken with Fire Chief Lester Gary who had said he would have the site mowed. He had witnessed a brush hog on site for fifteen or twenty minutes, and the site still wasn't mowed. The previous weekend the HOA had held a neighborhood cleanup. He noted the HOA appreciation for the park putting a trash receptacle by the fire station. The HOA had been complaining about a couple of old sofas that had been in the fire station parking lot for several months. These had been placed in the receptacle. The green space agreed to by the County at Fire Station 5 had initially been maintained but had been allowed to die back. Two trees were all that remained. He asked if the County intended to have a public service building using a septic system. He asked how many people the County intended to house at the site. When I-40 was shut down, there were hundreds of stranded motorists. In his opinion, the infrastructure details on the plat were not viable for the proposed purpose. He repeated this was premature and that a second building could not be put on the lot pursuant to the deed. He explained that the neighborhood was opposed to putting an emergency management facility in the neighborhood. The HOA wanted the fire station at its location and repeated the County had not met the landscaping agreement. He repeated the statement about the maintenance and quality of the roads in the subdivision. He explained that he represented the Home Owner's Association, that he was President, and repeated that they were opposed to this action. **Chairman Graham** asked Staff for comment. **Mr. Guetschow** referred to the letter of intent. He then referred to the satellite image which showed the occupation and location of the neighboring properties. Carl Cannon Road was the line between the County and City of Moriarty. Carl Cannon Road was chip sealed, it was not heavy duty asphalt. He referred to the landscape plan drawn in 2013 for the buffer between the subdivision and Fire Station 5 and Superior Ambulance. On that plan to the east of the fire station, he had sketched in the proposed location of a 40 x 60 building and off-street parking to the back. The drawing showed utility easements from the plat of record and the clearance that would be had if there was a ten foot setback on the east side. Side setback according to County regulations was fifteen feet. The County was requesting a Variance for a ten foot setback.

Even if the Variance was granted today, there were still several steps before the building could be placed. He referred to the floor plan of the proposed building, which showed an assembly area of 1768 square feet accessed via the proposed garage door. This door would provide access to back in trailers. The floor plan included a small office space, kitchen /utility room combination, men's and women's bathrooms with handicapped accessibility, and a small storage area. A stake boundary survey would be required to replace the missing monuments. Monuments that were present in 2013 were missing. He estimated there would be about eighteen feet separation between the fire station and the proposed building but in no case should there be less than fifteen feet. Per the Unified Building Code Standards, for a multi-use occupational building for public use with an assembly area for three hundred people or less without a stage required a one-hour firewall rating if the building separation was less than twenty feet. An architect would have to draw a full set of plans. The building would be a metal pre-fabricated building, and the architect would provide the specifications. For outdoor specifications, the building could be stuccoed like the fire station. Copies of the liquid waste system permit so that the system specifications could be reviewed had been requested from the State Environmental Department but had not been received at this time. Due to the covid situation and procedural changes, delays with requests were occurring.

**County Attorney John Butrick** wanted to clarify Mr. Guetschow's testimony for those present and the public. Mr. Guetschow had stated that there would be an eighteen foot separation but no less than fifteen foot between the two buildings. Current side setback per ordinance was fifteen feet and the County was requesting a ten foot setback.

**Mr. Guetschow** confirmed that was correct. He explained to the Board that if they chose to approve the Variance today, that was not approval for the building itself. That Variance was for setback, and setback was not specified in the Homestead Estates covenants.

**County Manager Wayne Johnson** returned to the podium. He disagreed with Mr. Sharbutt's statement that the hearing was premature. He reminded the Board that their job was to enforce County Zoning Code. The Board did not enforce covenants. The Association was a party to the hearing, but the Board did not represent them or act on their behalf. The Board did not enforce deed restrictions. That was a civil matter. He explained that the Board's [dis]approval of the Variance would not necessarily stop the project. It would change the project to a smaller, less usable building. In regards to the determination of the deed restriction, he and Mr. Sharbutt were going to have a different interpretation of what a facility was. It could be argued that a facility was one building, but as Mr. Wallin had stated in his email, "it [was] arguable that a 'facility' may be more than one building." The County was taking that position, that this was indeed the case. There were no restrictions in the covenants for multiple buildings. The covenants referred to accessory buildings and allowed them. Then again, the Board did not enforce covenants. Covenants were a civil matter. In reference to truck traffic, it would not be generated by this facility. Truck traffic would be non-existent. If there was any heavier traffic on that road it would involve moving people from a parking lot. Truck traffic would not be on the level generated by the Pilot. In regards to other traffic, there would be increased traffic if there was a weather event. Anticipated intended use would not generate traffic on a daily basis or contribute to road decay.

