



Monteray Shores Homeowners Association

MONTERAY SHORES HOA BOARD OF DIRECTORS RESOLUTION

(2022-01)

Interpretation of the Term “Lot”

(DRAFT for HOA Membership Comment)

The Monterey Shores PUD Homeowners Association, Inc. (herein the “HOA” and/or the “Association”), by its Board of Directors (herein the “Board”), hereby adopts and approves, RESOLUTION 2022-1 (herein “Resolution 2022-1”) regarding the interpretation of the term “Lot”, to wit:

WHEREAS, the Declaration of Protective Covenants (“Covenants” and/or “Declaration”) for the HOA were signed on July 6, 1988 and recorded on said date in the Currituck County Land Records at Book 243, Page 757; and

WHEREAS, as stated in the Covenants, the Community was to be known as Monterey Shores, which was intended to be a planned unit development (“PUD”) located in the Poplar Branch Township (i.e. Corolla) in Currituck County, North Carolina (herein the “Community” and/or the “Monteray Shores PUD”);

WHEREAS, as stated in the Covenants, the Monterey Shores PUD was to be developed as a residential community with recreational amenities and common areas for the benefit of property owners (“Owners”) and to have a “flexible and reasonable method for the administration and maintenance of the properties within the Monterey Shores PUD” [Emphasis added]; and

WHEREAS, as stated and declared in the Covenants, “all that property” in the Community was to be:

held, conveyed, . . . or . . . used, occupied, and improved subject to [the Covenants, including] “easements, liens and charges, all of which [were] declared and agreed to be in furtherance of enhancing and protecting the value, desirability, and attractiveness of Monterey Shores PUD and any part thereof, and all of which shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the described Monterey Shores PUD or any part thereof.

and;

WHEREAS, as stated in the Covenants at Section 1.01, Phase I of the Monterey Shores PUD was all that property described in Exhibit A to the Covenants; and

WHEREAS, as stated in the Covenants at Section 1.02, Phase II of the Monterey Shores PUD was all that property described in Exhibit B to the Covenants and that said property would become subject to the Covenants by an Amended Declaration.

WHEREAS, as stated in the Covenants at Section 1.03, Phase III of the Monterey Shores PUD was all that property described in Exhibit C to the Covenants and that all or portions of said property would become subject to the Covenants by an Amended Declaration.

WHEREAS, Article II in the Covenants address Definitions, and as stated in Section 2.01 Definitions, certain words were to have certain meanings, “unless the context shall prohibit or otherwise require.” [Emphasis added]; and

WHEREAS, as stated in Sections 2.01 (o), (p), (r), and (u) of the Covenants, the following terms were defined:

(e) “**Assessment**” shall mean and refer to an Owner’s share of the Common Expenses or other charges from time to time assessed against an Owner by the Association in the manner herein provided.

(f) “**Association**” shall mean and refer to Monterey Shores PUD Homeowner’s Association, Inc., a North Carolina non-profit corporation.

(o) “**Dwelling**” shall mean and refer to any improved property for a single family residential occupancy use located within the Monterey Shores PUD.

(p) “**Improvements**” shall mean and refer to any additions to a Lot including a dwelling, garage, carports, porches, terraces, balconies, decks, patios, courtyards, piers, bulkheads, boat houses, swimming pools, tennis courts and any other construction which has been approved by the Architectural Standards Committee of Monterey Shores PUD.

(r) “**Lot**” shall mean and refer to an unimproved portion of Monterey Shores PUD on which it is intended that a single family dwelling shall be constructed as such Lots are shown on Exhibits A, B, and C. A parcel of land shall be deemed unimproved and is considered to be a Lot, rather than a Dwelling, until the improvements constructed thereon are sufficiently complete to permit habitation thereof.

