Overcoming HOA Objections to Solar Energy Installations

An analysis of strategies and tools available to contractors wishing to install solar energy in neighborhoods with HOA restrictions

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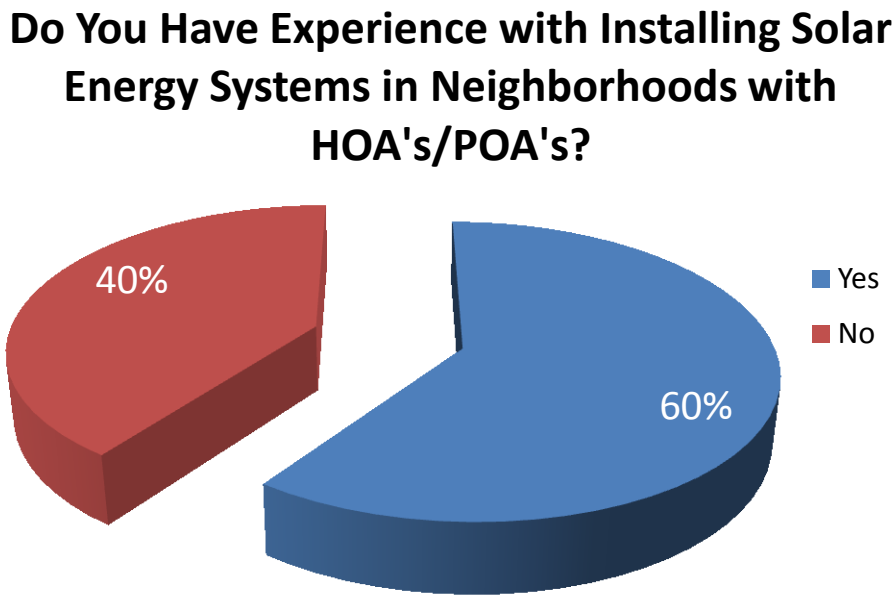
Background

Homeowner Associations have historically been viewed as one of the largest roadblocks to installing solar energy systems. In many cases, these associations have either had restrictions on where a system could be installed on a home or an outright refusal to allow a system of any kind. There was little recourse available to homeowners who were subject to the restrictions of the HOA. The only options previously available were attempted negotiations with the HOA, installing the system and being subject to fines and lawsuits, or moving out of the neighborhood completely. Build San Antonio Green conducted a survey of solar contractors and builders to determine what, if any, obstacles are in place that either add difficulty or completely prevent solar installations in neighborhoods with Homeowner Associations (HOA's) or Property Owner Associations (POA's).

Survey Results

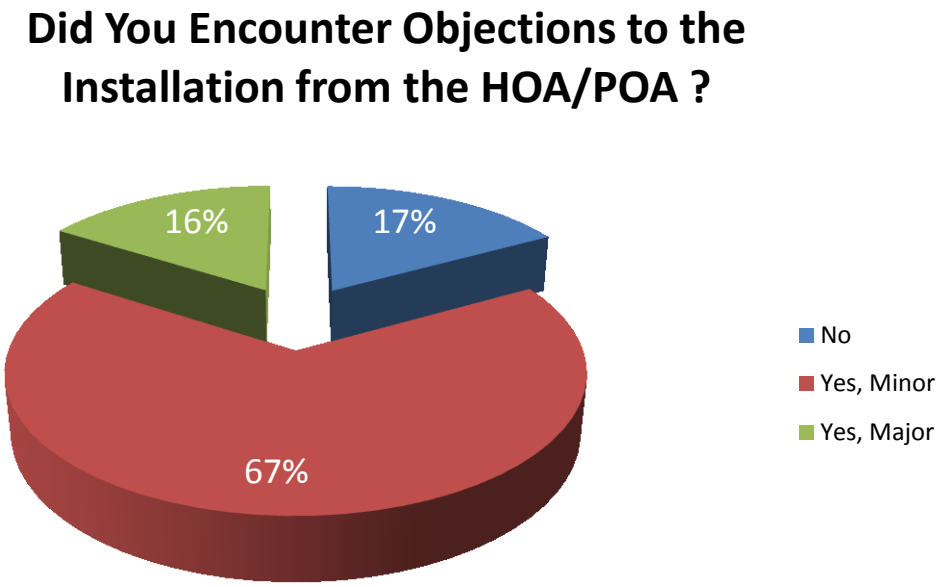
Of the survey respondents, more than half (approximately 60%) reported they did have experience in building or installing solar energy systems in neighborhoods with HOA's/POA's. Some of the builders surveyed did not have much experience with HOA's because they focus on new construction and offer solar energy as an option on their homes, and the areas in which they build either do not have HOA's or, if so, the HOA does not have any specific prohibitions against solar energy installations.