His recollection was that the last time I-40 was shut down was a couple of years ago. This facility would not be used that frequently, but when it was needed the County couldn't wait to build it. The County needed to be prepared for events. In response to the septic system concern, several types of systems were available. If the State Environmental Department determined that a higher level treatment system was called for to accommodate maximum output at the facility, the septic system would be upgraded to accommodate the use. That was incumbent on the County. He noted that the State Environment Department would not allow the County to open a facility without an adequate system in place. Secondary, tertiary, and high-level advance treatment systems were available to be put in place if needed. He would argue that a 40x60 building on this property would help the maintenance and improve the appearance of the lot. He referred back to his earlier statement admitting that the County had not complied with previous agreements. He wanted our County facilities [were] to be something that the County and the communities they were in to be proud of, and was acting to have sites cleaned up. Regardless of the determination of the action today or whether the facility was built, he gave his commitment to the HOA to maintain the site properly going forward. **Mr. Guetschow** referred to the photos taken that morning that showed the couches had been removed from the site. There was still a storage container that needed to be moved, and the site needed to be mowed. He had spoken with Fire Chief Lester Gary to have these issues resolved. **Mr. Propp** explained that he was not aware of the history of the neighborhood. He was looking at it strictly from the stand point of what he could do better for the community. As Emergency Manager, he took responsibility for the appearance of the site. In the event of a winter storm and there was a full closure of I-40 and there were a lot of people, the idea was not for this facility to be the shelter for everyone. There was still a partnership with the City of Moriarty at the Lions Club and the Civic Center. The problem was the buffer period between the closure and the full occupancy of the hotels. Research showed that the majority of people who needed help were not truckers, they were families that didn't have a lot of money. The decision was whether they were going to sleep in the back of a station wagon or could the County put them in a building with heat. He did anticipate occupancy in that building even under shelter conditions to be no more than twenty to twenty-five people. The Lion's Club would still be used as the parking facility, and a van used to bring people to the shelter. Multiple vehicles would not be brought to the shelter. The County was looking at putting up twenty cots for vulnerable people while getting everything else established. Another thing this allowed him to do was to bring his CERT team, Community Emergency Response Team, to the County Facility, closer to the Civic Center, closer to the Lion's Club. So at the point we're ready to open those in the event we have a major incident and we need to use those facilities, he wouldn't ask them to come in from remote locations putting them at risk during a highway closure. The team needed to be in place earlier to prepare. Even if it was just the team at the facility, they would be preparing to move equipment to the Lion's Club and Civic Center, they'd be right across the road, and they could get there safely. If there was a need to put up cots, the team was already there. On the current issue, if a Deputy was exposed to covid there would be a place to put them. There had not been a great partnership with the hotels on this issue. Due to the stigma, the attitude was "I don't want them in my hotel." His role was what he could do to make the community safer as a whole. **Mr. Sharbutt** returned to the podium. On behalf of the HOA he reminded the Board that this was a residential neighborhood with a Fire Station.

He explained that there were commercial lots available nearby with permanent asphalt road access, that were more accessible, that would take less work; that had water and sewer. He suggested that there were other locations that were readily available. He asked that the shelter be put in a commercial, not residential area. He explained that the County was going to face a lot of issues if the facility was put in a residential area.

