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Report on the Code Development Process

Appeals Board Report on the Impact of Online Voting (CP 28), Cost Impact, Voting Guides, Voter Eligibility, and Validation Process

September 25, 2020

REPORT

In accordance with Section 7.1 of Council Policy 1 (CP 1), the following is the report of the International Code Council Appeals Board on the appeals related to the following: Impact of Online Voting (CP 28); Cost Impact; Voting Guides; Voter Eligibility; and Validation Process as submitted by the Leading Builders of America (LBA) and the National Association of Home Builders (NAHB). All appeal related documents, including the appeals, have been posted on the appeals [webpage](#).

The appeal was conducted in accordance with Council Policy 1 *Appeals*. The hearing was held virtually via Webex Event on September 14, 2020, at approximately 9:00 a.m. Central. The Appeals Board consisted of:

- Cindy Davis, CBO, Appeals Board Chair (ex-officio, nonvoting), Code Council Board of Directors Vice President
- Anne Anderson, P.E., S.E. Green Mountain Structural Engineering
- Henry Green, Hon. AIA, Retired, Past President of the Code Council; Former President & CEO of National Institute of Building Sciences
- John Terry, CBO, Retired, Former Assistant Director of Division of Codes and Standards, New Jersey Department of Community Affairs; Past Chair of ICC Codes and Standards Council

APPEALS BOARD RECOMMENDATIONS

Facts:

- The Appeals Board's authority to take action is limited to violations of process or procedure as required by CP 1.
- Matters concerning voter irregularity that are not a clear violation of process or procedure, as outlined by CP 28, are beyond the scope of the Appeals Board.
- This is the first time that there have been code changes that were Disapproved at the Committee Action Hearings (CAH), the Disapproval sustained at the Public Comment Hearings (PCH), and Approved as Submitted on the Online Governmental Consensus Vote (OGCV). This resulted in a final action of As Submitted. It is further noted that CP 28 specifically provides for this scenario.
- Based on the report of the Validation Committee, which was assisted in its work by Code Council staff and outside auditors, the Code Council Board of Directors, on March 31, 2020, unanimously certified the results of the OGCV for the 2019 Group B cycle.
- As part of its review process, the Validation Committee directed Code Council staff "to investigate whether voting members participating in the OGCV were fully and correctly reviewed and vetted in accordance with written Code Council policies and bylaws" and determined that they all met the bylaw definition.
- Voting guides do not violate CP 28 and have historically been part of the Code Council code development process.

Findings:

- These appeals have posed significant discussion for the Appeals Board which raises a number of issues that are beyond the scope of the Appeals Board.
- The proponents and opponents have presented compelling discussions supporting their respective positions.
- There is no clear evidence of a violation of matters of process or procedure, however CP 28 may not go far enough to support the principles of the Code Council code development process.
- Several participants, in addition to the appellants, stated that there is room for improvement in the code development process.

Recommendations:

The Appeals Board recommends that the Code Council Board of Directors deny the appeals; however, the Appeals Board makes the following recommendations for consideration by the appropriate Code Council board appointed committees:

1. The current process as outlined in CP 28 should be reviewed for compliance with the Code Council code development principles with respect to:
 - Definition of a governmental member
 - Definition of a governmental member voting representative
 - Review procedures for conducting the PCH and the OGCV, including:
 - Examine the process for OGCV consideration of proposals receiving an action of disapproval at both hearings; and,
 - Consider a requirement for the voter to provide a reason statement on their ballot as to why they are voting to overturn the PCH action.
 - Examine the current requirements in CP 28 for cost impact
2. The Code Council Board should consider developing a Code Council energy standard to replace the International Energy Conservation Code and Chapter 11 of the International Residential Code because of the highly technical and evolving nature of energy efficiency that requires further debate, which is not provided for in the current process due to time constraints.

APPEAL PARTICIPANTS

The following individuals participated in the appeal hearing:

Appellants

LBA:

- Amanda Hickman, Rep: LBA
- Clayton Traylor, LBA

NAHB:

- Craig Drumheller, NAHB
- Megan Berge, Legal Counsel
- Jared Wigginton, Legal Counsel

Participants

- David Beahm, County of Warren, VA
- Sharon Bonesteel, Salt River Project
- Amy Boyce, IMT
- Ed Carley, NASEO
- Kim Cheslak, NRDC
- Dave Collins, AIA
- Caroline Davidson-Hood, AHRI
- Bill Fay, Energy Efficient Codes Coalition
- Judith Grove, Framington, MA
- Bryan Holland, NEMA
- Greg Johnson, Coalition for Fair Energy Codes

- Harry Misuriello, ACEEE
- Jake Pauls, Jake Pauls Consulting Services
- Chris Perry, ACEEE
- Jim Ranfone, AGA
- Nick Resetar, Roetzel & Andress
- Steve Rosenstock, EEI
- Tim Ryan, IABO
- Ben Silverman, City of Boston
- Lauren Urbanek, NRDC
- Jason Vandever, SPEER
- Thom Zaremba, Roetzel & Andress

Code Council Staff

- Mike Pfeiffer, Senior Vice President of Technical Services
- Melike Oncu, General Counsel

APPEAL PRESENTATIONS AND TESTIFIERS

The following testified at the appeal hearing. Those who provided formal presentations are noted with the file name of the presentation in parenthesis following their name. The file is posted on the appeals web page.