(u) “**Owner**” shall mean and refer to the record owner, whether one or more persons or entities of the fee simple title to any Lot situated within the Monterey Shores PUD, but notwithstanding any applicable theory of any lien or mortgage law, shall not mean or refer to any mortgagee or trust beneficiary unless and until such mortgagee or trust beneficiary has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

and;

WHEREAS, in connection with the defined term “Lot” in Section 2.01 (r) of the Covenants, Exhibits A, B, and C to the Covenants depict large unimproved parcels of land for Phases 1, 2, and 3 of the planned development within the Community, and not specific lots in each parcel of land that were to be sold to Owners for the intended future construction of a Dwelling or other improvements (excerpts pasted below); and

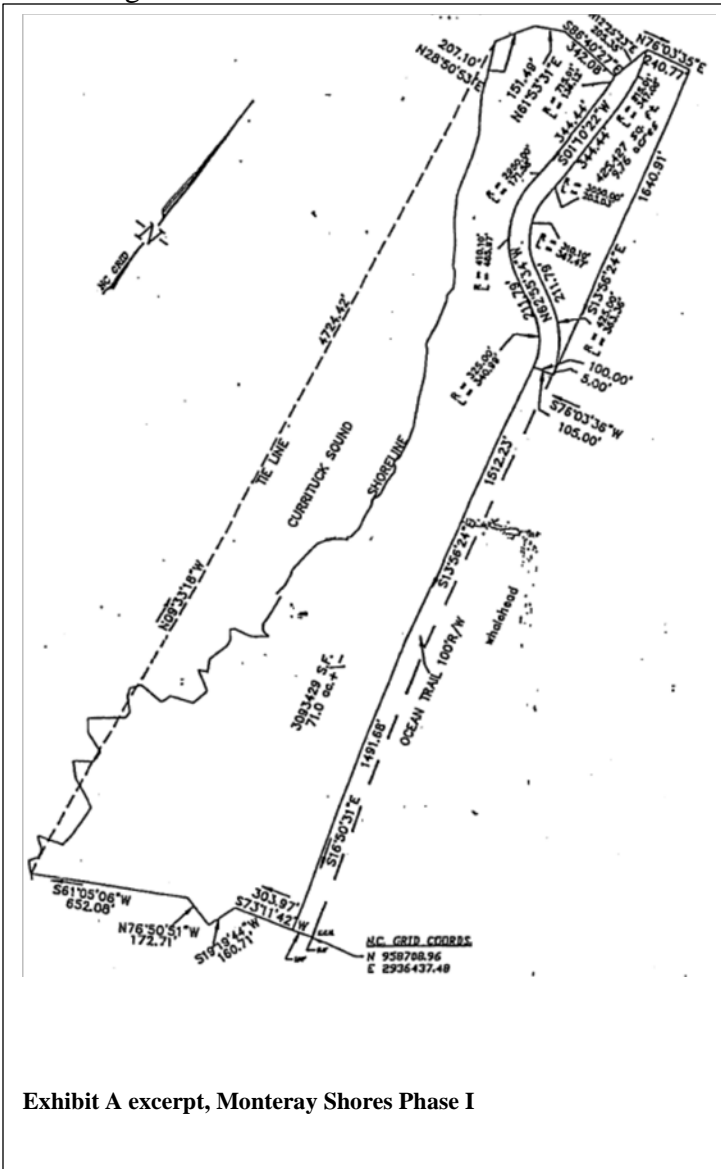


Exhibit A excerpt, Monterey Shores Phase I

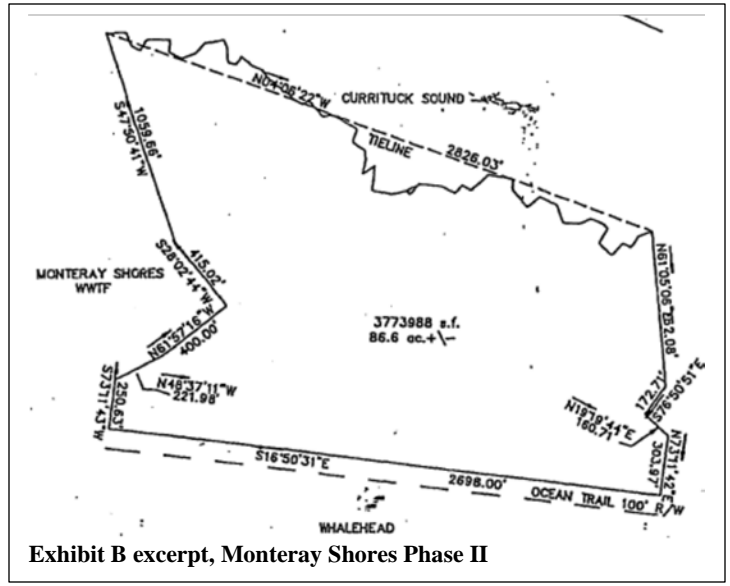


Exhibit B excerpt, Monterey Shores Phase II

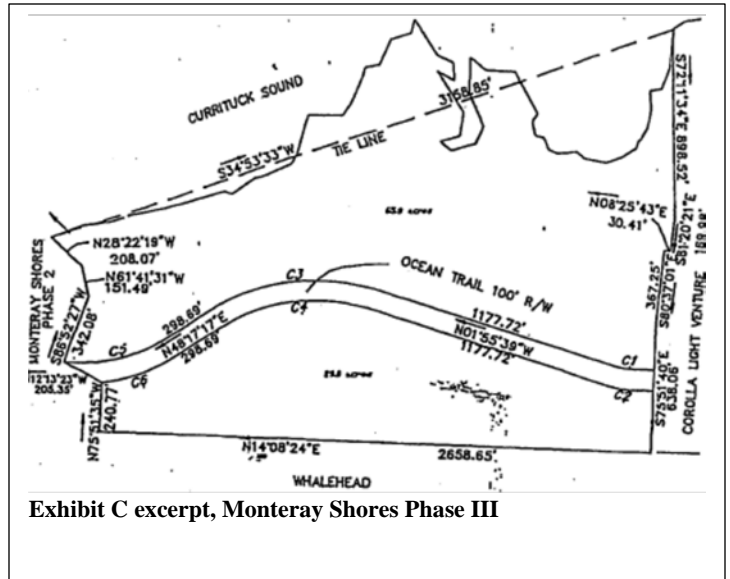


Exhibit C excerpt, Monterey Shores Phase III

WHEREAS, Article IV in the Covenants addresses Property Rights, and at Section 4.01 General, it states:

Each Lot shall for all purposes constitute real property which shall be owned in fee simple

* * *

Each Owner shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title to his Lot.

and;

WHEREAS, Article V in the Covenants addresses Membership, and at Section 5.01 Membership, it states:

Every person or entity who is a record owner of a fee simple interest in any Lot is subject by this Declaration to assessment by the Association and shall be a member of the Association

