



INDY ENERGY

Analysis of HB 1662

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Introduction

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Practicing since 2001

HB 1662

Community Association Institute Position

- ◇ **The Community Associations Institute Missouri Legislative Action Committee (LAC) needs YOUR help: we need you to tell Governor Parson to VETO HB 1662**
- ◇ **Changes the laws regarding restrictive covenants by expanding the definition of prohibited covenants and establishes a procedure to remove prohibited covenants from deeds (Restrictions by race, color, religion, or national origin can be expunged from the public record on any parcel).**
- ◇ **The Legislative Action Committee supported HB 1662, as introduced, creating a simple process to remove racially offensive language from restrictive covenants. Racially restrictive covenants have long been unenforceable, so the original bill didn't change the law; it merely allowed homeowners to "cleanse" their title of this offensive and hurtful language. However, the Senate Substitute of HB 1662 completely changed the spirit and purpose of the bill and rushed through language that will have unintended consequences on both local government and homeowners living in homeowner associations.**
- ◇ **CAI Missouri LAC objects to the provision in Section 442.404.4 related to "for sale" signs. The intent of the legislation is to bypass local ordinances and community association rules related real estate "for sale" signs. However, the legislative language does not specify "real estate sales" and allows for "for sale" signs for any merchandise or service. Further, the legislative language is so poorly written that it will create legal interpretation issues for all parties involved.**
 - ◇ **Not vetted,**
 - ◇ **Did not go through due process,**
 - ◇ **Is not germane to the original bill.**
 - ◇ **Language will create challenges likely resulting in unnecessary lawsuits between parties.**
 - ◇ **Was offered in HB 2828 which was not assigned to a House committee until the last day of session.**
 - ◇ **No public hearing in the House**
 - ◇ **The provision was included in the Senate Substitute for HB 1662, offered and adopted by the Senate on May 11, so no public hearing was possible on the addition of the provision to the substitute.**
- ◇ **A homeowners' association is intended to be a true democracy where the homeowners have the ability to change or adopt restrictions to promote both their happiness and their property values without the interference of government, but this provision on "For Sale" signs is a State intrusion on our rights as homeowners without giving us any opportunity to express our position.**

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Missouri Municipal League

Similarly seeking to have the governor veto the bill based upon impacts that it has on local governments to control home-based businesses and signage



Interesting to note that neither the MML nor CAI are focusing their objections on the solar panel issues (at least in their advocacy materials).



HOAs Generally

Governing documentation

- a. Declarations of Covenants, Conditions and Restrictions (sometimes separate HOA Declarations)
- b. Articles of Incorporation
- c. Bylaws
- d. Rules and Regulations

Hierarchy.



HOAs Generally

Duties

1. Maintenance of Common Areas and Amenities
2. Collection of Assessments
3. Enforcement of Declarations of Covenants, Conditions and Restrictions.
4. Advocacy for neighborhood-wide issues before governmental entities and jurisdictions.

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WHAT IT DOES

1. Adds a definition to Section 442.404 for “Solar panel or solar collector”.

“A device used to collect and convert solar energy into electricity or thermal energy, including but not limited to photovoltaic cells or panels, or solar thermal systems.”



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WHAT IT DOES

2. Prohibits HOAs from adopting or enforcing deed restrictions, covenants, or similar binding agreements running with the land that would limit or prohibit, or have the effect of limiting or prohibiting, the installation of solar panels or solar collectors on the rooftops of any property or structure. *(emphasis added)*



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Limitations

- ◆ Subsection 3(2) of the section allows the following:

“A homeowners’ association may adopt reasonable rules, subject to any applicable statutes or ordinances, regarding the placement of solar panels or solar collectors to the extent that those rules do not prevent the installation of the device, or adversely affect the cost or efficiency of the device.”



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Limitations (cont'd)

- ◆ Subsection 3(3) of the section allows the following:

Indicates that it **ONLY** applies to rooftops that are **OWNED**, **CONTROLLED**, and **MAINTAINED** by the owner of the individual property or structure.

**Would exclude communities wherein the HOA provides maintenance of the roofs.



REASONABLE RULES

PLACEMENT ONLY!!

Limitations on the front of residence unless it can be shown that no other viable option is available.

Requiring placement on the back or sides of a residence.

Reasonable efforts to limit glare on street and neighboring homes.

Requiring submission of plans/specifications to the ARB/ARC.

Installation of reasonable screening to limit negative impact on neighboring property owners.





Recommendations

Form a small committee within the Association to discuss reasonable restrictions to place on the installation of solar panels by property owners. Recommendations from the committee would then be presented to the Board for adoption as a rule or regulation. You could also consider adopting the standards and requirements for approval as an amendment to your Declarations by the membership.

