

When 2 Minus 1 Still Equals 2: Combining Lots in a Planned Community

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'I will just combine my two lots into one, then I only have to pay one assessment but I'll still have two votes, right?'

NOT NECESSARILY!

Owners of adjoining lots in subdivisions often decide to combine them for a variety of reasons. But, in a planned community governed by an owners' association, the owner may have to obtain consent to combine lots, and a lot combination may not have the desired effect. Moreover, combining lots may affect an owner's compliance with other dimensional or setback restrictions on the land.

While there are typically other governmental ordinances that regulate the subdivision and combination of lots, the North Carolina Planned Community Act contains no provision specifically addressing this issue. So, in addition to complying with those governmental regulations, the owner will have to review the community association governing documents, including, but not limited to, the declaration, subdivision plats, and bylaws (collectively, "Governing Documents") to determine whether or not the owners' association has any authority to regulate the owner's proposed combination or recombination of lots, and the effect of any permitted and resulting combination.

Association Authority to Approve/Deny Lot Combinations

The association's authority to govern or prescribe the manner in which lots can be combined within the community lies solely within the Governing Documents. If the Governing Documents are silent on that issue or ambiguous, the association most likely does not have the authority to approve or deny a lot combination. If the association does have authority on the issue, there may be additional provisions within the Governing Documents describing the manner in which the combined lots will be treated for purposes of assessments, voting, and, perhaps, other specific issues.

The Effect of a Lot Combination

Assessments

The general rule regarding combining lots in planned communities is that the combined lots will continue to

be treated as the original pre-combined number of lots unless the Governing Documents provide otherwise. In other words, multiple combined lots do not automatically become one lot for purposes of levying assessments. The North Carolina Court of Appeals has inferred that it would be inequitable to the owners of other lots within the community who are subject to the Governing Documents if a lot owner could reduce his assessment obligations simply by combining lots. That does not mean that lots cannot be combined, but it does mean that the combined lots will generally continue to be treated as two lots when it comes to levying assessments.

Voting

Again, one must review the Governing Documents to determine whether the combined lot will continue to be treated as two lots for purposes of voting. Votes are typically assigned to each individual, a separate lot. So, unless the Governing Documents provide to the contrary, the new resultant combined lot owner will still be entitled to cast the number of votes assigned to the original two lots (or any number of lots) so owned.

Other Issues

The Governing Documents for the community usually contain provisions establishing easements along interior lot lines for the installation of utilities, drainage, and other purposes. Placing improvements within the easement areas may interfere with the purposes and functions for which those easements are reserved and thus may be prohibited. The same could be said for setback lines shown on the subdivision maps as well as those established by the Governing Documents. Absent language in the Governing Documents to the contrary, any dimensional or setback restrictions on lots found in the Governing Documents will generally be enforced according to the lot configuration shown on the original recorded plat. Thus, an owner who later combines lots may find he or she is no longer in compliance with dimensional or setback requirements.

The Governing Documents for older planned communities may not address the combination of lots at all. However, it is possible that the members of the association may amend the Governing Documents to allow owners to combine lots. In doing so, it is important that the amendment clearly states the authority to approve or deny any such requests and clearly designate the entity for making that determination (i.e., the association's board of directors or the architectural committee). In addition, the amendment should unambiguously illustrate the effect of lot combination on assessments and voting allocations, along with any other matters unique to the particular planned community.

So, 2 minus 1 may equal 2 and, at the same time, it may equal 1!

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