and;

WHEREAS, Article VII in the Covenants addresses Assessments, and at Section 7.01 Purpose of Assessments, it states:

The assessments for Common Expenses provided for herein shall be used for the general purpose of maintenance of roads and improvements, promoting recreation, health, safety, welfare, common benefit, and enjoyment of the Owners of Monterey Shores PUD, and maintaining the Development and improvements therein, all as may be more specifically authorized from time to time by the Board of Directors.

and;

WHEREAS, as stated in the Covenants at Section 7.09 Exempt Property, the only property exempt from assessment in the Community are, “All properties owned by the Declarant including Lots with Monterey Shores PUD . . .”; and

WHEREAS, Article IX in the Covenants addresses Architectural Standards and Use Restrictions, and at Section 9.01 Purpose, it states “. . . the Lots and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article IX.” and;

WHEREAS, as stated in the Covenants at Section 9.18 Motor Vehicles, Trailers, Boats, etc:

Each Owner shall provide for parking of automobiles off streets and roads within Monterey Shores PUD prior to occupancy of any Dwellings owned and maintained by such Owner. There shall be no outside storage or parking upon any Lot, or within any portion of the Common Areas, of any mobile home, trailer, motor home, tractor, truck (other than pickup trucks), commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft (other than in boat slips, boat houses, or other docking facilities), boat trailer, motor cycle, motorized bicycle, motorized go-cart, or any other related forms of transportation devices.

