

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

PUBLIC HEARING

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:
   
IN THE MATTER OF: :
   
:
   
TEXT AMENDMENT: NEW CHAPTER :Case No.
   
34, GREEN AREA RATIO :12-10
   
:
   
-----:

Monday,
   
November 5, 2012

Hearing Room 220 South
   
441 4<sup>th</sup> Street, N.W.
   
Washington, D.C.

The Public Hearing of Case No. 12-10
   
by the District of Columbia Zoning Commission
   
convened at 6:52 p.m. in the Jerrily R. Kress
   
Memorial Hearing Room at 441 4<sup>th</sup> Street, N.W.,
   
Washington, D.C., 20001, Anthony J. Hood,
   
Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
   
MARCIE COHEN, Vice Chair
   
PETER MAY, Commissioner (NPS)
   
ROBERT MILLER, Commissioner

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OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director,  
Development Review & Historic  
Preservation  
JOEL LAWSON

The transcript constitutes the  
minutes from the Public Hearing held on November  
5, 2012.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

ZCDC CASE NO. 12-10 - Text Amendment, New Chapter 34, Green Area Ratio

Preliminary Matters ..... 7

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Organizations or Persons in Support

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Organizations or Persons in Opposition

    Mark Eckenwiler ..... 33

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1 P-R-O-C-E-E-D-I-N-G-S

2 6:52 p.m.

3 CHAIRMAN HOOD: Okay. Good  
4 evening, ladies and gentlemen. This is the  
5 public hearing of the Zoning Commission for the  
6 District of Columbia for Monday, November the  
7 5th, 2012.

8 My name is Anthony Hood. Joining  
9 me are Marcie Cohen, Commissioner Miller and  
10 Commissioner May.

11 Michael Turnbull will not be here,  
12 but will be reviewing the record to participate  
13 in deliberations.

14 We're also joined by the Office of  
15 Zoning staff Ms. Sharon Schellin.

16 Also, the Office of Planning, Ms.  
17 Steingasser and Mr. Lawson.

18 This proceeding is being recorded  
19 by a court reporter and is also webcast live.

20 Accordingly, we must ask you to refrain from  
21 any disruptive noises or actions in the hearing  
22 room.

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1           The subject of this evening's  
2 hearing is Zoning Commission Case Number 12-10.

3           This is a request by the Office of Planning  
4 for text amendments to the Zoning Regulations  
5 to add Chapter 34 which is a Green Area Ratio  
6 and 412 and 2115.9.

7           Notice of today's hearing was  
8 published in the *D.C. Register* on September 7th,  
9 2012 and copies of that announcement are  
10 available to my left on the wall near the door.

11           The hearing will be conducted in  
12 accordance with provisions of 11 DCMR 3021 as  
13 follows: Preliminary matters, presentation by  
14 the Office of the Planning, in this case, reports  
15 of other Government agencies, report of the  
16 ANCs, that's all of them, organizations and  
17 persons in support, organization and persons  
18 in opposition.

19           The following time constraints will  
20 be maintained in this hearing: Organization  
21 six minutes, individuals four minutes.

22           The Commission intends to adhere to

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1 the time limits as strictly as possible in order  
2 to hear the case in a reasonable period of time.

3 The Commission reserves the right  
4 to change the time limits for presentations if  
5 necessary and notes that no time shall be ceded.

6 All persons appearing before the  
7 Commission are to fill out two witness cards.

8 These cards are located to my left on the table  
9 near the door. Upon coming forward to speak  
10 to the Commission, please give both cards to  
11 the reporter sitting to my right before taking  
12 a seat at the table.

13 When presenting information to the  
14 Commission, please turn on and speak into the  
15 microphone first stating your name and home  
16 address.

17 I think we have seasoned folks. I'm  
18 going to skip the rest of this and go to please  
19 turn off all beepers and cell phones.

20 At this time, the Commission will  
21 consider preliminary matters. Does the staff  
22 have any preliminary matters?

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1 MS. SCHELLIN: No, sir.

2 CHAIRMAN HOOD: Okay. Let's go to  
3 the Office of Planning. Ms. Steingasser.

4 MS. STEINGASSER: Good evening,  
5 Chairman Hood, Commissioners.

6 We're presenting to you tonight the  
7 Green Area Ratio. Also called the GAR.

8 The Commission first considered the  
9 GAR in May of 2009 through the Sustainability  
10 Concept Public Hearing as part of the ZRR initial  
11 work.

12 You provided guidance to us in June  
13 and on Slide Number 2 before you, there is a  
14 rundown of the history of the public hearings,  
15 the Zoning Commission action and the Notice of  
16 Proposed Rulemaking that was published in the  
17 *D.C. Register* in June of 2011.

18 That was language that was proposed  
19 for the new Zoning Code. We have since felt  
20 that this particular environmental action was  
21 important enough to bring forward into the  
22 existing code and have enacted more -- sooner.

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1       Go to the big word.

2               The GAR would apply to all zones  
3       except the R-1, R-2, R-3 and R-4. In those  
4       zones, we're proposing a pervious surface  
5       limitation that would be a little less flexible,  
6       but a little easier to administer because the  
7       GAR, the Green Area Ratio, is to be triggered  
8       by the Certificate of Occupancy and in the  
9       single-family and flat zones, there is no  
10      certificate of occupancy. So, there would be  
11      an enforcement problem.

12              I've provided some slides for you  
13      that kind of run through what the GAR does and  
14      how it works and it is a mathematical equation  
15      that looks at landscape elements based on a  
16      multiplier divided by the lot area. The  
17      multipliers and landscape elements are proposed  
18      in the Zoning Text.

