

# **Opposition by Jake Pauls, BArch, CPE, HonDSc, to NAHB & LBA Appeals to ICC *for Hearing on September 14, 2020***

This opposition to the two, related appeals submitted to ICC by Leading Builders of America (LBA) and the National Association of Home Builders comes from Jake Pauls, of Jake Pauls Consulting Services, who hereby applies to participate in, and comment during, the public hearings being held, by Web, on September 14, 2020.

The opposition, introduced below, will be augmented by a PowerPoint presentation submitted to ICC by the deadline for such submissions. Some graphic material, below, provide an introduction to the US residential (and office) context for Jake Pauls work and life (especially during the COVID-19 Pandemic), especially during the hottest July on record in the Washington, DC, area. It is an apt context for this opposition to the home building industry's foot dragging on energy conservation issues addressed in the many specific proposals—approximately twenty—coming from some very devoted energy conservation advocates, including the Energy Efficient Code Coalition (EECC) among several other organizations.

Notable among the arguments provided by the Appellants are those on purported weak benefit-cost implications—specifically long payback periods—of the energy-conserving strategies and tactics addressed in the score of proposals to which the Appellants object. Here I note that payback periods of 21-103, even 156 years claimed by Appellant LBA, are not, in themselves sufficient reasons for failing to conserve energy and slow down, if not halt, the hugely damaging effects of global climate change. Here one is reminded of the first surviving people to inhabit North America had the seven generations standard which, by my reckoning, sets an approximate 175 year criterion for considering the effects of ones decisions, particularly on environment where the time scale for our earth is in the many millions of years.

NAHB's bases for their Appeal, as well as LBA's, focus on the procedural aspects of how public spirited organizations such as EECC combined advocacy for both physical ecology and organizational ecology, the latter being the exercise of their voting rights as code officials. In my professional view, as one involved continuously with model code development since 1967—the equivalent of just over two generations (out of the seven noted above)—the code officials were acting responsibly relative to the ICC code of ethics while those behind the appeals appear not to have such a code and/or they violate the one(s) they should be living up to. The four NAHB-nominated members of the 12-member code development committee, generally vote as a block, not in the interests of the buyers, occupants or visitors to the homes they construct—*so badly in relation to safety and public health generally in this commenter's professional opinion.*

Here it should be noted that I have formally represented the world's oldest and largest public health organization, the American Public Health Association (APHA) on about 11 national codes/standards development committees, including the ICC Industry Advisory Committee (IAC), on which I have served for almost all of ICC's two-plus decades of existence. Of the three APHA membership groups to which I belong, the Environment Section is the one with the most direct concern for the environment, including many of the issues addressed by the code changes pertinent to these Appeals.

Dr. William (Bill) Foege was one of the most famous leaders of APHA, plus public health generally, including a role decades ago as the head of the US Centers of Disease Control (CDC), and most recently a key advisor to the Bill and Melinda Gates Foundation. He is well known for his statement, “Our job in public health is to be indignant on behalf of everyone else.” If he had chosen, instead, to be a code official, his famous statement could well have been, “Our job in code development and enforcement is to not just be indignant, but do everything we humanly can to get the builders to build our homes (and other buildings) right so they do not harm people in the short term—as with building-related injuries—nor do they harm the human race’s chances of survival due to the many threats of global climate change.” (Bill was one of the most remarkable, inspiring people I have ever met. Known as the “Smallpox Slayer” we now have the benefit of his knowledge to defeat the COVID-19 threat on a worldwide scale.)

While I will have much else to say in the hearings on the two Appeals from the home builders, let me end this statement of opposition to the two Appeals with my own, personal contribution to energy conservation through careful decisions on my personal environmental impact with my dwelling which also doubles as my office so there is no pollution due to commuting to and from work, including a decade since last having a personal automobile. I am in my second year of renting a home in a state-of-the-art building in downtown Silver Spring, Maryland, where almost everything I routinely need is within easy walking distance. Here is the public indication of my residential (and work) building’s credentials in energy use, etc.



