

Linda

From: "Bernie Waugh" <bernie.waugh@gardner-fulton.com>
Date: Monday, May 14, 2012 12:31 PM
To: "Evan Karpf" <drevannh@gmail.com>
Cc: "Linda" <mtview@roadrunner.com>; <twinmtn@roadrunner.com>
Subject: RE: Lot Line Adjustment language

Hi Evan:

DISCUSSION: If I am reading your message correctly, these lots are all owned by the same owner, CNL Mt. Washington. This makes me curious what the owner's purpose is in requesting the adjustment, but certainly LEGALLY the effects of a lot line adjustment (in a case where the owner of all parcels is the same) would be: (a) to regulate what the boundaries are of the parcels which might legally be conveyed separately in the FUTURE, and (b) to potentially alter the way in which local regulations (such as lot size, setbacks, etc.) would apply to the parcels. I'm assuming - in answering your question - that there is no different or additional purpose/effect in this case, other than (or inconsistent with) the above two goals.

As I read Section 3.15 of the Carroll Subd. Regs. As a whole, they were clearly written to apply to a case where the owners of the parcels involved are different. For example, paragraph 5 requires a deed conforming to paragraphs 3 and 4 to be presented to the Board before it will allow the mylar to be recorded. If this were to be taken literally to apply to all cases of lot line adjustments, then it would in essence prohibit the Board from approving any lot line adjustment where the owner of the parcels is the same.

Question #1: In general can a Board legally refuse subdivision approval just because there is no immediate plan to convey any property from one owner to another? Answer: No. In my opinion a landowner can seek subdivision approval even though there is no immediate plan for any conveyance. For example RSA 674:39-a recognizes that an owner may wish to merge lots "for municipal regulation and taxation purposes..." In my view, an owner may wish to subdivide, or adjust lot lines, for the same "regulation and taxation purposes" even though there is no immediate

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plan to convey any land from one owner to another, and this is a perfectly legal and legitimate reason for requesting board approval.

Question #2: Can a town planning board legally mandate the recording, in the Registry of Deeds, of a deed which has no legal effect as a conveyance, solely for the purpose of implementing deed language required by the planning board? Answer: In my opinion, no. The state laws governing recording and conveyances are a comprehensive scheme which would preempt any such local mandate. Planning boards have the legal authority to attach conditions to conveyances which might otherwise be made for OTHER legal reasons, but not to demand the recording of a deed where no conveyance purpose is being served by that document. Basically a deed running from CNL Mt. Washington to CNL Mt. Washington would not be a valid deed anyway, because grantee/grantor are the same, hence the language contained in any such deed would be worthless from a legal perspective.

Conclusion: In my opinion the Planning Board does not have the legal authority to apply Section 3.15 in a literal, straightforward manner in a case where all lots are already owned by the same owner. In particular, if CNL Mt. Washington has no present intent to convey any parcel or portion to anyone else, the Board cannot legally mandate the recording of any type of deed.

RECOMMENDATION: In my view the Board should in essence bypass (as unenforceable) the requirement of actual deed language, as contained in paragraphs 3 and 4 of Section 3.15, but instead require language to be inserted on the mylar which achieves the same goals as the deed language would otherwise serve, similar to the following:

"It is a condition of the approval of this plan that the premises labeled as _____ [insert whatever description or label refers only to the area begin annexed from one lot to another] shall not separately conveyed, and shall not be deemed or considered a separate lot of record, but shall constitute an annexation and shall be regarded as merged into and made an integral part of _____ [insert label or description of the lot(s) which that area is being merged with]."

[Note that if I saw the actual plan, I could do a better job at suggesting exact language.]

I would also suggest that to any extent the Board is engaged in

revising the Subdivision Regulations at some point now or future, this section 3.15 should be revised so that there is no absolute requirement for specific deed language, but instead a requirement for language to be inserted in the plan similar to the above.

Please don't hesitate to get back to me with comments or questions about this.

Sincerely,
Bernie Waugh