19              At the set-down hearing, the Zoning  
20      Commission asked for some additional  
21      information on specifying what kind of plants  
22      species would be incentivized by GAR. We have

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1 provided to you a copy of what we're proposing  
2 to include which is the native plants for  
3 wildlife habitat and conservation landscaping  
4 for the Chesapeake Bay area. This is put out  
5 by the U.S. Fish and Wildlife Service. It's  
6 available online, but I've also printed out a  
7 copy for the Commissioners and for the record.

8 We have included that inside the regulations.

9 There was also a question raised  
10 through the Zoning Task Force about the  
11 certification requirements and we had included  
12 a certified U.S. Green Building Council  
13 Professional.

14 The issue was raised as to whether  
15 there is actually a landscape focus to that  
16 certification and as we researched it, there  
17 is not. So, we are now proposing that that  
18 particular professional certification be  
19 removed.

20 However, the other state landscape  
21 architects -- Certified Landscape Architects,  
22 the International Society of Arboriculture,

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1 Certified Arborists, Professional  
2 Horticulturalists be continued to be acceptable  
3 to the District.

4 So, the Commission heard the text  
5 originally. However, you did not go through  
6 and take action on the actual GAR standards.  
7 Those are shown on Slide 6 and we're proposing  
8 that they be at a .40 for the lower density  
9 multifamily zones, CR-5-A and R-5-B and working  
10 their way through the commercial zones up to  
11 a .2 in the high density commercial zones and  
12 the downtown.

13 The Commission did take action on  
14 industrial zones as part of the original  
15 industrial language for the new zoning regs,  
16 the PDR (Production, Distribution and Repair)  
17 and we, at that time, went through a series of  
18 exercises to come out with a .1 for one story  
19 warehouses and a .3 for all other structures.

20 So, we are proposing to include those also  
21 within this text.

22 The pervious surface was proposed

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1 as an alternative in the R-1 through R-4 zones.

2 It established in combination with the lot  
3 occupancy they would all be applicable and  
4 insures that there would be a certain amount  
5 of pervious surface on the lot and those  
6 standards are also presented in the text as  
7 anywhere from 50 percent in the lowest density  
8 R-1 zones up to 20 percent in the most dense  
9 R-4 zones.

10 Finally, we also have proposed  
11 surface parking landscape standards and those  
12 would be applicable for surface parking lots  
13 of ten spaces or more. Requires a 10 percent  
14 minimum of the total area devoted to parking  
15 and that would include the aisles and driveways,  
16 but that would be landscaped with trees and  
17 shrubbery.

18 There's some particulars about  
19 maintaining it in a living condition and that  
20 the areas at the end of the parking aisle would  
21 also be treed.

22 I have gone through the ANC 6C

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1 position and accept all of their typographical  
2 corrections and if the Commission would like  
3 us to look at some of their issues regarding  
4 the -- especially the maintaining of the minimum  
5 size dimension for the tree pits, we're happy  
6 to do that as well.

7 With that, we're available for  
8 questions.

9 CHAIRMAN HOOD: Okay. Thank you,  
10 Ms. Steingasser. I think that was very well  
11 done and straight to the point. We greatly  
12 appreciate it.

13 Let's see if we have any questions  
14 or do we also -- let me ask this. Do we want  
15 to ask our questions now or do we want to hear  
16 from -- I think we have three people that want  
17 to testify. Then ask our questions after that.

18 Okay.

19 Some don't. Well, we'll see.  
20 Well, let's ask the questions we have now.

21 COMMISSIONER MAY: Can we do both?

22 CHAIRMAN HOOD: Of course. We only

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1 have three people. Maybe four possibly who want  
2 to testify. So, go ahead, Commissioner May.

3 COMMISSIONER MAY: I had just a  
4 couple of quick questions. First, on the  
5 pervious surface requirement, that only applies  
6 for all other structures in those zones. Is  
7 that what I'm reading here?

8 MS. STEINGASSER: No, sir, it  
9 starts at the top where it says --

10 COMMISSIONER MAY: Your slide  
11 rather than your report, but --

12 MS. STEINGASSER: Oh, I'm sorry.  
13 In the text, the R-1 through R-4 public  
14 recreation and community centers have a surface  
15 requirement of 30 percent that we're proposing.

16 COMMISSIONER MAY: Right.

17 MS. STEINGASSER: All of the  
18 structures to those would then have the  
19 standards below.

20 COMMISSIONER MAY: Oh, other than  
21 those.

22 MS. STEINGASSER: Other than those

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1 two.

2 COMMISSIONER MAY: Okay. Got it.

3 MS. STEINGASSER: That's it.

4 COMMISSIONER MAY: Okay. So,  
5 private homes will have a 20 percent requirement  
6 in R-4?

7 MS. STEINGASSER: In the R-4,  
8 right.

9 COMMISSIONER MAY: Okay. So, I  
10 guess my question is if that's the case, how  
11 is that going to affect an existing home  
12 particularly one that's currently not compliant  
13 with that?

14 MS. STEINGASSER: It's not  
15 retroactive. If they came forward for a  
16 building permit, it would go into effect.

17 COMMISSIONER MAY: So, if you go in  
18 for a building permit for something that's  
19 completely unrelated to the yard, would you have  
20 to bring it into compliance?

21 MS. STEINGASSER: No, if it's an  
22 interior permit --

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1 COMMISSIONER MAY: Um-hum.