Furthermore, although not expressly prohibited hereby, the Board of Directors may at any time prohibit mobile homes, motor homes, campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts, and other similar vehicles, or any of them, from being kept, placed, stored, maintained, or operated upon any portion of Monterey Shores PUD if in the opinion of the Board of Directors such prohibition shall be in the best interest of Monterey Shores PUD. [Emphasis added].

and;

WHEREAS, as stated in the Covenants at Section 10.04 Interpretation, the provisions of the Declaration:

[S]hall be construed together and given that interpretation or construction which, in the opinion of the Declarant or the Board of Directors will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. [Emphasis added].

and;

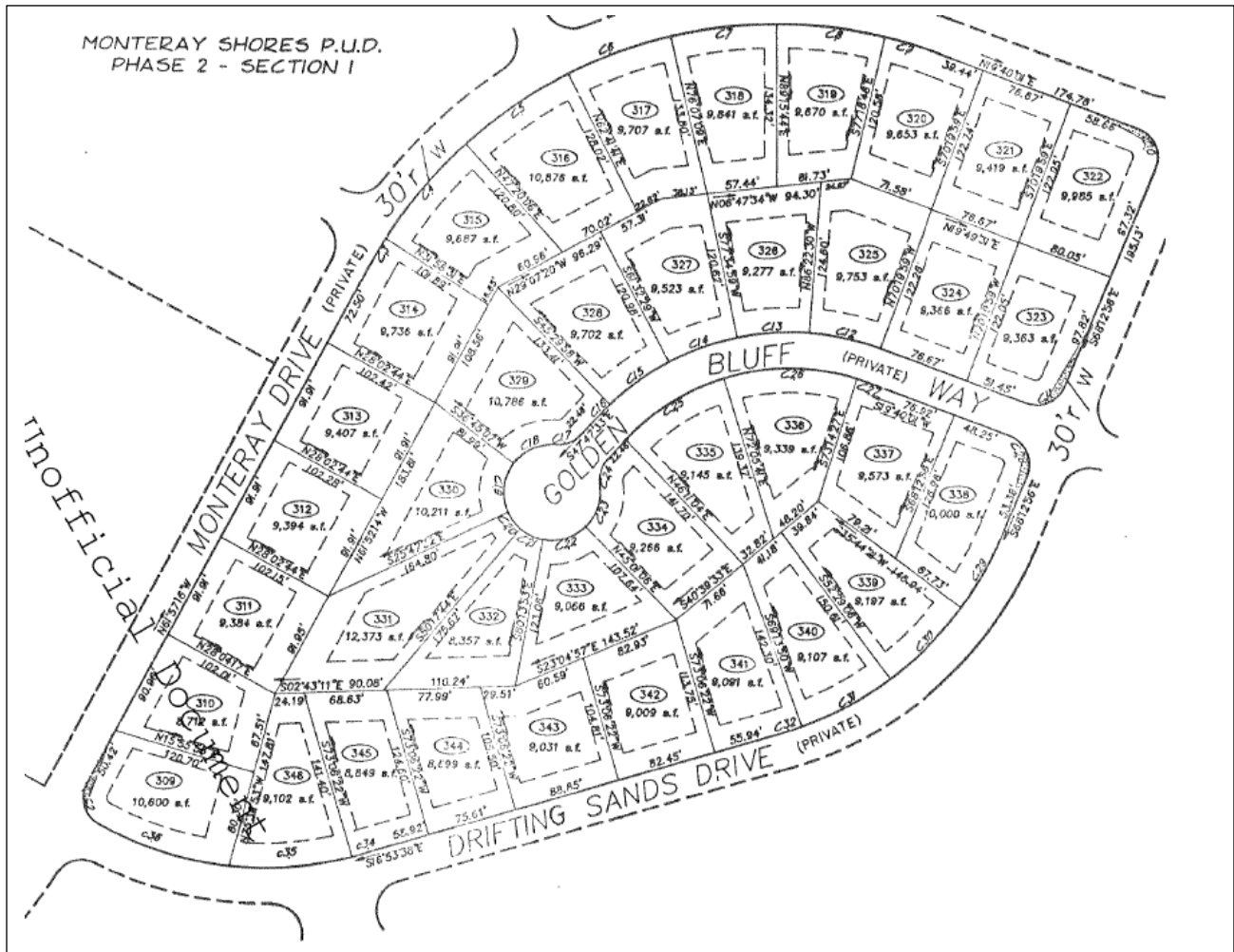
WHEREAS, considerable controversy has arisen in the Community in connection with

the defined term "Lot", the use of the term "Lot" throughout the Covenants, and the effect of the term "Lot" when it has been improved with the construction of a Dwelling on the Lot;

