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**Testimony of the
District of Columbia Building Industry Association
on Zoning Commission Case 04-33A
Map and Text Amendments, Inclusionary Zoning Overlay District
Thursday, October 5, 2006, 6:30 PM
Before the Zoning Commission of the District of Columbia
Presented By
Jeffrey H. Gelman, Partner
Greenstein DeLorme & Luchs, P.C.**

Good Evening members of the Zoning Commission – I am Jeffrey Gelman, an attorney in the law firm of Greenstein DeLorme and Luchs, P.C. and a member of the Executive Committee and Board of Directors of the District of Columbia Building Industry Association. I also chair its Housing Committee. I am here today testifying in behalf of DCBIA.

DCBIA and numerous individual developers testified on the text amendment case expressing concern about a far reaching program which would produce few affordable units but which could cause significant harm to the housing market generally in the District of Columbia. Those concerns remain with us today. With the slowing of the housing market, and the continuing escalation of construction costs, the mandatory program adopted by the Commission under certain assumptions that were intended to hold developers harmless no longer justifies the belief that developers and property owners will not be seriously harmed by this mandatory program. Indeed, we are seeing the effects of even the prospect of MIZ on the housing market today. Various developers have indicated that they have been unable to proceed with projects because of the uncertainty and destabilizing effect on land values the proposed MIZ program is creating. This destabilization of land values and the housing market began with the first public announcements of the proposed mandatory program and will continue for perhaps several years if the program is enacted in its current form.

Given this uncertainty, we urge the Zoning Commission to defer final action on Case 04-33, Phase II, until inclusionary zoning legislation has been adopted by the Council. The deferral would incur no significant delay, but it would provide the opportunity to more finely calibrate an IZ overlay with the final shape of the IZ program. The Office of

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**ZONING COMMISSION
District of Columbia**

CASE NO. 04-33A
EXHIBIT NO. 4
EXHIBIT NO. 36

Planning report to the Zoning Commission recommends the application of mandatory inclusionary zoning “to a wide range of zones and areas of the city.” Given the uncertain but potentially far reaching consequences of the program, it would clearly be prudent to know as precisely as possible how the program will work (or, at least, how it is supposed to work) before the extent of its area of application is established

The building industry is understandably concerned that the District is preparing a major new regulatory regime in three separate formulations, without sufficient consideration of how those formulations interact with each other in determining the workability of the total program.

I would note that the final rulemaking on IZ text amendments contains several specific provisions that exacerbate the problems identified in our previous testimony. The final rulemaking text, for example, omits the transition period for IZ implementation provided in the draft amendments. Further, it establishes low-income (50% AMI) set-aside requirements for steel and concrete construction in zones R-3 thru R-5-E. Finally, the rulemaking contradicts earlier understandings that set-aside requirements would apply only where, and to the extent that, bonus densities are achievable

The front-end discussion to the final rulemaking states “The Commission agreed with OP that a property’s inability to access bonus density does not warrant a complete exemption from compliance. The Commission is confident that most residential projects will be able to succeed under the IZ program with or without bonus density.” On that critical point, the building industry – those responsible for actually constructing the housing which is the focus of this program -- does not share such confidence

The net result is a program that is becoming more demanding in its requirements, as its formulation progresses. That would seem to call for a narrower zone of application focused on achievable densities. Instead, OP has recommended a broader IZ overlay than it did in its original proposal.

That broader area of application also affects the workability of the implementing legislation now before the Council. As drafted, the proposed bill would, among other things, effectively limit set-aside sales and rental prices to 30% (including utilities and condominium fees) of eligible household income. Since all eligible low-income households will not come in at the upper limit of 50% of AMI and all moderate income households at 80%, the impact on subsidy costs can only be severe. Meanwhile, the escalation in housing prices over recent years that might have allowed those subsidy costs to be passed on to market-rate buyers has collapsed

It is our judgment that we are moving in the wrong direction in the formulation of a workable inclusionary zoning program, and we are doing so at just the wrong time. Accordingly, we urge the Zoning Commission to re-visit its final rule-making on IZ text amendments with respect to a suitable transition period and set-aside requirements that realistically reflect a housing market of declining sales and rising construction costs. We further urge a deferral of action on an IZ overlay until the shape of final enabling legislation is clear.

Thank you for the opportunity to provide these remarks. .