**County Attorney John Butrick** explained that he was going to address comments made by both the applicant and Mr. Sharbutt. Mr. Sharbutt had stated that these were residential lots. According to the HOA that was absolutely correct, even under the amended version of the HOA regulations. With that said, the HOA was very aware in 2006 when Mr. Wallin transferred this property to the County. They have understood since the actual facility was built in 2008 that this was not going to be residential. Arguably that is taken from another area of property law, acquiescence to that specific type of property on the lot. Moreover looking at the warranty deed, the warranty deed refers to section 47-1-47. Obviously, this was not something that you were going to be looking at today but for your benefit the applicability of that statute talks about the State of New Mexico or any Municipality. It doesn't speak about the County or any other political subdivision of the State. His argument would be this statute only applies to the State and Municipalities within Torrance County, not to the County itself. Mr. Johnson is correct; the deed restriction that may be in the warranty deed. It refers, number 1, to the Public Service Building, not to the covenants. First and foremost any restriction that exists within the warranty deed belongs to Mr. Wallin, not to the Homeowners Association or anyone else. The warranty restriction, moreover, is to the Public Service Building. He quoted: "For the limited purpose of constructing, maintaining, and operating a Public Service Building facility, and for so long as Torrance County complies with the covenants of the Homestead Estates Homeowners Association." Mr. Butrick emphasized "period." Mr. Butrick quoted: "Upon the cessation of use as a Public Service Building the land shall revert to Dennis K. Wallin." There is nothing in this next sentence that refers to anything about the covenants. Furthermore, Mr. Wallin could not execute or put those covenants into place individually because those covenants don't belong to him individually. Just as this reversionary clause does not belong to the Homeowners Association. Mr. Guetschow is correct: There were several more steps that needed to take place before this building is built. First and foremost is getting this Variance if the Board will approve it today. Then there's the land development permit and the building development permit. Hiring the architect and then actually constructing the building. As Mr. Johnson had been clear, the County would take care of the green space, the landscaping and maintenance. The County has made that commitment. Most importantly, from Mr. Propp's perspective, the DOH in our letter of intent has said that this is the optimal location for this, and Mr. Johnson has said this as well. The property where a lot of this stuff happens will not be Estancia, Mountainair, or Willard, or Encino. It's going to be in Moriarty along the I-40 corridor. This is just the best location. In his opinion, and Mr. Butrick agreed with Mr. Guetschow, Mr. Johnson, and Mr. Propp that the Board should approve this setback.

**Chairman Graham** asked the Board for questions or comments. **Mrs. Langell** asked if other locations had been looked at. **County Manager Wayne Johnson** explained yes, other County-owned properties had been looked at.

Part of the problem with this project and the funding source itself was that it was going to happen pretty quickly. If the County received the funding they would have to move on it. This kind of limited the County's flexibility with moving to different locations or land acquisition that would be involved. Not to mention that would increase the cost of the project as a whole. So in many cases, it may end up making it unfeasible from a money standpoint. The County was looking at receiving somewhere in the neighborhood of \$100,000.00, probably not enough to pay for the project as designed right now. In order to make this work, the County would also put in a significant amount of money. Other land options and other places had been considered. They were discarded either because of their location or the proximity to the I-40 corridor that DHSEM and Emergency Management needed. He believed DOH was also part of this as well. This location was determined to be the best place that met all of the criteria from the other agencies, plus land that the County already had from a budgetary standpoint. **Mr. Propp** explained that one of the things brought to the County by FEMA and the State was what property was available to the County at the moment. Ideally, he would have liked to have sought out a commercial property somewhere else for purchase. That avenue was not given to the County in this project. The State asked what was available to the County currently that the County could move on a project with. From the State standpoint, an emergency shelter for use during the winter wasn't in their realm for this project. What the County looked at for this project was the public health sector for Torrance County. The Torrance County public health sector included the County and Edgewood. When you looked at the "L" shape, the location the County was looking at was ideal just by proximity and central to those two locations. He explained other property locations that were considered. The State eliminated some of these as being too remote and having security risks as well. The State wanted the location to be in a visible area. This knocked out about 90% of the property that the County had available. Other locations further south were deemed as being too far from the central public health sector area. The Moriarty area was preferred by the State. In the Moriarty area, options were really limited in what properties were currently available to the County. The proposed location was identified by the County and submitted to the State. The proposed location was the one being considered by the State. **Mr. Guetschow** explained that during consideration of other sites, drive times from I-40 access were also logged as a factor in viability. The State had rejected locations as too remote from the I-40 corridor. The State had ordered Mr. Propp to locate the structure next to the ambulance service. **Mr. Frost** relayed a past experience with a winter storm highway closure. In the '90s before the current community center had been built in Moriarty there was not enough space and people were sleeping on the concrete at the old civic center. He and his wife had opened their home to people in need to help relieve the pressure on the old civic center used at that time. There were a couple of additional times they had housed stranded travelers. He remembered when the fire station was built in the early 2000's at the proposed location. There were problems then, but the County was able to get it built. Not long after the Superior Ambulance facility was proposed, there was a lot of dissatisfaction from the residents, but the facility was built. He agreed that the roads in Homestead Estates were well maintained. He thought there could be a better location for the proposed shelter. He knew a lot of the residents of the neighborhood, that they would not be happy with the situation, and that the County would hear from them. At this time, he was not in favor of it.

