



January 2, 2009

## **Response to NAHB Appeal**

### **International Residential Code Proposals RB64-07/08 and RB66-07/08 2009 IRC Requirements for Residential Fire Sprinklers**

The purpose of this document is to provide a response on behalf of the IRC Fire Sprinkler Coalition to an appeal filed by the National Association of Home Builders (NAHB) challenging the International Code Council's (ICC) approval of Code Changes RB64-07/08 and RB66-07/08, which added fire sprinkler requirements to the 2009 edition of the International Residential Code (IRC). NAHB's appeal alleged that there were irregularities involving the ICC membership's approval of these two code changes and sought to have the changes set aside by the ICC Board of Directors.

In response to this appeal, the ICC Board of Directors convened an Appeals Committee to review this matter. In accordance with an established policy, this committee was chaired by the ICC Vice President and included chairmen of ICC's three code councils. To process the appeal, the Appeals Committee convened a public hearing where all interested parties were given an opportunity to testify, and at the conclusion of the hearing, the Committee ruled that ICC's bylaws and council policies had been properly adhered to in the processing of Code Changes RB64 or RB66. Accordingly, the Committee unanimously rejected NAHB's appeal.

In accordance with ICC policy, the Committee's ruling was then reviewed by the full ICC Board of Directors. Prior to rendering a decision, the Board provided an additional opportunity for testimony, and following this hearing, the Board voted unanimously to affirm the recommendation of the Appeals Committee, rendering the final decision to deny NAHB's appeal on December 19, 2008. Accordingly, fire sprinkler requirements are retained in the 2009 edition of the IRC.

In rendering their decision, the ICC Board cited Council Policy 28 (CP28), which governs the ICC code development process. This policy only permits an appeal to be sustained when it can be shown that a material and significant irregularity of process or procedure has occurred. Although CP28 does not specifically define what constitutes an "irregularity," it is reasonable to conclude that the intent is to allow remedial action only for cases where a clear violation of ICC regulations or improper conduct on the part of members can be demonstrated. The ICC Board's rejection of the appeal establishes that: 1. There were no such irregularities in the processing of RB64 or RB66 at the Minneapolis Final Action Hearing, and 2. Approval of these code changes was the result of proper and legitimate actions of the ICC membership.

With the foregoing discussion in mind, the Coalition would also like to specifically respond to each of the three claims that NAHB offered in support of their appeal.

### **1. NAHB Claim “Failure to Provide Balance of Interest in Voting”**

NAHB asserted that the ICC process somehow intends to accomplish consensus by balancing sub-classes of Voting Governmental members, i.e. fire official interests, building official interests, etc. at ICC final action hearings. This is simply incorrect. There is not, and never has been, any intent on the part of ICC, its bylaws or the rules governing code development to divide Voting Governmental members into sub-classes for the purpose of voting on code change proposals.

NAHB attempted to justify their assertion by citing a Federal document, OMB Circular A119, which speaks to “balance of interests” in code development. They argued that, because the ICC advertises its codes as compliant with Circular A119, there is an obligation on ICC’s part to balance various governmental interests in the ICC code development process. This argument was rejected by ICC. Whether ICC chooses to advertise their process as being consistent with Circular A119 from a marketing perspective, or not, has no bearing on ICC’s code development process. Furthermore, there is no indication in Circular A119 that balance among government representatives is contemplated.

In addition, NAHB’s claim that the approval of Code Changes RB64 and RB66 could only have come from the fire service “packing” the meeting failed to acknowledge that residential sprinklers have gained the support of a broad spectrum of interests, beyond the fire service, among many levels of government that has been clearly demonstrated. Statewide associations representing building officials in New York, Maryland and New Hampshire all formally endorsed the IRC requirement for fire sprinklers in new residential occupancies. In addition, organizations representing plumbing and mechanical official interests have also publicly stated support for residential sprinklers, and the United States Fire Administration has issued a policy statement supporting residential sprinklers on behalf of the Federal Government. Likewise, public interest organizations including SafeKids, the American Burn Association and the Phoenix Society for Burn Survivors have publicly voiced support.

With respect to the code change requiring sprinklers in new townhouses, it is a surprise to many when they find out that Code Change RB66 was submitted by a major builder, not a fire service organization. Also, with respect to approval of this code change, it is important to point out that the vote of the IRC Committee to disapprove RB66 at the ICC Palm Springs hearing was not affirmed by ICC members who were present at that meeting. As a formal action, ICC members assembled in Palm Springs introduced and passed a floor motion disagreeing with the IRC Committee’s disapproval recommendation and supporting approval of the townhouse sprinkler requirement. This vote for approval was simply upheld by the ICC membership at the Minneapolis final action hearing.

All of this evidence clearly demonstrates that the approval of RB64 and RB66 by the ICC membership represents the sentiment of a broad base of ICC’s membership, not just the fire service.

Finally, with respect to the issue of balance, it is important to note that the residential sprinkler issue has been adjudicated not only in ICC's governmental consensus process, but also in an American National Standards Institute (ANSI) accredited code development process, with identical results. Fire and building codes published by the National Fire Protection Association, which are ANSI accredited documents developed in a process limiting any single interest category to not more than one-third of the total vote count, have required fire sprinklers in all new one- and two-family dwellings and townhouses since 2006.