2 MS. STEINGASSER: -- no. No, sir,  
3 it would only be for exterior permits and we  
4 can clarify that.

5 COMMISSIONER MAY: Okay. And so,  
6 if you were doing something that would otherwise  
7 not require zoning relief?

8 MS. STEINGASSER: This would be a  
9 new zoning standard. So, if you were compliant  
10 with your yards and your height and your lot  
11 and --

12 COMMISSIONER MAY: Right.

13 MS. STEINGASSER: -- but, the --

14 COMMISSIONER MAY: Oh, so if you  
15 want to do -- if you want to put in a patio or  
16 if you want to put in a deck and it --

17 MS. STEINGASSER: We did --

18 COMMISSIONER MAY: -- could  
19 conceivable trigger this requirement.

20 MS. STEINGASSER: It could. We  
21 tried to exclude those as long as the soil  
22 beneath them is accessible. Yes.

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1                   COMMISSIONER MAY:     Okay.     But,  
2     those are the conditions that would have to be  
3     considered at the time of the application.

4                   MS.     STEINGASSER:             At     the  
5     application, yes, sir.

6                   COMMISSIONER MAY:     Okay.     But,  
7     it's not the sort of thing that would make the  
8     property nonconforming and therefore, trigger  
9     anything else in terms of other zoning reviews?

10                   MS.     STEINGASSER:     Oh, I see.     So,  
11     if you're currently a lot that has 90 percent  
12     and you wanted to put something on top that would  
13     otherwise be compliant --

14                   COMMISSIONER MAY:     Um-hum.

15                   MS.     STEINGASSER:             --     yes,     it  
16     probably would unless we clarified otherwise.

17                   COMMISSIONER MAY:     Well, I think  
18     that's worth taking a look at.     Because what  
19     I don't want to do is trigger a whole bunch more  
20     BZA cases because of, you know, triggering  
21     things that we wouldn't necessarily want to  
22     trigger.     I mean maybe we do want to trigger.

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1 I don't know. That's just -- I'm just thinking  
2 about things that might go a bit awry.

3 So, when you have a single-family  
4 home in one of the other zones say R-5 or C-2-A  
5 or something like that, you're theoretically  
6 going to be subject to the GAR.

7 MS. STEINGASSER: That would be  
8 correct.

9 COMMISSIONER MAY: Okay. But, the  
10 time when GAR gets evaluated is at the occupancy  
11 permit.

12 MS. STEINGASSER: That's correct.

13 COMMISSIONER MAY: Certificate of  
14 Occupancy stage. But, we took the action with  
15 R-1 through R-4 being excluded because it was  
16 a difficult enforcement issue. So, now, you're  
17 going to have that difficult enforcement issue  
18 for those single family homes.

19 MS. STEINGASSER: For those rare,  
20 yes.

21 COMMISSIONER MAY: Yes, but I don't  
22 think they're that rare. Are they? I mean

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1 aren't they --

2 MS. STEINGASSER: They are --

3 COMMISSIONER MAY: They're going to  
4 be --

5 MS. STEINGASSER: Well, I mean we  
6 can get the count for you, but they are pretty  
7 rare. There are some --

8 COMMISSIONER MAY: If it's not hard  
9 to get the count, I mean if you can just sort  
10 of punch in some numbers and just so we  
11 understand what the level is. Because it may  
12 be -- I don't know how you would draft it, but  
13 it may be worth providing that as an alternative  
14 to GAR compliance when you're dealing with a  
15 single-family home in one of those other zones.

16 MS. STEINGASSER: Well, actually,  
17 it wouldn't be that difficult. There is  
18 currently language that carries for  
19 single-family homes in commercial zones now for  
20 various standards. So, we could look. We'll  
21 get you those options.

22 COMMISSIONER MAY: And it may want

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1 to be more than just single-family. Maybe it's  
2 single family and flats or something. I don't  
3 know. Okay. Those are my -- a couple of  
4 questions.

5 CHAIRMAN HOOD: Vice Chair.

6 VICE CHAIR COHEN: Thank you, Mr.  
7 Chairman.

8 How did you derive the multipliers?  
9 Were they standard in the industry?

10 MS. STEINGASSER: Well, that's  
11 interesting. There is no real industry  
12 standard for this right now. We're the second  
13 city behind Seattle. I think Portland is also  
14 now coming online with this.

15 We worked with Dr. Melissa Keeley  
16 at George Washington University and her graduate  
17 class. She was also instrumental in working  
18 with Seattle on setting theirs.

19 So, they -- let me get the language  
20 right on this. They worked through a series  
21 of aerial photographs with infrared imagery with  
22 layers from octo for roads, buildings,

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1 sidewalks, water bodies, street trees and wooded  
2 areas to develop the combined data and then they  
3 did a cost analysis of the different  
4 environmental -- I'm sorry. They did a  
5 performance analysis of the different  
6 environmental elements, the trees, the shrubs  
7 that are recommended in there. They provided  
8 that. That's what that --

9 CHAIRMAN HOOD: Okay.  
10 Commissioner Miller.

11 COMMISSIONER MILLER: Thank you,  
12 Mr. Chairman.

13 Yes, I had a question for OP. They  
14 referenced the ANC 6C's letter of October 15th  
15 and you accepted their typographical  
16 corrections, but could you respond to their  
17 suggestion in the next to last paragraph? Let  
18 me just read that into the record and then if  
19 you could just respond.

20 They say "For many 6C properties  
21 with garages or paved rear parking areas, the  
22 impact of this provision," they're talking about

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1 the pervious surface area provision, "would be  
2 substantial. For example, a rowhouse owner  
3 wishing to construct an addition to expand lot  
4 occupancy to 60 percent which is now a matter  
5 of right would still have to apply to the BZA  
6 for a special exception or make potentially  
7 costly upgrades because of the existing roof  
8 paving conditions. To correct this defect, an  
9 exception might be added similar to the GAR  
10 exception at 3401.3 exempting historical  
11 properties in cases where the GFA is increased  
12 by less than 50 percent or some other suitable  
13 proportion."