We were very pleasantly surprised with the responses from those who stated they did have experience with HOA's. As the chart below shows, more than 75% reported that they either encountered no objections or resistance or very minor objections. Minor objections are primarily aesthetic properties, not affecting the performance of the system. These commonly entailed the

color of the panels and/or the piping, racking, and brackets used to secure panels to the roof. In these cases, respondents indicated they were easily able to make the necessary aesthetic changes to the system to be in compliance.

Approximately 16% of survey respondents indicated they did face major objections. Major objections are defined as requirements that affect the performance of the system or complete prohibition of a system. Common major objections include requiring the system not be visible from the street, which can lead to reduced output if it must be placed on a north-facing roof surface. Some HOA's also have complete prohibitions on the installation of a system.



Strategies for Overcoming Objections

Homeowner Associations have begun to recognize the value and necessity of solar energy installations. Despite this, some still attempt to limit or prevent the installation of these systems in their jurisdiction, as note above. While these prohibitions historically have represented a nearly insurmountable obstacle, they are now easily overcome. Builders and installers who experienced significant resistance, or even outright refusal to allow the system, utilized a very powerful tool to overcome this resistance: House Bill 362.

This piece of legislation, enacted on June 17, 2011, forbids Homeowner Associations from prohibiting solar energy installations except in very specific circumstances. The legislation covers all instances of HOA objection, from limitations on placement up to complete refusal of a system and limits the ability of HOA's to prohibit the installation of solar energy systems in neighborhoods under their purview. As the legislation is worded, it prevents HOA's from mandating any change in configuration or placement of a solar energy installation that would:

- Installation threatens public health and safety or violates a law
- Installation is on property owned or maintained by the association

- Installation is on property owned in common by members of the association
- If installation is anywhere other than on the roof or inside a fenced yard or patio maintained by the owner of the property
- If the installation extends beyond the roof line
- If the installation does not conform to the slope of the roof line and has a top edge not parallel to the roof line
- Frame, bracket, piping or wiring that is any color other than black, bronze, or silver
- If a ground mount system extends higher than the fence line
- If installation of the system will void the manufacturer's warranty
- If the system causes "unreasonable discomfort or annoyance"

Further, the bill states that if an HOA makes a recommendation or has a requirement for the location of the system that would result in the system's annual production decreasing by 10% or more, then that requirement is not enforceable. This objection commonly occurs when HOA's would allow the system, but only if not visible from the street. Placing of the system on a roof surface not visible from the street could cause power production to decrease significantly, e.g. if the front roof surface is south facing, and thus the homeowner and solar installer are allowed, by the provisions of HB 362, to place the system in the optimal location.

Most of the provisions in the law are very straightforward, and in most cases the contractor is automatically in compliance. For example, a solar installer, in an effort to take advantage of available rebates in San Antonio, must ensure the system meets current codes. Thus, there is no need to worry about the system violating a law or threatening public health and safety. Codes in San Antonio also prevent systems from extending beyond the roof line, as a 3-foot clearance is required around the panels in case firefighters ever need access to the roof.

Other provisions, such as material color, slope or angle of the panels and height of a ground mount system are easily overcome by the solar contractor by altering the design or location of the system.

The only possibly troublesome provision in HB 362 is the clause regarding an "unreasonable discomfort or annoyance." While other provisions are very clear-cut, this one is quite subjective – one HOA's determination of "unreasonable" will vary quite considerably from another's. If the HOA makes this determination, it is easily overcome by obtaining a signed letter from neighbors of the property indicating that the system does not impede on their enjoyment of their property or cause a discomfort or annoyance. With this letter, homeowners and solar contractors easily mitigate the HOA's concerns.

