

The Sun Does Not Shine
on Homeowner's Solar Panels

by

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After three trials and one appeal, a homeowner must remove part of its solar panel system because the homeowners' association did not approve it, and pay up to \$56,000 in attorney fees to the association.

The case is *The Lake at Twelve Oaks Home Association, Inc. v. Hausman*, 2016 WL 1579124 (W.D. Mo. April 19, 2016).

In July 2012, Matthew and Stacy Hausman installed a photovoltaic solar array system on various roofs and on the ground of their home located within a subdivision in St. Joseph, Missouri. The subdivision was part of The Lake at Twelve Oaks Homes Association, Inc. Homeowners were subject to a declaration of covenants, conditions and restrictions for the subdivision.

One of the restrictions was that homeowners must submit written plans and specifications and obtain written permission from the Association's Design Review Committee (DRC) prior to construction of any structure that materially changed the exterior appearance of that homeowner's property. The Hausmans did not submit anything to the DRC. Ironically, Matthew Hausman was a member of the DRC.

The Association demanded that the Hausmans remove the solar array as being in violation of the restrictions of the subdivision. The Hausmans did not remove the system. The Association filed a lawsuit seeking a permanent injunction.

In the first trial, the judge ordered the Hausmans to present their plans for the solar array system to the DRC for its review and approval in total, in part or not at all.

Shortly thereafter, the St. Joseph City Council enacted an amendment to its zoning ordinances regarding solar energy systems within the city limits. It provided in part that no homeowner's agreement could be more restrictive than the new city ordinance.

The DRC approved the portion of the system installed on the rear roof but rejected the portion of the system that included the panels installed on the side

roof of the garage and the ground-mounted panels on the south side of the garage. The DRC's decision was based on a provision within the Solar Guidelines previously adopted by the DRC that required panels to be constructed only within a fenced yard or patio at the rear of the main structure.

The DRC also based its decision on how the solar panels affected the character of the subdivision and considered individual homeowner complaints plus compatibility with surrounding properties and impact on the value of subdivision homes.

After a second trial, the court ordered the Hausmans, consistent with the DRC decision, to remove the part of the solar array system erected on the garage and the ground-mounted panels on the south side of the garage.

The trial court then set aside its own judgment, deciding that the parties should have included the city as an indispensable party given its new ordinance on solar panels.

After a third trial, the trial court found again in favor of the Association and ordered the Hausmans to remove the solar arrays not approved by the DRC. The court also determined that the city's solar ordinances could not be applied retroactively to the Association's Solar Guidelines and further found that the DRC's decision was reasonable.

Finally, the trial court awarded attorney fees (provided in the subdivision declarations) to the Association.

The Hausmans argued on appeal that the trial court erred in upholding the DRC's decision as being reasonable. They argued that sale prices for homes in the subdivision actually increased after the solar panels were installed.

By contrast, the DRC chair testified at trial that most members of the DRC did not find the solar energy system to be esthetically pleasing. He further testified that the Association had received complaints from approximately 20 neighbors who expressed negative views regarding the appearance of the solar system and concern that its installation lowered the value of surrounding properties.

The Hausmans' former next-door neighbor testified that the glare from the solar panels focused on his property four to five hours a day. He further testified that he made \$20,000 in concessions in the sale price of his home due to the negative impact of the solar system.

Another neighbor who lives in the home across the street from the Hausmans testified that the glare from the panels during the evening penetrated into his front window and negatively affected the value of his home.

The appellate court discounted evidence from the Hausmans that the DRC had approved a solar array system of another homeowner in the subdivision and thus by denying the Hausmans' system the DRC had acted in an arbitrary and capricious manner. The Western District noted that the system for this other homeowner could not be seen by anyone and that there were no complaints from the neighbors.

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