

Harborview Homeowners Association
405 Marina Drive
Smithville MO 64089
newharborviewbod@gmail.com

To: Members of Harborview Homeowners' Association

Date: February 22, 2021

From: Board of Directors

Re: Pending Litigation

As promised, the Board is providing you this update on the pending lawsuit involving the Association. As you know, the Association brought suit against an owner for violating the prohibition on solar panels. In retaliation, the owner sued the Association asserting that the Board was not properly formed so the Board cannot enforce the solar panel prohibition even though the owner was on the Board at the time; the Association is being defended on this part of the lawsuit under an insurance policy of the Association. The Board engaged in good-faith negotiations to provide the owner the opportunity to settle and keep her solar panels should the owners support an amendment but she refused.

In January 2021, the Association was successful and obtained a Judgment in its favor on all arguments. This information (as well as almost all Missouri cases) is available online at <https://www.courts.mo.gov/casenet/base/welcome.do>. The easiest way to search the case is by its case number: WD84323. Included as part of the Judgment, Judge Sutton awarded the Association \$10,568.77 in attorney's fees and costs of the \$23,227.77 requested.

The owner has filed a notice of appeal and the Court has entered an order setting an appellate bond amount (called a Supersedeas Bond) in the amount of \$10,000.00. The bond payment has not yet been submitted to the court. Once such payment is made, the Judgment is stayed pending the appeal. If the payment is not made, the Association would proceed with execution on the Judgment to recover the money portion of the Judgment.

The next procedural steps require the owner to have the court's file sent to the Western District Court of Appeals and the owner's attorney will submit a brief. After that, the Association will prepare and submit its brief with each side provided an opportunity to respond. Once all the briefing is done (and oral arguments are held, if requested), the Court of Appeals would issue its opinion. There is no deadline for the Court of Appeals to issue a decision. The Board will make all briefs available online as they are filed and will give you the appeal case number once assigned.

To provide cost-certainty to the Association on the solar panel issue, the Association's legal counsel has agreed to a flat fee for handling the appeal in the amount of \$10,000.00. The Association's arguments related to the validity of the Board will continued to be defended under the Association's insurance policies.

We trust you agree that enforcement is inherently a part of living in our community because that is what we all agreed to when we bought our homes. Without it, the Harborview Declaration and the Harborview Declaration of Association would not be worth the paper they are written on. The Board is committed to avoiding litigation when it can, which is why the Board places such an emphasis on reaching out to owners to resolve any violations as quickly and fairly as we can.

The Board is committed to staying on that path without letting an owner destroy what we all agreed to. If you have any questions, please contact the Board. Otherwise, the Board greatly appreciates your time, efforts and support. Without a doubt, our community has come a long way in building a larger sense of community while reducing disputes and arguments amongst the owners.

Sincerely,

Board of Directors