14 Do you see that as a problem and  
15 --

16 MS. STEINGASSER: Well, I think  
17 this is what Commissioner May was also circling  
18 around and we're happy to take a look at that  
19 and see what that gives us and provide the  
20 Commissioners with alternatives if that's your  
21 desire.

22 COMMISSIONER MILLER: Okay. I

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1 think that would be helpful.

2 MS. STEINGASSER: Yes, sir.

3 COMMISSIONER MILLER: And did you  
4 make a reference to the ANC's comments about  
5 the minimum cubic feet of soil comment?

6 MS. STEINGASSER: We're happy to  
7 look at that and come up with a minimum  
8 dimension.

9 COMMISSIONER MILLER: Okay.  
10 Thanks. That's all.

11 CHAIRMAN HOOD: I'm just curious.  
12 The way I read the ANC letter if -- and Ms.  
13 Steingasser said they would accept everything  
14 that's in the ANC letter. Am I correct?

15 MS. STEINGASSER: Regarding the  
16 typographical errors.

17 CHAIRMAN HOOD: Yes. What about  
18 some of the other stuff that they mentioned?

19 MS. STEINGASSER: Well, we're happy  
20 to look at it. I hate to take it all forward.  
21 I mean their main recommendation is to oppose  
22 the regulations and obviously, we don't --

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1 CHAIRMAN HOOD: Right and that's  
2 what I --

3 MS. STEINGASSER: -- we don't  
4 support that.

5 CHAIRMAN HOOD: And the way I looked  
6 at -- well, the way I looked at it they said  
7 they would -- the way I read it, you know, we  
8 all read things differently, is that they said  
9 they would oppose it, but if you took the --  
10 if the Zoning Commission chooses to move  
11 forward, the ANC advises the following. I don't  
12 know. I just wonder if you were to take this  
13 and we were to implement some of this after you  
14 look at it, would they be in support. That's  
15 kind of what I was just trying to figure out.

16 MS. STEINGASSER: That I don't  
17 know.

18 CHAIRMAN HOOD: Probably not.

19 MS. STEINGASSER: I mean we could  
20 --

21 CHAIRMAN HOOD: That's --

22 MS. STEINGASSER: Yes.

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1 CHAIRMAN HOOD: -- that's me really  
2 trying to stretch and try to see how they would  
3 be supportive, but it is what it is. It's in  
4 black and white. So, I'll leave it at that.

5 But, I think you mentioned that you  
6 would look into some of this. Not necessarily  
7 the Office of Planning would be agreeable to  
8 it moving it forward, but you would look at it.  
9 Right?

10 MS. STEINGASSER: We'll look at it  
11 and provide some alternatives to the Commission  
12 as to what it means.

13 CHAIRMAN HOOD: Okay. I just  
14 didn't want to -- I think this was the only ANC  
15 that provided information and I really  
16 appreciate ANC 6C doing that.

17 Any other questions up here? Okay.

18 Let me ask the -- let me just let  
19 Vice Chair just go ahead and take right over.

20 She wants me to swear everybody in. Okay.  
21 This is a rulemaking. I'm confused enough.  
22 I'm really having fun. Got to have some

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1       sometime.

2                   I was going to ask all three to come  
3 up, but if Mr. Gates wants to come up and testify  
4 to these two, he can.

5                   For some reason, my Vice Chair wants  
6 you all to be sworn in. Why is that? We  
7 actually don't swear in on the rulemaking.

8                   VICE CHAIR COHEN: Oh. Okay.  
9 Thank you.

10                  CHAIRMAN HOOD: If you want --

11                  MS. SCHELLIN: I'm not sure. Has  
12 she been here for any rulemakings. I can't --  
13 I guess she has.

14                  CHAIRMAN HOOD: Yes, she actually  
15 has because she wanted me to swear them in once  
16 before.

17                  MS. SCHELLIN: I was thinking maybe  
18 it was her first one and she's confused.

19                  CHAIRMAN HOOD: Everyone who's here  
20 to testify if you could just come forward.  
21 Okay. So, we have two.

22                  So, with that, we only have two

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1 people. Unless you just have seven pages of  
2 testimony, we will hear all your testimony.  
3 Okay. As long as we don't have seven pages.

4 Can I ask about how much time you  
5 think you would need? Why don't I do it this  
6 way? How much time do you think you'll need?

7 Let me start with Ms. Gates. Three minutes?

8 Ms. Gates, how much time do you -- he said three.

9 No, he said three minutes. He only needs three  
10 minutes. How much time do you need, Ms. Gates?

11 MS. GATES: I need six.

12 CHAIRMAN HOOD: Six minutes?

13 MS. GATES: I don't -- I honestly  
14 don't --

15 CHAIRMAN HOOD: Turn your mike on,  
16 Ms. Gates. Okay. Well, I'll tell you what.  
17 We will hear all your testimony since you two  
18 are the only two here to testify. Why don't  
19 we do that? Is that a fair deal?

20 MS. GATES: That's very fair.

21 CHAIRMAN HOOD: Okay. All right.

22 Who would like to start? Ms. Gates.

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1 MS. GATES: Good evening, Chairman  
2 Hood and Members of the Commission.

3 I am Alma Gates testifying on behalf  
4 of the Committee of 100 on the Federal City  
5 formed in 1923 to act as a force of conscious  
6 in the evolution of the Nation's Capital City.

7 It is in that spirit that the  
8 Committee has participated in the Zoning  
9 Regulations revision and is before you tonight  
10 in support of the new Zoning Chapter 34, Green  
11 Area Ratio.

12 The Committee participated in the  
13 work group and task force sessions on  
14 sustainability GAR and contributed to the  
15 development of the Department of the Environment  
16 Stormwater Regulations.

