

Board of Appeals Decision on NAHB Appeal of RB64 & RB66

FYI- This is a reproduction of the recommendation from the Board of Appeal to the Board of Directors. This is not a verbatim transcript.

The Appeals Board returned from Executive Session. Chairman Lynn noted:

There are a number of important issues that were brought up by both sides today that cannot be addressed by this Appeals Board, and this panel will recommend to the ICC Board that it review the current policies and procedures surrounding the Final Action Hearing process.

The recommendation of this Appeals Board related to this appeal shall, in conformance with CP 1-03, Section 6.1, be submitted to the CEO, and the final decision regarding this appeal shall, pursuant to CP 1-03 Section 6.3, be that of the ICC Board of Directors.

Pursuant to Section 5.3.8 of CP-1.03, “In order to sustain the appeal, or any part thereof, the Appeals Board must find that there was a material and significant irregularity of process or procedure.”

In evaluating this appeal, the Appeals Board reviewed the applicable Council Policies, Bylaws and Exhibits submitted. In summary, the Appeals Board voted unanimously against the appeal.

In response to the issues noted in the appeal filed with ICC:

- Failure to Provide for Balance of Interest in Voting

Appeals Board recommendation: The Appeals Board finds by unanimous vote that there was no material and significant irregularity of process or procedure applicable to the Final Action Hearing Process.

- Failure to Provide a Fair and Open Process

Appeals Board recommendation: The Appeals Board finds by unanimous vote that there was no material and significant irregularity of process or procedure applicable to the Final Action Hearing Process.

- Failure to Prevent Unfair Influence of Third-Party Funding on Voting Process

Appeals Board recommendation: The Appeals Board finds that this is a very significant allegation and significant concern. There was not a material difference in both sides bringing up this issue. The Appeals Board recommends that the ICC Board consider the issue of third-party funding and develop policies and procedures to address this issue. At this time, the Appeals Board finds by unanimous vote that there was no material and significant irregularity of process or procedure applicable to the Final Action Hearing Process.

Chairman Lynn asked the members of the Appeals Board if this was their recommendation. The Appeals Board agreed unanimously with the decision.

The attendees were notified that the recommendation of the Appeals Board will be forwarded to the ICC Board for their final disposition at the upcoming ICC Board Meeting on December 19 – 20 in Las Vegas. It was further noted that this will be the first agenda item for the Board to consider on December 19th and the meeting will be open. (It was previously noted by staff that the ICC Board has voted to waive the 10 day requirement in 6.2 of CP #1 in order to have the appeal considered in a face-to-face Board meeting.) It was further noted that the audio tape record was for ICC internal use.