

Technology & Associations - An Ongoing Series

New Colorado Legislation Promotes Renewable Energy

Zero-energy homes, plug-in cars, and entire cities independent of fossil fuels are the future. Whether you believe widely accepted scientific conclusions that we are in the middle of worldwide climate change, or if you are skeptical and believe global warming is a theory, the world, as we know it is changing its view on energy consumption. There is even a zero emission city being planned and managed by a Denver based company overseas near Dubai. Locally, if you do not already have them you will have renewable energy devices in your neighborhood. Governor Ritter signed House Bill 1270 ("HB 1270"), concerning Energy Efficient Measures in Connection with Real Property, making it effective on August 6, 2008.

There has been a law regarding restrictions on solar panels since the late 1970s. However, the old law was vague and gave Associations the authority to provide reasonable restrictions on the installation of solar panels. There was one Colorado Appellate Opinion that also provided Associations with little direction on this issue. Recently, given increasing economic pressure on consumers from higher food prices to the pain at the pump, consumers to look in to alternative methods of energy conservation to save money. One option that is still expensive even with rebates is for a homeowner to install solar panels, but under the old law, associations could limit the installation of solar panels, the new law limits the association's restrictions and allows for additional devices.

Revisions to C.R.S. §38-30-168 addressing Renewable Energy Devices

Associations may not prohibit the installation of "renewable energy generation devices". These devices are more than just solar devices, also included are wind-electric generators. Associations may impose reasonable aesthetic restrictions on devices, but the legislature has given a narrow window on the scope of the restrictions.

The Association restrictions may not significantly increase the cost of the device; or significantly decreases the performance or efficiency. The association can have safety

requirements that match up with a recognized building code or electrical safety standard. In addition, the association may limit wind-electric generators based on noise.

New C.R.S. §38-30-106.7- Energy Efficient Measures

Associations may not unreasonably restrict “Energy efficient measures”. These are defined as:

- I) Awning, Shutters, Trellis, Ramada, or other shade structure that is marketed for the purpose of reducing energy consumption;
- II) A Garage or Attic Fan and any associated vents or louvers;
- III) An Evaporative Cooler;
- IV) An Energy-Efficient Outdoor lighting device, including without limitation a light fixture containing a coiled or straight fluorescent light bulb, and any solar recharging panel, motion detector, or other equipment connected to the lighting device;
- V) A retractable clothesline.

The Association may reasonably installation restrict the aesthetic efficient measures, however these restrictions are also limited in scope. The Association must base their restrictions on:

- I) The impact on the purchase price and operating costs of the energy efficiency measure;
- II) The Impact on the performance of the energy efficiency measure; and

- III) The criteria contained in the governing documents of the community
- IV) Bona fide safety requirements consistent with an applicable building code or recognized safety standard, for the protection of persons and property.

Impact

We are entering into a new age of development for renewable resources. While the Green movement has been active since the 1960s and these technologies are not new, there are two major market forces generating demand. The demand for alternative energy is higher due to the increasing cost of current energy sources, and there is an increased awareness and concern that the environmental impact of fossil fuels is contributing to climate change. The result is a consumer that is motivated by either or both a fiscal or moral position. So what does this mean for Associations, will neighborhoods turn into Wind Farms and Solar Panel Plants? No, but as consumers work to reduce their consumption and their carbon footprint our neighborhoods will change their physical appearance. Currently, the technology for wind-electric generators is just not practical for urban settings, so the firm expects the majority of issues to surround solar devices and other efficiency measures.

FAQ

- 1) What is the scope of the HB 1270? The new law applies to Declarations, it does not override local rules and zoning regulations.
- 2) Will my neighbor be able to put up a large windmill? - Not likely due to local zoning restrictions on height requirements. Currently, in order for windmills to be efficient they must be unobstructed and very tall to capture constant winds.

- 3) Will there be solar panels placed in common areas?
 - a. Only if the association places solar panels in common areas.
 - b. A Homeowner will not be able to place solar panels in common areas for their own personal use.

- 4) What if the renewable energy device blocks my view?
 - a. Unless there is a specific grant of a view easement, there are no implied easements for views in Colorado.

- 5) What if my neighbors tree blocks my sunlight and I want to try to install solar panels?
 - a. Better work it out with your neighbor and your association; the neighbor is under no obligation to remove the tree that blocks the solar panel.

The CAI tradeshow theme this year was centered around green efforts. Several speakers addressed the issue of solar panels, and their advice for homeowners is applicable to associations. Plan. Solar panels should be the last step in making a home energy efficient. Associations need to plan as well. They need to have procedures in place to handle the applications of homeowners to install energy generation devices.

Colorado is uniquely positioned to capitalize on the Green Movement with wind farms, Xcel energy rebates, National Renewable Energy Labs, and new green companies sprouting up along the Front Range. The market is demanding consumer oriented renewable energy, and the new law will make it impossible for associations to ban renewable energy devices. Associations should be pro-active and develop procedures for the application and installation of renewable energy devices.