17 GAR is timely and necessary to help  
18 minimize impacts resulting from increased lot  
19 coverage and the potential for excessive  
20 stormwater run off, a deterioration of air  
21 quality and the more intense urban heat island.

22 The outcomes of higher lot coverage

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1 have grown exponentially over time as the areas  
2 of this City have expanded and developed and  
3 will continue to affect the urban environment  
4 until and unless regulations are incorporated  
5 in the Zoning Code to help prevent environmental  
6 deterioration each time development occurs.

7 The proposed regulations presented  
8 for consideration tonight reflect a substantial  
9 effort on the part of the Office of Planning,  
10 DDOE and DDOT's Urban Forestry Administration.

11  
12 OP's Laine Cidlowski is to be  
13 commended for her work on Chapter 34 as well  
14 as Vision for a Sustainable D.C., Mayor Vincent  
15 Gray's vision for a more sustainable future.

16 Working in conjunction with the  
17 District's agencies, OP, DDOT and DDOE is D.C.  
18 Water through its green infrastructure campaign  
19 aimed at greening the District, cleaning the  
20 rivers and providing an enhanced ecosystem aimed  
21 at beautifying our Nation's Capital.

22 The C 100 makes the following

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1 observations about Chapter 34. One, the City's  
2 tree canopy has suffered dramatically in spite  
3 of positive outcomes anticipated from the Tree  
4 Bill and efforts of organizations like Casey  
5 Trees. A commitment to increase the City's tree  
6 canopy from 35 to 40 percent by 2035 has been  
7 made to improve stormwater management and  
8 climate adaptation, remove greenhouse gases,  
9 reduce heat islands and provide wildlife  
10 habitat.

11 While a 5 percent increase in the  
12 tree canopy over the next 23 years does not  
13 appear to be an aggressive undertaking, it may  
14 prove difficult given the 100 percent lot  
15 coverage allowances proposed in the Zoning  
16 Regulations. Green roofs will replace ground  
17 level green space and landscaping around the  
18 base of buildings. Setbacks will diminish as  
19 footprints are permitted to expand. Less green  
20 space available for tree planting will make  
21 increasing the City's tree canopy more  
22 challenging as many street trees struggle to

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1 survive in tree boxes shaded by tall buildings,  
2 lack of water and excessive Pepco pruning.

3 To insure every effort is made by  
4 developers to not remove trees unnecessarily,  
5 please refer to GAR Section 3404.4(j) which  
6 refers to the location and size of any trees  
7 to be removed on a landscape plan. If a  
8 developer is going to get points for planting  
9 trees, then the same developer must lose points  
10 for removing trees and begin with a negative  
11 GAR score.

12 The ability to pay into the tree fund  
13 does not guarantee trees will be replaced or  
14 the tree canopy will be increased as the fund  
15 as fallen prey to D.C. budget shortfalls in the  
16 recent past. To guarantee the tree canopy is  
17 replaced, a developer should be required to  
18 replace caliper inch for caliper inch and such  
19 a requirement is absent in Chapter 34.

20 A reference to Chapter 15, various  
21 overlay district, is missing. Many of these  
22 districts have tree and slope provisions.

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1 Chapter 34 needs to reference  
2 Chapter 15 and insure that it is not in conflict,  
3 does not weaken or take precedent over  
4 established overlay protections. A real  
5 concern is the proposed elimination in the ZRR  
6 of current penalties found in Section 1568.3  
7 for TSO violations which weakens the protections  
8 in the guise of strengthening them.

9 How is the Green Area Ratio  
10 strengthened by Section 3405, special  
11 exceptions? Unfortunately, special exceptions  
12 have become too commonplace and no longer hold  
13 their intended special purpose. Chapter 34  
14 cannot accomplish its intended outcome if a  
15 developer can flee to the BZA and seek relief  
16 from its provisions.

17 Perhaps some special exception  
18 limitations or a variance instead of a special  
19 exception are needed.

20 The C 100 appreciates the  
21 opportunity to testify tonight on this important  
22 addition to the Zoning Regulations.

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1 CHAIRMAN HOOD: Thank you, Ms.  
2 Gates. Next.

3 MR. ECKENWILER: Thank you, Mr.  
4 Chairman, Members of the Commission.

5 My name is Mark Eckenwiler. I live  
6 at 312 E Street, N.E. on Capitol Hill.

7 I have prepared testimony targeting  
8 a specific issue in the proposal 12-10 going  
9 to the pervious surface minimum requirements.

10 I'm going to abbreviate that even further in  
11 light of the comments by Commissioner May and  
12 Commissioner Miller.

13 I just want to highlight a few things  
14 in my experience from having lived on the Hill  
15 for the last 16 years and being very active in  
16 zoning and historic preservation issues.

17 There is an enormous number of  
18 properties in R-4 zones and in particular within  
19 the Capitol Hill Historic District that for  
20 various reasons have right now more than 80  
21 percent impervious surface coverage.  
22 Sometimes a lot of these buildings were built

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1 before the Zoning Code was adopted and so,  
2 they're well over 80 percent. Some of them are  
3 on small lots where there's no way to build a  
4 habitable structure without going over 80  
5 percent.

6 In many cases, we have accessory  
7 structures. We have garages. We have carriage  
8 houses. Sometimes historic. Sometimes less  
9 so and then, of course, there is the paving  
10 unfortunate otherwise that typifies a lot of  
11 backyards.

12 As Ms. Steingasser from OP pointed  
13 out during the July hearing for set down, we  
14 don't get any credit for the front yard because  
15 we don't own that. That's actually public  
16 parking and, therefore, would not go toward the  
17 calculation of pervious surface.

18 Picking up on one point that  
19 Commissioner May had raised, there are actually  
20 some fairly significant cases in which a  
21 homeowner would be subjected to the requirement  
22 of having to seek zoning relief from the BZA.

