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New HOA flap on solar panels heats up

By Sara Thorson
Tribune

In Gary Vernon's Pinal County neighborhood, horses, chickens and dogs run free in back and front yards, and boat and horse trailers sit out in plain view. In most East Valley homeowners associations, at least some of those things would garner the homeowner a violation notice from the HOA board.

But, instead, it's the thin, gray solar panels on Vernon's garage roof that his HOA has a problem with.

Vernon moved to the small community of horse properties more than two years ago from west Mesa's Dobson Ranch. He'd had solar panels in that master-planned community for years, and no one ever complained, he said.

Last March, he wanted to install similar panels on the roof of his detached garage in Vinwood Estates to heat his swimming pool. He applied to do so with the Vinwood Estates Homeowners Association. First, he was told his application was lost, he said. He submitted another one, and when he asked for a response after a month, was told the HOA didn't have his address to send him one. A letter to the HOA's architectural committee, which cited a state law voiding restrictions that effectively prohibit solar panels, also generated no response.

So, in August, Vernon had the \$3,500 panels installed. In October, the HOA sent him a notice of violation of its rules barring unconcealed heating and air-conditioning equipment from rooftops. Attached to the violation notice was a response to Vernon's initial request, dated April 9, 2005, that said he could install the panels if they weren't visible from the street, suggesting he put them on the ground or on a rack.

Vernon said it was the first time he had seen that response. A rack for the solar panels would require a cement base, be too expensive and would still be visible to his neighbors, he said.

The property manager for the Vinwood Estates Homeowners Association did not return a request for comment this week. An attorney retained by the HOA said attorney-client privilege prevented him from speaking about the case.

When Vernon didn't remove the panels, the attorney sent him a letter on March 14 telling him to remove the panels in 30 days or face a court injunction.

Vernon contacted state legislators and Gov. Janet Napolitano's office. State officials said the attorney general has no authority to enforce state law in the matter, and Vernon would need to retain his own attorney.

Vernon said he was frustrated by that response: "If there's a law on the books that says the HOA can't do this, why can the HOA do this?"

But Vernon has retained an attorney - one who won a landmark case for homeowners in a similar situation in Avondale. Vernon has also met with nearly half the homeowners in his 60-home neighborhood to ask whether his panels are a problem.

"None of them have any problems with my solar panels," he said. "In fact, the overwhelming response has been, 'What solar panels?' "

He said he was surprised that the association hadn't informed other homeowners about pending legal action because if he wins, the HOA would have to cover the legal costs, which could mean a special assessment.

"I think they should let the homeowners know we're entering legal action that could cost everyone," he said.

Vernon said some of his neighbors plan to speak on his behalf at a Monday HOA board meeting. Meanwhile, Vernon's pool is heated to 70 degrees, thanks to the panels and he plans to keep it that way.

"I'm not going to back down on this," he said. "I'm hoping, by this time next month, I'll be swimming."

HOAs v. solar panels

What the law says: A state law enacted in 1980 voids any covenants, conditions or restrictions approved by homeowners associations that "effectively prohibit" installation or use of solar energy devices.

A 2003 Arizona Court of Appeals opinion on the case, Garden Lakes Community Association v. Madigan, which involved an Avondale HOA, further defined the factors a court can consider when determining whether an HOA has violated the law. The factors include the language of the restrictions, the conduct of the association in applying the restrictions, the extent to which the homeowner's property is amenable to modifications required by the restrictions, and the feasibility and cost of required modifications, among other things.

However, the court decided that the homeowner still has to prove that the HOA's restrictions violate the law.



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