**Mrs. Lynch** explained that she was an active member of CERT, she had been involved in a lot of earlier stuff, she didn't remember which committee because she belonged to several. Different possible shelters had been looked at. Several different shelter locations had been evaluated. Given the situation when I-40 was closed down, Moriarty was the only location that made sense. Mobilization and preparation time was needed. If she were to respond on something with CERT she lived way south in Torrance County and couldn't get through the roads to help. Many of the CERT members were near to Moriarty and could get there. She lived in the Corona area. When the road was closed, the Baptist Church would open up the basement, and local residents would donate food and other items. This helped exactly the situation referred to earlier. People who didn't have the resources to stay in a motel and at risk of freezing to death. As a simple humanitarian gesture we could all pitch in for two days to help these people. We as a community needed to do something to help people who were stranded. For two days every four years she didn't think was too much to ask. **Mr. Lawson** asked who owned lot 15 where Superior Ambulance was located. **Mr. Guetschow** couldn't recall the property owner's name but it was clarified that the property was privately owned. **Mr. Lawson** explained the property owner had been notified by the posting of the Action and had the opportunity to complain if he wanted to about the proposal. Mr. Lawson thought that was an important point. He also felt a lot like Mr. Frost did. He agreed with a Moriarty location but didn't think this was the only location the shelter could be built. He asked if the County owned any property in Moriarty besides this location. **County Manager Wayne Johnson** explained that the County had considered other property in Moriarty currently owned by the County. There was not a lot of it. Other locations were owned by Moriarty or privately held. To his knowledge, not many were for sale. Even if property were available it would still have to meet the metrics from the Department of Health, the State, and FEMA. He understood that neighborhood's would be uncomfortable with this project. The proposed location was the last one the County could find that met all of the criteria and the availability of the property. It took time to find and purchase a property that met all of the criteria. The project would be funded with emergency funding from the Federal Government so that placed limits. It had to be something that the County already had access to that met the other criteria for access to the location. That was the long way of saying, yes the County looked, and no, the County couldn't find anything that would be as good or would fit the criteria. **Mr. Lawson** asked if the town of Moriarty was willing to offer property for the project or was that a long-term process to transfer ownership. **Mr. Guetschow** explained that the stance of The City of Moriarty and their economics: they want their motels full before any shelter opened, and this would compete with that. **County Manager Wayne Johnson** explained that Mr. Guetschow was correct. He repeated that was one of the biggest issues that the County couldn't even stand up the shelter until those motels were 100 % full , and then it was potentially too late for CERT and Red Cross volunteers to get on scene and stand it up. Even so, best case was people would be waiting an hour in a parking lot, waiting for the facility to be stood up. It was really not a tenable situation. Right now the County could use the Convention Center, but volunteers would not be allowed to even enter until the hotels were full. With all due respect to the Council and Mayor of Moriarty, in his opinion this was a ridiculous policy because if he had the choice and the money to stay in a hotel or stay in a shelter he would take the hotel every time. If he didn't have the choice to stay in a hotel because of finances, he didn't want to die out on the interstate either.