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1 A good example would be someone who's current  
2 dwelling occupies 55 percent of the lot and they  
3 decide they'd like to do a small addition. But,  
4 they only want to go up to 60 percent. Sixty  
5 percent is matter of right under Chapter 4.

6 But, as Ms. Steingasser  
7 acknowledged during her July presentation and  
8 set down, that would trigger the requirements  
9 for seeking a special exemption and I think  
10 people sometimes lose sight of the fact. You  
11 know, obviously the Members of this Commission  
12 are very well versed in the Zoning Regulations,  
13 but to the average District resident, it is like  
14 Sanskrit in a mirror.

15 This is very difficult stuff and it  
16 means hiring either -- you either hire a zoning  
17 counsel or you pay your architect more in order  
18 to do the zoning compliance for you. So, there  
19 is a burden in terms of financial cost.

20 There is a burden in terms of delay.  
21 Just plain stress and effort put into that and  
22 I think Commissioner May rightly points out that

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1 having a lot more of these cases go to the BZA  
2 for special exemption is not in the public  
3 interest and that's why I'm here to speak in  
4 opposition to that particular element of Case  
5 12-10.

6           There is much to be admired. I want  
7 to be clear. I think there are some very  
8 commendable goals and OP has I think in many  
9 ways done a very good job with many of the other  
10 elements in this proposal.

11           But, I find it remarkable that there  
12 is this enormous carve out in the Green Area  
13 Ratio provisions. Section 3401.3 that wholly  
14 exempts historic properties from the Green Area  
15 Ratio requirements unless the addition is  
16 frankly enormous, unless you're adding more than  
17 half the gross floor area and there is no  
18 comparable exception whatsoever in the pervious  
19 surface requirements and for those reasons, I  
20 would urge the Commission to reject at least  
21 these elements of the proposal.

22           Thank you.

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1 CHAIRMAN HOOD: Okay. I thank you,  
2 both. Let's see if we have any questions.

3 Commissioners, any questions?

4 Let me ask this. I'm sorry.  
5 Commissioner May. I'm sorry. Commissioner  
6 Miller.

7 COMMISSIONER MILLER: I didn't have  
8 a question of the witnesses, but I did have a  
9 question I wanted to ask Office of Planning.

10 CHAIRMAN HOOD: Why don't we just  
11 do both?

12 COMMISSIONER MILLER: Yes. Okay.  
13 To respond to Ms. Gates' suggestion regarding  
14 that if you're going to gain points for planting  
15 trees, you should lose points for taking trees  
16 down. Was that considered in developing the  
17 regulation? Was it not workable or what's the  
18 --

19 MS. STEINGASSER: Well, no, it  
20 wasn't considered. I mean it's inherent that  
21 a lot would lose trees for construction to a  
22 certain agree if it's a heavily wooded site,

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1 but most of that's covered by the Tree Act  
2 already. So, it seemed duplicative to have it  
3 in multiple places with multiple jurisdictions.

4 So, we left the tree protection with the Tree  
5 Act and moved forward with the GAR separately.

6 COMMISSIONER MILLER: And her  
7 suggestion that there needed to a reference to  
8 the tree and slope overlay provisions?

9 MS. STEINGASSER: We'll cross check  
10 because we certainly didn't mean to leave those  
11 out by any means. So, we'll make sure that that  
12 cross-reference gets made.

13 COMMISSIONER MILLER: Does there  
14 need to be a reference to the Tree Act in the  
15 -- since you brought it up, since you said that  
16 the taking down of trees is addressed by that  
17 or is that not appropriate in the Zoning Code?

18 MS. STEINGASSER: Usually, OAG  
19 frowns on it when we try to start  
20 cross-referencing.

21 COMMISSIONER MILLER: Because it  
22 might get changed and --

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1 MS. STEINGASSER: When there's --  
2 yes, sir. But, we can ask him if there's a way  
3 to make that reference.

4 COMMISSIONER MILLER: Would the  
5 deduction of points not work at all in this  
6 particular kind of calculation or --

7 MS. STEINGASSER: Well, it's not  
8 the same kind of calculation that the GAR is  
9 set to accommodate. I mean we could try to run  
10 an example. Find a wooded lot and see what  
11 happens if you had to move basically all that  
12 tree caliper to the non-buildable parts of the  
13 lot and see what that gives us. But, it's a  
14 different type of calculation than the GAR is  
15 set.

16 But, if there's another way to go  
17 to take a look at it, we'll be happy to  
18 investigate that.

19 MS. GATES: May I just add one  
20 thing. I don't necessarily mean that it has  
21 to be on the same lot and that is part of the  
22 tree provision. You're correct.

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1           But, I just want to make sure because  
2           this tree canopy is so important that caliper  
3           inch is replaced by caliper inch. I don't care  
4           whether it happens with the tree folks or with  
5           you all, but it needs to happen.

6           MS. STEINGASSER: This is one of the  
7           issues that was discussed through the Zoning  
8           Task Force and there was a lot of concern about  
9           forcing someone to do something on somebody  
10          else's property or in the public space and our  
11          attorneys were very concerned when we floated  
12          the issue up that if -- if I took the trees off  
13          my property and I wanted to put them on say Mr.  
14          May's property, but Mr. May didn't want them  
15          or the City didn't want them and once you put  
16          them there, who would maintain them. So --

17          COMMISSIONER MAY: You can't.  
18          I've got too much impervious surface.

19          MS. STEINGASSER: You won't when I  
20          put my tree there. Vigilant tree planting in  
21          the middle of the night.