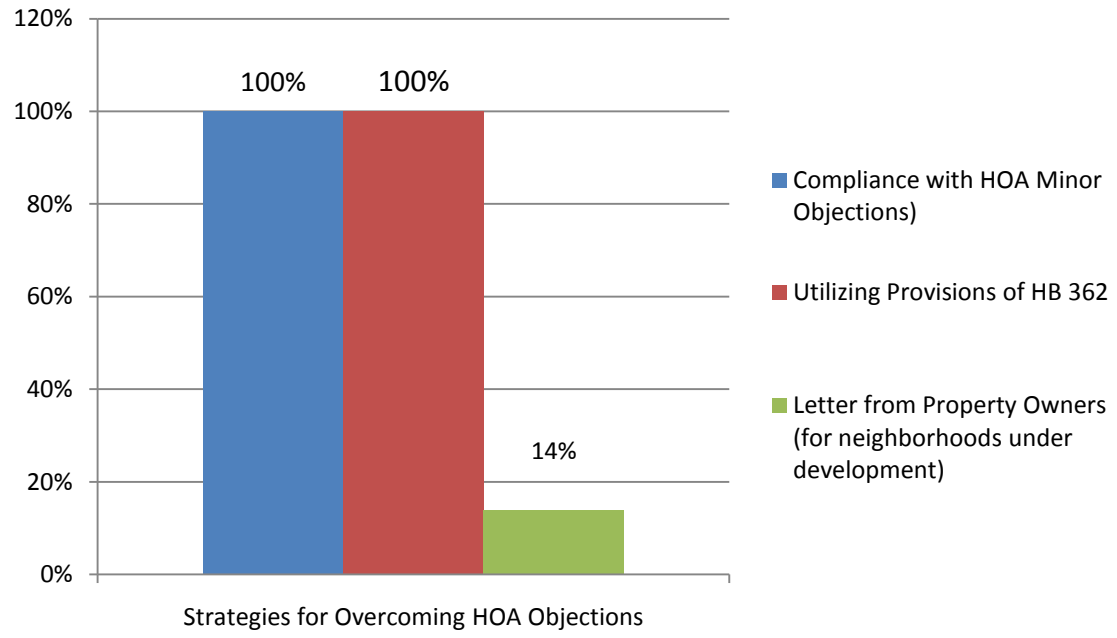
One hundred percent of the survey respondents who had experience with HOA objections reported that they were familiar with the provisions of HB 362. Further, each respondent who faced major objections to the system installation utilized the provisions of the bill to overcome said objections. When the HOA was informed of the provisions of the law, and given proof that the system will not violate any of the provisions, the HOA dropped its objections to the system and allowed installation.

The only difficulty still encountered, in some cases, had to do with neighborhoods that are still "under development." HB 362 does allow developers, defined as those who have "a right to

facilitate the development, construction, and marketing of the subdivision; and a right to direct the size, shape, and composition of the subdivision" to prohibit the installation of a solar energy system, or to have restrictions on the size, location, etc. of any installed systems. Respondents to the survey stated that in cases where they have installed a system in a neighborhood still under development, the only recourse available was to obtain a signed letter from neighbors of the property indicating that they had no objection to the installation of the system. While this tactic can give some leverage, developers still have the final word and if they opt to prohibit or severely limit systems, installers must comply with the developer's restrictions.

The chart below shows the strategies to overcoming HOA objections utilized by survey respondents. In cases of minor objections, the contractor was easily able to mitigate the situation, and all of them reported that the aesthetics of the system were changed to comply or the HOA was notified that the system would be in compliance. Notification typically consisted submitting a copy of the panel design and system layout to the HOA for review.

For respondents who faced major objections, such as location of system or complete refusal, each one of the respondents indicated they informed the HOA about the provisions of HB 362. In every case, the HOA acquiesced and allowed installation of the system. One respondent did state that in cases of a neighborhood under development, they would attempt to obtain letters from neighboring property owners showing no objection to the system. This respondent did stress, though, that while this can help, ultimately the decision is up to the developer and as yet, there is no provision of law that can prohibit a developer from not allowing a system.