Sample Language

The following provisions are adopted to promote the use of solar energy for heating and cooling and to ensure uniform installation and design of solar energy systems in a way that matches the aesthetics of the neighboring homes.

(i) Owners should first consider all existing structures and landscaping before electing a site for any proposed solar system. No ground mounted solar systems will be allowed (unless such design is allowed by local, state, or federal solar access laws in which no other location on the property would have been deemed acceptable).

(ii) All plans must be preapproved by the Approving Party prior to installation.

(iii) Only rear-facing, roof mounted arrays will be allowed and must be positioned in a manner in which they are not visible from the street elevation (unless such use is prohibited by local, state, or federal solar access laws).

(iv) Flush mounted panels (i.e. the plane of the array is parallel to the roof) will be allowed on a roof facing a street, only if documentation is provided from the solar contractor indicating this is the only feasible location for a solar array and it has been identified to be necessary in conjunction with local, state, or federal solar access laws. If panels are installed on a side or rear roof, the array may be tilted or raised if a variance is granted.

(v) All components of the solar system should be integrated into the design of the home. The color of the solar system components should generally conform to the color of the roof shingles to the extent practical. Solar “shingles” that mimic the look of a composite shingle are acceptable but should match the color of the current roof shingles as much as practical.

(vi) All installation of solar panels must be completed by a licensed installer and all local construction and utility company permits (as necessary) shall be obtained prior.

(vii) Applications submitted to the Approving Party should include the following:

- a) A diagram drawn to scale by the licensed contractor installing the system showing where the system will be installed;
- b) Photos of the roof area where the array will be mounted;
- c) Material to be used and/or the manufacturer’s description of the system, photos, and/or pictures of the system and color of the system.
- d) Where possible, photos should be provided of similar existing systems as examples.

- (viii) Piping and electrical connections will be located directly under and/or within the perimeter of the panels, when possible, and placed as inconspicuously as possible when viewed from all angles.
- (ix) The highest point of a solar panel array will be lower than the ridge of the roof where it is attached.
- (x) All painted surfaces will be kept in good repair.
- (xi) Changes to adjacent property should not impede an existing or soon-to-be-installed solar system or interfere with any existing solar energy easement.
- (xii) All wall mounted equipment or electrical panels shall not be placed on the front exterior of the home. The size and placement of such equipment or electrical panels should be installed in a position that it is not viewed from the front street elevation.
- (xiii) The layout of solar panels should be symmetrical in nature to the layout of the rooflines.
- (xiv) Subject to solar access laws or restrictions, the Approving Party will consider the ideal positioning of the panels to balance the requirements for access alongside the aesthetics in which preference will be given to placing panels on the rear of the home, followed by the sides of the home, and only on the front of the home when all other requirements for installation outlined in these Restrictions are met (i.e. flush mounted panels or by using solar shingles).
- (xv) A variance to certain sections of these provisions may be granted if compliance with these provisions would significantly increase the purchase price of the solar system or significantly decrease its performance or efficiency. If an owner seeks a variance they must provide a minimum of two bids depicting the cost of installation of the solar systems (one bid in compliance with these guidelines and a second bid depicting the desired alternative location), unless the variance represent the only feasible installation location. The Approving Party may require bids or estimates from a second contractor to make an informed decision.
- (xvi) All solar equipment installed and the workmanship of the installer must carry an industry competitive warranty to ensure that it will provide long-term reliability and value to the homeowner.
- (xvii) Any leased solar systems must include an option to have the lease transfer to a new homeowner in the event of a home sale, or a provision must be made by the installer to remove the system (with any roof repairs to return the home to the previous condition) if the new homeowner should elect to discontinue the use of the system.
- (xviii) Any purchased solar systems will have any title of ownership transferred to new homeowners in the event of a home sale as part of the purchase price of the home. Any home that is sold, in which an existing solar system is to be removed, must have the roof returned to the condition prior to the installation.
- (xix) Any inoperable or non-functioning solar systems must be removed from the home and the roof should be returned to the condition prior to the installation.
- (xx) This guidance on solar energy does not apply to items like landscaping lights that utilize solar power or solar powered water heaters used for swimming pools. The guidance for the use of those items should be followed as outlined in the remainder of the Declaration of Restrictions.

Any home that is adjacent to another home utilizing solar panels must follow all local, state, and federal access laws regarding solar access through solar easements. All trees and landscaping must not prohibit the adjacent home from having proper solar access through these easements. Any additional construction on the property must not prohibit the adjacent home from having proper solar access through these easements.