

March 4, 2021

BY E-MAIL ONLY

Doug Fuller
President, Secretary, Treasurer
Precon Development Corporation, Inc.
dfuller@preconmarine.com

Board of Directors
Edinburgh Community Association, Inc.
c/o Michaela Audet
maudet@unitedpropertyassociates.com

**Re: Exterior Alteration Application
1608 Water View Circle**

Mr. Fuller and Directors:

I am an attorney representing Will Rivera regarding his application to install solar at his home within the Edinburgh Community Association (the “Association”). The application was unlawfully denied by Mr. Fuller on behalf of Precon Development, Inc., (“the Declarant,”) and by the Architectural Review Board of the Association (the “ARB”). The purpose of this letter is to provide you an opportunity to resolve this case prior to litigation. To do so, the application should be approved within fourteen (14) days. If the matter is not resolved in that time, we intend to file a complaint in the Circuit Court for the City of Chesapeake substantially in the form of the attached document.

By way of background, my client submitted a modification application to the ARB and DRC on December 29, 2020. Later that day, Mr. Fuller, on behalf of the Declarant, responded to the application with the statement “Solar Panels are Not Allowed in Edinburgh.” On February 15, 2021, the Association’s management company provided a formal summary denial on behalf of the ARB.

The denial by the Declarant and the ARB’s action were contrary to Virginia law. By statute, a homeowners’ association (HOA) may not prohibit solar unless the recorded declaration for the HOA establishes such a prohibition. Va. Code § 67-701(A). The law

applies retroactively to declarations recorded before the effective date of the statute.¹ Under this law, HOAs may “establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices.” *Id.* But associations cannot impose a restriction that “(i) increases the cost of installation of the solar energy collection device by five percent over the projected cost of the initially proposed installation or (ii) reduces the energy production by the solar energy collection device by 10 percent below the projected energy production of the initially proposed installation.” Va. Code § 67-701(B).

The recorded Declaration for the Association contains no prohibition on solar installations or any other provision addressing solar installations.² By law, the de facto prohibition on solar installations by Declarant and the ARB is unlawful. The prohibition also does not appear in the ARC Detailed Design Standards of March 5, 2007 or the October 17, 2006 Resolution, meaning that there was no existing basis for the denial.

The Declaration requires lot owners to provide a site plan and schedule, and to obtain committee approval, prior to any exterior modifications.³ But the approval powers of the Declarant and the ARB are curtailed by Va. Code § 67-701(A) (allowing only “reasonable” restrictions on the size, place, and manner of placement of solar arrays). The Declarant and the ARB cannot create a flat prohibition on solar, unless that prohibition is already established in the Declaration.

The denial of my client’s modification application – by both Declarant and the ARB – was unlawful. The denials violate state law, violate the Declaration, and create liability for attorney’s fees and costs under the Virginia Property Owners’ Association Act. Va. Code § 55.1-1828. We ask that you reverse the denial and promptly approve the Application. Please free to have your counsel contact me as necessary to discuss.

Respectfully,

/s/ Matthew L. Gooch

Matthew L. Gooch

Enclosures: Complaint

¹ Op. Atty. Gen. Mark Herring to Del Yost (April 14, 2105), available at: https://oag.state.va.us/files/Opinions/2015/14-057_Yost.pdf

² Edinburgh Declaration of Protective Covenants and Restrictions (March 29, 2004)

³ Declaration, § 6.5.