22          So, that's kind of where we -- it

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1 was -- you probably remember. It was a  
2 difficult discussion as to how you -- if you  
3 don't have a willing recipient and what is the  
4 responsibility of that recipient to the person  
5 who's removed the tree. So, that became a  
6 difficult -- the tree issue, I mean we're very  
7 sympathetic to it obviously and it's very, very  
8 critical and important. But, it didn't seem  
9 to fit hand and glove with the GAR.

10 CHAIRMAN HOOD: Any other comments  
11 on that issues? Any more? Okay.  
12 Commissioner May.

13 COMMISSIONER MAY: I have a  
14 different issue. Is that all right? Okay.

15 So, going back to the minimum  
16 pervious surface and I can't remember if we  
17 discussed this before because this has been a  
18 subject of some discussion for a while and not  
19 wanting things to get too complicated in that  
20 circumstance, but does it make sense that the  
21 lack of pervious surface could be offset by green  
22 roof or some of green feature?

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1 MS. STEINGASSER: That if I recall  
2 correctly did not comport with the definitions  
3 that DDOE uses for pervious surface, the green  
4 roof. So, it would be an in lieu of.

5 COMMISSIONER MAY: Right. I mean  
6 does that get too complicated? I know we want  
7 to try to keep it simple.

8 MS. STEINGASSER: It gets a little  
9 more complicated because of the enforcement of  
10 -- when you come in for a building permit, you  
11 can see pervious surface, lot occupancy, side  
12 yards. You can identify the green roof, but  
13 there's no way to know whether it's --

14 COMMISSIONER MAY: Right.

15 MS. STEINGASSER: Yes, it's as  
16 self-enforcing as -- if you say it's a pervious  
17 paver versus not a pervious paver. You know,  
18 that --

19 COMMISSIONER MAY: Yes, I mean it  
20 --

21 MS. STEINGASSER: We can look into  
22 it and see if --

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1                   COMMISSIONER MAY:    Yes, I mean I  
2                   hate to make it too complicated, but, you know,  
3                   and it's hard not to relate this to my own  
4                   personal circumstance.  But, you know, I do have  
5                   more than 80 percent pervious surface on my  
6                   property.  We do have plans to put a green roof  
7                   on our garage, you know, once I can -- once my  
8                   kids get out of college and I can afford it.

9                   But, you know, I have solar panels  
10                  and I have a rain barrel and all these other  
11                  things that would, you know --

12                 MS. STEINGASSER:  All this good.

13                 COMMISSIONER MAY:  That I'm good.  
14                 I'm a good citizen, but I --

15                 MS. STEINGASSER:  You're green.

16                 COMMISSIONER MAY:  But, you know,  
17                 if I -- I have a patio.  So, I would not --

18                 MS. STEINGASSER:  Go outside and  
19                 use your -- we'll certainly take a look at it.

20                 I mean we're sympathetic to what we're hearing  
21                 especially in the older parts of the rowhouse  
22                 zoned Capitol Hill.  You're right.  Where

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1 there's still the L'Enfant Streets creating some  
2 really funky narrow lots. So, we'll take  
3 another look at that.

4 MR. ECKENWILER: May I be heard on  
5 that point?

6 If I understood Ms. Steingasser, I  
7 thought she was saying the green roof doesn't  
8 count, but I -- to be fair, I think it actually  
9 does under the proposal looking at 412.3(a).  
10 It says only the following should be considered  
11 pervious surfaces and (a) includes all areas  
12 of vegetated roof planted with a growing medium.

13 So, I think green roof, but my point  
14 and this -- you'll see I discuss this in my  
15 written testimony. That can often be  
16 substantially costly as Commissioner May points  
17 out. There may be a problem with you got  
18 something else on your roof like solar panels  
19 and speaking from my personal experience, I know  
20 that's something that my better half would  
21 pretty much like to do at some point in the  
22 future. So, those two things cannot be done

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1 together.

2 COMMISSIONER MAY: I think there  
3 was a complication on green roofs. Which is  
4 that there's a requirement that it be -- there  
5 be a water source.

6 MS. STEINGASSER: In GAR, it --

7 COMMISSIONER MAY: In GAR, yes.

8 MS. STEINGASSER: But, not in the  
9 pervious surface. I stand corrected.

10 COMMISSIONER MAY: Yes. Okay.

11 CHAIRMAN HOOD: Any other  
12 questions?

13 As far as Ms. Gates, did you have  
14 anything you wanted to add?

15 MS. GATES: Well, I just was going  
16 to say that initially the green roof was only  
17 required for a two-year period and we felt that  
18 the project was going to be in place for longer  
19 than that and that is why the water source or  
20 the water was put in there. To keep -- to make  
21 sure that it was preserved.

22 I really have to say I think this

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1 particular chapter of the ZRR was enjoyable to  
2 work on because I think we had a great exchange  
3 and it brought out a lot of interest that people  
4 may not have been willing to share before and  
5 I think they really did come in on this and OP  
6 really listened and implemented the changes that  
7 were suggested.

8 MS. STEINGASSER: Could we get a  
9 copy of this transcript please?

10 CHAIRMAN HOOD: I tell you if you  
11 want it accurate, wait for it to come out and  
12 record it accurately because I can --

13 COMMISSIONER MAY: Somebody's  
14 tweeting it right now though. Aren't they?

15 CHAIRMAN HOOD: Well, I hope  
16 they're tweeting it correctly.

17 Let me just ask this though and Mr.  
18 Eckenwiler had mentioned the red tape that you  
19 would have to go through the BZA. One of the  
20 tools that we already have and I'm just curious  
21 if it fits within the form of our expedited  
22 review. Would this kind of -- some cases

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1 probably fall under that. I'm just curious.  
2 None of this -- a lot of this is new. This GAR.