In Support

- Appellant: Megan Berge and Craig Drumheller, NAHB (Presentation_Drumheller_NAHB_OGCV_Voter)
- Appellant: Clayton Traylor and Amanda Hickman, LBA (Presentation_Gear_LBA_OGCV_Voter)
- Greg Johnson, Coalition for Fair Energy Codes
- Nick Resetar, Roetzel & Andress
- Thom Zaremba, Roetzel & Andress (Presentation_Zaremba_OGCV_Voter)

International Code Council

- Mike Pfeiffer (Presentation_Pfeiffer_ICC_Preemption)

In Opposition

- Sharon Bonesteel, Salt River Project
- Amy Boyce, IMT
- Ed Carley, NASEO
- Kim Cheslak, NRDC
- Dave Collins, AIA
- Bill Fay, Energy Efficient Codes Coalition
- Judith Grove, Framington, MA
- Bryan Holland, NEMA (Presentation_Holland_NEMA_OGCV_Voter)
- Harry Misuriello, ACEEE

- Jake Pauls (Presentation_Pauls_OGCV_Voter)
- Chris Perry, ACEEE
- Steve Rosenstock, EEI
- Ben Silverman, City of Boston
- Lauren Urbanek, NRDC

WRITTEN COMMENTS

The following submitted written comments in accordance with Section 6.1.3 of CP 1. The comments are posted on the appeals webpage, identified by file name in parenthesis.

- Rich Anderson, City of Fort Collins (Anderson_FortCollins_OGCV_Voter)
- David Bobzien, State of Nevada (Bobzien_Nevada_OGCV_Voter)
- Stephen Baldrige, State of Oklahoma (Baldrige_Oklahoma_OGCV_Voter)
- Sharon Bonesteel, Salt River Project (Bonesteel_SRP_OGCV_Voter)
- Amy Boyce, Institute for Market Transformation (Boyce_IMT_OGCV_Voter)
- Christine Bunch, City of Seattle (Bunch_Seattle_OGCV_Voter)
- Kim Burke, State of Colorado (Burke_Colorado_OGCV_Voter)
- Kim Burke, State of Colorado (Burke_Colorado_OGCV_Voter2)
- Kerry Campbell, State of Pennsylvania (Campbell_Pennsylvania_OGCV_Voter1)
- Kerry Campbell, State of Pennsylvania (Campbell_Pennsylvania_OGCV_Voter2)
- Ed Carley, National Association of State Energy Officials (Carley_NASEO_OGCV_Voter)
- James Cartney, City of Edwardsville (Cartney_Edwardsville_OGCV_Voter)
- Chris Castro, City of Orlando (Castro_Orlando_OGCV_Voter)
- Kimberly Cheslak, New Buildings Institute (Cheslak_NBI_OGCV_Voter1)
- Kimberly Cheslak, New Buildings Institute (Cheslak_NBI_OGCV_Voter2)
- Kimberly Cheslak, New Buildings Institute (Cheslak_NBI_OGCV_Voter3)
- Eric R. Coffman, State of Maryland (Coffman_Maryland_OGCV_Voter)
- David S. Collins, The Preview Group; Rep: AIA (Collins_AIA_OGCV_Voter1)
- David S. Collins, The Preview Group; Rep: AIA (Collins_AIA_OGCV_Voter2)
- Reid Conway, State of North Carolina (Conway_NorthCarolina_OGCV_Voter)
- Thomas D. Culp, Birchpoint Consulting LLC (Culp_BirchPoint_OGCV_Voter)
- Craig Drumheller, National Association of Home Builders (Drumheller_NAHB_OGCV_Voter1)
- Craig Drumheller, National Association of Home Builders (Drumheller_NAHB_OGCV_Voter2)
- Jocelyn Durkay, State of Colorado (Durkay_Colorado_OGCV_Voter)
- Daniel Farrell, Virginia Department of Mines, Minerals and Energy (Farrell_VAMines_OGCV_Voter)
- William D. Fay, Energy Efficient Codes Coalition (Fay_EECC_OGCV_Voter)
- Heather J. Goggin, State of Alabama (Goggin_Alabama_OGCV_Voter)
- Amanda Hickman, The Hickman Group; Rep: LBA (Hickman_LBA_OGCV_Voter)
- Bryan Holland, National Electrical Manufacturers Association (Holland_NEMA_OGCV_Voter1)
- Bryan Holland, National Electrical Manufacturers Association (Holland_NEMA_OGCV_Voter2)
- Greg Johnson, Johnson & Associates Consulting Services; Rep: Coalition for Fair Energy Codes (Johnson_CFEC_OGCV_Voter)

