



Appeal Comments re: Impact of Online Voting

August 26, 2020

Mike,

As you know, I have been involved in the ICC energy code development process for many years, representing the Glazing Industry Code Committee, National Glass Association, and Aluminum Extruders Council. Over the years, I have worked with both the appellants and the respondents on various issues, trying to help develop an effective, usable energy code to benefit the built environment, ICC, my clients, and the public.

I trust the Appeals Board will do a thorough job reviewing and deciding the appeals. I simply want to address one subject – the issue of “zombie proposals” that were disapproved twice (at the committee action hearing, and at the public comment hearing), yet were then approved in the online vote following lobbying efforts outside of ICC. The Appeals Board will decide whether that was completely within the rules and appropriate, an inappropriate exploitation of the rules, or a voting irregularity that warrants action. My point is simply this: this new phenomenon of zombie proposals results in poor code. Even the proponents admitted that some of these proposals that were ultimately approved in the online vote were flawed, because they unsuccessfully tried to correct them in the public comment hearing. Yet after they were disapproved following review and debate in two hearings, the original flawed proposal was approved in the online vote with arguably no further technical review. That does not result in good code, and will lead to delayed adoption and/or extensive local amendment.

I am encouraged that the Board Committee on the Long Term Code Development Process is looking into this issue seriously, but I want to stress that action needs to be taken for the upcoming cycle, not just further down the road. Otherwise, we will only see this problem grow. I support the concept that if a proposal cannot survive the technical review and debate and is disapproved at both the first two hearings, it should not proceed to the online vote. No zombies. The ICC code development process has long deferred towards a higher bar for approval than disapproval with the principle “first, do no harm.” Far better code will result if these proposals wait to come back for consideration in the next cycle with further refinement. This will also encourage broader participation at the public comment hearing, and a fair, level playing field. (In contrast, if you can get what you want by effective lobbying in the online vote, why even show up to the public comment hearing?)

Finally, I want to point out that few of these proposals directly affected my clients this cycle, but I think it important speak out on my own behalf as an active participant in the code development process with the hope of an improved process for all.

Thank you again for your consideration, and best regards,

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