

April 30, 2020

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**Appeal Results of the Online Governmental Consensus Vote (“OGCV”) regarding Proposed Changes to the 2021 International Energy Conservation Code (“IECC”)**

Ken Gear, on behalf of Leading Builders of America (“LBA”) (“Appellants”) appeal the results from the Online Governmental Consensus Vote of the proposed changes to the 2021 IECC.

**I. The Issues:**

The questions (issues) raised by this appeal are as follows:

1. Whether ICC created highly subjective bylaws that fail to provide due process to certain groups and stakeholders.
2. Whether ICC failed to properly validate voters by failing to ensure on-line voters truly complied with eligibility criteria.
3. Whether the Energy Efficient Code Coalition’s propriety interests in the outcome of the code change proposals have unfair access to IECC members that are on-line voters that other ICC stakeholders do not have resulting in a due process failure.
4. Whether the 2021 IECC final outcome will result in egregious cost ineffectiveness and negatively impact home affordability.

**II. The Standard Applicable to a Determination of the Questions Raised in this Appeal:**

Pursuant to CP #1-03 Section 6.3.8, the standard applicable to a determination of the questions raised in this appeal is whether there was a material and significant irregularity of process or procedure in the IECC’s Online Governmental Consensus Vote?

**III. Why These Issues are Being Appealed:**

These issues are being appealed because of the significant flaws that exist in the ICC code development process and procedure that led to the irregularities that occurred during the Online Governmental Consensus Vote, which in turn produced the final action results of the 2021 IECC.

The ICC Governmental Consensus Process, specifically with respect to the Online Governmental Consensus Vote “OGCV” does not represent a “consensus”- balanced, or any other kind. It failed to provide the “built-in safeguards designed to prevent domination by a single vested interest” as

ICC assured it would. The system did not “ensure fairness in the process”, nor did it offer “controls against conflicts of interest”. What the Online Governmental Consensus Vote did, was the exact opposite of what ICC promised, which was to “prevent vested economic interests from determining the outcome of all code change proposals”.

ICC is an organization that facilitates and publishes codes which are strongly encouraged if not required to be written in mandatory language. Ironically, the ICC bylaws that govern the process of developing those mandatorily written codes, are highly subjective and primed for undue influence.

Unfortunately, the final results of the 2021 IECC were achieved through deliberate and calculated manipulations through the leveraging of these overly subjective bylaws. These manipulations were orchestrated by proprietary interests which have a direct vested economic stake in the IECC being developed in their favor.

The Energy Efficient Code Coalition “EECC” has a mix of membership interests that are both proprietary and non-proprietary. Many of its members were permitted by ICC to vote during the OGCV. This poses not just a conflict of interest, but also undue process. EECC has inside, unfettered and confidential access to its members that are also online voters.

The OGCV results have a direct correlation to EECC’s Voting Guide. Curiously, an unprecedented number of proposals were overturned from disapproval to approval (requiring 2/3rds) during the online vote. An unprecedented phenomenon that only occurred on IECC proposals, and only on those contained in the EECC Voting Guide. These include:

- I. Overturned Commercial Proposals: CE12-19, CE49-19, CE56-19, CE217-19 and CE262-19
  - a. Of these CE217 is completely beyond the scope of the IECC.
- II. Overturned Residential Proposals: RE21-19, RE29-19, RE32-19, RE33-19, RE36-19, RE37-19, RE126-19, RE145-19, RE147-19, RE151-19, RE182-19, RE184-19, RE192-19, RE201-19 and RE209-19
  - a. Of these RE147 is completely beyond the scope of the IECC.

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”. And to that end, can individuals whose job description includes advocating for the highest level of energy efficiency, be fair arbitrators of what should be included in minimum codes?

#### **IV. Adverse Effect on Appellants:**

Leading Builders of America (LBA) is a Washington, DC based trade association representing 21 of the largest builders in the U.S. Collectively, LBA members produce nearly 40% of the new homes constructed annually in the U.S. LBA’s fundamental mission is to preserve home affordability.

The considerable increased costs associated with the OGCV outcome will result in egregious cost ineffectiveness, that will significantly affect the home building industry and ultimately, will drastically impact home affordability. The cost increase to a typical home that would be built pursuant to change approved in the 2019 Group B OGCV to the 2021 IECC is estimated to be between **\$10,000-\$12,000**, depending on the type of construction and climate zone. (NAHB).

Many of the OGCV's approved, cost-contributing proposals have extraordinarily long payback periods. Some over 100 years. Below are the cost specifics of some of the proposals overturned during the OGCV:

- **RE29-19**, requires increased continuous wall insulation in climate zone 4 and 5. For a city like Baltimore, the estimated energy savings amounted to only \$40 a year. However, the upfront cost for a 1-story home would be somewhere between \$849-\$4,133. This amounts to a payback period of anywhere from 21-103 years.
- **RE32-19**, Increases slab edge insulation in CZ3-5. This would only save \$18 a year in energy costs for a 1-story home in Baltimore at a first cost of over \$1,000. That represents a 57-year payback.
- **RE33-19** and **RE36-19**, increases ceiling insulation in climate zones 2-8. The initial cost to a 2-story home built in Houston would be over \$1,000 and only save \$7 a year in energy costs. This is a payback period of 156 years.
- **RE126-19**, adds new requirements for water heating equipment at an additional cost in the range of \$238-\$1,046, while only saving \$31 a year in energy costs.
- **RE209-19**, requires additional energy efficiency measures at a cost of upwards of \$3,500, while at best, only saving \$144 in energy costs annually.

Once adopted, the 2021 IECC has the potential to eliminate close to 1.8 million new homebuyers from purchasing homes. A study conducted by NAHB found that 127,560 prospective buyers are barred from the market for every \$1,000 added in construction cost. The COVID-19 pandemic has already caused significant damage to the economy. If the situation persists, the housing market could take a considerable hit. Implementing a high-cost energy code with an unbalanced benefit to homeowners (which the 2021 is set to deliver) would be catastrophic to the home-building industry.

#### **V. Interested Parties:**

ICC has informed Appellants that it intends to notify interested parties of appeals of the IECC Final Action Results by giving notice and providing links to the appeals on ICC's website.

#### **VI. The Remedial Actions Requested:**

1. Rescind actions taken on IECC proposals during the Online Governmental Consensus Vote,  
– or –
2. Reverse actions taken during the OGCV on: CE12-19, CE49-19, CE56-19, CE217-19, CE262-19, RE21-19, RE29-19, RE32-19, RE33-19, RE36-19, RE37-19, RE126-19, RE145-19, RE147-19, RE151-19, RE182-19, RE184-19, RE192-19, RE201-19 and RE209-19.

3. Safeguard the process so that it is open, fair, objective, and not unduly influenced by propriety interests; and that only governmental officials who actually enforce the code and are charged with the public's safety, are permitted to vote and determine the outcome of codes. Specifically, procedural changes should be instituted to ensure voters are not members of organizations that have a proprietary and financial interest in the outcome of code(s).

Respectfully submitted,

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

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