- Christine Knapp, City of Philadelphia (Knapp_Philadelphia_OGCV_Voter)
- Rachel Koller, Shiftzero (Koller_Shiftzero_OGCV_Voter)
- Ryan Manzik, State of Colorado (Manzik_Colorado_OGCV_Voter)
- Flore Marion, City of Pittsburgh (Marion_Pittsburgh_OGCV_Voter)
- Donna McKee, Lederach, PA (McKee_Lederach_OGCV_Voter)
- Stacy Miller, City of Minneapolis (Miller_Minneapolis_OGCV_Voter)
- Julia Murphy, City of San Antonio (Murphy_SanAntonio_OGCV_Voter)
- Barry Murphy, State of Vermont (Murphy_Vermont_OGCV_Voter)
- Edward O'Brien, State of Louisiana (Obrien_Louisiana_OGCV_Voter)
- Jake Pauls, Consulting (Pauls_Consulting_OGCV_Voter)
- Cammy Peterson, Metropolitan Area Planning Council (Peterson_MAPC_OGCV_Voter)
- Jared Polis, State of Colorado (Polis_Colorado_OGCV_Voter)
- Nick Resetar, Roetzel & Andreas (Resetar_RAlaw_OGCV_Voter)
- Natalie Rogers, City of Milwaukie (Rogers_Milwaukie_OGCV_Voter1)
- Natalie Rogers, City of Milwaukie (Rogers_Milwaukie_OGCV_Voter2)
- George W. Schulner, (Schluter_OGCV_Voter)
- Cheryl Scott, Metropolitan Mayors Caucus (Scott_Mayors_Caucus_OGCV_Voter)
- Christopher Sgroi, NYSERDA (Sgroi_NYSERDA_OGCV_Voter)
- Blake Shelide, State of Oregon (Shelide_Oregon_OGCV_Voter)
- Benjamin Silverman, City of Boston (Silverman_Boston_OGCV_Voter)
- Zach Waas Smith, City of Ann Arbor (Smith_AnnArbor_OGCV_Voter)
- Lucinda Smith, City of Fort Collins (Smith_FortCollins_OGCV_Voter)
- Brad Smith, City of Fort Collins (Smith_FortCollins_OGCV_Voter2)
- Greg Smith, City of West Linn (Smith_WestLinn_OGCV_Voter)
- Russ Stark, City of St. Paul (Stark_StPaul_OGCV_Voter)
- Missy Stults, City of Ann Arbor (Stults_AnnArbor_OGCV_Voter)
- Alison Waske Sutter, City of Grand Rapids (Sutter_GrandRapids_OGCV_Voter)
- Flavia Tonioli, City of Miami Beach (Tonioli_MiamiBeach_OGCV_Voter)
- Eddy Trevino, State of Texas (Trevino_Texas_OGCV_Voter1)
- Eddy Trevino, State of Texas (Trevino_Texas_OGCV_Voter2)
- Robert Underwood, State of Delaware (Underwood_Delaware_OGCV_Voter)
- Lauren Urbanek, National Resources Defense Council (Urbanek_NRDC_OGCV_Voter)
- CJ Volpone, Lincoln, MA (Volpone_Lincoln_OGCV_Voter)
- Uyen T. Vong, City of Honolulu (Vong_Honolulu_OGCV_Voter)
- Jeff Vredenburg, City of Sarasota (Vredenburg_Sarasota_OGCV_Voter)
- Eric Walker, City of Hood River (Walker_Hood_River_OGCV_Voter)
- Christin Whitco, City of Boulder (Whitco_Boulder_OGCV_Voter)
- Kimberly White, City of Highland Park (White_Highland_Park_OGCV_Voter)
- Christian Williss, State of Colorado (Williss_Colorado_OGCV_Voter)
- Alicia R. Zatcoff, City of Richmond (Zatcoff_Richmond_OGCV_Voter1)

- Alicia R. Zatcoff, City of Richmond (Zatcoff_Richmond_OGCV_Voter2)
- Luba Zhaurova, City of Worcester (Zhaurova_Worcester_OGCV_Voter)

NONSPEAKING PARTICIPANTS

These individuals were present on the Webex line but did not provide spoken testimony.

- David Beahm, Country of Warren VA
- Caroline Davidson-Hood, AHRI
- Jim Ranfone, AGA
- Tim Ryan, IABO
- Jason Vandever, SPEER

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