

# AIA Position on Appeals from the OGCV in the 2019 Code Development Cycle Voter eligibility Validation Process

The American Institute of Architects (AIA) is proud of its active engagement with the International Code Council (ICC) during its initial creation and history of code development. AIA's public policies support the development and adoption of codes and standards using the following guidelines.

## AIA's public policy on Building Codes and Standards states:

*The AIA supports regulation by a single set of comprehensive, coordinated, and contemporary building codes and standards that establish sound threshold values of health, safety, and the protection of the public welfare throughout the United States and abroad. To that end, the AIA espouses the development and adoption of model building codes that:*

- *Include participation by architects and the public in a consensus process;*
- *Are the product of informed education and research;*
- *Are without favoritism or bias to any special interest;*
- *Include provision for a prompt appeals procedure for all that might be aggrieved;*
- *Are cost-effective in relation to public benefit; and*
- *Promote building code provisions that set performance rather than prescriptive criteria.*

(emphasis added)

AIA's public policies support the development of codes and standards that improve the building environment using the following guidelines.

## AIA's public policy on Energy and Carbon in the Built Environment states:

*The AIA advocates for policies, programs, and incentives for energy efficiency and renewable energy for the planning, design, construction, and operations of buildings. These strategies reduce anthropogenic greenhouse gas emissions that cause climate change, lowering risks and costs for our clients and the public. Architects must prioritize energy efficiency and renewable energy to achieve carbon neutral new construction and major renovations by 2030 (2030 Commitment) and a carbon neutral built environment by 2050 (2050 Imperative).*

(emphasis added)

## LBA and NAHB Appeal Impact of Voter eligibility Validation Process

LBA states in its appeal of April 30, 2020 that ICC failed to provide due diligence and that staff acted improperly:

*“ICC failed to do its due diligence by not instituting adequate and appropriate oversight to ensure that Governmental Members and /or their designated voting representatives were in fact engaged in the “administration, formulation, implementation or enforcement of laws, ordinances, rules or regulations relating to the public health, safety and welfare.”*

ICC Staff, following the guidelines for accreditation of eligibility of voting membership confirmed the voting membership roster twice. First during the initial process of establishing who was eligible, and secondly during the Validation Committee’s process to confirm the final votes. In the ICC’s *Report on the Code Development Process: 2019 Group B Cycle*, it reported:

*As requested by the Validation Committee, Code Council staff performed a comprehensive analysis of the twenty identified code changes. In addition, staff performed an analysis of the entire 2019 Group B cycle of all 388 code changes considered at the PCH and then the OGCV. The 2019 Group B analysis is reflected in Appendix A of this report and included a review of the following:*

- *Governmental member (GM) and governmental member voting representative (GMVR) compliance with the definitions set forth in the bylaws.*
- *GM/GMVR compliance with application deadlines.*

*The staff report also provided findings relative to “voting irregularities” cited in the Zaremba letter.*

- *Staff determined that all 124 applicants met the bylaws definition.*
- *Staff found two other GMs who did not meet the application deadlines for the 2019 Group B cycle. Staff determined that votes cast by these two were not material to the outcome of the final action vote on code changes voted on as stipulated in Section 10.2 of CP 28.*
- *Staff found that all the applicants who participated in Group B met the bylaws definition.*
- *Staff found that all the applications were received in compliance with the deadline.*
- *Staff found that no voting irregularities occurred during the 2019 Group B cycle. (emphasis added)*

On March 20, 2020, the Validation Committee stated that:

Having found no irregularities or concerns material to the outcome of the voting process, the Validation Committee hereby certifies the results of the online governmental consensus vote and confirms a valid voting process for the 2019 Group B code development cycle.

The report also indicates:

The Validation Committee further stated that no additional voting guides were investigated.

Representatives on that committee included:

John Catlett, BOMA  
Craig Drumheller, NAHB  
Mae Drzyga, Dupont  
Bill Dupler, ICC Past President, Chesterfield County, VA (retired)  
Steve Thomas, City of Cherry Hills, CO

LBA has not shown any valid reason for overturning the decision of the ICC membership on various code changes. The AIA believes that the argument by LBA is incorrect and should be rejected, allowing the action by the membership to stand.

NAHB also states in its May 8, 2020 appeal:

*This appeal does not dispute that the letter of CP#28 was followed in the Group B process, but it is clear that the spirit and intent of the process was exploited leading to the voting irregularities occurred.*

NAHB isn't clear what "spirit and intent" was exploited, nor were voting irregularities it claims confirmed by both the ICC staff and the ICC validation committee on which NAHB has a representative. NAHB indicates in item 4 of its appeal:

#### **4) Voter Validation**

*The eligibility of many of the Governmental Members Voting Representatives (GMVR) is suspect and NAHB believes the status of a subset of GMVRs should be reevaluated because it appears they do not meet the ICC Bylaw's definition.*

*The ICC Bylaws state, "[A] Governmental Member [Voting Representative] ... shall be an employee or a public official **actively engaged** either full or part time, in the **administration, formulation, implementation or enforcement** of laws, ordinances, rules or regulations relating to the public health, safety and welfare."*

*Presumably, ICC established certain parameters for GMVRs to ensure voters have the knowledge and experience to consider the installation and inspection practicalities associated with codes proposals and make educated decisions via their votes. It appears, however, that numerous GMVRs are not actively engaged in the administration, formulation, implementation, or enforcement of laws, ordinances, rules or regulations related to public health, safety and welfare. Absent this baseline knowledge or experience, there is little assurance that voters fully understand the impacts or consequences of proposals or their votes.*

NAHB provides no evidence pertaining to their presumption. The decision regarding who shall cast the vote, what their knowledge and experience involves is wholly up to the ICC voting member jurisdiction. NAHB is claiming without foundation that the ICC membership does not exercise its responsibility to act according to the Bylaws in making this decision.

AIA strongly disagrees with NAHB's assertion. The AIA believes that the argument by NAHB is incorrect and should be rejected, allowing the action by the membership on code changes to stand.

Presented for your consideration.



David S. Collins, FAIA

Representing the American Institute of Architects