Conclusion & Summary of Findings

The results of the survey were very encouraging. In setting out to do the survey, we expected to find many more objections from HOA's and POA's than were reported by our survey respondents. As shown, most of the survey respondents encountered either no objections or very minor, aesthetic objections that were easily overcome. For those who initially experienced major objections, HB 362 proved to be an invaluable tool. HOA's have no choice but to allow solar energy installations, provided they do not violate any of the provisions of HB 362. While historically these associations have been viewed one of the largest hurdles to overcome in regards to installation of solar energy systems, the Texas Legislature has provided a a powerful tool for builders, solar contractors, and homeowners. Removal of this once difficult obstacle has dramatically altered the landscape of solar in Texas, as it opens the doors for more solar energy installations. Contractors will continue to take advantage of the law and install systems in neighborhoods where they were previously prohibited. In our daily work with members of the residential construction industry, solar contractors, other members of the green building industry and the general public, Build San Antonio Green will be working to educate these sectors about the provisions of the bill and how to take full advantage.

Appendix I

Questionnaire given to builders and solar contractors

Solar Installation & HOA Survey for Builders

1) Have you installed solar energy systems in an area with a neighborhood association?
2) If so, have you encountered any resistance from the neighborhood association regarding the installation of the solar energy system?
3) How did you overcome the resistance or address the concerns of the HOA?
4) Are you aware of the provisions of HB 362, enacted by the Texas legislature in 2011?
5) Have you ever utilized the provisions of HB 362 to counter an HOA's resistance to or refusal to allow a solar installation?

Appendix II

Summary of HB 362 provisions (a contractor checklist) & Sample Letter for the "Discomfort or Annoyance" Provision

Courtesy Solar San Antonio

World Trade Center
118 Broadway, Suite 621
San Antonio, TX 78205
P: (210)354-0236

www.solarsanantonio.org

Solar Installation in Home Owner's Association

The following checklist is to assist in determining if a Solar Installation can be prohibited or forced to relocate in accordance with Texas House Bill Number 362.

A "Yes" answer simply means that an HOA or POA can bar the installation or require relocation.

Does/Is the Installation:

Conditions	Yes	No
Threatens Public health and Safety. Sec 202.010 (2)(d)(1)(A)		
Violates a Law. Sec 202.010 (2)(d)(1)(B)		
On property owned or maintained by associations. Sec. 202.010 (2)(d)(2)		
On property owned by common Property Owners of POA. Sec.202.010 (2)(d)(3)		
Installed anywhere other than home roof or other approved structure or inside fenced yard or patio maintained by owner. Sec. 202.010 (2)(d)(4)(A)(B)		
Extends higher than the roof line. Sec 202.010 (2)(d)(5)(A)		
Not conforming to the slope of the roof line. Sec. 202.101 (2)(d)(5)(C)		
Frame, Piping or Wiring that are any color other than silver, bronze or black. Sec. 202.010 (2)(d)(5)(D)		
A ground mount system that is higher than the fence line. Sec. 202.010 (2)(d)(6)		
Install voids warranties. Sec. 202.010 (2)(d)(7)		
Installed without permission from POA where prior permission currently required. Sec 202.010 (2)(d)(8)		
Causes unreasonable discomfort or annoyance Sec. 202.010 (2)(e) Neighbors have signed letter		
POA's suggested location will not decrease the system's annual production by 10% or more from owner's preferred install location. Sec. 202.010 (2)(d)(4)(A)		

If all answers are checked "No" then the installation cannot be prohibited in accordance with Texas House Bill 362. If "discomfort or annoyance" is a question, letters from neighbors resolves that question. (See sample)

*Note that this is only applicable to homes/subdivisions that are not under control of the developer.