Just inside the main entrance to the building is the following additional detail on the buildings environmental credentials, not just in design and construction, but in operation as well.



A Sustainable Development By



THE PEARL

## Your Healthy Home

### Indoor Air Quality & Ventilation



UVC lighting to destroy airborne viruses & bacteria in lobby, hallways, and fitness center



Common area dedicated outdoor air systems are maximized



Dyson fans with HEPA filters in the fitness center to capture 99.97% of particles as small as 0.3 microns



Relative humidity levels monitored



Preventative maintenance on mechanical systems to provide optimal indoor air quality

### Sustainability & Wellness Leadership



2020 LEED v4.1 Operations + Maintenance Platinum Certification  
*Outperformed local & global averages compared to other LEED projects*



2018 Multifamily Residential Fitwel Certification - 1<sup>st</sup> in the World  
*50+ evidence-based strategies to promote residents' health & wellbeing*



2019 ENERGY STAR Certification - Score of 81  
*More energy efficient than 81% of similar buildings nationwide*





Moreover, not only is stairway use encouraged in the 15-story building, it is enhanced with state-of-the-art stairways, with “7-11” stairways throughout the building and protected by state-of-the-art fire protection systems and architectural design including protected elevator lobbies (with direct access to one of the exit stairs) that serve people with mobility issues during emergencies, particularly fire (lower photo).



## **Ethics, Policy, Process and Procedural Issues Also at the Heart of this Opposition to the Two Appeals from NAHB and LBA.**

The NAHB asks the board to ensure that there is a fair and transparent process that is truly consensus based regarding votes, citing voting irregularities. While their appeal focuses on the government consensus voting process the concerns regarding transparency, fairness, and ethical conduct should, and indeed must, translate to every aspect of any and all ICC votes.

The *ICC Code of Ethics* provides as follows:

The protection of the health, safety and welfare of the public by creating safe buildings and communities is the solemn responsibility of the International Code Council (“ICC”) and all who participate in ICC activities. Recognizing this, the ICC advocates commitment to a standard of professional behavior that exemplifies the highest ideals and principles of ethical conduct. The governing concepts embodied in this philosophy are characterized herein, for the benefit and guidance of those so engaged, and for the enlightenment of the public so served.

Each individual participating in an ICC activity shall:

- Support the mission of the ICC to provide the highest quality codes, standards, products and services for all concerned with the safety and performance of the built environment.
- At all times, act in an ethical manner, comply with the ethical rules and regulations related to his or her profession, and avoid conflicts of interest.
- Demonstrate integrity, honesty, and fairness while participating in ICC activities.
- For ICC certified individuals, maintain professional competence in all areas of employment responsibility and encourage the same for colleagues and associates.
- Act in accordance with the Bylaws and Policies of the International Code Council, including this Code of Ethics. The ICC Board of Directors may take any actions it deems necessary in order to enforce this Code of Ethics and to preserve the integrity of the International Code Council.

Additionally, the ICC has enacted CP#42-07 titled: “***Board of Directors Confidentiality and Conflict of Interest Policy***” (approved 12/7/07, revised 4/16/16). Specifically, the conflict of interest provisions include the following:

**CONFLICT-OF-INTEREST** The purpose of this conflict-of-interest policy is to prevent the institutional or personal interests of ICC board members from interfering with the performance of their duties to ICC, and to ensure that there is no personal, professional, or political gain at the expense of ICC. This policy is not designed to eliminate relationships and activities that may create a duality of interest, but to require the disclosure of any conflicts of interest and the recusal of any interested party in a decision relating thereto. A conflict of interest may exist when the interests or potential interests of any director, or that director's close relative, or any individual, group, or organization to which such director has allegiance, may be seen as competing with the interests of ICC, or may impair such director's independence or loyalty to ICC. A conflict of interest is defined as an interest that might affect, or might reasonably appear to affect, the judgment or conduct of any director in a manner that is adverse to the interests of ICC.