**Chairman Graham** explained that he believed in helping his fellow man. He didn't think that government or religion had to do it by themselves. As a community we all needed to be human and help each other when help was needed. He commended everyone there who had helped in their own way. He thought it was a sad thing when a Home Owner's Association and the County couldn't get along, see eye to eye. He was glad that he didn't live on the I-40 corridor, but right now he wished he did because he would donate property for the facility. All he could see was that it would help us as a community and a County. He was glad that County Manager Wayne Johnson was making the commitment to clean up county property.

**Chairman Graham** requested a motion. **Mrs. Lynch** made a motion to approve the setback under Action Item 3. **Chairman Graham** seconded.

**Chairman Graham** began the roll call vote with **Jim Frost: No, Catherine Lynch: Aye, Harlan Lawson: Aye, Gail Langell: Aye, Chairman Ron Graham: Aye.**  
**Four in favor, one opposed. Motion carried.**

**County Manager Wayne Johnson** thanked the Board. He wanted to make a commitment to the Homeowners Association and Mr. Sharbutt that the County would work with them on this, not against or at cross purposes. The County would begin some of the clean up immediately. **Mr. Sharbutt** returned to the podium. He expressed his disappointment of the decision made by the Board. He stated that Georgia Overlander had also sent a letter. **Mr. Guetschow** explained a letter had not been received. The letter from Mr. Sharbutt and the email from Dennis Wallin were all that had been received.

**Discussion Items: None**

**Mr. Guetschow** explained that last week at the County Commission meeting the renewal of the Special Waste Disposal permit was granted, and Mr. Roger Clyde's application for a Special Use District for an RV Park was also approved.

*Pursuant to New Mexico State Statute Section 10-15-1 through 10-15-4 (NMSA 1978), these issues can be addressed in general. No decision can be rendered at this meeting.*

**Executive Session:**

*As per Motion and Roll Call Vote, pursuant to New Mexico State Statute Section 10-15-1 (NMSA 1978), the following matters will be discussed in Closed Session: None*

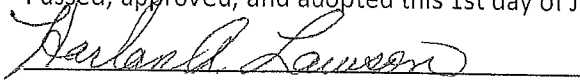
**ADJOURN**

Having no more business, Chairman Graham asked for a motion to adjourn. Vice Chairman Lawson made a motion to adjourn. Mrs. Langell & Mrs. Lynch seconded. Chairman Graham began the roll call vote with Catherine Lynch: Aye, Gail Langell: Aye, Vice Chairman Harlan Lawson: Aye, Chairman Ron Graham: Aye. None were in opposition, all in favor, motion approved.

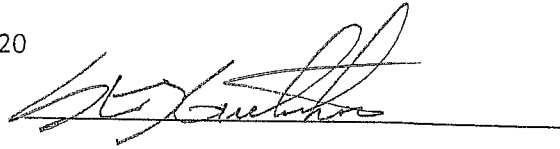
Meeting adjourned at 11:13am.

**APPROVED**

Passed, approved, and adopted this 1st day of July, 2020



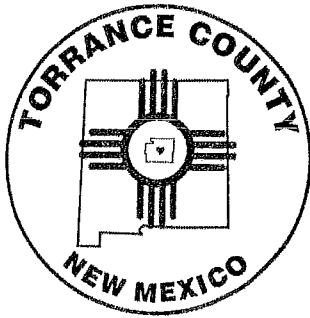
Chairman of the Board



Steve Guetschow, Planning & Zoning Director



**STAFF**  
**EXHIBIT 6**



# *Torrance County*

## *Planning & Zoning*

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### **NOTICE**

A special meeting will be held on Monday, July 13, 2020 to conduct a Public Hearing by the Torrance County Commission to review a request for an Appeal. The Homestead Estates Homeowner's Association is aggrieved by the decision of the Torrance County Planning & Zoning Board to approve a Variance for a side Setback of less than 15 feet. The special meeting will begin at 9:00 a.m. in the Torrance County Administrative building at 205 S. 9<sup>th</sup> Street Estancia. The subject property is located at 45 Carl Cannon Rd. being described as Lot 14, Block 7, Unit 1 of the Homestead Estates Subdivision, Torrance County, NM.