## **2. NAHB Claim "Failure to Provide a Fair and Open Process"**

NAHB claimed that an "irregularity" must have occurred in Minneapolis because RB64 and RB66 didn't fail, as they expected. They maintain that the vote must have been "stacked" by the fire service to yield this unexpected result. However, the final action vote in Minneapolis was not an anomaly. Instead, it represented the next step in a clearly visible progression of the sentiment of ICC's Voting Governmental members over the past 10 years, methodically embracing residential sprinklers. The following facts demonstrate this:

- In 2001, ICC members passed a requirement in the IBC to mandate residential sprinklers in all multifamily occupancies.
- In 2005, ICC members passed IRC Appendix P, providing a specific code section on the subject of residential sprinklers for one and two family dwellings and townhouses in the International Residential Code.
- In 2007, ICC members supported Code Change RB114, which proposed to require sprinklers in all residential occupancies, by a 56% margin with 851 members casting votes at the Rochester hearing. While sprinkler supporters were the clear majority, the required two-thirds margin to pass a change at the final action hearing was not achieved.
- And finally, at the 2008 final action hearing in Minneapolis, ICC members passed code changes RB64, RB66 and RP3 to mainstream sprinklers as a basic fire-safety feature for new one- and two-family dwellings and townhouses

NAHB's claim that the Minneapolis vote resulted from a process that was not open or was somehow unfair is groundless. All participants at the hearing were given an opportunity to express their views, and Voting Governmental members, all of whom were duly qualified and credentialed by ICC, were free to vote however they wished.

## **3. NAHB Claim "Failure to Prevent Unfair Influence of Third-party Funding on Voting Process"**

In this claim, NAHB directly questioned the conduct of the IRC Fire Sprinkler Coalition with respect to providing travel assistance to help ICC Voting Governmental members attend the Minneapolis hearing. NAHB's claim in this regard is surprising, given that NAHB was actually the first organization to conceive of and offer a travel assistance program associated with voting on the residential sprinkler issue.

NAHB initiated their program in 2007, prior to the ICC Final Action Hearing in Rochester, New York, sporting a \$250,000 budget (copies of documents distributed by NAHB and their local affiliates describing their funding program are available from the Coalition upon request). The NAHB funding program concerned the IRC Fire Sprinkler Coalition because the NAHB program used local affiliates as an agent for distribution of funds, and some of these affiliates published documents stating that funds would only be offered to individuals who would agree to vote against sprinklers.

To promote a fair and balanced playing field for the final vote in Minneapolis in 2008, it became clear that an additional, unbiased, travel funding mechanism would be needed to ensure that ANY interested ICC Voting Governmental member would be given the opportunity to attend the hearing. The IRC Fire Sprinkler Coalition undertook this challenge.

When we put our travel assistance program together, our most important concern was to ensure that the program was both legal and ethical to protect the integrity of the ICC process and those who participate in it. In that regard, we sought a legal opinion by an independent attorney to provide advice on how the program should be structured. As a result, our program was guided by the following fundamentals:

- There was no “litmus test” requiring individuals to commit to voting a certain way to qualify for funding. On the contrary, each individual accepting airfare or hotel space was specifically required to acknowledge that they would vote independently before accepting assistance.
- The Coalition controlled the funding process directly to ensure that it was handled properly and ethically. No one received money directly. Instead, the Coalition used a central travel agency to manage air reservations, and airlines were paid directly. Likewise, the Coalition managed hotel reservations, and hotels were paid directly. The Coalition paid for airfare, hotel room charges and local parking for attendees who were within driving distance. We provided no reimbursements for food or entertainment.
- The Coalition funded every applicant who provided an ICC voting governmental number and agreed to conditions of the funding program. There was no screening based on the agency represented or any other criteria.

The intimation by NAHB and others that the fire sprinkler industry “bought the vote” in Minneapolis is fundamentally incorrect in that it fails to recognize that the IRC Fire Sprinkler Coalition is NOT the fire sprinkler industry and that the IRC Fire Sprinkler Coalition’s travel assistance program was unbiased with respect to individuals who were helped. The Coalition’s leadership and supporting organizations, currently 115 of them, represent national and international safety interests plus code official groups and fire service associations from 44 states and the District of Columbia. Many of these organizations have been advocating residential fire sprinklers for decades.

In the past, those advocacy efforts were somewhat fragmented. Today, the IRC Fire Sprinkler Coalition has organized and galvanized these longstanding efforts into a

coordinated network to advocate the collective interests of those who share the vision of mainstreaming residential fire sprinklers in the construction of new homes.

### **Conclusion**

In conclusion, we would like to quote from an ICC marketing brochure, which promotes the ICC governmental consensus process. *“ICC follows a straightforward approach in the development and maintenance of its codes. **THE PROCESS IS CLEAR, CONSISTENT AND CONDUCTED IN AN OPEN FORUM THAT ASSURES EQUAL ACCESS FOR ALL INTERESTS.**”* The source of this quote is cited as Jeffrey T. Inks, NAHB’s assistant vice president for codes and standards. It’s unfortunate that NAHB’s support for ICC’s voting governmental process seems to hinge on whether the process delivers their desired results.

It is the position of the IRC Fire Sprinkler Coalition that ICC’s rules governing code development are clear and that these rules were followed in the processing of Code Changes RB64 and RB66. A review of the testimony offered at the Minneapolis hearing clearly demonstrates that all parties were given the opportunity to express their views, and following the testimony, ICC’s duly qualified Voting Governmental members rendered a proper ruling. The unanimous decision of the ICC Board of Directors to reject NAHB’s appeal in this matter affirms our position.

On behalf of the IRC Fire Sprinkler Coalition,

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