**a. Use of Information**

ICC board members shall not use information received from participation in ICC affairs, whether expressly denominated as confidential or not, for inappropriate personal gain or to the detriment of ICC.

**b. Disclosure and Recusal**

Whenever any director has a conflict of interest or a perceived conflict of interest with ICC, he or she shall notify the President of such conflict. When any conflict of interest is relevant to a matter that comes under consideration or requires action by the board, or a board committee, the interested director shall call it to the attention of the President. Such director shall in all circumstances abstain from voting on such matter. In addition, the President shall have the authority to require that such director not be present during board or committee discussion or decision on the matter. Furthermore, regardless of whether a director has identified a potential conflict of interest, the President shall have the authority to ask any director to not be present at discussion or decision on a matter or otherwise not vote on a matter if in the President's reasonable judgment, such director has a potential conflict of interest. A director shall in all circumstances provide the board or applicable committee with any and all relevant information on conflict of interest matters. The minutes of the meeting of the board or its committee shall reflect that the conflict of interest was disclosed, that the interested director was not present during discussion or decision on the matter as applicable, and did not vote.

The NAHB has a long-standing resolution (May 20, 1996) which should disqualify it from voting on matter involving stair geometry—which NAHB members serving on IRC code development committees have never respected. (Specifically, NAHB resolution #14A approved by its Board of Directors provides as follows:

“WHEREAS, NAHB was unsuccessful in preventing the change in the stair geometry requirement in the 1996 edition of the National Building Code (BOCA) and the 1995 edition of the CABO One and Two-Family Dwelling Code; . . . BE IT FUTHER RESOLVED that the National Association of Home Builders continue to vigorously pursue the adoption of a stair geometry standard consistent with the 1993 BOCA Code.”

NAHB has other policy positions which will be described during the Appeals hearings that directly address energy conservation issues and which will be noted in the PowerPoint being prepared for the hearings on September 14<sup>th</sup>.

The bottom line, ethically in ICC, when ICC Board members are in a voting position and they have an ethical or fiduciary obligation to another that duty/obligation should be fully disclosed to all who are considering the issue. Additionally, those with such a conflict should, as directed by CP#42-07 recuse themselves from any vote. The same rule should be applied to Code Development Committees in the ICC process.

The integrity of the International Code Council, its Code of Ethics, its policies and procedures are relevant to the upcoming appeals, as they were in the first hearing this year on appeals that I submitted. With the two appeals now, from NAHB and LBA, we have an example of voting building official members of ICC taking an ethical stance and voting during the Governmental Consensus Voting Process when the first two steps in the code proposal process failed to address adequately the critical issues of energy use in home design, operation and regulation. While the process employed by the voting majority is somewhat unusual, it is a sign of hope for ICC’s somewhat tarnished process—at least with regard to the distorting influence of the NAHB.

Jake Pauls, BArch, CPE, HonDSc (U. of Greenwich)  
Recipient of building and fire safety advocacy career awards  
in 2018 from the Canadian Public Health Association and the  
Christian Regenhard Center for Emergency Response Studies.  
***Celebrating 53 years of filling-bldguse-and-safety-gaps™ 8 May 2020***

(US Mail) Jake Pauls Consulting Services  
180 High Park Lane, Suite 1007, Silver Spring, MD 20910  
and  
(Non-critical Canadian Mail) Jake Pauls Consulting Services  
255 Glenlake Avenue, Suite 2207, Toronto, Ontario, M6P 1G2, Canada

International Mobile/SMS/Voice Mail: 1-301-706-8830; E-mail: [bldguse@aol.com](mailto:bldguse@aol.com)

Web: [www.bldguse.com](http://www.bldguse.com) (including links for about 30 streaming video resources covering several topics, including the classic documentary film, The Stair Event, from 1979). New to the collection is “One-Minute Stairway Flight Inspection,” an 8-minute video produced in April 2020, the first in a “pandemic series” created in the Silver Spring, MD, residence-based office (and video studio).