Honorable Committee Members

I have read HB23-1127. I think I understand the purpose of the bill. I support the general principle that government and private housing authorities should not inhibit the use of appliances, water heaters and furnaces depending on the energy source. But I oppose the bill because it allows installation of solar panels, wind turbines, and hydro power in all areas. Even those where good reasons exist to ban the installation. So, it is deficient in three areas:

1. Runs afoul of Covenants and Zoning

2. Does not address the differences in ownership and construction in HOAs

3. It is overbroad and not precise.

Installation Is The Problem

It is an error to legislate an override to Covenants and Zoning which prohibit the installation of energy generating systems on the exterior of buildings and homes, and upon the curtilage of dwelling units. There are good reasons for the prohibitions based on fire protection, structural integrity, ease of maintenance, and preservation of green space surrounding single family dwellings.

It is not an error to declare a public policy in support of using the energy systems listed. That is, no one should have an objection to the installation of appliances, furnaces, water heaters and the like using natural gas, propane, and electricity.

It is only the installation of the power generating system upon premises that is objectionable.

All HOAs Are Not Born Equal

Common Interest Communities come in all sizes, varieties, ownership rights, common areas, and limited common elements. And therein lies the problem.

When one person envisions an HOA she may be thinking of a planned development of platted housing lots with abutting public streets with fee simple ownership, but subject to mandatory membership in an HOA with declarations governing the maintenance of common parks, exterior appearance of properties, parking, and lot building specifications, such as fences.

Another person may envision a condominium association where the owners have common undivided interests in all the buildings with a right to exclusive use of interior airspace. In such cases the HOA is responsible for exterior maintenance of all Units, groundskeeping, and even utilities in some instances.

Both conceptualizations are valid because both, and many more permutations, exist under CCIOA as it now exists.

So, the proposed installation of energy generating systems (a wind charger for instance) envisioned by the Bill upon the common grounds or upon the exterior of a Unit for which the owner is not personally entitled to the exclusive use creates conflict in the community where none otherwise exists.

When people buy into a planned community with explicit specifications for height, appearance, and use they should be able to rely on those provisions in perpetuity. They should not fear that one neighbor has the ear of a state legislator to change the rules so that they can now build to the detriment of the other neighbors.

Overbreadth And Vagueness

I suppose that the draftsman wants to ensure the legislation covers the perceived problem. That is, the property owner should be able to build an energy generation station (system) on her ground or attach it to her home, and use any interior appliance she wishes to use that energy.

But does the author wish to allow an owner with mineral interests the right to drill a gas well? To install a boiler and dynamo to generate electricity? And does the author envision that systems not constrained by the 100 Kw limit be allowed to generate power of 1000 Kw or 100,000 Kw using natural gas, propane, and solar?

And has anyone even thought through the application of Colorado water law to the use of riparian flows to generate hydro power in this context? If the HOA with common ownership of general elements owns the stream bed, can any member set up hydro station and run a wire to her Unit? Be careful what you legislate because the current language is not precise.

Most importantly, doesn't it make sense to allow local building codes and HOA rules to be used to ensure installations of power generating systems do not overburden a building, run the risk of collapse, interfere with the neighbors, or pose a fire risk?

Recommendations

This legislation can be salvaged. I think a bit of surgery on the language will limit the application to the interior use of appliances. Thus, avoiding the "installation" problem. I would strike parts of the proposal as follows:

Re: HOAs

(b) NOTWITHSTANDING ANY PROVISIONS IN THE DECLARATION, BYLAWS, OR RULES AND REGULATIONS OF THE ASSOCIATION TO THE CONTRARY, AN ASSOCIATION SHALL NOT LIMIT OR PROHIBIT THE ~~INSTALLATION OR~~ USE OF AN~~Y~~ ~~SYSTEM OR~~ APPLIANCE THAT USES NATURAL GAS, PROPANE, SOLAR PHOTOVOLTAICS, ~~MICRO WIND TURBINES, OR MICRO HYDROELECTRICITY~~ FOR ~~GENERATING ELECTRICITY~~, COOKING, HEATING WATER, OR HEATING OR COOLING SPACES IN A UNIT.

Re: Government

(2) NOTWITHSTANDING ANY LAW TO THE CONTRARY, A STATE AGENCY SHALL NOT PROMULGATE OR ENFORCE A RULE AND A LOCAL GOVERNMENT SHALL NOT ENACT OR ENFORCE AN ORDINANCE, RESOLUTION, REGULATION, OR OTHER LAW THAT LIMITS OR PROHIBITS THE ~~INSTALLATION OR~~ USE OF AN~~Y SYSTEM OR~~ APPLIANCE THAT USES NATURAL GAS, PROPANE, SOLAR PHOTOVOLTAICS, ~~MICRO WIND TURBINES, OR MICRO 18 HYDROELECTRICITY~~ FOR ~~GENERATING ELECTRICITY,~~ COOKING, HEATING WATER, OR HEATING OR COOLING SPACES IN A RESIDENCE OR BUSINESS.

The clean operative language for both HOAs and Governments would thus be:

> NOTWITHSTANDING ANY .... TO THE CONTRARY, A ... SHALL NOT .... PROMULGATE OR ENFORCE A RULE AND A LOCAL GOVERNMENT SHALL NOT ENACT OR ENFORCE AN ORDINANCE, RESOLUTION, REGULATION, OR OTHER LAW THAT LIMITS OR PROHIBITS THE USE OF ANY APPLIANCE THAT USES NATURAL GAS, PROPANE, OR SOLAR PHOTOVOLTAICS, FOR COOKING, HEATING WATER, OR HEATING OR COOLING SPACES IN A RESIDENCE OR BUSINESS.

Respectfully Submitted,

Herbert Sampson