



August 26, 2020

Michael J. Pfeiffer, Senior Vice President of Technical Services
International Code Council
Central Regional Office
mpfeiffer@iccsafe.org

Mr. Pfeiffer,

This letter is in response to the Notice of Appeal that was posted by ICC on July 30, 2020. As a named appellant, Leading Builders of America (LBA) respectfully requests that Clayton Traylor and Amanda Hickman be permitted to participate in, and present information at, the ICC Appeals Board Hearings during the following proceedings:

- Impact of Online Voting (CP#28) / Cost Impact / Voting Guides – September 10, 2020
- Voter Eligibility / Validation Process – September 14, 2020

LBA has prepared the enclosed written response statement and supporting information for the consideration of the International Code Council Appeals Board. The response details several key issues during the above-mentioned hearings. This includes specific irregularities that occurred during the 2019 Group B code development cycle, evidence that demonstrates clear violations of Council Policy 28 occurred, discussion of how these violations of Council Policy 28 constitute a material and significant irregularity of process or procedure required by Council Policy 1 to sustain LBA's appeal, and the negative consequences that will result if these irregularities are left unremedied.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ken Gear", with a long horizontal flourish extending to the right.

Ken Gear
Chief Executive Officer
Leading Builders of America
1455 Pennsylvania Ave NW, Suite 400
Washington, DC 20004
(202) 621-1815

Attachments: LBA Fact Sheet: 2020

CP#28 Violations Appeal Response Statement Submitted by LBA

CC: Dominick Sims

While the mission of Leading Builders of America (LBA) is to protect home affordability, it is the material and significant irregularity of process and procedure¹ which occurred during the 2019 Group B Code Development Cycle that LBA seeks to have its appeal sustained.

Although cost is not grounds for sustaining an appeal, the negative impact to home affordability and the home-building industry due to the violation of process that took place in the 2019 Group B development Cycle cannot be overstated. If corrective action is not taken, the 2021 IECC has the ability to eliminate close to 1.8 million new homebuyers from the market, while adding exorbitant cost and an unbalanced benefit to remaining homebuyers.

ICC's stated mission for code development assures that **"The governmental consensus process leaves the final determination of code provisions in the hands of public safety officials who, with no vested financial interest, can legitimately represent the public interest."**² Unfortunately, this is precisely opposite of what occurred during the code development process of the 2021 IECC.

Proprietary interests led by the Energy Efficient Code Coalition (EECC) unfairly exploited the ICC code development process using subversive tactics to deny due process to other stakeholders including LBA.

EECC's proprietary interests have a significant vested financial interest in the outcome of the IECC. If any of the products their members manufacture are mandated by the codes, they will sell FAR more of those products. This is contradictory to ICC's stated mission for code development.

The Energy Efficient Codes Coalition consists of a unique mix of membership interests - both business interests (proprietary) and also governmental (non-proprietary) groups. The largest proprietary group being insulation manufacturers and related trade associations. The governmental groups include the National Association of State Energy Officials (NASEO) and Local Governments for Sustainability (ICLEI) as well as regional Energy Alliances³. Many of EECC's members are permitted to vote in the ICC governmental consensus process. This is a clear conflict of interest.

EECC developed a voting guide which included sixty-four (64) of its own highly proprietary proposals. These proposals were authored by EECC and/or its strategic partners. Using its exclusive access to its unique mix of members from proprietary and governmental groups, EECC was able to funnel their voting guide to their governmental membership.

This is confirmed by webinars found on YouTube. EECC participated on recruitment webinars⁴ hosted by their governmental members and their surrogate groups to curate new sympathetic voters

¹ CP#1-03-Appeals, Section 6.3.8.

² ICC Code Development Process. <https://www.iccsafe.org/products-and-services/i-codes/code-development/>

³ EECC Supporters. <https://energyefficientcodes.org/about/>

⁴ MAPC website "Validating Voters Webinar" 8-20-2019 posted to YouTube 8/26/2019. <https://www.youtube.com/watch?v=u8yFj87MJuk&feature=youtu.be>

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into the process and then encouraged them to vote in accordance with their voting guide. During the webinar hosted by MAPC “How to Vote on the 2021 IECC – A Codes for Climate Webinar”,⁵ the facilitator states that “what you need to vote is...40 to 60 minutes to sit down and vote and EECC’s voting guide...”. It is clear that voters were not being encouraged to look at recorded video testimony available in cdpACCESS, consider other opinions or even read the proposals. This was inconsistent with ICC’s core principles, which CP#28, Section 1.4 Process Maintenance requires for the manner in which Codes are developed.⁶

The timing of the recruitment effort was deliberate and purposeful as well. These webinars were held just weeks prior to the application deadline to ensure ICC was flooded with a surge of new voters to validate. Of paramount importance, these new voting members were not posted to the ICC member directory, in many cases until weeks after the Online Governmental Consensus Vote (OGCV) was well underway, effectively making them secret to all other stakeholders. All the while, EECC had exclusive and unfettered access to lobby these voters and advance its agenda.

In its “Report on the Code Development Process: 2019 Group B Cycle” ICC noted that in the last ten days before the September 23 deadline, 696 Governmental Member Voting Representative (GMVR) applications were submitted to staff.⁷ We now know from the “Additional Documentation of Energy Code Votes”⁸ that ICC prepared that the majority of these new GMVRs came from the 123 new Governmental Members that signed up in 2019. These Governmental Members also remained secret from stakeholders other than EECC and their strategic partners and members.