Sample letter to answer any “discomfort or annoyance” issue

I understand that my neighbor, _____ (Name) at _____(Address) is planning to install a Solar energy system on their property. I understand that, in accordance with Texas law, one of the determining factors in whether this installation is approved is that it does not cause any unreasonable discomfort or annoyance. [Sec. 202.010(2)(e)]

I have no problems with this solar installation and it does not cause my household any unreasonable discomfort or annoyance.

Signed,

_____(Signature)

_____(Print Name)

_____(Address)

_____

_____(Date)

Appendix III

Text of HB 362

AN ACT

relating to the regulation by a property owners' association of the installation of solar energy devices and certain roofing materials on property.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 202, Property Code, is amended by adding Sections 202.010 and 202.011 to read as follows:

Sec. 202.010. REGULATION OF SOLAR ENERGY DEVICES. (a) In this section:

(1) "Development period" means a period stated in a declaration during which a declarant reserves:

(A) a right to facilitate the development, construction, and marketing of the subdivision; and

(B) a right to direct the size, shape, and composition of the subdivision.

(2) "Solar energy device" has the meaning assigned by Section 171.107, Tax Code.

(b) Except as otherwise provided by Subsection (d), a property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from installing a solar energy device.

(c) A provision that violates Subsection (b) is void.

(d) A property owners' association may include or enforce a provision in a dedicatory instrument that prohibits a solar energy

device that:

(1) as adjudicated by a court:

(A) threatens the public health or safety; or

(B) violates a law;

(2) is located on property owned or maintained by the property owners' association;

(3) is located on property owned in common by the members of the property owners' association;

(4) is located in an area on the property owner's property other than:

(A) on the roof of the home or of another structure allowed under a dedicatory instrument; or

(B) in a fenced yard or patio owned and maintained by the property owner;

(5) if mounted on the roof of the home:

(A) extends higher than or beyond the roofline;

(B) is located in an area other than an area designated by the property owners' association, unless the alternate location increases the estimated annual energy production of the device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than 10 percent above the energy production of the device if located in an area designated by the property owners' association;

(C) does not conform to the slope of the roof and has a top edge that is not parallel to the roofline; or

(D) has a frame, a support bracket, or visible

piping or wiring that is not in a silver, bronze, or black tone commonly available in the marketplace;

(6) if located in a fenced yard or patio, is taller than the fence line;

(7) as installed, voids material warranties; or

(8) was installed without prior approval by the property owners' association or by a committee created in a dedicatory instrument for such purposes that provides decisions within a reasonable period or within a period specified in the dedicatory instrument.

(e) A property owners' association or the association's architectural review committee may not withhold approval for installation of a solar energy device if the provisions of the dedicatory instruments to the extent authorized by Subsection (d) are met or exceeded, unless the association or committee, as applicable, determines in writing that placement of the device as proposed by the property owner constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. For purposes of making a determination under this subsection, the written approval of the proposed placement of the device by all property owners of adjoining property constitutes prima facie evidence that such a condition does not exist.

(f) During the development period, the declarant may prohibit or restrict a property owner from installing a solar energy device.

Sec. 202.011. REGULATION OF CERTAIN ROOFING MATERIALS. A

property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner who is otherwise authorized to install shingles on the roof of the owner's property from installing shingles that:

(1) are designed primarily to:

(A) be wind and hail resistant;

(B) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or

(C) provide solar generation capabilities; and

(2) when installed:

(A) resemble the shingles used or otherwise authorized for use on property in the subdivision;

(B) are more durable than and are of equal or superior quality to the shingles described by Paragraph (A); and

(C) match the aesthetics of the property surrounding the owner's property.

SECTION 2. Sections 202.010 and 202.011, Property Code, as added by this Act, apply to a dedicatory instrument without regard to whether the dedicatory instrument takes effect or is renewed before, on, or after the effective date of this Act.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I certify that H.B. No. 362 was passed by the House on April 11, 2011, by the following vote: Yeas 143, Nays 3, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 362 on May 27, 2011, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 362 on May 29, 2011, by the following vote: Yeas 143, Nays 1, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 362 was passed by the Senate, with amendments, on May 25, 2011, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 362 on May 29, 2011, by the following vote: Yeas 31, Nays 0.

_____

Secretary of the Senate

APPROVED: _____

Date

_____

Governor