NOW, THEREFORE, in consideration of these premises and by the power granted to the Board of Directors to construe and interpret the Covenants, which are to be liberally interpreted and, if necessary, so extended or enlarged by implication as to make them fully effective,

BE IT RESOLVED AS FOLLOWS:

1. The use of the word "Lot" throughout the Covenants shall be interpreted to mean an unimproved Lot or parcel of land, and at such time that a Dwelling is constructed on the Lot that is suitable for occupancy, it shall become an improved Lot.
2. The word "Lot" is commonly used in the real estate industry to refer to a specific portion of land within a large parcel of land that is subject to individual ownership. For example as shown in the excerpt below, when the First Supplement to the Covenants for the Community were recorded in the Currituck Land records on January 27, 1989 in Book 254 at Page 421 to make the Phase II development part of the Community, it referred to a Plat for Phase II, Sections 1- 6 that was recorded in Map Book D at Page 20 (*see, e.g.,* excerpts below for Ph II, Section 6).



LOT	CURVE	RADIUS	LENGTH	CHORD	BEARING
501	c2	25.00'	39.27'	35.36'	S73°02'44"W
506	c3	385.00'	26.41'	26.40'	N59°58'23"W
507	c4	385.00'	103.21'	102.90'	N50°20'42"W
508	c5	385.00'	103.21'	102.90'	N34°59'07"W
509	c6	385.00'	90.21'	90.00'	N20°15'35"W
510	c7	385.00'	88.31'	88.12'	N07°18'34"W
511	c8	385.00'	90.21'	90.00'	N05°58'28"E
512	c9	385.00'	48.90'	48.87'	N16°10'36"E
514	c10	25.00'	40.19'	36.00'	N65°43'32"E
515	c11	25.00'	36.35'	34.70'	S28°16'28"E
517	c12	215.00'	60.20'	60.00'	S11°38'45"W
518	c13	215.00'	60.20'	60.00'	S04°23'45"E
519	c14	215.00'	60.20'	60.00'	S20°26'18"E
520	c15	215.00'	60.20'	60.00'	S36°28'47"E

2. The word “Lot” as used in Article IX of the Covenants and the first part of Section 9.18, refers to an unimproved Lot, prior to occupancy of any Dwellings owned by an Owner. Once such property is improved with a Dwelling then it becomes an improved Lot. As described in the second part of Section 9.18 when a Lot has been improved with a Dwelling then the prohibitions against the storage of vehicles, water craft, and trailers, etc. ceases to exist, unless in the opinion of the Board of Directors such prohibition shall be in the best interest of the Community. By this Resolution, the Board of Directors is confirming that no such prohibition is currently implemented.

4. The word “Lot” as used throughout the Covenants and specifically in Articles IV, V, VI, VII, VIII, IX, and X of the Covenants refers to unimproved Lots, without Dwellings, and improved Lots with Dwellings. As such, the Owner of a Lot, regardless of whether it is unimproved or improved with a Dwelling are members in the Association and are subject to Assessments by the Association.

5. Until such time as the Covenants can be properly Amended and/or a subsequent Board of Directors determines it is no longer in the best interest of the Community, this Resolution 2022-01 shall operate as the appropriate, common sense understanding when used in conjunction with the word “Lot” in the Community’s Covenants.

Adopted this ___ day of 2022, by:

The Monterey Shores HOA Board of Directors, as evidenced by their signatures below.

Ted Case, President

Roger Jones, Vice President

Valerie Flannery, Secretary

Mike LaRuffa, Treasurer

Mike Schutzer, Treasurer/Member at Large