3 MS. STEINGASSER: We could look at  
4 that as a fall-back alternative. Even an  
5 expedited review takes about two months and the  
6 notice still has to go to the ANC. So, that's  
7 a minimum of functionally 50 days and then the  
8 ANC has to get their reports in. So, it can  
9 still -- it's more expedited than a four to five  
10 month hearing, but it still could be lengthy.

11 We'll take a look at it.

12 CHAIRMAN HOOD: Yes, if we could.

13 MS. STEINGASSER: I think we'll be  
14 able to find a matter of right solution.

15 CHAIRMAN HOOD: Okay.

16 MR. ECKENWILER: And if I can also  
17 just as a further comment on that, one problem  
18 with expedited review is that if an objection  
19 is lodged to an application that's presented  
20 for expedited review, then you go to the back  
21 of the line. So, you're actually worse off than  
22 if you had just made a regular application.

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1 I've had a conversation with Mr.  
2 Nero in OZ about this. At least, that's the  
3 way he's characterized it to me.

4 CHAIRMAN HOOD: So, you actually go  
5 to the back of the line. Actually, I sat on  
6 one the other day. I didn't know that.

7 MS. STEINGASSER: You take a risk  
8 by requesting expedited that nobody is going  
9 to object, but if they object, you go to the  
10 next available hearing. You don't get a have  
11 the hearing that same day. So, it --

12 CHAIRMAN HOOD: I really think we  
13 need to -- I didn't know that. I think we need  
14 to look at that. We're going to look at that.

15 I really do. Because we just did one when I  
16 was here and I really didn't know I was sending  
17 somebody to the back of the line. I thought  
18 I was just sending them to have a hearing and  
19 we need to -- I think we can tweak that. I don't  
20 know, you know, what we need to do, but that's  
21 something I would ask my colleagues and I let's  
22 look at.

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1 I'm not sure. You know, I know a  
2 lot of stuff has been thought out a lot, but  
3 actually, I don't think that's fair.

4 Let me be quiet because I don't want  
5 to get tweeted again. So, let me just be quiet.

6 Okay. Commissioner May, do you  
7 have anything?

8 COMMISSIONER MAY: No, you know, on  
9 the subject of going to the end of the line after  
10 an expedited review is rejected, you know, I  
11 remember we had a lot of discussion about how  
12 to make the process fair and I don't think that  
13 that really was the intention and so, maybe there  
14 is something that we need to do to try to address  
15 that.

16 CHAIRMAN HOOD: If we did do it, I  
17 can tell you I was not cognizant of us doing  
18 that.

19 COMMISSIONER MAY: Right.

20 CHAIRMAN HOOD: Sending you all the  
21 way to the end of the line.

22 COMMISSIONER MAY: So, is that

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1 something that we're asking the Office of  
2 Planning to take a look at?

3 CHAIRMAN HOOD: Them and us. All  
4 of us are going to do it because --

5 MS. STEINGASSER: I believe this is  
6 a result of OAG and the BZA and the Office of  
7 Zoning's scheduling and notice requirements  
8 more than a planning OP issues.

9 CHAIRMAN HOOD: Right. We can work  
10 with them in shop and kind of figure something  
11 out and work with our -- both -- well, especially  
12 our BZA secretary because I just think the end  
13 -- I don't think there's anything written, but  
14 I just don't see any point to --

15 COMMISSIONER MAY: But, I mean are  
16 you saying that it would not require a  
17 modification, further modification, of the text  
18 to come up with a better system?

19 MS. STEINGASSER: I'm going to let  
20 Ms. Schellin answer.

21 MS. SCHELLIN: But, I think she's  
22 right. That it may be an internal scheduling

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1 process and it may be that -- maybe if one comes  
2 in, they could, you know, have the expedited  
3 date, but also be sitting on the calendar  
4 somewhere as if they had filed a regular case.

5 So, that way if the expedited doesn't happen,  
6 they could get that. If not, then they've got  
7 a shorter day, but that's up to the BZA to  
8 schedule.

9 I'll be glad to mention that to them  
10 if that's what you want to do.

11 CHAIRMAN HOOD: I'm sure that --

12 MS. SCHELLIN: But, I think it's a  
13 scheduling. I'm getting nods.

14 CHAIRMAN HOOD: The Chairman of the  
15 BZA works with us all so well. I'm sure he will  
16 make sure --

17 MS. SCHELLIN: Right. Well, Mr.  
18 Nero's the one who does the scheduling. So,  
19 I'll mention it to him.

20 CHAIRMAN HOOD: Okay. Well, Mr.  
21 Nero or Cliff or whoever it is --

22 MS. SCHELLIN: Yes.

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1 CHAIRMAN HOOD: -- they will make  
2 sure that they've heard our concern and I will  
3 also convey that to them. Okay.

4 But, I will -- you and I will work  
5 together on that. Okay. Great.

6 Okay. Anything else? Ms.  
7 Schellin, do we have anything else?

8 MS. SCHELLIN: Dates. I'm sorry.  
9 Is this something that can done by absentee  
10 ballot or do we need to put it on for January  
11 also? It would be December. The December  
12 meeting. So, you could do that one by absentee  
13 ballot you think? Okay.

14 If that works for OP, then could we  
15 have -- based on the discussion this evening,  
16 your responses by 3:00 p.m. the 26th. That  
17 gives you three weeks.

18 MS. STEINGASSER: Yes.

19 MS. SCHELLIN: And then that will  
20 allow OAG time to review everything and we can  
21 take it up on the 10th if that works.

22 CHAIRMAN HOOD: Okay. Are we all

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1 in order?

2 MS. SCHELLIN: We are.

3 CHAIRMAN HOOD: Okay. I want to  
4 thank everyone for their participation tonight  
5 and this hearing is adjourned.

6 (Whereupon, at 7:35 p.m., the  
7 hearing was adjourned.)

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