



Monterey Shores Homeowners Association

Date: February 9, 2022

**Re: Draft Resolution 2022-01 – Interpretation of the Term “Lot”
60 Day Comment Period Through April 11, 2022**

NOTICE

As discussed at the February 8, 2022 Community Board Meeting, attached is a draft proposed Board Resolution that is being posted for a period of 60 days for Community comment, questions, suggested edits, concerns, etc. The Board encourages all Members to participate in this process. Each comment, concern, etc. will be evaluated and, to the extent appropriate, the proposed Resolution will be revised to address the issue raised by the comment.

The purpose of the proposed Resolution is to address the controversy surrounding the term “Lot” as it is used in the Community Covenants. The issue is: what does an unimproved Lot become after it has been improved with a habitable “Dwelling” (i.e. a single family residential home that is occupied)? Since the term “Lot” is used throughout the Covenants to describe property owned by HOA Members, and since it is term that is commonly used in the real estate industry to describe property that is individually owned, the proposed Resolution interprets the term “Lot” to mean: an unimproved Lot before a Dwelling is built on the Lot and after a Dwelling is built, it becomes an improved Lot. Either way, a “Lot” is property in the Community that is individually owned. The Board believes this is an appropriate, common sense interpretation that gives full effect to the Covenants.

By way of example, Section 9.08 in the Covenants uses the term “Lot” to describe property before it is improved with a Dwelling. The use of such Lots for the storage of boats, trailers, campers, mobile homes, etc., before a Dwelling is constructed and occupied, is prohibited. But once a Dwelling is constructed this prohibition no longer exists. Thus, the distinction between an unimproved “Lot” and an improved “Lot.”

Similarly, Section 5.01 in the Covenants it refers to the fact that every person who owns a Lot is a member of the Association and is subject to assessment by the Association. In this context, the term Lot can be an unimproved Lot or an improved Lot with a Dwelling.

Part of the problem underlying this controversy is the fact that the definition of the term Lot in the Covenants refers to Exhibits A, B, and C to the Covenants. Unfortunately, these Exhibits simply depict large, unimproved parcels of land that do not show the individual Lots proposed for the Community. When the covenants were recorded on July 6, 1988, there were no individually owned Lots. At the time, the Covenants were intended to address the Phase I development of the Community.

Six months after the recording of the Covenants, several Lots had been sold and several Dwellings had been constructed on the sold Lots. As such, on January 27, 1989 the developer recorded the First Supplement to the Community's Covenants for the purpose of adding the Phase II development to the Community. Unlike the large unimproved parcels of land depicted in the Exhibits to the initial Covenants, this First Supplement referred to a recorded plat for the Phase II development, which identified the individual Lots that were to be sold for Owners to build Dwellings upon.

For any Members who desire to provide feed back or comment on the proposed Draft Resolution, please email them to

Roger Jones, HOA Board Vice President: jones@constructionlaw.com
and please copy Amy Wygans at Association Consultants: amy@associationconsultantsllc.com

If you would prefer to communicate with Roger over the phone, the cell phone number he can be reached at is: (443) 253-3471.