To be clear, voting guides have been widely used and are not disallowed by Council Policy 28. However, the almost perfect correlation between the OGCV results and the EECC voting guide provides virtually indisputable proof that EECC curated “last-minute” voters to ensure they had access to them, while excluding all other interested parties, including LBA.

This enabled EECC to secure the outcomes it desired on the proposals identified in its voting guide during the OGCV. It is this action that is a violation of Council Policy 28. Section 1.2.2 of Council Policy 28 requires that there must be an “open discussion of code change proposals by all parties desiring to participate”. This clearly did not happen.

Additionally, the twenty (20) over-turned double disapproved proposals never received a substantive debate during the Public Comment Hearing because their disapprovals were never over-turned. Therefore, there was no discussion of Public Comments or full debate on “As Submitted”. As a result, voters during the OGCV never had the ability to fully vet these proposals.

⁵ MAPC “How to Vote on the 2021 IECC A Codes for Climate Webinar”.
<https://www.youtube.com/watch?v=2RQO83ut4YI&feature=youtu.be>

⁶ ICC CP#28, Section 1.4. <https://www.iccsafe.org/wp-content/uploads/CP28-05.pdf>

⁷ ICC Report on the Code Development Process: 2019 Group B Cycle. Appendix D.

⁸ ICC Additional Documentation of Energy Code Votes. https://www.iccsafe.org/wp-content/uploads/2020_ICC_Hearing_Appeals_Energy_Votes.pdf

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This too was a violation of Council Policy 28 Section 1.2.2 because there was not an open discussion for approval of these code change proposals.

The ICC Validation Committee certified the results and process of the OGCV, however, this was based on information ICC provided to them at that time. ICC staff, as described in their published report of the 2019 development process, confirmed that the online voters met eligibility criteria contained in ICC bylaws. However, ICC was presumably unaware that Governmental Members were being told during a recruitment webinar: “Don’t lose sleep over which one of these you’re selecting [eligibility criteria] we talked about eligibility before and if you have questions over who should qualify to either of these questions, just let us know and we can help walk you through it. **But there is no wrong answer between these options**”.⁹ This raises serious concerns about voter eligibility.

The violations detailed herein clearly constitute a material and significant irregularity of process and procedure and for that reason LBA’s appeal should be sustained. Immediate action should be taken to overturn the irregular results of the OGCV for the IECC/IRC-E proposals and default back to the PCH results.

⁹ MAPC website “Validating Voters Webinar” 8-20-2019 posted to YouTube 8/26/2019.
<https://www.youtube.com/watch?v=u8yFj87MJuk&feature=youtu.be>



FACT SHEET: 2020

- ★ Leading Builders of America (LBA) was founded in 2009 to provide the largest homebuilders in the United States with a direct voice in the policymaking process in Washington, combining their reach and expertise to address the key issues impacting the health of the industry. Membership includes both public and privately-owned companies. The LBA Board of Directors is comprised of the CEOs of its member companies.
- ★ LBA's 20 member companies are: Ashton Woods Homes; Beazer Homes; Brookfield Residential; David Weekley Homes; D.R. Horton; Hovnanian Enterprises; KBHome; Lennar Corporation; LGI Homes; MDC Holdings (Richmond American); Meritage Homes; M/I Homes; Perry Homes; PulteGroup; Shea Homes; Taylor Morrison; The Drees Companies; Toll Brothers; TRI Pointe Group; Woodside Homes.
- ★ LBA members build in 34 states and the District of Columbia: Alabama, Arizona, California, Colorado, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, and Utah.
- ★ LBA members produce a wide range of home types including traditional single-family homes, townhomes, condominiums, apartments, retirement and second homes.
- ★ Many LBA member companies own affiliated businesses that provide mortgage lending and title services.
- ★ In 2018, LBA members sold over 216,000 new homes. Approximately 35% of all new homes sold in the United States were built by an LBA member.
- ★ LBA members produced over 650,000 jobs in 2018 through direct employment and the engagement of subcontractors.
- ★ In 2019, LBA member companies generated over \$87 billion in revenue for the national economy.

(over)

- ★ LBA emphasizes support for policies and programs that promote a healthy and sustainable housing market by working to create a legislative and regulatory atmosphere that promotes high-quality, energy efficient new homes for well-qualified homebuyers. LBA places special emphasis on policies and regulations impacting the housing finance and tax provisions important to homebuyers, as well as energy efficiency issues, labor availability and workplace safety.
- ★ LBA takes an active role in the development of residential energy policy at the legislative, regulatory and model code levels. Member companies are leaders in energy efficient building programs including Energy STAR and the DOE Builder's challenge. LBA members have been active in identifying ways to remove obstacles that prevent builders from building more efficient homes. We crafted the SAVE Act, federal legislation instructing housing agencies to recognize energy efficiency in the home financing process. When enacted, it will unlock significant new opportunities to increase the efficiency of new homes and to include additional energy efficient products and features in new homes. We've engaged the energy code development process to move away from proscriptive code requirements in favor of performance-based provisions that promote innovation and savings.
- ★ LBA is an official sponsor of the Pacific Coast Building Conference (PCBC), held each June in California. LBA CEO's and senior executives are active participants in education programs, and national and regional purchasing executives participate in the trade show through the Key Buyers' Club.

LEADING BUILDERS *of* AMERICA

1455 Pennsylvania Avenue, NW
Suite 400 Washington, DC 20004
www.leadingbuildersofamerica.org

Ken Gear, CEO: (202) 621-1815
ken.gear@leadingbuildersofamerica.org

Clayton Traylor, VP of State and Regulatory
Affairs: (972) 955-2500
clayton.traylor@leadingbuildersofamerica.org